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NEW JERSEY REGISTER

DEPARTMENT OF ... INTER-OFFICE

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VOLUME 24 NUMBER 7

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(Includes adopted rules filed through March 16, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 21, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 18, 1992

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **May 6, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Bees

Volunteer Inspector Program, Noncommercial Apiaries and Bees

Proposed New Rules: N.J.A.C. 2:24-4

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

Authority: N.J.S.A. 4:6-1 et seq.

Proposal Number: PRN 1992-150.

Submit comments by May 6, 1992 to:
William W. Metterhouse, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Honeybees are essential to New Jersey agriculture. Numerous crops are dependent upon the honeybee for pollination. The State has long had a regulatory presence in bee culture with its Bee Inspection Service. The purpose of the service is to control diseases and pests and disseminate information on good bee management to beekeepers. It is the policy of the Department to insure the continued presence of sufficient numbers of bees for pollination, promote the production and sale of New Jersey agricultural products such as honey, and insure that New Jersey continues to benefit from having quality hives and bees.

Due to reduction in the budget of the Department of Agriculture, various programs of the Department have either been reduced in scope or eliminated. State inspection of apiaries and bees is one program that has currently been reduced in scope. The State bee inspection service is now staffed with one full-time inspector. Historically, the inspection service has been staffed with three (or more) inspectors and additional part time seasonal inspectors. Despite budget reductions, the Department remains committed to the maintenance of quality hives.

On September 26, 1991 the Department received a petition for the promulgation of an agency rule regarding bee and apiary inspection (see 23 N.J.R. 3386(a) and 3533(a)). The petition was made by Mr. Thomas P. Thatcher, noncommercial New Jersey beekeeper. The petitioner was concerned that the State bee inspection service would not have sufficient manpower to respond to hobbyist and noncommercial hive inspection requests. The petition requested promulgation of a rule establishing a Department of Agriculture sanctioned and coordinated program to train interested volunteers to inspect and monitor hobbyist and noncommercial New Jersey hives. Unlike the regular State bee inspection service, this program would be wholly advisory in nature and volunteer inspection would only be done at the request of the apiary owner or operator. The petition called the program the Volunteer Inspector Program (VIP). The Department finds the goals and provisions of the proposed VIP program to be compatible with those of the Department. The VIP program has the potential to be a significantly beneficial supplement to existing Department bee culture programs. The Department also supports the petition for the reasons that it (1) promotes education on the art and science of beekeeping, and (2) promotes informed and responsible industry self-help.

Beekeeping in the United States is significantly impacted by the recent introductions of Varroa mites, Tracheal mites, and the Africanized honeybee (AHB). The Department believes that developing a cadre of interested and trained volunteers to monitor noncommercial hives and disseminate information to hobbyist beekeepers would be a distinctly positive step. Expanded education and practical experience within the beekeeping industry should increase the effectiveness of industry and government efforts to control impacts of mites and AHB.

The Department has decided to endorse the VIP petition and promulgate the following rules. The proposed rules include a provision that participants in the VIP program will hold the Department of Agriculture harmless from any and all claims of loss or damages.

Social Impact

The proposed rules would initiate a beekeeping industry self-help program whereby trained volunteers could participate in the inspection and monitoring of New Jersey intrastate noncommercial bees and apiaries. The Department will cooperate and help coordinate the program and provide opportunities for volunteer training, printed educational materials, and incidental program forms. Efforts by the beekeeping industry and Department for the betterment of New Jersey bee culture and education are both necessary and desirable.

Economic Impact

The proposed rules will not require significant new expenditures by the Department of Agriculture. The program would be coordinated utilizing existing Department staff resources. The primary new cost to the Department will be the printing and distribution of several new forms referred to in the rules. Volunteers participating in the program will have local auto travel costs which will not be reimbursed by the Department. Since individual activity in the program is wholly volunteer and self directed, no person will experience involuntary out of pocket expenses.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules pertain exclusively to individual noncommercial and volunteer activities.

Full text of the proposed new rules follows:

SUBCHAPTER 4. VOLUNTEER INSPECTOR PROGRAM, NONCOMMERCIAL APIARIES AND BEES

2:24-4.1 Definitions

As used in this subchapter, the following words and terms shall have the following meaning:

"Activity log" means the permanent record of VIP inspection activities and Advisory Reports maintained by each VIP designee on a form provided by the Department. VIP designees shall forward a copy of their Activity Log to the Department if requested to do so by the Department.

"Advisory report" means a non-binding written report made by a VIP designee to an apiary owner or operator following an inspection of a hive(s) or apiary. The report shall be made in the form, or facsimile thereof, as supplied by the Department.

"Department" means the New Jersey Department of Agriculture.

"Noncommercial" means a beekeeper enterprise of 50 or less colonies which does not engage in the sale of bee colonies, package bees, queens, or the rental of bees for pollination services. Beekeepers with 50 or less colonies who sell honey, but do not engage in the above activities, shall be considered noncommercial.

"Secretary" means the Secretary of Agriculture or his or her authorized designee.

"Significant event" means any noteworthy occurrence or discovery which shall be reported to the Department of Agriculture because of its regulatory significance or potential to adversely affect the New Jersey beekeeping industry.

"VIP" means Volunteer Inpector Program.

"VIP designee" means a person who meets the Department's qualification criteria and has received Department training in the fundamentals of bee and apiary inspection; has been designated by the Department as a Volunteer Inspector pursuant to this subchapter; and, who does not receive compensation or reimbursement for expenses by the Department.

2:24-4.2 General organization and purpose of the Voluntary Inspector program

(a) The Volunteer Inspector Program (VIP) is a cooperative and volunteer program involving the Department of Agriculture, interested beekeepers, educators, and interested beekeeping organizations. The purpose of this program is to train volunteers in the

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fundamentals of apiary and bee inspection so that they may assist the State Bee Inspection Service with the inspection and monitoring of noncommercial intrastate bees and apiaries.

(b) The organization and roles of the VIP components are generally as follows:

1. The Department of Agriculture shall oversee the program and will provide training to prospective VIP designees, forms and educational materials;

2. The VIP designees are volunteers trained by the Department and designated as VIP bee and apiary inspectors;

3. The beekeepers and apiary operators may request a VIP inspection of his or her bees or apiary. The request may be made by contacting the Department for a list of local VIP designees. The person requesting the inspection shall be present at the time of the inpsection.

2:24-4.3 Provisions and standards for VIP designee activities

(a) VIP designees may inspect and make advisory reports only for noncommercial intrastate bees and apiaries. Commercial and interstate bee inspections shall be performed only by State employed Bee Inspectors.

(b) VIP designees do not have law enforcement powers pursuant to N.J.S.A. 4:6-1 et seq., or "right of entry" powers pursuant to N.J.S.A. 4:6-18.

(c) VIP inspection shall be performed only at the request of the owner or operator of an apiary.

(d) The owner or operator of the apiary must be present at the time of a VIP inspection.

(e) In addition to making advisory reports to beekeepers, VIP designees shall report any significant event directly to the Department.

(f) VIP designees may not:

1. Accept money or compensation from a beekeeper for an inspection or advisory report;

2. Make an advisory report on bees owned by the VIP designee; and

3. Represent themselves as a State official, spokesperson for the State or Department or as a person with regulatory authority.

(g) VIP designees shall:

1. Maintain an up-to-date activity log of all VIP inspections and retain a record for not less than three years from the date of the last entry;

2. Comply with VIP directives as may be issued by the Secretary; and

3. Conduct themselves in a professional manner.

2:24-4.4 Qualifications and training

(a) Volunteers shall have at least five years experience in keeping bees and shall be currently active beekeepers.

(b) Standards and requirements for initial and recurrent VIP training shall be established by the Department. Training sessions for VIP designees and designee candidates shall be offered by the Department.

(c) Classroom training sessions may be supplemented by additional practical field training. At the sole discretion of the Department, VIP designees or designee candidates may accompany, for practical field training purposes, a State Bee Inspector during actual apiary inspections.

2:24-4.5 Expiration of designation

VIP designations made by the Department shall be valid for no more than two years. VIP designees shall take refresher and update training on no less than a biennial (every two years) basis.

2:24-4.6 Suspension orders by the Secretary or Director

(a) The Secretary or the Director of the Division of Plant Industry may temporarily or permanently order the suspension of the VIP designation of any person.

(b) Notification of suspension of any VIP designee shall be done in writing and may be delivered in person or by mail. The notice shall state the Secretary's or Director's reason(s) for the order and the effective date of the suspension.

2:24-4.7 Liability

(a) The VIP is a wholly voluntary program. All persons participating in this program, including all designees, and persons requesting VIP inspections do so of their own choosing and liability.

(b) Any persons, including beekeepers and VIP inspectors participating in the VIP shall agree to hold Department of Agriculture harmless from any and all claims of loss or damages resulting from participating in the program.

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program

Proposed Readoption with Amendments N.J.A.C. 2:32

Authorized By: Sire Stakes Board of Trustees, Bruce A. Stearns, Executive Director and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 5:5-91.

Proposal Number: PRN 1992-139.

Submit comments by May 6, 1992 to:
Bruce A. Stearns, Executive Director
New Jersey Sire Stakes Program
Division of Markets
Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-8830

The agency proposal follows:

Summary

The rules governing the New Jersey Sire Stakes are being filed for readoption in accordance with Executive Order 66(1978). The rules are scheduled for expiration on June 1, 1992. The majority of the rules will remain unchanged having proven effective during the past five years although several amendments have been proposed.

N.J.A.C. 2:32-2 contains the majority of the New Jersey Sire Stakes conditions. The amendments proposed for these conditions are primarily technical and are merely designed to clarify existing substantive provision. The only substantive change was to slightly increase the entry fee for three-year-olds who race in pari-mutuel events to reflect the higher purse structure for those races. The fair program sustaining payment dates have also been changed to bring them into line with the rest of the Standardbred industry and to also make them on the same dates as the sustaining payments due for the pari-mutuel program. The fees and dates have also been changed for the supplemental yearling nominations which creates a two tiered system lowering the fee if the payment is made before September 15 and raising the fee if the payment is made after that date and also extending the final date from January to February.

The New Jersey Sire Stakes Conditions were based on the provisions of N.J.S.A. 5:5-91 which established the program in April of 1971. The conditions have been amended since their initial adoption to provide an administrative framework under which the program could operate. The amendment process is done by the New Jersey Sire Stakes Board of Trustees who solicit suggestions for proposed changes from various groups of horsemen who participate in the program. The Trustees consider the various suggestions including concerns of their own and adopt changes at the end of each racing season.

The conditions are necessary for the operation of the Sire Stakes Program and are widely distributed among the participants and are reproduced in several industry publications. They relate to standing of stallions, nomination of yearlings, sustaining payments and the racing of the New Jersey sired horses at New Jersey tracks.

Subchapter 1 covers the general provisions of the Sire Stakes Program by incorporating by reference the United States Trotting Association's Guide for Stakes and Futurities. Subchapter 3 establishes an appeal process for any person aggrieved by any action or inaction by the Board of Trustees.

The rules have provided definitive guidelines for the operation of the Sire Stakes Program for the past two decades and have operated well during that period.

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Social Impact

The Sire Stakes Board of Trustees perceive these modifications will have no social impact to participants since they are mostly minor changes in language and fee schedules.

The social effects of the Sire Stakes Conditions have had limited impact on the public in general during their existence. The effects of the rules are primarily felt by horse owners and participants in the program although they will number nearly 6,000. The social conditions which would most effect the general public would be to preserve open space as farm land as a result of the Sire Stakes Program. The program has created a favorable economic climate in New Jersey for the raising and training of Standardbreds and the effect in 1992 is as great if not greater than it was in 1971 when the program was established. As to the horses' owners and participants, the effects of the conditions are to provide guidelines for the smooth operation of the program. Other agencies involved would include the New Jersey Racing Commission and the New Jersey Sports and Exposition Authority.

To date the affected parties appear to be in harmony with the current conditions as evidenced by the small number of suggested changes and comments received in recent years. To fail to readopt the conditions would leave the Sire Stakes Program without a framework in which to operate. The current conditions which include modifications made over the past 20 years have provided the structure necessary to implement the program.

Economic Impact

The proposed amendments should cause little economic impact on the Sire Stakes participants because the few changes in fees will only apply to owners of yearling horses not nominated in the usual fashions and also to the owners of three-year-olds who actually race in the pari-mutuel events; then, the additional entry fees will be added to the purses of those races. The change in the supplemental yearling nomination dates and costs will have a beneficial effect on those horse owners who miss the May deadline by allowing them to nominate at a reduced rate prior to September 15. Although the final supplemental cost is slightly higher after the September 15 date, the deadline has been extended by one month which should also have a beneficial effect.

The Sire Stakes Program, through the Conditions has a great impact on the agricultural community in New Jersey as well as the social fabric of the state. The largest breed of horses in New Jersey are the Standardbreds numbering over 16,000 according to the most recent surveys. The existence of the Sire Stakes Program and other related programs have provided the incentive to make New Jersey the national leader in the number of Standardbreds for the past decade. With a total of between $12,000,000 and $14,000,000 in purses, breeders awards and other incentives available, the Standardbred population in New Jersey is highly dependent on the New Jersey Sire Stakes Program. The Program provides many of the horses who race at the New Jersey tracks. Upwards of 35 percent of the Standardbreds racing in New Jersey are products of the local breeding program.

Total Sire Stakes purse monies available compare favorably with other states and provinces placing New Jersey at or near the top each year. The results of these programs are to attract top stallions to farms in New Jersey and resulting in a large number of mares sent to New Jersey from out-of-State locations to be bred to those stallions. Nearly two-thirds of the 3,376 mares bred to New Jersey stallions in 1991 were owned by out-of-State residents, most of whom board their horses at farms in New Jersey. The value of New Jersey sired yearlings produced each year exceeds $30,000,000. The sources of funding for the Sire Stakes program are from the pari-mutuel harness tracks and fees paid by the participants to keep their horses eligible. The readoption of the conditions would be necessary for the continuation of the latter funding.

Regulatory Flexibility Analysis

Many of the participants in the Sire Stakes Program are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is appropriate.

The purpose of the Sire Stakes Program is to provide competitions for New Jersey-Sired Standardbred horses that are, at once, challenging enough to improve the breed and open enough to encourage the maximum participation of Standardbred, with economic incentives of sufficient magnitude to make participation worthwhile.

The Sire Stakes Board of Trustees is aware of the characteristics of the industry it regulates. The total value of the 16,000 plus Standardbred stallions and race horses in New Jersey exceeds $360 million. Standardbred owners, breeders and trainers add $75 million to the State's economy each year and realize about $75 million worth of revenue. Individually, it costs approximately $20,000 per year to keep a race horse, but average purse revenues are only $19,000.

The Sire Stakes Program, by providing 360 races at both pari-mutuel and fair tracks, provided nearly $5.9 million in purse money and another $2.8 million restricted races for New Jersey sired performers. The program has continued to grow despite its funding problems. The number of small businesses participating in the program has increased each year. Therefore, the Sire Stakes Board of Trustees believes the program is beneficial to the small business of the Standardbred industry based on the continuing and increasing numbers of small business participants.

As stated above, the proposed amendments will have only a minor impact on small businesses. No new recordkeeping requirements are imposed.

In the interest of competitive fairness and to maintain the integrity of the program, no differing standards, based on business size, are offered.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:32.

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

2:32-2.3 Registration of stallions

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

(c) The registration must be returned by December 1. The Certificate of Good Health must be completed by a licensed New Jersey veterinarian on the farm where the stallion is standing, **sometime** between January 1 and January 21 of the year the stallion is registered and standing. The Certificate of Good Health, when signed by the veterinarian, is to be sent along with a copy of the EIA-AGID test chart to the Standardbred Owners and Breeders Association, Inc., P.O. Box 839, Freehold, New Jersey 07728 **by February 15 of the registered year.**

(d) The fee for annual registration of a stallion shall be due on or before December 1 of the approaching breeding season and December 1 for new registration. The fee must accompany this registration.

1. The following fees shall be applicable:

i. [$500.00] **$750.00** if the stud fee is [under $1,000,] **between $0 and $1,000** [private treaty,] or free.

ii. [$750.00] **$1,000** if the stud fee is **between** [$1,000] **$1,001** [but under] **and** [$10,000] **$5,000.**

iii. [$1,000] **$1,500** if the stud fee is **between** [$10,000] **$5,001** [or higher] **and $15,000 or private.**

iv. $2,000 if the stud fee is over $15,000.

(e) (No change.)

(f) The stallion must be on the farm by January 1[.] **of the year they are expected to stand. Special permission may be granted by the New Jersey Sire Stakes Board of Trustees only for first year stallions to compete in any stakes or invitational events which are determined by the New Jersey Sire Stakes Board of Trustees to be important to the betterment of the Sire Stakes Program. A fee of $7,500 shall be payable to the New Jersey Sire Stakes Program if this permission is granted. In any event the stallion must be on the farm by March 1 and must have been registered in accordance with (a) through (f) above.**

(g) The registration makes the foals of the stallion eligible to be nominated to the following:

1.-8. (No change.)

9. New Jersey Sire Stakes (Fair and Pari-Mutuel); [and]

10. New Jersey Yearling Show[.]; **and**

11. New Jersey Sired Overnight Events.

(h) (No change.)

2:32-2.9 [Registration of foals] **Yearling nominations**

(a) All foals must be registered with the United States Trotting Association with a certificate of registration dated on or before the time of nomination.

1. (No change.)

2. The yearling [registration] **nomination** fee shall be $40.00 if a copy of the United States Trotting Association certificate of registration accompanies the yearling nomination form and an additional

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$10.00 processing fee shall be due if the copy of the United States Trotting Association certificate is not submitted. The nomination payment covered the nomination fee for both the Fair and Pari-Mutuel division. Thereafter, each division will have separate sustaining payments [with separate due dates].

3. (No change.)

4. Supplemental nominations may be made to the New Jersey Sire Stakes commencing with foals of [1984] **1991**. Parties delinquent in paying the May 15 yearling nomination fee date are given until [January] **September** 15 of the [two-year-old] **yearling** year to fulfill the aforementioned conditions of nominations for a fee of [$400.00] **$250.00. After September 15 up until February 15 of the two-year-old year the cost will be $500.00**. An additional $400.00 is required to supplement to the Lou Babic Pace $300.00 or for the Lou Babic Filly division **by February 15 of the two-year-old year**.

2:32-2.10 Sustaining fees

The sustaining fee schedule will be as follows:

PARI-MUTUEL DIVISION

(No change.)

FAIR DIVISION

Age	First Sustaining Fee	Second Sustaining Fee
2	$100.00 ([Jan.] **Feb.** 15)	$150.00 ([Mar.] **Apr.** 15)
3	$100.00 ([Jan.] **Feb.** 15)	$150.00 ([Mar.] **Apr.** 15)

LOU BABIC MEMORIAL PACE

Age	**Sustaining Fee**
2YO Open	**$600.00 (Mar. 15)**
2YO Filly	**$300.00 (Mar. 15)**

2:32-2.19 Entry fee deadlines

(a) (No change.)

(b) All New Jersey Sire Stakes horses entered and drawn to post positions are required to pay [starting] **entry** fees at the track. This [starting] **entry** fee is required even though a horse is scratched.

(c) The [starting] **entry** fee must be paid or the horse will not be permitted to race in any Sire Stakes event until the fee is paid and collected.

(d) The [starting] **entry** fee will not be refunded unless the horse dies between the time of declaration and the start of the race.

(e) (No change.)

2:32-2.20 [Starting] **Entry** fees

[Starting] **Entry** fees will be added to the basic purse only in Fair and Pari-Mutuel series races. [Starting] **Entry** fees will be:

Pari Mutuel Division	Fair Divisions
2 year olds $500.00	2 year olds $75.00
3 year olds [$500.00] **$600.00**	3 year olds $75.00

2:32-2.27 Final races

(a) (No change.)

(b) Each Pari-mutuel Final will have a $500.00 [starting] **entry** fee **for two-year-olds and a $600.00 entry fee for three-year-olds** and is open to the highest New Jersey Sire Stakes point winners declared in the Meadowlands, Garden State and Freehold, and the highest New Jersey Sire Stakes point winners at the Fairs in each division that are declared in and can be drawn to post in **the** first tier. Trailers will not be permitted to start in any New Jersey Sire Stakes Finals. There will be no entry fee for the Fair Finals.

(c)-(j) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighorbood Preservation Balanced Housing Program

Proposed Amendments: N.J.A.C. 5:14-2.2, 3.1, 4.1, 4.5, 4.6 and 4.7

Proposed New Rules: N.J.A.C. 5:14-1.6

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-320.

Proposal Number: PRN 1992-133.

Submit written comments by May 6, 1992 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX # (609) 633-6729

The agency proposal follows:

Summary

Balanced Housing rules were originally published and adopted in 1985. Those rules governed an initial competitive cycle of Balanced Housing applications. In April 1991, new Balanced Housing rules were proposed. These rules were adopted and have been published elsewhere in this issue of the New Jersey Register. These proposed amendments are a product of the public comment and subsequent discussions that those proposals generated.

The reproposed new rule, N.J.A.C. 5:14-1.6 includes provisions for maximum allowable fees, rather than maximum allowable project cost, and has been completely rewritten.

N.J.A.C. 5:14-2.2(c) provides additional evaluation procedures to be used in construction with the Balanced Housing Priorities. Subsection (c) provides procedures for evaluating reasonable per unit costs and also defines project design considerations and provides the basis for unit size adjustments.

N.J.A.C. 5:14-3.1(k)-(m) define Balanced Housing loan and subordination procedures. Additionally, subsection (n) defines requirements for the application and use of the Federal requirements for the application and use of the Federal Low-income Housing Tax Credit.

N.J.A.C. 5:14-4.1(b) was amended in 1990 to designate the Affordable Housing Management Service (AHMS) as the responsible agency for administering affordability controls for Balanced Housing projects. The amendment also provided, at N.J.A.C. 5:14-4.1(b)2, that non-profit funding recipients would receive these services at no extra cost to the project, while for-profit recipients would pay a fee for use of the services.

The current fee chargeable to for-profit funding recipients is $300.00. The Department proposes to amend N.J.A.C. 5:14-4.1(b)1 to increase the amount of the fee chargeable to all funding recipients from $300.00 to $500.00.

Other changes of note include the following:

1. N.J.A.C. 5:14-4.5 provides a formula governing repayment of the deferred payment loan under certain conditions. The formula specifies the amount of principal and interest which the borrower must repay. The Department proposes to substitute for the existing formula a repayment schedule that accurately reflects the number of years for which the loan is held.

2. A proposed amendment to N.J.A.C. 5:14-4.6(a)2 would simply refer to an occupied rental unit and would delete any reference to a two-to-four unit owner-occupied rehabilitated structure.

3. N.J.A.C. 5:14-4.7(e) provides that only certified households shall be considered for low- and moderate-income housing. The Department believes this provision should be amended to clarify the phrase "certified households." The proposed amendment to this section would clarify which households are eligible for sales and rental units designated as low-income units and as moderate-income units.

Social Impact

The purpose of the Balanced Housing Program is to provide housing for low and moderate income households. The new provisons will in-

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crease housing opportunities for these households by modifying maximum per unit developer fees and providing a reasonable per unit cost, thereby enhancing project feasibility and promoting the production of the maximum number of affordable housing units.

The designation of the Affordable Housing Management Service as the administrative entity responsible for ensuring that affordable housing units receiving Balanced Housing funds comply with affordability control procedures continues to be necessary. AHMS's "watchdog" status is essential in order to guarantee that housing developed through the investment of public funds is made available to residents of the State who do not have adequate opportunities to acquire affordable housing otherwise.

Economic Impact

Except as noted below, each of the amendments will have a positive economic impact. New housing construction will promote additional jobs. New and rehabilitated housing units will add to the municipal tax base.

The fee to be charged to recipients of Balanced Housing funds has been increased from $300.00 per unit to $500.00 per unit for the use of the Affordable Housing Management Service throughout the entire period of affordability controls. The fee charged for the occupancies of rental units will be $100.00 for a low-rent unit and $150.00 for a moderate-income unit. These fees are changed in accordance with a directive of the State Treasurer dated September 9, 1991 pursuant to N.J.S.A. 52:27D-301 et seq., after a determination by the Office of the Treasurer that this fee meets the test of reasonableness for these administrative services. The use of these services is necessary to preserve the supply of affordable housing and provide the maximum economic return to the public on Balanced Housing investments as intended by P.L. 1985, c.222. This fee is a negligible percentage of the total cost of project development and therefore should not have a significant economic impact.

Developers are bound by the reasonableness limits provided in N.J.A.C. 5:14-2.2(c), and are required to justify any higher costs.

Design factors, which have variable costs, are considered in the evaluation of an application for funding.

N.J.A.C. 5:14-3.1(k) restricts the developer's return on equity. Provisions at subsection (l) allow construction loans, under certain conditions. Subsection (m) permits the subordination of such loan, also specifying conditions. Subsection (n) requires the developer to apply for Federal Low Income Housing Tax Credits, unless good cause is shown, as delineated in (n).

Regulatory Flexibility Analsyis

The proposed amendment of N.J.A.C. 5:14-4 relieves municipalities and developers from burdensome requirements that otherwise would have impacted some developers who may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The administrative fee has been approved by the State Treasurer, is reasonable and is necessary to maintain affordability controls. The program's statutory purpose would be hindered by a relaxation of requirements for small business developers. No such differentiation based upon business size is, therefore, provided by the proposed amendment.

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

5:14-1.6 Maximum allowable project fees

(a) The maximum contractor fee shall be determined in accordance with Appendix D, incorporated herein by reference.

(b) The maximum developer fee per unit shall be calculated as follows:

Maximum per unit Developer Fee
(in thousands of dollars)

	A	B	C
Studio and one bedroom	**5**	**7**	**9**
Two bedroom	**6**	**8**	**10**
Three bedroom	**7**	**9**	**11**
Four or more bedrooms	**8**	**10**	**12**

1. Column A shall apply to new homeownership units located in municipalities that are not listed in Appendix A.

2. Column B shall apply to new homeownership units located in municipalities that are listed in Appendix A and to new rental units which are located in municipalities which are not listed in Appendix A.

3. Column C shall apply to new rental units located in municipalities that are listed in Appendix A.

(c) The Department may waive these limits in cases where an applicant can demonstrate that a higher fee will reasonably enhance project feasibility by increasing the amount of non-Department subsidy in the project.

5:14-2.2 Priorities

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

(c) Additionally, the following evaluation criteria shall be considered in reviewing applications for funding:

1. To assure that public subsidy will be allocated in a cost effective manner so as to assist in the production of the maximum possible number of affordable housing units, the Department will review all project costs to assure reasonableness. Regarding affordable housing units eligible for assistance by the Balanced Housing Program, reasonable total per-unit development cost shall be: $68,800 for an efficiency unit; $72,000 for a one bedroom unit; $76,800 for a two bedroom unit; $83,200 for a three bedroom unit; and $89,600 for a four bedroom or larger unit. Applicants will be required to defend per-unit costs greater than the above-listed standards.

i. The Department may, upon satisfactory justification by the applicant, waive the per-unit limit in a project costing within 15 percent of the above standards. In reviewing costs, the Department will consider actual documented project costs plus published data sources such as the Building Valuation Data Report or other such public sources which the applicant may provide.

ii. For projects in which the total per-unit development cost is 15 percent to 40 percent greater than the above-listed standards, the Department may waive the per-unit limit based on justification by the applicant of actual documented costs, evidence of extraordinary need and infeasibility of producing affordable housing units in the applicant municipality at lower cost.

iii. The Department will not fund projects in which the total per-unit cost is greater than 40 percent above the listed standards.

2. The Department will favor projects that incorporate design features that will enhance the overall livability of the units. Factors considered will include, but are not limited to, number of bathrooms, storage space, porches, balconies, private yard and, where appropriate, shared facilities such as senior citizen activity rooms or lounges.

i. Incorporation of such design features will be considered as a basis for waiving all or a portion of the unit size adjustments in Appendix B and Appendix C of these rules.

ii. The Department reserves the right, based on the size and design of the units, to not fund a project or to restrict the size of a household who may be qualified for occupancy.

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

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

5:14-3.1 General provisions

(a)-(j) (No change.)

(k) A developer may take out no more than eight percent return on equity until the Balanced Housing loan has been repaid.

(l) Balanced Housing funds may be provided to a project during the development phase as a construction loan where project feasibility requires supplementing private sources of construction financing. The terms and conditions of the construction loan provided by the Balanced Housing Program shall be at the discretion of the Department. When Balanced Housing funds are utilized during the development phase, they shall be advanced in conjunction with other sources of private and public funds. The Department shall prescribe a drawdown schedule and construction monitoring procedure for each project. Funds will be disbursed contingent on the adequacy of the work performed and the ongoing viability of the project.

(m) The Department will subordinate the Balanced Housing construction loan to the lien of a permanent lender(s) upon completion of the construction of the project and on terms and conditions determined at the discretion of the Department. After a project's permanent financing is in place and after the project has been placed in service, the Department will consider honoring a request

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to subordinate its mortgage to the lien of another lender, provided that the sponsor/developer provides evidence to the satisfaction of the Department that the project income can service an increased level of private debt, and that some public benefit will result from honoring the request to subordinate the Department's mortgage. An initial funding commitment to the project by the department shall not constitute a commitment to subordinate the Balanced Housing loan after the initial placement financing has been accomplished and after the project has been placed in service.

1. The sponsor/developer shall submit a request for subordination to the Division Director. The decision of the Division Director shall be presented in writing and shall be final. The request for subordination shall include:

i. An up-to-date income and expense statement;

ii. A mortgage commitment regarding the proposed refinancing;

iii. Verification that reserves are at required levels;

iv. A statement regarding project vacancies, turnover and anticipated major expenditures; and

v. An explanation of the public benefit that will occur. It shall be considered to be of public benefit if refinancing the project results in cash that will be utilized to:

(1) Perform necessary repairs in the project that cannot be funded by the accumulated reserves;

(2) Provide a source of development funding to create additional units that will be affordable to low and moderate income occupants; or

(3) Allow the sponsor/developer to increase the time period during which units will be affordable to low and moderate income households.

(n) Any developer/sponsor of a project which is eligible to receive Federal Low Income Housing Tax Credits shall be required to apply for the Credits and shall be required to use the proceeds of any sale of those Credits as a source of development funding for the project.

1. The Department at its discretion may waive this requirement if the sponsor/developer demonstrates good cause not to seek the Credits. Such good cause may include an inability to sell the credits or a negative or marginal benefit due to the cost of syndication. Evaluation and determination of good cause shall be made by the Department. In the event the Credits are obtained but not sold, the Department shall estimate their value to the project prior to calculating the level of subsidy.

5:14-4.1 General provisions

(a) (No change.)

(b) In order to receive approval for a grant or loan from the Department of Community Affairs, Neighborhood Preservation Balanced Housing Program, a municipality must assure that units remain affordable to and occupied by low and moderate income-eligible households for the prescribed time period.

1. The Affordable Housing Management Service is established within the Department to administer affordability controls for Balanced Housing projects. [This service shall be utilized by municipalities receiving Balanced Housing funds as a condition of the funding contract.] **Balanced Housing recipients shall be contractually obligated to utilize the Affordable Housing Management Service for the purpose of monitoring affordability controls.**

2. Funding recipients shall be charged a [$300.00] **$500.00** per unit fee for the use of these services **at initial occupancy. Owners of rental units will be charged a fee for reoccupancy of rental units of $100.00 for occupancy of a low-rental unit and $150.00 for occupancy of a moderate-income unit. The fee schedule shall be reassessed annually and, when necessary, revised in accordance with the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq.**

2.-4. (No change.)

(c) (No change.)

5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1. If the owner-occupant (hereinafter known as the borrower) transfers title to the property, vacates the unit, or prepays the principal amount within 10 years from the date the unit has been declared in standard condition, the borrower shall pay the Department the original loan amount plus [two percent interest calculated as simple interest annually] **the principal amount multiplied by .02 multiplied by the number of years or portion thereof that the loan is held.**

2. In the event of the death of the owner-occupant prior to the end of the 10 year restricted period, the loan shall be due and payable at the [two percent annual interest rate] **principal amount multiplied by .02 multiplied by the number of years, including any portion thereof, that the loan is held,** at the time of death unless the persons inheriting the property are income eligible and personally occupy the rehabilitated property. In this event the loan shall be due and payable under the same terms as above if the persons inheriting the property vacate, transfer title to the property, or prepay the loan any time thereafter until the end of the same ten-year period.

3.-6. (No change.)

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

5:14-4.6 Rental units

(a) Initial rents shall be determined in accordance with contractual agreements approved by the Department at ranges that indicate affordability to households whose gross annual incomes are within low and moderate income ranges as determined by the approved median income guide for the municipality.

1. (No change.)

2. In an occupied rental unit [contained within a two-to-four unit owner-occupied rehabilitated structure], the maximum base rent shall be the greater of the current rent or 30 percent of the gross monthly income of the eligible household occupying the unit. The current rate (defined as the rent charged at the time of the municipality's application) shall not exceed the maximum allowable rent for a household at 50 percent of median for low income units or below 80 percent of median for moderate income units.

3. (No change.)

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

5:14-4.7 Procedures for establishing eligibility for occupancy

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

(e) Only households [approved by the Department as certified households shall have an opportunity to be considered for low and moderate income housing.] **certified as low income households shall be considered for sales and rental units designated as low income units. Only households certified as moderate income households shall be considered for sales and rental units designated as moderate income units.** Households [who] **that** are certified shall be issued written certification that is valid for 120 days. Certification may be extended by the Department for one additional period of 120 days if a mortgage application has been made and the household has not received approval or denial. Households having received certification which expires shall be returned to the referral list and may be considered for future housing referrals.

(f)-(h) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Continuing Care Retirement Community Rules

Proposed Readoption: N.J.A.C. 5:19

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-330 et seq., specifically 52:27D-358.

Proposal Number: PRN 1992-148.

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Submit written comments by May 6, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX # (609) 633-6729

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Continuing Care Retirement Community Rules, N.J.A.C. 5:19, are scheduled to expire on February 1, 1993.

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. Therefore, N.J.A.C. 5:19 is proposed for readoption without change.

The Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L. 1986, c.103, is intended to protect persons who enter into continuing care contracts with providers. Under these contracts, people pay entrance fees, and may pay periodic fees as well, in exchange for lodging and health care services for the rest of their lives. Providers are required to obtain a certificate of authority from the Department of Community Affairs before establishing, operating or administering a continuing care facility in New Jersey, are required to make full and accurate disclosures to potential residents, are required to maintain adequate financial reserves to ensure that the services contracted for will be provided, and are subject to civil penalties, issuance of administrative cease and desist orders and court injunctions, and the placing of facilities in receivership in the event of violation of the act.

The rules being proposed for readoption establish specific requirements for certification of facilities, application for certification, disclosure statements, advertising, contracts, financial responsibility, nonbinding reservation agreements and administration and enforcement procedures. They are necessary for the proper implementation of the Act. Rules promulgated by the Department of Health regulate the provision of services in the facilities.

Social Impact

Readoption of the rules will allow the Department to continue to carry out its responsibility to protect residents and potential residents of continuing care retirement communities by making sure that the facilities are run by responsible providers and that the services advertised and contracted for will indeed be provided. Failure to readopt the rules would eliminate the standards that are necessary in order to protect this portion of the public. The 14 facilities currently in operation serve a total of 4907 people in long-term, assisted or hospital units.

Economic Impact

There will be no economic change as a result of readoption, since no new fees are being established and no new procedural or technical requirements are being imposed. Failure to readopt would eliminate the fees that are required by the Department for enforcement of the Act, and would subject the residents and potential residents to market vagaries, and possible loss of life savings. The costs to the providers are variable, depending upon, for example, the type of advertising and disclosure statements provided. Other costs, primarily legal, which are required by the Department's application process, would be incurred in the normal course of development of such a project, as various planning and zoning approvals are sought. Filing fees include $400.00 plus $40.00 for each unit planned, $130.00 for each disclosure statement and $50.00 for a Letter of Nonapplicability.

Regulatory Flexibility Statement

The 14 continuing care community providers currently operating in the State of New Jersey are not small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq, as more than 100 people are employed by each. The three additional projects certified and in the process of development will also be large businesses. 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. 5:19.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Administration and Enforcement Process; Special Inspections

Proposed Amendments: N.J.A.C. 5:23-2.15, 2.18, 2.20 and 3.14

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27-124.
Proposal Number: PRN 1992-137.

Submit comments by May 6, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802
FAX Number (609) 633-6729

The agency proposal follows:

Summary

"Special inspections" is a term of art in the Building Officials and Code Administrators" (BOCA) National Building Code, which the State has adopted by reference. Special inspections are inspections done at critical times during the construction process; they are usually performed on specially engineered components such as specially designed concrete or steel components. In the past several years, while the BOCA Code has expanded its provisions covering special inspections, the Department has deleted these requirements from the code in New Jersey.

This proposal would adopt the BOCA provisions concerning special inspections, and alter other sections of the code to accommodate them. As complex construction has come to rely more on such specially engineered components, inspections of them during the construction process have become more commonly required and more necessary. The inspections are not like those done by the code official; rather, they are tests performed by experts to assure that components have been properly manufactured and installed.

The proposed amendments mandate special inspections for Class I structures, and allows a construction official to require them for Class II and III construction. The official, ideally, will inform an applicant of the need for special inspections during plan review but, in unusual cases, such inspections may be required whenever conditions during construction so warrant.

Social Impact

The social impact of these amendments, as with the code as a whole, is to insure the health and safety of building occupants and the general public. Many Class I buildings are routinely subject to special inspections as part of safe and efficient construction management. While there is a definite cost to an applicant or construction firm, special inspections are cost effective because they prevent the need for later reconstruction and avert failure of materials and structural insufficiency.

Economic Impact

Because most of the special inspections required by these amendments are for Class I structures, and those structures are often already informally subject to such inspections, the economic impact of this proposal is expected to be minimal. It will, however, ensure that the construction official has documentation of the inspections performed. The costs of the inspections are not known, but generally involve the salary of a subject-matter specialist who is on the work site for the purpose of evaluation of tasks as they are done.

Regulatory Flexibility Statement

The special inspections required by these amendments are mandatory only for Class I buildings, which are large and complex and are not owned by "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In any event, the requirement for special inspections to be performed during construction is a matter of building safety to which the form of organization or size of the entity owning or using the building is not relevant.

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

5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted in such form as the enforcing agency may prescribe and shall be accompanied by the required fee as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure, and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following.

1.-4. (No change.)

5. A statement that all required State, county and local prior approvals have been given, including such certification as the construction official may require[.] **; and**

6. For Class I structures, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode.

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

5:23-2.18 Inspections

(a) (No change.)

(b) Inspections during the progress of work:

1. The construction official and appropriate subcode officials shall carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the approved plans and the requirements of the regulations.

i.-iii. (No change.)

iv. Special inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional or special inspections to the applicant in writing prior to the issuance of a permit **and during construction in the case of unforseeable circumstances. Where Class I structures incorporate construction techniques covered under the special inspection provisions of the building subcode, such special inspections shall be provided for. The applicant shall provide a list of special inspections required by the building subcode when applying for the permit.**

(c)-(g) (No change.)

5:23-2.20 Tests **and special inspections**

(a) All tests **and special inspections** [as] required by the provisions of the regulations shall be made and conducted under the supervision of the enforcing agency and in accordance with such inspection and test procedures as may be prescribed by the provisions of the regulations, with the expense of all test and inspections to be borne by the owner or lessee, or the contractor performing the work.

(b) The construction official may accept tests and test reports of the [department] **Department** and other government agencies, [and in lieu thereof, may accept,] **as well as** signed statements and supporting inspection and test reports filed by qualified licensed professionals **or approved agencies or firms**.

5:23-3.14 Building Subcode

(a) (No change.)

(b) The following articles or sections of the building subcode are modified as follows:

1.-9. (No change.)

10. The following amendments are made to Article 13 of the building subcode entitled "Materials and Tests":

i.-iv. (No change.)

v. Section [1308.0 is deleted in its entirety. In addition any references to 1308.0 are deleted and in lieu thereof shall be considered a reference to the regulations.] **1308.1 is amended to add the phrase "for Class I structures or when requested by the building subcode official" after the word "special inspections" on the first line;**

vi. Section 1308.1.1 is deleted in its entirety and substitute in lieu thereof "Permit applications shall be made in accordance with N.J.A.C. 5:23-2.15.";

vii. Section 1308.2 is deleted and substitute in lieu thereof "Premanufactured construction and components shall be approved in accordance with N.J.A.C. 5:23-4.26.";

viii. Section 1308.3.1 is deleted in its entirety.

11.-21. (No change.)

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Municipal Enforcing Agencies—Establishment

Proposed Amendment: N.J.A.C. 5:23-4.3

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1992-129.

Submit comments by May 6, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802
FAX Number: 609-633-6729

The agency proposal follows:

Summary

This proposal amends the statement in the rule that the State will not enforce just one subcode in a municipality to make an exception for the elevator safety subcode.

When the Department adopted the elevator safety subcode on July 1, 1991 (operative date July 1, 1992), it made provision for its enforcement of only that subcode in municipalities which cede their enforcement responsibility to the State. That is an exception to the general principle that the Department will either serve as construction official and enforce all subcodes or not enforce any subcodes in a municipality.

The case involving the elevator safety subcode differs because regulation of elevator devices is a unique and distinct area of code enforcement. The other subcodes tend to be interrelated, and partial enforcement by the Department would be likely to result in continuing State-municipal conflicts and to be uneconomical both for the Department and for the municipality.

Social Impact

This proposed amendment is intended to resolve a conflict between the text being amended and N.J.A.C. 5:23-4.3(a)3, which gives the Department jurisdiction over elevator inspection and plan review in any municipality that does not employ an elevator subcode official.

Economic Impact

The proposed amendment should have no economic impact. It makes it clear that municipalities can have the Department enforce the elevator safety subcode without their having to relinquish their authority to enforce the rest of the code. There may be cost savings due to avoidance of confusion.

Regulatory Flexibility Statement

This proposed amendment affects only municipalities and the Department. It does not involve small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

5:23-4.3 Municipal enforcing agencies—establishment

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

(c) Term; transfer:

1.-2. (No change.)

3. **Except as otherwise provided in (a)3 above with regard to enforcement of the elevator safety subcode,** [The department will]

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The Department shall not assume partial responsibility for the enforcement of the regulations pursuant to this section. Whenever the Department is constituted as the local enforcing agency by the municipality, it shall act as the exclusive enforcing agency with respect to all subcodes and all areas of the regulations within the limits of such municipality.

(d)-(g) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

New Home Warranties and Builders' Registration Denial, Suspension or Revocation of Registration; Warranty Obligations

Proposed Amendments: N.J.A.C. 5:25-2.5, 5.2, 5.4 and 5.5

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 46:3B-10.

Proposal Number: PRN 1992-128.

Submit written comments by May 6, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625.

The agency proposal follows:

Summary

In response to the decision of the Appellate Division in the case of *Hoffman Enterprises, Inc. v. Bureau of Homeowner Protection, New Home Warranty Program,* 248 *N.J. Super.* 166 (App. Div. 1991), the Department is amending N.J.A.C. 5:25-2.5 to make a clear distinction between those cases where the appropriate penalty for a violation by a builder is denial or revocation of registration and those cases where it is suspension. The essence of the amendment is that revocation is now to be reserved for those violations that demonstrate unworthiness or incompetence, while suspension pending compliance is to be used in those cases where the violation is curable. Revocation may still be used when a violation that would ordinarily lead to suspension is engaged in either habitually or in a particularly egregious manner.

In response to the decision of the Appellate Division in the case of *Central Heights Condominium Association, Inc. v. The Little Falls Savings and Loan Association,* Dkt. No. A-61-90T5 (decided October 24, 1991), the Department has amended N.J.A.C. 5:25-5.2, 5.4 and 5.5 to make it clear that the only persons eligible to file claims against the New Home Warranty Fund are the owners of new homes and that the Fund can only be required to pay for the correction of warrantable defects in a proceeding brought under these rules, and not in a case where the homeowner has elected another remedy. In *Central Heights,* the Appellate Division invited the Department to make clear its intent in a case where a mortgagee in possession seeks third-party relief against the Fund in a court action. With these amendments, the Department makes clear its intent, which is consistent with its longstanding interpretation and application of the rules, that the rule not be construed to allow such a mortgagee in possession to recover from the Fund.

Other minor changes to the text are also proposed which are stylistic in nature.

Social Impact

The establishment of a clear distinction between those violations that warrant revocation or denial of registration and those that merely warrant suspension will allow builders to better evaluate the likely consequences of their actions or omissions and will give them protection against disproportionate punishment.

The clarification regarding eligibility for payment from the New Home Warranty Fund will help preserve the money in the fund for the benefit of those who follow the prescribed procedures.

Economic Impact

Builders who are suspended pending compliance, rather than revoked, will be spared the cost of either foregoing business opportunities or incurring costs of litigation.

Persons and entities whose ineligibility for payment from the New Home Warranty Fund is made clear by these amendments will not be able to recover the Fund by virtue of any alternative reading of the rules.

Regulatory Flexibility Statement

These rules apply equally to builders and other sellers that qualify as "small businesses", as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and to those that do not. These rules are intended to protect owners of new homes from loss resulting from the acts or omissions of builders, regardless of their form of organization. There is no basis or any distinction here between builders that are "small businesses" and those that are not. The proposed amendments impose no compliance requirements. They establish clear standards for suspension and revocation of certificates of registration, make clear who may file a claim against the State fund and reiterate the exclusiveness of the remedy selected by the owner, in accordance with N.J.S.A. 46:3B-9.

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

5:25-2.5 Denial, suspension or revocation of registration

(a) A certificate of registration may be denied[, suspended] or revoked if the registrant or applicant, or an officer, partner, director or stockholder of the registrant or applicant, has at any time:

1.-3. (No change.)

4. Willfully violated the New Jersey State Uniform Construction Code to any substantial degree; **or**

5. **Habitually or egregiously engaged in any act or omission set forth in (b)1 through 7 below.** [Failed to continue his participation in either the State Plan or a private plan;

6. Failed to enroll or warrant any new home with a private plan, which new home was sold during the time he was participating in such private plan;

7. Fails to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan as the case may be, unless such determination is appealed;

8. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;

9. Has as an officer, partner, director or stockholder, any person who was serving as an officer, partner, director or stockholder for a builder whose certificate of registration has been suspended or revoked for cause pursuant to this subchapter at the time the incidents or practices leading to revocation occurred;

10. Has incurred or been responsible for incurring an award against the New Home Warranty Security Fund;

11. Violated any provision of the New Home Warranty and Builders' Registration Act (P.L. 1977, c. 467) or this chapter;

12. Fails to participate in the dispute settlement process;

13. Has violated any Order issued by the Commissioner and which has been adjudicated in accordance with the Administrative Procedure Act.]

(b) A certificate of registration may be suspended, pending compliance with the Act, with this chapter and with the orders of the Commissioner, if the registrant, or an officer, partner, director or stockholder of the registrant, has at any time:

1. Failed to continue his participation in either the State Plan or a private plan;

2. Failed or enroll or warrant any new home with either the State Plan or an approved private plan;

3. Failed to correct or settle any claim arising out of any defect after his responsibility has been established through the dispute settlement procedure of the State Plan or of a private plan, as the case may be, unless such determination is appealed and a stay of the order to correct the defect is issued by the Commissioner or by a court having jurisdiction;

4. Failed to file an amended application for or to a certificate of registration within 30 days of any material change in the information provided in the most recent application or amendment thereto;

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5. Had as an officer, partner, director or stockholder any person who was serving as an officer, partner, director or stockholder of a builder that is not registered or the certificate of registration of which has been revoked or is currently suspended; provided that this paragraph shall not apply to any person who was not affiliated with such builder at the time that the incident or practice that led to revocation or suspension occurred;

6. Incurred, or been responsible for incurring, an award against the New Home Warranty Security Fund for which the fund has not been fully compensated; or

7. Failed to participate in the dispute settlement process, in which case any suspension shall continue in effect pending resolution of the dispute and full compensation for any payments made, or expenses incurred, by the Fund.

(c) A certificate of registration may be denied or revoked, or suspended, depending on the nature and severity of the violation, if the applicant or registrant, or an officer, partner, director or stockholder of the applicant or registrant, has at any time, violated any provision of the Act or of this chapter, or any order of the Commissioner, with regard to any matter not referred to in either (a) or (b) above.

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

5:25-5.2 Claim eligibility

(a) (No change.)

(b) An owner who elects a remedy other than the filing of a warranty claim with an approved private plan or the State plan shall not be eligible thereafter to file a claim against the State fund. The State fund shall not be liable for any claim not filed in accordance with this chapter.

(c) No person who is not an eligible owner, as determined in accordance with (a) above, shall be entitled to file a claim against the State fund. No builder or other seller of a new home shall be eligible to file a claim against the State fund or to obtain indemnification or other relief from the State fund, whether in a third-party action or otherwise.

5:25-5.4 Warranty contributions, amount, date due

(a) Each builder not participating in an approved private plan shall contribute to the State **plan** in an amount equal to 0.4 of one percent of the purchase price of the home, or the fair market value of the home on its completion date if there is no good faith sale, each time he sells a home. When the cost of land is not included in the sale, the purchase price shall be **deemed to be** 125 percent of the contract amount and shall be the basic [of] **for** calculating the premium and [will be] the dollar value placed on the Certificate of Participation.

1. Whenever the seller of a new home is not the builder who constructed it, or a builder taking from the builder who constructed it, such as a mortgage in possession, receiver in bankruptcy, or executor of an estate, such person shall not be excused from payment of premiums or from taking corrective action on complaints, dispute settlement, or the like in the same manner as would any builder. Such person may contract with a builder for follow-up services **that may be required pursuant to the warranty**, or may at his option pay an additional 0.4 of one percent of the purchase price of the new home and be relieved of the obligation to provide such follow-up services. The State plan shall then stand in his place with regard to any claims **made pursuant to this subchapter, but shall not stand in his place if the homeowner elects not to file a claim in accordance with this subchapter and elects, rather, to pursue any other remedy against the seller. The claims procedure established by this subchapter shall be the exclusive remedy whereby the State plan shall stand in the place of the seller**. [and the] **The** Department [will] **shall** inspect the new home for any defects. The list of defects [will] **shall** be attached to the Certificate of Participation. [as incompleted] **Uncompleted** portions [will] **shall** be excluded from the warranty coverage until completed [under], **in accordance with** N.J.A.C. [5:25-3.3(d)1] **5:25-3.4(a)1**. The additional amount paid shall not be passed through to the owner.

2. Where a builder is under contract with a property owner to fully construct a new home and provide the required warranty coverage and fails to complete the contract and obtain a certificate of occupancy, the owner may apply to the Department for a new home warranty and pay a premium of 0.8 of one percent of the [sales value] **purchase price** of the home. Such procedure**, and the coverage thereby secured,** shall be [similar to that] **as** defined in N.J.A.C. 5:25-5.4(a)1. A warranty shall not be [applicable] **issued** when the home is less than 80 percent complete or it is determined **by the Department** that **the** cause [for] **of the builder's** not completing the home [is due to] **was** the [owner] **owners'** failing to meet their responsibility [in] **under** the contract.

3.-4. (No change.)

5:25-5.5 Claims procedure

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

(e) Final payment in event of builder default rules are as follows:

1. If any builder, after receiving the decision of the arbitrator, the Bureau of [Construction Code Enforcement] **Homeowner Protection** or the Director, as the case may be, [refuse] **refuses** to correct any defect within the time period specified in the decision, then the owner may file a request for payment with the Department. Notwithstanding any conciliation agreement or arbitration award, the Division shall inspect the home for the purpose of determining if the defect is covered by the warranty and, upon verification that the defect is covered, and upon submission of the bids and review thereof as provided in (e)2[.] below, the Director shall certify the amount of the award to the Treasurer, who shall make payment from the fund.

2.-4. (No change.)

(f) [Rules concerning settlement in court of law are:

1.] Nothing herein shall limit the right of an owner to seek a remedy directly in court pursuant to Section 9 of the Act, without regard to the dispute settlement procedures made available in accordance with [these regulations] **this subchapter; provided, however, that the New Home Warranty Security Fund shall have no liability if a remedy other than dispute settlement in accordance with this subchapter is elected by the owner of a new home.**

(g) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Special Education

Proposed Amendments: N.J.A.C. 6:28

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department 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:39-1, U.S.P.L. 93-112, Sec. 504, 94-142 and 99-457.

Proposal Number: PRN 1992-151.

Submit written comments by May 6, 1992 to:

Irene Nigro, Rules Analyst
NJ Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Amendments to N.J.A.C. 6:28 are proposed for the purpose of establishing Statewide implementation of several components of the *Plan to Revise Special Education.* In January 1986, the *Plan to Revise* was originally presented to the State Board of Education as a proposal to improve the special education delivery system through changes in programs and services. From September 1987 to June 1990, 13 local school districts operated as pilots to implement the *Plan to Revise.* Educational Testing Service (ETS) conducted a comprehensive evaluation of the pilot project and submitted the final evaluation to the Department of Education in August 1990. A series of public hearings were held in February and March 1991 to obtain public comment on the pilot project outcomes.

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A number of components of the *Plan to Revise* for which sufficient information was gathered in the pilot projects are now ready for implementation and are proposed as amendments.

A series of amendments is also proposed to clarify special education regulations in response to public comment or questions the Department has received since the adoption of amendments to the special education rules in June 1991.

Other amendments are proposed to ensure compliance with Federal mandates under the Individuals with Disabilities Education Act (I.D.E.A.) and the New Jersey Corrective Action Plan which recently was approved by the United States Office of Education.

Plan to Revise Special Education

Amendments are proposed to implement certain program components of the *Plan to Revise Special Education.* These proposed amendments will expand program options for pupils educated in resource center programs and modify the child study team assessment model to focus more closely on the educational needs of the pupil.

The following amendments are proposed to expand program options for pupils educated in resource center programs:

N.J.A.C. 6:28-4.2 and 4.3 have been amended to change the term "resource room" to "resource center program," to list resource center as a program option and to set the criteria for resource center programs. The change in terminology is necessary to reflect the more flexible program proposed in these rules. Program flexibility is achieved by proposing amendments to allow pupils to receive either support or replacement resource center instruction in either a separate room or in a regular classroom. The amount of time a pupil may receive resource center instruction has been expanded to include up to the pupil's entire day for replacement or support instruction in the regular class, and up to one-half of the pupil's instructional day in a separate resource room. The proposed amendments permit district boards of education to either operate resource rooms or resource centers for the 1992-3 school year. On June 30, 1993 the rules for resource rooms will expire.

N.J.A.C. 6:28-11.5 has been deleted to allow the *Plan to Revise* pilot districts to follow the same referral procedures as other districts.

N.J.A.C. 6:28-11.7(d)2, 3, 4 and 11.11(a) have been amended to allow the *Plan to Revise* pilot districts to operate their resource centers in the same manner as other districts will in accordance with the proposed amendments to N.J.A.C. 6:28-4.2(a) and 4.3(b).

The following amendments are proposed to change the child study team assessment model:

N.J.A.C. 6:28-3.4(d) has been amended to clarify and expand the requirements regarding the use of functional and standardized tests in child study team evaluations. Amendments have been made in this section due to redundancy with the requirements for evaluation with the proposed amendment to N.J.A.C. 6:28-3.4(d)5. Amendments have been made to N.J.A.C. 6:28-3.7(a)3 to keep the requirements for reevaluation the same as N.J.A.C. 6:28-3.4(d).

N.J.A.C. 6:28-11.3(b) has been amended at the recommendation of the *Plan to Revise* pilot districts. The requirement for the participation of the speech correctionist or speech-language specialist as a child study team member will be changed from all grades to preschool through grade three in the pilot districts.

The following additional amendments are proposed in response to public comment and questions received by the Department since the adoption of amendments to the special education rules in July 1991.

N.J.A.C. 6:28-1.2(g) has been amended to reflect the current practice of collecting data regarding high school graduation requirements.

N.J.A.C. 6:28-3.5(d) has been amended so that there is consistency with N.J.A.C. 6:28-2.3(h). This makes clear the requirements for the participation of a teacher at the eligibility meeting.

N.J.A.C. 6:28-3.5(d)4, 5, 8, 11 and 12 have been amended to correct a technical error with enumeration in this subsection.

N.J.A.C. 6:28-3.6(e) and 3.6(f) have been amended to streamline the IEP requirements for pupils classified eligible for speech-language services, by eliminating those sections of the IEP that are appropriate only for pupils classified by the full child study team.

N.J.A.C. 6:28-3.6(e)5vii and 4.7(b) have been amended to clarify that post-secondary outcomes shall be a component in IEPs for pupils age 14 and above.

N.J.A.C. 6:28-3.6(f) has been recodified as N.J.A.C. 6:28-3.6(g) and N.J.A.C. 6:28-3.6(h) has been deleted to clarify that the basic plan and instructional guide may be completed prior to the actual implementation of the pupil's program.

N.J.A.C. 6:28-4.5(c)1 and 5.1(c)viii have been amended to allow the provision of home instruction by clinics and agencies to public school pupils.

N.J.A.C. 6:28-6.2(a) has been amended to comply with a recent change to N.J.S.A. 18A:46-19.4 which no longer limits the provision of speech and language services to articulation disorders.

N.J.A.C. 6:28-9.2(a) has been amended to clarify that county offices of education are not involved in complaint investigation procedures for early intervention programs because county offices of education do not oversee or supervise those programs.

N.J.A.C. 6:28-10.1(b) and (d) have been amended because the Developmental Disabilities Council no longer participates in the collaborative effort of administering and supervising early intervention programs.

N.J.A.C. 6:28-10.1(d) has been amended to separate monitoring and complaint investigation functions in early intervention programs.

Federal Mandates

The following amendments are proposed to implement Federal mandates contained in I.D.E.A. adopted in 1991.

A technical change in terminology is proposed due to the removal of the word "handicapped" in the I.D.E.A. To ensure consistency with Federal terminology, "educationally handicapped pupil" will be replaced with "pupil with an educational disability" wherever it appears in N.J.A.C. 6:28.

N.J.A.C. 6:28-1.1(b), 1.3, and 7.3(a)6 have been amended to change the reference to the Federal law from "Education for All Handicapped Children Act" to "Individuals with Disabilities Education Act." This is necessary to provide the correct reference to the Federal law and rules.

N.J.A.C. 6:28-1.2(e)3 has been amended to comply with Section 613 of the I.D.E.A. which requires each state to collect data annually on the numbers and types of special education and related service personnel. The amendment has been written in such a way to allow the Department to comply with any reporting requirements which may be changed under I.D.E.A. in the future.

N.J.A.C. 6:28-2.1(c) has been amended to comply with 34 CFR 300.342(b)(2) which requires that an IEP be implemented as soon as possible after the IEP meeting.

N.J.A.C. 6:28-2.7(j) has been amended to comply with 34 CFR 300.513(a). The provision that a pupil's educational placement may not be changed during pendency of an administrative or judicial proceeding is not limited to due process hearings. This provision also applies to proceedings in any court. Therefore, this requirement has been expanded to apply to all proceedings.

N.J.A.C. 6:28-2.10(a) has been amended to comply with 34 CFR 300.550(b)(1), 300.553 and 300.512(c) because the U.S. Office of Education, Office of Special Education Programs requires that Department rules contain the exact language of the Federal rules. Three changes are proposed to ensure consistency with the Federal language. "Each district board of education" has been amended to "each public agency"; "district" has been changed to "school"; and a provision added that "to the maximum extent appropriate" each pupil shall participate in regular classes, activities and programs.

N.J.A.C. 6:28-3.5(c)8i has been amended to comply with Section 612 (2) of the I.D.E.A. which requires each state to include a definition of children with traumatic brain injury.

N.J.A.C. 6:28-3.5(b) and 3.6(d) have been amended to comply with the Federal mandate (34 CFR 300.344) which requires at least three participants at each eligibility and IEP meeting. This proposed amendment will expand this requirement to meetings conducted when a child is classified eligible for speech-language services.

N.J.A.C. 6:28-4.7(b)1i has been amended to comply with Section 602(a)(19) of the I.D.E.A. which requires district boards of education to reconvene an IEP meeting if an outside agency fails to provide a transition service for a pupil with educational disabilities. Transition services are those which enable a pupil with an educational disability to move successfully from school to adult life.

N.J.A.C. 6:28-10.1(a) has been amended to ensure consistency with the Federal language in 34 CFR 303.166 which addresses a child's needs in an individualized family service plan.

N.J.A.C. 6:28-10.1(m) has been amended to comply with 34 CFR 303.420 which allows the Department to adopt the same mediation procedures for early intervention programs as for school age children.

The following amendments are proposed to comply with the New Jersey Department of Education's Federal Corrective Action Plan:

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N.J.A.C. 6:28-3.4(f) has been amended to comply with 34 CFR 300.543 which requires that a written report following the evaluation of a pupil contain statements about the pupil's behavior. The requirement to include pertinent information from parent(s) and other personnel has been moved to N.J.A.C. 6:28-3.4(d)6 and is not necessary under this section because it would be redundant.

N.J.A.C. 6:28-3.5(c) and (d)8ii have been amended to comply with Federal regulations regarding specific learning disabilities contained in 34 CFR 300.541 and 300.543. A statement must be made by the child study team in the evaluation summary when a pupil is classified perceptually impaired of whether the pupil has a specific learning disability. Federal regulations require that the criteria for determining whether or not a pupil has a specific learning disability be based upon a severe discrepancy between current achievement and intellectual ability and not be based on environmental, cultural or economic disadvantages.

Social Impact

The proposed amendments are designed to improve the quality of services to pupils with educational disabilities. District boards of education, pupils with educational disabilities and their parents will be affected by the changes in a positive way.

The modification of the child study team evaluation model to emphasize functional assessment will enable districts to better identify the instructional needs of their pupils. The use of functional assessment in the *Plan to Revise Special Education* pilot project led to increased interaction among child study team members, parents and teachers and increased attention to the way pupils perform in class.

The proposed amendments regarding resource center programs will provide districts a variety of program options which will enable them to better meet the needs of their pupils with educational disabilities. For example, pupils receiving in-class support instruction were reported to have better self-esteem and to perform better academically and behaviorally. The additional option of in-class instruction received a great deal of positive support from teachers, parents and pupils in the pilot districts.

Economic Impact

Because there will be more instructional options in resource center programs it is anticipated that some pupils with educational disabilities who would have been placed in self-contained special classes now will be placed in resource centers. Based upon the *Plan to Revise* pilot project experience with resource center programs, no appreciable increased staff needs are anticipated. The Quality Education Act formula contains a provision for revising the special education cost factors every two years to reflect any shifts in program enrollment costs.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impact solely upon local school districts in New Jersey and schools operated by the Department of Education.

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

6:28-1.1 General requirements

(a) The rules in this chapter, adopted by the State Board of Education, supersede all existing rules pertaining to [educationally handicapped] pupils **with educational disabilities.**

(b) The purpose of this chapter is to:

1. Ensure that all [educationally handicapped] pupils **with educational disabilities**, as defined herein, have available to them a free, appropriate public education as that standard is set under the [Education for all Handicapped Children] **Individuals with Disabilities Education** Act (20 U.S.C. 1400 et seq.);

2. (No change.)

3. Ensure that the rights of [educationally handicapped] pupils **with educational disabilities** and their parents are protected;

4. Assist public and private agencies providing educational services to [educationally handicapped] pupils **with educational disabilities**; and

5. (No change.)

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to [educationally handicapped] pupils **with educational disabilities.**

1.-2. (No change.)

3. Each district board of education shall provide information regarding services available through other State, county and local agencies to parents of [handicapped] **disabled** children below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1.-2. (No change.)

3. Be located in State approved facilities that are accessible to the [handicapped] **disabled**; and

4. (No change.)

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1.-2. (No change.)

3. Be located in State approved facilities that are accessible to the [handicapped] **disabled** or in early intervention programs approved according to N.J.A.C. 6:28-10.1[.]**; and**

4. (No change.)

(f) (No change.)

(g) When a district board of education 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. (No change.)

2. When individual pupils are placed in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to [educationally handicapped] pupils **with educational disabilities.**

(h) Each district board of education shall ensure that special classes, separate schooling or other removal of [emotionally handicapped pupils] **pupils with educational disabilities** from the regular educational environment occurs only when the nature or severity of the [handicap] **educational disability** is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(i) With the exception of pupils placed in nonpublic schools according to N.J.A.C. 6:28-6.5, all [educationally handicapped] pupils **with educational disabilities** 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) Each district board of education shall ensure that placement of [educationally handicapped] pupils **with educational disabilities** is based on their individualized education programs.

(k)-(l) (No change.)

(m) All public and private agencies which provide educational programs and services to [emotionally handicapped] pupils **with educational disabilities** shall maintain documentation demonstrating compliance with this chapter.

(n) (No change.)

6:28-1.2 Plans for special education

(a) Each district board of education, jointure commission, county special services school district, educational services commission, approved private school and State-operated program for the educationally [handicapped] **disabled** shall develop a written plan for special education. The plan shall conform with the State plan for the educationally [handicapped] **disabled.** Plans for special education shall be submitted for approval to the Department of Education through its county offices as set forth in this section.

(b) The development of the plan for special education shall provide reasonable opportunities for the participation of professional staff, parents, community members, [handicapped] **disabled** individuals and groups representing the [handicapped] **disabled** population. Parts one and three of the written plan shall be presented at a public meeting prior to approval by the district board

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of education or governing board. Copies of the plan shall be made available upon request.

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

(e) Part two of the plan shall be submitted annually and shall include:

1. A report of the numbers of [educationally handicapped] pupils **with educational disabilities** according to their classification, age, racial-ethnic background, sex, placement and related services;

2. A report of the staff employed to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to [educationally handicapped] pupils **with educational disabilities** and the full-time equivalence of their assignments;

3. [A report of the projected staff needed in the following school year] **Any additional reports as required by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)**; and

4. (No change.)

(f) (No change.)

(g) Upon request, additional reports shall be submitted to the Department of Education including, but not limited to, **high school graduation requirements and** the numbers of [educationally handicapped] pupils **with educational disabilities** existing education, referred, classified, evaluated and receiving home instruction.

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] **the Individuals with Disabilities Education** Act.

...

"Approved private school for the handicapped" means an incorporated entity approved by the Department of Education according to N.J.A.C. 6:28-7.2 or 7.3 to provide special education and related services to [educationally handicapped] pupils **with educational disabilities** placed by the district board of education responsible for providing their education.

...

["Educationally handicapped pupil" means a pupil who has been determined to be eligible for special education and/or related services according to N.J.A.C. 6:28-3.5.]

...

"Pupil age" means the school age of a pupil as defined by the following:

1. (No change.)

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cut off date by the district board of education. [Educationally handicapped pupils] **Pupils with educational disabilities** attaining age five during the school year shall continue to be provided preschool services for the balance of that school year.

3. "Age 21" means the attainment of the twenty-first birthday by June 30 of that school year. [Educationally handicapped pupils] **Pupils with educational disabilities** attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Pupil with an educational disability" means a pupil who has been determined to be eligible for special education and/or related services according to N.J.A.C. 6:28-3.5.

"Recreation" for [educationally handicapped] pupils **with educational disabilities** means instruction to enable the pupil to participate in appropriate leisure time activities, including involvement in recreation programs offered by the district board of education and the facilitation of a pupil's involvement in appropriate community recreation programs.

...

"Related services" for [educationally handicapped] pupils **with educational disabilities** means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech-language services, recreation, occupational therapy, physical therapy, transportation, as well as any other appropriate developmental, corrective and supportive services required for a pupil to benefit from education as required by the pupil's individualized education program.

"Special education" means specially designed instruction to meet the educational needs of [educationally handicapped] pupils **with educational disabilities** including, but not limited to, subject matter instruction, physical education and vocational training.

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 **with educational disabilities** from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8;

2. Prevention of needless public labeling of [educationally handicapped] pupils **with educational disabilities**;

3. (No change.)

4. Identification, location and evaluation of potentially educationally [handicapped] **disabled** pupils;

5. Provision of full educational opportunity to [educationally handicapped] pupils **with educational disabilities**;

6. Participation of and consultation with the parent(s) of [educationally handicapped] pupils **with educational disabilities** toward the goal of providing full educational opportunity to all [educationally handicapped] pupils **with educational disabilities** ages birth through 21;

7. Provision of special services to enable [educationally handicapped] pupils **with educational disabilities** to participate in regular educational programs to the maximum extent appropriate;

8.-9. (No change.)

10. Placement of [educationally handicapped] pupils **with educational disabilities** in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(e)5, and 4.1(i); and

11. (No change.)

6:28-2.1 General requirements

(a) Each district board of education shall provide a free, appropriate public education program and related services for [educationally handicapped] pupils **with educational disabilities** in the least restrictive environments according to N.J.A.C. 6:28-1.1(b)1.

(b) When [an educationally handicapped] **a pupil with an educational disability** between the ages of 16 and 21 voluntarily, and before receiving a high school diploma, leaves a public school program, he or she may reenroll at any time up to and including the school year of the pupil's twenty-first birthday.

(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. (No change.)

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.] **The basic plan shall be implemented as soon as possible but no more than 30 calendar days after the individualized education program meeting.**

(d)-(g) (No change.)

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] **educationally disabled** pupils shall:

1.-10. (No change.)

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

6:28-2.6 Mediation

(a) For pupils age three through 21, when disputes arise under this chapter, mediation shall be available through the district board of education, the Department of Eduation 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

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available through the Department of Education through the Division of Special Education. Mediation shall be provided in accordance with the following:

1.-2. (No change.)

3. Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to [educationally handicapped] **the** [pupil] needs **of pupils with educational disabilities**; and

4. (No change.)

(b) (No change.)

6:28-2.7 Due Process hearings

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

(j) Pending the outcome of a due process hearing, **or any administrative or judicial proceeding,** no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief **as part of a request for a due process hearing** is granted by the Office of Administrative Law according to (h) above.

6:28-2.8 Disciplinary action

(a) [Educationally handicapped pupils] **Pupils with educational disabilities** are subject to the same district board of education disciplinary policies and procedures as [nonhandicapped] **nondisabled** pupils, 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. (No change.)

(b) (No change.)

(c) When [an educationally handicapped] **a** pupil **with an educational disability** 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.-3. (No change.)

(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] **disability** 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] **disability**, 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] **disability**, 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)-(f) (No change.)

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

6:28-2.9 Pupil records

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

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

6:28-2.10 Least restrictive environment

(a) Each [district board of education] **public agency** shall ensure that:

1. To the maximum extent appropriate, [an educationally handicapped] **a** pupil **with an educational disability** shall be educated with children who are not educationally [handicapped] **disabled**;

2. Special classes, separate schooling or other removal of [educationally handicapped pupils] **a pupil with an educational disability** from the **pupil's** regular [education environment] **class** occurs only when the nature or severity of the [handicap] **educational disability** is such that education in **the pupil's** regular [class(es)] **class** with the use of **appropriate** supplementary aids and services cannot be achieved satisfactorily;

3.-4. (No change.)

5. When the individualized education program does not describe specific restrictions, the pupil shall be [included] **educated** in the regular school program provided in the [district] **school** he or she would attend if not [handicapped] **educationally disabled**.

[(i) This includes participation]**6. To the maximum extent appropriate each pupil with an educational disability shall participate** in **regular classes,** health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra-curricular activities.

6:28-3.1 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who:

1.-2. (No change).

3. May deliver appropriate related services to [educationally handicapped] pupils **with educational disabilities**;

4. May provide preventive and support services to [nonhandicapped] **nondisabled** pupils; and

5. (No change.)

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

(d) At least one member of the child study team shall be knowledgeable about placement options for [educationally handicapped] pupils **with educational disabilities** according to N.J.A.C. 6:28-4.

6:28-3.2 Identification

(a) Each district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district who may be educationally [handicapped] **disabled** and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be [handicapped] **disabled** shall be identified, located and evaluated through programs operated by or through contracts with the Department of Education.

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

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] **disabled** 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 notice has been provided.

1. (No change.)

(c) (No change.)

(d) Audiometric screening shall be conducted for every pupil referred to the child study team according to N.J.A.C. [6:29-8] **6:29-5**.

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

(g) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally [handicapped] **disabled** pupil for whom a 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 for initial evaluation according to this subchapter.

6:28-3.4 Evaluation

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

(d) An initial evaluation shall consist of [the following:] **an assessment by a school psychologist, a learning disabilities teacher-consultant, a school social worker and a physician employed by the school. The child study team evaluation shall include an appraisal of the pupil's current functioning and an analysis of instructional implication(s) appropriate to the child study team member report-**

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ing. Each initial evaluation of the pupil by the child study team shall:

1. Consider the requirements for eligibility for special education and/or related services;

2. Be used to determine instructional needs of the pupil;

3. Consider any relevant medical condition in evaluating the pupil's instructional needs;

4. Include pertinent information from the pupil's parent(s), the pupil's teacher(s) and other relevant persons;

5. Include, where appropriate, or required, the use of a standardized test(s) which shall be:

i. Individually administered;

ii. Valid and reliable;

iii. Normed on a representative population; and

iv. Scored as either standard scores with a standard deviation or norm referenced scores with a cutoff score; and

6. Include functional assessment as follows:

i. A minimum of one structured observation by each child study team member in other than a testing session;

ii. An interview with the pupil's parent(s);

iii. An interview with the teacher(s) referring the pupil;

iv. A review of the pupil's developmental/educational history including records and interviews;

v. A review of prereferral interventions documented by the classroom teacher(s) and others who work with the pupil; and

vi. One or more informal measure(s) which may include, but not be limited to:

(1) Surveys and inventories;

(2) Analysis of work samples;

(3) Trial teaching;

(4) Self report;

(5) Criterion referenced tests;

(6) Curriculum based assessment; and

(7) Informal rating scales.

(e) Each initial evaluation shall include the following assessments:

1. (No change.)

2. A psychological assessment shall be the responsibility of a school psychologist employed by the district board of education[. The psychologist assessment shall include teacher conferences and observation of the pupil in other than a testing session. The assessment also] **and** shall include an appraisal of the current cognitive, social, adaptive and emotional status of the pupil.

3. An educational assessment shall be the responsibility of a learning disabilities teacher-consultant employed by the district board of education[. It] **and** shall include [observation of the pupil in other than a testing session, review of the pupil's educational history, conferences with the pupil's teacher(s) and] an evaluation and analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be the responsibility of a school social worker employed by the district board of education[. The social assessment shall include observation of the pupil and communication with the pupil and his or her parent(s). It shall also] **and shall** include an evaluation of the pupil's adaptive social functioning and emotional development and of the family, social and cultural factors which influence the pupil's learning and behavior in the educational setting. **The social assessment shall include communication with the pupil and his or her parent(s).**

5. (No change.)

[(e)]**(f)** [The child study team shall include pertinent information from the parent(s), the pupil's teacher(s) and other certified school personnel when rendering evaluation and eligibility decisions.] **The child study team members shall prepare written reports of the results of each of their assessments. The reports must include a statement regarding relevant behavior noted during the observation of the pupil and the relationship of that behavior to the pupil's academic functioning.**

[(f)]**(g)** Evaluation by additional specialists may be required as listed in N.J.A.C. 6:28-3.5[(c)]**(d)**.

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

6:28-3.5 Determination of eligibility

(a) (No change.)

(b) When a speech-language evaluation is completed, a meeting shall be held to determine eligibility for speech-language services. Participants in the meeting shall be the speech correctionist or speech-language specialist, the parent(s) and at least one of the following:

1. A teacher having knowledge of the pupil's educational performance;

2. Another speech correctionist or speech-language specialist; or

3. Other school personnel qualified to provide or supervise special education.

[(b)]**(c)** Whether or not a pupil is determined eligible for special education and/or related services, the parent(s) and the referring staff member shall be given a written summary, signed by the child study team, of all decisions and any recommended course(s) of action.

1. When the pupil has been classified as perceptually impaired according to (d)8ii below the summary shall include a statement of whether the pupil has a specific learning disability and the basis for making that determination. The summary shall include a statement that the perceptual impairment is not the result of environmental, cultural or economic disadvantage.

[(c)]**(d)** Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, **a teacher having knowledge of the pupil's educational performance,** 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.-3. (No change.)

4. "Communication handicapped" means impaired native speech or language which is outside the range of acceptable variation, adversely affects a pupil's educational performance and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by [(c)3]**(d)4** i or ii below. An evaluation by a certified speech correctionist or speech-language specialist is required.

i. (No change.)

ii. "Eligible speech-language services" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or speech-language specialist. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4[(g)] **(h)**.

5. "Emotionally disturbed" means the exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance and shall be characterized by [(c)4] **(d)5** i or ii below. An evaluation by a psychiatrist experienced in working with children is required.

i.-ii. (No change.)

6. (No change.)

7. "Multiply handicapped" means the presence of two or more educationally [handicapped] **disabling** conditions which interact in such a manner that programs designed for the separate [handicapped] **disabling** conditions will not meet the pupil's educational needs. All evident educational [handicap] **disabilities** shall be documented. Eligibility for speech-language services as defined in this section shall not be one of the [handicapping] **disabling** conditions which forms the basis for the classification of a pupil as "multiply handicapped." Evaluation by all specialists required in this subsection for the separate [handicapping] **disabling** conditions being considered for the determination of "multiply handicapped" are required.

8. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally [handicapping] **disabling** condition or environmental, cultural or economic disadvantage and is characterized by [(c)7]**(d)8** i or ii below.

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i. "Neurologically impaired" means a specific impairment or dysfunction of the nervous system **or traumatic brain injury** which adversely affects the education of a pupil. An evaluation by a physician trained in neurodevelopmental assessment is required.

ii. "Perceptually impaired" means a specific learning disability manifested [in a disorder in understanding and learning, which affects the ability to listen, think, speak, read, write, spell and/or compute to the extent that special education is necessary for achievement in an educational program.] **by a severe discrepancy between the pupil's current achievement and intellectual ability in one or more of the following areas:**

(1) Basic reading skills;

(2) Reading comprehension;

(3) Oral expression;

(4) Listening comprehension;

(5) Mathematic computation;

(6) Mathematic reasoning; and

(7) Written expression.

9. "Preschool handicapped" means those children age three through five who have an identified [handicapped] **disabling** condition and/or a measurable developmental impairment who require and would benefit from special education and related services.

10. (No change.)

11. "Socially maladjusted" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined in [(c)4]**(d)5** above. If determined necessary by the child study team, an evaluation by a psychiatrist experienced in working with children is to be obtained.

12. "Visually handicapped" means an inability to see within normal limits as characterized by [(c)11]**(d)12** i or ii below. An evaluation by a specialist qualified to determine visual disability is required. Visually handicapped pupils eligible for special education and/or related services shall be reported to the Commission for the Blind and Visually Impaired.

i.-ii. (No change.)

6:28-3.6 Individualized education program

(a) The individualized education program for each educationally [handicapped] **disabled** pupil shall consist of a basic plan and an instructional guide.

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

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

1. For pupils classified eligible for speech-language services, the meeting shall [be attended by the parent(s) and, when appropriate the pupil. The speech correctionist or speech-language specialist shall attend.] **include the same participants as required by N.J.A.C. 6:28-3.5(b). When appropriate, the pupil shall attend the meeting.**

2. (No change.)

3. When [an educationally handicapped] **a** pupil **with an educational disability** 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) **below**.

(e) [The] **With the exception of an individualized education program for a pupil classified eligible for speech-language services, the** basic plan [of the individualized education program] shall include, but not be limited to:

1.-4. (No change.)

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

i.-ii. (No change.)

iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of [an educationally handicapped] **a** pupil **with an educational disability** in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the regular education program shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil;

iv.-v. (No change.)

vi. A statement of the alternate requirement for each exemption from State and local high school graduation requirements. The individualized education program shall identify which alternative requirements must be achieved by the [educationally handicapped] pupil **with an educational disability** to qualify for the State endorsed diploma issued by the school district;

vii. For [educationally handicapped] pupils **with educational disabilities** age 14 and over, [goals and objectives which describe the preparation of the pupil for] **post-secondary outcomes in** one or more of the following [post-secondary] areas, as appropriate: educational programs, vocational programs, work settings, or independent living. [according to N.J.A.C. 6:28-4.7(b)] **Annual goals and objectives shall be related to the post-secondary outcomes**;

viii.-xiii. (No change.)

(f) The basic plan for the pupil classified as eligible for speech-language services shall include (e)1, 2, 3, 4, and 5i, ii, iii, ix, x and xii above. When appropriate, (e)5vii and xi above shall be included in the basic plan. The statement of the current educational status in (e)2 above shall be a description of the pupil's status in speech-language performance. If related services other than speech-language services are required, the speech-language specialist shall refer the pupil with an educational disability to the child study team.

[(f)]**(g)** Following the development of the basic plan **and prior to the twentieth calendar day after implementation of the plan**, the case manager shall coordinate the development **and completion** of the instructional guide.

[(g)]**(h)** The instructional guide shall be developed jointly by the teacher(s) responsible for implementing the pupil's instructional program and the case manager. The parent(s) of the [educationally handicapped] pupil **with an educational disability** may participate in the development of the instructional guide, along with other appropriate certified school staff members.

[(h) The instructional guide shall be completed within 20 calendar days after the basic plan has been implemented.]

(i) (No change.)

(j) Annually, or more often if necessary, the case manager, parent(s), teacher(s), the pupil, if appropriate, and other individuals at the discretion of the parent(s) or district board of education shall meet to review and revise the instructional guide and the basic plan of the individualized education program and determine placement as specified in this subchapter.

1. The annual review shall be completed by June 30 of [a handicapped] **an educationally disabled** pupil's last year in a preschool program.

2. The annual review shall be completed by June 30 of [a handicapped] **an educationally disabled** pupil's last year in an elementary school program and shall include input from the staff of the secondary school.

(k)-(l) (No change.)

(m) During a 21-year-old [handicapped] **educationally disabled** pupil's last year in an educational program, a meeting shall be held including the parent(s), the case manager, the pupil, if appropriate, and other individuals as appropriate to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended.

(n) School personnel, adult pupils and the parent(s) of [an educationally handicapped] **a** pupil **with an educational disability** 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 shall be completed within three years of the date of the previous certification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon

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demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5[(c)] **(d)**1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5[(c)]**(d)**2 shall be required.

2. (No change.)

3. Reevaluation shall be conducted according to N.J.A.C. 6:28-3.4(c), [(f) and] (g) **and (h)**. Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(d)[2, 3, 4 or 5.] **1. through 6.**

4.-5. (No change.)

6:28-3.8 Related services

(a) Related services shall be provided to [an educationally handicapped] **a** pupil **with an educational disability** according to his or her individualized education program and may include one or more of the following:

1. Counseling services shall be provided in the following manner:

i. Counseling services for [an educationally handicapped] **a** pupil **with an educational disability** shall be provided within the public schools during the school day by certified school psychologists, social workers or guidance counselors; and

ii. (No change.)

2.-6. (No change.)

(b) (No change.)

6:28-4.1 General requirements

(a) Each district board of education shall provide educational programs and related services for [educationally handicapped] pupils **with educational disabilities** required by the individualized education programs of those pupils for whom the district board of education is responsible.

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

(d) Appropriate written curricula shall be developed and appropriate materials shall be provided for [educationally handicapped] pupils **with educational disabilities**.

(e) The length of the school day and the academic year of programs for [educationally handicapped] pupils **with educational disabilities** shall be at least as long as that established for all pupils.

1.-2. (No change.)

(f) (No change.)

(g) Physical education services, specially designed if necessary, shall be made available to every [educationally handicapped] pupil **with an educational disability** age five through 21, including those pupils in separate facilities.

(h) When [an educationally handicapped] **a** pupil **with an educational disability** transfers from one New Jersey school district to another, or when a pupil classified as educationally [handicapped] **disabled** by a State or local school district outside of New Jersey transfers into a New Jersey school district, and immediate review of the classification and individualized education program cannot be conducted, the pupil shall be immediately placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days.

(i) When the individualized education program of [an educationally handicapped] **a** pupil **with an educational disability** does not describe any restrictions, the pupil shall 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, and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities is provided to groups consisting solely of [educationally handicapped] pupils **with educational disabilities**, the size of the groups and the age range shall conform to the requirements for special class programs described in this subchapter.

(j) (No change.)

(k) Each district board of education shall ensure that all [educationally handicapped] pupils **with educational disabilities** have available to them the variety of educational programs and services available to [nonhandicapped] **nondisabled** pupils.

6:28-4.2 Program options

(a) Educational program options include the following:

1. Instruction in [school which complements regular or special class programs through the] **a regular class with all necessary and appropriate supports including, but not limited to, the** following: [means:]

i. [Modification of a regular program, including, but not limited to, academic instruction, vocational, home economics, art, music, physical education and health education programs;] **Curricular or instructional modifications;**

ii. (No change.)

iii. Speech-language services; [and]

iv. Resource room **(expires June 30, 1993)**;

v. Resource center programs;

vi. Assistive technology including environmental adaptations;

vii. Specialized instructional strategies;

viii. Teacher aides; and

ix. Related services.

2.-7. (No change.)

8. Individual instruction at home or in other appropriate facilities, 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] **a** pupil **with an educational disability** 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 **with educational disabilities** according to N.J.A.C. 6:28-6.5.

(b) (No change.)

6:28-4.3 Program criteria: supplementary instruction, speech-**language services** [and], resource rooms **and resource center programs**

(a) Supplementary instruction and speech-language services provided to [educationally handicapped pupils] **a pupil with an educational disability** shall be in addition to the regular instructional program and shall meet the following criteria:

1.-5. (No change.)

(b) District boards of education may operate on a district wide basis either but not both, resource rooms and resource center programs until June 30, 1993. From that date forward, all district boards of education shall be required to comply with (d) below.

[(b)]**(c)** Resource room programs shall be instructional centers offering individual and small group instruction in place of regular classroom instruction, based on curriculum adopted by the board of education. Resource rooms shall meet the following criteria:

1. [An educationally handicapped] **A** pupil **with an educational disability** in a resource room shall be enrolled on a regular public school class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource room teacher and the regular class teacher(s) as described in the individualized education program.

2. (No change.)

3. Types of resource room programs shall be designated as follows:

i.-ii. (No change.)

iii. Open program for [nonhandicapped] **nondisabled** and [handicapped] **educationally disabled** pupils.

4.-5. (No change.)

6. This subsection shall expire on June 30, 1993.

(d) A district board of education may commence the operation of a resource center program at any time during the 1992-93 school year provided the district discontinues resource rooms. Resource center programs shall offer individual and small group instruction and shall meet the following criteria:

1. A pupil with an educational disability in a resource center program shall be enrolled on a regular class register with his or

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her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource center program teacher and the regular class teacher(s) as described in the individualized education program.

2. The resource center teacher shall hold certification as teacher of the handicapped. If the resource center program solely serves pupils who are classified as visually handicapped, the teacher must be certified as a teacher of blind or partially sighted. If the resource center program solely serves pupils who are classified as auditorily handicapped, the teacher must be certified as a teacher of deaf and/or hard of hearing.

3. Resource center programs shall provide two types of instruction or service:

i. Instruction which replaces that provided in the regular class;

ii. Instruction which supports or supplements instruction initially provided by the regular class teacher; and

iii. Support and replacement instruction shall not be provided to pupils by the same teacher during the same instructional period.

4. Resource center program instruction may be provided in the pupil's regular class or in an approved separate resource room according to N.J.A.C. 6:22-5.4 and 5.5 as appropriate and indicated in the pupil's individualized education program.

5. Group sizes for pupils who receive support instruction in resource center programs shall not exceed the following:

i. In an approved separate resource room—five pupils;

ii. In the regular class, when the resource center teacher is present each instructional period that the subject is being taught;

(1) Preschool or elementary—eight pupils;

(2) Secondary—10 pupils;

iii. In the regular class, when the resource center teacher is present for some, but not all of the instructional periods that the subject is being taught—five pupils.

6. Support instruction provided in the pupil's regular class shall be at the same time and in the same activities as the rest of the class.

7. Group size for classified pupils who receive replacement instruction in class shall not exceed three pupils.

8. Group size for classified pupils who receive replacement instruction in an approved separate resource center shall be as follows:

i. For a single content area:

(1) Preschool or elementary—six pupils; and

(2) Secondary—eight pupils.

ii. For two content areas—three pupils.

9. The age span in an approved separate resource center program shall not exceed four years.

10. Replacement instruction in the regular class shall be for pupils normally enrolled in the class being served. Only a single content area shall be taught to the group. A pupil receiving in-class instruction shall be included in activities such as group discussion, special projects, field trips and other regular class activities as deemed appropriate in the pupil's individualized education program.

11. A resource center program teacher shall be provided time for consultation with appropriate regular education teaching staff.

12. A pupil may be provided resource center instruction according to the following limits:

i. Replacement or support instruction in a separate approved resource room shall be for not more than one half of the pupil's instructional day; and

ii. Replacement or support instruction in the regular class may be for up to the pupil's entire school day.

13. For State aid funding purposes, district boards of education shall count pupils with educational disabilities in resource center programs as resource room pupils according to N.J.S.A. 18A:7D-16.

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

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

1. [An educationally handicapped] **A** pupil **with an educational disability** in a special class program shall be enrolled on a special class register;

2. Pupils shall be the primary instructional responsibility of a full-time special education teacher assigned to that class. Such teachers shall work with other teachers to whom the [educationally handicapped] **with an educational disability** may be assigned for portions of his or her educational program;

3. Depending on the educational [handicaps] **disability(ies)** 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 deaf or hard of hearing;

4.-7. (No change.)

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

1. (No change.)

2. [An educationally handicapped] **A** pupil **with an educational disability** 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:

i. (No change.)

ii. For instructional purposes:

(1) (No change.)

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

4. In addition to the requirement of (b)2 above, instruction may be provided in the following settings, as appropriate:

i. A class consisting solely of [educationally handicapped] pupils **with educational disabilities** instructed by a regular education teacher where an adapted general education curriculum is used.

(1) (No change.)

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

ii. (No change.)

(1) The number of [educationally handicapped] pupils **with educational disabilities** 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. (No change.)

(c) Vocational education programs shall meet the following criteria:

1. (No change.)

2. In vocational shop, and related academic programs class sizes shall be as follows:

i. For a class consisting of [educationally handicapped] pupils **with educational disabilities**, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted. Approval shall be considered according to procedures specified by the Department of Education. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following pupil needs and instructional considerations;

(1) Nature and degree of [handicapping] **educationally disabling** condition:

(2)-(8) (No change.)

(d) (No change.)

6:28-4.5 Program criteria: home instruction

(a) For pupils determined by the school physician to need confinement at their residence 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. [Educationally handicapped pupils] **Pupils with educational disabilities** may be exempted in their individualized education program according to N.J.A.C. 6:28-3.6(e)5iv;

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6.-7. (No change.)

(b) A pupil classified as educationally [handicapped] **disabled** 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.-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 determined by the school physician to need home instruction or classified by the child study team as educationally [handicapped] **disabled**, 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 **or approved clinic or agency** at the pupil's place of confinement;

2.-3. (No change.)

6:28-4.7 Transition

(a) (No change.)

(b) For [educationally handicapped] pupils **with educational disabilities** 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 the following post-secondary areas, as appropriate: educational programs, vocational programs, work-settings or independent living;] **be written in accordance with N.J.A.C. 6:28-3.6(e)5vii.**

i. If an agency other than the district board of education fails to provide the transition services included in the pupil's individualized education program, the district board of education shall reconvene a meeting of the individualized education program participants. Alternative strategies to meet the pupil's transition objectives shall be identified.

2.-5. (No change.)

6:28-4.8 Diplomas and graduation

(a) [An educationally handicapped] **A** pupil **with educational disability** 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 **with an educational disability** for a State endorsed diploma issued by the school district responsible for his or her education.

(b) [An educationally handicapped] **A** pupil **with an educational disability** shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program has not included the range of proficiencies measured by the High School Proficiency Test and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.

(c) (No change.)

(d) If a district board of education grants an elementary school diploma, [an educationally handicapped] **a** pupil **with an educational disability** who fulfills the requirements of his or her individualized education program shall qualify for a diploma.

(e) [Educationally handicapped pupils] **Pupils with educational disabilities** meeting the standards for graduation according to [N.J.A.C. 6:28-4.8] **this section**, shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

6:28-5.1 General requirements

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

(c) Services which may be contracted shall be restricted to the following:

1. For public school pupils:

i. Independent child study team evaluation and/or child study team diagnostic services to supplement existing local district services; [and]

ii. The related services of occupational therapy and physical therapy[.]**; and**

iii. Home instruction.

2.-3. (No change.)

(d) (No change.)

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

(a) Identification, referral, evaluation, determination of eligibility, development of individualized education programs and provision of speech [correction for articulation disorders] **and language services**, home instruction and supplementary instruction shall be provided according to this chapter.

(b)-(j) (No change.)

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

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

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

6:28-7.1 General requirements

(a) Educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, private schools for the handicapped and public college operated programs for the handicapped shall obtain prior written approval from the Department of Education to provide programs for [educationally handicapped] pupils **with educational disabilities** through contracts with district boards of education.

1.-3. (No change.)

(b) (No change.)

(c) Programs for [educationally handicapped] pupils **with educational disabilities** provided under this subchapter shall be operated according to this chapter.

1. (No change.)

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

6:28-7.2 Approval procedures to establish or change a program

(a) Prior to the establishment or change of a program for [educationally handicapped] pupils[,] **with educational disabilities** an application shall be submitted to the Department of Education.

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

(e) The application for approval to establish or change a program for [educationally handicapped] pupils **with educational disabilities** shall include, but not be limited to:

1. A survey of need indicating the number, age range and classifications of [educationally handicapped] pupils **with educational disabilities** to be served. This survey shall include, but be limited to:

i.-ii. (No change.)

2. (No change.)

3. The projected program for each group of [educationally handicapped] pupils **with educational disabilities** with the same [handicapping] **educationally disabling** condition including:

i.-iii. (No change.)

iv. The nature and scope of the program and services to be offered and the number and type of [educationally handicapped] pupils **with educational disabilities** to be served; and

v. (No change.)

4.-5. (No change.)

6. Additionally each private school shall submit:

i. An affidavit that its programs and services for [the educationally handicapped] **pupils with educational disabilities** are nonsectarian; and

ii. (No change.)

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6:28-7.3 Annual approval procedures

(a) Annually each approved private school shall submit information including, but not limited to:

1.-5. (No change.)

6. An affidavit that its programs and services for the educationally [handicapped] **disabled** are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28, The [Education for All Handicapped Children Act—Part B] **Individuals with Disabilities Education Act** (20 U.S.C. 1400 et seq.) and the Rehabilitation Act (U.S.P.L. 93-112 Section 504).

6:28-7.4 Responsibilities of district boards of education

(a) The educational program of [a handicapped] **an educationally disabled** 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. (No change.)

(b) The placement of [an educationally handicapped] **a** pupil **with an educational disability** in a program as described in N.J.A.C. 6:28-7.1(a) shall be made only with the prior written approval of the Department of Education through its county office. Providers of programs under this subchapter shall maintain documentation of this approval.

1. A district board of education shall seek approval to place [an educationally handicapped] **a** pupil **with an educational disability** in such a program only when it can assure that the individualized education program can be implemented in that setting.

2. (No change.)

3. If [an educationally handicapped] **a** pupil **with an educational disability** has available a free, appropriate education offered by a district board of education and the parent(s) chooses to place the pupil in a private school, neither the State nor the district board of education shall be responsible for the cost of the private school placement.

4. When a district board of education is able to demonstrate to the Department of Education through its county office that the individualized education program of [an educationally handicapped] **a** pupil **with an educational disability** cannot be provided by a public program or private day school program, the pupil may be placed in an approved residential private school which shall be at no cost to the parent(s). The district board of education shall be responsible for special education costs, room and board.

5. Placement of [an educationally handicapped] **a** pupil **with an educational disability** in an approved residential private school by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the nonresidential special education costs.

i.-ii. (No change.)

(c) If the approval of a private school for the handicapped is removed, a district board of education having [an educationally handicapped] **a** pupil **with an educational disability** placed therein, shall immediately begin seeking an alternative, appropriate placement for that pupil.

6:28-7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any [educationally handicapped] pupil **with an educational disability** from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference according to N.J.A.C. 6:28-3.6(j) which shall include participation of appropriate personnel from the receiving school. Fifteen calendar days prior to termination or withdrawal written notice shall be given by the parent(s), the district board of education or the school providing the program to the other parties.

(b) [An educationally handicapped] **A** pupil **with an educational disability** shall receive a diploma if the requirements of N.J.A.C. 6:28-4.8 are met.

6:28-7.7 Fiscal management

(a) (No change.)

(b) The district board of education shall establish a written contract for each [handicapped] **educationally disabled** pupil it places in a program approved under this subchapter. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the [educationally handicapped] pupil **with an educational disability**.

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

6:28-7.8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-2 pertaining to pupil records. In addition:

1. (No change.)

2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-2 shall be directed to the chief school administrator or his or her designee of the local school district having responsibility for the [handicapped] pupil **with an educational disability**.

3. (No change.)

(b) (No change.)

6:28-8.1 General requirements

(a) The requirements of this chapter shall apply to all educational programs provided under N.J.S.A. 18A:7B for [handicapped] **educationally disabled** pupils by the Departments of Corrections and Human Services. These requirements do not apply to Graduate Equivalent Degree (GED), adult continuing education or college degree programs.

(b) All [educationally handicapped] pupils **with educational disabilities** shall recieve an educational program and/or related services based on an individualized education program. A pupil who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the individualized education program incorporated into the plan.

(c) (No change.)

(d) All [educationally nonhandicapped] **nondisabled** pupils in State facilities shall receive an educational program according to N.J.A.C. 6:8. (Thorough and Efficient System of Free Public Schools).

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

(g) Attendance is compulsory for all pupils except for a pupil age 16 or above who explicity waives this right. Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by parental consent. Educationally [handicapped] **disabled** pupils may reenroll according to N.J.A.C. 6:28-2.1(b).

(h)-(i) (No change.)

(j) When a pupil enters a State facility:

1. If a pupil is educationally [handicapped] **disabled** and an immediate review of the classification and individualized education program cannot be conducted, the pupil shall be placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days; or

2. If the pupil is not currently classified as educationally [handicapped] **disabled**, or if the State facility does not have current school records, the State facility shall review the pupil's educational status within 30 calendar days to determine if the pupil is potentially educationally [handicapped] **disabled** and if referral to the child study team is required.

(k)-(o) (No change.)

6:28-8.3 Procedural safeguards

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

(c) Mediation efforts by the Department of Education as described in N.J.A.C. 6:28-2.6 may be requested for [handicapped] **educationally disabled** pupils.

(d) The educational rights of [noneducationally handicapped] **nondisabled** pupils to procedural safeguards are the same as [noneducationally handicapped] **nondisabled** pupils in local district schools in New Jersey.

(e) Discipline of educationally [handicapped] **disabled** pupils shall be according to N.J.A.C. 6:28-2.8.

(f) (No change.)

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6:28-8.4 Provision of programs

(a) (No change.)

(b) A residential State facility may recommend placement of [an educationally handicapped] **a** pupil **with an educational disability** in a local school district if the pupil is capable of participating in an educational program offered by a district board of education. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.

(c)-(g) (No change.)

(h) An educational plan shall be developed by the approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which shall include:

1. (No change.)

2. An individualized education program for [educationally handicapped] pupils **with educational disabilities**; or for [noneducationally handicapped] **nondisabled** pupils, a description of the pupil's general education progam; and

3. (No change.)

(i)-(j) (No change.)

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.

1. The Division of Special Education shall complete an investigation within 60 calendar days after a written complaint is received for children below the age of three.

2. 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 **for pupils age of three and above.**

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

6:28-10.1 General requirements for early intervention programs serving children between birth and age three

(a) This subchapter applies to all agencies that receive public funds through contracts from the Department of Education for the provision of early intervention programs to [handicapped] children **with disabilities** between birth and age three **and their families.** Early intervention programs [shall address a child's education, health and human service needs within the framework of the family] **are designed to address or enhance the child's development** through an individualized family service plan according to P.L. 99-457.

(b) Early intervention programs shall be administered by the Department of Education as the lead agency in collaboration with the Departments of Health and Human Services [and the Developmental Disabilities Council].

(c) (No change.)

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

[1. Monitor] **monitor** and review [annually] the programs **annually** [and]**.**

[2. Conduct] **(e) The Department of Education shall conduct** complaint investigations according to N.J.A.C. 6:28-9.2.

Recodify existing (e) through (k) as **(f)** through **(l)**. (No change in text.)

[(1) A] **(m) Mediation and/or 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-**2.6 and** 2.7.

6:28-11.1 General provisions

(a) The New Jersey Department of Education has developed the Plan to Revise Special Education in New Jersey (Plan). The Plan is a major initiative of the Department and includes a set of recommendations designed to improve the organization and delivery of special education programs and services to [handicapped] **educationally disabled** pupils. The Plan is also designed to build the capacity in regular education to serve [nonhandicapped] **nondisabled** pupils with mild learning problems in regular education.

(b) (No change.)

(c) This subchapter shall replace N.J.A.C. 6:28-3.1 [through]**, 3.2, 3.4 and** 3.5 and N.J.A.C. 6:28-4.1(a) through (d) and [4.2] **4.3** through 4.6 and shall apply only to those districts selected by the Department of Education to pilot the Plan. All other provisions of N.J.A.C. 6:28 shall apply to such districts except as specifically noted in this subchapter.

(d) Prior to September 1, 1988, the child study teams of pilot districts shall determine an appropriate eligibility status for all pupils classified according to N.J.A.C. 6:28-3.5[(c)](**d**).

1.-2. (No change.)

(e) (No change.)

6:28-11.2 School resource committee

(a) All pilot district boards of education shall establish at least one school resource committee in each of its regular schools. The school resource committee is a standing committee whose purpose is to assist teachers with strategies for educating [nonhandicapped] **nondisabled** pupils with learning and/or behavior problems in regular education. Pilot district boards of education shall develop procedures for requesting the services of the school resource committee, implementing committee recommendations and communicating with parents.

1.-3. (No change.)

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

6:28-11.3 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who shall:

1. Evaluate pupil instructional needs after parental consent has been received and participate in the determination of eligibility for special education and/or related services for pupils referred as potentially educationally [handicapped] **disabled**;

2. (No change.)

3. Deliver appropriate related services to educationally [handicapped] **disabled** pupils;

4. Provide preventive and support services for [non-handicapped] **nondisabled** pupils; and

5. (No change.)

(b) A child study team shall consist of a learning disabilities teacher-consultant, a school psychologist, **and** a school social worker**.** [and a] **A** speech correctionist or speech-language specialist **shall be a child study team member for pupils in preschool through grade three.** All members of the child study team shall be employees of the pilot district board of education, have an identifiable apportioned time commitment to the local school district and be available during the hours when pupils are in attendance.

(c) (No change.)

(d) At least one member of the child study team shall be knowledgeable about placement options for [educationally handicapped] pupils **with educational disabilities** according to N.J.A.C. 6:28-4.

6:28-11.4 Identification

(a) Each pilot district board of education shall adopt written procedures for identifying those pupils ages three through 21 who reside within the local school district, may be educationally [handicapped] **disabled** and are not receiving special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Education.

1. (No change.)

2. The identification procedures shall provide for participation of the school resource committee, instructional, administrative and other professional staff of the local school district, parents and agencies concerned with the welfare of pupils.

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(b) When [an educationally handicapped] **a** pupil **with an educational disability** transfers into a pilot district, placement shall be according to N.J.A.C. 6:28-4.1(h).

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

6:28-11.5 Referral

[(a) Prior to any decision regarding referral of a pupil to a child study team for determination of eligibility for special education programs or services, a certified staff member shall request the school resource committee to recommend interventions in the regular public school program to address educational problems. The following exceptions to this provision apply:

1. School resource committee intervention is not required for a pupil whose educational problems are such that direct referral to the child study team can be supported; and

2. The parent(s) may refer their child to the child study team directly. The child study team shall determine the appropriateness of any such referral.

(b) A written report by the school resource committee of the intervention's effect and other collected at a regarding the pupil shall be presented to the child study team upon referral of the pupil.

(c) The parent(s) of a pupil being considered for referral to a child study team shall receive written notice according to N.J.A.C. 6:28-3.3(b).

(d) When consent for initial evaluation is withheld, the district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(e) Audiometric screening shall be conducted for every pupil referred to the child study team including those referred solely for speech and language services according to N.J.A.C. 6:29-8.

(f) The school nurse shall gather, review and summarize relevant health information including, but not limited to, routine examinations, health records and medical reports and shall recommend a comprehensive medical evaluation, if appropriate, as part of the child study team referral materials.

(g) When a parent identifies a child age three to five as potentially handicapped, the district board of education shall use a screening procedure which includes at a minimum, an observation of the child to determine if the child should be referred directly to the child study team for comprehensive evaluation. Screening shall be completed within 30 calendar days of parental request.

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

(i) Pupils referred solely for speech-language services may be referred directly to the speech-language specialist and need not be reviewed by the entire child study team.

(j) Vision screening shall be conducted by the school nurse for every pupil referred to the child study team.] **Each pilot district shall follow referral requirements according to N.J.A.C. 6:28-3.3.**

6:28-11.7 Determination of eligibility

(a) (No change.)

(b) When [an educationally handicapped] **a** pupil **with an educational disability** transfers into a pilot school district, review of the pupil's classification and appropriateness of the eligibility status and individualized education program shall be conducted within 30 calendar days.

(c) Pupils determined by the school physician to have temporary health problems which prohibit regular attendance in school need not be classified as [handicapped] **educationally disabled** but shall be entitled to receive at least five hours per week of individual instruction at home for a period of time determined by the school physician. After 60 days, the pupil shall be referred to the child study team to determine if the pupil is eligible for special education and/or related services.

(d) Pupils determined eligible for special education or related services shall be classified according to the following definitions:

1. (No change.)

2. Eligible for part-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil can participate in regular education [for the majority of the instructional day] **with the use of resource center programming.**

3. Eligible for full-time special education: The pupil shall have met the criteria for one or more of the domains and either impact area listed in N.J.A.C. 6:28-11.8 and the child study team shall have determined that the pupil requires special education [for a majority of the instructional day] **in a full-time special class.**

[4. When the pupil's instructional day is evenly divided between regular and special education, the child study team shall determine eligibility for full- or part-time special education based upon the pupil's instructional need.]

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

6:28-11.8 Eligibility criteria

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

(f) Pupils who do not meet the standard eligibility criteria but do meet functional criteria may be considered as eligible for special education if the child study team determines that the pupil is educationally [handicapped] **disabled** and requires special education and/or related services. The child study team must show evidence why the standard criteria are inappropriate for the pupil and how the other evaluation data support a decision to classify the pupil.

(g) When the parent of a pupil eligible for special education and/or related services requests a classification designation as stated in N.J.A.C. 6:28-3.5[(c)]**(d)**, the child study team shall select an appropriate classification type based upon the evaluation completed according to N.J.A.C. 6:28-11.6 and **11.7** and any specialist required by N.J.A.C. 6:28-3.5[(e)]**(d)**.

6:28-11.9 Individualized education program

(a) The individualized education program for each [educationally handicapped] pupil **with an educational disability** shall consist of a basic plan and an instructional guide, pursuant to N.J.A.C. 6:28-3.6 and this subsection.

1. (No change.)

2. The basic plan of the individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), (c), [and] (e) **and (f)** and shall also include the following:

i.-iii. (No change.)

3. The instructional guide shall describe both the learning characteristics of the pupil and the related instructional characteristics of the pupil's learning environment. The instructional guide shall include those requirements stated in N.J.A.C. 6:28-3.6[(f),] (g), (h) and (i) and the following:

i.-iv. (No change.)

(b) Pupils determined to require placement in a county day training facility shall be classified as eligible for day training according to N.J.A.C. 6:28-3.5[(d)5iii]**(d)6iii** based upon the child study team evaluation completed under N.J.A.C. 6:28-11.6(g).

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

6:28-11.10 Provision of programs

(a) Each pilot district board of education shall provide educational programs and related services for [handicapped] **educationally disabled** pupils in accordance with their individualized education programs.

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

(d) Appropriate facilities shall be provided for [educationally handicapped] pupils **with educational disabilities** according to N.J.A.C. 6:22.

(e) Each full-time class type shall be described in individual class profiles that are reviewed and approved by the county office and the Division of Special Education acting jointly. Appropriate written curricula shall be developed and appropriate materials shall be provided for [educationally handicapped] pupils **with educational disabilities** served in full-time class types.

(f) (No change.)

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6:28-11.11 Program options

(a) Educational program options shall [include the following:

1. Related services;

2. Instruction in school which complements regular class programs through part-time special education including:

i. Modification of a regular program through the use of in-class support instruction, in-class replacement instruction, out-of-class support instruction and out-of-class replacement instruction;

3. A full-time special class program in the pupil's local school district,

4. A special education program in the following settings:

i. Another local school district;

ii. A vocational and technical school;

iii. A county special services school district;

iv. An educational services commission; or

v. A jointure commission.

5. Programs in hospitals, convalescent centers or other medical institutions;

6. A program operated by a department of New Jersey State government;

7. Vocational rehabilitation facilities;

8. An approved privately operated special class in the continental United States, when it is not appropriate to provide services according to (a)1 through 7 above. Placement in a privately operated special class shall only be made with the prior written approval of the Department of Education through its county office; and

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. Speech-language services provided to educationally handicapped pupils shall be in addition to the regular instructional program and shall meet the following criteria:

i. Speech-language services may be given individually or in groups not to exceed three pupils.

ii. Speech-language services shall be provided by a certified speech correctionist or speech-language specialist.

2. Part-time special education programs shall provide individual and small group instruction to pupils eligible to receive part-time special education and shall meet the following criteria:

i. There shall be resource centers in sufficient numbers to provide programs for pupils in part-time programs. Each center shall be approved by the Department of Education.

ii. An educationally handicapped pupil in a resource center shall be enrolled on a regular public school class register with his or her chronological peers.

iii. The teacher(s) assigned to the resource center shall be certified as teacher of the handicapped. When the resource center serves only blind or deaf pupils, the resource center teacher shall hold certification as a teacher of the blind/partially sighted or teacher of deaf/blind of hearing.

iv. A resource center teacher providing support instruction shall be provided time for consultation with the regular teaching staff.

v. Types of part-time programs shall be designated as follows:

(1) In-class support is assistance provided in the regular classroom by a resource center teacher to pupils requiring remedial support in order to benefit from regular class instruction.

(2) Out-of-class support is assistance provided in the resource center by a resource center teacher to pupils requiring remedial support in order to benefit from regular class instruction.

(3) In-class replacement is direct instruction in content areas by the resource center teacher in place of instruction by the regular class teacher, provided to the pupil in the regular class.

(4) Out-of-class replacement is direct instruction in content areas by the resource center teacher in place of instruction by the regular class teacher, provided to the pupil in the resource center.

vi. The number of pupils provided replacement instruction at any given time shall not exceed six in an elementary group or eight in a secondary group. The group size in out-of-class replacement instruction may be increased by one-third with the addition of a classroom aide by obtaining the approval of the Department of Education through its county office. The group size in secondary out-of-class replacement instruction may be doubled when a regular teacher joins the resource center teacher in instructing the group. No more than one content area may be taught in an individual period of replacement instruction. Age span shall not exceed four years.

vii. Group size for pupils provided support instruction shall not exceed five. Support and replacement instruction may not be provided to the same group at the same time.

viii. Pupils eligible for part-time special education shall participate in regular classroom programs for the majority of the pupil's instructional day.] **include those listed in N.J.A.C. 6:28-4.2(a).**

(b) Program criteria shall be met in accordance with N.J.A.C. 6:28-4.3.

1. In addition, the group size in out-of-class replacement resource center instruction may be increased by one-third with the addition of a classroom aide by obtaining the written approval of the Department of Education through its county office.

[3.]**(c)** Full-time special class programs shall meet the following criteria:

[i.]**1.** (No change in text.)

[ii.]**2.** An educationally [handicapped] **disabled** pupil eligible for full-time special education shall be enrolled on a special class register.

Recodify iii.-iv. as **3.-4.** (No change in text.)

[v.]**5.** Teachers in full-time class types shall work cooperatively with other teachers to whom the [educationally handicapped] pupil **with an educational disability** may be assigned for portions of his or her educational program.

Recodify vi.-vii. as **6.-7.** (No change in text.)

6:28-11.12 Full-time class types

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

(e) Moderate behavior handicap class types shall meet the following requirements:

1. (No change.)

2. The program shall emphasize:

i.-ii. (No change.)

iii. Decreasing behaviors which present a danger to the pupil or [other] **others**;

iv.-vi. (No change.)

3.-7. (No change.)

(f)-(l) (No change.)

(m) Pupils enrolled in full-time class types may be instructed in regular classes in accordance with their individualized education program. The number of [educationally handicapped] pupils **with educational disabilities** enrolled in a full-time class register who can attend any given instructional period in such classes shall be limited to four if program modification is required.

(n) and (o) (No change.)

6:28-11.13 Program approval

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

(c) A pupil classified as educationally [handicapped] **disabled** by a child study team may have the individualized education program implemented through individual instruction at home when it can be demonstrated that no other program option is appropriate at that time. This provision shall not apply to pupils suffering from temporary medical problems such as, but not limited to, pregnancy or fractures. Pupils suffering temporary medical problems shall be provided instruction individually through regular education and need not be eligible for special education.

1.-2. (No change.)

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

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HEALTH

(a)

OFFICE OF HEALTH POLICY AND RESEARCH

State Health Plan

Proposed New Rules: N.J.A.C. 8:100

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-5 and 26:2H-8.

Proposal Number: PRN 1992-159.

Six public hearings are scheduled for the following dates and places. Hearing times are 10:00 A.M. to 12:00 noon and 1:00 to 3:00 P.M.

April 13—LAB VI
Ocean County College
Lecture Hall
College Drive
Route 549 (Hooper Avenue)
Toms River, New Jersey

April 21—LAB IV
Ramada Inn Edison
3050 Woodbridge Avenue
Edison, New Jersey

April 28—LAB II
Fairleigh Dickinson University, Rutherford Campus
Sammartino Hall Auditorium
West Passaic Avenue and Montross Avenue
Rutherford, New Jersey

May 5—LAB III
Chancellor Suite
Student Center
Seton Hall University
South Orange Avenue and Center Street
South Orange, New Jersey

May 19—LAB V
Jewish Community Center
2395 West Marlton Pike
Cherry Hill, New Jersey

May 27—LAB I
County College of Morris
Student Community Center
214 Center Grove Road
Randolph, New Jersey

For more information, call the Department of Health Boards and Councils Office at 609-292-9383.

Submit written comments by June 5, 1992 to:
Bruce Siegel, M.D., M.P.H.
Executive Director
Office of Health Policy and Research
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

New Jersey's health care system is in crisis. With health spending Statewide now over $22 billion, our State's employers and workers find it increasingly difficult to shoulder this burden. Health care costs have a direct effect on insurance costs, and the number of people who are unable to attain health insurance. As health care costs go up, so do insurance costs. With high insurance costs, more and more employers and individuals are no longer able to afford coverage.

The result is a State in which over 800,000 people are uninsured, and perhaps many more have inadequate insurance. This is not a problem of the poor, nor is it only a problem of the unemployed. Most New Jerseyans without insurance are employed, and only a small proportion live in poverty. The crisis in cost and access has struck hardest at working middle-class people.

The effects on people's health are clear. In New Jersey in 1989, there were 130,000 hospital admissions that could have been avoided had people been able to receive appropriate preventive care or early treatment. These admissions cost us $650 million in 1989, $650 million spent needlessly.

The State Health Plan is designed to begin a public process of determining how we will make future investments in New Jersey, and what health services we will emphasize. It allows for cost-containment which will then give us the savings we can use to ensure that more New Jerseyans have access to at least basic health services. The plan also includes proposals designed to improve quality of care by furthering the regionalization structures we already have in place in our State.

The plan is not complete. The seven subchapters here have been reviewed, revised, and approved by the State Health Planning Board (Board) after four months of extensive deliberation which included five public hearings. As voting members of the Board, representatives of the six local advisory boards (LABs) brought local knowledge and perceptions to the development of the plan. As the Board passes these first seven chapters to the Health Care Administration Board for consideration and action, the Board will now turn its attention to developing the remaining nine subchapters for proposal later this year. The subchapters to be contained in the second phase of the plan are identified and reserved in the body of the proposal.

The State Health Plan will remain a dynamic document. The LABs will continue to make ongoing recommendations on how the plan should be changed based on local needs. The law establishing the Board made it clear that the plan was to be revised on at least an annual basis. This will be a document designed not to bind us to the past, but to help us look to the future.

In June 1991, *Healthy New Jersey 2000: A Public Health Agenda for the 1990's,* identified health needs throughout the State. The State Health Plan identifies the services available to meet those needs. In many subchapters of the plan, a maldistribution of services is seen, as well as lack of cordination, service gaps, and unintentional duplication. While there are too few of some services, there are often plenty of others. Our State now has at least 75 magnetic resonance imagers (MRIs). This is six times as many as Canada and more than all of Germany. In many areas of tertiary care, we have made very expensive investments, intentionally or unintentionally. Meanwhile, we are neglecting fundamental public health as thousands of our State's children go in want of a simple immunization.

A summary of each subchapter follows:

Subchapter 1. Introduction

This subchapter defines the purpose and scope of N.J.A.C. 8:100, the State Health Plan. It begins by listing specific purposes of the chapter. A large section of the purpose is devoted to furthering the public health goals and objectives already established by the Department of Health.

Recognizing the need to help the people of New Jersey improve their health, State Commissioner of Health, Frances J. Dunston, M.D., M.P.H., initiated a major effort to identify quantifiable health objectives which reflect the specific needs of the residents of this state. During the first half of 1991, the Department of Health prepared New Jersey's health promotion and disease prevention goals for this decade and developed objectives to be used to measure our progress toward achieving those goals throughout the coming years. All divisions of the Department of Health contributed to the development of these goals and objectives. Assistance was also offered by other agencies in New Jersey State government, notably the Department of Labor, Law and Public Safety, Education, and Human Services.

Eleven priority areas were selected, each with a goal statement and several measurable objectives. Targets for the year 2000 were set for each objective. These goals and objectives are contained in subchapter 1. The 11 goals for a Healthy New Jersey in the year 2000 are:

INCREASE ACCESS TO PREVENTIVE AND PRIMARY CARE
IMPROVE INFANT, CHILD HEALTH AND MATERNAL OUTCOMES
REDUCE THE INCIDENCE OF ADOLESCENT PREGNANCY
PREVENT, DETECT AND CONTROL CANCER
PREVENT, DETECT AND CONTROL CARDIOVASCULAR AND OTHER VASCULAR DISEASES
PREVENT AND CONTROL AIDS AND HIV INFECTION
PREVENT AND CONTROL SEXUALLY TRANSMITTED DISEASES
PREVENT AND CONTROL VACCINE-PREVENTABLE AND OTHER INFECTIOUS DISEASES

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REDUCE AND CONTROL INJURIES
REDUCE OCCUPATIONAL AND ENVIRONMENTAL HAZARDS
REDUCE THE RATES OF MORTALITY AND MORBIDITY DUE TO USE AND ABUSE OF TOBACCO, ALCOHOL AND OTHER DRUGS

Public input into the development of the goals and objectives was sought through regional focus groups, a public hearing, and a public opinion survey. Six regional focus group meetings were held across the State. These meetings provided a rare opportunity for community leaders, health and social service providers, consumers, and advocates to come together, present their views, and discuss common concerns as well as differences.

The expressed views of New Jerseyans were remarkably consistent across the State. The goals identified by the Department of Health were affirmed as priority concerns for the State. Abuse of drugs and alcohol, because of its inextricable connection with so many other pressing health problems, was generally viewed as the central issue confronting New Jerseyans. Infant mortality was another universal concern. Special emphasis was also given to the need to address barriers to access to care such as inadequate reimbursement, lack of coordination of services, and insufficient outreach activities. Concern was repeatedly expressed about the relatively poor health status of minority populations. The needs of special populations, such as the elderly, were raised as well. Across focus groups, a unified message was heard: "Invest more resources in community-based primary and preventive care."

A formal public hearing was held to broaden the scope of public input into the development of goals and objectives. The testimony supported the views expressed during the focus groups. In addition, a call was heard from local policy makers for access to timely health data on which to base decisions. Finally, a public opinion telephone survey was conducted in which 800 people throughout the State were asked to rate health issues. More than two-thirds of the people interviewed rated the 11 health issues addressed by our Healthy New Jersey goals as either "extremely" or "very" important.

Subchapter 1 also defines the scope of the plan and includes a section of definitions of the terms used throughout the chapter.

Subchapter 4. Maternal and Child Health Services

The health of mothers, infants, children and adolescents is an issue across the fabric of our society. Health objectives from nine of the 11 priority areas of *Healthy New Jersey 2000: A Public Health Agenda for the 1990's* serve as a framework for subchapter 4, Maternal and Child Health Services. Access to good. high-quality prenatal and pediatric primary care is essential to reduce New Jersey's unnecessarily high infant mortality rate as well as childhood mortality and morbidity. Lack of access to prenatal and primary care as well as inappropriate utilization of hospital emergency rooms have contributed to spiraling health care costs. Universal access to primary care would reduce poor birth outcomes, improve child health, and reduce costs.

In 1976, Toward Improving the Outcome of Pregnancy, published by the March of Dimes, suggested a system to regionalize perinatal services. Since that time, the regionalization of perinatal services has been nationally documented as having the greatest impact on improving survival rates for high risk infants. Expanding this concept to pediatric services would improve coordination for universal access to primary care for families.

In the "Comprehensive Health Plan for New Jersey, 1973-1974", the New Jersey Statewide Health Coordinating Council (SHCC) listed the reduction of infant mortality as its top priority goal for New Jersey. Regionalized perinatal services were recognized as a means to achieving this goal. New Jersey's first perinatal planning regulations based on specific levels of care were promulgated in 1977 and the designation process was completed in 1981. This system provided for four levels of perinatal care (I, II, IIA, and III with Level III facilities providing the most specialized, intensive services). In 1987, the Robert Wood Johnson Foundation further built on this system by funding seven organized regional networks coordinated by the tertiary care or Level III facilities. These are widely known as the RWJ Consortia. Existing referral patterns and the number of deliveries in a region were used as the criteria for funding. The purpose of the Consortia was to improve coordination of referral and transport services between facilities, provide professional education to all providers, and implement a maternal risk assessment tool.

In 1989, the Perinatal Technical Advisory Committee (PTAC) was convened by the Department of Health to examine regionalization in New Jersey. The committee was primarily comprised of members of the industry who closely examined the successes of the RWJ Consortia. Management of the high risk newborn improved under this system but very little progress was demonstrated in improving poor birth outcomes and preventing low birthweight in babies. One of the reasons for this poor prevention track record, as cited in the PTAC report, was the emphasis on acute care. The RWJ Consortia were oriented toward hospitals and the services they provide. Access to prenatal care, adolescent pregnancy, perinatal HIV/AIDS, and addicted pregnant women were not sufficiently addressed. Also cited in the report was a breakdown of linkages between the community-based, publicly-funded providers and the private sector. The PTAC recommended a Statewide regionalized system of perinatal services, incorporating the concepts of the RWJ Consortia, and funded in the same way as the model Southern New Jersey Perinatal Cooperative Demonstration Project. This demonstration project, funded as an RWJ Consortia, provided coordinated maternity and newborn services in southern New Jersey. The PTAC further recommended that more attention be focused on maternal prenatal care, risk assessment and management appropriate for the individual.

Since the initial designation process in 1981, there have been great technological strides in neonatal intensive care so that many Level I, II, and IIA hospitals have upgraded their neonatal capabilities. Such progress has not been the same for perinatology or maternal-fetal medicine. This is still a relatively new field designed to manage the high risk mother and prevent the low birthweight delivery.

Overall, infant mortality rates have improved, though for minorities the rate is still double that for whites. Urban areas consistently have the highest infant mortality rates in the State. Related to the infant mortality rate are the increasing rates of low birthweight, inadequate prenatal care and adolescent pregnancy. Women with no prenatal care are ten times more likely to have a very low birthweight baby. The number of women without good prenatal care, and the number of very low birthweight infants born in our State, are increasing.

Fragmentation of services also exists in pediatric care. Not only are linkages between the public and private sector lacking as in prenatal care, but different providers within the system concentrate on only specific aspects of care. For example, local health departments provide well child care for the most part. Conversely, hospitals and community health centers emphasize acute care without organized, preventive care follow up. In addition, occupancy in pediatric units has been averaging less than 50 percent Statewide and continues to decrease. This is indicative of a need to streamline the existing number of pediatric units with allowance for geographic access and to emphasize the provision of primary care.

Since the mid-80's New Jersey has been experiencing outbreaks of measles, a disease once thought to be nearly eradicated. Although the urban areas reported the highest number of cases, this problem affects suburban, rural, poor and middle-class families as well.

In 1989, there were over 17,000 children under five years admitted Statewide for medical problems which are usually preventable with appropriate primary care. Examples of such problems are ear infections, pneumonia, gastroenteritis, and measles. While there are a variety of reasons for the poor status of preventive prenatal and pediatric care, the primary reasons are related to a lack of access due to economic and social barriers. Over 50 percent of mortality among children is caused by injuries and infectious diseases which are largely preventable through safety precautions, immunizations, and access to appropriate primary care.

Adolescents are a vulnerable population which frequently view themselves as invulnerable. Growing substance abuse among teens is related to increases in adolescent pregnancy, unintentional injuries, homicides and suicides, HIV and AIDS, and sexually transmitted diseases. In 1989, nine percent of all New Jersey babies were born to young women under 19 years of age. These young women have the greatest risk of delivering low birthweight babies and are the least likely to seek prenatal care.

The number of children registered with special needs has been increasing as diagnosis, case finding and the survival rate of low and very low birthweight infants improve every year. These children are now living longer lives with greater health needs in their adolescent and young adult years. Families with special needs children find it difficult to obtain primary care in their communities. Instead, for basic health care services they turn to the child's specialist who is often geographically difficult to access and more expensive than primary care providers.

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To achieve the coordination of services needed to improve the health of mothers and children in New Jersey, this subchapter contains one primary recommendation: Establish a regionalized system of maternal and child health care that emphasizes community-based prevention and primary care services, with particular attention to the appropriate linkages between outpatient and regional inpatient providers.

This system would be managed by Maternal and Child Health Consortia which would mean that the current RWJ Consortia would evolve into private, non-profit agencies funded through the hospital rates similar to the Southern New Jersey Perinatal Cooperative. The new perinatal regionalization would place an emphasis on access to early and adequate prenatal care with comprehensive risk assessment and follow-up including home care as needed. This recommendation moves one step beyond perinatal regionalization by incorporating pediatric services into the regional system. The regional organizations would then become licensed Maternal and Child Health Consortia with the following responsibilities:

1. The development of perinatal and pediatric regional plans in cooperation with the Local Advisory Board(s). Plans would include further developing community-based services and moving categorical programs into fully integrated perinatal and pediatric services;
2. Professional education of all providers;
3. Coordination of maternal and neonatal transport systems;
4. Coordination of home follow-up services;
5. Total quality improvement through maternal risk assessment and infant death review; and
6. Submission of perinatal and pediatric Certificate of Need applications for the consortia members who are health facilities.

Subchapter 4, Maternal and Child Health Services, stresses strategies to implement the above proposed regional system and provide universal access to primary care for families. Strategies revolve around the three issues of reimbursement, manpower capacity, and service provision. There are recommendations affecting both State and local policies.

Subchapter 8. Addictions

A priority area of Healthy New Jersey 2000: A Public Health Agenda for the 1990's is to "reduce the rates of morbidity and mortality due to use and abuse of tobacco, alcohol and other drugs." Measurable objectives establish targets for improving health by decreasing addiction over the decade.

Morbidity and mortality caused by or related to addiction to nicotine, alcohol, drugs, gambling and food exact an enormous human and economic toll. Addiction is responsible for almost one in four deaths in New Jersey. During 1990, 15,000 persons in New Jersey died due to addictions. Almost 80 percent of them died from smoking and 20 percent from drinking alcohol. The public perceives drug abuse as the most serious of addictions. In reality, fewer people use and abuse drugs than nicotine, alcohol and food, and the health consequences of drug abuse are less severe with the exception of HIV infection. Addiction causes many diseases such as cancer, heart disease, gastro-intestinal disorders, and liver disease. It also worsens many other diseases such as diabetes, hypertension, and asthma.

Two out of three people drink alcohol. Of those who drink, one in 10 is addicted to alcohol. One-quarter of Americans smoke and one-quarter are obese. Six and one-half percent have used illicit drugs. Everyone who abuses any of these substances incurs risk of injury while judgment or motor coordination or both are impaired. Although it is commonly thought that addictions are more prevalent among low income persons, especially minorities, household surveys show that addictions are just as likely among middle and upper income populations.

For people who are addicted to nicotine, alcohol, drugs, gambling and food, the signs and symptoms of addiction are the same. Some include:

- Continued use despite clear evidence of harm or negative consequences;
- Compulsion to use and loss of control over use;
- Increased tolerance and physiological dependence which results in discomfort and illness when the substance is withdrawn;
- Use and recovery from bad effects of use consume an excessive amount of time; and
- Recurrent pattern of use and problems caused by use.

There is strong evidence that all the addictions involve similar neurochemical changes in the brain that reinforce the addictive behaviors. Family history of addiction is a risk factor for developing addiction. Although the majority of children of addicted persons do not become addicted, they are three to five times more likely to become addicted than persons who do not come from families of addiction.

Prevention, intervention and treatment strategies are the same for all addictions. Education is the most powerful prevention tool. Other prevention strategies include limiting access through taxation and law enforcement and restricting promotion of the substance or activity of abuse. Physician, family and law enforcement intervention interrupts and moderates use for some users without any further treatment.

There are many levels of treatment: acute hospital care, subacute residential treatment, and outpatient and community-based residential treatment. However, access to treatment is generally a function of insurance coverage rather than severity of illness. Because of State insurance mandates, most of the alcohol programs are accessible to persons with insurance.

Access to acute care hospital treatment is assured through the New Jersey Health Care Trust Fund. However, the majority of New Jersey hospitals do not provide a continuum of care for addicted persons. Treatment of the medical sequelae of late stage addiction and detoxification are the services most likely to be available in hospitals. Addiction screening and treatment are not customarily part of the protocol of care. In New Jersey, two points emerge: (1) universal access is only available at the most costly level of acute medical care; (2) treatment often begins so late that the disease has become more severe, and the patient has lost all social supports and resources.

Improvement in health status depends on early detection of addiction and improved access to appropriate levels of care. To achieve this goal, the following recommendations are made in the subchapter:

1. Move to a unified additions approach. This means that when a person is treated for one addictions, he or she is screened and referred for treatment of any other addictions as well;
2. Classify treatment settings by objective criteria as established by the American Society of Addiction Medicine;
3. Evaluate addicted persons and match them to intensity of treatment based on severity of addiction rather than insurance coverage;
4. Screen for addictions in all health care settings using a standardized protocol;
5. Follow up screening with evaluation and case management to assess health status for at least two years from initial intervention;
6. Establish a payment system to insure access for the indigent to all appropriate levels of care; and
7. Expand community-based outpatient services to provide appropriate care in cost-effective settings.

Subchapter 9. Cardiovascular Disease

To prevent, detect and control cardiovascular and other vascular diseases is one of the 11 goals in *Healthy New Jersey 2000: A Public Health Agenda for the 1990's.* Cardiovascular disease (CVD), diseases of the heart and blood vessels, remains the leading cause of death in New Jersey, particularly among older adults (age 65 and older). The two most often reported categories of CVD are coronary heart disease (CHD) and cerebrovascular disease (stroke). New Jersey's CHD rate has historically been slightly above the national rate, with the State's stroke rate slightly below the national average.

CVD is the leading cause of death in New Jersey, resulting in the death of more people than all other diseases combined. In 1986, the Centers for Disease Control ranked New Jersey as the fourth highest state for age-adjusted rates of coronary heart disease mortality. Deaths from strokes in New Jersey are somewhat lower than the national rate. Heart disease is more prevalent in minorities. In 1988, the coronary heart disease death rate per 100,000 total population in New Jersey aged 45 to 64 was 206.2. The rate for minorities in the same age group was slightly more at 214.8 deaths per 100,000. In 1988, deaths due to stroke in the total 45 to 64 age group was 32.6 per 100,000. The death rate for minorities in that age group was nearly twice that at 64.2 deaths per 100,000. While the volume of cardiac services has increased in recent years, access by minority populations continues to be a problem in New Jersey. For example, while African Americans comprised 15.4 percent of hospital admissions in 1989, they accounted for only 9.1 percent of catheterization admissions and 3.9 percent of cardiac surgery admissions; this in spite of clear evidence that CVD is more frequent in the black population.

Several recent studies have questioned whether invasive cardiac services are clinically appropriate for specific categories of patients. A wide variation in rates of intervention found throughout regions in the country, where rates of CVD are comparable, has raised concern that increased use of these treatments is compelled by the technology itself. In short, how much of the increased demand in services is generated by increased availability rather than clinical need?

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The good news is that mortality rates for both coronary heart disease and stroke have been declining over the last 20 years, largely due to the development of effective prevention tools that help reduce risk of developing the diseases. The major modifiable risk factors associated with CVD are: cigarette smoking; high blood pressure; high blood cholesterol; obesity; sedentary lifestyle; and diabetes.

Subchapter 9, Cardiovascular Diseases, emphasizes disease prevention and health promotion measures in seeking to achieve the *Healthy New Jersey 2000: A Public Health Agenda for the 1990's* objective of reducing CVD mortality by 25 percent. To improve our ability to control this disease in the future, two major initiatives are stressed. The first emphasizes primary prevention of the disease, because many CVD risk factors are modifiable. The second major initiative is a detailed Statewide appraisal of current cardiac resources devoted to the acute manifestations of cardiovascular disease.

The primary prevention effort will be implemented through the expansion of education and prevention programs that are targeted at the modifiable risk factors for CVD, and the establishment of community-based public policies that seek to identify needed preventive programs in each LAB region. The proposed preventive strategies encourage the development of specific plans and programs that support individual behavioral changes which modify or eliminate CVD risk factors. The health education, health promotion and screening activities of hospitals, local health departments and voluntary nonprofit organizations (for example, American Heart Association) are included in the state's inventory of service providers and must be considered as integral components of the prevention system for CVD.

This subchapter defines the major acute cardiac care services, including cardiac catheterization; percutaneous transluminal coronary angioplasty (PTCA); open heart surgery; electrophysiology studies (EPS); automatic implantable cardioverter/defibrillators; and thrombolytic (blood clot-dissolving) therapies. With the exception of thrombolytic therapy which is, and should be, available at all acute care hospitals, the cardiac interventions listed above are complex and sophisticated procedures. Therefore, health planning and the Certificate of Need decisions in the State have been guided by the concept of regionalizing these procedures in specially designated regional centers where sufficient annual caseloads are available to maintain the required skills necessary to ensure an effective and efficient service. In spite of these efforts, a strong system of regionalized cardiac services has not yet emerged in this State.

The current capacity and utilization rates at the regional cardiac centers were analyzed to determine whether there is need for additional services. Based on 1990 data, the subchapter indicates that existing cardiac catheterization and open heart surgery resources in New Jersey currently function at approximately 60 percent of capacity. Therefore, the subchapter recommends that the basis of future expansion of cardiac services be contingent on the effective regionalization of the current cardiac centers in accordance with LAB specifications.

The cardiovascular subchapter recommends the following initiatives:

1. Promote smoking prevention activities and strategies throughout New Jersey: public service announcements; include smoking prevention programs in grade school; increase cost of cigarettes, restrict sales of tobacco to minors; increase support to nonsmokers; increase availability of smoking cessation programs and increase innovative cessation programs;

2. Promulgate public policy which supports healthy behaviors that are targeted at CVD risk reduction. Public policies supportive of smoking cessation and prevention activities as well as community-based health promotion programs are recommended as a means of increasing disease prevention efforts, empowering communities and individuals, and creating supportive environments for healthy behaviors;

3. Base future expansion of acute cardiac resources on further study of the procedures as they are currently being provided and on access to care for all citizens and tie expansion of services to regionalization;

4. Develop a Statewide mechanism to review the quality and appropriateness of cardiac procedures performed in New Jersey. In acute cardiac care, greater scrutiny of the appropriateness of invasive acute cardiac services is needed to assess whether unnecessary invasive diagnostic (for example, cardiac catheterization) procedures and therapeutic (for example, PTCA, open heart surgery) cardiac procedures are being performed. Clinical studies are cited that indicate a significant percentage of cardiac catheterization, PTCA and open heart surgery may be performed for inappropriate reasons. A further analysis of access to these procedures by all segments of the population is recommended;

5. Develop, evaluate and modify, if needed, the techniques for health promotion activities conducted in New Jersey;

6. Increase Department of Health resources devoted to the Myocardial Infarction Data Acquisition System (MIDAS), a cardiovascular disease data base derived from hospitalization data which provides information on type of disease, co-morbid conditions, treatment procedures and risk factor profiles; and

7. Develop incentives for providers to offer more outpatient nutrition counseling services.

In addition to these strategies, Subchapter 11, Diabetes, which will be proposed in the second phase of the plan, will contain a number of related recommendations.

Subchapter 14. Acute Care Hospital Services

Subchapter 14, Acute Care Hospital Services, addresses the major elements the Chapter 83 payment system, which includes all of the state's 85 short-term acute care general hospitals. This system includes medical/surgical (M/S), intensive care and critical care (ICU/CCU), pediatric, obstetric (OB), and obstetric/gynecological (OB/GYN) services. Constituting over 90 percent of the nearly 30,000 acute care beds in the State, these services are the focus of most major certificate of need applications, and account for the majority of capital investment in the State's health care system.

The orderly development of an acute care hospital system for New Jersey is critical to the attainment of an efficient and cost-effective system which provides high quality care to all New Jersey citizens in need of hospital services. The goals of this subchapter are to achieve such a system through the appropriate distribution and supply of inpatient acute care beds throughout the state, as well as assuring appropriate allocation of capital investments in the system, and the balancing of expenditures on inpatient care in relation to health care dollars available for primary and preventive services. To accomplish these goals, this subchapter addresses the existing supply of hospital beds, occupancy rates, the potential need for beds, the appropriate deployment of existing hospital capacity, and the allocation of new services to areas of identified need. It recommends initiatives that will specifically address the imbalances that are found.

Current bed capacity in New Jersey is 29,481 licensed beds, operating at a Statewide occupancy rate of 73.6 percent in 1990. Though approved, but yet to be implemented, Certificate of Need projects, an additional 561 beds will be eliminated from the system, reducing the total to 28,920. Total bed capacity has decreased Statewide from 30,930 in 1980, while admissions and patient days have remained relatively stable since 1987. Occupancy in medical-surgical beds was 75.7 percent in 1990, while it was only 47.5 percent in pediatric units.

Average length of stay (ALOS), a standard measure of hospital efficiency, has varied within a relatively narrow range in recent years, from a low of 7.75 days in 1990 to a high of 7.91 days in 1987. According to financial industry analysts, New Jersey's ALOS is significantly higher than the national average. This has been noted when comparing both length of stay for all admissions to hospitals as well as the ALOS of patients covered by Medicare, where longer hospital stays are expected. The Medicare ALOS in New Jersey is nearly 60 percent higher than the national average (11.4 days in New Jersey versus 7.12 days in the United States). Although the complexity of Medicare cases treated in New Jersey hospitals is somewhat higher on average than nationally, it does not fully explain the variation in length of stay differential and, thus, a study of this variation is recommended.

The determination of the State's need for inpatient beds by the year 1995 was projected through use of several methodologies. The initial approach was to measure changes in the averge daily census of hospitals on an annual basis between 1987 and 1990, projecting these forward on a straight-line basis. Three other methods considered employed admission rates per 1,000 residents, measured over the same period. The base assumptions were adjusted in several ways to derive varying projection levels for admissions and patient days by 1995.

The projections for over and under capacity utilized the target goals of 85 percent occupancy rates for medical/surgical beds and 75 percent occupancy rates for all other services. These targets are consistent with existing regulatory occupancy standards and reflect goals originally established in the Hospital Survey and Construction Act of 1946 (Hill-Burton Act), a Federal Act which amended the Public Health Service Act to authorize grants to states to survey hospitals and to plan and construct additional facilities needed to provide adequate hospital services.

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It is noteworthy that all of the models generated projections that indicate there will be an excess of between 2,000 and 3,000 hospital beds in New Jersey by 1995. The most conservative projections, which reveal an excess of 2,060 to 2,175 beds, were used as the basis for recommendations. A need for additional ICU/CCU beds throughout the state is recognized by these methodologies, while a Statewide excess of 300 to 400 pediatric beds and 100 to 400 OB beds is identified. This chapter addresses ways to reduce the number of excess beds, as well as ways to avoid maintaining a surplus of this magnitude through 1995.

To achieve the needed reductions and system performance improvements, several recommendations are made:

1. Specific hospitals are identified as having significant utilization and/or financial difficulties. It is recommended that these facilities be phased out of the delivery of inpatient acute care services. It will be the responsibility of the LABs where these hospitals are located to determine if conversion to another health care use is appropriate and feasible. Measures are discussed through which the Department can assist hospitals and LABs through a planning and transition phase. Based on analysis of utilization trends, market share, area bed need, financial condition, quality of care, physical plant, and impact on consumer access to care, the following six hospitals have been recommended for phase-out of acute care services or to engage in an action that results in an equivalent reduction in beds:

St. Mary's Hospital—Passiac	Passaic County	226 beds
Greenville Hospital	Hudson County	86 beds
South Amboy Hospital	Middlesex County	161 beds
Kennedy at Saddlebrook	Bergen County	112 beds
Montclair Community	Essex County	100 beds
Zurbrugg-Riverside Division	Burlington County	158 beds

2. The State's LABs should undertake studies, develop plans, and implement measures that will achieve the state goals of 85 percent occupancy for M/S and 75 percent for ICU/CCU, OB/GYN and pediatrics;

3. A study is recommended to determine the reasons for our high ALOS and recommend appropriate remedies;

4. Actions are identified to increase health promotion and primary care resources, and to reduce preventable "ambulatory care sensitive " hospital inpatient admissions;

5. The Department of Health will continue to explore the discrepancies between official inventories of hospital beds and those listed by hospitals, most specifically the "licensed" bed and the "maintained" bed counts;

6. A three-tiered pediatric system of care is proposed, including two to three specialty acute care children's hospitals, eight to 10 regional pediatic centers, and 25 to 30 community pediatric centers. A significant downsizing of community pediatric centers is recommended, involving elimination of 300 to 400 beds and elimination of approximately 15 programs throughout the State. Maternal and Child Health Consortia should develop regional plans based upon these specific recommendations; and

7. The Obstetric Plan calls for the Maternal and Child Health Consortia also to develop regional plans for the designation of hospital perinatal services at institutions providing various levels of care throughout the State. These plans will address the need for the reduction of at least 100 OB beds and several underutilized delivery services, and will be prepared in concert with the pediatric and prevention/primary care plans for their regions.

Subchapter 15. High Tech Services

The rising costs of health care in the United States can be, at least in part, attributed to the rapid diffusion of technology, tested or untested, into the nation's health care system as standard medical practice. High technology health care exists at virtually every level of the health care delivery system. Subchapter 15, High Technology Services, sets forth the need to establish a rational approach to the future evaluation and distribution of high technology services in the State.

The specific high technology services that are addressed in this subchapter include: computerized tomography (CT); magnetic resonance imaging (MRI); positron emission tomography (PET); electracorporeal shock wave kidney and biliary lithotripsy (ESWL and ESWBL); transplantation services; and mobile high technology services.

With the exception of position emission tomography (PET), all of these high technology health care services are already being provided in New Jersey. The question remains whether these services are equally available to all residents of the State, and to what extent resources should be allocated for additional high technology in the future. The overriding issues are identification of the equipment or services appropriate for Department of Health regulatory activity and the development of a process to determine appropriate resource allocation. In considering these issues, concerns have been raised regarding the current process of high technology distribution. Recommendations targeted at avoiding some of the problems experienced in the past are contained in the subchapter.

To some degree, every subchapter of the State Health Plan incorporates high technology. Not all innovative technology has resulted in widespread acceptance within the medical community, despite its initial promise. The same is true of some initial generations of high technology equipment (for example, CT), which were introduced and quickly replaced by a rapid succession of more advanced equipment that operate more effectively and have more clinical applications. Therefore, the issue of technological obsolescence must also be factored into the evaluative process.

In analyzing the need for additional high technology services, existing resources were identified in each of the six local advisory board (LAB) regions. It was determined that existing services are not utilized at capacity in any of the regions and, therefore, additional services are not needed at this time. This subchapter establishes Statewide policies that recognize existing but previously unregulated health care resources in the State's health care inventory for use in determining future need. The recommended strategies for future resource allocation identify need for services on a population basis wherever possible and do not necessarily confine the need analysis to the geographic boundaries of each LAB region. In the case of organ transplantation services, for example, need determination is limited by the number of available donor organs. Therefore, a Statewide or perhaps multi-state perspective is necessary.

The major recommendations are as follows:

1. Establish an orderly process of evaluating innovative, high technology services/equipment (based on established criteria) that permits initial limited deployment and analytical appraisal of innovative equipment and/or services prior to further allocation of additional resources. Mechanisms should include a core clinical advisory group to advise the Department of Health and an elaboration of Statewide demonstration project criteria;

2. The Department of Health should regulate all MRI services;

3. Deregulate CT services;

4. The Department of Health should convene a transplantation task force in-State as well as out-of-State experts to evaluate future State transplant service needs for both solid organ and bone marrow programs. The task force should address kidney and bone marrow transplants first and then examine other solid organ transplantation;

5. Until the transplantation task force completes its work, the Department of Health should continue the Transplant Moratorium on Certificates of Needs for kidney, liver, pancreas, heart, heart/lung, lung and new bone marrow transplantation programs;

6. Assure all New Jersey residents with a medical need for non-experimental transplantation services equal access to a qualified transplant center, whether in-State or out-of-State, without regard to ability to pay, race, or any other non-medical factor; and

7. New kidney lithotripsy services in New Jersey should not be approved at this time.

Subchapter 16. Long-Term Care Services

New Jersey's long-term care system is at a crossroads. For many years, nursing homes have served as the predominant source of formal long-term care in New Jersey. Long-term care planning within the Department of Health has focused on developing an adequate supply of nursing home beds to meet the population's needs. Alternatives, such as Medicaid's Community Care Program for the Elderly and Disabled (CCPED), have maintained a very limited, static number of slots, while the number of nursing home beds has grown by roughly 1,500 per year.

The goal of Subchapter 16, Long-Term Care Services, is to create alternatives that not only save dollars, but also enhance quality of life and better serve the needs of the elderly and disabled citizens. To attain this goal, a new approach to planning long-term care services is proposed. The emphasis of this new planning process for long-term care services is fourfold:

- Creating choices: developing several new alternatives to nursing home care and expanding home care so that people can select the most appropriate and desirable option to meet their needs;

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• Supporting quality of life: designing non-institutional long-term care settings that respect individuals' privacy, independence, and personal preferences;

• Creating a more balanced system: shifting from a system in which 95 percent of the people needing formal long-term care are placed in nursing homes, to one in which at least 25 percent utilize home and community-based alternatives and only 75 percent are nursing home patients; and

• Providing for community involvement in long-term care planning: creating a process whereby each county is responsible for determining the mix of long-term care services that are needed and desired by its residents.

This subchapter recognizes that most long-term care is provided not by health care professionals, agencies, or institutions. Rather, it is families that serve as the predominant source of caretaking for chronically ill, impaired individuals. Most people would prefer to receive long-term care while remaining in the privacy and comfort of their own residences. Thousands of families throughout New Jersey currently offer whatever care and assistance is required to maintain their frail elderly and disabled loves ones at home.

Unfortunately, at any point in time, approximately five percent of New Jersey's elderly population (roughly 46,000 people in 1990) will find themselves functionally dependent but without a family member or friend to provide long-term caregiving to the extent that it is needed. For these individuals, reliance on formal (that is, professional, paid) long-term care becomes a necessity. Although many different community-based and institutional services make up the long-term care system, those in need of care may find that srvices are currently difficult to access, very costly, or unacceptable. Furthermore, the more debilitated the individual, the fewer the care options from which to choose. The recommendations in this subchapter are to expand formal long term care options designed to retain frail elderly and disabled people in their communities. Three new options are proposed:

1. Assisted living: Apartment-style residences for nursing home-eligible individuals, featuring private rooms furnished by the resident, private baths, and congregate dining;

2. Alternate family caregiving: Nursing home-eligible individuals are matched with families trained in long-term caregiving; the patient moves into and becomes a member of the household, receiving board and care from the family; and

3. Upgraded residential health care: Facilities providing a sufficient amount of care and services to meet the needs of nursing home-eligible individuals with modest nursing care requirements.

In addition to these new options, the subchapter also proposes expansion of certain existing in-home care programs (for example, Medicaid's CCPED) and adult day health care. These services are especially valuable in bolstering the caregiving efforts of family members.

Nursing home placement will continue to be a choice available to those who need a high level of care and supervision. The current nursing home bed supply will be maintained, and new beds that have already been approved will still be constructed. However, growth of the nursing home bed supply will be constrained in order to make way for new options and a more balanced long-term care system.

This proposed subchapter contains innovative strategies for implementing the new care options. Choice should be emphasized not only at the individual patient level, but also at the community planning level. Counties and LABs should become actively involved in the process of determining the mix of long-term care options which is most appropriate to their residents' needs, taking into consideration local cultural, economic, geographical, and land use factors. The overall number of long-term care placements needed in each county will be established in accordance with a formula adopted by the State Health Planning Board, but within this constraint, counties should decide which options to develop.

In addition to a discussion of new long-term care options, the chapter contains recommendations with respect to comprehensive rehabilitation, specialized long-term care, continuing care retirement communities, and other community-based, long-term care services. These recommendations should facilitate the development of continuing care retirement communities by eliminating the 300-unit minimum size required, and should promote the orderly development of comprehensive rehabilitation, specialized and other long-term care services in areas of the State where they are needed.

Social Impact

These proposed subchapters will affect people in all stages of life. They are designed to improve the chances that a baby will be born healthy in our state. They seek to ensure that a child has access to the best state-of-the-art pediatric care. They help assure that adolescents will know the dangers of addiction. The plan aims to extend the known benefits of cardiovascular disease prevention to everyone. For the frail elderly, it aims to develop new options in long-term care. And finally, it is designed to make sure that every New Jerseyan has access to quality health care services, regardless of age.

More specifically, the interventions recommended in the State Health Plan can be expected to improve the health status of New Jerseyans and increase the efficiency and effectiveness of the delivery system in the following ways:

Increased preventive care offered from infancy onward will help all segments of the population avoid certain debilitating illnesses and conditions. The recent series of measles epidemics and the 12,000 annual deaths attributable to smoking in New Jersey demonstrate the shortage of preventive education and services in this State. Many New Jerseyans will be spared the discomfort, pain, and expense they might otherwise have suffered by the active promotion of health and prevention of disease.

Increased access to primary care will also help in the avoidance of potential pain and suffering because it will facilitate early diagnosis and treatment, thereby avoiding or minimizing the more serious consequences of untreated illness or disease. The shortage of these services is demonstrated by the fact that one in six New Jerseyans reports no source of primary care. Additionally, every year there are 130,000 hospital admissions which could have been avoided through effective primary care. By ensuring that every New Jerseyan has a medical home, we will go a long way towards achieving universal access to needed health care services.

The rational assessment of new technologies and tertiary care services will ensure that New Jerseyans receive appropriate services when needed. In the areas of high technology and acute care we have an excess quantity of services. The presence of 75 MRIs in our State, compared to 12 in all of Canada, is one example. This assessment will also allow us to measure and improve the quality of all health care, for the existence of a service does not necessarily assure its effectiveness. Through assessment and measurement we can maximize quality while reducing unnecessary, excess treatment and cost.

The focusing of planning on humane options for long-term care will enhance the quality of life for elderly and disabled New Jerseyans. Frail and chronically ill individuals will have more affordable choices that respect their preferences and individual needs. The choices will foster a normal lifestyle to the greatest extent possible. Furthermore, new long-term care choices will enable people to "age in place"; the distressing experience of having to relocate in order to receive additional care and services will be kept to a minimum.

Economic Impact

It is estimated that New Jerseyans will spend over $22 billion for health care in 1992. The employers in this State foot a large part of the bill, yet have little control over the rapidly escalating price tag. Health care economists across the nation believe that the rate of increase in health expenditures can be slowed through comprehensive health planning and certificate of need programs, especially in a state such as New Jersey where hospital payment is also controlled.

Major capital investment in New Jersey's health care facilities has been put on hold since August 22, 1991 awaiting the creation of a plan to guide rational decisionmaking. Chapter 187 sets a limit on hospital capital investment of $225 million in 1992, 1993, and 1994. With the adoption of these rules and companion certificate of need rules, the Department of Health, the LABs, and the State Health Planning Board may entertain certificate of need applications.

The economic impact of each Plan-implementing subchapter is as follows:

Subchapter 4. Maternal and Child Health Services

Access to adequate and appropriate prenatal and pediatric primary care is paramount for reducing health care costs. The improvement in infant mortality has mainly been due to advances made in expensive technology rather than in improving the likelihood that pregnant women will give birth to healthy babies. This is a very expensive way to achieve the goal of reducing infant mortality. The average hospital rate for neonatal intensive care in 1992 is $70,000 for a very low birthweight baby

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compared to $1,800 for the birth of a healthy infant. The total cost for intensive care of all low birthweight infants in 1989 exceeded $85 million. This excludes the lifetime cost of managing the health, social and educational needs of infants who survive but are disabled.

Less extreme cases occur much more frequently. In 1989, 17,000 children under the age of five were admitted to hospitals for ambulatory care sensitive (ACS) conditions. ACS illnesses, such as ear infections and influenza, do not usually need to result in a hospitalization if managed by a primary care provider. These preventable pediatric hospital admissions cost in excess of $42 million Statewide.

The larger number of ACS hospital admissions illustrates how the lack of economic access to primary care disproportionately affects women and children, and can eventually lead to even greater expenditures on acute and rehabilitative services. Because of the New Jersey Health Care Trust Fund, the economic barriers experienced by women and children trying to access primary care do not exist for hospital care. Inappropriate utilization of hospital emergency rooms and hospital admissions preventable through appropriate pediatric primary care have thus contributed to spiraling health care costs. One-third of all hospital admissions covered by the New Jersey Health Care Trust Fund are related to maternity. It is presumed that many of these women lack adequate health insurance or income to pay for prenatal care.

The estimated initial cost of funding the Maternal and Child Health Consortia is $4.4 million annually, starting in 1993.

Subchapter 8. Addictions

For those who need treatment to recover from an addiction, one dollar invested saves 12 dollars in court, correction, health and social agency costs. Nowhere is the cost of mismatching clients and resources more dramatic than in the treatment of addictions. People who are addicted are eight times as likely to be uninsured as nonaddicted persons. Lack of adequate insurance coverage means that thousands of addicted people forego early treatment only to have the disease progress to a more severe illness requiring expensive hospitalization. In New Jersey, eleven and one-half percent of the hospitalized population, those who are admitted for addiction-related treatments and illnesses, is using 20 percent of the hospital resources. If we take into consideration the major diagnostic groups for addictions and all the illnesses caused by addiction, 40 percent of the New Jersey Health Care Trust Fund is used to treat conditions which are a result of addictions at a cost of over $300 million annually. A five-percent reduction in addiction-related hospitalizations will result in a savings of $15 million per year for the Trust Fund.

Subchapter 9. Cardiovascular Diseases

Cardiovascular disease accounts for approximately $3.25 billion spent on health care each year in New Jersey. It accounts for billions more in lost productivity, disability and other costs. Yet, cardiovascular disease is eminently preventable. We know that simple, low-cost interventions can dramatically reduce the health and economic consequences of this disease. Nevertheless, most of our dollars continue to be spent on the late stages of the disease, with few resources devoted to prevention.

Proliferation of cardiac services over the past five years has also been costly. Twenty-five certificates of need (less than one-third of the applications) have been approved over this period in New Jersey, for an aggregate cost of over $40 million. It is estimated that the facilities created by these actions have incurred many millions more in operating costs. Despite the high cost for these services, their capacity now exceeds need. By more rationally allocating and developing these services, New Jerseyans can be saved millions of dollars.

Subchapter 14. Acute Hospital Services

Hospital acute care inpatient services represent one of New Jersey's major industries, with gross revenues of approximately $7 billion in 1991. This amount represents 35 to 40 percent of total health care expenditures in the State, which were estimated to be approximately $20 billion in that year.

It is critical that New Jersey have an appropriate but not excessive inventory of hospital beds by 1995. Doing so will allow hospitals to take advantage of certain economies of scale that accrue to larger hospitals. Increased patient care volume quite simply reduces both the per capita and the total costs of providing today's highly technological and expensive inpatient acute care services. Assuring hospitals that function in New Jersey are of adequate size will also serve to avoid the very high capital costs incurred in maintaining and replacing physical plants and major moveable equipment. Currently, it costs in excess of a quarter of a million dollars to replace one hospital bed. Reducing the supply of beds by approximately 2000 will eventually save New Jerseyans half a billion dollars in hospital capital project replacement costs. Consolidating service delivery into fewer numbers of hospitals will also improve the quality of care provided to patients, because many studies have shown that increased volume improves patient outcome, especially in certain surgical procedures.

Subchapter 15. High Technology Services

The rising costs of health care in the United States can be, at least in part, attributed to the rapid diffusion of technology into the nation's health care system. In the past, State government has been unable to regulate all providers of high technology services which has hampered the establishment of a rational public policy dealing with the diffusion of high technology. This inability has led to unrestrained technology investment in the unregulated sector permitting, at least in some instances, competitive inequity between regulated and unregulated providers and the proliferation of far more resources than are needed to respond to the health needs of the State's residents. For example, New Jersey's previous regulatory system restrained the number of hospital MRIs to 18, while at least 57 were acquired by unregulated providers.

Nationally, there is major concern over the extent to which the method of health care delivery dictates the quantity or appropriateness of the service being provided. Studies have shown that unregulated, physician investor-owned health resources may be engendered by the economic incentives of such investment.

Subchpter 16. Long-Term Care Services

In New Jersey, nearly half (47 percent) of the Medicaid budget is spent on long-term care, mainly nursing home care. Medicaid pays for about 45 percent of all nursing home expenses. As the population of New Jersey ages, more and more Medicaid dollars will be required to meet their long-term care needs. The development of alternatives to expensive institutional care is a crucial component of long range health planning in this state.

The proposed new and expanded long-term care options can be implemented at a substantially lower cost, compared to the existing system. In today's dollars, it is estimated that a carefully planned long-term care system offering a balance of new and existing options and expanded community care programs could result in Medicaid savings of roughly $116 million by the year 2000.

Regulatory Flexibility Statement

These proposed new rules, which constitute the State Health Plan, do not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements are imposed on the Department of Health, the Maternal and Child Health Care Consortia created hereunder, hospitals and their component entities, Local Advisory Boards, and continuing care retirement communities. None of these qualify as small businesses, due either to their nature as a government entity, their status as either advisory, non-business entities or associations of non-small businesses, or their employment of more than 100 people. Even if small businesses were regulated by the Plan, no exemptions or lesser requirements could be provided due to the Plan's purpose of promoting health and high quality Health care at a reasonable cost to all citizens of the State.

Full text of the proposed new rules follow.

CHAPTER 100
STATE HEALTH PLAN

SUBCHAPTER 1. INTRODUCTION

8:100-1.1 Purpose

(a) The purpose of this chapter is to establish a plan that will satisfy the mandate of P.L. 1991, c.187 and support the public policy of the State in promoting health and high quality health care at a reasonable cost for all the citizens of the State. The State Health Planning Board, established by Section 33 of P.L. 1991, c.187 as the planning advisory board within the Department of Health is required to "prepare and revise annually, a State Health Plan. The State Health Plan shall identify unmet health needs in an area by service and location and it shall serve as the basis upon which all certificate of need applications shall be approved. The plan shall be effective

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beginning January 1, 1992. (P.L. 1991, c.1987 s.34). Specifically, the purpose of this chapter is to:

1. Identify unmet health care needs by service and location;

2. Establish a process for evaluating health care needs and services in six regional health planning areas;

3. Establish guidelines for making health planning decisions;

4. Contain the costs of providing health care;

5. Promote quality health care services;

6. Increase appropriate access for the residents of the State to preventive, primary, acute and sub-acute health care services;

7. Provide a comprehensive, population-based planning guide to health care; and

8. Establish policies for the rational use of health care resources in the State of New Jersey. One of the goals of these policies will be to reach the health targets established in *Healthy New Jersey 2000: A Public Health Agenda for the 1990's*, as well as other supporting health objectives identified below.

(b) The following goals and objectives will serve to guide subsequent policies and rules of the Department of Health (targets are set for attainment by the year 2000 unless otherwise specified).

1. Increase access to preventive and primary care:

i. Reduce the proportion of the population under age 65 with no health insurance coverage from 11.7 percent of the total population, 16.0 percent of African Americans and 25.0 percent of persons of Hispanic origin to 3.0 percent for all groups (1989 baseline);

ii. Reduce from 7.7 percent to 2.0 percent the proportion of the population without health insurance coverage who are under age 65 and employed or a spouse or dependent of an employed person (1989 baseline);

iii. Increase the percentage of residents who have a source of primary care from 84.4 percent of the total population and 84.2 percent of the African American population to 98.0 percent (1986 baseline);

iv. Decrease years of potential life lost per 100,000 population under 65 years of age from 5,778.7 years to 5,200.0 years (1988 baseline);

v. Increase life expectancy for White babies at birth from 75.9 years to 77.9 years (1988 baseline);

vi. Increase life expectancy for minority babies at birth from 71.8 years to 75.0 years (1988 baseline); and

vii. Reduce by 20.0 percent (26,000 admissions) the number of hospital admissions for ambulatory care sensitive diagnoses, such as pediatric otitis media, pneumonia, bronchitis and asthma, respiratory infections, gastroenteritis, cellulitis, and diabetes (1989 baseline).

2. Improve infant, child health, and maternal outcomes:

i. Reduce total infant mortality from 9.8 to 7.0 infant deaths per 1,000 live at births (1988 baseline);

ii. Reduce African American infant mortality from 19.5 to 11.0 infant deaths per 1,000 live births (1988 baseline);

iii. Reduce the percentage of infants weighing less than 2500 grams at birth from 6.8 percent to 5.0 percent of all births and from 13.6 percent to 9.0 percent of African American births (1988 baseline);

(1) By 1995, increase the number of high-risk pregnant women in appropriate prenatal management, including referral and transport to tertiary centers where indicated (baseline not available);

(2) By 1995, insure that hospitals provide care to mothers and infants based on their approved capabilities (baseline not available);

(3) Increase the percentage of all women receiving prenatal care in the first trimester from 73.1 percent for all births and 57.1 percent of African American births to 90.0 percent of all births (1988 baseline);

(4) By 1995, implement universal access to prenatal care, including comprehensive risk assessment;

(5) By 1995, insure appropriate referral and followup for all pregnant women seen in emergency rooms without a primary care provider (baseline not available); and

(6) Increase the proportion of eligible pregnant women served by Women, Infants, and Children (WIC) from 45.7 percent to 100.0 percent (1991 baseline);

iv. Reduce maternal deaths from 24.5 per 100,000 of all live births and 76.2 in the African American population to 5.0 per 100,000 live births (1986-1989 baseline);

v. Increase abstinence during pregnancy from as follows:

(1) Alcohol to 95 percent (no baseline);

(2) Tobacco from 86.6 percent (1989 baseline) to 90 percent; and

(3) Cocaine, heroin, marijuana or methamphetamines by 20 percent (no baseline);

vi. Reduce the annual incidence of measles (rubeola) from 405 cases to zero (1988 baseline);

(1) Measles (rubeola) immunization levels in two-year-old children will be 90 percent (baseline not available);

vii. Immunization levels for H. influenzae type b started at two months will be 80 percent (baseline not available);

viii. Reduce the prevalence of blood-lead levels exceeding 15 mcg/dl in children aged nine months through five years to 14,000 (baseline not available) and those exceeding 25 mcg/dl from 1,500 to zero (1988 baseline);

(1) By 1995, 100.0 percent of children at high risk and 75.0 percent of all children will be screened for lead poisoning and receive appropriate environmental and medical management (baseline not available);

ix. Reduce by 20.0 percent (26,000 admissions) the number of hospital admissions for children aged zero to four due to ambulatory care sensitive diagnoses, such as pediatric otitis media, pneumonia, bronchitis and asthma, respiratory infections, gastroenteritis, cellulitis, and diabetes (1989 baseline);

(1) 75.0 percent of families will have a community-based pediatric primary care provider (baseline not available);

(2) By 1995, all children seen in emergency rooms without a primary care provider will be referred and followed up for primary care (baseline not available); and

(3) 100.0 percent of maternity hospitals and prenatal care clinics will provide active programs of education and support for women to breastfeed (baseline not available);

x. Reduce the proportion of children six through 18 with dental caries to 35 percent or less (baseline not available);

(1) Increase the proportion of people served by community water systems providing optimal levels of fluoride from 19 percent to 62 percent (1990 baseline, estimated; excludes population whose water source is well water and water systems serving fewer than 6,000).

xi. Reduce the incidence of iron deficiency among children one through two to under 10 percent and to five percent among children three to four (no baseline); and

xii. Control the increase in the incidence of AIDS per 100,000 population in children zero to nine years of age so that it only doubles from 4.4 to 8.8 (1988 baseline);

3. Reduce the incidence of adolescent pregnancy and improve adolescent health:

i. Decrease the prevalence of cigarette smoking among high school students from 41.2 percent to 20.0 percent (1989 baseline);

ii. Reduce the number of births per 1,000 females aged 15 to 19 years of age:

(1) To all women from a rate of 37.5 to 25.7 (1988 baseline); and

(2) To minority women from a rate of 78.9 to 55.8 per 1,000 (1988 baseline);

iii. Reduce the number of births per 1,000 females aged 10 to 14 years of age:

(1) To all women from a rate of 1.0 to 0.7 per 1,000 (1988 baseline); and

(2) To minority women aged 10 to 14 from 2.8 to 2.0 per 1,000 (1988 baseline);

iv. Ninety percent of sexually active high school students shall have used contraception during their most recent intercourse and 60 percent will use barrier methods (baseline not available);

v. The proportion of adolescent females receiving family planning services will increase from 35.7 percent to 50 percent of adolescent females in need of such services (1987 baseline); and

vi. Adolescents who have engaged in sexual intercourse shall be no greater than 15 percent for tenth grade girls and boys, and 40 percent for 12th grade girls and boys (baseline not available);

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4. Prevent and control injuries:

i. Reduce the rate per 100,000 population of deaths caused by motor vehicle crashes from 12.7 deaths to 11.4 in the total population (age-adjusted rates), from 25.8 to 23.0 for youth aged 15 to 24 and from 24.6 to 20.0 for people aged 70 and over (1988 baseline);

ii. Increase the use of seat belts by persons 18 and over "always" or "nearly always" when driving or riding in a car to 75.0 percent (baseline not available);

iii. Decrease the rate per 100,000 population of deaths due to falls and fall-related injuries from 13.0 to 12.0 for people age 65 to 84 years and from 117.7 to 105.0 for people age 85 years and over (1988 baseline);

iv. Decrease homicide deaths for minority males aged 15 to 44 from 48.9 to 39.0 per 100,000 population and from 9.2 to 7.0 per 100,000 population for minority females aged 15 to 44 (1988 baseline);

v. Reduce suicides per 100,000 population from 9.3 to 7.5 for youth aged 15 to 24 and reduce suicides for white men aged 65 and over to 39.2 per 100,000 (1988 baseline for youth, not available for white men aged 65 and over); and

vi. Decrease hospitalizations for nonfatal head and spinal cord injuries per 100,000 population by 15.0 percent (baseline not available);

5. Prevent and reduce the incidence of vaccine-preventable and other infectious diseases:

i. Reduce the annual incidence of measles (rubeola) from 405 cases to zero (1988 baseline);

ii. Reduce the annual incidence per 100,000 population of active TB from 10.3 to 4.4 in the total population and from 32.7 to 13.5 in the minority population (1988 baseline);

iii. Reduce the annual incidence of lyme disease (with rash) from 550 total cases to 275 cases (1988 baseline);

iv. Increase information levels for measles (rubeola) in children by age two to 90.0 percent (baseline not available);

v. Increase H. influenzae type b immunization levels started at two months to 80.0 percent (baseline not available);

vi. Increase hepatitis B immunization levels in pregnant women and infants to 100.0 percent (baseline not available);

vii. Increase hepatitis B immunization levels among intravenous drug users served in publicly-funded clinics from zero to 90.0 percent (1988 baseline);

viii. Increase hepatitis B immunization levels among gay men served in publicly-funded clinics from zero to 90.0 percent (1988 baseline);

ix. Increase the number of publicly-funded addiction treatment centers which screen HIV-positive clients for tuberculosis to 95.0 percent (baseline not available); and

x. Increase the number of all other publicly-funded clinics which screen HIV-positive clients for tuberculosis from zero to 75.0 percent (1988 baseline);

6. Prevent and reduce the incidence of STDs:

i. Reduce the incidence per 100,000 of primary and secondary syphilis from 14.2 to 10.0 for the total population and from 68.5 to 65.0 for the minority population (1988 baseline);

ii. Reduce the cases per 100,000 live births of congenital syphilis from 64.3 to 30.0 in the total population and from 259.2 to 100.0 in the minority population (1990 baseline);

iii. Reduce the incidence per 100,000 total population of gonorrhea from 212.7 to 175.0 (1988 baseline);

iv. Reduce the incidence of chlamydia trachomatis infections to 170.0 per 100,000 population (baseline not available);

v. Increase the number of publicly-funded clinics which offer provider referral service to patients with bacterial STD from 25.0 percent to 50.0 percent (1988 baseline); and

vi. Increase the number of publicly-funded clinics providing STD services to 100.0 percent of all prisons/detention centers (baseline not available) and from zero to 50.0 percent of all other publicly-funded clinics (1988 baseline);

7. Prevent and control AIDS and HIV infection:

i. Reduce the transmission rate of HIV/AIDS so that the incidence rate per 100,000 population is not greater than:

(1) 8.8 for the pediatric population zero to nine years of age;

(2) 79.2 for white males 25 to 44 years of age;

(3) 868.2 for minority males 25 to 44 years of age; and

(4) 150.0 for minority females 15 to 44 years of age;

ii. Reduce deaths due to HIV/AIDS in the total population from 15.1 to 12.1 per 100,000 population (age-adjusted rates) and for 25 to 44 year olds from 37.6 to 30.1 per 100,000 population (1991 baseline);

iii. 60 percent of sexually active high school students will use barrier contraception at their most recent intercourse (baseline not available);

iv. 75 percent of primary care and mental health care providers shall provide age-appropriate counseling on the prevention of HIV infection (baseline not available); and

v. Publicly-funded clinics that provide counseling and testing services to HIV-infected individuals shall be increased:

(1) From zero to 40 percent at alcohol treatment centers (1991 baseline); and

(2) From a range of 16 to 95 percent to 100 percent at all other publicly-funded clinics (1991 baseline);

8. Reduce the rates of morbidity and mortality due to addictions:

i. Reduce the prevalence of cigarette smoking among individuals age 20 and over from 24.5 percent to 15.0 percent and among high school students from 41.2 percent to 20.0 percent (1989 baseline);

ii. Increase the proportion of women who abstain from tobacco use during pregnancy from 86.6 percent to 90.0 percent (1989 baseline);

iii. Increase the proportion of women who abstain from alcohol use during pregnancy to 95.0 percent (baseline not available);

iv. Increase by 20.0 percent the proportion of women who abstain during pregnancy from use of cocaine, heroin, marijuana or methamphetamines (baseline not available);

v. Decrease the percentage of high school sophomores, juniors and seniors who have used the following substances in the past 30 days: alcohol from 49.6 percent to 37.0 percent, marijuana from 11.8 percent to 9.0 percent and cocaine from 2.2 percent to 1.6 percent (1989 baseline);

vi. Decrease by 10.0 percent the proportion of persons 18 years of age and older who consumed five or more alcoholic drinks per occasion, one or more times during the past month (baseline not available);

vii. Decrease deaths per 100,000 due to alcohol-related motor vehicle crashes for the total population from 4.0 to 3.5, and for youth aged 15-24 from 5.9 to 5.0 (1988 baseline);

viii. Decrease deaths per 100,000 population from cirrhosis for the total population from 10.3 to 6.8 (age-adjusted rates) and for minority males from 20.8 to 12.3 (age-adjusted rates, 1988 baseline);

ix. Decrease drug-related deaths per 100,000 population from 8.3 to 6.6 (age-adjusted rates, 1988 baseline);

x. Of clients in treatment, decrease the average time between first use and treatment by 20.0 percent for alcohol treatment (baseline not available) and from 9.3 years to 7.5 years for other drug treatment (1988 baseline);

xi. Increase the percentage of publicly-funded clinics providing addiction screening services from a range among types of clinics of zero to 27 percent to 100 percent of all types of publicly-funded clinics (1988 baseline);

xii. Increase the proportion of persons addicted to alcohol and/or drugs who are treated in residential or outpatient programs annually from 9.0 percent to 20.0 percent (1990 baseline); and

xiii. Reduce the prevalence of obesity from 24 percent in men and 27 percent in women aged 20 through 74 to no more than 20 percent, and from 15 percent to 10 percent in adolescents aged 12 through 19 (1976-80 baseline);

9. Increase efforts to prevent, detect and control cardiovascular and other vascular diseases:

i. Reduce deaths per 100,000 population due to coronary heart disease:

(1) From 142.9 to 107.2 for the total population (age-adjusted rates, 1988 baseline);

(2) From 133.1 to 99.8 for the minority population (age-adjusted rates, 1988 baseline);

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(3) From 206.2 to 154.7 for the total population aged 45-64 (1988 baseline); and

(4) From 214.8 to 161.1 for the minority population aged 45-64 (1988 baseline);

ii. Decrease deaths per 100,000 population due to cerebrovascular diseases:

(1) From 27.0 to 20.8 for the total population (age-adjusted rates, 1988 baseline);

(2) From 39.5 to 32.0 for the minority population (age-adjusted rates, 1988 baseline);

(3) From 32.6 to 22.8 for the total population aged 45-64, (1988 baseline);

(4) From 64.2 to 44.9 for the minority population aged 45-64 (1988 baseline); and

(5) From 354.7 to 283.8 for the total population aged 65 and over (1988 baseline);

iii. Reduce the rate of end-stage renal disease as a complication of diabetes from 1.9 to 1.8 per 1000 diabetics (1988 baseline) and decrease end-stage renal disease as a complication of diabetes for African Americans by 10.0 percent (baseline not available);

iv. Increase by 10 percent the proportion of persons 18 and over who participate in physical activity for at least 30 minutes three or more times per week (baseline not available);

v. Increase to 90 percent the proportion of people aged 18 and over who have had their blood pressure checked by a health professional within the past two years and can state whether their blood pressure was normal or high (baseline not available); and

vi. Increase by 15 percent the proportion of people 18 and over who have had their blood cholesterol checked by a health professional within the past five years (baseline not available);

10. Increase efforts to prevent, detect and control cancer:

i. Decrease breast cancer deaths per 100,000 women:

(1) From 25.2 to 22.7 for all women (age-adjusted rates, 1988 baseline);

(2) From 80.6 to 72.5 for women aged 50-64 (1988 baseline); and

(3) From 144.7 to 130.2 for women aged 65 and over (1988 baseline);

ii. Increase by 60.0 percent the number of women aged 40 and over who received an annual clinical breast examination and a mammogram (baseline not available);

iii. Reduce the rate of deaths due to lung cancer per 100,000 population to a rate of no more than:

(1) 41.3 for the total population (age-adjusted rates, 1988 baseline); and

(2) 64.8 for minority males (age-adjusted rates, 1988 baseline);

iv. Reduce the prevalence of cigarette smoking among individuals:

(1) Age 20 and over from 24.5 percent to 15 percent (1989 baseline); and

(2) Among high school students from 41.2 percent to 20.0 percent (1989 baseline);

v. Reduce colorectal cancer deaths per 100,000 population from 16.9 to 15.5 (age-adjusted, 1988 baseline);

vi. Increase to five the average daily servings of fruits and vegetables (including legumes) consumed by people aged 18 and over (baseline not available);

vii. Decrease death rates per 100,000 women from cervical cancer:

(1) From 2.7 to 1.3 for all women (age-adjusted rates, 1988 baseline);

(2) From 5.3 to 2.6 for minority women (age-adjusted rates, 1988 baseline); and

(3) From 6.3 to 3.2 for women aged 65 and over (1988 baseline); and

viii. Increase the number of women (with uterine cervix) who have had a Pap smear in the past two years to 85.0 percent for all women, 80.0 percent for minority women and 70.0 percent for women aged 65 and over (baseline not available);

11. Reduce morbidity and mortality related to occupational and environmental hazards:

i. Reduce work-related injury deaths per 100,000 for full-time, male construction workers from 15.0 to 10.0 (1983-1989 baseline);

ii. Reduce the number of workers with occupational exposure causing blood lead concentrations >25 mcg/dl of whole blood from 1,248 to zero (1988 baseline);

iii. Reduce the number of workers with exposures leading to hospitalizations for acute occupational lung diseases from 164 to 82 (1988 baseline);

iv. Increase the number of sites evaluated for potential human exposure pathways to hazardous waste from 100 to 350 (1988 baseline);

v. Reduce the prevalence of blood-lead levels exceeding 15 mcg/dl in children aged nine months through five years to 14,000 (baseline not available) and those exceeding 25 mcg/dl from 1,500 to 0 (1988 baseline);

vi. Increase from 76.0 percent to 100.0 percent the amount of asbestos either properly maintained or removed in school buildings with asbestos management plans submitted and approved by the Department of Health (1988 baseline); and

vii. Increase the proportion of people served by community water systems providing optimal levels of fluoride from 19 percent to 62 percent (1990 baseline, estimated; excludes population whose water source is well water and water systems serving fewer than 6,000); and

12. Improve the health and quality of life for people with chronic functional impairments:

i. Increase the span of healthy, independent life for all New Jerseyans (no baseline available);

ii. Minimize the limiting effects of chronic conditions and help individuals to maintain their highest level of functioning (no baseline available);

iii. Support and encourage the endeavors of the predominant providers of long-term care: family (no baseline available);

iv. Provide access to an array of affordable long-term care options so that individuals can receive care in the least restrictive setting appropriate to their needs and preferences;

v. Improve access to care for special long-term care patient populations; and

vi. Increase the options available to persons who are eligible for nursing home care so that the number of people accessing these options increases from five percent to 23 percent of the eligible population (1990 baseline).

8:100-1.2 Scope

(a) This chapter establishes comprehensive goals and objectives for future certificate of need, licensure, reimbursement and public health rules to be promulgated by the Department of Health governing health care facilities as defined by the Health Care Facility Planning Act (P.L. 1971, c.136) and health care services. It also provides policies and guidelines for future grant making by the Department of Health and directs the Department to work with sister agencies to include, but not be limited to, the Departments of Human Services, Education, Insurance, and Community Affairs to address issues of mutual concern.

(b) The State Health Plan is a dynamic document that should change with the health needs of the people in the State. To that end, it is the role of each LAB:

1. To evaluate each new subchapter as it relates to the specific health care needs and resources of the region, and report to the State Health Planning Board revisions that are necessary in response to local health needs. This report will be completed within four months of adoption of the subchapter and will initiate the first revision; and

2. To provide recommendations at least annually for changes to the plan in response to local health needs.

8:100-1.3 Definitions

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

"ACS" means ambulatory care sensitive conditions, which are hospital admissions that usually could have been avoided with appropriate primary care.

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"Acute care hospital" means all short-term general hospitals governed by the Chapter 83 rate setting system.

"ALOS" means the average length of stay in a hospital.

"Alternate family care" means a contractual arrangement whereby no more than two individuals in need of long-term care receive room, board, and care in the private residence of a nonrelated family that has been trained to provide the necessary caregiving.

"ASAM" means American Society of Addiction Medicine.

"Commissioner" means the Commissioner, New Jersey Department of Health.

"Community Care Program for the Elderly and Disabled" or "CCPED" means a Medicaid-funded, Federally waivered program offering case managed home and community-based care to persons who meet specific eligibility criteria.

"Continuing care retirement community" means the provision of lodging and nursing, medical, or other related services at the same or another location to an individual pursuant to an agreement effective for the life of the individual or for a period greater than one year, including mutually terminable contracts, and in consideration of the payment of an entrance fee with or without other periodic charges. A fee which is less than the sum of the regular periodic charges for one year of residency is not considered an entrance fee.

"CN" means certificate of need.

"CT" means computerized tomography.

"CVD" means cardiovascular disease which is diseases of the heart and blood vessels, including coronary heart disease and cerebrovascular disease (stroke).

"Department" means Department of Health.

"ESWBL" means electracorponeal shock wave biliary lithotripsy.

"ESWL" means electracorponeal shock wave lithotripsy.

"ICU/CCU" means intensive care and critical care hospital units.

"LAB" means local advisory board, a regional health planning agency established by P.L. 1991, c.187 sec. 35 and designated by the Commissioner of Health.

"Long-term care" means a wide range of personal care, psychosocial, nursing, and other supportive services for people with functional limitations due to chronic—and frequently degenerative—physical or cognitive disorders. Long-term care services range from in-home assistance provided by family members or a home care agency to nursing home care.

"Long-term care" means a wide range of personal care, psychosocial, nursing, and other supportive services for people with functional limitations due to chronic—and frequently degenerative—physical or cognitive disorders. Long-term care services range from in-home assistance provided by family members or a home care agency to nursing home care.

"Long-term care placement" means a unit of service provided to an individual who is nursing home-eligible. The unit of service may be a bed, for example, a nursing home bed, or a slot, for example, a Community Care Program for the Elderly and Disabled slot.

"M/S" means medical/surgical hospital units.

"Maternal and Child Health Region" means the perinatal and pediatric service delivery area defined by the concept of cooperative network formation. Contained within each region is at least one Regional Perinatal Center, one Regional Pediatric Center, and the balance, Community Perinatal and Pediatric Centers.

"Maternal and Child Health Consortia" means the perinatal and pediatric providers of the maternal and child health region which agree to associate and establish a nonprofit corporation consistent with the Internal Revenue Code under Title 26 of the United States Code Service, Section 501(c)(3).

"MRI" means magnetic resonance imaging.

"Nursing home" means a facility that is licensed by the Department of Health for long-term care beds.

"OB/GYN" means obstetric/gynecological hospital units.

"PET" means positron emission tomography.

"Provider" means an institution or individual actively delivering health care services, including, but not limited to, hospitals, physicians, nurses, clinics, local health departments and community health centers.

"Regionalization" means the planning and coordination of services for the best use of financial and medical resources such as staffing, equipment, facilities, education, and expertise to support appropriate, quality health care to a specific population.

SUBCHAPTER 2. PREVENTION, PRIMARY AND AMBULATORY CARE SERVICES (RESERVED)

SUBCHAPTER 3. HEALTH PERSONNEL SUPPLY (RESERVED)

SUBCHAPTER 4. MATERNAL AND CHILD HEALTH SERVICES

8:100-4.1 General recommendations

(a) The Department shall:

1. Develop a regionalized system of maternal and child health care that emphasizes community-based preventive prenatal and pediatric primary care services, with particular attention to the appropriate linkage of outpatient to regional inpatient providers.

2. Establish a comprehensive health care system which is accessible, affordable and acceptable to women of reproductive age, infants, children, and adolescents including those with special needs, between the ages of 1 and 18.

3. Develop a regionalized system of total quality improvement, using outcome-oriented objectives including peer review, and monitor and enforce programs through licensure standards, certificate of need regulations, and grant requirements.

8:100-4.2 Regionalization

(a) The Department shall designate an Office of Regionalized Services in the Department to:

1. Coordinate the regional system both locally and between State agencies;

2. Monitor the Maternal and Child Health Consortia;

3. Evaluate the Maternal and Child Health Consortia using performance criteria based on outcome objectives; and

4. Develop letters of agreement with each Maternal and Child Health Consortia for funding through the rates.

(b) The Department of Health shall revise perinatal planning regulations N.J.A.C. 8:33C and initiate the development of pediatric regulations.

8:100-4.3 Regional designation

(a) The Department of Health shall designate Maternal and Child Health Regions, Consortia, and regional perinatal centers based on 1988, 1989, and 1990 data, and only for approved services in existence at the time of application for certificate of need in accordance with N.J.A.C. 8:33C. A maternal and child health service region shall have:

1. A minimum of 10,000 live births or 100 very low-birthweight neonates (in no case may the number of deliveries be below 8,000 women);

2. At least one facility meeting the qualifications of and functioning as a regional perinatal center and a regional pediatric center (although regions may have more than one of each); and

3. A geographically rational and cohesive network of services with documentation of accessibility to patients and a three year documented history of referral and transport patterns.

(b) Regionalization shall link inpatient with outpatient services. For perinatal designation, a Certificate of Need application shall be filed in accordance with N.J.A.C. 8:33C-1.19 et seq. through all affected local advisory boards. Pediatric applications shall be filed in accordance with Certificate of Need rules to be developed by the Department of Health. Funding will proceed once the certificate of need application has been filed and fulfills all components specified in N.J.A.C. 8:33C-1.19 et sq. In order to provide perinatal or pediatric services, facilities shall participate in regionalization and apply for the appropriate designation through their Maternal and Child Health Consortia in accordance with the certificate of need process specified above. Changes in certificate of need regarding unit size or capital expenditures by facilities following initial designation

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shall be endorsed by the consortia and affected local advisory boards. Changes in certificate of need regarding designation status shall be submitted by the Maternal and Child Health Consortia.

(c) Regionalized services shall take into account existing referral patterns, which may not be consistent with regional health planning boundaries. Maternal and Child Health Regions need not be in accordance with these boundaries; however, care at regional centers must be geographically accessible to patients living within the regions.

8:100-4.4 Maternal and Child Health Consortia

(a) Services in each Maternal and Child Health Region shall be coordinated by a Regional Maternal Child Health Consortium, a private, nonprofit agency organized under IRSC 501(C)(3). This consortium shall be a central service facility licensed by the Department of Health and funded through hospital reimbursement and available state funding. General membership in the Consortia shall include a balance of agencies with interests in both pediatric and perinatal issues. Membership shall include all hospitals with maternity, newborn, and/or pediatric services, local health departments, local advisory boards, community health centers, Healthy Mothers/Healthy Babies Coalitions, WIC agencies, family planning agencies, all licensed ambulatory care facilities which provide prenatal or pediatric care, County Human Services Advisory Committees, and any other voluntary, professional or local/county governmental agencies concerned with maternal and child health services.

(b) The Board of Directors of each consortium shall be nominated from and voted upon by the general membership. The general membership shall also vote on the bylaws. The Board shall consist of 18-21 members, one-third of which are hospital providers, one-third are nonhospital providers, and one-third are consumers. Each member agency or hospital is entitled to one vote in either the general membership or the Board. The Board shall also have one each licensed and currently practicing pediatrician and obstetrician, a licensed and currently practicing registered nurse with a certification in maternal and child health nursing and one health officer.

(c) The Maternal and Child Health Consortia shall be required to comply with patient confidentiality requirements as specified in Hospital Licensing Standards N.J.A.C. 8:43G-4.1(a)21.

8:100-4.5 Functions of Maternal and Child Health Consortia

(a) Maternal and Child Health Consortia shall:

1. Assess local needs (including service capacity, accessibility, and cultural sensitivity);
2. Develop regional perinatal and pediatric plans;
3. Develop family-centered primary care services as needed;
4. Develop patient tracking systems;
5. Collect and share data with regional providers;
6. Provide total quality improvement;
7. Offer professional education;
8. Coordinate maternal, neonatal and pediatric transport systems;
9. Resolve conflicts;
10. Submit Certificate of Need applications for both facilities and the region;
11. Coordinate outreach and education programs; and
12. Make recommendations to the Department of Health for funding local services.

(b) In addition to (a) above, Maternal and Child Consortia will assess the need to consolidate or expand services provided in the currently funded categorical programs of local health departments, prenatal clinics, and family planning agencies. These services should be expanded to provide community-based, accessible primary care to women and children. For example, Maternal and Child Health block grant funds shall be removed from hospital-based services and replaced with funds from the rates. Maternal and Child Health Block grant funds should then be utilized to expand existing family planning clinics to provide child health and prenatal services, and/or to expand care clinics to provide child health and family planning.

(c) One alternative for agencies with specific expertise would be to merge service provision in order to consolidate the availability and delivery of care. Satellite services should be available in housing projects and schools as needs are determined by the Maternal and Child Health Consortia in conjunction with the local advisory boards. These services should be linked or co-located with other services such as employment or job training. Primary care availability should be increased with expansion of existing categorical programs into broader maternal and child health providers, where such comprehensive services are indicated. See also N.J.A.C. 8:100-2, Prevention, Primary and Ambulatory Care Services, for more detail on specific need areas.

(d) Prenatal care shall not be funded without concurrent evaluation of the need for family planning and pediatric components. Maternal and Child Health Consortia shall make recommendations to the Department of Health regarding funding for local direct care providers. Local advisory boards should work in concert with Maternal and Child Health Consortia when planning for primary care services for women and children.

(e) Hospitals should follow-up all women and children without primary care providers who are seen in emergency rooms.

(f) Local advisory boards and Maternal and Child Health Consortia should jointly evaluate whether the acute care facilities slated for transition may become primary care facilities or residential and outpatient treatment facilities for pregnant addicted women and their children.

8:100-4.6 System of care

(a) Hospital-based and community-based care must comply with licensed ambulatory care standards (N.J.A.C. 8:43A), HealthStart standards (N.J.A.C. 10:49-3), and Standards for Obstetrics and Gynecological Services, 6th ed., 1985, published by the American College of Obstetricians and Gynecologists, 600 Maryland Avenue, SW, Suite 300 East, Washington, DC, 20024-2588, incorporated herein by reference. Prenatal care clinics in a region shall accommodate, at a minimum, the number of Medicaid births in a region annually.

(b) Prenatal care shall include, but not be limited to: history, physical exam, laboratory, risk assessment and plan of care. Support services shall include the following:

1. Outreach and education;
2. Case management;
3. WIC, on-site Medicaid eligibility determination;
4. Public health nursing follow-up in the home which can include the utilization of community volunteers or outreach workers supervised by a public health nurse, including the evaluation by the Department of the use of Nursing Incentive Reimbursement Award (NIRA) funds;
5. Patient/family education which is culturally sensitive and includes nutrition (especially breastfeeding), dental health, contraception, parenting skills, growth and development, injury prevention, HIV risk, and addictions;
6. Family risk assessment for abuse and neglect, addictions, and HIV exposure;
7. Consultation routinely available from registered dieticians or nutritionists, geneticists, social workers, other physician and pediatric specialties; and
8. Co-management between regional perinatal facilities and the perinatal provider in the community-based setting.

(c) Access to routine and high-risk inpatient perinatal care shall be improved by designating a network of perinatal facilities linked with community providers. In accordance with requirements specified in perinatal planning regulations (N.J.A.C. 8:33C) and based on their capability of caring for low-birthweight infants, facilities shall comply with Hospital Licensing Standards, N.J.A.C. 8:43G-22, and shall be designated as one of the following:

1. Community Perinatal Centers shall be licensed facilities providing prenatal care, intrapartum care including delivery of the patient, and postpartum care to women. Community Perinatal Centers should provide a range of high risk neonatal management based on regional needs, in-house staffing and task capability and in accordance with the letter of agreement with their Regional Perinatal Center. Community Perinatal Centers shall each be designated as one of the following:

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i. Community Perinatal Center—Birthing Center (less than 500 deliveries per year, uncomplicated deliveries);

ii. Community Perinatal Center—Basic (less than 800 deliveries per year, anticipated deliveries of greater than 2499 grams and 36 weeks gestation);

iii. Community Perinatal Center—Intermediate (anticipated deliveries of greater than 1499 grams and 32 weeks gestation); or

iv. Community Perinatal Center—Intensive (anticipated deliveries of greater than 999 grams and 28 weeks gestation).

2. Regional Perinatal Centers are licensed facilities able to provide a full range of perinatal services to their patient population and support to their regional affiliates. The Regional Perinatal Center shall document that for 1990 or the average of the last three consecutive years of data (1988, 1989, 1990) more than 80 maternal referrals or transports were accepted and full neonatal management was provided to more than 40 very low birthweight infants (less than 1500 grams). The Regional Perinatal Center shall have a neonatal intensive care unit in-house and a pediatric intensive care unit available either in-house or linked regionally;

3. Letters of agreement between all facilities in a region shall be specific regarding the coordination of services, transports, and referrals. The Regional Perinatal Center shall be able to provide: total management of the high risk maternal patient referred by the Community Perinatal Center, co-management with the attending physician at the Community Perinatal Center or community based setting, and telephone consultation to the attending physician at the community perinatal center; and

4. All facilities shall provide to the consortia and the Department individual patient data for the purpose of a total quality improvement program.

(d) Family planning services shall be routinely available at prenatal clinics and primary care facilities which should include information on the full array of reproductive health options. Adolescents should have information about methods of contraception readily available and, if sexually active, have access to family planning services. Mentoring programs should be initiated and evaluated for effectiveness. Renewed emphasis should be placed on male involvement and responsibility in reproductive health.

(e) Residential and outpatient services to pregnant addicted women shall include followup after delivery.

(f) The system of comprehensive pediatric care shall be in compliance with standards established by the American Academy of Pediatrics, P.O. Box 1034, Evanston, Illinois 60204, the Advisory Committee on Immunizations Practices (Centers for Disease Control) and HealthStart N.J.A.C. 10:49-3.1 through 3.20 which are incorporated herein by reference, and include:

1. A strong network of cooperating pediatric providers; and

2. An infant-tracking system of all newborns in need of primary care. This shall be accomplished through public health nursing home visits done by public health nurses or community volunteers or outreach workers under the supervision of a public health nurse. All nurses making home visits should have received Nursing Child Assessment Training (NCAST). Funding allocation shall be explored by the Department of Health and should include the possibility of utilizing some Nursing Incentive Reimbursement Awards (NIRA) to reduce ambulatory care sensitive admissions, and improve immunization status.

(g) Accessible (operating some evenings and weekends), community-based comprehensive preventive and primary care services to all children and adolescents shall include, but is not limited to, well and 24-hour sick care, as well as:

1. Periodic physical examinations, which include dental assessments;

2. Immunizations;

3. Developmental and nutritional assessments with referral if indicated;

4. Screening tests such as lead levels, vision and hearing screening with referral if indicated;

5. Anticipatory guidance, including injury prevention and age-appropriate sex education;

6. Prompt treatment of all medical conditions not requiring immediate hospitalization or referral for secondary or tertiary care;

7. Case management;

8. Adolescent health services which includes assessment for sexual activity, substance abuse, teen male involvement in reproductive health issues, mentoring, and esteem building programs; and

9. Co-management of children with special needs by primary care providers and pediatric specialists.

(h) Refer to N.J.A.C. 8:100-2 and 6 on Prevention, Primary and Ambulatory Services and Infectious Diseases, respectively, for more information on strategies to improve primary immunization status in children.

(i) Local access to routine inpatient pediatric care shall be assured by a network of efficient and high-quality regional and community pediatric facilities linked with community providers. Facilities shall comply with Hospital Licensing Standards, N.J.A.C. 8:43G-22. Facility designation shall take place, with the development of pediatric planning regulations and in accordance with recommendations discussed in N.J.A.C. 8:100-14, Hospital Inpatient Services:

1. Community Pediatric Centers shall have a dedicated pediatric inpatient unit and shall link with Regional Pediatric Centers and provide primary and preventive health services to children;

2. Regional Pediatric Centers shall have pediatric intensive care units, and in-house or linkage with a neonatal intensive care unit, pediatric residency or 24-hour house staff, pediatric subspecialty physicians, pediatric trauma/prehospital care program, primary and preventive pediatric care, and professional outreach and education program for community pediatric centers and other community-based pediatric providers, including emergency responders; and

3. Specialty Acute Care Childrens Hospitals which have been designated for the provision of highly specialized regional neonatal and pediatric care. They shall be available for Statewide consultation. Criteria for designation shall be developed by the Department in pediatric planning rules utilizing the definition of a children's hospital set by the National Association of Children's Hospitals and Related Institutions, Inc. Allocation of resources will be made in accordance with these pediatric planning.

(j) The Department of Health in conjunction with the Dental School (UMDNJ) should assess dental needs Statewide through the use of data gathering such as a study to determine the "decayed, missing, filled and treated" (DMFT) rate.

8:100-4.7 Policy changes/restructuring

(a) The Department of Health shall propose to the Public Health Council to amend Minimum Standards of Performance for Local Boards of Health (N.J.A.C. 8:52) as follows:

1. Special delivery shall reflect a prioritized system of care based on needs assessment, utilization, cost effectiveness, and a total quality improvement program;

2. Service delivery shall be commensurate with the community's needs such as:

i. Local health departments who have defined unmet pediatric primary care needs shall provide a comprehensive preventive health program for infants and preschool children. This shall include an appointment system where an initial appointment shall be no longer than 30 days and for children in areas of high immunization needs identified by the Department of Health shall be scheduled for the appropriate immunization within 14 days;

ii. Local health departments shall facilitate service delivery to women and children through linkages and referrals to primary care providers and WIC agencies;

iii. Local health departments who serve municipalities which exceed key indicators such as infant mortality, adolescent pregnancy, inadequate prenatal care, and poor immunization status shall provide home visits prenatally and postpartally in order to prevent poor birth outcomes and improve the poor parenting skills that can result in abuse and neglect. All nurses making home visits should receive Nursing Child Assessment Training (NCAST);

iv. Local health departments shall facilitate service delivery to high risk pregnant women such as pregnant addicted women, incarcerated women, etc.;

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v. Local health departments shall provide for the prevention and control of lead poisoning in young children in accordance with Chapter 13 of the State Sanitary Code (N.J.A.C. 8:51); and

vi. Local health departments shall provide a strong program of health promotion and prevention linked to the primary care system; and

3. Local health departments shall participate as members of the Maternal and Child Health Consortia.

(b) The Department of Health shall ensure that proposed intermunicipal contracts for local health services are in accordance with the Local Health Services Act, N.J.S.A. 26:3A2-1-20. See N.J.A.C. 8:100-2, Prevention, Primary and Ambulatory Care Services, for further information on local health departments.

(c) The Department of Health shall require that WIC agencies, family planning agencies, community health centers, Healthy Mothers/Healthy Babies Coalitions and other community-based providers of prenatal or pediatric services participate on the Maternal and Child Health Consortia.

(d) The Department of Health shall work to eliminate system barriers:

1. Women, Infants and Children (WIC) shall develop a memorandum of agreement with Local Health Development Services to expedite follow-up of pregnant women and children with primary care needs;

2. HealthStart and Maternal and Child Health Services shall streamline the existing reporting requirements including the Maternity Services Summary Data Report (MSSD), which is overly comprehensive and demands much administrative time. To attract more providers, the recertification process should also be streamlined, with a concentration on the quality of care delivered. The requirement for home follow-up of high-risk patients should be enforced by a performance audit during recertification. The HealthStart regulation should be evaluated regarding the issue of comprehensive care on the first prenatal visit. Provider staffing standards should be more flexible during the certification process in order to expand the provider base; and

3. The Department of Health should streamline State monitoring procedures to eliminate duplication.

(e) The Department should coordinate with the Department of Education the expansion of the role of school nurses and increase the utilization of mid-level practitioners as important resources of health care for children and adolescents in public schools linked with primary care providers. This can be done through:

1. School-based youth services clinics;

2. Immunization provision on-site;

3. Adolescent health care, including information about reproductive health which may require linkage with local family planning agencies; and

4. Comprehensive follow-up of children deficient in immunizations and EPSDT referrals by linking with local health departments and/or primary care providers.

(f) The Department of Health, in conjunction with the Department of Human Services, should coordinate the administration of health programs at the State level through:

1. The administration of health programs and coordination with other departments to eliminate duplication of services and oversite and barriers to care; for example, by providing on-site Medicaid eligibility determination;

2. Coordination of services serving the same populations in need; for example, providing immunizations for indigent populations that are served by the Department of Human Services at AFDC and Food Stamp offices;

3. Coordination with the Department of Education to further develop educational programs for pregnant adolescents to encourage them to finish school or obtain occupational training; to provide prevention curricula on HIV/AIDS, sexually transmitted diseases, family life education, substance abuse, and injury; and to assess for mental health needs or substance abuse problems; and

4. Coordination with the Department of Education to facilitate comprehensive plans to address educational, emotional, social, and health needs of children with specialized needs.

(g) The Department of Health shall launch a Statewide mass media campaign, including prime time television and radio, to change public perceptions of the importance of early and adequate prenatal care and pediatric well child care and to emphasize the importance of adolescent pregnancy prevention.

(h) The Department of Health shall seek changes in the Federal categorical funding process to promote comprehensive care at a single site and to serve women beyond reproductive health age.

8:100-4.8 Reimbursement and cost containment

(a) Reimbursement rules (N.J.A.C. 8:31B) shall be revised in order to:

1. Fund Regional Maternal and Child Health Consortia through an add-on to hospital rates that is based on obstetrical, neonatal and pediatric admissions. The initial estimated total cost annually is $4.4 million. Funding shall be administered by the Department of Health through letters of agreement with each Maternal and Child Health Consortium. Each Consortium will be monitored, evaluated and held accountable to the Department of Health. Regional allocations shall be based on the number of deliveries and other criteria as determined by the Department of Health;

2. Encourage co-management of ambulatory and primary care services between specialists and primary care providers for children with specialized needs;

3. Inappropriate pediatric primary care delivered in emergency rooms shall be reimbursed at a reduced rate;

4. Allow for back transport of stabilized high risk neonates from facilities with intensive care capabilities to the community perinatal centers—basic or intermediate; and

5. Deny hospital inpatient reimbursement for perinatal and neonatal care delivered at hospitals not designated to provide that care excluding emergencies beyond stabilization.

(b) The Department of Health shall coordinate activities with the Department of Human Services to:

1. Revise the Medicaid reimbursement system to:

i. Increase the level of Medicaid (including HealthStart) reimbursement for pediatric primary care providers including pediatricians and family practitioners for both well and acute care to at least 80 percent of reasonable cost;

ii. Reimburse mid-level practitioners (nurse practitioners and physicians' assistants) at a rate commensurate with their practice;

iii. Expand cost-based payment for Medicaid and other payers to include free-standing licensed ambulatory care facilities, local health departments, and other free-standing facilities;

iv. Develop a plan for reimbursing Special Child Health Services (SCHS) case management in order to best utilize Federal and State sources of funds, including Medicaid; and

v. Expand reimbursement to cover the cost of the multidisciplinary approach and the intensity of primary care required by special needs children.

(c) The Department of Health and the Department of Insurance should jointly develop strategies to encourage health insurance companies and plans to cover comprehensive preventive services to women and children including prenatal care, family planning, immunizations, lead screening and preventive dental care and other services such as genetic testing, counseling, and multidisciplinary specialty care.

(d) The Department of Health should eliminate the provision of grant funds to expensive hospital-based primary care services and incorporate such costs into the rates.

(e) Regional perinatal centers should be encouraged to have open staffing arrangements for physicians from community perinatal centers to deliver their high risk patients whenever possible.

(f) The Department of Health should fund programs utilizing minimum performance standards for productivity levels per full-time equivalent (F.T.E.) will be established for providers in publicly-funded clinics, in accordance with standards established by John Snow, Inc. for the Bureau of Health Care Delivery and Assistance, Department of Health and Human Services (DHHS) incorporated herein by reference. For example:

1. Obstetricians—150 to 225 women/year;

2. Certified nurse midwives—90 to 125 women/year;

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3. Family practice physicians—75 to 90 prenatal patients per year; and

4. Pediatricians/family practice physicians—4500 to 6000 pediatric encounters per year.

(g) Public health priority funding should be restored to a total of $6 million for local health departments whose services are comprehensive and consolidated; for example, that prenatal care, family planning, and pediatric primary care are co-located, community-based, and with satellites where appropriate (housing projects, schools, day care, etc.), or to initiate primary care services in local health departments. As a minimum criteria for funding, Medicaid/HealthStart providership should be required where indicated.

(h) The Department of Health shall seek to enact legislative changes necessary to:

1. Designate a fund for revenue generated by local health departments in the provision of Medicaid services;

2. To amend the Public Health Priority Funding Act, N.J.S.A. 26:2F-6.2, to exempt local health departments from the provision of requiring increasing expenditures in order to qualify for the receipt of Public Priority Funds; and

3. Amend N.J.S.A. 40A:45.2 to exclude increases in local health budgets from the current municipal "cap" of 4.5 percent for priority health services.

(i) Local health departments shall obtain reimbursement from the Department of Education for school health services provided in nonpublic schools, in accordance with P.L. 1991, c.226.

(j) The Department of Health shall recommend to the Hospital Rate Setting Commission the utilization of Nursing Incentive Reimbursement Awards (NIRA) to annually fund public health nursing home visiting activities.

(k) The Department of Health should work to initiate legislation requiring home testing for lead by house purchasers. Lead abatement should be funded in environments where children live, using Federal and State housing funds and employing specially trained neighborhood workers.

8:100-4.9 Manpower

(a) Loan-forgiveness programs for primary care physicians and mid-level practitioners should be expanded on condition of Medicaid participation.

(b) The practice of mid-level practitioners (for example, nurse practitioners and physicians' assistants), and the advanced practice of post-graduate trained nurses under the direction of a physician should be authorized through licensure.

(c) The Department of Health should recommend to the Hospital Rate Setting Commission that Nursing Incentive Reimbursement Awards (NIRA) be utilized to encourage nurses to seek expanded practice through nurse practitioner and certified nurse midwifery programs.

(d) Hospitals with primary care residencies should be reimbursed at a higher rate for primary care, and pro-rated based on the actual number of residents within each program.

(e) The Department of Health should collaborate with the Department of Insurance, the Trial Lawyers Association, and the Medical Society of New Jersey to resolve the issues of prohibitive costs of liability insurance and to seek tort reform.

(f) Hospitals should be encouraged to allow family practice physicians and certified nurse midwives to provide prenatal care and deliver their patients, where they have privileges and where the care is appropriate.

(g) Local health departments should be encouraged to seek providership as HealthStart Support Package providers for maternity services to augment private obstetricians who desire to become HealthStart providers.

(h) See also N.J.A.C. 8:100-3, Health Personnel Supply, for more specific recommendations.

8:100-4.10 Total Quality Improvement Progam

(a) Local peer review shall include infant and fetal death review.

(b) To maintain delivery privileges, all obstetric providers shall be required to document a comprehensive prenatal risk assessment on all pregnant women.

(c) Local audit shall include immunization level analysis in conjunction with local health departments and schools.

(d) Monitoring of ambulatory care sensitive admissions shall occur locally be the Maternal and Child Health Consortia and each facility.

SUBCHAPTER 5. INJURIES (RESERVED)

SUBCHAPTER 6. INFECTIOUS DISEASES (RESERVED)

SUBCHAPTER 7. AIDS AND HIV (RESERVED)

SUBCHAPTER 8. ADDICTIONS

8:100-8.1 Purposes

(a) The purposes of this subchapter are to decrease morbidity and mortality due to addictive illnesses by:

1. Preventing the onset of addiction;

2. Screening for addiction;

3. Treating addiction and co-dependence as early as possible in the least costly and least restrictive setting;

4. Providing aftercare and relapse prevention; and

5. Ensuring universal access to care, based on severity of illness.

8:100-8.2 Prevention

(a) The Department of Health shall establish effective prevention programs appropriate to each stage of the life cycle and each aspect of addictive illness using the biopsycho (host) social (environment and agent) model to:

1. Reinforce "light use" norms for alcohol, prescription and over the counter drugs, and gambling;

2. Promote norms of "no use" of tobacco, illicit drugs, and alcohol for persons under age 21;

3. Support policies to control promotion, limit access and raise prices of alcohol and tobacco; and

4. Increase use of fruits, vegetables and complex carbohydrates, and decrease use of sugar, caffeine, refined carbohydrates, and fats, especially among addicted and co-dependent persons.

(b) The Department of Health in cooperation with the Governor's Council on Alcoholism and Drug Abuse shall conduct a bi-lingual media campaign to promote education and awareness in the general population, especially targeting vulnerable groups, such as women, youth, minorities, the disabled, and the elderly, and including the following components:

1. Participation in the dissemination of Public Service Announcements prepared by the Partnership for a Drug Free America. Encourage the use of added messages regarding the addictive properties of alcohol and nicotine and discourage their use;

2. Promotion of media campaigns conducted by other groups to address addictive illnesses, for example, the Chamber of Commerce, March of Dimes, United Way, American Cancer Society;

3. Collaboration with the Governor's Council on Alcoholism and Drug Abuse to support media activities on the part of local Community Alliance planning groups in cooperation with County Alcoholism and Drug Abuse Authorities and Local Advisory Boards for Health Planning;

4. Cooperation with the Departments of Education, Human Services, and Labor to establish appropriate prevention initiatives for all addictions for use in schools, workplaces, child care agencies, Headstart, and local human service agencies;

5. Earmarking a percentage of tobacco and alcohol taxes to counter tobacco and alcohol advertising;

6. Targeting public information at families and significant others of addicted persons;

7. Providing addiction prevention materials, such as videos and brochures, to primary care providers for use in waiting areas, and for in-service training of staff; and

8. In cooperation with the Department of Human Services, expansion of school-based youth service programs currently dealing with adolescent drug, alcohol and mental health issues to include health education, intervention and care for gambling and food addiction.

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(c) The Department of Health shall establish a reporting system for prevention activities and relate the conduct of prevention programs to measured changes of opinion and behavior. The Department shall:

1. Convene a work group of individuals knowledgeable about information gathered in New Jersey on addiction prevention. This group should include, but not be limited to, the Department of Human Services Office of Prevention, the prevention section of the Division of Alcoholism, Drug Abuse and Addiction Services within the Department of Health; the Commission on Smoking or Health; the American Heart Association; Rutgers Center of Alcohol Studies Clearinghouse; the alliance section of the Governor's Council on Alcoholism and Drug Abuse; and the Statewide association of the local Councils on Alcoholism and Drug Abuse;

2. Determine uniform taxonomy and identifying missing data elements;

3. Publish an annual report on all prevention activities;

4. Seek and obtain funding from government or private sources, such as the Office of Substance Abuse Prevention of the U.S. Public Health Service to establish a survey agency to track changes in public opinion about addiction and changes in high risk behavior;

5. Prepare bi-annual reports to the Legislature and the cabinet on the relationship of prevention efforts to high risk behaviors and public opinions and attitudes on addiction; and

6. Cooperate with the Governor's Council on Alcoholism and Drug Abuse to review findings and establish policy.

(d) The Department of Health shall seek to enact the legislative changes necessary to restrict advertising and activities promoting the use of alcohol and tobacco, especially those targeted at women, youth and minorities. The Department shall:

1. Support legislation to limit alcohol and tobacco advertising and promotions, especially in urban areas, on college campuses, and in State buildings and facilities, including sporting events conducted on State property;

2. Promote advertising which ties sports and physical exercise to non-smoking, non-drinking behaviors;

3. Eliminate the advertising of alcohol and tobacco products on billboards, in transit vehicles and at point of purchase; and

4. Publicize and strengthen clean indoor air laws, and smoke-free workplaces.

(e) The Department of Health, Office of Health Policy and Research, shall assess the positive and negative impact of triplicate prescription statutes, in states such as New York, which have implemented the additional reporting requirement, for effectiveness in decreasing abuse.

(f) The Department of Health shall seek to enact the legislative and regulatory changes required to:

1. Revise the age of sale law for tobacco from 18 years to 19 years of age in order to stop sales to high school aged youth;

2. Ban automatic or vending machine sales of tobacco products, single cigarette sales, and self service;

3. Ensure that all sales take place only from behind the counter, rather than self serve, through establishment of a means for local enforcement;

4. Increase penalties for underage sales. Establish primary enforcement through administrative procedures, such as escalating fines, license suspension, and revocation;

5. License retailers at the local level to sell tobacco products, and establish specific local roles and responsibilities to educate and enforce; and

6. Use licensing fees to fund this program at the local level.

(g) The Department of Health shall initiate and support initiatives which expand the number of sites which are smoke-free, such as:

1. Updating existing legislation providing for clean indoor air and smoke free workplaces and schools to reflect new knowledge of medical harm to persons exposed to smoke in their environment;

2. Amending hospital smoking bans to incorporate nicotine dependence treatment by:

i. Working with patients, staff and visitors to assure compliance with the ban on smoking by establishing education and enforcement; and

ii. Mandating that treatment be available for patients and employees;

3. Providing education to businesses and schools about how to establish smoke free environments and why they are important;

4. Assisting the Department of Education in extending school building smoking bans to include school grounds, both when school is in session and when it is not;

5. Proposing a gubernatorial executive order to ban alcohol and tobacco advertising, promotion, sale and sponsorship on State property;

6. Amending licensing rules N.J.A.C. 8:39, 8:42, 8:42A, 8:42B, 8:43, 8:43A, 8:43F and 8:43H to establish smoke-free environments in all licensed health care facilities within three years of adoption of these regulations; and

7. Issuing advisories and provide training to all Department of Health contractors in preparation for becoming smoke-free within three years of the adoption of these regulations.

(h) The Department of Health shall initiate and support activities directed to sensitizing high risk populations about food addiction, such as amending licensure rules (N.J.A.C. 8:42A, 8:42B, and 8:43A) to promote education about the addictive properties of sugar and caffeine, and to achieve sugar and caffeine free environments within five years of the adoption of these regulations.

(i) The Department of Health shall publish alcohol and drug addiction, nicotine dependence, gambling and food addiction treatment directories. The Department shall:

1. Promote communication and referral among addiction providers through establishment of a newsletter, regional information exchanges, and development of interagency referral agreements;

2. Assist the New Jersey Alcoholism and Other Drugs of Abuse Counselor Certification Board in the development and certification of expertise in food, nicotine, and gambling addictions; and

3. Establish cross-training in addictions for counselors, planners, and managers of addictions programs, using new and established training networks.

8:100-8.3 Uniform addiction screening

(a) The Department of Health shall establish and implement utilization of a uniform addiction screening tool by:

1. Amending the licensing standards at N.J.A.C. 8:42A, 8:42B, 8:43A, and 8:43G to require the use of the tool in all licensed health care facilities; and

2. Collaborating with the Departments of Human Services, Education, Labor, Law and Public Safety, and Corrections to implement the use of this tool in their service settings to screen for addiction.

(b) Every medical contact for illness or injury should result in an objective, non-judgmental screening and, if needed, referral for diagnosis and treatment. The Department of Health shall:

1. Convene a task force to select and field test a screening instrument within six months following the adoption of these rules. The task force should include experts in nicotine, alcohol, drugs, gambling and food addiction;

2. Develop addiction screening curriculum, films, and training for health care professionals within six months of the adoption of the screening instrument;

3. Implement assessment and referral training for employees of all health care institutions and programs within two years of the completion of the training curriculum;

4. Incorporate ongoing continuing education components at the University of Medicine and Dentistry of New Jersey, the New Jersey Hospital Association, the New Jersey Medical Society, the New Jersey Council on Alcoholism and Drug Abuse, and the Academy of Medicine;

5. Establish a reporting system for aggregate reporting of results of implementation of screening for addictions throughout the health care system;

6. Include an addiction screening as part of the 12-hour evaluation process in Intoxicated Driver Resource Centers. Treatment plans should include attention to other addiction problems;

7. In conjunction with the Division of Mental Health and Hospitals of the department of Human Services, provide training to clinicians in community mental health programs and psychiatric

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hospitals. Sessions should include information about addictions, as well as training in the use of the standardized addiction screening instrument, and when to refer to addiction evaluation professionals to determine the severity of addiction;

8. Cooperate with the Department of Human Services' Division of Mental Health and Hospitals, and the Governor's Council on Alcoholism and Drug Abuse in the development of a comprehensive assessment tool for determining mentally ill chemical abusers for use by both systems;

9. Train student assistance counselors in grades kindergarten through 12 to recognize the symptoms of all addictions and to intervene and refer for treatment students with addictions. Training should be supported by policy changes by the Department of Education encouraging the expansion of services to addicted students; and

10. In cooperation with the Department of Labor, establish screening for addiction as part of vocational assessment, and establish vocational assessment as part of addiction treatment, as appropriate.

8:100-8.4 Diagnostic criteria and treatment placement

(a) The Department of Health shall establish a review committee to adapt the American Society of Addiction Medicine (ASAM) criteria for use in New Jersey to establish medical necessity for each level of care within six months of the adoption of these rules. The review committee shall:

1. Assess the severity level of people identified by screening to be at risk for addiction; this shall be known as the severity of addiction assessment;

2. Determine the appropriate nature and intensity of treatment, based on addiction severity, treatment history, environment, and other patient characteristics;

3. Promote the use of the least costly and least restrictive setting for treatment; and

4. Determine the severity level of co-dependence using a standard for prescribing the level and duration of treatment.

(b) The Department of Health shall develop curriculum, films, and training on the use of the New Jersey adaptation of the ASAM criteria for patient placement in level of treatment within six months of adoption of the criteria.

(c) The Department of Health shall support the Council on Alcohol and Drug Abuse and Rutgers Center on Alcohol Studies to implement training for credentialled addiction professionals within two years of the adoption of these regulations.

(d) The Department of Health shall assure the establishment of ongoing in-service training at the University of Medicine and Dentistry of New Jersey, the New Jersey Hospital Association, the New Jersey Medical Society, Rutgers Center on Alcohol Studies, the New Jersey Council on Alcoholism and Drug Abuse, the Academy of Medicine, and the New Jersey Alcoholism and Other Drugs of Abuse Certification Board.

(e) The Department of Health shall prepare a uniform client record to be used at six-month intervals for two years from point of assessment as described in the case management process contained in N.J.A.C. 8:100-8.6(a)3.

8:100-8.5 Establish appropriate levels of care

(a) The Department of Health shall designate a working group to review the ASAM levels of care and revise them to establish a comprehensive system reflecting all New Jersey treatment modalities.

(b) The Department of Health shall revise licensure standards (N.J.A.C. 8:42A, 8:42B, and 8:43A) to:

1. Classify licensed alcohol and drug treatment programs into a single continuum of care, include unlicensed out-patient addiction treatment programs;

2. Define a comprehensive addictions treatment system which has varying levels of intensity of care;

3. Promote the development of program components specific to the type and degree of addiction and co-dependence;

4. Recommend changes consistent with New Jersey patient placement criteria within six months of adoption of these regulations;

5. Set rates for residential drug treatment and alcohol halfway house treatment programs within one year of adoption of the patient placement criteria; and

6. Set rates for outpatient treatment within two years of adoption of the patient placement criteria.

(c) The Department of Health shall authorize the issuance of certificates of need for addiction services pending as described in the addictions chapter of the State Health Plan in accordance with N.J.A.C. 8:33. New certificate of need applications will be accepted for treatment programs targeted at adolescence and pregnant women.

(d) The Department of Health shall revise licensure standards (N.J.A.C. 8:43G) to require that hospital based addiction services be staffed by a physician who is certified in Addiction Medicine by the American Society of Addiction Medicine (ASAM), within four years of the adoption of these regulations.

(e) In cooperation with the Local Advisory Boards, the Department of Health shall designate, in each region, a Comprehensive Addiction Care Center to serve as a model for hospital based addiction prevention, intervention, and treatment, within two years of the adoption of these regulations.

8:100-8.6 Match patients with appropriate levels of care

(a) Based on the results of the standardized diagnostic criteria including the severity of addiction assessment established in N.J.A.C. 8:100-8.4(a), the Department of Health shall:

1. Determine appropriate treatment placement or level of care needed;

2. Structure a reimbursement system that is contingent upon appropriate patient placement;

3. Establish a case-management process to ensure follow-through with the prescribed treatment plan and the reporting of treatment outcomes at six month intervals for two years; and

4. Develop methods to assist patients to make informed choices about service settings offering the level of care needed, according to the severity of addiction assessment.

8:100-8.7 Expand outpatient treatment capacity

The Department of Health shall ensure universal access to less costly outpatient treatment by expanding outpatient treatment capcity, and develop a financing mechanism to guarantee access to the uninsured as described in N.J.A.C. 8:100-8.9.

8:100-8.8 Aftercare and relapse prevention

(a) The Department of Health shall amend licensing standards N.J.A.C. 8:42A, 8:42B, 8:43A, and 8:43G to provide that treatment facilities shall:

1. Utilize a uniform client record;

2. Perform a follow-up assessment using the uniform client record every six months for two years from assessment of addiction severity;

3. Promote the use of self-help programs for aftercare and relapse prevention; and

4. Submit data contained on the uniform client record to the Department of Health upon request.

8:100-8.9 Cost containment

(a) The Department of Health shall emphasize screening activities, outpatient expansion, and care for the uninsured to reduce the high costs associated with inpatient care by:

1. Structuring a reimbursement system that is contingent upon appropriate patient placement;

2. Appointing an implementation task force to review means of paying for universal access to addiction treatment based on severity of illness rather than insurance coverage;

3. Encouraging hospitals to develop lower cost effective addiction treatment programs;

4. Establishing a methodology for assuring addiction screening and assessment for all patients in addiction caused or exacerbated diagnostic-related categories in health care facilities and programs;

5. Establishing interagency referral agreements with facilities providing each of the levels of care for addiction; and

6. Encouraging drug and alcohol testing only as an adjunct to a comprehensive addiction screening and assessment.

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(b) The Department of Health shall seek to enact legislative changes necessary to set aside funds from the New Jersey Health Care Trust Fund (N.J.A.C. 8:31B-4) to support screening and assessment for addiction in earlier stages of illness, and to demonstrate the efficacy and cost savings of these initiatives.

8:100-8.10 Administration

(a) The Department of Health shall promote the siting of new addictions programs by supporting legislation that would pre-empt local zoning ordinances in favor of establishing a Statewide master plan for locating facilities.

(b) The Department of Health shall seek to enact legislative changes to substantially increase alcoholic beverage and tobacco taxes, based on a percentage of price. Earmark the proceeds for addiction prevention and treatment. Establish a trust fund to pay for access to treatment for addicted persons and their family members.

(c) The Department of Health shall collaborate with the Department of Insurance to promote reimbursement by all payers, including HMOs and PPOs, for all addiction screening and treatment based on severity of illness.

(d) The Department of Health shall develop reliable prevalence estimates for every addiction, which include adjustments for special populations and geographic variations. These estimates should include comorbidity with other addictions, because of the high rates of cross-prevalence of each addiction with the other addictions.

(e) The Department of Health shall amend the rules governing the certificate of need process (N.J.A.C. 8:33, 8:33K) to:

1. Establish a structure and process that ensures an accurate count of all addiction services provided by county and health planning region; and

2. Authorize the Local Advisory Committees on Alcoholism and Drug Abuse (LACADAs) to assist the Local Advisory Boards in their review of Certificate of Need applications for addiction services from their county.

(g) The Department of Health shall amend the charity care eligibility criteria for reimbursement, under the New Jersey Health Care Trust Fund (N.J.A.C. 8:31B-4.40) to allow hospitals to consider repayments of gambling debts as allowable adjustments to income when determining eligibility of compulsive gamblers receiving treatment.

(h) The Department of Health shall seek to enact legislation necessary to collect fines imposed by the courts upon admitted compulsive gamblers, bookmakers and others involved in illegal gambling activities. These funds should be placed in a fund to finance treatment and intervention activities for gamblers in the same way Drug Enforcement Demand Reduction (DEDR) money is used to fund drug abuse prevention programs.

(i) The Department shall amend licensing rules (N.J.A.C. 8:42A, 8:42B, and 8:43A) to encourage revision of by-laws and admissions policies of drug and alcohol treatment centers to allow admission and treatment of compulsive gamblers, nicotine dependent and food addicted persons, and to assure that staff have received specialized training and patients are placed according to severity of addiction.

(j) The Department of Health shall cooperate with the Department of Community Affairs and the Department of Human Services to develop outreach programs for senior citizens with addiction problems. Few senior citizens currently enter treatment, but they account for a sizable portion of casino business. Senior citizens are not often involved with the criminal justice or other systems which frequently result in referrals of younger persons. Programs should be conducted through senior citizens' centers and health care agencies in conjunction with the county Offices on Aging.

(k) The Department of Health shall collaborate with other states which have initiated comprehensive addictions programs. Research findings, new treatment approaches, and prevention strategies should be shared. A combined effort should be made to encourage national planning and funding for these activities.

(l) In cooperation with the Department of Health, the Department of Human Services shall expand Medicaid coverage for addiction treatment services for pregnant addicted women, within six months of adoption of these regulations.

(m) The Department of Health, Office of Health Policy and Research, shall investigate and report on the advisability of amending rules for government contrators, to require hiring an established percentage of recovering addicted persons as a condition of receipt of contract.

SUBCHAPTER 9. CARDIOVASCULAR DISEASE (CVD) SERVICES

8:100-9.1 Prevention of Smoking Initiation and Treatment for Nicotine Dependence Policies

(a) Smoking prevention activities and strategies shall be promoted actively by the Department of Health throughout New Jersey. These strategies shall include:

1. Countering the effects of cigarette advertising and promotion by providing public service announcements (PSAs) on the harmful effects of smoking and on the benefits of quitting smoking at any age;

2. Promoting prevention of initiation of smoking programs at the grade-school level by including instruction in the health education curriculum; and

3. Reducing access to tobacco by increasing the cost of cigarettes through an increase in the cigarette tax, with proceeds earmarked for nicotine dependence treatment and education activities, restricting the sale of tobacco to minors, and providing the necessary enforcement of access laws. The Department of Health shall convene a task force comprised of individuals from educational, business, and law enforcement sectors to develop fair, effective methods of enforcing the laws currently in effect.

(b) Nicotine dependence treatment activities and strategies shall be promoted actively by the Department of Health throughout New Jersey. In recognition that cigarette smoking, one of the most preventable causes of cardiovascular disease, is highly addictive, the policy recommendations directed at eliminating tobacco dependence are fully supported. Additional nicotine dependence treatment strategies include:

1. Increasing support for nonsmokers' rights by stiffening clean indoor air regulations and encouraging smoke-free environments through tax breaks to smoke-free employers who provide smoking cessation programs for employees, and providing the necessary enforcement of clean indoor air laws. The Department of Health shall convene a task force comprised of individuals from educational, business, and law enforcement sectors to develop fair, effective methods of enforcing the laws currently in effect;

2. Encouraging a "smoke free" New Jersey by increasing the availability of nicotine dependence treatment programs by providing insurance coverage for tobacco addiction treatment programs, and encouraging innovative programs targeted to high-risk populations such as pregnant women, minorities, and chemical industrial workers; and

3. Providing economic incentives such as decreased health and life insurance premiums to nonsmokers.

8:100-9.2 Cardiovascular Health Promotion Policy

(a) Cardiovascular health for all New Jersey communities and citizens shall be promoted through the promulgation of public policy by the Department of Health that supports healthy behaviors, creates supportive environments, and empowers individuals to maintain healthy choices in daily living. Specifically, the Department of Health shall:

1. Establish and maintain a Cardiovascular Health Promotion Disease Prevention Subcommittee as an advisory body to the Commissioner of Health through the Commissioner's Cardiac Services Committee, to serve as the mechanism for providing health promotion and disease prevention planning, implementation and evaluation;

2. Collaborate with the Department of Education to implement the New Jersey school system with policies that integrate cardiovascular health education as part of the health curriculum in grades kindergarten through 12;

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3. Collaborate with the Department of Agriculture to implement policies which support the integration of nutrition incentives within cardiovascular health promotion programs;

4. Collaborate with the Department of Environmental Protection and Energy, Division of Parks and Forestry, and the New Jersey Recreation and Parks Association to provide and maintain adequate, safe and accessible facilities for physical activity;

5. Collaborate with the Department of Labor to implement policies supporting cardiovascular health promotion and education in all worksites with 50 or more employees;

6. Coordinate within the appropriate divisions of the Department of Health to implement policies promoting cardiovascular health promotion and disease prevention programs in health care facilities and health departments;

7. Provide for technical assistance encouraging community organizations to carry out health promotion programs which create an environment which supports cardiovascular health;

8. Provide for, coordinate and enhance data sources to monitor the health behaviors and cardiovascular risk factors of New Jersey communities and citizens;

9. Provide for cost-effective, population-wide models that motivate persons and communities to permanently adopt behavior which promotes community and individual cardiovascular health;

10. Collaborate with organizations, and especially with the American Heart Association, to provide cardiovascular health education to health professionals throughout the State, enabling them to counsel and advise their clients and communities on lifestyle changes which support cardiovascular health;

11. Provide for population-wide cardiovascular health promotion media campaigns that stress healthy decisions and behavior regarding cardiovascular risk factors, healthy eating, and physical activity;

12. Provide for scientifically-based information about cardiovascular health for health professionals, communities and consumers;

13. Promote and support policies that ensure the availability of healthy food choices to all citizens, and promote policies and incentives to encourage food industry attention to nutrition in product development and promotion; and

14. Establish incentives for the development of innovative programs that encourage cardiovascular fitness.

(b) Mechanisms or evaluative techniques shall be continually developed and modified by the Department of Health to evaluate existing health promotion/prevention activities conducted in New Jersey, such as the New Jersey State Healthy Heart Programs.

(c) Outpatient nutrition counseling services should be provided through designated referral sources in all acute-care hospitals, in order to maximize the opportunity for cost-effective primary and secondary CVD prevention and intervention strategies. A sliding fee scale for underserved minority and elderly populations should also be provided.

8:100-9.3 Acute Care Cardiac Services and Resource Allocation Policy

(a) Statewide mechanisms shall be developed to review the quality and appropriateness of the cardiac procedures now performed in New Jersey. Implementation of pre-procedure, patient-risk stratification mechanisms shall be completed and perhaps extended to other aspects of cardiac intervention by the Commissioner's Cardiac Services Committee. The outcomes from these evaluative measures shall be linked to future expansion or contraction of the State's cardiac resources.

(b) Future certificates of need to expand cardiac services shall be contingent on the development of a regionalized plan by the local advisory boards to include, but not be limited to, organized referral patterns, a network of community-based secondary and tertiary, acute care providers, educational programs, and cost containment considerations. Preference should be given to existing programs that have demonstrated quality care through utilization of its cardiac services. Pediatric cardiac services, to be provided by the State's children's hospitals are established in the acute care subchapter (N.J.A.C. 8:100-14).

(c) Increased Department of Health resources should be devoted to the Myocardial Infarction Data Acquisition System (MIDAS), in order to facilitate long-term policy and resource-allocation decision-making. The Department of Health should expand its support for MIDAS to evaluate variations in treatment of hospitalized myocardial infarction patients.

SUBCHAPTER 10. CANCER (RESERVED)

SUBCHAPTER 11. DIABETES (RESERVED)

SUBCHAPTER 12. MENTAL HEALTH (RESERVED)

SUBCHAPTER 13. OCCUPATIONAL AND ENVIRONMENTAL HEALTH (RESERVED)

SUBCHAPTER 14. HOSPITAL INPATIENT SERVICES

8:100-14.1 General Recommendations

(a) The Department of Health shall:

1. Assure the appropriate distribution and supply of acute care hospital beds throughout New Jersey to meet the identified health care needs of consumers, assure access to care, and promote quality of care and cost effectiveness;

2. Promote the use of appropriate levels of care, such as primary care, preventive, and care to special populations, including children, the frail elderly, and persons with AIDS;

3. Allocate new hospital capital expenditures within the Statewide capital cap by setting priorities for approval of needed projects; and

4. Encourage the development of a strong regionalized health care system through coordination and consolidation of institutional and community resources.

8:100-14.2 Hospital efficiency targets and objectives

(a) The target occupancy rate by 1995 for medical-surgical units of hospitals shall be 85 percent.

(b) The target occupancy rate by 1995 for all other inpatient services shall be 75 percent occupancy, except where otherwise identified in this rule.

(c) The Statewide objective for occupancy within the inpatient acute care hospital system is to achieve an occupancy of between 80 and 85 percent.

(d) Target rates for units located in geographically isolated areas or having unique service area responsibilities shall be developed by the LAB in conjunction with the Department.

(e) The Department and LABs will study the average length of stay for acute care services and promote appropriate utilization of facilities.

(f) The Department and LABs will investigate the high rates of admissions for certain ambulatory care sensitive conditions in areas of the State and promote actions to reduce them to the Statewide average.

8:100-14.3 Statewide bed need

(a) Using the methodology adopted by the State Health Planning Board, an overall excess of 2,175 hospital beds is projected for 1995.

(b) All certificate of need projects submitted by a hospital shall be reviewed under the provisions of this subchapter and also under the requirements of N.J.A.C. 8:43I, the Hospital Policy Manual, or under other planning regulations, where applicable. In the event of a conflict in the meaning, this subchapter shall supersede.

8:100-14.4 Decertification of unused beds

(a) Pursuant to the Health Care Cost Reduction Act, N.J.S.A. 26:2H-38d, the Commissioner may amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility. This authority may be exercised if the Commissioner determines that 10 or more licensed beds in the health care facility have not been used for at least the last two succeeding years. For purposes of this rule, retroactive review of hospital utilization may begin on January 1, 1990.

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(b) Notice of the Commissioner's intent to decertify beds from a hospital license will be issued to an affected hospital with a statement of the reasons for the proposed action. The hospital may request an informal hearing with the Department within 30 days of receipt of the notice of intent.

(c) If the Commissioner issues a final decision to decertify beds, a request for fair hearing submitted within 30 days of receipt of the decision will be granted and conducted in accordance with N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., the Administrative Procedure Act, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8:100-14.5 Prioritization of hospital capital expenditure limits under Chapter 187

(a) Priority will be assigned to a Certificate of Need proposing a capital expenditure in which the following factors are demonstrated within the application:

1. Community Need: A hospital will be deemed to have exhibited priority community need when it has the following characteristics:

i. Occupancy in excess of 90 percent in all services during the last calendar year preceding the application. Services that are proposed in the application to be closed may be excepted;

ii. The county in which the hospital is located has been determined to have a bed need; and

iii. The county's and hospital's rates of inpatient admission and length of stay have been demonstrated to be appropriate and not likely to decline as a result of changing medical practice or reimbursement policy;

2. Project Need:

i. The project is substantially directed to correcting Life Safety Code A or B level deficiencies, or other conditions posing imminent peril to health and safety of patients and staff; and

ii. The hospital has not implemented a major modernization or construction program in the affected areas of the project for a period in excess of 10 years. In addition, the overall average age of the physical plant exceeds 10 years based on the Department's calculations using generally accepted accounting principles;

3. Project Goals: The certificate of need application has been submitted in order to address a priority or a specific recommendation that is identified in the State Health Plan, and is determined by the Department to be essential to achieving that goal. These in specific include hospital closure or merger applications that demonstrate significant cost savings to the health care system, or projects implementing ambulatory care initiatives that improve health care delivery patterns and reduce system expenditures; and

4. Affordability: Projects meeting one of the above prioritization criteria shall be assessed for affordability. Indicators of affordability are the total project cost, cost per adjusted admission, and the institution's ability to obtain low cost financing. Within the list of all identified priority projects, the Department's assessment of the measures of affordability will be utilized to rank projects.

8:100-14.6 Nondiscrimination

All patients must have equal access to treatment for all services available in the hospital system. Any hospital which has been found to violate State or Federal laws prohibiting discrimination on the basis of race, age, religion, national origin, sex, sexual preference, handicap, ability to pay, or diagnosis (including AIDS), is not eligible for submission of a certificate of need for new or expanded health care services.

8:100-14.7 Criteria for assessing need for a hospital

(a) In assessing whether a hospital has demonstrated community need for purposes of this plan and certificate of need review, the criteria in this section shall be used.

(b) A hospital must demonstrate that it will be efficiently operated. If the hospital has less than 200 beds and overall occupancy below 75 percent, need for continued operation must be based on area need and/or geographic isolation.

(c) A hospital's overall financial viability must be demonstrated, based on standard measures of profitability, liquidity and debt structure.

(d) Concerning the need for capital investment:

1. An assessment of the relative age and condition of a hospital's physical plant must indicate that it has maintained a safe and efficient environment for delivering patient care services; and

2. If the hospital has demonstrated high community need, then a hospital's obsolete or unsound physical plant must receive priority attention.

(e) The following pertain to the criteria of community need:

1. Community need may be demonstrated by the special consideration of unique service provision to a geographically isolated region, a medically indigent population, or to persons with AIDS.

i. Geographic isolation as used in this rule refers to the lack of an alternative hospital within 15 miles where at least 40 percent of service area residents use the hospital.

ii. Unique service provision to a medically indigent population can be demonstrated where the hospital provides services to a significant medically indigent population where there are no alternate providers.

iii. Unique service provision to a disproportionate share of persons with AIDS can be demonstrated where a hospital serves as a clinical AIDS resource center and it provides a significant level of services to HIV-positive individuals in its service area.

2. Community need may be demonstrated by hospitals providing a needed regionalized tertiary care service. Regionalized tertiary care services include: cardiac surgery (adult and pediatric), trauma, organ transplant and neonatal intensive care.

3. Community need will consider the factor of quality of care provided by a hospital. Priority will not be given to those facilities which exhibit significant levels of licensure deficiencies, penalty actions, validated consumer complaints, and adverse patient outcomes.

8:100-14.9 Limitations on hospitals and areas with excess bed capacity

(a) A hospital which is recommended for transition from acute care services is not eligible to submit any certificate of need application except for those associated with its transition from acute care or projects essential to the safety of patients. Reimbursement of capital expenditures for renovations of physical plant areas not requiring certificate of need approval will be limited. Alternative actions may be taken to effect this recommendation including a merger or consolidation resulting in an equivalent reduction in acute care beds.

(b) All hospitals in a county which has been designated as having excess beds in 1995 based upon a methodology approved by the State Health Planning Board in a magnitude that exceeds the size of any hospital in the county will not be permitted to submit any certificate of need application for major renovation/construction (in excess of $10 million) until a plan to implement the required bed reduction has been approved by the LAB and the Department and implementation steps have been initiated. Exceptions for projects that address physical plant conditions demonstrated to have a significant negative impact on patient care outcomes may be granted by the Commissioner.

(c) The Department of Health will not recommend any special rate adjustment for a hospital which has been designated for phase out of all acute care inpatient services or closure of services (that is, pediatric and obstetrical) until such a plan has been approved by the hospital(s) board(s) of trustees and appropriate regulatory agencies.

(d) The Department of Health may initiate a full rate review under N.J.A.C. 8:31B-3.52 for a hospital which has been recommended for phase out of all acute care services in the following circumstances:

1. Patient volume falls below an average daily census of 50, or to a level which results in adverse patient care outcomes or risk to patient safety; and

2. The hospital is financially insolvent.

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8:100-14.10 County specific recommendations for M/S and total hospital services

(a) Based upon the criteria contained in N.J.A.C. 8:100-14.3, 14.5, and 14.7, the actions set forth in (b) through (g) below are to be taken by hospitals, Local Advisory Boards, and the Department:

(b) Local Advisory Board I:

1. Morris County:

i. Dover and Chilton must participate in a LAB M/S bed need study to determine whether bed reductions are warranted.

ii. The LAB must complete an areawide acute care bed need study and submit it to the State Health Planning Board and Department of Health.

iii. All other hospitals in Morris County must take steps to achieve target occupancy levels identified in this plan.

2. Passaic County:

i. St. Mary's—Passaic must transition from inpatient acute care services by 1995.

ii. The LAB must complete an areawide acute care bed need study that also addresses the phase-out of St. Mary's and the need to continue the psychiatric inpatient programs currrently provided at St. Mary's.

iii. All other hospitals in Passaic County must take steps to achieve target occupancy levels identified in this plan.

3. Sussex County:

i. Newton and Wallkill Valley must participate in an areawide acute care bed need study to determine whether bed reductions are warranted.

ii. The LAB must complete an areawide bed need study and submit it to the State Health Planning Board and Department of Health.

iii. Until the LAB areawide bed need study is approved by the State Health Planning Board and the Department of Health, no certificate of need applications related to inpatient acute care services may be submitted by Newton or Wallkill Valley. An exception may be made only if the Department determines that a serious quality of care issue has occurred which requires immediate attention.

4. Warren County:

i. The LAB must complete an areawide bed need study and submit it to the State Health Planning Board and Department of Health.

ii. Until the LAB areawide bed need study is approved by the State Health Planning Board and the Department of Health, no certificate of need applications related to inpatient acute care services may be submitted by Warren or Hackettstown Hospitals. An exception may be made only if the Department determines a serious quality of care issue has occurred which required immediate attention.

(c) Local Advisory Board II:

1. Bergen County:

i. Bergen Pines County Hospital must participate in a LAB study to determine if inpatient acute care services must remain at this facility.

ii. Kennedy Memorial—Saddlebrook must transition from inpatient acute care services by 1995.

iii. All other hospitals in Bergen County must take steps to achieve target occupancy levels identified in this plan.

2. Hudson County:

i. Greenville Hospital must transition from inpatient acute care services as the Jersey City Medical Center implements its Certificate of Need for a replacement facility.

ii. All other hospitals in Hudson County must take steps to achieve target occupancy levels identified in this plan.

(d) Local Advisory Board III:

1. Essex County:

i. Montclair Hospital must transition from inpatient acute care services by 1995.

ii. Clara Maass Medical Center must participate in a LAB study to determine if further bed reductions are warranted.

iii. St. James and St. Michaels must participate in a LAB study to determine if service consolidations at one site are warranted.

iv. Newark Beth Israel and Irvington General Hospitals must work with the LAB to further consolidate and efficiently distribute acute care services between the two facilities.

v. United Hospitals Medical Center must participate in a LAB study which studies its future role in providing adult acute care services.

vi. All other hospitals in Essex County must take steps to achieve target occupancy levels identified in this plan.

2. Union County:

i. Muhlenberg Hospital must participate in a LAB study to determine if acute care bed reductions are warranted.

ii. All other hospitals in Union County must take steps to achieve target occupancy levels identified in this plan.

iii. Requests for additional ICU/CCU beds may only be approved if the applicant and the LAB clearly demonstrate serious access or quality care problems.

(e) Local Advisory Board IV:

1. Hunterdon County:

i. Hunterdon Medical Center may maintain current bed status.

2. Mercer County:

i. Each hospital in the county must participate in a LAB acute care bed need study.

ii. The LAB plan must include a definite strategy for acute care bed reductions and must consider the option of phasing out one existing acute care facility, through merging two facilities or by other means.

iii. Until the LAB plan and bed need study is approved by the State Health Planning Board and the Department of Health, no certificate of need applications related to inpatient acute care services may be submitted by any hospital in the county. An exception may be made only if the Department determines that a serious quality of care issue has occurred which requires immediate attention.

3. Middlesex County:

i. South Amboy Memorial Hospital must transition from inpatient acute care services by 1995.

ii. Raritan Bay Medical Center must participate in a LAB study to determine whether acute care bed reductions are warranted at its Perth Amboy division.

iii. Raritan Bay Medical Center and South Amboy Memorial Hospital must participate in a LAB study to determine the appropriateness and feasibility of joint ventures, particularly to retain South Amboy's inpatient psychiatric programs in the county.

iv. All other hospitals in Middlesex County must take steps to achieve target occupancy levels identified in this plan.

4. Somerset County:

i. Somerset Medical Center may maintain current bed status.

(f) Local Advisory Board V:

1. Burlington County:

i. Zurbrugg Memorial Hospital-Riverside Division must transition from inpatient acute care services by 1995.

ii. The LAB must develop a plan to maintain access to the psychiatric and substance abuse services currently being provided by Zurbrugg's Riverside Division.

iii. All hospitals in Burlington County must take steps to achieve target occupancy levels identified in this plan.

2. Camden County:

i. Kennedy Memorial Hospitals must participate in a LAB bed need study to determine if acute care bed reductions are appropriate for its Stratford and Cherry Hill divisions in this county.

ii. All hospitals in Camden County must take steps to achieve target occupancy levels identified in this plan.

3. Cumberland County:

i. Each hospital in the county must participate in a LAB acute care bed need study.

ii. Until the LAB bed need study is approved by the State Health Planning Board and the Department of Health, no certificate of need applications related to inpatient acute care services may be submitted by any hospital in the county. An exception may be made only if the Department determines that a serious quality of care issue has occurred which requires immediate attention.

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4. Gloucester County:
i. All hospitals in Gloucester County must take steps to achieve target occupancy levels identified in this plan.
5. Salem County:
i. Elmer Community Hospital must participate in a LAB bed need study to determine if this facility should continue to provide inpatient acute care services.
ii. Until the LAB study is approved by the State Health Planning Board and the Department of Health, Elmer Community Hospital may not submit a certificate of need application related to inpatient acute care services. An exception may be made only if the Department determines that a serious quality of care issue has occurred which requires immediate attention.
(g) Local Advisory Board VI:
1. Atlantic County:
i. All hospitals in the county must participate in an LAB acute care bed need study.
ii. Until the LAB study is approved by the State Health Planning Board and the Department of Health, no certificate of need applications related to inpatient acute care services may be submitted by any hospital in the county. An exception may be made only if the Department determines that a serious quality of care issue has occurred which requires immediate attention.
2. Cape May County:
i. Burdette Tomlin Memorial Hospital must take steps to achieve target occupancy levels identified in this plan.
3. Monmouth County:
i. Monmouth Medical Center must participate in a LAB acute care bed need study to determine if this facility should reduce beds.
ii. All other hospitals in Monmouth County must take steps to achieve target occupancy levels identified in this plan.
4. Ocean County:
i. Southern Ocean County Hospital must participate in a LAB study to determine if financial stability may best be achieved through merger with another hospital.
ii. All other hospitals in Ocean County must take steps to achieve target occupancy levels identified in this plan.

8:100-14.11 Obstetric and pediatric services—Maternal and Child Health Consortia

(a) The Department of Health shall designate a network of regional Maternal and Child Health Consortia as specified in N.J.A.C. 8:100-4.3(a) and (c).
(b) Until such time that the Maternal and Child Health Consortia are designated and operational in a region, the Department will not accept certificate of need applications from hospitals requesting changes in their OB/GYN and/or pediatric bed complement. Exceptions may be granted by the Commissioner only where the applicant and LAB can document that serious access or quality problems will accrue absent such certificate of need consideration.
(c) When the Maternal and Child Health Consortia are established, they shall file certificate of need applications which will be accepted in accordance with the batching cycles established in N.J.A.C. 8.33. The applications shall request the initial perinatal and pediatric designations of each hospital in the region, as well as the initial complement of licensed pediatric and OB/GYN beds and intensive and intermediate care bassinets. Such applications will be reviewed and recommended for approval or denial based on the State Health Plan, these regulations, any other applicable approved planning/certificate of need regulations, and the advice of the Local Advisory Board.
(d) Once the Maternal and Child Health Consortia are established and operational and have recommended and had approved initial perinatal and pediatric designations for each hospital in the region, only the consortia may file an application for a change in an individual hospital designation, not the hospital itself.
(e) Once the Maternal and Child Health Consortia are established and operational, an individual hospital may file a certificate of need application for changes in the number of bassinets or in its OB/GYN and/or pediatric bed complement. Such an application must contain a recommendation for endorsement from the regional Maternal and Child Health Consortia.
(f) Within one year of formation, each Maternal and Child Health Consortium shall develop a perinatal and pediatric regional plan which includes letters of agreement between facilities for regionalized care. The plan shall be developed in cooperation with all appropriate Local Advisory Boards and submitted to these boards, the State Health Planning Board and the Department of Health.
1. Each Maternal and Child Health Consortium regional plan shall consider, but not be limited to, the following:
i. The requirements in N.J.A.C. 8:100-4.3 through 4.6;
ii. Obstetric and pediatric recommendations and criteria contained in these regulations and the State Health Plan;
iii. Geographic accessibility to obstetric and pediatric inpatient services by residents of each region;
iv. Increasing obstetric and pediatric unit size for those hospitals that meet criteria approved in these regulations, the State Health Plan, the Local Advisory Boards, and any other applicable regulations; and
v. Decreasing obstetric and pediatric unit size or closing the service. Closing the OB service shall be considered in those hospitals with less than 1,000 annual deliveries or less than 1,500 annual OB/GYN admissions or less than 60 percent OB/GYN annual occupancy for three consecutive calendar years based on licensed beds. Pediatric unit closures must be considered in those hospitals that fail to meet the utilization criteria described at N.J.A.C. 8:100-14.16(b) or 14.17(b).
(g) The Department of Health, the State Health Planning Board, and the Local Advisory Board shall utilize the criteria in (f)1 above in reviewing any certificate of need application affecting any applicant's inpatient OB/GYN or pediatric service.

8:100-14.12 Inpatient obstetric and gynecological (OB/GYN) services

(a) Within one year of approval of the Maternal and Child Health Consortia regional designation plan, the target annual OB/GYN occupancy (based on licensed beds) shall be:
i. Units with less than 20 licensed beds:
LDRP: 55 percent
Postpartum: 65 percent.
ii. Units with 20 or more licensed beds:
LDRP: 65 percent
Postpartum: 75 percent.
(b) Based upon a methodology approved by the State Health Planning Board, the Department projects that there is an excess of at least 100 licensed obstetric beds by 1995.

8:100-14.13 Local area need

(a) The Maternal and Child Health Consortium must address the following individual hospitals that have been identified as having OB bed excesses or bed need as part of its certificate of need application for designation (arranged by current perinatal region):
1. Northern Consortium (Bergen, Passaic, parts of Morris and Sussex Counties):
i. St. Mary's (Passaic)—OB/GYN unit closure; and
ii. Wayne General—OB/GYN unit closure or bed reduction.
2. Essex County Consortium (Essex and part of Union Counties):
i. St. James and St. Michael's Medical Center—consolidation of OB/GYN services at one site;
ii. Rahway Hospital—further OB/GYN bed reductions;
iii. Elizabeth General—OB/GYN bed reduction;
iv. St. Elizabeth's—reduction of OB/GYN bed capacity;
v. St. Barnabas Medical Center—OB/GYN bed increase; and
vi. Newark Beth Israel—OB/GYN bed increase.
3. Hudson County Consortium (Hudson County):
i. Bayonne Hospital—OB/GYN unit closure or bed decrease;
ii. St. Mary's (Hoboken)—OB/GYN unit closure or bed decrease; and
iii. Meadowlands Hospital—OB/GYN bed increase.
4. Northwest Consortium (Morris, Sussex, part of Union Counties):
i. Dover—OB/GYN bed decrease; and

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ii. Warren and Hackettstown Hospitals—potential consolidation of their OB/GYN programs at one site.

5. Central New Jersey Consortium (Middlesex, Mercer, Hunterdon, Somerset, part of Union Counties):

i. St. Francis Medical Center—OB/GYN bed reduction, unit closure, or consolidation with Helene Fuld at one site;

ii. Helene Fuld—OB/GYN bed reduction, unit closure, or consolidation with St. Francis at one site; and

iii. St. Peter's Medical Center—OB/GYN bed increase.

6. Monmouth/Ocean Consortium (Monmouth and Ocean Counties):

i. Paul Kimball Medical Center—OB/GYN bed reduction;

ii. Northern Ocean Medical Center—reduction of OB/GYN bed capacity; and

iii. Monmouth Medical Center—OB/GYN bed increase.

7. Southern Jersey Perinatal Cooperative (Burlington, Camden, Gloucester, Salem, Cumberland, Cape May and Atlantic Counties):

i. South Jersey Hospital System (Bridgeton)—OB/GYN bed reduction, unit closure, or consolidation with Newcomb at one site;

ii. Newcomb Hospital—OB/GYN bed reduction, unit closure, or consolidation with Bridgeton at one site;

iii. JFK (Washington Division)—OB/GYN bed reduction;

iv. Shore Memorial Hospital—reduction of OB/GYN bed capacity;

v. Underwood—reduction of OB/GYN bed capacity;

vi. Atlantic City (City Division)—OB/GYN bed increase;

vii. Memorial Hospital of Burlington County—OB/GYN bed increase; and

viii. Cooper Medical Center—OB/GYN bed increase.

8:100-14.14 Designation of pediatric services

Pediatric services, including additional specialty acute care hospital services, shall only be provided by the appropriate facility as determined by the pediatric designation process. Designations shall be recommended by the Maternal and Child Health Consortia following adoption of pediatric planning rules by the Commissioner.

8:100-14.15 Specialty acute care children's hospitals

(a) The two designated specialty acute care children's hospitals, at United Hospitals/University Hospital in Newark, and Cooper Medical Center in Camden, shall develop plans to become operational.

(b) The Department shall evaluate the need for the development of a third specialty acute care children's hospital, either as a joint program between Robert Wood Johnson and St. Peter's Medical Centers in New Brunswick or elsewhere in the State.

(c) Facilities designated as specialty acute children's hospitals may provide:

i. Major chest surgery, including pediatric cardiac surgery;

ii. Pediatric neurosurgery;

iii. Pediatric solid organ transplants; and

iv. Pediatric burn care.

(d) An exception to (c) above is made for Deborah Hospital in Burlington County, which maintains an active pediatric cardiac surgery program.

(e) No certificates of need for additional pediatric cardiac surgery sites will be accepted until at least 1994.

(f) A facility not designated as a specialty acute care children's hospital that is not currently approved to perform the services in (c) above may not do so without first obtaining certificate of need approval.

(g) Specialty acute care children's hospital must demonstrate the ability to serve as the core of a regional network to provide and advise on the provision of all clinical pediatric care.

(h) Minimum criteria for designation as a specialty acute care children's hospital shall include:

1. Licensed pediatric beds:

i. A minimum of 75 beds within five years of designation; and

ii. The ability to meet all licensing standards for inpatient pediatric beds;

2. A separately identifiable, designated pediatric intensive care unit (PICU) with:

i. A minimum of PICU 12 beds within two years of designation;

ii. A minimum of 1000 annual admissions to the PICU within two years of designation;

iii. A minimum annual occupancy of 75 percent; and

iv. The ability to meet licensing standards for PICU at N.J.A.C. 8:43G;

3. The provision of the following core services within two years of designation, each with its own full-time staff director:

i. Neonatal intensive care bassinets and a Regional Perinatal Center or Community Perinatal Center—Intensive designation and demonstrated compliance with applicable perinatal regulations;

ii. Pediatric critical care;

iii. Pathology;

iv. Radiology;

v. Child life;

vi. Cardiology;

vii. Emergency care;

viii. General pediatrics;

ix. Surgery;

x. Anesthesiology; and

xi. Neurosurgery and neurology;

4. A pediatric residency program that:

i. Is accredited and affiliated with a university medical school; and

ii. Has a full time program director;

5. Immediate availability of pediatric trauma/prehospital care program including:

i. A separate pediatric emergency room;

ii. Specialized pediatric training for emergency room staff; and

iii. Leadership and participation in a regionwide referral and transport network;

6. Availability within one year of designation of the following specialized ambulatory care programs, including:

i. Rehabilitation and communication evaluation and treatment;

ii. Sickle cell/hemoglobinopathics treatment;

iii. Hemophilia program and services; and

iv. Cleft lip/palate craniofacial anomalies services. These may be provided by affiliation with a Regional Pediatric Center(s);

7. Immediate ability to provide primary and preventive care outpatient services;

8. Research capability and programs;

9. Ability to serve as a Statewide pediatric education resource center for both health care professionals and the public;

10. The specialty acute care children's hospital shall have a board structure and administration separate from that of any other health care facility, although it may be affiliated with or subsidiary to an existing board of trustees;

11. The specialty acute care children's hospital shall have an identifiable entrance separate from that of any other health care facility; and

12. The specialty acute care children's hospital shall provide parent/guardian accommodations.

8:100-14.16 Regional pediatric centers

(a) The Department shall designate nine to 11 Regional Pediatric Centers.

(b) Minimum criteria for designation as a Regional Pediatric Center include the following:

1. Licensed pediatric beds:

i. A minimum of 30 beds within two years of designation;

ii. A minimum average daily census of 23 within two years of designation;

iii. A minimum of 1500 annual admissions within two years of designation; and

iv. The ability to meet all licensing standards for inpatient pediatric beds;

2. A separately identifiable, designated pediatric intensive care unit with:

i. A minimum of six beds within two years of designation that do not include general pediatric beds;

ii. A minimum annual occupancy of 75 percent; and

iii. The ability to meet licensing standards;

3. Provision of neonatal intensive care services:

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i. Designation as a Regional Perinatal Center or Community Perinatal Center—Intensive; and

ii. Demonstrated compliance with applicable perinatal regulations;

4. A pediatric residency program approved by the Residency Review Committee of the American Council of Graduate Medical Education;

5. The provision of the following core services within two years of designation, in accordance with regional services plan approved by the Maternal and Child Health Consortia:

i. General pediatrics;

ii. Pediatric critical care;

iii. Anesthesiology;

iv. Neurology;

v. Otolaryngology;

vi. Orthopedic;

vii. Cardiology;

viii. Psychiatry and/or psychology;

ix. Radiology; and

x. Pathology;

6. Immediate availability of a pediatric trauma/prehospital care program, including:

i. A separate pediatric triage area in an existing emergency room;

ii. Specialized pediatric training for emergency room staff; and

iii. Participation in a regionwide referral and transport network;

7. Availability within two years of designation of specialized ambulatory care programs. The designated center must provide such programs from among the following:

i. Rehabilitation and communication evaluation and treatment;

ii. Sickle cell/hemoglobinopathics treatment;

iii. Hemophilia program and services; and

iv. Cleft lip/palate craniofacial anomalies services. These may be provided by affiliation with another Regional Center or Specialized Acute Care Children's Hospital; and

8. Immediate provision of primary and preventive care outpatient services;

8:100-14.17 Community Pediatric Centers

(a) The Department shall designate a minimum of 30, but not more than 40, Community Pediatric Centers.

(b) Criteria for designation as a Community Pediatric Center include, but are not limited to:

1. Licensed pediatric bed criteria:

i. A minimum of 20 beds. This may be waived for facilities determined by the Department to be geographically isolated or offering care to historically underserved populations;

ii. Demonstration that a minimum average daily census of 15 or an annual occupancy of 75 percent for units of 20 beds or more will be achieved within two years of designation; and

iii. Demonstration that a minimum annual occupancy of 60 percent for units of less than 20 beds will be achieved within two years of designation;

2. Written affiliation and transfer/referral agreement with a designated New Jersey Regional Pediatric Center at the time of designation; and

3. Immediate ability to provide primary and preventive care outpatient services.

8:100-14.18 Pediatric bed need

Pediatric bed need shall be in accordance with the methodology approved by the State Health Planning Board. The Department finds an excess of 300 pediatric beds will exist in 1994.

8:100-14.19 Maternal and Child Health Consortia—pediatric designations

(a) Certificate of need applications for the designation of Regional and Community Pediatric Centers, arranged by current perinatal region, may be filed by Maternal and Child Health Consortia as described below. However, based on their determination of regional need, geographic access, access to special populations and quality, the Consortia may recommend the retention of pediatric units that are recommended for elimination.

1. Northern Consortium (Bergen, Passaic, parts of Morris and Sussex Counties):

i. St. Joseph's Medical Center may apply for designation as a Regional Pediatric Center;

ii. Hackensack Medical Center may apply for designation as a Regional Pediatric Center;

iii. Englewood, Holy Name, Valley and Barnert Hospital(s) may apply for designation as Community Pediatric Centers;

iv. Hospitals located in the City of Passaic must participate in a LAB pediatric bed need study to determine which unit will remain as a Community Pediatric Center to best serve the access needs of the area; and

v. Pascack Valley shall eliminate its licensed pediatric unit.

2. Essex County Consortium (Essex and part of Union Counties):

i. Newark Beth Israel and St. Barnabas may apply for designation as Regional Pediatric Centers;

ii. Columbus, Hospital Center at Orange, St. James and St. Michael's may apply for designation as Community Pediatric Centers;

iii. Clara Maass, Mountainside and Rahway Hospital(s) shall eliminate licensed pediatric units; and

iv. Elizabeth General and Muhlenberg may apply for designation as Community Pediatric Centers.

3. Hudson County Consortium (Hudson County):

i. Jersey City Medical Center may apply for designation as a Regional Pediatric Center;

ii. Bayonne and Christ Hospitals may apply for designation as Community Pediatric Centers; and

iii. Meadowlands, St. Mary's and St. Francis Medical Center (Jersey City) shall eliminate licensed pediatric units.

4. Northwest Consortium (Morris, Sussex, Warren, part of Union Counties):

i. Morristown and Overlook Hospital may apply for designation as a joint Regional Pediatric Center;

ii. Newton and Warren Hospitals may apply for designation as a Community Pediatric Center; and

iii. Morris County hospitals must participate in a LAB pediatric bed need study to determine which hospital will be designated as a Community Pediatric Center to best serve the access needs of the area.

5. Central New Jersey Consortium (Middlesex, Mercer, Hunterdon, Somerset, part of Union Counties):

i. Robert Wood Johnson and St. Peter's Medical Centers may apply for designation as a joint Regional Pediatric Center;

ii. Mercer Medical Center may apply for designation as a Regional Pediatric Center;

iii. Hunterdon Medical Center, Somerset Medical Center, JFK-Edison, Raritan Bay, Princeton, and St. Francis may apply for designation as Community Pediatric Centers; and

iv. Helene Fuld shall eliminate its licensed pediatric units.

6. Monmouth/Ocean Counties (Monmouth and Ocean Counties):

i. Jersey Shore and Monmouth Medical Centers may apply for designation as a joint Regional Pediatric Center;

ii. CentraState Medical Center, Riverview Hospital, Community Medical Center, Kimball Medical Center, and Medical Center of Ocean County may apply for designation as Community Pediatric Centers; and

iii. Bayshore shall eliminate its licensed pediatric beds.

7. Southern Jersey Perinatal Cooperative (Burlington, Camden, Gloucester, Salem, Cumberland, Cape May and Atlantic Counties):

i. Atlantic City-City Division may apply for designation as a Regional Pediatric Center;

ii. Memorial Hospital of Burlington County, West Jersey-Eastern Division, Our Lady of Lourdes, Newcomb, Kessler, and Shore may apply for designation as Community Pediatric Centers; and

iii. Atlantic City-Mainland Division, Rancocas Valley, Kennedy-Stratford Division, Bridgeton, and Underwood shall eliminate licensed pediatric units.

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SUBCHAPTER 15. HIGH TECHNOLOGY SERVICES

8:100-15.1 High technology process development

(a) The Department of Health shall establish an orderly evaluation process for innovative, high-technology health care services and equipment, based on established criteria, that permits the analytical appraisal and initial limited diffusion of innovative equipment and/or services, prior to the further allocation of resources. Mechanisms shall include:

1. Establishment of a core clinical advisory group with representation from, at a minimum, the New Jersey Medical Society, The Biomedical Ethics Committee, the University of Medicine and Dentistry (UMDNJ), the New Jersey Hospital Association (NJHA), the New Jersey State Nurses Association (NJSNA), hospital clinical social worker, and home health professional, to advise the Department of Health;

2. Development of criteria that will be an elaboration of statewide demonstration project criteria contained in current certificate of need rules, along with the commitment of sufficient Department of Health resources to permit a meaningful evaluation of demonstration activities; and

3. The criteria developed by the core clinical advisory group will give preference for new technology demonstrations to the core teaching hospitals of the State medical school given compliance with all other criteria. These hospitals will assume the responsibility to share access to the technology for patient care, education, and research.

8:100-15.2 Magnetic Resonance Imaging (MRI) Services and Resource Allocation Policy

(a) A certificate of need application shall be submitted by all existing MRI services in the State seeking to replace their MRI equipment, regardless of whether the service currently has certificate-of-need approval.

(b) The Department of Health shall continue and expand a utilization and data-monitoring system for MRI services to assist in the evaluation of their statewide need.

(c) An appropriateness-review study of physician-investor and non-physician-investor MRI facilities shall be undertaken by the Department of Health to determine differential-use rates and variations in practice patterns.

8:100-15.3 Computerized Tomography (CT) Services and Resource Allocation Policy

Computerized Tomography (CT) services shall be deregulated through the repeal of the CT rules (N.J.A.C. 8:33G), because virtually every acute-care provider in the State now has access to these services either on-site or through a contractual arrangement with a CT vendor.

8:100-15.4 Transplantation Services and Resource Allocation Policy

(a) The Department of Health will strengthen its efforts to support the existing transplant services provided in New Jersey and to seek to improve organ donation and compliance with the State's assured option law.

(b) The Department of Health shall convene a transplantation task force of out-of-State and in-State experts to evaluate future State transplant service needs for both solid organ and bone marrow programs. This evaluative effort will include an examination of organ distribution rules and their impact on the in-State availability of organ transplant services to New Jersey residents. Priority consideration will be given to the review of kidney and bone marrow transplantation policy. The findings of this task force shall be used in future discussions of transplantation services in the State Health Plan.

(c) Consideration of new or expanded solid organ transplantation services shall await the recommendations of the transplantation task force established in (b) above.

(d) A certificate of need shall be required for all bone marrow transplantation services, regardless of type. Consideration of new or expanded bone marrow transplantation services shall await the recommendations of the transplantation task force established in (b) above.

(e) The current regulatory standards for minimum volume, staff credentials and experience, infection control, and quality assurance (see N.J.A.C. 8:33Q) shall be maintained by all existing New Jersey transplant centers, in order to ensure high-quality services.

(f) All New Jersey residents with a demonstrated medical need for nonexperimental transplantation services shall be ensured access to a qualified transplant center without regard to ability to pay, race, or any other non-medical factors.

(g) The Department of Health, with advice from the expert task force established in (b) above, shall develop financing mechanisms to pay for transplantation services performed out-of-state.

8:100-15.5 Extracorporeal Shock Wave Kidney and Biliary Lithotripsy (ESWL and ESWBL) Services and Resource Allocation Policy

(a) Additional kidney and biliary lithotripsy services in New Jersey are not needed at this time. Statewide need for kidney lithotripsy services has been met by the three existing providers and the potential need for biliary lithotripsy devices and services has been virtually eliminated by the widespread acceptance of the laparoscopic surgical procedure for gallstone removal (laparoscopic cholecystectomy).

(b) The Department shall establish a mechanism to monitor the quality and efficacy of care at approved Extracorporeal Shock-Wave Lithotripsy (ESWL) sites. Additional reporting requirements shall be established which include, but are not limited to, procedure failures, stone recurrence, and post-procedure infection data.

(c) The Department shall develop licensing standards for all ESWL sites, as well as for the other free-standing high-technology services discussed in this subchapter.

8:100-15.6 Interim Statewide Policies—Mobile High Technology Health Care Services

(a) The Department of Health shall develop certificate of need and licensing standards for all mobile high technology services, including new technology offered, or proposed to be offered, on a mobile basis. Until such standards are developed and promulgated, all applicants for a certificate of need for a mobile service that has been justified based on geographic isolation shall:

1. Provide documentation from the New Jersey Department of Transportation that the proposed mobile vehicle will be permitted on New Jersey roadways;

2. Describe how current fixed-site licensing requirements (for example, ambulatory care and/or hospital standards) or their equivalents will be maintained by the mobile service, and identify those that cannot be maintained demonstrating that this loss will not adversely affect quality of care;

3. Submit protocols for recalibration of equipment, including a listing of the equipment that requires recalibration, how often this will be done, and wherever possible, the manufacturer's recalibration recommendations;

4. Specify the infection-control protocols that will be employed for any invasive procedures and document how sterility will be consistently maintained in a mobile vehicle;

5. Submit proposed admission criteria for the mobile service proposed, as well as clinical criteria for exclusion;

6. Specify the protocols for addressing any emergency conditions that a patient may experience during the proposed procedure(s);

7. Submit a written Quality Assurance (QA) Plan that specifies the mechanisms for appropriate follow-up, quality assessments, responsible personnel for QA, etc.;

8. For applications accepted as "demonstration projects," submit an independently developed research protocol for evaluation of the proposed program, including, at a minimum, the data that will be collected and analyzed, frequency of data collection, norms against which the data will be evaluated, criteria for concluding that the demonstration program offers safe, effective, efficient, and affordable care, and the length of time necessary to demonstrate same; and

9. Document that the proposed service will be available to all who would benefit from it regardless of ability to pay.

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8:100-15.7 Positron Emission Tomography (PET) Scanning Services and Resource Allocation Policy

The core clinical advisory group, established in N.J.A.C. 8:100-15.1, shall develop demonstration parameters for Positron Emission Tomography (PET) scanning within one year of the effective date of this rule. No certificate of need applications for Positron Emission Tomography scanners will be accepted until the recommendations of this technical committee are adopted by the Health Care Administration Board, either as a separate new (PET) rule or as an amendment to the State Health Plan.

SUBCHAPTER 16. LONG TERM CARE

8:100-16.1 Purpose

The purpose of this subchapter is to foster a diverse but well coordinated array of high quality, affordable long-term care services which are readily accessible to those who need them. In so doing, the Department recognizes the long-term care population's heterogeneity: people's needs and preferences for care vary depending on the nature and degree of their functional impairments, availability of family and social supports, and so forth. The importance of consumer participation in decision-making about which services to use is underscored, along with the necessity of making information, assessment, case management, and referral resources available. The Department acknowledges the fact that most people would prefer to receive long-term care in their own homes; therefore, the expansion of home and community-based care is of the highest priority. As much as possible, long-term care should enable people to "age in place." When relocation cannot be avoided due to increasing debilitation, it should be to a homelike setting that affirms the individual's right to privacy, dignity, and a "normal" lifestyle, to the greatest extent possible.

8:100-16.2 Support services for family caregivers

(a) The Department shall enhance the ability of family caregivers to continue to care for their elderly or disabled relatives. Informal caregivers are a key component in the State's long term care system. Without the care provided by them, the State would be unable to meet the long term care needs of its residents through the existing formal system. It is essential that this valuable component of the long term care system be supported and enhanced through the expansion of community services. The Department of Health shall:

1. Expand respite care programs, such as the Respite Care (DHS) and Dementia Day Care Program (DOH). The Departments of Health and Human Services should investigate approaches that can be taken, including additional appropriations, to expand existing services to support family caregivers.

2. The Department of Health should expand the Caregiver Education and Support Program in the following ways:

i. Develop a curriculum for employed caregivers;

ii. Revise the caregiver manual;

iii. Develop a practicum for caregivers to gain hands-on experience in providing physical care safely; and

iv. Provide seminars for the facilitators to assist them in remaining current in their knowledge.

3. The Department of Health, in conjunction with the NJ Business and Industry Association, should develop seminars to educate and sensitize employers to the concerns of employees with caregiving responsibilities.

4. The Department of Health should encourage State legislation to:

i. Offer tax incentives to private industry to develop new financing sources for long term care, such as employee benefits, life insurance conversion options, grants, etc.; and

ii. Allow family caregivers to deduct expenses incurred in caring for an aged or disabled relative, as they are currently able to do for child day care.

8:100-16.3 Adult day care services

(a) The Department of Health, in conjunction with the Departments of Human Services and Community Affairs, should develop uniform third party payment rates for adult day health care and adult day care.

(b) The Department of Health should encourage the development of new adult day health care centers which target unserved and underserved populations, particularly those whose level of physical and/or mental impairments would necessitate nursing home placement without community supports. Adequate reimbursement must be provided to meet the staffing needs required appropriate to the level of care provided.

(c) The Department of Health, in conjunction with the Departments of Human Services and Community Affairs and the New Jersey Adult Day Care Association, should develop licensing standards for social day care centers and determine the appropriate licensing authority.

(d) The Department of Health, in conjunction with the Departments of Human Services and Community Affairs, should design a common data collection instrument for adult day care centers that would gather information on services provided, costs, volume of care, special populations served, licensure status, and staffing information.

8:100-16.4 In-home care services

(a) The Department of Health, in conjunction with the Departments of Human Services, Community Affairs, and Law and Public Safety, should design a common data collection instrument for home care services that would gather information on services provided, costs, volume of care, special populations served, licensure status, and staffing information.

(b) The Department of Health should extend NIRA grants to home care providers for programs involving registered nurse education and retention, expanded and innovative roles for home health nurses, and care for special populations.

(c) The Department of Health, in conjunction with the State Board of Nursing and the Department of Higher Education, should collaborate to develop a standardized core curriculum for the training of aides that will be complemented with specialized modules for home health, long term care, and hospital care.

(d) The Department of Health, in conjunction with the Departments of Human Services and Community Affairs, should encourage the development of uniform third party payment rates for comparable home care services.

(e) The Department of Health, in conjunction with the home care industry, should establish an advisory committee to investigate the extent of unmet need for home care services and to develop appropriate certificate of need requirements for home health agencies and other recommendations to improve access to high quality in-home care. The advisory committee should complete its deliberations and submit recommendations to the Commissioner of Health by June 30, 1993.

(f) The Department of Health, in conjunction with the Department of Human Services, should support the introduction of comprehensive legislation to further protect vulnerable adults from abuse and neglect.

(g) The Department of Health should conduct a study to determine the need for additional inpatient hospices and identify appropriate reimbursement mechanisms. Any additional in-patient need may be considered as an alternative use for acute care hospitals transitioning to non-acute facilities.

(h) The Department of Health should pursue legislation requiring all agencies providing home care services to meet minimum licensing standards for areas such as patient services, continuity of care, quality assurance, supervision, training of personnel, etc.

8:100-16.5 Assessment, screening, and targeting of long-term care services

(a) The Department of Health should expand the current Geriatric Assessment Program to assure access to this service to residents of all 21 counties in the State.

(b) Impartial pre-admission screening for long-term care services should be promoted by the Department of Health, to assure that people will receive an appropriate level of long-term care services. This assessment should be available regardless of an individual's payment source and should be offered conjunction with information about all available, suitable long-term care options.

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(c) To assure that long-term care placements are targeted to those in greatest need, the Departments of Health, Human Services, and Community Affairs should work collaboratively to develop well-defined prioritization criteria which may be applied uniformly throughout the State in determining eligibility for long-term care services. Those with the greatest immediate likelihood of being admitted to a nursing home should receive priority for admission to home and community-based programs such as the Community Care Program for the Elderly and Disabled (CCPED), provided that the person is otherwise eligible for and desirous of the program.

(d) The Department of Health, in conjunction with the Medical Society of New Jersey, New Jersey State Nurses Association, and other professional organizations, should design and offer continuing education on various geriatric issues for health care professionals to assure expertise in performing client assessments and pre-admission screenings for long-term care services.

8:100-16.6 Nutritional services

(a) The Department of Health should support additional funding for the Department of Community Affairs, Division on Aging, to enable them to expand home-delivered meals for the elderly.

(b) The Department of Health should increase the number of hospitals providing outpatient nutrition services, with an emphasis on minority and elderly populations.

(c) The Department of Health should mandate that nutrition be a core activity in "Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey," and identify an adequate funding base.

(d) A mechanism should be established to enable the public to identify qualified nutrition professionals who meet minimum standards for practice.

8:100-16.7 Mental health services

(a) The Departments of Health and Community Affairs should assist the Department of Human Services with an evaluation of the adequacy of community based mental health services in meeting the needs of the elderly.

(b) The Departments of Health and Community Affairs should assist the Department of Human Services in developing training programs for mental health professionals in gerontology and gerontological psychiatry to enable them to recognize the special needs of gero-psychiatric clients. Conversely, long term care and residential health care providers should be trained on managing residents who present behavior disorders.

(c) The Departments of Health and Community Affairs should assist the Department of Human Services in designing appropriate educational and informational programs for the elderly in order to reduce the stigma associated with mental health treatment and to increase access by elderly clients of mental health services.

8:100-16.8 Transportation services

The Departments of Health, Community Affairs and Human Services and New Jersey Transit should design a transportation survey to identify existing services, gaps, costs and recommendations for improvements.

8:100-16.9 Housing options for the frail elderly and disabled

(a) The Department of Health should assist the Department of Community Affairs in exploring ways in which housing adaptations/modifications, household repairs, housekeeping and chore and yard services can be provided to enable the chronically ill to live better and keep up their homes.

(b) The Departments of Health and Community Affairs and the New Jersey Housing and Mortgage Finance Agency should explore ways in which the equity in an older person's home can be used to pay for home care services.

8:100-16.10 Improved information and coordination of services

(a) The Commissioners of the Departments of Health, Human Services, and Community Affairs should develop a memorandum of understanding to facilitate improved coordination of services for the elderly and disabled.

(b) Long-term care consumers should have access to a single information source in each county which will enable them to make educated choices regarding all available care options in their area. To promote access to appropriate levels of care, one agency in each county should be designated by the Department of Health, in consultation with the Local Advisory Board, as the primary information and referral center for all long-term care options. The Local Advisory Board, in collaboration with the Department of Health and each county information and referral center, should develop, maintain, and disseminate a current directory of the area's various long-term care options and supportive services.

(c) The Department of Health should design a Statewide media campaign focusing on long term care options with family caregivers as the audience.

(d) The Department of Health, in conjunction with the Departments of Human Services and Community Affairs, should develop and disseminate a public awareness campaign explaining adult day care and home care services and how to access them.

(e) To advance the development of long-term care options and improve coordination of services, the Department of Health, in collaboration with the Departments of Human Services and Community Affairs, Local Advisory Boards, and county-based agencies should hold regular information sharing sessions.

8:100-16.11 Care options for the nursing home-eligible population

(a) New Jersey residents who are nursing home eligible by virtue of their functional impairments and needs for assistance should have access to a variety of care options, so that each person may choose the least restrictive, most affordable alternative which will result in a satisfying quality of life. The Department of Health shall encourage the creation, expansion, and/or appropriate utilization of the following long-term care options:

1. Alternate family care placements;
2. Assisted living residencies;
3. Community Care Program for the Elderly and Disabled placements;
4. Adult day health care placements;
5. Upgraded residential health care facilities, otherwise to be known as comprehensive personal care homes; and
6. Nursing home beds.

(b) The Department of Health, in collaboration with an advisory committee including participation by the Departments of Human Services and Community Affairs, consumers, and health and social service providers, shall formulate a transition/implementation plan to assure that new and expanded home and community-based care options become available in an expeditious manner, in accordance with the provisions of this subchapter. The transition/implementation plan shall allow reasonable time periods for the development of new or amended licensing standards and reimbursement mechanisms and the infrastructure which is necessary to assure a diverse but well coordinated system of long-term care options.

(c) The Department of Health should assure the orderly development of new long-term care services in areas of the State where there is an identified need. The need for long-term care placements of the types identified in (a)1 through 6 above shall be determined by a formula, projecting five years into the future for each county, as follows: 0.07 placements per 100 population age 20 to 64, plus 1.07 placements per 100 population age 65 to 74, plus 5.44 placements per 100 population age 75 to 84, plus 21.21 placements per 100 population age 85 and over.

1. In recognition of the uncertainty about when new and expanded alternatives to nursing home care will become available, the Department of Health shall assure the continued but controlled expansion of the nursing home bed supply in New Jersey. For the year 1992, the Department shall give consideration to the certificate of need approval of up to 9.2 nursing home beds per 100 population age 75 and over in each county, based on population projections for 1997.

2. The Department of Health shall use two benchmarks to determine whether the number of new nursing home beds to be approved should be increased in 1993: a State legislature appropriation of Medicaid funds for initiation of the options identified in (a)1 through 5 above beginning in 1994; and submission by the Department of Human Services of a Federal Medicaid waiver request for new home and community-based long term care services, or, if a

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waiver is not required, an amendment to the Medicaid State Plan. In the event that the State legislature has not appropriated funds and the Department of Human Services has not submitted a Medicaid waiver request to the U.S. Health Care Financing Administration (or, if a waiver is not required, the Medicaid State Plan has not been amended) by July 31, 1993, the Department of Health shall give consideration to the certificate of need approval of up to 10.0 nursing home beds per 100 population age 75 and over in each county, based on population projections for 1998. In the event that the aforementioned benchmarks are achieved, the Department shall give consideration to the certificate of need approval of up to 9.2 nursing home beds per 100 population age 75 and over in each county, based on population projections for 1998.

(d) A proposal indicating the desired mix of new long-term care placement options should be developed for each county, taking into consideration local circumstances and consumers' diverse preferences. In each county where there is a need for new long-term care placements in accordance with (c) above, the Local Advisory Board shall establish a public process whereby the placement mix proposal may be devised with participation by area consumers, advocacy groups, health and social service providers, and others with an interest in long-term care. The number of placements allocated to each option identified in (a)1 through 6 above shall be specified in the proposal.

(e) The Department of Health should periodically conduct surveys of nursing home-eligible individuals and their families in New Jersey to determine their awareness of, preference for, access to, and satisfaction with various long-term care options. This information should be used to guide the future planning and development of services.

8:100-16.12 Alternate family care

(a) The Department of Health shall encourage and promote the development of high quality, accessible alternate family care programs, to be utilized by individuals who would prefer this alternative to nursing home institutionalization.

(b) The Department of Health, in collaboration with an advisory group, shall develop the requisite policies, procedures, and criteria to effectuate programs of alternate family care throughout New Jersey.

1. The advisory group referenced in (b) above shall include representation by the Departments of Community Affairs and Human Services as well as consumers and provider agencies.

2. Issues to be addressed in developing guidelines for alternate family care programs shall include but not be limited to:

i. Appropriate patient selection;
ii. Family screening;
iii. Family training;
iv. Quality assurance;
v. Protection against patient abuse; and
vi. Program evaluation.

(c) The Department of Health, in collaboration with the Attorney General, shall identify and endeavor to resolve potential guardianship, liability, and nursing practice issues to assure that alternate caregiving families may be trained to meet the nursing needs of patients who are placed in their homes.

8:100-16.13 Assisted living residences

(a) The Department of Health shall encourage and promote the development of high quality, accessible assisted living residences to be utilized by frail and disabled individuals including those who would prefer this alternative to nursing home institutionalization, but excluding those who are vegetative or who require ongoing, technically complex nursing care and supervision.

(b) The Department of Health, in collaboration with an advisory group, shall give consideration to the benefits and limitations of developing licensing, construction, and planning standards for assisted living residences as a means of promoting the orderly expansion of this long-term care alternative.

(c) Assisted living residences are intended to offer a maximum amount of privacy and independence in homelike surroundings, while meeting residents' needs for long-term care. To be recognized by the Department of Health as an assisted living residence, the building shall at a minimum offer:

1. A private, unfurnished room or apartment for each occupant (unless double occupancy is requested by the resident). As an optional feature, kitchenettes in each room or apartment should be permitted;

2. A private bath in each room or apartment;

3. A lockable door to each room or apartment (occupant holds the key);

4. Congregate dining; and

5. Availability of 24 hour personal care assistance and health services which are provided to each occupant as needed.

(d) To promote access to assisted living for low income elderly and disabled adults, the Department of Health should explore the feasibility of making assisted living available in existing HUD-subsidized housing for the elderly and disabled.

8:100-16.14 Residential health care and similar facilities

(a) The Department of Health should develop an enhanced level of residential health care in facilities that have the capacity to offer more supervision and personal care services than are traditionally offered in residential health care facilities and Class C boarding homes. This new type of facility shall be referred to as a "comprehensive personal care home." The Department of Health should convene an advisory committee to develop licensing and reimbursement standards and to identify that segment of the nursing home eligible population which would benefit most from comprehensive personal care homes.

(b) To assure the orderly development of long-term care options, certificate of need approval shall be required for the conversion of existing residential health care facilities to upgraded, service-enriched facilities.

(c) The Departments of Health, Human Services, and Community Affairs should evaluate the current system of residential health care and Class C Boarding Homes, with the aim of eliminating duplicative oversight functions for these very similar indistinguishable levels of care. The possibility of consolidating residential health care facility and Class C Boarding Home licensing within the Department of Community Affairs should be consideed, insofar as it would not reduce the health maintenance and monitoring services and Supplemental Security Income payment for existing residential health care facility residents.

(d) The Department of Health should support legislative initiatives to increase the Supplemental Security Income subsidy for residential health care residents.

8:100-16.15 Continuing care retirement communities

(a) The Department of Health should recognize continuing care retirement communities (CCRCs) as a viable long-term care option. The minimum size requirements for CCRCs shall be eliminated, while maintaining a requirement for the construction of at least four independent living units for every one long-term care bed up to a maximum of 120 long-term care beds.

(b) Certificate of need applicants for new or expanding CCRCs shall document the potential demand for their projects by conducting and submitting a detailed marketing study.

8:100-16.16 Specialized long-term care services

(a) The Departments of Health and Human Services and Local Advisory Boards (LABs) should collaborate to develop strategies and criteria for improving access to long-term care services for persons requiring specialized long-term care. The circumstances under which specialized care should be regionalized should be identified.

(b) The Department of Health and LABs should annually conduct a survey to determine the number and characteristics of persons in each LAB region who need specialized long-term care services.

(c) As part of their long-term care placement mix proposal, counties shall identify and address the service needs of area residents requiring specialized care.

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8:100-16.17 Alzheimer's Disease and related dementias

(a) Eligibility criteria and licensing standards for community-based long-term care services, such as adult day health care, should be reviewed to assure accessibility for persons with dementia.

(b) The Department of Health should encourage research to determine the most cost-effective and efficient methods to care for persons with dementia.

(c) The Department of Health in collaboration with Local Advisory Boards should ensure that Alzheimer's Disease family support groups are available and accessible in all counties in the State.

(d) The Department of Health should develop and offer training for caregivers and professionals/paraprofessionals in community agencies and long-term care facilities on management of persons with dementia.

8:100-16.18 Comprehensive rehabilitation

(a) The Department of Health shall continue to conduct planning for rehabilitation hospitals in accordance with the provisions of N.J.A.C. 8:33M, the Rehabilitation Hospital Policy Manual for Certificate of Need Review. However, N.J.A.C. 8:33M shall be amended to include a new, LAB region-specific, patient-origin and age-based adult bed-need methodology.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Primary Care Physician/Dentist Loan Redemption Program

Proposed New Rules: N.J.A.C. 9:16-1

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:72D-1 et seq.

Proposal Number: PRN 1992-140.

Submit comments by May 6, 1992 to:
Brett E. Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Board of Higher Education is statutorily responsible for the administration of the Primary Care Physician/Dentist Loan Redemption Program in New Jersey. The purpose of the program is to increase and improve the provision of primary care health services in those areas of the State, primarily urban and rural, that are currently underserved. The proposed new rules set forth the terms and conditions of a new loan redemption program for New Jersey physicians and dentists in return for service as a physician or dentist in a medically underserved area of the State. The provisions cover eligibility requirements; application procedures; maximum loan amounts redeemable; and terms for redemption.

Social Impact

The purpose of the program is to increase and improve the provision of primary care health services in those areas of the State, primarily urban and rural, that are currently underserved. To encourage service in these areas and improve the primary care services offered to many New Jersey residents, the State will redeem on an annual basis a percentage of the educational loans of physicians and dentists.

Economic Impact

The proposed new program will assist physicians and dentists who agree to work in an underserved area for four years. Specifically, physicians and dentists in this program may redeem educational loans incurred up to a maximum of $70,000 per individual in return for service as a physician or dentist in an underserved area of the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rules do not impose 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. The proposed new rules set forth the criteria for a new Jersey resident to have educational loans redeemed in lieu of services as a physician or dentist in an underserved area of the State.

Full text of the proposed new rules follows:

CHAPTER 16
PRIMARY CARE PHYSICIAN AND DENTIST LOAN REDEMPTION PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

9:16-1.1 Purpose and scope

The purpose of this chapter is to prescribe rules and procedures for Primary Care Physician and Dentist Loan Redemption Program which is intended to promote access to primary care services in medically underserved areas of the State by improving the distribution of primary care health personnel.This program provides for the redemption of eligible student loan expenses of its participants in exchange for a specified period of service in such medically underserved areas.

9:16-1.2 Definitions

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

"Chancellor" means the Chancellor of the New Jersey Department of Higher Education or his or her designee.

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

"Eligible student loan expenses" means qualifying student loans, including interest paid or due on such loans, that a program participant has obtained to cover his or her cost of attendance at an institution of undergraduate medical or dental education.

"Medically underserved area" means an urban or rural area or population group within the State of New Jersey which has a medical or dental manpower shortage as determined by the Commissioner, or a public or not-for-profit private health care facility or other facility which is so designated. A list of medically underserved areas shall be specified annually by the Commissioner and published in the New Jersey Register prior to February 1.

"Primary care" for physicians means the practice of family medicine, general internal medicine, general pediatrics, general obstetrics, gynecology, and any other areas of medicine defined as such by the Commissioner of Health.

"Primary care" for dentists means the practice of general dentistry and pedodontics.

"Program" means Primary Care Physician and Dentist Loan Redemption Program.

"Qualifying student loans" means Federally Insured Student Loan (FISL), Stafford Loan, Perkins (formerly National Direct Student Loan—NDSL), PLUS (student), Supplemental Loan for Students (SLS), Health Professions Student Loan (HPSL), Health Education Assistance Loan (HEAL), New Jersey College Loans to Assist State Students (NJCLASS), other State loans, and other Federal loans.

"Resident of the State of New Jersey" means an individual who is living in the State with the intention of making his or her home here and not for a temporary purpose. Temporary absences from the State, with subsequent returns to the State or intent to return when the purpose of the absences has been accomplished, do not interrupt continuity of residence.

"Undergraduate medical or dental education" means the period of time between entry into medical or dental school and the award of the medical (M.D., D.O.) degree or dental (D.M.D., D.D.S.) degree respectively.

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SUBCHAPTER 2. PROGRAM REQUIREMENTS

9:16-2.1 Eligibility

(a) To be eligible for participation in the program, an applicant must:

1. Be a resident of the State of New Jersey;

2. Be licensed to practice in the State of New Jersey;

3. Secure an undergraduate medical/dental school faculty member's recommendation for program participation;

4. In the case of medical applicants, an applicant must:

i. Execute a contract with the Department of Higher Education, at the completion of residency training, which specifies, at a minimum, the length of service and total amount of debt to be redeemed in return for specified service rendered;

5. In the case of dental applicants, an applicant must:

i. Execute a contract with the Department of Higher Education, at the completion of dental undergraduate education or residency training if such training is required in a primary care specialty, which specified, at a minimum, the total amount of debt to be redeemed in return for specified service rendered;

6. Agree to practice primary care medicine or dentistry in a New Jersey underserved area as designated by the New Jersey Department of Health; and

7. Not be in default on any qualifying student loan.

9:16-2.2 Application and selection procedures

(a) The Chancellor shall annually determine the number of program positions available based upon the need for primary care physicians and dentists in medically underserved areas of the State and the availability of funding for the program.

(b) To receive consideration for participation in the program, an applicant must annually submit a completed program application to the Chancellor.

(c) Upon receipt of application materials, the Chancellor shall determine the eligibility of applicants in the order of priority defined in N.J.S.A. 18A:72D-1 et seq.

(d) The Chancellor, in consultation with the Commissioner, shall match eligible applicants to medically underserved areas based upon the Commissioner's ranking of such areas and applicant preference.

(e) Service in the designated area for a selected physician applicant must begin upon completion of his or her medical residency training. For a selected dental applicant, service in the designated area must begin upon completion of his or her undergraduate dental training or residency training if such training is required in a primary care specialty.

(f) Each selected applicant shall serve a six-month probationary period upon initial placement in a service site.

(g) At the completion of each applicant's probationary period, a medical or dental staff member at his or her designated site shall submit to the Chancellor a recommendation of either the continuation of the applicant's placement, a change of placement, or the applicant's unsuitability for the program.

1. If the recommendation is a change in placement, the Chancellor shall place the applicant in an alternate placement site.

2. If the recommendation is the applicant's unsuitability for the program, the Chancellor shall take such recommendation into consideration in determining the applicant's final acceptance into the program.

(h) Satisfactory completion of the probationary period shall constitute final acceptance as a program participant and entitle the participant to receive credit for the probation period in the calculation of his or her first full year of service.

(i) At the time an applicant is accepted as a program participant, the Chancellor will encumber those program funds necessary to provide for the redemption of the participant's eligible student loan expenses.

9:16-2.3 Terms of loan redemption

(a) Total maximum loan redemption under the program shall be the amount of each participant's eligible student loan expenses up to, but in no event exceeding, $70,000.

(b) After the successful completion of a six-month probationary period, during which time there are no redemption benefits, each participant's redemption credit shall be:

1. Fifteen percent of eligible student loan expenses for one full year of service, which shall include the probationary period;

2. An additional 20 percent for a second full year of service;

3. An additional 25 percent for a third full year of service; and,

4. An additional 40 percent for a fourth full year of service.

(c) In no event shall service for less than the full calendar year of each period of service entitle the participant to any redemption benefits for such period.

9:16-2.4 Procedure for loan redemption

(a) Upon completion of each full year of service, each program participant shall apply to the Chancellor for the earned amount of indebtedness redemption specified in his or her contract. At the time of application, the applicant shall submit to the Chancellor a Participation Performance Report, which shall include:

1. A certification, indicating that the participant, provided primary care services for a full year, attested to by the Chief Executive Officer or Director of the applicable service site and details of the satsifactory performance of the participant at the site.

(b) The Chancellor shall authorize payment to a participant for that portion of his or her indebtedness to be forgiven as specified in his or her contract. Checks shall be made payable jointly to the program participant and the lending institution designated by the participant to insure proper application of the payment to eligible indebtedness as defined in N.J.S.A. 18A:72D-1 et seq.

9:16-2.5 Cancellation of contract obligations and involuntary termination of service

(a) The Chancellor shall cancel a participant's contractual obligations if he or she determines:

1. On the basis of a sworn affidavit of a qualified physician that the participant is totally and permanently disabled;

2. On the basis of a death certificate or other evidence of death that is conclusive under state law that the participant has died; or

3. On the basis of substantiating documentation provided by the participant that continued enforcement of the service obligation may result in extreme hardship for the participant.

(b) The Chancellor may terminate a participant's service in the program when:

1. The participant is convicted of a felony or an act of gross negligence in the performance of his or her service obligations; or

2. The participant's license to practice medicine or dentistry is suspended or revoked.

9:16-2.6 Termination by participant prior to completion of contractual service requirements

A participant desiring to terminate program participation prior to the completion of the requirements of his or her loan redemption contract must notify the Chancellor, in writing, three months prior to his or her intended date of termination.

9:16-2.7 Reversion of unexpended funds

In the event that any or all funds encumbered for a particular participant are not paid due to the participant's failure to fulfill his or her contractual term of service or his or her involuntary termination of service, such funds will revert to the program fund and be available to enroll other participants.

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HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Assistance Standards Handbook

AFDC Income Limits; Assistance Payment Standards; AFDC-N Segment Payment Standard Equalization; AFDC Prospective Budgeting

Proposed Amendments: N.J.A.C. 10:82-1.6, 1.7, 2.1, 2.2, 2.3, 2.6, 2.7, 2.8, 2.9, 2.13, 2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.15 and 5.10

Proposed Repeals: N.J.A.C. 10:82-1.11, 2.11, 2.12, 4.5 and 5.11

Proposal Repeals and New Rules: N.J.A.C. 10:82-1.2 and 1.10

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3; P.L.1991, c.527. (New Jersey Assembly Bill No. 4704); Public Law 74-271 (Social Security Act) as amended by the Federal Omnibus Budget Reconciliation Act (OBRA) of 1990.

Proposal Number: PRN 1992-141.

A **public hearing** on the proposed rulemaking will be held Tuesday, April 21, 1992 at the following location and time:

10 Quakerbridge Plaza
Conference Rooms A and B
Quakerbridge Road
Trenton, New Jersey 08625
10:00 A.M.-4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey by telephone at (609) 588-2291 no later than noon April 17, 1992, and provide his or her name, organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until May 6, 1992 on these proposed rules to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments introduce three new concepts to New Jersey's Aid to Families with Dependent Children (AFDC) program. The first change introduces both a ratably reduced payment standard based on the recently adopted Standard of Need and a maximum payment standard. The second AFDC modification replaces the retrospective budgeting methodology and a monthly reporting process with a prospective system for calculating the assistance benefit. The final amendment equalizes the assistance payment standards for New Jersey's State-only funded segment, AFDC-N (two-parent households which do not meet Federal eligibility criteria for AFDC-C or -F segments) with the assistance payment standards for AFDC-C and -F.

The New Jersey Department of Human Services established through the rulemaking process, the Standard of Need for the Aid to Families with Dependent Children program. The adoption of the Standard of Need appeared in the January 6, 1992 issue of the New Jersey Register at 24 N.J.R. 101(a). The Standard of Need is the amount of money deemed sufficient to maintain a safe and decent life for families and is based upon the actual cost of basic necessities in the State. The Standard of Need is set forth at N.J.A.C. 10:82-1.1A and represents the monthly amount of need by family size.

The Standard of Need becomes operational on July 1, 1992.

The proposed amendments are necessary to comply with certain Federal mandates which are predicated on the State's Standard of Need. However, the State is not able to meet the need in full under the recently adjusted Standard of Need. Federal regulations require that a state's gross income limits test and its payment standard reflect its established Standard of Need. As such, the State may make ratable reductions in accordance with Federal regulations to its established Standard of Need to create assistance payment standards which are proportionately adjusted in relation to the updated Standard. Therefore, once the State's Standard of Need becomes operational (July 1, 1992), the payment standards must also be adjusted in relation to the Standard. Proposed amendments at N.J.A.C. 10:82-1.2(b), Schedule II, represent payment standards which are a ratable reduction of 45 percent of the State's Standard of Need, based on family size. In determining the amount of the assistance payment for the family, countable earned and unearned income is subtracted from this payment standard. In general, the current levels remain as the maximum payment standards for families with no other countable income sources (see N.J.A.C. 10:82-1.2(b), Schedule III). The setting of maximum payment levels is Federally permissible.

The implementation of the Standard of Need will also affect another aspect of the Federal AFDC provisions, namely, the lump sum receipt of nonrecurring income sources for AFDC purposes. Lump sum receipts include payments from other countable assistance program sources and payments in the nature of a windfall such as inheritances or lottery winnings, and compensation awards to the extent that those monies are not used to pay back medical bills, funeral and burial costs, or replacement or repair of lost resources for which the award was originally intended. Currently, lump sum receipts are divided by the needs allowance standard to determine the months of ineligibility for AFDC benefits; with the Standard of Need operational in July, 1992, the Federal requirements use the Standard of Need as the divisor in this determination process.

The equalization of the AFDC-N segment payment standards to those of the Federally funded AFDC-C and -F segments of the program occurs as a result of the recently enacted welfare reform measure of the Legislature in P.L.1991, c.527 (January 21, 1992). Proposed amendments align assistance benefit levels for AFDC-N families to those benefits received by AFDC-C and -F families and standardizes the procedures utilized in the eligibility and benefit determination process with those Federally funded segments. All costs of this initiative are solely State funds.

Prospective budgeting proposed amendments establish a "best estimate" approach in the determination of countable income sources received by an applicant/recipient family for a month, which is then used in the determination of eligibility and of the assistance benefit. This new approach replaces the retrospective budgeting process which is affiliated with monthly reporting requirements under Federal provisions. Recent modifications to the Social Security Act as a result of the Omnibus Budget Reconciliation Act of 1990, grant states the option to determine the budgeting methodology in the AFDC program. In consultation with the counties, this Department's Division of Economic Assistance chose the alternative "best estimate" or prospective process. A four-week period of time prior to the application/reapplication or report of a change in circumstances is used in this method to examine significant changes which will affect the family's financial and non-financial situation. Eligibility and the assistance benefit are based on these projected circumstances until the next reported significant change in circumstances or redetermination, whichever occurs first. Circumstances which meet the definition of "significant" changes are delineated in the proposed amendments.

Current text at N.J.A.C. 10:82-1.2(a), (b), (c) and (d) allows for different income levels and assistance payment standards for individuals eligible for public assistance under AFDC-C and -F segments than the income levels and payment standards for individuals eligible for public assistance under the AFDC-N segment. The State-funded AFDC-N segment benefit levels are currently one-third less dollars than Federally matched AFDC-C and -F benefit levels. This section, N.J.A.C. 10:81-1.2, is being repealed and replaced with new rule text to include new income limits and new public assistance payment standards. N.J.A.C. 10:82-1.2(a) includes much of the language deleted at N.J.A.C. 10:82-1.2(d). Since the maximum income limits test is the first step in the family's eligibility determination, it also appears first in the income limits and assistance payment standards section of the proposed rule. Also included is a new Schedule I, Maximum Income Levels, which represents 185 percent of the State's new Standard of Need (N.J.A.C. 10:82-1.1A) and replaces the current Schedule III.

The current public assistance allowance standards, Schedules I and II, at N.J.A.C. 10:82-1.2(c), are being replaced with new assistance payment Schedules II and III, which raise the State-funded AFDC-N segment assistance payments to the level of the Federally funded

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AFDC-C and -F segements and which incorporate a ratable reduction of 45 percent of the Standard of Need in Schedule II payment standards, absent State funding to meet the Standard of Need on a more recipient beneficial level.

N.J.A.C. 10:82-1.2(c) through (g) explain the methodology used in determining eligibility and assistance payments based on the new payment standards in Schedules II and III.

Countable income sources, both earned and unearned, shall be deducted from Schedule II payment standards. Once income is deducted, the remainder is compared to the maximum payment standard in Schedule III. The assistance payment is the lesser of the two amounts.

Schedule III maximum payment standards are utilized when the family has no other countable income. Such payments are the maximum benefit amounts payable.

The one instance which entails special attention in the eligibility and benefit determination process concerns receipt by the family of unemployment insurance compensation (UIB). Such benefits shall be deducted last in the calculation. If the family has no other countable income and the beneficiary is any member of the eligible family with the exception of the principal earner, then the UIB is deducted from Schedule II. By Federal regulations, UIB received by the principal earner shall be deducted last from the assistance payment for the family, and since the family is entitled in such occurrences (when other countable income is not available to the eligible family) to the **maximum** payment standard for the family size, the UIB is subtracted from Schedule III payment standards.

Language at N.J.A.C. 10:82-1.6 and 1.7 is deleted and revised to include AFDC-N segment equally in computations as used presently for AFDC-C and -F segment cases. Since AFDC-N segment families are entitled to equal payment standards as AFDC-C and -F segment families, all related computations have also been standardized to compensate for the increase in the payment standards.

With the elimination of monthly reporting/retrospective budgeting requirements, current text at N.J.A.C. 10:82-1.10 and 1.11, concerning the retrospective budgeting and monthly reporting process, is deleted in its entirety. New text is presented at N.J.A.C. 10:82-1.10 with a detailed explanation of the prospective budgeting process.

N.J.A.C. 10:82-1.10(a) stipulates that AFDC eligibility and assistance payments are determined using prospective budgeting methodology. This policy is also applicable to AFDC-related Medicaid.

N.J.A.C. 10:82-1.10(b) describes the "best estimate" concept and that this determination is based on the family's and the agency's reasonable expectation of circumstances that will continue concerning the family's nonfinancial and financial status until the next reported significant change or eligibility determination.

N.J.A.C. 10:82-1.10(b)1, 2 and 3 delineate the time frame for obtaining wage or income information used in determining the "best estimate" calculation for eligibility and benefits. Conversion factors utilized in the process to obtain a best estimate of gross monthly income of the family are also prescribed.

Significant changes encompassing both income and family circumstanes are defined at N.J.A.C. 10:82-1.10(c). Under the prospective process, significant changes of a continuous nature are reviewed and action must be taken on such changes concerning eligibility or the assistance benefit. Likewise, non-significant changes are defined at N.J.A.C. 10:82-1.10(d).

N.J.A.C. 10:82-1.10(e) delineates the best estimate process as action steps.

N.J.A.C. 10:82-1.10(f) indicates when recalculations of the best estimate occur.

Certain references have been deleted at N.J.A.C. 10:82-2.1 and 2.2 because the proposed amendments render those references obsolete.

At N.J.A.C. 10:82-2.3, 2.6, 2.7, 2.8 and 2.9, language is added to include equalization of the AFDC-N segment with AFDC-C and -F segment discussions concerning available income to the eligibile unit, initial eligibility determination and procedures for determining calculated earned income for all three segments and any references to the new ratably reduced payment standards in Schedule II or the Standard of Need. In addition, language at N.J.A.C. 10:82-2.7 has been revised to clarify initial eligibility procedures for all three segments, AFDC-C, -F and -N.

N.J.A.C. 10:82-2.11 and 2.12 are repealed since those sections are concerned with differential treatment in determining initial eligibility and calculating earned income for AFDC-N segment eligible individuals, who are now addressed under N.J.A.C. 10:82-2.3, 2.6, 2.7, 2.8 and 2.9, along with the AFDC-C and -F segments.

Current provisions at N.J.A.C. 10:82-2.13 are concerned with calculation of earned and unearned income and assistance payments for AFDC companion cases, that is, eligible units which are a combination of some individuals who are eligible for AFDC-C and other individuals who are eligible for AFDC-F or AFDC-N. Language has been aligned to equalize the AFDC-N segment with AFDC-C and -F segment procedures in calculating such cases. The per capita assistance payment tables and maximum income level tables have now been deleted because they are no longer relevant in that there is equalization in payment among the three segments AFDC-C, -F and -N. References have been added to indicate use of appropriate income limit and assistance payment schedules, as well as correct procedures in calculating those income and benefit standards.

The proposed amendments at N.J.A.C. 10:82-2.14(a), (b) and (c) delete language which is no longer applicable in determining monthly earned income for the purpose of establishing the amount of assistance. That methodology is now located at N.J.A.C. 10:82-1.2.

Language is deleted at N.J.A.C. 10:82-2.19 and 2.20, referring to procedures under the monthly reporting system, when a change in circumstances of the eligible unit may result in an adjustment in the amount of the assistance payment. New text is inserted to stipulate that the adjustment must be effective no later than the first day of the month following the month in which a significant change in circumstance occurred.

N.J.A.C. 10:82-3.13 is revised to delete reference to use of Schedule I and to replace that reference with the Standard of Need, for use in determining calculations concerned with deeming of an alien sponsor's income.

N.J.A.C. 10:82-3.14 is amended to delete reference to use of Schedule I and to replace that reference the Standard of Need for use in determining calculations concerned with deeming of income of parents of adolescent parents. The work expense disregard has also been raised from $75.00 to $90.00 in accordance with Federal revisions.

N.J.A.C. 10:82-4.4 includes the AFDC-N segment in text concerning application of the earned income disregard for individuals eligible for assistance under the AFDC-C and -F segments. Text at N.J.A.C. 10:82-4.4(e)3 has been deleted because the proposed amendments eliminating the monthly reporting/retrospective budgeting requirements render the paragraph's provisions obsolete.

N.J.A.C. 10:82-4.5 is repealed since it contains language pertaining to application of the disregard of earned income in AFDC-N segment cases, which is now incorporated into N.J.A.C. 10:82-4.4 with AFDC-C and -F recipients.

N.J.A.C. 10:82-4.15 is concerned with treatment of an AFDC eligible family's receipt of nonrecurring earned or unearned lump sum income. Terminology has been changed to read "Standard of Need" where appropriate throughout the text in place of the former allowance standard terminology.

N.J.A.C. 10:82-5.10 reflects the proper income levels and payment standards tables to use in situations pertaining to emergency assistance as a result of the implementation of the Standard of Need and the resulting new payment standard Schedules II and III.

N.J.A.C. 10:82-5.11 is repealed since it addresses supplemental assistance payments resulting from the retrospective budgeting process.

Social Impact

The proposed amendments concerning the equalization of the AFDC-N segment to the payment standards of the Federally funded AFDC-C and -F segments of the program should have a positive impact on those recipient families. The percent of increase in the benefit standards in consideration of the new increases to the payment standard levels based on the Standard of Need for those families, averages a 50 percent increase in the payment standards over the previous levels. Working recipient families will have the added advantage of the Federal earned income disregards which permit a deduction of $90.00 as the standard deduction for work expenses. This disregard alone is an increase over the former State deduction of $60.00 and is supplemented by the additional $30.00 and one-third deductions. The equalization of the AFDC-N segment will affect approximately 9,800 families Statewide in State fiscal year (SFY) 1993.

Additionally, the revised payment standards based on the Standard of Need provide for a higher base from which to deduct countable income for all working families. These new standards will impact adverse-

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ly on families with seven or more members, as discussed more fully in the Economic Impact Statement.

With the implementation of the Standard of Need, the lump sum receipt of nonrecurring income by AFDC families will impact on such recipient families. The most recent recidivism report covering the period from June 1990 to June 1991 indicates that approximately 270 AFDC cases were in receipt of nonrecurring income which resulted in the loss of AFDC eligibility. The period of ineligibility was roughly a period of 10 months. That period of time of ineligibility should be reduced by one-half with the use of the Standard of Need in such calculations.

Economic Impact

The new welfare reform measure to equalize the AFDC-N segment benefit level will yield an annual increase in total expenditures for those families at the new payment standard levels of $4,626,000. The State's portion of those costs is approximately $4,394,800 and the county share is approximately $231,300. An estimated 11,550 persons will be served through these monies.

The impact of the lump sum provisions increases AFDC costs by approximately $475,000.

The revised payment standards based on the Standard of Need provide for a higher base from which to deduct countable income for all working families. These new standards will have an adverse economic impact of a benefit reduction on families with seven or more members. By basing the payment standard on the established Standard of Need in accordance with Federal requirements, the payment standards in Schedule II reach a cost-neutral level at family sizes of seven members. This fact results in a benefit reduction from current assistance payment standards for families of seven or more members. About 1.4 percent of the AFDC caseload or approximately 1,760 families will be affected.

The proposed ratable reduction procedure and grant level determination methodology is expected to be cost-neutral.

Regulatory Flexibility Statement

The proposed amendments, new rules and repeals have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments, new rules and repeals impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Aid to Families with Dependent Children program to a low-income population by a governmental agency rather than a private business establishment.

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

[10:82-1.2 Schedules of allowance

(a) The public assistant allowance is the standard amount established for each eligible unit. The allowance is determined according to the number of persons in the eligible unit, as identified in N.J.A.C. 10:82-1.3.

(b) The AFDC program is composed of three segments. Allowance standards for persons eligible under the AFDC-C and AFDC-F segments appear in Schedule I. Allowance standards for persons eligible under the AFDC-N segment appear in Schedule II. Standards in Schedule II are set by state statute at 66-2/3 percent of the AFDC-C and -F standards.

(c) Public Assistance Allowance Standards AFDC Program.

Schedule I AFDC-C AFDC-F	Number in Eligible Unit	Schedule II AFDC-N
$162	1	$108
322	2	215
424	3	283
488	4	325
552	5	368
616	6	411
680	7	453
744	8	496
808	9	539
872	10	581
Add $64 each person	more than 10	Add $43 each person

(d) AFDC eligibility shall not exist for any month if the total income of the eligible unit exceeds the amount indicated in Schedule III for the appropriate eligible unit size and program segment. For this purpose, total income shall include all income of the eligible unit (without benefit of the disregards in N.J.A.C. 10:82-4.4 or 4.5) including the income of stepparents and alien sponsors determined available to the eligible unit in N.J.A.C. 10:82-2.9 and 3.13. Total income includes the earned income of the AFDC children except for earnings disregarded by provisions of N.J.A.C. 10:82-4.7(g). Child support payments, except for the first $50.00 monthly current child support received on behalf of the eligible unit, whether received directly by the household or collected through the CSP process, shall be counted in the determination of total income. See N.J.A.C. 10:82-2.13(f) for companion cases.

1. The AFDC grant shall not be considered as income for this purpose.

2. Funds exempted under N.J.A.C. 10:82-1.7 and 3.2(b)6 through 10 and monies disregarded under N.J.A.C. 10:82-4.6 shall not be considered income for this purpose.

Schedule III
Maximum Income Levels

Schedule I AFDC-C AFDC-F	Number in Eligible Unit	Schedule II AFDC-N
$ 300	1	$ 200
596	2	398
784	3	524
903	4	601
1021	5	681
1140	6	760
1258	7	838
1376	8	918
1495	9	997
1613	10	1075
Add $118 each person	More than 10	Add $80 each person]

10:82-1.2 Income limits and assistance payment standards

(a) AFDC eligibility shall not exist for any month if the total income of the eligible unit exceeds the amount indicated in Schedule I for the appropriate eligible unit size. For this purpose, total income shall include all income of the eligible unit (without benefit of the disregards in N.J.A.C. 10:82-4.4 or 4.5) including the income of stepparents and alien sponsors determined available to the eligible unit in N.J.A.C. 10:82-2.9 and 3.13. Total income includes the earned income of AFDC children except for earnings disregarded by provisions of N.J.A.C. 10:82-4.7(g). Child support payments, except for the first $50.00 monthly current child support received on behalf of the eligible unit, whether received directly by the household or collected through the Child Support and Paternity (CSP) process, shall be counted in the determination of total income. See N.J.A.C. 10:82-2.13(f) for companion cases.

1. The AFDC grant shall not be considered as income for this purpose.

2. Funds exempted under N.J.A.C. 10:82-1.7 and 3.2(b)6 through 10 and monies disregarded under N.J.A.C. 10:82-4.6 shall not be considered income for this purpose.

3. Schedule I represents 185 percent of the State's Standard of Need set forth in N.J.A.C. 10:82-1.1A.

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Schedule I
Maximum Income Levels

AFDC-C, -F and -N	Number in Eligible Unit
$ 758	1
1,515	2
1,822	3
2,085	4
2,331	5
2,564	6
2,784	7
2,991	8
Add $207 each additional person	More than 8

(b) AFDC assistance payment standards are set forth in Schedules II and III below. The payment standards are established for the eligible family unit according to the number of persons in the eligible unit.

Payment Standards

Schedule II AFDC-C -F, and -N	Number in Eligible Unit	Schedule III Maximum Payment AFDC-C, -F and -N
$185	1	162
369	2	322
443	3	424
507	4	488
567	5	552
624	6	616
677	7	677
728	8	728
Add $50.00 each additional person	More than 8	Add $50.00 each additional person

(c) Countable income sources (both earned or unearned) of an eligible family shall be subtracted from the payment standard for the eligible family size set forth in Schedule II. However, unemployment insurance benefits as a source of income shall be handled as delineated in (g) below.

1. Schedule II payment standards represent a ratable reduction of 45 percent of the State's Standard of Need set forth at N.J.A.C. 10:82-1.1A for the eligible family unit size.

(d) The payment standards in Schedule III are maximum payment standards based on family size. Schedule III maximum payment standards are a function of available funding.

(e) When an eligible family has no other countable income source for AFDC purposes, Schedule III payment standards are used to determine the assistance benefit for the eligible family members.

(f) After the subtraction of countable income from the Schedule II payment standard, the income maintenance worker shall compare the remainder after subtraction to the maximum payment standard for the eligible unit size in Schedule III. The eligible family shall receive an assistance payment which is the lesser of the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size.

(g) Unemployment insurance compensation benefits (UIB) are subtracted last in all assistance payment determinations.

1. If the eligible family has other countable income, the UIB benefits of any member of the eligible family, including the principal earner, shall be deducted from the lesser of either the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size, as the last step in the determination of the monthly assistance payment.

2. If the eligible family has no other countable income except for UIB, and the principal earner is the UIB beneficiary, then the UIB is deducted from the Schedule III payment standard for the eligible family size. The remaining amount after subtraction of the UIB is the family's monthly assistance payment.

3. If the eligible family has no other countable income except for UIB and the UIB beneficiary is any other member of the eligible family except for the principal wage earner, then the UIB is deducted, as any other unearned income, from Schedule II. The assistance payment is the lesser of the remainder after subtraction from Schedule II or the Schedule III maximum payment amount for the eligible family size.

10:82-1.6 Eligible person temporarily in an institution

(a) A member of the eligible unit who is temporarily in an institution in accordance with N.J.A.C. 10:81-3.33 shall continue to be regarded as an eligible member of that unit.

1. When the absence of an -N segment parent will continue for [80] **30** days or longer, the remaining members of the family may be eligible for AFDC-C.

(b) In situation where such institutional care continues for a period of [80] **30** days or more (disregarding any interruptions for "visits home" by the day or weekend), an adjustment to accommodate to this absence must be made in the computation of the family's assistance grant. For this purpose, enter as "other income" on the PA-3A form: **$25.00 in AFDC-C, -F and -N cases.**

[1. $25.00 in AFDC-C and -F cases;

2. $17.00 in AFDC-N cases.]

10:82-1.7 Eligible AFDC child regularly attending school or in vocational training at a Residential Job Corps Center

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

(e) If the student is in fact living apart from the eligible unit and is receiving all expenses for room and board from other sources, an adjustment to accommodate for this absence must be made in computing the family's grant. For this purpose, the amount of $25.00 per month for AFDC-C, [and] -F **and -N** children [or the amount of $17.00 per month for AFDC-N children] shall be entered as "other income" on the PA-3A form.

[10:82-1.10 Retrospective budgeting

(a) Eligibility and the amount of the assistance payment for all AFDC applicants and recipients must be determined using retrospective budgeting policy (see N.J.A.C. 10:90).

1. Retrospective budgeting policy shall be applied to recipients of Medicaid benefits, including AFDC-related Medicaid Only and Medicaid Special.

(b) Definitions: The following terms used in retrospective budgeting policy are defined in accordance with N.J.A.C. 10:90.

1. Prospective budgeting: Eligibility is determined (and the amount of assistance is computed for the first two months) based on the CWA's best estimate of income and circumstances which will exist in a month. This estimate shall be based on the CWA's reasonable expectation of current, past, or future circumstances.

2. Retrospective budgeting: The amount of assistance for a payment month is computed based on actual income or circumstances which existed in a previous month.

3. Budget month: The fiscal or calendar month from which income or circumstances of the eligible unit shall be used in computing the amount of the assistance payment.

4. Payment month: The fiscal or calendar month for which the CWA shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month is the second month after the budget month.

5. Processing month: In retrospective budgeting, the fiscal or calendar month between the budget month and payment month during which the eligible unit reports to the CWA income and circumstances for the budget month (and any other changes) and the CWA acts on the reported information to compute the assistance payment for the payment month.

6. Retrospective budgeting cycle: The retrospective budgeting cycle consists of three consecutive months: the budget month, processing month and payment month. In the retrospective budgeting cycle, income and circumstances existing in a budget month are reported by the eligible unit and acted upon by the CWA in the

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processing month to determine eligibility and compute the assistance payment for the payment month.]

10:82-1.10 Prospective budgeting

(a) Eligibility and the amount of the assistance payment for all AFDC applicants and recipients shall be determined using prospective budgeting methodology.

1. Prospective budgeting policy shall be applied to recipients of Medicaid benefits, including AFDC-related Medicaid and Medicaid Special.

(b) AFDC eligibility and benefit calculations shall be based on a best estimate of the family's income and other circumstances that will exist until the next reported significant change in circumstance or redetermination, whichever is first. The best estimate of income is based on the family's and the agency's reasonable expectations and knowledge of current, past, and future circumstances. In determining the best estimate of income, the CWA shall use income averaging and the concept of "significant and non-significant" income and circumstance changes. Verification of the income used must be clearly documented in the case record.

1. For purposes of determining the family's eligibility and benefits, the CWA shall determine earnings by obtaining wage information for the four consecutive week period immediately preceding the date of application, redetermination, or change in circumstance. Likewise, all unearned income received within this four week period is also determined. All earned and unearned income received within this four week period must be verified and documented in the case record, even if all four weeks of income are not ultimately used to calculate the best estimate.

2. In order to maintain consistency in policy application between the AFDC and Food Stamp (FS) programs, the CWA shall utilize the same income estimate for both the AFDC application/redetermination period and the Food Stamp application/recertification period, whenever possible. Therefore, in those public assistance (PA)/FS cases where the Food Stamp calculation encompasses a five-paycheck (or a three paycheck month for bi-weekly income) month, CWAs are authorized to use that same estimate for AFDC if it is also representative for AFDC best estimate purposes. Documentation of the best estimate determination must be in the case record.

3. The payment schedule of receipt of income by an AFDC individual occurs weekly, biweekly, or on a semi-monthly basis. The CWA shall convert the average income amount to a gross monthly amount by multiplying the averaged income amount by the appropriate conversion factor as follows: weekly amounts by 4.333; biweekly amounts by 2.167; and semi-monthly amounts by two.

(c) Significant income and circumstance changes are defined as changes in sources or amounts of earned or unearned income or changes to the eligible unit size which are expected to continue into the future. Examples of significant changes include, but are not limited to: starting a new job or gaining a new source of unearned income; losing a job or a source of unearned income; permanent or long term changes in hours worked and/or rate of pay; permanent or long term changes in unearned income; changing from part-time to full-time employment (or vice versa); promotion or demotion; beginning to work piece work or regular overtime (or vice versa); changing employers; short term plant closings (such as one or more weeks) or periods of sick leave without compensation (more than one day); or addition of or loss of an eligible family member.

1. The CWA shall use information about past significant changes of a continuous nature in estimating future income. The date of an anticipated significant income/circumstance change may be used to schedule a desk review to coincide with the expected date of the change, in order to recalculate the best estimate of income.

2. Families shall be required to report all significant changes in income and circumstances that could affect eligibility and grant amount as soon as possible, but in no event later than 10 calendar days of the date the change happened. The CWA shall initiate appropriate action on the reported change within 10 calendar days of receiving the report of the change, subject to timely and/or adequate notice requirements.

(d) Non-significant income/circumstance changes are defined as temporary, very short term variations in the earned or unearned income amount of eligible unit size caused by a situation which is not of an ongoing nature, or which is of a variable nature. Examples include, but are not limited to: fluctuations in wages due to ongoing (reported) earnings from piece work; occasional changes in wages due to very irregular overtime; or an occasional unpaid day off.

(e) The following procedures are to be followed in determining the best estimate of income.

1. Verification through wage stubs or documentation from the employer, of income received within the specified timeframe in (b) above. All earned and unearned income received within this four week period must be verified and documented in the case record even if all four weeks of income are not ultimately used to calculate the best estimate.

2. Determination, through a review of the income documentation and discussion with the family, if there have been any significant changes during that period. If a significant change has occurred and the change is of a continuous nature, the change must be documented and taken into consideration when determining the best estimate. For example, if a family has received an increase in hourly rate, the new hourly rate must be multiplied by the appropriate number of hours (either stable or averaged) to determine anticipated income.

3. Determination if any significant changes are expected in the future. If a significant change is expected and the exact nature of the change is known, the CWA shall use the information in determining the best estimate of income and shall require that the family provide the required verification subsequent to the change to determine if the best estimate was correct or needs to be recalculated. If the exact nature of the anticipated change is not known, then a desk review can be scheduled to coincide with the expected date of change and/or the client advised to report the change within 10 days of the date of change.

4. Determination, through review of the documentation, the case record and discussion with the client, if any of the income received is not expected to be representative of the future. For instance, the first pay check of new employment may not represent a full-pay period; a missing week's income may represent a summer plant closing; or a larger check may represent nonrecurring overtime, all of which may not be anticipated to occur in the future. Non-representative income (or lack of income) shall not be used in calculating the best estimate. The case record must be clearly documented to explain why any income was not used, and to show how the best estimate was calculated. For example, the family receives regular weekly income but is missing one week's pay due to a plant closing for that week only. The three available amounts would be averaged to determine average weekly income and that average converted to monthly gross income as described in (b)2 above.

5. If income fluctuates (that is, is not exactly the same each time received and/or is not received on a regular schedule) to the extent that a four-week period is not expected to provide the best estimate of income until the next redetermination, the CWA shall require the family to submit verified wage information for those months subsequent to the month of review, in order that the CWA may recalculate the best estimate. When income fluctuates dramatically, the CWAs shall rebudget the case as often as deemed necessary to ensure the most accurate best estimate and correct assistance payment.

i. When four consecutive weeks of income fluctuate but are representative of the family's anticipated fluctuation in income for future months, the CWA shall average the income from the four-week period and project that gross income estimate for future months, taking into account any anticipated significant changes.

6. The final step shall be to average the income that has been determined to be representative of the eligible family's circumstances and to convert that average to a gross monthly income "best estimate" amount by using the conversion factors set forth in (b)2 above. The best estimate amount shall then be used to determine eligibility until the next redetermination or report of a significant change.

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(f) If there are no significant changes in circumstances, a new best estimate of income shall, at a minimum, be completed at the time of the next redetermination of eligibility.

1. When non-significant changes are reported, it shall not be necessary to redetermine eligibility immediately. Non-significant changes shall, however, be taken into consideration when determining the best estimate of income at the next regularly scheduled redetermination. When such changes are reported, the case record must be clearly documented to show that the change was non-significant.

2. A significant change in circumstances of the eligible family may result in an adjustment upward or downward in the amount of the assistance payment. Unless (i) below applies, the adjustment must be effective no later than the first day of the month following the month in which the significant change in circumstance occurred, or 10 business days after the change is reported to the CWA, whichever is later. Downward adjustments shall be subject to timely and adequate notice.

i. Under certain circumstances which in the judgment of the CWA would otherwise result in undue hardship to the eligible family, a supplemental payment to the last regular benefit payment shall be issued during the current payment period for the reasons stated at N.J.A.C. 10:82-2.20.

ii. Any supplemental payment to an eligible family for the reason of undue hardship shall be subject to proration based on the date of the change.

10:82-1.11 [Monthly reporting] **(Reserved)**

[(a) Under the monthly reporting system, certain AFDC eligible families are required to report their income and circumstances and any expected changes in income and circumstances to the CWA every month by submitting a complete Monthly Status Report (MSR) form. The information reported on the MSR for a budget month is used by the CWA in the processing month to determine eligibility and compute the assistance payment the corresponding month (see N.J.A.C. 10:90).

1. Eligible families receiving Medicaid Only and Medicaid Special are not subject to monthly reporting under the AFDC program. However, AFDC eligible families who do not receive an assistance payment due to the $10.00 limitation are subject to monthly reporting.]

10:82-2.1 Form PA-3A or Form 105

(a) (No change.)

(b) Form PA-3A shall be completed in the following order:

1. (No change.)

2. Part VI: For all new applications, Part VI, Determination of Initial Eligibility, must be completed first, in accordance with N.J.A.C. 10:82-2.7 [and 2.11].

3. Part V: When one or more members of the eligible unit have earned income [N.J.A.C. 10:82-4.2 through 4.9)], compute the calculated earned income in Part V. See N.J.A.C. 10:82-2.8 [and 2.12] for methods for determining calculated earned income.

4.-6. (No change.)

10:82-2.2 Initial grant

(a) When eligibility has been determined, the initial grant shall be computed as follows:

1. All income which has been received or which will be received in the month of application shall be counted in accordance with the best estimate policy found at N.J.A.C. [10:90-2.4(a)] **10:82-1.10**. The countable income shall be subtracted from the appropriate monthly assistance standard and the result shall be prorated by multiplying that amount by the factor appropriate for the date of application in the table below. If the result is not a whole dollar amount, the amount shall be rounded in the next lower whole dollar.

Date of Application	Multiplication Factor	Date of Application	Multiplication Factor
1	1.000	16	.5000
2	.9666	17	.4666
3	.9333	18	.4333
4	.9000	19	.4000
5	.8666	20	.3666
6	.8333	21	.3333
7	.8000	22	.3000
8	.7666	23	.2666
9	.7333	24	.2333
10	.7000	25	.2000
11	.6666	26	.1666
12	.6333	27	.1333
13	.6000	28	.1000
14	.5666	29	.0666
15	.5333	30 and 31	.0333

(b) In determining the amount of the initial grant, the appropriate disregards shall be applied to earned income [(see N.J.A.C. 10:82-4.2 through 4.9)].

(c) (No change.)

10:82-2.3 Income from eligible and noneligible individuals in the household

(a) Family groups living together: For purposes of AFDC, in family groups living together, income of the spouse is considered available for children under 18. If the spouse or parent is living with his or her spouse or children, respectively, income is considered available regardless of whether the spouse or natural or adoptive parent is noneligible or sanctioned. However, if a spouse or parent is receiving SSI benefits, including mandatory or optional State supplementary payments, then for the period for which such benefits are received, his or her income and resources shall not be counted as income and resources available to the eligible family.

1. (No change.)

2. For earned income, the net amount to be considered available to the eligible family shall be determined by deducting only the first $90.00 of such income for each employed individual in the AFDC-C, [and] -F **and -N** segments to cover work-related expenses, including, but not limited to, transportation and mandatory payroll deductions and the actual expenses of child care or care for an incapacitated individual in the household (when applicable as set forth in N.J.A.C. 10:82-2.8 and 4.4) that do not exceed the following rates:

i.-iv. (No change.)

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

10:82-2.6 Initial eligibility

(a) On all new applications, reapplications, or reopened applications, initial financial eligibility must be established before a determination of the amount of the monthly grant can be made. [(For -N segment cases, see N.J.A.C. 10:82-2.11.)]

1. Earned income disregards: For AFDC-C, [and] -F **and -N** cases, when the eligible family received assistance in one of the four months prior to the month of application, all earned income disregards at N.J.A.C. 10:82-2.8 shall apply to the determination of initial financial eligibility. For AFDC-C, [and] -F **and -N** cases which have not received assistance in one of the four months prior to the month of application, the earned income disregards apply, except that the disregard of the first $30.00 of the remaining income plus one-third of the remainder does not apply. If total income equals or exceeds the public assistance allowance **payment** standard **in Schedule II for the eligible family size,** the family is ineligible for assistance. In the computation of the initial AFDC grant, application of the $30.00 and one-third earned income disregards is subject to the limitations at N.J.A.C. 10:82-2.8.

2. (No change.)

10:82-2.7 **Initial** [Maximum] eligibility; AFDC-C, [and] -F **and -N** procedures

(a) The procedures regarding **initial** [maximum] income eligibility are:

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1. (No change.)

2. Determine the total monthly income (including gross earned income) available to the eligible unit and compare it to the maximum income level in N.J.A.C. 10:82-1.2[(d)]**(a)**. If total income equals or is less that the maximum for the appropriate eligible unit size, maximum income eligibility has been established and the grant amount shall be determined in accordance with N.J.A.C. 10:82-2.8. If total income exceeds the appropriate maximum for any month, the family is not eligible for assistance.

10:82-2.8 Determination of calculated earned income: AFDC-C, [and] -F **and -N** procedures

(a) From the total gross earnings of each employed person in the AFDC-C, [and] -F **and -N** segments, deduct the cost of producing income if self-employed (see N.J.A.C. 10:82-4.3) and proceed as follows:

1. (No change.)

2. For a period of not longer than four consecutive months, deduct the first $30.00 of the remaining earned income plus one-third of the remainder for each employed individual in the eligible family. For REACH participants in the work supplementation program (WSP) see N.J.A.C. 10:81-14.11 and 14.21.

i. This deduction shall cease after a period of four consecutive months and shall not be applied again so long as the wage earner is a recipient of AFDC-C, [and] -F **or -N** benefits. This deduction will again be applied after the original four consecutive month period only after the wage earner has not been a recipient of AFDC-C, [or] -F **or -N** benefits for a period of 12 consecutive months. (See also N.J.A.C. 10:82-4.4.)

3. For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

i. Upon expiration of the eight-month period, this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C, [or] -F **or -N** benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C, [or] -F **or -N** benefits for a period of 12 consecutive months.

4. Deduct an amount equal to the actual expenditures for child care or for care of an incapacitated individual living in the same home as the AFDC-C, [or] -F **or -N** eligible family. In no event shall this deduction exceed the limits as follows:

i.-iv. (No change.)

(b) The deduction described in (a)4 above shall be made for actual expenditures for child care or for care of an incapacitated adult living in the same home as the AFDC-C, [or] -F **or -N** eligible family when any of the following circumstances apply to the eligible family:

1. (No change.)

2. The family pays expenditures for care of an incapacitated adult living in the AFDC-C, [or] -F **or -N** household to enable the AFDC-C, [or] -F **or -N** employed individual to remain employed. This disregard process shall be used in determining the calculated earned income to an AFDC-C, [or] -F **or -N** family to meet the costs of care of an incapacitated adult in the household if the family incurs such expenses, regardless of the fact that direct payment for child care costs may be paid by the agency (see N.J.A.C. 10:82-5.3(b) and 10:81-14.18(d)1);

3. An AFDC-C, [or] -F **or -N** applicant family which has an employed family member who is defined as a REACH/JOBS mandatory participant (that is, not exempt from REACH/JOBS participation) shall use the disregard method for costs of child care due to employment during the interim time period covering referral of the mandatory individual to REACH/JOBS case management; and until such time (subject to timely and adequate notice provisions at N.J.A.C. 10:81-7.1 and 14.7) that income maintenance is subsequently advised by case management of the direct payment of child care costs through REACH/JOBS;

4. (No change.)

5. The REACH/JOBS child care payment is made to a child care provider selected by the AFDC-C, [or] -F **or -N** family participating in REACH/JOBS, and that provider does not meet the criteria at N.J.A.C. 10:82-5.3(c) through (f) and N.J.A.C. 10:81-14.18(f) as an authorized child care arrangement for direct payment through REACH/JOBS; or

6. (No change.)

10:82-2.9 Stepparents: AFDC-C procedures

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

(c) When the stepparent is not included in the eligible unit, the eligible unit shall consist of the natural or adoptive parent and the eligible children.

1. (No change.)

2. The grant for the eligible unit shall be the appropriate [allowance] **payment** standard on Schedule [I] **II** less any income to the eligible unit, including the countable income of the stepparent as determined in (d) below.

(d) When a stepparent of eligible AFDC-C children lives in the same home as the children and is not included as a member of the eligible family, his or her income shall be considered available to the eligible family in accordance with the following procedures:

1.-2. (No change.)

3. Further reduce the remaining income by the appropriate amount in [Schedule I] **the Standard of Need** (N.J.A.C. [10:82-1.2] **10:82-1.1A**) for the stepparent and any other individuals residing in the household who are or could be claimed by the stepparent as dependents for Federal personal income tax liability and who are not recipients of AFDC-C, [or] -F **or -N**.

4.-5. (No change.)

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2[(d)]**(a)**) and in the determination of grant amount.

10:82-2.11 [Initial eligibility; AFDC-N procedures] **(Reserved)**

[(a) Initial eligibility rules are:

1. Identify the number of persons in the eligible unit;

2. Use Schedule II to determine the appropriate public assistance allowance;

3. Identify all income as in N.J.A.C. 10:82-2.1(b)4i. To establish amount of calculated earned income, determine gross earned income and deduct the first $60.00 for each employed person, provided, however, that each such person earns a minimum of $60.00. If earnings of any individual are less than $60.00, disregard such earnings. This initial disregard only shall be deducted in determining the calculated earned income for initial eligibility, unless N.J.A.C. 10:82-4.5(b) is applicable;

4. When there is an adjusted allowance of any amount, eligibility is established. Determination of the amount of monthly grant must then be made in accordance with section 1 of this subchapter.

5. When total income as computed in paragraph 3 above equals or exceeds the public assistance allowance, the family is not eligible for assistance.]

10:82-2.12 [Determination of calculated earned income; AFDC-N procedures] **(Reserved)**

[(a) From the total gross earnings of all persons in the AFDC-N segment, deduct cost of producing income if self-employed (N.J.A.C. 10:82-4.3), and proceed as follows:

1. From the gross earnings of each employed person, deduct the first $60.00 as the initial disregard;

2. Deduct one-third of the amount remaining;

3. The remainder shall be entered on Form PA-3A as calculated earned income.

(b) Deductions from earned income for any purpose other than those identified in this section shall not be recognized.]

10:82-2.13 Companion cases

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

(c) The public assistance allowance for each segment shall be the [per capita of the] **payment** standard for the total eligible unit on

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Schedule [I or] **II or III**, as appropriate[, multiplied by the number of persons in that segment].

[1. For companion cases of two to 10 eligible members, the Per Capita Table on the following page provides pre-calculated per capita amounts. Under the appropriate "Number in Segment", identify the allowance which corresponds to the number in the total eligible unit. Enter these amounts in Part I of the PA-3A form.]

(d) When there is no income, earned or unearned, to any member of the eligible unit, the total [allowance] **payment standard for the family size in Schedule III** shall represent the monthly grant for the eligible unit.

(e) When any member of the eligible unit has income, earned or unearned, [proceed as follows:] **follow the procedures described in N.J.A.C. 10:82-1.2 (c), (f) and (g).**

[1. Compute calculated earned income according to the procedure in N.J.A.C. 10:82-2.8 or 2.12. When parents are not married to each other and both are employed, both methods with appropriate disregards shall be used. Enter the total amount of calculated earned income(s) in Part II of the PA-3A form:

2. All unearned income shall likewise be entered on the PA-3A form;

3. Deduct the total income from the total allowance to determine the adjusted allowance (and grant) for the eligible unit.

Per Capita Table for Companion Cases

Total Eligible Unit	Number in -C or -F Segment 1	2	3	4	5	6	7	8	9
2	$161								
3	141	283							
4	122	244	366						
5	110	221	331	442					
6	103	205	308	411	513				
7	97	194	291	389	486	583			
8	93	186	279	372	465	558	651		
9	90	180	269	359	449	539	628	718	
10	87	174	262	349	436	523	610	698	785

Total Eligible Unit	Number in -N Segment 1	2	3	4	5	6	7	8	9
2	$108								
3	94	189							
4	81	163	244						
5	74	147	221	294					
6	69	137	206	274	343				
7	65	129	194	259	324	388			
8	62	124	186	248	310	372	434		
9	60	120	180	240	299	359	419	479	
10	58	116	174	232	291	349	407	465	523

(f) The Maximum Income Level: Per Capita Tables below shall be used to determine AFDC income eligibility for companion cases of two to 10 members. For cases of more than 10 members the maximum income level shall be the per capita of the standard for the total eligible unit on Schedule III, N.J.A.C. 10:82-1.2, multiplied by the number of members in that segment.

Maximum Income Level—Per Capita Table

Total Eligible Unit	Number in -C or -F Segment 1	2	3	4	5	6	7	8	9
2	$298								
3	261	523							
4	226	452	677						
5	204	408	613	817					
6	190	380	570	760	950				
7	180	359	539	719	899	1078			
8	172	344	516	688	860	1032	1204		
9	166	332	498	664	831	997	1163	1329	
10	161	323	484	645	807	968	1129	1290	1452

Total Eligible Unit	Number in -N Segment 1	2	3	4	5	6	7	8	9
2	$199								
3	175	349							
4	150	301	451						
5	136	272	409	545					
6	127	253	380	507	633				
7	120	239	359	479	599	718			
8	115	230	344	459	574	689	803		
9	111	222	332	443	554	665	775	886	
10	108	215	323	430	538	645	753	860	968]

10:82-2.14 [Establishing monthly] **Contract** earnings

[(a) The procedures in this section apply in the determination of earned income for the purposes of establishing the amount of assistance grant with the exception of initial grants (see N.J.A.C. 10:82-2.2).

(b) Earnings projection: When due to new or changed earnings, the client is unable to provide the four consecutive weeks verification required in (d) below seven calendar days prior to the FAMIS cutoff date, the CWA shall compute the following month's CEI on an earnings projection. In developing the earnings projection the CWA shall use all actual wage information available seven calendar days prior to the FAMIS cutoff date together with the client's estimate of ongoing wages and/or hours. The earnings projection and the information used to determine it shall be fully documented in the case record. The earnings projection shall be used to determine the AFDC assistance payment only until sufficient earnings verification is available to base the earnings on actual verification of four consecutive weeks as required in (c) below.

Example: The client receives his or her first pay check on the 11th of the month for 20 hours of employment. The client states that he or she will be working 40 hours a week at the same hourly wage rate. The earnings projection will be based on 40 hours a week.

1. When an earnings projection is used, the client must be advised that the required wage verification must be supplied or the next month's grant will be suspended.

2. In the event subsequent verification reveals that the client has been underpaid because of the use of an earnings projection, the underpayment shall be corrected in accordance with N.J.A.C. 10:82-2.19.

(c) Required evidence of earnings: Except for the period of time a case is subject to an earnings projection, monthly gross earnings shall be determined by obtaining wage verification for any consecutive four week period within the five weeks before and the five weeks following the date the client signs the Form PA-1J or reports a change in earnings. This policy applies also at redetermination when a new PA1J is signed. The evidence used to verify the earnings and the dates thereof shall be fully documented in the case record.]

[(d)] [Contract earnings:] Earnings payable under the terms of renewable contract, [e.g.] **for example**, earnings of school teachers, are to be prorated over the stated term of the contract only.

10:82-2.19 Overpayments and underpayments

(a) Overpayments: Overpayment means a financial assistance payment received by or for an eligible unit for the payment month which exceeds the amount for which that unit was eligible. Upon discovery of an overpayment, the CWA shall take all reasonable steps necessary to promptly correct any overpayment as outlined in [(a) of] this **sub**section. The CWA shall seek recovery of all overpayments regardless of fault, including overpayments caused by administrative action or inaction and overpayments resulting from assistance paid pending hearing decisions.

1.-3. (No change.)

4. Recovery may be accomplished by securing repayment from the existing income and resources of the eligible unit, by reducing the assistance payable to the eligible unit, [by suspending assistance payable to an eligible unit subject to monthly reporting,] or by securing repayment through court action, if necessary.

5. In the circumstances of an overpayment to an eligible unit which is currently receiving assistance (including recipients whose

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overpayment occurred during a prior period of eligibility), the amount may be repaid (in part or in full) by the eligible unit, or the grant shall be reduced by an amount which is equal to 10 percent of the appropriate allowance standard for the family size. The AFDC grant shall be reduced by this amount until such time as the full amount of the overpayment is recovered. [For cases subject to monthly reporting, the CWA may deny or suspend assistance for the corresponding payment month in accordance with (a)5ii below.] If the grant is reduced to zero because of recovery, members of the eligible unit will continue to be considered recipients of AFDC. If the amount payable because of recovery is less than $10.00, the AFDC check shall be issued in that lesser amount.

i. (No change.)

[ii. The CWA may deny or suspend assistance for the corresponding payment month rather than recover if the eligible unit was ineligible for the budget month, the CWA becomes aware of the ineligibility when the monthly report is submitted, the recipient accurately reported the budget month's income and other circumstances, and the eligible unit will be eligible for the following payment month.]

6.-14. (No change.)

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

10:82-2.20 Change in need while assistance is being received

(a) A change in the circumstances of the eligible unit may result in an adjustment upward or downward in the amount of the assistance payment. Unless (b) below applies, the adjustment must be effective [for the payment month corresponding to the budget month] **no later than the first day of the month following the month** in which the **significant** change in circumstance[s] occurred. Downward adjustments are subject to [adequate notice if the change in circumstances was reported on the Monthly Status Report (MSR), and] timely and adequate notice [if the change was reported by means other than the MSR].

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

[(d) Reduction or loss of income: If the eligible unit experiences a reduction or loss of income in or after a budget month, the CWA shall not issue additional assistance payments for the corresponding processing month or payment month to supplement this loss of income. However, an eligible unit may apply for AFDC supplemental payments, set forth in N.J.A.C. 10:82-5.11, if the family has suffered a substantial loss of income due to unanticipated circumstances and its regular AFDC grant does not reflect that loss because of retrospective budgeting.]

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) (No change.)

(b) The amount of income of a sponsor which shall be deemed to be the unearned income of an alien shall be determined as follows:

1.-2. (No change.)

3. The amount determined in (b)2 above shall be reduced by the following:

i. The appropriate amount [in Schedule I] **from the Standard of Need** (N.J.A.C. [10:82-1.2] **N.J.A.C. 10:82-1.1A**) for the sponsor, spouse, and other persons residing in his or her household who are or could be claimed by the sponsor as dependents for determination of Federal personal income tax liability and who are not recipients of AFDC-C, [or] -F **or -N**;

ii.-iii. (No change.)

4-5. (No change.)

(c)-(g) (No change.)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) (No change.)

(b) When an adolescent parent lives in the same home as his or her own parent(s) or legal guardian(s), the income of such parent(s) or legal guardian(s) shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) or guardian(s) receive(s) SSI or AFDC of if the adolescent parent is categorically eligible for the -N segment only. For the purposes of this section, the term parent shall include legal guardian.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by [$75.00] **$90.00**.

2. (No change.)

3. Further reduce the remaining income by the appropriate amount [in Schedule I] **from the Standard of Need** (N.J.A.C. [10:82-1.2] **10:82-1.1A**) for the parent(s) and any other individuals residing in the household who are or could be claimed by the parent(s) as dependents for Federal personal income tax liability and who are not recipients of AFDC-C, [or] -F **or -N**.

4.-5. (No change.)

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2[(d)]) and in the determination of grant amount.

(c) (No change.)

10:82-4.4 Disregard of earned income in AFDC-C, [and] -F **and -N** segments

(a) (No change.)

(b) The CWA shall disregard from the total earned income not already disregarded, the first $30.00 and one-third of the remainder for each employed individual.

1. This disregard shall apply to the earned income of a person for a period of four consecutive months. Once this disregard has applied for a four consecutive month period, it shall not again be applied on behalf of that individual as long as he or she continues to receive AFDC-C, [or]-F **or -N**. If after receiving this disregard for a four consecutive month period, the individual becomes ineligible for AFDC-C, [or] -F **or -N**, this disregard shall not be applied to his or her income unless the individual has remained ineligible for AFDC for a period of 12 consecutive months.

2.-3. (No change.)

(c) For a period not exceeding eight months from the end of the four consecutive months of the $30.00 plus one-third of the remainder disregard, a deduction of the first $30.00 of the remaining income shall be applied.

1. Upon expiration of the eight-month period this deduction shall not be applied again so long as the wage earner is a recipient of AFDC-C, [or] -F **or -N** benefits. This deduction will again be applied after the eight-month period only after the wage earner has not been a recipient of AFDC-C, [or] -F **or -N** benefits for a period of 12 consecutive months.

(d) The CWA shall disregard from the remaining earned income, the actual costs paid for child care or for care of an incapacitated individual in the same home as the AFDC-C, [or] -F **or -N** eligible family when the circumstances described at N.J.A.C. 10:82-2.8(b) exist. The amount of the disregard shall not exceed the limits as follows:

1.-4. (No change.)

(e) None of the disregards above shall apply to the earned income of the individual for any month in which one of the following conditions apply to him or her:

1.-2. (No change.)

[3. Failed to make a timely report of earned income without good cause. The penalty shall not apply when the CWA is able to make the proper AFDC payment despite the lack of timely report.

i. Good cause for failure to make a timely report shall include but is not limited to:

(1) The individual failed to report a decrease in earnings;

(2) The individual failed to report an increase in earnings of less than $5.00;

(3) Illness prevented the individual from reporting on a timely basis.]

Recodify existing 4. as **3.** (No change.)

10:82-4.5 [Disregard of earned income in AFDC-N segment] **(Reserved)**

[(a) Rules on the N segment are as follows.

1. The first $60.00 of gross monthly earnings of each employed member of the eligible AFDC-N unit shall be the initial disregard.

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In addition, in determining the amount of payment for an otherwise eligible unit, one-third of the total remaining earned income shall be disregarded and, where applicable, the following:

i. All earned income of children under 16 years of age shall be exempt.

ii. All earned income of children 16 to 19 years of age who are attending an accredited educational institution on a full-time basis shall be exempt. (See also N.J.A.C. 10:82-4.7.)

(b) For the purposes of determining basic initial eligibility for AFDC-N (see N.J.A.C. 10:82-2.2), calculated earned income is determined without benefit of the disregards authorized in (a) above, unless during any one or more of the four months immediately preceding such determination the family had lawfully been receiving AFDC. When eligibility exists without the benefit of disregards, then disregards are applicable in determining the amount of the initial and subsequent grants.]

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) When a recipient receives nonrecurring earned or unearned lump sum income, including retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together with all other income received that month by the eligible family after application of the disregards in N.J.A.C. 10:82-2.8 [and 2.12] and the exemption of income in N.J.A.C. 10:82-2.7. The AFDC assistance payment shall not be considered income. No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt. When this total exceeds the [AFDC allowance standards in Tables I or II as appropriate] **Standard of Need for the eligible family size as set forth at N.J.A.C. 10:82-1.1A**, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the [allowance standard] **Standard of Need** applicable to the eligible family. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1.-4. (No change.)

5. Once established, the period of ineligibility may be reduced only in the circumstances below. It is the responsibility of the former eligible family to provide all necessary information and documentation required to make a determination to shorten the period of ineligibility. The basis for a determination to shorten the period of ineligibility shall be thoroughly documented in the case record.

i. The period of ineligibility may be recalculated when **the** AFDC [allowance standards are] **Standard of Need is** increased. Upon request of a former AFDC eligible family, the period of ineligibility will be reduced as follows:

(1) The number of months of ineligibility already elapsed shall be multiplied by the [allowance standard] **Standard of Need** used to compute the original period of ineligibility;

(2) (No change.)

(3) The remaining amount shall be divided by the new AFDC [allowance standard] **Standard of Need for the eligible family size** and the result will be the number of months of ineligibility remaining.

ii.-iii. (No change.)

6. (No change.)

(b) (No change.)

(c) These regulations are not to be construed to limit any policy pertaining to reimbursement in any program but must be applied in conjunction with any repayment agreement. [(See also N.J.A.C. 10:82-3.7(a).)]

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" (EA) is hereby established as any initial, extra or additional payment(s), authorized in accordance with (d) through (n) below during the period of 30 consecutive days immediately following the date the application for EA is made/approved as a result of the occurrence of an emergency as defined in (d) below. Emergency assistance can be issued to AFDC families in receipt of presumptive eligibility benefits or continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-1J form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, and the family is otherwise eligible, emergency assistance shall be authorized and/or provided as appropriate. Except as noted in (g) below, payments of emergency assistance in AFDC shall be made as vendor payments whenever feasible, or as direct payments to the eligible unit, or as a combination of both.

1. (No change.)

[ii.]**2.** Financial eligibility for all applicants for emergency assistance shall be determined using Schedule [I] **II or III** of N.J.A.C. 10:82-1.2[(c)] and the maximum income levels for AFDC-C and AFDC-F segments of Schedule [III] **I** of N.J.A.C. 10:82-1.2[(d)].

(b)-(n) (No change.)

10:82-5.11 [AFDC supplemental payments] **(Reserved)**

[(a) AFDC supplemental payments shall be granted for any month when, in accordance with this section, an eligible unit has suffered a substantial loss of income due to unanticipated circumstances and its regular AFDC grant does not reflect that loss because of retrospective budgeting.

(b) A supplemental payment shall be issued for a payment month if all of the following conditions are met:

1. The eligible unit has filed a complete monthly status report (MSR) for the payment month and is otherwise eligible for AFDC;

2. The eligible unit notifies the CWA of the income loss in accordance with (d) below;

3. The income loss is established through verification;

4. It has been established that the loss of income was due to unanticipated circumstances (see (f) below); and

5. The eligible unit's remaining countable income (if any) plus the regular AFDC grant for the payment month is less than the appropriate standard in (h) below.

i. In circumstances in which the eligible unit's grant is subject to recovery, this determination shall be based on the AFDC grant that would be paid if it were not for the recovery.

(c) If the eligible unit is determined eligible for an AFDC supplemental payment, the amount of the supplemental payment shall be the difference between the applicable AFDC allowance (see N.J.A.C. 10:82-1.2) and the eligible unit's remaining countable income plus the regular AFDC grant (in grants subject to recovery, the grant that would be payable were it not for recovery).

(d) The eligible unit must notify the CWA of the income loss. Notification must be accomplished on the unit's MSR or, subsequent to submission of an MSR, by notifying the CWA by telephone, in writing, or in person. Further, the eligible unit must request supplemental aid.

(e) The eligible unit is responsible for providing verification of the occurrence of and the amount of the income loss.

(f) Unanticipated circumstances are those over which the individual suffering the income loss had no control or opportunity to plan in advance and do include illness and layoff. Unanticipated circumstances shall not include:

1. Loss of income which could reasonably be anticipated (for example, loss of seasonal employment);

2. Loss of income due to regular or periodic business closing;

3. Regular expiration of time-limited benefits such as unemployment benefits;

4. Voluntary termination or reduction of employment without good cause;

5. Termination with cause by the employer (dismissal resulting from some action or inaction of the employee);

6. Regular fluctuation of income due to the nature of the income source;

7. For income received less often than monthly, months in which the income is not received;

8. Loss of any benefits due to an individual's inaction or failure to comply with requirements for continued receipt;

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9. Reduction of income caused by garnishment or recovery of previous overpayment; or

10. Loss of unreported income.

(g) No supplemental payment shall be granted for any month in which the income loss is not reported timely (see N.J.A.C. 10:90-2.3). There is no entitlement retroactively for any past months of income loss.

(h) AFDC supplement payment eligibility standards.

AFDC-C AFDC-F	Number in Eligible Unit	AFDC-N
$108	1	$ 72
215	2	143
283	3	189
325	4	217
368	5	245
411	6	274
453	7	302
496	8	331
539	9	359
581	10	387
Add $43 each person	more than 10	Add $29 each person

(i) If all criteria are met for each month, supplemental payments, up to three supplemental checks, may be issued for a single income loss. For instance, if the eligible unit's income loss occurs on January 15, retrospective budgeting will not fully reflect the loss until April. In this case three checks may be issued (for January, February, and March). If the income loss occurs on the last day of January, retrospective budgeting will fully reflect the loss in April. In this case, supplemental checks would be required for only February and March.

(j) Payments for families eligible for AFDC supplemental payments shall be made promptly upon verification of eligibility criteria.]

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Public Hearing and Extension of Comment Period

Special Payments Handbook, Aged, Blind and Disabled

Emergency Assistance (EA)

Proposed Repeal and New Rule: N.J.A.C. 10:83-1.2

Take notice that the Department of Human Services, at the request of the Board of Chosen Freeholders of the County of Warren, will conduct a public hearing concerning proposed repeal and new rule at N.J.A.C. 10:83-1.2 published on February 3, 1992 at 24 N.J.R. 326(a). The proposed new rule aligns, as appropriate, EA benefits available to Supplemental Security Income recipients with those provided under the General Assistance and Aid to Families with Dependent Children programs.

The **public hearing** concerning the proposed rulemaking at N.J.A.C. 10:83-1.2 will be held on Thursday, April 23, 1992, at the following location and time:

Division of Economic Assistance
Quakerbridge Plaza
Building No. 10
Quakerbridge Road
Trenton, New Jersey 08625
10:00 A.M.–4:00 P.M.

Individuals interested in testifying at the hearing must advise the Division of Economic Assistance, Trenton, New Jersey, by telephone at (609) 588-2291 no later than noon, April 22, 1992 and provide name(s), organization represented, and telephone number. Interested speakers will be limited to 10 minutes of oral testimony.

Interested parties may submit written testimony at the hearing or by mail until May 7, 1992. Those comments should be addressed to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

CORRECTIONS

(b)

THE COMMISSIONER

Mail, Visits and Telephone

Proposed Readoption: N.J.A.C. 10A:18

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1992-147.

Submit comments by May 6, 1992 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:18, Mail, Visits and Telephone, expires on July 6, 1992. This chapter is not being amended on readoption. The Department of Corrections has reviewed these rules and has determined these rules to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Subchapter 1 provides the purpose and scope of the chapter, the definition of words and terms used and a list of forms that are utilized with this chapter.

Subchapter 2 establishes the policies and procedures which govern the sending and receiving of correspondence for inmates and establishes the guidelines whereby correspondence may be disapproved, withheld, and/or removed from an inmate's possession.

Subchapter 3 establishes policies and procedures which govern the sending and receiving of legal mail for inmates and the guidelines on cost of mailing legal correspondence.

Subchapters 4 and 5 establish the policies and procedures which govern the sending and receiving of publications and packages for inmates and establish the guidelines whereby these publications and packages may be monitored, censored or restricted.

Subchapter 6 provides rules for the administration of the inmate visit programs within correctional facilities of the Department of Corrections.

Subchapter 7 provides policies and procedures which govern bedside and/or funeral visits by an inmate to a dying or deceased relative.

Subchapter 8 establishes the policies and procedures regulating inmate access to and use of the telephone.

Social Impact

The rules within Chapter 18, Mail, Visits and Telephone, have been in effect for some time and serve to implement policies and procedures for processing incoming and outgoing mail, conducting visits, and regulating telephone access and use. These rules enable inmates to maintain family and community relationships, serve to relieve the tension experienced by inmates while they are incarcerated, and contribute to the orderly operation of a correctional facility.

Economic Impact

The cost of meeting and maintaining the requirements established in this proposed readoption have been and will be met by the Department through the established budget process with monies allocated by the State.

Regulatory Flexibility Statement

A regulatory flexiblity analysis is not required because the proposed adoption does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption

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impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 10A:18.

INSURANCE

(a)

ACTUARIAL SERVICES

Basic Health Care Coverage Authorized by N.J.S.A. 17:48-6.13, 17:48A-6.8, 17:48E-22.1, 17B:26B-1 and 26:2J-4.2

Reproposed New Rules: N.J.A.C. 11:4-36
Reproposed Amendments: N.J.A.C. 11:4-14,1, 15.1, 16.2, 19.2 and 28.3

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:48-6.14, 17:48A-6.9, 17:48E-22.2, 17B:26B-2, and 26:2J-4.3.

Proposal Number: PRN 1992-155.

Submit comments by May 6, 1992 to:
Verice M. Mason
Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Health Care Cost Reduction Act ("HCCRA"), P.L. 1991, c.187, was enacted on July 1, 1991. The primary goal of the HCCRA is to reduce the cost of purchasing and delivering health care in New Jersey. Secondary goals of the HCCRA include increasing the number of New Jersey citizens covered by private insurance by making health care coverage more affordable and more accessible with an emphasis on preventive care coverage, rather than catastrophic coverage.

Sections 49 through 59 of the HCCRA require that private insurers, health, hospital and medical service corporations ("service corporations") and health maintenance organizations ("HMOs") offer individual and group basic health care coverage having specified benefits ("BASIC"). The Department of Insurance is required by the HCCRA to provide schedules for the policy benefits, specify loss ratios, and set forth other standards for the HCCRA policies.

In fulfilling its statutory mandate, the Department of Insurance proposed new rules at N.J.A.C. 11:4-36, and rule amendments to N.J.A.C. 11:4-14.1, 15.1, 16.2, 19.2 and 28.3. The proposal appeared in 23 N.J.R. 3066(a) on October 21, 1991. Numerous comments were received regarding the October 21, 1991 proposal, precipitating several meetings with various interested parties as well. Based upon some of the comments, which are summarized below, and the meetings, the Department determined that certain significant changes to the proposed new rules was appropriate. Hence this reproposal of the rules and rule amendments.

Comments were received from 10 insurers (CIGNA Companies, Mutual of Omaha, Blue Cross and Blue Shield of New Jersey, The Prudential, Aetna, Selective Insurance Company of America, Combined Insurance Company of America, The Travelers, The Guardian, and Garden State Hospitalization Plan through the law firm Toolan, Abbott, Ziznewski and Hollander); two insurance trade associations (American Council of Life Insurance, and Health Insurance Association of America); two business associations (New Jersey Retail Merchants Association, and New Jersey Business and Industry Association); the HEAL Coalition; McCabe Ambulance Service, Inc.; the New Jersey Optometric Association; the New Jersey Public Health Association; the New Jersey Podiatric Medical Society; the Home Health Assembly of New Jersey, Inc.; the Kessler Institute for Rehabilitation, Inc.; Children's Specialized Hospitals; the New Jersey Chapter of the American Physical Therapy Association; six chiropractic associations (the Council of New Jersey Chiropractors through the law firm of Theodosia A. Tamborlane, P.C.; the New Jersey Chiropractic Society through the law firm of Nashel, Kates, Modarelli, Nussman, Rapone and Ellis, and separately through the Society's Insurance Relations Committee; the Academy for the General Practice of Chiropractic; the Northern New Jersey Chiropractic Society; the Garden State Chiropractic Society, through nine members via a form letter, and the Chiropractic Alliance); the Family Chiropractic Center of Nutley, plus 46 substantially similar signed form letters; seven hundred and eighty-seven chiropractic patients and/or other persons interested in chiropractic (via three separate form letters, one of the form letters apparently being nonaligned, the second form letter apparently having been prepared by or distributed through the Sasso Family Chiropractic Center, and the third form letter having been prepared by the Council of New Jersey Chiropractors); four mental health centers and hospitals (Mid-Bergen Community Mental Health Center, Inc.; South Bergen Mental Health Center, Inc.; West Bergen Mental Health Center, Inc.; and Bergen Pines County Hospital through both its Executive Director and the law firm of Cohen, Shapiro, Polisher, Shiekman and Cohen); four mental health-related associations (Coalition for Comprehensive Health Care of New Jersey; New Jersey Association of Mental Health Agencies, Inc.; New Jersey Psychiatric Association, and twelve form letters from the Mental Health Advocacy Group of Bergen); the County of Bergen, Division of Mental Health within the Department of Health Services; the Association of Retarded Citizens of New Jersey; the New Jersey Developmental Disabilities Council; three signed copies of an apparently nonaligned form letter regarding mental health benefits; twelve signed copies of a form letter apparently prepared by the Mental Health Advocacy Group; three independent consumer letters (Nasar Mahmud; Mrs. Salvatore Poppo; and E.A. Von Lindern, Jr.); the New Jersey Division of the American Cancer Society, and the New Jersey Department of the Public Advocate. Additional comments, whether independent or form letter (including approximately 30,000 pre-printed postcards distributed by the Council of New Jersey Chiropractors to patients for mailing to the Commissioner of Insurance and various legislators), postmarked and/or received after the end of the comment period are considered only at the Commissioner's discretion. Not all comments received were responsive to the proposal, and thus, may not be addressed below. Similar comments have been consolidated where reasonable.

COMMENT: The Department received numerous comments regarding the various paragraphs of N.J.A.C. 11:4-36.10(b). Seven hundred and ninety-four commenters essentially stated that BASIC policies should include chiropractic services, arguing, to one degree or another, that: (1) denial of chiropractic services forces New Jersey residents to choose allopathic care; (2) elimination of consumer choice is arbitrary, contrary to the public policy of New Jersey, unreasonable, capricious, and not in compliance with legislative intent; (3) individuals are entitled to a choice in health care alternatives, and health insurance should reflect that basic right of choice; (4) exclusion of chiropractic services would penalize a large sector of the population in an age when people are already hurting; and (5) exclusion of chiropractic services would deny what is now a statutorily mandated benefit. Forty-seven additional commenters stated that they recognized that N.J.A.C. 11:4-36(b)6 does not effect them directly inasmuch as BASIC policies essentially only provide hospital services, but requested removal of the subsection because its precedential value might prove to be deleterious to them in the future. One additional commenter stated that chiropractic services would be available in a hospital setting in the near future, and that the language of N.J.A.C. 11:4-36.10(b)6 would eliminate chiropractic services under such a setting, an effect which is prejudicial and in direct contradiction of the "Equity Laws." Twenty-six commenters stated that BASIC policies should not exclude benefits for mental and emotional disorders, and/or addictions, and/or suicide, arguing, to one degree or another, that: (1) society recognizes the importance of treating psychological disorders and chemical addictions; (2) exclusion of these benefits is discriminatory; and (3) the Health Care Cost Reduction Act of 1990 ("HCCRA"), P.L. 1990, c.187, does not purport to discriminate against mental illness, and that the Department has overridden its authority by including N.J.A.C. 11:4-36.10(b)2 and 3ii. Three of these commenters also stated that the right to exclude benefits for mental and emotional disorders and chemical addiction treatments does not mean that the services won't be provided, merely that the cost will be shifted to government agencies. One commenter stated that the exclusion for chronic foot strain or symptomatic complaints of the feet, N.J.A.C. 11:4-36.10(b)5, should be deleted noting

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that such conditions tend to significantly impact upon an employee's ability to function productively in the workplace.

RESPONSE: The Department of Insurance was charged with the duty of developing terms, conditions, and benefit schedules appropriate to effectuate the intent of the HCCRA. The most apparent intent of the HCCRA in establishing the benefit categories for this new type of coverage is that coverage is not meant to be comprehensive; hence, the term "bare bones" has often been used to describe this type of coverage. The Department determined therefore that, except as the HCCRA specified otherwise, BASIC policies should not provide greater benefits than those benefits required of a standard individual or group health policy sold in this State. N.J.A.C. 11:4-16 sets forth the minimum standards required of individual health policies sold in New Jersey. There are no such similar standards applicable to group health policies. Thus, the Department relied heavily upon N.J.A.C. 11:4-16 in developing the rules proposed as N.J.A.C. 11:4-36.

N.J.A.C. 11:4-36.10(b) follows substantially the language of N.J.A.C. 11:4-16.5(i). (It should be noted that N.J.A.C. 11:4-16 has been in effect since 1980.) The language of N.J.A.C. 11:4-16.5(i) which is repeated at N.J.A.C. 11:4-36.10(b) is entirely consistent with the parameters of the language of the HCCRA. Contrary to the belief of some of the commenters, N.J.A.C. 11:4-36.10(b) does not require exclusion of any of the conditions enumerated. Rather, what N.J.A.C. 11:4-36.10(b) says is that carriers may not exclude any type of condition, except those enumerated. In other words, it allows limited exclusions, but requires none.

The point is this: carriers have always had the right to exclude coverage in standard individual and group health policies of chiropractic services, mental health services and podiatric services. BASIC policies represent no departure from that traditional position. Even though, in practical application, standard policies seldom exclude any of these services, the Department did not believe that BASIC policies should be prevented from utilizing the same exclusions unless it would be against statutory intent or public policy.

The Department has been informed by the HCCRA's sponsor, Senator Codey, that mental health care was intended to be covered to the extent that services fall into the category of hospital expenses. Thus, the Department will remove the permissive exclusion language with respect to mental or emotional disorders. Further, based on the comments submitted and subsequent meetings with various chiropractic groups, the Department is more than willing to remove the permissive exclusion language with respect to chiropractic services. However, the Department cautions that the practical application of the removal of these permissive exclusions may be of little merit. That is, removal of the language from the rules has no impact upon the language of the HCCRA.

The HCCRA limits BASIC policies to the provision of benefits for: (1) hospital and medical-surgical expenses, (2) maternity expenses, and (3) scheduled physical exams. Any service not fitting into one of these three categories is not covered under a BASIC policy. (BASIC policies with alternative benefits may cover other types of expenses, conceivably). Additionally, the HCCRA removes any obligation from carriers to reimburse all health care providers who are not licensed as medical doctors, even if the health care providers are acting within the scope of their practice, and rendering covered services (as codified, see: N.J.S.A. 17:48-6.14g, 17:48A-6.9g, 17:48E-22.2g, 17B:26B-2g and 26:2J-4.3g).

Inasmuch as chiropractors generally do not render services in hospital, and medical-surgical services, maternity care and physical exams are outside the scope of their practice, chiropractic services are not expected to be covered under BASIC policies. Even if chiropractors do render services in hospitals, some carriers may not consider a chiropractor to be an eligible provider. Statutory provisions which heretofore required equal treatment of chiropractors rendering covered services, such as N.J.S.A. 17:84E-12, 17B:26-2f and 17B:27-51.1, are not applicable to BASIC policies.

Treatment of mental or emotional disorders is subject also to essentially the same constraints. Services will have to be rendered in hospital, and the facility must meet the contractual definition of "hospital." Further, services will have to be rendered by an eligible health care provider. Many facilities and health care providers may fail to meet a carrier's contractual definitions of eligibility. (Note that a carrier's definition of "hospital" cannot be more restrictive than the definition set forth by the Department's proposed rules.) Statutory provisions which heretofore required equal treatment of psychologists, for instance, such as N.J.S.A. 17:48E-12, 17B:26.2e and 17B:27-58, are not applicable to BASIC policies.

The foregoing arguments hold true for just about any type of service rendered by just about any type of health care provider not licensed as a doctor of medicine, or meeting a carrier's definition of "physician." The arguments are true by virtue of the language of the HCCRA, and not by virtue of any function of the language of the Department's proposed rules.

COMMENT: One commenter stated that N.J.A.C. 11:4-36.10(b)2, excluding benefits for the treatment of mental and emotional disorders and chemical addiction, is incongruous with N.J.A.C. 11:4-36.8(i)1 which mandates coverage for treatment of alcoholism.

RESPONSE: The Department disagrees. N.J.A.C. 11:4-36.8(i)1 does not mandate coverage for treatment of alcoholism. There is no incongruity.

COMMENT: One commenter stated that the exclusion of benefits for dental care or treatment at N.J.A.C. 11:4-35.10(b)8 is too general, and should be rephrased so as not to exclude services performed by oral surgeons when such services are necessary as part of reconstructive surgery following a covered accident or injury, suggesting insertion of the word "routine."

RESPONSE: The Department disagrees. Insertion of the word "routine" is problematic because it is subject to wide interpretations and begs for a definition which this Department would not presume to provide. N.J.A.C. 11:4-16.6(i), from whence N.J.A.C. 11:4-36.10(b) was derived, has never utilized the term "routine," and no outstanding difficulties have arisen from lack of its use.

COMMENT: Two commenters stated strong opposition to any health care policies which intentionally exclude people with mental retardation and/or other developmental disabilities, citing N.J.A.C. 11:4-36.10(b)2. An additional commenter questioned whether the proposal is in compliance with the Federal Americans With Disability Act.

RESPONSE: The rules governing BASIC health care policies do not exclude from coverage people with mental retardation and/or other developmental disabilities. N.J.A.C. 11:4-36.10(b)2 allows for an exclusion of benefits for treatment of mental and emotional disorders, not people with mental and emotional disorders. Exclusion of a service (for example, treatment for emotional disorders) is not the same as exclusion of a person. A mentally retarded person or a person with other developmental disabilities may be covered under a BASIC policy, and will receive benefits for hospital services, medical-surgical services, physical exams and maternity care just like anyone else who may be covered under a BASIC policy. The rules do not violate the Americans With Disabilities Act.

COMMENT: One commenter stated that elimination of home care, pursuant to N.J.A.C. 11:4-14.1, is counter-productive to creating a cost-effective BASIC policy, noting that carriers and the State clearly recognized that inclusion of home care benefits has the potential of reducing health care costs primarily by reducing the lengths of stay in (acute care) hospitals. (The commenter included various reports to substantiate the cost-saving contention.)

RESPONSE: Benefits for home health care services are statutorily mandated. Standards for home health care service benefits are set forth at N.J.A.C. 11:4-14. Under the HCCRA, however, BASIC policies are not required to include any statutorily mandated benefits. Thus, it was necessary to provide an exception at N.J.A.C. 11:4-14.1 for BASIC policies in order to effectuate the intent of the HCCRA. (A BASIC policy conceivably may cover home health care services as an alternative benefit, but it should be understood that home health care services do not fall within the categories of hospital and medical-surgical expenses, physical exams and maternity care, to which BASIC benefits are otherwise limited.)

COMMENT: One commenter stated that the definition of "hospital" at N.J.A.C. 11:4-36.11(a)5ii should not allow for the exclusion of facilities primarily affording rehabilitative care, arguing the value of such facilities as follows: (1) such facilities train people to learn or re-learn functional techniques to compensate for physical impairments and to restore abilities to engage in essential daily functions; (2) comprehensive medical rehabilitation occurs in a hospital-based inpatient setting following stabilization of a patient's medical condition in a general care facility, resulting in greater overall savings than if care had continued in an acute care facility; (3) the medical and therapeutic services available in a comprehensive rehabilitation program are widely accepted as an integral component of health care services; and (4) reimbursement to rehabilitation hospital providers and other specialty hospitals in New Jersey is not available through the Uncompensated Care Trust Fund.

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RESPONSE: The Department used the definition of "hospital" at N.J.A.C. 11:4-16.4(a)4, which has been in effect for standard individual health policies since 1980. The Department used this definition, and will continue to use this definition, because the Department believes the drafters of the HCCRA were aware of and anticipated use of the definition of N.J.A.C. 11:4-16.4(a)4, and because it is inappropriate for BASIC policies to provide broader benefits than those required for standard individual policies, unless the HCCRA or public policy clearly dictates otherwise.

Also, the Department is very concerned about the costs that inclusion of rehabilitation facilities may add to BASIC policies. Readers should note that some carriers may elect to include rehabilitative facilities in the definition of hospital, since the exclusion is permissive, not mandatory. The Department will scrutinize such policies to ascertain whether the additional costs associated with the broadened definition are cost-effective, and promote affordability.

COMMENT: One commenter expressed a concern that physical therapy does not appear to be a covered service under the BASIC policies, arguing that physical therapy has been shown to be a cost effective approach to the treatment of many physical disabilities.

RESPONSE: Physical therapy services are not specifically excluded from coverage under a BASIC policy. However, inasmuch as carriers are not subject to the provider statutes with respect to BASIC policies, pursuant to the HCCRA, there is no requirement that carriers provide benefits for such services, even if performed in an eligible hospital. It must be remembered that BASIC health policies are designed by statute to provide hospital-based services, maternity care and physical exams. Physical therapy services that do not qualify as a hospital-based service, maternity care or physical exams are not included for coverage under BASIC policies.

COMMENT: One commenter objected to the definitions of "in-hospital physician services" and "surgical services" in that the wording apparently precludes medically necessary services of health care professionals with hospital staff privileges who otherwise do not meet the physician qualification, such as podiatrists and dentists. The commenter suggested insertion of the phrase "or other health care professional" in the definitions at N.J.A.C. 11:4-36.3.

RESPONSE: The Department disagrees with the suggestion. The HCCRA specifically exempts carriers from compliance with any required provider laws with respect to BASIC policies. The Department can not require that carriers provide reimbursement for services rendered by someone who does not meet the definition of physician, even if the services provided by the health care professional are within the scope of his or her practice.

COMMENT: One commenter objected to the definition of "physician" at N.J.A.C. 11:4-36.11(a)11 in that it does not include chiropractors, and, as such, is blatantly prejudicial and discriminatory to the chiropractic profession and contrary to New Jersey public policy.

RESPONSE: N.J.A.C. 11:4-36.11(a)11 repeats the definition of "physician" provided for at N.J.A.C. 11:4-16.4(a)7. Given that N.J.A.C. 11:4-36.11(a)11 reiterates current New Jersey law, it cannot be said to be against New Jersey public policy. It should be noted that N.J.S.A. 45:9-1 et seq., which governs the various health care professions, continues to recognize distinctions between physicians and chiropractors. Failure to include chiropractors within the definition of physician is neither facially prejudicial or discriminatory, nor is it discriminatory or prejudicial in practical effect. BASIC policies are not designed to provide the types of services which a chiropractor would perform inasmuch as benefits are limited to hospital-related expenses. Moreover, because carriers are not obligated to comply with the provider statutes in regards to BASIC health policies pursuant to the HCCRA, carriers are not obligated to provide benefits performed by a chiropractor, even if such services were otherwise covered. Thus, inclusion of the term "chiropractor" within the definition of "physician" would have no impact, just as failure to include the term has no impact.

COMMENT: Three commenters stated that the exclusion of benefits for services received in a government hospital, N.J.A.C. 11:4-36.10(b)7, is inappropriate.

RESPONSE: As with the rest of N.J.A.C. 11:4-36.10(b), the permissive exclusion of government hospitals repeats a provision of N.J.A.C. 11:4-16.5(1), and as such, does not represent any new policy in this State. Some of the commenters, however, may be presuming an overly broad interpretation of the term "government." Read in conjunction with the definition of the term "hospital" and the permissible exclusion at N.J.A.C. 11:4-36.11(a)5, it should be understood that government hospitals generally include only Federally-owned or Federally-contracted facilities, such as military and veteran hospitals. Payment of Federal funds to a facility, whether a research grant, pilot project or Medicare payments, for instance, does not, in and of itself, make a facility Federally-owned or Federally-contracted. Hospitals operated by a state or county are not necessarily excludable by virtue of their ownership. It is notable, however, that some of the State run facilities in New Jersey will fail to meet the definition of "hospital" because they do not provide the requisite medical, diagnostic and major surgical facilities, and may be more convalescent or custodial in nature.

COMMENT: One commenter stated that the definition of hospital should be limited to acute care facilities, given the limited nature of the BASIC coverage.

RESPONSE: The Department used the definition of "hospital" at N.J.A.C. 11:4-16.4(a)4 because it assumed that the drafters of the HCCRA were familiar with N.J.A.C. 11:4-16 and its various provisions, including the definition of "hospital." The Department is not inclined to restrict further the definition of "hospital" without an indication of legislative intent that the definition should be more restrictive.

COMMENT: One commenter stated that the definition of "surgical services" should delete reference to hospital services. The commenter argues that the definition is more liberal than the HCCRA by including hospital services in this definition, and essentially may duplicate benefits, since hospital services should already be covered under the basic hospital expense coverage.

RESPONSE: The Department agrees and has revised the definition accordingly.

COMMENT: One commenter stated that the definition of "anesthesia services" should be limited to physician charges, noting that the HCCRA only requires benefits be provided for physician services, while the definition at N.J.A.C. 11:4-36.3 is more liberal.

RESPONSE: The Department agrees and has revised the definition accordingly.

COMMENT: One commenter suggested that a definition of "health insurer" be incorporated into the rules (suggested language was provided) so that it is clear that carriers providing policies with only incidental medical benefits are not obligated to comply with N.J.A.C. 11:4-36.

RESPONSE: The Department disagrees that a definition of "health insurer" is the most effective means of achieving the intended goal of clarifying that carriers providing policies with only incidental medical benefits are not obligated to comply with N.J.A.C. 11:4-36. (See the following comment.)

COMMENT: One commenter suggested that N.J.A.C. 11:4-36.4(d), which provides exclusions for carriers from compliance with the subchapter if they issue only specified types of coverages in New Jersey, be revised to substitute the word "primarily" for the word "solely" to clarify that carriers providing only incidental medical benefits on these types of policies are not obligated, by virtue of incidental medical benefits, to comply with the subchapter.

RESPONSE: The Department disagrees with the suggestion, although the Department understands the problem. Rather than change the word "solely," the Department has revised N.J.A.C. 11:4-36.4(d) to exclude policies with only incidental health benefits.

COMMENT: One commenter stated that carriers issuing only conversion policies in this state should also be exempted at N.J.A.C. 11:4-36.4(d) from compliance with the subchapter.

RESPONSE: The Department disagrees. Unlike the types of policies listed at N.J.A.C. 11:4-36.4(d), which provide only very limited or supplemental benefits, conversion policies typically provide health coverage on par with, or substantially similar to, the benefits provided under a group's health benefit plan. In this respect, carriers are expected to be sufficiently knowledgeable and financially sophisticated to meet the rigors of providing BASIC policies, even if they only deliver conversion policies in New Jersey. Therefore, it is this Department's position that carriers choosing to deliver individual conversion policies in this State must comply with the HCCRA by offering individual BASIC policies.

COMMENT: One commenter questioned the requirement to comply with the subchapter being dependent upon whether insurers were issuing non-exempted type health policies on or after January 1, 1991 rather than on or after September 29, 1991 when sections 49 through 59 of the HCCRA became effective.

RESPONSE: The Department originally selected January 1, 1991 because it is a clear and recognizable point of demarcation. The Department has revised the date to July 1, 1991, the date of enactment of the

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HCCRA. The Department will not set the date later than July 1, 1991 because it does not want to allow carriers the opportunity to seek to circumvent compliance with the law, which may have occurred between the enactment date of the act, and the effective date of the specific applicable sections of the act.

COMMENT: One commenter stated that N.J.A.C. 11:4-36.4(c) would require any insurer in the health insurance business on or after January 1, 1991 to offer group BASIC policies regardless of whether they are still in the group health business after that date, for which there is no statutory authority. Additionally, the commenter noted that the HCCRA does not appear to link BASIC coverage obligation to insurers renewing existing policies.

RESPONSE: Most group policies are essentially delivered on a yearly basis. Although the term "renewal" is used, renewal of group policies is effectively a reissue of business. The policy may be the same from one contract period to another, but very often the policies change substantially from contract period to contract period. The group covered may not be new, but more often than not, the policy is. Renewal of a group policy, in the Department's opinion, is tantamount to delivery. Carriers may elect to withdraw from the life and health insurance business to avoid compliance with the HCCRA or these rules. If such is the case, then the carrier should submit an application to withdraw to the Department for review. Barring such a withdrawal however, it is the Department's opinion that renewal of business in the group health market means that a carrier is, in fact, still in the group health business, even if no new groups have been solicited or new policy products developed on or after July 1, 1991.

COMMENT: One commenter objects to N.J.A.C. 11:4-36.4(f) which excuses Federally-qualified health maintenance organizations ("HMOs") from compliance with the subchapter, stating that there are no grounds for this discriminatory distinction, and that there is no statutory basis.

RESPONSE: There is a statutory basis for the distinction. Section 59j of the HCCRA, codified as N.J.S.A. 26:2J-43j, states that HMOs which are in compliance with the Federal standards set forth at 42 U.S.C. 300e et seq. will be deemed to be in compliance with the basic health care contract requirements mandated by the HCCRA. In other words, Federally-qualified HMOs are deemed to comply with the HCCRA and need do nothing more than to continue their current practice. Arguably, a Federally-qualified HMO would lose its Federal qualification, and the advantages inherent in Federal qualification, if it were to offer fewer benefits than those specified by Federal statutes and rules on any of its contracts. The required HCCRA benefits are far fewer than those benefits required for an HMO to receive Federal qualification.

COMMENT: Two commenters raised objection to the language of N.J.A.C. 11:4-36.8(l) which states that BASIC policies shall not provide mandatory health care benefits, noting that the HCCRA merely states that BASIC policies shall not be required to cover mandatory health care benefits.

RESPONSE: The Department agrees that the language of the rule is inappropriately restrictive. The Department has revised the rule to reflect a permissive exclusion of statutorily mandated benefits.

COMMENT: One commenter objected to the exclusion by the Department of BASIC policies from compliance with P.L. 1991, c.279, which requires carriers to provide mammogram benefits. The commenter argues that because P.L. 1991, c.279 was enacted on September 16, 1991, after enactment of the HCCRA, that the Legislature and the Governor must have intended for mammograms to apply to BASIC policies.

RESPONSE: The Department disagrees. Normal statutory construction holds that laws of general applicability govern so long as these laws do not conflict with laws of specific applicability. Here, P.L. 1991, c.279 is a law of general applicability, governing the general contracts and policies issued by the various carriers in New Jersey. However, P.L. 1991, c.187, §§ 49-59 is a law of specific applicability, governing BASIC contracts and policies issued by the various carriers in New Jersey. The HCCRA, at sections 51g, 53g, 55g, 57g, and 59g, (as codified, N.J.S.A. 17:48-6.14g, 17:48A-6.9g, 17:48E-22.2g, 17B:26B-2g, and 26:2J-4.3g, respectively), states that, any law to the contrary notwithstanding, BASIC policies shall not be required to include any health care benefit mandated by other laws. Inasmuch as the HCCRA's provisions are not limited by any parameters of time, it is of no merit that a benefit is mandated subsequent to the date of enactment of sections 49-59 of the HCCRA. The last-in-time statutory construction principle does not apply in this instance. Rather, for a mandated benefit to apply to a BASIC policy, the specific sections of the HCCRA, as codified, must be amended directly.

COMMENT: Two commenters queried what is meant by medically necessary mammograms, noting that if mammograms are not performed until cancer is suspected, they lose their preventive care quality. One commenter suggested that limiting mammography benefits to conditions of physical examination settings is too narrow and that coverage should be provided "where a mammogram is determined to be a medically necessary diagnostic test or x-ray provided in conjunction with treatment for a condition for which benefits are otherwise payable." The commenter suggested that with such language, if a patient is hospitalized, and during the course of hospitalization the attending physician orders a mammogram for purposes of ruling out a suspected tumor, the test should be covered.

A third commenter suggested providing two separate definitions to recognize the separate functions of mammography: screening for prevention, and diagnosis. For screening purposes, this commenter suggests mammograms be provided more frequently than the physical exam schedule provided by the HCCRA. Nevertheless, this commenter suggests retaining the "medically necessary" language in reference to mammograms provided to women over age 40 at N.J.A.C. 11:4-36.8(i)7.

RESPONSE: The Department agrees in part and disagrees in part with the commenters' suggestions. The Department agrees that screening mammography should be one of the x-rays available during physical examinations, and should not be subject to a "medically necessary" criteria. However, the Department cannot require that mammography, as a screen or otherwise, be provided more frequently than on the basis of the physical exam schedule specified by the HCCRA. Furthermore, while the Department believes it may require a diagnostic mammogram which is medically appropriate as part of the physical exam schedule, the Department cannot otherwise require coverage of mammographies. (On a practical level, if a diagnostic mammogram is considered part of a hospital expense which is medically necessary, carriers will likely cover it. Carriers are entitled under the HCCRA to utilize medical necessity in considering claims for hospital and medical-surgical expenses.)

The Department does not agree with the suggested language changes to N.J.A.C. 11:4-36.8(i)7 as originally proposed, nor is the Department pleased with the originally proposed language. The Department has revised the language to reflect the requirement that screening mammographies are to be provided to women 40 years of age and older during physical exams, and that diagnostic mammograms should be provided with physical exam as medically appropriate.

COMMENT: One commenter stated that under the HCCRA, chiropractic services would be allowable "alternative benefits or services" which insurers could seek to include in the BASIC policies they develop and present to the Department, but that due to a specific exclusion of chiropractic services at N.J.A.C. 11:4-36.10(b)6, such services would not be deemed allowable for inclusion as alternative benefits or services, a situation to which the commenter objects. The commenter went on to note that it does not concede that the Department's interpretation of "alternative benefits" provided in the Summary (that is, additional optional benefits for additional premiums, or optional lesser benefits for lower premiums, and trading of one benefit for another for approximately equivalent premiums) is in accordance with the intent of the Legislature.

RESPONSE: As stated previously, the proposed rules do not specifically exclude coverage of chiropractic services. Rather, exclusion of chiropractic services is a function of statutory law. In any event, there is no prohibition against the provision of chiropractic services through alternative benefits.

The commenter has not suggested another definition of "alternative benefit" or given any reason why the Department's definition may not be in accordance with the intent of the Legislature. Therefore, the Department provides no response, other than to say that the Department believes its definition is fully in accord with the legislative intent.

COMMENT: One commenter stated that it does not concede that the Department's approval of alternative benefits is not subject to future challenge, objecting to the Department's interpretation set forth in the Summary which states that submissions of alternative benefits by carriers for review may not be deemed approved, nor are subject to hearings or such other proceedings which normally may apply to form filings.

RESPONSE: The Department did not state that its review is not subject to future challenge. The right to challenge agency actions is statutorily protected pursuant to N.J.S.A. 52:14B-1 et seq. Rather, what the Department said is that the typical form filing laws do not apply, primarily due to the fact that the HCCRA has set apart prior approval of alternative benefits (and managed care aspects) from filing

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procedures. There are two types of typical filing procedures: file and use, and prior approval subject to a deemer period, usually 30 days. The HCCRA merely states that alternative benefits are subject to approval of the Commissioner, at his discretion. The Department is employing the strictest interpretation of the "approval" language at this time. More definite procedures and standards may be established at a later date. Persons who submit alternative benefit proposals to the Department and subsequently believe they have not received due process may always seek relief in a legal forum.

COMMENT: One commenter objected to the limitation on the use of deductibles and coinsurance for alternative benefits to no more than the deductibles and coinsurance amounts available under the BASIC policy, noting that the statute is silent on this issue, and thus there is no statutory authority to limit the use of deductibles and coinsurance with respect to alternative benefits.

RESPONSE: The Department notes some ambiguity in its language between the Summary and the rules as proposed. The Department has revised the rules to remove this ambiguity.

It was not the Department's intent to prevent separate deductible and coinsurance requirements from being used with respect to an alternative benefit. There are certain alternative benefits which would be almost impossible to price otherwise. What the Department will not permit to be offered as an alternative benefit is an option to elect deductibles in excess of $250.00 or coinsurance amounts in excess of $500.00 for pure BASIC benefits. The Department is opposed to such an "alternative" because no real benefit is involved, and because the HCCRA has emphatically set the upper limits on pure BASIC policies at $250.00 for the deductible and $500.00 for coinsurance. A BASIC policy with an alternative benefit—a "BASIC-PLUS" policy—could conceivably have additional deductible and coinsurance requirements so long as the additional requirements inure only to the alternative benefit(s) and not to the BASIC benefits.

COMMENT: Two commenters suggested that the definition of preexisting condition provided for BASIC policies be the same as that provided in N.J.A.C. 11:4-16, which includes conditions for which there were symptoms such that an ordinarily prudent person would have sought medical advice or treatment in addition to conditions for which medical advice or treatment was rendered. A third commenter suggested the definition of preexisting condition be revised to include conditions for which a diagnosis was made during the 12-month period prior to the effective date of the policy.

RESPONSE: It is the Department's current position that the ordinarily prudent person standard is too subjective, and with respect to the public policy goals of this State regarding BASIC policies, may be used too restrictively.

Revision of the definition of preexisting condition to include the standard of diagnosis as opposed to medical advice and/or treatment tends to imply that medical advice and treatment are recommended oftentimes without a diagnosis. This seems doubtful, and as such, use of the term diagnosis is unnecessary. It should be remembered that medical advice or treatment need merely be recommended, not received, in order for a condition to be considered preexisting. There may be a few diagnoses for which no medical advice or treatment is recommended, but these should be very few, and for conditions which either have no avoidance or treatment standards, or which do not pose any perceivable immediate problem.

COMMENT: One commenter stated that the Department had no statutory authority to limit preexisting condition clauses to 12 months prior and 12 months after the effective date of the policy, or to make satisfaction of a preexisting condition clause portable.

RESPONSE: Pursuant to sections 51h, 53h, 55h, 57h, and 59h of the HCCRA, (as codified, N.J.S.A. 17:48-6.14h, 17:48A-6.9h, 17:48E-22.2h, 17B:26B-2h and 26:2J-4.3h, respectively), the Commissioner of Insurance is authorized to adopt rules and regulations to effectuate the purpose of the relevant sections of the HCCRA, including standards for terms and conditions of the contracts and policies required to be offered. The Commissioner is authorized to set the parameters and contingencies for preexisting condition limitations in BASIC policies.

COMMENT: Two commenters stated that because BASIC policies are intended for people who cannot obtain coverage elsewhere, it is counter-productive to have a waiting period or a 12-month preexisting condition clause. One commenter also noted that the insurance industry has indicated (through negotiations on other pending legislation) that a nine-month preexisting condition clause is entirely acceptable; therefore, there is no valid reason for the Department to require a 12-month preexisting condition clause.

RESPONSE: It is unclear to the Department why the commenters believe that waiting periods and preexisting condition limitations are counterproductive to the process of extending coverage to persons previously uninsured. One of the primary reasons for lack of insurance is affordability of current marketplace products. Waiting periods and preexisting condition limitations are aimed at reducing adverse selection (by discouraging those who can afford coverage from waiting until the onset of a medical condition before purchasing coverage) and thereby directly impact upon premiums. The longer the waiting period and preexisting condition limitation periods, the lower the premium. (Eventually, however, waiting periods and preexisting condition limitation periods may not be actuarially justified, but such is not the case here.) In the instance of individuals or groups which were without coverage because of "uninsurability," while it is true that they may be denied coverage for preexisting conditions for up to one year, they will, nevertheless, be otherwise covered, a situation which is better than being totally uninsured.

The Department is aware that some members of the insurance industry have been willing to accept a nine-month preexisting condition limitation in negotiations involving a bill designed to provide insurance to small employers. Although the Department acknowledges that such acquiescence on the part of industry members is persuasive, the Department also recognizes that there are some fundamental differences which yet exist between the pending bill and these rules. Given that, the Department is reluctant to lower the upper limit of the preexisting condition limitation provision. (Readers should remember that the 12-month pre-and post-effective date periods are outermost parameters. Carriers may use lesser time spans, and are encouraged to do so.)

COMMENT: One commenter stated that the Department has no statutory authority to limit waiting periods to 30 days.

RESPONSE: The Department is authorized by the HCCRA to adopt rules establishing standards for terms and conditions for BASIC policies.

COMMENT: Four commenters objected to the Department's prohibition upon employers establishing a waiting period of more than 30 days for coverage under BASIC policies with respect to new employees.

RESPONSE: The commenters have misunderstood the concept of "waiting period" as used in these rules. The waiting period established here does not refer to the length of time an employee must be with an employer before the employer extends coverage to that employee and/or his or her dependents. Rather, the waiting period limit established here refers to the length of time following the effective date of coverage which a covered person must wait before becoming eligible for benefits under the terms of the policy.

Waiting periods are very common for individual policies, but may be only nominal or non-existent in group policies. With that in mind, and inasmuch as the waiting period requirement causes confusion for employers, the Department has determined to prohibit any such waiting period in group policies. This prohibition is reflected in the revised rules.

COMMENT: One commenter questioned whether there is a conflict between the 12-month preexisting condition clause and the 30-day waiting period limitations.

RESPONSE: There is no conflict. A waiting period is the period of time during which a covered person may be prohibited from collecting any benefits under the policy for any services rendered, even though these services would otherwise be covered. A preexisting condition limitation period is the period of time during which a covered person may be prohibited from collecting any benefits under the policy for covered services rendered in relation to a preexisting condition (that is, a condition existing prior to the effective date of the policy). Waiting periods and preexisting condition periods must be included in a policy or certificate in order to be applicable. Both time periods begin to run immediately following the effective date of coverage, and thus, run simultaneously, not consecutively. Pursuant to these rules, no covered person may be denied benefits for covered services beyond the thirtieth day following the effective date of coverage, unless rendered for a preexisting condition, and no covered person may be denied benefits for covered services beyond the twelfth month following the effective date of coverage, even if rendered for a preexisting condition.

COMMENT: Seven commenters objected to the Department's scheduling of physical examinations, noting that the HCCRA only requires up to six physical examinations during the first two years of life, while the rules, at N.J.A.C. 11:4-36.7, specify up to six physical examinations, but no less than four. Additionally, the rules specify annual physical

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examinations for those aged 60 and over, while the HCCRA requires physical examination for this age group once every two years.

RESPONSE: The Department acknowledges that the schedule of physical exams for persons aged 60 and over contained in the rules conflicted with the schedule in the HCCRA, which specifies one physical exam every other year beginning at age 60. The error was inadvertent and the rules have been corrected to reflect the schedule in the HCCRA.

With respect to the schedule of physical exams for persons aged two years and younger, the Department notes a variance but not a conflict between the schedule contained in the rules and the schedule contained in the HCCRA. The HCCRA requires up to six physical exams during the first two years. Despite the open-endedness of the language used, the Department believes that the intent of the Legislature was to assure that at least six physical exams be available to children under two years old. The Department sincerely doubts that the legislature entertained the possibility that a BASIC policy could provide no physical exams to an infant and still be in compliance with the HCCRA. With this in mind, the Department has removed the lower limit of four physical exams, and is requiring in the revised rules that benefits for six physical exams be included in the policy, no more and no less.

COMMENT: Two commenters objected to the physical examination limits during the first two years of life. One commenter stated that the Department should require more than four examinations, in that six examinations are authorized by statute. Both commenters noted that six physical examinations are far fewer than that recommended for well-baby care.

RESPONSE: The Department agrees and has revised the rules accordingly.

COMMENT: Seven commenters argued that the Department had exceeded its statutory authority by requiring an outlined set of diagnostic tests, since the HCCRA merely stated that physical examinations may include diagnostic tests and x-rays.

RESPONSE: The Department disagrees. The language of the HCCRA is not permissive with respect to x-rays or diagnostic tests, but indicates that physical exams will include such x-rays and tests. Furthermore, the HCCRA authorizes the Commissioner to establish schedules of benefits. The Commissioner has not exceeded his statutory authority.

COMMENT: Two commenters stated that diagnostic tests should only be performed in conjunction with physical examinations as medically necessary.

RESPONSE: The Department does not disagree with the commenter in all respects, but notes that the HCCRA does not provide for medical necessity in this regard.

The Department believes that, for purposes of preventive care, which physical exams typically represent, medical necessity, in some instances, may be counterproductive. However, the Department is willing to limit diagnostic tests and x-rays to instances in which such procedures are consistent with good medical practice which is a less restrictive standard than medical necessity.

COMMENT: One commenter objected to the definition of physical examination to the extent that the definition encompasses both out-of-hospital and outpatient services, because the HCCRA only refers to out-of-hospital services.

RESPONSE: The Department agrees, and has revised the rules accordingly.

COMMENT: One commenter stated that the definition of physical examination should not address examinations for maternity care.

RESPONSE: The Department agrees and has revised the rules accordingly. The definition of physical examination is primarily meant to describe that term as it applies to the scheduled physical exam benefit required by the HCCRA. To avoid any confusion, references to maternity care are restricted to the definition of "maternity expenses," because it should never be assumed that the physical exam and maternity expense benefit somehow may overlap or be co-joined.

COMMENT: One commenter stated that it was unclear whether hospital charges are included in the maternity coverage. If so, then the rules should be revised to clarify that such benefits will not be duplicated by benefits provided under other BASIC coverages. If not, then the rules should be clarified to state that maternity coverage includes benefits for physician charges only.

RESPONSE: Maternity benefits are to include coverage of all services and expenses inherent in maternity care up to and including discharge after delivery, or discharge after any complications of pregnancy. The maternity benefit is separate from the hospital expense benefit, but the maternity benefit does include coverage of hospital expenses associated with maternity, delivery or complications of pregnancy. That is, the time spent in a hospital for maternity-based reasons does not have any impact upon the hospital expense benefit, per se. Time spent in a hospital for delivery, for instance, does not reduce a person's available allotment of hospital expense benefit during that benefit period or calendar year. The Department does not consider this to be a duplication of benefits, merely a recognition of the separateness of the benefits.

COMMENT: One commenter questioned whether, for a hospital service corporation, benefits for maternity expenses are to be provided only for a period of 31 days following the date of birth.

RESPONSE: Hospital service corporations must provide benefits for any hospital-based maternity expenses. Hospital-based expenses may conceivably be incurred for maternity care prior to delivery. As defined, maternity expenses include nursery services following delivery. However, other than coverage of nursery services following maternity, a newborn must be covered for all other hospital expenses incurred during its first 31 days of life, up to the 21 day limit required by the HCCRA for hospital expense. The days spent in the nursery following delivery do not count against this 21 day period, but any readmission will count against the 21 day period. For instance, following delivery, a newborn is in the nursery for three days and is discharged; the newborn is readmitted two days later, and remains in the hospital for the next 26 days: 21 of those 26 days must be covered for hospital expenses incurred. If, on-the-other-hand, the newborn is not readmitted until 10 days after its initial discharge, and remains in the hospital for 26 days, only 18 of those days must be covered under the first 31-day-rule for newborns. (Typically, of course, the child will be added to the policy, and all 21 days will be covered.)

COMMENT: One commenter questioned whether maternity expenses are included within the hospital expense benefit days, or are additional thereto, taking the position that maternity expenses should not be additional.

RESPONSE: The language of the HCCRA is not clear on this issue. However, inasmuch as the HCCRA sets up benefits for maternity expenses, including delivery, as something entirely separate from the benefits for hospital expenses, the Department is inclined to interpret the statute as intending that maternity expenses are not to be included in the hospital expense benefit days. The Department believes, however, that the 21-day-rule applying to hospital expenses generally should apply on the hospital-based component of the maternity expense as well. Thus, the Department will not require that carriers include more than 21 days of hospital-based expense coverage under maternity, only that the hospital-based maternity expense does not impact upon the general hospital expense benefit.

COMMENT: One commenter stated that the definition of maternity expenses ought to make it clear that "reasonable and necessary" expenses are not limited by the schedule of care providing for physical examinations, since reasonable and necessary must be intended to retain plain meaning. The commenter suggested that the definition, as written, could be read to limit coverage for necessary monitoring and treatment.

RESPONSE: The terms "reasonable" and "necessary" are intended to carry their plain meaning. It should be clear from the definition of "maternity expenses" contained in the rules that reasonable and necessary expenses are not limited by the schedule of physical examinations set forth therein, in that the definition provides that the schedule of physical exams is the minimum care required not the maximum care required.

COMMENT: One commenter questioned whether, in the definition of maternity expense benefits, pediatric nursery services refer to hospital charges, pediatrician charges, or both.

RESPONSE: The definition refers to hospital charges. The term "pediatric" has been removed upon reproposal to avoid confusion. That does not mean, of course, that inhospital physician services required for the mother and the newborn following delivery should not be covered, unless the carrier is a hospital service corporation.

COMMENT: Two commenters stated that the requirement that maternity benefits be extended may place many plans in violation of Federal law, noting that Federal law requires that if one type of benefit is offered to a terminated employee and not connected with total disability, a similar extension of all other medical services covered under the plan is also required.

RESPONSE: It is the Department's opinion that N.J.A.C. 11:4-36.8(f), on its face, does not violate, or create a violation of the Pregnancy Discrimination Act, Pub. L. 95-555. The Federal law addresses employers

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and employment practices of discriminating against pregnancy and pregnant women in hiring, firing, career tracking, and fringe benefits, such as health care coverage and sick leave, as well as benefit accrual. It was a common practice to dismiss pregnant employees, or force them to take leaves of absence without sick time or disability pay even though such benefits were available for other medical conditions. It was also a common practice to provide no coverage for pregnancy and delivery expenses, or to predicate coverage based on marital status or presumed marital status (that is, benefits for maternity expenses existed in family coverage, but not single coverage). The intent of the Federal law was to bring pregnancy and pregnancy-related conditions on-line with other recognized medical conditions for purposes of employment practices.

Notably, N.J.A.C. 11:4-36.8(f) applies not to employers or their employment-related practices, but to carriers and their contingency obligations following an involuntary termination of a group. An employer is not required to provide the benefit beyond the date on which the coverage contract is terminated, nor is the carrier entitled to payment from the employer.

COMMENT: One commenter questioned whether a carrier may continue collecting premiums for the maternity coverage if benefits are extended upon cancellation.

RESPONSE: No. Appropriate pricing of group BASIC coverage should include reserving for this contigency.

COMMENT: One commenter questioned whether it was within the legislative intent to include complications of pregnancy within the definition of maternity expense, noting that it is common industry and regulatory practice to view and treat complications as separate from routine pregnancy, compensable as for any other sickness (while coverage for routine pregnancy may be excluded or provided on a mandated offer basis). The commenter states that given that deductibles and copayments are limited for maternity expense by HCCRA, it is probable that the Legislature only contemplated routine maternities be covered under the maternity expense benefit.

RESPONSE: The Department disagrees. The Department doubts that the Legislature considered, or was even aware, that many (not all) carriers treat complications of pregnancy separately from routine maternity with respect to benefits and coverage. The practical reasons which might otherwise exist for treating routine pregnancy and complications of pregnancy separately (other than monetary factors) do not exist here.

COMMENT: Six commenters objected to the requirement that carriers use the Medicare Resource-Based Relative Value Scale for Medicare Part B ("RBRVS") in respect to providing benefits for the basic medical-surgical expense coverage in accordance with N.J.A.C. 11:4-36.7(f). One commenter stated that using the RBRVS is not equivalent to cost containment. Doctors lose money on every Medicare patient they treat and must make up the loss somewhere else. Five commenters argued that, even if the RBRVS has merit in controlling or limiting cost, requiring its use seriously undermines efforts to move away from a fee-for-service model. These commenters stated that the Department is exceeding its statutory authority, inasmuch as the HCCRA is silent on this issue. An additional commenter questioned whether the Department has legal authority to utilize the RBRVS for non-Medicare subscribers.

RESPONSE: Inasmuch as the HCCRA authorizes the Commissioner to set the terms and conditions of this type of coverage, the Department believes it is acting within its statutory authority. The Department believes that use of the RBRVS is an appropriate means of achieving the goal of producing a more affordable insurance contract, but acknowledges it is not the only method or even the best method for all carriers.

The Department has not noted any serious efforts to move away from the fee-for-service payment system, although managed care methods have become more and more common. The Department presumes, therefore, that the thrust of the commenters' concern is that the RBRVS will impede efforts to move toward managed care systems.

There is a popular, but incorrect, notion among many people that managed care and fee-for-service systems are diametrically opposed. No doubt, this belief arises from the proliferation and modest success of the HMO system which utilizes managed care without a typical fee-for-service arrangement.

It must be understood, however, that fee-for-service is a method of payment, and though the method of payment does impact upon how and to what extent health care services will be rendered, the impact is only indirect. By design, the concept of managed care is meant to assure specifically that proper and adequate utilization of health care services occur, and that unnecessary services either are not rendered, or at least are not compensated. Notably, the capitation method of payment used by HMOs, while contributing greatly to the managed care concept, is not what creates a managed care design in the HMO system. It is the requirement that patients elect a primary care physician (and such specialists as that physician—acting as a gatekeeper—may recommend) or forego coverage of services, which represents the managed care portion of the arrangement. Here, managed care is represented by control of the provider network, limited choice, and strict rules regarding referrals to other physicians, both in- and out-of-network. Health care providers are given an incentive to join the HMO network by the guaranteed monthly revenue which the capitation method of payment provides, anticipating that the revenue generated will usually be sufficient to cover the costs of service rendered. Thus, the payment method and the managed care design, though interrelated, are distinct and separate components, which are not necessarily interdependent. Case management, for instance, is a managed care system which can and does occur quite readily under a fee-for-service payment basis.

There is nothing inherently wrong with a fee-for-service model. Typically it is a combination of the level of the fee and inadequate claims control which creates problems in the fee-for-service model. The use of the RBRVS addresses the problem of fee levels. Markedly limited benefits will help somewhat in easing claims control problems.

It is true that use of the RBRVS does not squarely address the issue of health care cost containment, but that is not the function of these rules or sections 49-59 of the HCCRA. Many other provisions of the HCCRA are designed to address problems of health care cost containment.

Carriers able to develop fee schedules or negotiate reimbursement levels at or below those reimbursement levels of the RBRVS in New Jersey are encouraged to do so. The Department has revised the language regarding the RBRVS to authorize carriers to use the RBRVS, rather than requiring the use of the RBRVS.

With respect to the issue of authority to appropriate use of the RBRVS for non-Medicare subscribers, the commenter appears to be asking whether use of the RBRVS is the exclusive domain of the Federal government. The Federal government has not proclaimed that the RBRVS may not be used for non-Medicare situations. Wider spread use of the RBRVS would probably help, not hinder, the Federal government's goals.

COMMENT: One commenter stated that if carriers are required to use the RBRVS, then providers should be required to accept the RBRVS amount as payment in full.

RESPONSE: The Department of Insurance is only authorized to regulate carriers; it is not authorized to regulate health care providers. Thus, while the Department may require carriers to use a specific fee schedule, it cannot require health care providers to accept the fees from the fee schedules as payment in full under the HCCRA.

COMMENT: One commenter questioned why the Department would elect to require use of the RBRVS when New Jersey has already developed its own fee schedule for auto accident victims (set forth at N.J.A.C. 11:3-29).

RESPONSE: The dynamics of the automobile personal injury protection ("PIP") medical fee schedule was not considered appropriate for use with BASIC policies at this time. Because the statutes relating to PIP coverage prohibit balance billing by doctors, and removes any obligation from carriers to provide reimbursement beyond the PIP medical fee schedule, the PIP medical fee schedule essentially represents a ceiling on fees. The HCCRA does not address the issues addressed by the PIP statutes, and thus, a ceiling-type fee schedule was not considered appropriate. Instead, the Department was seeking a lower level fee schedule which has, or will have, high recognition value from both the carriers' and providers' perspective, and may be implemented by both parties with relative ease in their billing and claims handling practices.

COMMENT: One commenter suggested that the Department should approve policies which do not utilize the RBRVS, if carriers are able to deliver benefits of substantially similar scope within the required premium parameters.

RESPONSE: The Department has difficulty answering this inquiry for two reasons. First, there are no required premium parameters, per se. Second, the Department is unclear what is meant by the phrase "benefits of substantially similar scope."

The $1500 benchmark specified for group policies is just that—a benchmark. Policies priced at or around $1500 will have provided prima facie "evidence" that the specified loss ratios will be met as required.

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No further demonstrations will be required of the rates. Carriers may submit group policy with higher premiums, but will have to provide documentation to the Department that the required loss ratios will be met.

BASIC policies must provide the benefits specified by the HCCRA and the rules. At this time, more of one benefit may not be substituted for another. For instance, medical-surgical, maternity expense and physical exam benefits may not have as a substitute more extensive hospital benefits, where some carriers are able to obtain greater volume discounts.

Strictly speaking to the question of whether carriers may utilize some fee arrangement other than the RBRVS, the answer is a qualified yes. Carriers which have entered into participating provider agreements already should honor those agreements until their expiration. If, however, current participating provider agreements may be interpreted by all parties as not applying to new, statutorily-required policy forms, then the RBRVS or some reimbursement level which approximates or is lower than that of the RBRVS should be imposed. The Department is seeking consistency in the treatment of these types of policies.

COMMENT: One commenter suggested that HMOs be allowed to continue to utilize their traditional mode of reimbursement for BASIC coverage, rather than utilizing an RBRVS-based system.

RESPONSE: The Department recognizes that the HMOs may require special handling and arrangements in this regard, and that the solution for one HMO may not be a solution for another HMO. The Department, therefore, will not require any HMO to utilize the RBRVS, but will work separately with each HMO to attempt to produce BASIC coverage contracts in line with the intent of these rules. It should be noted that it is not the mode of reimbursement which may have to be altered, but the level of reimbursement.

COMMENT: Two commenters questioned the meaning and practical application of an average charge per covered person of $1500, with the average charge for dependent coverage consistent with this amount: does it mean that a family of four (two parents and two minor children) should expect an annual premium of $6,000?

RESPONSE: No. The $1500 figure refers to a covered adult under individual coverage. In general, the charge for dependent children will be less per person than for an adult.

COMMENT: Six commenters stated that by specifying that BASIC policies be $1500 in 1992 and 1993, pursuant to N.J.A.C. 11:4-36.6(d), the Department is exceeding its statutory authority, which is to establish loss ratios, not rates.

RESPONSE: The Department is not establishing rates. The $1500 set forth at N.J.A.C. 11:4-36.6(d) is merely a benchmark, essentially demarcating the rate levels at which the Department will presume that the group policy is in line with the rules' loss ratio requirements, and hence, will require no further demonstrations for purposes of initially filing the forms. Carriers are permitted to submit policy forms with higher rates, but the Department will expect detailed actuarial demonstration that the loss ratio requirements for these policy forms will be met, using realistic expectations and factors.

COMMENT: One commenter stated that by establishing a $1500 premium rate for policies in 1993, the Department is implying that carriers may not raise from 1992 to 1993. The commenter argues that the Department has no statutory authority to prevent carriers from raising rates.

RESPONSE: The Department is not establishing premium rates, nor does the Department intend to infer that carriers may not raise rates, if justified, between 1992 and 1993. Please refer to the response to the foregoing comment.

COMMENT: One commenter stated that there is no statutory authority for the Department to limit substandard rates to 35 percent higher than standard rates pursuant to N.J.A.C. 11:4-36.6(g).

RESPONSE: The Department is authorized by the HCCRA to set the terms and conditions of the policies and contracts in order to effectuate the intent of the legislation. The intent of the HCCRA generally is to reduce the uncompensated care burden in New Jersey. This is to be achieved, in part, by decreasing the ranks of the uninsureds by making minimum coverage more affordable. The Department believes that by requiring that substandard rating be limited, it is carrying out the intent of the HCCRA within its statutory authority, as well as authority available through other laws, for instance, the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., which are applicable to BASIC policies.

COMMENT: Two commenters stated that the limitation of the substandard charge to no more than 35 percent above the standard rates will result in large numbers of rejections, and that greater latitude allows acceptance of greater risk by carriers.

RESPONSE: Carriers are reminded that where guaranteed issue is required, rejection, per se, is not possible.

COMMENT: One commenter stated that the objective of BASIC policies should not be to provide coverage to people who are basically healthy, but to those people considered to be uninsurable. Allowing insurers to reject whomever and charge substandard rates does nothing to decrease the uncompensated care cost burden.

RESPONSE: Carriers are not allowed to reject whomever they desire. As reproposed, carriers must offer and extend coverage to all groups which request BASIC coverage, and even in the original proposal, all small groups had to be covered. Additionally, all individual BASIC policies are required to be guaranteed issue as well, in accordance with the rules as reproposed. (As originally proposed, only Blue Cross and Blue Shield of New Jersey was required to accept all individual BASIC applicants regardless of their health status).

Individuals otherwise considered uninsurable have never been denied coverage by Blue Cross and Blue Shield of New Jersey. Such persons tended to remain uncovered because the costs of coverage have been prohibitive. Both the HCCRA and these rules are designed to address problems of affordability to some degree. Affordability has been and continues to be a key issue in extending insurance coverage.

It is not possible for the Department to prohibit substandard rating. The HCCRA specifically permits underwriting. The Department does believe, however, that it is within its statutory authority to limit substandard bands in order to meet the legislative intent to create as affordable (and hence, generally accessible) a product as reasonably possible.

COMMENT: One commenter questioned why loss ratios should be higher than normal for these policies.

RESPONSE: The loss ratios for these policies are somewhat higher than normal because the Department expects that the overall administrative costs will be somewhat lower for these policies. The policy design has essentially already been developed by the Legislature and the Department. Because the benefits are so limited, claims administrative costs should not be as high as would be true for more standard policies. Additionally, initial marketing costs should not be as great, inasmuch as this is a product which essentially all carriers will have, and one which has received significant media attention.

COMMENT: One commenter stated that the loss ratios are too low, arguing that because the BASIC coverage is so detailed in the rules and because all carriers must offer such coverage, it is difficult to understand why carriers should be allowed to use 20 to 35 cents of each dollar for administrative expenses, and that the low loss ratios will allow carriers to continue to be as inefficient as ever.

RESPONSE: All costs of administration are not tied to the development of the product. Carriers will continue to incur some level of marketing costs, commissions and claims handling costs which are all part of the carriers' administrative expenses. Reserves, surplus and profits must also be considered, and are elements which assure that claims will be payable at some future date.

The bulk of the administrative expense will still probably be for handling claims, premium collection, administrative functions and marketing costs. It is in these areas where the group is much more advantageous than the individual insured, from a carrier's point of view, because volume tends to create savings; hence, the difference between the group and individual policy loss ratio requirements.

COMMENT: One commenter stated that specific loss ratios have been improperly imposed, noting that the HCCRA merely requires BASIC policies to be reasonably priced.

RESPONSE: The HCCRA specifically states at sections 51f, 53f, 55f, 57f and 59f (as codified, N.J.S.A. 17:48-6.14f, 17:48A-6.9f, 17:48E-22.2f, 17B:26B-2f and 26:2J-4.3f) that the Commissioner shall establish loss ratio standards for BASIC policies.

COMMENT: Five commenters stated that N.J.A.C. 11:4-36.6(i)1 essentially establishes community rating for "demographic" purposes, by providing that the expected loss ratio for a rating class not differ from the expected loss ratio of all classes by more than 10 percent. One commenter goes on to state that if the section of the rule is meant to require actuarial justification for rating differentials, the goal is undermined by the setting of an arbitrary cap on the actuarial adjustments for demographic characteristics; if a greater differential is actuarially justified, it would be prohibited. The commenters stated that the Department lacks statutory authority.

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RESPONSE: The rule does not establish or essentially establish community rating. Under community rating, **rates** are not allowed to vary by demographic status (age, sex, geographic location). What the rule says, essentially, is that **loss ratios** cannot vary significantly by demographic status. The loss ratio is the ratio of benefits paid to premiums. Therefore, if one demographic class has claims that are two times that of another demographic class, the premium can also be two times that of the other demographic class. The rule does not set a "cap" on actuarial adjustments for demographic characteristics because it is the deviation in loss ratio, not the deviation in rate, which is capped.

The Department does not lack statutory authority. The statutes authorize the Commissioner to set the terms and conditions of BASIC policies, including loss ratios.

COMMENT: One commenter stated that, in order to have true community rating, all people should be insurable at the standard (basic) rate, and no substandard rates should apply. Furthermore, if the carrier is allowed to raise rates during open enrollment, rating is no longer community-based, and becomes discriminatory.

RESPONSE: The Department presumes that the commenter's concern is centered upon N.J.A.C. 11:4-36.6(h), which governs rates specifically for health service corporations (that is, Blue Cross and Blue Shield of New Jersey), and which is the only section of the rule which requires community rating. It is probable that some confusion has arisen on this issue because of the peculiarities of the health service corporation concept, which are inferred by the language of the section, but not explicitly stated. Health service corporations issue two broad categories of individual health coverage: co-op and nonco-op. When referring to open enrollment, co-op contracts are actually what is being referenced, and not a specific period of open enrollment, as that term is often used. Both co-op and nonco-op contracts are community rated, but co-op contracts are rated on a substandard basis, while nonco-op contracts are rated as standard, and usually have lower premiums. Co-op contracts typically are charged at a higher rate than nonco-op contracts primarily because they are not underwritten and because enrollment is unrestricted for the most part. Here, the rules have limited the relative spread between rates for co-op and nonco-op BASIC contracts to an average of 35 percent. In and of itself, this requirement does not substantively affect the concept of community rating. The issue of raising rates during open enrollment appears to be moot, inasmuch as the definition inferred by the commenter for the phrase open enrollment is incorrect with respect to its usage at this specific juncture.

If, in fact, the commenter is referring to N.J.A.C. 11:4-36.6(f) and (g), which prohibit experience rating and provide for percentage limits on substandard rates, then the point is that pure community rating has not been required, and hence, there is no contradiction in permitting substandard rating within a group.

COMMENT: One commenter stated that the rules prohibit community rating which is beyond the statutory requirements inasmuch as the statute is silent on this matter.

RESPONSE: The rules do not prohibit community rating.

COMMENT: One commenter states that the Department lacks any statutory authority to prohibit experience rating.

RESPONSE: The Department is authorized to establish the terms and conditions for BASIC policies and contracts.

COMMENT: One commenter argued that the rating methodology is unfair in that carriers are allowed to use age, sex, occupation, location and health status to establish rates.

RESPONSE: In general, carriers are not prohibited from using age, sex, occupation, location, or health status to establish rates. According to N.J.S.A. 17B:30-12d, unfair discrimination exists and is prohibited only when individuals of the same class and of essentially the same hazard are treated differently by a carrier with respect to the amount of premium, policy fees, or rates changed for like policies or contracts, or in the benefits payable thereunder, or in any of the terms or conditions of the policies or contracts. However, to the extent that discrimination is based on valid differences in hazard between different rating classes, such discrimination is neither unfair nor prohibited. (As an exception, the courts have held that health service corporations may not discriminate according to age, sex, occupation, or location in their rates on individual contracts.) The HCCRA made no specific exceptions from the general rules in this regard. (Readers should note that any discrimination—as opposed to unfair discrimination—is prohibited with respect to race, creed, color, national origin and ancestry. See N.J.S.A. 17B:30-12.)

COMMENT: One commenter stated that the rating methodology is unfair in that Blue Cross and Blue Shield of New Jersey ("BCBSNJ") must community rate policies while other carriers do not. The commenter stated that in doing so, BCBSNJ is guaranteed to be stuck with all of the worst risks, worsening BCBSNJ's financial condition, while other carriers are free to set rates to attract only healthy risks, guaranteeing profits.

RESPONSE: The Department believes reference to "worst" risks is ambiguous. It is unclear whether the reference is to risks from locations, genders and age groups with higher expected claims, or to less healthy and uninsurable risks. The Department notes that, even under community rating, BCBSNJ is allowed to charge a different amount (a substandard rate) for subscribers that do not meet underwriting standards (that is, less healthy and uninsurable risks). Therefore, the Department disagrees with the statement that BCBSNJ is guaranteed to be stuck with all of the worst risks. Moreover, the Department does not know really what is meant by setting rates to attract only healthy risks, since presumably, a rate attractive to a healthy risk is attractive to an unhealthy risk as well. Further, the Department does not believe that the ability to demographically rate necessarily guarantees a profit.

The Department agrees that the requirement that BCBSNJ community rate its individual contracts, while commercial insurers are not so required, allows a form of anti-selection to occur and results in a worsening of BCBSNJ's financial condition. However, nothing in the HCCRA authorizes BCBSNJ to depart from its historical community rating of nongroup contracts, nor does anything in the HCCRA necessarily require other carriers to specifically incorporate community rating with respect to individual BASIC policies.

The Department will closely monitor the effect on BCBSNJ of being the unique carrier required to community rate its individual BASIC policies. If the effect becomes significant, either financially or in terms of availability of coverage, the Department may require commercial carriers to community rate their individual BASIC contracts (the Department believes it has the statutory authority to do so), or alternatively, may seek authority allowing BCBSNJ to demographically rate its individual contracts.

COMMENT: One commenter argued that prior filing of premium rates is inappropriate, especially for the small group market. Carriers need the ability to remain flexible and to react quickly to sudden changes in claims.

RESPONSE: Prior filing of rates is required by the HCCRA at sections 51e, 53e, 55e, 57e and 59e (as codified, N.J.S.A. 17:48-6.14e, 17:48A-6.9e, 17:48E-22.2e, 17B:26B-2e and 26:2J-4.3e). The HCCRA does authorize the Commissioner to waive some or all of the 60-day prior approval period in his discretion, and the Commissioner may do so when and if such a waiver is demonstrated to be in the best interests of the public. The rules as revised reflect this possibility, allowing for a 30-day deemer provision under certain circumstances.

COMMENT: Three commenters stated that while they do not disagree with limiting experience rating for small groups, they do not believe the prohibition is appropriate for larger groups (of a credible size).

RESPONSE: The Department agrees, and has revised the rules to permit experience-rating for groups not defined as a "small group." The actual determination of what constitutes a credibly large group is left to the discretion of the various carriers. The Department anticipates that groups not considered "credible" will not be experience rated, even if those groups do not meet the definition of "small group."

COMMENT: One commenter stated that the Department is requiring the submission of information on premiums, claims and reserves beyond that currently required for existing health products, unduly adding to administrative costs.

RESPONSE: Actually, the Department is not requiring the submission of information on premiums, claims and reserves beyond that currently required for individual health products. Inasmuch as such information has not heretofore been required for most carriers on group health products, it is true that the information requested is "more," and will add to administrative costs. However, that is to be expected since the HCCRA requires prior approval of all BASIC policy and contract rates, both group and nongroup. Given that no administrative costs have been incurred by any carrier specific to BASIC policies or contracts, and hence the only real benchmark for such administrative costs relative to any policy exists only for nonBASIC individual health products, the administrative costs to be borne by carriers relative to BASIC policies and contracts can't really be described as undue.

COMMENT: Three commenters objected to the requirement that the cost of maternity benefits be distributed equally among all adult risk classifications. One commenter noted that this will increase costs for

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older individuals despite the fact that this age group already experiences the highest health care costs.

RESPONSE: The legislation mandated coverage of maternity benefits. If the cost of these benefits is allocated to the demographic group most likely to use them (women of the predominant childbearing age), the cost would be prohibitive. Therefore, women of childbearing age would be unable to afford the coverage specifically mandated in the statutes. The Department believes its proposal is the only workable way of fulfilling this mandate.

The Department agrees with the statement that some of the cost burden falls on older individuals. However, the statement that older individuals experience higher health care costs is not necessarily true. Even ignoring maternity costs, health care costs for women in their 30's and 40's may exceed those for men in their 50's. When maternity costs are taken into account, this disparity is even greater.

The Department also notes that, to the extent that health care costs are higher for older individuals, they do not pay these costs when they are covered by individual Blue Cross and Blue Shield contracts in New Jersey (which are community rated) or by most group insurance contracts (which are demographically rated as to the employer, but not as to the employee contribution). Therefore, the Department wonders why a similar rating subsidy that benefits women of childbearing age is questioned.

COMMENT: Seven commenters objected to N.J.A.C. 11:4-36.9(a) which essentially requires guaranteed issue of group BASIC coverage to small groups (as defined in the rules) and all (eligible) members of small groups especially without some kind of reinsurance mechanism. The commenters stated that the statute provides no authority for such a requirement, and that there is no indication that the Legislature intended that BASIC policies be made available to uninsurables or high risk individuals or groups, noting that the Department's Summary statement indicates that the BASIC policies are designed primarily for individuals or groups that are basically healthy but unable to afford the standard benefit policies currently available.

RESPONSE: The Department is authorized to establish the terms and conditions of BASIC policies and contracts and, therefore, has not exceeded its statutory authority.

The Summary did include the statement that the Department was interpreting the HCCRA to be pursuing six objectives, one of which is the promotion of policies designed primarily for individuals and groups that are basically healthy but unable to afford standard benefit policies and contracts currently available in the marketplace. It should be noted that the remaining objectives include increasing the risk spread among as wide a population as possible, coverage of all family members and as many families as possible, and making the coverage attractive to groups. All of these objectives, of course, are meant to achieve, to one degree or another, the goals of the HCCRA, which include making coverage more affordable and more accessible, increasing the number of New Jersey citizens covered by private insurance, and thereby, reducing the uncompensated care burden in this State. All of this is stated in the Summary.

Additionally, the Department notes that just because a group is considered high risk does not mean that the group is not basically healthy. (The same is true of individuals.) Further, carriers are allowed to use substandard rating within limits. Finally, the Department is firmly of the belief that increasing stability in the marketplace for small groups (and larger groups) and individuals will benefit all parties concerned, including carriers, in matters of finance, public confidence and increased responsiveness.

The Department has never accepted the argument that guranteed issue and a pooling/reinsurance mechanism must be married. On the contrary, the Department's experience in this regard, albeit limited, is that such a marriage is often a poor one which may lead to pauperization of the pooling mechanism. It is a marriage that requires solid guidelines as to the various benefits the parties have a right to expect, their obligations, and the goals of the partnership. The HCCRA provides for none of this.

Other methods to ease the potential burdens of guaranteed issue on some carriers and equalize responsibilities are available. Some form or manner of allocation of high risk coverage is one such method. The Department has revised its rules to allow carriers temporary relief from guaranteed issue of BASIC coverage to high risk individuals and groups upon application using an "inverse allocation" method. Relief will vary somewhat among carriers. For instance, HMOs may be able to obtain relief based upon an indication of insufficient capacity, while Blue Cross and Blue Shield of New Jersey will not be eligible for relief on nongroup guaranteed issues. Otherwise, a carrier may be able to obtain partial relief based upon its market share of "uninsurables" in relation to the share of other carriers, as reported to the Department on an annual basis. Of necessity, some level of BASIC market participation is required of essentially all carriers, if relief from compliance with the HCCRA and the proposed rules is to be obtained. Relief will be granted for 12 months at a time, and a new application must be submitted to continue relief, as the rules have been reproposed.

COMMENT: Six commenters objected to the required five-year guaranteed renewal requirement for group BASIC policies, as proposed. One commenter stated that the Department has no statutory authority to require guaranteed renewability. One commenter stated that it is inappropriate to require a carrier to continue providing coverage when premium increases must be filed and approved, because carriers have no assurance against rates becoming inadequate. Three commenters stated that carriers should be allowed to nonrenew or cancel the policy when the group no longer meets underwriting guidelines, participation and/or contribution requirements. All five commenters stated that other reasons besides nonpayment of premium should be recognized for cancellation of coverage, such as material misrepresentation and fraud.

RESPONSE: The Department does not agree that carriers have no assurance against rates becoming inadequate. The loss ratio standards provide for an adequate return in relation to claims. The commenters assume that the Department will allow rates to become inadequate. Actions in this regard are always subject to administrative and judicial review. (The Department notes that individual health insurance sold on a guaranteed renewal basis also lacks the assurances sought by commenters.)

The Department does not agree that groups should be cancellable for failure to meet underwriting guidelines. Any permitted underwriting at issue should take into account the guaranteed renewability period. However, the Department agrees that groups may be cancelled for failure to meet participation requirements, as reproposed in the rules by the Department. Material misrepresentation and fraud are always grounds for cancellation, as well as denial of claim.

The Department does not lack statutory authority to require guaranteed renewability which is a term and condition of the BASIC policy or contract.

COMMENT: One commenter stated that carriers should not be allowed the discretion to nonrenew a small group's BASIC coverage after five years; especially since the rules do not specify how much time in advance and what types of notice must be given.

RESPONSE: Though not statutorily required, it is common practice under group health insurance for both parties to the insurance contract to be required to provide at least a 30-day notice of an intention to nonrenew the policy. The Department has incorporated this practice within the rules upon reproposal.

The Department disagrees, however, that carriers should never have the discretion to nonrenew a small group's BASIC policy, since the characteristics of a group—any group, but especially small group—may change over time, substantially altering the risk originally insured. Some groups will turn out to be much better than anticipated, but others may turn out to be much worse. It should be understood that health factors are not the only considerations for a carrier; creditworthiness, participation, and the make-up of contributions by employers and employees also weigh in on considerations of risk for both large and small groups. Additionally, most carriers are not able to continue to cover indefinitely large numbers of poor risks without calling into question their financial integrity, so the Department believes it is appropriate for carriers to nonrenew groups under these circumstances as well. (Note that the rules have been revised to limit nonrenewal of groups to those instances where carriers have submitted reasons for nonrenewal, and these reasons have been filed by the Department.)

COMMENT: One commenter questioned whether N.J.A.C. 11:4-36.8(b) and (d) apply to group BASIC policies. N.J.A.C. 11:4-36.8(b) requires that guaranteed renewable policies shall not provide for termination of coverage of one spouse because the other spouse has been terminated. N.J.A.C. 11:4-36.8(d) specifies that in policies covering both spouses, the age of the younger spouse must be used as the basis for meeting age and durational requirements.

RESPONSE: N.J.A.C. 11:4-36.8(b) applies specifically and exclusively to individual BASIC policies. The language at N.J.A.C. 11:4-36.8(d) is admittedly ambiguous, given the definition of "policy" in the rules.

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N.J.A.C. 11:4-36.8(d) should apply only to individual policies as well. The rules will be revised to reflect this clarification.

COMMENT: One commenter questioned whether the requirement of guaranteed renewability for nongroup policies applies when an individual ceases to be a New Jersey resident.

RESPONSE: The answer depends by and large upon the type of carrier involved. If the covered person moves outside the geographic area served by an HMO or health service corporation, for instance, it is physically and conceptually impossible to continue renewing the policy or contract. A person who is covered through BCBSNJ may, of course, seek to have that coverage placed with a Blue Cross and Blue Shield organization in his or her new state of residence. However, since the Blue Cross and Blue Shield organization in this other state is not subject to compliance with New Jersey laws, the new coverage is not required to be BASIC or guaranteed renewable. For the more traditional indemnity-type insurers, such problems of guaranteed renewability are not present. However, the Department would not enforce these requirements, for it would be impractical to do so, and might raise conflicts with laws of the other state, which are the laws which should apply to individual policies delivered or renewed there.

COMMENT: One commenter stated that the definition of "guaranteed renewable" should reflect a termination date as the earlier of eligibility for Medicare or age 65.

RESPONSE: The Department assumes that the commenter is referring only to the definition of "guaranteed renewable" as the term applies to individual BASIC policies. In that respect, the Department agrees, and has revised the definition accordingly. Such a definition cannot apply across-the-board to group BASIC policies.

COMMENT: One commenter stated that guaranteed renewability combined with guaranteed issuance may aggravate problems of availability.

RESPONSE: The offering of these policies is a requirement imposed on (most) companies doing the business of health insurance in New Jersey. Availability can become a problem only if companies avoid these requirements.

COMMENT: One commenter queried whether carriers will be allowed to cancel an entire class of group or individual BASIC policies if another alternative policy, meeting the standards of N.J.A.C. 11:4-36 or the HCCRA, as they may be amended from time to time, may serve as a replacement policy.

RESPONSE: No, unless approved by Commissioner. Then existent policyholders of policies not otherwise required to be amended by law are entitled to full compliance with the terms of their policies, and may not be forced to accept a new alternative policy by the threat of loss of coverage with that carrier.

COMMENT: Eight commenters stated that current New Jersey law does not require conversion for health policies, and that the Department has exceeded its statutory authority.

RESPONSE: The HCCRA authorizes the Commissioner to establish the terms and conditions of BASIC policies and contracts. The Department has not exceeded its statutory authority, notwithstanding that a conversion privilege is not required by statute or rule for any other health policy delivered in this State. (As a point of fact, Medicare supplement policies must include a conversion privilege.)

COMMENT: One commenter (BCBSNJ) stated that the requirement that left-group conversion privileges be extended to individuals whenever a group terminates could lead to rate opting as groups terminate coverage to take advantage of conversion rates that are lower than group rates. The commenter further stated that since individual BASIC policies must be made available by BCBSNJ, it may serve public policy interests not to extend a conversion option when the group terminates coverage due to nonpayment of premium.

RESPONSE: Group participants generally have no control over whether or not group policyholders terminate contracts. Therefore, it is entirely consistent with public policy to require that these insureds and covered persons be allowed to convert. Any individual coverage which may be available through BCBSNJ is an alternative to, but not a valid replacement for, this conversion option.

The Department considers the hypothetical rate opting cited by BCBSNJ to be a legitimate option available for covered groups.

COMMENT: One commenter questioned the correctness of its assumption that spouses of deceased nongroup policyholders may convert family coverage to single or parent and child coverage with benefits running continuously.

RESPONSE: The commenter is correct.

COMMENT: Six commenters objected to the 30-day "free look" period required by N.J.A.C. 11:4-36.8(a), stating that the HCCRA does not require such a provision, and that the Department has exceeded its statutory authority.

RESPONSE: The HCCRA authorizes the Commissioner to establish the terms and conditions of BASIC policies; hence, statutory authority has not been exceeded.

COMMENT: Three commenters stated that the free look provision should be amended to allow carriers to recapture any claim payments made during the period, if the insured drops the coverage; otherwise, the rules should specify which entity is liable for any claims occurring during that period.

RESPONSE: Policies or contracts cancelled during the free look period are to be treated as if they had never been issued and delivered. That is, the person responsible for incurring the claim is fully responsible for payment, as if coverage never existed.

COMMENT: One commenter stated that the free look period should be limited to nongroup BASIC policies, and should not apply to covered persons under a group policy, unless the covered persons are solicited individually and pay the full premiums (for example, association groups).

RESPONSE: The Department agrees, and has revised the rules accordingly. Free look periods have traditionally been required with respect to nongroup coverage only, where the level of uncertainty as to the existence of coverage and the potential for incurring (uncovered) claims is relatively limited. A free look period for group policyholders could have an unintended egregious effect upon group certificate holders.

The Department notes that, with few exceptions, it does not recognize association groups to be valid groups for purposes of compliance with the group insurance laws of this State. If an association group is formed and situated in New Jersey, coverage sold to its members is considered individual coverage, not group, and should be in compliance with the laws of this State applicable to individual policies and contracts. Hence, such BASIC policies should include a 30-day review period as a condition of issuance and delivery.

COMMENT: One commenter questioned if eligibility for Medicare (which, under the HCCRA, would bar eligibility for coverage under a BASIC policy), is contingent upon an individual participating in Part A, Part B or both Parts of Medicare.

RESPONSE: Participation in either Part A or Part B of Medicare would be sufficient to make an individual ineligible for coverage under a BASIC policy, as a general rule. (See the following comment and response.)

COMMENT: One commenter stated that Federal law stipulates that, for groups of 20 or more employees, employees and their eligible dependents who are Medicare eligible must be allowed to elect to remain covered under the group's policy. The HCCRA (and the rules at N.J.A.C. 11:4-36) mandates that those who are Medicare eligible are not eligible for coverage under BASIC policies, group or nongroup. The commenter queried how the laws are to be reconciled in practical application.

RESPONSE: To the extent that there is a conflict between State and Federal law, Federal law will supersede. The rules have been revised to reflect the dichotomy.

Persons who are 65 and older who remain employed, or whose spouse remains employed, and are part of an employment group of 20 or more employees cannot be terminated for Medicare-eligibility. A person who is disabled but employed and Medicare-eligible, or is a disabled Medicare-eligible spouse or dependent of an employee, who is part of an employee group of 100 or more cannot be terminated for Medicare-eligibility. Otherwise, the HCCRA controls, and Medicare-eligibility bars BASIC coverage eligibility.

COMMENT: One commenter noted that, at N.J.A.C. 11:4-36.9(d), the rule specifies that a group BASIC policy shall terminate coverage for persons who become eligible for Medicare, but that the statutory exclusion of Medicare eligibles is not limited to group BASIC policies.

RESPONSE: The commenter is correct, and the rules have been revised to more clearly express this. However, the Department notes that the remainder of N.J.A.C. 11:4-36.9(d) states that no person eligible for Medicare is eligible for coverage under any BASIC policy (or certificate).

COMMENT: Eight commenters objected to the provision of hospital service expense benefits for 21 days per confinement rather than for 21 days per benefit year as set forth in the HCCRA, stating that the Department has exceeded its statutory authority.

RESPONSE: The use of the term "benefit year" in the HCCRA rather than "calendar year" or "benefit period" created some uncertainty, in the Department's opinion, as to the intent of the Legislature in specifying

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21 days of hospital expense coverage. It is, of course, common practice for carriers to provide coverage of hospital days on a per benefit period basis, or per confinement period basis, with the benefit period or confinement period separated by a specified number of days of nonconfinement in a hospital. This was the tack the Department took. In retrospect, the Department believes that the Legislature did not intend to distinguish "benefit year" for hospital expense purposes from a year of 365 days. The Department agrees that the hospital expense benefit should be limited to 21 days per year, as the term year is commonly understood. The rules have been revised accordingly.

COMMENT: One commenter stated that the HCCRA provides for 21 days of inpatient and outpatient hospital services expense benefits combined, contrary to the provisions of the rules.

RESPONSE: The Department agrees that the rules could be interpreted to require the provision of hospital outpatient services in excess of the 21 day allotment for hospital expenses, which is not intended. The rules have been revised to eliminate this ambiguity.

COMMENT: One commenter questioned whether, if an illness requires numerous admissions, there is a point in time prior to the anniversary date of the BASIC policy when the 21 days are renewed.

RESPONSE: As revised, the rules do not require any coverage for periods of confinement exceeding the 21 days specified for each year of benefits.

COMMENT: Four commenters questioned why the Department would prohibit applicant affirmations that statements made are not untrue or do not represent material misrepresentations which otherwise may render the contract void. One commenter stated that prohibition of such affirmations appears to be in direct conflict with the Fraud Prevention Act. An additional commenter queried why such warning statements would be prohibited in application forms.

RESPONSE: The application rule is a restatement of N.J.A.C. 11:4-16.7, which has been effective for a number of years. The Department does not believe that either N.J.A.C. 11:4-16.7 or N.J.A.C. 11:4-36.15 conflict in any way with the Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq. Carriers should note that they are not prevented from including statements that untrue or false answers material to the risk will render the contract void; they only are prohibited from requiring affirmations of honesty and stipulations as to dishonesty by the applicant. Statements that the information provided is correct to the best of the applicant's knowledge and belief would be acceptable under most circumstances since it would not be a blanket certification.

Fraud or material misrepresentation necessarily renders a contract voidable or void, so applicant affirmations or stipulations in this regard are unnecessary. Of greater concern to the Department, however, are applicant affirmations and stipulations as to factual situations which may become issues of genuine dispute at a later date. The Department is not inclined to change the rules in favor of the carriers in this regard.

COMMENT: Two commenters stated that the additional data collection on the application required by the Department exceeds statutory authority, and will add to the carrier's administrative costs.

RESPONSE: The Department acknowledges that the additional data collection will add to most carrier's administrative costs, and acknowledged this in the Summary to the October 21st proposal. However, some additional administrative costs were to be expected inasmuch as the HCCRA requires carriers to report certain information regarding BASIC policies to the Department on an annual basis. Although it is true that the Department is requiring submission of data beyond what the HCCRA requires, the Department disagrees that it lacks statutory authority to do so. Specific statutory authority to survey carriers regarding their BASIC business is not required via the HCCRA, but exists under other, more general statutes.

The Department is requesting additional, specific information to fulfill its obligations under the HCCRA to analyze carriers' March 1 reports and provide recommendations to the Legislature as appropriate. The information specified under the HCCRA, in the Department's opinion, was inadequate to draw conclusions as to whether or not BASIC policies are effective in meeting the intended goals.

COMMENT: One commenter stated that the additional data to be included on the application appears to be directed to groups primarily, and questioned whether the nongroup applications need to include questions to gather the desired data.

RESPONSE: The questions are geared to gather more group-oriented information, but most questions are readily applicable to both individuals and groups, and should eventually show patterns in both markets. Questions should be included on both group and nongroup applications.

COMMENT: One commenter questioned whether a carrier must or may issue coverage to a group or individual applicant which does not answer the additional questions.

RESPONSE: First, it should be noted that the rules have been revised. Carriers are no longer prohibited from using these questions for underwriting purposes or other reasons, nor are they allowed to state that these questions are being asked only to comply with requirements specified by the Department. In other words, the questions should not necessarily appear to be segregated from all other application questions, and thus should not appear to be optional in any way. Failure to complete these questions should be viewed as failure to complete the application. (Carriers should attempt to have these questions answered as completely as possible, inasmuch as the statistics developed therefrom may subsequently help support an exemption request.)

COMMENT: One commenter stated that it is unclear whether the $250.00 deductible is per individual or per family.

RESPONSE: The maximum deductible per policy or certificate is $250.00, regardless of whether coverage is for a single person or for a family. A carrier may require a $250.00 deductible for an individual who has single coverage. A carrier may require no more than a $250.00 deductible for a policy or certificate providing husband-wife, parent-child or family coverage.

COMMENT: One commenter stated that the deductible and coinsurance could reach $750.00 which is unacceptable for the financially disadvantaged.

RESPONSE: The HCCRA authorizes carriers to require up to a $250.00 deductible and up to a $500 coinsurance amount. The Department cannot override the statutes in this matter.

COMMENT: Three commenters stated that the rules are sparse on references to "medically necessity" and fail to address the issues of experimental and investigational procedures. The commenters stated that the Department should revise the rules to: (1) limit the provision of benefits to medical necessity; (2) exclude any provision of benefits for any medical services and supplies not ordered by an attending physician; and (3) exclude experimental and investigational procedures.

RESPONSE: Commenters should note that while the BASIC rules do not mention medical necessity in great abundance, the language of the HCCRA allows the limitation of coverage for basic hospital expenses and basic medical-surgical expenses to medically necessary services and treatment rendered as the result of injury or sickness. (The HCCRA does not carry over the medically necessary standard to maternity benefits or physical exams.) Despite the scarcity of the use of the term in the rules, the Department believes carriers have the statutory right to limit their coverage on the basis of medical necessity.

It has never been the policy of the Department to address experimental or investigational procedures, primarily because the use of the terms begs the question of the definition. The Department is not prepared to provide definitions or standards of "experimental" or "investigational," but leaves these issues to be determined by the carriers within the confines of their contracts, and relevant case law.

COMMENT: One commenter queried if it is correct to assume that medical underwriting is prohibited with respect to small groups.

RESPONSE: Medical underwriting is appropriate for rating purposes, subject to the limits imposed by the rules.

COMMENT: One commenter queried if it is correct to assume that it is permissible to adopt standard underwriting for groups larger than 25 persons.

RESPONSE: As revised, the rules require guaranteed issue for groups of all sizes. To that extent, standard underwriting is overridden. Underwriting for rating purposes is permissible.

COMMENT: One commenter queried if it is correct to assume that it remains the employer's option to extend coverage to spouses and dependents.

RESPONSE: No, the extension of benefits to spouses and dependents does not rest with the employer. However, the contribution level for payment of these benefits is the employer's decision.

COMMENT: Two commenters questioned the requirement that, for meeting age and durational standards, carriers must use the age of the younger spouse (on husband-wife policies). One commenter stated that there is no statutory authority for such a requirement. The other

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commenter stated that the requirement presents systemic difficulties for carriers and suggested that age and durational requirements be based on the age of the employee. This commenter also queried if, under this requirement, an employee is 65 and eligible for Medicare, but the spouse is younger and not Medicare eligible, the group must allow the spouse to remain in the group.

RESPONSE: The HCCRA authorizes the Commissioner to establish the terms and conditions of BASIC policies. The Department has statutory authority to establish this requirement.

N.J.A.C. 11:4-36.8(d) applies to nongroup policies, not group policies. This has been clarified upon reproposal. (The Department acknowledges the ambiguity.) N.J.A.C. 11:4-36.8(d) is derived from N.J.A.C. 11:4-16.6(c)3, which has been in effect for some years. As such, it should not be problematic for carriers currently delivering nongroup policies in New Jersey. Carriers finding themselves in a position requiring them to deliver nongroup BASIC policies (because of conversion policies delivered here) will have to conform; any systemic difficulties will have to be overcome.

To clarify, for employer groups not subject to Federal law regarding Medicare eligibles, a covered group member who becomes eligible for Medicare may be terminated from group coverage, and technically, so may any of that member's dependents. However, continuation or conversion privileges will apply to the dependents of the covered member. The rules as reproposed provide that spouses and dependents may elect to continue the group coverage so long as the Medicare-eligible employee continues to be employed; otherwise, a conversion privilege applies. These rules are applicable to all group BASIC coverage, except as Federal law may supersede.

Federal law requires that persons who become Medicare eligible, whether a covered group member or a covered dependent or spouse, be treated the same as any non-Medicare eligible of the group with respect to employer-sponsored group plans, so long as "employment" is not terminated. For persons who become eligible by virtue of age, the law does not become applicable unless the employer employs 20 or more employees. For persons who become eligible by virtue of disability, the law does not become applicable unless the employer employs 100 or more employees. (For those disabled, Medicare determines whether employment is still occurring.) Continuation and conversion requirements, under State or Federal law, may apply in these cases as well.

COMMENT: One commenter questioned whether a carrier with an HMO subsidiary must provide BASIC coverage through both entities, or only one.

RESPONSE: Carriers must provide BASIC policies through all of their subsidiaries authorized to transact the business of health insurance or provide health service coverage in New Jersey, if the subsidiary meets the requirements of the HCCRA and the rules. A carrier with an HMO subsidiary must provide BASIC coverage through the HMO and the carrier's other insurance entity as well (assuming neither entity is subject to any exclusions under the law).

COMMENT: One commenter asked whether, with respect to health service corporations, N.J.S.A. 17:48E-27.1, which generally governs the filing of group contracts and rates by health service corporations, applies to the group BASIC contracts of health service corporations, rather than the 60 day filing requirement specified in the rules.

RESPONSE: No, N.J.S.A. 17:48E-27.1 does not apply. The 60 day filing requirement specified in the rules is based upon the 60 day filing requirement for all carriers specified by the HCCRA with respect to BASIC policies. As codified, see specifically N.J.S.A. 17:48E-22.2e.

COMMENT: One commenter questioned what the term "deemed filed" means: does it mean approved for sale?

RESPONSE: Policies and contracts "deemed filed" may be marketed and sold. Filing, in and of itself, has never meant "approved," only "not disapproved," from the Department's perspective.

COMMENT: Two commenters asked whether carriers will be permitted to impose reasonable limitations on benefits for out-of-hospital outpatient services, maternity expenses and physical examination expenses.

RESPONSE: Carriers will be permitted to impose limitations on benefits on a "reasonable and customary" or "usual and customary" or "reasonable, usual and customary" or such other similiar basis.

COMMENT: One commenter questioned whether HMOs are required to credit customer copayments towards fulfillment of the coinsurance limits.

RESPONSE: Yes.

COMMENT: One commenter requested that the newborn coverage requirement be clarified to state that such coverage does not extend to grandchildren (that is, a newborn of a covered dependent).

RESPONSE: The rule carries the normal statutory interpretation (that is, newborn grandchildren are not required to be covered). The Department is not making a clarification in the rule.

COMMENT: One commenter stated that the provision that coverage for newborn children be contingent upon notification to the carrier within a 31-day period following the birth of the child ought to clarify that notice is effectively provided by request for payment to cover costs of the birth of the child, and that such notice shall trigger a mailing of an application for subsequent coverage of the child beyond the 31-day period.

RESPONSE: The Department agrees, and has revised the rules to specify that submission of a claim for coverage of a newborn's bills should provide sufficient notice of the newborn, and that carriers should send out an application for dependent coverage based upon that notice. However, the Department cautions that new parents who assign their benefit rights should not necessarily rely upon the claim method of notice but should check with their carriers directly as soon as possible. For them, the claim method of notice may serve only as a back-up system, and may result in a temporary lapse of coverage of the newborn after the 31st day following birth.

COMMENT: One commenter stated that, with respect to hospital service corporations, newborn coverage should be limited to 21 days of hospital expenses.

RESPONSE: With respect to hospital service corporations, newborn coverage is limited to hospital expenses up until discharge following delivery (up to 21 days), plus up to 21 days of hospital expenses for services provided, if any, subsequent to discharge following delivery. Prior to discharge following delivery, the newborn's hospital expenses are covered as part of the maternity benefit.

COMMENT: One commenter stated that hospital service corporations may not issue contracts to groups of less than 10 people pursuant to N.J.S.A. 17:48-6.1, and asked how that requirement should be reconciled with the BASIC rules.

RESPONSE: Hospital service corporations will have to comply with N.J.S.A. 17:48-6.1, and will not be able to issue BASIC contracts to groups having fewer than 10 employees or members. In all other respects, however, hospital service corporations shall comply with the rules regulating BASIC coverage. They are not excused from compliance with guaranteed issue requirements, to the extent that the guaranteed issue requirements do not conflict with N.J.S.A. 17:48-6.1. For groups of 11 or more employees, there are no conflicts between the two provisions.

COMMENT: One commenter queried whether there is a conflict between the definitions of hospital and the permissible establishment of territorial limitations.

RESPONSE: The Department assumes that the commenter is concerned that carriers may be able to essentially redline certain districts of New Jersey, making hospitals (and health care providers) in those districts ineligible providers. Such is not the case. Territorial limitations typically apply to areas of the country or world where a carrier will not provide coverage for elective services, and sometimes even emergency care. The most common territorial limitation is for care received outside the United States and its territories, often with exceptions for care received in Canada and Mexico.

COMMENT: One commenter stated that the Department should address the issue of group participation requirements.

RESPONSE: Although participation and contribution is not an area typically regulated by the Department with respect to health insurance, due to the nature of BASIC coverage, and the presumed target populations for this type of coverage, the Department believes it is worthwhile to establish parameters on participation and contribution requirements to help assure accessibility of the coverage. Moreover, the establishment of such requirements may help clarify certain implied aspects of the BASIC coverage rules (for instance, employers cannot be required to contribute to family coverage). Proposed participation requirements are set forth in N.J.A.C. 11:4-36.9.

COMMENT: One commenter stated that the requirement that benefits be extended in cases of disability should not apply to individual BASIC policies if the extension would be a result of nonpayment of premium.

RESPONSE: The Department assumes the commenter is referencing N.J.A.C. 11:4-36.8(g). The Department disagrees, noting that carriers may deduct any unpaid premium from the benefit to be received.

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COMMENT: One commenter questioned whether there is a conflict between the definition of physician and N.J.A.C. 11:4-36.8(j) which states that carriers are not subject to mandated provider requirements with respect to benefits under BASIC policies.

RESPONSE: The Department doubts there is any conflict, since the definition of physician as set forth in the proposed rules is permissive with respect to using a broad statement. That is, carriers are not prohibited from restricting the definition of physician. However, the rules have been revised to avoid any confusion in this regard.

COMMENT: One commenter notes that the proposed rules are more restrictive with respect to in-hospital services in that the rule restricts benefits to a maximum of 21 visits for one period of confinement while the HCCRA does not restrict the number of visits.

RESPONSE: The commenter is correct. The Department assumed that, notwithstanding the wording of the HCCRA provisions, the Legislature meant for the basic hospital expense coverage and the basic medical-surgical expense coverage to be coterminus. Upon reproposal, however, the Department has removed the 21 visit restriction, noting that it is really unnecessary to achieve the presumed goal.

COMMENT: One commenter stated that the beginning and end of a benefit year or benefit period needs to be defined, so that confusion will not occur over whether or not this is a "per cause" benefit period. The commenter suggested the following: "A covered person's first benefit period will begin on the date of the first expense covered under the policy and will end 12 calendar months later. Subsequent benefit periods for a covered person begin with the date of the first covered expense incurred after the end of that person['']s prior benefit period and ends 12 calendar months later."

RESPONSE: The Department has no objection to a carrier defining a benefit period (or benefit year) as suggested by the commenter. The Department only requires that a benefit period be defined as a consecutive 12 calendar month duration. The Department is leaving it to the various carriers to establish the event which initiates the 12-month period.

COMMENT: One commenter suggested the rules provide that benefits be provided on a calendar year basis rather than a benefit year or benefit period basis. The commenter noted that the calendar year approach accommodates both the intent of the statute for one year time frames and the concept of family maximums for deductibles and coinsurance.

RESPONSE: The Department agrees that the calendar year approach would be the easiest approach to use. However, the Department is not inclined to mandate the calendar year approach, but prefers to allow carriers to determine their own approach to this matter, so long as a benefit period is equivalent to a consecutive 12 calendar month period.

COMMENT: One commenter asked whether the HCCRA is intended to apply to any non-health coverage offered by carriers authorized to offer health insurance.

RESPONSE: The Department does not comprehend the thrust of this comment, but speculates that the answer is no. Carriers are only required to comply with the HCCRA based upon their authority to transact the business of providing health coverage, and, in the case of commercial insurers (service corporations and HMOs do not write non-health coverage), whether or not they have transacted such business in this State under N.J.S.A. 17B:26-1 et seq., or 17B:27-1 et seq. The provision of PIP benefits or workers' compensation benefits by a carrier does not, in the Department's opinion, require a carrier to provide BASIC coverage, since neither type of benefit is provided pursuant to N.J.S.A. 17B:26-1 et seq., or 17B:27-1 et seq.

COMMENT: One commenter asked whether "fleet" rules will apply so that carriers do not have to develop multiple identical policies for each licensed insurance company.

RESPONSE: The Department assumes the commenter is asking whether (one) policy form(s) may be submitted with an indication that several companies, presumedly affiliates and subsidiaries, will use the same form(s). The answer is no, not for health insurance. Each company should submit a separate set of forms, even if the forms are identical or substantially identical to those of an affiliate or subsidiary.

COMMENT: One commenter stated that the rules require coverage to end for dependents aged 19 and older on family policies, which is contrary to the goal of extending coverage to as many people as possible. The commenter noted that most policies currently on the market allow for continued coverage of the dependent, if the dependent is enrolled as a full-time student.

RESPONSE: The commenter is incorrect in its interpretation of the rules. The rules do not require coverage to end at age 19 for dependent; the rules require coverage to be extended to dependents until at least age 19. (Actually, the rules repeat substantially the various statutory provisions specifying that, if dependent coverage is available, it must be available to age 19.) Carriers may provide for dependent coverage past age 19, to whatever age, and may charge additional premium in doing so. In this regard, the rules for BASIC policies are no different from the rules for other health policies to be sold in New Jersey.

COMMENT: One commenter stated that the rules should provide for the payment of medically necessary ambulance transportation. The commenter noted that the inclusion of a benefit for ambulance fees would add very little to the cost of the policy, and further, that many towns which currently allocate significant tax dollars to provide necessary ambulance coverage would be provided with an appropriate means of compensation.

RESPONSE: The Department has no opinion as to the correctness of the statement that ambulance service coverage would add little to the total cost of BASIC coverage. The Department notes, however, that the statutorily limited nature of the BASIC coverage does not provide for coverage of ambulance expenses (if such expenses are not included in the hospital expense component). Carriers may provide coverage for ambulance expenses as an alternative benefit, conceivably. The Department would have to see such a proposal and its costs, as well as some argument such a benefit fits in with the intended goal of the HCCRA.

COMMENT: One commenter asked what is meant by the statement that group BASIC policies may not always elect to be primary: does it mean that services not covered by a BASIC policy will be reimbursed under a traditional policy?

RESPONSE: The statement means that BASIC policies must include a coordination of benefits provision. This means that in some instances, the BASIC coverage will be primary, and in some instances it will be secondary. It also means that there is a potential for some savings under the BASIC policy which might otherwise not exist, and thus, premiums should be somewhat lower than they otherwise would be. It also prevents insureds from receiving more than coverage of 100 percent of allowable expenses, providing some disincentive to manipulate the insurance system. It may mean that services not covered by a BASIC policy will be reimbursed under a traditional (standard) policy, but not necessarily. Whether services are covered, and the level at which they are covered will depend upon what is considered an allowable expense and what a carrier would have paid had it been primary.

That is, if a person is covered under a BASIC policy and under a standard policy but neither policy provides benefits for chiropractic expenses, for example, then even if chiropractic services are rendered, none of the services will be covered. If, however, the standard policy provides benefits for chiropractic expenses, then chiropractic expenses become an allowable expense for purposes of coordination of benefits, and some level of benefit will be provided.

COMMENT: Two commenters asked what is meant by "... symptomatic complaints of the feet."

RESPONSE: The reference is to disease conditions and physical disorders, as opposed to accidental injury. For instance, a broken toe does not fall into the category of "symptomatic complaints," whereas clubbed footedness is more indicative of symptomatic complaints. Disease conditions such as diabetes may create symptomatic complaints of the feet. (It should, of course, be understood that such chronic disease conditions are not going to be very well covered under BASIC policies because of the very limited nature of the BASIC policy.)

COMMENT: One commenter stated that it is unclear from the definition of group whether or not N.J.A.C. 11:4-36 will apply to all trustee groups, and suggested that the definition be clarified to cover all such groups regardless of ERISA status.

RESPONSE: The Department assumes that the commenter is suggesting the those entities which often claim ERISA-preemption should have to comply with the HCCRA by offering BASIC coverage. In some instances, it is a legal impossibility.

Bona fide employer plans and bona fide employee organization plans are not subject to regulation by the State (although any policies delivered or issued for delivery to such plans in this State, and carriers issuing those policies, must comply with all State insurance laws). With specific exceptions, such bona fide plans may not be deemed to be insurers by the states. New Jersey law can not require bona fide employer plans and bona fide employee organization plans to comply with the HCCRA, or at least the law is unenforceable.

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Multiple employer welfare arrangements ("MEWAs") or multiple employer/employee trusts ("METs"), which are not-fully-insured are, in the Department's opinion, insurers subject to all State insurance laws including compliance with the HCCRA, until they are able to demonstrate that the United State's Department of Labor has determined that they, individually or as a class, are exempt from State regulation. Any such self-insured or partially self-insured MEWAs or METs which do not comply with all facets of this State's insurance laws are in violation of the laws, and will be treated accordingly.

Any MEWAs or METs which are fully-insured, that is, no form of self-insurance is involved at all, do not have to comply with State regulation of this nature, since they are not acting as insurers. It should be noted that stop-loss and excess coverage do not make a MEWA or MET fully-insured. In fact, a MEWA is not necessarily considered by this Department to be fully-insured until such a determination is made by the United States Department of Labor.

As a point of clarification, it is the Department's interpretation that a bona fide employer plan is one established or maintained by a single employer or by a group or association of employers within a control group, such as affiliates or subsidiaries within a holding company system. A trust agreement executed by several unrelated employers does not qualify as a bona fide employer plan.

Additionally, the participating employers must exercise control over the plan, both in form and in substance. Such control may be direct or indirect, but it may not be illusory. Further, participation in the plan must be based upon the status of being an employer. Membership based upon the practice of a trade or profession is not membership based upon status as an employer.

A bona fide employee organization plan is one which is established or maintained by a qualified employee organization or a qualified employee beneficiary association. A qualified employee organization is a formalized organization which exists for the purpose of interacting with employers on behalf of member employees with respect to benefit plans and/or other matters incidental to the employment relationship. The employee organization must also provide for direct employee participation. Membership must be conditioned upon an individual's employment status with specific employers.

A qualified employee beneficiary association is a formalized organization formed, in whole or in part, for the purpose of establishing a welfare plan. Membership must be conditioned upon employment status with specific employers, but the employee benefit association may not have any dealings with the employer(s), as a general principle.

It appears that only Taft-Hartley trusts have qualified as bona fide employee organization plans under United States Department of Labor determinations. (Taft-Hartley trusts are those trusts which are organized and comply with 29 U.S.C. 151 et seq.) The Department is unaware of any employee beneficiary associations which have been determined by the United States Department of Labor to have met the requirements necessary to claim ERISA preemption protection.

MEWAs (and METs) are employee welfare benefit plans (other than bona fide employer or employee organization plans), or other arrangements established or maintained for the purpose of offering some of the types of benefits recognized by ERISA to the employees, and their beneficiaries, of two or more employers, including self-employed individuals. Arrangements maintained by a rural electric cooperative or pursuant to a collective bargaining agreement are excluded from the definition of MEWA. (It is this Department's opinion that multi-employer Taft-Hartley trusts are such collectively bargained arrangements excluded from the definition of MEWA).

COMMENT: One commenter stated that by requiring that hospital services be covered by a hospital service corporation and medical services be covered by a medical service corporation, the Department is ensuring two separate sets of administrative costs which will increase the overall cost to the consumer.

RESPONSE: The commenter is incorrect. Moreover, by statute, hospital service corporations are only authorized to transact a business involving coverage of hospital services and expenses, while medical service corporations may only cover medical services and expenses. (Health service corporations, commercial insurers and health maintenance organizations may cover both.)

COMMENT: One commenter questioned whether N.J.A.C. 11:4-36.8(g) may be interpreted as allowing a person who becomes ill, but not disabled, to lose benefits for continuing treatment upon termination of the policy, while someone who is disabled would continue to have those benefits.

RESPONSE: Not necessarily. What the provision says is that any loss which commenced during the policy period must continue to be covered despite termination. That is, if a person enters a hospital, and during the hospital stay the BASIC contract terminates, the full hospital stay must be covered (total expenses must be considered), subject to the terms of the contract. Extension of benefits beyond this loss, however, may be conditioned upon total disability, under State law.

COMMENT: One commenter asked whether, pursuant to N.J.A.C. 11:4-36.8(k)4i, any grace period applies. (N.J.A.C. 11:4-36.8(k) sets forth standards for continuation of coverage for the totally disabled group member.)

RESPONSE: No, not necessarily. The terms of the contract would apply. Most contracts include a grace period, seldom exceeding 30 days. Termination, however, is usually effective upon the date when payment was originally due.

COMMENT: One commenter asked whether, inasmuch as BASIC plans will afford additional coverage for persons covered under an entity with managed care systems, and thus, people will be encouraged to enroll in HMOs, there are sufficient HMOs operating in New Jersey to accommodate the expected additional demand.

RESPONSE: The Department does not know whether there will be sufficient capacity for all the people who may seek BASIC coverage through an HMO, but hopes so. It should be noted that most of the HMOs currently operating in New Jersey are Federally-qualified, and effectively do not have to comply with the HCCRA.

COMMENT: One commenter stated that BASIC policies and N.J.A.C. 11:4-36 represent an immoral tax on business.

RESPONSE: The comment is purely argumentative, and the Department provides no response as to its merits. This is a comment which should be addressed to the Legislature; the Department is merely fulfilling its functions as required by law.

COMMENT: One commenter stated that it would appear that an informational pamphlet, a certificate and a summary plan description are repetitive, and thus an informational pamphlet would unnecessarily add to costs.

RESPONSE: The Department disagrees. It is not the purpose of the pamphlet to repeat material which may be contained in a certificate and summary of plan. The pamphlet's thrust is to educate consumers generally about the differences to be expected between typical BASIC policies (those without alternative benefits) and typical standard policies. The Department also intends to try to provide some not-too-technical explanations about continuation, conversion, COBRA, and total disability benefit extensions under State law. The Department intends to try to explain when Medicare eligibility will cause a covered person to lose their BASIC coverage, and when it will not. The Department will also try to explain why some HMOs and other carriers provide BASIC coverage while others do not, and what the few reasons are for denial of BASIC coverage to a group, such as health coverage in the preceding 12 month period. Some of these issues are ones which a certificate or summary may cover, but not all issues will be covered by all certificates and summaries.

COMMENT: One commenter questioned how the 21 day hospital benefit is to be handled in light of the DRG system in New Jersey.

RESPONSE: If a hospital stay falls within both the DRG trim points, and the 21 day limit (or remaining number of benefit days), there should be little problem in determining the benefit: the full DRG amount must be considered (less any applicable carrier discounts or differentials, of course), but only the actual number of days spent in the hospital count against the per covered person 21 day per year limitation. When the number of days in hospital are within the 21 day limit (or the remaining number of benefit days), but fall outside the DRG trim points, either above or below, then whatever is billed must be considered, but only the actual days count against the 21 day benefit period. When the days spent in hospital exceed the 21 day limit (or remaining number of benefit days), but are within the trim points, and the lower trim point is fewer than 21 days (or the remaining number of benefit days), then the full DRG should be considered. If more than 21 days (or the remaining number of benefit days) are spent in hospital and exceeds the high trim point, carriers need not consider any per diem charges.

N.J.A.C. 11:4-14.1 and 15.1 are proposed for amendment to clarify that BASIC policies are not subject to any statutorily mandated benefit requirements, or rules promulgated thereunder, N.J.A.C. 11:4-14 sets standards for home health care, and N.J.A.C. 11:4-15 sets standards for the provision of alcoholism treatment benefits.

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N.J.A.C. 11:4-16 sets forth minimum standards and minimum benefits for a variety of individual policies delivered or issued for delivery in this State. N.J.A.C. 11:4-16.2 is proposed for amendment to clarify that the standards for BASIC individual policies are not contained in N.J.A.C. 11:4-16, but are set forth by proposed new rules at N.J.A.C. 11:4-36.

N.J.A.C. 11:4-19 sets standards for optional childbirth benefits. N.J.A.C. 11:4-19.2 is proposed for amendment because maternity benefits are required for BASIC policies.

N.J.A.C. 11:4-28.3 is proposed for amendment to specify that the rules for coordination of benefits are not permissive with respect to group BASIC policies. Rather, group BASIC policies must contain coordination of benefit provisions, and may not elect to be always primary. Group BASIC policies, as well as all other BASIC policies, must comply also with N.J.A.C. 11:3-37.

The proposed new rules at N.J.A.C. 11:4-36 provide the standards specific to BASIC policies authorized by the HCCRA.

N.J.A.C. 11:4-36.1 sets forth the purpose of the proposed new rules, which is to establish standards for BASIC policies.

N.J.A.C. 11:4-36.2 sets forth the scope and applicability of the proposed new rules. All policies meant to comply with the HCCRA must also comply with these proposed new rules. Additionally, all carriers authorized to transact the business of health insurance in New Jersey are subject to these proposed new rules.

N.J.A.C. 11:4-36.3 sets forth definitions for purposes of the proposed new rules.

N.J.A.C. 11:4-36.4 sets forth which entities subject to these proposed new rules must provide BASIC policies and whether they must provide group or individual policies or both. Carriers providing group BASIC policies must also provide BASIC conversion policies.

N.J.A.C. 11:4-36.5 sets forth the requirements for submitting forms and rates for filing by the Commissioner, including rate revisions. All forms and rates must be submitted for filing. With the exception of rate revisions for group policies (meeting certain criteria), all submissions for filing are subject to a 60-day deemer provision. Under specified circumstances, which are set forth in the rule, rate revisions for group policies will be considered filed upon the date submitted, and may be used immediately.

N.J.A.C. 11:4-36.6 sets forth loss ratio standards and rate submission requirements. Experience rating of BASIC policies sold to small groups is prohibited. The Department will allow substandard rating within certain parameters. Group policy forms submitted for filing which are intended for issue in 1992 and 1993 will be deemed by the Department to meet the loss ratio requirements of the proposed new rules if the policies are priced such that the average charge per covered person is $1,500 per year (and the average charge for dependent coverage is consistent with this amount), and the expected loss ratio over the life of the policy is at least 80 percent. However, carriers are cautioned that if such policies do not report an incured/earned loss ratio of at least 75 percent within 24 months of the date the policy form is filed, the Commissioner may require a reduction in or refund of premiums so that the 75 percent loss ratio may be met.

N.J.A.C. 11:4-36.7 sets forth the benefits for all BASIC policies. The benefits for hospital service corporation BASIC policies and medical service corporation BASIC policies are not the same as the benefits required for other carriers' BASIC policies. Additionally, the rules permit benefit levels for basic medical-surgical to be based on the "Resource-Based Relative Value Scale for Medicare Part B" prepared by the Health Care Financing Administration of the United States Department of Health and Human Services.

N.J.A.C. 11:4-36.8 sets forth minimum standards for BASIC policies. Individual BASIC policies and BASIC conversion policies must be guaranteed renewable, while group BASIC policies must be guaranteed renewable for at least five years.

N.J.A.C. 11:4-36.9 specifies to whom BASIC policies shall and shall not be offered. All groups must be provided coverage unless the group had a policy or contract for health coverage in effect during the previous 12 months. Generally, all individuals must be provided coverage as well. However, no one eligible for Medicare, whether an individual or a member of a group, may be provided with BASIC coverage, except as Federal law specifies otherwise.

N.J.A.C. 11:4-36.10 sets forth prohibited policy provisions. Waiting periods are allowed in individual BASIC policies, but may not exceed 30 days after the effective date of coverage. BASIC policies may not contain waivers for preexisting disease, condition or extra hazardous activity. Additionally, preexisting condition exclusion provisions cannot exceed 12 months.

N.J.A.C. 11:4-36.11 sets forth policy definitions for specified terms commonly used in policies for health care coverage.

N.J.A.C. 11:4-36.12 sets forth group conversion privileges and standards. No waiting period may apply on conversion policies and any preexisting condition exclusion satisfied, in whole or in part, under the group BASIC policy must be credited against such a provision in a conversion policy.

N.J.A.C. 11:4-36.13 sets forth certain standards for family coverage, including coverage of newborns and rights of spouses and dependents.

N.J.A.C. 11:4-36.14 establishes disclosure standards for BASIC policies. No outline of coverage is required at this time, but carriers are required to issue an informational pamphlet on BASIC policies. This pamphlet is to be prepared by the Department. Carriers are advised that the pamphlet is not currently available. Notice via a Bulletin or Order will be provided to carriers when this pamphlet is available, if it does not become available prior to the date of adoption of these proposed new rules.

N.J.A.C. 11:4-36.15 establishes standards for BASIC policy application forms. These standards are in accord with current rules and Department policy. However, carriers are being required to incorporate certain additional questions on all application forms, information from which must be reported to the Department annually on March 1.

N.J.A.C. 11:4-36.16 sets certain standards for alternative benefits. No alternative benefits currently are being proposed by these new rules. Carriers may propose alternative benefits to the Department.

N.J.A.C. 11:4-36.17 sets certain standards for managed care utilization, including which carriers may use managed care at this time with respect to BASIC policies.

N.J.A.C. 11:4-36.18 establishes the criteria for and information to be included in the statutorily required annual reports. The Department will prepare for the Legislature a report with recommendations, as appropriate, based upon an analysis of the information received from carriers.

N.J.A.C. 11:4-36.19 provides that carriers and BASIC policies must comply with all other State laws not inconsistent with the HCCRA in providing coverage and benefits.

N.J.A.C. 11:4-36.20 is a penalty provision.

N.J.A.C. 11:4-36.21 is a severability provision.

Summary of Agency-Initiated Changes Upon Reproposal:

The Department has replaced references to P.L. 1991, c.187 throughout the reproposed new rules by references to the statutes as codified.

At N.J.A.C. 11:4-36.5, the Department has included a 60-day time period following the effective date of adoption of the reproposed new rules within which all carriers must submit forms of BASIC policies for filing by the Commissioner.

The Department has rewritten N.J.A.C. 11:4-36.6(d)2, which establishes part of the criteria which BASIC policies filed in 1992 and 1993 under the prima facie $1,500 premium benchmark must meet, to more clearly express the Department's intent. A clarification has also been made to N.J.A.C. 11:4-36.6(e) to include all three specified loss ratios at N.J.A.C. 11:4-36.6(c), not just the first two.

The Department has clarified N.J.A.C. 11:4-36.7(f) to state that carriers are permitted, but not required, to use the RBRVS, and to state that it is the 1992 median geographic factor for New Jersey which should be used when utilizing the RBRVS.

The Department has added a new subsection, subsection (n), to N.J.A.C. 11:4-36.8 requiring carriers to provide a 30-day notice to policyholders prior to any premium increase.

N.J.A.C. 11:4-36.9 has been modified with respect to termination of group coverage of a Medicare-eligible person, to require that a continuation privilege be extended to spouses and dependents if the Medicare-eligible person continues to be employed with the group. Certain other subsections of N.J.A.C. 11:4-36.9 have been recodified for clarification.

Proposed N.J.A.C. 11:4-36.9(e) provides carriers with means by which to obtain an exemption from compliance with the guaranteed issue requirements of N.J.A.C. 11:4-36.9 generally. N.J.A.C. 11:4-36.9(e)1, 2, 3, 4 and 5 provides an exemption to carriers believed to have insufficient financial or physical capacity to comply with the initial guarantee issue requirements. N.J.A.C. 11:4-36.9(e)6 provides an exemption to carriers believed to have placed a disproportionately large share of the market of "uninsurables" so that they may obtain temporary relief, and the marketshares may be redistributed. N.J.A.C. 11:4-36.9(e)7, 8, 9 and 10 set forth certain operating standards applicable to exemptions.

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At N.J.A.C. 11:4-36.11(a), the definition of "nurse" has been revised to assure that it does not conflict with the intent of the HCCRA, which states that carriers are not required to provide benefits for services rendered by providers of health care services as otherwise required by law.

Also at N.J.A.C. 11:4-36.11(a), the definition of "one period of confinement" has been deleted consistent with the removal of the term from the subchapter definitions at N.J.A.C. 11:4-36.3. This reinforces the Department's agreement with commenters that only 21 days of hospital expenses a year must be covered pursuant to the HCCRA.

N.J.A.C. 11:4-36.13(c)1 has been modified to specify that the period during which a continuation privilege may be exercised following the death of the covered member must be at least 31 days.

N.J.A.C. 11:4-36.13(c)2 has been modified to add two new qualifying events for exercising a conversion privilege to include Medicare-eligibility of a covered person and the end of any continuation period.

N.J.A.C. 11:4-36.14 has been modified with a new provision requiring carriers to provide certificateholders with summary plan descriptions. The summary plan description may be a part of or separate from the certificate, but it must provide the information specified in the rules, including information on how to file a claim, the process for appealing a claim, etc.

Social Impact

It is the intent of these proposed new rules and rule amendments to effectuate and make possible the objectives of sections 49 through 59 of the HCCRA. BASIC policies should be available at a lower cost than the standard policies currently available in the marketplace, and thus should be affordable for larger portions of the population than is true of most standard policies. The Department anticipates that BASIC policies will be attractive to small groups which either have been unable to obtain coverage, or have not been able to maintain coverage because of ever-increasing premiums. The Department expects that marketing and purchasing of BASIC policies will be concentrated among small groups initially, in part because these are the groups which have experienced the most difficulty in obtaining and maintaining coverage, and in part because larger groups still have an array of coverage options available to them before they decide to turn to BASIC policies.

If larger numbers of people are able to obtain coverage via BASIC policies, the burden on the uncompensated care system should be eased to some extent. If managed care can be successfully introduced among BASIC policies there should be an additional favorable impact upon the uncompensated care system. Reductions in the cost of uncompensated care should translate into reduced costs for hospital care in general, benefiting the State as a whole.

Economic Impact

BASIC policies should be available at a lower cost to consumers than are standard policies (that is, policies which comply with all current non-HCCRA statutory requirements), allowing a larger portion of consumers to purchase health care coverage. As more people are able to obtain some level of insurance, the costs inherent to maintaining an uncompensated care system should be reduced. Reductions in uncompensated care costs would provide a positive impact upon consumers, and carriers, given the current methodology used to recover the costs of uncompensated care in New Jersey.

Carriers should incur some positive economic impact from BASIC policies, although how positive an impact any specific carrier can expect will be based in large part upon the carrier's presence in the marketplace, marketing strategies, underwriting expertise and overall efficiency. Carriers which come into the BASIC policy market with a positive attitude and real commitment are lilkely to obtain greater economic satisfaction overall than other carriers.

Carriers will incur costs, of course, in complying with the HCCRA and the proposed new rules. Such costs are to be expected with any new product. However, some of the additional costs will result directly from reporting and recordkeeping requirements imposed by HCCRA and these proposed new rules. The costs associated with the recordkeeping and reporting undoubtedly will vary from one carrier to another, and be highly dependent upon the types of data carriers currently gather on the applicants. Carriers which currently are involved heavily with market analysis may incur only minimal additional expense, while for other carriers, the initital expense may be more than minimal.

The Department expects to incur costs in reviewing new BASIC policy forms, rates, rate revisions, alternative benefit proposals, managed care proposals, informational pamphlets, and analysis of annual reports, as well as inquiries and complaints from carriers and consumers which are certain to come. It is unclear whether current staffing levels are and will continue to be adequate to assure thoughtful and efficient function with respect to these policies. Obviously, the Department will function to the best of its ability within current resource levels.

Regulatory Flexibility Analysis

These reproposed new rules and rule amendments do impose additional recordkeeping, reporting and compliance requirements, as described in the Summary above, for many carriers, although the degree of imposition is likely to be variable among carriers in accordance with their current practice. Some carriers will have all or most of the information requested already available in-house. Other carriers may have little of the information requested currently available and may have to institute new systems to capture and record the information for annual retrieval. The Department anticipates that the majority of carriers will incur only minimal additional costs, but acknowledges that for some carriers, the cost may be more than "minimal." The possible range of cost is unknown. The Department notes, however, that the annual report is a statutory requirement. The Department is requesting information in addition to what is mandated by the statute in order to provide the Legislature with a clearer analysis of what the statutorily requested numbers may mean. Anecdotal evidence abounds; hard data is more difficult to obtain.

The Department does not believe that any of the carriers required to comply with these proposed new rules and rule amendments are "small businesses" as that term is defined at N.J.S.A. 52:14B-16 et seq. Assuming such were the case, however, the Department would not be inclined to include any relaxation of the recordkeeping, reporting or compliance requirements, because the HCCRA does not provide any exceptions in this regard. Furthermore, information from both large and small companies is equally valuable, and may suggest trends which would otherwise not be documented.

Full text of the reproposed new rules and rule amendments follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]).

SUBCHAPTER 14. HOME HEALTH CARE INSURANCE COVERAGE

11:4-14.1 Scope

[These rules apply] **(a) This subchapter applies** to individual and group health insurance policies which provide coverage for the costs of daily room and board while confined in a hospital or skilled nursing facility. [They do] **This subchapter does** not apply to:

1. [hospital] **Hospital** indemnity policies which provide additional income while the insured is hospitalized[. These rules also do not apply to];

2. Medicare complement policies since Medicare provides home health care; **or**

3. BASIC health care coverage policies in compliance with N.J.A.C. 11:4-36.

SUBCHAPTER 15. ALCOHOLISM BENEFITS

11:4-15.1 Scope

(a) This subchapter applies to individual and group health insurance policies providing hospital-medical expense benefits issued or renewed in this State **except as specified below**. "Renewed" is defined as any date the insurer has the option to change the level of premium rates. This subchapter does not apply to:

1. [policies] **Policies** which provide only limited hospital or medical expense coverage, such as:

i. Medicare complement policies[,];

ii. [hospital] **Hospital** income policies[,];

iii. [student] **Student** accident, trip or accident only policies[,];

iv. PIP coverage[,];

v. [cancer] **Cancer** or dread disease policies[,];

vi. [surgical] **Surgical** expense policies[,]; or

2. [policies] **Policies** issued prior to June 2, 1977, where the premium is guaranteed at issue and the insurer cannot increase the premium[,]; **or**

3. BASIC health care coverage which meets the requirements of N.J.A.C. 11:4-36.

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SUBCHAPTER 16. MINIMUM STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

11:4-16.2 Applicability and scope

(a) This [regulation] **subchapter** shall apply to all individual health insurance policies delivered or issued for delivery in this State on or after the effective date hereof, except that it shall not apply to:

1. [conversion] **Conversion** policies issued pursuant to a contractual conversion privilege [or to];

2. [credit] **Credit** health insurance; **or**

3. BASIC health care coverage policies which meet the requirements of N.J.A.C. 11:4-36.

(b) As used herein, policy means the entire contract between the insurer and the insured including all policies, certificates, riders, applications and endorsements which are required to be filed pursuant to N.J.S.A. 17B:26-1 and N.J.S.A. 17:44A-21. The requirements contained in this [regulation] **subchapter** shall be in addition to any other applicable [regulations] **rules** previously adopted. Nothing in this [regulation] **subchapter** shall be construed to limit the [commissioner's] **Commissioner's** authority to disapprove policies pursuant to N.J.S.A. 17B:26-1h, which, in the opinion of the [commisioner] **Commissioner,** contain provisions that are unjust, unfair, inequitable, misleading or contrary to law or public policy in this State.

SUBCHAPTER 19. OPTIONAL COVERAGE FOR PREGNANCY AND CHILDBIRTH BENEFITS

11:4-19.2 Scope

This subchapter shall apply to all group and individual health insurance policies as well as hospital and medical service corporation contracts delivered or issued for delivery in this State[. This], **except that this subchapter shall not apply to BASIC health care coverage policies or contracts which meet the requirements of N.J.A.C. 11:4-36 or** to health service corporation contracts.

SUBCHAPTER 28. GROUP COORRDINATION OF BENEFITS

11:4-28.3 Coordination permissive

(a) The use of COB provisions in group contracts providing health care benefits shall be permissive[;], **except with respect to BASIC health care coverage contracts meeting the requirements of N.J.A.C. 11:4-36.** Where COB is used, it shall be included in group contracts providing health care benefits subject to the following conditions:

1.-2. (No change.)

(b) (No change.)

SUBCHAPTER 36. STANDARDS FOR BASIC HEALTH CARE COVERAGE AUTHORIZED BY N.J.S.A 17:48-6.13, 17:48A-6.8, 17:48E-22.1, 17B:26B-1 and 26:2J-4.2

11:4-36.1 Purpose

The purpose of this subchapter is to set forth standards for all BASIC health care coverage policies delivered or issued for delivery in New Jersey.

11:4-36.2 Scope and applicability

(a) This subchapter applies to all individual and group policies delivered or issued for delivery in this State providing BASIC health care coverage in accordance with N.J.S.A. 17:48-6.13, 17:48A-6.8, 17:48E-22.1, 17B:26B-1 and 26:2J-4.2.

(b) This subchapter applies to all insurers authorized to transact the business of health insurance in this State, all hospital, medical and health service corporations, all health maintenance organizations and such other similar corporations or organizations.

11:4-36.3 Definitions

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

"Aggregate loss ratio" means the ratio of the accumulated value of past benefits (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future benefits to the accumulated value of past premiums (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future premiums. Benefits shall not be increased nor premiums reduced by actual or anticipated dividends, and interest shall be included in the accumulated and present values on the same basis as in the present values of the anticipated loss ratio.

"Anesthesia services" means the administration of general anesthesia and related procedures provided in connection with a covered surgical services rendered by a physician other than the physician performing the surgical services.

"Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premium, not reduced by dividends, over the entire period for which rates are computed to provide coverage. Present values must incorporate realistic rates of interest which are determined before federal taxes but after investment expenses.

"BASIC" means NEW JERSEY BASIC health care coverage.

"Benefit period" means a consecutive 12 calendar month duration.

"Carrier" means any person authorized to transact the business of health insurance in this State, including insurers, fraternal benefit societies, hospital, medical and health service corporations and health maintenance organizations.

"Certificate" or "certificate form" means any certificate, evidence of coverage or member or enrollee booklet issued pursuant to a group policy or contract or agreement of health coverage delivered or issued for delivery in this State by any carrier subject to this subchapter.

"Commissioner" means the Commissioner of the Department of Insurance.

"Daily hospital room and board" means charges for semi-private hospital accommodations, costs for general nursing care and any special diets.

"Department" means the New Jersey Department of Insurance.

"Experience rated" means rating as defined at N.J.S.A. 17B:30-4c, that is, readjustment of the rate of premium for a policy based on the loss or expense experience thereunder at the end of the first or any subsequent policy year, which may be made retroactive only for such policy year.

"Group" means an employer group, a trustee group established on behalf of one or more employers, a labor union, a trustee group established on behalf of one or more labor unions, a trustee group established on behalf of one or more employers and one or more labor unions, or an employee association formed for purposes not solely related to obtaining a group health policy.

"Guaranteed renewable" means:

1. In the case of BASIC individual policies, including conversion policies, that the covered person has the right to continue the policy in force by the timely payment of premiums until age 65 or earlier eligibility for Medicare, during which time the carrier may not make any change in any provision of the policy without the covered person's consent, except such changes as may be required by law, and changes in premium rates by classes.

2. In the case of BASIC group policies, that the policyholder has the right to continue the policy in force by the timely payment of premiums for at least five years following the original effective date of the policy, during which time the carrier may not make any change in any provision without the policyholder's consent, except such changes as may be required by law, and changes in premium rates by classes.

"Hospital outpatient services" means services rendered at a hospital on an outpatient basis, limited to: hospital services provided on the day surgery is performed; hospital services provided within 72 hours after an injury; and x-ray and laboratory tests, to the extent that such services are covered benefits if provided on an inpatient basis.

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"Hospital" means a health care facility licensed by the State of New Jersey, or which meets the requirements for licensure by the State of New Jersey, if the health care facility is located out of State.

"Incurred/earned loss ratio" means the ratio of incurred claims to earned premiums.

"In-hospital physician services" means physician services provided to a covered person who is hospital confined for treatment of injury or sickness not otherwise requiring surgical services.

"Maternity expenses" means reasonable and necessary expenses for obstetrical and prenatal services, delivery services, nursery services, and postnatal and postpartum services for at least 31 days following the date of birth, including services for complications of pregnancy. Such services shall include at least one physical examination every four weeks for the first 28 weeks, one physical examination every two weeks for the next six weeks, one physical examination every week thereafter immediately prior to delivery, and two physical examinations following delivery; counseling on prenatal health and nutrition management; reasonable laboratory tests and diagnostic services; reasonable physician or midwife services for delivery, and costs of medicines prescribed specifically for obstetrical or prenatal care.

"Medicare" means Title XVIII of the United States Social Security Act, as amended or superseded.

"Physical examinations" means examinations provided by a physician on an out-of-hospital basis, which may include reasonable diagnostic tests and x-rays, including, but not necessarily limited to: dipstick urinalysis for hematuria, bacteriuria and proteinauria; fecal occult blood test and/or digital rectal examination; pap smear and manual breast examination; screening mammography; diagnostic mammography; and serum cholesterol. Frequency of provision of any diagnostic test or x-ray shall be as medically appropriate, except that screening mammographies shall be provided without restriction to women aged 40 and over during a physical examination under the presumption of medical appropriateness.

"Policy" or "policy form" means nay policy, contract or agreement of health coverage delivered or issued for delivery in this State by an carrier subject to this subchapter.

"Small group" means a group comprised of no less than two persons, not including spouses or dependents, nor more than 25 persons, not including spouses or dependents. A carrier may define a small group no more restrictively than as a group meeting the definition of small group provided herein on at least 180 nonconsecutive days of the most recently expired calendar year.

"Surgical services" means hospital and physician services provided in connection with a covered surgery, other than anesthesia services.

11:4-36.4 Requirement to offer BASIC policies

(a) Hospital service corporations, medical service corporations, health service corporation and health maintenance organizations shall offer for delivery in New Jersey individual BASIC policies, including coverage for dependents, and group BASIC policies, including coverage for dependents. Health service corporations shall maintain a continuous open enrollment period as required by N.J.S.A. 17:48E-3d, providing BASIC coverage to persons otherwise unable to obtain such coverage.

(b) Insurers and fraternal benefit societies which have delivered or issued for delivery or which will deliver or issue for delivery in New Jersey individual policies providing health insurance on or after July 1, 1991 shall offer for delivery in this State individual BASIC policies, including coverage for dependents. Conversion policies shall be considered individual policies providing health insurance delivered or issued for delivery in New Jersey.

(c) Insurers and fraternal benefit societies which have delivered, issued for delivery or renewed, or which will deliver, issue for delivery or renew in New Jersey group policies providing health insurance on or after July 1, 1991 shall offer for delivery in this State group BASIC policies, including coverage for dependents.

(d) Insurers and fraternal benefit societies delivering, issuing for delivery or renewing (with respect to group policies) in this State individual or group policies solely for the purpose of providing the types of coverage set forth below, and which offer no other forms of policies for health coverage in this State, are not required to comply with this subchapter:

1. Disability income protection coverage;
2. Hospital confinement indemnity coverage;
3. Accident only coverage;
4. Medicare supplement coverage;
5. Credit health coverage;
6. Long-term care coverage; or
7. Coverage in which the health benefits, if any, are only incidental.

(e) All carriers subject to this subchapter in accordance with (a) and (c) above shall offer for delivery in this State individual BASIC conversion policies to covered persons leaving a group which has in effect a group BASIC policy, and to the individuals of a group that has a group BASIC policy which is not renewed by either the group policyholder or the carrier, and which is not replaced by another group policy, BASIC or otherwise.

(f) Health maintenance organizations which are Federally qualified health maintenance organizations pursuant to 42 U.S.C. 300e et seq. shall not be required to comply with this subchapter.

(g) Carriers delivering policies or issuing policies for delivery in this State which are not required, or believe they are not required, to offer individual or group BASIC policies in accordance with this subchapter shall submit to the Department a statement to that effect, indicating the reason compliance is not required. Such statements shall be directed to the Department as set forth at N.J.A.C. 11:4-36.5(e).

11:4-36.5 Filing of forms and rates

(a) Every carrier subject to this subchapter shall submit for filing by the Commissioner all forms for use with BASIC coverage within 60 days of the effective date of this subchapter. Each carrier shall submit appropriate forms for group, individual and conversion BASIC coverage as that carrier is required to submit to be in compliance with N.J.A.C. 11:4-36.4.

(b) No policy, written application, rider, waiver, endorsement, certificate or any other form for use with a BASIC policy shall be delivered or issued for delivery in this State until the form thereof has been submitted to and filed by the Commissioner. No form shall be filed by the Commissioner until the classification of risks and rates pertaining to such form have been submitted to the Commissioner.

(c) No carrier shall use or revise rates for a BASIC policy until the rates and methodology and all supporting documentation have been submitted to and filed by the Commissioner, or filed with Commissioner as set forth below.

1. With respect to the submission of revised rates for group BASIC policies only, the revision shall be deemed filed 30 days after the date of submission unless affirmatively filed or disapproved by the Commissioner sooner. A disapproval shall be in writing stating the reasons for the disapproval.

2. Responses submitted to a notice of disapproval shall be deemed filed 30 days after the date of submission unless affirmatively filed or disapproved by the Commissioner.

(d) Except as (c)1 above may apply, policy forms or rates submitted which are not affirmatively approved or disapproved by the Commissioner prior to the expiration of 60 days following the date of submission shall be deemed filed. This provision shall not apply to any subsequent response to a disapproval notice issued in accordance with this provision.

(e) No policy form, rate or rate amendment disapproved for filing shall be delivered or issued for delivery or otherwise utilized until such disapproval is withdrawn. Any policy form, rate or rate amendment filed or deemed filed by the Commissioner may be delivered, issued for delivery or otherwise used until it is withdrawn from filing by the Commissioner, subject to a hearing held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(f) All forms and rate submissions for filing by the Commissioner shall be submitted to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625-0325, directed to specific bureaus as follows:

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1. Health Care Plan Bureau, for submissions from health maintenance organizations;

2. Service Corporations Bureau, for submissions from health, hospital and medical service corporations; and

3. Statutory Compliance Bureau-Health, for submissions for all other carriers.

11:4-36.6 Loss ratios and rate submission requirements

(a) Each submission of rates for filing shall include all rates to be charged, including substandard rates, or a formula for such rates to be charged in sufficient detail to allow the Department to replicate the rate for any individual or group with specified rating characteristics.

(b) Each insurer shall include with each submission of new or revised rates the following information and material:

1. An actuarial memorandum which shall include the following:

i. The anticipated loss ratio;

ii. The specific formulas and methodology used in calculating gross premiums;

iii. An explanation and documentation supporting the premium assumptions;

iv. The objective basis for rate differentials; and

v. A certification signed by the company's actuary that the information given in the actuarial memorandum is appropriate and that the benefits provided are reasonable in relation to the premiums charged.

2. In connection with rate revisions only, the aggregate loss ratio, a statement of the reason for the revision, and an estimate of the expected average increase or decrease in premium both in dollars and percent.

(c) Except as (d) below applies, for new forms, the benefits provided are presumed reasonable in relation to the premiums charged if the anticipated loss ratio meets the following standards:

1. For individual BASIC policies, other than conversion policies, the ratio is at least 65 percent;

2. For BASIC conversion policies, the ratio is at least 80 percent; and

3. For group BASIC policies the ratio is at least 80 percent.

(d) For group policies which are intended to be issued in 1992 and 1993, the premium shall be deemed reasonable in relation to benefits when policy forms and rates are submitted for filing if the average charge per covered person is $1,500 per benefit period, and the average charge for dependent coverage is consistent with this amount.

1. No further loss ratio demonstration shall be required at the time of submission for filing of these policy forms, however, these policy forms shall attain a loss ratio of at least 80 percent over the life of the policy.

2. Within 24 months after a policy form with premiums deemed reasonable pursuant to (d) above is filed, the carrier shall demonstrate that the aggregate loss ratio satisfies the loss ratio standards specified in (d)1 above. If the loss ratio standard is not met, the carrier shall reduce future charges as required by the Commissioner in order to meet the standard. This requirement is in addition to the requirements of (e) below.

(e) With respect to filings of rate revisions for previously approved policy forms, benefits shall be deemed reasonable in relation to premiums if both the anticipated loss ratio and the aggregate loss ratio satisfy the loss ratio standards, specified in (c)1, 2 and 3 above.

(f) BASIC policies shall not be experience rated. The premium rate for any policyholder shall not be based solely on the loss or expense experience of that policyholder.

(g) For group policies in which individuals are underwritten, the insurer may charge a rate for a substandard or uninsurable individual which is no greater than 35 percent higher than the rate of a standard individual with the same rating characteristics.

(h) The rate charged by a health service corporation for individuals provided BASIC coverage through open enrollment may be no more than 35 percent higher than the rate applicable to individuals covered under BASIC policies which are underwritten. Health service corporation individual BASIC policies shall be community rated, and all other provisions of N.J.S.A. 17:48E-1 et seq. regarding health service corporation rates shall be applicable to BASIC policies, (c) above notwithstanding.

(i) An actuarial certification shall be included with each submission of rates for filing, certifying that:

1. With respect to demographic rating (such as by age, gender or territory), the rates are not unfairly discriminatory between rating class, that is, the expected loss ratio for any rating class shall not differ by more than 10 percent from the expected loss ratio for all rating classes, except with respect to that portion of the rate specific to the provision of benefits for maternity expenses required by this subchapter.

2. With respect to demographic and community rating, the cost of providing benefits for maternity expenses required by this subchapter is distributed equally among all adult risk classifications in proportion to the expected nonmaternity claim costs for those classifications, and the constant percentage of each such claim cost attributable to the charge (including claim administrative expenses) for maternity expenses benefits shall be indicated.

(j) Carriers shall maintain records of premiums, claims and reserves for each BASIC policy form currently on file in this State.

1. Carriers shall submit to the Department annually on or before June 30 a completed report for each BASIC policy form regarding premiums, claims and incurred/earned loss ratios. Reports shall include the accumulated experience for all previous calendar years, up to and including December 31 of the calendar year most recently completed. Reports shall also include experience on a calendar year basis for each calendar year in which the policy has been issued, and shall show separately, within each calendar year, the experience of policies in their first year, second year, and all later years. Premiums shall be reported on an earned and written or paid basis. Claims shall be reported on both an incurred and paid basis.

2. If the incurred/earned loss ratios for a specific BASIC policy form, based on a significant volume of reasonably mature business, do not meet the standard set forth at (c) above, the carrier shall provide an explanation why the premiums should not be regarded as unreasonably high in relation to the benefits provided, and additional information as the Department may request.

3. If, after consideration of any explanation and materials provided in accordance with (h)2 above, the Commissioner determines that the premiums are not reasonably related to benefits provided, the carrier shall reduce premiums within 90 days of notice of the determination, so that the requirements of (c) above may be met.

11:4-36.7 BASIC benefits

(a) Except as (b) and (c) below may apply, a BASIC policy, including a BASIC conversion policy, shall provide benefits only for the following:

1. Hospital expenses for 21 days per benefit period for each covered person, incurred for medically necessary treatment and services, consisting of:

i. Daily hospital room and board;

ii. Miscellaneous hospital expenses; and

iii. Hospital outpatient services;

2. Medical-surgical expenses for each covered person, incurred for medically necessary treatment and services, consisting of:

i. Surgical services;

ii. Anesthesia services; and

iii. In-hospital physician services;

3. Maternity expenses; and

4. Expenses for out-of-hospital physical examinations as follows:

i. For covered persons less than two years of age, six examinations during the first two years of life;

ii. For covered persons two years old and older, but less than 19 years of age, one physical examination at age three, six, nine, 12, 15 and 18 years.

iii. For covered persons 19 years old and older, but less than 40 years of age, one physical examination every five years;

iv. For covered persons 40 years old and older, but less than 60 years of age, one physical examination every three years; and

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v. For covered persons 60 years old and older, one physical examination every two years.

(b) Hospital service corporations shall not provide a BASIC policy in accordance with (a) above, but shall offer a BASIC policy that provides only benefits for the following:

1. Hospital expenses for 21 days per benefit period for each covered person, incurred for medically necessary treatment and services, consisting of:

i. Daily hospital room and board;

ii. Miscellaneous hospital expenses; and

iii. Hospital outpatient services; and

2. Maternity expenses that are hospital-based.

(c) Medical service corporations shall not provide a BASIC policy in accordance with (a) above but shall offer a BASIC policy that provides only benefits for the following:

1. Medical-surgical expenses for each covered person, incurred for medically necessary treatment and services, consisting of:

i. Surgical services;

ii. Anesthesia services; and

iii. In hospital physician services;

2. Maternity expenses other than those of a hospital; and

3. Out-of-hospital physical examinations as follows:

i. For covered persons less than two years of age, six examinations during the first two years of life;

ii. For covered persons two years old and older, but less than 19 years of age, one physical examination at age three, six, nine, 12, 15 and 18 years;

iii. For covered persons 19 years old and older, but less than 40 years of age, one physical examination every five years;

iv. For covered persons 40 years old and older, but less than 60 years of age, one physical examination every three years; and

v. For covered persons 60 years old and older, one physical examination every two years.

(d) Carriers may require satisfaction per benefit period of a deductible amount for covered benefits up to an aggregate deductible per individual BASIC policy or group certificate not greater than $250.00. The benefits for maternity and physical examinations shall not be subject to any deductible.

(e) Carriers may require satisfaction of coinsurance amounts for covered benefits up to an aggregate per individual BASIC policy or group certificate per benefit period total of no more than $500.00. The benefits for maternity and physical examinations shall not be subject to any coinsurance requirements under the policy.

(f) Benefits may be provided with respect to the basic medical-surgical expense coverage in accordance with the "Resource-Based Relative Value Scale for Medicare Part B," prepared by the Health Care Financing Administration, using the dollar multiplier specified by the Health Care Financing Administration, modified by the 1992 median geographic factor indicated for New Jersey, as medically necessary. Information regarding the "Resource-Based Relative Value Scale for Medicare Part B", incorporated herein by reference, may be obtained by writing to:

Health Care Financing Administration
United States Department of Health and Human Services
6325 Security Boulevard
Baltimore, MD 21207

11:4-36.8 Minimum standards for benefits

(a) All individual BASIC policies shall provide that the covered person shall have the right to return the policy within 30 days of the date of delivery and to have whatever premium was paid therefor refunded if, after examination of the policy, the covered person is not satisfied for any reason.

(b) All individual BASIC policies, including BASIC conversion policies, shall be guaranteed renewable. A guaranteed renewable policy shall not provide for termination of coverage for a spouse solely because of the occurrence of an event specified for termination of coverage of the other spouse, except for nonpayment of premium.

(c) All group BASIC policies shall be guaranteed renewable for at least five years from the original effective date of the policy. No carrier shall nonrenew a group BASIC policy at the end of the five year period except in accordance with those reasons specified by the carrier in a form submitted to and filed by the Commissioner.

1. Forms specifying reasons for nonrenewal of group BASIC policies shall be submitted to the Commissioner at least 30 days prior to the date the carrier intends to begin the nonrenewal process. Forms submitted and neither affirmatively approved or disapproved within 30 days of the date of submission shall be deemed filed, subject to an extension of the review period for an additional 30 days upon written notice to the carrier. Any disapproval shall be in writing stating the reasons for the disapproval. Forms shall be submitted in accordance with N.J.A.C. 11:4-36.5(f).

2. Notwithstanding (c)1 above, a carrier may nonrenew a group BASIC policy upon any annual anniversary of the policy effective date if the number of persons covered under the policy on the anniversary date totals less than two.

3. A group BASIC policy may be otherwise terminated at any time only for the following reasons:

i. Nonpayment of premiums;

ii. Failure of the group to meet participation requirements set forth in this subchapter; or

iii. Fraud or material misrepresentation.

(d) In an individual BASIC policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting age and durational requirements. However, a carrier shall not be prevented from terminating coverage of the older spouse upon attainment of age 65, so long as the policy continues in force as to the younger spouse to the age of 65.

(e) If a BASIC policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for a refund of premiums as applicable to such person(s), on a pro rata basis.

(f) Maternity benefits shall be provided if conception occurs after the effective date of coverage, or after a waiting period of not more than 30 days after the effective date of coverage, except that no waiting period shall apply on BASIC conversion policies. If a carrier cancels or nonrenews a group BASIC policy, benefits for maternity shall be extended beyond the final date of coverage with respect to a pregnancy commencing while the policy was in force and which otherwise was or would have been covered under the policy.

(g) Termination of a BASIC policy shall be without prejudice to any claim for continuous loss which commenced while the policy was in force; however, the payment of benefits after the termination date may be predicated upon the continuous disability of the covered person, except as (f) above applies, limited to the duration of the benefit period or payment of the maximum benefits.

(h) If disability is a criterion for payment of benefits under a policy, the policy must include a definition of disability.

(i) BASIC policies are not required to provide mandatory health care benefits. For purposes of this subchapter, "mandatory health care benefits" means specific services or supplies required by statute, or treatment of specific conditions, illness or injury as required by statute, including the following:

1. Treatment of alcoholism;

2. Treatment of hemophilia;

3. Treatment of Wilm's Tumor;

4. Reconstructive breast surgery;

5. Home health care services;

6. Second surgical opinion; and

7. Mammograms (except as a mammogram may be used for screening purposes as an x-ray provided in conjunction with benefits for physical examinations in accordance with N.J.A.C. 11:4-36.7, or as a medically appropriate diagnostic test).

(j) BASIC policies are not required to provide benefits for services rendered by providers of health care services as otherwise required by law.

(k) A group BASIC policy shall provide that covered persons whose coverage under the policy would otherwise terminate because of termination of employment due to total disability shall be entitled to continue coverage under the group policy, including dependent

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coverage, subject to all of the terms and conditions of the group policy, and the following:

1. Continuation shall be available only to covered persons who were continuously covered under the group policy for the three month period ending with the date of termination of group membership.

2. Continuation of benefits shall include all of the benefits and benefit levels applicable to the group BASIC policy.

3. The covered person electing continuation shall pay to the group policyholder or the employer, if different, on a monthly basis, in advance, the amount of contribution required by the policyholder or employer, which amount shall not exceed 100 percent of the group rate for that covered person and the covered person's dependents, if applicable. The covered person's written election for continuation, together with the first contribution, shall be given to the policyholder or employer within 31 days of the date the covered person's coverage under the BASIC policy would otherwise terminate.

4. Continuation of coverage under the group policy for any covered person shall terminate at the first to occur:

i. Failure of the covered person to make timely payment of a required contribution. Termination shall occur at the end of the period for which contributions were made.

ii. The date the covered person becomes employed and eligible for benefits under another group policy, BASIC or otherwise, or becomes eligible for Medicare.

iii. The date on which the group BASIC policy is terminated, provided that if termination occurs at the request of the policyholder or employer, the covered person(s) shall have the right to become covered under any new group policy BASIC or otherwise, contracted for by the policyholder or employer, under the same conditions specified herein, but the prior group BASIC policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits, as if the replacement had not occurred.

(l) All group BASIC policies shall contain a coordination of benefit provision in accordance with the requirements of N.J.A.C. 11:4-28 and N.J.A.C. 11:3-37.

(m) No BASIC policy shall be cancelled or nonrenewed unless a written notice of cancellation or nonrenewal has been sent to the policyholder at least 30 days prior to the effective date of the cancellation or nonrenewal. Such written notice shall state the reason(s) for cancellation or nonrenewal. Such written notice shall state whether a right of continuation or conversion may exist or shall refer the policyholder to a review of the policy to determine whether a right of continuation or conversion exists.

(n) Carriers shall provide policyholders of BASIC policies a written notice of any premium increase at least 30 days prior to the effective date of any such premium increase.

11:4-36.9 Persons or entities to whom policies shall or shall not be issued

(a) No carrier shall deliver or issue for delivery any group BASIC policy to any group policyholder for coverage of a group having one or more group health policies in effect during the 12 month period ending on the date of application for coverage under a group BASIC policy issued by the carrier.

(b) For purposes of complying with (b) above, "group health policy" does not include:

1. Disability income protection coverage;
2. Hospital confinement indemnity coverage;
3. Accident only coverage;
4. Limited benefit coverage;
5. Short-term nonrenewable coverage;
6. Long-term care coverage; or
7. Coverage in which health benefits, if any, are only incidental; and
8. BASIC health care coverage meeting the requirements of this subchapter.

(c) Carriers shall not offer individual BASIC policies, including BASIC conversion policies, to anyone eligible for Medicare, and no person eligible for Medicare shall be eligible for coverage under an individual BASIC policy. Coverage for a person under an individual BASIC policy, including conversion BASIC policies, shall be terminated upon that person becoming eligible for Medicare.

(d) Except as Federal law may specify otherwise, a carrier shall not offer certificate under a group BASIC policy to persons eligible for Medicare, and no person eligible for Medicare shall be eligible for coverage under a group BASIC policy. Except as Federal law may specify otherwise, a group BASIC policy shall provide for termination of coverage for covered persons who become eligible for Medicare but shall provide for continuation of coverage of a spouse and dependents under family coverage upon election made by the spouse and dependents within 31 days of the date of termination of the covered person and payment of appropriate premiums, which shall be no more than 102 percent of the group rate for such coverage, so long as the Medicare eligible person remains an employed member of the group.

(e) Except as (a), (b), (c) and (d) above may apply, carriers offering group BASIC policies shall issue coverage to all groups which apply for coverage under a group BASIC policy, and all carriers offering individual BASIC policies shall issue coverage to all individuals who apply for coverage under an individual BASIC policy, unless and until a carrier is granted an exemption from compliance with this provision by the Commissioner.

1. A health maintenance organization subject to the requirements of this subchapter may obtain no less than a 12 month exemption from compliance with (e) upon a showing of insufficient capacity to service individual or group BASIC policies, or additional individual or group BASIC policies, which exemption may be renewed only upon a new and separate submission demonstrating insufficient capacity. A health maintenance organization granted an exemption of this nature shall be prohibited from issuing any other new individual or group enrollment policies or certificates, except to extend coverage to new group members of a currently enrolled group via open enrollment or otherwise, or to permit coverage of family members of current enrollees, during the entirety of each exemption granted.

2. A stock insurer may obtain no less than a 12 month exemption from compliance with (e) upon a showing of an amount which is no greater than two times the capital and surplus amount required to commence business in this State as an insurer authorized to transact business as set forth at N.J.S.A. 17B:18-35(b) or (c), which exemption may be renewed only upon a new and separate submission demonstrating insufficient capital and surplus as defined by this provision.

3. A mutual insurer may obtain no less than a 12 month exemption from compliance with (e) upon a showing of an amount which is no greater than two times the net cash asset amount required to commence business in this State as an insurer authorized to transact business as set forth at N.J.S.A. 17B:18-36(b) or (c), which exemption may be renewed only upon a new and separate submission demonstrating insufficient net cash assets as defined by this provision.

4. A hospital service corporation and a medical service corporation may obtain no less than a 12 month exemption from compliance with (e) upon a showing of a surplus amount which is no greater than two times the surplus amount required to be maintained by these carriers in accordance with N.J.S.A. 17:48-10 and N.J.S.A. 17:48A-14, respectively, which exemption may be renewed only upon a new and separate submission demonstrating insufficient surplus as defined by this provision.

5. A health service corporation may obtain no less than a 12 month exemption from compliance with (e), with respect to issuance of group BASIC policies only, upon a showing of a surplus amount which is no greater than one and one half times the surplus amount required to be maintained by the carrier for its account not related to its individual contracts in accordance with N.J.S.A. 17:48E-17.1b, which exemption may be renewed only upon a new and separate submission demonstrating insufficient surplus as defined by this provision.

6. A carrier unable to qualify for an exemption in accordance with (e)1, 2, 3, 4, or 5 above may obtain an exemption from compliance with (e) after it has offered individual or group BASIC policies, or

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both, for sale in this State for at least 12 months, upon showing that its share of uninsurable BASIC policyholders exceeds that proportionate percentage share of the carrier's total health coverage business in New Jersey relative to other carriers subject to this subchapter, subject to the following conditions:

i. "Uninsurable" shall be defined as an individual or group which is determined to be 150 percent above average using the carrier's underwriting guidelines established in accordance with the requirements of this subchapter for BASIC policies;

ii. The exemption shall be for no less than a consecutive 12 month period, which may be renewed only upon a new and separate submission demonstrating the requirements for exemption specified by this provision;

iii. During the exemption, the carrier shall be permitted to decline issuance of BASIC policies to groups and individuals which are determined to be uninsurable in accordance with 6i above, but otherwise, shall continue to issue BASIC policies; and

iv. No exemption shall be provided to health service corporations in this regard with respect to individual BASIC policies.

7. An exemption shall have no bearing upon any carrier's obligations under BASIC policies issued prior to the date of the exemption. A carrier shall not be entitled to cancel or nonrenew a BASIC policy because of any exemption granted to it.

8. A submission for an exemption which is neither affirmatively approved nor disapproved within 60 days of the date of the submission shall be deemed filed by the Commissioner. Any exemption filed or deemed filed by the Commissioner shall be effective until such time as the exemption is disapproved and withdrawn from filing by the Commissioner, subject to a hearing held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. Any notice of disapproval shall be in writing, stating the reason(s) for the disapproval.

9. A submission for an exemption shall contain all documentation that the Commissioner deems appropriate for review.

10. In order to provide a basis for determining market shares so that exemptions may be granted in accordance with (e)6 above, each carrier subject to this subchapter shall submit to the Commissioner within nine months of the effective date of this subchapter, and on an annual basis thereafter, the approximate number of lives covered for health care expenses or services under all policies issued by the carrier, other than policies for:

i. Disability income protection coverage;

ii. Hospital confinement indemnity coverage;

iii. Accident only coverage;

iv. Limited benefit coverage;

v. Short-term nonrenewable coverage;

vi. Long-term coverage; and

vii. Coverage in which health benefits, if any, are only incidental.

(f) Coverage shall be made available to all members of a group and to all spouses or dependents of members electing dependent coverage, except as (d) above may apply.

(g) No group BASIC policy shall be issued on which the entire premium is to be derived from funds contributed by the group members and not the group policyholder. The premium for the group BASIC policy shall be paid by the group policyholder, regardless of the contribution arrangement between the policyholder and group members.

1. A group BASIC policy for which part of the premium is to be derived from funds contributed by the covered group members shall be issued only if at least 75 percent of the group members eligible for coverage at the time of application elect to make the required contributions.

2. A group BASIC policy for which no part of the premium is to be derived from funds contributed by the covered group members shall cover all eligible members of that group.

3. No carrier shall require that a specified percentage of the premium be derived from funds contributed by the group policyholder.

4. No carrier shall require that a specified percentage of the premiums related to coverage of a spouse and dependents be derived from funds contributed by the group policyholder.

11:4-36.10 Prohibited policy provisions

(a) No BASIC policy or certificate shall provide coverage for specified disease(s) or procedures or treatments which are limited to specified diseases, nor shall coverage be provided solely for specifically identified kind(s) of accident(s).

(b) No BASIC policy or certificate shall limit or exclude coverage by type of illness, accident, treatment or medical condition, other than:

1. Preexisting conditions;

2. Drug addiction;

3. Illness, treatment or medical conditions arising from:

i. War or act of war (whether declared or undeclared), participation in a riot or insurrection, or service in the armed forces or units auxiliary thereto;

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

iii. Aviation, other than as a fare paying passenger on a regularly scheduled airline;

4. Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved parts, or reconstructive surgery required because of a congenital disease or anomaly of a covered newborn dependent child which has resulted in a functional defect;

5. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet;

6. Treatment provided in a government hospital, benefits provided under Medicare or other governmental program (except Medicaid), any state or Federal workers' compensation, employers' liability or occupational disease law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

7. Dental care or treatment;

8. Eye glasses, hearing aids and examination for the prescription or fitting thereof;

9. Rest cures, custodial care and transportation; or

10. Territorial limitations.

(c) No BASIC policy or certificate shall include a provision which reduces, limits or excludes benefits solely on the basis of gender or marital status of the covered person.

(d) No BASIC policy or certificate shall exclude or limit loss due to a preexisting condition for a period greater than 12 months following the effective date of coverage, subject to the requirement that any preexisting condition exclusion under a group BASIC policy satisfied in whole or in part shall be credited to the extent satisfied against the preexisting condition exclusion existing under a BASIC conversion policy, and subject to the further requirement that benefits under a group BASIC policy shall not be denied for a preexisting condition for any person becoming a covered person if the covered person was covered under another group policy issued by the carrier, BASIC or otherwise, in the time period immediately prior to coverage under the current BASIC policy, and the carrier paid benefits for the condition under the group policy by which the person was previously covered.

(e) No individual BASIC policy shall contain a provision establishing a probationary or waiting period exceeding 30 days following the effective date of coverage. There shall be no probationary or waiting period applicable to newborn children. No waiting period shall apply to a BASIC conversion policy.

(f) No group BASIC policy or certificate shall contain a provision establishing a probationary or waiting period for benefits following the effective date of coverage of any person.

(g) No individual BASIC policy shall include a provision which gives the carrier an unconditional right of nonrenewal.

(h) No group BASIC policy, BASIC conversion policy or individual BASIC policy issued in accordance with N.J.S.A. 17:84E-3d shall contain any waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting disease,

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physical condition or extra hazardous activity as a condition of issuance, renewal or reinstatement of a BASIC policy.

(i) No individual BASIC policy, nor group BASIC policy issued to a small group, shall be experience rated. The premium rate for an individual policy holder and small group policyholder shall not be based solely on the loss or expense experience of that policyholder.

11:4-36.11 Policy definitions

(a) The following shall apply to definitions of policy terms:

1. "Accident," "accidental injury," or "accidental means," shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characteristics.

2. "Benefit period" shall be defined in accordance with the subchapter definition for benefit period provided at N.J.A.C. 11:4-36.3.

3. "Convalescent nursing home," "extended care facility" or "skilled nursing facility" shall be defined in relation to its status, facilities and available services.

4. "Guaranteed renewable" shall be defined in accordance with the subchapter definition for guaranteed renewable provided at N.J.A.C. 11:4-36.3.

5. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

i. The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

(1) Be an institution operated pursuant to law; and

(2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

(3) Provide 24-hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

ii. The definition of the term "hospital" may state that such term shall not be inclusive of:

(1) Convalescent homes, convalescent, rest or nursing facilities;

(2) Facilities primarily affording custodial, educational or rehabilitative care;

(3) Facilities for the aged, drug addicts, or alcoholics; or

(4) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

6. "Injury" shall not be defined more restrictively than accidental bodily injury sustained by the covered person which is the direct cause of the loss, independent of disease, bodily infirmity or other cause, and which occurs while the coverage is in force. Such definition may provide that injuries shall not include injuries for which benefits are provided under workers' compensation, employer's liability or similar law, or injuries occurring while the covered person is engaged in any activity pertaining to any trade, business, employment or occupation for wage or profit.

7. "Medicare eligible person" shall be defined to include any person who is eligible for benefits under Title XVIII of the United States Social Security Act, as amended or superceded.

8. "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis or mental or emotional disease or disorder of any kind.

9. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.).

10. "Physician" may be defined so that the description of physician is restricted to a type of physician except that such definition shall not be more restrictive than requiring a physician be a licensee authorized to practice medicine and surgery in accordance with the laws of this State, N.J.S.A. 45:9-1 et seq.

11. "Preexisting condition" shall not be defined to be more restrictive than as a condition for which medical advice or treatment was recommended by and/or received from a physician within a one year period preceding the effective date of the BASIC coverage.

12. "Sickness" shall not be defined more restrictively than a sickness or disease which causes loss commencing while the policy is in force and which is not excluded under a preexisting condition limitation. A definition may provide for a probationary period which will not exceed 30 days from the effective date of the coverage of a covered person. Such probationary period shall not apply to newly-born children. The definition may also be modified to exclude sickness or disease for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

13. "Total disability" shall be defined to exist only while the covered person is not engaged in any gainful occupation and is completely unable, due to sickness or injury, or both, to engage in any and every gainful occupation for which the person is reasonably suited by education, training or experience.

14. "Usual," "customary" and "reasonable" when used to define the payment of benefits, shall not be defined more restrictively than as:

i. "Usual" means the fee ordinarily charged by the provider for a specific service or supply.

ii. "Customary" means the range of usual fees charged by providers for the same service or supply under like circumstances within the same geographical or socio-economic area. The range of usual fees charged by physicians shall consider training and experience.

iii. "Reasonable" means a fee above usual and customary which may be justified by unusual complexity of the treatment required.

11:4-36.12 Conversion

(a) All group BASIC certificates shall contain a provision setting forth the right of conversion for covered persons who become ineligible for group coverage, or whose group coverage is terminated by either the group policyholder or the carrier, and which is not replaced by another group policy, BASIC or otherwise.

(b) The provision setting forth the right of conversion shall specify the manner and time period for making the election. The time period shall be no less than 31-days following the termination date of the covered person's coverage under the group BASIC policy. No more than 90 days of premium, inclusive of the 31 day election period, may be required in order to effectuate the election.

(c) No waiting period shall apply to a conversion policy, and any preexisting condition exclusion provision satisfied, in whole or in part, under the group BASIC policy, shall be credited, to the extent satisfied, against any preexisting condition exclusion provision which may apply under the conversion policy.

(d) Conversion policies shall include dependent coverage, and shall meet all of the requirements for individual BASIC policies under this subchapter, unless specified otherwise.

11:4-36.13 Family coverage

(a) All BASIC policies and certificates shall include an option to cover the spouse and dependents of the covered person, at the election of the covered person.

(b) The term dependent shall include a covered person's spouse and minor children, including stepchildren, adopted children and children for whom the covered person or covered person's spouse is or becomes the legal guardian. The term dependent may include other persons within a family relationship as the carrier may determine and set forth in the policy and certificate.

(c) Spouses and dependents shall be eligible to exercise continuation and conversion privileges.

1. Subject to the payment of appropriate premiums, coverage for a spouse and dependents shall be continued for at least 180 days after the death of the covered person, subject to policy provisions for termination of coverage for spouses or dependents for reasons

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other than the death of a covered person. The period during which an election to continue coverage may be made shall be no less than 31 days following the death of the covered person.

2. During a period of no less than 31 days following the occurrence of a qualifying event, a spouse and dependents shall have the right to apply for a BASIC conversion policy (in the case of group BASIC policies), or a separate individual BASIC policy (in the case of individual BASIC and BASIC conversion policies).

i. Qualifying events shall include:

(1) Death of a covered person, or in the case of continued coverage required following the death of a covered person, the end of the continuation period;

(2) Divorce;

(3) Legal separation;

(4) Attainment by the spouse or dependent of an age specified under a policy for terminating eligibility;

(5) Attainment of eligibility for Medicare by a covered person, if such eligibility results in termination of that covered person's policy or certificate, and if the covered person's spouse or dependents are not themselves eligible for Medicare; and

(6) End of a continuation period.

ii. No new evidence of insurability shall be required in connection with the application for coverage, but any preexisting condition, exclusion, waiting period or other limitation not satisfied by the former spouse and dependents under the former policy may apply on the new policy, to the extent that such exclusion, period or limitation remains unsatisfied, except that no waiting period shall apply on a conversion BASIC policy.

iii. The effective date of the new coverage shall be the day following the date on which the coverage under the prior policy terminated with respect to the former spouse and dependents.

(d) BASIC policies may provide for termination of coverage of dependent children upon attainment of the age of 19, or upon marriage of the child prior to attainment of the age of 19. Any dependent child incapable of self-sustaining employment by reason of mental retardation or physical handicap, who became so incapacitated prior to attainment of age 19 and who is chiefly dependent upon the covered person or covered person's spouse for support and maintenance, shall not be terminated while the policy remains in force and the dependent remains in that condition, if, within 31 days following the dependent's attainment of age 19, the covered person presents proof of the dependent's incapacity.

(e) BASIC policies shall provide coverage to newly-born children of a covered person or a covered person's spouse for at least 31 days after the moment of birth of the child. Coverage shall be for injury or sickness including the necessary care and treatment of medically diagnosed congenital abnormalities. Carriers may provide that continued coverage of a newly-born child beyond the 31 day period is contingent upon notification of birth, application for coverage if the BASIC policy is not currently family-type, and submission of appropriate premiums or contribution, if any, to effect coverage. Where a carrier requires notification of birth to continue coverage of the newborn, submission of a claim for the newborn shall be considered effective notice. Where a carrier requires application for continued coverage of the newborn, submission of a claim for the newborn shall serve as a request for an application. Submission of a claim shall serve as an alternative procedure for providing notice and request for an application, and need not be the only method recognized by the carrier. No evidence of insurability shall be required with regard to a newborn child.

11:4-36.14 Disclosure provisions

(a) Each BASIC policy shall include a renewal provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the carrier effectuates a request made in writing by the policyholder or covered person, all riders or endorsements added after the date of issue, or at reinstatement or renewal, which reduce or eliminate benefits or coverage under the BASIC policy shall require signed acceptance by the covered person, or policyholder in the case of group policies. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term, shall be agreed to in writing by the covered person, or policyholder in the case of group policies, except if the increased benefit or coverage is required by law.

(c) Where riders or endorsements which reduce or eliminate coverage or benefits are attached to the policy at issue, the policy shall contain on the first page or specification page either a prominent warning or the full text of the rider or endorsement.

(d) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(e) In a policy or certificate which provides for payment of benefits based on standards specified as "usual and customary," "reasonable and customary" or "usual, customary and reasonable," such standards shall be defined in the policy and certificate.

(f) If a policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph in the policy and certificate and shall be labelled as "Preexisting Condition Limitations."

(g) If age is to be used as a determining factor for reducing the benefits available in the policy, such fact must be set forth prominently in the policy and certificate.

(h) All individual BASIC policies shall have a notice prominently printed on the first page of the policy, or attached thereto, stating in substance that policyholders shall have the right to return the policy within 30 days of delivery and to have the premium(s) refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(i) All policies and certificates shall contain a provision explaining dependent coverage. The provision shall specify how to maintain coverage for a newborn child past the first 31 days of life, and how to maintain coverage for a dependent child upon attainment of age 19. The provision shall explain dependent coverage upon the death of the covered person.

(j) The conversion privilege shall appear as a separate paragraph under the caption "Conversion Privilege" in policies and certificates. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person who may exercise the conversion privilege. The provision shall specify the benefits to be provided on conversion, or may state that the converted coverage will be as provided on a policy form being used, by the carrier for conversion purposes.

(k) Carriers shall provide an informational pamphlet to each policyholder and certificateholder free of charge no later than the date of delivery of the BASIC policy or certificate issued under a BASIC policy. The booklet shall be prepared by the New Jersey Department of Insurance, Division of Public Affairs. Carriers may obtain copies of the pamphlet or information pertaining to the printing of this pamphlet by contacting:

NEW JERSEY BASIC Health Care Coverage Pamphlet
Division of Public Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

(l) Carriers shall provide to group policyholders for distribution to group members a certificate summarizing the benefits, terms and conditions of the group policy, and definitions applicable to the policy. In addition, the summary shall explain such information as: how to file a claim; how to appeal a claim denial or limitation; how notice is to be provided to the carrier regarding any events which may qualify a member to exercise a continuation or conversion option; and briefly explaining when and how coordination of benefits occur.

(m) The continuation privilege shall appear as a separate paragraph under the caption "Continuation Privilege" in policies and certificates. The provision shall indicate the persons eligible for continuation, the circumstances applicable to the continuation privilege, including any limitations on the privilege, and the

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person(s) who may exercise the continuation privilege. The provision shall specify the benefits to be provided on continuation.

(n) All BASIC policies, certificates, riders, waivers or endorsements, or other such similar material used to inform or correspond with consumers, covered persons or the Department shall be entitled or otherwise labelled as "NEW JERSEY BASIC Health Care Coverage", and may be referred to as "NEW JERSEY BASIC" or "NJBHCC" within the body of documents so entitled or otherwise labelled. No policy, nor any documents pertaining to any policy delivered or issued for delivery in this State on or after the effective date of this subchapter shall be referred to or described as "NEW JERSEY BASIC Health Care Coverage" "basic health care coverage" or use the terms "NEW JERSEY BASIC" or "NJBHCC" unless the policy meets the requirements of this subchapter and has been filed or deemed filed by the Commissioner.

(o) All group BASIC policies and certificates shall contain a coordination of benefits section consistent with the requirements of N.J.A.C. 11:4-28 and the Appendix to that subchapter.

11:4-36.15 Application forms

(a) Application forms shall not include provisions, statements or questions that:

1. Pertain to race, creed, color, national origin or ancestry of the proposed covered person;

2. Change the terms of policy to which it is attached;

3. State that the applicant has not withheld any information or concealed any facts; or

4. Require the applicant to agree that an untrue or false answer material to the risk shall render the contract void.

(b) If the carrier makes any changes or amendments to the application, signed acceptance by the applicant is required.

(c) Questions used to ascertain the past and present health of a proposed covered person shall be factual. Questions which are subjective, unfairly discriminatory, overly technical, or which ask for the applicant's opinion shall not be used. All questions shall be stated to be to the best of the applicant's knowledge and belief.

(d) Questions concerning alcohol and drug abuse shall be based on specific criteria such as treatment, driving records, work attendance records, etc. Questions such as "Do you use alcohol or drugs to excess" shall not be used.

(e) Application forms shall include a means for identifying the coverage or policy for which application is made.

(f) Application forms shall contain questions designed to provide certain information for the annual reports required to be filed March 1 by all carriers, as set forth at N.J.A.C. 11:4-36.18. Such questions may be indicated by the carrier to be for the purpose of complying with New Jersey regulations. These questions shall be designated to elicit the following information:

1. The type of entity providing previous or current coverage, such as health service corporation (Blue Cross and Blue Shield), health maintenance organizations, fraternal benefit society;

2. The type of policy the applicant previously or currently has, such as major medical, limited benefit, disability, Medicare, Medicaid, accident-only;

3. The type of coverage the applicant previously or currently had, or is permitted with respect to group policies, such as individual, husband-wife, parent-child, family;

4. The date when previous or current coverage was or will be terminated or nonrenewed; and

5. Whether termination or nonrenewal was at the election of the applicant, and if so, the primary reason for the termination or nonrenewal, such as cost of premium, level of deductibles and coinsurance, benefits offered, preexisting condition requirements, other coverage limitations or exclusions.

11:4-36.16 Alternative benefits

(a) Carriers may submit to the Department alternative benefit or service forms, including all underwriting guidelines and rates directly connected with the alternative benefit(s) or service(s), and a brief explanation as to the manner in which the proposed alternative benefit or service is within the intent of the Health Care Cost Reduction Act, N.J.S.A. 17:48-6.13, 17:48A-6.8, 17:48E-22.1, 17B:26B-1 and 26:2J-4.2. No alternative benefit or service form may be used without the prior affirmative approval of the Commissioner.

(b) Deductibles or coinsurance amounts in excess of those amounts authorized by statute for the BASIC benefits set forth at N.J.A.C. 11:4-36.7 shall not be approved by the Commissioner as alternative benefits. This shall not be interpreted, however, to prohibit carriers from requiring a separate deductible or coinsurance amount with respect to the provision of an alternative benefit or service.

(c) Submissions proposing alternative benefits should be directed to the Department as set forth at N.J.A.C. 11:4-36.5(f). Filed policy forms which the submission is proposed to amend shall be clearly indicated.

11:4-35.17 Managed care

(a) Carriers shall not utilize any managed care system(s) for coverages required to be offered in accordance with this subchapter until utilization of the managed care system(s) by carriers is approved by the Commissioner, except to the extent that a class of carriers is authorized to utilize managed care or managed care systems pursuant to N.J.S.A. 26:2J-1 et seq. or N.J.S.A. 17:48E-1 et seq.

(b) Carriers proposing to utilize managed care or managed care systems other than or in addition to that currently authorized for the specific carrier or class of carriers shall submit a detailed explanation of the managed care system to be utilized for review and approval by the Commissioner. A detailed explanation shall include, but not necessarily be limited to the following:

1. A description of the managed care system and any contractual arrangements which may be required between the carrier and the managed care system provider(s);

2. A list of the coverages to which the managed care system will be applied;

3. A clear indication of the geographic limitations to the managed care system, if any, and the method by which the carrier intends to avoid inequity based on geographic limitations, specifically with respect to group BASIC and conversion policies;

4. Rates applicable to utilization of the proposed managed care system, demonstrating that benefits are reasonably related to premiums, and that the loss ratio requirements of this subchapter will be met;

5. A demonstration that utilization of a managed care system, particularly one having geographic limitations, coverages limitations, or benefit differentials, may be accomplished without violating the Trade Practices Act, N.J.S.A. 17B:30-1 et seq.; and

6. The policy forms, riders, waivers and applications to be made a part of the policy, if any, and all information to be provided to covered persons regarding the policy, benefits and utilization of the managed care system, including a clear description of procedures to be used by covered persons, and the impact upon benefits for covered persons who do not follow the established procedures.

(c) In addition to the BASIC benefits set forth at N.J.A.C. 11:4-36.7, BASIC policies using managed care systems may provide benefits for expenses due to out of hospital physician services, that is, office visits, to the extent that such services are essential to the control of costs under the managed care system.

(d) The terms "managed care" and "managed care system" shall include, but are not limited to:

1. Preferred provider networks and arrangements; and

2. Case management systems.

(e) Proposals for utilization of managed care systems shall be directed to the Department as set forth at N.J.A.C. 11:4-36.5(f).

11:4-36.18 Annual informational reports

(a) Every carrier subject to the requirements of this subchapter shall submit a report to the Department annually on or before March 1 containing the information specified below for January 1 through December 31 of the immediately preceding calendar year:

1. The total number of individual BASIC policies delivered or issued for delivery, and the total number of persons covered by the aggregate number of such policies delivered or issued for delivery;

2. The total number of group BASIC policies and conversion BASIC policies delivered or issued for delivery, and the total number

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of persons covered by the aggregate number of such policies delivered or issued for delivery;

3. The total known number of persons covered under individual BASIC policies continued, renewed or reinstated;

4. The total known number of persons covered under group BASIC policies or conversion BASIC policies continued, renewed or reinstated;

5. The total number of applicants completing application form questions designed pursuant to N.J.A.C. 11:4-36.15(e) by:

i. Entity type, including categories "other" and "nonapplicable";

ii. Policy type, including categories "other" and "nonapplicable";

iii. Coverage type, including categories "other" and "nonapplicable";

iv. Number of months since previous coverage was terminated, disregarding any category "nonapplicable" responses, and disregarding group applicant responses of less than 12 months; and

v. Number of responses to the following primary reasons for voluntary termination or nonrenewal:

(1) Cost of premium;

(2) Level of deductibles and coinsurance;

(3) Benefits offered;

(4) Preexisting condition requirements; and

(5) Other coverage limitations or exclusions.

(b) Annual reports shall be filed with:

Assistant Commissioner
Division of Life and Health Actuarial Services
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325

11:4-36.19 Compliance with other laws

All laws of this State not inconsistent with N.J.S.A. 17:48-6.13 or 6.14, 17:48A-6.8 or 6.9, 17:48E-22.1 or 22.2, 17B:26B-1 or 2 or 26:2J-4.2 or 4.3 or this subchapter shall be applicable to BASIC health care coverage.

11:4-36.20 Penalties

Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties available in accordance with the laws of this State.

11:4-36.21 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held to be invalid for any reason, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Fees

Proposed Amendment: N.J.A.C. 13:40-6.1

Authorized By: State Board of Professional Engineers and Land Surveyors, John V. DeGrace, P.E., President.

Authority: N.J.S.A. 45:8-27 et seq.

Proposal Number: PRN 1992-152.

Submit written comments by May 6, 1992 to:
Arthur Russo, Executive Director
State Board of Professional Engineers and Land Surveyors
Post Office Box 45015
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Professional Engineers and Land Surveyors is proposing a general increase in its fee schedule, N.J.A.C. 13:40-6.1, in order to cover increased investigative, examination and program costs as well as the costs of several necessary and recently approved additions to the Board's staff. Pursuant to N.J.S.A. 45:1-3.2, the Board is required to be self-funding, and the proposed increases are necessary to prevent a fiscal loss.

Additional proposed amendments to the fee schedule reflect a determination of the Division of Consumer Affairs to amend professional board fee schedules in order to create within the Division a uniform method of assessing and collecting fees. In that regard, the Board proposes to establish an initial license fee (in the same amount as the renewal fee) prorated on an annual basis for the benefit of initial licensees who apply during the second year of a biennial period. The $1.00 Secretary of State filing fee has been included in the license fee and therefore has been deleted as a separate charge. Additionally, language which the Board considers to be unnecessary or confusing has been deleted.

Social Impact

The proposed fee increases, which will affect all applicants and current licensees of the Board of Professional Engineers and Land Surveyors, will enable the Board to continue to discharge its statutory obligations to evaluate applicants for licensure and to regulate the engineering and land surveying professions. The new fee schedule will provide the Board with the minimum financial resources necessary to carry on its responsibilities to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed fee increases should yield revenues sufficient to cover the rising expenses generated by the Board's many statutory obligations: licensing of engineers and land surveyors; investigation of complaints; and initiation and prosecution of disciplinary actions. The amendments will have a direct economic impact upon all applicants and current licensees in that they will have to pay higher licensing fees. However, because the current fee structure has not been changed since 1986, the financial impact is in line with the general rise in the cost of living. The Board does not anticipate that these increases will be passed onto the consumer in the form of higher professional fees, since as a business expense the proposed new fees are reasonable; the biennial renewal fee increase from $30.00 to $80.00 represents an increase of only $25.00 per year. The proposed amendments are necessary to prevent a fiscal loss to the Board, which is required by statute to cover its expenses. In accordance with N.J.S.A. 45:1-3.2, the sums to be raised are estimated not to exceed the amount required to fund the Board's operations.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, it has been determined that, with few exceptions, all professional engineering and land surveying entities are small businesses that will be affected by the proposed amendments. The specific number is impossible to determine, since the Board licenses individuals and not entities.

The proposed amendments, which implement a general increase in the Board's fee schedule, do not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. Compliance requirements consist of completing the initial licensing or renewal application form and paying licensing fees in a timely manner. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact upon small businesses has been implemented.

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

13:40-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

1. [All application fees shall accompany the application as follows]

Application fees:

i. Engineer-in-training ..... [$25.00] **$30.00;**

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ii. Professional engineer ..... [$60.00] **$75.00;**

iii. Land surveyor ..... [$60.00] **$75.00.**

[NOTE: These fees do not include the cost of any examination required to be taken.]

2. Examination [and reexamination] fees [are based upon the nature of the certificate or license for which the applicant has applied, and will be billed prior to the examination, as follows]:

i. Engineer-in-training (fundamentals of engineering) ..... [$45.00] **$70.00;**

ii. Professional engineer:

(1) Fundamentals ..... [$45.00] **$70.00;**

(2) Specialized training ..... [$55.00] **$85.00.**

iii. Land surveyor:

(1) Fundamentals ..... [$45.00] **$70.00;**

(2) Specialized training (Principles of land surveying and New Jersey State portion) ..... [$100.00] **$150.00;**

[3. Reexamination fees are the same as examination fees.]

[4. Renewal fees:

i. The annual fee shall be $15.00 renewed biennially upon the payment of $30.00 during the month of April in every even year.

ii. If a licensee fails to renew his certificate of license in the month of April, a late renewal fee of $10.00 shall be charged (in addition to any other fees due and owing), provided that the licensee applies for renewal within a one-year period immediately subsequent to the 30th day of April in the year of renewal. If a license is not renewed within the one-year time period provided, the licensee upon application for reinstatement shall pay a reinstatement fee of $30.00 plus $15.00 for each year in which the licensee is in arrears.

5. Fee for filing full name of the licensee with the Secretary of State, $1.00.

6. Certificate replacement fees:

i. The charge for reissuing a certificate of license to any licensee whose certificate may have been lost, mislaid or destroyed shall be $10.00 and accompanied by a certified statement explaining the need for reissuance.

ii. The charge for reissuing a renewal certificate of license to any licensee whose renewal certificate may have been lost, mislaid or destroyed shall be $5.00 and accompanied by a certified statement explaining the need for reissuance.]

3. Initial license fee:

i. During the first year of a biennial renewal period $80.00

ii. During the second year of a biennial renewal period $40.00

4. Biennial renewal fee $80.00

5. Late renewal fee $50.00

6. Reinstatement fee $125.00

7. Duplicate license fee $20.00

8. Replacement wall certificate $40.00

[7.]**9.** All licensees, and the clerks of each municipality in the State, shall receive without charge one copy of the roster of licensed professional engineers and land surveyors. Additional copies, if and when available, may be purchased at a fee of [$6.00] **$20.00** each.

Recodify existng 8.-10. as **10.-12.** (No change in text.)

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF SHORTHAND REPORTING
Fees
Proposed Amendments: N.J.A.C. 13:43-3.1 and 4.1

Authorized By: State Board of Shorthand Reporting, Charles Tramer, Jr., Chairman.

Authority: N.J.S.A. 45:15B-1.

Proposal Number: PRN 1992-153.

Submit written comments by May 6, 1992 to:

John J. Meade, Executive Director
State Board of Shorthand Reporting
Post Office Box 45019
Newark, New Jersey 07101

The agency proposal follows:

Summary

In order to cover increased administrative and program costs, the State Board of Shorthand Reporting is proposing to increase its application and biennial registration fees currently set forth at N.J.A.C. 13:43-4.1. These fee increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to be self-funding.

The proposal also designates an initial license fee, prorated on an annual basis for the benefit of individuals who apply during the second year of a biennial period, as well as fees for late renewal, license reinstatement, duplicate license and replacement wall certificate. The addition of these fees to the fee schedule reflects a determination of the Division of Consumer Affairs to amend professional board fee schedules to accurately and specifically identify each Board's actual expense elements and to create within the Division a uniform method of assessing and collecting fees.

Social Impact

The proposed fee increases, which will affect all current and potential licensees of the Board of Shorthand Reporting, are necessary to generate revenues to cover all proper expenses incurred by the Board in fulfilling its statutory obligation to evaluate applicants for licensure and to regulate the practice of shorthand reporting. The new fee schedule will provide the Board with the minimum financial resources to carry on its responsibility to ensure professional competence and the maintenance of high professional standards.

Economic Impact

Applicants for licensure and current licensees will be affected by the proposed amendments in that they will be required to pay higher licensing fees. These increases are necessary to prevent a fiscal loss to the Board, which is required by statute to cover its expenses. The Board points out, however, that because licensing fees have not increased in over eight years, the financial impact upon applicants and licensees is in line with the general rise in the cost of living. The Board believes that the increased fees are, as business expense, reasonable and therefore does not anticipate higher charges to the consumer as a result of these amendments.

Regulatory Flexibility Analysis

The Board of Shorthand Reporting licenses approximately 1,190 shorthand reporters. The specific number of small businesses is impossible to determine, since the Board licenses individuals and not entities.

Compliance requirements consist of paying increased licensing fees in a timely manner. There are no reporting or recordkeeping requirements related to the fees other than completion of the initial licensing or renewal application, and no professional services are needed in order to comply. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:43-3.1 Certification; examination

(a) Rules concerning examination and certification are:

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1. A request for an initial official application form shall include the applicant's name, address and telephone number, where available, along with a certified check or money order [for $10.00] made payable to "State of New Jersey, Board of Shorthand Reporting." Such fee and request shall be required only for the initial application.

2. An applicant for initial examination shall make written application under oath on the form furnished by the board. Such application must be filed with the secretary-treasurer of the board not less than three weeks before the announced date of examination and must be accompanied by a certified check or money order [for $35.00] made payable to "State of New Jersey, Board of Shorthand Reporting." If the board determines that an applicant is not qualified to take the examination it shall notify him of that fact. Note: Fees are not refundable.

3. An applicant for subsequent examination shall forward a certified check or money order [for $35.00] to the board, along with a letter indicating intent to take the examination, and the applicant's name, address and telephone number, where available.

4.-6. (No change.)

(b) (No change.)

13:43-4.1 Fee Schedule

(a) The following fees shall be charged by the Board:

[1. Examination	$75.00
2. Reexamination	$50.00
3. Biennial registration for licensure	$50.00]
1. Application fee	**$ 75.00**
2. Examination fee	**75.00**
3. Initial license fee:	
i. During the first year of a biennial renewal period	**110.00**
ii. During the second year of a biennial renewal period	**55.00**
4. Biennial renewal fee	**110.00**
5. Late renewal fee	**50.00**
6. Reinstatement fee	**125.00**
7. Duplicate license fee	**20.00**
8. Replacement wall certificate	**40.00**

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF WEIGHTS AND MEASURES
Magnitude of Allowable Variations
Proposed Amendment: N.J.A.C. 13:47K-5.2

Authorized By: William J. Wolfe, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61 and 51:1-29.

Proposal Number: PRN 1992-154.

Submit written comments by May 6, 1992 to:
William J. Wolfe, State Superintendent
Office of Weights and Measures
Division of Consumer Affairs
Department of Law and Public Safety
126, Routes 1 and 9 South
Avenel, New Jersey 07001

The agency proposal follows:

Summary

Effective September 17, 1990, the Office of Weights and Measures repealed N.J.A.C. 13:47D and adopted new rules at N.J.A.C. 13:47K governing the exposure for sale and the sale of commodities in package form. The State Superintendent stated at that time that the best interests of the public would be served by promulgating entirely new rules because the existing rules, originally promulgated in the mid-1950's, were obsolete due to a combination of court decisions and legislative mandates. (See 22 N.J.R. 1440(a) and 22 N.J.R. 2982(b).)

Maximum allowable packaging variations (MAVs) set forth at N.J.A.C. 13:47K-5.2, which apply to all commodities not subject to Federal preemption, were increased when the new rules were promulgated in order to reflect Federal standards. These Federal standards are contained in a publication known as Handbook 133, which was adopted in 1985 by the National Institute of Standards and Technology (NIST) within the United States Department of Commerce. NIST is responsible for encouraging the states to adopt uniform laws and inspection standards. Over 41 states including New Jersey have adopted in whole or in part the standards contained in Handbook 133.

Subsequent to the adoption of the increased MAVs in 1990, however, many letters from members of the Legislature and local Weights and Measures superintendents were received requesting the Division of Consumer Affairs to consider readopting the stricter MAV standards. The basis for these requests was preliminary information indicating that the increased MAVs provided less consumer protection than those they replaced.

In order to analyze the costs and benefits of the increased MAV's to determine whether they should be continued or tightened, the Superintendent solicited comments from all interested parties (see 23 N.J.R. 3645(a), and a public hearing was held on January 23, 1992. Twenty letters were received and 25 individuals attended the public hearing. The hearing officer reported that all individuals responding, with the exception of two, favored tightening the MAVs. The vast majority of those advocating the tightening of the MAVs advocated a return to the MAVs previously set forth in N.J.A.C. 13:47D; no other method was suggested. In his report dated January 28, 1992, the hearing officer recommended, based upon the written and oral testimony received, that N.J.A.C. 13:47K-5.2 be repealed and that the tighter MAV standards previously set forth at N.J.A.C. 13:47D be reenacted.

Based upon the hearing officer's recommendation, the State Superintendent is now proposing to amend N.J.A.C. 13:47K-5.2(a) through (d). In proposing to return to the stricter standards which were in place prior to September 17, 1990, the State Superintendent has also considered that modern weighing and measuring devices are capable of weighing in thousandths of pounds and measuring in thousandths of gallons, and that a tightening of MAVs is more in line with today's technological achievements. Finally, because New Jersey is a densely populated state and a highly commercialized area, the stricter MAV standards are essential for the protection of the consumer.

Subsection (e) of N.J.A.C. 13:47K-5.2, which contains permitted variations for the boundaries of the gray area for different sizes of flour packages, adopted effective September 17, 1990, has been retained in this proposal as subsection (b). These variations are the variations set forth in section 3.17 of Chapter 13 of NIST Handbook 133, Third Edition. Pursuant to N.J.S.A. 51:1-29.2, the State Superintendent was required, effective January 3, 1990, to adopt these net weight standards pertaining to flour.

Social Impact

The amendment to N.J.A.C. 13:47K-5.2(a) through (d), which tightens the magnitude of allowable packaging variations for commodities not subject to Federal preemption, will have a substantial and beneficial impact on consumers, inasmuch as they will be assured that the quantity of a product they receive is as close to the product quantity specified on the packaging as may be determined by modern weighing and measuring devices. Accurate identification of merchandise sold ensures that merchandise is as represented to the purchaser, a basic principle of the Consumer Fraud Act.

Economic Impact

The return to stricter standards with regard to the magnitude of allowable packaging variations will have a favorable economic impact upon New Jersey consumers, who will be assured of receiving, with only reasonable and unavoidable variation, the quantity of a product subject to these MAVs for which they paid. For example, the current MAV for a one- to two-pound package of produce (4.4 percent) amounts to approximately 3/4 of an ounce. Under this proposal, the MAV for a one- to two-pound package of produce (three percent) would amount to only 1/2 ounce. Since 70 percent of packaged produce sold in New Jersey is sold in one- to two-pound packages, the effect of the tighter MAV upon the consumer is significant.

Merchants in the marketplace will be subject to the imposition of penalties pursuant to N.J.S.A. 51:1-89 et seq. in the event the weight, measure or content of their prepackaged commodities subject to these MAVs exceeds the variations permitted by this rule amendment.

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Regulatory Flexibility Analysis

The proposed amendment to N.J.A.C. 13:47K-5.2(a) through (d) relating to the magnitude of allowable packaging variations will affect merchants in the marketplace, many of whom are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16.

The only compliance requirement imposed is that merchants ensure that the weight, measure or count of their prepackaged commodities which are not subject to Federal preemption does not exceed the magnitude of allowable variations established by this proposed amendment. The State Superintendent does not anticipate that the amendment will increase the capital cost of compliance, nor does the amendment impose reporting or recordkeeping requirements. Professional services will not be needed in order to comply. Because the proposed amendment seeks to protect the public welfare, the MAVs proposed by this amendment must be uniformly and consistently applied; no differential treatment can be afforded to small businesses.

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

13:47K-5.2 Magnitude of allowable variations

[(a) The magnitude of allowable 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

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>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
>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 Individual Packages Labeled by Volume, Liquid or Dry

Inch-Pound				Metric	
Labeled Quantity (fl oz)	Liquid MAV	Labeled Quantity	Dry MAV (cu in)	Labeled Quantity (mL)	Liquid and Dry MAV
up to & including 0.50 fl oz	0.5 mL	up to & including 0.18 cu in (cu in)	0.03	up to & including 3 mL	(mL) 0.5
		>0.18 *>> 0.49	0.06	>3 *>> 8	1.0
	(fl oz)	>0.49 *>> 0.92	0.09	>8 *>> 15	1.5
>0.50 *>> 0.75	0.06	>0.92 *>> 1.35	0.11	>15 *>> 22	2.0
>0.75 *>> 2.25	0.13	>1.35 *>> 4.06	0.23	>22 *>> 67	3.5
>2.25 *>> 4.25	0.19	>4.06 *>> 7.67	0.34	>67 *>> 126	5.5
>4.25 *>> 5.75	0.25	>7.67 *>> 10.38	0.45	>126 *>> 170	7.5
>5.75 *>> 7.50	0.31	>10.38 *>> 13.54	0.56	>170 *>> 222	9
>7.50 *>> 11.75	0.38	>13.54 *>> 21.21	0.68	>222 *>> 347	11
>11.75 *>> 17.00	0.50	>21.21 *>> 30.68	0.90	>347 *>> 503	15
>17.00 *>> 21.00	0.63	>30.68 *>> 37.90	1.13	>503 *>> 621	18
>21.00 *>> 27.00	0.75	>37.90 *>> 48.73	1.35	>621 *>> 798	22
>27.00 *>> 31.00	0.88	>48.73 *>> 55.95	1.58	>798 *>> 917	26
>31.00 *>>39.00	1.00	>55.95 *>> 70.38	1.80	>917 *>> 1.153 L (L)	30
>39.00 *>> 55.00	1.25	>70.38 *>> 99.26	2.26	>1.153 *>> 1.627	37
>55.00 *>> 69.00	1.50	>99.26 *>> 124.5	2.71	>1.627 *>> 2.041	44
>69.00 *>> 85.00	1.75	>124.5 *>> 153.4	3.2	>2.041 *>> 2.514	52
>85.00 *>> 103	2.0	>153.4 *>> 185.9	3.6	>2.514 *>> 3.046	59
>103.00 *>> 160	2.5	>185.9 *>> 288.8	4.5	>3.046 *>> 4.732	74
>160 *>> 185.6	3.0	>288.8 *>> 335.0	5.4	>4.732 *>> 5.489	89
>185.6 *>> 240	3.5	>335.0 *>> 433.1	6.3	>5.489 *>> 7.098	104
>240 *>> 272	4.0	>433.1 *>> 490.9	7.2	>7.098 *>> 8.044	118
>272 *>> 344	4.5	>490.9 *>> 620.8	8.1	>8.044 *>> 10.173	133
>344 *>> 392	5.0	>620.8 *>> 707.4	9.0	>10.173 *>> 11.593	148
>392 *>> 560	6.0	>707.4 *>> 1011	10.8	>11.593 *>>16.561	177
>560 *>> 640	7.0	>1011 *>> 1155	12.6	>16.561 *>> 18.927	207
>640 *>> 800	8.0	>1155 *>> 1444	14.4	>18.927 *>> 23.659	237

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>800 *>> 904	9.0	>1444 *>> 1631	16.2	>23.659 *>> 26.734	266
Over 904 fl oz	1% of labeled volume	Over 1631 cu in	1% of labeled volume	Over 26.734 L	1% of labeled volume

Liquid Measure Equivalents
1 pint = 16 fl oz
1 quart = 32 fl oz
1 gallon = 128 fl oz* *

Table 3
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 4
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.

Table 5
MAV's for Foam Aerosol Products

Avoirdupois:

Labeled weight of package		MAV Ounce	MAV Pound
0 to less than	1 1/2 oz	0	0
1 1/2 oz to less than	5 oz	1/16	0.004
5 oz to less than	8 oz	1/8	0.008
8 oz to less than	11 oz	3/16	0.012
11 oz to less than	14 oz	1/4	0.016
14 oz to less than	1 lb 1 oz	5/16	0.020
1 lb 1 oz or more		3/8	0.023

Metric:

	MAV Grams
0 to less than 50 g	0
50 g to less than 100 g	1
100 g to less than 200 g	3
200 g to less than 300 g	5
300 g to less than 400 g	7
400 g to less than 500 g	9
Over 500 g	10

(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.]

(a) The magnitude of variations permitted under this subchapter shall, in the case of any shipment, delivery, aggregation or lot, be determined by:

1. The facts in the individual case;

2. That the declaration of net quantity of contents shall express an accurate statement of the quantity of contents of the package. Reasonable variations caused by loss or gain of moisture during the course of good distribution practice will be recognized. Varia-

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tions from stated quantity of contents shall not be unreasonably large; and

3. That when a variation from the declared net contents of an individual package exceeds the Maximum Allowable Variations for an Individual Package (MAV), such variation from the declared net contents is unreasonably large and is a violation.

i. Each individual package exceeding the MAV shall be a separate and distinct violation.

ii. The following table sets forth the MAVs for an individual package. These MAVs apply only to commodities which are not subject to specific Federal preemption.

Maximum Allowable Variations for an Individual Package

	Package type							
MAV	Weight (Standard Pack)	Weight (Random Pack)	Liquid Volume Including Frozen Liquids	Solid Volumes	Linear Measure	Square Measure	Cubic Measure	Count
½%		greater than 2 lb(1.0kg)			greater than 10 ft (3 m)			
1%	greater than 2 lb (1 kg)	greater than 1 lb to & inc 2 lb (500 g-1.0 kg)	greater than 1 gal (4 L)	greater than 1 qt (1 L)	less than & inc 10 ft (3 m)	greater than 100 ft² (10 m²)		greater than 100
1½%							greater than 1 yd³ (1 m³)	
2%			greater than 1 qt to & inc 1 gal (1 L-4 L)	greater than 1 pt to & inc 1 qt (500 mL -1 L)		less than & inc 100 ft² (10 m²)		
3%	greater than 2 oz to & inc 2 lb (50 g-1 kg)		greater than 1 pt to & inc 1 qt (500 mL -1 L)				less than & inc 1 yd³ (1 m³)	
5%	less than & inc 2 oz (50 g)		greater than 3 fl oz to & inc 16 fl oz (100 - 500 mL)	less than & inc 1 pt (500 mL)				
7%			greater than ¼ fl oz to & inc 3 fl oz (10 mL - 100 mL)					
10%			less than ¼ fl oz (10 mL)					
0.01 lb (5 g)		less than & inc 1 lb (500 g)						
0								less than 25
1								25-100

inc = including

[(e)] **(b)** 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

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PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONER

Telecommunications
Access to Adult-Oriented Information
Proposed New Rules: N.J.A.C. 14:10-7

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, and Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.
Authority: N.J.S.A. 48:17-22.
BRC Docket Number: TX91111686.
Proposal Number: PRN 1992-131.

Submit written comments by May 6, 1992 to:
Michael P. Gallagher, Director
Division of Telecommunications
New Jersey Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The new rules have been proposed pursuant to the directives contained in N.J.S.A. 48:17-22 (P.L. 1988, c.49) which pertains to access to adult-oriented information-access telephone service. The statute provides, in pertinent part, that:

. . . 'adult-oriented information-access telephone service' means a class of telephone service where for a charge, in addition to the basic exchange charge, sexually explicit recorded messages are furnished.

Proposed new rules N.J.A.C. 14:10-7 require telephone companies offering adult-oriented information-access telephone service originating in the State to restrict such access unless a written request for same is received from the subscriber. The rules apply to both local exchange and interexchange telephone companies as well as to both "976" and "900/700" information-access lines and any future access provisioning. The rules prohibit any adult-oriented information-access availability through telephone company operators or pay telephone and also require that subscribers requesting access be over 18 years of age. The permissible methods of restriction include dedicated normally blocked telephone exchanges, information provider presubscription and information provider supplied scrambling.

Social Impact

The proposed rules set forth requirements for the restriction of adult-oriented information-access telephone service availability from the general public. Access to the service is available to individual telephone subscribers only upon written request and proof of age. This will help to ensure that such service is not readily available to underaged individuals.

Economic Impact

There is no economic impact upon the public from the proposed new rules. The proposed rules will have no impact, economic or otherwise, upon telephone companies in the State unless a company elects to provide adult-oriented information-access service originating in the State. In the latter case, the company must dedicate a normally blocked exchange code to the service, maintain records of written subscriber requests for access and proof of age or assure that information providers rendering adult-oriented information-access service from the company's facilities comply with these same provisions. In addition, the proposed rules will more than likely have an adverse economic impact on those particular information providers dealing with such services in that their customer base will be restricted to those telephone subscribers who are over 18 years of age and who request such service in writing.

Regulatory Flexibility Analysis

The proposed new rules will not impose any recordkeeping or reporting requirements upon any business, large or small, unless the business elects to provide adult-oriented information-access telephone service originating in the State. Telephone companies, which are not small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or information providers, which may be small businesses pursuant to the aforementioned statute, electing to provide such service originating in the State are required to maintain records of written customer requests for access together with proof of age, incurring attendant administrative costs. Because the requirements imposed by the proposed rules are necessary to restrict this type of service in a reasonable manner and are mandated by the provisions of N.J.S.A. 48:17-22, the Board finds no reason to distinguish between large and small businesses.

Full text of the proposed new rules follows:

SUBCHAPTER 7. ACCESS TO ADULT-ORIENTED INFORMATION-ACCESS TELEPHONE SERVICE

14:10-7.1 Scope

(a) This subchapter applies only to telephone companies electing to provide access to adult-oriented information-access telephone service in the State.

(b) For purposes of this subchapter, telephone companies include local exchange telephone companies (LEC) and interexchange carrier telephone companies (IXC) operating in the State. IXC includes both facilities based carriers and resellers.

(c) The provisions of this subchapter shall apply to both "976" services accessed by a seven digit telephone number of the form NXX-XXXX and "900" or "700" services accessed by a 10 digit telephone number of the form 900-NXX-XXXX or 700-NXX-XXXX as well as any future access arrangement.

14:10-7.2 Definitions

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

"Adult-oriented information-access telephone service" means a class of telephone service where local exchange telephone companies or interexchange carrier telephone companies collect from subscribers an identifiable charge for sexually explicit messages that the local exchange telephone companies or interexchange carrier telephone companies remit in whole or in part to the information providers of such sexually explicit messages.

"IXC" means interexchange carrier telephone companies, both facilities based and resellers.

"Information providers" means those entities who utilize LEC or IXC adult-oriented information-access telephone services to provide sexually explicit messages.

"LEC" means local exchange telephone companies.

"Subscriber" means a telephone customer of an LEC or IXC.

14:10-7.3 Restrictions on access

(a) No telephone company operating in the State shall provide a subscriber access to adult-oriented information-access telephone service in the State without written authorization from the subscriber.

(b) LECs offering seven digit adult-oriented information-access telephone service shall assign all lines providing such service to a specific Central Office code, or codes (NXX), and arrange all lines in the code or codes, to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(c) LECs and IXCs offering 10 digit adult-oriented information-access telephone service shall assign all lines accessing such service to a specific 900-NXX or 700-NXX code or codes and arrange all lines in the code to be normally blocked. Unblocked access shall be pursuant to N.J.A.C. 14:10-7.4(a).

(d) Alternatively, LECs and IXCs may:

1. Require as a condition of service that information providers utilizing the LEC or IXC intrastate adult-oriented information-access telephone service restrict access to the service as indicated in N.J.A.C. 14:10-7.4(a). Such LECs or IXCs shall be responsible for assurance that information providers restrict access in accordance with this rule; or

2. Require as a condition of service that the information provider offering intrastate adult-oriented information-access service scramble its transmissions and supply audio descramblers to ensure that inadvertent or unauthorized access will not result in intelligent

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transmission. Descrambler provision shall be pursuant to N.J.A.C. 14:10-7.4(a).

(e) No telephone company operating in the State and offering adult-oriented information-access telephone service originating in the State shall permit access of such service from telephone operators or pay telephones.

(f) Subscribers to local telephone service in the State shall be advised of these rules through inclusion in the informational consumer guide pages in the front of local telephone directories.

14:10-7.4 Subscriber requests for service; charges

(a) Telephone companies or information providers offering intrastate adult-oriented information-access telephone service shall permit access to the service only upon receipt of a written and signed subscriber request.

1. The subscriber request shall include an appropriate means of proof (such as a photocopy of a birth certificate or a valid State driver's license), in the same name as the telephone account of record, that the requesting subscriber is over 18 years of age.

2. The telephone company or information provider offering the adult-oriented information-access telephone service shall maintain the hard copy signed subscriber request with proof of age for the duration that access to the service is unblocked.

(b) The initial subscriber request to unblock access at a given location shall be free of charge to the subscriber.

(c) If an LEC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line.

(d) If an IXC elects to charge for subsequent requests to reblock or unblock, the subscriber shall be charged the then prevailing service order charge for adding service to an existing line and the central office work charge for an existing line charged by the LEC providing the subscriber basic telephone service.

(e) In the event that the serving LEC does not have a tariffed service order charge for adding service to an existing line and for central office work for an existing line, the tariffed charge from the LEC serving the largest number of telephone lines in the State having such a tariffed charge shall be used.

STATE

(a)

DIVISION OF THE STATE MUSEUM

Division of the State Museum Rules

Proposed New Rules: N.J.A.C. 15:5

Authorized By: Leah Sloshberg, Director, State Museum, with the approval of Daniel J. Dalton, Secretary of State.

Authority: N.J.S.A. 18A:73-1 et seq., and N.J.S.A. 52:16A-11.

Proposal Number: PRN 1992-156.

Submit comments by May 6, 1992 to:
Daniel J. Dalton, Secretary of State
Attn: Colleen M. McCann
Department of State
State House, CN 300
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 15:5, Division of the State Museum, expired on February 17, 1992. In accordance with N.J.A.C. 1:30-4.4(g), these rules are herein proposed as new rules without amendment.

The New Jersey State Museum has performed the traditional functions of collecting, exhibiting and interpreting in the broad areas of science, history and the arts for nearly a century. This framework now includes expanding emphasis on community outreach services.

The Museum's primary responsibility is to care for the State's collections while making them available for the public's enjoyment and education. Therefore, the emphasis in the following proposed new rules is on how the collections are to be managed and the conditions under which they may be seen.

Among the major areas covered in the rules are: methods of acquisitions, rules for deaccessioning (disposal) of objects in the Museum's collections and documentation rules for both of these procedures. Also included in the rules are provisions for loans of objects in the Museum's collections to other institutions and the limitation imposed on such loans. In addition, the rules address public participation in the Museum's interpretive programs and the requirements of the State Office's Fine Arts Loan Program.

There are a broad range of persons and institutions who will be affected by these rules: members of the public who visit the Museum in Trenton to participate in the Museum's interpretive programs or those who experience the traveling exhibitions throughout the State, State agencies who participate in the film loan program or the State House Fine Arts Loan program, and, of course, Museum staff members who must also abide by the rules.

Social Impact

There are four areas in the rules which will have major social impact: community outreach programs, loans of objects to other institutions, acquisitions of new objects and deaccessioning. The rules, however, clarify the Museum's procedures for the public and other State agencies.

The rules for the community outreach programs have a positive social impact in that they provide for wide distribution of traveling exhibitions to assure maximum public benefit. The rules also guarantee the existence of the various education programs to the extent that budgetary limits allow.

The rules for loans to other institutions not only protect the objects to be loaned but also guarantee that the objects will be available to the greatest number of people, whenever possible.

The acquisition rules ensure that the public will continue to benefit from prudent acquisitions which will improve, expand and develop the collections for future generations.

The deaccessioning rules are written to ensure that the Museum is careful in its disposition of objects to make room for better or more useful ones. The rules include appropriate checks and balances so that objects will not be disposed of without a thorough evaluation by the Director, Museum Advisory Council and Secretary of State.

Economic Impact

The proposed rules will have an economic impact in three major areas. First, the rules allow the Museum to charge fees to cover the costs of: special programs, postage and insurance on film loans, processing and documentation costs for loans of objects in the Museum's collections to other institutions, and supervisory costs for access to collections not on display. The Museum has not, in the past, charged fees to cover processing and documentation costs for loans of objects to other institutions. This has become common practice in other museums. Since the Museum does not have a staff conservator, each time an object is requested for loan the Museum must pay to have the objects' condition (ability to withstand travel) assessed for insurance and conservation purposes. The processing and documentation costs may also include photography fees which add substantially to the Museum's costs of loaning the object. The fees assessed will vary according to the work required in each individual situation.

Additionally, the Museum has not, in the past, charged fees to cover supervisory costs for access to collections not on display. It may do so in the future when access is requested for the purposes of long term research or private sector commercial endeavors. These fees will save New Jersey taxpayers money. Only those who are directly benefiting from the special services will assume the costs. Since the Museum does not charge a general admission fee, there is no economic impact on the majority of those who use the Museum.

Second, in the areas of acquisition, the Museum spends State funds (allotted in the budget) along with money raised in the private sector to purchase new objects for the collections. The rules will clarify these procedures. It should be noted that most of the additions to the Museum's collections are in the form of valuable gifts to the Museum or funds to purchase such objects from private individuals or groups, thereby building the State's collections at no cost to the taxpayers.

Finally, in the area of deaccessioning, items which may legally be sold are disposed of at public sales to insure the greatest profits for future acquisitions. The rules provide for an appraisal by a disinterested third party to insure that the Museum sells objects in an equitable and honest manner. Requiring more than one appraisal may not be cost effective

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nor necessary. The requirement that the appraisal be by a disinterested third party, and the thorough evaluation procedures for deaccessioning, assure that the sale of objects will be handled in a legally efficient manner.

Regulatory Flexibility Analysis

The State Museum rules do not impose any reporting or recordkeeping requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Under N.J.A.C. 15:5-2.1(i), compliance requirements in the nature of fees to be paid for reproduction, photographs and use of color transparencies are imposed on those, including small businesses, seeking reproduction of Museum exhibits for publication. Non-profit institutions and organizations, some of which may qualify as small businesses, must comply with the application and exhibiting requirements for traveling exhibitions imposed under N.J.A.C. 15:5-3.4(e) and (f).

The total publication related fees will vary based upon the amount of reproduction and Museum services needed. No professional services are necessary for compliance. Because the fees are designed to offset the cost of Museum services, lesser fees or exemptions for small businesses are not provided.

For traveling exhibitions, borrower costs are administrative in nature for preparation of the application, and those costs attendant to the pick-up, exhibiting and return of the exhibition items. These latter costs will vary based upon the size of the exhibition and the pick-up and return methods used. While a borrower may use professional services to set-up and/or to pick-up and return the exhibition, such is not required. Because the application information is needed to provide a basis for the exhibition loan decision, and the exhibiting, pick-up and return requirements are needed to ensure the integrity of the borrowed exhibition, lesser requirements or exemptions for small businesses are not provided.

Full text of the proposed new rules may be found in the New Jersey Administrative Code at N.J.A.C. 15:5.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping
Routes N.J. 23 in Sussex County and N.J. 181 in Morris County
Proposed Amendments: N.J.A.C. 16:28A-1.15 and 1.54

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-198.

Proposal Number: PRN 1992-146.

Submit comments by May 6, 1992 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendments will establish revised "no stopping or standing" zones along Routes N.J. 23 in Hardyston Township, Sussex County, and N.J. 181 in Jefferson Township, Morris County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The amendment to N.J.A.C. 16:28A-1.15 expands the restriction to both sides of the road and adds an exception for other approved restrictions. The amendment to N.J.A.C. 16:28A-1.54 references N.J.S.A. 39:4-198, which requires signs notifying the motorist of the restrictions and expands the restrictions to include all of Route 181 in Jefferson Township, Morris County.

Based upon requests from local governments in the interest of safety, and as a part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of the revised "no stopping and standing" zones along Route N.J. 23 in Hardyston Township, Sessex County, and N.J. 181 in Jefferson Township, Morris County, were warranted.

The Department therefore proposed to amend N.J.A.C. 16:28A-1.15 and 1.54 based upon the requests from local goverments and the traffic investigations.

Social Impact

The proposed amendment will establish revised "no stopping or standing" zones along Routes N.J. 23 in Sussex County and N.J. 181 in Morris County for the 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 governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.15 Route 23 and Route 23 (Temporary)

(a) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.**

1. No stopping or standing:

i. Along both sides:

(1) In Sussex County:

(A)-(C) (No change.)

(D) Hardyston Township:

I. For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by other approved parking restrictions.

(2)-(3) (No change.)

[ii. Along the westerly (southbound side):

(1) In Sussex County:

(A) Hardyston Township:

I. For the entire length within the corporate limits of Hardyston Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.]

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

16:28A-1.54 Route 181

(a) The certain parts of State highway Route 181 described [herein below] **in this subsection** shall be [, and hereby are,] designated and established as "no [parking] **stopping or standing"** zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.**

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1. No stopping or standing along both sides in Jefferson Township, Morris County: [from a point 290 feet north of the northerly curb line of Collins Avenue to a southerly curb line of Mill Street.]

i. For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other approved parking regulations.

TREASURY-GENERAL

(a)

STATE PLANNING COMMISSION

State Planning Rules

Letter of Clarification; Voluntary Submission of Plans for Consistency Review; Amendment of the Resource Planning and Management Map

Proposed New Rules: N.J.A.C. 17:32-6, 7 and 8

Authorized By: State Planning Commission, John W. Epling, Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1992-142.

Submit comments by May 6, 1992 to:
John W. Epling, Secretary and
Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
150 West State Street, CN 204
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Development and Redevelopment Plan (SDRP) is an expression of Statewide public policy intent regarding planning and growth issues. Developed through an intensive and open intergovernmental planning process, the SDRP reflects the greatest intergovernmental consensus possible at the time of its adoption on the issues it addresses. Its purpose is to assist private and public entities to make planning and investment decisions that are consistent with similar decisions being made by other agencies and governments. The SDRP is designed, therefore, to guide, or measure, the reasonableness of individual public plans and investment decisions, given the direction of Statewide policy set forth in the Plan.

Implementation devices should be formulated to be consistent with municipal, county and State agency plans, rather than directly with the SDRP, because the SDRP is not designed to deal with site-specific, or regulatory-specific, issues; it is designed to coordinate public policy intent, recognizing (1) that there are multiple ways to carry out this intent, and (2) for the SDRP to be effective, that the unique mandates, authorities and political preferences among agencies and governments must find expression in individual plans, again uniquely, are consistent with the SDRP.

In accordance with the above, the SDRP is not a "regulatory" document, and it should not be referenced or applied in such a manner. The SDRP essentially defines public policy "spaces" within which any number of decisions at the various levels of government will be consistent with decisions made by others toward achievement of shared goals and objectives. In this manner, it serves to coordinate public planning for land-development and infrastructure-investment Statewide.

The State Planning Act anticipates that municipal and county master plans and State agency functional plans will be drawn to be consistent with the SDRP. Administrative rules, codes, ordinances, regulations and other devises designed to implement master and functional plans should then be drawn to be consistent with the respective master, or functional, plan(s) of the governing body(ies), or agency(ies), promulgating such rules, codes, etc. The purpose of these proposed new rules, therefore, is to accommodate these review and revision processes. These rules accomplish this purpose in three ways:

1. By providing governments, organizations and individuals an opportunity to petition for clarification on the meaning, intent and applicability of specific provisions of the SDRP, through "letters of clarification";

2. By providing a process whereby governments and governmental agencies can petition for "reviews for consistency" between their plans and the SDRP, thereby furthering the goal of the State Planning Act relative to the coordination and integration of planning Statewide; and

3. By providing a process whereby governments, organizations and individuals may petition to amend the Resource Planning and Management Map (RPMM) of the SDRP to ensure that it is kept up-to-date between its triennial reviews and revisions and to help ensure effective and efficient implementation of the SDRP.

Social Impact

The proposed rules pertain to an administrative process that will take effect following the adoption of the State Development and Redevelopment Plan. It is anticipated that the proposed rules will result in a uniform clarification of provisions found in the State Plan, promote intergovernmental coordination of plans and allow for future refinements of the State Plan. These processes will ensure a more equitable and efficient implementation of the State Plan by private and public entities making planning and investment decisions, thereby resulting in a positive social impact.

Economic Impact

The proposed rules pertain to an administrative process in which public or private participation is totally voluntary. The only costs connected with the process would be those related to the preparation of a petition for clarification of the State Plan, review of local plans for consistency with the State Plan or amendments to the Resource Planning and Management Map. Those costs are expected to be minimal but may vary with the complexity of the issues involved in the petition.

Regulatory Flexibility Analysis

The procedures which would be established under the proposed rules are to utilize on a voluntary, rather than a mandatory, basis. As such, the rules will impose no reporting, recordkeeping, or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., unless such businesses elect to utilize such procedures. To the extent that small businesses may choose to do so, the rules make no distinction as to the types or sizes of businesses to which they apply.

To the extent that small businesses may elect to utilize such procedures to seek letters of clarification or amendments to the Resource Planning and Management Map, they may, like all other applicants, incur certain costs in the preparation and submission of such applications. However, since the rules pertain solely to the submission of written petitions, they will not impose any capital costs on such businesses. Further, since petitions need only be submitted once, the rules will not impose any annual compliance costs.

To the extent that any costs will be incurred by small businesses, or any other applicants, under the rule, such costs will be those associated with compiling and setting forth such information as may be necessary to support a petition. These costs may include costs for legal or engineering services. However, as noted, such costs will only be incurred once, rather than on a recurring basis. Further, such costs will presumably only be incurred where an applicant has determined that the incurrence of such costs is warranted on financial or other grounds. Therefore, lesser requirements or exemptions for small businesses are not provided.

Full text of the proposed new rules follows:

SUBCHAPTER 6. LETTERS OF CLARIFICATION

17:32-6.1 Purpose

For the State Development and Redevelopment Plan to serve as a useful guide to officials in both the public and private sectors in making planning and investment decisions, it must be well understood and accurately interpreted. The purpose of this subchapter, therefore, is to enhance this understanding and to assure that clarification of the State Plan reflect as closely as possible the intentions of the State Planning Commission in its approval of the Plan. This purpose is served by creating a process for these officials and the general public to obtain clarification of these provisions.

17:32-6.2 Eligibility

(a) Any individual or organization, public or private, may petition the State Planning Commission for a letter of clarification regarding any goal, strategy, objective, policy, criterion or definition contained in the State Development and Redevelopment Plan.

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(b) The State Planning Commission will not consider petitions for clarification that involve the application of State Plan provisions to specific parcels of land or that seek to either "validate" or "invalidate" a specific code, ordinance, administrative rule, regulation or other instrument of plan implementation.

17:32-6.3 Procedures

(a) The individual or organization shall submit the petition in writing to the Director of the Office of State Planning, who shall act as agent for the State Planning Commission in the administration of these rules, citing:

1. The exact provision of the State Development and Redevelopment Plan on which the clarification is being requested;

2. The nature of the provision that makes it unclear to the petitioner; and

3. As much detail as possible on the specific circumstances surrounding the potential application of the provision that makes its application of interest or concern to the petitioner.

(b) Except as provided in (c) below, the Director of the Office of State Planning shall provide a clarification in writing to the petitioner within 60 days of receipt of the petition.

(c) Where the purposes of these rules are served, the Director of the Office of State Planning may, prior to rendering a clarification to the petitioner, seek the counsel of the State Planning Commission, one of its duly authorized subcommittees, if any, a State department or the Office of the Attorney General, in which case the Director shall so inform the petitioner in writing within the 60 day period specified in (b) above and provide a clarification within 120 days of receipt of the petition.

(d) The Director of the Office of State Planning shall file periodic reports of such clarifications with the State Planning Commission.

17:32-6.4 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for clarifications exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

17:32-6.5 Tenure of clarifications

Clarifications rendered by the Director of the Office of State Planning shall stand until the State Planning Commission adopts the next triennial revision of the State Development and Redevelopment Plan.

SUBCHAPTER 7. VOLUNTARY SUBMISSION OF PLANS FOR CONSISTENCY REVIEW

17:32-7.1 Purpose

(a) The State Planning Act recommends but does not require that municipal and county plans be consistent with the State Development and Redevelopment Plan. During the cross-acceptance process, however, many government officials and citizens expressed concern, given the complexity of public plans and processes in general and of the State Plan in particular, about how agencies at each level of government would know whether their plans are consistent with the State Plan. The purpose of this subchapter is to establish a process for the voluntary submission of plans for a determination of consistency, as a service to governments and agencies at all levels.

(b) For purposes of this subchapter, "consistency," as defined in N.J.A.C. 17:32-1.4, shall also include the notion of "compatibility," also defined in N.J.A.C. 17:32-1.4.

17:32-7.2 Eligibility

(a) Any municipal or county governing body, commissioner or secretary of a State department, regional, or interstate agency may petition the State Planning Commission for a review of the consistency between its plan and the State Development and Redevelopment Plan.

(b) The master plans of municipalities (including elements as defined in the municipal Land Use Law), and counties (as defined in the County Planning Enabling Act), functional plans of State agencies, and the adopted comprehensive plans of regional and interstate agencies are eligible for review by the State Planning Commission under these rules. Codes, ordinances, administrative rules, regulations and other instruments of plan implementation are not eligible for review. Nothing in these rules shall be interpreted to mean, however, that the staff of the Office of State Planning and the Commission may not provide technical assistance and advice to agencies at any level of government on matters falling under the mandates of the Commission or Office, as set forth in the State Planning Act, N.J.S.A. 52:18A-196 et seq.

17:32-7.3 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter in a newspaper of general circulation within the municipality, prior to their submission of a petition for consistency review. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter in a newspaper of general circulation within the county, prior to their submission of a petition for consistency review. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

(c) State agencies shall notify the 21 county planning boards of their filing of a petition under this subchapter prior to the agency's submission of a petition for consistency review and shall further cause notice of their petition to be published in the New Jersey Register.

(d) Regional and interstate agencies shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the New Jersey portion of their jurisdiction, prior to the agency's submission of a petition for consistency review. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction.

(e) All notifications required under this section shall contain, at a minimum, the following information:

1. The name and address of the person or organization filing the petition;

2. A description of the action being requested;

3. Where copies of the petition and supporting documentation can be examined; and

4. Instructions to forward comments on said petition to both the petitioner and the Office of State Planning.

(f) Newspaper notices may be published as a standard legal advertisement.

17:32-7.4 Procedures

(a) Petitions for determinations of consistency may be submitted to the Director of the Office of State Planning, who is herewith authorized to act as agent for the State Planning Commission in the administration of these rules, no sooner than 60 days after adoption of the State Development and Redevelopment Plan by the State Planning Commission.

(b) A petition shall consist of the following:

1. A form, prepared by the Office of State Planning, fully completed and signed by the petitioner or a duly authorized official, with proof thereof, representing the petitioner;

2. A resolution of the municipal or county governing body or regional or interstate agency, authorizing submission of the petition, or in the case of a State agency, a transmittal letter on letterhead from the departmental Commissioner or Secretary requesting consideration of the petition; and

3. At least three copies of the municipal or county master plan or State agency functional plan and all elements thereof.

(c) In cases where the Director of the Office of State Planning finds that the petition is not submitted in accordance with these rules, the Director shall inform the petitioner in writing within 30 days after receipt of the petition of the deficiencies of the petition and

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declare whether these deficiencies can be corrected. The petition shall then proceed as follows:

1. If the deficiencies can be corrected, the petitioner shall have 30 days after receipt of the Director's letter to resubmit a corrected petition. If a corrected petition is resubmitted, the petition will be considered in accordance with (d) through (g) below.

2. If a corrected petition is not resubmitted within the time period provided in (c)1 above, or is resubmitted incorrectly, the petition will be considered withdrawn and the petitioner so notified. No further action by the Director will be taken;

3. If the deficiencies cannot be corrected, the Director shall so inform the petitioner and the petition will be considered withdrawn.

(d) In cases where the Director of the Office of State Planning finds that the petition is submitted in accordance with these rules, or is resubmitted correctly pursuant to (c)1 above, he or she shall, within 90 days of such a finding, review said plan(s), make a preliminary determination and proceed as indicated below:

1. In cases where the Director finds that said plan is consistent with the State Development and Redevelopment Plan, the Director shall process the petition in accordance with (e) through (g) below;

2. In cases where the Director finds that said plan is not consistent with the State Development and Redevelopment Plan, the Director shall identify the reasons therefor in writing to the petitioner and indicate the actions the Director considers necessary to bring the plan into consistency. In such cases the petitioner may:

i. Within 180 days after receipt of the Director's letter, amend said plan in a manner that satisfies the cited inconsistencies and request reconsideration of the petition, including with such request evidence of official action amending said plan; or

ii. Within 60 days after receipt of the Director's letter, request to appear before the State Planning Commission, or its duly authorized subcommittee if any, to appeal the findings, in whole or in part, of the Director;

3. If the petitioner does not act in accordance with either (d)2i or (d)2ii above, the petition will be considered withdrawn.

(e) Except for petitions withdrawn under (c) or (d) above, the Director of the Office of State Planning shall submit the final recommendations on petitions, or appeals filed pursuant to (d)2ii above, to the State Planning Commission or its duly authorized subcommittee(s).

(f) The State Planning Commission shall consider the recommendations of the Director of the Office of State Planning and any duly authorized subcommittee, and shall, at least in the case of (d)2ii above, provide opportunity for the petitioner to appear in behalf of its petition.

(g) Within 60 days after receipt of a petition, or an appeal filed pursuant to (d)2ii above from the Director of the Office of State Planning, the State Planning Commission may act on said petition; if the Commission does not act within 60 days, the Director's determinations and actions regarding the petition shall prevail.

17:32-7.5 Notification of disposition

(a) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, or nonaction as set forth in N.J.A.C. 17:32-7.4(g), notify the petitioner in writing of the Commission's disposition of the petition.

(b) Municipalities shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities within the same 30-day time period.

(c) Counties shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties within the same 30-day time period.

(d) State agencies shall notify the 21 county planning boards of the disposition of their petition under this subchapter, within 30 days of their receipt of the Director's notification pursuant to (a) above, and shall further cause notice of its petition to be published in the next available New Jersey Register.

(e) Regional and interstate agencies shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the New Jersey portion of their jurisdiction, within 30 days of the receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all New Jersey municipalities and counties within the agency's jurisdiction within the same 30-day time period.

(f) All notifications required under (b), (c), (d) and (e) above shall contain, at a minimum, the following information:

1. The name and address of the person or organization that filed the petition;

2. A description of the action that was requested; and

3. A description and date of the State Planning Commission's disposition of the petition.

(g) Newspaper notices may be published as a standard legal advertisement.

17:32-7.6 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for consistency reviews exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

SUBCHAPTER 8. AMENDMENT OF THE RESOURCE PLANNING AND MANAGEMENT MAP

17:32-8.1 Resource Planning and Management Map

(a) The official map of the State Development and Redevelopment Plan is entitled the "Resource Planning and Management Map" (RPMM) and is comprised of a series of maps corresponding to the 1:24,000 scale United States Geological Survey (U.S.G.S.) 7.5 inch topographic quadrangle maps comprising the geographic area of the State of New Jersey.

(b) Each said quadrangle map is labelled "RPMM" and reflects at a minimum the following State Planning Commission approved delineations and information:

1. Planning areas;
2. Identified or designated centers;
3. Community development boundaries;
4. Population and employment allocations for each Center;
5. Critical Environmental Sites; and
6. The certification, signature, and appropriate initialing of revisions, if any, by the Secretary of the Commission.

(c) Any other graphic representation, at any scale, of delineations and other pertinent data contained on the Resource Planning and Management Map that is included in the State Development and Redevelopment Plan or any other document, is for illustrative purposes only and is not to be considered the official map of the State Plan as outlined in (a) and (b) above.

17:32-8.2 Purpose

(a) In most cases, the Resource Planning and Management Map reflects the intergovernmental consensus arrived at during the cross-acceptance process. While the cross-acceptance process provided sufficient data, coordination and dialogue to prepare an initial Map, new research, conditions and events may also suggest appropriate changes to the Map. The purpose of this subchapter, therefore, is to create a process for amending the Resource Planning and Management Map after adoption of the State Development and Redevelopment Plan in order to accommodate such newly discovered or newly important conditions, situations or knowledge that emerge as the State Plan is applied, as well as to update the Map as progress is made by municipalities and counties in their own planning.

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(b) Neither the State Development and Redevelopment Plan nor its Resource Planning and Management Map is regulatory and it is not the purpose of this process to provide for amendments to the Map to reflect, or "validate," land use changes or to serve as a legal basis for making such changes. There is no site specific change of land use that is inherently inconsistent with the State Plan. To the extent that such a change of use may be inconsistent with another public entity's plan, code, ordinance or regulation formulated to be consistent with the State Plan, and as a result be disapproved by that entity, resolution of the issue resides with that public entity and the interested or aggrieved party.

(c) Individuals or organizations considering submitting a petition to the State Planning Commission to amend the Resource Planning and Management Map are encouraged to submit petitions for a letter of clarification pursuant to N.J.A.C. 17:32-6, where the petition to amend may involve a clarification of a provision of the State Development and Redevelopment Plan relative to the geographic area in question. Municipalities, counties and State agencies also are encouraged to voluntarily petition the Commission for review for consistency pursuant to N.J.A.C. 17:32-7, to obviate the need for numerous requests for letters of clarification and petitions to amend the Resource Planning and Management Map.

17:32-8.3 Eligibility

(a) Any State agency, county or municipal governing body, and private citizen or organization may submit a petition to the State Planning Commission to amend the Resource Planning and Management Map.

(b) The State Planning Commission may consider the following petitions:

1. Petitions to amend planning areas supported by new or updated capacity based planning information, as defined in the State Development and Redevelopment Plan, that would realign the boundary(ies) of planning areas;

2. Petitions to amend centers and growth allocations supported by new or updated capacity based planning information, as defined in the State Development and Redevelopment Plan, that:

i. De-designate, or otherwise eliminate, a center that was identified/designated in the State Plan, said petition including appropriate adjustments to population and employment allocations among centers;

ii. Identify or designate additional centers based on new or updated information, said petitions including appropriate adjustments to population and employment allocations;

iii. Identify, or adjust, the population and employment allocation among centers, maintaining the municipal and county population and employment levels, or ranges, identified in the State Plan; or

iv. Delineate, or adjust the delineation of, the "community development boundary" of a center(s), said delineation or adjustment accompanied by appropriate adjustments, if any, of the population and employment allocation among centers; and

3. Petitions to include new critical environmental sites on, or remove them from, the Resource Planning and Management Map based on new information related to the criteria for such sites found in the State Development and Redevelopment Plan.

17:32-8.4 Notification of petition filing

(a) Municipalities shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities.

(b) Counties shall provide public notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties.

(c) A private citizen or organization shall provide notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the municipality effected by the petition, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of the subject municipality and county.

(d) State agencies shall provide notice of their filing of a petition under this subchapter, in a newspaper of general circulation within the county effected by the petition, prior to their submission of a petition to amend the Resource Planning and Management Map. Notice shall also be sent to the planning boards of the subject municipality and county.

(e) All notifications required under this section shall contain, at a minimum, the following information:

1. The name and address of the person or organization filing the petition;

2. A description of the action being requested;

3. Where copies of the petition and supporting documentation can be examined; and

4. Instructions to forward comments on said petition to both the petitioner and the Office of State Planning.

(f) Newspaper notices may be published as a standard legal advertisement.

17:32-8.5 Procedures

(a) Petitions to amend the Resource Planning and Management Map may be submitted to the Director of the Office of State Planning, who shall serve as agent for the State Planning Commission in the administration of these rules, no sooner than 180 days after adoption of the State Development Plan by the State Planning Commission.

(b) A petition to amend the Resource Planning and Management Map shall include at a minimum:

1. Petitioner's name, address and telephone number, including the same information for the duly authorized agent, if any, who will represent the petitioner, with proof of authorization;

2. A statement describing the petitioner's interest in the land area under consideration, including, at a minimum:

i. For a public entity, its public policy (planning and/or regulatory) interests;

ii. For a private citizen or organization, his her, or its financial, ownership or contractual interests and a description of any pertinent regulatory actions occurring during the immediate past five years or planned/anticipated in the next three years regarding the use of the property;

3. A statement describing:

i. How the amendment promotes local, regional and State goals and objectives;

ii. How the amendment will impact public sector decisions; and

iii. The reason(s) why the amendment cannot await the triennial revision of the State Development and Redevelopment Plan;

4. A statement describing:

i. How the proposed amendment is consistent with the provisions of the State Development and Redevelopment Plan and with municipal and county plans, citing the pertinent provisions in each plan; and

ii. How the amendment helps the municipality and county to achieve consistency with the State Development and Redevelopment Plan;

5. Map(s), at a scale of 1:24,000 on drafting film and corresponding to U.S.G.S. 7.5 inch topographic quadrangle maps, delineating the geographic area that is the subject of the amendment and a sufficient amount of the vicinity to adequately identify the location and issues; and

6. Proper authorization and endorsement as follows:

i. For a municipality or county, the petition shall include a resolution of the governing body authorizing submission of the petition;

ii. For a State department, the petition shall include a transmittal letter on letterhead from the departmental Commissioner or Secretary requesting consideration of the petition;

iii. For a private organization, the petition shall include a certified copy of the authorization to submit the petition; and

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iv. For a private citizen, at the discretion of the petitioner, the petition may include endorsements of the amendment by public and private organizations.

(c) In cases where the petition to amend the Resource Planning and Management Map is submitted by an entity other than the municipality or county within which the subject geographic area is located, the Director of the Office of State Planning shall forward one copy of the petition to the appropriate municipal and county planning board(s) for their review and comment. If no comment is received within 90 days after mailing said petition, the municipality and/or county shall be deemed to have no comment on the petition.

(d) The State Planning Commission may, at its discretion, appoint one or several subcommittees to hear and review petitions. Only the Commission may dispose of a petition, except as set forth in (f) below.

(e) The Director of the Office of State Planning shall ensure prompt review of the petition and submit both the petition and the Director's recommendation(s) to the State Planning Commission or its duly authorized subcommittee(s), if any.

(f) The Director of the Office of State Planning may disapprove petitions to amend the Resource Planning and Management Map under the following circumstances:

1. The petition is incomplete, contains false information or is improperly submitted;

2. The petition involves land areas that have been the subject of a previous petition submitted and disposed of in accordance with this subchapter within the previous three years;

3. The petition involves land areas that are actively under regulatory review at any level of government;

4. The petition requests an amendment that conflicts with the criteria set forth in the State Development and Redevelopment Plan;

5. The petition is based on an imporper application of, or a misunderstanding of, the role of the State Development and Redevelopment Plan, as described in N.J.A.C. 17:32-8.2(b);

6. In the case of planning areas, the petition involves a land area smaller than one square mile in size; or

7. For reasons not anticipated in this rule but, in the judgment of the Director of the Office of State Planning, the petition conflicts with the purposes described in N.J.A.C. 17:32-8.2 for providing this amendment process, in which case the Director shall advise the State Planning Commission to act in emergency and subsequently, but with reasonable speed, promulgate appropriate amendments to these rules.

(g) In cases where petitions are disapproved pursuant to (f) above, the Director of the Office of State Planning shall inform the petitioner and the State Planning Commission in writing of the reasons therefor.

(h) All meetings of the State Planning Commission, or its duly authorized subcommittee(s), to consider petitions shall be conducted in accordance with the Open Public Meetings Act, and opportunity shall be provided to the public at all said meetings to comment on petition(s) being considered prior to action being taken.

(i) The State Planning Commission or the Director of the Office of State Planning shall consider the petition in accordance with this subchapter within a period of 120 days after receipt of the petition, or 210 days in the event a petition is forwarded for municipal or county comment pursuant to (c) above, or in a period of time established pursuant to N.J.A.C. 17:32-8.7.

17:32-8.6 Notification of disposition

(a) The Director of the Office of State Planning shall, within 30 days after State Planning Commission action, notify the petitioner in writing of the Commission's disposition of the petition.

(b) Municipalities shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning board of the county within which the municipality is located and to the planning boards of adjoining municipalities within the same 30-day time period.

(c) Counties shall provide public notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of all municipalities within the subject county and to the planning boards of any adjoining counties within the same 30-day time period.

(d) A private citizen or organization shall provide notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the municipality effected by the petition, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of the subject municipality and county within the same 30-day time period.

(e) State agencies shall provide notice of the disposition of their petition under this subchapter, in a newspaper of general circulation within the county effected by the petition, within 30 days of their receipt of the Director's notification pursuant to (a) above. Notice shall also be sent to the planning boards of the subject municipality and county within the same 30-day time period.

(f) All notifications required under (b), (c), (d) and (e) shall contain, at a minimum, the following information:

1. The name and address of the person or organization that filed the petition;

2. A description of the action that was requested; and

3. A description and date of the State Planning Commission's disposition of the petition.

(g) Newspaper notices may be published as a standard legal advertisement.

17:32-8.7 Suspension or extension of time requirements

(a) At the request of the Director of the Office of State Planning, the State Planning Commission may suspend or extend the time allowed for certain actions under these rules in the event that the number of requests for amendments to the Resource Planning and Management Map exceeds the resources of the Office of State Planning to process those requests in accordance with these rules.

(b) The Director of the Office of State Planning shall notify petitioners of any suspension or extension of time periods resulting from (a) above.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Financial Disclosure by Lobbyists and Legislative Agents

Lobbying Fee Schedules

Proposed Amendments: N.J.A.C. 19:25-20.8 and 20.19

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Authority: P.L. 1991, c.244, §12 and N.J.S.A. 52:13C-22.3.

Proposal Number: PRN 1992-132.

Submit written comments by May 6, 1992 to:
Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
CN 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes, at N.J.A.C. 19:25-20.19, to increase the annual registration and filing fee of legislative agents filing notices of representation and quarterly reports from $100.00 to $200.00. The Commission also proposes, at N.J.A.C. 19:25-20.8(c), to exempt legislative agents making voluntary filings from these fees. Legislative agent organizations that are exempt from sales and use taxes under Section 9(b) of Chapter 30 of the Laws of 1966, as amended (N.J.S.A. 54:32B-9(b)), remain exempt from these fees. Payment of the $200.00 fee covers the registration and

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all filings of the legislative agent made during a 12-month period commencing on August 1 and ending the following July 31.

Social Impact

On January 1, 1992, comprehensive amendments to the Legislative Activities Disclosure Act, N.J.S.A. 52:13C-18, et seq., became effective (see P.L. 1991, c.243 and c.244). Among other statutory changes, these amendments specifically authorized the Commission to establish reasonable fees for various lobbying filings, provided that the amount of such fees does not exceed the costs to the Commission of processing and maintaining those reports, and the costs of compiling, summarizing, and publishing information contained in them (see P.L. 1991, c.244, §4, amending N.J.S.A. 52:13C-21(j)). These amendments, which significantly expanded the duties of the Commission and the scope of the activity subject to disclosure reporting, did not contain any appropriation for implementation of these new duties.

The Commission believes that in adopting these amendments, the Legislature intended that the reasonable costs to the Commission of administering the Legislative Activities Disclosure Act should be borne principally by legislative agents, and the lobbyists who employ them.

Imposition by a State of user fees on an identifiable segment of the public benefiting from a particular service is a well-established legislative policy. For example, motorists contribute to the support of the driver licensing and motor vehicle registration system by paying fees for those services. The Legislative Activities Disclosure Act is intended to preserve and maintain the integrity of the legislative and regulatory processes by requiring identification of persons and groups who are spending or receiving money to influence legislation, or rules and regulations (see N.J.S.A. 52:13C-18, as amended by P.L. 1991, c.243, §2).

Persons who receive compensation of $100.00 or less in any three-month period in a calendar year do not become legislative agents subject to registration and filing requirements (see N.J.S.A. 52:13C-20(g), defining the term "legislative agent"). Therefore, such persons cannot be required to pay registration and filing fees.

The Legislative Activities Disclosure Act specifically provides that a person who is receiving less than the minimum compensation amount provided in the above-referenced definition of "legislative agent" may register and file on a voluntary basis (see P.L. 1991, c.244, §9, amending N.J.S.A. 52:13C-35). Voluntary registration and filing may be desirable and useful, for example, so that a person can obtain a name tag identifying that person as one entitled to conduct lobbying in the State House (see P.L. 1991, c.244 §7, amending N.J.S.A. 52:13C-28). Therefore, the Commission believes that persons making such voluntary registration and filing should not be compelled to pay any fee.

Economic Impact

The proposed amendments will increase the cost of compliance for legislative agents. However, the Commission believes the increase is necessary and reasonable.

The Commission estimates that its annual cost of processing and maintaining notices and reports, and of compiling, summarizing and publishing information contained in those notices and reports will exceed $160,000. The costs include: salaries, equipment, printing, supplies, postage, and telephone.

The Commission further estimates that approximately 600 legislative agents are currently filing notices of representation and quarterly reports, and a negligible number of those are offered on a voluntary basis. Because the scope of the activity covered by the Legislative Activities Disclosure Act has been expanded to include activity to influence rulemaking, the number of legislative agents filing with the Commission is expected to increase. Therefore, in anticipation of 700 to 800 legislative agents in the next fiscal year, the Commission has established $200.00 as the sum each legislative agent must bear to meet all or most of the $160,000 anticipated program costs.

The Commission does not anticipate establishing any other fees in connection with any other filings required by the Act.

Regulatory Flexibility Analysis

Some legislative agents may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14-16 et seq. The proposed amendments impose no additional reporting or recordkeeping requirements on legislative agents. The amendment to N.J.A.C. 19:25-20.19 increases the annual fee to be paid by legislative agents from $100.00 to $200.00. Because the fee increase is necessary in order to enable the Commission to fulfill its statutory responsibilities concerning legislative agents, and since such costs do not vary significantly based upon the agent's business size, a lesser fee for small businesses is not provided. The proposed amendment to N.J.A.C. 19:25-20.8(c) exempting legislative agents filing voluntary statements from the annual fee eliminates a compliance requirement for such agents, some of whom may be small businesses.

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

19:25-20.8 Voluntary statements

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

(c) Voluntary filings pursuant to this section are [subject to] **exempt from** the fees provided in N.J.A.C. 19:25-20.19.

19:25-20.19 Annual Fee

(a) Effective August 1, 1992, and each August 1 thereafter, each legislative agent who is an individual and whose activities during any part of a 12-month period commencing on August 1 and ending on the following July 31 are subject to the Act shall pay an annual fee of [$100.00] **$200.00**.

(b) In the event that the legislative agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be [$100.00] **$200.00** for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.

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

(a)

CASINO CONTROL COMMISSION

Applications

Casino Hotel Facilities

Proposed Amendment: N.J.A.C. 19:41-2.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j) and 99.

Proposal Number: PRN 1992-144.

Submit comments by May 6, 1992 to:
Robert H. Barney, Assistant Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Surveillance of casino games to detect various forms of cheating by patrons or employees is a vital requirement in the regulation of casinos. N.J.S.A. 5:12-70(j) requires that the Commission shall include within its rules provisions:

Prescribing [for gaming operations] the procedures, forms and methods of management controls, including employee and supervisory tables of organization and responsibility, and minimum security standards, including security personnel structure, alarm and other electrical or visual security measures;

The requirement for "other electrical and visual security measures" has, in the past, been met with a combination of direct and indirect visual surveillance. N.J.S.A. 5:12-98b(1) requires that each casino licensee shall "install a closed circuit television system according to specifications approved by the Commission . . ." N.J.A.C. 19:41-2.2(a)7 requires that a casino hotel be equipped with a "closed circuit television system"; paragraph (a)11 requires there to be "such facilities in the ceiling of the casino room commonly referred to as an "eye-in-the-sky" appropriate to permit direct overhead visual surveillance of all gaming . . ." The justification for this twin system of surveillance was that the reliability of closed circuit television (CCTV) in 1978 was not sufficient to meet the standard of compliance required by the Act. Subsequently, however, and for a number of years, CCTV equipment has been available at a high level of reliability. The degree of reliability is such that the Commission believes the requirement for direct visual surveillance can be effectively replaced with indirect visual surveillance using CCTV cameras, monitors, and recording equipment. As a result, it is appropriate to propose the deletion of N.J.A.C. 19:41-2.2(a)11.

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Social Impact

The proposed amendent has no direct effect on persons or businesses external to the casino regulation process. The proposed amendment is in conformance with continuing requirements of the Act to maintain effective controls over gaming operations.

Economic Impact

The proposed amendment has no economic effect on persons or businesses external to the casino regulation process. The proposed amendment is restricted to removing the requirement for catwalks and direct visual surveillance apertures above gaming operations. The economic impact upon casino licensees is the removal of a costly construction requirement. Althouth it is not anticipated the repeal will lead immediately to savings in existing casinos, the cost of renovation construction of casino rooms should be favorably affected. The construction cost for a new casino or major expansion of an existing casino will be sharply reduced by the elimination of the required catwalks.

Regulatory Flexibility Statement

Casino licensees are not "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-17. Therefore, no regulatory flexibility analysis pursuant to small business concerns is required.

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

19:41-2.2 The hotel

(a) No casino license shall be issued unless the casino shall be located within an approved hotel which conforms in all respects to all facilities requirements of the Act and unless, in accordance with sections 1, 6, 27, 70, 83, 98, 100, 103 and 136 of the Act and the regulations of the Commission, such approved hotel:

1.-10. (No change.)

[11. Contains such facilities in the ceiling of the casino room commonly referred to as an "eye-in-the-sky" appropriate to permit direct overhead visual surveillance of all gaming therein; provided, however, that the Commission may exempt from this requirement any casino room in any building existing as of December 15, 1977, the effective date of this provision in any instance in which it is satisfied that the same contains an acceptable approved alternative and that such an exemption would not be inimical to the policy of this Act and of the regulations of the Commission; and]

Recodify existing 12. as **11**. (No change in text.)

(a)

CASINO CONTROL COMMISSION

Applications

Fees

Proposed Amendments: N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, and 9.20

Proposed Repeal: N.J.A.C. 19:41-9.5

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 70(e), 139 and 141.

Proposal Number: PRN 1992-143.

Submit written comments by May 6, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The current hourly fee rates for services provided by the Casino Control Commission (Commission) and the Division of Gaming Enforcement (Division) have been operative since January 1, 1989, when the last revision to these rates was adopted. The proposed amendments to the fee rules (N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12 and 9.20) eliminate specified hourly rates. Rather, the amended rules are designed to enable the Commission to adjust the hourly fee rates, if necessary, should the projected fiscal year budgets and/or staffing levels of both agencies so warrant, thereby resulting in a more accurate matching of on-going costs with the services being provided. In addition, the proposed amendments permit adjustments in the hourly fee rates during a fiscal year in response to changes in the final budget approved for both regulatory agencies by the Legislature, thereby significantly reducing the amount of the assessment for uncollected expenditures of the agencies. It is anticipated that the Commission will, subsequent to the adoption of these amendments, consider delegating the authority to set the hourly fee rates to the Director of the Division of Financial Evaluation.

The proposed deletion of the work permit fee rule, at N.J.A.C. 19:41-9.5, is consistent with the Legislature's recent repeal of the work permit requirement in section 106 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq. (see P.L. 1991, c.182, §43).

The proposed amendment to N.J.A.C. 19:45-9.4(d) is to conform to the casino license renewal fees established by N.J.S.A. 5:12-139(a) of the Act, which establishes a minimum fee of $100,000 for a one-year casino license renewal and a minimum fee of $200,000 for a two-year casino license renewal.

Social Impact

The proposed amendments should result in a fee structure that more accurately reflects ongoing costs, by allowing the Commission the flexibility to adjust hourly fee rates in response to the projected and final fiscal year budget approved for the Commission and Division. The proposal should thus benefit both the regulatory agencies and the regulated public by ensuring that, to the extent possible, each applicant, licensee or registrant is held responsible for his or her fair share of the investigatory and regulatory costs incurred.

The proposal also modifies N.J.A.C. 19:41-9.4(d) and repeals N.J.A.C. 19:41-9.5, to conform to amendments to the Casino Control Act. These regulatory amendments are thus not expected to have any significant social impact.

Economic Impact

The Casino Control Act contemplates that the Commission and the Division should be financed from fees assessed each fiscal year upon applicants, licensees and registrants. To the extent fairly possible, each applicant or licensee should pay the investigatory and regulatory costs attributable to that applicant or licensee. The proposed amendments to N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12 and 9.20 will allow the Commission to adjust the hourly fee rates charged to licensees and applicants pursuant to those rules, based upon the combined fiscal year budget for the Commission and the Division. The primary impact of the proposed amendments will thus be a closer matching of the hourly fee rates assessed upon casino licensees and applicants, and casino key employee, junket representative and gaming school resident director licensees and applicants, with the on-going costs of the services being provided by the Commission and the Division on matters related to such licensure or application. Further, by allowing the Commission to adjust the hourly rates during the fiscal year if the final agency budget so warrants, the proposed amendments should significantly reduce the amount of the year-end assessment upon casino licensees for uncollected expenditures of the agencies.

However, the Commission's fee rules also recognize that individual licensees cannot fairly be required to cover the total actual costs incurred in investigating and processing applications, and place a $3,000 cap on the total costs of application or renewal for casino key employees, junket representative and gaming school resident director licensees and applicants, thus limiting the total economic impact that an adjustment in the hourly fee rates would have on these individual licensees and applicants.

The proposed amendments to N.J.A.C. 19:41-9.1(d) simply conform that rule to section 139(a) of the Act, which provides for a two-year casino license renewal; such amendment will thus not have any economic impact.

The Legislature's repeal of the work permit requirements, N.J.S.A. 5:12-106, provided an economic benefit to the casino industry by eliminating the assessment of work permit fees. The proposed elimination of the work permit fee rule at N.J.A.C. 19:41-9.5 merely reflects the legislative amendment.

Regulatory Flexibility Analysis

The proposed amendments will affect casino licensees and applicants, casino key employee and junket representative licensees and applicants, gaming school resident director licensees and applicants, and certain governmental bodies, none of which qualifies as a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments will also impact upon those who hold or apply for licensure as a sole owner and operator of a junket enterprise,

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some of which may qualify as a small business as defined under the Regulatory Flexibility Act. Pursuant to the Casino Control Act, N.J.S.A. 5:12-1 et seq., the Commission and the Division are to be financed exclusively from fees charged each fiscal year to applicants, licensees and registrants. The fee rules reflect the Commission's determination that, to the extent fairly possible, each applicant or licensee should pay the investigatory or regulatory costs attributable to that applicant or licensee. However, the impact on these applicants or licensees is limited by regulatory provisions that limit the maximum fee for issuance or renewal to $3,000.

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

19:41-9.4 Casino license fees

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

(d) No casino license shall be renewed unless the applicant shall first have paid in full a renewal fee of not less than $100,000 for each **one-year license** renewal**, and not less than $200,000 for each two-year license renewal.**

(e) As a component of its initial license fee or renewal fee and as a condition of casino licensure, each applicant or licensee shall be required [:]

[1. To] **to** pay for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division;] **hourly rates to be set by the Commission in accordance with this subsection,** and

[2. To] **to** reimburse any unusual costs or out of pocket expenses incurred by the Commission or the Division in regard to such matters.

1. Prior to the start of each fiscal year, the Commission shall determine the hourly fee rates to be paid by licensees and applicants pursuant to this subchapter. These rates shall be based upon the hourly costs of services provided by Commission professional staff, Commission inspection staff and Division professional staff during the fiscal year, as estimated from the projected fiscal year budget for the Commission and the Division.

2. The projected hourly fee rates established pursuant to (e)1 above may be adjusted by the Commission during the fiscal year based upon the final fiscal year budget approved for the Commission and the Division by the Legislature.

3. Notice of the hourly fee rates established pursuant to (e)1 above shall be published in the New Jersey Register.

(f) (No change.)

19:41-9.5 [Work permits] **(Reserved)**

[In accordance with Sections 106 and 142 of the Act, a casino licensee shall obtain work permits for all persons appointed or employed by such licensee. Each casino licensee shall pay an annual fee of $2.00 for each work permit obtained.]

19:41-9.6 Slot machine fees

(a) (No change.)

(b) In accordance with Section 100(h) of the Act, no slot machine shall be used to conduct gaming unless it is identical to a model thereof which has been specifically tested by the Division and licensed for use by the Commission. Any person seeking to have a prototype slot machine so tested and licensed shall pay an initial minimum amount of $500.00 which shall be applied to the total fee. Such person shall be required to pay for the efforts of the Commission and the Division on matters directly related to the examination, testing and consideration of the prototype slot machine at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e).**

19:41-9.7 Casino hotel alcoholic beverage licenses

(a) (No change.)

(b) The fee for the issuance or renewal of a casino hotel alcoholic beverage license for a casino licensee conducting alcoholic beverage activity in a casino hotel shall be assessed as follows:

1. Payment for the efforts of the Commission and the Division on matters directly related to the casino hotel alcoholic beverage license or application at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e)**; and

2. (No change.)

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

19:41-9.11 Casino key employee license fees

(a) (No change.)

(b) The fee for the issuance of a casino key employee license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e)**; and

3. (No change.)

19:41-9.11A Junket representative license fees

(a) (No change.)

(b) The fee for the issuance or renewal of a junket representative license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e)**; and

3. (No change.)

19:41-9.12 Gaming school resident director license fees

(a) (No change.)

(b) The issuance fee or renewal fee for a three-year resident director license shall be as follows:

1. (No change.)

2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e)**; and

3. (No change.)

19:41-9.20 Fees for services provided to other governmental bodies

(a) Whenever the Commission or Division is authorized by law to provide services to any State, county or municipal department, board, bureau, commission, authority or agency, and to receive compensation for the performance of such services, the Commission shall assess fees for the cost and expense of providing these services as follows:

1. Payment for the efforts of the Commission and the Division on matters directly related to other governmental bodies at [the rate of $89.00 per hour for members of the Commission, $54.00 per hour for professional staff members of the Commission, $27.00 per hour for inspection staff members of the Commission, and $56.00 per hour for professional staff members of the Division] **hourly rates to be set by the Commission in accordance with N.J.A.C. 19:41-9.4(e)**; and

2. (No change.)

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(a)

CASINO CONTROL COMMISSION

Casino Service Industries
General Provisions
Proposed Amendment: N.J.A.C. 19:43-1.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-70(a) and 92.
Proposal Number: PRN 1992-145.

Submit written comments by May 6, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Applicants for a non-gaming related casino service industry license may request permission to file a modified form of application if the applicant's securities are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange (NYSE) or the American Stock Exchange (AMEX). N.J.A.C. 19:43-1.3(d). In lieu of the standard Business Entity Disclosure Form (BED), such enterprise would be allowed to submit the more extensive filings already prepared for the Securities and Exchange Commission.

The proposed amendment would also allow enterprises which are listed with the National Association of Securities Dealers' (NASDAQ) National Market System to request permission to file a modified form of casino service industry application.

Social Impact

The proposed amendment will benefit non-gaming related casino service industry applicants which are listed on the NASDAQ National Market System. With the Commission's permission, such an applicant would be allowed to submit a modified form of application, including filings already prepared for the Securities and Exchange Commission, which will minimize the time and expense involved in the application process. Such filings will provide the Commission with extensive information, and will thus not impede the investigatory process.

Economic Impact

As noted above, the proposed amendment is anticipated to reduce the costs associated with the license application process, for certain non-gaming related casino service industry license applicants listed on the NASDAQ National Market System. There should be no economic impact on the regulatory agencies.

Regulatory Flexibility Analysis

The proposed amendment affects certain applicants for non-gaming related casino industry services licenses, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment will benefit those applicants, including those which are small businesses, whose securities are listed, or approved for listing upon notice of issuance, on the NASDAQ National Market System, by allowing them to file a simplified form of license application.

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

19:43-1.3 Standards for qualification

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

(d) Any enterprise directed to file an application for a casino service industry license pursuant to subsections 92(c) and (d) of the Act may request permission from the Commission to submit a modified form of such application. The Commission, in its discretion, may permit such modification if the enterprise can demonstrate to the Commission's satisfaction that securities issued by it are listed, or are approved for listing upon notice of issuance, on the New York Stock Exchange [or], the American Stock Exchange**, or the National Association of Securities Dealers' Automated Quotation system (NASDAQ) National Market system**.

(e) (No change.)

(b)

CASINO CONTROL COMMISSION

Internal Controls
Personnel Assigned to the Operation and Conduct of Gaming and Slot Machines
Proposed Amendment: N.J.A.C. 19:45-1.12

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-70(f) and 70(j).
Proposal Number: PRN 1992-127.

Submit comments by May 6, 1992 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission has recently adopted amendments to N.J.A.C. 19:45-1.12 to revise the staffing requirements for the operation and supervision of table games by licensed casinos (see 24 N.J.R. 972(a)). Among other things, the amendments introduced procedures for implementing revised supervisory levels (see N.J.A.C. 19:45-1.12(d) through (f)), which are scheduled to expire on September 16, 1992. N.J.A.C. 19:45-1.12(g). This six-month effective date is intended to allow for Commission review and analysis of the initial implementation of revised supervision plans in accordance with the new standards and procedures. Based upon such review, the Commission may, in its discretion, choose to adopt the revised supervision procedures on a permanent basis. By publishing this proposed deletion of the sunset provision in N.J.A.C. 19:45-1.12(g) at this time, the Commission will retain the flexibility to adopt the proposal, in effect making the revised supervision provisions permanent, prior to the September 16, 1992 expiration date. While the publication of this amendment will maximize the Commission's ability to make the rules permanent, the Commission does not contemplate taking such action until the late summer of 1992.

N.J.A.C. 19:45-1.12(d) provides that each licensee is at all times responsible for maintaining a level of supervision which ensures the proper operation and effective supervision of all table games in the casino. Since the Commission views this as a general obligation, the proposal herein would recodify such provision at N.J.A.C. 19:45-1.12(a).

Social Impact

The new revised supervision procedures at N.J.A.C. 19:45-1.27(d) through (f) are expected to benefit the casino industry by allowing casino management some flexibility in assigning table games supervisors in response to varying circumstances. However, the caps on staff reductions and the requisite notice procedures will serve to ensure the security and integrity of gaming operations. Should the Commission decide to adopt the proposed deletion of N.J.A.C. 19:45-1.12(g) such benefits would be extended to the casino industry on a permanent basis. The proposed amendment to N.J.A.C. 19:45-1.12(a) will ensure that any staffing reductions which have otherwise been approved by the Commission will not impact upon the proper operation and effective supervision of the table games.

Economic Impact

The newly adopted plan for revised supervision should benefit the casino industry by allowing optimum utilization of supervisory personnel. The deletion of N.J.A.C. 19:45-1.12(g), if adopted by the Commission, would allow such benefits to accrue to the industry beyond the original six-month effective date. The language added to N.J.A.C. 19:45-1.12(a) is not expected to have any significant economic impact, since it simply makes explicit the casino licensee's responsibility to maintain a level of staffing that ensures the proper operation and effective supervision of all the gaming tables.

Regulatory Flexibility Statement

The proposed amendments affect only the operations of casino licensees, none of which qualify as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) Each casino licensee shall be required to employ the personnel herein described in the operation of its casino, regardless of the position titles assigned to such personnel by the casino licensee in its approved jobs compendium. Functions described in this section shall be performed only by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to perform such functions, or by persons holding the appropriate license and position endorsement required by the casino licensee's approved jobs compendium to supervise persons performing such functions, subject to the limitations imposed by N.J.A.C. 19:45-1.11(a). **Each casino licensee shall at all times maintain a level of staffing which ensures the proper operation and effective supervision of all table games in the casino.**

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

(d) Notwithstanding the provisions of (c) above, a casino licensee may implement a plan for revised supervision by floorpersons or pit bosses [, provided that each casino licensee shall at all times maintain a level of supervision which ensures the proper conduct and effective supervision of all table games in the casino]. In any plan for revised supervision:

1.-3. (No change.)

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

[(g) The provisions of (d), (e) and (f) above shall expire on September 16, 1992.]

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

(a)

DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations and Administrative Manual—Rules of Practice and Procedure

Summary: Notice is hereby given that the Delaware River Basin Commission will hold public hearings in accordance with this notice to receive comments on proposed amendments to its Comprehensive Plan, Water Code, Water Quality Regulations and Rules of Practice and Procedure relating to water quality standards and policies to protect existing water quality in certain waters of the Basin. The proposal would also classify the Upper Delaware Scenic and Recreational River, the Delaware Water Gap National Recreation Area, and the Delaware River from Millrift, Pennsylvania to the northern boundary of the Delaware Water Gap National Recreation Area as Special Protection Waters.

Hearing Dates: The **public hearings** are scheduled as follows: May 5, 1992, and May 6, 1992 from 2:00 to 5:00 P.M., resuming at 7:00 P.M.

Hearing Addresses: The May 5, 1992 hearing will be held in the Ballroom of the Inn at Hunt's Landing, 900 Routes 6 & 209, Matamoras, Pennsylvania.

The May 6, 1992 hearing will be held in the Tusten Theater on Bridge Street (Route 52) in Narrowsburg, New York.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

For Further Information Contact: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883-9500. Persons wishing to testify are requested to notify the Secretary in advance.

Supplementary Information:

Background

Water quality standards and policies now in effect for the Delaware River between Hancock, New York and the Delaware Water Gap are based on the protection of designated uses for primary-contact recreation and aquatic life. However, these water quality standards and associated effluent and other policies do not specifically preserve the existing high level of water quality from degradation.

In 1988, the Commission and the National Park Service initiated the development of a water quality protection plan for the Middle Delaware Scenic and Recreational River and tributaries within the boundary of the National Recreation Area. Prompting the need for the plan was the existing and planned rapid growth and development in the drainage area to the National Recreation Area and the potential decline in water quality within the National Recreation Area due to increased point and non-point source pollution in its drainage area.

In 1989, the Watershed Association of the Delaware River petitioned the Commission to classify the Delaware River from Hancock, New York to the Delaware Water Gap as an Outstanding National Resource Water, as described by U.S. Environmental Protection Agency anti-degradation regulations.

In response to the petition and other considerations, the Commission expanded the areal scope of the water quality protection planning effort to include the Upper Delaware Scenic and Recreational River corridor.

Commission reports describing issues and alternatives were disseminated in March 1990, October 1990 and April 1991. In November and December 1990, the Commission held a series of public briefings concerning possible scenic rivers protection alternatives.

The proposed changes to the Commission's regulations were developed with scientific and policy input from the Commission's Water Quality Advisory Committee. Participants in the Committee discussions included representatives from the environmental departments of Delaware, New Jersey, New York, Pennsylvania; U.S. Environmental Protection Agency Regions II and III; public members from the University of Rhode Island and the Academy of Natural Sciences; and the National Park Service. Members of the general public were observers at the various Committee meetings. Comments received on the various reports issued to the public during the planning process, comments received from the public briefings, and the inputs received through the Advisory Committee deliberations have led to the changes now being proposed.

The proposed revisions set forth an overall framework for providing special water quality protection measures for interstate and contiguous waters deemed by the Commission to have exceptionally high scenic, recreational, ecological or water supply values. The proposed changes then go an additional step by classifying certain stream reaches as Special Protection Waters, thus activating the provisions of the Special Protection Water policies in these reaches. The changes have been designed to be implementable, with the dual objective of protecting existing water quality without adversely impacting local growth and development prerogatives.

The proposed amendments define the goals of the water quality protection strategy, set forth point and non-point source pollution control policies and requirements and define the institutional structure within which the Commission, the state environmental agencies and others will share overall water quality management responsibilities. The proposal also classifies certain stream reaches as Special Protection Waters and includes numerical definitions of Existing Water Quality and the locations of monitoring points which will be used to manage water quality.

The Commission has prepared a "Basis and Background Document—Proposed Revisions to Water Quality Standards and Regulations—Hancock, New York to the Delaware Water Gap" describing the proposed amendments and their rationale in considerable depth. This and other relevant reports may be obtained by contacting Christopher M. Roberts at the Commission.

The subjects of the hearings will be as follows:

Amendments to the Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations, and **Administrative Manual—Rules of Practice and Procedure** Relating to Water Quality Standards and Policies.

Article 3 of the Water Code of the Delaware River Basin sets forth the water quality standards and guidelines for the Delaware River Basin. The Commission's Administrative Manual—Part III Water Quality Regulations, apply to all waste dischargers, public and private, using the waters of the Delaware River Basin. It is proposed to:

1. Amend Article 1 of the **Administrative Manual—Part III, Water Quality Regulations** by the addition of new subsection 1.20.10 to read as follows:

1.20.10 "Special Protection Waters" are waters classified as either Outstanding Basin Waters or Significant Resource Waters by the Commission (see 3.10.3 of Article 3).

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2. Amend Article 2 of the **Administrative Manual—Part III, Water Quality Regulations** as follows:

a. Section 2.20 is revised to read as follows:

Section 2.20 Additional Requirements. Any of the signatory parties may impose standards, including water quality criteria and effluent quality requirements, with respect to waste discharges within its jurisdiction more stringent than those provided by the Comprehensive Plan and these Regulations.

b. Section 2.30 is revised to read as follows:

Section 2.30 Regional Requirements. It shall be the policy of the Commission to promote and encourage planning for regional solutions to water pollution problems including problems derived from both point and non-point sources of pollution. The Commission may recognize that the most efficient and environmentally acceptable regional solution may be small multiple facilities spread throughout a watershed. The use of regional water pollution control facilities and/or institutional arrangements providing optimum combinations of efficiency, reliability and service area will be required throughout the Delaware River Basin to the maximum extent feasible. The Commission will cooperate with industries and state, county and municipal agencies seeking a regional solution to water pollution problems. The Commission may provide planning, and when necessary, constructing, financing and operating services required for regional solutions to water pollution problems where other appropriate agencies do not provide such services.

3. Amend Article 3 of the **Administrative Manual—Part III, Water Quality Regulations,** the Comprehensive Plan and Article 3 of the **Water Code of the Delaware River Basin** as follows:

a. Redesignate existing subsection 3.10.3A and 3.10.3B.

b. Subsection 3.10.3B. is redesignated as subsection 3.10.3A. and revised to read as follows:

3.10.3A. Antidegradation of Waters.

1. Interstate Waters

It is the policy of the Commission to maintain the quality of interstate waters, where existing quality is better than the established stream quality objectives, unless it can be affirmatively demonstrated to the Commission that such change is justifiable as a result of necessary economic or social development or to improve significantly another body of water. In implementing this policy, the Commission will require the highest degree of waste treatment determined to be practicable. No change will be considered which would be injurious to any designated present or future use.

2. Special Protection Waters

It is the policy of the Commission that there be no measurable change in existing water quality except towards natural conditions in waters considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Waters with exceptional values could be classified by the Commission as Outstanding Basin Waters or Significant Resource Waters.

In determining waters suitable for classification as Special Protection Waters, the Commission will consider nomination petitions from local, state and federal agencies and governing bodies, and the public for waters potentially meeting the definition of Outstanding Basin Waters and Significant Resource Waters as described in 3.10.3.A.2.a.

The following policies shall apply to waters classified by the Commission as Outstanding Basin Waters or Significant Resource Waters and their drainage areas:

a. Definitions:

1). "Outstanding Basin Waters" are interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are considered by the Commission to have exceptionally high scenic, recreational, and ecological values that require special protection.

2). "Significant Resource Waters" are interstate waters considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection.

3). "Existing Water Quality" is defined as the actual concentration of a water constituent at an in-stream site or sites, as determined through field measurements and laboratory analysis of data collected over a time period determined by the Commission to adequately reflect the natural range of the hydraulic and climatologic factors which affect water quality. Existing water quality shall be described in terms of (a) an annual or seasonal mean of the available water quality data, (b) two-tailed upper and lower 95 percent confidence limits around the mean, and (c) the 10th and 90th percentiles of the data set from which the mean was calculated. Where available data are insufficient to determine existing water quality, existing water quality may be estimated from data obtained from sites within the same ecoregion or from best scientific judgment.

4). "Measurable Change" is defined as an actual or estimated change in a mean (annual or seasonal) in-stream pollutant concentration that is outside the range of the two-tailed upper and lower 95 percent confidence limits that define existing water quality. In the absence of adequate available data, background concentrations will be assumed to be zero and "measurable change" will be based on in-stream concentrations greater than the minimum detectable limits for each parameter.

5). "Public Interest" is a determination of all the positive and negative social, economic and water resource impacts associated with a project affecting a Significant Resource Water. A project that is in the public interest in one that, at a minimum, provides housing, employment, and/or public facilities needed to accommodate the adopted future population, land use, and other goals of a community and region. In general such a project conforms to a locally-adopted growth management plan which is undergoing active implementation by local officials.

6). "Regional Resources Management Plan" is a management plan developed and adopted by the government agency that is assigned primary responsibilities for the overall management of a national park, scenic and recreational river and/or wildlife refuge which contains waters that have been classified by the Commission as Outstanding Basin Waters. A regional resources management plan is one that addresses, among other subjects, the location and general size of allowable wastewater treatment facilities. A regional resources management plan, or applicable portions thereof, will be incorporated into the Commission's Comprehensive Plan after adoption by the agency preparing the plan.

7). "Natural Condition" is the ecological state of a water body that represents conditions without human influence.

8). "Minimum Detectable Limit" is the lowest level of a substance that can be measured in natural waters by a specific analytical method. Minimum Detectable Limit as defined herein, corresponds to the U.S. Environmental Protection Agency's Method Detection Limits (MDL) as described in 40 CFR Part 136, Appendix B.

9). "Non-discharging/Load Reduction Options" are options whereby the amount of wastewater discharged to a surface stream is reduced by (1) instituting load reduction measures involving reductions in pollutants at the source possibly accompanied by water conservation practices to reduce the amount of flow received at a wastewater treatment plant; and/or (2) using land-based wastewater disposal whereby treated wastewater effluent is further treated by percolation and other soil-based processes instead of in-stream processes.

10). "Natural Wastewater Treatment Systems" are soil-based, vegetative and/or aquatic wastewater treatment systems characterized by the use of low energy treatment processes that use and simulate "natural" environmental processes such as primary and secondary productivity, crop production, wetlands, ponds and others.

11). "Non-Point Sources" are sources of pollutants carried by surface and sub-surface runoff that are derived from human activities and land use.

12). "Cumulative Impact" is the net sum of all individual impacts including all point and non-point source impacts.

13). "Boundary Control Points" are locations where monitoring and other activities occur to determine existing water quality, no measurable change, and related pollution control requirements as applicable. Boundary Control Points for Outstanding Basin Waters will generally correspond to federally-established boundaries for national parks, etc. while those for Significant Resource Waters will generally correspond to the confluence of an intrastate tributary with the classified interstate water.

14). "Interstate Special Protection Waters Control Points" are general locations used to assess water quality for purposes of defining and protecting Existing Water Quality.

b. Water Quality Management Policies

1). Outstanding Basin Waters shall be maintained at their existing water quality. Point and non-point sources of pollutants originating from outside the boundaries of stream reaches classified as Outstanding Basin Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at Boundary and Interstate Special Protection Waters Control Points. Point sources of pollutants discharged to Outstanding Basin Waters shall be treated as required and then dispersed in such a manner that complete mixing of effluent with the receiving stream is, for all practical intents and purposes, instantaneous.

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2). Unless the Commission finds that the public interest warrants a change in existing water quality, Significant Resource Waters shall not be degraded below existing water quality. Changes in existing water quality will only be considered for limited effluent assimilation. In determining allowable changes to water quality in Significant Resource Waters, the Commission will require the highest possible point and non-point source treatment levels necessary to limit the size and extent of mixing zones.

Point and non-point sources of pollutants originating from outside the boundaries of stream reaches classified as Significant Resource Waters shall be treated as required and then dispersed in the receiving water so that no measurable change occurs at boundary and river control points.

c. Policy on Allowable Discharges

1). Direct discharges of wastewater to Special Protection Waters are discouraged. No new or expanded wastewater discharges or expansions of existing discharges shall be permitted in waters classified as Special Protection Waters until all non-discharge/load reduction alternatives have been fully evaluated and rejected because of technical and/or financial infeasibility.

2). The general number, location and size of future wastewater treatment facilities discharging to Outstanding Basin Waters (if any) shall be developed taking into consideration any adopted regional resource management plan as defined in Section 3.10.3.A.2.a.6. and, on an individual project basis, based on the feasibility of non-discharging options.

3). Discharges to Significant Resource Waters shall only be allowed for circumstances which are demonstrably in the public interest as defined in Section 3.10.3.A.2.a.5.

d. Policies Related to Wastewater Treatment Facilities

1). All wastewater treatment facilities discharging to waters classified as Special Protection Waters shall have available standby power facilities unless it can be shown that a proposed discharge can be interrupted for an extended period with no threat to the water quality of Special Protection Waters.

2). Any wastewater treatment facility discharging to waters classified as Special Protection Waters that is not staffed 24 hours every day shall have a remote alarm that will continuously monitor plant operations whenever the plant is not staffed. The alarm system will be designed to alert someone available with authority and knowledge to take appropriate action.

3). Applicants for wastewater treatment plants discharging to waters classified as Special Protection Waters shall prepare and implement an emergency management plan following the guidance provided in the Water Pollution Control Federation's *Manual of Practice SM-8, Emergency Planning for Municipal Wastewater Facilities,* the U.S. EPA's *Design Criteria for Mechanical, Electric and Fluid System and Component Reliability* or other suitable manuals. Emergency management plans shall include an emergency notification procedure covering all affected downstream users.

4). Discharge plumes shall not cause visual impacts in Outstanding Basin Waters.

5). All applicants seeking wastewater treatment project approval under Section 3.8 of the Compact shall satisfactorily prove the infeasibility or overwhelming disadvantages of using natural wastewater treatment technologies.

6). Minimum wastewater treatment requirements for all new and expanding wastewater treatment projects discharging to Special Protection Waters, including projects approved by the Commission after September 1988, will be "Best Demonstrable Technology". The following average effluent criteria define Best Demonstrable Technology:

5-day CBOD:	10 mg/1 or less
Dissolved oxygen:	6.0 mg/1 or greater
Total suspended solids:	10 mg/1 or less
Ammonia-nitrogen:	1.5 mg/1 or less
Total nitrogen:	10.0 mg/1 or less
Total phosphorus:	2.0 mg/1 or less
Fecal coliform:	50/100 ml or less

Ultraviolet light disinfection or an equivalent disinfection process that results in no harm to aquatic life, does not produce toxic chemical residuals, and results in effective bacterial and viral destruction.

e. Policies Concerning the Control of Non-Point Sources

1). It is the goal that non-point sources in the drainage area to waters classified as Special Protection Waters be controlled in such manner that the cumulative impact on water quality of all existing and future non-point source loads is not greater than the impact caused by loads that existed prior to Special Protection Waters classification.

2). All applicants seeking project approval for a project serving new areas under Section 3.8 of the Compact shall:

a. Submit a non-point source control program to prevent increases in pollutant loadings above pre-project conditions in the new service area of the project; and

b. Demonstrate project compliance with the applicable state Section 319 Non-point Source Management Program as approved by the U.S. Environmental Protection Agency; and

c. Demonstrate project compliance with any applicable state and local government non-point source control programs.

3). The Commission may require local and county governments to develop and implement watershed nonpoint source control plans for watersheds that the Commission identifies as significantly impacting Special Protection Waters, or likely to significantly impact Special Protection Waters in the near future.

f. Policies Regarding Inter-Government Responsibilities

1). Interrelationship of State and Commission Responsibilities.

The applicable state environmental agency shall assure that existing water quality in Special Protection Waters is not measurably changed by the cumulative impact of point and non-point sources of pollution discharged into the intrastate tributary watersheds within its jurisdiction. For water quality management purposes, the state environmental agency and the Commission will jointly develop Boundary Control Points as described in Section 3.10.3.A.2a.13). and g.4).

In performing this responsibility, the state environmental agency shall require that all new or expanding wastewater treatment facilities and existing wastewater treatment plants applying for a discharge permit or permit renewal under the delegated NPDES program to comply with the policies contained in Section 3.10.3.A.2.d. unless it can be demonstrated, after consultation with the Commission, that these requirements are not necessary for the protection of existing water quality in the Special Protection Waters due to distance from Special Protection Waters, time of travel, the existence of water storage impoundments, the waste assimilation characteristics of the receiving stream, and other relevant hydrological and limnological factors.

Nothing in this section precludes the state environmental agency from establishing more stringent requirements for the purpose of protecting receiving stream water quality or managing the total watershed cumulative impacts as measured at Boundary Control Points.

The Commission shall, to the extent practicable, coordinate and oversee all Special Protection Waters activities and assist the efforts of each state environmental agency to control pollutants originating from intrastate tributary watersheds. The Commission shall determine pollution control requirements for discharges to Special Protection Waters; for non-point sources draining directly into Special Protection Waters; and total non-point source loads emanating from intrastate tributary watersheds as measured at Boundary Control Points.

g. Classified Special Protection Waters

1). The following stream reaches are classified as Outstanding Basin Waters:

(a) The Upper Delaware Scenic and Recreational River (Delaware River between River Mile 330.7 and 258.4);

(b) Those portions of tributaries located within the established boundary of the Upper Delaware Scenic and Recreational River Corridor;

(c) The Middle Delaware Scenic and recreational River (Delaware River between River Miles 250.1 and 209.5);

(d) Those portions of tributaries located within the established boundary of the Delaware Water Gap National Recreation Area.

2). The following stream reaches are classified as Significant Resource Waters:

(a) The Delaware River between River Miles 258.4 (the downstream boundary of the Upper Delaware Scenic and Recreational River) and 250.1 (the upstream boundary of the Delaware Water Gap National Recreation Area).

3). Definitions of Existing water quality for waters classified in 1. and 2. above are presented in Table 1.

4). The location of Boundary and Interstate Special Protection Waters Control Points are described in Table 2.

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TABLE 1: DEFINITION OF EXISTING WATER QUALITY IN THE DELAWARE RIVER BETWEEN HANCOCK, NEW YORK AND THE DELAWARE WATER GAP

PART A: UPPER DELAWARE SCENIC & RECREATIONAL RIVER

PARAMETER	MEAN	95 PERCENT CONFIDENCE LIMITS OF MEAN	10TH AND 9TH PERCENTILES	ADDITIONAL
Dissolved oxygen	9.0	8.9 to 9.2	7.5 and 11.0	Never below 6.0 mg/l (night time); May-Sept; reachwide
BOD_5 (mg/l)	0.67	0.6 to 0.8	0.3 and 1.9	May-Sept; reachwide
Conductivity (umhos/cm)	68	66.6 to 69.3	52 and 88	non-seasonal; reachwide
Fecal coliform (colonies/100 ml)	24	21 to 28	4 and 200	May-Sept; reachwide
Total suspended solids (mg/l)	4.0	2.9 to 5.6	2.0 and 16	non-seasonal; reachwide
Total phosphorus (ug/l)	28	27 to 31	18 and 50	non-seasonal; reachwide
Ammonia + ammonium (ug/l)	15	13 to 18	10 and 50	as nitrogen; May-Sept; reachwide
Ammonia + ammonium (ug/l)	22	20 to 25	10 and 60	as nitrogen; non-seasonal; reachwide
Total kjeldahl nitrogen (ug/l)	202	172 to 237	100 and 530	May-Sept; reachwide
Nitrite + nitrate nitrogen (ug/l)	293	256 to 335	123 and 492	May-Sept; reachwide
Hardness (mg/l as $CaCo_3$)	21	19.9 to 22.2	17.0 and 27.0	non-seasonal; reachwide
Biocriteria: Shannon-Wiener	3.6	3.4 to 3.8	2.7 and 4.3	May-Sept; reachwide
Biocriteria: Equitability	0.8	0.7 to 0.9	0.5 and 1.1	May-Sept; reachwide
Biocriteria: EPT	15.5	13.8 to 17.2	8.0 and 24.0	May-Sept; reachwide

PART B: DELAWARE RIVER FROM MILLRIFT THROUGH THE DELAWARE WATER GAP INCLUDING THE MIDDLE DELAWARE SCENIC AND RECREATIONAL RIVER

PARAMETER	MEAN	95 PERCENT CONFIDENCE LIMITS OF MEAN	10TH AND 9TH PERCENTILES	ADDITIONAL
Dissolved oxygen (mg/l)	9.2	9.1 to 9.4	7.4 and 12.8	Never below 6.0 mg/l (night time); May-Sept; reachwide
BOD_5 (mg/l)	0.63	0.6 to 0.7	0.3 and 1.6	May-Sept; reachwide
Conductivity (umhos/cm)	76	75 to 77	60 and 95	non-seasonal; reachwide
Fecal coliform (colonies/100 ml)	47	42 to 53	9 and 272	May-Sept; reachwide
Total suspended solids (mg/l)	3.4	3.0 to 3.8	1.0 and 12.0	non-seasonal; reachwide
Total phosphorus (ug/l)	27	26 to 29	14 and 40	May-Sept; reachwide

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Ammonia + ammonium (ug/l)	23	21 to 26	10 and 50	non-seasonal; reachwide
Ammonia + ammonium (ug/l)	41	37 to 44	10 and 187	May-Sept; reachwide
Total kjeldahl nitrogen (ug/l)	293	276 to 312	101 and 860	non-seasonal; reachwide
Total kjeldahl nitrogen (ug/l)	206	189 to 225	100 and 490	May-Sept; reachwide
Nitrite + nitrate nitrogen (ug/l)	246	233 to 260	100 and 490	non-seasonal; reachwide
Nitrite + nitrate nitrogen (ug/l)	206	191 to 223	92 and 392	May-Sept; reachwide
Hardness (mg/l) as $CaCo_3$)	24	24 to 25	20 and 30	non-seasonal; reachwide
Biocriteria: Shannon-Wiener	3.6	3.4 to 3.7	3.2 and 4.1	May-Sept; reachwide
Biocriteria: Equitability	0.8	0.7 to 0.9	0.5 and 1.1	May-Sept; reachwide
Biocriteria: EPT	13.9	12.8 to 15.1	8.0 and 20.0	May-Sept; reachwide

PART C: NOTES ON STATISTICS USED TO DEFINE EXISTING WATER QUALITY

The definitions of Existing Water Quality presented in Parts A and B of this table were developed by performing parametric statistical analyses using logarithmic transformation of available water quality data to derive normality. The numbers represent the anti-log of the statistical results and, thus, will differ from numbers generated by using non-transformed data. Means derived from log transformations, for example, will be lower than means derived from non-transformed data. The 95 percent confidence limits were derived from a two-tailed distribution. Biocriteria were not developed using log-transformed data. The three indices used to develop the biocriteria were derived from specialized transformations of the original data, resulting in values that are normally distributed.

Table 2. BOUNDARY AND INTERSTATE SPECIAL PROTECTION WATERS CONTROL POINTS

BOUNDARY	CONTROL POINTS	MAP REFERENCE
Northern Boundary-UDSRR	Delaware River Mile 330.7	DRBC River Mile maps & UDSRR River Management Plan
Eastern Boundary-UDSRR	New York streams in Delaware & Sullivan Counties: Blue Mill; Humphries; Abe Lord; Bouchoux; Pea; Hoolihan; Basket; Hankins; Callicoon; Mitchell Pond; Tenmile; Grassy Swamp; Narrow Falls; York Lake; Beaver Brook; Halfway; Mill; Fish Cabin; Mongaup; Shingle Kill	UDSRR River Management Plan
Western Boundary-UDSRR	Pennsylvania Streams in Wayne & Pike Counties: Shingle Hollow; Stockport; Factory; Equinunk; Weston; Little Equinunk; Cooley; Hollister; Schoolhouse; Beaverdam; Calkins; Peggy Run; Masthope; Westcolang; Lackawaxen; Verga Pond; Panther; Shohola; Twin Lakes; Pond Eddy; Bush Kill	UDSRR River Management Plan
Northern Boundary-Eight mile reach between UDSRR and MDSRR	Delaware River Mile 258.4 (railroad crossing at Millrift, Pennsylvania)	DRBC River Mile maps; UDSRR River Management Plan
Eastern & Western Boundaries—Eight mile reach between UDSRR & MDSRR	Confluence of New York streams (Orange County); Pennsylvania streams (Pike County); and New Jersey streams (Sussex County) with the Delaware River: Sparrowbush; Neversink; Cummins	U.S.G.S. Port Jervis South & North topographic maps
Northern Boundary-DWGNRA	Delaware River Mile 250.1 near the confluence of Cummins Creek	DRBC River Mile map & DWGNRA Tract Maps
Eastern Boundary-DWGNRA	New Jersey streams in Sussex County: Shimers; White; Big Flatbrook; Little Flatbrook	DWGNRA Tract Maps
Western Boundary-DWGNRA	Pennsylvania streams in Pike & Monroe Counties: Crawford Branch; Vandermark; Sawkill; Raymondskill; Conashugh; Dry; Adams; Dingmans; Hornbeck; Deckers; Alicias; Brodhead-Hellers; Hellers; Toms; Denmark; Little Bushkill; Bushkill; Shawnee; Brodhead; Cherry; Caledonia; Slateford	DWGNRA Tract Map

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SPECIAL PROTECTION WATERS	CONTROL POINTS (General Locations)	RIVER MILE
Upper Delaware Scenic & Recreational River	Buckingham Access Area	325
	Lordville Bridge	322
	Kellams Bridge	313
	Callicoon Access Areas	303
	Damacus/Cochecton	298
	Skinners Falls	295
	Narrowsburg Area	290
	Ten Mile River Access Area	284
	Lackawaxen Access Area	277
	Barryville/Shohola Bridge	273
	Pond Eddy Bridge	266
Delaware River between the UDSRR & the DWGNRA	Millrift	258
	Matamoras/Port Jervis	254
	Northern boundary-DWGNRA	250
Delaware Water Gap National Recreation Area	Milford Beach	247
	Dingmans Access Area	239
	Eshback Access Area	232
	Bushkill Access Area	228
	Depew Access Area	221
	Smithfield Beach	218
	Worthington S.F. Access	215
	Kittatinny Visitor Center	211
	Upstream end of Arrow Island	210

c. Subsection 3.10.4F.1. is revised to read as follows:

1. Discharges to intermittent streams may be permitted by the Commission only if the applicant can demonstrate that there is no reasonable economical alternative, the project is environmentally acceptable, and would not violate the stream quality objectives set forth in Section 3.10.3B.1.a.

d. Section 3.50 is deleted.

Amendment to the *Administrative Manual—Rules of Practice and Procedure*

It is proposed to amend the *Administrative Manual—Rules of Practice and Procedure* as follows:

Subsection 2-3.5(a)(4) and (5) are revised to read as follows:

(4) The construction of new municipal sewage treatment facilities or alteration or addition to existing municipal sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL CLAIMS ADMINISTRATION

Processing of Damage Claims Under Spill Compensation and Control Act

Proposed New Rules: N.J.A.C. 7:1J
Proposed Repeal: N.J.A.C. 17:26

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

Authority: N.J.S.A. 58:10-23.11 et seq., especially 58:10-23.11j(a), 58:10-23.11m, 58:10-23.11t, and N.J.S.A. 13:1D-9.

DEPE Docket Number: 10-92-03.

Proposal Number: PRN 1992-158.

A **public hearing** will be held at 10:00 A.M. on Monday, May 4, 1992, at:

Department of Environmental Protection and Energy
1st Floor Hearing Room
401 East State Street
Trenton, New Jersey

Submit written comments by June 5, 1992 to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

Summary

The Department of Environmental Protection and Energy ("Department" or "DEPE") is proposing new rules governing the processing of claims under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the "Act").

Through the enactment of the Act in 1976, the Legislature established the New Jersey Spill Compensation Fund (the "Fund") within the Department of the Treasury. The 1985 amendments to the Act transferred the Fund to the Department. To implement the transfer of the Fund, the amendments also transferred the functions, powers and duties of the administrator of the Fund in the Department of the Treasury to the administrator of the Fund in the DEPE (the "administrator"). The amendments also provided that the rules adopted by the administrator in the Department of the Treasury, N.J.A.C. 17:26, would continue as the rules of the administrator in the DEPE until such rules were amended or repealed.

The rules adopted by the administrator in the Department of the Treasury in 1977 were originally intended to be interim rules. These rules provided only the most general guidance to the administrator and to claimants. The DEPE believes that detailed rules are necessary to provide specific guidance to claimants at all stages of the claims process, and to ensure that the Department's action on claims will be consistent.

Accordingly, the Department proposes to repeal N.J.A.C. 17:26, and to propose comprehensive new rules for the processing of claims under the Act for damages resulting from discharges of a hazardous substance. Such damages include all cleanup and removal costs, and all direct and indirect damages, arising in connection with a discharge of a hazardous substance in violation of the Act.

Under the Act, the administrator of the Fund has a fiduciary duty to the fund. To assist the administrator in performing that duty, the proposed new rules contain provisions designed to ensure that payments to claimants from the Fund serve the sole purpose of compensating for damages incurred by claimants resulting from discharges of hazardous substances.

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The proposed new rules reflect the Department's experience since 1985 in processing damage claims against the Fund, as well as its experience in processing claims against the Sanitary Landfill Facility Contingency fund. Many issues have arisen in individual claims which are not specifically addressed by the existing rules at N.J.A.C. 17:26, making it necessary for the Department to resolve these issues case-by-case. This case-by-case resolution has delayed the processing of some claims. The Department has determined that these comprehensive new rules are necessary to eliminate the delays inherent in case-by-case decisionmaking, and to ensure consistency.

The new rules specify procedures for the entire claims process, including the following: the original filing of the claim; the initial acceptance or denial of the claim by the administrator; administrative closure of the claim; claim settlement negotiations between the claimant and potentially responsible parties; settlement negotiations between the claimant and the Fund; and arbitration of claims. The provisions of the proposed new rules are discussed in more detail below.

N.J.A.C. 7:1J-1 General Provisions

N.J.A.C. 7:1J-1 contains general provisions outlining the scope of the proposed new rules; providing for their liberal construction; providing for severability so that if a court overturns one or more provisions, the remainder of the rules will be unaffected; allowing delegation of authority by the administrator of the Fund to members of the administrator's staff; and describing the requirements for notices and other communications under these rules.

N.J.A.C. 7:1J-1.1 establishes the scope of the proposed new rules.

N.J.A.C. 7:1J-1.4 defines terms used in the proposed new rules. Several of these definitions are drawn directly from the Act, including the following: "cleanup and removal costs," "discharge," "emergency response action," "local unit" and "natural resources." This section also includes definitions of terms not defined in the Act, which terms are discussed below and in the summaries of the substantive provisions in which the terms are used.

The term "affected area" is used in connection with claims associated with providing an alternative supply of water required when an existing supply is damaged by a discharge. N.J.A.C. 7:1J-3 applies the term in determining the required size of that alternative water supply. The term includes the area for which the Department has determined, pursuant to its safe drinking water regulations at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge.

The definition of "applicable contaminant standard" is used in determining the compensability of a claim for providing an alternative source of potable water under N.J.A.C. 7:1J-3 (discussed below). The term is defined, for any particular hazardous substance, as the maximum contaminant level for that hazardous substance (if any) established in the Federal and State safe drinking water regulations. If no maximum contaminant level has been established for a particular hazardous substance under those regulations, the term is defined to mean the applicable cleanup standard under N.J.A.C. 7:26D (see 24 N.J.R. 373(a), February 3, 1992).

The definition of "damages" is based upon N.J.S.A. 58:10-23.11g(a), which describes the direct and indirect damages for which the Fund is strictly liable.

The term "discovery" is defined as the time at which a claimant discovers, or by the exercise of reasonable diligence and intelligence should have discovered, that he or she may have a basis for a claim. The term is used in connection with the statutory requirement that claims shall be filed no later than one year after the date of discovery of damages. N.J.S.A. 58:10-23.11k. The definition is consistent with case law interpreting this provision.

The term "emergency response claim" is defined as a claim by a local unit (which, in turn, is defined in the amendments to the Act in P.L. 1991, c.85 as any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad) for reimbursement of costs incurred in an emergency response action. An "emergency response action" is defined in the proposed new rules and in P.L. 1991, c.85 as activities conducted by a local unit to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety or welfare. These terms are used in the provisions of the proposed new rules implementing the amendments to the Act at P.L. 1991, c.85, which require expedited procedures in the processing of these emergency response claims by local units.

"Potable water" is defined to include drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. "Potable water" does not include water for use in firefighting. The term is important in determining the compensability of a claim for providing an alternative source of potable water under subchapter 3 of the proposed new rules (discussed below).

The term "potentially responsible party" is defined to mean any person who may have discharged a hazardous substance from which a claim arises, or may be responsible in any way for any hazardous substance from which a claim arises. The term is used primarily in the provisions of the proposed new rules governing settlement negotiations by the claimant, and arbitration rights.

The term "threatened discharge" is defined to include several circumstances with respect to a hazardous substance which has not been discharged, but for which a discharge may be imminent. The amendments to the Act at P.L. 1991, c.85 describe these circumstances, in which a local unit may remove or arrange for the removal of the hazardous substance with the approval of the Department.

N.J.A.C. 7:1J-1.6 establishes requirements for signature and certification of claims and affidavits required under the proposed new rules. If the claim or affidavit is by a corporation, the document must be signed by a person authorized to do so under a resolution of the board of directors. This requirement provides the administrator with the knowledge that the person is signing the document speaks for the corporation. The same reasoning applies to the signature requirements for a partnership or for a municipality, State, Federal or other public agency.

This section also requires that the signatory to these claims and affidavits certify the truth, accuracy and completeness of the information they contain. The Act provides criminal penalties if a person knowingly gives or causes to be given any false information. N.J.S.A. 58:10-23.11k.

N.J.A.C. 7:1J-1.7 states the address to which all claims, notices, requests and other communications with the Department are to be sent. This section also requires that all such communications, both from the claimant and from the Department, must be sent by certified mail or by other means (for example, many overnight delivery services and courier services) which provide a receipt showing the date of mailing and the date of delivery. The requirement is necessary because the Act and the proposed new rules contain many time-sensitive requirements which the receipt will establish have been satisfied.

N.J.A.C. 7:1J-2 Claims Generally

N.J.A.C. 7:1J-2.1 provides that any person claiming to have incurred damages may file a claim. As provided in the existing rules N.J.A.C 17:26-1.4, this section prohibits claims by assignees and subrogees of such persons; compensation from the Fund is available only to the person who has sustained the damages which are the subject of the claim. Accordingly, a person selling real property damaged by a discharge could not sell his or her interest in the claim along with the property. For the same reasons, an insurance company which pays a claim by a policyholder for damages caused by a discharge could not then assert a claim against the Fund to recover the amount paid to the policyholder.

N.J.A.C. 7:1J-2.2 provides that certain provisions of the proposed new rules (including the general provisions of subchapters 1 and 2, the provisions for claims procedure in subchapter 6, the settlement provisions in subchapters 7 and 8, and the arbitration provisions of subchapter 9) are applicable to all claims, with one exception: As required by P.L. 1991, c.85, a local unit asserting an emergency response claim under subchapter 5 can obtain compensation without first pursuing settlement negotiations under subchapters 7 and 8 and without having to arbitrate the validity or amount of the claim under subchapter 9.

N.J.A.C. 7:1J-2.3 requires the claimant to establish, by a preponderance of the evidence, that the claim satisfies all requirements for eligibility under these rules, and that the amount of the claim correctly reflects the damages sustained by the claimant.

N.J.A.C. 7:1J-2.4 provides that the claim is eligible for compensation only if the claimant has actually suffered damages. Therefore, if a claimant has obtained compensation from other sources (for example, from an insurance carrier or from a person responsible for the discharge which caused the damages), the claimant could not collect that amount a second time from the Fund. The Department may suspend processing of the claim while the claimant is attempting to obtain compensation from these other sources. In addition, if the damages are contingent or speculative, the claim will be ineligible for compensation.

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This section also requires the claimant to exercise reasonable diligence and ordinary care to prevent the damages from increasing or being aggravated.

N.J.A.C. 7:1J-2.5 concerns multiple overlapping claims for the same damages. For example, if a discharge damages a source of water supply so that an alternate source of water must be provided, and the water purveyor and an individual homeowner file separate claims for the same damages represented by the cost of the alternate source, the two claims would be considered overlapping claims subject to this section. To avoid paying double compensation from the fund, if one claim had already been paid, the second claim covering the same damages would be ineligible for compensation. If the two claims were made simultaneously, the administrator would apportion the payment between the claimants, based upon a determination of which one had actually incurred each element of the damages in question.

N.J.A.C. 7:1J-2.6 concerns the effect of a claimant's failure to supply information which the Department has requested regarding damages. Under the claims procedure in subchapter 6, the claim initially filed is required to contain only the most general information, to make it as simple as possible for a claimant to begin the claims process; the Department then requests whatever more specific information is necessary. If the claimant fails to submit such specific information about one or more elements of the damages sustained, that failure will operate as a waiver of the claim for those elements of the damages. However, the likelihood that a claimant will inadvertently waive part of a claim is reduced by the liberal provisions of subchapter 6 allowing the claimant to amend submissions.

Under N.J.A.C. 7:1J-2.7, if the claimant discharged the hazardous substance which is the subject of the claim, or if the claimant is in any way responsible for that hazardous substance, the claim is generally not compensable. Under the Act, the claimant would be strictly liable for all cleanup and removal costs, N.J.S.A. 58:10-23.11g(c); to allow the claimant to be compensated for those same costs would defeat the purpose of the liability provisions of the Act. However, the Act does allow for a limited number of defenses which can be asserted by the owner or operator of a major facility or vessel which is responsible for the discharge, N.J.S.A. 58:10-23.11g(d). If the claimant can establish one of these defenses, and the claim satisfies all other eligibility requirements, it would be compensable.

N.J.A.C. 7:1J-2.7 also provides that claims by a purchaser of the land from which the discharge emanated are generally ineligible, unless the purchaser did not discover the discharge until after the time of purchase despite a diligent and thorough inquiry into previous ownership and uses of the land. This provision is necessary because the damages suffered by the purchaser would otherwise result more from the failure to conduct the inquiry than from the discharge itself. For the same reasons, the exclusion from eligibility would apply to a government entity which obtained the property through eminent domain or by foreclosure on a tax lien, but not to a government entity which obtained the property through operation of law or other involuntary means, such as escheat.

N.J.A.C. 7:1J-2.8 provides that the administrator may administratively close a claim. The administrative closure is without prejudice to the claimant, so that the claimant can reactivate the claim.

N.J.A.C. 7:1J-3 Water Supply System Claims

Subchapter 3 of the proposed new rules establishes eligibility requirements and procedures for evaluating water supply system claims (WSSCs). A WSSC is a claim for compensation for construction and ancillary costs associated with providing an alternative supply of water required because of damage to an existing supply of water caused by a discharge of a hazardous substance.

N.J.A.C. 7:1J-3.2 and 3.3 establish the essential eligibility requirements. Under N.J.A.C. 7:1J-3.2, the costs of providing an alternative supply of water are eligible for compensation from the Fund they are directly associated with damages to natural resources located within a Spill Fund Claims Area (SFCA, the delineation of which is discussed below), or directly associated with supplying potable water to an area within or outside the SFCA, for which the existing source of potable water is unsuitable for human consumption due to a discharge, or directly associated with damages to natural resources resulting from a discharge, notwithstanding whether the Department has delineated an SFCA. The Department notes that the claim for the cost of providing an alternative supply of water should be distinguished from a claim for damages to the natural resource itself. Because natural resources are held in trust or otherwise controlled by the State, only the State can assert a claim for the damages to the natural resources.

Under N.J.A.C. 7:1J-3.3, the costs of providing the alternative supply of water are eligible only to the extent of the cost of the most cost-effective environmentally sound means of ameliorating the damages from a discharge. To determine what remedy is the most cost-effective, for each alternative the Department will consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, reliability, and feasibility of implementation. The Department recognizes that the claimant may have chosen one of several alternative environmentally sound means of ameliorating the damages from a discharge.While the proposed new rules do not restrict the claimant's ability to select a particular alternative, if the claimant has chosen an alternative that is more expensive than the most cost-effective remedy, only part of the cost of the chosen alternative will be compensable. For example, if the claimant has chosen an environmentally sound alterantive at a cost of $100,000, and another environmentally sound alternative costing $80,000 was available, no more than $80,000 will be compensable.

The proposed new rules at N.J.A.C. 7:1J-3.4 are intended to avoid overpayments from the Fund resulting from the construction of water supply systems with capacities exceeding what is necessary to provide potable water to properties affected by a discharge. For example, the water purveyor may extend a service beyond the area affected by the discharge, construct a system with capacity sufficient to deliver fire flows, or construct a system with capacity sufficient to serve future development which is no more than speculative at the time of the construction. The cost of such excess capacity is unrelated to the damages caused by a discharge, and therefore is ineligible for compensation from the Fund.

In developing the new rules, the Department has worked from the assumption that the amount eligible for compensation from the Fund should be no greater than the estimated cost of a water supply system of the minimum capacity necessary to supply potable water to the real property located within the SFCA, or directly associated with supplying potable water to an area within or outside the SFCA, for which the existing source of potable water is unsuitable as a result of a discharge. To the extent that the cost of the water supply system exceeds that minimum amount, the excess is ineligible for compensation. The proposed new rules, at N.J.A.C. 7:1J-3.4(a), (b) and (c), provide methods of calculating that excess amount for water wells, water storage facilities, and water mains, respectively. The calculations will be contained in a report submitted by the water purveyor, certified by a licensed professional engineer. The cost of preparing that report will be compensable from the Fund, provided that the eligibility requirements of the proposed new rules are satisfied.

The minimum required capacity of the water supply system depends upon the needs of the users of potable water in the affected area. N.J.A.C. 7:1J-3.4(d) establishes how these needs will be calculated.

Under N.J.A.C. 7:1J-3.4(d)1, the water supply needs of residential users in the affected area are expressed in the following formula:

$$RR = (R \times 350 \times PF)$$

where:

RR equals the requirements of residential users in the affected area;

R is the number of single-family residences within the affected area which, before the Department delineated the SFCA, are in existence, under construction, had building permits issued for their construction, or were expected to be constructed. Residences which were expected to be constructed will not be included in this calculation unless the planning of those residences has completed at least the preliminary steps in the development process before the Department delineates the SFCA. Therefore, the proposed new rules provide that each vacant, unimproved tax lot will be considered as one residence in determining the water supply needs of the affected area. For example, an unimproved 100-acre lot will be counted as one residence in this calculation; however, if subdivision approval has been granted, creating 100 one-acre lots on that land, the Department will assume that 100 residences will be constructed on it;

350 represents a requirement of 350 gallons per day (GPD) to serve each single-family residence (which requirement is consistent with the Department's Safe Drinking Water regulations under N.J.A.C. 7:10); and

PF represents the peaking factor by which the 350 GPD requirement will be multiplied, which peaking factor will be equal to two unless the Department determines that a different peaking factor would be more accurate. Again, in applying its other regulations, the Department has found that this peaking factor is accurate in most cases. However, utility records may show that a higher peaking factor would be more accurate

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for certain water supply systems, such as one serving vacation communities which have higher peak demands as a result of seasonal fluctuations, or a very small system, for which peak fluctuations are statistically more likely to be greater; a lower peaking factor would be more accurate for a system serving most commercial and industrial development, which has more constant demands.

Under N.J.A.C. 7:1J-3.4(d)2, the water supply needs of nonresidential and multifamily users in the affected area are set forth in a table which is based upon the Department's regulations at N.J.A.C. 7:10-12.7, Table 1.

N.J.A.C. 7:1J-3.4(d)3 takes into account the actual water supply needs of other nonresidential users in the affected area, which users are not listed in the table at N.J.A.C. 7:1J-3.4(d)2. The needs of these users will be included in determining the minimum required capacity of the water supply system, if the user satisfies three criteria: First, before the Department delineated the SFCA, the user's facility must have been in existence or under construction, or a building permit must have been issued for its construction. Second, the discharge must have rendered the existing source of potable water unsuitable for the user's particular use; if the existing water supply remains suitable for that use despite the discharge, the necessary size of the replacement water supply system would not reflect that user's needs. Third, connection to the replacement water supply system must be the most cost-effective environmentally sound means of remedying the damages incurred by the user as a result of the discharge.

The following example of an area for which a discharge has rendered the existing source of potable water unsuitable for human consumption illustrates the above calculation. The area contains the following:

20 single-family homes;

Five undeveloped tax lots;

One day school with 100 students, faculty and staff and no cafeteria, showers or laboratories;

One industrial facility which used the existing water supply for cooling purposes, and which can continue to do so despite the discharge.

Assuming that the normal peaking factor of two is accurate, the affected area would have the following water supply requirements:

For residential users, the requirements (expressed as "RR") are calculated according to the formula

$$RR = (R \times 350 \times PF)$$

"R," the sum of the number of residences plus the number of the undeveloped lots, is 25. Therefore, "RR" equals (25 × 350 GPD × 2), or 17,500 GPD.

The requirement to serve the non-residential user (the day school) is found in the table at N.J.A.C. 7:1J-3.4(d)2, which states that the required capacity is 10 gallons per day per student, or 1,000 GPD.

The industrial user can continue to use the existing water supply despite the discharge. Therefore, the needs of that user are not included in the calculation.

Therefore, the total requirement for the affected area is 18,500 GPD (17,500 GPD for the residential users, and 1,000 GPD for the non-residential user). This minimum would not include additional capacity required for use in firefighting.

N.J.A.C. 7:1J-3.4(a) provides that if a water well is constructed with a capacity greater than the minimum required, the amount of the claim for the cost of that well will be reduced. The amount of the claim against the Fund eligible for compensation would be reduced by the excess of the cost of the well actually constructed (including, without limitation, construction costs, design and engineering costs, and finance charges incurred in the design and constructed) over the cost (including all of the same factors) of a well with the minimum necessary capacity, as such cost is estimated by the water purveyor and approved by the Department.

Under N.J.A.C. 7:1J-3.4(b), a similar reduction in the eligible amount would be made if water storage facilities were constructed with a capacity greater than the minimum necessary to serve the users in the affected area, as described above. Again, the water purveyor would submit a report, certified by a licensed professional engineer, stating the minimum necessary capacity of the storage facilities. The calculation of the minimum necessary capacity is based upon the Department's requirements under its regulations implementing the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. N.J.A.C. 7:19-6.

Under N.J.A.C. 7:1J-3.4(c), a similar reduction in the eligible amount would also be made if water mains were constructed with a capacity greater than the minimum necessary to serve the users in the affected area. Again, the water purveyor would submit a report, certified by a licensed professional engineer, stating the minimum necessary capacity of the storage facilities. The proposed new rules set forth the method for calculation of the minimum necessary capacity; this method is based upon standard engineering practices, and upon standards which the Department has applied in implementing its regulations under the Safe Drinking Water Act, N.J.S.A. 58:11-23 et seq., and other statutes.

The minimum necessary capacity is based upon the maximum instantaneous water demands for the affected area. For residential service connections, the maximum demand is calculated as 12 gallons per minute (GPM) per residence for the first 14 residences in the affected area, and three GPM for each additional residence. This calculation is consistent with the requirements of the National Plumbing Codes for single-family homes published by the National Associaton of Plumbing and Heating Contractors, and with the standards set forth in the Uniform Construction Code, N.J.A.C. 5:23, as well as the Department's Standards for the Construction of Public Non-Community and Non-Public Water Systems at N.J.A.C. 7:10-12.36. For service connections to the types of establishments listed in the table at N.J.A.C. 7:1J-3.4(a)1v, the maximum demands are as listed in the table, expressed in GPM and multiplied by the peaking factor of 10 (unless the Department determines that a different peaking factor would be more accurate. As discussed above, utility records may indicate that a higher peaking factor would be more accurate for water supply systems serving vacation communities which have higher peak demands as a result of seasonal fluctuations, or for very small systems, for which peak fluctuations are statistically more likely to be greater; a lower peaking factor would be more accurate for systems serving mostly commercial and industrial development, which have more constant demands).

The calculation to determine the minimum diameter of pipe for the water main necessary to meet the maximum instantaneous water demand is based upon the following factors:

1. **The maximum velocity of water through the water main**. The calculation must assume a maximum velocity no greater than five feet per second. At this velocity, the water flowing through the main will not scour the main, and disturbance of the sediments at the bottom of the main will be reduced.

2. **The loss in the flow of water through the pipe due to friction**. The calculation must assume a coefficient of friction (the "c" value as used in the Hazen-Williams formula for determining friction losses of fluids through pipe) of 100. For new pipe, a higher "c" value would initially be more accurate; however, the "c" value normally drops as pipes age and the inside walls of the pipe collect sediment and tuberculation. Therefore, the use of this "c" value is necessary to provide for a main which will not be rendered inadequate by normal aging.

3. **The residual pressure in the main.** The calculation must assume that the residual pressure in the main, at street level, under the maximum flow condition, is not less than 20 pounds per square inch. This requirement is based upon the Department's Water Supply Management Rules at N.J.A.C. 7:19-6.7.

4. **Hydraulic analyses.** The hydraulic analyses shall be performed using the Hazen-Williams formula for determining friction losses and the Hardy-Cross method for determining flow conditions for multiple piping systems. This formula and method are the ones most commonly used by civil engineers in solving hydraulic engineering problems for water distribution systems. Personal computer programs using this formula and method are generally available and widely used by consulting engineers designing water distribution systems.

5. **Standard pipe diameter**. The Department recognizes that the calculation based on the factors listed in 1 through 4 above may result in a determination that the pipe required to meet the maximum instantaneous water demands is one which is not a commonly commercially available size. If this is the case, the cost of the next largest commonly commercially available diameter of water pipe would be used in determining the costs eligible for compensation from the Fund.

In addition to the reductions in the compensable amount which would result from the construction of a water main with a capacity greater than the minimum necessary, N.J.A.C. 7:1J-3.4(c) also provides that the cost of any transmission or distribution line beyond the point necessary to service the affected area is ineligible for compensation. Again, the reason for the ineligibility is that the discharge does not make such an extension of the line necessary; therefore, the cost of such an extension is not "damages" compensable from the Fund.

N.J.A.C. 7:1J-3.5 provides for other reductions in amounts compensable from the Fund. These reductions are not related to the capacity of the water supply system constructed in response to a discharge. The specific reductions are discussed in more detail below.

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N.J.A.C. 7:1J-3.5(a) concerns claims for water supply systems which are to be operated by a private water purveyor. Under the regulations of the Board of Regulatory Commissioners (formerly the Board of Public Utilities), a utility extending service is normally expected to invest in the extension an amount equal to five times the estimated annual revenue from the new service area. See N.J.A.C. 14:3-8. Applying the same reasoning, the proposed new rules provide for the aggregate amount eligible for compensation from the Fund for the water supply system to be reduced by an amount equal to five times the expected aggregate average annual water bill of all residential and nonresidential users within the affected area.

For claims by publicly owned water purveyors, N.J.A.C. 7:1J-3.5(b) reduces the amount eligible for compensation from the Fund to reflect the surplus debt service payments which the water purveyor will collect as a result of the extension of service to the affected area. The water purveyor will collect surplus debt service payments because the debt service component of its rates is based upon a smaller number of ratepayers, which does not include the new ratepayers in the affected area; as a result, the debt service component paid by those new additional ratepayers is not needed to defray the water purveyor's debt service costs, and is surplus.

The surplus debt service is calculated as follows:

$$SDSP = \frac{(DSP)(NR)}{ER}$$

where:

SDSP represents the surplus debt service payments;

DSP equals the aggregate amount of the payments due on all debt obligations of the water purveyor reflected in the computation of the water purveyor's rates, and incurred before the making of the WSSC, which payments are due during the period beginning on the date on which water service commences to new ratepayers not previously served by the water purveyor before the construction of the water supply system which is the subject of the claim, and ending on the first anniversary of the effective date of the water purveyor's rates in effect as of the commencement of such service (that is, the time before new rates reflecting the addition of new ratepayers are in effect);

NR equals the number of new ratepayers served by the new water supply system, who were not served by such water purveyor before the construction of such facilities; and

ER equals the number of existing ratepayers served by the water purveyor immediately prior to the making of the WSSC.

The following example illustrates the calculation of surplus debt service. The example assumes that the water purveyor's aggregate debt service payment during the period described under the description of "DSP" above is $100,000, that there are 10,000 existing ratepayers served by the water purveyor excluding those served by the water supply system which is the subject of the claim, and that 200 new ratepayers will be served by that water supply system. On the average, each existing ratepayer pays $10.00 toward the water purveyor's debt service ($100,000 divided by 10,000 ratepayers). Until the water purveyor's rates are adjusted to reflect the new ratepayers served by the water supply system which is the subject of the claim, those 10,000 existing ratepayers are defraying the water purveyor's entire debt service burden. Therefore, the addition of 200 new ratepayers, each paying $10.00 toward debt service, results in the payment of $2,000 in surplus debt service payments. Applying the formula set forth above:

$$SDSP = \frac{(DSP)(NR)}{ER}$$

$$SDSP = \frac{(\$100{,}000)(200)}{10{,}000}$$

Therefore, SDSP = $2,000.

Under N.J.A.C. 7:1J-3.5(c), the cost of pre-existing equipment (installed or for which installation had begun before the discharge) is ineligible for compensation from the Fund; since such equipment was to be installed even absent the discharge, the cost of the equipment could not be considered "damages" compensable from the Fund.

Similarly, under N.J.A.C. 7:1J-3.5(d), the Department does not consider the cost of equipment which replaces the equipment in the water supply system constructed as a result of the discharge to be compensable. The need for replacement results from ordinary wear and tear or other causes unrelated to the discharge. N.J.A.C. 7:1J-3.5(d) also provides that the cost of "corrective action" is not compensable from the Fund. Corrective action includes action such as the installation of replacement or additional equipment made necessary as a result of an error or omission in the design, construction, installation or operation of a water supply system which is the subject of the claim. The need for such corrective action results from the error or omission, and not from the discharge. Therefore, the cost of the corrective action could not be considered "damages" compensable from the Fund.

N.J.A.C. 7:1J-3.5(e) reflects regulations of the Board of Regulatory Commissioners which require water purveyors to incur certain costs in connection with water supply systems. For example, N.J.A.C. 14:3-4.1 requires a utility to provide meters without charge for each customer supplied utility services on a measured basis, and N.J.A.C. 14:3-2.1 requires the utility to perform certain services at its own expense upon making service connections. N.J.A.C. 7:1J-3.5(e) provides that these costs are ineligible for compensation from the Fund. This provision is necessary to avoid overpayment from the Fund and a windfall to the water purveyor; absent the provision, it would be more profitable for a water purveyor to install a water supply system if the system is made necessary as a result of a discharge.

N.J.A.C. 7:1J-3.5(f) provides that if a water purveyor or government entity has charged fees or costs for connecting to the water supply system which is the subject of the claim, the claim by the water purveyor or government entity is reduced by such fees or costs. This provision prevents double collection of the connection costs.

N.J.S.A. 40:14B-21 authorizes the charging of a connection fee or tapping fee for the connection of a property to a water supply system. The fee may include the actual cost of the physical connection, plus certain other amounts such as previously existing debt service. N.J.A.C. 7:1J-3.5(g) therefore provides only the portion of the fee which the claimant pays which represents the actual cost of the physical connection is eligible for compensation from the Fund, because this is the only portion of the fee which represents damages resulting from the discharge.

Several of the provisions in N.J.A.C. 7:1J-3.4 and 3.5 are not relevant to the water supply system claim that a water purveyor could make for the cost of replacing or treating a water supply, when the purveyor's existing supply of water is or will become unsuitable to serve the needs of the water purveyor's existing customers. Only the cost of replacing or treating that existing water supply will be compensable from the Fund; therefore, there is no need for the water purveyor to perform the calculations under N.J.A.C. 7:1J-3.4 to determine the appropriate size of the replacement water supply. Many of the calculations under N.J.A.C. 7:1J-3.5 are similarly unnecessary, because they arise only when new customers are served by the new water supply, and not when existing customers are served by a replacement water supply. Therefore, N.J.A.C. 7:1J-3.1(b) lists the provisions of N.J.A.C. 7:1J-3 which are applicable to this type of claim.

N.J.A.C. 7:1J-3.6, 3.7 and 3.8 establish the method by which the Department will delineate the Spill Fund Claims Area (SFCA). As discussed above, the location of property within the SFCA is a factor in determining whether a water supply system claim is eligible for compensation from the Fund.

The Department delineates the SFCA as the geographic area consisting of the currently known extent of ground water pollution, combined with the most probable pollutant migration zone. The "currently known extent of ground water pollution" is the volumetric extent of ground water in which concentrations of one or more hazardous substances exceed the applicable contaminant standard. The determination of this volumetric extent will be based upon sampling data collected by the Department, or in accordance with a Department-approved sampling plan by persons approved by the Department in writing.

The "most probable pollution migration zone" is the volumetric extent of ground water for which the Department determines it is most probable that, within a specified amount of time, concentrations of one or more hazardous substances will exceed the applicable contaminant standard. That specified amount of time will be three years after the date the Department delineates the SFCA, unless the Department determines that under the circumstances of a particular case, the remediation will not be completed within three years. In such cases, the time period will be the time which the Department estimates as necessary to complete the remediation, in its best professional judgment based on the particular circumstances of the case.

The method for delineating the most probable pollution migration zone under the proposed new rules reflects factors such as ground water elevations, the location and distribution of pumping wells, the distribution and concentration of pollutants in affected wells, topography, and geology. In delineating this zone, the Department multiplies the most probable pollutant transport rate (expressed in feet per day), by the

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remediation period (expressed in days); this calculation shows the distance the pollutant will migrate. The migration distance, projected along the most probable ground water flow directions from the currently known extent of ground water pollution (that is, the leading edge of the plume), yields the most probable pollution migration zone.

The Department recognizes that a government entity making a water supply system claim may issue bonds and apply the proceeds to the cost of the water supply system. To assist the government entity in determining the necessary amount of the bond issue, N.J.A.C. 7:1J-3.9 provides that the government entity may submit preliminary plans and specifications for the water supply system for review by the Department. The Department then will provide a preliminary estimate of the amount of the water supply system claim which will be eligible for compensation from the Fund. The final determination of the amount eligible for compensation may change from the preliminary estimate, as a result of changes in circumstances affecting the claim.

N.J.A.C. 7:1J-4 Property Value Diminution Claims

The Act provides that the Fund is strictly liable for any reduction in the value of property damaged or destroyed by a discharge, provided that the reduction was caused by the discharge. N.J.S.A. 58:10-23.11g(a)(1). Subchapter 4 of the proposed new rules establishes the criteria for measuring this type of damage and for processing claims for such damages.

Generally, N.J.A.C. 7:1J-4 requires that a property value diminution claim is eligible for compensation only if the claimant has sold the subject property (exceptions to this requirement are discussed in more detail below). The New Jersey Supreme Court recently unanimously upheld a similar requirement in the Department's regulations for claims against the Sanitary Landfill Facility Contingency Fund (the "SLFC Fund"), N.J.A.C. 7:1I. *Citizens for Equity v. New Jersey Department of Environmental Protection,* Dkt. No. A-28/29, September Term 1991. Essentially, the claimant will not incur damages from property value diminution until the subject property is sold; without a sale, the claimant will not realize a loss even if the value of the property has declined. Case law interpreting the Internal Revenue Code (especially 26 U.S.C. § 1001) takes the same approach in determining when a loss or gain has been realized.

N.J.A.C. 7:1J-4 also contains provisions intended to ensure that the sale of the subject property is conducted in good faith. The good faith requirement is necessary, because the availability of compensation from the Fund could be expected to reduce any incentive to sell the subject property for the highest price possible; the claimant could rationally accept a much lower price if the Fund would pay any difference.

As noted above, the regulations governing claims against the SLFC Fund include procedures for property value diminution claims. As discussed below, N.J.A.C. 7:1J-4 provides a different (and, in the Department's belief, better) method of handling such claims. The Department expects to propose amendments to the SLFC Fund regulations within the next few months.

The most important difference between the proposed new rules and the SLFC Fund regulations is that the proposed new rules require far less intervention by the Department in the sale of the subject property. Under the SLFC Fund regulations, the Department establishes the initial sale price of the subject property, and allows monthly reductions of the price. Under the proposed new rules, the Department evaluates the circumstances of the sale as it occurs, leaving the claimant the discretion to establish a sale price in good faith. A more detailed discussion of the proposed new rules follows.

N.J.A.C. 7:1J-4.1 provides that claims for diminution of property value are compensable only to the extent that the diminution is directly attributable to a discharge of a hazardous substance. Under the Act, the Fund cannot pay compensation for diminution which results from causes other than a discharge. If the diminution results wholly or in part from other factors, such as a general decline in the real estate market, the part of the diminution resulting from those other factors would be ineligible for compensation. In addition, a diminution in the value of improvements added to the subject property after the discharge is not compensable; by improving the subject property, the claimant would have aggravated his or her damages from property value diminution.

N.J.A.C. 7:1J-4.2 establishes requirements which must be satisfied if a property value diminution claim is to be eligible for compensation. Eligibility is based upon the administrator's conclusion that the sale of the subject property was conducted in good faith. The good faith determination is based upon any appraisals of the subject property under N.J.A.C. 7:1J-4.3 (discussed below), and upon information and documents submitted under N.J.A.C. 7:1J-4.5 (also discussed below). In addition, to satisfy the good faith requirement, the claimant is required to list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or, for nonresidential property, which is not normally listed with a multiple listing service, its commercial equivalent).

N.J.A.C. 7:1J-4.3 provides for the administrator to obtain two appraisals of the subject property, to be used in assigning a value to the claim under N.J.A.C. 7:1J-4.4: one appraisal stating the value of the subject property as affected by the discharge, and one appraisal stating the value absent the effect of the discharge. The appraisals will state the value of the subject property as of the time of sale (except for specific types of claims, discussed below, which the administrator may settle without a sale; for those claims, the appraisal will be as of the date of the settlement offer). The appraisals are performed by independent appraisers which the Department selects.

The appraisals will be based upon factors normally applied by qualified real estate appraisers, including sales of comparable properties, income generated by the subject property, including the replacement cost of the subject property. In certain cases, there may be insufficient information to support a meaningful appraisal reflecting the effects of a discharge; N.J.A.C. 7:1J-4.3(b) therefore allows the administrator to refrain from obtaining the appraisals in these cases.

N.J.A.C. 7:1J-4.4 provides the method for determining the amount of a property value diminution claim eligible for compensation. If the claimant sells the subject property for a price at least equal to the appraised value of the property as affected by the discharge, the amount eligible will be the difference between the appraised value without considering the discharge, and the sale price. However, if the sale price is less than the appraised value as affected by the discharge, it is likely that circumstances other than the discharge were responsible for part of the price reduction. For this reason, the amount eligible for compensation would be the difference between the appraised value without considering the discharge, and the appraised value as affected by the discharge.

The administrator may further adjust the amount eligible for compensation, if information other than the sale price and the appraisals support a conclusion that these factors alone do not accurately show the diminution in property value. For example, if the cleanup of the discharge were completed just before the sale, an appraisal would be misleading if it were based on sales of comparable properties which occurred while the cleanup was in progress.

Under N.J.A.C. 7:1J-4.5, the claimant is required to submit documents which will assist the Department in determining that a sale was in good faith. These documents, which include listing agreements, contracts of sale, settlement statements, and affidavits by the claimant and the claimant's realtor, should indicate if a sale is not arm's length, or if the claimant has received consideration other than the sale price in payment for the subject property.

N.J.A.C. 7:1J-4.6 and 4.7 create exceptions to the requirement that the subject property must be sold for the claim to be eligible for compensation. Under N.J.A.C. 7:1J-4.6, the administrator may settle the claim if the claimant is legally unable to sell the subject property as a result of the discharge. For example, many municipalities require that a certificate of occupancy (C/O) be issued before property is conveyed; however, the discharge may have caused the property to become ineligible for a C/O. The provision does not authorize settlement without a sale if the discharge has created practical rather than legal impediments to a sale, because in such circumstances there should still be a price at which a buyer will purchase the subject property.

Once any legal impediments to a sale are removed (for example, after the discharge is cleaned up), the claimant may sell the property for a price higher than the value on which the settlement was based. For example, the administrator may have paid a $20,000 settlement based upon an appraised decline in property value from $100,000 to $80,000; after the cleanup, the claimant may sell the property for $95,000, indicating that the settlement was $15,000 too high. To protect the assets of the Fund from this type of excessive settlement, the proposed new rules provide that as a condition of the settlement, the claimant will grant the Fund a lien on the subject property in the amount of the settlement. In the example described above, the Fund would release the lien upon repayment of the $15,000 excess settlement. The rule provides that the amount of the repayment required will never exceed the amount of the settlement, plus interest.

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Settlement of a property value diminution claim without a sale is also appropriate when, as a result of the discharge, emergency relocation of the claimant is necessary. N.J.A.C. 7:1J-4.7 therefore authorizes the administrator to suspend any or all requirements of N.J.A.C. 7:1J-4.2, 4.3, 4.4 and 4.5 and immediately award compensation if the administrator determines that environmental conditions at a property creates a substantial risk of imminent harm to the health and safety of the occupants of the property.

The Department recognizes that a claimant may have begun efforts to sell the subject property before filing the claim, and therefore without knowledge of the requirements of the proposed new rules. To avoid the harsh result of certain denial of the claim, N.J.A.C. 7:1J-4.8 provides the administrator with the discretion to consider settling the claim in this circumstance, despite the claimant's inability to comply with all of the requirements of the proposed new rules. The claimant is required to submit all of the documents normally required under N.J.A.C. 7:1J-4.5, but need not submit the listing agreement of realtor's affidavit if these documents are unavailable.

The proposed new rules will apply to all claims processed after the operative date, including claims which were filed before the date. In light of the requirements of the proposed new rules (including the requirement for a sale of the subject property), claimants with claims already pending may desire to suspend their claims until they are ready to sell. Accordingly, under N.J.A.C. 7:1J-4.9, the Department will notify all claimants with claims already pending of the requirements of the proposed new rules; within 60 days after the receipt of notice, each such claimant will be required to notify the Department of his or her election to pursue the claim, suspend it or withdraw it.

A claimant can reactivate a suspended claim at any time upon written request, enabling the claimant to choose the most appropriate time to sell the subject property. In addition, the claim will be reactivated if the administrator notifies the claimant that the remediation of the discharge has been completed. If the remediation of the discharge has been completed, it is the Department's position that any property value diminution remaining is not attributable to the discharge; accordingly, the claim would be denied upon this reactivation. The administrator may also reactivate a claim upon the conclusion of litigation or arbitration between the claimant and any potentially responsible parties, which litigation or arbitration concerns the damages which are the subject of the claim.

N.J.A.C. 7:1J-5 Emergency Response Claims by Local Units

In April, 1991, the Legislature amended the Act to provide for payment from the Fund to local units (including any county or municipality, any county or municipal agency or instrumentality, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad) for their activities to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety or welfare. P.L. 1991, c.85 (the "1991 amendment"). The 1991 amendment also provided a time frame for the processing of claims arising from these emergency response actions. N.J.A.C. 7:1J-5 implements the requirements of the 1991 amendment.

N.J.A.C. 7:1J-5.1 generally provides that these emergency response claims are eligible for compensation under the subchapter.

N.J.A.C. 7:1J-5.2 establishes the procedure for a local unit to make an emergency response claim. Under the 1991 amendment, a local unit must obtain the Department's approval before initiating cleanup or removal activities, including prevention, containment or mitigation activities. Accordingly, the claimant is required to submit an affidavit regarding this approval. The claimant is also required to submit other documents necessary to evaluate the claim, including any reports by police departments, fire departments, the local hazardous materials unit and the local health department; documentation of the time spent on the emergency response action; and evidence of payment of costs incurred in the emergency response action.

The 1991 amendment requires that the Department process an emergency response claim by a local unit within 120 days after the filing of a completed claim (including all supporting information and documentation). The 1991 amendment also states that the administrator's approval or denial of the claim is without regard to the Act's requirements for efforts toward a settlement between the claimant and the alleged discharger or between the claimant and the Fund, and without regard to the arbitration provisions. N.J.A.C. 7:1J-5.3 implements those requirements. Under N.J.A.C. 7:1J-5.4, the Department still will provide notice of the claim to potentially responsible parties, though this notice will not affect processing of the local unit's claim.

N.J.A.C. 7:1J-6 Claims Procedure

N.J.A.C. 7:1J-6 sets forth the procedure for submission and initial processing of claims. The procedure is designed to make it as simple as possible to begin the claims process by filing the claim; after the claim is filed, the Department expects to provide substantial guidance to the claimant throughout the claims process.

The Act requires that claims be filed with the administrator no later than one year after the date of discovery of damage. N.J.S.A. 58:10-23.11k. N.J.A.C. 7:1J-6.1 includes this requirement.

For example, a claimant may receive test results for his or her well indicating that the supply of water contains a hazardous substance in a concentration above the applicable contaminant standard. If the claimant had not discovered the contamination before that time, despite the exercise of reasonable diligence and intelligence (for example, investigating circumstances indicating that a discharge may have affected the well), the claimant would have one year following the receipt of the test results to file the claim. If the claim were filed after the one-year period expired, the Act would require that the administrator deny the claim.

As discussed above, N.J.A.C. 7:1J-1.7 requires claims to be sent by certified mail, return receipt requested, or by other means (such as many overnight delivery services or courier services) which provide a receipt showing the date of mailing and date of delivery. That information is essential to establish that a claim was filed within the allotted one-year period.

Under N.J.A.C. 7:1J-6.2, the claim will be deemed to have been filed as of the date of mailing shown on the certified mail receipt, if the claim is filed by certified mail. If the claimant uses another means of delivery, the claim will be deemed filed as of the date the Department receives the claim.

N.J.A.C. 7:1J-6.3(a) establishes what information must be included in the claim. To simplify the claimant's preparation of the claim, the document need contain only basic information identifying the claimant and the claim, and a statement that the claimant has incurred damages, has not received compensation for the damages from any other source, and was in no way responsible for the discharged hazardous substance. These contents of the claim enable the administrator to confirm that the claim does not fall into any of the most basic categories of ineligible claims (such as claims by the discharger, and claims already compensated from other sources). If the claim is for property value diminution, the claimant is also required to state that he or she intends to sell the subject property; as discussed above, the claim is compensable only in connection with a sale or attempted sale.

Additional information is required to be included only for property value diminution claims made when the claimant has contracted to sell the property before filing the claim; as required under N.J.A.C. 7:1J-4.8(d), additional documentation regarding the sale must be submitted with the claim. Inasmuch as the documents required are of a type which will be readily available at the time the claim is submitted, the requirement should not be a significant burden.

N.J.A.C. 7:1J-6.3(b) enables the Department to request the specific information required to further investigate the claim following receipt of the basic information filed under N.J.A.C. 7:1J-6.3(a). Such information may concern the source of the discharge and potentially responsible parties; the nature and extent of the damages which the claimant has incurred; links between the discharge and claimed damages; other persons or entities who may have information about the discharge; other possible sources of compensation for the claimant's damages; and anything else which the claimant believes to be relevant or which the Department believes is necessary to process the claim.

N.J.A.C. 7:1J-6.4 allows for the claimant to amend the claim, or a response to a Department request for information, until the earlier of the approval or denial of the claim by the administrator, or the agreement to a settlement among the claimant and one or more potentially responsible parties. This provision will normally prevent a harsh result such as a waiver of all or part of a claim resulting from a failure to correct errors or to submit information about new or different damages.

Without provision for amendment, the claimant would have an incentive to delay filing a claim until he or she had collected all information about the claim and was certain of all damages; as a result, many claimants could fail to meet the one-year filing deadline necessary for eligibility.

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N.J.A.C. 7:1J-6.5 enables the Department, the Board of Arbitration, or other persons designated by the administrator or the Board to inspect, copy and audit documents supporting the claim, and to inspect the damaged real and personal property and other property to which the claimant can provide access. Access to this property and information will help the Department and the Board to verify the existence and extent of damages, as well as the most cost effective and environmentally sound solution.

N.J.A.C. 7:1J-6.6 establishes the procedure for processing a claim which contains information indicating that it is ineligible for compensation, or does not contain information sufficient to support eligibility.

N.J.A.C. 7:1J-6.6(a) concerns claims which contain information indicating that the claim is ineligible for compensation from the Fund. For example, a claim may make it clear that filing occurred more than one year after discovery of damages; or a claim may assert only damages which are ineligible for compensation, such as damages which result from causes other than the discharge of a hazardous substance. The administrator shall deny such a claim.

N.J.A.C. 7:1J-6.6(b) through (f) concern claims which are not clearly ineligible for compensation, but also do not contain information sufficient to support a determination that the claim is eligible for compensation. In response to such a claim, the administrator will issue a Notice of Intent to deny the claim (NOI). The purpose of the NOI is to prevent apparently marginal claims from being denied, by providing the claimant with the opportunity to submit additional information to support the claim.

The claimant has 30 days after receipt of the NOI to provide additional evidence to support the claim or to rebut statements of fact in the NOI. Based on that additional evidence, if the administrator determines that the claim does not clearly fail to satisfy the requirements for eligibility, the NOI will be withdrawn. If the claimant fails to submit any additional evidence within the allotted time, or if the administrator's review of the additional evidence shows that the claim clearly fails to satisfy the requirements for eligibility, the claim will be denied.

The claimant may request arbitration of the denial of a claim, if the denial is based solely upon the validity of the claim and not upon other matters such as untimely filing which is apparent on the face of the claim. Arbitration is not available when the claimant is contesting only such legal matters, and does not dispute any material facts upon which the denial is based. Arbitration can be helpful in resolving factual disputes, but adds little to the decision-making process when the dispute is purely legal. Under N.J.A.C. 7:1J-6.6(h), the claimant is required to submit specific information in support of the arbitration request; the purpose of the requirement is to assist the Department in determining the nature of the dispute, and to assist the Board in preparing for and conducting the arbitration.

N.J.A.C. 7:1J-6.7 allows the claimant to designate a representative (for example, the claimant's attorney) to receive all communications from the Department in connection with the claim.

The Department recognizes that many of the claimants affected by the proposed new rules are unlikely to be familiar with all requirements of the rules, and may fail to comply strictly with all of the procedural requirements of the rules. In certain circumstances, requiring strict adherence to the procedural requirements may result in unfairness or injustice, especially when the failure to strictly comply prejudices no one aside from the claimant and the procedural requirement in question is not specifically required by the Act (or other applicable statute or court decision). Therefore, N.J.A.C. 7:1J-6.8 provides the administrator with the discretion to relax procedural requirements to avoid unfairness or injustice.

N.J.A.C. 7:1J-7 Settlement of Claims between Claimant and Potentially Responsible Parties

The Act requires the administrator to attempt to promote and arrange a settlement between the claimant and the person responsible for the discharge. N.J.A.C. 7:1J-7 establishes the procedure through which the administrator will implement this requirement.

Under N.J.A.C. 7:1J-7.1, if the administrator determines that a person is a potentially responsible party (defined as any person who may have discharged a hazardous substance from which a claim arises, or may be responsible in any way for any hazardous substance from which a claim arises), the administrator will notify that person of the claim. The administrator then will establish a time period (which can be extended) for settlement negotiations among all potentially responsible parties and the claimant. The administrator may arrange for a neutral third party to work with the potentially responsible parties and the claimant to promote and arrange a settlement.

Under N.J.A.C. 7:1J-2.4, the claimant is required to exercise best efforts to obtain compensation from any source other than the Fund from which compensation is reasonably likely to be available. Such good faith efforts include good faith efforts to settle the claim with the potentially responsible parties under N.J.A.C. 7:1J-7. If the claimant is unable to reach a settlement with one or more potentially responsible parties despite these good faith efforts, the claimant may request payment from the Fund under N.J.A.C. 7:1J-8, discussed below.

A settlement between the claimant and one or more potentially responsible parties who have conceded liability operates as a waiver by the claimant of all recourse against the Fund, thereby precluding the possibility of double recovery from the potentially responsible party and from the Fund. If the settling potentially responsible party has not conceded liability, and the terms of the settlement prejudice the Fund's right to subrogation or assignment, or impair the Fund's ability to obtain cost recovery, the settlement will again constitute a waiver of all recourse against the Fund. However, the Department recognizes that the potentially responsible party may become insolvent or otherwise unable to perform its obligations under the settlement; in this case, the administrator may allow the claimant to reinstate the claim against the Fund. The Fund will not be bound by any aspect of the settlement to which the claimant previously agreed with the potentially responsible party.

N.J.A.C. 7:1J-8 Settlement of Claims Between Claimant and Fund

The Act provides that if the source of the discharge is unknown or cannot be determined, the claimant and the administrator shall attempt to arrange a settlement between the claimant and the Fund. N.J.S.A. 58:10-23.11m. N.J.A.C. 7:1J-8 establishes the procedure through which the administrator will implement this requirement. In addition, N.J.A.C. 7:1J-8 provides for the claimant to request payment from the Fund when one or more potentially responsible parties have been identified, but despite the claimant's good faith efforts no settlement has been reached within the time allocated under N.J.A.C. 7:1J-7.

Under N.J.A.C. 7:1J-8.1(b), the Department will provide the potentially responsible parties with written notice of the claimant's request for payment from the Fund. The Department believes that it is necessary to notify the potentially responsible parties, in light of the possible liability of such persons to the Fund in a cost recovery action, and the arbitration rights under N.J.A.C. 7:1J-8.2, discussed below. In addition, the notice may encourage further settlement discussions between the potentially responsible parties and the claimant.

N.J.A.C. 7:1J-8.2 provides that any potentially responsible party may contest the validity or amount of the claim by requesting that the administrator submit the claim to arbitration. The potentially responsible party must deliver that request to the Department within 20 days after the date of delivery of notice of the claim (or, 20 days after the date the notice was mailed, if the party refuses delivery). In addition, any other person may also request arbitration, even if the person has not been designated as a potentially responsible party. The time for such a person to request arbitration begins to run when the person receives actual notice of the claim.

The potentially responsible party's request for arbitration must contain specific information regarding the nature of the objection to the validity or amount of the claim. This requirement is necessary to narrow the scope of the arbitration; otherwise, the Board of Arbitration conceivably could require the claimant to prove the validity and amount of the claim in its entirety, substantially burdening the claimant and greatly increasing the complexity and cost of the arbitration proceeding. The specific requirements for the request are essentially the same as the requirements applicable to a claimant requesting arbitration.

N.J.A.C. 7:1J-8.3(a) authorizes the administrator to make a settlement offer to the claimant, if certain requirements have been satisfied. The requirements are as follows: The claim must be eligible for compensation; the claimant must have requested payment from the Fund; a period of 30 days must have passed since the date of delivery of the last notice of the claim to potentially responsible parties (or since the date of mailing, if the potentially responsible party refused delivery), without the Department having received any requests for arbitration; and the claimant must have made a good faith effort to settle the claim with any potentially responsible parties, but not entered into a settlement within the time allotted for settlement negotiations.

Unlike N.J.A.C. 7:1J-8.3(a), which provides the administrator with the discretion to make a settlement offer in certain circumstances, N.J.A.C.

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7:1J-8.3(b) sets forth circumstances in which the administrator is required to make a settlement offer. The administrator must make the settlement offer if: the claim is eligible for compensation; the claimant has requested payment of the claim; and the administrator determines that the source of the discharge is unknown or cannot be determined.

If the administrator has not denied the claim, is not required to make a settlement offer and has not elected to do so, N.J.A.C. 7:1J-8.3(c) requires the administrator to submit the claim to arbitration.

N.J.A.C. 7:1J-8.4 establishes a time frame for the claimant to accept or reject a settlement offer. Upon acceptance of the offer, the claimant is deemed to have waived further claims against the Fund in connection with the discharge, and the Fund is subrogated to the claimant's rights against other persons. If the claimant rejects the settlement offer, the claim is submitted to arbitration. If the claimant does not accept or reject the offer within the allotted time, the claimant is deemed to have rejected the offer.

N.J.A.C. 7:1J-9 Boards of Arbitration

The Act requires the administrator to convene a Board of Arbitration (Board) when persons alleged to have caused the discharge, the administrator, or other persons contest the validity or amount of damage claims. N.J.S.A. 58:10-23.11n. To implement this requirement of the Act, N.J.A.C. 7:1J-9 states when a Board is to be convened, how the Board is formed, the jurisdiction of the Board, the conduct of the arbitration proceeding (including pre-hearing and post-hearing procedures as well as the hearing itself). The precise conduct of the hearing and the pre-hearing and post-hearing procedures is left to a large extent within the discretion of the Board; however, some procedures (such as discovery) are to be conducted in light of the expedited nature of arbitration intended under the Act. N.J.A.C. 7:1J-9 also contains other provisions relevant to the Board and to the arbitrators who comprise the Board.

The purpose of arbitration under the Act is to contest the validity or amount of a claim. Arbitration is not a means for a potentially responsible party to contest liability for the discharge which is the subject of the claim.

Several arbitration proceedings have been conducted before the proposal of these new rules. The proposed new rules are based in part upon procedures agreed upon by the parties to past individual arbitration proceedings, and also upon guidelines established by the American Arbitration Association.

Social Impact

The existing claims rules in N.J.A.C. 17:26 have had a positive social impact, by providing claimants with a means of obtaining reimbursement for losses suffered in connection with discharges of hazardous substances. The proposed new rules will increase this positive social impact upon claimants, by providing them with specific, orderly procedures for making claims. The proposed new rules also limit the amount of time which each stage of the claims process can consume, enhancing the accountability of the administrator for timely processing of claims.

Economic Impact

The existing claims rules in N.J.A.C. 17:26 have had a positive economic impact upon persons who have suffered damages caused by discharges of hazardous substances. The existing rules have provided a method for these persons to obtain compensation for such damages.

The proposed new rules generally will preserve this positive economic impact, by clarifying and codifying the Department's claims processing practices. However, the new rules are likely to have a negative economic impact upon certain persons making certain types of claims, resulting from new provisions designed to ensure that payments from the Fund serve the sole purpose of compensating for damages resulting from discharges of hazardous substances.

As discussed in the Summary above, the proposed new rules at N.J.A.C. 7:1J-3 include several limitations upon and deductions from the amount of a water supply system claim which is eligible for compensation from the Fund. These limitations and deductions are intended to avoid overpayments from the Fund for the cost of a water supply system. Absent these provisions, such overpayments could result from the payment of costs which the claimant normally would expect to recover from another source, or which the claimant would normally be required to pay; from the use of remedial measures which are not the most cost-effective environmentally sound measures available; from the construction of a water supply system with a capacity exceeding what is necessary to provide potable water to properties affected by a discharge; or from the payment of costs which result from causes other than a discharge. The Department cannot determine the precise range of the economic impacts of these provisions, because the economic impact in any case will vary with the size and cost of the water supply system and with other circumstances particular to the case.

The Department expects the proposed new rules at N.J.A.C. 7:1J-4, governing property value diminution claims, to have a positive economic impact. The proposed new rules establish procedures for submission and processing of property value diminution claims which minimize the role of the Department in the sale of property which has its value adversely affected by a discharge, and to the greatest extent practicable allow the market to establish the amount of property value diminution. The Department's approach in the proposed new rules is to encourage the seller of the affected property to act in good faith to obtain the highest price which the market will allow, and to rely upon appraisals and upon evidence of the good faith nature of the sale in evaluating the seller's claim. The Department believes that this approach will result in less property value diminution than an approach which attempted to control the seller's efforts to sell the affected property.

As discussed above, N.J.A.C. 7:1J-4 generally requires that a property value diminution claim is eligible for compensation only if the claimant has sold the subject property (exceptions to this requirement are discussed in the Summary above). Until a sale occurs, the property owner has not suffered anything more than speculative and contingent damages; even if the value of the property has temporarily declined as a result of a discharge, the property owner will not have realized any actual loss, because the property may recover its value by the time a sale occurs. For this reason, the Department expects that the sale requirement will have no economic impact upon the property owner, and will have a positive impact by preserving the assets of the Fund.

The Department expects no significant economic impact to result from the provisions of N.J.A.C. 7:1J-4 intended to ensure that the sale of the subject property is conducted in good faith. A person selling real property unaffected by a discharge would be likely to comply with most of these requirements (such as retaining a broker who is a member of a multiple listing service, keeping copies of documents such as the contract of sale, deed, and settlement statement) automatically, and the other requirements (such as keeping a record of all offers to purchase the property, submitting an affidavit concerning the good faith circumstances of the sale, and obtaining an affidavit by the claimant's realtor attesting to routine circumstances of the sale) impose no significant cost.

The Department expects N.J.A.C. 7:1J-5 to have a positive economic impact upon local units making emergency response claims. As discussed in the Summary, N.J.A.C. 7:1J-5 provides for expedited processing of such claims, as required by the Act. Local unit claimants will therefore avoid costs related to settlement negotiations with potentially responsible parties and with the Fund, as well as costs associated with arbitration.

The economic impact of the claims procedures at N.J.A.C. 7:1J-6 will vary depending upon the nature and complexity of the claim. The Department has structured these procedures to avoid the need for the claimant to incur costs wherever possible. For example, the requirements of N.J.A.C. 7:1J-6.3(a) for the initial filing of the claim make it necessary for the claimant to present only the most basic information about the claim. N.J.A.C. 7:1J-6.3(b) provides for the Department to request any further information necessary to process the claim, enabling the Department to tailor its informational requirements to the circumstances of a particular claim.

Claimants may incur significant costs in providing some types of information which the Department may request. However, it is the Department's position that reasonable costs incurred in having a claim processed are themselves damages which are compensable from the Fund. Accordingly, the Department expects claimants to incur no significant economic impact under the procedural requirements of N.J.A.C. 7:1J-6, or under the procedures for settlement negotiations with potentially responsible parties under N.J.A.C. 7:1J-7, settlement negotiations with the Fund under N.J.A.C. 7:1J-8, and arbitration under N.J.A.C. 7:1J-9. The Department notes that the reasonableness of the amount of the claim, which would include costs incurred under N.J.A.C. 7:1J-6, 7, 8 and 9, is itself subject to arbitration under N.J.A.C. 7:1J-9. As a result, the Fund will not pay any portion of such costs which are unreasonable.

Potentially responsible parties may incur costs if they participate in settlement negotiations with claimants under N.J.A.C. 7:1J-7, or if they participate in arbitration under N.J.A.C. 7:1J-9. The cost of such participation will vary with the decision of the potentially responsible party to retain attorneys and other professionals, upon the complexity

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of the settlement negotiations, and upon the issues arising in any particular arbitration.

Environmental Impact

The proposed new rules will increase the positive environmental impact of the existing claims rules. As discussed in the Economic Impact statement above, the new rules are designed to prevent several types of potential overpayments of claims, which would otherwise reduce the assets of the fund available to pay cleanup and removal costs for other claims. In addition, with respect to water supply system claims, the new rules expressly require environmentally sound means of ameliorating the damages resulting from a discharge. The existing claims rules contained no such express requirement, though the Department historically has taken the position that the existing rules imply such a requirement.

The proposed new rules at N.J.A.C. 7:1J-5, concerning emergency response claims by local units, will have a positive environmental impact. As required by the April, 1991 amendments to the Act, N.J.A.C. 7:1J-5 provides expedited procedures for the processing of such claims. The Department expects that such expedited processing will encourage local units to take emergency response actions when necessary, thereby preventing or mitigating the effects of a discharge. In addition, as a condition of eligibility, the local unit claimant is required to have obtained the approval of the Department before taking the emergency response action which is the subject of the claim, enabling the Department to assist the local unit in responding to a discharge or threatened discharge in an environmentally sound manner.

Regulatory Flexibility Analysis

Many of the claimants and potentially responsible parties affected by the proposed new rules may be small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, because a person would become a claimant or potentially responsible party as a result of a discharge, rather than as a result of the nature of the person's business, the Department cannot determine how many small businesses would be affected.

The provisions of the proposed rules concerning water supply system claims impose certain reporting requirements upon small businesses which will require those businesses to obtain professional services. Specifically, a claimant making a water supply system claim concerning water wells, water storage facilities or water transmission and distribution lines is required to cause the water purveyor to submit a report on such facilities, certified by a licensed professional engineer. There are approximately 200 water purveyors in New Jersey which can be classified as "small businesses." The proposed new rules do not distinguish between water purveyors which qualify as small businesses and those which do not; however, because the reasonable cost of these professional services will be compensable from the Fund, the Department does not expect the proposed new rules to adversely affect small business. Compliance with the proposed new rules will not require any initial capital cost or annual costs.

With respect to property value diminution claims, the owners of properties which are the subjects of such claims may be small businesses. The proposed new rules require such claimants to submit several documents to be eligible for compensation from the Fund. Claimants also must obtain professional services from real estate brokers, through a multiple listing service (or its commercial equivalent, for claims involving commercial property or other property not normally sold through a multiple listing service). However, the Department does not believe that this requirement imposes substantial costs upon small business claimants, because it is likely that such claimants would retain a real estate broker to market their properties even if the proposed rule did not so require. Compliance with the proposed new rules will not require any initial capital cost or annual costs. The proposed new rules make no special provision for property value diminution claimants who qualify as small businesses, because any such special provisions would impair the administrator's ability to perform the fiduciary duty to the Fund in processing property value diminution claims.

As discussed in the economic impact statement above, claimants may need or elect to obtain services from attorneys and other professionals in satisfying the compliance requirements under N.J.A.C. 7:1J-6, 7, 8 and 9; however, these requirements should not impose a burden upon small businesses, because the reasonable cost of satisfying those requirements would be compensable from the Fund.

Potentially responsible parties participating in settlement negotiations with claimants under N.J.A.C. 7:1J-7, or in arbitrations under N.J.A.C. 7:1J-9, may need or elect to retain an attorney or other professionals to assist in such negotiations or arbitrations. The extent of the professional services which may be necessary depends upon the nature and complexity of the issues arising in the negotiations or arbitrations, and not upon requirements imposed under the proposed new rules. For this reason, and because different treatment of small business potentially responsible parties could result in prejudice to the rights of claimants to compensation, the proposed new rules do not contain different requirements for small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 17:26.

Full text of the proposed new rules follows:

CHAPTER 1J
PROCESSING OF DAMAGE CLAIMS PURSUANT TO THE SPILL COMPENSATION AND CONTROL ACT

SUBCHAPTER 1. GENERAL PROVISIONS

7:1J-1.1 Scope

This chapter constitutes the rules of the Department concerning the processing of all claims under the Act for damages resulting from the discharge of a hazardous substance or a threatened discharge of a hazardous substance.

7:1J-1.2 Construction and applicability

(a) This chapter shall be construed liberally to permit the Department and the administrator to fulfill their statutory functions. This chapter shall be construed in conformity with, and not in derogation of, the Act.

(b) This chapter shall apply to the processing of all claims which have not been paid, settled or denied on or before the operative date of this chapter, notwithstanding the date upon which any such claim was filed with the Department.

7:1J-1.3 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof.

7:1J-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

"Administrator" means the chief executive of the Fund.

"Affected area" means, with respect to a water supply system claim, the area within or outside the Spill Fund Claims Area for which the Department has determined, pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge.

"Applicable contaminant standard" means, for any particular hazardous substance, the maximum contaminant level for that hazardous substance (if any) established under N.J.A.C. 7:10 and 40 CFR Part 141. If no maximum contaminant level has been established for a particular hazardous substance under those regulations, "applicable contaminant standard" means the applicable cleanup standard under N.J.A.C. 7:26D.

"Board" means a Board of Arbitration convened by the administrator pursuant to N.J.A.C. 7:1J-9.1.

"Claim" means a claim for damages filed with the Department for recovery from the Fund. The claim includes all documents submitted under this chapter in support of the claim, including without limitation any amendments thereto under N.J.A.C. 7:1J-6.4.

"Claimant" means the person filing a claim.

"Cleanup and removal costs" means all costs associated with a discharge, incurred by the State, or its political subdivisions, or their agents, or any person with written approval from the Department, in: the removal or attempted removal of a hazardous substance; or

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the taking of reasonable measures to prevent or mitigate damage to the public health, safety, or welfare, including, but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources, and shall include costs incurred by the Department for the indemnification and legal defense of contractors pursuant to the Act, subject to the appropriation by law of moneys from the General Fund to the Fund to defray these costs.

"Damages" means all cleanup and removal costs and all direct and indirect damages actually incurred, no matter by whom sustained, arising in connection with a discharge of a hazardous substance in violation of the Act, or in connection with a threatened discharge, or in connection with a pre-Act discharge, which costs and damages include, but are not limited to, the following:

1. The cost of restoring, repairing or replacing any real or personal property damaged or destroyed by a discharge, any income lost from the time such property is damaged to the time such property is restored, repaired or replaced, and any reduction in value of such property caused by such discharge in comparison with its value absent the discharge;

2. The cost of restoration and replacement, where possible, of any natural resource damaged or destroyed by a discharge;

3. Loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge, provided that such loss or impairment exceeds 10 percent of the amount which the claimant derives, based upon income or business records, exclusive of other sources of income, from activities related to the particular real or personal property or natural resources damaged or destroyed by such discharge during the week, month or year for which the claim is filed;

4. Loss of tax revenue by a state or local government for a period not to exceed one year, due to damage to real or personal property proximately resulting from a discharge (which one-year period, in the case of lost real property tax revenue, commences on the effective date of the first reduction in the assessed value of real property for damage proximately resulting from the discharge);

5. Interest on loans obtained or other obligations incurred by a claimant for the purpose of ameliorating the adverse effects of a discharge pending the payment or settlement of a claim; and

6. Such sums as may be necessary to reimburse a local unit for costs incurred in an emergency response action taken to prevent, contain, mitigate, clean up or remove a discharge or threatened discharge of a hazardous substance.

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

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

"Discovery" means the time at which the claimant discovers, or by the exercise of reasonable diligence and intelligence should have discovered, that he or she may have a basis for a claim.

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety or welfare.

"Emergency response claim" means a claim by a local unit for reimbursement of costs incurred in an emergency response action.

"Fund" means the New Jersey Spill Compensation Fund established pursuant to the Act.

"Government entity" means a governing body, department, agency, authority or any other unit of any Federal, State, county or local government or governments, including without limitation a municipal utilities authority.

"GPD" means gallons per day.

"GPM" means gallons per minute.

"Ground water" means the portion of water beneath the land surface that is within the zone of saturation (below the water table) where the pore spaces are filled with water.

"Hazardous substance" means any substance defined as such under the Discharges of Petroleum and Other Hazardous Substances regulations, N.J.A.C. 7:1E-1.7.

"Local unit" means any county or municipality, or any agency or other instrumentality thereof, or a duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad.

"Most probable ground water flow direction" means the most probable direction of ground water flow within the Spill Fund Claims Area, as determined by the Department.

"Most probable pollutant transport rate" means the most probable rate at which each hazardous substance present in ground water in a concentration exceeding the applicable contaminant standard or other applicable maximum level will be transported within the ground water flow regime, as calculated by the Department pursuant to N.J.A.C. 7:1J-3.8(c).

"Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

"Notice of Intent to Deny," or "NOI," means a notice issued by the administrator to a claimant pursuant to N.J.A.C. 7:1J-6.6, notifying the claimant that the claimant's claim lacks sufficient information to support a determination that the claim is eligible for compensation from the Fund.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, association, society, firm, partnership, joint stock company, foreign individual or entity and its agents, interstate agency or authority, the United States and any of its political subdivisions or agents, the State of New Jersey and its agents or any of the political subdivisions of or found within the State of New Jersey and their agents, or any of the other meanings which apply to the common understanding of the term.

"Potable water" means drinking water, water for other personal uses, and water for purposes requiring a supply of water which the Department determines is suitable for human consumption pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10. "Potable water" does not include water for use in firefighting.

"Potentially responsible party" means any person who may have discharged a hazardous substance from which a claim arises, or may be responsible in any way for any hazardous substance from which a claim arises, including, without limitation, any of the following:

1. Any person whose act or omission results or has resulted in a discharge;

2. Each owner or operator of any facility, vehicle or vessel from which a discharge has occurred;

3. Any person who owns or controls any hazardous substance which is discharged;

4. Any person who has directly or indirectly caused a discharge;

5. Any person who has allowed a discharge to occur; or

6. Any person who brokers, generates or transports the hazardous substance discharged.

"Pre-Act discharge" means a discharge of a hazardous substance which occurred before April 1, 1977.

"Private water purveyor" means a water purveyor which is not a government entity. The term "private water purveyor" does not include a municipal utilities or county utilities authority organized pursuant to N.J.S.A. 40:14B.

"Spill Fund Claims Area," or "SFCA," means the geographic area delineated by the Department pursuant to N.J.A.C. 7:1J-3.6.

"Subject property" means property which is the subject of a claim.

"Threatened discharge" means any of the following circumstances with respect to a hazardous substance:

1. A hazardous substance which has not been discharged from a grounded or disabled vessel, if the Department determines that such removal is necessary to prevent an imminent discharge of such hazardous substance; or

2. A hazardous substance which has not been discharged, if the Department determines that such substance is not satisfactorily

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stored or contained and said substance possesses any one or more of the following characteristics:

i. Explosiveness;

ii. High flammability;

iii. Radioactivity;

iv. Chemical properties which in combination with any discharged hazardous substance at the same storage facility would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment;

v. Is stored in a container from which its discharge is imminent as a result of contact with a hazardous substance which has already been discharged and such additional discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment; or

vi. High toxicity and is stored or being transported in a container or motor vehicle, truck, railcar or other mechanized conveyance from which its discharge is imminent as a result of the significant deterioration or the precarious location of the container, motor vehicle, truck, railcar or other mechanized conveyance, and such discharge would create a substantial risk of imminent damage to public health or safety or imminent and severe damage to the environment.

"Useful storage capacity" means that portion of a water storage facility capable of meeting the distribution system pressure requirements contained in N.J.A.C. 7:10-11.7(c) and 7:19-6.7.

"Water purveyor" means a person which owns, operates, manages or controls a water supply system, plant or equipment.

"Water Supply System Claim," or "WSSC," means a claim (whether asserted by a water purveyor or any other person) for compensation for construction and ancillary costs associated with providing an alternative supply of water required because of damage to an existing supply of water caused by a discharge of a hazardous substance.

7:1J-1.5 Delegation

The administrator may delegate administrative, supervisory, or investigatory authority to members of the Department's staff. The administrator may enter into contracts on behalf of the Fund or the Department for the performance of services ancillary to the powers and duties of the administrator under the Act, including, but not limited to, the performance of claims adjustment services.

7:1J-1.6 Signatures; certifications

(a) All claims, and all affidavits required under this chapter, shall be signed by the claimant and notarized, as follows:

1. If the claimant or affiant is a corporation, the claim or affidavit shall be signed by a person authorized by a resolution of the claimant's board of directors to sign the document in question. The claimant or affiant shall submit with the document a copy of the resolution of the claimant's board of directors authorizing the person to sign the document. The copy of the resolution shall be certified as a true copy by the secretary of the corporation.

2. If the claimant or affiant is a partnership, the claim or affidavit shall be signed by a general partner of the partnership.

3. If the claimant or affiant is a sole proprietorship, the claim or affidavit shall be signed by the proprietor of the proprietorship.

4. If the claimant or affiant is a municipality, local unit, State, Federal or other public agency, the claim or affidavit shall be signed by a principal executive officer of such entity, the ranking elected official of such entity, or the designee of such principal executive officer or ranking elected official. If the claim or affidavit is signed by a designee, the claimant shall submit with the claim or affidavit a copy of the document authorizing the designee to sign the claim or affidavit.

5. If the claimant or affiant is a natural person, the claim or affidavit shall be signed by the claimant or affiant, provided however, that if the claimant or affiant is a minor, is incompetent as defined under New Jersey law, or is deceased, the claim or affidavit shall be signed by the claimant's parent, guardian, executor, or court appointed representative, as applicable.

(b) All claims, and all affidavits required by N.J.A.C. 7:1J-4, shall contain the following certification, signed by the person required to sign the claim or affidavit:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that to the best of my knowledge, after diligent investigation including inquiry of those individuals immediately responsible for obtaining the information, the information contained in this claim is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including fines and/or imprisonment, for submitting false information."

7:1J-1.7 Notices and other communications

All claims, notices, requests and other communications required or permitted under this chapter shall be given in writing and sent by certified mail, return receipt requested or by other means which provides a receipt showing the date of mailing and the date of delivery. All such communications sent to the Department by certified mail shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
CN 402
Trenton, New Jersey 08625-0402

All such communications sent to the Department by means for which a street address is required by the carrier shall be sent to the following address:

Department of Environmental Protection and Energy
Environmental Claims Administration
506 East State Street
Trenton, New Jersey 08625

All such communications to the claimant shall be sent to the mailing address set forth in the claim under N.J.A.C. 7:1J-6.3(a)3, unless the claimant directs otherwise under N.J.A.C. 7:1J-6.7.

7:1J-1.8 Computation of time

(a) In computing any period of time fixed by or under this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor legal holiday.

(b) In computing any period of time fixed by or under any provision of this chapter, "days" shall mean calendar days, unless the provision specifies working days.

SUBCHAPTER 2. CLAIMS GENERALLY

7:1J-2.1 Persons who may submit a claim

Any person claiming to have incurred damages may submit to the Department a claim for such damages. No subrogee or assignee of a person who has incurred damages may submit a claim. No claim by a subrogee or assignee of a person who has incurred damages shall be eligible for compensation from the Fund.

7:1J-2.2 Provisions applicable to all claims

The provisions of N.J.A.C. 7:1J-1, 2, 6, 7, 8 and 9 are applicable to all claims made pursuant to this chapter, including without limitation water supply system claims pursuant to N.J.A.C. 7:1J-3, and property value diminution claims pursuant to N.J.A.C. 7:1J-4. The provisions of N.J.A.C. 7:1J-1, 2 and 6 are applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5; the provisions of N.J.A.C. 7:1J-7, 8 and 9 are not applicable to emergency response claims by local units pursuant to N.J.A.C. 7:1J-5.

7:1J-2.3 Burden of proof

No claim shall be eligible for compensation from the Fund unless the claimant shows by a preponderance of the evidence that the claim satisfies all requirements for eligibility under the Act and this chapter, and that the amount of the claim correctly reflects the damages which the claimant has sustained.

7:1J-2.4 Damages actually incurred; mitigation

(a) A claim shall not be eligible for compensation from the Fund unless the claimant has actually suffered the damages which are the subject of the claim. A claim shall be ineligible for compensation from the Fund to the extent that the damages which are the subject of the claim are contingent or speculative.

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(b) A claim shall be ineligible for compensation from the Fund to the extent that the claimant has received compensation from any other source for damages which are the subject of the claim. The claimant shall exercise best efforts to obtain compensation from any other source from which compensation is reasonably likely to be available, including without limitation insurance policies, contractual rights, and any other remedies provided under statutory or common law (including, without limitation, remedies with respect to a potentially responsible party under N.J.A.C. 7:1J-7). The administrator may suspend processing of any claim pending the completion of the claimant's efforts to obtain compensation from such other sources.

(c) The claimant shall exercise reasonable diligence and ordinary care to prevent the damages incurred by the claimant from increasing or being aggravated.

7:1J-2.5 Overlapping claims

(a) A claim shall not be eligible for compensation from the Fund to the extent that the Fund has already paid or settled another claim for the same damages.

(b) If two or more claims include an assertion of the same damages, the administrator shall apportion payment for such damages among the claimants or exclude certain of the claims from payment. The administrator shall base the apportionment or exclusion upon the administrator's determination of which claimants have actually incurred the damages in question.

7:1J-2.6 Waiver of damages not set forth in claim

The claimant shall be deemed to have waived any damages which are not set forth in the claim or in any response to the Department's request for information under N.J.A.C. 7:1J-6.3(b), or in any amendment to such claim or response under N.J.A.C. 7:1J-6.4.

7:1J-2.7 Claims by potentially responsible parties or by owners or occupants of property from which discharge has emanated

(a) If a potentially responsible party makes a claim in connection with the subject discharge, the claim shall be ineligible for compensation from the Fund unless:

1. The claimant is the owner or operator of a major facility or vessel responsible for the discharge; and

2. The claimant establishes one or more of the defenses provided under N.J.S.A. 58:10-23.11g(d).

(b) If, after a discharge occurs, a person purchases the land from which the discharge emanated, claims by such purchaser in connection with the discharge are ineligible for compensation from the Fund, unless such purchaser can establish to the satisfaction of the Department that the claim satisfies either of the following requirements:

1. Despite the exercise of reasonable diligence and intelligence before the purchase, the claimant did not discover until after the time of purchase that any hazardous substance has been discharged or was discharging from the property in question; and, before the purchase, the claimant conducted a diligent and thorough inquiry into previous ownership and uses of the property.

2. The claimant is a government entity and acquired the property by escheat or other involuntary transfer or by operation of law, and not by any affirmative or voluntary act such as exercise of the power of eminent domain. If the government entity acquired the property by an affirmative or voluntary act, the standard set forth in (c)1 above shall govern eligibility of the government entity's claim.

7:1J-2.8 Administrative closure of claims

(a) The administrator may, in his or her discretion, administratively close any claim for which the claimant has:

1. Failed to take actions required by this chatper within 60 days after the claimant was required to take such action; or

2. Failed to respond to a request for information by the Department within the time period set forth in the request.

(b) Administrative closure of a claim is without prejudice. The claimant may reactivate the claim by rectifying the failure under (a)1 or (a)2 above and making a written request to the Department for reactivation.

(c) Before closing a claim under (a) above, the administrator shall send the claimant written notice of the administrator's intent to administratively close the claim. The administrator shall state in the written notice the reason for the administrative closure, and the procedure to avoid administrative closure under (d) below.

(d) The administrator shall administratively close the claim unless:

1. Within 30 days after the claimant's receipt of the notice described in (c) above, the claimant has submitted to the Department an affidavit explaining why the claim should not be administratively closed (which affidavit may include an explanation of why the time allotted to take action or provide information was insufficient); and

2. The administrator determines that the affidavit provides an adequate explanation of why the claim should not be administratively closed.

SUBCHAPTER 3. WATER SUPPLY SYSTEMS CLAIMS

7:1J-3.1 Eligibility of water supply systems claims for compensation

(a) Water Supply Systems Claims (WSSCs) are eligible for compensation from the Fund only in accordance with the requirements of this chapter, and only to the extent permitted under this subchapter.

(b) If the Department determines that as a result of a discharge, a water purveyor's existing supply of water is or will become unsuitable to serve the needs of the water purveyor's existing customers, the water purveyor may make a WSSC for the cost of replacing or treating the existing water supply. No portion of such a WSSC which represents costs beyond those necessary to replace or treat the existing water supply is eligible for compensation from the Fund. Such a WSSC is eligible for compensation from the Fund only in accordance with those requirements of this chapter which are listed at (b)1 through 8 below, and only to the extent permitted under such listed requirements.

1. N.J.A.C. 7:1J-3.1(b);
2. N.J.A.C. 7:1J-3.2;
3. N.J.A.C. 7:1J-3.3;
4. N.J.A.C. 7:1J-3.5(c) and (d);
5. N.J.A.C. 7:1J-3.6;
6. N.J.A.C. 7:1J-3.7;
7. N.J.A.C. 7:1J-3.8; and
8. N.J.A.C. 7:1J-3.9.

7:1J-3.2 Spill Fund Claims Area

(a) No costs expended by a claimant in connection with a WSSC are compensable by the Fund unless they are either:

1. Directly associated with damages to natural resources located within the Spill Fund Claims Area (SFCA), if the Department has delineated an SFCA;

2. Directly associated with supplying potable water to real property in an area within or outside the SFCA for which the Department has determined, pursuant to the Safe Drinking Water regulations set forth at N.J.A.C. 7:10, that the existing source of potable water is unsuitable for human consumption due to a discharge; or

3. Directly associated with damages to natural resources resulting from a discharge, notwithstanding whether the Department has delineated an SFCA.

7:1J-3.3 Most cost-effective environmentally sound alternative

(a) A WSSC shall be eligible for compensation from the Fund only if the WSSC is for costs associated with remedial actions which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge.

(b) A WSSC shall be eligible for compensation from the Fund only to the extent of the cost (as such cost is determined by the Department) of the most cost-effective means which the Department has determined to be an environmentally sound means of ameliorating the damages resulting from a discharge. To determine what remedy is the most cost-effective, for each alternative the Department will consider initial capital costs, 20-year operation and maintenance costs, monitoring costs, reliability, feasibility of implementation, and acceptability to the public.

(c) The Department may evaluate alternatives as well as any new technologies, to determine whether any other environmentally sound means of ameliorating the damages resulting from a discharge are

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more cost-effective than the remedial actions for which the claim has been made. Such alternatives may include, without limitation, the following (or any combination thereof):

1. Filtration of water supply at point of entry;
2. Extension of existing water lines;
3. Drilling of deeper wells for individual residences;
4. Provision of interim alternative water supplies, such as bottled water or waterbuffaloes;
5. Containment of discharge and treatment of water supply;
6. Stand-alone satellite water supply systems/installation of production wells;
7. Contaminant removal;
8. No remedial action;
9. Drilling new wells; and/or
10. Treatment of the contaminated water supply, by methods such as air stripping or filtration.

7:1J-3.4 Reductions in costs eligible for compensation if alternative water supply actually constructed exceeds requirements for provision of adequate alternative water supply

(a) If a WSSC is a claim for compensation for the cost of a water well or wells, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells) of the water well or wells actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water well or wells), estimated by the Department after consideration of the report submitted under (a)2 below, of constructing the water well or wells with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be the amount required to satisfy the users' requirements set forth in (d) below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.2(c)3 and 4, with respect to the water well or wells actually constructed; and

ii. The design and specifications of the water well or wells that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the wells determined in accordance with (a)1 above.

(b) If a WSSC is a claim for compensation for the cost of water storage facilities, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water storage facilities) of the water storage facilities actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water storage facilities), estimated by the Department after consideration of the report submitted under (b)2 below, of the water storage facilities with the minimum useful storage capacity necessary to supply potable water sufficient to satisfy the users' requirements set forth in (d) below. Such capacity shall be the minimum necessary to satisfy the requirements of N.J.A.C. 7:19-6.7, and maintain a minimum of 20 pounds per square inch gauge (psig) water pressure at street level throughout the distribution network, under all required flow conditions, but shall not include any additional capacity required for use in firefighting.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.8, with respect to the water storage facilities actually constructed; and

ii. The design and specifications of the water storage facilities that would be required to provide an adequate supply of potable water to the total number of residential and nonresidential users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum useful storage capacity necessary to supply potable water to the users described in (d) below.

(c) If a WSSC is a claim for compensation for the cost of water transmission and distribution lines, the amount otherwise eligible for compensation from the Fund shall be reduced as follows:

1. The amount eligible for compensation from the Fund shall be reduced by the following amount:

$$RA = AC - NC$$

where:

i. RA equals the amount of the reduction;

ii. AC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines) of the water transmission and distribution lines actually constructed; and

iii. NC equals the cost (including without limitation construction costs, design and engineering costs, and finance charges incurred in the design and construction of the water transmission and distribution lines), estimated by the Department after consideration of the report submitted under (c)2 below, of constructing the water transmission and distribution lines with the minimum capacity necessary to supply potable water to the affected area. Such minimum necessary capacity shall be determined as follows:

$$\text{Minimum necessary capacity} = (RC + NRC)$$

where:

(1) RC is the capacity, expressed in GPM and computed pursuant to (c)3 below, of water transmission and distribution lines required to serve the number of residences listed in (d)1 below; and

(2) NRC is the capacity, expressed in GPM and computed pursuant to (c)3 below, of water transmission and distibution lines required to serve all nonresidential an multifamily users listed in (d)2 and (d)3 below.

2. The claimant shall cause the water purveyor to submit a report (or, if the water purveyor is the claimant, the water purveyor shall submit the report), certified by a licensed professional engineer, setting forth the following:

i. Such information as is required to satisfy the requirements of N.J.A.C. 7:10-11.7(c), with respect to the water transmission and distribution lines actually installed; and

ii. The design and specifications of the transmission and distribution line or lines that would be required to provide an adequate supply of potable water to all of the users listed in (d) below. The engineer's computation of such design and specifications shall be justified by hydraulic analysis without consideration of additional capacity necessary for use in firefighting. The engineer's report shall contain a calculation of the minimum necessary capacity of the lines

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(designated as "(RC + NRC)" in the formula set forth in (c)1 above), computed in accordance with (c)3 below.

3. RC and NRC shall not include such additional capacity as may be necessary for use in firefighting. RC and NRC shall be computed in accordance with the following:

i. Instantaneous water demands for residential service connections to the types of residences not listed in (a)1v above shall be based upon a flow of 12 GPM per residence for the first 14 residences, and three GPM for each additional residence. Instantaneous water demands for service connections to the types of establishments listed in (a)1v above shall be equal to the requirements set forth in (a)1v above, multiplied by the peaking factor of 10 (unless the Department determines that a different peaking factor would be more accurate), and expressed in GPM. For the purposes of (c)1 above, (RC + NRC) shall equal the total instantaneous water demands, adjusted pursuant to (c)3vi below;

ii. The maximum velocity in the water main shall not exceed five feet per second;

iii. The coefficient of friction "c" value as used in the Hazen-Williams formula shall be 100;

iv. The residual pressure in the main at the street level under the maximum flow condition as indicated herein shall not be less than 20 pounds per square inch;

v. The hydraulic analyses shall be performed using the Hazen-Williams formula for determining friction losses and the Hardy-Cross method for determining flow conditions for multiple piping systems; and

vi. If the maximum water demands, maximum velocity, "c" value, residual pressure, and hydraulic analysis pursuant to (c)3i through v above require a diameter of water pipe which is not a commonly commercially available size, then the total instantaneous water demands shall be adjusted to reflect the use of the next largest commonly commercially available diameter of water pipes.

4. If any section of transmission or distribution line has been extended beyond the point necessary to service any property within the affected area, then any and all costs associated with that section of line beyond the boundary of the affected area shall be the sole responsibility of the water purveyor and will not be eligible for compensation from the Fund. This exclusion from eligibility shall not apply to extensions which the Department has stated in writing are required for effective operation of the water system.

(d) For the purpose of calculating the minimum necessary capacity of water wells under (a) above, water storage facilities under (b) above, or water mains under (c) above, the potable water requirement of the users of such wells, storage facilities or mains is the aggregate of the potable water requirements listed in (d)1, 2 and 3 below.

1. The potable water requirements of residential users in the affected area equals the following:

$$RR = (R \times 350 \times PF)$$

where:

i. RR equals the potable water requirements of residential users in the affected area;

ii. R equals the sum of A and B below:

(1) The number of single-family residences within the affected area which are in existence or under construction, or for which building permits have been issued, before the Department delineated the SFCA; and

(2) The number of tax lots contained in the affected area upon which no residences or nonresidential improvements have been constructed or are under construction as of the time when the Department delineated the SFCA, and for which no building permit to construct one or more residences or nonresidential improvements has been issued prior to the time when the Department delineated the SFCA;

iii. 350 represents a potable water requirement of 350 gallons per day (GPD) to serve each single-family residence; and

iv. PF represents the peaking factor by which the 350 GPD requirement will be multiplied, which peaking factor will be equal to two unless the Department determines that a different peaking factor would be more accurate.

2. The potable water requirements of nonresidential and multifamily users are set forth in the following table, and include all nonresidential and multifamily residential facilities within the affected area which are in existence or under construction, or for which building permits have been issued, prior to the time when the Department delineated the SFCA:

Type of Establishment	Potable water requirements (in GPD per person except as noted)
1. Apartment buildings (assuming one person per bedroom)	75
2. Rooming houses	50
3. Boarding houses	75
Add for each nonresident boarder:	15
4. Hotels	75
Add if laundry facilities are on premises:	37.5
5. Motels and tourist cabins	75
6. Mobile home parks	100
7. Restaurants	10
8. Camps	
Barracks type	50
Cottage type	40
Day camps	15
9. Day schools	10
Add for cafeteria:	5
Add for showers:	5
Add for laboratories:	5
10. Boarding schools	100
Add if laundry facilities are on premises:	50
11. Industrial property (per eight hour shift)	25
12. Hospitals (depending on type)	150-250
13. Institutions other than hospitals	75-125
14. Picnic grounds and comfort stations	10
Add if showers are on premises:	5
15. Swimming pools and bathhouses	10
16. Clubhouses (per resident member)	60
Add per nonresident member:	25
17. Nursing homes	150
18. Campgrounds (GPD per individual sewer hookup)	100
Add if laundry facilities are on premises:	50
19. Retail and office space (GPD per square foot)	.125
20. Self-service laundries (gallons per wash)	50

To determine the well capacity required to serve the above establishments, the potable water requirements set forth in the table shall be multiplied by a peaking factor of two, unless the Department determines that a different peaking factor would be more accurate.

3. The potable water requirements of agricultural, silvicultural, industrial or other users not listed in the table at (d)2 above are actual requirements of all such users which are located in the affected area and meet the requirements of both 3i and ii below:

i. Before the Department delineated the SFCA, the user's facility was in existence or under construction, or a building permit had been issued for its construction;

ii. The user is unable to use the existing source of potable water, because such source has become unsuitable for the user's particular use as a result of the discharge; and

iii. Connection to the replacement water supply system is the most cost-effective environmentally sound means of remedying the damages incurred by the user as a result of the discharge.

7:1J-3.5 Other reductions in amount eligible for compensation from Fund

(a) If the water supply system which is the subject of the claim is to be operated by a private water purveyor, the aggregate amount eligible for compensation from the Fund for such water supply

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system shall be reduced by an amount equal to five times the aggregate expected average annual water bill of all residential and nonresidential users within the affected area.

(b) If the claimant is the water purveyor, the amount eligible for compensation from the Fund shall be reduced further by the surplus debt service payments received by the water purveyor, calculated as follows:

$$SDSP = \frac{(DSP)\ (NR)}{ER}$$

where:

1. SDSP represents the surplus debt service payments;
2. DSP equals the aggregate amount of the payments due on all debt obligations of the water purveyor reflected in the computation of the water purveyor's rates, and incurred before the making of the WSSC, which payments are due during the period beginning on the date on which water service commences to new ratepayers not previously served by the water purveyor before the construction of the water supply system which is the subject of the claim, and ending on the first anniversary of the effective date of the water purveyor's rates in effect as of the commencement of such service;
3. NR equals the number of new ratepayers served by the new water supply system, who were not served by such water purveyor before the construction of such facilities; and
4. ER equals the number of existing ratepayers served by the water purveyor immediately prior to the making of the WSSC.

(c) No portion of the cost of any water supply system which had been installed or for which installation had begun before the discharge, and which commences operation after the discharge, shall be eligible for compensation from the Fund.

(d) If all or part of the cost of any water supply system has been paid from the Fund, no part of the cost incurred in connection with any replacement equipment for such system shall be eligible for compensation from the Fund. If, as a result of an error or omission in the design, construction, installation or operation of a water supply system, corrective action (including, without limitation, the installation of replacement or additional equipment) is necessary for proper operation of the water supply system, no part of the cost of such corrective action shall be eligible for compensation from the Fund.

(e) Costs required under BRC regulations: No costs which a water purveyor is required to incur under regulations promulgated by the Board of Regulatory Commissioners (including, without limitation, the cost of meters required to be provided under N.J.A.C. 14:3-4.1, and the cost of the work to be done under N.J.A.C. 14:9-2.1 upon making service connections) shall be eligible for compensation from the Fund.

(f) If the water purveyor or a government entity has charged fees or other costs for connecting individual properties to the water supply system which is the subject of the claim, the amount of the water purveyor or government entity's claim, eligible for compensation from the Fund shall be reduced by the aggregate amount of such fees or costs.

(g) With respect to any connection fee or tapping fee which the claimant pays for connection of any property to the water system, only the portion of such fee which represents the actual cost of the physical connection shall be eligible for compensation from the Fund. Any portion of such fee which represents other amounts allowed under N.J.S.A. 40:14B-21 is ineligible for compensation from the Fund.

7:1J-3.6 Delineation of Spill Fund Claims Area (SFCA)

The Spill Fund Claims Area (SFCA) is the geographic area delineated by the Department, consisting of the currently known extent of ground water pollution determined by the Department pursuant to N.J.A.C. 7:1J-3.7, combined with the most probable pollution migration zone determined by the Department pursuant to N.J.A.C. 7:1J-3.8.

7:1J-3.7 Currently known extent of ground water pollution

(a) The currently known extent of ground water pollution is the volumetric extent of ground water in which concentrations of one or more hazardous substances exceed the applicable contaminant standard for such hazardous substances.

(b) The delineation of the currently known extent of ground water pollution shall be based upon sampling data collected by the Department or by other persons approved by the Department in writing, pursuant to a sampling plan approved by the Department in writing. Such sampling data shall be plotted on a copy of the tax map of the municipality in which the sampling is being performed.

7:1J-3.8 Most probable pollution migration zone

(a) The most probable pollution migration zone is the volumetric extent of ground water for which the Department determines under (b) below that, within the remediation period (as defined below), it is most probable that concentrations of one or more hazardous substances in ground water will exceed the applicable contaminant standard for any such hazardous substances. The remediation period shall be the three years after delineation of the Spill Fund Claims Area, unless the Department determines, in its best professional judgment based upon the particular circumstances of the aquifer contamination, that the remediation of the aquifer contamination will not be completed within three years. In such event, the remediation period shall be the time the Department estimates for the completion of the remediation, in its best professional judgment based upon the particular circumstances of the aquifer contamination.

(b) The delineation of the most probable pollution migration zone is based upon the most probable ground water flow directions, and the most probable pollutant transport rate, for each hazardous substance present in the ground water. In delineating the most probable pollution migration zone, the Department will consider factors including, without limitation, ground water elevations, the location and distribution of pumping wells, the distribution and concentration of pollutants in affected wells, topography, and geology.

(c) The Department shall calculate the most probable pollutant transport rate pursuant to the following formula:

$$Vpt = \frac{Ki}{(ne)(Rd)}$$

where:

1. Vpt equals the most probable pollutant transport rate, expressed in feet per day, of each hazardous substance present in the ground water in a concentration exceeding the applicable contaminant standard;
2. K equals aquifer hydraulic conductivity, measured in affected wells and expressed in feet per day;
3. i equals hydraulic gradient, expressed in feet per feet;
4. ne equals aquifer effective porosity; and
5. Rd equals the retardation factor, calculated pursuant to the following formula:

$$Rd = 1 + \frac{Kd(pb)}{ne}$$

where:

i. Kd equals distribution coefficient;
ii. pb equals average dry bulk density; and
iii. ne equals effective porosity.

(d) The most probable pollutant transport rate (expressed in feet per day), multiplied by the remediation period (expressed in days), yields the migration distance. The migration distance, projected along the most probable ground water flow directions from the currently known extent of ground water pollution (that is, the leading edge of the plume), yields the most probable pollution migration zone.

7:1J-3.9 Cost of obtaining estimate by Department consultant of amount eligible for compensation

(a) Upon the written request of a government entity claimant, accompanied by preliminary plans and specifications for the water supply system which is the subject of a WSSC (including, without limitation, the engineer's reports required under N.J.A.C. 7:1J-3.4(a)2, (b)2 and (c)2), the Department shall cause its consult-

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ant to review such plans and specifications and make a preliminary estimate of the amount of the WSSC which will be eligible for compensation from the Fund. The Department shall not be bound or estopped by the preliminary estimate in making a final determination of the amount of the claim eligible for compensation, if there are any changes in the preliminary plans and specifications which are the subject of the preliminary estimate, or if the Department finds that there are errors, omissions or other changes necessary from the preliminary plans and specifications, or if there are other changes in circumstances affecting the WSSC.

(b) The preliminary estimate prepared under (a) above shall be at the claimant's expense. Before the preliminary estimate is performed, the Department shall inform the claimant of the cost of the preliminary estimate, and shall cause the preliminary estimate to be performed only if the claimant provides the Department with written consent to the performance of the estimate at the claimant's expense. The amount eligible for compensation from the Fund shall be reduced by the cost of such estimate.

SUBCHAPTER 4. PROPERTY VALUE DIMINUTION CLAIMS

7:1J-4.1 Extent of eligibility

Claims for diminution of property value shall be eligible for compensation from the Fund only to the extent that such diminution is attributable to the discharge of a hazardous substance. A diminution of property value may be deemed atributable to a discharge of a hazardous substance notwithstanding the lack of any physical intrusion of the hazardous substance onto the subject property. A diminution in the value of any improvements to the subject property made after the date of discovery of damages shall not be eligible for compensation from the Fund.

7:1J-4.2 Requirements for eligibility

(a) Except for claims settled under N.J.A.C. 7:1J-4.6 or 4.7, claims for diminution of property value are not eligible for compensation by the Fund unless the claimant has sold the subject property and the administrator determines that the claimant's sale of the subject property was in good faith, based upon the appraisals made pursuant to N.J.A.C. 7:1J-4.3 and the information submitted pursuant to N.J.A.C. 7:1J-4.5.

(b) Within 30 days after filing the claim, the claimant shall list the subject property for sale with one or more licensed real estate brokers who are members of a multiple listing service (or its commercial equivalent, for nonresidential property). The claimant shall so list the subject property for sale continuously, until entering into an agreement for the sale of the subject property; provided however, that discontinuities made necessary by the claimant's good faith choice to list the subject property with another broker shall not be deemed to violate this requirement. One discontinuity of less than 14 days shall be presumed to be in good faith.

7:1J-4.3 Appraisal of subject property

(a) After the claimant has elected under N.J.A.C. 7:1J-4.9 to pursue the claim, the administrator shall obtain appraisals of the value of the subject property. The appraisals shall be as of the time of the sale of the subject property (or, for claims under N.J.A.C. 7:1J-4.6 or 4.7, as of the date the administrator makes the settlement offer). Once such appraisal shall state the value of the subject property as affected by the discharge (unless the administrator elects not to obtain such an appraisal, pursuant to (b) below), and one appraisal shall state the value of the subject property absent the effect of the discharge. The appraisals may, in the administrator's discretion, be based upon one or more of the following factors:

1. Sales of comparable properties in the immediate area;
2. Income generated by the subject property;
3. Replacement cost of the subject property; and/or
4. Such other factors as are ordinarily considered by real estate appraisers who are members of the Appraisal Institute or who are licensed or certified to perform real estate appraisals in New Jersey.

(b) The administrator may elect not to obtain an appraisal of the subject property as affected by the discharge if the administrator determines, in his or her discretion, that there is insufficient information to obtain a meaningful appraisal of the subject property reflecting the effect of the discharge. Without limiting the discretion of the administrator under this subsection, the administrator may determine that there is insufficient information if fewer than three comparable properties which have been affected by the discharge have been sold as of the date on which the claim is filed.

7:1J-4.4 Valuation of claim

(a) If the administrator has obtained appraisals pursuant to N.J.A.C. 7:1J-4.3(a), the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (a)1 and (a)2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and
2. The greater of:

i. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), reflecting the effect of the discharge on such value; or

ii. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(b) If, pursuant to N.J.A.C. 7:1J-4.3(b), the administrator has elected not to obtain an appraisal of the subject property as affected by the discharge, the amount of the claim eligible for compensation from the Fund shall be equal to the difference between (b)1 and 2 below, adjusted in accordance with (c) below:

1. The appraised value of the subject property determined pursuant to N.J.A.C. 7:1J-4.3(a), excluding the effect of the discharge on such value; and
2. The price actually obtained by the claimant upon the sale of the subject property, without closing adjustments.

(c) The administrator may, in his or her discretion, adjust the amount determined pursuant to (a) or (b) above by considering other information available to the administrator which supports a conclusion that the amount determined pursuant to (a) or (b) above does not accurately reflect the diminution in the value of the subject property resulting from the discharge. Such information may include, but is not limited to, any of the following:

1. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that factors other than the discharge affected the sale prices of such properties. Such information may include, without limitation, the prices of comparable properties within and outside the area in which the discharge may have affected real property values; the time elapsed between listing for sale and execution of an agreement of sale for comparable properties within and outside the area in which the discharge may have affected real property values; and specific terms of the agreements of sale (such as financing terms, personal property included in the sale, and apportionments of closing costs);
2. Information concerning sales of comparable properties considered in establishing an appraisal pursuant to N.J.A.C. 7:1J-4.3(a), indicating that such properties have characteristics which distinguish them from the subject property, and which affect the values of such properties;
3. Information concerning the sale of the subject property, indicating that the difference between the sale price and the appraised value of the property reflected factors other than the discharge. Such information may include, but is not limited to, the time elapsed between listing of the subject property for sale and execution of an agreement of sale; the length of time and subject property was offered for sale; the nature and number of any offers to purchase the subject property; the difference between the initial listing price and the sale price; the number and extent of intermediate reductions in the listing price; specific terms of the agreement of sale for the subject property (such as financing terms, personal property included in the sale, the apportionments of closing costs); data concerning the real estate market generally at the time of the sale of the subject property; and other evidence of the good faith nature of the sale required to be submitted under 7:1J-4.5; and

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4. The effect of the cleanup and removal of a discharged hazardous substance or of other amelioration of the damages resulting from a discharge.

7:1J-4.5 Evidence of good faith sale

(a) Except as provided in N.J.A.C. 7:1J-4.7 and 4.8, within 10 days after the closing of a sale of the subject property, the claimant shall submit the following documents to the Department:

1. Copies of all listing agreements for the sale of the subject property;

2. Copies of all written offers to purchase the subject property;

3. A copy of the contract of sale of the subject property;

4. Copies of all settlement statements, including without limitation the HUD-1 Uniform Settlement Statement form if required by 24 CFR 3500.8;

5. A copy of the deed conveying the subject property, together with a copy of the transmittal letter forwarding the deed to the county clerk or register of deeds and mortgages for recording;

6. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1J-1.6, stating the following:

i. The sale price of the subject property without closing adjustments;

ii. That neither the claimant nor any person not listed on the settlement statements has received any money or other compensation from any party in connection with the subject property, except as set forth on the settlement statements; and

iii. That the documents submitted pursuant to (a)1 through 5 above are true copies of the original documents executed and delivered in connection with the sale of the subject property; and

7. An affidavit by the claimant's realtor, stating the following:

i. That the realtor is a member of the multiple listing service, and listed the property for sale with the multiple listing service (unless the subject property is of a type not normally sold through a multiple listing service);

ii. The period of time the subject property was offered for sale, and the period of time the property was listed for sale with the multiple listing service;

iii. The initial listing price;

iv. All changes in the listing price, and the dates of such changes;

v. A record of all inquiries received from potential purchasers regarding the subject property, and of all showings or open houses held in the course of offering the subject property for sale, including the names and addresses of all persons who inquired about the subject property, were shown the subject property, or attended open houses at the subject property, and a description of the responses of these persons to the subject property; and

vi. A record of the amount and date of each offer made for the purchase of the subject property.

(b) A determination by the administrator that the claimant arrived at the sale price in good faith shall not preclude the administrator from determining that any other aspect of the sale of the subject property was not in good faith.

(c) The administrator may deny the claim or adjust the amount eligible for compensation, if based upon the evidence required under (a) above, the administrator determines that any aspects of the sale of the subject property was not in good faith.

7:1J-4.6 Settlement based upon legal inability to sell the subject property

(a) If, solely as a result of the discharge, the claimant is legally unable to sell the subject property (for example, if a certificate of occupancy cannot be issued for the subject property as a result of the discharge, and the subject property is located in a municipality in which a certificate of occupancy is required for the sale), the administrator may, in his or her discretion, offer to settle the claimant's claim against the Fund in accordance with this section.

(b) If the administrator elects to settle a claim pursuant to this section, the administrator shall determine the amount of the claim eligible for compensation pursuant to N.J.A.C. 7:1J-4.4. An offer by the administrator to settle the claim shall be in such amount.

(c) The making, acceptance or rejection, and arbitration of such settlement offer pursuant to (b) above shall be in accordance with N.J.A.C. 7:1J-8 and 9.

(d) As a condition of the settlement of the claim pursuant to this section, the claimant shall cause all persons having an ownership interest in the subject property (including without limitation any dower or curtesy interest preserved pursuant to N.J.S.A. 3B:28-1) to execute, acknowledge and deliver to the Department a document, in recordable form, granting to the Fund a lien on the subject property securing repayment of the full amount of the settlement. The Department shall foward such document to the county clerk or register of deeds and mortgages of the county in which the subject property is located. Such document shall be prepared and recorded at the claimant's expense.

(e) The administrator shall execute, acknowledge and deliver to the claimant a discharge of the lien upon payment of the following amount (provided however, that if the payment amount calculated below is less than zero, the administrator shall execute, acknowledge and deliver the discharge of the lien upon the claimant's written request, without the payment of any money; and provided further, that if the payment amount calculated below exceeds the amount of the settlement, the administrator shall execute, acknowledge and deliver the discharge of the lien upon repayment of the settlement amount, plus interest at the rate for post-judgment interest established in the Rules Governing the Courts of the State of New Jersey, as such rate is in effect as of the date of the settlement):

$$\text{Payment amount} = SP - (AV - S)$$

where:

1. SP equals the sale price of the subject property, as adjusted pursuant to the criteria listed in N.J.A.C. 7:1J-4.4(c), if the administrator determines that the actual sale price does not accurately reflect the diminution in the value of the subject property resulting from the discharge;

2. AV equals the appraised value of the subject property, absent the effects of the discharge, as adjusted under N.J.A.C. 7:1J-4.4(c); and

3. S equals the amount of the settlement made pursuant to this section.

7:1J-4.7 Settlement when emergency relocation is necessary

If the administrator determines, in his or her discretion, that environmental conditions at the subject property which result from a discharge occurring after April 1, 1977 create a substantial risk of imminent harm to the health and safety of the occupants of the subject property, the administrator may suspend any or all of the requirements of N.J.A.C. 7:1J-4.2, 4.3, 4.4 and 4.5 and may immediately award compensation to enable the occupants of the property to relocate temporarily or permanently. Such an award may include all or part of the purchase price, relocation costs, and assumption of the costs of property encumbrances.

7:1J-4.8 Contract for sale of property entered into before filing of claim

(a) If a claimant has entered into a contract for the sale of property before filing a property value diminution claim with respect to such property, the administrator may, in his or her discretion, settle such a claim in accordance with this section.

(b) Claims made pursuant to this section shall be eligible for compensation only to the extent provided in N.J.A.C. 7:1J-4.1, and only if the subject property satisfies the eligibility requirements set forth in N.J.A.C. 7:1J-4.2.

(c) Subject to the limitation in N.J.A.C. 7:1J-4.1, the administrator shall determine the amount of the settlement offer pursuant to N.J.A.C. 7:1J-4.4.

(d) Together with the claim (or, if the claim is made before closing of the sale of the subject property, within 10 days after closing), the claimant shall submit to the Department all documents required pursuant to N.J.A.C. 7:1J-4.5; provided, however, that the Department may, in its discretion, refrain from requiring submission of the documents normally required under N.J.A.C. 7:1J-4.5(a)1 and 4.5(a)7.

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7:1J-4.9 Suspension of claims

(a) The Department shall send notice of the requirements of this chapter to each claimant who filed a property value diminution claim before the effective date of this chapter. Within 60 days after receipt of such notice, each claimant shall notify the Department of his or her election to:

1. Pursue the claim;
2. Suspend the claim for the period provided in (c) below; or
3. Withdraw the claim.

(b) If a claimant fails to notify the Department of his or her election under (a) above, the claimant shall be deemed to have suspended the claim for the period provided in (c) below.

(c) All claims suspended pursuant to (a) or (b) above will remain in suspension until one of the following occurs:

1. The Department receives notice from the claimant, stating that the claimant desires to reinstate the claim; or
2. The claimant receives notice from the Department, stating that the remediation of the discharge has been completed to the satisfaction of the Department, and that the administrator is therefore denying the claim.

(d) At any time during the period of suspension under (c) above, a claimant may request reinstatement of the claim by notice to the Department.

(e) At the end of the suspension period provided in (c) above, the claim will be automatically reactivated, unless the claimant has previously withdrawn the claim.

(f) The administrator may, in his or her discretion, reactivate a claim suspended under N.J.A.C. 7:1J-2.4(b) upon the conclusion of litigation or arbitration between the claimant and any potentially responsible parties, which litigation or arbitration concerns such damages. For the purpose of this subsection, litigation or arbitration shall be deemed to have concluded upon the occurrence of any of the following: a complete settlement of the litigation or arbitration; or the entry of a certification, judgment or order completely resolving the litigation or arbitration, followed by the expiration of time allotted to appeal or otherwise challenge such certification, judgment or order.

(g) Upon reactivation of a suspended claim:

1. The administrator shall confirm the reactivation by written notice to the claimant;
2. The claim will be processed in accordance with this chapter; and
3. Within 30 days after receiving notice of the reactivation, the claimant shall list the subject property for sale with one or more licensed brokers who are members of a multiple listing service (or its commercial equivalent, for claims involving commercial property or other properties not normally offered for sale through a multiple listing service).

(h) Upon the claimant's second suspension of the claim, the administrator shall dismiss the claim, without prejudice. If the claimant subsequently files a new claim for the same damages contained in the original dismissed claim, the new claim will be deemed to have been filed as of the date of filing of the original dismissed claim.

SUBCHAPTER 5. EMERGENCY RESPONSE CLAIMS BY LOCAL UNITS

7:1J-5.1 Eligibility of emergency response claims for compensation

Emergency response claims are eligible for compensation from the Fund in accordance with the requirements of this chapter, to the extent permitted under this subchapter.

7:1J-5.2 Procedure for making emergency response claim

(a) Emergency response claims shall be subject to the claims procedure requirements of N.J.A.C. 7:1J-6.

(b) In addition to the information and documents required to be submitted under N.J.A.C. 7:1J-6.3(a), a claimant making an emergency response claim shall submit the following:

1. An affidavit by the claimant, signed by the person required to sign the claim and certified in accordance with N.J.A.C. 7:1J-1.6, stating that the claimant obtained the approval of the Department before taking the emergency response action which is the subject of the claim, identifying the Department employee from whom the approval was obtained, stating the date of the approval, and the form in which the approval was transmitted to the claimant (for example, by telephone, mail, or facsimile transmission);
2. Reports by the police department and fire department concerning the emergency response action which is the subject of the claim, if such reports have been prepared;
3. Reports by the local hazardous materials unit and the local health department concerning the emergency response action which is the subject of the claim, if such reports have been prepared;
4. Documentation of the time spent by the claimant's personnel, personnel of other local units, and personnel acting at the request of the claimant or other local units, in connection with the emergency response action which is the subject of the claim; and
5. Receipts or other evidence of payment of costs incurred in the emergency response action which is the subject of the claim.

7:1J-5.3 Processing of emergency response claims

(a) Within 10 days after an emergency response claim is filed, the Department shall notify the claimant whether the claim is complete. If the claim is incomplete, the Department shall list in the notice the information necessary to make the claim complete, and specify in the notice the date by which the necessary information is to be submitted. The administrator may administratively close the claim under N.J.A.C. 7:1J-2.8 for failure to submit the necessary information in the allotted time.

(b) The administrator shall approve or deny an emergency response claim, without regard to the requirements of N.J.A.C. 7:1J-7, 8 and 9, within 120 days after the filing of a completed claim, including all supportive information or documentation required under N.J.A.C. 7:1J-5.2, (a) above, and 7:1J-6.

(c) If the administrator fails to approve (in whole or in part) or deny the emergency response claim within the 120 days allotted under (b) above, all costs in the claim shall be deemed approved.

(d) If the administrator denies the emergency response claim or approves only part of the costs claimed, the claimant shall not be precluded from seeking recovery of the costs denied by the administrator under any other provision of statutory law or in accordance with any remedies available under common law.

7:1J-5.4 Notice to potentially responsible parties

If the Department determines that a person is a potentially responsible party in connection with a discharge or threatened discharge which is the subject of an emergency response claim, the Department shall provide such person with written notice of the nature of the claim and the identity of the claimant.

SUBCHAPTER 6. CLAIMS PROCEDURE

7:1J-6.1 Time for filing of claims

Claimants shall submit any claims to the Department not later than one year after the date of discovery. If a claimant fails to submit a claim to the Department within such one-year period, the claimant shall be deemed to have waived such claim. Such waiver is with prejudice and shall bar all recourse by the claimant against the Fund for any damages arising out of or related to the discharge or threatened discharge.

7:1J-6.2 Submission of claim

(a) For the purposes of determining whether a claim has been timely filed pursuant to N.J.A.C. 7:1J-6.1, the following shall apply:

1. If the claimant submits the claim by United States mail, the claim will be deemed filed as of the date of mailing by the claimant.
2. If the claimant submits the claim via another means of delivery, the claim will be deemed filed as of the date of receipt by the Department.

7:1J-6.3 Contents of claim

(a) Claims shall be typewritten or written legibly in ink, and shall contain the following information:

1. The name of the claimant;
2. The street address of the claimant;
3. The mailing address of the claimant;

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4. The home and business telephone numbers of the claimant;

5. The name, mailing address, telephone number, and relationship to the claimant of any person designated to receive communications from the Department pursuant to N.J.A.C. 7:1J-6.7;

6. Whether the claimant is an individual, general partnership, limited partnership, corporation, local government entity, Federal government entity, or state government entity; and

i. If the claimant is a limited partnership, the names and addresses of all general partners;

ii. If the claimant is a general partnership, the names and addresses of all partners; and

iii. If the claimant is a corporation, the names and addresses of all directors and of all officers;

7. A statement that the claimant claims to have actually incurred damages, as such term is defined in N.J.A.C. 7:1J-1.4, that the claimant has not received compensation from any other source for such damages, and that the claimant is not a potentially responsible party in connection with the discharge which is the subject of the claim. Such statement need not be specific about the amount or the nature of such damages;

8. Except as provided in (a)9 below, if the claim is for property value diminution, a statement that the claimant is attempting to sell the subject property. The administrator shall deny, without prejudice, a claim for property value diminution (other than as provided in (a)9 below) which does not contain this statement. The claimant may again file the claim upon commencing efforts to sell the subject property; and

9. If the claim is for property value diminution and is made pursuant to N.J.A.C. 7:1J-4.8, all documents required by N.J.A.C. 7:1J-4.8 to be submitted with the claim, and a statement that the claimant has contracted to sell or has sold the subject property.

(b) The claimant shall submit to the Department any of the following types of information requested by the Department;

1. The location of the property from which the claimant believes the discharge to have emanated or at which the threatened discharge occurred, including the name of the site, the street address, the municipality, and the county;

2. With respect to all persons whom the claimant believes to be responsible for the discharge or threatened discharge:

i. The name and address of each such person;

ii. If known to the claimant, whether each such person is an individual, general partnership, limited partnership, corporation or government entity;

iii. Whether any such person has admitted responsibility for the discharge or threatened discharge from which the claim arose, or liability for the amount of damages for which the claim is being made; and

iv. If any such person has admitted responsibility or liability pursuant to iii above, the names of such persons and the nature of such admissions;

3. With respect to a claim involving damage to personal property:

i. The date or dates on which the damage occurred;

ii. The location of the personal property at the time the damage occurred;

iii. A description of the personal property which was damaged;

iv. A description of the damage;

v. The original cost paid by the claimant for the damaged personal property;

vi. The date the claimant acquired the damaged personal property;

vii. Evidence of the claimant's ownership of the damaged personal property;

viii. An estimate of the cost of repairing the damage to the personal property, and an estimate of the value of the damaged personal property as of the time of the damage;

ix. The name, address and qualifications of any persons who prepared the estimates required by (b)3viii above; and

x. The location at which the administrator or his designee can inspect the damaged personal property;

4. A description of any damage to real property located thereon, including:

i. The date on which the damage occurred;

ii. The precise location of the damaged real property, including the street address, the tax lot and block, the municipality, and the county;

iii. A description of the predominant use of the damaged real property;

iv. A detailed description of the damage to the real property;

v. An estimate of the cost of remedying the damage, and the name, address and qualifications of the person making the estimate; and

vi. A description of the claimant's interest in the damaged real property; and documents evidencing such interest. Documents evidencing fee title to the damaged real property shall include an affidavit of title executed by the claimant, together with either a copy of the recorded deed conveying title to the claimant, or an owner's title insurance policy insuring the claimant's interest in the property. Documents evidencing a leasehold interest in the property shall include a copy of the lease for the property, together with an affidavit of the claimant stating that the lease is in full force and effect;

5. A detailed description of the facts known to the claimant which support the claim, including without limitation the following:

i. The facts which lead the claimant to believe that the discharge caused the damages suffered by the claimant; and

ii. The facts which lead the claimant to believe that a person is a potentially responsible party;

6. The names and addresses of any witnesses known to the claimant who may have knowledge concerning the discharge, threatened discharge, or damage;

7. The names of any public agencies (including without limitation any local or state police or any other local, state, interstate or federal agencies) who have investigated the discharge or threatened discharge, and, if known to the claimant, the names of the persons who conducted the investigations on behalf of such agencies;

8. If any of the damaged real or personal property or any of the asserted lost income or tax revenue may be covered by any insurance policy or policies, the following information:

i. The name and address of the insurance carrier which issued the policy;

ii. The policy number;

iii. A copy of the certificate of insurance; and

iv. Copies of any correspondence between the insurance carrier and the claimant or the claimant's representatives concerning the discharge or threatened discharge;

9. The names and addresses of any persons other than the Fund (including without limitation insurance companies) against whom the claimant has asserted a claim;

10. Whether the claimant has received or agreed to receive any compensation from any person in connection with the discharge or threatened discharge, and the details of any such compensation or agreement to receive compensation;

11. A description of any action taken to repair, restore or replace damaged real property, including without limitation the following:

i. The name and address of the person who has taken such action; and

ii. The cost of such action;

12. If the claimant asserts damages which include a loss of income, the claim shall include the following information:

i. The total amount of the claimed loss of income;

ii. The period of time during which the claimant asserts that the loss of income has occurred;

iii. If the claimant asserts that the loss of income has occurred over a period exceeding 12 months, a breakdown of the loss of income by three-month periods, with the first such period commencing on the date of discovery;

iv. A detailed description of the method employed by the claimant in calculating the claimed loss of income;

v. A statement of whether all income, sales and other accounting and financial information supporting the claim is available for inspection, copying and audit by the Department;

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vi. If any of the information described in (b)12v above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vii. With respect to any of the information described in (b)12v above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information; and

viii. If any of the information described in (b)12v above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and of the auditors' reports;

13. If the claimant asserts damages which include a loss of tax revenue, the claim shall include the following information:

i. The total amount of the claimed loss of tax revenue;

ii. The period of time during which the claimant asserts that the loss of tax revenue has occurred;

iii. A detailed description of the method employed by the claimant in calculating the claimed loss of tax revenue;

iv. A statement of whether all financial information supporting the claim is available for inspection, copying and audit by the Department;

v. If any of the information described in (b)13iv above is not available for inspection, copying and audit, an explanation of why such information is unavailable for such purposes;

vi. With respect to the information described in (b)13iv above which is available for inspection, copying and audit, a description of where and when the Department can obtain access to such information;

vii. If any of the information described in (b)13iv above has been audited, certified or reviewed by a certified public accountant, the name, address, and telephone number of such accountant, and the date of such audit, certification or review. If such information has been audited, the claimant shall attach copies of all audited statements and of the auditors' reports;

14. Any other information which the claimant believes to be relevant to the claim; and

15. Any other information which the Department deems necessary to process the claim.

(c) Any documents supporting the claimant's assertion of costs incurred in ameliorating damage resulting from a discharge shall be presented as follows:

1. The claimant shall submit a compilation of all such costs, stating the aggregate amount of the costs incurred;

2. The claimant shall submit a breakdown of the aggregate costs incurred, stating which portion of the aggregate cost is attributable to ameliorating damage resulting from the discharge, and which portion is not; and

3. The claimant shall submit all bills, invoices, receipts and other documentation in an orderly fashion, accompanied by an index and/or a summary if the Department determines that an index or summary would assist in the organized and expeditious processing of the claim.

(d) The administrator may administratively close the claim pursuant to N.J.A.C. 7:1J-2.8 for failure to provide information under this section.

7:1J-6.4 Amendment of claim

A claimant may amend a claim, or a response to the Department's request for information, with respect to the nature or extent of the damages, the cause of the damages, the amount of the claim, or any other information relevant to the claim, until the occurrence of the earliest of the following: the approval of the claim by the administrator; the denial of the claim by the administrator; or the agreement to a settlement among a claimant and one or more potentially responsible parties.

7:1J-6.5 Consent to inspection

(a) Submission of a claim shall constitute consent by the claimant to the following:

1. The inspection of the damaged real and personal property by the administrator, the Department, the Board, and other persons designated by the administrator, the Department or the Board;

2. For all information submitted pursuant to N.J.A.C. 7:1J-6.3(b)12, 13, 14 or 15, the inspection, copying and audit of such information by the Department, the Board, and other persons designated by the administrator, the Department or the Board; and

3. The entry by the administrator, the Department, the Board, and other persons designated by the administrator or by the Board, onto any property to which the claimant has the right to grant access, or to which the claimant has the right to compel another person to grant access. Any cost which the claimant incurs in compelling such access shall be borne solely by the claimant.

7:1J-6.6 Notice of Intent to Deny; Denial

(a) The administrator shall deny a claim which, on its face, appears to be ineligible for compensation from the Fund.

(b) The administrator may issue a Notice of Intent to Deny (NOI) with respect to any claim which, on its face, does not contain information sufficient to support a determination that the claim is eligible for compensation from the Fund. The administrator shall send the claimant the NOI by certified mail, return receipt requested.

(c) The claimant may contest the NOI by submitting to the Department additional evidence in support of the claim, and evidence that any material fact set forth in the NOI is incorrect. The claimant shall submit such evidence within 30 days after the date on which the claimant received the NOI; provided however, that if the claimant has refused delivery of the NOI, the claimant shall submit such evidence within 30 days after the date the administrator mailed the NOI.

(d) If, after reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim does not clearly fail to satisfy the requirements for eligibility for compensation from the Fund, the administrator shall withdraw the NOI and process the claim in accordance with this chapter.

(e) The administrator shall deny the claim after the expiration of the 30-day period alloted under (c) above, if:

1. The claimant fails to submit any evidence to the Department within the 30-day period; or

2. After reviewing the evidence submitted pursuant to (c) above, the administrator determines that the claim clearly fails to satisfy the requirements for eligibility for compensation from the Fund.

(f) If the administrator denies the claim pursuant to (a) or (e) above, the administrator shall prepare a written statement setting forth the denial and the reasons therefor. The administrator shall send the claimant a copy of the statement by certified mail, return receipt requested.

(g) A claimant may request that a denial of a claim be arbitrated under N.J.A.C. 7:1J-9 if the denial was based solely upon the validity of the claim, and not upon other matters including, without limitation, untimely filing of the claim as shown on the face of the claim. The claimant shall make the request in writing within 20 days after receiving the administrator's written statement under (f) above; provided however, that if the claimant refuses delivery of the administrator's written statement, the claimant shall make the request for arbitration within 20 days after the date the administrator mailed the written statement. Failure to request arbitration before the expiration of such 20-day period shall operate as a waiver of any right to have the claim submitted to arbitration.

(h) A request for arbitration under (g) above shall contain the following information:

1. A denial of each fact disputed by the claimant which the administrator has asserted in the denial of the claim. The claimant's denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the claimant believes them to be;

2. If the claimant asserts that, based upon the facts asserted in the administrator's denial of the claim, the administrator's denial is improper as a matter of law, a specific explanation of the legal basis for that assertion;

3. Copies of written documents which the claimant is relying upon to support the request, provided however, that if the claimant has

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previously submitted such documents to the Department, a specific reference to such documents will be sufficient;

4. An estimate of the time required for the hearing; and

5. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(i) If the claimant does not submit the information required under (h) above within the time allotted under (g) above, the administrator shall deny the request. If the claimant fails to include all of the information required under (h) above, the administrator may deny the request.

(j) The administrator may require that the claimant submit additional information beyond that required under (h) above, if the administrator determines that such information is necessary to provide the administrator, the Department or the Board with adequate notice of the specific factual or legal bases for the claimant's objections to the denial.

7:1J-6.7 Communication with claimant or representative

The Department will direct all communications in connection with the claim to the person who signed the claim, unless the claimant submits to the Department a written statement, signed by the person required to sign the claim, designating a representative to receive communications from the Department.

7:1J-6.8 Relaxation of procedural requirements

(a) Except as provided by (b) below, the Department may relax any of the procedural requirements of this chapter if the administrator determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Nothwithstanding (a) above, the Department shall not relax procedural requirements of this chapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

SUBCHAPTER 7. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND POTENTIALLY RESPONSIBLE PARTIES

7:1J-7.1 Notice of claim to potentially responsible party

(a) If the administrator determines that a person is a potentially responsible party in connection with a discharge which is the subject of a claim, the administrator shall provide such person with written notice of the claim.

(b) The written notice provided under (a) above shall state the following:

1. The nature of the claim;

2. The identity of the claimant;

3. The time period established for settlement negotiations under N.J.A.C. 7:1J-7.2; and

4. The right to contest the validity or amount of the claim by requesting arbitration under N.J.A.C. 7:1J-8.2(a).

7:1J-7.2 Settlement negotiations

(a) If the administrator determines that one or more persons are potentially responsible parties in connection with a discharge which is the subject of a claim, the administrator shall establish a time period for settlement negotiations between all potentially responsible parties and the claimant. Such time period shall be no longer than 60 days, commencing as of the date set forth in the written notice under N.J.A.C. 7:1J-7.1, unless the administrator, the claimant and all potentially responsible parties agree upon a longer period. During this settlement negotiation period, all parties shall negotiate in good faith in attempt to resolve the subject claim. Such settlement negotiation period may be extended upon the agreement of the administrator, the claimant and all potentially responsible parties.

(b) The administrator may arrange for the assistance of a neutral third party to attempt to promote and arrange a settlement between the claimant and the potentially responsible parties.

7:1J-7.3 Effect of settlement between claimant and potentially responsible party

(a) If the source of the discharge which is the subject of the claim is determined, and one or more potentially responsible parties concede liability, the claimant and such potentially responsible parties may agree to a settlement which shall be final and binding upon the parties and which will waive all recourse by that claimant against the Fund in connection with the discharge which is the subject of the claim. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(b) If the source of the discharge which is the subject of the claim has not been determined, or if no potentially responsible party has conceded liability, the claimant and such potentially responsible parties may nonetheless agree to a settlement. Such settlement shall operate as a waiver by that claimant of all recourse against the Fund in connection with the discharge which is the subject of the claim, if the terms of the settlement in any way prejudice the subrogation or assignment rights of the Fund, or in any way impair the Fund's ability to obtain cost recovery. Such waiver shall be effective regardless of any communications or understanding between or among the claimant, potentially responsible parties, and/or the administrator or the Department.

(c) Notwithstanding the waiver under (a) or (b) above, if the settling potentially responsible party is or becomes insolvent or otherwise unable to perform its obligations under the settlement, the administrator may, in its discretion, allow the claimant to reinstate the claim against the Fund. If the claim is reinstated, the Fund shall not be bound by any aspect of the settlement with the potentially responsible party.

SUBCHAPTER 8. SETTLEMENT OF CLAIMS BETWEEN CLAIMANT AND FUND

7:1J-8.1 Request for payment upon failure to identify or settle with potentially responsible party

(a) A claimant may request payment of a claim from the Fund, if:

1. Based upon the information supplied by the claimant and other information obtained by the Department, the administrator has determined that he or she cannot identify any potentially responsible parties for the discharge from which the claim arose; or

2. The claimant has made good faith efforts to enter into a settlement with one or more potentially responsible parties, but has not entered into any such settlement within the time allotted under N.J.A.C. 7:1J-7.2.

(b) Upon receipt of a request under (a) above for payment of a claim from the Fund, the administrator shall provide written notice of the request to any potentially responsible parties who have been designated at or before the time of such claim.

7:1J-8.2 Contest of validity or amount of claim

(a) Any potentially responsible party may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If a person receiving notice of the claim under N.J.A.C. 7:1J-7.1 has not delivered a request for arbitration within 20 days after the date of delivery of the notice of the claim (or, if such person has refused delivery of the notice, 20 days after the date of mailing of the notice), such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(b) The administrator may contest the amount or validity of the claim by submitting the claim to arbitration.

(c) Any other person may contest the amount or validity of the claim by requesting that the administrator submit the claim to arbitration. If the person seeking to contest the claim has not delivered a request for arbitration within 20 days after receiving actual notice of the claim such person shall be deemed to have waived any right to have the claim submitted to arbitration.

(d) Upon receipt of a request for arbitration under (a) or (c) above, the administrator shall provide the person requesting arbitration with a copy of all information submitted to the administrator under N.J.A.C. 7:1J-6.3(a) and (b). Within 20 days after receipt of such information, the person requesting arbitration shall submit the following information to the administrator in writing:

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1. The name, address and telephone number of the person requesting arbitration, and such person's authorized representative;

2. A denial of each fact asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b) which the person requesting arbitration disputes. The denial shall fairly meet the substance of the disputed facts, and shall contain assertions of the facts as the person requesting arbitration believes them to be;

3. If the person requesting arbitration asserts that, based upon the facts asserted in the information submitted under N.J.A.C. 7:1J-6.3(a) and (b), the claim is invalid or the amount is unreasonable as a matter of law, a specific explanation of the legal basis for that assertion;

4. Copies of written documents which the person requesting arbitration is relying upon to support its assertions and the request;

5. An estimate of the time required for the hearing; and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(e) If the person requesting arbitration does not submit the information required under (d) above within the time alloted under (d) above, the administrator shall deny the request. If the person requesting arbitration fails to include all of the information required under (d) above, the administrator my deny the request.

(f) The administrator may require that the person requesting arbitration submit additional information beyond that required under (d) above, if the administrator determines that such information is necessary to provide the administrator, the Department, the claimant or the Board with adequate notice of the specific factual or legal bases for the objections by the person requesting arbitration to the validity or amount of the claim.

7:1J-8.3 Settlement offer by the administrator

(a) The administrator, on behalf of the Fund, may make a written settlement offer to the claimant if:

1. The claim is eligible for compensation from the Fund;

2. The claimant has requested payment of the claim under N.J.A.C. 7:1J-8.1;

3. The Department has not received any requests for arbitration of the claim within 30 days after the date of delivery of the last notice under N.J.A.C. 7:1J-8.1(b) (or, if any potentially responsible party has refused delivery, within 30 days after the date of mailing of the notice, if such date is later than the date of delivery to other potentially responsible parties); and

4. The claimant has made good faith efforts to enter into a settlement with one or more potentially responsible parties, but has not entered into any such settlement within the time allotted under N.J.A.C. 7:1J-7.2.

(b) The administrator, on behalf of the Fund, shall make a written settlement offer to the claimant if the claim is eligible for compensation from the Fund, the claimant has requestd payment of the claim under N.J.A.C. 7:1J-8.1, and the administrator determines that the source of the discharge is unknown or cannot be determined.

(c) If the administrator is not required to make a settlement offer under (b) above, has elected not to make a settlement offer under (a) above, and has not denied the claim pursuant to N.J.A.C. 7:1J-6.6(e), the administrator shall submit the claim to arbitration in accordance with N.J.A.C. 7:1J-9.

7:1J-8.4 Action on administrator's settlement offer

The claimant shall either accept or reject the settlement offer made pursuant to N.J.A.C. 7:1J-8.3 no later than 20 days after the date the claimant receives the settlement offer (or, if the claimant refuses delivery of the settlement offer, 20 days after the date of mailing of the settlement offer). The administrator may extend this 20-day period by written notice to the claimant.

(b) If the claimant accepts the administrator's settlement offer made pursuant to N.J.A.C. 7:1J-8.3, the claimant shall be deemed to have waived all further claims against the Fund arising in connection with the discharge which was the subject of the settled claim. Upon such acceptance, the administrator shall be subrogated to all rights of the claimant against all other persons arising in connection with the damages which were the subject of the settled claim.

(c) If the administrator rejects the settlement offer within the time allotted by (a) above, the administrator shall submit the claim to arbitration pursuant to N.J.A.C. 7:1J-9, unless the administrator and the claimant expressly agree otherwise in writing.

(d) If no acceptance or rejection of the offer is delivered to the administrator before the expiration of the 20-day period allotted by (a) above (as such period may be extended), the claimant shall be deemed to have rejected the offer, and the offer shall be deemed to have terminated.

SUBCHAPTER 9. BOARDS OF ARBITRATION

7:1J-9.1 Convening a board of arbitration

(a) The administrator shall convene a board of arbitration upon the occurrence of any of the following:

1. When a claimant contests in writing the denial of a claim issued by the administrator pursuant to N.J.A.C. 7:1J-6.6(e), and requests arbitration pursuant to N.J.A.C. 7:1J-6.6(g); provided, however, that arbitration of denial of a claim shall be granted only if the denial was based solely upon the lack of validity of the claim;

2. When a claimant rejects a settlement offer made by the administrator pursuant to N.J.A.C. 7:1J-8.4(c);

3. When any potentially responsible party contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(a), the administrator contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(b), or any other person contests the validity or amount of the claim under N.J.A.C. 7:1J-8.2(c); or

4. When a claimant has failed to agree upon a settlement with a potentially responsible party within the time allotted pursuant to N.J.A.C. 7:1J-7.2, and the administrator has elected not to make a settlement offer pursuant to N.J.A.C. 7:1J-8.3(a).

7:1J-9.2 Notice of arbitration

The administrator shall provide written notice of the arbitration to the claimant, to all potentially responsible parties identified as of the date of the notice, and to any other person who has contested the validity or amount of damage claims or cleanup and removal costs presented to the Fund for payment.

7:1J-9.3 Membership of Board

(a) In the administrator's discretion, the board of arbitration shall consist of either three individuals, or one individual.

(b) The arbitrator for a one-member board shall be selected by one of the following methods, in the administrator's discretion:

1. Selection by the administrator;

2. Selection by agreement of the claimant and any potentially responsible parties, with the consent of the administrator; or

3. Selection by the American Arbitration Association.

(c) Membership of a three-member board shall be as follows:

1. One member appointed by the potentially responsible party, provided however, that if the administrator has not identified a potentially responsible party for the discharge, the administrator shall request the American Arbitration Association to select the member who would otherwise be appointed by a potentially responsible party;

2. One member appointed by the claimant; and

3. One member appointed by the members listed in (c)1 and 2 above. This member shall serve as chairman of the board.

(d) The claimant and the potentially responsible party each shall make the appointments required by (c) above within 30 days after each such person has received notice that a board will be convened. If either the potentially responsible party or the claimant fails to appoint a member within the allotted 30-day period, the administrator shall request the American Arbitration Association to select that member, and said member and the other member shall select the neutral arbitrator; provided however, that if both the claimant and the potentially responsible party fail to appoint a member within the allotted 30-day period, the administrator shall request the American Arbitration Association to select both members, and said members shall select the neutral arbitrator. Within 30 days after the appointment of the second of the members selected pursuant to (c)1 and (c)2 above, such members shall make the appointment required by (c)3 above. If such members fail to appoint the third arbitrator

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within such time period, the administrator shall request the American Arbitration Association to select the neutral arbitrator.

(e) Before the appointment of any person appointed as arbitrator becomes effective, the appointee shall disclose to the administrator any circumstance likely to affect the arbitrator's impartiality, including without limitation any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with any of the parties or any of their representatives. Upon receipt of such information from the appointee, the administrator shall communicate the information to the parties and to the board. Upon receipt of such information from a source other than the appointee, the administrator shall communicate the information to the appointee, to the parties and to the board.

(f) The selection of an arbitrator by a potentially responsible party shall not be construed as an admission of liability by any such person.

(g) Before proceeding with the first hearing, each arbitrator shall take the following oath of office:

I hereby solemnly swear to fairly, impartially and faithfully execute my duties as an arbitrator in accordance with the Spill Compensation and Control Act, and all other applicable laws and regulations.

(h) The administrator may declare the position of an arbitrator to be vacant, if presented with sufficient proof to reasonably support the conclusion that a member of the board has become unable to perform the duties of the office. A substitute member shall be appointed in accordance with this section, unless the administrator and the parties consent to proceed without a substitute member.

7:1J-9.4 Jurisdiction over all claims related to discharge

One board may be convened to hear and determine all claims arising from or related to a common discharge.

7:1J-9.5 Class actions

The board may acknowledge a class of claimants, pursuant to and in accordance with N.J.S.A. 58:10-23.11p.

7:1J-9.6 Administrative conference, preliminary hearing, and mediation conference

(a) The board, in its discretion, may schedule an administrative conference with the board and the parties and/or their representatives to expedite the arbitration proceedings.

(b) The board, in its discretion, may schedule a preliminary hearing with the parties and/or their representatives and the board to specify the issues to be resolved, to stipulate to uncontested facts, and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, at the preliminary hearing the board may establish:

1. The extent of the schedule for the production of relevant documents and other information;
2. The identification of any witnesses to be called;
3. A schedule for further hearings to resolve the dispute; and
4. Such other procedural requirements which the board deems necessary.

(c) With the consent of the parties, the board at any stage of the proceeding may arrange a mediation conference in order to facilitate settlement.

7:1J-9.7 Discovery

(a) The board shall have complete discretion regarding discovery, provided however, that the board shall exercise such discretion in light of the expedited nature of Spill Fund Arbitration as outlined in N.J.S.A. 58:10-23.11n.

(b) The board shall reduce any proposed discovery orders to writing which shall be presented to the parties. Any exceptions to the board's proposed discovery order shall be filed within seven days after receipt of the order.

(c) The board may authorize the use of telephone conferences with the parties and the board to raise, argue and resolve any disputes regarding discovery.

7:1J-9.8 Prehearing requirements

(a) At least 10 days before the commencement of the hearing, the parties shall have:

1. Met and prepard a stipulation of facts not in dispute, and provided it to the board;
2. Met and pre-marked a joint set of exhibits as to which neither authenticity nor relevance is disputed, and provided it to the board;
3. Met and resolved all questions of authenticity as to any evidence with respect to which relevance remains in dispute, and advised the board of such resolution;
4. Identified and advised the board of all evidentiary and procedural issues which must be resolved *in limine;* and
5. If required by the board, filed trial briefs with the board and served copies of the trial briefs upon all parties.

7:1J-9.9 Conduct of hearing

(a) The board shall set the date, time, and place for each hearing. The board shall mail to each party notice thereof at least 10 days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof. For good cause shown, the board may postpone any hearing upon the request of a party or upon the board's own initiative.

(b) Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the board of the name and address of the representative at least three days prior to the date set for the hearing at which the person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

(c) If the board elects to have a record, stenographic or otherwise, then the board shall make the arrangements to obtain the recording services, and the administrator shall bear the expense thereof. If the board elects not to obtain recording services, any party desiring a stenographic record or other record shall make arrangements directly with a stenographer and shall notify the other party of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties to be, or determined by the board to be, the official record of the proceeding, it shall be made available to the board and to the other parties for inspection, at a date, time, and place determined by the arbitrator.

(d) Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall pay the costs of the service.

(e) The arbitrator shall maintain the privacy of the hearings unless the Act or any other applicable law or regulation provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(f) The parties shall have leave to present to the arbitrator such motions as the arbitrator deems appropriate for purposes of resolving procedural and substantive issues and evidentiary issues. The arbitrator may require oral argument upon such motions.

(g) A hearing shall be opened by the filing of the oath of the arbitrator, by the recording of the date, time, and place of the hearing, and the presence of the board, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement.

(h) Following the opening of the hearing, the board may ask for opening statements from the parties or from parties' counsel, clarifying the issues involved.

(i) After any opening statements, the claim shall be presented. If the board, in its discretion, so directs, the claimant shall appear and present his or her proofs. Any witness appearing for the purpose of substantiating the validity or amount of the claim shall then submit to questions and cross-examination by the board and by all other parties. The potentially responsible party or other party contesting the validity and amount of a damage claim shall then present its proofs and direct examination of its witnesses, who shall submit to questions and cross-examination by the board and by all other parties. In its discretion, the board may allow rebuttal testimony. The board may vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material and

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relevant evidence concerning a contest to the validity or amount of damage claims or damages presented to the Fund for payment. The requirements of N.J.A.C. 7:1J-2.3 shall apply to all proceedings under this subchapter.

(j) The arbitrator may receive in evidence exhibits offered by either party. The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

(k) The order in which multiple claimants and multiple potentially responsible parties present their cases shall be determined by the board. The order in which contesting parties present their respective cases shall be determined by the board.

(l) Unless the Act or any other applicable law or regulation provides otherwise, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

(m) The hearing shall be completed within one day; provided however, that the board may, for good cause shown, schedule one or more additional days of hearing, which shall be consecutive days if possible.

(n) Before closing the hearing, the board shall specifically inquire of the parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the board shall declare the hearing closed and the time of such closing shall be recorded. If post-hearing submissions (such as briefs or finding of facts and conclusions of law) are to be filed after the presentation of all proofs and witnesses in the hearing, the hearing shall be declared closed as of the final date set by the board for the receipt of such post-hearing submissions. If documents are to be filed with the board after the presentation of proofs and witnesses, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be deemed the date of closing of the hearing.

(o) The board may reopen the hearing on its own initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time mandated in N.J.A.C. 7:1J-9.16, in N.J.A.C. 7:1J-9.20, or in the Act, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

(p) There shall be no oral communication between the parties and any member of the board, except at the hearing, unless the parties and the arbitrator agree otherwise. Any written communication from the parties to the board shall be directed to the board, the administrator, and to all of the parties.

(q) All pleadings, notices, motions, correspondence or any submissions whatsoever to the board shall be served upon all parties and upon the administrator.

7:1J-9.10 Consent to service of process

Each party shall be deemed to have consented to accept service of all papers, notices, process, or awards necessary or proper for the initiation or continuation of an arbitration under these rules, or for any court action in connection therewith. The entry of any award made under these rules shall be served on a party in accordance with N.J.A.C. 7:1J-1.7.

7:1J-9.11 Evidence

(a) The parties may offer evidence which is supportive of their claim or such evidence which is relevant and material relating to a contest to the validity or amount of damage claims or cleanup and removal costs presented to the Fund for payment and shall, to the fullest extent practicable, produce such evidence as the board may deem relevant to an understanding and determination of such issues or such a contest.

(b) The board shall be the judge of the relevance and materiality of the evidence offered. Strict conformity to legal rules of the evidence offered. Strict conformity to legal rules of the evidence shall not be necessary; provided however, that the board shall respect all privileges recognized by the New Jersey Rules of Evidence.

(c) All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

(d) Exhibits, when offered by any party, may be received in evidence by the board, and shall be retained in the board's custody until the board renders a decision. After the board renders its decision, the board shall transfer custody of all exhibits to the administrator.

(e) The board may receive and consider the evidence of witnesses by affidavit certified in accordance with N.J.A.C. 7:1J-1.6, giving it such weight as the board deems it to be entitled to after consideration of any objections made to its admission.

(f) If the parties agree or the board directs that documents or other evidence be submitted to the board after the hearing, the documents or other evidence shall be filed with the administrator for transmission to the board. All parties shall be afforded an opportunity to examine such documents or other evidence.

7:1J-9.12 Subpoenas; witnesses

(a) The board may order testimony under oath and may subpoena attendance and testimony of witnesses and the production of such documentary materials pertinent to the issues presented to the board for determination. The board may cross-examine and ask questions of any witness. All oaths and affirmations shall be made and taken before any of the persons designated in N.J.S.A. 41:2-1.

(b) The expenses of witnesses (including, without limitation, expert witnesses) for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the board, and any witness and the cost of any proof produced at the direct request of the board, shall be borne by the Fund unless the parties agree otherwise or unless the board in the award assesses such expenses or any part thereof against any specified party or parties.

7:1J-9.13 Inspections and investigations by the Board

The board may conduct inspections or investigations of any real or personal property which is relevant to the claim. An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall advise the administrator and the parties. The board shall set the date and time and shall notify the administrator and the parties thereof. Any party may be present at such inspection or investigation. If one or all parties are not present at the inspection or investigation, the board shall make a verbal or written report to the parties and afford them an opportunity to comment.

7:1J-9.14 Submission of briefs

(a) At any time before or during the hearing, the board may direct the parties to submit briefs on such legal issues as the board deems necessary for final determination of the claim. All parties shall serve copies of such briefs on each arbitrator, on all parties, and on the administrator. The board shall determine when the briefs are to be filed and shall notify the parties and the administrator of the filing date. The failure of a party to file such a brief shall not operate to delay the proceedings or the rendering of a decision by the board within the time limits specified in this subchapter or in the Act.

(b) Within 10 days after the board has determined that the parties have no further proofs to offer or witnesses to be heard, the board may direct the parties to submit to the board proposed findings of fact and conclusions of law. The board may also require any party to prepare supplemental legal memoranda on any issue that the board deems appropriate.

(c) Any party desiring reconsideration of any of the rulings of the Board rendered under N.J.A.C. 7:1J-9.16 shall move within 10 days after the determination of the Board.

7:1J-9.15 Default

Where there is only one known potentially responsible party, and that party fails to appear at the hearing without obtaining an adjournment thereof, and where neither the administrator nor other persons contest either the validity or amount of the claim presented to the

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Fund for payment, a decision may be made solely on the default of the potentially responsible party. In all other cases, a decision may not be made solely on the default of a party, and the board shall require the party who is present to submit such evidence as is deemed necessary to arbitrate the issues before the board, except that issues raised only by a defaulting party need not be addressed by the board, and the board's determination of all issues before it shall be binding as to the defaulting party.

7:1J-9.16 Decisions of the board; award; payment of claim

(a) All decisions of the board shall be in writing, with notification to all parties, and shall be rendered within 60 days after the last member of the board takes the oath of office under N.J.A.C. 7:1J-9.3(g), unless the parties otherwise agree in writing to an extension. If all parties agree to such an extension, the board shall render its decision within 20 days after the date for final post-hearing submissions determined under N.J.A.C. 7:1J-9.9(n).

(b) No sooner than 30 days after the determination of the board, nor more than 60 days thereafter, the board shall certify all claims settled or arbitrated to the administrator, who, in turn, shall certify the amount of the award and the name of the claimant to the Commissioner of the Department, who shall direct the administrator to pay the award from the Fund.

(c) The award shall be in writing, signed by a majority of the arbitrators and filed with the administrator. The award shall be executed in the manner required by law.

(d) Any member of the board who disagrees with the award shall file a dissent which shall be certified and delivered to the administrator with the majority award.

(e) The board may grant any remedy or relief that the board deems just and equitable and within the scope of the arbitration provision of the Act. The arbitrator has no authority or power whatsoever to adjudicate the liability of any potentially responsible party for a discharge or threatened discharge; nonetheless, the board may deny any claim upon a finding that a particular claim is invalid for any reason or that the amount of the damage claim or cleanup and removal costs are not justified given the evidence presented to the board. The board has no authority to determine the scope of coverage or the applicability of any insurance policy pertaining to a potentially responsible party. This limitation upon the board's authority shall not be construed to limit the board's authority to determine whether the administrator's rights to subrogation have been impaired.

(f) If the parties settle their dispute during the course of the arbitration, the board may set forth the terms of the agreed settlement in a consent award.

(g) The administrator shall deliver the award in accordance with N.J.A.C. 7:1J-1.7.

(h) Determinations made by the board shall be final. Any action for judicial review shall be filed in the Appellate Division of the Superior Court within 30 days after the filing of the decision with the administrator pursuant to (b) above.

(i) All payments from the Fund pursuant to an award by the board shall be conditioned upon the administrator acquiring by subrogation all rights of the claimant to recovery of cleanup and removal costs and damages from any potentially responsible party; and provided further that the claimant has not received any compensation for said damages or cleanup and removal costs pursuant to any other State or Federal law. In any case in which a potentially responsible party seeks judicial review, reasonable attorney's fees and costs shall be awarded to the claimant if the decision of the board is affirmed.

7:1J-9.17 Waiver of hearing

(a) If the parties and the administrator agree in writing, signed by all parties and by the administrator, to waive the oral hearing, the board shall not hold a hearing.

(b) If the parties and the administrator waive the hearing pursuant to (a) above, the Board shall designate a date for submission of proofs. The Board shall notify all parties and the administrator of the date at least one week prior to the designated date. All parties shall submit all their respective proofs to the Board. The parties and the administrator shall have the opportunity to respond in writing to the proofs submitted by the other parties. The Board shall designate the time by which any such response must be filed.

(c) If the board thereafter requires additional documentation from any party, it shall notify the party of such requirement and of the date by which such material must be submitted to the board.

(d) The failure of any party to submit proofs, other documentation required by the board pursuant to (c) above, or permitted responses within the time specified by the board shall not operate to delay the rendering of a decision within the time limits specified in N.J.A.C. 7:1J-9.16, 9.20, or the Act. The board may, in its discretion, extend the time within which a party may submit information and responses so long as such extension will not operate to delay the rendering of a decision within the time limits specified in N.J.A.C. 7:1J-9.16, or the Act.

7:1J-9.18 Variance from procedural requirements

(a) Except as provided in (c) below, the board may relax any of the procedural requirements of this subchapter if the board determines that strict adherence to such requirements would result in unfairness or injustice.

(b) Nothing herein shall be deemed to preclude the parties from voluntarily agreeing to procedures more detailed than those found in this subchapter, provided that such supplemental agreements are approved by the board, and do not violate the limitations of (c) below. By way of illustration, such procedures may include guidelines for the presentation of expert testimony and the use and exchange of such testimony, or specific discovery procedures.

(c) Notwithstanding (a) and (b) above, the board shall not relax procedural requirements of this subchapter if such requirements are imposed by the Act, by other applicable State or Federal statutes, or by applicable decision, order or decree of a court of competent jurisdiction.

7:1J-9.19 Extensions of time

For good cause shown, the board may extend any period of time established by this subchapter, except the time for certifying the award. The board shall notify the parties of any extension.

7:1J-9.20 Expedited procedures

(a) The parties, the administrator and the board may unanimously agree to conduct the arbitration proceeding pursuant to the expedited procedures in this section. If the parties so agree, and if there is any conflict between this section and any other provision of this subchapter, this section shall control.

(b) Notwithstanding N.J.A.C. 7:1J-1.7, the parties shall accept all notices from the board by telephone. The board shall subsequently confirm such notices to the parties in writing, provided however, that the failure to provide written confirmation shall not invalidate the telephone notice.

(c) The board shall set the date, time and place of the hearing, and so notify the parties at least seven days before the scheduled hearing date.

(d) The hearing shall be completed within one day, unless the board, for good cause shown, schedules one or more additional hearing dates.

(e) Unless the parties agree otherwise, the board shall render its decision within 14 days after the date of the close of the hearing.

7:1J-9.21 Waiver of rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of this subchapter has not been complied with and who fails to state an objection thereto in writing shall be deemed to have waived the right to object.

7:1J-9.22 Interpretation and application of rules

The board shall interpret and apply this subchapter insofar as it relates to the board's powers and duties. When the board consists of more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, the difference shall be decided by a majority vote. If no majority of the board agrees upon one resolution of the difference, the board shall refer the issue to a neutral party acceptable to the board, the administrator and the parties. If the board, the administrator and the parties cannot agree upon a neutral party, the administrator shall request that the

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American Arbitration Association apply its procedures to select the neutral party.

7:1J-9.23 Copies of papers for judicial proceedings

The board shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the board's possession that may be required in judicial proceedings relating to the arbitration.

7:1J-9.24 Exculpation of arbitrators

No arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

(a)

SITE REMEDIATION—BUREAU OF ECRA APPLICABILITY AND COMPLIANCE

Notice of Extension of Public Comment Period Environmental Cleanup Responsibility Act Rules

Proposed Amendments: N.J.A.C. 7:26B

Take notice that the Department of Environmental Protection and Energy (the "Department") is extending until May 6, 1992 the comment period for the proposed rule amendments published at 24 N.J.R. 720(a) on March 2, 1992 (DEPE Docket Number 03-92-01). The comment period was originally scheduled to end April 1, 1992.

Interested persons may submit written comments until May 6, 1992, to:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Procedures for Department Oversight of the Remediation of Contaminated Sites

Proposed New Rules: N.J.A.C. 7:26C
Proposed Amendment: N.J.A.C. 7:26B-9.3
Proposed Repeal and New Rule: N.J.A.C. 7:26B-7

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

Authority: N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., and 58:10A-21 et seq.

DEPE Docket Number: 09-92-03.

Proposal Number: PRN 1992-135.

A **public hearing** concerning this proposal will be held on: Wednesday, June 3, 1992, at 10:00 A.M.:

Lewis Hermann Labor Education Center
Multi-Purpose Room C
Cook College
New Brunswick, New Jersey

Thursday, June 4, 1992 at 10:00 A.M.:

War Memorial
Veterans Room
Trenton, New Jersey

Submit written comments on or before July 6, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy has the responsibility to ensure that the investigation and cleanup of contaminated sites are protective of human health and the environment and are accomplished in a timely manner. Contaminated sites in New Jersey present not only an unacceptable risk to human health and the environment, but also pose an unacceptable burden on the vitality of the State's economy. The Department has already identified over 600 major contaminated sites that need to be cleaned up over the next several years (see Site Remediation Status Report, 1991) and thousands of other less serious sites. The potential number of contaminated sites that will need to be addressed is in the tens of thousands.

The necessity to remediate contaminated sites is self evident. These sites pose a risk to the health of New Jersey residents and the State's environment. There has been a continual loss of potable water supplies throughout the State caused by contamination. These factors warrant the rapid cleanup of all contaminated sites in the State to protect the public and the environment. The Department has been responding to this demand over the past decade with a cleanup program which has focused on addressing the worst environmental cases first. The Department has found, however, that this approach has often discouraged private parties from addressing the contamination at sites of lower priority in terms of environmental severity.

Important societal changes have occurred, however, which have identified factors other than environmental priority, such as economic and business factors, in the determination of the timing for contaminated site remediation. Buyers do not want to purchase contaminated properties. Lenders want to ensure that a piece of property is clean before accepting the property as collateral for a loan. Similarly, prospective tenants want to make sure the leasehold is not contaminated prior to signing a lease for the property. Companies, on their own initiative, have developed internal environmental audit programs which can lead to the identification of contaminated areas of a facility.

In such circumstances the Department has been asked to respond with oversight and approval of cleanups of contaminated sites in an order different from the Department's environmental priorities. Last year, in an effort to respond to such societal concerns, the Department began to focus on the need to encourage private parties, on a voluntary basis, to remediate contaminated sites of lower environmental priority.

The Department is now ready to institutionalize a new initiative to enable a variety of factors to influence the timing of contaminated site cleanup. The cornerstone of this new approach is a memorandum of agreement which allows any party to voluntarily approach the Department with the intent to begin the investigation and remediation of a contaminated site. As discussed in more detail below, the major features of a memorandum of agreement include a party's agreement to perform certain aspects of remediation and to pay the Department's review costs, and in return the Department agrees to specific time frames to review and comment on the submissions. The Department has developed a standard memorandum of agreement which articulates this agreement.

Similarly, in an effort to establish a consistent, predictable process for how the Department will oversee other statutorily required cleanups, the Department has also included, in these proposed rules, standard ECRA and responsible party administrative consent orders. These rules are one of many initiatives that the Department is undertaking to allow remediation to occur in a shorter period of time with increased consistency and effective protection of human health and the environment.

These rules, together with the cleanup standards which the Department proposed on February 3, 1992 (24 N.J.R. 373(a)), and the technical rules for the remediation of contaminated sites which the Department will propose next month, establish the core of the Department's site remediation program. Anyone conducting cleanup activities will have to comply with the requirements established in these three regulatory initiatives. This will ensure that all sites are investigated properly and the same level of cleanup occurs regardless of the party conducting the work.

Regulatory Background

Magnitude of the Problem

A wide range of statutory programs are involved in the remediation of contaminated sites in New Jersey. The Department is reversing the historic trend of these programs to develop in a divergent nature by directing the convergent evolution of the Department's oversight of these activities into a single, comprehensive and coordinated structure. The

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purpose of the Department's oversight in each of these programs is to ensure that all remediation is conducted in a manner consistent with prevailing technical requirements and achieves the applicable cleanup standards.

There are several major Federal and State programs currently regulating contaminated sites in New Jersey. At the Federal level, the Environmental Protection Agency (EPA) has identified 113 contaminated sites in New Jersey as part of its Superfund program, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). 42 U.S.C. 9600 et seq. EPA and the Department share the responsibility to oversee the remediation of Superfund sites in New Jersey.

Under the Resource Conservation and Recovery Act of 1976 (RCRA), 40 U.S.C. 6900 et seq., EPA manages the generation, treatment, storage and disposal of hazardous wastes. The major component of the RCRA program which is relevant to this proposal is the corrective action directed at releases into the environment from solid waste management units. There are more than 600 facilities in New Jersey which are subject to these RCRA corrective action requirements. The Department is working with EPA to obtain delegation for the RCRA corrective action program in New Jersey. Currently, EPA accepts the Department's oversight of remedial actions as equivalent for RCRA corrective action.

Another Federal cleanup-related program which operates under the RCRA framework, and has a State equivalent (see N.J.S.A. 58:10A-21 et seq.), is the regulation of underground tanks storing hazardous substances. This program requires the design and installation of leak prevention and detection systems for certain underground tanks, and mandates the cleanup of discharges of contaminants from such tanks into the environment. The Department estimates that there may be as many as 80,000 tanks in New Jersey which are subject to these requirements.

In addition to the Federal programs, there are several State government regulatory programs which involve the cleanup of contaminated sites. These include ECRA, N.J.S.A. 13:1K-6 et seq., which requires the owner or operator of an industrial establishment to provide for the cleanup of contamination at such establishment prior to the transfer, or cessation of operations. The Department estimates that there are more than 17,000 industrial establishments in New Jersey which are subject to ECRA requirements. One thousand of these establishments are currently involved with obtaining ECRA compliance. At the option of the party triggering compliance, ECRA compliance is available by working with the Department prior to the transfer or cessation, or through an administrative consent order which allows the transaction to precede full ECRA compliance.

Another State regulatory cleanup related program exists under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., pursuant to which the Department regulates the discharge of pollutants at over 500 landfills throughout New Jersey. These landfills range in size from single building demolition landfills to municipal landfills covering hundreds of acres and containing millions of cubic yards of solid waste. While both the location and engineering design of new landfills are directed at minimizing the discharge of pollutants into the environment, a vast majority of older landfills were located in low-lying wetlands, and were constructed without any concern for the possibility of pollutants leaching from them and into the ground water.

Lastly, the Department regulates the cleanup of contaminated sites pursuant to the Spill Compensation and Control Act (Spill Act), N.J.S.A. 58:10-23.11 et seq. The Spill Act and regulations promulgated under this statute prohibit the discharge of hazardous substances and require the cleanup and removal of any such discharge. Spill Act contaminated sites range in size and complexity from relatively small fuel oil spills at private residences to extensive contamination by a wide range of hazardous substances at huge industrial complexes and landfills. The Department has used administrative consent orders to oversee the responsible party's remediation of some of these sites.

These programs, while directed at a variety of environmental concerns, establish the backdrop for a party's participation in the remediation of contaminated sites. The Department's challenge is to develop a consistent, comprehensive and coordinated role for the Department to oversee these activities while conserving and limiting the minimum amount of public resources dedicated to these resources.

Department Responsibilities

The Department is charged with the responsibility of ensuring that the thousands of contaminated sites in New Jersey are remediated to the degree that protects human health and the environment. The Department must also ensure that contaminated sites are remediated as quickly as possible. A clear definition of how the Department will allow participation in the remediation of contaminated sites, as well as how the Department will oversee this process, will greatly enhance this effort.

The Department seeks to encourage the regulated community to conduct cleanups and eliminate the need for the Department to always be involved in every step of the cleanup process. These oversight rules, along with the proposed cleanup standards and technical requirements, will significantly decrease the amount of Department involvement needed to define the process and end points that must be achieved in the remediation of all contaminated sites. The Department expects these rules, particularly the inclusion of memoranda of agreement, to encourage the initiation of numerous cleanups. This will make the remediation not only more efficient and expedient for the Department and the parties involved in cleanups, but also will ensure the public that cleanups will conform to articulated standards of conduct.

There are four integral parts to the Department's strategy for remediating contaminated sites: the organization of the Department's personnel who have the responsibility of performing or overseeing such activities; the identification and prioritization of contaminated sites; the technical and procedural requirements for site remediation; and the specific cleanup standards applicable to the remediation. Each of these components are necessary for the effective remediation of contaminated sites. The Department has already begun the process of implementing some of these components.

In the Summer of 1991, the Department consolidated its staff involved in the remediation of contaminated sites, forming a single organization under the Assistant Commissioner for Site Remediation. The numerous benefits include the consolidation of management, regulations, guidance, data systems and the establishment of a single program case manager for each site. This consolidation will also result in improved policy and technical coordination to allow cases to move to an efficient and cost effective closure. This new organization will allow the Department to meet its mission of ensuring more consistent, efficient and effective cleanup of contaminated sites.

The Department is well along in its efforts to compile a comprehensive list of known or suspected contaminated sites in New Jersey. The Department is using existing site lists to develop this comprehensive list. Among the lists being used are the sites identified pursuant to CERCLA, enforcement, permit, and remedial programs, and the hazardous waste manifest system. The Department expects to complete the initial draft of the comprehensive list of known or suspected contaminated sites in the Fall of 1992.

Because of the number of contaminated sites in New Jersey, a system to prioritize site cleanups is necessary for the Department to implement a successful comprehensive site remediation strategy. Of particular concern are those sites, or portions of sites, which may pose an immediate or acute risk. The Department, therefore, has begun to prioritize the sites identified to date in terms of the severity of the potential risk to human health or the environment posed by each site. The Department will complete its development of a comprehensive priority system by the end of 1992. The use of the prioritized list for enforcement action requires the Department to keep the site priority ranking confidential.

Earlier this year the Department proposed cleanup standards which will apply to all contaminated sites in New Jersey (see 24 N.J.R. 373(a), February 3, 1992). Those rules are intended to provide clearly articulated, predictable levels to which contaminated sites must be remediated in order to adequately protect human health and the environment.

The Department has developed two sets of rules which will establish the substantive and procedural requirements for site remediation. The first set of rules proposed herein define when and how a party may participate in remediation activities and the degree of Department oversight of those activities. The second set of rules will provide detailed guidance on how investigations and cleanups are to be conducted by establishing the technical requirements for remediation. These technical requirements are consistent across all of the statutory programs relating to the remediation of contaminated sites. These two sets of rules contain many cross references to each other. The Department intends to propose the technical rules next month and to hold joint public hearings on the two proposals. The Department will then stagger the end of the two comment periods to allow for the sequential, rather than simultaneous, submission of comments. The Department intends to adopt the two sets of rules at the same time.

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Statutory Authority

Over the last several years, the Department has focused its efforts to remediate contaminated sites on those parties legally responsible for the contamination. The Department's emphasis on the "polluter pays" principle is supported by several specific statutes in addition to the Department's general statutory authority in N.J.S.A. 13:1D-1 et seq. The following discussion, while not exhaustive, is intended to illustrate the general scope and trends of the Department's statutory authority.

The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., authorizes the Department to regulate discharges of pollutants by making it illegal for any party to discharge any pollutant except in conformity with a valid New Jersey Pollutant Discharge Elimination System (NJPDES) permit. The Water Pollution Control Act also gives the Department five nonexclusive enforcement options to respond to the violations of this Act. The Department may: (1) issue an order requiring compliance with this Act; (2) bring a civil action for temporary or permanent injunction, assessment for cost of the investigation, and assessment of costs incurred by the State for removing, correcting or mitigating the adverse effects on water quality; (3) assess civil administrative penalties up to $50,000 per violation; (4) bring a judicial action for civil penalties up to $50,000 per violation; and (5) petition the Attorney General to bring a criminal action. N.J.S.A. 58:10A-10.

The Environmental Cleanup Responsibility Act ("ECRA"), N.J.S.A. 13:1K-6 et seq., requires the owner or operator of an industrial establishment to either certify in a negative declaration that the facility is in an environmentally acceptable condition or clean up any contamination prior to transfer, termination or closing. ECRA establishes a process in which the owner or operator must review the current and past handling, storage, management and disposal of hazardous substances and hazardous wastes, delineate any contamination and submit an acceptable cleanup plan for this contamination to the Department. The Department may allow an owner or operator of an industrial establishment to enter into an Administrative Consent Order requiring full compliance with ECRA, including the posting of financial assurance, prior to the transfer of the industrial establishment. ECRA authorizes the Department to: void a sale if the transferor fails to submit a negative declaration or cleanup plan, N.J.S.A. 13:1K-13b, and to seek civil penalties up to $25,000 for each offense against any party who knowingly gives any false information or who fails to comply with ECRA, N.J.S.A. 13:1K-13c.

The Spill Act prohibits the discharge of hazardous substances. Similar to the Water Pollution Control Act, the Spill Act authorizes the Department to take enforcement actions for violations of the statute, plans, information requests, access requests, directives, or rules with the same types of enforcement options authorized in the Water Pollution Control Act. See N.J.S.A. 58:10-11.23u. In addition, the Spill Act authorizes the Department to respond to a discharge of a hazardous substance by taking, in its sole discretion, one of the following alternative actions: (1) removing the discharge and then bringing a cost recovery action against the responsible party, N.J.S.A. 58:10-23.11fa; (2) directing the responsible party to remove the discharge, N.J.S.A. 58:10-23.11fa; (3) directing the responsible party to arrange for the removal of a discharge by paying to the Department the money necessary for the Department to remove the discharge, *In the Matter of Directive of the State of New Jersey, Department of Environmental Protection, Issued to Kimber Petroleum Corporation et al.*, 110 *N.J.* 69 (1988); or (4) removing the discharge and then issuing a civil administrative order to the responsible party to recover its costs of any investigation, cleanup or removal. N.J.S.A. 58:10-23.11u.

The selection of one or more of these alternative actions for a particular contaminated site is solely within the discretion of the Department. No responsible party has a vested right to participate in the cleanup procedures selected and developed by the Department. *Woodland Private Study Group et al. v. Dept. of Environmental Protection*, 109 *N.J.* 62 (1987). Furthermore, responsible parties have no right to judicial review of cleanup directives prior to the Department initiating either an enforcement or a cost recovery action. *In the Matter of Directive of the State of New Jersey, Department of Environmental Protection, Issued to Kimber Petroleum Corporation et al.*, 110 *N.J.* 79; *Woodland Private Study Group v. State of N.J.*, 616 *F. Supp.* 794 (D.N.J. 1985), *aff'd* 846 *F.2d* 921 (3rd Cir. 1988).

If the Department directs a responsible party to remove or arrange for the removal of a discharge, the responsible party must commit to removing or arranging to remove the discharge; a bare promise is not enough. The Department may seek such a commitment in an oversight document, commonly in the form of an administrative consent order. A responsible party has no pre-enforcement right to challenge the conditions the Department requires in such an administrative consent order. *Department of Environmental Protection v. Mobil Oil Corporation*, 246 *N.J. Super.* 331 (App. Div. 1991). *Kimber* ensures that the responsible party ultimately will have ample due process protection. *Id.* at 338.

The Department is required to articulate through rulemaking the degree, manner and scope of a party's participation which the Department elects to allow in the remediation of contaminated sites. See *Woodland Private Study Group et al. v. Dept. of Environmental Protection*, 109 *N.J.* 62 (1987). These rules are intended to comply with the *Woodland* decision.

Rule Development

The threat of serious and in some cases irreversible environmental pollution by toxic chemicals has prompted the Legislature to mandate a systematic and consistent approach to the remediation of those sites (N.J.S.A. 58:10-23.20). Over the last several years, the Department has been working with the regulated communities of the remediation programs to develop systematic and consistent remediation methodologies, including the Department's oversight of these activities. The Department has directed its efforts in two main areas: ECRA administrative consent orders and Spill Act administrative consent orders. In each instance, the focus has been on those parties with the legal responsibility to remediate a site.

In the ECRA program, two often competing interests have greatly influenced the direction the Department has taken in developing a systematic and consistent approach to site remediation. First, the Department needed to be responsive to the need of the parties subject to ECRA to have the triggering economic transactions proceed with little or no interruption in scheduling. Second, the myriad of transactions which trigger ECRA compliance, including large, multinational transactions, and the varying legal relationship of the individuals and companies involved, necessitated the need to accommodate a wide variety of situations. In addition, prior to the Department's consolidation of its site remediation programs into a single unit as discussed above, the ECRA program had been hampered by the segregation from other remedial programs.

The Department has negotiated well over 1,000 ECRA administrative consent orders which balance these interests with the statutory requirements to ensure that the industrial establishments are cleaned up to the applicable standard. The industrial establishments which have been subject to ECRA administrative consent orders range in environmental complexity from sites of low environmental priority, to sites of high environmental priority. Last month the Department proposed amendments to the ECRA applicability rules which may decrease the number of ECRA subject parties (24 N.J.R. 720(a)). The Department, working with hundreds of ECRA-subject parties and with the ECRA Industrial Advisory Committee, has engaged in a multi-year process to identify, draft and fine tune the language in ECRA administrative consent orders. In responding to the needs of the regulated community, the Department developed a standard ECRA administrative consent order and developed variations from the standard to provide for flexibility necessitated by variation in property and business transactions. The Department's development of multiple ECRA administrative consent orders is a critical part of the Department's efforts to streamline the ECRA process.

The Department initially developed the standard Spill Act administrative consent order in response to large, complex contaminated sites, which included Superfund sites. Similar to the Department's efforts in developing the standard ECRA administrative consent orders, the Department has spent many thousands of hours negotiating the exact words, punctuation and grammar to be included in a Spill Act administrative consent order. The resulting standard has been accepted by individuals and industry alike for many sites throughout New Jersey. The Department has executed over 100 administrative consent orders of this type. This mechanism has been successful in addressing a limited number of sites, but does not provide the Department with sufficient flexibility to respond to the needs of other responsible parties to address sites of lesser Departmental priority.

The Department is aware that it must also balance economic and business needs in the determination of the priority for contaminated site remediation. Lenders want to ensure that property is clean before accepting the property as collateral for a loan. Similarly, prospective tenants want to make sure a leasehold is not contaminated prior to signing a lease for the property. Many companies, on their own initiative, have developed internal environmental audit programs which can lead to the identification of contaminated areas of a facility.

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In such circumstances the Department has been asked to respond with oversight and approval of cleanups of contaminated sites on a schedule that may not (fully) correspond with the Department's environmental priorities. Last year, in an effort to respond to such concerns, the Department began to focus on the need to encourage private parties to come forward on a voluntary basis to remediate contaminated sites of lower environmental priority.

In order for the Department to adequately respond to these changing concerns, the Department is preparing to institutionalize a new system/method to enable a variety of factors to influence the pace of contaminated site cleanup. The cornerstone of this new approach is a memoranda of agreement which allows any person to voluntarily approach the Department with the intent to begin remediating a contaminated site. The Department has developed a model Memorandum of Agreement which articulates these concepts.

The memorandum of agreement is basically a contract established between the Department and the party electing to perform the work and is not a formal enforcement document. It allows, and in fact encourages, participation in any phase of the remediation process by any party at any time, so long as that party desires. The only stipulations that apply are; 1) the site is not listed as a Department priority; 2) the party must comply with promulgated cleanup standards and technical remediation requirements; 3) any data developed during the remediation is to be supplied to the Department; and 4) the party must agree to pay all of the Department's oversight costs. What this means is that a party can now come forward and volunteer to conduct remediation without the threat of certain provisions (stipulated penalties, financial assurance) which in the past may have provided a disincentive to begin those remediation efforts. In return, the Department will commit to specific time frames to review and comment on specific submissions.

Issue Analysis

High Priority Site Remediation

The Department has recognized that in order to be truly effective in carrying out its statutory mandate to ensure the timely and effective remediation of all contaminated sites, it needed to "re-think" how it conducts its business.

A key component of the Department's approach to site remediation is the establishment of a remedial priority case list utilizing a "worst first" methodology for assignment. The Department will continue to prioritize its cases based upon potential harm to human health and the environment. The worst cases will be handled first. The Department responds in an enforcement mode to those responsible parties whose sites are of highest priority and offers an oversight document (that is, administrative consent orders) which includes financial assurances and stipulated penalties for future violations of the oversight document, among other conditions, that will help to ensure that these high priority projects remain on schedule for remediation. In the event that the responsible party fails to proceed according to the terms and conditions of the oversight document, the Department may at its discretion, withdraw that party's opportunity to continue. If this were to occur, the site would then be referred for publicly conducted remediation, either by the United States Environmental Protection Agency (EPA), via the National Contingency Plan (NCP), or the State.

The ability of the Department to move rapidly to assume both financial and technical control of cleanup responsibilities at a site provides the leverage to encourage responsible parties to respond more quickly. If the responsible party cannot—or will not—assume cleanup responsibility within the time frames established, the Department is prepared to mobilize its own cleanup resources, leaving the responsible party to face the subsequent legal ramifications.

Voluntary Site Remediation

While the Department recognizes the importance of working on the worst cases first, it equally wishes to encourage those parties interested in cleaning up sites which may be lower on the priority list to come forward and begin remediation efforts. In order to provide an incentive for the remediation of these sites, the Department will offer a memorandum of agreement for any portion or phase of a cleanup without any further commitment by those parties to conduct the entire remediation. No financial assurance, stipulated penalties or further commitment would be required at that time. What would be required, however, is that the remediation be performed consistent with both the Department's technical remediation requirements and cleanup standards, and that the person conducting the remediation with Department oversight pay all of the Department's costs of that oversight. If work were to cease and if further remediation activities were required, then the site would remain on the Department's list of contaminated sites to be cleaned up through either an enforcement action or through the use of public funds. If the responsible party elected to perform the remediation when the site became a priority, then the responsible party would be required to sign an administrative consent order.

The Department recognizes that not all individuals have the same interest or potential responsibility in remediating contaminated sites. Therefore, there is a need to have flexibility in the Department's strategy. The use of a memorandum of agreement allows those individuals who willingly come forward and whose sites are not a high priority to perform a partial study or cleanup at any time without penalty. The rationale for this new approach is to get more cleanups underway faster. There is no negative impact from utilizing this strategy and the positives include: developing information (via studies) on sites which the Department would not otherwise address for extended periods of time; effectuating cleanups (full or partial) not currently scheduled due to their lower priority; and allowing individuals, such as prospective buyers, developers and bankers, to make business decisions based upon known facts rather than speculation.

Issues Unique to Administrative Consent Orders

There are several recurring issues which continue to monopolize much of both parties' time in the negotiation of an administrative consent order for site remediation. The discussion of these issues is presented below to clearly articulate both the importance of, and the rationale for, these conditions in administrative consent orders.

A. Criticism of Comprehensive Administrative Consent Order

Responsible parties have argued that the Department wants them to sign a "blank check" as a condition to performing the remediation at a high environmental priority contaminated site. Responsible parties generally make this argument in response to the requirement that the parties responsible for the contamination agree, before the contamination is fully delineated and before the Department makes the specific decisions on the extent of the necessary cleanup, to perform all necessary cleanup at the site. As discussed above, the task of cleaning up all of the contaminated sites in New Jersey is a major undertaking. If the Department were to expend its limited resources on multiple and protracted negotiations with the responsible parties for each individual site, the Department would be wasting resources as well as significantly increasing the time involved in cleaning up each site. If a party wants the opportunity to perform the cleanup of a high priority contaminated site, the people of this State expect, and therefore the Department must demand, that the party commit to perform all phases of the cleanup. This allows the Department to utilize its public resources to the fullest extent. The incorporation of the memorandum of agreement into these rules allows a responsible party to avoid the alleged "blank check" administrative consent order by coming forward prior to the Department reaching the contaminated site on its priority list and taking appropriate enforcement action for site remediation.

One of the situations which may arise out of an agreement between the Department and responsible parties to clean up contaminated sites, particularly the more complex sites, is a misunderstanding or disagreement on substantive technical issues at various key points throughout the cleanup process. To address this situation when it arises, the Department addresses dispute resolution in the proposed rules in two different ways. Initially, the Department encourages full and open communication between the Department and the responsible party. This has been particularly effective at the critical decision-making points in the cleanup process. A responsible party has the express opportunity to meet with the Department prior to the Department making certain key decisions. Through this mechanism, the Department intends to consistently encourage the regular exchange of views and opinions with the party to avert the escalation of issues into adversarial disputes.

In the event that such a dispute occurs, the responsible party may also attempt to resolve the matter through one of the dispute resolutions as described below. The responsible party can decide that it will proceed with the work as approved by the Department, notwithstanding its disagreement with a departmental decision and thereby elect not to proceed with formal dispute resolution. If the responsible party elects not to proceed with the remediation, the Department may, in its enforcement discretion, initiate a lawsuit to enforce the administrative consent order against the responsible party, and such action will allow the

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responsible party to raise any and all defenses or issues that it is entitled to raise concerning the issues in the suit, including whether or not the Department acted in an arbitrary, capricious, or unreasonable manner.

To the extent that a responsible party is able to prevail in such an action, the responsible party shall not be liable for stipulated penalties and may seek damages from the Department for any arbitrary, capricious, or unreasonable use of the financial assurance. As stated above, no responsible party has a right to pre-enforcement review of any Department decision concerning the cleanup of a contaminated site. In an action brought by the Department to enforce the oversight document, however, the responsible party will then have a full and fair opportunity to resolve the dispute.

In those cases in which the Department elects to use the financial assurance the responsible party has posted to complete the work, the responsible party reserves its right to seek damages from the Department after the Department has completed the cleanup. The foundational support for this approach is "the philsophy expressed by the Spill Act and *Kimber,* that is, that remediation and clean-up come first and that litigation must abide these priorities." *Department of Environmental Protection v. Mobil Oil Corporation,* 246 *N.J. Super.* 331, 336 (App. Div. 1991).

B. Stipulated Penalties

Stipulated penalties are an important tool in the Department's efforts to ensure that responsible parties take seriously their obligations to clean up a site under an administrative consent order and comply with agreed upon actions and timetables. Many governmental agencies, including the United States Environmental Protection Agency for Superfund sites, commonly use stipulated penalties for this same purpose. Stipulated penalties are fixed sums of money that a responsible party agrees in advance to pay to the Department as a penalty for any unexcused failure to comply with the agreed upon provisions of an administrative consent order. These stipulated penalties are generally analogized to liquidated damages in a commercial contract in that they are designed to provide an effective monetary incentive for strict compliance with the administrative consent order. The Department believes that there is more timely compliance with administrative consent orders which include stipulated penalties than with those that do not.

The main purposes of stipulated penalties are to create a disincentive not to comply and to reinforce the expectation that the responsible party complete the work within the established schedules, and do the work according to the terms and conditions of the administrative consent order. The Department believes that stipulated penalties should be set at a level sufficient to provide an economic incentive to comply. Stipulated penalties must, therefore, be set at a level which will effectively "strip violators not only of profits made in connection with their [noncompliance], but also in a sufficient amount to deter others from similar [noncompliance]. The penalty that may be imposed will be large enough so as not to become the mere equivalent of permit fee or the mere cost of doing business [in this State]." *State of New Jersey, Department of Environmental Protection and the Pinelands Commission v. John Lewis,* 215 *N.J. Super.* 564, 576 (App. Div. 1987). The Department proposes two schedules for stipulated penalties. The first schedule is for the major deliverables and tasks, and the second schedule is for all other requirements.

Stipulated penalties begin to accrue on the day in which the violation or noncompliance with the requirement actually occurs and not when the Department gives notice of the violation or noncompliance to the violator. The stipulated penalties then continue to accrue during the period of violation or noncompliance through to the day of correction as determined by the Department. Noncompliance includes untimely performance as well as submissions of unacceptable quality. If a deliverable is of such poor quality so as to not even qualify as a submission, then the Department may seek stipulated penalties as if the responsible party had not made any submissions. However, when the violation asserted relates to the quality of the deliverable, stipulated penalties cease to accrue after a specified number of days unless the Department supplies written notice to the violator that stipulated penalties continue to accrue.

For a violation of an administrative consent order which includes more than one responsible party, each responsible party is separately liable for the stipulated penalties for violation of the same obligation. The proposed rules provide that the stipulated penalties are payable within 30 days after receipt by the violator of notification from the Department of noncompliance. Furthermore, interest begins to accrue on any unpaid stipulated penalty balance at the end of the 30-day period so that the responsible party does not achieve an economic benefit from delayed payment of stipulated penalties. Finally, payment of the stipulated penalties by any responsible party does not relieve that responsible party's responsibility to comply with the administrative consent order or prevent the Department from taking other enforcement actions.

Any party against whom the Department asserts stipulated penalties who believes it is not liable for the stipulated penalities may either attempt to settle the matter with the Department or elect not to pay the stipulated penalties. This could force the Department to bring an enforcement action in which the party could raise all available defenses (see discussion on reservation of rights below) to refute the Department's allegations.

C. Financial Assurance

There are three purposes for the financial assurance requirements. First, the required financial assurance provides the Department with assurance that the responsible party has at its disposal the financial resources available to perform all of the work which is the subject of the administrative consent order. Second, by posting the financial assurance to guarantee that it will perform the work, the responsible party risks its own standing in the financial community by using some of its available credit to "guarantee" that it will complete the work, thus providing an incentive to complete the cleanup as detailed in the administrative consent order. Third, if after the parties execute an administrative consent order, the responsible party becomes unwilling or unable to complete the work, the Department may draw on the responsible party's financial assurance to perform the work and thus preserve public funds.

When the Department requires financial assurances, a responsible party must provide one of several financial assurance alternatives as a guarantee to the Department that adequate funds will be available to the Department should the responsible party be either unwilling or unable to comply with the administrative consent order. The administrative consent order then requires the responsible party to submit annual project cost reviews. As the actual cost of the remediation becomes more definite, the Department must adjust the amount of the financial assurance required to reflect that amount.

The Department has included, in both the ECRA rules (N.J.A.C. 7:26B) and in N.J.A.C. 7:26C-5, the factors which the Department will use to determine the appropriate amount of financial assurance for a particular case.

D. Force Majeure

This section establishes a three part procedure for the application of force majeure to any event during a responsible party's participation in remediation activities pursuant to an administrative consent order. First, the responsible party must notify the Department in writing within seven calendar days of a delay or anticipated delay, specifically referencing the force majeure provision in the administrative consent order and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay and the time required to take any such measures to minimize the delay. Second, the responsible party must take all measures necessary to prevent and minimize the delay. A responsible party's failure to strictly comply with either of these first two steps of the force majeure provision is a waiver of force majeure to the specific issue at question.

Third, upon the determination by the Department that the responsible party has both complied with the notice requirements and has taken all necessary action to prevent and minimize any such delay, the Department then reviews the facts to determine whether or not the delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of the responsible party. If the Department is able to make such a finding, the Department then extends the time for performance for a period no longer than the delay resulting from the circumstances. If the Department does not make such a finding, the Department will not exceed the time for performance under the administrative consent order and any such delay by the responsible party would be a violation subjecting that responsible party to enforcement action by the Department.

The burden of proving that any delay is caused by circumstances beyond the control of the responsible party and the length of any such delay attributable to those circumstances rests with the responsible party. Force majeure does not include the non-attainment of goals, standards, guidelines or remediation requirements set forth or referenced in the administrative consent order, increases in the cost or expenses in fulfulling the requirements of the administrative consent order, or contractor's breach unless such breach otherwise falls within the force majeure

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provisions. If the responsible party implements the remedial alternative the Department selects and is unable to attain the remediation requirements established by the Department, this is not a situation in which the force majeure provision applies. In such circumstances, the Department may require the responsible party to implement another remedial alternative or conduct any other work necessary to protect human health and the environment.

E. Reservation of Rights

The purpose of the reservation of rights provisions is to articulate the legal rights of both the Department and the responsible party upon the issuance or execution of the oversight document. In allowing the responsible party to participate in the cleanup of the contaminated site the Department cannot and will not waive its statutory authority and responsibility to require the responsible party to take any and all additional measures necessary to protect human health and the environment. Furthermore, one of the rights the Department reserves is the right to unilaterally terminate an oversight document if the responsible party fails to comply with its terms and conditions. The Department also reserves other important rights necessary to ensure that the Department can bring to bear on a situation any of its statutory authority necessary to clean up and remove the discharge. As stated above, a responsible party does not have the right to pre-enforcement review of the Department's decisions concerning the cleanup of a contaminated site. However, in an action brought by the Department to enforce the oversight document the responsible party may raise a defense that the Department's decision at issue was arbitrary, capricious or unreasonable.

Summary of Rules

General Provisions

Subchapter 1 includes the scope of the proposed rules, definitions, certifications, construction, waiver and severability provisions.

Selection of Appropriate Oversight Document

Subchapter 2 presents the legal options and oversight documents available to the Department for assessment and inspection of a site which may be contaminated and the remediation of a contaminated site and the procedures to determine which oversight document option is applicable to a particular site.

The Department has established the criteria to identify the specific oversight mechanism applicable to a particular circumstance. Once the particular oversight mechanism is identified, the reader is then referred to the appropriate subchapters which provide the procedural requirements to obtain the applicable document.

In subchapter 2 the Department states that a Spill Act directive is intended to constitute a clear, written notice to those parties the Department believes to be in any way responsible for hazardous substances discharged at a particular site, both as to their liability for hazardous substances at issue and as to the nature of the cleanup determined by the Department to be necessary to remove the discharge. The Department, however, is in no way restricted to the Findings it alleges in a Directive in the event that it initiates a cost recovery action against a responsible party who had not complied with a Directive. *In the Matter of Gloucester Environmental Management Services, Inc., et al., Appeal of Manor Care, Inc.,* Superior Court of New Jersey, Appellate Division (Dkt. No. A-1202-88T3), decided April 17, 1990.

Although a directive recipient may raise all good cause defenses it has to a directive if and when the Department moves in court to enforce the directive, the proposed rules require a directive recipient to respond to the directive by documenting to the Department such defenses within the response time indicated in the directive. Such a response is necessary to eliminate a directive recipient from creating arguments subsequent to the time for responding to the directive and erroneously couching them as defenses existing at the time the Department issued the directive. The Department will rely on such defenses raised in a timely manner in its decision to proceed with public funds to remove or arrange for the removal of the discharge. Similarly, the Department will rely on a party's failure to respond to a directive in its decision to proceed with public funds to remove or arrange for the removal of the discharge.

Memorandum of Agreement

Subchapter 3 presents the procedures for a party to obtain a memorandum of agreement for the Department to oversee that party's performance of all or part of the investigation or remediation of a site. Any party may initiate this process at an appropriate site by submitting to the Department a completed application (which the Department will provide). The Department will then prepare and offer for signature to the applicant a memorandum of agreement based on the application and the standard language for a memorandum of agreement (see N.J.A.C. 7:26C, Appendix A). The integral parts of the memorandum of agreement require the applicant to perform all work pursuant to the technical requirements in N.J.A.C. 7:26E and to pay the Department for its costs in overseeing the work and for the Department to agree to specific response times and to give the applicant written comments on any submissions and approvals as appropriate.

To request the Department to enter into a memorandum of agreement, the party who will be conducting the cleanup submits a completed application which details the work to be performed. In addition, the party conducting the remediation must provide the Department with a schedule of the work to be performed, including the timing of the submission of documents and reports to the Department for review. This schedule will improve the Department's ability to schedule its resources and to provide timely comments on all submissions.

The Department will review the document for administrative completeness and relay notice of any deficiencies to the party conducting the remediation within 30 days. Upon the Department's determination that a submission is administratively complete, the Department will notify the party in writing of the Department's expected turnaround time for comments on the document.

The Department will provide written comments on the submission detailing the acceptance of any conclusions or recommendations and the need for any additional remediation efforts. It is anticipated that these reviews will take between 30 and 60 days depending on the level of complexity of the submission. The Department will bill the party for all costs associated with the review in accordance with the oversight cost formula proposed in Appendix I to N.J.A.C. 7:26C.

ECRA Administrative Consent Orders

Subchapter 4 presents the procedures for obtaining an ECRA administrative consent order. Previously, the Department promulgated these rules at N.J.A.C. 7:26B-7, but has decided to move them to this chapter so that all Department oversight documents are in a single chapter.

In appropriate cases, the Department may allow transactions or closures involving industrial establishments subject to ECRA and the ECRA rules, N.J.A.C. 7:26B, to proceed prior to completing the standard ECRA administrative process through the execution of an ECRA administrative consent order. The administrative consent order specifies a time schedule for completion of ECRA requirements, provides for stipulated penalties for non-compliance and requires financial assurance to be posted in a form and amount acceptable to the Department prior to consummation of any transaction or closure subject to ECRA. Failure to fully comply with all the terms and conditions of an administrative consent order shall subject the industrial establishment to the full range of penalties and remedies prescribed in ECRA, the ECRA rules, and the administrative consent order.

An ECRA administrative consent order is available in instances where the applicant demonstrates to the Department that he or she meets the criteria as specified in N.J.A.C. 7:26C-4.1. To start the process, the applicant submits a completed administrative consent order application with the appropriate fee to the Department. Within two weeks of the Department's receipt of a completed administrative consent order application, the Department will prepare an administrative consent order. When incomplete administrative consent order applications are submitted, the applicant will have 30 days in which to submit any outstanding information. The Department will continue to process the administrative consent order, but will not release it until all outstanding information is submitted.

An application is used to request an administrative consent order or, when appropriate, an amendment to an existing administrative consent order to enable a transaction or closing subject to the provisions of ECRA to occur prior to full compliance with the ECRA requirements. This application must be completed by the owner and the operator of the industrial establishment or their authorized agents pursuant to N.J.A.C. 7:26B-1.13 and submitted with payment in the amount of $2,000, or $500.00 for an administrative consent order amendment.

The Department will not process the request unless all questions and signatures in the application are completed and notarized, and accompanied by the appropriate fee. The applicant must provide the Department with sufficient time to review the application and prepare the

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administrative consent order for signature prior to the planned ECRA triggering event.

In Appendix B to this chapter, the Department has included a standard ECRA administrative consent order as the mechanism for the Department to oversee a party's compliance with ECRA at an industrial establishment.

The standard ECRA administrative consent order is slightly different from the administrative consent orders previously used in the ECRA program. This is the result of the Department's evaluation of the language of both the ECRA and responsible party administrative consent orders which the Department has been negotiating for over eight years. By incorporating the best aspects of each of these administrative consent orders into a single document, the Department has created not only a consistent document across program lines, but also was able to clarify and strengthen the wording in these critical oversight documents.

One of the important differences is the change in the nomenclature for the phases of remediation. ECRA "sampling plans" are now defined in N.J.A.C. 7:26E as "remedial investigation plans" and ECRA "cleanup plans" as "remedial action plans". This change in terminology will help to ensure that there is no confusion as to the scope and requirements for the individual phases of remediation.

Some of the differences from the ECRA perspective include new sections which were added and the modification of existing sections. New sections incorporated into the ECRA administrative consent order include: an optional penalty and damage reimbursement provision; an interim response section; and a feasibility study section applicable in certain specific circumstances. The following sections have been modified: stipulated penalty amounts have been increased, but the Department has retained the discretion to ask for penalties up to the maximum stipulated penalty amount; two different stipulated penalty amounts are included, one for major violations and the other for all other violations; and several general provision sections have been modified.

Responsible Party Administrative Oversight Document

Subchapter 5 defines the degree, manner and scope of a party's participation in the remediation of high priority contaminated sites. One of the purposes of this proposal is to standardize the terms of oversight documents when a party other than the Department is conducting the cleanup of high priority contaminated sites, so that sites with similar contamination and risk exposure are dealt with consistently. This chapter also presents the standardized terms of an oversight document for a party to participate in the cleanup which the Department is conducting.

The Department, on a periodic basis, identifies contaminated sites of high environmental priority at which the Department intends to allocate public resources for site remediation. The Department then proceeds to use those public resources for the site unless one or more private parties agree to fund and implement the remediation pursuant to an oversight document. When the Department addresses each of these sites in turn, the Department schedules both the personnel and financial resources necessary to perform the work through its public site remediation program.

The Department notifies the responsible parties for those contaminated sites of high environmental priority to inform them of the priority status of the contaminated sites. In those cases in which the Department is able to identify a responsible party that is both willing and able to perform the work in the place of the Department, then the Department is able to shift the resources of its publicly conducted site remediation program to the next highest case on its priority list for publicly conducted work. The form of a responsible party's commitment in this situation must guarantee the complete remediation of a contaminated site since limited public resources are being shifted to a lower priority site.

The Department's experience has been that in the absence of a binding, enforceable document, for example, an administrative consent order, many responsible parties do not pursue cleanups with aggressiveness appropriate for a high priority site. On the contrary, responsible parties often delay the work, produce work of unacceptable quality and at times have stopped the work completely. This response is unacceptable for any contaminated site, but particularly for high priority sites. It is imperative, therefore, that a party conducting a cleanup perform the work pursuant to an oversight document. Unless the party performs the work pursuant to a legally enforceable document guaranteeing the work, the Department is not able to ensure that the responsible party will conduct the remediation in a timely manner. It is only the presence of an oversight document which memorializes the party's commitment to clean up a site completely which allows the Department to move on to the next priority site. In addition, the Department has the alternative of using public funds to ensure the protection of human health and the environment. The work a party performs pursuant to an oversight document, therefore, must be at least equivalent to that which the Department would perform if the Department was conducting the cleanup itself.

The purposes of an administrative consent order for a high priority contaminated site are to: establish the conditions of a party's participation in the cleanup of the contaminated site in a legally enforceable document; ensure the timely and appropriate cleanup of a contaminated site; establish the procedural and technical requirements of the work so that the environmental and human health impacts associated with past and present activities at the site are thoroughly investigated and appropriate remedial action taken as necessary to protect human health and the environment; establish a procedural framework and schedule for developing, implementing and monitoring appropriate remedial actions at the site; define the legal rights of the Department and the responsible party; and establish the requirement and mechanism for a responsible party's payment of the Department's costs of overseeing the responsible party's activities pursuant to the administrative consent order.

Oversight documents, such as administrative consent orders, for the cleanup contaminated sites in New Jersey have evolved over the course of the last decade. Often compared to commercial contracts, administrative consent orders are worded to ensure that both parties understand the obligations and commitments. Similarly, where the Department is conducting the cleanup, it uses binding agreements with its contractors to ensure proper and timely performance by both parties.

In Appendix C to this chapter, the Department has included a standard administrative order as the mechanism for the Department to oversee a party's performance of the remediation at a high priority site. In Appendix D to this chapter, the Department has included a standard oversight document as the mechanism for a party to participate in the cleanup that the Department is conducting. Appendices E through H include the language for the financial assurance mechanisms required pursuant to this subchapter; substantively these appendices are the same as the financial assurance mechanisms for ECRA in N.J.A.C. 7:26B.

The standard responsible party oversight document is slightly different from the administrative consent orders previously used in the responsible party remediation program. This is the result of the Department's evaluation of the language of both the ECRA and responsible party administrative consent orders which the Department has been negotiating for over eight years. By incorporating the best aspects of each of these administrative consent orders into a single document, the Department has created not only a consistent document across program lines, but also was able to clarify and strengthen the wording in these critical oversight documents.

One of the important differences is the change in scheduling of the remediation. The Department has been very successful in achieving timely ECRA cleanups by standardizing the time frames for the performance of the individual phases of remediation. The Department has found that much of the work can be accomplished within these time frames. The Department has retained the discretion to extend any of these time frames for those situations in which additional time is needed. In this way the Department hopes to improve the timeliness of the remediation of contaminated sites. Other important changes include a reduction in the requirements which would trigger the higher level of stipulated penalties if violated and a capping of the stipulated penalties at $25,000 per violation.

One group of companies and individuals with experience in the cleanup of contaminated sites has clearly articulated that the "[f]inal standard by which [an administrative consent order] should be judged is whether it advances the general public interest. That objective surely requires that [administrative consent orders] protect the needs of the government to ensure the quality and timeliness of work performed by [responsible parties] when they assume responsibility to conduct the [cleanup]." The Information Network for Superfund Settlements. Superfund Negotiation Handbook, A critical Analysis of EPA's Model ACO for RI/FS Work. 1990. p. 7. In the context of the Department's actual experience in not only negotiating administrative consent orders, but also in overseeing their implementation, the Department believes that it has struck a reasonable balance between competing concerns through which New Jersey will continue to achieve unprecedented success in obtaining private party commitments to clean up contaminated sites.

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Subchapter 5 also identifies which of the conditions the Department will include in an oversight document to control a specific party's investigation and cleanup of a high priority contaminated site. Different degrees of Department oversight and control are appropriate because of the variability and complexity of contaminated sites. One example of this variability is the party or parties who will be performing the remediation. The general rule is that a party executing an oversight document pursuant to this subchapter must agree to perform all necessary remediation of the site. An exception to this is provided for sites involving multiple responsible parties which may commit to perform the remedial investigation and feasibility study separate from the remainder of the remediation. The dynamics of a group of multiple responsible parties, is such that it is extremely difficult to obtain their commitment to perform more than a single phase at a time.

The Department has proposed procedures in subchapter 5 for negotiating administrative consent orders. Included in this process are time frames which the Department will use to limit the period of negotiation and demand a decision by the responsible party as to whether or not it is willing to participate in the cleanup pursuant to this chapter.

Oversight Cost Formula: Appendix I

An intrinsic part of any agreement for the Department to oversee a party's performance of the remediation of a contaminated site is that party's agreement to reimburse the Department for its review costs. In order to make the identification of those costs both predictable and consistent, the Department will use the oversight cost formula included in the proposed rules in Appendix I, which is applicable to memoranda of agreement and responsible party administrative consent orders. This formula identifies all of the Department's direct and indirect costs related to oversight of site remediation. The Department will continue to use ECRA fees as the mechanism to cover the Department's oversight costs.

Amendments to the Existing ECRA Rules

As discussed above, the Department has recodified the existing ECRA rules concerning administrative consent orders and included a standard document in these rules. The Department, therefore, is proposing to delete the existing N.J.A.C. 7:26B-7 and to replace it with a reference to N.J.A.C. 7:26C-4. In addition, the Department is proposing to delete the references to violations of ECRA administrative consent orders in N.J.A.C. 7:26B-9.3, because the standard ECRA administrative consent order includes stipulated penalty provisions.

Social Impact

Contaminated sites affect virtually everyone in the State whether directly (due to proximity to the site causing potential environmental and human health risks) or indirectly (due to the cost to the taxpayer of having these sites remediated). Public opinion polls have shown that environmental issues including the issue of pollution, are a major concern of the citizens of New Jersey. The proposed rules will have a positive social impact by resulting in the expedited cleanup of contaminated sites throughout the State in an efficient and effective manner. Cleanups will occur more expeditiously for two reasons: the Department, by standardizing the contents of oversight documents, has increased the predictability and consistency of the commitments it expects from a party performing the remediation with Department oversight, and a new oversight document which will be available under the rules allows a party to perform the work with Department oversight for sites which are not high on the Department's priority list.

Economic Impact

The Department has estimated that it will cost several billion dollars to clean up confirmed contaminated hazardous waste sites which it has targeted for remediation over the next decade. Thus far, the Department has been fairly successful in achieving effective oversight documents, once it has identified a particular site for action. However, by decreasing the amount of time and staff resources committed to negotiation, the Department expects to address a larger number of sites. More responsible parties should therefore be performing the actual cleanups with private dollars. These rules will have a positive economic impact on the State as a whole in that public funds originally earmarked for the cleanup of contaminated sites will be available for those sites where a responsible party cannot be identified or is unwilling to remediate a contaminated site. The funds applied to such cleanup activities are expected to result in jobs for the associated investigation and remediation.

In addition, the proposed memoranda of agreement will allow the Department to respond to external economic forces to clean up lower priority sites. These rules will also increase the number of previously contaminated sites which can be returned to productive use, thereby resulting in both a public and private economic benefit. This is of particular importance in the context of the State Master Plan which encourages the redevelopment of urban sites since a disproportionate number of these sites exist in urban areas and will not be productively reused until cleaned up.

The costs the proposed rules impose include payment of the Department's oversight costs pursuant to any oversight document, and the posting of financial assurance, and the payment of stipulated penalties for all Administrative Consent Orders. Whenever a person elects to conduct the remediation of a contaminated site pursuant to an oversight document under the proposed rules, the Department allocates staff time to oversee this work to ensure that the work is performed in compliance with applicable environmental statutes and regulations. As a condition to performing the remediation, the person executing the oversight document agrees to pay for the Department's oversight costs. In developing a formula to calculate oversight costs, the Department's goal was to identify all costs the Department incurs in reviewing and approving work performed for a contaminated site. The oversight costs varies with the complexity of the site and the type and extent of contamination. The greater the complexity, the more review and the higher the oversight costs.

For all administrative consent orders the Department requires financial assurance. There are no changes in the financial assurance requirements for ECRA administrative consent orders which are being recodified in these proposed rules. The only new oversight document with financial assurance requirements are administrative consent orders for high priority contaminated sites. As the Legislature intended in N.J.S.A. 13:10-9u, the financial assurance provides the Department with the funds if a private entity is unable or unwilling to proceed with the cleanup. The cost of obtaining financial assurance is generally one to three percent of the cost of the cleanup.

Another potential cost which may be incurred as a result of these proposed rules are stipulated penalties or other enforcement fines when a person is out of compliance with the Administrative Consent Order. The amount of stipulated penalties are designed as a deterrence to noncompliance. There is no way to estimate what the amounts could be, but whether or not they are assessed is in control of the person that executed the Administrative Consent Order who decides subsequently not to comply.

Environmental Impact

By institutionalizing the way a private party may be involved in the cleanup of a contaminated site, the result will be a greater number of sites being cleaned up in a more expeditious and environmentally sound manner. These rules require those conducting remedial activities to preform the same level of investigation and cleanup as if the Department was performing the work itself, thus ensuring quality cleanups. Further, by using private dollars to remediate these contaminated sites instead of public funds, the public funds dedicated to cleaning up contaminated sites will be available for those sites without an identified or willing responsible party. Thus, these proposed rules will have an obvious positive environmental impact.

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 the proposed new rules will affect a significant number of small busineses (as defined in the Regulatory Flexibility Act). The following analysis describes those effects attributable to each of the major portions of the proposed new rule.

With the exception of the new memorandum of agreement as the mechanism to have the Department oversee a party's performance of remediation, the rules do not represent new Department initiatives. The proposed rules include a recodification of the existing ECRA rules governing administrative consent orders and a codification of how the Department has been conducting oversight for the high priority contaminated sites. The rules, therefore, will not affect small businesses in any negative manner, but rather give them the flexibility to respond to changing economic circumstances.

The level of environmental concern of a contaminated site, and hence its priority for remediation, is independent of the size of the business that is located at a site or is otherwise responsible for the contamination.

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Small businesses subject to these rules will require the services of an environmental consultant to perform the investigation and cleanup of contaminated sites as they have in the past. Any contaminated site must be remediated to levels that are protective of human health and the environmental, regardless of the size of the business conducting the remediation. In developing these rules, the Department has balanced the need to protect public health and the environment against the economic impact of the proposed rules as discussed above and has determined that to minimize the impact of the proposed regulations on small businesses would endanger the environment, public health and public safety. Therefore, these rules can not establish separate requirements for small businesses and no exemption is provided for "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The use of a memorandum of agreement will assist all businesses, including small businesses, in their decision making concerning sites with known or suspected contamination. Such businesses will be in a position to perform as much of the remediation as they are able to, and will be allowed the option to terminate the activities at any time without any financial penalty being applied.

Full text of the proposed repeal and new rule at N.J.A.C. 7:26B-7 and the proposed amendment to N.J.A.C. 7:26B-9.3 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 7. ADMINISTRATIVE CONSENT ORDERS

[7:26B-7.1 Criteria

(a) In the circumstances listed in (a)1 through 10 below, the Department may, in its discretion, enter into an ACO with the owner or operator of an industrial establishment so that the closing, termination or transferring of operations may occur provided that compliance with the act and this chapter is assured as specified in the ACO.

1. If there is a stock tender offer, either friendly or hostile;

2. If there is a public offering of securities traded or to be traded on federally regulated stock exchanges;

3. If the industrial establishment is required to develop a detailed sampling or cleanup plan, or both, and it is determined by the Department that a negative declaration or cleanup approval pursuant to N.J.A.C. 7:26B-5 will not be granted within four months from the time the Initial Notice is submitted;

4. If there is a sale or transfer to a New Jersey State, county, or municipal department, agency or authority with the power of eminent domain;

5. If the owner or operator demonstrates that bankruptcy or insolvency is likely to occur if this transaction does not take place prior to implementation of the provisions of the Act and this chapter;

6. If the owner or operator demonstrates that layoffs of employees by either the seller or buyer are likely to occur if the transaction does not take place prior to implementation of the provisions of the Act and this chapter;

7. If there is a transaction involving one or more industrial establishment(s) in New Jersey, that is a part of a transaction involving multiple places of business at least one of which is not located in New Jersey;

8. If financing is provided by the New Jersey Economic Development Authority or other governmental department, authority or agency;

9. If a tenant requests that an ACO due to lease termination by its landlord in which the tenant has fewer than 180 days notice of termination.

10. If a landlord requests an ACO due to lease termination by its tenant in which the landlord has fewer than 180 days notice of termination.

(b) The applicant shall demonstrate that the circumstances described in (a) above will occur or have occurred and, therefore, that an ACO is necessary or advisable.

7:26B-7.2 Application Forms

The owner or operator of an industrial establishment, or the purchaser, transferee, mortgagee, or other party to the transfer, shall submit an application for an ACO on forms available from the Department and accompanied by fees as described at N.J.A.C. 7:26B-1.10.

7:26B-7.3 ACO financial assurance requirements

(a) The owner or operator of an industrial establishment, or the purchaser, transferee, mortgagee, or other party to the transfer, shall provide financial assurance in accordance with N.J.A.C. 7:26B-6 in an amount equal to or greater than the Department's current estimate of the cost of cleanup.

(b) In no case shall the amount of financial assurance for an ACO be less than $100,000 unless the Department determines the cost of cleanup is less than $100,000 based upon the submission of sampling data and a complete SES.

7:26B-7.4 Stipulated penalties

(a) All ACOs shall contain a provision for the payment of stipulated penalties in the amounts for the violations set forth in N.J.A.C. 7:26B-9; for violations of this chapter, the Act of the ACO which are not listed at N.J.A.C. 7:26B-9, the stipulated penalties shall not be less than $1000.00 nor more than $5000.00 per day per violation.

(b) The party(ies) to the ACO shall waive their rights to contest the Department's discretion concerning the amount of stipulated penalties assessed by the Department under the stipulated penalty provision of the ACO.

7:26B-7.5 ACO signatories and liability

(a) All ACO's must be signed by the owner or operator of the industrial establishment.

(b) In the Department's discretion, a purchaser, transferee, mortgagee, or other party to the transaction may sign an ACO with the Department and the owner or operator; however, the owner or operator, as well as any other non-Department signatories, shall be strictly liable, jointly and severally, for compliance with this chapter, the Act, and the ACO. If the operator signs an ACO and the owner does not, or if the owner signs an ACO and the operator does not, the owner and the operator remain strictly liable, jointly and severally, with the signatories to the ACO, for compliance with ECRA and this chapter.

(c) If a signatory to an ACO is executing the ACO on behalf of an entity other than that individual, the ACO shall be accompanied by documentary evidence (such as a corporate resolution, a partnership resolution, a power of attorney, or the like) authorizing the signatory to bind the entity to the provisions of the ACO.

7:26B-7.6 Site access

The owner or operator of an industrial establishment who enters into an ACO shall provide to the Department appropriate documentation that the purchaser, transferee, mortgagee, operator, or other party to the transaction shall allow access by the Department and the transferor to the industrial establishment for all purposes of the Act and this chapter.]

7:26B-7.1 ECRA administrative consent orders

(a) The process for obtaining an ECRA administrative consent order is specified in N.J.A.C. 7:26C and contains:

1. The eligibility criteria for obtaining an ECRA administrative consent order;

2. The procedure to obtain an ECRA administrative consent order; and

3. The wording requirements for an ECRA administrative consent order.

7:26B-9.3 Civil penalties

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

(d) The schedule in **(d)**1 to 7 below indicates the amounts which the Department may accept for the following violations**, except for violations of an ECRA administrative consent order which are governed by N.J.A.C. 7:26C-4**:

1. Unless otherwise provided in **(d)**2 to 7 below:

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Days from date required to date received	Notification/ Submissions required by Regulations/ Legislation (per day)	Submissions Required by letter(s) from DEPE pursuant to the Regulations Legislation (per day)	[Violations of any ACO Requirement (per day)
1-14 Days	$ 250.00	$ 500.00	$1,000.00
15-29 Days	500.00	1,000.00	2,000.00
30-44 Days	750.00	1,500.00	3,000.00
45-59 Days	1,000.00	2,000.00	4,000.00
more than 59	1,250.00	2,500.00	5,000.00]

2.-7. (No change.)

(e) (No change.)

(f) Nothing in (d) above shall limit or otherwise prohibit the Department from seeking the maximum penalties provided by the Act for the violations listed in (d) above or for any other violation of the Act, **or** this chapter, [or an ACO not listed in (d) above] in a summary action under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

Full text of proposed new rules N.J.A.C. 7:26C follows:

CHAPTER 26C
DEPARTMENT OVERSIGHT OF THE REMEDIATION OF CONTAMINATED SITES

SUBCHAPTER 1. GENERAL INFORMATION

7:26C-1.1 Scope

(a) This chapter identifies the Department oversight documents available for a person to participate in the remediation of a contaminated site or the assessment and investigation of a potentially contaminated site, and presents the procedures to determine the applicable oversight document for a particular site.

(b) The participation by any person in any of the procedures outlined in this chapter shall not relieve that person from responsibility to comply with all other applicable statutes and regulations.

7:26C-1.2 Certifications

(a) Any person making a submission to the Department required by this chapter, shall include the following signatures and two-part certification pursuant to (b) and (c) below.

(b) The following certification shall be signed by the highest ranking individual with overall responsibility for implementing the remediation of a site:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil 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. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(c) The second certification shall be as indicated in (c)1 below.

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein 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. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

2. The certification in (c)1 above shall be signed as follows:

i. For a corporation, by a principal executive officer of at least the level of vice president;

ii. For a partnership of sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

iv. For persons other than (c)2i through iii above by the person with legal responsibility for the site.

7:26C-1.3 Definitions

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

"Administrative consent order" means an administrative order issued by the Department which is consented to by one or more persons; and may be in the form of a memorandum of understanding for public entities at the Department's discretion.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.).

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy or his or her authorized representative.

"Contaminated site" means all portions of environmental media that contain one or more contaminants at a concentration which exceeds any applicable cleanup standard, and includes all contamination at an industrial establishment, facility or other site, and all contamination which is emanating, or which has emanated, therefrom.

"Contaminant" means any discharged hazardous substance, hazardous constituent, hazardous waste or pollutant.

"Decision document" means a document issued by the Department that outlines the engineering components and cleanup standards for all or part of a contaminated site. The decision document summarizes the history, characteristics and risks posed by conditions at the site. The decision document also describes, where appropriate, the remedial alternatives that were considered during the site investigation, the comparative analysis of those alternatives and provides the rationale for selection of the final remedial action, specifically explaining the remedial action.

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

"Directive" means a document issued by the Department pursuant to N.J.S.A. 58:10-23.11 et seq. and N.J.S.A. 13:1D-1 et seq. to, among other things, notify the recipient thereof that the Department has determined that it is necessary to remove or arrange for the removal of a discharge of hazardous substances and that the Department believes the recipient is a person who may be subject to liability for the discharge of a hazardous substance.

"Discharge" means any intentional or unintentional act or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance, hazardous constituent, hazardous waste or pollutant into the waters or onto the lands of the State, including building interiors; or into waters outside the jurisdiction of the State when damage may result to the lands, waters, or natural resources within the jurisdiction of the State. A discharge does not include a discharge pursuant to and in compliance with a valid State or Federal permit.

"ECRA" means the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.

"Environmental medium" means any component such as soil, air, sediment, structures, ground water or surface water.

"EPA" means the United States Environmental Protection Agency.

"Feasibility study" or "FS" means a study to develop and evaluate options for remedial action pursuant to N.J.A.C. 7:26E. The FS emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation (RI). The FS process uses data gathered during the RI to develop conceptual remedial action alternatives based on the characterization of the nature and extent of contamination. The RI data are used to define the objectives of the remedial action and to develop remedial action alternatives. Next, an initial screening of these alternatives is conducted to reduce the number of alternatives to a workable number. Finally, the FS involves an analysis for engineering, scientific, institutional, human health, environmental and cost factors of a limited number of alternatives which remain after the initial screening stage.

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"Hazardous constituent" means any substance defined as such pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.16.

"Hazardous substance" means any substance defined as such pursuant to the Discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

"Hazardous waste" means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.

"High priority site" means a contaminated site that is scheduled to be remediated with public funds unless a responsible party executes an administrative consent order pursuant to this subchapter.

"Industrial establishment" means any place of business or real property identified as an industrial establishment pursuant to N.J.A.C. 7:26B.

"Initial Notice" means both the completed GIS and the completed SES described at N.J.A.C. 7:26B-3.

"Interim response action" or "IRA" means the temporary or partial remediation of contaminants, or temporary or partial remediation of an operable unit as may be necessary due to a discharge or threat of a discharge to prevent, minimize, or mitigate damage to human health or to the environment, which may otherwise result from a discharge or threat of discharge. The term also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals, and removal and care of wildlife.

"Memorandum of agreement" means a written agreement between the Department and one or more persons concerning the Department's oversight of remediation pursuant to this chapter.

"Multiple responsible parties" means five or more unrelated responsible parties, as determined by the Department, involved at a contaminated site.

"Natural resources" means all land, biota, fish, shellfish, and other wildlife, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

"Negative declaration" means a negative declaration as defined pursuant to N.J.A.C. 7:26B.

"Operable unit" means part of a contaminated site for which a discrete action comprises an incremental step toward comprehensively addressing contaminated site problems. This discrete portion of remediation manages migration, or eliminates or mitigates a discharge, threat of a discharge, or pathway of exposure to a contaminant. Remediation of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

"Operation, maintenance and monitoring" or "OM&M" means activities required to operate, maintain and ensure the effectiveness of a remedial alternative.

"Oversight document" means any document the Department issues pursuant to this chapter to define the role of a person conducting the remediation of a contaminated site, and may include, without limitation, an administrative order, administrative consent order, directive, memorandum of understanding, or memorandum of agreement.

"Operator" means any person defined as an operator pursuant to N.J.A.C. 7:26B.

"Owner" means any person defined as an owner pursuant to N.J.A.C. 7:26B.

"Person" means any individual or entity, including without limitation, a public or private corporation, company, association, society, firm, partnership, joint stock company, foreign individual or entity and its agents, interstate agency or authority, the United States and any of its political subdivisions or agents, the State of New Jersey and its agents, or any of the political subdivisions of or found within the State of New Jersey and their agents, or any of the other meanings which apply to the common understanding of the term.

"Pollutant" means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Preliminary assessment" or "PA" means the initial search and evaluation of existing site specific operational and environmental information to determine if further investigation concerning the document, alleged, suspected or potential release of hazardous substances is required by the Department. The preliminary assessment is the first phase in the process of determining whether contaminants are present at a site.

"Public entity" means any Federal, State or county agency, commission or authority, any municipality or municipal authority or any body corporate and politic created by the act or acts of the Federal government, the State Legislature or any county or municipal government.

"RCRA" means the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.).

"Record of decision" or "ROD" is a decision document issued by the EPA pursuant to CERCLA, that outlines the engineering components and remediation goals in a remedial action plan for an NPL site or operable unit which is part of an NPL site. The ROD summarizes the history, characteristics and risks posed by conditions at the site. The ROD also describes the remedial alternatives that were considered during the feasibility study, the comparative analysis of those alternatives and provides the rationale for selection of the final remedial action, specifically explaining how the remedial action satisfies the requirements of CERCLA.

"Remedial action" or "RA" means those actions taken at a contaminated site and may be specified in a decision document, ROD, or other document the Department determines appropriate. The term includes, but is not limited to, such actions at the location of a contaminated site as compliance with cleanup standards, storage, confinement, perimeter protection using dikes, trenches, or ditches, clay or other covers, neutralization, cleanup of discharged contaminants and associated contaminated materials, ground water pumping and treatment, recycling or reuse, diversion, destruction, segregation of wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, treatment, off-site transport and off-site storage, treatment, destruction, or secure disposition of contaminants and associated contaminated materials, or any monitoring required to assure that such actions protect the public health or the environment. The term includes the permanent relocation of residents and businesses and community facilities where the Department determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such contaminants, or may otherwise be necessary to protect human health. The term includes the restoration of natural resources.

"Remedial design" or "RD" means the technical analysis, procedures, and activities which follow the selection of a remedial action for a contaminated site and results in a detailed set of plans, reports and specifications for implementation of the remedial action.

"Remedial investigation" or "RI" is a process to determine the nature and extent of site contamination and the problems presented by a discharge. The RI emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The RI includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for remedial action and to support the evaluation of remedial alternatives.

"Remediation" means all necessary actions to investigate and clean up any known or suspected discharge or threatened discharge of contaminants, including, but not limited to, PA/SIs, IRAs, RI/FSs, RDs, RAs, and OM&M.

"Responsible party" means a person who is in any way responsible for a contaminated site, or for the contaminants at a site including, for the purposes of this chapter, each owner or operator, and any other person obligated by law to clean up and remove contaminants at a site.

"Site investigation" or "SI" means the collection and evaluation of adequate data through biased environmental sampling to verify and support the findings of the preliminary assessment.

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"Solicitation document" means the document by which the Department seeks proposals from prospective offerors for the provision of services.

"Spill Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

7:26C-1.4 Liberal construction

These rules, being necessary to promote the human health and the environment, shall be liberally construed in order to allow the Commissioner and the Department to effectuate the purposes of the law.

7:26C-1.5 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. PROCEDURES FOR THE IDENTIFICATION OF THE APPROPRIATE OVERSIGHT DOCUMENT

7:26C-2.1 Scope

(a) This subchapter identifies:

1. The statutory authority for the Department to oversee a person's participation in the remediation of a site;

2. The oversight documents available depending on the circumstances of the particular site;

3. The procedures and requirements for a person to respond to a Spill Act Directive from the Department; and

4. The procedures to determine which particular oversight document is appropriate for a particular site.

(b) If a person conducting remediation elects to obtain Department oversight of those activities, the parties shall execute an oversight document pursuant to this chapter.

(c) Nothing in this subchapter shall be construed as limiting:

1. Any legal, equitable or administrative remedies against any person which the Department may have under any applicable law or regulation; or

2. The Department's discretion to pursue or to refrain from pursuing any such remedies.

7:26C-2.2 Memorandum of agreement

(a) The Department may choose to enter into an agreement with any person through which that person agrees to perform remediation of certain known or suspected contaminated sites. Such agreements shall be a memorandum of agreement.

(b) The Department will include in each memorandum of agreement, pursuant to (a) above, provisions pursuant to N.J.A.C. 7:26C-3.

7:26C-2.3 Administrative consent order

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Environmental Cleanup Responsibility Act, the Spill Compensation and Control Act, the Solid Waste Management Act, and the Water Pollution Control Act, the Department may issue an administrative consent order. Among other actions, the Department may issue administrative consent orders for the remediation of a contaminated site.

(b) The Department may choose to enter into an agreement with any person through which that person shall undertake remediation of a high priority site under the supervision of the Department. Such agreements shall be administrative consent orders.

(c) The Department will include in each administrative consent order for the remediation of a site provisions that conform to the requirements in N.J.A.C. 7:26C-4 or 5 as applicable.

7:26C-2.4 Administrative order

(a) Pursuant to N.J.S.A. 13:1D-1 et seq., the Solid Waste Management Act, and the Water Pollution Control Act, the Department may issue an administrative order. Among other actions, the Department may issue administrative orders for the remediation of a contaminated site.

(b) The Department will include, in each administrative order for the remediation of a contaminated site, provisions that conform to the requirements in N.J.A.C. 7:26C-5 to the extent appropriate to the particular enforcement action.

7:26C-2.5 Spill Act directive

(a) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a discharge of a hazardous substance to:

1. Conduct the remediation of a contaminated site, including the actual removal of the contamination or measures designed to prevent or mitigate damages to human health or the environment; or

2. Arrange for the remediation of a contaminated site, including such indirect arrangements as the funding by the responsible party of the government's costs to conduct the necessary remediation, or any other indirect arrangement deemed appropriate by the Department in the exercise of its enforcement discretion.

(b) This directive is intended to constitute a clear, written notice of that person's potential liability under N.J.S.A. 58:10-23.11 for any costs of cleanup, civil penalties or damages, and to provide that person a timely opportunity to respond to the directive.

(c) To the extent possible, the Department will in the directive provide general notice as to:

1. The site of the discharge or threatened discharge;

2. The identity of those responsible parties receiving the directive;

3. The connection of the directive recipient to the discharge;

4. The nature of the necessary remediation or the estimated costs to be incurred;

5. The actions that the directive recipients are directed to accomplish;

6. The manner and timetable for the undertaking of those activities; and

7. The identification of a period in which the recipients shall respond to the directive.

(d) The Department may issue a notice to an insurer or any other person who may have financial responsibility for those believed by the Department to be in any way responsible for a discharge of a hazardous substance.

(e) In those instances where the Department directs the performance of remediation, the Department may, in the exercise of its enforcement discretion, require the entry of an agreement in the form of an administrative consent order in order to provide assurance that any remediation required by that directive will be performed in a timely and proper fashion. These administrative consent orders shall conform to N.J.A.C. 7:26C-5.

(f) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive with the directive recipient. These discussions shall be initiated by the directive recipient and inquiries shall be made to the Department's contact person designated in the directive.

(g) The directive recipient shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the directive recipient decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the directive recipient decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the directive recipient shall make such payment in mitigation of any liability that it may possess and comply with (h) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the directive recipient decides not to comply with the directive, the directive recipient shall indicate in writing that it chooses not to take any actions to comply with the directive and comply with (h) below.

(h) If the directive recipient chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the directive recipient shall submit a written response to the Department according to the requirements in the directive.

1. The directive recipient shall include in the response a detailed explanation of the recipient's reasons for its decision, including all good cause defenses therefore. These written reasons will serve both to enable the Department to consider the recipient's contentions as

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to liability and to establish the nature and extent of any good cause defenses to treble damages.

2. The defenses the directive recipient includes in its written response to the directive will establish the good cause defenses to treble damages which the directive recipient may raise in a subsequent action by the Department to enforce the directive. The Department will rely on such defenses raised in a timely manner in its decision to proceed with public funds to remove or arrange for the removal of the discharge.

(i) In those circumstances where a person has chosen not to comply with a directive by executing an administrative consent order pursuant to this chapter, not to pay in mitigation of its liabilities under a directive, or not to respond to a directive, the Department may perform the remediation and obtain a cause of action against the directive recipient in an amount equal to three times the cost of the remediation conducted in accordance with the directive. In order to obtain such a treble recovery, the Department must initiate a cost recovery action in court against the directive recipient and must prove, as an initial matter, its entitlement to a single-cost recovery against the directive recipient. If the Department is able to establish a single-cost recovery against a directive recipient, it will be entitled to treble the cost recovery unless the recipient can establish that the directive recipient had, at the time required to respond to the directive, an objectively reasonable basis for failing to comply with the directive.

(j) Nothing in this section shall prohibit the Department from pursuing a cost recovery action against any person.

7:26C-2.6 Court action

Pursuant to the Environmental Cleanup Responsibility Act, Water Pollution Control Act and the Spill Compensation and Control Act, other environmental statutes and the common law, the Department may seek a range of judicial relief to address a contaminated site. The Department will exercise its enforcement discretion on a case-by-case basis in determining whether or not and how to proceed with court actions for the remediation of a contaminated site.

7:26C-2.7 Procedures to identify the appropriate oversight document for a particular case

(a) The purpose of this section is to establish the procedures for the identification of the specific oversight document which is appropriate depending on the specific set of circumstances relevant to a particular case.

(b) If any person elects to perform remediation at a site which the Department has not identified as a high priority site and the site is not subject to ECRA, the appropriate oversight document is identified in N.J.A.C. 7:26C-3.

(c) If the site is subject to ECRA, the appropriate oversight document is identified in N.J.A.C. 7:26C-4.

(d) If the Department has identified the contaminated site as a high priority site and the site is not subject to ECRA, the appropriate oversight document is identified in N.J.A.C. 7:26C-5.

(e) If the Department has elected to conduct the remediation itself and any person elects to pay the Department for the cost of the remediation, the appropriate oversight document is identified in N.J.A.C. 7:26C-5.

SUBCHAPTER 3. MEMORANDA OF AGREEMENT

7:26C-3.1 Scope

(a) This subchapter contains:

1. The procedures to obtain a memorandum of agreement; and

2. The wording requirements for a memorandum of agreement.

7:26C-3.2 Procedure to obtain a memorandum of agreement

(a) Any person may conduct remediation pursuant to N.J.A.C. 7:26C-2.7(b) with Department review pursuant to a memorandum of agreement as provided in this subchapter.

(b) To obtain a memorandum of agreement pursuant to this subchapter, a person shall submit a completed application, including the name of the applicant, site owner, tenants and operators, the site location and current and intended use, discharges and contamination permits, environmental compliance information and other information requested by the Department, available from the Department, to the Department at the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection and Energy
CN 028
Trenton, New Jersey 08625-0028
Attn: MOA Application

(c) The Department will review a completed application for a preliminary assessment and site investigation to determine whether or not a preliminary assessment and/or site investigation is necessary. Within 30 calendar days after the Department's receipt of the completed application, the Department shall either:

1. Inform the applicant in writing that a preliminary assessment and/or site investigation is not necessary at the site; or

2. Submit a memorandum of agreement for a preliminary assessment and/or site investigation for the applicant's signature.

(d) Within 30 calendar days after the Department's receipt of a completed application for remediation other than a preliminary assessment and/or site investigation, the Department shall submit a memorandum of agreement for the applicant's signature.

7:26C-3.3 Wording of memorandum of agreement

The Department shall prepare each memorandum of agreement pursuant to the standard memorandum of agreement in Appendix A, incorporated herein by reference, as appropriate for the specific remediation phase(s) the applicant intends to conduct.

SUBCHAPTER 4. ECRA ADMINISTRATIVE CONSENT ORDERS

7:26C-4.1 Scope

(a) This subchapter contains:

1. The eligibility criteria for obtaining an ECRA administrative consent order;

2. The procedure to obtain an ECRA administrative consent order; and

3. The wording requirements for an ECRA administrative consent order.

7:26C-4.2 Eligibility criteria for obtaining an ECRA administrative consent order

(a) Pursuant to (b) below, the Department may enter into an administrative consent order with the owner or operator of an industrial establishment so that the closing, termination or transferring of operations may occur provided that compliance with ECRA is ensured as specified in the administrative consent order.

(b) The Department may, in its discretion, enter into an ECRA administrative consent order if the applicant presents sufficient information to support a Department determination that one of the following applies:

1. If there is a stock tender offer, either friendly or hostile;

2. If there is a public offering of securities traded or to be traded on Federally regulated stock exchanges;

3. If the industrial establishment is required to develop a detailed sampling or cleanup plan, or both, and the Department determines that a negative declaration or cleanup plan approval pursuant to N.J.A.C. 7:26B-5 will not be granted within four months for the time the Initial Notice is submitted pursuant to N.J.A.C. 7:26B-3;

4. If there is a sale or transfer to a New Jersey State, county, or municipal department, agency or authority with the power of eminent domain;

5. If bankruptcy or insolvency is likely to occur if this transaction does not take place prior to implementation of the provisions of ECRA;

6. If layoffs of employees by either the seller or buyer are likely to occur if the transaction does not take place prior to implementation of the provisions of ECRA;

7. If there is a transaction involving one or more industrial establishment(s) in New Jersey, that is a part of a transaction involving multiple places of business at least one of which is not located in New Jersey;

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8. If financing is provided by the New Jersey Economic Development Authority or other governmental department, authority or agency;

9. If a tenant requests an administrative consent order due to lease termination by its landlord in which the tenant has fewer than 180 days notice of termination; or

10. If a landlord requests an administrative consent order due to lease termination by its tenant in which the landlord has fewer than 180 days notice of termination.

7:26C-4.3 Procedure to obtain an ECRA administrative consent order

(a) To apply for an ECRA administrative consent order pursuant to this subchapter, the applicant shall submit a completed application to the Department including the name of the applicant, site owner, tenants and operators, the site location and current and intended use, discharges and contamination permits, environmental compliance information and other information requested by the Department. Applications are available from the Department at the following address:

Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection and Energy
CN 028
Trenton, New Jersey 08625-0028
Attn: ECRA ACO Application

(b) Within 14 calendar days after the Department's receipt of a completed application for an ECRA administrative consent order, the Department shall submit an ECRA administrative consent order for the applicant's signature.

7:26C-4.4 Types and language of ECRA administrative consent orders

(a) The standard ECRA administrative consent order in Appendix B, incorporated herein by reference, is applicable in all situations pursuant to this subchapter, except as provided in (b) below.

(b) The Department has developed variations from the standard ECRA administrative consent order. The following alternate ECRA administrative consent orders may be applicable when the applicant presents sufficient information to support a Department determination that one of the following apply:

1. An owner or operator is completing a transaction at multiple industrial establishments (multiple-site ECRA administrative consent order);

2. There are multiple ECRA subject tenants (tenant ECRA administrative consent order);

3. A modification or addition is applicable to an existing administrative consent order (ECRA administrative consent order amendment); or

4. After an initial ECRA administrative consent order is issued, but before a cleanup plan or a negative declaration is approved, another person triggers ECRA for the same industrial establishment (subsequent sale ECRA administrative consent order—the owner or operator executing this administrative consent order accepts guarantor liability under ECRA).

(c) The language for the individual ECRA administrative consent order identified in (b) above shall conform to the language in the standard ECRA administrative consent order to the greatest extent practical, as determined by the Department, according to the specific situation to which the ECRA administrative consent order applies. The Department, in its sole discretion, shall prepare each ECRA administrative consent order for the particular circumstances identified in (b) above.

7:26C-4.5 Determination of financial assurance amount

(a) The Department shall determine the amount of financial assurance required for an ECRA administrative consent order, based upon a completed ECRA administrative consent order application, by identifying the areas of concern at the industrial establishment and estimating the cost of remediation for each area of concern and then adding all of the estimates to arrive at a total amount for the financial assurance.

(b) The responsible party may submit for the Department's evaluation the following additional information:

1. A detailed cost estimate for remediation of areas of concern, identifying the areas of concern, proposed remedial activities, and the estimated costs of those activities, to be performed at the site;

2. The condition of areas of concern prior to completion of remediation, the remediation completed and the condition of the areas upon completion of the remedial activities; and

3. Information concerning whether or not the responsible party possesses adequate funds to post the financial assurance, including its most recent corporate or other applicable tax returns for the past three years and any other additional information required by the Department.

(c) The Department may, in its discretion, adjust the amount of the financial determined pursuant to (a) above, based on any information submitted pursuant to (b) above.

7:26C-4.6 Administrative consent order signatories and liability

(a) Each ECRA administrative consent order shall be signed by:

1. The owner or operator of the industrial establishment; and

2. At the Department's discretion, any other person, including, without limitation, a purchaser, transferee, or mortgagee; however, any such persons shall be strictly liable, jointly and severally, for compliance with the ECRA administrative consent order.

(b) If the operator signs an ECRA administrative consent order and the owner does not, or if the owner signs an administrative consent order and the operator does not, the owner and the operator remain strictly liable, jointly and severally, with the signatories to the ECRA administrative consent order, for compliance with ECRA.

SUBCHAPTER 5. RESPONSIBLE PARTY ADMINISTRATIVE CONSENT ORDERS

7:26C-5.1 Scope

(a) This subchapter presents:

1. The procedure the Department will use to inform the responsible party(s) for a particular site that the site is a high priority site;

2. The evaluation process the Department will use to decide whether or not to defer to an existing permit or oversight document for a high priority site; and

3. The procedure the Department will use to identify the appropriate oversight document for a person performing remediation of a high priority site.

(b) If the Department, in its discretion, elects to allow a person to participate in the remediation of a high priority contaminated site, such participation shall be governed by an administrative consent order pursuant to this subchapter.

(c) The degree, manner and scope of that participation will be based on the specifics of each case as determined by the Department pursuant to this subchapter.

7:26C-5.2 Notification of high priority sites

(a) The Department will provide notification to the responsible party(s) for a particular site that the Department has identified the site as a high priority site as follows:

1. The Department, on a periodic basis, will identify contaminated sites of high priority at which the Department intends to allocate public resources for site remediation unless a person agrees to fund and/or implement the remediation pursuant to an administrative consent order in accordance with this subchapter; and

2. The Department will notify in writing the responsible party(s) for those high priority sites to inform them that the contaminated site will be remediated with public funds unless the responsible party(s) executes an administrative consent order pursuant to this subchapter.

7:26C-5.3 Deferral to an existing regulatory or enforcement mechanism

(a) In some instances, a high priority site may be the subject of remediation pursuant to other Federal or State regulatory or enforcement mechanisms. For example, certain sites may be the subject of an enforcement order from the EPA pursuant to CERCLA, or

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a corrective action order pursuant to RCRA. Similarly, in certain instances, the remediation of a contaminated site may be subject to such State regulatory programs as ECRA, or the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., or through a New Jersey Pollutant Discharge Elimination System permit issued pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b) In determining the nature and extent of a responsible party's participation in the remediation of a contaminated site pursuant to this subchapter, the Department will evaluate the entirety of the circumstances surrounding the contaminated site and determine whether or not the remediation being performed pursuant to an existing regulatory or enforcement mechanism is sufficient. In making such an evaluation, the Department will evaluate the nature of the actions causing the contamination and any other relevant factors on the basis of the information then currently available, including among other things, the nature and extent of the contamination, the threat posed to human health and the environment, the nature of necessary remedial action, the nature and status of the ongoing remediation.

(c) Based upon the evaluation described in (b) above, the Department, in an exercise of its discretion, will decide to either:

1. Allow a regulatory or enforcement mechanism already in effect at the site to control the remediation at the site;

2. Pursue additional regulatory or enforcement mechanisms, including, but not limited to, those described in N.J.A.C. 7:26C-2; or

3. A combination of (c)1 and 2 above.

(d) The Department may reconsider its decision whether or not to defer to ongoing remediation activities at any time.

7:26C-5.4 Types and language of responsible party administrative consent orders

(a) The standard responsible party administrative consent order in Appendix C, incorporated herein by reference, is applicable in all situations pursuant to this subchapter, except as modified in (b) below.

(b) The Department has developed variations of the standard responsible party administrative consent order as follows:

1. For multiple responsible parties conducting the remedial investigation and feasibility study only, the standard responsible party administrative consent order shall be used without the remedial design, remedial action, and operation, maintenance and monitoring sections;

2. For one or more responsible parties implementing the remedial action, the standard responsible party administrative consent order shall be used without the interim response action, remedial investigation, and feasibility study sections;

3. For a public entity:

i. Conducting the entire remediation, the standard responsible party administrative consent order requirements shall be used excluding the financial assurance and penalty sections; and

ii. Implementing the remedial action, the standard responsible party administrative consent order shall be used without the interim response action, remedial investigation, feasibility study, and financial assurance and penalty sections; and

4. For any person conducting interim remedial actions only, the standard responsible party administrative consent order shall be used without the remedial investigation, feasibility study, remedial design, remedial action, operation, maintenance and monitoring, financial assurance and stipulated penalties sections.

(c) If a contaminated site does not fit within any of the specific categories described in (b) above, the Department will select the administrative consent order based upon the similarity of the contaminated site and person to the categories listed in this subchapter or upon other factors in the exercise of its discretion.

(d) When any person agrees to pay the Department for all of its costs of remediation, the administrative consent order shall be consistent with the standard administrative consent order in Appendix D, incorporated herein by reference.

(e) Nothing in this section shall be construed as limiting the Department from settling additional issues in an administrative consent order.

(f) The Department may select an administrative consent order different from that provided for in this subchapter, based upon the Department's consideration of the current status of negotiations at the time of adoption of this chapter.

(g) Appendices E (Standard Letter of Credit), F (Standard Standby Trust Agreement), G (Standard Fully Funded Trust Agreement) and H (Standard Surety Bond) as referenced in Appendix C, and Appendix I (Oversight Cost Formula) as referenced in Appendix B, are incorporated herein by reference as part of this chapter.

7:26C-5.5 Negotiation procedures

(a) The Department will apply the following procedures to facilitate the entry of an administrative consent order.

1. The Department will notify, in writing, the responsible party of a negotiation period that shall not exceed 90 days. If negotiations have not been concluded within the established negotiation period, the Department in the exercise of its enforcement discretion may extend the negotiation period for a period of up to 45 days.

2. In those circumstances where the Department determines that a contaminated site involves multiple responsible parties, the Department may establish an initial period, that shall not exceed 60 days, prior to the start of the negotiation period during which the responsible parties have the opportunity to organize into a single representative body that will pursue negotiations with the Department. Whether or not a single representative body is formed during this initial period, the negotiation period shall commence as specified in the written notice given pursuant to (a)1 above.

3. Notwithstanding (a)1 and 2 above, if the Department determines that an IRA is necessary at a contaminated site, the Department shall specify the appropriate period of negotiation.

(b) If the Department agrees to allow a responsible party to conduct the remediation of a high priority contaminated site, the responsible party shall execute an administrative consent order pursuant to this subchapter within the negotiation period specified at (a) above and in no case after the Department begins its publicly-funded process by issuing a solicitation document for the required RI/FS of the contaminated site.

(c) If the Department agrees to allow a responsible party to implement the selected remedial action for a contaminated site, the responsible party shall execute an administrative consent order pursuant to this subchapter within the time frame specified by (a) above, and in no case after the Department begins the publicly-funded process by issuing a solicitation document for the remedial design of the selected remedial action for the contaminated site.

(d) If the time for the negotiation of the administrative consent order specified at (a) above has expired without the execution of an administrative consent order, a responsible party may nevertheless participate in the required remediation of a contaminated site by paying all or part of the cost of the remediation. Any partial payment by responsible party will mitigate, but will not satisfy, the liability of the responsible party for the Department's cleanup and removal costs, statutory penalties and treble damages.

7:26C-5.6 Determination of financial assurance amount

(a) The Department shall determine the amount of financial assurance required for a responsible party administrative consent order by identifying the areas of concern at the contaminated site and estimating the cost of remediation for each area of concern and then adding all of the estimates to arrive at a total amount for the financial assurance.

(b) The responsible party may submit for the Department's evaluation the following additional information:

1. A detailed cost estimate for remediation of areas of concern, identifying the areas of concern, proposed remedial activities, and the estimated costs of those activities, to be performed at the site;

2. The condition of areas of concern prior to completion of remediation, the remediation completed and the condition of the areas upon completion of the remedial activities; and

3. Information concerning whether or not the responsible party possesses adequate funds to post the financial assurance, including its most recent corporate or other applicable tax returns for the past

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three years and any other additional information required by the Department.

(c) The Department may, in its discretion, adjust the amount of the financial determined pursuant to (a) above, based on any information submitted pursuant to (b) above.

APPENIX A
STANDARD MEMORANDUM OF AGREEMENT

The standard memorandum of agreement contains references to [Person], blank brackets [ ], and bracketed directions which specify required information. Upon the Department's issuance or entry of a memorandum of agreement, the Department will replace these terms, blank spaces and bracketed directions with the appropriate information for the specific memorandum of agreement.

IN THE MATTER OF	:	
[Name of the subject site]	:	MEMORANDUM
AND	:	OF
[Name of [Person]]	:	AGREEMENT

This Memorandum of Agreement is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy (hereinafter "the Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this memorandum of agreement is owned by [full name of current property owner], and is located at [address] and is designated as Block [____], Lot [____] on the tax maps of the Township of [____], [____] County, New Jersey (hereinafter the "Site"). The Site encompasses [____] acres and is bounded generally by [geographic boundaries].

2. [The full name and mailing address of each person executing the memorandum of agreement, (hereinafter "[Person]"), describe structure, e.g., corporation, partnership, government entity.]

3. The intent of this memorandum of agreement is to allow [Person] to conduct any of the remedial activities outlined herein with oversight from the Department. [Person] has indicated to the Department in its application dated that it wishes to conduct the following activities at the Site with the Department's oversight:

[Give brief description of activities here.]

4. By entering into this memorandum of agreement, [Person] does not admit to any fact, fault or liability under any statute or regulation for conditions which existed before, during, or after [Person]'s execution of this memorandum of agreement.

5. [Additional provisions may be added at the Department's discretion]

AGREEMENT

I. Remediation

1. [Person] agrees to submit [reference documents to be submitted, use title of documents in N.J.A.C. 7:26E] and the Department agrees to review and comment on documents submitted.

2. Within thirty (30) calendar days after the Department's receipt of any submission pursuant to this memorandum of agreement, the Department will inform [Person] in writing of any administrative deficiencies in the submission, pursuant to N.J.A.C. 7:26E, that will prevent the Department from conducting its review. When the Department determines that the submission is administratively complete, the Department will notify [Person] in writing of the timeframe required for the Department to complete the review.

3. Within seven (7) days after the effective date of this memorandum of agreement, [Person] will submit to the Department: a) the name, address and telephone number of the individual who will be the contact for [Person] regarding technical matters concerning this memorandum of agreement and b) the name, and address of the designated agent for [Person] for the purpose of service for all matters concerning this memorandum of agreement.

4. [Person] may terminate this memorandum of agreement if it is determined that it is no longer feasible or desirable to continue with this memorandum of agreement, when [Person]:

a. Submits full payment to the Department for any Department oversight costs the Department incurred pursuant to this memorandum of agreement which [Person] has not paid;

b. Notifies the Department in writing of its intentions to terminate this memorandum of agreement;

c. Submits all data generated pursuant to this memorandum of agreement; and

d. Ensures that no environmental hazards exist at the Site as a result of [Person's] actions pursuant to this memorandum of agreement.

II. Project Coordination

1. Unless otherwise directed by the Department, [Person] shall submit [number of copies] copies of all documents required by this memorandum of agreement to the person identified below, who shall be the Department's contact for [Person] for all matters concerning this memorandum of agreement.

[ ]

III. Financial Obligations

1. Upon receipt of a summary of the Department's costs incurred in connection with its oversight functions of this memorandum of agreement [and if applicable, for all prior costs] associated with the Site, [Person] shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" with NJDEPE Form 062A for the full amount of the Department's oversight costs. [Person] cannot be released from its obligations under this memorandum of agreement, until all oversight costs, for work performed by the Department, are paid.

2. Beginning three hundred sixty-five (365) calendar days after the effective date of this memorandum of agreement, and annually thereafter on that same calendar day, [Person] shall submit to the Department a detailed summary of all monies spent to date pursuant to this memorandum of agreement, the estimated cost of all future expenditures required to comply with this memorandum of agreement (including any operation and maintenance costs), and the reason for any changes from the previous cost review [Person] submitted.

IV. Reservation of Rights

1. The Department reserves the right to unilaterally terminate this memorandum of agreement in the event that [Person] violates any terms or fails to meet the obligations of this memorandum of agreement or in the event that the Site becomes a high priority for the Department.

2. Nothing herein, including any document the Department issues as agreed to above, shall be interpreted to constitute a release or waiver of liability for any of the conditions which existed before, during or after the Department's execution of this memorandum of agreement.

V. General Conditions

1. [Person] shall, in addition to any other obligation required by law, notify the Department contact immediately upon knowledge of any condition posing an immediate threat to human health and/or the environment.

2. [Person] shall perform all work conducted pursuant to this memorandum of agreement in accordance with N.J.A.C. 7:26E and prevailing professional standards.

3. [Person] shall conform all actions required by this memorandum of agreement with all applicable Federal, State and local laws and regulations.

4. Nothing in this memorandum of agreement shall relieve [Person] from complying with all other applicable laws and regulations.

5. [Person] shall preserve all potential evidentiary documentation found at the Site, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any [Person] which generated, treated, transported, stored or disposed of contaminants at the Site, until written approval is received from the Department to do otherwise.

6. Upon receipt of a written request from the Department, [Person] shall submit to the Department all data and information concerning contamination at the Site, including technical records and contractual documents, and raw sampling and monitoring data, whether or not such data and information was developed pursuant to this memorandum of agreement.

7. This memorandum of agreement shall be governed and interpreted under the laws of the State of New Jersey.

8. This memorandum of agreement shall be binding, jointly and severally, on each signatory, its successors and assignees. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this memorandum of agreement.

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9. This memorandum of agreement shall become effective upon execution hereof by all parties.

Date:_____ NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

Date:_____ [Print Name of Company executing Order]

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

APPENDIX B
STANDARD ECRA ADMINISTRATIVE CONSENT ORDER

The standard ECRA administrative consent order contains references to [Person], [amount], and other blank brackets [ ]. Upon the Department's issuance or entry of an administrative consent order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF	:	ADMINISTRATIVE
[Name of Person]	:	CONSENT ORDER
ECRA CASE NO.	:	

This Administrative Consent Order is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy (hereinafter "the Department") by N.J.S.A. 13:1D-1 et seq. and the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. On [date], [Person] submitted to the Department an application for an administrative consent order pursuant to N.J.A.C. 7:26C-2. The administrative consent order application is incorporated herein by reference and includes the following information:

[Fill in information on Industrial Establishment(s) and Transaction(s)]

2. The Transaction described in Paragraph 1 above is the sale, transfer and/or closing of an Industrial Establishment as defined by ECRA. The Department and the [Person] expressly agree that the Transaction is subject to ECRA. The [Person] has requested that the Department prepare an administrative consent order which, when effective, will allow the Transaction to be consummated prior to the completion of all administrative requirements.

3. By entering this administrative consent order, [Person] does not admit to any fact, fault or liability under any statute or regulation concerning the condition of the Industrial Establishment.

4. All of the Department's files concerning the [name of Industrial Establishment] are incorporated herein and made a part hereof.

5. The Department and [Person] agree that the scope of the investigation and cleanup required by this administrative consent order will include all contaminants at the above reference Industrial Establishment, and all contaminants which are emanating from or which have emanated from the Industrial Establishment.

6. [Additional provisions may be added at the Department's discretion.]

ORDER

I. Penalty, Damages and Reimbursement of Prior Costs [Optional]

1. [Person] shall submit to the Department a certified or cashier's check made payable to the "Treasurer, State of New Jersey" submitted with Form 062A for $ [amount], no later than [person's] signature and submission of this administrative consent order to the Department. Payment of this penalty shall not relieve [person's] obligation to fully comply with this administrative consent order. Furthermore, the Department's acceptance of this penalty shall not be construed as a waiver of the Department's right to compel [Person] to specifically perform its obligations pursuant to this administrative consent order.

2. Within thirty (30) calendar days after receipt of a written summary of the Department's costs incurred to the effective date of this administrative consent order in accordance with N.J.A.C. 7:26C Appendix I, [Person] shall submit [amount] to the Department as payment for these costs, in connection with the investigation of, and response to, the matters described in the Findings hereinabove, including the costs associated with the preparation of this administrative consent order. [Person] shall make payment of the above amount by a cashier's or certified check payable to the ("Treasurer, State of New Jersey" or "Administrator, New Jersey Spill Compensation Fund", as appropriate) and submitted with DEPE Form 062A.

II. Interim Response Action

1. [Person] shall implement interim response action(s) as follows:

[Include specific provisions for interim response action(s) or if interim response action(s) have already been initiated at the site, include the specific interim response action(s) provisions from such oversight document, including a reference to the date the oversight document was issued. If no IRA's are required at the time of execution of the ACO "None Required" will be included herein.]

2. Within forty-five (45) calendar days after the effective date of this administrative consent order or as otherwise directed by the Department, [Person] shall submit to the Department a detailed draft Interim Response Action Work Plan (hereinafter "IRA Work Plan") in accordance with N.J.A.C. 7:26E.

3. Within ninety (90) days after receipt of the Department's written approval of the IRA Work Plan, [Person] shall implement and submit the results of the IRA Work Plan in accordance with N.J.A.C. 7:26E along with one of the following: a proposed no action alternative; a proposed remedial action; or a supplemental IRA Work Plan.

4. Upon the Department's approval of a no action alternative submitted pursuant to Paragraph 3 above, no further action shall be required as specifically stated in the Department's approval.

5. Upon receipt of the Department's written approval of a remedial action plan, [Person] shall implement any Department-approved remedial action in accordance with the approved schedule.

6. If the Department approves a supplemental IRA Work Plan pursuant to Paragraph 3 above, [Person] shall perform the additional work pursuant to Paragraph 3 above.

7. If the Department determines that any submittal made under this section is inadequate or incomplete, then the Department shall provide the [Person] with written notification of the deficiency(ies), and the [Person] shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.

8. During the time this administrative consent order is in effect, if the Department determines that additional interim response actions are required, [Person] shall conduct the required work pursuant to Paragraph 2 through 7, above.

III. Remedial Investigation and Action Requirements

1. The [Person] shall complete and submit the Initial Notice (commonly referred to as ECRA I and II) pursuant to N.J.A.C. 7:26B-3.

2. In the event that the Department determines that no RI Work Plan is required at the submit Industrial Establishment pursuant to this administrative consent order, [Person] shall submit a proposed negative declaration affidavit, in accordance with N.J.A.C. 7:26B-5, within a reasonable timeframe not to exceed thirty (30) days from receipt of the Department's written request for a proposed negative declaration.

3. Within ninety (90) days after receipt of the Department's written approval of the Remedial Investigation Workplan (hereinafter "RI Work Plan") [Person] shall implement and submit the results of the RI Work Plan in accordance with N.J.A.C. 7:26E along with one of the following and all appropriate fees required pursuant to N.J.A.C. 7:26B-1:

(a) A proposed negative declaration pursuant to N.J.A.C. 7:26B-5;
(b) A proposed remedial action pursuant to N.J.A.C. 7:26E; or
(c) A supplemental RI Work Plan pursuant to N.J.A.C. 7:26E.

4. Upon the Department's approval of a negative declaration submitted pursuant to Paragraph 3 above, no further action shall be required as specifically stated in the Department's approval.

5. Upon receipt of the Department's written approval of a remedial action plan, [Person] shall implement the Department-approved remedial

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action in accordance with the approved time schedule or defer implementation of all or part of the remedial action subject to the Department approval pursuant to N.J.A.C. 7:26E.

6. If the Department approves a supplemental RI Work Plan pursuant to Paragraph 3 above, [Person] shall perform the addition work pursuant to Paragraph 3 above.

7. If the Department determines that any submittal made under this section is inadequate or incomplete, then the Department shall provide the [Person] with written notification of the deficiency(ies), and the [Person] shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.

8. During the time this administrative consent order is in effect, if the Department determines that additional remedial investigation is required, [Person] shall conduct additional remedial investigation as required by the Department in writing and submit a supplemental work plan.

IV. Feasibility Study

1. If required by the Department, [Person] shall submit to the Department a Feasibility Study Report (hereinafter "FS Report") in accordance with N.J.A.C. 7:26E.

V. Permit Application Process for Remediation Activities

1. Within thirty (30) calendar days after receipt of the Department's written notification regarding the Department's selection of the remedial action, [Person] shall submit to the Department a detailed draft permit application submission schedule in accordance with N.J.A.C. 7:26E for all relevant federal, State and local permit applications, certifications or modifications necessary to implement the selected remedial action.

2. Upon receipt of the Department's written approval of the permit application schedule, [Person] shall carry out the permit application process in accordance with the approved schedule.

3. This administrative consent order shall not be construed to be a permit or in lieu of a permit for any activities which require permits and it shall not relieve [Person] from obtaining and complying with all applicable federal, State and local permits necessary for any activities which [Person] must perform in order to carry out the obligations of this administrative consent order.

4. [Person] shall submit complete applications for all federal, State and local permits or permit modifications required to carry out the obligations of this administrative consent order in accordance with the approved schedules.

5. Within thirty (30) calendar days after [Person's] receipt of written comments from the permitting agency concerning any permit application to a federal, State, or local agency, or within a time period extended in writing by the Department, [Person] shall modify the permit application to conform to the permitting agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency.

6. The terms and conditions of any federal, State or local permit or permit modification issued to [Person] shall not be preempted by the terms and conditions of this administrative consent order even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this administrative consent order.

7. To the extent that the terms and conditions of any federal, State or local permit or permit modification are substantially equivalent to the terms and conditions of this administrative consent order, [Person] waives any rights it may have to contest such terms and conditions of any such permit.

VI. Progress Reports

1. If requested by the Department, [Person] shall submit quarterly progress reports to the Department in accordance with the next Paragraph. [Person] shall submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this administrative consent order. [Person] shall submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported.

2. [Person] shall detail the status of [Person's] compliance with this administrative consent order in each progress report and shall include the following:

i. Identification of the contaminated site and a reference to this administrative consent order, including signatory parties and effective date;

ii. Identification of specific requirements of this administrative consent order, including the corresponding Paragraph number and schedule, which were initiated during the reporting period;

iii. Identification of specific requirements of this administrative consent order, including the corresponding Paragraph number and schedule, which were initiated in a previous reporting period, which are still in progress and which will continue to be carried out during the next reporting period;

iv. Identification of specific requirements of this administrative consent order, including the corresponding Paragraph number and schedule, which were completed during this reporting period;

v. Identification of specific requirements of this administrative consent order, including the corresponding Paragraph numbers and schedule, which were scheduled to have been completed during the reporting period and were not;

vi. An explanation of each specific requirement of this administrative consent order not met, including actions taken or to be taken to address each such requirement;

vii. Identification of the specific requirements of this administrative consent order, including the corresponding Paragraph number and schedule, that will be initiated during the next reporting period; and

viii. All data generated during the reporting period which indicate that conditions at the contaminated site exceed federal, State or local human health based standards or criteria, or in the absence thereof, any data which indicate potential human health concerns; and

ix. All reports and other information required pursuant to any work plan or report the Department approves pursuant to this administrative consent order.

VII. Project Coordination

1. [Person] shall submit to the Department all documents required by this administrative consent order, including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this administrative consent order and the applicability of stipulated penalties and any other remedies available to the Department.

2. With seven (7) calendar days after the effective date of this administrative consent order, [Person] shall submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this administrative consent order and [Person] shall designate an agent for the purpose of service for all matters concerning this administrative consent order and shall provide the Department with the agent's name and address.

3. Unless otherwise directed in writing by the Department, [Person] shall submit all payments and [ ] copies of all documents required by this administrative consent order to the individual identified below, who shall be the Department's contact for [Person] for all matters concerning this administrative consent order:

[Name, title, address and telephone number of Department contact]

4. [Person] shall notify, both verbally and in writing, the contact person listed above at least fourteen (14) calendar days prior to the initiation of any field activities.

VIII. Financial Assurances and Project Cost Review

1. Within five (5) calendar days after the effective date of this administrative consent order, [Person] shall obtain and provide to the Department financial assurance in the form acceptable to the Department in the amount(s) of (amount). The financial assurance shall conform with the requirements of N.J.S.A. 13:1K-9(b)3, N.J.A.C. 7:26B-6 and this Administrative Consent Order.

2. [Person] shall select a financial institution or surety, and a trustee, that shall agree in writing to be subject to the jurisdiction of New Jersey courts for all claims made by the Department against the financial assurance. Within fourteen (14) calendar days after the effective date of this administrative consent order, [Person] shall submit the written agreement with such financial institution or surety and the trustee to the Department with the financial assurance.

3. In the event that the the Department determines that [Person] has failed to perform any of the obligations under this administrative consent order or ECRA, the Department may proceed to draw on that amount of the financial assurance necessary to complete the performance of the obligation; provided, however, that before the Department takes this action, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and shall have thirty (30) calendar

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days after receipt of such notice, unless extended in writing by the Department, to remedy the failure to perform such obligation. Notwithstanding any other provisions of this administrative consent order, [Person] reserves its rights, if any, to commence an action seeking judicial review of the Department's draw-down or expenditure of the financial assurance at any time after such draw-down has occurred. During the pendency of such an action, [Person] will not seek to enjoin the Department from the drawing down of funds or the expenditure of funds drawn down pursuant to this provision. Penalties assessed for violations of this administrative consent order shall not be drawn against the financial assurance.

4. At any time, [Person] may apply to the Department to substitute other financial assurances as specified by this subchapter, in a form, and manner acceptable to the Department.

5. Upon the Department approval of a remedial action, the [Person] shall amend the amount of the financial assurance, specified in Paragraph 1 above, to equal the estimated cost of implementation of the approved remedial action, or shall provide such other financial assurance as may be approved by the Department in an amount equal to the estimated cost of implementation of the approved remedial action.

6. The [Person] shall comply with the following project cost reviews requirements:

(a) Beginning 365 calendar days after the effective date of this administrative consent order, and annually thereafter on that same calendar day, the [Person] shall submit to the Department a detailed review of all costs required for the (person) compliance with this administrative consent order, including:

i. A detailed summary of all monies spent to date pursuant to this administrative consent order;

ii. The estimated cost of all future expenditures required to comply with this administrative consent order, including any operation, maintenance and monitoring costs; and

iii. The reason for any changes from the previously submitted cost review.

(b) At any time after the [Person] submit the first cost review pursuant to the preceding Paragraph, the [Person] may request the Department's approval to reduce the amount of the financial assurance to reflect the remaining costs of performing the obligations under this administrative consent order. If the Department grants written approval of such a request, the [Person] may amend the amount of the then existing financial assurance consistent with that approval.

(c) If the estimated costs of meeting the [Person] obligations in this administrative consent order at any time increase to an amount greater than the financial assurance, the [Person] shall:

i. Within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing financial assurance or provide additional financial assurance to an amount equal to the Department's approved estimated cost; and

ii. Upon notification from the Department pursuant to Paragraph 34, Section XI General Provisions, that the obligations of this administrative consent order have been satisfied, the [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this administrative consent order for the facility which is the subject of the Department approved Negative Declaration. Upon the Department's written approval of the completion of any remedial action required by this administrative consent order, as verified by final site inspection pursuant to N.J.A.C. 7:26B-5 and upon the [Person's] satisfaction of all financial obligations in connection therewith, the [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this administrative consent order for the facility at which the approved remedial action has been completed.

IX. Stipulated Penalties

1. [Person] agrees to pay stipulated penalties to the Department for [Person's] failure to comply with any of the deadlines, schedules or requirements of this administrative consent order including those established and approved by the Department in writing pursuant to this administrative consent order. Each day of violation for each deadline, schedule or requirement not complied with shall be an additional, separate and distinct violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this administrative consent order. Each signatory to this administrative consent order shall be jointly and severally liable for stipulated penalties for violations of this administrative consent order which result in the Department's issuance of a demand for stipulated penalties.

2. Stipulated penalties shall begin to accrue on the first calendar day after the performance is due or noncompliance occurs and not at the time the Department gives notice of the violation for stipulated penalties. Stipulated penalties shall then continue to accrue through the final day of correction of the non-compliance. The Department may determine that a submittal of insufficient quality constitutes non-compliance and one or more violations of this administrative consent order. Stipulated penalties for such violations shall accrue from the date [Person] made the submission for sixty (60) calendar days, unless the Department provides [Person] with written notice that stipulated penalties for such violations continue to accrue beyond the sixty (60) day period. In which case stipulated penalites will continue to accrue until [Person] corrects the non-compliance.

3. [Person's] payment of stipulated penalties for [Person's] failure to comply with the deadlines, schedules and requirements associated with this administrative consent order, as identified below, shall be made according to this Paragraph:

(a) Major violations include [Person's] failure, according to the schedules in the administrative consent order, to:

i. Submit any remedial investigation workplans;

ii. Submit any remedial action workplans;

iii. Implement any approved remedial investigation workplan;

iv. Implement any approved remedial action workplan;

v. Implement any approved interim response actions;

vi. Submit permit applications;

vii. Satisfy any financial assurance requirement;

viii. Failure to allow the Department or its authorized agents access to the site; and

ix. Implementation and recording of permanent use and/or access restrictions.

x. Reimbursement of oversight costs, including prior costs; and

xi. Submit payment of penalty or damage payments.

(b) [Person] agrees to pay stipulated penalties for the major violations, identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	$ 1,000
15-29	$ 2,500
30-44	$ 5,000
45-59	$10,000
60-over	$25,000

(c) [Person] agrees to pay stipulated penalities for all other violations, not identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	$ 200
15-29	$ 500
30-44	$ 1,000
45-59	$ 5,000
60-over	$10,000

4. Stipulated penalties shall be due and payable thirty (30) calendar days after [Person's] receipt of a written demand by the Department. [Person] shall make payment of stipulated penalties by a cashier's or certified check payable to the "Treasurer, State of New Jersey" submitted with DEPE Form 062A, and shall be accompanied by a letter referencing this administrative consent order and the Department's written demand for stipulated penalties.

5. [Person] shall regard payments of stipulated penalties pursuant to this administrative consent order as payments of civil or civil administrative penalties.

6. The payment of stipulated penalties does not alter [Person's] responsibility to complete any requirement of this administrative consent order.

7. If [Person] fails to pay stipulated penalties pursuant to this section, the Department may take additional enforcement action, including without limitation, instituting civil proceedings to collect such penalties or assessing civil administrative penalties.

8. If [Person] fails to pay stipulated penalties pursuant to this section, the Department may take additional enforcement action, including without limitation, instituting civil administrative penalties.

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X. Reservation of Rights

1. The Department will not exercise its right to void the Transaction described in the Findings above, except in the event that the [Person] fails to submit an approvable negative declaration or remedial action as required hereinabove. The Department's right to void the subject sale or transfer shall terminate upon the Department's written approval of an appropriate negative declaration or remedial action submitted by the [Person] pursuant to this administrative consent order and ECRA.

2. Nothing in this administrative consent order shall preclude the Department from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against [Person] for matters not set forth in the Findings of this administrative consent order. The Department reserves the right to conduct any remediation itself at any time.

3. Nothing in this administrative consent order, including the Department's assessment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this administrative consent order. In any such action brought by the Department under this administrative consent order for injunctive relief, civil, or civil administrative penalties or collection of stipulated penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this administrative consent order, on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the administrative consent order. Similarly, in the event that [Person] prevails in any proceeding in which [Person] alleges that the Department acted arbitrarily, capriciously, or unreasonably in exercising its right under to draw on the financial assurance, the Department will refund, to the account of the financial assurance the amount of the funds so drawn. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief or stipulated penalties, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this administrative consent order and under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this administrative consent order.

4. This administrative consent order shall not be construed to affect or waive the claims of federal or State natural resources trustees against any [Person] for damages for injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

5. The Department reserves the right to require [Person] to take or arrange for the taking of any and all additional measures if the Department determines that such actions are necessary to protect human health or the environment.

6. Notwithstanding any other provision of this administrative consent order, [Person] reserves its right to challenge, as a contested case pursuant to N.J.S.A. 52:14B-1 et seq., that the Department's draw on the financial assurance provided pursuant to this administrative consent order was arbitrary, capricious or unreasonable; [Person] agrees, however, not to initiate any such challenge until after the Department has corrected or implemented the requirement of this administrative consent order which was the focus of the Department's draw. The Department reserves its right to contest any such action.

XI. Force Majeure

1. If any event specified in the following Paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this administrative consent order, [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this Paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measures taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

2. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a) [Person] has complied with the notice requirements of the preceding Paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circumstances beyond the control of [Person]; and

(c) [Person] has taken all necessary action to prevent or minimize any such delay.

3. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

4. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this administrative consent order;

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within Paragraph 1 above; and

(d) Failure to obtain access required to implement this administrative consent order, unless denied by a court of competent jurisdiction.

XII. General Provisions

1. [Person] shall, in addition to any other obligation required by law, notify the Department contact identified in Paragraph [ ] immediately upon knowledge of any condition posing an immediate threat to human health and the environment. The Department reserves the right to stop any construction, improvement(s), or change(s) at the site(s) subject to this administrative consent order, due to the presence of hazardous substances or wastes, the disturbance of which, prior to implementation of the Department-approved remedial action, which has the potential to cause a threat to human health and the environment as determined by the Department.

2. In the event that the Department determines that a meeting concerning the remediation of the site is necessary at any time, [Person] shall ensure that the [Person's] appropriate representative is prepared and available for, and participates in such a meeting upon written notification from the Department of the date, time and place of such meeting.

3. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] shall allow the Department and its authorized representatives access to the site at all times for the purpose of monitoring [Person's] compliance with this administrative consent order and/or to perform any remedial activities [Person] fails to perform as required by this administrative consent order.

4. [Person] shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by [Persons] acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

5. [Person] shall perform all work conducted pursuant to this administrative consent order in accordance with prevailing professional standards.

6. [Person] shall provide a copy of this administrative consent order to each contractor and subcontractor retained to perform the work required by this administrative consent order and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this administrative consent order. [Person] shall be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this administrative consent order.

7. [Person] shall conform all actions required by this administrative consent order with all applicable federal, State, and local laws and regulations.

8. Nothing in this administrative consent order shall relieve [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this administrative consent order shall not excuse the [Person] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ECRA through this administrative consent order. This administrative consent order shall not preclude the Department from requiring that the [Person] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this administrative consent order if the terms and conditions of any such permit are more stringent than the terms and conditions of this administrative consent order. Should any of the measures to be taken by the

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[Person] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then the [Person] shall obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

9. All work plans and documents required by this administrative consent order and approved in writing by the Department are incorporated herein and made a part hereof.

10. [Person] shall preserve all potential evidentiary documentation found at the site until written approval is received from the Department to do otherwise, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person which generated, treated, transported, stored or disposed of contaminants at the site.

11. Upon the receipt of a written request from the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this administrative consent order.

12. Obligations and penalties of this administrative consent order are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the human health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding. No obligations imposed by this administrative consent order are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding.

13. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

14. The Department agrees that it will not bring any action, nor will it recommend that the Attorney General's Office bring any action, including monetary penalties, for the [Person] failure to comply with (a) the time requirements in N.J.S.A. 13:1K-9(b)1 that the Department be notified within five (5) days of execution of an agreement of sale or public release of its decision to close, and (b) the time requirement in N.J.S.A. 13:1K-9(b)2 that a Negative Declaration or Remedial Action be submitted sixty (60) days prior to transfer of title or closing operations for the transaction described in Paragraph 1.B above.

15. No modification or waiver of this administrative consent order shall be valid except by written amendment to this administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and all [Person]. The Department reserves the right to require the resolution of any outstanding violations of ECRA, the rules or this administrative consent order prior to executing any such amendment.

16. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

17. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

18. If any provision of this administrative consent order or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this administrative consent order or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this administrative consent order shall be valid and enforced to the fullest extent permitted by law.

19. This administrative consent order represents the entire integrated agreement between the Department and [Person] and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

20. Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall record a copy of this administrative consent or with the County Clerk, [ ] County, State of New Jersey and shall provide the Department with written verification of compliance with this Paragraph which shall include a copy of this administrative consent order stamped "Filed" by the County Clerk.

21. Any officer or management official of the [Person] who knowingly directs or authorizes the violation of any provision of ECRA shall be personally liable for the penalty established pursuant to N.J.S.A. 13:1K-13, N.J.A.C. 7:26B-9 and the Spill Compensation and Control Act.

22. The site or any portion thereof may be freely alienated provided that [Person] complies with the requirements in this Paragraph and all other applicable law.

(a) At least ninety (90) calendar days prior to the date of such alienation, [Person] shall notify the Department in writing of the proposed alienation, the name of the grantee, the extent of the alienation, and a description of the grantor's continuing obligations, if any, which grantee has agreed to perform.

(b) At least 90 calendar days prior to transfer of ownership of [Person's] facility, site, or portion thereof which are the subject of this administrative consent order, and shall simultaneously verify to the Department that such notice has been given.

(c) Any contract to alienate the site shall require the grantee to allow the implementation and continuation of all activities and obligations pursuant to this administrative consent order and to allow [Person], the Department and its authorized representatives access to the site for purposes of such activities and obligations. Any alienation shall not affect [Person's] obligations under this administrative consent order.

(d) [Person] shall include in any instrument of conveyance, including but not limited to a deed, title, lease, easement or license for the site a written notice that the site is the subject of this administrative consent order. Any such instrument of conveyance shall be subject to the requirements set forth in this administrative consent order regarding the use of the site and deed restrictions.

23. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

24. [Person] shall preserve, during the pendency of this administrative consent order and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten-year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, the [Person] shall submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege or a privilege regarding such data or information, however, [Person] agrees not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

25. [Person] agrees not to contest the authority or jurisdiction of the Department to issue this administrative consent order; [Person] further agrees not to contest the terms or conditions of this administrative consent order except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this administrative consent order. [Person] reserves all of its rights pursuant to the Spill Act concerning the Department's selection of any remedial action pursuant to this administrative consent order.

26. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to Paragraph [ ] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. This requirement shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within

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fourteen (14) days of the Department's written request, the [Person] shall obtain and submit to the Department additional financial assurance pursuant to this administrative consent order.

27. [Person] shall not make any use of the site or take any actions at the site inconsistent within this administrative consent order. [Person] shall impose such use and/or access restrictions as may be deemed necessary by the Department. The use and access restrictions are to run with the land and be for the benefit of and enforceable by the Department and any citizen which is or may be damaged as a result of violations of the use and access restrictions. The use and access restrictions shall provide actual and constructive notice to any subsequent grantee of the locations and concentrations of all contaminants which remain at the site and of the use and access restrictions imposed. Within thirty (30) calendar days after [Person's] receipt of a written request from the Department, [Person] shall record the restrictions with [ ] County Clerk, [ ] County, State of New Jersey, and provide the Department with a copy of this administrative consent order stamped "Filed" by the [ ] County Clerk.

28. Except as otherwise set forth herein, by the execution of this administrative consent order the Department does not release any person from any liabilities or obligations such person may have pursuant to ECRA, or any other applicable authority, nor does the Department waive any of its rights or remedies pursuant thereto.

29. [Person] shall submit to the Department, along with the executed original administrative consent order, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Person] to the terms of this administrative consent order. Any signatory to this administrative consent order, who is executing this administrative consent order on behalf of an entity other than that individual, shall provide to the Department appropriate documentary evidence as specified in N.J.A.C. 7:26B-1 authorizing the signatory to bind the entity to the provisions of this administrative consent order.

30. If the [Person] does not consummate the transaction described in Paragraph 1 above, and, therefore, no ECRA triggering event has occurred, the [Person] may withdraw from ECRA pursuant to N.J.A.C. 7:26B-3. If the [Person] withdraw from ECRA pursuant to N.J.A.C. 7:26B-3, this administrative consent order shall be null and void.

31. The Department will consider a request for an extension of time to perform any requirement under ECRA or this administrative consent order, provided that any extension request is submitted to the Department two weeks prior to any applicable deadline to which the extension request refers.

32. [Person] expressly agree that in the event that [Person] or [Person] fails or refuses to perform any obligation(s) under this administrative consent order as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this administrative consent order, ECRA, or any other statute to ensure full and complete ECRA compliance.

33. [Optional paragraph—The Department and [Person] expressly agree that the Department shall allow [Person] to complete the Merger within forty-five (45) days of the effective date of this administrative consent order, without requiring [Person] to amend this administrative consent order to include the Merger. In the event that [Person] does not complete the Merger within this time period, [Person] shall enter into an amendment to this administrative consent order prior to [Person's] completion of the Merger.]

34. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, and [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this administrative consent order. Furthermore, such written notice shall not terminate the obligations and requirements set forth in the preceding six (6) Pargapgraphs.

35. This administrative consent order shall be effective upon the execution of this administrative consent order by the Department and the [Person]. The [Person] shall return a fully executed administrative consent order to the Department together with the financial assurance required by Paragraph [ ] above, and signature authorization required by Paragraph [ ] above within five (5) business days from the effective date.

36. This administrative consent order shall be null and void unless executed by the [Person] within thirty (30) days of the Department signing.

37. Upon the effective date of this administrative consent order, the [Person] may complete the Transaction described in Paragraph [ ] above, subject to the conditions of this administrative consent order.

Date:_____ NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

Date:_____ [Print Name of Company executing Order]

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

APPENDIX C
STANDARD RESPONSIBLE PARTY OVERSIGHT DOCUMENT

The standard responsible party oversight document contains references to [Person] [amount], [Order], and other blank brackets [ ]. Upon the Department's issuance or entry of an [Order], the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF	:	
[Site name]	:	[ORDER]
AND	:	
[Name of Person]	:	

This [Order] is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy (hereinafter "the Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and duly delegated to the Assistant Director, Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the memorandum of agreement.]

2. [The full name and mailing address of each responsible party executing the [Order] if applicable.]

3. [The regulatory and enforcement history of the site.]

4. By entering this [Order], [Person] does not admit to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable].

5. All of the Department's files concerning the [name of site] are incorporated herein and made a part hereof.

6. The Department intends [and [Person] agrees [if applicable]] that the scope of the investigation and cleanup required by this [Order] will include all contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the Department's discretion].

ORDER

I. Penalty, Damages and Reimbursement of Prior Costs [Optional]

1. [Person] shall submit to the Department a certified or cashier's check made payable to the "Treasurer, State of New Jersey" submitted with Form 062A for $ [amount], no later than [person's] signature and submission of this [Order] to the Department. Payment of this penalty shall not relieve [person's] obligation to fully comply with this [Order].

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Furthermore, the Department's acceptance of this penalty shall not be construed as a waiver of the Department's right to compel [Person] to specifically perform its obligations pursuant to this [Order].

2. Within thirty (30) calendar days after receipt of a written summary of the Department's costs incurred to the effective date of this [Order] in accordance with N.J.A.C. 7:26C Appendix I, [Person] shall submit [amount] to the Department as payment for these costs, in connection with the investigation of, and response to, the matters described in the Findings hereinabove, including the costs associated with the preparation of this [Order]. [Person] shall make payment of the above amount by a cashier's or certified check payable to the ("Treasurer, State of New Jersey" or "Administrator, New Jersey Spill Compensation Fund", as appropriate) and submitted with DEPE Form 062A.

II. Interim Response Action

1. [Person] shall implement interim response action(s) as follows:

[Include specific provisions for interim response action(s) or if interim response action(s) have already been initiated at the site, include the specific interim response action(s) provisions from such oversight document, including a reference to the date the oversight document was issued. If no IRA's are required at the time of execution of the ACO, "None Required" will be included herein.]

2. Within forty-five (45) calendar days after the effective date of this [Order] or as otherwise directed by the Department, [Person] shall submit to the Department a detailed draft Interim Response Action Work Plan (hereinafter "IRA Work Plan") in accordance with N.J.A.C. 7:26E.

3. Within ninety (90) days after receipt of the Department's written approval of the IRA Work Plan, [Person] shall implement and submit the results of the IRA Work Plan in accordance with N.J.A.C. 7:26E along with one of the following: a proposed no action alternative; a proposed remedial action; or a supplemental IRA Work Plan.

4. Upon the Department's approval of a no action alternative submitted pursuant to Paragraph 3 above, no further action shall be required as specifically stated in the Department's approval.

5. Upon receipt of the Department's written approval of a remedial action plan, [Person] shall implement any Department-approved remedial action in accordance with the approved schedule.

6. If the Department approves a supplemental IRA Work Plan pursuant to Paragraph 3 above, [Person] shall perform the addition work pursuant to Paragraph 3 above.

7. If the Department determines that any submittal made under this section is inadequate or incomplete, then the Department shall provide the [Person] with written notification of the deficiency(ies), and the [Person] shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.

8. During the time this [Person] is in effect, if the Department determines that additional interim response actions are required, [Person] shall conduct the required work pursuant to Paragraph 2 through 7, above.

III. Remedial Investigation and Action Requirements

1. Within forty-five (45) calendar days after the effective date of this [Order], [Person] shall submit to the Department a detailed Remedial Investigation Work Plan (hereinafter "RI Work Plan") in accordance with N.J.A.C. 7:26E.

2. Within ninety (90) days after receipt of the Department's written approval of the RI Work Plan, [Order] shall implement and submit the results of the RI Work Plan in accordance with N.J.A.C. 7:26E along with one of the following:

(a) A proposed no action alternative;

(b) A proposed remedial action; or

(c) A supplemental RI Work Plan.

3. Upon the Department's approval of a no action alternative submitted pursuant to Paragraph 2 above, no further action shall be required as specifically stated in the Department's approval.

4. Upon receipt of the Department's written approval of a remedial action plan, [Person] shall implement any Department-approved remedial action in accordance with the approved schedule.

5. If the Department approves a supplemental RI Work Plan pursuant to Paragraph 3 above, [Person] shall perform the addition work pursuant to Paragraph 3 above.

6. If the Department determines that any submittal made under this section is inadequate or incomplete, then the Department shall provide the [Person] with written notification of the deficiency(ies), and the [Person] shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) days from receipt of such notification.

7. During the time this [Order] is in effect, if the Department determines that additional remedial investigation is required, [Person] shall conduct additional remedial investigation as required by the Department in writing and submit a supplemental work plan.

IV. Feasibility Study

1. If required by the Department, [Person] shall submit to the Department a Feasibility Study Report (hereinafter "FS Report") in accordance with N.J.A.C. 7:26E.

V. Permit Application Process for Remedial Activities

1. Within thirty (30) calendar days after receipt of the Department's written notification regarding the Department's selection of the remedial action, [Person] shall submit to the Department a detailed draft permit application submission schedule in accordance with N.J.A.C. 7:26E for all relevant federal, State and local permit applications, certifications or modifications necessary to implement the selected remedial action.

2. Upon receipt of the Department's written approval of the permit application schedule, [Person] shall carry out the permit application process in accordance with the approved schedule.

3. This [Order] shall not be construed to be a permit or in lieu of a permit for any activities which require permits and it shall not relieve [Person] from obtaining and complying with all applicable federal, State and local permits necessary for any activities which [Person] must perform in order to carry out the obligations of this [Order].

4. [Person] shall submit complete applications for all federal, State and local permits or permit modifications required to carry out the obligations of this [Order] in accordance with the approved schedules.

5. Within thirty (30) calendar days after [Person's] receipt of written comments from the permiting agency concerning any permit application to a federal, State, or local agency, or within a time period extended in writing by the Department, [Person] shall modify the permit application to conform to the permitting agency's comments and resubmit the permit application to the agency. The determination as to whether or not the permit application, as resubmitted, conforms with the agency's comments or is otherwise acceptable to the agency shall be made solely by the agency.

6. The terms and conditions of any federal, State or local permit or permit modification issued to [Person] shall not be preempted by the terms and conditions of this [Order] even if the terms and conditions of any such permit or permit modification are more stringent than the terms and conditions of this [Order].

7. To the extent that the terms and conditions of any federal, State or local permit or permit modification are substantially equivalent to the terms and conditions of this [Order], [Person] waives any rights it may have to contest such terms and conditions of any such permit.

VI. Progress Reports

1. If requested by the Department, [Person] shall submit quarterly progress reports to the Department in accordance with the next Paragraph. [Person] shall submit the first progress report on or before the last calendar day of the fourth calendar month following the effective date of this [Order]. [Person] shall submit a progress report thereafter on or before the last calendar day of the month following the next three calendar months being reported.

2. [Person] shall detail the status of [Person's] compliance with this [Order] in each progress report and shall include the following:

i. Identification of the contaminated site and a reference to this [Order], including signatory parties and effective date;

ii. Identification of specific requirements of this [Order], including the corresponding Paragraph number and schedule, which were initiated during the reporting period;

iii. Identification of specific requirements of this [Order], including the corresponding Paragraph number and schedule, which were initiated in a previous reporting period, which are still in progress and which will continue to be carried out during the next reporting period;

iv. Identification of specific requirements of this [Order], including the corresponding Paragraph number and schedule, which were completed during this reporting period;

v. Identification of specific requirements of this [Order], including the corresponding Paragraph numbers and schedule, which were scheduled to have been completed during the reporting period and were not;

vi. An explanation of each specific requirement of this [Order] not met, including actions taken or to be taken to address each such requirement;

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vii. Identification of the specific requirements of this [Order], including the corresponding Paragraph number and schedule, that will be initiated during the next reporting period; and

viii. All data generated during the reporting period which indicate that conditions at the contaminated site exceed federal, State or local human health based standards or criteria, or in the absence thereof, any data which indicate potential human health concerns; and

ix. All reports and other information required pursuant to any work plan or report the Department approves pursuant to this [Order].

VII. Project Coordination

1. [Person] shall submit to the Department all documents required by this [Order], including correspondence relating to force majeure issues, by delivery with an acknowledgement of receipt from the Department. The date that the Department executes the acknowledgement will be the date the Department uses to determine [Person's] compliance with the requirements of this [Order] and the applicability of stipulated penalties and any other remedies available to the Department.

2. Within seven (7) calendar days after the effective date of this [Order], [Person] shall submit to the Department the name, title, address and telephone number of the individual who shall be [Person's] technical contact for the Department for all matters concerning this [Order] and [Person] shall designate an agent for the purpose of service for all matters concerning this [Order] and shall provide the Department with the agent's name and address.

3. Unless otherwise directed in writing by the Department, [Person] shall submit all payments and [ ] copies of all documents required by this [Order] to the individual identified below, who shall be the Department's contact for [Person] for all matters concerning this [Order]:

[Name, title, address and telephone number of Department contact]

4. [Person] shall notify, both verbally and in writing, the contact person listed above at least fourteen (14) calendar days prior to the initiation of any field activities.

VIII. Financial Assurances and Project Cost Review

1. Within five (5) calendar days after the effective date of this [Order], [Person] shall obtain and provide to the Department financial assurance in the form acceptable to the Department in the amount(s) of [amount]. The financial assurance shall conform with the requirements of this [Order].

2. [Person] shall select a financial institution or surety, and a trustee, that shall agree in writing to be subject to the jurisdiction of New Jersey courts for all claims made by the Department against the financial assurance. Within fourteen (14) calendar days after the effective date of this [Order], [Person] shall submit the written agreement with such financial institution or surety and the trustee to the Department with the financial assurance.

3. The financial assurance shall meet the following requirements:

(a) Irrevocable letter of credit:

i. The wording of the irrevocable letter of credit shall be identical to the wording specified in N.J.A.C. 7:26C Appendix E;

ii. The irrevocable letter of credit shall be issued by a New Jersey State or federally chartered bank, savings bank, or savings and loan association, which, unless otherwise approved by the Department in writing, has its principal office in New Jersey; and,

iii. The irrevocable letter of credit shall be accompanied by a letter from [Person] referring to the irrevocable letter of credit by number, issuing institution and date and providing the following information: the name and address of the site which is the subject of the [Order] and the amount of funds securing the [Person's] performance of all its obligations under the [Order].

(b) Surety bond:

i. The wording of the surety bond shall be identical to the wording specified in N.J.A.C. 7:26C Appendix F;

ii. The surety company issuing the surety bond shall be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury, which is published annually on July 1 in the Federal Register; and

iii. The surety bond shall be accompanied by a letter from [Person] referring to the surety bond by number, issuing institution and date and providing the following information: the name and address of the site which is the subject of the [Order] and the amount of funds securing the [Person's] performance of all its obligations under the [Order].

iv. The surety bond shall be accompanied by an irrevocable standby trust fund which wording shall be identical to the wording specified in N.J.A.C. 7:26 Appendix G.

v. The irrevocable standby trust fund may, at the discretion of the Department, be the depository for all funds paid pursuant to a draft by the Department against the letter of credit.

(c) Fully funded trust:

i. The wording of the fully funded trust shall be identical to the wording specified in N.J.A.C. 7:26C Appendix H.

ii. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. The trustee shall agree to be subject to the jurisdiction of New Jersey courts.

iii. An executed certification of acknowledgement that is identical to the wording specified in N.J.A.C. 7:26C Appendix G shall be submitted to the Department with the fully funded trust and the irrevocable standby trust.

4. In the event that the Department determines that [Person] has failed to perform any of the obligations under this [Order], the Department may proceed to draw on that amount of the financial assurance necessary to complete the performance of the obligation; provided, however, that before the Department takes this action, the Department shall notify [Person] in writing of the obligation(s) which it has not performed, and shall have thirty (30) calendar days after receipt of such notice, unless extended in writing by the Department, to remedy the failure to perform such obligation. Notwithstanding any other provisions of this [Order], [Person] reserves its rights, if any, to commence an action seeking judicial review of the Department's draw-down or expenditure of the financial assurance at any time after such draw-down has occurred. During the pendency of such an action, [Person] will not seek to enjoin the Department from the drawing down of funds or the expenditure of funds drawn down pursuant to this provision. Penalties assessed for violations of this [Order] shall not be drawn against the financial assurance.

5. At any time, [Person] may apply to the Department to substitute other financial assurances as specified by this subchapter, in a form and manner acceptable to the Department.

6. Upon the Department approval of a remedial action, the [Person] shall amend the amount of the financial assurance, specified in Paragraph 1 above, to equal the estimated cost of implementation of the approved remedial action, or shall provide such other financial assurance as may be approved by the Department in an amount equal to the estimated cost of implementation of the approved remedial action.

7. The [Person] shall comply with the following project cost reviews requirements:

(a) Beginning three hundred sixty-five (365) calendar days after the effective date of this [Order], and annually thereafter on the same calendar day, the [Person] shall submit to the Department a detailed review of all costs required for the [Person] compliance with this [Order], including:

i. A detailed summary of all monies spent to date pursuant to this [Order];

ii. The estimated cost of all future expenditures required to comply with this [Order], including any operation, maintenance and monitoring costs; and

iii. The reason for any changes from the previously submitted cost review.

(b) At any time after the [Person] submits the first cost review pursuant to the preceding Paragraph, the [Person] may request the Department's approval to reduce the amount of the financial assurance to reflect the remaining costs of performing the obligations under this [Order]. If the Department grants written approval of such a request, the [Person] may amend the amount of the then existing financial assurance consistent with that approval.

(c) If the estimated costs of meeting the [Person] obligations in this [Order] at any time increase to an amount greater than financial assurance, the [Person] shall:

i. Within thirty (30) calendar days after receipt of written notice of the Department's determination, increase the amount of the then existing financial assurance or provide additional financial assurance to an amount equal to the Department's approved estimated cost; and

ii. Upon notification from the Department pursuant to Paragraph [ ] that the obligations of the [Order] have been satisfied, the [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this [Order] for the site which is the subject of this [Order]. Upon the Department's written approval of the completion of any cleanup required by this [Order], as verified by final site inspection and upon the [Person's] satisfaction of all financial obliga-

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tions in connection therewith, the [Person] shall be relieved of any further obligation to maintain in full force and effect the financial assurance required by this [Order] for the facility at which the approved cleanup has been completed.

IX. Oversight Cost Reimbursement

1. Within thirty (30) calendar days after receipt from the Department of a summary, of the Department's costs, including all accrued interest incurred pursuant to (a)2 below, determined pursuant to N.J.A.C. 7:26C Appendix I, [Person] shall submit to the Department a cashier's or certified check payable to the "Treasurer, State of New Jersey" and submitted with DEPE form 062A, for the full amount of the Department's oversight costs, for the period being charged.

2. Interest shall accrue on the unpaid balance of oversight costs, beginning at the end of the thirty (30) calendar day period established in the preceding Paragraph, at the rate established by Rule 4:42 of the current edition of the Rules Governing the Courts of the State of New Jersey.

X. Stipulated Penalties

1. [Person] agrees to pay stipulated penalties to the Department for [Person's] failure to comply with any of the deadlines, schedules or requirements of this [Order] including those established and approved by the Department in writing pursuant to this [Order]. Each day of violation for each deadline, schedule or requirement not complied with shall be an additional, separate and distinct violation. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this [Order]. Each signatory to this [Order] shall be jointly and severally liable for stipulated penalties for violations of this [Order] which result in the Department's issuance of a demand for stipulated penalties.

2. Stipulated penalties shall begin to accrue on the first calendar day after the performance is due or noncompliance occurs and not at the time the Department gives notice of the violation or non-compliance to [Person] or issues a written demand for stipulated penalties. Stipulated penalties shall then continue to accrue through the final day of correction of the non-compliance. The Department may determine that a submittal of insufficient quality constitutes non-compliance and one or more violations of this [Order]. Stipulated penalties for such violations shall accrue from the date [Person] made the submission for sixty (60) calendar days, unless the Department provides [Person] with written notice that stipulated penalties for such violations continue to accrue beyond that sixty (60) day period. In which case stipulated penalties will continue to accrue until [Person] corrects the non-compliance.

3. [Person's] payment of stipulated penalties for [Person's] failure to comply with the deadlines, schedules and requirements associated with the major deliverables and tasks required by this [Order], as identified below, shall be made according to this Paragraph:

(a) Major violations include [Person's] failure, according to the schedules in the [Order], to:

i. Submit any remedial investigation workplans;

ii. Submit any remedial action workplans;

iii. Implement any approved remedial investigation workplan;

iv. Implement any approved remedial action workplan;

v. Implement any approved interim response actions;

vi. Submit permit applications;

vii. Satisfy any financial assurance requirement;

viii. Failure to allow the Department or its authorized agents access to the site; and

ix. Implementation and recording of permanent use and/or access restrictions.

x. Reimbursement of oversight costs, including prior costs; and

xi. Submit payment of penalty or damage payments.

(b) [Person] agrees to pay stipulated penalties for the major violations, identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	$ 1,000
15-29	$ 2,500
30-44	$ 5,000
45-59	$10,000
60-over	$25,000

(c) [Person] agrees to pay stipulated penalties for all other violations, not identified in (a) above, up to the following amounts as determined by the Department:

Calendar Days After Due Date	Stipulated Penalties per Calendar Day
1-14	$ 200
15-29	$ 500
30-44	$ 1,000
45-59	$ 5,000
60-over	$10,000

4. Stipulated penalties shall be due and payable thirty (30) calendar days after [Person's] receipt of a written demand by the Department. [Person] shall make payment of stipulated penalties by a cashier's or certified check payable to the "Treasurer, State of New Jersey" submitted with DEPE Form 062A, and shall be accompanied by a letter referencing this [Order] and the Department's written demand for stipulated penalties.

5. [Person] shall regard payments of stipulated penalties pursuant to this [Order] as payments of civil or civil administrative penalties.

6. The payment of stipulated penalties does not alter [Person's] responsibility to complete any requirement of this [Order].

7. If [Person] fails to pay stipulated penalties pursuant to this section, the Department may take additional enforcement action, including without limitation, instituting civil proceedings to collect such penalties or assessing civil administrative penalties.

8. If [Person] fails to pay stipulated penalties pursuant to this section, the Department may take additional enforcement action, including without limitation, instituting civil administrative penalties.

XI. Reservation of Rights

1. The Department reserves the right to unilaterally terminate this [Order] in the event [Person] violates the terms or fails to meet the obligations of this [Order].

2. Nothing in this [Order] shall preclude the Department from seeking civil or civil administrative penalties, costs and damages or any other legal or equitable relief against [Person] for matters not set forth in the Findings of this [Order]. The Department reserves the right to conduct any remediation itself at any time.

3. Nothing in this [Order], including the Department's assessment of stipulated penalties, shall preclude the Department from seeking civil or civil administrative penalties or any other legal or equitable relief against [Person] for violations of this [Order]. In any such action brought by the Department under this [Order] for injunctive relief, civil, or civil administrative penalties or collection of stipulated penalties, [Person] may raise, among other defenses, a defense that [Person] failed to comply with a decision of the Department, made pursuant to this[Order], on the basis that the Department's decision was arbitrary, capricious or unreasonable. If [Person] is successful in establishing such a defense based on the administrative record, [Person] shall not be liable for penalties for failure to comply with that particular requirement of the [Order]. Similarly, in the event that [Person] prevails in any proceeding in which [Person] alleges that the Department acted arbitrarily, capriciously, or unreasonably in exercising its right under to draw on the financial assurance, the Department will refund, to the account of the financial assurance the amount of the funds so drawn. Although [Person] may raise such defenses in any action initiated by the Department for injunctive relief or stipulated penalties, [Person] hereby agrees not to otherwise seek review of any decision made or to be made by the Department pursuant to this [Order] and under no circumstances shall [Person] initiate any action or proceeding challenging any decision made or to be made by the Department pursuant to this [Order].

4. This [Order] shall not be constructed to affect or waive the claims of federal or State natural resources trustees against any [Person] for damages or injury to, destruction of, or loss of natural resources, unless expressly provided herein, and then only to the extent expressly provided herein.

5. The Department reserves the right to require [Person] to take or arrange for the taking of any and all additional measures if the Department determines that such actions are necessary to protect human health or the environment.

6. Notwithstanding any other provision of this [Order], [Person] reserves its right to challenge, as a contested case pursuant to N.J.S.A. 52:14B-1 et seq., that the Department's draw on the financial assurance provided pursuant to this [Order] was arbitrary, capricious or unreasonable; [Person] agrees, however, not to initiate any such challenge until

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after the Department has corrected or implemented the requirement of this [Order] which was the focus of the Department's draw. The Department reserves its right to contest any such action.

XII. Force Majeure

1. If any event specified in the following Paragraph occurs which [Person] believes or should believe will or may cause delay in the compliance or cause non-compliance with any provision of this [Order], [Person] shall notify the Department in writing within seven (7) calendar days of the start of delay or knowledge of the anticipated delay, as appropriate, referencing this Paragraph and describing the anticipated length of the delay, the precise cause or causes of the delay, any measure taken or to be taken to minimize the delay, and the time required to take any such measures to minimize the delay. [Person] shall take all necessary action to prevent or minimize any such delay.

2. The Department will extend in writing the time for performance for a period no longer than the delay resulting from such circumstances as determined by the Department only if:

(a) [Person] has complied with the notice requirements of the preceding Paragraph;

(b) Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike or other circusmtances beyond the control of [Person]; and

(c) [Person] has taken all necessary action to prevent or minimize any such delay.

3. The burden of proving that any delay is caused by circumstances beyond the control of [Person] and the length of any such delay attributable to those circumstances shall rest with [Person].

4. "Force Majeure" shall not include the following:

(a) Delay in an interim requirement with respect to the attainment of subsequent requirements;

(b) Increases in the cost or expenses incurred by [Person] in fulfilling the requirements of this [Order];

(c) Contractor's breach, unless [Person] demonstrates that such breach falls within Paragraph 1., above; and

(d) Failure to obtain access required to implement this [Order], unless denied by a court of competent jurisdiction.

XIII. General Provisions

1. [Person] shall, in addition to any other obligation required by law, notify the Department contact identified in Paragraph [ ] immediately upon knowledge of any condition posing an immediate threat to human health and the environment. The Department reserves the right to stop any construction, improvement(s), or change(s) at the site(s) subject to this [Order], due to the presence of hazardous substances or wastes, the disturbance of which, prior to implementation of the Department-approved remedial action, which has the potential to cause a threat to human health and the environment as determined by the Department.

2. In the event that the Department determines that a meeting concerning the remediation of the site is necessary at any time, [Person] shall ensure that the [Person's] appropriate representative is prepared and available for, and participates in such a meeting upon written notification from the Department of the date, time and place of such meeting.

3. In addition to the Department's statutory and regulatory rights to enter and inspect, [Person] shall allow the Department and its authorized representatives access to the site at all times for the purpose of monitoring [Person's] compliance with this [Order] and/or to perform any remedial activities [Person] fails to perform as required by this [Order].

4. [Person] shall not construe any informal advice, guidance, suggestions, or comments by the Department, or by [Persons] acting on behalf of the Department, as relieving [Person] of its obligation to obtain written approvals as required herein.

5. [Person] shall perform all work conducted pursuant to this [Order] in accordance with prevailing professional standards.

6. [Person] shall provide a copy of this [Order] to each contractor and subcontractor retained to perform the work required by this [Order] and shall condition all contracts and subcontracts entered for the performance of such work upon compliance with the terms and conditions of this [Order]. [Person] shall be responsible to the Department for ensuring that its contractors and subcontractors perform the work herein in accordance with this [Order].

7. [Person] shall conform all actions required by this [Order] with all applicable federal, state and local laws and regulations.

8. Notwithstanding in this [Order] shall relieve [Person] from complying with all other applicable laws and regulations. Compliance with the terms of this [Order] shall not excuse the [Person] from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by this [Order]. This [Order] shall not preclude the Department from requiring that the [Person] obtain and comply with any permits, and/or orders issued by the Department under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this [Order] if the terms and conditions of any such permit are more stringent than the terms and conditions of this [Order]. Should any of the measures to be taken by the [Person] during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then the [Person] shall obtain a NJPDES permit or permit modification from the Department prior to commencement of the activity.

9. All work plans and documents required by this [Order] and approved in writing by the Department are incorporated herein and made a part hereof.

10. [Person] shall preserve all potential evidentiary documentation found at the site until written approval is received from the Department to do otherwise, including without limitation, documents, labels, drums, bottles, boxes or other containers, and/or other physical materials that could lead to the establishment of the identity of any person which generated, treated, transported, stored or disposed of contaminants at the site.

11. Upon the receipt of a written request from the Department, [Person] shall submit to the Department all data and information, including technical records and contractual documents, concerning contamination at the site, including raw sampling and monitor data, whether or not such data and information, including technical records and contractual documents, was developed pursuant to this [Order].

12. Obligations and penalties of this [Order] are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of the human health, safety and welfare and are not intended to constitute debt or debts which may be limited or discharged in a bankruptcy proceeding. No obligations imposed by this [Order] are intended to constitute a debt, claim, penalty or other civil action which could be limited or discharged in a bankruptcy proceeding.

13. [Person] hereby consents to and agrees to comply with this [Order] which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

14. No modification or waiver of this [Order] shall be valid except by written amendment to this [Order] duly executed by [Person] and the Department. Any amendment to this [Order] shall be executed by the Department and all [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules of this [Order] prior to executing any such amendment.

15. [Person] waives its rights to an administrative hearing concerning the entry of this [Order].

16. This [Order] shall be governed and interpreted under the laws of the State of New Jersey.

17. If any provision of this [Order] or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this [Order] or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this [Order] shall be valid and enforced to the fullest extent permitted by law.

18. This [Order] represents the entire integrated agreement between the Department and [Person] and supersedes all prior negotiations, representations or agreements, either written or oral, unless otherwise specifically provided herein.

19. Within thirty (30) calendar days after the effective date of this [Order], [Person] shall record a copy of this [Order] with the County Clerk, [ ] County, State of New Jersey and shall provide the Department with written verification of compliance with this Paragraph which shall include a copy of this [Order] stamped "Filed" by the County Clerk.

20. Any officer or management official of the [Person] who knowingly directs or authorizes the violation of any provision of this [Order] shall be personally liable for the penalty established pursuant to the Solid

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Waste Management Act, the Spill Act and the Water Pollution Control Act.

21. The site or any portion thereof may be freely alienated provided that [Person] complies with the requirements in this Paragraph and all other applicable law.

(a) At least ninety (90) calendar days prior to the date of such alienation, [Person] shall notify the Department in writing of the proposed alienation, the name of the grantee, the extent of the alienation, and a description of the grantor's continuing obligations, if any, which grantee has agreed to perform.

(b) At least ninety (90) calendar days prior to transfer of ownership of [Person's] facility, site, or portion thereof which are the subject of this [Order], and shall simultaneously verify to the Department that such notice has been given.

(c) Any contract to alienate the site shall require the grantee to allow the implementation and continuation of all activities and obligations pursuant to this [Order] and to allow [Person], the Department and its authorized representatives access to the site for purposes of such activities and obligations. Any alienation shall not affect [Person's] obligations under this [Order].

(d) [Person] shall include in any instrument of conveyance, including but not limited to a deed, title, lease, easement or license for the site a written notice that the site is the subject of this [Order]. Any such instrument of conveyance shall be subject to the requirements set forth in this [Order] regarding the use of the site and deed restrictions.

22. This [Order] shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity. No change in the ownership or corporate status of any signatory or of the facility or site shall alter signatory's responsibilities under this [Order].

23. [Person] shall preserve, during the pendency of this [Order] and for a minimum of ten (10) years after its termination, all data and information, including technical records, potential evidentiary documentation and contractual documents, in its possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the contamination at the site, despite any document retention policy to the contrary. After this ten year period, [Person] may make a written request to the Department to discard any such documents. Such a request shall be accompanied by a description of the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents. Upon receipt of written approval by the Department, [Person] may discard only those documents that the Department does not require to be preserved for a longer period. Upon receipt of a written request by the Department, the [Person] shall submit to the Department all data and information, including technical records and contractual documents or copies of the same. [Person] reserves whatever rights it may have, if any, to assert any privilege or a privilege regarding such data or information, however, [Person] agrees not to assert confidentiality claims with respect to any data related to site conditions, sampling, or monitoring.

24. [Person] agrees not to contest the authority or jurisdiction of the Department to issue this [Order]; [Person] further agrees not to contest the terms or conditions of this [Order] except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this [Order]. [Person] reserves all of its rights pursuant to the Spill Act concerning the Department's selection of any remedial action pursuant to this [Order].

25. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to Paragraph [ ] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. This requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] shall obtain and submit to the Department additional financial assurance pursuant to this [Order].

26. [Person] shall not make any use of the site or take any actions at the site inconsistent within this [Order]. [Person] shall impose such use and/or access restrictions as may be deemed necessary by the Department. The use and access restrictions are to run with the land and be for the benefit of and enforceable by the Department and any citizen which is or may be damaged as a result of violations of the use and access restrictions. The use and access restrictions shall provide actual and constructive notice of any subsequent grantee of the locations and concentrations of all contaminants whch remain at the site and of the use and access restrictions imposed. Within thirty (30) calendar days after [Person's] receipt of a written request from the Department, [Person] shall record the restrictions with [ ] County Clerk, [ ] County, State of New Jersey, and provide the Department with a copy of this [Order] stamped "Filed" by the [ ] County Clerk.

27. Except as otherwise provided, the requirements of this [Order] shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this [Order]. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to federal, state or local laws for matters not addressed by this [Order]. Furthermore, such written notice shall not terminate the obligations and requirements set forth in the preceding six (6) Paragraphs.

28. Except as otherwise set forth herein, by the execution of this [Order] the Department does not release [Person] from any liabilities or obligations such person may have pursuant to any other authority, nor does the Department waive any of its rights or remedies pursuant thereto.

29. [Person] shall submit to the Department, along with the executed original [Order], documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Person] to the terms of this [Order].

30. The Department will consider a request for an extension of time to perform any requirement under this [Order], provided that any extension request is submitted to the Department two weeks prior to any applicable deadline to which the extension request refers.

31. [Person] expressly agree that in the event that [Person] or [Person] fails or refuses to perform any obligation(s) under this [Order] as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this [Order], or any other statute.

32. Except as otherwise provided, the requirements of this [Order] shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this [Order]. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this [Order].

33. [Optional—use if the oversight document is an administrative consent order—] This [Order] shall be effective upon the execution of this [Order] by the Department and the [Person]. The [Person] shall return a fully executed [Order] to the Department together with the financial assurance required by Paragraph [ ] above, and signature authorization required by Paragraph [ ] above within five (5) business days from the effective date.

Date:_____

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

BY: _____

Signature

_____

Print Full Name Signed Above

_____

Title

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Date:_____ [Print Name of Company executing Order]

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

APPENDIX D
STANDARD PUBLICLY CONDUCTED
ADMINISTRATIVE CONSENT ORDER

The standard publicly conducted administrative consent order contains—references to [Person], [amount], and other blank brackets [ ]. Upon the Department's issuance or entry of an administrative consent order, the Department will replace these terms and blank spaces with the appropriate information for that specific oversight document.

IN THE MATTER OF	:	
[Site Name]	:	ADMINISTRATIVE
and	:	CONSENT ORDER
[Name of Person]	:	

The Administrative Consent Order is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy, (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and duly delegated to the Assistant Director for the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. [The name, location, street address and general description of the contaminated site (hereinafter "Site") which is the subject of the memorandum of agreement.]

2. [The full name and mailing address of each responsible party executing the administrative consent order if applicable.]

3. [The regulatory and enforcement history of the site.]

4. By entering this administrative consent order, [Person] does not admit to any fact, fault or liability under any statute or regulation concerning the condition of the Site [if applicable].

5. All of the Department's files concerning the [name of site] are incorporated herein and made a part thereof.

6. The Department intends [and [Person] agrees [if applicable]] that the scope of the investigation and cleanup required by this administrative consent order will include all contaminants at the above referenced Site, and all contaminants which are emanating from or which have emanated from the Site.

7. [Additional provisions may be added at the Department's discretion.]

ORDER

I. Reimbursement of Prior Costs [Optional]

1. Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay to the Department the sum of $ [amount] as reimbursement of costs incurred by the Department to date, in connection with the investigation of, and response to, the matters described in the Findings hereinabove.

2. [Person] shall submit to the Department within five (5) calendar days after the effective date of this administrative consent order a cashier's or certified check payable to the "Treasurer, State of New Jersey" in the amount of $ [amount]. Payment shall be submitted along with Form 062A to:

New Jersey Department of Environmental Protection
and Energy
Bureau of Revenue
CN 402
440 East State Street
Trenton, New Jersey 08625-0402

II. Payment

1. The Department will conduct an RI/FS of hazardous substances, as defined by the Spill Compensation and Control Act, and all pollutants, as defined by the Water Pollution Control Act, discharged at, emanating from, or which have emanated from the Site. The RI/FS will be performed in accordance with 7:26E.

2. [Person] shall pay for all costs of the Department's in its preparation and performance of the RI/FS described above, including contracting costs and the cost of the Department's administration and supervision of the performance of the RI/FS as follows (hereinafter collectively "cost of the RI/FS"):

(a) Within thirty (30) calendar days after the effective date of this administrative consent order, [Person] shall pay the sum of $ [amount] to the Department. The Department shall deposit this payment in a separate interest bearing account (hereinafter "Account"). The Department will draw on such funds to pay the costs of the RI/FS. All interest earned upon the amount shall be credited to the Account.

(b) Within thirty (30) calendar days after payment of the invoices by the Department, the Department will provide [Person] with copies of all invoices submitted to the Department by its contractors. Within thirty (30) calendar days after the Department draws down on the Account the Department will provide [Person] with a statement showing that the Department has paid the invoices from the Account.

(c) Within seven (7) calendar days after receipt from the Department of a written notice by the Department that the balance of the Account has fallen below $ [amount], [Person] shall submit such payments to the Department in an amount sufficient to restore the Account to an amount of $ [amount]. The Department will deposit this payment in the Account.

(d) Funds remaining in the Account upon completion of the RI/FS shall be promptly returned to [Person] by the Department.

III. Exchange of Information

1. The Department will provide [Person] with final copies of RI/FS documents fined as Deliverables in the approved contract between the Department and its contractor(s), which include: Work Plan and Sampling Plans; Quality Assurance/Quality Control ("QA/QC") Protocols; Remedial Investigation Reports; Endangerment or Risk Assessment Reports; Feasibility Study Reports; Treatability Study Reports; and Data Reports that include all data that have passed or failed QA/QC. For any data that fails QA/QC, the reasons for such failure will be explained in the data report.

2. [Person] may submit written comments to the Department on the Deliverables. The Department will review all such comments submitted by [Person], but is under no obligation to incorporate [Person's] comments in the Deliverables.

3. The Department will schedule meetings concerning the RI/FS with [Person] on a quarterly basis, or more often if considered necessary or appropriate by both the Department and [Person].

4. The Department will provide [Person] with reasonable advance notice of all field activities for conducting of the RI/FS. The Department will not exclude [Person] representatives from being present during the conduct of RI/FS activities and taking split-samples of all samples collected as part of the RI/FS provided however, that [Person] representatives does not in any way impede the progress of the RI/FS, and subject to [Person] obtaining any necessary access agreement to the property being where RI/FS activities are taking place.

5. [Person] agrees that no employee of, representative of, or consultant to [Person] shall have any ex-parte communications with the contractor hired by the Department to conduct the RI/FS other than simple verbal exchanges which may occur in the field and are necessary to conduct the RI/FS field activities.

IV. General Provisions

1. [Person] hereby consents to and agrees to comply with this administrative consent order which shall be fully enforceable as an Administrative Order in the New Jersey Superior Court pursuant to the Department's statutory authority.

2. No modification or waiver of this administrative consent order shall be valid except by written amendment to this administrative consent order duly executed by [Person] and the Department. Any amendment to this administrative consent order shall be executed by the Department and all [Person]. The Department reserves the right to require the resolution of any outstanding violations of the rules or this administrative consent order prior to executing any such amendment.

3. [Person] waives its rights to an administrative hearing concerning the entry of this administrative consent order.

4. This administrative consent order shall be governed and interpreted under the laws of the State of New Jersey.

5. This administrative consent order shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or

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equity. No change in the ownership or corporate status of any signatory or of the facility or site shall alter signatory's responsibilities under this administrative consent order.

6. [Person] agrees not to contest the authority or jurisdiction of the Department to issue this administrative consent order; [Person] further agrees not to contest the terms or conditions of this administrative consent order except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the Department to enforce the provisions of this administrative consent order. [Person] reserves all of its rights pursuant to the Spill Act concerning the Department's selection of any remedial action pursuant to this administrative consent order.

7. [Person] shall provide to the Department written notice of the dissolution of its corporate or partnership identity, the liquidation of the majority of its assets or the closure, termination or transfer of operations at least thirty (30) calendar days prior to such action. Upon such notice, [Person] shall submit a cost review pursuant to Paragraph [ ] to the Department. [Person] shall also provide written notice to the Department of a filing of a petition for bankruptcy no later than the first business day after such filing. This requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations. Upon receipt of notice of dissolution of corporate identity, liquidation of assets or filing of a petition for bankruptcy, the Department may request and, within fourteen (14) days of the Department's written request, the [Person] shall obtain and submit to the Department additional financial assurance pursuant to this administrative consent order.

8. [Person] shall submit to the Department, along with the executed original administrative consent order, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind [Person] to the terms of this administrative consent order.

9. [Person] expressly agree that in the event that [Person] or [Person] fails or refuses to perform any obligation(s) under this administrative consent order as determined by the Department, the Department shall have the right to exercise any option or combination of options available to the Department under this administrative consent order, or any other statute.

10. Except as otherwise provided, the requirements of this administrative consent order shall be deemed satisfied upon the receipt by [Person] of written notice from the Department that [Person] has demonstrated, to the satisfaction of the Department, that [Person] has completed the substantive and financial obligations imposed by this administrative consent order. Such written notice shall not relieve [Person] from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this administrative consent order.

11. [Person] agrees not to bring an action or maintain any existing or future claim or demand upon any State fund(s), established for the purpose of remediating or responding to environmental contamination, including the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11 et seq., and the Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-100 et seq., for the cost of any cleanup and removal costs or any other actions required by this Administrative Consent Order and for damages sustained by [Person], its predecessors or its successors and assigns as a result of contamination attributable from [Person's] operations or any of the Sites, provided however, [Person] does not release or waive any right it may have to seek damages otherwise from any other responsible party for such costs or damages.

12. By entering into this Administrative Consent Order, the Department does not waive its right to assess or collect civil or civil administrative penalties for past, present and future violations by [Person] of any New Jersey environmental statutes or regulations.

13. [Person] admits that it has agreed to comply with the terms of this Administrative Consent Order. Neither the entry into this Administrative Consent Order nor the conduct of [Person] hereunder, shall be construed as any admission of fact, fault or liability by the [Person] under any applicable laws or regulations.

14. This administrative consent order shall be effective upon the execution of this administrative consent order by the Department and the [Person]. The [Person] shall return a fully executed administrative consent order to the Department together with the financial assurance required by Paragraph [ ] above, and signature authorization required by Paragraph [ ] above within five (5) business days from the effective date.

Date:_____ NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

Date:_____ [Print Name of Company executing Order]

BY: _____
Signature

_____
Print Full Name Signed Above

_____
Title

APPENDIX E
STANDARD LETTER OF CREDIT

The standard letter of credit contains references to [Person], [amount], and other blank [ ] which the issuing institution shall fill in as appropriate when issuing the letter of credit.

LETTER OF CREDIT WORDING

[_____, 19____]

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION & ENERGY
DIVISION OF RESPONSIBLE PARTY SITE REMEDIATION
CN 028
Trenton, New Jersey 08625
Attention: Chief, Bureau of Budget and Accounting

RE: Administrative Consent Order, [**date executed**] Division of Responsible Party Site Remediation [**site and location include street address lot(s) and block(s) municipality and county**]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____ in your favor, at the request and for the account of **[Person] and address** up to the aggregate amount of **[amount written out]** U.S. Dollars **[$ amount]**, available upon presentation by you of:

(1) Your sight draft, bearing reference to this letter of credit No. ____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to the terms and provisions of the _____, 19 ____ Administrative Consent Order executed by the New Jersey Department of Environmental Protection and Energy and [Person] in order to remedy contamination identified at **site and location**.

This letter of credit is irrevocable and issued for a period of at least one (1) year. This letter of credit is effective as of **[date]** and shall expire on **[date at least one year later]**, but such expiration date shall be automatically extended for a period of **[at least one year]** on **[date]** and on each successive expiration date, unless, at least 120 calendar days before the current expiration date, we notify both you and **[Person]** by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 calendar days after the date of receipt by both you and **[Person]**, as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of **[Person]** in accordance with your instructions.

We hereby agree to be subject to the jurisdiction of the New Jersey courts for all claims made by the NJDEPE against the letter of credit and that this letter of credit shall be construed and enforced according to the State of New Jersey.

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We shall not cancel this letter of credit on the basis of a request from [Person] until we have received written authorization from you.

This letter of credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"]

Very truly yours,
[Name of Issuing Bank]
[Signature and Title of Official]
[Printed Name of Officials]
[Date]

APPENDIX F
STANDARD STANDBY TRUST AGREEMENT

The standard standby trust agreement contains references to [Person], [amount], and other blank brackets [ ] which the issuing institution shall fill in as appropriate when issuing the standby trust agreement.

STANDBY TRUST AGREEMENT WORDING

Trust Agreement, "Agreement", entered into as of [date] by and between [Person] known as "Grantor" and issuing institution the "Trustee".

Whereas, the New Jersey Department of Environmental Protection and Energy, "NJDEPE", an agency of the State of New Jersey, has entered into an Administrative Consent Order with Grantor dated _____, 19____, to cleanup contamination identified at **site and location,** a copy of which is annexed hereto as Schedule "A", pursuant to which Grantor is obligated to establish a trust fund to assure the availability of funds to secure the performance of Grantor's obligations under that Administrative Consent Order.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means **[Person]** who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee, who has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or New Jersey agency. The name, address and title of the Trustee is:

_____

_____

_____

(c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy.

(d) The term "Beneficiary" means the New Jersey Department of Environmental Protection and Energy.

(e) The term "NJDEPE" means the New Jersey Department of Environmental Protection and Energy.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule "A".

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as herein provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

Section 4. Payment for Performance of Administrative Consent Order. The Trustee shall make payment from the Fund as the NJDEPE Commissioner shall direct, in writing, to provide for the payment of the costs of performing Grantor's obligations under the _____, 19____ Administrative Consent Order (annexed hereto as Schedule "A"). The Trustee shall reimburse the Grantor or other persons, as specified by NJDEPE, in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts, as the NJDEPE specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. At such time as the corpus of the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his/her duties with respect to the Trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other

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expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall, annually, at least 30 calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 calendar days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee, may from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services, as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 calendar days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule "C". The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the NJDEPE to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEPE hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with this Agreement. The Trust shall be indemnified and saved harmless by the Grantor or the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

DATE: _____ [NAME OF GRANTOR]
BY: _____
TITLE: _____

DATE: _____ [NAME OF TRUSTEE]
BY: _____
TITLE: _____

CERTIFICATION OF ACKNOWLEDGEMENT

TO BE EXECUTED BY BOTH THE GRANTOR AND TRUSTEE

State of
County of

On the ____ day of _____ before me personally came [name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the Trust Agreement; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

_____
[Signature of Notary Public]

SCHEDULE A

Instructions to the Grantor:

Include here a copy of the Administrative Consent Order.

SCHEDULE B

Instructions to the Grantor:

Include here the initial amount of money the Administrative Consent Order requires you to deposit in the irrevocable standby trust fund.

$ _____ in cash
$ _____ in securities

SCHEDULE C

Instructions to the Grantor:

Include here the required information of your designee for communications with the Trustee.

individual's name, title
[Person]

CERTIFICATE OF ACKNOWLEDGEMENT

State of
County of

On this ____ day of _____, 19____, before me personally came [name] to me known, who being by me duly sworn, did depose and say that she/he resides at_____ , that she/he
is
[title] of [Person], the corporation described in and which executed the Trust Agreement pursuant to the Administrative Consent Order dated _____, 19____, that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that it was

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so affixed by Order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

_____
[Notary Public]

APPENDIX G

STANDARD FULLY FUNDED TRUST AGREEMENT

The standard fully funded trust agreement contains references to [Person], [amount], and other blank brackets [ ] which the issuing institution shall fill in as appropriate when issuing the fully funded trust agreement.

FULLY FUNDED TRUST AGREEMENT

RE: RESPONSIBLE PARTY SITE REMEDIATION
ADMINISTRATIVE CONSENT ORDER executed on [date]by the New Jersey Department of Environmental Protection and Energy and [PERSON] for the investigation and cleanup of the contaminated site located at [include lot and block numbers, municipality and county]

Trust Agreement, "Agreement", entered into as of [date] by and between [Person] known as "Grantor" and issuing institution the "Trustee".

Whereas, the New Jersey Department of Environmental Protection and Energy, "NJDEPE", an agency of the State of New Jersey, has entered into an Administrative Consent Order with Grantor dated _____, 19____, to cleanup contamination identified at site and location, a copy of which is annexed hereto as "Schedule "A", pursuant to which Grantor is obligated to establish a trust fund to assure the availability of funds to secure the performance of Grantor's obligations under that Administrative Consent Order.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner of operator of the industrial establishment entering into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

(c) The term "Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy.

(d) The term "Beneficiary" means the New Jersey Department of Environmental Protection and Energy.

(e) The term "NJDEPE" means the New Jersey Department of Environmental Protection and Energy.

Section 2. Identification of Industrial Establishment and Cost Estimates.

This Agreement pertains to the industrial establishments and cost estimates identified in "Schedule "A".

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEPE. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee and NJDEPE, described in Schedule "B", attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEPE.

Section 4. Payment for Cleanup.

The Trustee shall make payment from the Fund as the NJDEPE Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cleanup costs of the industrial establishment [as appropriate add "pursuant to the Administrative Consent Order dated _____ or "covered by the cleanup approved by the NJDEPE on _____] and this Agreement. The Trustee shall reimburse the Grantor or other persons, as specified by the NJDEPE, from the Fund for cleanup expenditures in such amounts as the NJDEPE shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts the NJDEPE specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund, as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management.

At such time as the corpus of the Fund is funded **with more than one dollar,** the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEPE as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

i. Securities or other obligations of the Grantor, or any other owner or operator of the facilities or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

ii. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

iii. The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and

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records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation.

The Trustee shall, annually, at least 30 calendar days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEPE a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 calendar days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 calendar days after the statement has been furnished to the Grantor and the NJDEPE shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEPE and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee.

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Schedule "C". The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEPE to the Trustee shall be in writing, signed by the NJDEPE Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of a written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEPE hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEPE, except as provided for herein.

Section 15. Amendment of Agreement.

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEPE or by the Trustee and the NJDEPE if the Grantor ceases to exist and no successors or assigns are named.

Section 16. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement, as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEPE or of the Trustee and the NJDEPE, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act of omission[s], made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEPE issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 19. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreeemnt shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date first above written:

[NAME OF GRANTOR]

DATE:_____ BY:_____

TITLE:_____

[NAME OF TRUSTEE]

DATE:_____ BY:_____

TITLE:_____

CERTIFICATION OF ACKNOWLEDGMENT
TO BE EXECUTED BY BOTH THE GRANTOR AND TRUSTEE

State of

County of

On the ____ day of _____ before me personally came [name] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation] the corporation described in and which executed the Trust Agreement; that she/he knows the seal of said corporation; that the seal affixed to such instruments is such corporate seal; that is [was] so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like other.

_____

[Signature of Notary Public]

Schedule A

Instructions to the Grantor:

Include here a copy of the Administrative Consent Order.

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Schedule B

Instructions to the Grantor:

Include here the initial amount of money the Administrative Consent Order requires you to deposit in the standby trust fund

$_____ in cash

$_____ in securities

Schedule C

Instructions to the Grantor:

Include here the required information of your designee for communications with the Trustee.

_____ _____
Individual's name Title

_____
Company

APPENDIX H
STANDARD SURETY BOND

The standard surety bond contains references to [Person], [amount], and other blank brackets [ ] which the issuing institution shall fill in as appropriate when issuing the surety bond.

SURETY BOND

RE: ADMINISTRATIVE CONSENT ORDER executed on [date] by the New Jersey Department of Environmental Protection and Energy and [PERSON] for the investigation and cleanup of the contaminated site located at [include lot and block numbers, municipality and county]

Date bond executed:_____

Effective date:_____

Principal: [Legal name and business address of owner or operator of the industrial establishment]

Type of organization [insert "individual", ["] "joint venture,", ["] "partnership", ["] or "corporation"]

State of incorporation_____

Surety(ies): [names and business addresses]

Total penal sum of bond:_____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection and Energy, hereinafter NJDEPE, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal has entered into an Administrative Consent Order with NJDEPE dated [date], under which Principal has agreed, among other things, to undertake certain actions in order to comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Solid Waste Management Act, N.J.S.A. 58:10-23.11 et seq., and all obligations set forth by the Administrative Consent Order executed for the above referenced property.

WHEREAS, said Principal is required to provide financial assurance in the amount equal to or greater than the cost estimate for implementation of the obligations set forth by the Administrative Consent Order date _____.

WHEREAS, the condition of this obligation is such that, if Principal shall promptly and faithfully perform its obligations under the Administrative Consent Order, then this obligation shall be null and void; otherwise the surety bond shall remain in full force and effect to assure and guarantee the performance and implementation of all obligations set forth by the Administrative Consent Order for this site.

WHEREAS, said Principal shall establish a standby trust fund as is required by the Administrative Consent Order when a surety bond is used to provide a mechanism for access by NJDEPE to all or part of such financial assurance required by the Administrative Consent Order to assure performance of the implementation of all obligations set forth by the Administrative Consent Order.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform its obligations under the Administrative Consent Order, whenever required to do so, regarding each site for which this surety bond guarantees performance, then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEPE that the Surety(ies) shall place funds in the amount guaranteed for the investigation and cleanup of the site into the standby trust fund as directed by the NJDEPE within ten (10) days of receipt of NJDEPE's notification.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEPE contact referenced above; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEPE, as evidenced by the return receipts, nor shall cancellation occur while proceedings to enforce the terms of the Administrative Consent Order are pending or actions to a violation of the Administrative Consent Order are underway.

The Principal may terminate the bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEPE.

In WITNESS WHEREOF, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and the Surety(ies) and that the wording of this surety bond is identical to the wording required by the Administrative Consent Order dated _____.

Principal

[Signature(s)]

[Date]

[Name(s)]

[Title(s)]

[Corporate Seal]

[Name and address]

State of incorporation:_____

Liability limit:_____

[Signature(s)]

[Date]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above].

Bond premium:_____

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APPENDIX I
OVERSIGHT COST FORMULA

I. Formula

Administrative Cost Recovery Formula = A + B as detailed below.

A. Case Management Team

Staff members—including case managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, etc.—who have coded to the site-specific project activity code (PAC) reflecting direct hours worked on the case. Actual hours and salaries for all staff members using the specific PAC will be included in the formula calculations.

(Sum of coded hours x hourly rates) x 1.22 additive factor x 1.2865 fringe benefit factor x 2.3424 indirect cost factor = A

B. Direct Costs

Represents any non-salary direct site-specific costs such as laboratory analysis contractor expenses, etc. These costs will be billed directly to the responsible party as a formula add on.

Direct costs = B

II. Factor Definitions

Salary Additive Rate—22.0%

The NJDEPE salary additive represents the prorated percentage of charges attributable to employees' reimbursable "down-time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular site/project.

Fringe Benefit Rate—28.65%

The New Jersey Office of Management and Budget has negotiated with the United States Department of Health and Human Services for a composite fringe benefit rate of 21.00% of base salaries for the year ending June 30, 1992. The rate is applicable to personnel who are members of the Public Employees' Retirement System (PERS) and covers charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance and unused sick leave. The employer's share of FICA taxes—7.65% for calendar year 1991—is added to the composite fringe benefit rate for a total of 28.65%. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, Dedicated and Non-State programs.

Indirect Cost Rate—134.24%

The indirect cost rate of 132.24% represents the rate which has been developed for this program in accordance with Federal OMB Circular A-87, "Cost Principles for State and Local Governments". Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

The components of the Department's indirect cost rate include indirect salaries and various indirect non-salary costs incurred by Department management, the Division of Publicly Funded Site Remediation, the Division of Responsible Party Site Remediation, and divisional indirect offices—i.e., Commissioner, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

Also, building rent and the Departmental allocation as determined by the Department of Treasury in the Statewide Cost Allocation Plan are includable as indirect costs. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30.

The total of these indirect costs divided by the total direct costs of these programs determine the indirect cost rate.

This rate represents the actual indirect cost for the fiscal year ending June 30, 1991. The rate will be updated annually after the close of the fiscal year.

(a)

OFFICE OF ENERGY

Low Emissions Vehicle Program

Proposed New Rules: N.J.A.C. 7:27-26

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

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-8 et seq., specifically 26:2C-8 and 8.1 through 8.5.

Proposal Number: PRN 1992-126.

DEPE Docket Number: 07-92-02.

Public hearings concerning this proposal will be held on:

May 19, 1992, at 10:00 A.M.
Student Center Theater
Rider College
Route 206 (2083 Lawrenceville Rd.)
Trenton, New Jersey 08648
and
June 3, 1992, at 6:00 P.M.
Lewis Herrmann Labor Education Building
Auditorium
Ryders Lane
New Brunswick, New Jersey 08903

Submit written comments by June 17, 1992, to:

Samuel A. Wolfe, Esquire
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

A number of documents have been cited within this notice as references or as documents being incorporated by reference. Copies of these documents may be requested from:

David West, Chief
Bureau of Transportation Control
Office of Energy
Department of Environmental Protection and Energy
CN 411
Trenton, New Jersey 08625

Copies of the documents incorporated by reference may also be obtained from the Office of Administrative Law.

Copies of this notice and of the proposed amendments, as well as the documents cited in the notice as references or as documents being incorporated by reference, are being deposited and will be available for inspection during normal office hours at:

Atlantic County Health Department
201 South Shore Road, Room 437B
Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program
280 Hobart Street, Room #518
Perth Amboy, New Jersey 08861

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

New Jersey Department of Environmental Protection and Energy
Office of Energy
401 East State Street, Second Floor
Trenton, New Jersey 08625

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

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

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

New Jersey Department of Environmental
Protection and Energy
Bureau of Enforcement Operations
Central Regional Office
Horizon Center, Building 300
Route 130
Robbinsville, New Jersey 08691

These new rules will become effective 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal is set forth below. It contains six major components: a "Summary" section which describes the purpose and scope of the proposal, a "Social Impact" section which describes the anticipated societal effects of the proposal, an "Economic Impact" section which sets forth the anticipated costs and benefits of the proposal, an "Environmental Impact" section which sets forth the anticipated emission reductions to be obtained, a "Regulatory Flexibility Analysis" section which examines the effect of the proposal on small businesses, and a full statement of the text of the proposed new rules.

Summary

The New Jersey Department of Environmental Protection and Energy (the Department) is proposing new rules, N.J.A.C. 7:27-26 (Subchapter 26). The Department is proposing, with these new rules, that all new 1996 and subsequent model year passenger cars and light-duty trucks sold or leased for registration in New Jersey shall meet strict standards for the emission of air contaminants identical to the standards that have been established for such vehicles in the state of California.

The purpose of this rulemaking is to reduce emissions of air pollutants from new motor vehicles as part of New Jersey's overall effort to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide (CO). This action is one part of a comprehensive program to control motor vehicle emissions. Other components include use of cleaner fuels, enhanced vehicle inspection and maintenance, and actions to reduce motor vehicle use. It is the intent of these proposed rules to achieve these motor vehicle emission reductions primarily through the establishment of vehicle emission standards. It is not the intent of these proposed rules to establish any particular fuel requirements. Automobile manufacturers may, however, in order to meet the proposed standards, elect to manufacture vehicles designed to use alternative fuels such as compressed natural gas (CNG), methanol, ethanol, liquid petroleum gas (LPG), or hydrogen. The Department does intend at a later date to propose rules that set forth market incentives to encourage the use of these alternative fuels in centrally-fueled fleet vehicles.

The Federal Clean Air Act, 42 U.S.C. § 7401 et seq., sets forth five different designations or categories of non-attainment with the NAAQS for ozone. These designations relate to how far an area's ambient air quality is from the national standard. The non-attainment designations for ozone range from "marginal" to "extreme," with an area designated as "extreme" having the worst ambient air quality. Eighteen of New Jersey's 21 counties have been designated by the United States Environmental Protection Agency (EPA) as being in the "severe" non-attaintment category for ozone (greater than 50 percent above the NAAQS). This includes six counties which are part of the Greater Philadelphia Consolidated Metropolitan Statiscal Area (CMSA) and 12 counties which are part of the New York/New Jersey/Connecticut CMSA. The Clean Air Act mandates that the Greater Philadelphia CMSA must attain the ozone standard by 2005, and the New York/New Jersey Connecticut CMSA must attain the ozone standard by 2007 and maintain it thereafter.

The non-attainment designations for carbon monoxide (CO) range from "moderate" to "severe." Five counties and 12 cities within 10 other New Jersey counties have also been designated as being in the "moderate" non-attainment category for CO (greater than the NAAQS). The Clean Air Act mandates that these areas must be brought into attainment by December 31, 1995, and maintained in attainment thereafter.

An inventory of 1988 emissions prepared by the Department indicates that motor vehicles contributed 49 percent of the volatile organic compounds (VOC) emissions and 43 percent of the oxides of nitrogen (NO_x in New Jersey. These pollutants are the precursors which in the presence of sunlight combine to form ground level ozone. This inventory also indicates that motor vehicles contributed 74 percent of the CO emitted in New Jersey's urban areas. Nationwide data corresponds to the findings of the Statewide inventory. The United States Congress Office of Technology Assessment reporting in 1989 on nationwide emissions found vehicles to account for 40 to 45 percent of the total VOC inventory and one third of the NO_x inventory (1). (**Note:** Numbers in parentheses throughout the proposal statements note references which are summarized at the end of the proposal statements.) The Environmental Protection Agency has also published national data. In the National Air Quality and Emissions Trends Report for 1990, EPA found transportation sources accounted for 35, 38 and 63 percent of the national VOC, NO_x, and CO emissions respectively (2). The Department is in the process of developing a Statewide emissions inventory for 1990. The preliminary results of this inventory will be available prior to adoption of these rules.

Given the portions of the inventory resulting from motor vehicle emissions, it is evident that attainment of the NAAQSs for ozone and maintenance of the CO standards cannot be realized in New Jersey unless substantial motor vehicle emission reductions are achieved. The EPA report entitled "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report" (3) also supports this conclusion. This report is generally recognized as the most definitive and current assessment of urban ozone in the northeast Ozone Transport Region (OTR). The OTR, which was established by operation of law pursuant to the Clean Air Act (see 42 U.S.C. § 75511c(a)), includes the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, as well as the District of Columbia. The ROMNET report concludes that future attainment of the ozone health standard will be extremely difficult to achieve throughout the OTR region. The report further concludes that within the OTR, attainment of the ozone standard will be most difficult to achieve within the New York/New Jersey/Connecticut CMSA. The ROMNET report states that VOC reductions of more than 75 percent may be necessary for this area. For the Greater Philadelphia CMSA, the ROMNET study concludes, "the full complement of NO^x controls plus the maximum technology VOC measures may be necessary."

The emission reductions expected to be achieved by this motor vehicle emission control program are also necessary to offset the expected continued growth in vehicle miles travelled. Project: Clear Air, a private, public and government effort, was founded in 1988 to investigate and recommend motor vehicle and transportation control strategies to reduce air pollution. The Project: Clean Air study report (4), dated September 6, 1991, concluded that travel will grow in New Jersey by 25 percent by the year 2010 (1.7 percent per year through 1999 and 1.5 percent per year thereafter). Moreover, Project: Clean Air's steering committee focused on State land use policy and specific transporation control measures (TCM) to alleviate emission increases due to growth. The steering committee concluded that even if all the TCM's it recommended as being reasonable were implemented, travel would still grow by 14 to 15 percent by the year 2000. As such the committee also endorsed adopting the California standards as one of the measures essential to attaining the ozone NAAQS. Project: Clean Air found that unless significant reductions in vehicle emissions are achieved, New Jersey may be compelled to place further more onerous restrictions upon vehicle use in order to attain the ozone NAAQS. Such restrictions could include prohibitions on driving, imposition of fees for parking and increased tolls and gas taxes.

The ROMNET estimate of the projected emission reductions needed to comply with the Clean Air Act requirements and the findings of Project: Clean Air help demonstate that New Jersey must, in the current decade, adopt and implement the most aggressive mobile and stationary source controls available. New Jersey, as well as other states in the OTR, will need to consider all available control measures in developing the compliance strategies which will be implemented over the next 15 years. The Department has determined that one of these available necessary measures is to adopt as part of a comprehensive, regional strategy a program which establishes strict vehicle emission standards identical to those adopted by the state of California.

In addition to the Clean Air Act's general requirements to attain the NAAQS for ozone, the Act requires that New Jersey reduce emissions of volatile organic compounds 15 percent by 1996 and three percent each

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year thereafter until attainment. Where ozone reduction benefit can be shown, the three percent reductions may include NOx reductions as well as VOCs. Beginning in November 1992, the states must submit plans to EPA for review and approval. The plans, which are called State Implementation Plans or SIPs, specify how these emission reduction requirements will be met. The California vehicle emission standards are a key component of New Jersey's overall plan for meeting the mandated emission reduction requirements especially after 1996, when New Jersey must show continuous reductions each year. The phase-in of the more stringent emission requirements over time in the California low emission vehicle program correlates with this need to show continuous reductions.

Under the Clean Air Act, failure to submit and implement an approvable SIP would result in the imposition of costly Federal sanctions. Potential sanctions include a prohibition of major industrial development, the revocation of certain Federal highway funds, and the preemption of New Jersey's air pollution control authority through the promulgation of a Federal Implementation Plan (FIP).

To enable New Jersey to attain and maintain the NAAQSs for ozone and CO, the Department plans to institute a comprehensive mobile source emission control program which addresses aspects of the motor vehicle pollution problem in addition to that proposed in these rules. In addition to controlling new vehicle emissions, this comprehensive program will include the following three components: (1) controlling fuel quality; (2) enhancing vehicle inspection and maintenance (I/M); and (3) reducing vehicle miles traveled. These components will work in concert to reduce mobile source emissions. While no single component is predicated upon existence of the others, the reductions achieved by implementing a coordinated approach to mobile source control would outweigh the sum of the independent parts. In the new rules proposed herein, only the first of these components of the Department's comprehensive mobile source control program is addressed, controlling new vehicle emissions. The other components will be implemented through separate State and Federal regulatory actions in accordance with the schedule mandated by the Clean Air Act.

Since the 1960's, the Clean Air Act and the regulations promulgated thereunder by EPA have established standards for the emission of contaminants from new motor vehicles. See 42 U.S.C. § 7521. In general, these standards pre-empt individual states from adopting their own emission standards. However, the Clean Air Act authorizes the states to set emissions standards for new motor vehicles if certain conditions are met. See 42 U.S.C. §§ 7507 and 7543. The state of California has had a vehicle emissions control program in place since the 1950's, and is the only state authorized under the Clean Air Act to set its own vehicle emission standards which may differ from the Federal standards. California's emissions standards can be different than, and will supplant, the Federal standards provided that the EPA determines the California standards to be at least as protective of public health and welfare in the aggregate as the Federal limits. See 42 U.S.C. § 7543(b).

States with approved State Implementation Plans, such as New Jersey, are authorized to adopt emissions standards, provided that such standards are identical to California's. See 42 U.S.C. §7507. However, if these non-attainment states elect not to adopt the California standards, then vehicles sold or leased in those states would still be subject to the Federal vehicle emission standards. These recently adopted Federal emission standards, which are commonly referred to as the "Tier I" standards, are applicable to all 1994 and subsequent model year vehicles.

This proposal sets forth the Department's intent to adopt the California standards for new 1996 and subsequent model year vehicles sold or leased within the State. The new rules proposed herein would establish a New Jersey Low Emission Vehicle Program (hereinafter referred to as the LEV Program). This program would be based on California's Low Emission Vehicle program and would have vehicle emission standards identical to those established for passenger cars and light-duty trucks sold or leased in California.

The Department has worked with business and industry, environmental groups, and interested citizens in the development of this proposal. On November 7, 1991, the Department held a public workshop to provide interested parties the opportunity to discuss a conceptual version of this rule proposal (5). On December 10, 1991, the Department held a follow-up workgroup meeting to focus on the concerns of the regulated community identified at the public workshop. Persons representing vehicle manufacturers, automotive dealers, the petroleum industry, and public interest groups participated. Written comments were also forwarded to the Department following the workshop session. The Department has considered the comments received during this informal public consultation process in developing this rule proposal.

The Department is also working in cooperation with the other states in the OTR to implement the LEV Program, as part of a regional strategy to control motor vehicle emissions. New Jersey's persistent ozone air quality problem is in part generated by emissions transported into the State as well as emissions generated within the State. This reality dictates that New Jersey must seek regional progress, as well as progress within its own State boundaries, if the State is to achieve timely attainment of the ozone standard. Eleven member states and the District of Columbia of the OTR have signed a memorandum of understanding to proceed with the adoption of the LEV program in their respective states (6). Already New York and Massachusetts have taken action on rules which would adopt the LEV Program in their states.[7,8] Massachusetts adopted its LEV rule on January 31, 1992, and New York is expected to adopt its rule by May 1, 1992. The Department views this regional interstate cooperation as significant in respect not only to achieving emission reductions, but also to precluding any potential resultant economic inequities among OTR states.

Additionally, interaction between the California Air Resources Board (CARB) and air pollution control staff in New Jersey and other participating OTR states in support of the development of the LEV program in the northeast is on-going. This interaction, which will continue throughout the course of implementing and maintaining the LEV program, is essential to ensure that issues specific to New Jersey and the OTR are considered and addressed. Further, the Department has encouraged New Jersey business and industry leaders to consult their counterparts in California and draw on the experience that has been gained with the LEV program in California.

The LEV Program proposed herein would apply to all new 1996 and subsequent model year passenger cars and light-duty trucks up to 5750 pounds loaded vehicle weight. Passenger cars are defined as motor vehicles designed primarily for transportation of persons and having a design capacity of up to 12 persons. Light-duty trucks are defined as motor vehicles rated at up to 5750 pounds gross vehicle weight, which are designed primarily for transporting property or which are available with special features for off-highway operation.

The proposed program would not apply to medium-duty vehicles, heavy-duty trucks, motorcycles or off-highway equipment of any type. Heavy-duty vehicles are defined to include motor vehicles other than passenger cars, with a gross vehicle weight rating of more than 8500 pounds. Medium-duty vehicles are defined as heavy-duty vehicles with a gross vehicle rating of beteen 5750 and 8500 pounds. This part of the California LEV program is scheduled for implementation beginning in model year 1998. Prior to such implementation in California, the Department will evaluate the incremental benefit of including these vehicles in the LEV program. This approach is consistent with actions taken by New York and Massachusetts.

Beginning with model year 1994 vehicles, the Clean Air Act sets national vehicle emission standards which are commonly referred to as "Tier I" standards. The LEV Program has standards that are more stringent than the Tier I standards. Although the Tier I vehicle emissions standards are more stringent than prior Federal standards, the emission reductions to be achieved under the Federal Tier I program nonetheless fall short of the long range improvements required of New Jersey and which the LEV program would provide. The Clean Air Act does include contingent emissions standards which are similar to the LEV Program standards. See 42 U.S.C. § 7521(h). However, the imposition of these standards, which are commonly referred to as the "Tier II" standards, is dependent upon several factors, including the results of studies to be conducted by the EPA and the Federal Office of Technology Assessment, and the results of rulemaking activities to be conducted thereafter. Based upon the results of such studies, the EPA may determine that more stringent national standards than the Tier I standards are not necessary, and therefore, EPA may not promulgate the Tier II standards. Such a decision will be based upon a national analysis and could fail to respond to specific requirements of New Jersey or the OTR. Alternatively, if the EPA determines that more stringent standards are necessary, EPA may promulgate either the Tier II standards, or alternate standards, which must still be more stringent than the Tier I standards. In the event EPA determines that the more stringent standards are necessary, these new standards will take effect at the earliest for model year 2003, and may not take effect until model year 2006, a full 10 model years after the proposed LEV Program would take effect and one year after parts of New Jersey and most of the OTR must reach attainment of the standard.

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Therefore, Tier II standards would not contribute to timely attainment of the NAAQS for ozone. As such, if New Jersey were to rely on Tier II standards, it would be compelled to implement more onerous, and less desirable, alternatives such as further reductions in vehicle miles traveled and less cost effective small source controls for industrial and commercial facilities.

Clearly, the imposition of more stringent Federal standards than the Tier I standards is highly speculative. Because of this uncertainty concerning whether or when Tier II standards may go into effect, and what those standards may actually be, the Department has not considered such standards in proposing the LEV Program because of the need to move forward with this important element of its comprehensive motor vehicle emisisons control program. In the event that more stringent Federal standards are imposed at some future date, the Department will consider the impact such standards will have on the LEV Program.

As of the year 2005, when most of the OTR must attain the ozone NAAQS, the vehicle emission reductions obtained under the LEV Program would surpass those that would be obtained under the Federal Tier I program for VOC, NO_x, and CO by 27.9 percent, 19.1 percent, and 13.3 percent, respectively. (This information is contained in a report commissioned by the Northeast States for Coordinated Air Use Management (NESCAUM) and prepared by E.H. Pechan and Associates. This report is hereinafter referred to as the Pechan Report.[9]) When fully implemented in New Jersey in 2015, the LEV Program will provide, relative to the mandated Federal Tier I Program, further emission reductions of 21 to 58 tons of VOC per summer weekday, 31 to 49 tons of NO_x per summer weekday, and 219 to 730 tons of CO per winter weekday. Obtaining these reductions of base emissions from new motor vehicles which are greater than those which may be achieved under the mandated Federal vehicle emissions program is essential if New Jersey is to attain the ozone NAAQS.

Further benefits from the LEV program are expected in the emissions of toxic air contaminants. Appendix-1 of the Pechan Report states that "based on modeling conducted for this study, by the year 2015, 1,3-butadiene emissions from light-duty motor vehicles are expected to decrease by 23 percent to 66 percent, benzene emissions by 21 percent to 54 percent and formaldehyde emissions by 19 percent to 62 percent as a result of implementing the LEV Program."

The proposed new rules include the adoption of the California vehicle emission standards, including the adoption of exhaust emissions standards for formaldehyde, and a zero emission vehicle (ZEV) sales mandate. The Department's adoption of these LEV standards will supplant the application of Federal vehicle emission standards in New Jersey. However, adoption of the California vehicle standards will not obviate the need for other mobile source control programs mandated by the Clean Air Act, such as requirements for clean fueled fleets, enhanced inspection and maintenance, and reducing motor vehicle use.

The LEV Program allows vehicle manufacturers greater flexibility in how they may achieve conformance with the standards than does the Federal program. The LEV Program allows each manufacturer to take into consideration its production and distribution costs, consumer demand for its vehicles, and to elect to pursue a marketing strategy which the manufacturer determines to be the most cost effective means of achieving the standard. Under the Federal Tier I standards, all vehicles of the same general type (for example, all passenger cars and light-duty trucks up to 5,750 pounds loaded vehicle weight) must comply with a single set of tailpipe emission standards for non-methane hydrocarbons (NMHC), carbon monoxide (CO), and nitrogen oxides (NO_x). However, in the LEV program the Department is proposing five different categories of emission standards to which vehicle manufacturers may choose to certify particular model year engine classes. These categories include: standard vehicle (SV) which is equivalent to the Federal Tier I standards, transitional low emission vehicle (TLEV), low emission vehicle (LEV), ultra-low emission vehicle (ULEV), and zero emission vehicle (ZEV). The categories are defined based on the allowable exhaust emissions which are set forth in Tables 1, 2, and 3 of N.J.A.C. 7:27-26.4. The exhaust emission components specified are for CO, NO_x, non-methane organic gases (NMOG), and formaldehyde. The standards become increasingly stringent as the vehicle type goes from standard to transitional to low to ultra-low to zero. Manufacturers would be allowed to market new vehicles with engines certified to any of these five categories, provided that average NMOG emissions of the mix of vehicles sold does not exceed specified annual limits that grow more stringent each year.

In addition, in order to ensure continued progress toward a cleaner fleet, the LEV Program would require, beginning in model year 1998, that at least two percent of the manufacturers' annual sales be vehicles certified as ZEVs, which emit no regulated air contaminants. This minimum percentage would grow to five percent in 2001 and to 10 percent in 2003. Of course, manufacturers are free to elect to sell a higher percentage of ZEV's than the specified amounts if they decide that it would be appropriate to do so.

These proposed new rules do not include California's reformulated fuel requirements. This is consistent with the approach of New York and Massachusetts. The Department seeks comments from the public on the advisability of encouraging the use of alternative fuels in New Jersey and means for doing so. The Department seeks to encourage manufacturers to market at least a small but significant number of dedicated alternatively fueled vehicles. The Department requests comments suggesting approaches to encourage the production of such vehicles for use in vehicle fleets where central fueling locations are accessible.

Specifically, the proposed new rules include the following provisions:

Applicability: At N.J.A.C. 7:27-26.2, these proposed rules set forth the types of motor vehicles that would be subject to the proposed LEV Program. In this rulemaking, LEV standards are not being proposed for all types of motor vehicle classifications. Rather, at the present time the Department is limiting the applicability of the LEV Program to passenger automobiles and light-duty trucks of up to 5,750 pounds loaded vehicle weight. The LEV Program set forth herein does not apply to medium-duty vehicles, heavy-duty trucks, motorcycles, or off-highway equipment of any type.

Prohibitions: N.J.A.C. 7:27-26.3 generally prohibits the sale, registration, importation, purchase, rental, leasing, gift, acquisition or receipt of any 1996 or subsequent model year automobile which is not in compliance with the proposed new rules. However, the Department has proposed several exceptions to this prohibition in order to recognize the nature of dealer to dealer transfers and other transactions which make application of the prohibition inappropriate:

- Transfers to dealers;
- Transfers for the purpose of wrecking or dismantling;
- Transfers for registration outside New Jersey;
- Transfers for use exclusively off-highway;
- Rental of vehicles in possession of a rental agency in New Jersey, which are next rented with a final destination outside New Jersey;
- Passenger cars or light-duty trucks acquired outside New Jersey by a New Jersey resident for the purpose of replacing a vehicle which, outside New Jersey, was damaged beyond reasonable repair, became inoperative beyond reasonable repair, or was stolen;
- Vehicles transferred by inheritance or court decree;
- Vehicles tranferred after the effective date of the proposed new rules, if the vehicles were registered before the effective date; and
- Vehicles certified by EPA and originally registered in another state by a resident of that state, who subsequently establishes residence in New Jersey.

Emission Standards: Manufacturers electing to sell vehicles in New Jersey must submit an application for certification for each vehicle/engine combination. When a vehicle will be also sold in California, the certification process accepts the certification by the Executive Officer of the California Air Resources Board (CARB) thereby avoiding unnecessary duplicative certification testing and procedures. Where a manufacturer produces a vehicle for sale in New Jersey which will not be sold in California, the application for certification may be submitted to the Commissioner of the Department. The application must demonstrate the vehicle's compliance with all provisions of "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." The procedure involves submission of data by the applicant which demonstrates that the candidate's vehicle complies with exhaust and evaporative emission standards applicable to the vehicle type and model year at zero miles and over a prescribed number of accumulated miles (also referred to as the durability vehicle basis). The candidate vehicle must also comply with hardware requirements such as emission control labeling and onboard-diagnostics. If the application for certification demonstrates compliance with the applicable standards and requirements, the Executive Officer of CARB or the Commissioner of the Department may grant a certificate of conformity for the vehicle which allows the vehicle to be sold in the respective states.

At N.J.A.C. 7:27-26.4, these rules set forth five different categories of emission standards to which vehicle manufacturers may choose to

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certify particular model year engine classes. Certification of new vehicles includes the testing of the manufacturer's prototype motor vehicles by engine family according to certain test procedures which have been formulated by the California Air Resources Board. These categories include: standard vehicles (SVs); transitional low emission vehicles (TLEVs); low emission vehicles (LEVs); ultra-low emission vehicles (ULEVs); and zero emission vehicles (ZEVs). The exhaust emission standards for each of these categories apply to carbon monoxide (CO), nitrogen oxides (NO_x) and formaldehyde (HCHO), and non-methane hydrocarbons (NMHC) or non-methane organic gases (NMOG). The specific vehicle category standards have been established by the California Air Resources Board. The Clean Air Act requires that states which choose to adopt a motor vehicle emissions program other than the Federal Tier I program must adopt emission standards that are identical to the California program.

In-Use Compliance Standards: At N.J.A.C. 7:27-26.4, these proposed new rules set forth emission standards which must be met by vehicles after accumulation of mileage in-use. Generally, the manufacturer, upon submitting an application for certification, must demonstrate that the candidate vehicle will comply with the certification standard over a 50,000 mile or 100,000 mile period depending on the vehicle type and model year. In the case of the Low Emission Vehicle standards set forth in N.J.A.C. 7:27-26.4, in-use compliance standards, in effect until model year 1998, are proposed which are somewhat less stringent than the certification standards. These "intermediate in-use compliance standards" are intended to ease the burden of compliance on manufacturers during the early years of implementation.

Reactivity Adjustment Factors: At N.J.A.C. 7:27-26.4, these proposed new rules set forth the emission standards for TLEVs, LEVs, and ULEVs. Although the proposed new rules do not require the use of alternative fuels, if a manufacturer elects to meet the certification standards by using a fuel other than gasoline, the test procedures for demonstrating compliance with these standards will allow for emissions to be "adjusted" to reflect the different ozone forming potential of emissions from vehicles using the alternate fuel. In this way, manufacturers have an incentive to produce alternatively fueled vehicles which are "inherently low emitting," that is, vehicles whose in-use control of emissions is less vulnerable to the deterioration of emission control hardware. The reactivity adjustment factor is an inherent part of a LEV program.

Fleet Emission Average Requirement: At N.J.A.C. 7:27-26.6, these proposed rules allow each vehicle manufacturer to market any combination of new vehicles with engines certified to any of the five categories of emission standards, provided that the average NMOG emissions of the mix of vehicles sold and leased annually by that manufacturer does not exceed a specified fleet average requirement that grows more stringent each year. Small volume manufacturers (those with sales in California of less than or equal to 3000 new vehicles per model year) are given flexibility for how they meet the fleet average and the time frame in which they must meet this average.

Enforcement of the Fleet Average: The Department is proposing to allow for consumer choice to determine the combination of vehicles sold or leased in New Jersey, and not to bring an enforcement action if the fleet average is exceeded. This approach is being taken in order to maximize program effectiveness while minimizing administrative burden, and in order to develop regional consistency. This approach is consistent with rules recently adopted by Massachusetts and proposed by New York.

ZEV Sales Mandate: At N.J.A.C. 7:27-26.6, the proposed new rules will require that beginning in model year 1998 a certain percentage of the vehicles marketed and sold by each manufacturer will be zero emission vehicles (ZEVs). Starting with model year 1998, two percent of each manufacturer's fleet would be required to be ZEVs. This requirement would increase to five percent in model year 2001 and to 10 percent in model year 2003 and thereafter. The ZEV sales mandate will, in the long run, provide a greater assurance of achieving the maximum emission reduction benefit, particularly because, unlike gasoline-fueled vehicles, emissions from these vehicles will not increase as the vehicle gas. In addition, the ZEV is ideally suited for urban environments, where the State's worst air quality exists. Urban driving, characterized by slow speeds and stop-and-go traffic, strains the ability of the emissions control systems on conventionally-fueled vehicles to maintain low emission levels.

The ZEV, however, maintains zero emissions under these driving conditions and, in fact, gains a considerable advantage in overall efficiency due to battery recharging during frequent braking conditions.

Intermediate volume manufacturers (those with sales in California of between 3,001 and 35,000 new light-duty and medium-duty vehicles) would be exempt from the ZEV sales requirement until the model year 2003. Small volume manufacturers (those with California sales of fewer than 3001 new light-duty and medium-duty vehicles) would be completely exempt from the ZEV sales mandate.

The Department expects that specialized electric vehicle manufacturers may enter the marketplace. At present, only battery-powered electric vehicles appear capable of meeting the ZEV requirements. However, solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future.

The Department recognizes that significant electric vehicle technological developments are underway that may impact the potential for manufacturers to achieve the ZEV sales mandate. The Department, consistent with action planned by Massachusetts and New York, will undertake a technology review of ZEVs in 1994 to examine ZEV technology developments and issues relating to ZEV performance in New Jersey. This review will include an opportunity for public participation.

Quality Control Testing: No quality control provisions for assembly line testing are included in the proposed rules. The Department will consider proposing such provisions in the future and, in doing so, the Department will consider the need for consistency within the OTR. At the present time, the Massachusetts rule and the New York proposal include assembly line testing procedures identical to California's. However, the California Air Resources Board intends to revise these procedures. The Department, therefore, has decided not to propose a quality control testing provision at this time.

Onboard Diagnostic System: At N.J.A.C. 7:27-26.8, these proposed new rules require all vehicles sold or leased pursuant to the LEV Program to be equipped with advanced onboard diagnostic (OBD) systems. These standards are identical to those adopted by California and are consistent with the Massachusetts rule and the New York proposal. These systems would alert the vehicle operator if the emission system is malfunctioning and monitor additional parameters than those covered by recently proposed Federal OBD standards.

Fill Pipes and Openings of Motor Vehicle Fuel Tanks: At N.J.A.C. 7:27-26.8, these proposed new rules set forth the specifications for fill pipes and the openings of motor vehicle fuel tanks. This section prescribes the specifications for the fuel tank opening and the pipe leading from the fuel tank to the fueling inlet. The specifications are designed to prevent the introduction of a leaded fuel nozzle into the fuel tank opening to prevent misfueling of the vehicle and to assure compatibility of Stage-II refueling vapor control apparatus on gasoline fuel pumps with the fuel opening. Stage-II apparatus is designed to minimize refueling vapor loss during vehicle refueling.

Recall, Warranty and Aftermarket Parts Programs: Although no recall, warranty or aftermarket parts provisions are included in these proposed new rules, the Department does intend to propose such provisions in the future. The recall and warranty programs would have important regional implications. For this reason, the Department will consult and coordinate with other states in the OTR prior to developing and proposing the recall and warranty provisions of its LEV program. The aftermarket parts program has significant implications for the aftermarket parts industry in New Jersey. It is possible that the aftermarket parts provisions may be better integrated with the new enhanced inspection and maintenance (I/M) rules scheduled to be proposed later this year.

Penalties: The proposed rules provide that persons subject to this subchapter who fail to conform with its requirements, including the sales, reporting and registration requirements for low emission vehicles in New Jersey, may be subject to civil penalties in accordance with N.J.A.C. 7:27A-3. These new rules do not propose amendments to N.J.A.C. 7:27A-3 that would establish penalties specific to the requirements of these rules. However, the Department is considering whether to propose amendments establishing penalties, and will solicit public input on this issue in the future.

Incorporation by Reference: The proposed new rules incorporate provisions of the California Code of Regulations together with several specification documents and test procedures. The Department and other State agencies commonly incorporate other laws and regulations, including test procedures, by reference. See, for example, the Department's Safe Drinking Water regulations, specifically, N.J.A.C. 7:10-1.3, and the New Jersey Pollutant Discharge Elimination System regulations, specifically, N.J.A.C. 7:14A-1.9. The rules of the Office of Administrative Law specifically allow incorporation by reference, N.J.A.C. 1:30-2.2. This

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incorporation includes all amendments and supplements to those regulations, specification documents, and test procedures. The Department will publish notices of all such amendments and supplements in the New Jersey Register, which will become operative no earlier than 30 days following publication. The operative date will be stated in the publication. In addition, the Department will provide public notice of California's proposed amendments and supplements, including how copies of such proposals may be obtained and where comments may be submitted. If the Department determines that a particular amendment or supplement may not be appropriate to New Jersey's LEV Program, the Department will propose an amendment to these rules.

In any event, under the Clean Air Act New Jersey is required to provide two years notice of its adoption of LEV standards or revisions to such standards.

Social Impact

These proposed new rules will have a positive social impact. They are designed to help New Jersey achieve and maintain the NAAQS for ozone and carbon monoxide by reducing the emission of air contaminants from new motor vehicles. These air contaminants include volatile organic compounds, carbon monoxide, oxides of nitrogen and various toxic air pollutants. Volatile organic compounds and oxides of nitrogen contribute to the formation of photochemical smog, of which ground level ozone is a primary constituent. By reducing these emissions, these new rules would have the effect of helping to deter or prevent the exposure of persons who reside or work in New Jersey to elevated unhealthy concentrations of these substances. Reducing these emissions will also help to deter or prevent the degradation of plant life and various human-made materials which is caused by increased ozone concentrations. The effects would be protective of public health and the environment, and would be of significant societal benefit.

The frequent and widespread violations of the health-based NAAQS for ozone in New Jersey constitutes a serious public health problem in the State. In 1978 based on ozone's then known health effects, the national ambient air quality standard was established at 0.12 parts per million by EPA. However, adverse health effects have been observed at lower levels of ozone, and the American Lung Association and several states have filed a lawsuit against EPA seeking that EPA reevaluate the ozone standard in light of recent scientific findings in order to ensure that the national ozone standard is protective of public health.[10]

The Department maintains a comprehensive air pollution monitoring system throughout the State and provides a daily forecast and an annual report for each calendar year [11]. In addition, EPA has published a report which summarizes ozone air quality data for the New York, New Jersey, and Connecticut region[12]. This report provides 1990 air quality data including the occurrence of ozone air quality exceedances:

Air Quality Data
Exceedances of the Ozone Standard in 1990

Area	Number of Sites	Number of Exceedances	Average Number of Exceedances per site
New Jersey (southern)	6	21	3.50
New Jersey (northern/central)	9	37	4.1
New York (NYC Metro)	7	12	1.7
Connecticut	10	44	4.4
TOTAL	32	114	3.6

In New Jersey this translates into 58 site exceedances and 23 days in 1990 during which the ozone NAAQS was violated. Preliminary data for 1991 show that 75 site exceedances occurred and the ozone NAAQS was violated during 26 days in 1991.

Short-term effects on healthy exercising adults and children from exposure to elevated ozone concentrations include coughing, painful breathing and loss of certain lung functions. The connection between respiratory disease and high levels of ozone have been reported by the University of Medicine and Dentistry of New Jersey (UMDNJ). After studying data from nine central New Jersey hospitals, UMDNJ researchers found that the incidence of asthma attacks rose from seven to 10 percent when elevated levels of ozone were reported by the Department[13]. These effects are exacerbated in sensitive populations, particularly the elderly, those with preexisting respiratory diseases and children who play outdoors. Long-term effects are also of concern, because much of New Jersey's population has been exposed to unhealthful levels of ozone throughout their lifetime. Although chronic effects have not been conclusively determined, repeated exposure to ozone over a lifetime causes biochemical and structural changes in the lung and may be a causal factor in development of chronic respiratory diseases.

Increased ozone levels also cause damage to foliage. One of the earliest and most obvious manifestations of ozone impact on the environment is this impact on sensitive plants. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in ambient ozone concentrations will mitigate damage to foliage, fruits, vegetables and grains.

The oxidizing properties of ozone lead to accelerated degradation of various man-made materials such as rubber, plastics, dyes and paints. Attainment of the NAAQS for ozone will reduce the rate of degradation of both natural and sythetic materials.

Carbon monoxide reduces the oxygen carried in the blood and also may be fatal at high concentrations. In 1990 New Jersey had the fewest recorded exceedances of the CO NAAQS in recent years, with only one exceedance recorded in Elizabeth. However, preliminary data from 1991 indicates that two exceedances occurred in Elizabeth, one exceedance in East Orange, and one in North Bergen. Reducing the emissions of CO from motor vehicles is expected to help avoid any such exceedances.

In addition to the contribution to ozone and CO levels, the EPA estimates that motor vehicle emissions account for 60 percent of the total cancer incidence from outdoor exposure to air toxics nationwide[13]. Therefore, reducing the motor vehicle emissions is also expected to significantly reduce the total cancer incidence attributable to motor vehicle emissions.

Most New Jersey residents who wish to purchase new vehicles would be impacted by the LEV program. Only vehicles that are certified to LEV Program standards would be allowed for sale in New Jersey after 1996. Therefore, new car buyers would be restricted to purchasing only vehicles that conform with these proposed standards. New Jersey residents would not be able to register in New Jersey new vehicles purchased from an out-of-State automotive dealership, except for vehicles certified to the LEV Program standards. However, the Department believes that the adoption of these new rules would not materially limit either the availability of motor vehicles for New Jersey car buyers, or the availability of various makes or models of such motor vehicles. First, the LEV standards and any sales prohibitions would not apply to use vehicles. Second, past experience in California has shown that manufacturers certify the great majority of their product line to the more stringent California emission standards, resulting in little effect on the availability of particular makes or models. Third, the Department is proposing to adopt an "offset vehicle provision" similar to California's, whereby manufacturers can choose to sell in New Jersey a limited number of vehicles certified to Federal standards to increase model availability. The emissions from these higher emitting vehicles would be required to be "offset" through the sale of lower emitting vehicles. Lastly, the proposed LEV Program allows the manufacturers to certify cars to any one of five different categories of emission standards, and allows them to sell any mix of such vehicles the manufacturer decides, provided that the average emissions of MNOG do not exceed a certain level.

Another significant factor is that 11 member states of the OTR (including New Jersey's neighboring states of Pennsylvania and New York), together with the District of Columbia, agreed to a Memorandum of Understanding[6] containing a commitment to adopt the LEV Program within their jurisdictions. According to national vehicle registration statistics, these northeast states, together with California, constitute approximately 35 percent of the market for new cars in the United States. The size of the demand for cars that meet the LEV Program standards, once the program has been adopted throughout the northeast, will provide a substantial incentive for vehicle manufacturers to make such vehicles available. Therefore, the Department anticipates that under the LEV Program, a full range of vehicle models would be available to New Jersey residents.

Some New Jersey businesses are expected to be affected, namely new and used automotive dealerships and wholesalers, automotive parts dealers and distributors, and possibly gasoline retailers. Overall, as discussed in the Economic Impact and Regulatory Flexibility Analysis below, these new rules are expected to minimally affect the operations of New Jersey businesses and are not expected to affect the absolute sales or profits of such businesses.

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Economic Impact

The Department expects that the proposed new rules will result in both positive and negative economic impacts. While compliance with the proposed new rules will bring associated costs, such compliance will also result in improved air quality, avoiding some of the substantial costs associated with air pollution.

The actual costs and other economic impacts associated with reducing air pollutants by implementing the LEV program are speculative and difficult to accurately quantify, as they are a function of several different parameters. These parameters include vehicle cost and consumer demand, relative cost effectiveness of the emission reductions, impacts on vehicle dealerships, impacts on Department resources, costs inflicted by air pollution, and impacts on affected industries. Each of these are discussed below.

Added Vehicle Cost: The proposed new rules will increase the cost of producing complying vehicles. Manufacturers may add to the base price of each new vehicle produced in order to reflect any increase in costs necessary to certify vehicles to the more stringent LEV Program standards; however, for the reasons discussed below (see "Impacts Upon Affected Industries"), the increased cost will not necessarily be passed along to New Jersey purchasers in full.

The California Air Resources Board (CARB) has predicted the following incremental cost increases for the LEV Program over current-technology gasoline-fueled vehicles[15]:

Added Cost of Light-Duty
Low Emission Vehicles (est. 1990 $)

	Gasoline	Methanol/ Ethanol	Liquid Propane Gas (LPG)	Compressed Natural Gas (CNG)	Electricity
TLEV	$ 70	$200	$600	$1000	N/A
LEV	170	270	700	1200	N/A
ULEV	170	370	870	1200	N/A
ZEV	N/A	N/A	N/A	N/A	$1300

These increased costs reflect the anticipated technology-related expenses in hardware required to certify vehicles to TLEV, LEV, ULEV and ZEV emission standards. In the Pechan report[8], an average capital cost of $170.00 per vehicle (the estimate for LEV's and ULEV's) was used. The Pechan report predicts that the added cost of LEV Program vehicles will decline over time as the manufacturing volume of these vehicles increases. Whether the manufacturers actually increase the price to consumers to reflect these possible increased costs is dependent in large part upon consumer demand for the vehicles.

A report prepared by DRI/McGraw-Hill for the American Petroleum Institute (API)[16] contests these cost estimates. The report (herein after referred to as the DRI/McGraw-Hill report) estimates that the incremental cost differences will exceed those estimated by CARB and Pechan for the LEV, ULEV, and ZEV categories. The DRI/McGraw-Hill report assumes some uncertainty in cost increases and provides a range for the estimated incremental costs which at the high end exceed the CARB estimates by $930.00 per LEV or ULEV. The CARB estimate assumes the LEV and ULEV standards will be met by the addition of an electrically heated catalytic converter. Documentation supporting the DRI/McGraw-Hill report estimate has not been made available. It is the opinion of NESCAUM in responding to the DRI/McGraw-Hill report in a January 3, 1992 letter to API that manufacturers will pursue the most cost effective measures to comply[17]. According to NESCAUM, recent information from EPA, CARB and motor vehicle representatives "indicate that only a limited number of LEV engine families may use electrically heated catalysts while the majority of LEV engine families will rely on less costly emission control program modifications."

While CNG and electric vehicles are predicted to be more expensive to purchase, CARB predicts that once marketed, the higher purchase costs of alternative fuel vehicles will be largely offset by their lower fuel prices and maintenance costs.

Cost Effectiveness: By allowing manufacturers to market a mix of vehicles, the LEV program combines the economic efficiency of market-based averaging schemes with the enforceability of traditional vehicle emission standards. Instead of having to certify all vehicles to one strict standard, as would be required by the Federal standards, each manufacturer can choose to certify vehicle types to the different standards and to produce the various vehicle types in whatever combination is most cost-effective, given that manufacturer's production capabilities, as long as the required average fleet emissions average is met.

Historically, pollution control measures have focused on stationary sources. Therefore, the cost of such controls has become the basis of comparison for other proposed control measures. The proposed LEV Program would be more cost effective, in terms of dollars required to reduce a ton of pollutant, when compared to stationary source VOC emission reduction costs. The Pechan report estimates the following effectiveness values (first for LEV's only and then for the combined package including LEV's and ZEV's):

Table 2

Effectiveness of LEV Standard	(cost per ton)
VOC	$1900
NO_x	$1500
CO	$ 200

Table 3

Effectiveness of LEV & ZEV Combined	(cost per ton)
VOC	$1900
NO_x	$1400
CO	$ 190

The Department's experience is that average stationary source reductions for VOC's are currently in the range of $3,000 to $6,000 per ton, making the proposed LEV program significantly more cost effective. Stationary source controls for NO_x and CO are comparable to those listed in Table 3.

The DRI/McGraw-Hill report disputes the Pechan report cost effectiveness estimates. The DRI/McGraw-Hill report assumes a potentially higher increased cost per vehicle, uses a different means to calculate the effectiveness values for the LEV program than used by Pechan and questions the benefits to be gained. The DRI/McGraw-Hill report also emphasizes the technological uncertainties of the LEV program and concludes that until the technology to meet the LEV program is demonstrated, the cost per vehicle and effectiveness values can not be accurately estimated. The Department and NESCAUM agree with CARB, that for gasoline powered vehicles, the technology to meet the LEV Program standards is known and the costs can be estimated.

In an economic study conducted by Urbanomics for Project: Clean Air, the VOC emission reductions, congestion reductions, and costs were compared for 21 transportation and mobile source strategies. Using this data, the Project Clean Air steering committee ranked the LEV Program among the first-priority strategies, along with growth management, enhanced I/M, traffic flow improvement, mandatory employee trip reduction, and capital improvement for public transportation[4].

Impact on Vehicle Dealerships: The proposed new rules are expected to have little impact on vehicle dealerships. Provisions have been made to permit dealers to handle non-LEV Program vehicles for sale to another dealer, for the purpose of wrecking or dismantling, for off-highway use and for out-of-State registration. In addition, as more states enter the program, as anticipated, any dislocations in interstate trading of dealership stock will be mitigated. Finally, the proposed rules do not restrict the sale of used vehicles.

Impact on State Government Resources: The LEV Program by its nature will rely heavily on the staff and facilities of the California Air Resources Board (CARB), as CARB already regularly performs the background work necessary to implement its LEV Program. Since New Jersey's program would be based on California's, and since the emission standards are required by the Clean Air Act to be identical to Cali-

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fornia's, a minimum of additional resources will be required by the Department. The Department estimates that some additional staff members will be needed by the Department and the Division of Motor Vehicles Services (MVS) to audit registration, dealer compliance, certification and reporting, and to perform field enforcement.

Although the State intends to rely heavily on California's resources initially, it may become necessary for a regional recall investigation facility to exist in the Northeast. Such a facility could be of minimal additional cost to the State if jointly operated by all Ozone Transport Region states participating in the LEV program or if funding is available from another source, such as the EPA.

Costs of Air Pollution: The impact on the general public of not improving the air quality is very significant. The American Lung Association (ALA) has recently estimated the cost of health problems attributed to air pollution including the loss of worker productivity, to be in the range of $4.43 to $93.49 billion dollars per year, nationally[9]. New Jersey has an extremely high density of motor vehicles as compared to other states. Motor vehicles contribute more than half of the pollutants that result in air quality problems in New Jersey. For this reason, taking all prudent measures to limit the emission of air pollutants from motor vehicles is an essential step in reducing these pollutants.

Impacts Upon Affected Industries: The Department has made every effort to minimize the burdens borne by the motor vehicle manufacturing industry and vehicle dealers. By proposing to adopt emission standards identical to those in California, the Department ensures that the vehicle industry will have to comply with only two sets of pollution control standards (the Federal standards and the LEV Program standards). The Department does not anticipate that the estimated increased costs associated with the LEV Program will result in an appreciable reduction in the number of new vehicles sold in the State. While the additional costs of the cleaner cars mandated by the LEV Program would eventually be passed along to consumers, the full additional cost may not be added to purchase prices, because factors other than production costs influence prices. Therefore, it is unclear whether the cleaner cars would be priced to reflect the higher cost of their emission controls. The Department does not anticipate that the relatively small additional cost of LEV vehicles (about a one percent increase in the total cost) would materially reduce the number of new vehicles sold in New Jersey.

In addition, the Department is working closely with OTR states to ensure that there are no state specific programs which may negatively impact the distribution or sale of vehicles in the region.

Further, the Department has proposed allowing small and intermediate volume manufacturers additional time to comply with the LEV emission standards and requirements, and has proposed exempting small volume manufacturers from the ZEV sales mandate entirely. These provisions are intended to minimize the economic impact of the proposed new rules on those manufacturers which are generally least able to absorb increased costs.

Environmental Impact

The implementation of the proposed new rules will have a positive impact on the environment. The additional exhaust emission benefits from New Jersey's adoption of the proposed LEV Program as opposed to the Tier I standards were estimated in the Pechan report. This report should be consulted for details regarding the methodology for calculating emission benefits, emission factor generation, and other assumptions used[9].

In the Pechan Report, estimated emission benefits were calculated for each state in the NESCAUM region. The estimates for New Jersey, presented herein, are listed by pollutant. The benefits of adopting the proposed LEV Program are most pronounced in the later years of the Program, when significant numbers of low emitting vehicles become part of the vehicle fleet and older, high emitting vehicles are taken out of service.

The Pechan report also estimated the percent emission reductions for New Jersey. These data are shown in Tables 4B, 5B, and 6B. They were calculated by taking the estimated exhaust emission inventory for New Jersey under the LEV Program using CARB's assumptions and EPA's assumptions, subtracting that number from the estimated emissions inventory expected under the Federal Tier I Program, and dividing that by the mobile source inventory which would exist under Federal Tier I standards.

Volatile organic compounds (VOC) emissions are precursors to ozone formation. For this reason, efforts to attain and maintain the NAAQS for ozone have focused on reducing VOC emissions. In 1988, VOC emissions in New Jersey totalled 1263 tons per summer weekday with 630 tons attributed to emissions from all mobile sources, not just exhaust emissions.

The emission reduction calculations in Tables 4A and 4B show that 10 years into the program (2005), motor vehicle emissions in New Jersey under the proposed LEV Program will have been reduced by an additional 13 to 28 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the Federal Tier I Program.

Table 4A

New Jersey VOC Emissions Inventory
From Vehicle Exhaust
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	97	62	44	35
LEV: EPA estimates	99	75	70	72
TIER I	101	86	88	93

Table 4B

New Jersey VOC Emissions Inventory
from Vehicle Exhaust
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	4.0	27.9	50.0	62.4
LEV: EPA estimates	2.0	12.8	20.5	22.6

By the year 2015 (20 years after implementation), motor vehicle emissions would be reduced by an additional 23 to 62 percent over the reductions expected from under the Federal Tier I Program.

Oxides of nitrogen (NO_x) are also precursors to ozone formation. In 1988, NO_x emissions in New Jersey totalled 921 tons per summer weekday with 390 tons per summer weekday attributed to emissions from all mobile sources. Tables 5A and 5B show the estimated emissions reductions benefits to New Jersey that would accrue under the proposed LEV Program.

The emission reductions calculations in Tables 5A and 5B show that 10 years into the program (2005), motor vehicle emissions of NO_x in New Jersey under the proposed LEV program will have been reduced by an additional 14 to 19 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the Federal Tier I Program.

By the year 2015 (20 years after implementation), NO_x emissions from motor vehicle exhaust would be reduced by an additional 27 to 42 percent over the reductions expected from the Federal Program.

Table 5A

New Jersey NO_x Emissions Inventory
From Vehicle Exhaust
(tons per summer weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	121	89	73	68
LEV: EPA estimates	121	95	86	86
TIER I	124	110	110	117

Table 5B

New Jersey NO_x Emissions Inventory
From Vehicle Exhaust
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	2.4	19.1	33.6	41.9
LEV: EPA estimates	2.4	13.6	21.8	26.5

A recent released report by the National Academy of Sciences entitled "Rethinking the Ozone Problem in Urban and Regional Air Pollution" criticized the SIP process and EPA for not verifying emission control reduction[19]. In particular the NAS found that the SIPs underestimated mobile source VOC emissions by a factor of two to four. This underestimation along with underestimation of naturally occurring (biogenic) VOCs in many cases has led to erroneous estimates of the relation of VOC to NO_x emissions or VOC/NO_x ratio. At higher VOC/NO_x ratios,

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NO_x emission control is more effective in reducing ozone concentrations. Thus, NAS believes that in many areas fuller control of NO_x or controls on both VOC and NO_x will optimize the reduction of ozone formation. The LEV Program clearly leads to greater reductions of both VOC and NO_x.

Carbon monoxide (CO) is generally a localized wintertime pollutant, elevated levels of which are related to colder temperatures and congested traffic. The LEV Program will play an important role in reducing CO emissions from motor vehicles and maintaining the NAAQS. In 1988, CO emissions in New Jersey totalled 2943 tons per winter weekday, with 2200 tons per winter weekday attributed to all mobile sources.

The emission reduction calculations in Tables 6A and 6B show that 10 years into the program (2005), motor vehicle emissions of carbon monoxide in New Jersey under the proposed LEV Program will have been reduced by an additional six to 13 percent over the emission reductions that would have occurred had motor vehicles in New Jersey only been subject to the federal Tier I Program.

By the year 2015 (20 years after implementation), motor vehicle emissions of carbon monoxide will be reduced by an additional 10 to 34 percent over the reductions expected from the Federal Tier I standards.

Table 6A

New Jersey CO Emissions Inventory
From Vehicle Exhaust
(tons per winter weekday)
PROPOSED LEV PROGRAM VS. FEDERAL TIER I PROGRAM

(Year)	2001	2005	2010	2015
LEV: CARB estimates	2019	1698	1506	1426
LEV: EPA estimates	2026	1846	1853	1937
TIER I	2043	1958	2032	2156

Table 6B

New Jersey CO Emissions Inventory
From Vehicle Exhaust
(percent reduction beyond Federal Tier I Emission Standards)

(Year)	2001	2005	2010	2015
LEV: CARB estimates	1.2	13.3	25.9	33.9
LEV: EPA estimates	0.5	5.7	8.8	10.2

The proposed new rules would require that beginning in 1998, certain percentages of new passenger cars and light-duty trucks sold be ZEV's. Currently, only battery-powered electric vehicles are capable of meeting the ZEV requirements. Solar and fuel cell-powered vehicles may also be developed to provide zero emission mobility in the future. Electrically powered vehicles are not truly zero emission vehicles because the off-site generation of electricity required for the electric vehicles can result in additional stationary source emissions. However, modern electrical generation facilities emit far less pollution per unit of energy generated than gasoline-powered vehicles. Moreover, unlike the vehicles themselves, electrical generating facilities are often located outside heavily-populated urban areas. And, in contrast to conventional vehicles, ZEV's are expected to maintain their emissions standards as they age and operate in congested traffic situations. In addition, gasoline-powered vehicles are likewise responsible for additional stationary and mobile source emissions, which result from fuel refining and fuel distribution.

Analyses by CARB and the Electric Power Research Institute (EPRI) demonstrate that, even taking into account the emissions from the generation of electricity, present technology ZEV's will have extremely low emissions of VOCs and CO and substantially lower emissions of NO_x and carbon dioxide (CO_2) relative to gasoline-powered vehicles[18]. According to EPRI's analysis, which was based upon the power demand for the Chrysler electric "T" Van, VOC emissions will be 100 times lower, CO emissions will be 200 times lower, and NO_x emissions will be six times lower than conventionally fueled minivans[15]. It is expected that the benefits of electric vehicles will rise even further as more efficient battery and drive-train technologies become available.

The LEV Program standards set forth in the proposed rules set explicit emission limits for formaldehyde, whereas the Federal standards do not address formaldehyde emissions. The LEV standards also achieve substantial reductions in emissions of other toxic species that are included in generic hydrocarbon and non-methane organic gas (NMOG) classifications. When a vehicle is operated, toxic pollutants such as benzene, acetaldehyde, formaldehyde, and 1,3-butadiene are present in the exhaust. Vehicle technology designed to meet LEV standards and reduce the NMOG emissions will thus reduce toxic emissions as well. For instance, emissions of benzene from gasoline-fueled vehicles that meet the LEV standards are expected to decline in roughly the same proportion as hydrocarbon emissions. Benzene is the toxic pollutant with the highest potential carcinogenic risk among the exhaust pollutants. If other fuels are used, the reductions in benzene will be even greater. The correlation between emissions of 1,3-butadiene and hydrocarbons are not as well understood. However, the vast majority of 1,3-butadiene emissions occur during start-up emissions, which the LEV standards are expected to reduce substantially.

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 the proposed rules will not impose additional reporting or recordkeeping requirements on small business (as defined in the Regulatory Flexibility Act). The proposed rules would apply to vehicle manufacturers and dealers. Since no known vehicle manufacturers meets the definition of a small business, as they are not New Jersey based and employ more than 100 people, the proposed rules' impact upon small businesses will be upon vehicle dealerships.

The additional reporting and recordkeeping requirements imposed by the new rules apply to vehicle manufacturers, which are not small businesses. The compliance requirements imposed upon small businesses are the prohibition against the sale or leasing of new vehicles which have not been certified by the manufacturer as meeting the stringent LEV Program standards, and a pre-delivery check for performance requirements related to emissions control systems. Since it is expected that the estimated additional costs associated with the LEV Program ($170.00 per vehicle for LEV's and ULEV's) may be passed on to the ultimate consumer, and that such increased cost will not result in an appreciable reduction in new vehicle sales, the costs to small business in this regard should be minimal. Further, the proposed rules impose the fleet average and ZEV sales requirement only on vehicle manufacturers, which are not small businesses.

In developing these rules, the Department has balanced the need to protect human health and the environment against the economic impact of the rules as proposed. As a result, allowances have been made for small and intermediate volume manufacturers. These rules allow these manufacturers extended time for compliance and in some cases (ZEV sales for small volume manufacturers) exempt them entirely.

References

(1) Congress of the United States, Office of Technology Assessment, "Catching our Breath Next Step for Reducing Urban Ozone," July 1989.

(2) United States Environmental Protection Agency, "National Air Quality Trends Report, 1990," November 1991.

(3) "Regional Ozone Modelling for Northeast Transport (ROMNET) Final Report," USEPA, 1991.

(4) Regional Plan Association/New Jersey, "Final Report of Project: Clean Air," Newark, New Jersey, September 6, 1991.

(5) "Summary of Comments made at the November 7, 1991 Public Workshop on Mobile Source Rules Under Development Pursuant to the 1990 Clean Air Act Amendments (CAAA)," NJDEPE, 1992.

(6) Memorandum of Understanding, Ozone Transport Commission, signed by 10 states, as of October 29, 1991.

(7) Proposal to amend 6 NYCRR, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," July 30, 1991.

(8) Proposal to amend 310 CMR 7.00, et seq., September, 1991.

(9) E.H. Pechan & Associates, Inc., "Adopting the California Low Emission Vehicle Program in the Northeast States—An Evaluation," Northeast States for Coordinated Air Use Management, Boston, September 1991.

(10) *American Lung Association et al. vs. EPA,* Case No. 91 Civ. No. 4114, Second Circuit Federal U.S. District Court, October 22, 1991.

(11) "1990 Air Quality Report," New Jersey Department of Environmental Protection, July 1991.

(12) Environmental Protection Agency, Region II, "Ozone Air Quality 1990 New Jersey and New York," New York, Regional Air Quality Report.

(13) Cody, R. P., Weisel, C. P., Birnbaum, G., and Lioy, P. J., "The Effect of Ozone Associated with Summertime Photochemical Smog on the Frequency of Asthma Visits to Hospital Emergency Departments," Environmental Research, 1992.

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(14) "Cancer Risk from Outdoor Exposure to Air Toxics: Final Report," (US EPA, Office of Air Quality Planning and Standards, September, 1990)

(15) "Proposed Regulations for Low Emission Vehicles and Clean Fuels, Technical Support Document," State of California Air Resources Board, August 13, 1990.

(16) DRI/McGraw-Hill, "Assessing the Economic Effects of Eastern States Adopting California's Low Emission Vehicle Program," American Petroleum Institute, Washington, D.C., October 1991.

(17) Letter dated January 3, 1992, from Michael J. Bradley, Executive Director, Northeast States for Coordinated Air Use Management, to Terry F. Yosie, Vice President, American Petroleum Institute.

(18) Electric Power Research Institute Journal, April/May 1991, pp. 5-19.

(19) "Rethinking the Ozone Problem in Urban and Regional Air Pollution," National Academy of Sciences (NAS), 1991.

Full text of the proposal follows:

SUBCHAPTER 26. LOW EMISSION VEHICLES PROGRAM

7:27-26.1 Definitions

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

"Air contaminant emission control system" means the equipment designed for installation on a motor vehicle or motor vehicle engine for the purpose of reducing the air contaminants emitted from the motor vehicle or motor vehicle engine, or a system or engine modification on a motor vehicle or motor vehicle engine which causes a reduction of air contaminants emitted from the motor vehicle or motor vehicle engine, including, but not limited to exhaust control systems, fuel evaporation control systems and crankcase ventilating systems.

"Business" means an occupation, profession or trade; a person or partnership or corporation engaged in commerce, manufacturing, or a service; a profit-seeking enterprise or concern.

"California Air Resources Board" or "CARB" means the agency established and empowered to regulate sources of air pollution in the state of California, including motor vehicle, pursuant to California Health & Safety Code Sections 39500 et seq..

"California standards" means those emission standards for motor vehicles and new motor vehicle engines that the state of California has adopted and for which it has received a waiver from the United States Environmental Protection Agency pursuant to the authority of 42 U.S.C. Section 7543 and which other states are permitted to adopt pursuant to 42 U.S.C. Section 7507.

"CCR" shall mean the California Code of Regulations (Barclays, 1991).

"Certificate of conformity" means that document issued by the Executive Officer of CARB, USEPA, or the Commissioner of the Department certifying that a vehicle conforms to all applicable emission certification standards.

"Certification application" means the application and associated information that a motor vehicle manufacturer, a motor vehicle engine manufacturer or an air contaminant emission control system manufacturer submits to CARB, or the Department, in the process of applying for certification of a motor vehicle, motor vehicle engine, engine family or air contaminant emission control system.

"Certified" means the finding by the California Air Resources Board, or the Department, that a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system has satisfied the criteria adopted by CARB or the Department for the control of specified air contaminants from motor vehicles.

"Dealer" includes every person actively engaged in the business of buying, transferring, leasing, selling or exchanging motor vehicles and who has an established place of business.

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

"Diesel" means powered by an engine where the primary means of controlling power output is by limiting the amount of fuel that is injected into the combustion chambers of the engine.

"Dual fueled" means a motor vehicle that is engineered and designed to be capable of operating on a petroleum fuel and on another fuel which is stored separately on-board the vehicle.

"Durability vehicle basis" means the number of miles during which the test vehicle used by a motor vehicle manufacturer to certify to the prescribed exhaust emission standards must maintain those specified standards.

"Emission standards" means specified limitations on the discharge of air contaminants into the atmosphere.

"Engine family" means the basic classification unit comprised of the engine and drive-train configuration selected by a manufacturer and used for the purpose of certification testing.

"Established place of business" means a place actually occupied either continuously or at regular periods for business use.

"Evaporative emissions" means vaporized fuel emitted into the atmosphere from the fuel system of a motor vehicle.

"Field fixes" mean modifications, to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer's authorized service representative, and that are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Fleet average" means a motor vehicle manufacturer's average vehicle emissions of all non-methane organic gases from all vehicles subject to this subchapter which are sold in the State of New Jersey in any model year, beginning with model year 1996, based on the calculation in N.J.A.C. 7.27-26.6(a).

"Fuel flexible" means a methanol-fueled motor vehicle that is engineered and designed to be operated using any gasoline-methanol fuel mixture or blend.

"Fuel system" means the combination of fuel tank(s), fuel lines and carburetor, or fuel injector, and includes all vents and fuel evaporative emission control systems or devices.

"G/mi" means gram per mile.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty vehicle" means any motor vehicle having a manufacturer's gross vehicle weight rating greater than 6,000 pounds, except passenger cars.

"HEV contribution factor" means the NMOG emission contribution of HEVs to the fleet average NMOG value.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, and also includes any limited-access highway designated as a "freeway" or "parkway" by authority of law, and any semi-public or private way to which the provisions of Subtitle 1 of Title 39 of the Revised Statues, N.J.S.A. 39:1-1 et seq., have been made applicable pursuant to the provision of N.J.S.A. 39:5A-1.

"Hybrid electric vehicle" or "HEV" means a motor vehicle which allows power to be delivered to the driver wheels solely by a battery powered electric motor but which also incorporates the use of a combustion engine to provide power to the battery, or any vehicle which allows power to be delivered to the driver wheels by either a combustion engine and/or by a powered electric motor.

"Intermediate compliance standards" means in-use compliance standards that are effective prior to the effective date of the final in-use compliance standards.

"Intermediate volume manufacturer" means any vehicle manufacturer with sales between 3,001 and 35,000 new light-duty and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1993; provided that, for manufacturers certifying for the first time in California, model year sales shall be based on projected California sales.

"In-use compliance" means the adherence of a motor vehicle to specified exhaust emission standards while the motor vehicle is used and properly maintained within the guidelines of the motor vehicle manufacturer.

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"Light-duty truck" means any motor vehicle, rated at 6,000 pounds gross vehicle weight or less and a loaded vehicle weight of 5,750 pounds or less, which is designed primarily for purposes of transportation of property or is a derivative of such a vehicle, or is available with special features enabling offstreet or off-highway operation and use.

"Light-duty vehicle" means light-duty trucks and passenger cars.

"Loaded vehicle weight" or "LVW" means vehicle curb weight plus 300 pounds.

"Low emission vehicle" or "LEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Manufacturer's sales fleet" means all passenger cars and light-duty trucks a manufacturer sells or offers for sale in New Jersey.

"Medium-duty vehicle" means any pre-1995 model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 8,500 pounds or less, any 1992 and subsequent model year heavy-duty low emission vehicle or ultra-low emission vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less, or any 1995 and subsequent model year heavy-duty vehicle having a manufacturer's gross vehicle weight rating of 14,000 pounds or less.

"Mg/mi" means milligrams per mile.

"Model-year" or "MY" means the manufacturer's annual production period for each motor vehicle which includes January 1 of such calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any motor vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

"Motor vehicle" or "vehicle" means every device in, upon, or by which a person or property is or may be transported otherwise than by muscular power, excepting such devices as run only upon rails or tracks and motorized bicycles.

"Motor vehicle engine" means an engine that is used to propel a motor vehicle.

"New motor vehicle" or "new vehicle" means a motor vehicle, the equitable or legal title to which has never been transferred to the ultimate purchaser.

"New motor vehicle dealer" means the agent, distributor or authorized dealer of the manufacturer of a new motor vehicle who has an established place of business.

"New motor vehicle engine" means a new engine in a motor vehicle.

"Non-methane organic gas" or "NMOG" shall mean the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

"Off-highway" means any place other than a highway.

"Offset vehicle" means a Federally-certified light-duty vehicle that has been certified by CARB or the Department as meeting the standards and procedures set forth in the "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California", adopted July 20, 1982, as last amended July 12, 1991.

"Organic material hydrocarbon equivalent" or "OMHCE" means the sum of the carbon mass contributions of non-oxygenated hydrocarbons, methanol and formaldehyde as contained in an exhaust gas sample, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrocarbon-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot-soak emissions, the hydrocarbon-to-carbon ratios of the equivalent hydrocarbons are 2.33:1, respectively.

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 persons or less.

"Person" means an individual, public or private corporation, company, partnership, firm, association, society or joint stock company, municipality, state, interstate body, the United States, or any Board, commission, employee, agent, officer or political subdivision of a state, an interstate body or the United States.

"Quarterly reporting" means reporting based upon the following calendar periods: "January 1-March 31, April 1-June 30, July 1-September 30, and October 1-December 31.

"Reactivity adjustment factor" means a fraction applied to the NMOG emissions from a vehicle powered by a fuel other than conventional gasoline for the purpose of determining a gasoline-equivalent NMOG level. The reactivity adjustment factor means the ozone-forming potential of clean fuel vehicle exhaust divided by the ozone-forming potential of gasoline vehicle exhaust.

"Rental agency" means a business engaged in renting motor vehicles for temporary use.

"Running changes" mean modifications to motor vehicle engines or air contaminant emission control systems, specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

"Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate or subsequent purchaser.

"Small volume manufacturer" shall mean any vehicle manufacturer with sales less than or equal to 3,000 new light-duty trucks and medium-duty vehicles per model year based on the average number of vehicles sold in California by the manufacturer each model year from 1989 to 1991; provided that, for manufacturers certifying for the first time in California, model-year sales shall be based on projected California sales.

"Standard vehicle" or "SV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"State" means the State of New Jersey, unless otherwise specified.

"Transitional low emission vehicle" or "TLEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Type A HEV" means an HEV which achieves a minimum range of 60 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 CFR 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 60 miles. This definition shall also apply to vehicles which have no tailpipe emissions, but use fuel fired heaters, regardless of the operating range of the vehicle.

"Type B HEV" means an HEV which achieves a range of 40 to 59 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 CFR 600 Subpart B) without the use of the engine, and in which the use of vehicle accessories does not lower the battery-only range below 40 miles.

"Type C HEV" means an HEV which achieves a range of 0 to 39 miles over the Dynamometer Driving Cycle as defined by the "Federal Highway Fuel Economy Test Procedure" (HWFET: 40 CFR 600 Subpart B) without the use of the engine, an HEV which enables the vehicle operator to control the engine time and modes of operation solely through the use of the engine, and all other HEVs excluding Type A and Type B HEVs.

"Ultra low emission vehicle" or "ULEV" means a motor vehicle which has been certified as not exceeding the applicable standards set forth in N.J.A.C. 7:27-26.4.

"Ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

"Useful life" means a period of use denoted by the emission standards to which a given vehicle is certifying. For those light-duty vehicles certified to optional 100,000 mile standards and those 1996 and subsequent model year vehicles certified to 100,000 emission standards, and for those transitional low-emission, low-emission, and ultra-low emission vehicles certified to 100,000 emission standards, the useful life shall mean 10 years or 100,000 miles, whichever first occurs. For light-duty vehicles certified only to 50,000 mile standards useful life shall mean five years or 50,000 miles, whichever first occurs.

"Vehicle curb weight" means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the

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weight of optional equipment computed in accordance with 40 CFR 86.082-24. Incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

"Zero emission vehicle" or "ZEV" means any vehicle which produces zero emissions of air contaminants under any and all possible operational modes and conditions.

7:27-26.2 Applicability

This subchapter applies to all 1996 and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines.

7:27-26.3 Prohibitions

(a) No person who is a resident of or who operates an established place of business within this State shall sell, register, import, deliver, purchase, rent, lease, give, acquire, receive or otherwise transfer a 1996 or subsequent model-year new motor vehicle, new motor vehicle engine, or motor vehicle with a new motor vehicle engine, for use, registration or resale within this State, unless such new motor vehicle or new motor vehicle engine has been certified in accordance with this subchapter. No person shall attempt or assist in any such action.

(b) The prohibitions contained in (a) above shall not apply to the following passenger cars or light-duty trucks:

1. A vehicle acquired by a resident of this State for the purpose of replacing a vehicle registered to such resident which was damaged, or became inoperative, beyond reasonable repair or was stolen while out of this State; provided that such replacement vehicle is acquired out of State at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

2. A vehicle transferred by inheritance;

3. A vehicle transferred by court decree;

4. A vehicle transferred after the effective date of this subchapter if the vehicle was registered in this State before such effective date;

5. A vehicle having a certificate of conformity issued pursuant to the Federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this State;

6. A vehicle which is an offset vehicle;

7. A vehicle transferred by a dealer to another dealer;

8. A vehicle transferred for the purpose of being wrecked or dismantled;

9. A vehicle transferred for use exclusively off-highway;

10. A vehicle transferred for registration out of State; or

11. A vehicle which has been certified by the United States Environmental Protection Agency to the standards promulgated pursuant to the authority contained in 42 U.S.C. Section 7521, which is in the possession of a rental agency in New Jersey and is next rented with a final destination outside of New Jersey.

(c) To register any vehicle exempted under (b) above, the person seeking registration must provide satisfactory evidence, as determined by the New Jersey Division of Motor Vehicles, demonstrating that the exemption is applicable.

(d) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

7:27-26.4 Emission certification standards

(a) Except as otherwise provided in N.J.A.C. 7:27-26.3(b), all 1996 and subsequent model year motor vehicles subject to this subchapter must be certified as not exceeding the following emission standards for standard vehicles, low emission vehicles, transitional low emission vehicles, ultra-low emission vehicles, zero emission vehicles or hybrid electric vehicles. Vehicles must be certified as meeting the applicable emission certification standards for one of such categories of vehicles.

(b) The exhaust emission certification standards for 1996 and subsequent model year passenger cars and light duty trucks which are certified as standard vehicles are as follows:

1. The exhaust emission certification standards for non-methane hydrocarbons, carbon monoxide and oxides of nitrogen are set forth in Table 1.

Table 1
1996 AND SUBSEQUENT MODEL YEAR PASSENGER CAR
AND LIGHT-DUTY TRUCK STANDARD VEHICLE EXHAUST EMISSION CERTIFICATION STANDARDS

Vehicle Type[1]	Loaded Vehicle Weight (lbs)	Durability Vehicle Basis (mi)	Non-Methane Hydrocarbons (g/mi)[2]	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC	All	50,000	0.25	3.4	0.4
PC	All	100,000	0.31	4.2	n/a
Diesel PC (Option 2)	All	100,000	0.31	4.2	1.0
LDT	0-3750	50,000	0.25	3.4	0.4
LDT	0-3750	100,000	0.31	4.2	n/a
Diesel LDT (Option 2)	0-3750	100,000	0.31	4.2	1.0
LDT	3751-5750	50,000	0.32	4.4	0.7
LDT	3751-5750	100,000	0.40	5.5	n/a
Diesel LDT (Option 1)	3751-5750	100,000	0.40	5.5	1.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks, "n/a" means not applicable.

(2) For methanol-fuel vehicles certifying to these standards, including flexible-fueled vehicles, "Non-Methane Hydrocarbons" shall mean "Organic Material Hydrocarbon Equivalent" (or "OMHCE").

2. Methanol fueled passenger cars, and methanol-fueled light-duty trucks up to 3750 pounds loaded vehicle weight, certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 15 mg/mi, determined on a 50,000 mile durability vehicle basis. Methanol fueled light-duty trucks from 3751 to 5750 pounds loaded vehicle weight certifying to these standards are subject to a formaldehyde exhaust emission standard and an in-use compliance standard of 18 mg/mi, determined on a 50,000 mile durability vehicle basis.

3. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR Part 600 Subpart B) shall be not greater than 1.33 times

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the applicable passenger car standards and 2.00 times the applicable light-duty truck standards shown in Table I. Both the projected emissions and the HWFET standard shall be rounded in accordance with American Society for Testing Materials (ASTM) Standard Practice E29-88 to the nearest 0.1 g/mi before being compared.

4. Diesel passenger cars and light-duty trucks certifying to these standards are subject to a particulate exhaust emission standard of 0.08 g/mi, determined on a 50,000 mile durability vehicle basis.

5. For all vehicles, except those certifying to optional diesel standards, in-use compliance with the exhaust emission standards shall be limited to vehicles with less than 75,000 miles.

6. For the 1996 model year, all manufacturers, except those certifying to optional diesel standards, are permitted alternative in-use compliance as set forth below. Alternative in-use compliance is permitted for 20 percent of a manufacturer's vehicles in the 1996 model-year. For the 1996 model year small volume manufacturers only are permitted alternative in-use compliance for 100 percent of the fleet. The percentages shall be applied to the manufacturers' total projected sales for California-certified passenger cars and light-duty trucks for the model-year. Alternative in-use compliance standards for the 1996 model year shall consist of the following.

i. For all passenger cars and those light-duty trucks from 0 to 3750 pounds, loaded vehicle weight, except those diesel vehicles certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.32 g/mi non-methane hydrocarbon and 5.2 g/mi carbon monoxide for 50,000 miles.

ii. For light-duty trucks from 3751 to 5750 pounds, loaded vehicle weight, except those diesel light-duty trucks certifying to optional 100,000 mile standards, in-use compliance standards shall be 0.41 g/mi non-methane hydrocarbon and 6.7 g/mi carbon monoxide for 50,000 miles.

iii. In-use compliance standards shall be waived beyond 50,000 miles.

7. All passenger cars and light-duty trucks, except those diesel vehicles certifying to optional standards, are subject to non-methane hydrocarbon, carbon monoxide and oxides of nitrogen standards determined on a 50,000 mile durability basis and non-methane hydrocarbon and carbon monoxide standards determined on a 100,000 mile durability basis.

(c) The exhaust emission certification standards and test procedures for non-methane organic gases (NMOG), oxides of nitrogen (No_x), carbon monoxide (CO) and particulates for 1996 and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles are as follows:

1. The exhaust emission certification standards for NMOG, CO and NO_x are set forth in Table 2.

Table 2

EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES AND ULTRA-LOW EMISSION VEHICLES IN PASSENGER CAR AND LIGHT-DUTY TRUCK VEHICLE CLASSES(3)

Vehicle Type(1)	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category(2)	Non-Methane Organic Gases (g/mi)	Carbon Monoxide (g/mi)	Oxides of Nitrogen (g/mi)
PC and LDT	All 0-3750	50,000	TLEV	0.125 (0.188)	3.4 (3.4)	0.4 (0.4)
			LEV	0.075 (0.100)	3.4 (3.4)	0.2 (0.3)
			ULEV	0.040 (0.058)	1.7 (2.6)	0.2 (0.3)
		100,000	TLEV	0.156	4.2	0.6
			LEV	0.090	4.2	0.3
			ULEV	0.055	2.1	0.3
LDT	3751-5750	50,000	TLEV	0.160 (0.238)	4.4 (4.4)	0.7 (0.7)
			LEV	0.100 (0.128)	4.4 (4.4)	0.4 (0.5)
			ULEV	0.050 (0.075)	2.2 (3.3)	0.4 (0.5)
		100,000	TLEV	0.200	5.5	0.9
			LEV	0.130	5.5	0.5
			ULEV	0.070	2.8	0.5

(1) "PC" means passenger cars, "LDT" means light-duty trucks.
(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.
(3) The standards in parentheses are intermediate compliance standards for 50,000 miles, applicable under (c)5 below.

2. To demonstrate compliance with an NMOG standard, NMOG emissions shall be measured in accordance with the "California Non-Methane Organic Gas Test Procedures" as adopted July 12, 1991. For TLEVs, LEVs and ULEVs designed to operate exclusively on any fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG mass emissions at 50,000 and 100,000 miles by the reactivity adjustment factor established for the particular vehicle emission category and fuel combination in the application for certification. The reactivity adjustment factor shall be that which has been determined by CARB according to the procedure described in Appendix VIII of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

3. Fuel-flexible and dual-fuel PCs and LDTs from 0 to 5750 pounds loaded vehicle weight shall be certified to exhaust mass emission standards for NMOG established for the operation of the vehicle on any available fuel other than conventional gasoline, and conventional gasoline.

i. For TLEVs, LEVs, and ULEVs, when certifying for operation on a fuel other than conventional gasoline, manufacturers shall multiply the measured NMOG emissions by the applicable reactivity adjustment factor in the application for certification at 50,000 and 100,000 miles.

ii. For PCs and LDTs from 0 to 3750 pounds, LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

(1) For TLEVs, 0.25 g/mi and 0.31 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.125 g/mi and 0.156 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.075 g/mi and 0.090 g/mi for 50,000 and 100,000 miles, respectively.

iii. For LDTs from 3751 to 5750 pounds LVW, the applicable exhaust mass emission standard for NMOG when certifying the vehicle for operation on conventional gasoline shall be:

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(1) For TLEVs, 0.32 g/mi and 0.40 g/mi for 50,000 and 100,000 miles, respectively;

(2) For LEVs, 0.160 g/mi and 0.200 g/mi for 50,000 and 100,000 miles, respectively; and

(3) For ULEVs, 0.100 g/mi and 0.130 g/mi for 50,000 and 100,000 miles, respectively.

4. The maximum projected emissions of oxides of nitrogen measured on the Federal Highway Fuel Economy Test (HWFET; 40 CFR 600 Subpart B) shall be not greater than 1.33 times the applicable light-duty vehicle standards shown in Table 2. Both the projected emissions and the HWFET standard shall be rounded in accordance with ASTM E29-88 to the nearest 0.1 g/mi before being compared.

5. For PCs and LDTs from 0 to 5750 pounds loaded vehicle weight, including fuel-flexible and dual-fuel vehicles when operating on any available fuel other than conventional gasoline, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. Compliance with standards beyond 50,000 miles shall be waived through the 1998 model-year for LEVs and ULEVs.

i. For TLEVs, LEVs, and ULEVs designed to operate on any fuel other than conventional gasoline, including fuel-flexible and dual-fuel vehicles when operating on any fuel other than conventional gasoline, measured NMOG emissions shall be multiplied by the reactivity adjustment factor to determine compliance with intermediate compliance standards for NMOG.

ii. For fuel-flexible and dual-fuel PCs and LDTs from 0 to 3750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.32 g/mi, 0.188 g/mi, 0.100 g/mi for TLEVs, LEVs, and ULEVs, respectively.

iii. For fuel-flexible and dual-fuel PCs and LDTs from 3751 to 5750 pounds LVW, intermediate compliance standards for NMOG emissions at 50,000 miles, when the vehicle is operated on conventional gasoline, shall be 0.41 g/mi, 0.238 g/mi, and 0.128 g/mi for TLEVs, LEVs and ULEVs, respectively.

6. Manufacturers of diesel vehicles must also certify to particulate standards for 100,000 miles. For all PCs and LDTs from 0-5750 pounds loaded vehicle weight, the particulate standard is 0.08 g/mi, 0.08 g/mi and 0.04 g/mi for TLEVs, LEVs and ULEVs, respectively.

7. Manufacturers shall demonstrate compliance with the above standards for NMOG, CO, and NO_x at 50 degrees Fahrenheit according to the procedure specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991. For diesel vehicles, manufacturers shall demonstrate compliance with the particulate standard as specified in section 11k of the foregoing test procedures.

8. In-use compliance testing shall be limited to vehicles with fewer than 75,000 miles.

(d) Formaldehyde exhaust emission standards apply to vehicles designed to operate on any available fuel, including fuel-flexible and dual-fuel vehicles. The exhaust emission certification standards for formaldehyde, for 1996 and subsequent model-year passenger cars and light-duty trucks which are certified as transitional low emission vehicles, low emission vehicles, or ultra-low emission vehicles, are as follows:

1. The exhaust emission certification standards for formaldehyde are set forth in Table 3.

Table 3

FORMALDEHYDE EXHAUST EMISSION CERTIFICATION STANDARDS FOR TRANSITIONAL LOW EMISSION VEHICLES, LOW EMISSION VEHICLES, AND ULTRA-LOW EMISSION VEHICLES IN THE LIGHT-DUTY VEHICLE WEIGHT CLASS

Vehicle Type[1]	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Vehicle Emission Category[2]	Formaldehyde (mg/mi)[3]
PC and LDT	All 0-3750	50,000	TLEV	15 (23)
			LEV	15 (15)
			ULEV	8 (12)
		100,000	TLEV	18
			LEV	18
			ULEV	11
LDT	3751–5750	50,000	TLEV	18 (27)
			LEV	18 (18)
			ULEV	9 (14)
		100,000	TLEV	23
			LEV	23
			ULEV	13

(1) "PC" means passenger cars, "LDT" means light-duty trucks.

(2) "TLEV" means transitional low emission vehicles, "LEV" means low emission vehicles, "ULEV" means ultra-low emission vehicles.

(3) The standards in parentheses are intermediate compliance standards for 50,000 miles applicable under (d)2 below.

2. For PCs and LDTs from 0 to 5750 pounds LVW, including fuel-flexible and dual-fuel vehicles, intermediate compliance standards shall apply to LEVs and ULEVs through the 1998 model-year. Compliance with standards beyond 50,000 miles shall be waived through 1998 for LEVs and ULEVs.

3. Manufacturers shall demonstrate compliance with the above standards for formaldehyde at 50 degrees Fahrenheit according to the procedures specified in section 11k of the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light Duty Trucks and Medium Duty Vehicles" as adopted May 20, 1987 and last amended July 12, 1991.

4. In-use compliance testing shall be limited to passenger cars and light-duty trucks with fewer than 75,000 miles.

(e) The evaporative emissions certification standards for all 1996 and subsequent model-year gasoline-fueled, liquefied petroleum gas-fueled and methanol fueled motor vehicles, except petroleum-fueled diesel vehicles, are as follows:

1. The evaporative emission certification standards for hydrocarbons and OMHCE are set forth in Table 4.

Table 4

Vehicle Type	Model Year	Hydrocarbons or OMHCE[1] Hot Soak + Diurnal (grams per test) Useful Life	Running Loss (grams/mile) Useful Life
Passenger Car Light-Duty Trucks	1996 and subsequent	2.0	0.05

[1]The applicable evaporative emission standards for methanol vehicles are expressed as organic material hydrocarbon equivalent (OMHCE).

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2. Evaporative emission standards shall be tested in accordance with the "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles", adopted April 16, 1975, as last amended November 20, 1991.

3. The running loss and hot soak plus diurnal useful life standards shall be phased-in beginning with the 1996 model-year. Each manufacturer, except small volume manufacturers, must certify the following percent of passenger cars and light-duty trucks to the running loss and hot soak plus diurnal evaporative emission standards according to the following schedule.

Model-Year	Number of Vehicles Certified to Running Loss and Hot Soak + Diurnal Useful Life Standards
1996	30 percent
1997	50 percent
1998 and subsequent model year	100 percent

i. The number of motor vehicles in each vehicle type required to be certified to the running loss and hot soak plus diurnal useful life standards shall be determined by applying the specified percentage to the manufacturer's projected New Jersey model-year sales of passenger cars and light-duty trucks.

ii. Beginning with the 1998 model-year, all motor vehicles subject to the running loss and hot soak plus diurnal useful life standards, including those produced by small volume manufacturers, must be certified to the specified standards.

iii. All 1996 and 1997 model-year motor vehicles which are not subject to the running loss and hot soak plus diurnal useful life standards pursuant to the phase-in schedule must be certified to a 2.0 grams per test hot soak plus diurnal standard for 50,000 miles.

7:27-26.5 Certification

(a) Any person seeking certification from the Department for a new motor vehicle or new motor vehicle engine subject to this subchapter shall submit a certification application to the Department. The applicant shall provide the information regarding certification required by Title 40, Code of Federal Regulations, as amended by the "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," section (4)(a).

(b) Certification applications shall be submitted to the New Jersey Department of Environmental Protection and Energy, Office of Energy, Bureau of Transportation Control, CN 411, 380 Scotch Road, Trenton, N.J. 08625.

(c) The requirements set forth in (a) and (b) above shall not apply to a new motor vehicle or new motor vehicle engine subject to this subchapter which has been certified by CARB as meeting the California standards. Vehicle manufacturers shall submit one copy of all certification materials submitted to California to the Department at the address in (b) above, or, at the Department's discretion, to the Department's designee.

7:27-26.6 Fleet average

(a) The fleet average non-methane organic gas exhaust emissions from a manufacturer's sales of passenger cars and light-duty trucks shall not exceed the values set forth in Table 5.

Table 5

FLEET AVERAGE NON-METHANE ORGANIC GAS EXHAUST EMISSION REQUIREMENTS OF LIGHT-DUTY VEHICLE WEIGHT CLASSES[5]

Vehicle Type	Loaded Vehicle Weight (lbs.)	Durability Vehicle Basis (mi)	Model Year	Fleet Average Non-Methane Organic Gases (g/mi) [1,2,3,4]
PC and LDT	All 0-3750	50,000	1996	0.225
			1997	0.202
			1998	0.157
			1999	0.113
			2000	0.073
			2001	0.070
			2002	0.068
			2003 and subsequent	0.062
LDT	3751-5750	50,000	1996	0.287
			1997	0.260
			1998	0.205
			1999	0.150
			2000	0.099
			2001	0.098
			2002	0.095
			2003 and subsequent	0.093

[1]For the purpose of calculating fleet average NMOG values, a manufacturer may adjust the certification levels of hybrid electric vehicles (or "HEVs") based on the range of the HEV without the use of the engine.

[2]Each manufacturer's fleet average NMOG value for the total number of PCs and LDTs from 0 to 3750 pounds loaded vehicle weight sold in New Jersey shall be calculated in units of g/mi NMOG as: {[(No. of standard vehicles sold × (0.25)] + [(No. of transitional low emission vehicles, excluding HEVs, sold) × (0. 125)] + [(No. of low emission vehicles, excluding HEVs, sold) × (0.075)] + [(No. of ultra-low emission vehicles, excluding HEVs, sold) × (0.040)] + (HEV contribution factor)}/(Total No. of vehicles sold, including Zero-emission vehicles and HEVs):

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.100) + [No. of "Type B HEV" TLEVs sold] × (0.113) + [No. of "Type C HEV" TLEVs sold] × (0.125)]} + {[No. of "Type A HEV" LEVs sold] × (0.057) + [No. of "Type B HEV" LEVs sold] × (0.066) + [No. of "Type C HEV" LEVs sold] × (0.075)} + {[No. of "Type A HEV" ULEVs sold] × (0.020) + [No. of "Type B HEV" ULEVs sold] × (0.030) + [No. of "Type C HEV" ULEVs sold] × (0.040)}

(iii) Zero-emission vehicles classified as medium-duty vehicles by weight may be designated by the manufacturer as light-duty vehicles for the purposes of calculating fleet average NMOG values.

[3] Manufacturers that certify LDTs from 3751-5750 lbs. LVW, shall calculate a fleet average NMOG value in units of g/mi NMOG as: {[No. of standard vehicles sold × (0.32)] + [(No. of TLEVs sold excluding HEVs) × (0.160)] + [(No. of LEVs sold excluding HEVs) × (0.100) + [(No. of ULEVs sold excluding HEVs) × (0.050)] + (HEV contribution factor)}/Total No. of vehicles sold, including ZEVs and HEVs).

(i) The HEV contribution factor shall be calculated in units of g/mi as follows:

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(ii) HEV contribution factor = {[No. of "Type A HEV" TLEVs sold] × (0.130) + [No. of "Type B HEV" TLEVs sold] × (0.145) + [No. of "Type C HEV" TLEVs sold] × (0.160)} + {[No. of "Type A HEV" LEVs sold] × (0.075) + [No. of "Type B HEV" LEVs sold] × (0.087) + [No. of "Type C HEV" LEVs sold] × (0.100)} + {[No. of "Type A HEV" ULEVs sold] × (0.025) + [No. of "Type B HEV" ULEVs sold] × (0.037) + [No. of "Type C HEV's ULEVs sold] × (0.050)}

(4) In 2000 and subsequent model-years, small volume manufacturers shall comply with fleet average NMOG requirements.

(i) Prior to the year 2000, compliance with the specified fleet average NMOG requirements shall be waived for small volume manufacturers.

(ii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.075 g/mi for PCs and LDTs from 0 to 3750 pounds LVW for 50,000 miles.

(iii) In 2000 and subsequent model-years, small volume manufacturers shall not exceed a fleet average NMOG value of 0.100 g/mi for LDTs from 3751 to 5750 pounds LVW for 50,000 miles.

(b) While meeting the fleet average requirements, each manufacturer's New Jersey sales fleet of passenger cars and light-duty trucks from 0 to 3750 pounds LVW shall be composed of at least two percent ZEVs in the 1998 through 2000 model years, five percent ZEVs in 2001 and 2002, and 10 percent ZEVs in 2003 and subsequent model years.

1. Small volume manufacturers shall not be required to meet the percentage ZEV requirements.

2. Intermediate volume manufacturers shall not be required to meet the percentage ZEV requirements before the 2003 model year.

7:27-26.7 Enforcement

(a) Commencing with the 1996 model year, each manufacturer shall report to the Department the average NMOG emissions of its fleet sold in New Jersey for that particular model year. Such reports shall be submitted within 60 days after the end of each model year, and shall be submitted in a form and manner to be determined by the Department. Fleet average reports shall, at a minimum, identify the total number of vehicles including offset vehicles sold in New Jersey and California, respectively, the specific vehicle models comprising the sales in each state and the corresponding certification standards, and the percentage of each model sold in New Jersey and California in relation to total fleet sales in the respective states.

(b) Commencing with the 1998 model year, each manufacturer shall submit annually to the Department, within 60 days after the end of each model year, a report on a form provided by the Department calculating compliance with the zero emission vehicle requirements set forth in N.J.A.C. 7:27-26.6(b).

(c) In addition to all other requirements contained in this subchapter, new motor vehicle dealers shall comply with the following requirements:

1. No dealer shall sell or offer or deliver for sale a new passenger car or light-duty truck subject to this subchapter unless such vehicle conforms to the following standards and requirements:

i. Ignition timing is set to manufacturer's specification with an allowable tolerance of ±three degrees;

ii. Idle speed is set to manufacturer's specification with an allowable tolerance of ±100 revolutions per minute;

iii. Required exhaust and evaporative emission controls, such as exhaust gas recirculation (EGR) valves, are operating properly;

iv. Vacuum hoses and electrical wiring for emission controls are correctly routed and connected, and operating properly; and

v. Idle mixture is set to manufacturer's specification or according to manufacturer's recommended service procedure.

2. The requirements set forth in this subsection shall also apply to a dealer when servicing emission related components. However, only that requirement(s) appropriate to the service performed shall apply.

(d) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(e) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.6(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

7:27-26.8 Additional requirements

(a) In addition to all other requirements set forth in this subchapter, new motor vehicles and new motor vehicle engines which are certified to the emission certification standards contained in N.J.A.C. 7:27-26.4 shall comply with the following requirements:

1. Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control labels which conform to the requirements contained in the "California Motor Vehicle Emission Control Label Specifications" adopted March 1, 1978 as last amended July 12, 1991.

(c) Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, shall be equipped with emission control malfunction and diagnostic systems which conform to the requirements contained in the California Code of Regulations, Title-13, Section 1968.1.

(d) Passenger cars, and light-duty trucks up to 5750 pounds loaded vehicle weight, which are gasoline-fueled or methanol-fueled shall comply with the requirements set forth in California's "Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," dated March 26, 1976 and last amended February 21, 1990.

7:27-26.9 through 26.15 (Reserved)

7:27-26.16 Incorporation by reference

(a) Any reference in this subchapter to any of the documents or sources listed below shall be deemed to incorporate such document or source by reference, together with any future supplements or amendments thereto.

(b) If the entity which promulgated a document or source incorporated by reference into this subchapter proposes to amend or supplement the document or source, the Department will publish a notice of the proposed amendment or supplement in the New Jersey Register. The notice shall state how to obtain a copy of the proposal, and to whom comments on the proposal can be submitted. The Department will publish the notice within 60 days after publication of the proposed amendment or supplement.

(c) The adoption of any proposed amendment or supplement described in (b) above shall become operative in New Jersey no earlier than 30 days after publication by the Department of a notice of such adoption in the New Jersey Register.

(d) If the Department proposes to not incorporate any future supplements or amendments to any of the documents or sources incorporated by reference into this Subchapter, the Department will propose an amendment to this subchapter, and will provide opportunity for public comment on such proposed amendment, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(e) The following documents and sources are incorporated by reference within this subchapter:

1. California Code of Regulations, Title-13, Section 1968.1,

2. "Guidelines for Certification of 1983 and Subsequent Model Year Federally Certified Light-Duty Motor Vehicles for Sale in California," adopted July 20, 1982, as last amended July 12, 1991, CARB;

3. "California Non-Methane Organic Gas Test Procedures," adopted July 12, 1991, CARB;

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4. "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted May 20, 1987, as last amended July 12, 1991, CARB;

5. "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Motor Vehicles," adopted April 16, 1975, as last amended November 20, 1991, CARB;

6. "California Motor Vehicle Emission Control Label Specifications," adopted March 1, 1978, as last amended July 12, 1991, CARB;

7. "California Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks," adopted March 26, 1976, as last amended February 21, 1990, CARB;

8. American Society for Testing Materials Standard Practice E29-88;

9. "Federal Highway Fuel Economy Test Procedure" 40 CFR 600 Subpart B;

10. 40 CFR 86.082-24; and

11. "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 CFR 86, Subparts A and B.

(f) Any of the documents in (e) above may be obtained by contacting the Office of Administrative Law or by contacting:

Department of Environmental Protection and Energy
Office of Energy
Bureau of Transportation Control
CN 411 (380 Scotch Road)
Trenton, New Jersey 08625

7:27-26.17 Severability

Each section of this subchapter is severable. In the event that any section, subsection or division is held invalid in a court of law, the remainder of this subchapter shall continue in full force and effect.

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NOTES

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RULE ADOPTIONS

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION—LAND USE REGULATORY PROGRAM

Notice of Administrative Correction Freshwater Wetlands Protection Act Rules Civil Administrative Penalty for Engaging in Regulated Activities Without Approval

N.J.A.C. 7:7A-17.3

Take notice that the Department of Environmental Protection and Energy has discovered an error in the text of the adopted amendments to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, published in the March 16, 1992 New Jersey Register at 24 N.J.R. 975(b). In the published text of N.J.A.C. 7:7A-17.3(a), the first use of the term "regulated activity" is changed upon adoption to "prohibited activity" (see 24 N.J.R. 1112). This change is, however, a publishing error; as set forth in the original notice of adoption, R.1992 d.117, it is the second use of the term "regulated activity" in N.J.A.C. 7:7A-17.3(a) that was changed upon adoption to "prohibited activity." Through this notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, the correct adopted version of N.J.A.C. 7:7A-17.3(a) is provided.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:7A-17.3 Civil administrative penalty for engaging in regulated activities without approval

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who engages in a [prohibited] **regulated** activity in a freshwater wetland without a freshwater wetlands permit or engages in a [regulated] **prohibited** activity in a transition area without a transition area waiver.

(b) (No change.)

(b)

ENGINEERING AND CONSTRUCTION ELEMENT

Redelineation of Coles Brook

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: March 4, 1991 at 23 N.J.R. 647(a).

Adopted: February 28, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 3, 1992 as R.1992 d.146, **without change.**

Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 003-91-01.

Effective Date: April 6, 1992.

Expiration Date: July 14, 1994.

Summary of Hearing Officer's Recommendations and Agency Response:

John V. Scordato, of the Engineering and Construction Element in the Department of Environmental Protection and Energy (Department), served as a hearing officer at the public hearing on March 20, 1991. No one attended the public hearing. The hearing officer reviewed the documentation supporting the proposed amendment, and concluded that redefining the floodway as proposed would not increase flood levels along the stream. Therefore, the hearing officer recommended that the amendment be adopted without change. The Department concurs with this recommendation.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was published on March 4, 1991 in the New Jersey Register at 23 N.J.R. 647(a). The Notice advised that a public hearing had been scheduled for March 20, 1991 at the Division of Coastal Resources, Department of Environmental Protection, 501 E. State Street, Trenton, New Jersey to afford the public an opportunity to be heard. In addition, secondary Notice of the proposal was published on March 13, 1991 in the Record. Both notices invited written comments to be submitted by April 3, 1991 and announced the holding of the public hearing. No members of the public attended the public hearing. The following persons submitted written comments:

1. Mr. Eric S. Martindale, Jr., concerned citizen.
2. Mr. William R. Delorenzo, Jr., Winne, Banta, Rizz, Hetherington & Basralian, P.C., representing the First Real Estate Investment Trust of New Jersey.

A summary of the respective written comments follows.

COMMENT: The removal of the existing concrete bridge, which is the basis of the redelineation, will reduce the impact of moderate flood events. However, for major flood events, the removal of the bridge will have a negligible impact. The flood levels during the November 1977 "Election Day Flood" reached greater levels than the flood hazard areas shown. During the "Election Day Flood", the area of Madison Ave., Jefferson Ave., and Zabriskie Street in Hackensack looked like Venice. Coles Brook burst out of a bottleneck between South Lake Drive and Route 4 with such force and depth that several cars were swept down Main Street and pushed into a logjam of cars about 100 feet south of South Lake Drive. The water swept around apartment buildings in the area, and flowed heavily south along Main Street, and east down Zabriskie towards the railroad. There were so many acres of standing and flowing water that you could never guess where the channel was. The industrial area bounded generally by Johnson Ave., the railroad, and Temple Ave. acts as a huge flood retention basin for Coles Brook. I would imagine that the flood data the applicant is presenting before the DEPE tremendously downscales the actual problem. The flood delineation lines should be raised, if anything. His act of of filling along the Coles Brook could only make the problem worse.

RESPONSE: The Department disagrees with the commenter's assertion. The Department has determined that the floodway limit along the parcel owned by 270 Johnson Avenue Associates (the entity seeking the redelineation) can be located closer to the stream without increasing flooding along the stream, provided that the existing concrete bridge is removed. This determination is based upon the hydraulic analysis to determine flood levels and floodway limits along the stream.

The State's original analyses and the analyses for the proposed redelineation shows the same areas inundated as the commenter describes in his letter. The flood plain in the vicinity of the proposed floodway extends from Route 4 southerly along the railroad to Temple Avenue, westerly from the railroad to Johnson Avenue and Main Street. It should be noted that the flood plain limits have not changed.

COMMENT: The removal of the bridge will exacerbate the current flooding condition by increasing the rate of flow at the bridge. Based on actual flooding experience, the currrent maps do not accurately reflect the extent of the flood plain and therefore the State's hydraulic model is also questionable.

RESPONSE: the Department disagrees with the commenter's assertion that the removal of the bridge will exacerbate the current flooding condition. According to the hydraulic models, the removal of the bridge will have a negligible impact on the flood profiles and will have no impact on the present flood plain limits as shown on the DEPE maps.

The Department believes that its maps accurately reflect the extent of the flood plain, and that its hydraulic model is accurate as well. The flood plain limits are approximately the same as the area inundated during the November 1977 "Election Day Flood." The flood plain is shown on a 200 foot scale aerial photographic mosaics mapping with five foot contour intervals. The map scale and coutour interval, used to show the delineation, conform to the Department's Flood Plain Management Section mapping criteria. Natural valley field cross sections were coded into a state-of-the-art U.S. Army Corps of Engineers HEC-2 hydraulic model to simulate the watershed. Hydrology for the basin was performed to determine the quantity of water in cubic feet per second (cfs) at certain locations along the stream for certain flood recurrence

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intervals. Flood discharges for various recurrence intervals or flood magnitudes were used in the HEC-2 hydraulic model to determine flood levels and floodways along Coles Brook.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles showing the location of the revised delineated flood hazard areas may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey and at the Department of Environmental Protection, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plates specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY AND FLOOD
HAZARD AREA
COLES BROOK
PLATES CB-1 and CB-2

(a)

DIVISION OF WATER RESOURCES

Water Pollution Control Act

Civil Administrative Penalties and Reporting Requirements

Adopted Amendments: N.J.A.C. 7:14-8.2 and 8.5; 7:14A-1.9 and 3.10

Proposed: August 5, 1991 at 23 N.J.R. 2238(a).

Adopted: February 28, 1992, by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: March 3, 1992 as R.1992 d.145, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21, 58:11-49 et seq., 58:11-64 et seq., P.L. 1990, c.28.

DEPE Docket Number: 027-91-07.

Effective Date: April 6, 1992.

Expiration Date: April 27, 1994, N.J.A.C. 7:14
June 2, 1994, N.J.A.C. 7:14A.

Summary of Public Comments and Agency Responses:

The Department proposed the amendments on August 5, 1991. A public hearing on the proposed amendments was held on Wednesday, August 21, 1991, at 25 Scotch Road, Training Room A, Ewing Township, New Jersey, beginning at 10 A.M. No one came to testify, although representatives from Bell Laboratories and Schering-Plough attended the hearing. The written comment period closed on September 4, 1991. The following is a list of persons and/or organizations who submitted comments on this proposal:

Thomas J. Detweiler, Chemical Industry Council of New Jersey (CIC/NJ)

Robert F. Dixon, Gloucester County Utilities Authority (GCUA)

Ronald K. Lacey, Jersey City Power and Light Company (JCP&L)

Alfred H. Pagano, DuPont Chambers Works

C.A. Mahin, Anheuser-Busch Companies

Jeannie Jenkins, New Jersey Public Interest Research Group (NJPIRG)

Samuel L. Cunninghame, New Jersey Motor Truck Association (NJMTA)

The Department notes that some of the comments submitted by NJMTA do not concern these amendments, but instead concern the rules promulgated by the Department on August 5, 1991 at 23 N.J.R. 2366(a). The Department has responded only to those comments which concern these amendments.

A summary of the comments and agency responses is provided in accordance with N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-4.1(c).

COMMENT 1: The Chemical Industry Council of New Jersey (CIC/NJ) commented that the definition of No Measurable Acute Toxicity (NMAT) does not take into account the dilution factor in the water/effluent mixture and recommends that the Department re-evaluate its proposed definition of NMAT.

RESPONSE 1: The Department acknowledges that the proposed definition of No Measurable Acute Toxicity (NMAT) describes what the NMAT limit means rather than how the dilution of the effluent in the receiving water is considered in developing limits for the parameter acute toxicity. The procedures in N.J.A.C. 7:9-4.6(c)5 for developing whole effluent toxicity limits for acute toxicity, including the NMAT limit, are based largely on a consideration of dilution. Those procedures specify that the limit NMAT be imposed where the available dilution under critical conditions is so miminal that virtually no acute toxicity can be allowed if water quality is to be protected and maintained.

COMMENT 2: CIC/NJ and Jersey Central Power and Light Company (JCP&L) commented that the 40 percent exceedance factor for a serious violation for pH should be determined from the low and high endpoints of a pH range rather than from the midpoint of a pH range which the commenters believe was selected arbitrarily as a matter of convenience without mathematical or scientific basis.

RESPONSE 2: The Department disagrees with the commenters' suggestion. In developing the equivalent exceedance factor for pH, the Department considered that Water Pollution Control Act as amended defines a "serious violation" for nonhazardous pollutants as an exceedance of at least 40 percent of the effluent limitation, that a pH limitation is expressed as a range within which pH is to be controlled, and that the exceedances greater than the top or lower than the bottom of the prescribed pH range may cause environmental concerns.

If the Department defined a "serious violation" for pH to be a 40 percent exceedance from the endpoints of a pH effluent range, a "serious violation" would not occur for the typical pH effluent range of 6.0 to 9.0 standard units unless the 9 standard unit range of pH 3.6 to 12.6 was exceeded. The Department notes that a pH of 3.6 is far below the pH values required to support typical aquatic life and that a pH of 12.5 or greater is defined as a hazardous pollutant. The definition of "serious violation" in the rules as proposed more accurately defines what violations are "serious"; under that definition, a violation of the same pH effluent range would be a "serious violation" if the pH of the discharge was 4.5 or less, or 10.5 or greater. The Department also notes that this definition has been corrected to reflect the Water Pollution Control Act definition of "serious violation" as being an exceedance of 40 percent or more, rather than an exceedance of greater than 40 percent.

The Department further notes that it considered and rejected other methods of defining "serious violation" with respect to violations of a pH effluent range, because they did not accurately reflect the language or intent of the Water Pollution Control Act, as amended. The Department had originally proposed a definition which would include violations of at least two but less than three standard units outside the pH effluent limitation range, but it did not adopt this proposal due to public comments suggesting that the definition was less stringent than the definition in the Act. In developing an alternative equivalent exceedance factor, the Department also rejected a factor based upon the hydrogen ion concentration, which would have resulted in an extremely stringent definition under which a serious violation would occur at a pH of 5.85 or less or of 9.22 or greater.

COMMENT 3: CIC/NJ commented that the Department's definition of pH does not acknowledge that pH values are logarithmic functions. The commenter stated that for a pH range of six to nine, the pH midpoint is 7.3, rather than 7.5 as stated in the Department's example.

RESPONSE 3: In proposing these amendments, the Department acknowledged that the pollutant parameter pH is defined as the negative log of the hydrogen ion concentration, rather than as a mass or concentration, requiring the Department to prescribe an equivalent exceedance factor. However, the Department disagrees with the commenter's suggestion that the determination of the midpoint of the pH range should be based upon the hydrogen ion concentration, rather than upon the numerical pH limits. In developing the alternative equivalent exceedance factor for pH, the Department considered that the Clean Water Enforcement Act defines "serious violation" for nonhazardous pollutants as an exceedance of at least 40 percent of the effluent limitation, and that a pH limitation is expressed as a range within which pH is to be controlled. The Department believes that a midpoint based upon the numerical pH limits more accurately interprets the statutory definition; for a permitted pH range of six to nine, a midpoint calculated based upon the hydrogen ion concentration would be 6.3 (rather than 7.3, as stated by the commenter), making an exceedance below the permitted

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range less likely to be a "serious violation" than one above the permitted range.

COMMENT 4: Anheuser-Busch Companies commented that the proposed regulations to define a "serious violation" for pH penalizes dischargers with wider pH effluent limitation ranges and is lenient to those with narrower pH limitation ranges. Anheuser-Busch Companies further commented that for a possible pH range of five to 12, a deviation of 40 percent from the midpoint of the pH range would be 0.1 units within the endpoints. Anheuser-Busch Companies suggested defining a "serious violation" for pH as 1.5 units outside the permitted pH range but not exceeding the hazardous pH definitions of pH two or 12.5.

RESPONSE 4: The Department considered pH control technology as reflected in U.S. Environmental Protection Agency effluent guidelines in developing the proposed penalty regulations for pH since the ability to control pH is an important compliance consideration. The Department acknowledges that a discharger with a wide pH effluent limitation range in the permit would be allowed less deviation from the range endpoints than a discharger with a narrow pH range in the permit. However, the discharger with a wide pH effluent limitation range in the permit would have greater ability to control discharge pH without causing a serious violation. With specific regard to the possible seven unit wide pH effluent limitation range (pH five to 12), the proposed regulations define the greatest violation of this pH effluent range in any one calendar day as a "serious violation" since a serious violation must be both outside the permitted pH range **and** at least 40 percent from the midpoint of the pH range.

COMMENT 5: The Gloucester County Utilities Authority (GCUA) commented that the Department must cite specific reasons to utilize a more stringent factor of exceedance to determine a "serious violation" for pH.

RESPONSE 5: In accordance with the terms of the Clean Water Enforcement Act, the Department has proposed an **equivalent** exceedance factor for determining a "serious violation" for the pollutant parameter pH, which is defined as the negative log of the hydrogen ion concentration and not as a mass or concentration. The Department has not proposed a more stringent factor of exceedance which would have required stating the specific reasons therefor under the Clean Water Enforcement Act.

In developing the equivalent exceedance factor, the Department considered that the Clean Water Enforcement Act defines a "serious violation" for nonhazardous pollutants as an exceedance of at least 40 percent of the effluent limitation, that a pH limitation is expressed as a range within which pH is to be controlled, that pH is measured as an instantaneous value rather than as a monthly average or daily minimum, and that exceedances of pH greater than the top or lower than the bottom of the prescribed pH range may cause environmental concerns.

COMMENT 6: NJPIRG commented that the proposed definitions of "serious violation" and "significant noncomplier" for pH fail to address the absolute amount of the pollutant, since a small change in pH on a logarithmic scale can reflect a large change in hydrogen ion concentration. NJPIRG further commented that pH is a measure of the acidity or alkalinity of a solution and that organisms can be very sensitive to small changes in hydrogen ion concentration. NJPIRG also commented that the proposed definition of "serious violation" for pH ignores the explicit language in the Clean Water Enforcement Act because an equivalent exceedance factor for pH cannot be calculated using a logarithmic pH scale based upon the argument that a 40 percent over amount only has meaning when referring to a ratio expressed in absolute amounts of a material. NJPIRG finally commented that the proposed rule sets less stringent standards for violations of pH limitations than for other pollutants and noted that, using the standard pH range of six to nine, a 40 percent exceedance of the limit would be equal to a monthly average of 5.85 or less, or 9.22 or greater, derived from determining the actual amount of pollutant present.

RESPONSE 6: As stated in the Summary accompanying the proposed regulations, pH is a nonhazardous pollutant which is not measured by mass or concentration. pH is defined as the negative log of the hydrogen ion concentration. In addition, pH is expressed as a range within which pH is to be controlled, not as a maximum concentration which cannot be exceeded. It is measured as an instantaneous value and not as a monthly average or a daily maximum. Although NJPIRG contends that pH is a measure of the acidity or alkalinity of a solution, acidity and alkalinity are distinct parameters recognized by the U.S. Environmental Protection Agency (USEPA) which measure the buffering capacity of a solution to changes in pH. Also, while NJPIRG contends that organisms can be very sensitive to small changes in hydrogen ion concentration, the United States Environmental Protection Agency's Quality Criteria for water allows an instream pH range of 2.5 standard units for freshwater aquatic life and 2.0 standard units for marine aquatic life which represent at least a 100 fold difference in hydrogen ion concentration.

The Department has not ignored the explicit language or the legislative intent of the Clean Water Enforcement Act since it has included pH in the definitions for "serious violation" and "significant noncomplier." In essence NJPIRG seeks to have the Department consider pH as a concentration in prescribing an equivalent exceedance factor for pH. The Department believes that treating pH as a concentration as NJPIRG suggests would in effect eliminate both the applicability of "serious violation" and "significant noncomplier" to pH, since the Clean Water Enforcement Act applies these definitions only to pollutants measured as a mass or concentration which have monthly average or daily maximum effluent limitations rather than to parameters such as pH which have instantaneous limitations. Therefore, the Department does not concur with the position that it is appropriate to treat pH as the hydrogen ion concentration and to prescribe an equivalent exceedance factor of 40 percent from the ends of a typical USEPA technology based pH effluent limitation range of 6.0 to 9.0 standard units, which would theoretically result in a "serious violation" at a pH ≤ 5.85 or ≥ 9.22 standard units. The Department does, however, concur with the viewpoint that ignoring the logarithmic aspect of pH and using a 40 percent exceedance factor from the endpoints of a pH effluent limitation range using standard pH units would not provide an appropriate equivalent exceedance factor. The Department also notes that the proposed definition of "serious violation" for pH has been corrected to reflect the Water Pollution Control Act definition of "serious violation" as being an exceedance of 40 percent or more, rather than an exceedance of greater than 40 percent.

Recognizing that pH is expressed as a range within which pH is to be controlled, the Department has proposed using the midpoint of the pH effluent limitation range as the appropriate point from which to calculate an equivalent exceedance of 40 percent, using the greatest **instantaneous** violation of the pH effluent range in any one calendar day expressed in standard pH units. Moreover, having considered all comments received on this proposal and the instantaneous measurement aspect of this parameter, the Department remains convinced that the proposed equivalent exceedance factor for pH will provide a clear, reasonable basis for determining a "serious violation" and a "significant noncomplier" that is neither too stringent nor too lenient to achieve the intended purpose of the Clean Water Enforcement Act.

COMMENT 7: GCUA commented that 40 CFR 401.17(a) allows limited excursions from the permitted pH range, where a permittee continuously measures the pH of wastewater pursuant to a permit requirement or option, of up to 60 minutes for an individual excursion and up to seven hours and 26 minutes in any calendar month. GCUA requested clarification of the proposed definition of "serious violation" in N.J.A.C. 7:14-8.2, particularly in the case of Categorical Industrial Users of a Publicly Owned Treatment Works (POTW).

RESPONSE 7: The Department considered 40 CFR 401.17 in proposing these regulations and notes that 40 CFR 401.17(b) enables the Department to adjust the requirements in 40 CFR 401.17(a) with respect to the length of individual excursions from the range of pH values if a different period of time is appropriate based upon the treatment system, plant configuration or other technical factors. The Department's proposal therefore allows for pH excursions specifically excepted by a NJPDES permit with continuous pH monitoring because a NJPDES permit is the appropriate mechanism for establishing facility specific discharge limitations. This would include the case of Categorical Industrial Users.

COMMENT 8: DuPont Chambers Works commented that a specific exclusion for pH excursions excepted by a NJPDES permit with continuous monitoring should be included in the definition of serious violation under the proposed N.J.A.C. 7:14-8.2 and N.J.A.C. 7:14A-1.9.

RESPONSE 8: The Department concurs with DuPont's comment which is consistent with the Department's Summary statement that, "... the Department proposes to exclude pH excursions specifically excepted by a NJPDES permit with continuous pH monitoring." Therefore, the definitions for "serious violation" under N.J.A.C. 7:14-8.2 and N.J.A.C. 7:14A-1.9 will be changed to read:

"... 3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range

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by more than 40 percent of the midpoint of the range **excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring**. For example . . ."

COMMENT 9: E.I. DuPont DeNemours commented that the 24-hour time limit to gather and transmit to the Department all the information required in N.J.A.C. 7:14A-3.10(c)1 and 2 as specified in proposed N.J.A.C. 7:14A-3.10(d)2 is too short and recommended that the Department require verbal reporting of the information in (c)2 to the DEPE Hotline within 24-hours after commencement of the discharge or of the permittee becoming aware of the discharge and mailing or delivering a written report including the information in (c)1 and 2 within five days.

RESPONSE 9: The Department's experience in implementing this program, and other programs providing for faster reporting, has shown that the 24 hour time period to mail or deliver a written report of the nonhazardous pollutant discharge without a permit is a reasonable time period for the regulated community to report a violation without hindering the Department's response to either these nonhazardous pollutant violations or to hazardous pollutant violations which must be reported verbally via the DEPE Hotline at (609) 292-7172. The Department believes that reporting within 24 hours after the permittee knew or should have known of the violation is the appropriate requirement under N.J.A.C. 7:14A-3.10(d). The Department also believes that the administrative burden for a permittee to report an unpermitted discharge of a nonhazardous pollutant will be minimal compared with the reduced risk to public health, safety, welfare and the environment.

COMMENT 10: Jersey Central Power and Light Company commented that proposed N.J.A.C. 7:14A-3.10(d)2 should be modified to say ". . . permittee who discharges any non-hazardous pollutant **which is attributable to the permittee's operations** without a permit . . ." since facilities which utilize an intake water source may discharge minute quantities of nonhazardous pollutants as a result of raw water fluctuations over which it has no control.

RESPONSE 10: The discharge by a permittee of any pollutant without a permit is a violation of the Water Pollution Control Act and, therefore, will remain as a reportable event pursuant to N.J.A.C. 7:14A-3.10(d)2 as proposed. Since the cause of the noncompliance must be reported, the permittee's report to the Department should contain information concerning whether the discharge is attributable to the permittee's operations.

COMMENT 11: Jersey Central Power and Light Company commented in support of the proposed amended definition of "discharge" which excludes a leak into a secondary containment system which does not involve a release into the waters or lands of this State for purposes of determining penalties for violations of the Underground Storage of Hazardous Substances Act.

RESPONSE 11: The Department acknowledges the commenter's support of the amended definition of "discharge."

COMMENT 12: CIC/NJ commented that N.J.A.C. 7:14A-3.10(d) 1 and 2 are unclear regarding reporting requirements for a "serious violation" and for a **nonhazardous pollutant** within the guidelines of the Department.

RESPONSE 12: The Department acknowledges that the proposed regulations at N.J.A.C. 7:14A-3.10(d) do not require a specific reporting requirement for a "serious violation" and notes that most serious violations would be reported pursuant to N.J.A.C. 7:14A-3.10(b) and (d) since these requirements encompass most serious violations. Regarding N.J.A.C. 7:14A-3.10(d)2, the Department intended that this requirement apply to any **nonhazardous** pollutant as used in the Clean Water Enforcement Act and considers the term to mean a pollutant not defined as a "hazardous pollutant."

COMMENT 13: The New Jersey Motor Truck Association (NJMTA) commented that the definition of discharge should delete UST leaks into secondary containment.

RESPONSE 13: The Department notes that the proposed amended definition of "discharge" does exclude a leak into a secondary containment system which does not involve a release into the waters or lands of this State.

COMMENT 14: The NJMTA commented that the proposed rules tend to increase administrative burdens already in place.

RESPONSE 14: The Department's Regulatory Flexibility Analysis accompanying the proposed amendments notes that the Department does not expect that the proposed amendments will require small businesses to obtain any additional professional services, nor does the Department expect that there will be initial capital costs of compliance with the additional requirements for discharge reports. Finally, any annual costs should be minimal and cannot be reduced for small businesses without risk to public health, safety, welfare and the environment. The Department also believes that the administrative burden for a permittee to report an unpermitted discharge of a nonhazardous pollutant will be minimal compared with the reduced risk to public health, safety, welfare and the environment.

Summary of Hearing Officer's Recommendations and Agency Response:

Edward M. Neafsey, the Department's Director of Enforcement Policy, served as the hearing officer at the public hearing held on August 21, 1991 in Trenton, New Jersey. No one offered testimony at the public hearing. Director Neafsey recommended that the Department adopt the proposal without change, except for the minor corrections discussed in the summary of public comments and agency responses above. The Department agrees with the recommendation.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. To request a copy, contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

. . .

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

. . .

"Discharge Monitoring Report" or "DMR" means the Environmental Protection Agency's current uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees for discharge point sources.

. . .

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

. . .

"No Measurable Acute Toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occur in any acute toxicity test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

. . .

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"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1.-2. (No change.)

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by *[more than]* ***at least*** 40 percent of the midpoint of the range ***excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring***.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$\frac{7.5(\text{midpoint}) - 4.3\ (\text{greatest exceedance})}{7.5\ (\text{midpoint})} \times 100 = 42.6\%$$

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of *[less than 4.5 or greater than 10.5]* ***4.5 or less or a pH of 10.5 or greater***, the violation would be a "serious violation."

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

...

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1.-2. (No change.)

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous *[Ph]* ***pH*** monitoring, at the same discharge point source in any four months of any consecutive six month period; or

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

...

7:14-8.5 Civil administrative penalty determination

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

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below. Nothing in the description of seriousness in one level shall prevent the Department from assigning a different level of seriousness to the violation.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) (No change.)

(2) By more than 100 percent for a nonhazardous pollutant;

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and

iii. Any other violation not included in (g)1i or ii above which either:

(1)-(2) (No change.)

2. Moderate shall include:

i. Any violation other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. (No change.)

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) (No change.)

(2) By less than 40 percent for a nonhazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

(h)-(i) (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which the pollutant might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the state which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq. and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

...

"Discharge monitoring report" or "DMR" means the Environmental Protection Agency's current uniform national form, including any subsequent additions, revisions, modifications and replacements, for the reporting of self-monitoring results by permittees for discharge point sources.

...

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

...

"No Measurable Acute Toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9-4.6(c)5i(2), which requires that no mortality occurs in any acute toxicity test concentation, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

...

"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit,

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administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1.-2. (No change.)

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by *[more than]* ***at least*** 40 percent of the midpoint of the range ***excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring***.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If the five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

$$\frac{7.5 \text{ (midpoint)} - 4.3 \text{ (greatest exceedance)}}{7.5 \text{ (midpoint)}} \times 100 = 42.6\%$$

For example: Using the same information as above.

Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of *[less than 4.5 or greater than 10.5]* ***4.5 or less or a pH of 10.5 or greater***, the violation would be a "serious violation."

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

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1.-2. (No change.)

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

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

7:14A-3.10 Additional conditions concerning reporting requirements applicable to all DSW permits

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

(d) The permittee shall comply with the notice requirements in this subchapter.

1. Any permittee who discharges any pollutant in violation of its maximum daily discharge limitation not otherwise covered in (b) above shall, within 24 hours after the permittee knew or should have known of the violation, verbally communicate the violation to the Department via the DEP Hotline at (609) 292-7172.

2. Any permittee who discharges any nonhazardous pollutant without a permit shall, within 24 hours after the permittee knew or should have known of the violation mail or deliver a written report of the discharge, including the information required in (c)1 and 2 above, to the Department to the attention of the person identified in (c)4 above.

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

HEALTH

(a)

DIVISION OF FAMILY HEALTH SERVICES

Eligibility Criteria; HealthStart Plus

Adopted New Rules: N.J.A.C. 8:80

Proposed: January 6, 1992 at 24 N.J.R. 62(a).

Adopted: March 6, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: March 6, 1992 as R.1992 d.160, **with substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: April 6, 1992.

Expiration Date: April 6, 1997.

Summary of Public Comments and Agency Responses:

COMMENTER: Charles Kauffman, Public Health Coordinator, Ocean County Health Department

COMMENT: The intent of the legislation was to expand the existing Medicaid program, "HealthStart," to incorporate those individuals whose income level was between 185 percent and 300 percent of the poverty level on a sliding fee scale basis.

RESPONSE: The enabling legislation, P.L. 1991, c.187, "Health Care Cost Reduction Act" encourages the use of the managed care health care delivery model throughout the legislation. Specifically, it requires the expansion of the Garden State Health Plan, requires that the Garden State Health Plan develop provisions for small employers to buy into the Plan, and requires that health maintenance organizations submit plans for enrolling Medicaid eligible persons. On this basis, the plan to use the managed care health care delivery model is consistent with the legislation.

COMMENT: Substantial administrative start-up costs will be incurred by using the managed care model instead of expanding the New Jersey Medical Assistance and Health Services, which already has an administrative structure for eligibility determination, to include pregnant women and children to age one whose families' income is between 185 percent and 300 percent of the Federal poverty level.

RESPONSE: The underlying assumption that few administrative costs would be associated with an expansion of the New Jersey Medical Assistance and Health Services program is erroneous. Modification of the New Jersey Medical Assistance and Health Services data bases and modifications to the Medicaid Management Information System to include non-Medicaid eligibles and the hiring and training of county board of social services staff to perform eligibility assessments for non-Medicaid eligibles would be very costly.

COMMENT: Using the managed care model assumes that individuals can avail themselves of such an organization and those individuals can readily be assimilated. This may not be true.

RESPONSE: The contract(s) for the provision of HealthStart Plus health care services will require Statewide accessibility for services and enrollment of individuals.

COMMENT: The Department of Health should assume responsibility to assure that eligible individuals are knowledgeable about the program, have access to eligibility determination services, are permitted to enroll in a health maintenance organization, and that services are coordinated with existing services in the community.

RESPONSE: The contract(s) for the provision of HealthStart Plus health care services require marketing, eligibility determination and enrollment of individuals. The contractor(s) will be required to coordinate with and utilize community networks or agencies for those services which it does not directly provide to its members.

COMMENTER: Alan R. Letofsky, Esq., for US Healthcare

COMMENT: Eligibility for pregnant women should be limited to those pregnant women who have been residents of the State of New Jersey for at least nine months before pregnancy has been determined.

RESPONSE: The legislation states that maternity service should be available to pregnant women whose families incomes are between 185 percent and 300 percent of the Federal poverty level. The intent of the legislation is to assure access to maternity care for pregnant women living in the State. A requirement for residency for nine months prior to the determination of pregnancy is overly restrictive and would make

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otherwise eligible women who are residents of the State, ineligible for maternity services.

COMMENT: Eligibility for services should terminate when any enrolled woman or child does not remain a resident and continuously reside in the State of New Jersey.

RESPONSE: Since this program is intended to assist residents of the State, the Department is in agreement with this recommendation. The proposed rule is amended to reflect this clarification.

COMMENT: For children born of women who did not receive HealthStart Plus services eligibility should begin 30 days after discharge from a hospital or birthing center only if said facility is located in the State of New Jersey.

RESPONSE: The proposed rule states that children born of women who did not receive HealthStart Plus services become eligible 14 days after discharge from the hospital or birthing center to the home of the parents or guardians. Increasing the number of days after discharge to the start of eligibility and restricting eligibility to infants born in New Jersey facilities is overly restrictive and would deprive many otherwise eligible children of these comprehensive health care services. The 14 day requirement was proposed to avoid shifting catastrophic illness cases to the contractor. The 14 day requirement is adequate for this purpose. Since New Jersey borders two major cities in other states, some residents of the State chose to deliver out-of-State at these facilities. The Department cannot support the notion that exercise of this choice should exclude the infant's participation in HealthStart Plus if otherwise eligible.

COMMENTER: Barbara Kern, Director, Special Child Health Services, New Jersey Department of Health

COMMENT: The regulations should be less stringent regarding the requirement that each eligible person the family is required to pay 10 percent of the premium. She states that a more equitable approach would be to adopt a sliding fee scale approach to premium charge. The cost to the family for the coverage should be based on their income relative to poverty and the number of family members to receive coverage.

RESPONSE: The Department is in agreement with this comment; however it cannot make this substantive change upon adoption. The Department plans, in the near future, to propose an amendment to N.J.A.C. 8:80-2.1(e) to permit the implementation of a sliding fee scale approach.

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

CHAPTER 80
HEALTHSTART PLUS

SUBCHAPTER 1. GENERAL PROVISIONS

8:80-1.1 Purpose; scope

Healthstart Plus is funded through a limited appropriation and is contingent on the availability of those funds and the amount allocated by the Department of Health to support specific services for the purpose of improved health outcomes for under insured pregnant women and their infants through the provision of preventive and primary health care services:

8:80-1.2 Definitions

For the purpose of this chapter, the following words, phrases, names and terms shall have the following meanings:

"Authorized eligibility worker" means an employee of the health provider authorized by the Department of Health to provide HealthStart Plus.

"Comparable insurance" means a third party resource for payment of health care costs for preventive and primary ambulatory care, including prenatal care, and inpatient care.

"Family income" means the income of the pregnant woman and her spouse or the parents' or legal guardians' income for the child for the 12 months immediately proceeding the date of application. In the event the spouse is not living in the household, the spouse's income may be excluded from calculation of the household income upon presentation of a signed statement by the mother that the spouse does not contribute to the household income.

"HealthStart Plus" means a package of comprehensive maternity and pediatric health care services delivered by a provider authorized by the Department of Health; the funding source expires on June 30, 1993. HealthStart Plus maternity services include prenatal care, delivery and post partum care up to end of the calendar month of the sixtieth day of the end of the pregnancy. HealthStart Plus pediatric care includes newborn care and comprehensive health care to the end of the calendar month of the child's first birthday.

"Liquid assets" means cash, certificates of deposit, government bonds and other marketable securities which are readily converted to cash.

"Poverty level" means the Federal poverty income guidelines published annually in the "Federal Register" by the U.S. Department of Health and Human Services. The most recently published guidelines shall be used to determine eligibility.

"Total family income" means the combined wages, alimony, interest and all other earnings as required to be reported on the most recent US Tax 1040 form as gross income for the pregnant woman and her spouse or the parent's or legal guardians of the child.

SUBCHAPTER 2. ELIGIBILITY

8:80-2.1 Eligibility requirements

(a) In order to be enrolled for HealthStart Plus services, a completed application must be received by provider(s) authorized by the Department of Health to provide HealthStart Plus services no later than February 28, 1994. Application forms shall be available from provider(s) authorized by the Department of Health to provide HealthStart Plus services. Applications for HealthStart Plus shall include, but not be limited to, the following information:

1. Name and address of applicant;
2. Date the applicant began to reside in the State;
3. Date of birth of the applicant;
4. Place of birth and date of discharge from the hospital following birth for applicants who are children less than one year of age;
5. Estimated date of delivery and the name and address of any health care provider of any prenatal care rendered for this pregnancy, if the applicant is a pregnant woman;
6. The name of any health care benefits program or health care insurance, including New Jersey Medical Assistance and Health Services, from which the applicant is entitled to receive benefits;
7. A description of the benefits the applicant is entitled to under any health care benefits plan or health care insurance and the name and telephone number of a contact person who can verify these benefits;
8. Total family income for the previous 12 months;
9. Submission of appropriate documentation of income for the most recent tax year; and
10. Statement of type and value of all the family's liquid assets.

(b) Eligibility for HealthStart Plus is limited to pregnant women and the infants born of those pregnancies and children less than one year of age. Once eligibility has been determined, the pregnant woman shall remain eligible for and enrolled in HealthStart Plus until the last day of the calendar month in which the 60th post partum day occurs. For the child, born to a pregnant women who was enrolled in HealthStart Plus, eligibility and enrollment shall be automatic at the time of birth unless the mother requests that no enrollment occur. For children, eligibility and enrollment for HealthStart Plus end on the last day of the calendar month in which the child's first birthday occurs.

(c) In order to be eligible for HealthStart Plus services, a pregnant woman must be a resident of the State of New Jersey. For the child born to a resident of New Jersey but whose mother was not enrolled in HealthStart Plus, the child shall be considered a resident of the State 14 days after discharge from the hospital or birthing center to his or her parent(s)' or legal guardian's home in the State. For the child who moves to New Jersey, the child will be considered a resident once he has resided in New Jersey for a full calendar month. Neither citizenship nor alien status shall be considered in eligibility determination. ***Enrolled women and children who do not remain residents of the State of New Jersey shall cease to be eligible for HealthStart Plus.***

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(d) If a pregnant woman or child has comparable health insurance coverage, such individuals shall not be eligible for HealthStart Plus services. If the individual has third party health care coverage but that coverage is not comparable, eligibility will exist for the uncovered services. In this event, as a condition of eligibility, the family is required to provide all health care coverage information to the health care provider designated by the Department to provide HealthStart Plus services as is necessary to coordinate benefits. HealthStart Plus is the payor of last resort and will not provide payment for services that are included in any other health care coverage for the pregnant women or child.

(e) The pregnant woman or the parents or legal guardian of the child *[family]* must agree to pay 10 percent of the premium cost of each family member enrolled in HealthStart Plus to the health care provider designated by the Department to provide HealthStart Plus services.

(f) The total family income shall not exceed 300 percent of the poverty level for the household size and liquid assets shall not exceed $4,500. For the pregnant woman, the household includes her spouse, the unborn child, her children and her spouse's children under the age of 21 residing in the same household. The income of the parents of a pregnant woman shall not be considered in determining eligibility. Once income eligibility is established for the pregnant woman, the child born of that pregnancy shall automatically be deemed income eligible for the first 12 months of life. For a child, the household includes the child's parents or legal guardians and blood-related siblings (including half-blood).

(g) As a condition of eligibility for HealthStart Plus, the family shall present upon application adequate documentation of total family income sufficient for the authorized eligibility worker to determine income eligibility for the program. Adequate documentation may include, but is not limited to, a copy of the most recent U.S. Tax 1040 form of the family. If the U.S. Tax 1040 form from the most recent year is not available, or if income has significantly changed from the income reflected on the U.S. Tax 1040 form, copies of unemployment benefits checks or statements, copies of the four consecutive weeks' paystubs from the immediately proceeding four weeks or a statement from the employer may be substituted.

(h) No child or pregnant woman who is receiving (or would be eligible for benefits if he or she applied) benefits through New Jersey Medical Assistance and Health Services Program(s) shall be eligible for HealthStart Plus services.

(i) A pregnant woman, requesting transfer from a hospital-based prenatal care provider, who is at or beyond the 28th week of pregnancy, shall be ineligible for HealthStart Plus.

(j) As a condition of eligibility, the pregnant women or parents/legal guardians of the child agree to consent to the release of medical records to the Department of Health that are necessary to evaluate the impact of this program and service delivery.

SUBCHAPTER 3. APPEALS

8:80-3.1 Appeals process

(a) The following applies to first level appeals:

1. Upon receipt of an ineligibility determination by the authorized HealthStart Plus provider, the applicant may make appeal of such determination to the Department by filing a written appeal addressed to:

New Jersey State Department of Health
HealthStart Plus Program
CN 364
363 West State Street
Trenton, New Jersey 08625

2. The appeal shall comply with the following requirements:

i. The appeal shall be in writing;

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

iii. Appeals must be received by the State Office no later than 14 days from the date of the determination of ineligibility made by the HealthStart Plus provider.

3. Upon receipt of the appeal, the Department shall:

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

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

iii. Issue a written determination to the applicant within 30 days of original receipt of the appeal.

(b) The following applies to second level appeals:

1. Upon receipt of a determination by the *[Department]* HealthStart Plus ***Program***, an applicant who wishes to further dispute such determination may appeal to the State Commissioner of Health by submitting a written appeal to:

New Jersey State Department of Health
HealthStart Plus
John Fitch Plaza
CN 360
Trenton, New Jersey 08625-0360
ATTN: State Commissioner of Health

2. Appeals must be received at the above address no later than 14 days from the date of determination made by the HealthStart Plus Program.

3. The written appeal shall include all reasons and grounds for disputing the HealthStart Plus Program determination, and all proof and documentation in support of the appeal.

4. The State Commissioner of Health shall either direct the Department staff to conduct such review and analysis as is necessary to reach a decision on the appeal, and may direct a conference be held with the applicant, or may refer the matter to the Office of Administrative Law 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.

5. Except for appeals referred to the Office of Administrative Law, the State Commissioner of Health shall issue a decision on the appeal within 45 days from the date of original receipt of the appeal. Appeals referred to the Office of Administrative Law shall be decided by the State Commissioner of Health within 45 days from the date of filing of the Initial Decision of the Administrative Law Judge.

6. Decisions made by the State Commissioner of Health shall be final, with subsequent appeal to the Superior Court of New Jersey as permitted by court rules.

(c) Applicants may not receive HealthStart Plus benefits while an appeal is pending at any level.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Policies and Procedures Pertaining Strictly to County Community Colleges

Regulations for New Jersey Community Colleges Physical Facilities

Adopted Amendment: N.J.A.C. 9:4-1.12

Proposed: November 4, 1991 at 23 N.J.R. 3196(b).

Adopted: March 10, 1992 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Filed: March 12, 1992 as R.1992 d.163, **without change.**

Authority: N.J.S.A. 18A:64A-7.

Effective Date: April 6, 1992.

Expiration Date: September 26, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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9:4-1.12 Physical facilities

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

(g) Any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed $2,000,000 and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees.

(a)

STUDENT ASSISTANCE BOARD

Paul Douglas Teacher Scholarship Program Rules and Statutes Incorporated by Reference; Definitions; Attendance in an Eligible Institution; Renewal of Scholarship Eligibility

Adopted Amendments: N.J.A.C. 9:7-9.1, 9.2, 9.4 and 9.8

Proposed: January 6, 1992 at 24 N.J.R. 8(a).

Adopted: March 6, 1992 by the Student Assistance Board, M. Wilma Harris, Chairperson.

Filed: March 2, 1992 as R.1992 d.164, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 18A:71-15.3, Title V, Part E of the Higher Education Act of 1965, as amended by the Human Services Reauthorization Act of 1984, 20 U.S.C. 1119d-8 and the Higher Education Technical Amendments Act of 1987.

Effective Date: April 6, 1992.

Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

To avoid any misunderstanding, the Department felt that further clarification could be provided within the amended rules which now allow students to pursue an undergraduate teacher preparation degree program in any state, rather than restricting attendance at an in-State institution, by changing the capitalized reference to a "department of education" to lower case and specifically adding "of any state" when referring to the awarding of an instructional certificate. The Department also clarified reference to the accreditation of the postsecondary institution of attendance by an accrediting agency or association as one "recognized by the U.S. Secretary of Education." In addition, by allowing attendance and certification in any other state, the Department needed to add reference to the equivalent approved program in other states when referring to New Jersey's "Alternate Route" method for teacher certification.

The technical amendments to the adoption provide consistency when referencing the incorporation of Federal amendments and supplements as rules "within this subchapter" and correct a printing error in not deleting the designation of subsection (b) under N.J.A.C. 9:7-9.2.

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

9:7-9.1 Rules and statutes incorporated by reference

(a) The part of the Code of Federal Regulations known as 34 C.F.R. 653 through and including 34 C.F.R. 653.42 (as of November 25, 1987) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within this subchapter.

(b) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part D, 20 U.S.C. 1111 (as of October 17, 1986) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within *[these regulations]* ***this subchapter***.

(c) The provisions of the following sections of subchapter 2 of this chapter, N.J.A.C. 9:7-2.2 residency, 2.3 foreign nationals, 2.11 payments, 2.14 check endorsements, 2.15 appeals and 2.16 accounting and auditing standards, governing the programs administered by the Student Assistance Board shall also apply to this program unless they are inconsistent with or otherwise excepted within the provisions of this subchapter.

9:7-9.2 Definitions

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

"Alternate route" means the method of receiving approval from the New Jersey Department of Education to teach at the elementary or secondary school level pursuant to the provisions of N.J.A.C. 6:11-5.1, 5.2, 5.3 and 5.4.

[(b)] "Degree program leading to teacher certification" means an undergraduate teacher preparation degree program which curriculum leads to a recommendation for a state instructional certificate awarded by a *[state Department of Education]* ***department of education of any state*** or any other undergraduate degree program in which the student enrolled has expressed the intention to utilize such degree for the purpose of securing *[a state]* ***an*** instructional certificate awarded by a *[state Department of Education]* ***department of education of any state***, including any graduate study required to obtain an initial instructional certificate.

"Installment promissory note" means the promissory note signed by the scholar which sets forth the specific terms of repayment of previously received scholarship monies and interest in lieu of reduction of scholarship balances through teaching service pursuant to N.J.A.C. 9:7-9.9.

"Interim promissory note" means the promissory note signed by the scholar upon receipt of each disbursement of scholarship funds whereby the scholar promises to repay such funds plus interest unless teaching service is performed pursuant to N.J.A.C. 9:7-9.9.

9:7-9.4 Attendance in an eligible institution

An applicant must be enrolled or plan to enroll in an accredited college or university on a full-time basis in a degree program leading to a teaching certificate or has indicated an intent to seek employment in the teaching field through the "Alternate Route" method ***(or any such program approved for use in other states)*** but not including graduate study that is not required for initial teacher certification.

9:7-9.8 Renewal of scholarship eligibility

(a) In order to maintain eligibility for a scholarship a scholar must be:

1. Enrolled as a full-time student in a postsecondary institution that is currently accredited by *[a nationally recognized]* ***an*** accrediting agency or association ***recognized by the U.S. Secretary of Education***; and

2. Pursuing a course of study leading to certification as a teacher at the preschool, elementary or secondary level, as determined by the *[State]* ***state*** in which the postsecondary institution the student is attending is located; and

3. (No change.)

(b) (No change.)

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HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual
Prepaid Health Plans
Adopted Repeal and New Rules: N.J.A.C. 10:49-10

Proposed: January 6, 1992 at 24 N.J.R. 64(a).
Adopted: March 13, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: March 13, 1992 as R.1992 d.167, **without change.**
Authority: N.J.S.A. 30:4D-3b; 30:4D-6b(17); 30:4D-7, 7a, b and c, r; 30:4D-12; 42 CFR 434.
Effective Date: April 6, 1992.
Expiration Date: July 13, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 10. PREPAID HEALTH CARE SERVICES; TITLE XIX ELIGIBLES

10:49-10.1 Definitions

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

"Benefits" means medical, psychiatric and related health services which the contractor has agreed to provide, arrange for and be held fiscally responsible for under the negotiated contract. The benefit package that must be provided by the contractor under the terms of the contract is specified in N.J.A.C. 10:49-10.3(a)1.

"Capitation rate" means a stated sum due the contractor for a stated group of services for each enrollee.

"Commissioner" means the Commissioner of the Department of Human Services or a duly authorized representative.

"Contractor" means a health maintenance organization or prepaid health plan as defined herein which contracts with the Department for the provision of comprehensive health care services to Medicaid enrollees on a prepayment basis.

"CWA" or "county welfare agency" means a government agency that determines eligibility to receive financial assistance and Medicaid benefits.

"Department" means the Department of Human Services.

"Director" means the Director of the Division of Medical Assistance and Health Services or a duly authorized representative.

"Disenrollment" means the process of removal of an enrollee from the contractor's plan, not from the Medicaid Program.

"Division" means the Division of Medical Assistance and Health Services of the Department.

"Emergency services" means those services required to treat a life-threatening or organ-threatening condition or potentially life- or organ-threatening condition of such immediate nature that any unusual delay in treatment would be dangerous to the health or well-being of the enrollee.

"Enrollee" or "enrolled recipient" means an individual who is eligible for Medicaid residing within the defined market area, who elects or has had elected on his or her behalf by an authorized person, in writing, to participate in the contractor's plan and meets specific Medicaid eligibility requirements for Plan enrollment agreed to by the Department and the contractor.

"Enrollment" means the process by which individuals eligible for Medicaid voluntarily contract to utilize prepaid health care services in lieu of standard Medicaid benefits.

"Enrollment area" means the boundaries established by Zip Code, within which the HMO will limit its enrollment.

"EPSDT" means Early Periodic Screening, Diagnosis and Treatment mandated by Title XIX of the Social Security Act.

"Federally qualified HMO" means an HMO that has been determined by the Public Health Service (PHS) to be a qualified HMO under section 1310(d) of the PHS Act.

"Health maintenance organization" (HMO) means a public or private organization, organized under State law which:

1. Is a Federally qualified HMO (defined above); or
2. Meets the State Plan's definition of an HMO which includes, at a minimum, the following requirements:

(a) Is organized primarily for the purpose of providing health care services;

(b) Makes the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration, and scope) as those services are to non enrolled Medicaid eligible individuals within the area served by the HMO; and

(c) Makes provision, satisfactory to the Division, against the risk of insolvency, and assures that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent.

"HHS" or "DHHS" means the Department of Health and Human Services of the Federal government.

"IPN" means independent practitioner network which is one of the types of HMO operation. Services are provided for enrollees in the individual offices of the contracting physician case managers (PCMs).

"Market area" means the defined geographic area within which potential enrollees shall reside.

"Marketing" means any presentation by or on behalf of an HMO for enrollment purposes.

"Medicaid" refers to the program funded under Title XIX of the Social Security Act administered by the Department.

"Medicaid recipient" means an individual eligible to receive services under the New Jersey Medicaid Program as authorized by State and Federal law and amendments thereto.

"Non-covered HMO services" means services not covered in the contractor's benefits package included under the terms of the Medicaid contract.

"Non-covered Medicaid services" means all services not covered under the New Jersey State Plan for the Medicaid Program.

"Nonrisk" means that the contractor is not at financial risk for changes in the cost or utilization of services provided for in the payment rate agreed upon at the beginning of the contract period. Under a nonrisk contract, the State agency may make retroactive adjustments during and at the end of the contract period so that the contractor is reimbursed for costs actually incurred, subject to the upper limit of payment established in 42 CFR 447.362, or any lower limit specified in the contract.

"PCM" means physician case manager which is the primary care physician.

"Plan" means all services and responsibilities undertaken by the contractor pursuant to the contract.

"Prepaid health plan (PHP)" means an entity that provides medical services to enrollees, under a contract with the Medicaid agency and on the basis of prepaid capitation fees, but does not necessarily qualify as an HMO.

"Primary care physician" means a physician who has the responsibility for general care and treatment and for initiating referrals for specialist care and for maintaining continuity of patient care. In general, the primary care physician is a general or family practitioner, internist, pediatrician, or obstetrician/gynecologist.

"Referral/services" means those health care services rendered outside of the contractor's facilities or IPN when ordered and approved by the contractor.

"Risk" or "underwriting risk" means the possibility that a contractor may incur a loss because the cost of providing services may exceed the payments made by the agency to the contractor for services covered under the contract.

"Service area" means the geographic area in which the contractor is obligated to provide covered services for its Medicaid enrollees under its contract.

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"Stop-loss" means a limit to financial liability of the contractor for services provided under a risk contract. The need, applicability and amount of a stop-loss are negotiable and specified in the contract.

"Subcontract" means any written agreement between the contractor and a third party to perform a specified part of the contractor's obligations under the contract.

"Subcontractor" means any third party who has a written agreement with the contractor to perform a specified part of the contractor's obligations, and is subject to the same terms, rights, and duties as the contractor.

"Target population" means the population from which the initial number of enrollees, not to exceed any limit specified in the contract, will be drawn, that is, individuals eligible for Medicaid residing within the stated market area and belonging to one of the categories of eligibility for Medicaid to be covered under the contract.

"Termination" means the loss of Medicaid eligibility and therefore automatic disenrollment from the HMO if beyond the guaranteed eligibility period.

10:49-10.2 Criteria for contracting with the Department

(a) In contracting with the Department, the contractor shall:

1. Comply with the requirements of the New Jersey certificate of authority (N.J.S.A. 26:2J-1 et seq.) statutes and regulations;

2. Provide to the Division of Medical Assistance and Health Services, Department of Human Services, a copy of the Department of Health approved Certificate of Authority and application document on request;

3. Furnish the Department with such information and reports that the Department finds necessary and maintain records as required by the Department, State and Federal Governments pursuant to N.J.S.A. 30:4D-12.

4. Enroll individuals and provide services without reference to race, sex, age, religion, creed, color, national origin, ancestry or on the basis of health status or need for health services other than those services specifically excluded from coverage by the contract;

5. Comply with the requirement of having any contract resulting from a proposal be approved by the Health Care Financing Administration (HCFA) and the appropriate State control agencies before it shall become effective;

6. Have the organizational and administrative capabilities to carry out its duties and responsibilities under the contract, which shall include, at a minimum, the following:

i. A full time administrator to manage day-to-day business activities of the contractor and who is the responsible contract officer; this does not require a full time administrator to be dedicated solely to the Medicaid contract.

ii. Data reporting capabilities sufficient to provide necessary reports and to assure orderly and timely flow of reports to the Department;

iii. Financial records and books of accounts maintained in accordance with generally accepted accounting principles which are sufficient to disclose fully the disposition of all program funds received; and

iv. An annual independent audit arranged for by the contractor and which is performed by a certified public accountant;

7. Advise the Department of its administrative organization and changes thereto. This includes the functions and responsibilities of each principal, an organizational chart and list of all personnel and providers used either directly by the contractor or through subcontractural arrangements. For each principal and each provider, not previously reported, the following information shall be included:

i. Full name;

ii. Business address;

iii. Date of birth;

iv. Social Security Number;

v. IRS employer number;

vi. Professional license number (when applicable); and

vii. Medical specialty (when applicable);

8. Comply with eligibility requirements of the program which include, but are not limited to, for example, that the contractor shall only enroll individuals who are covered under specified Medicaid categories of assistance and who reside in the agreed upon market area;

9. Identify and provide financial disclosure of subcontractors with whom it has had business transactions in excess of $25,000 per year, and any significant business transactions with such subcontractors. Transactions that shall be reported include:

i. Any sale, exchange or leasing of property;

ii. Any furnishing for consideration of goods, services or facilities (but not employee salaries); and

iii. Any loans or extensions of credit;

10. Make available, upon request, any information reported to the State to the secretary of the Department of Health and Human Services, the Office of the Inspector General, the Comptroller General and to its enrollees. The State or Secretary may request that the information be in the form of a consolidated financial statement;

11. Disclose to the Division the identity of each person with a controlling interest or ownership of five percent or more; and

12. Not employ or contract with:

i. Any individual or entity excluded from Medicaid participation under sections 1128 or 1128A of the Social Security Act for the provision of health care, utilization review, medical social work, or administrative services; or

ii. Any entity for the provision of such services (directly or indirectly) through an excluded individual or entity.

(b) The contractor shall also comply with the Federal regulations governing HMOs or PHPs, as currently exist or hereinafter may be amended. The Federal regulations governing prepaid health care services may be found in the Code of Federal Regulations at 42 CFR 434 and 42 CFR 110.

10:49-10.3 Benefits

(a) The following concern the scope of benefits:

1. The Division shall be responsible for providing all noncovered HMO services that are Medicaid benefits to Medicaid enrollees. This means that any service or item normally provided under the New Jersey Medicaid Program shall be provided to enrollees if it is not covered under the terms of the contract with the HMO or PHP. The same limitations, such as prior authorization and medical necessity, are still applicable for Medicaid services provided outside the contract.

2. The benefits available under a nonrisk contract are those services and/or items that are specified in the contract.

3. The benefits available under a risk contract are those services and/or items that are specified in the contract.

4. Pursuant to Federal regulations (42 CFR 434.21), risk comprehensive contracts are risk contracts for furnishing comprehensive services, which shall include inpatient hospital services and any of the following services, or any three or more of the following services or groups of services:

i. Outpatient hospital services;

ii. Other laboratory and x-ray services;

iii. Covered long-term care services provided in nursing facilities, early and periodic screening, diagnosis and treatment (EPSDT), and family planning;

iv. Physicians' services;

v. Home Health services.

(b) The following concern the responsibilities of the contractor:

1. The contractor shall make available emergency services as defined in N.J.A.C. 10:49-10.1 on a 24-hour-a-day, seven-day-a-week basis.

2. The contractor shall offer health education services as an integral part of its health care delivery system to its enrollees in order to assure appropriate use of health care services and to promote the maintenance of health.

3. The contractor shall provide EPSDT equivalent services for all Medicaid enrollees under 21 years of age in accordance with the protocols approved by the Division. Initial physical examinations shall be provided. All further treatments indicated shall be provided in an appropriate and timely manner and shall be appropriately

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documented as specified by EPSDT requirements. The above shall be in accordance with EPDST regulations (42 C.F.R. 440.40(b); N.J.S.A. 30:4D-6a(4)b and N.J.A.C. 10:49-1.4(a)5.)

i. The Division shall monitor the EPSDT equivalent services through periodic audits.

4. The contractor shall provide or arrange to have provided all covered necessary health care services in a manner that is prompt, appropriate, and of a quality that conforms to generally acceptable professional standards as set forth in the Social Security Act, 42 U.S.C. 1302 et seq., and all other applicable Federal and State laws.

(c) The following service limitations in an HMO setting are consistent with those of the fee-for-service Medicaid program and are not included in the contractural service package or capitation payments even if provided by the HMO:

1. Services of podiatrists shall be provided with the exceptions of routine foot care and treatment of flat foot conditions, unless medical necessity determines otherwise.

2. Psychologists must be licensed and practice in the State of New Jersey.

3. Physical therapy, occupational therapy, and treatment for speech, language or hearing disorders are provided but limited to such services when provided to an enrollee by a nursing facility, by an approved home health agency, hospital outpatient department, independent outpatient clinic, or at contractor's facilities. Services provided by privately practicing therapists will not be eligible for payment under the capitation rate unless:

i. The physical therapist holds a current license to practice in New Jersey;

ii. The physical therapist is under contract with the contractor and will abide by the provisions of the contract; and

iii. The costs of these services are specifically identified in the contractor's proposed capitation rate.

4. Abortions are not covered under an HMO program but will continue to be paid on a fee-for-service basis by the Medicaid Program.

(d) The following are exclusions and are not covered services:

1. All claims arising directly or indirectly from services provided by or in institutions owned or operated by the Federal government;

2. Elective cosmetic surgery;

3. Rest cures and custodial or domiciliary care;

4. Personal comfort and convenience items; services and supplies not directly related to the care of the patient, including, but not limited to, guest meals and accommodations, telephone charges, travel expenses other than those services which may be specifically covered under the contract (such as ambulance services), take-home supplies and similar costs;

5. Services involving the use of equipment in facilities, the purchase, rental or construction of which has not been approved by applicable laws of the State of New Jersey and rules issued pursuant thereto;

6. All services not provided, approved or arranged by the HMO physician except in emergency situations as defined in N.J.A.C. 10:49-10.1;

7. Services provided in an inpatient psychiatric hospital that is not an acute care hospital to individuals under 65 years of age and over 21 years of age; and

8. Private duty nursing.

(e) The following concern the availability of services:

1. Each contractor shall demonstrate the availability and accessibility of sufficient numbers of institutional facilities and professional, allied and supporting paramedical personnel to perform adequately the agreed-upon services.

2. Each contractor shall insure that no distinctions will be made with regard to quality of service or availability of benefits between Medicaid enrollees under this subchapter and any other parties served by the contractor.

3. To the extent feasible and appropriate, each Medicaid enrollee shall be given the choice of a primary care physician who will supervise and coordinate his or her care.

4. Generally, the contractor must have only one market area for all Medicaid parties served, including those served under this subchapter. Modifications of such market area for purposes of contracting under this subchapter shall be subject to approval by the Division.

10:49-10.4 Marketing and enrollment

(a) The following concern marketing by the contractor:

1. The contractor shall obtain written approval from the Division prior to implementing the following:

i. The form and content of informational and instructional materials to be distributed to Medicaid enrollees, outlining the scope and nature of benefits provided by the contractor;

ii. The form and content of informational and instructional materials to be distributed to inform Medicaid enrollees of changes in program scope or administration; and

iii. The form and content of all public information releases pertaining to the enrollment of Medicaid individuals in the contractor's plan.

2. The contractor shall insure that:

i. All marketing presentations accurately and clearly represent the benefits and limitations of the contractor's plan;

ii. The marketing representatives have received sufficient instructions and training to be capable of performing such marketing activities;

iii. The marketing representatives shall only represent themselves as agents of the contractor involved in marketing;

iv. All marketing presentations make clear that HMO enrollment is voluntary; and

v. The marketing representatives are prohibited from offering or giving any form of compensation or reward as an inducement to a Medicaid recipient to enroll in the contractor's plan.

(b) The following concern information to members:

1. At such time as a Medicaid recipient signs an enrollment application of an HMO or prepaid health plan, the contractor shall inform the eligible that:

i. There is normally a minimum 30 to 45-day processing period between the date of application and the effective date of enrollment;

ii. During this interim period, the Medicaid enrollee may continue to receive health care services under his or her current arrangement as long as he or she retains Medicaid eligibility; and

iii. Subject to the disenrollment provisions specified in (d) below and the termination provisions in the contract between the contractor and the Department, enrollment is for a period of six months at a time.

2. Within 10 days after the effective date of coverage, or as specified in the contract, the contractor shall provide in writing to a new enrollee:

i. Notification of his or her effective date of enrollment;

ii. An identification card clearly indicating that the bearer is an enrollee in the HMO or prepaid health plan;

iii. Specific written details on benefits, limitations, exclusions, and availability and location of services and facilities. Thereafter, such notification shall be provided at least annually;

iv. An explanation of the procedure for obtaining benefits including the address and telephone number of primary care physicians, the hours and days facilities are open, and accepted appointment procedures;

v. Information regarding continued enrollment in the contractor's plan including patient's rights and patient's responsibilities, and the reasons a person may lose eligibility for the plan and what should be done if this occurs;

vi. Procedures for resolving complaints;

vii. Information giving reasons and procedures for disenrollment;

viii. Any other information essential to the proper use of the plan as may be required by the Division;

ix. An explanation of where and how 24-hour-a-day emergency medical care and out-of-area coverage is available; and

x. An explanation of how to obtain non-covered HMO services that are Medicaid benefits.

3. Information as required by (b)2 above shall be supplied whenever there are significant changes in the services provided or the locations where they can be obtained, or other changes in program

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nature and administration. Such information shall be provided to each enrolled family household at least 10 days prior to such change.

(c) The following concern enrollment:

1. The contractor shall enroll Medicaid recipients in the order in which they apply, without restrictions, up to contract limits.

2. Enrollment shall be accomplished by the individual's voluntary signing of an enrollment application agreeing to utilize only the health care services provided or arranged by the contractor.

3. Enrollment shall be for the entire Medicaid case (family household). The contractor shall not enroll a partial case except at the Director's discretion.

4. Enrollment shall be for periods of six months and in accordance with Federal statute, Section 1903(m)(2)(F) of the Social Security Act with the exceptions indicated in (d) below. This fact shall be clearly stated on the enrollment application.

5. At any time during the first 30 days of each six-month enrollment period, the enrollee may elect to disenroll from the contractor's plan, upon written notification to the contractor, without stating a cause and with cause thereafter. The contractor may terminate an enrollee's enrollment for reasonable cause through a grievance process which is consistent with applicable State and Federal regulations and is approved by the Division.

6. The contractor shall obtain written approval from the Director prior to implementing a method of enrollment and enrollment forms to be used to enroll Medicaid recipients.

7. For any person who applies for participation in the plan and who is hospitalized at the time this coverage would become effective, such coverage shall not commence until the date such person is discharged from the hospital.

(d) The following concern disenrollment:

1. Disenrollment of an enrollee from the plan will occur:

i. Whenever the enrollee is no longer qualified to receive Medicaid services, unless otherwise specified in the contract;

ii. Whenever the enrollee moves outside of the market area boundaries;

iii. Whenever the contract between the Department and the contractor is terminated; or

iv. Through formal grievance.

2. Provision shall also be made for an enrollee's voluntary disenrollment from the contractor's plan in accordance with Section 1903(m)(2)(F) of the Social Security Act.

3. Until such time as the enrollee's termination of coverage becomes effective, the contractor shall remain liable for all contracted services. If an enrollee is hospitalized at the time of disenrollment or termination, the contractor shall be liable for all inpatient hospital charges (if a contracted service).

10:49-10.5 Medical records; peer review; quality assurance

(a) The following concern medical records:

1. Each contractor shall maintain a medical record on each enrollee who has received medical services while enrolled in the contractor's plan.

2. Each enrollee's medical records shall be kept in detail consistent with Federal and State requirements and good medical and professional practice based on the service provided. Furthermore, each contractor shall conform to the standards of confidentiality of information mandated for Federal and State officials (Section 1902(a)(7) of the Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g) and N.J.A.C. 10:49-1.22).

3. Medical records of enrollees shall be sufficiently complete to permit subsequent peer review or medical audit. All required records, either originals or reproductions thereof, shall be maintained in legible form and readily available to appropriate Division professional staff upon request for review and evaluation by professional medical and nursing staff.

4. The contractor shall release medical records of enrollees, as may be directed by authorized personnel of the Division, appropriate agencies of the State of New Jersey or the U.S. Government and shall be consistent with the provisions of confidentiality (Section 1902(a)(7) of the Social Security Act, 42 CFR 431.300 N.J.S.A. 30:4D-7(g) and N.J.A.C. 10:49-1.22).

5. All records shall be retained in accordance with the record retention requirements of 45 CFR Part 74 and appropriate State law.

6. The Division has the right to conduct audits according to appropriate Federal and State statutes and regulations.

(b) The following concern peer review:

1. Each contractor shall submit a description of its system of internal peer review to the Division for approval to assure the acceptable professional practice shall be followed by the contractor as well as its subcontractors.

2. There shall be an explanation of how such peer review procedures will relate to the applicable Peer Review Organization (PRO) or other utilization review organization should such exist.

3. The number of cases reviewed and summaries of the actions taken by the peer review system shall be reported annually to the Division.

(c) Quality assurance rules require that:

1. The Division and the Department of Health and Human Services shall have the right to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed under this contract in accordance with State (N.J.S.A. 30:4D-7s) and Federal (42 CFR 434-34) requirements.

2. The contractor shall offer assurances that all health care services required by each enrollee shall meet quality standards within the acceptable medical practice of care consistent with the medical community standards of care.

3. The contractor shall submit a detailed plan for establishing and maintaining an internal quality assurance system to the Division for approval to assure that acceptable professional practice will be followed by the organization and its subcontractors. This shall include a proposed system for continuing performance review and health care evaluation, that is, an explanation of the methods which the contractor proposes to follow in guaranteeing that the services provided each enrollee will meet criteria required by appropriate Federal regulations (42 CFR 434.34).

4. The contractor shall agree to medical audits relating to its standard of medical practice and the quality, appropriateness and timeliness of health care services provided all enrollees, as may be required by the Division. The medical audit shall include, at a minimum, the review of:

i. The delivery system for patient care;

ii. Utilization data and medical evaluation of care provided and patient outcomes for specific enrollees as well as for a statistical representative sample of enrollee records;

iii. The peer review system and reports; and

iv. The grievances relating to medical care including their disposition.

5. The results of the medical audits may be disclosed to the public on a need-to-know basis by the State, consistent with State and Federal law.

6. The contractor shall agree to release the comprehensive medical records of enrollees upon termination of their coverage, as may be directed by the enrollee, authorized personnel of the Division, appropriate agencies of the State of New Jersey, or the United States Government.

10:49-10.6 Grievance procedure

(a) The contractor shall establish a grievance procedure for the receipt and adjudication of any and all complaints from enrollees relating to quality, scope, nature and delivery of services. Such grievance procedures shall be communicated to the enrollee in writing to provide for expeditious resolution of grievances by the contractor's personnel at a decision-making level with authority to require corrective action. The contractor shall also review the complaint procedure at reasonable intervals, but no less than annually, for the purpose of amending same, with the prior written approval of the Division in order to improve said system and procedure.

(b) The contractor shall insure that all enrollees receiving services funded under Title XIX of the Social Security Act shall be informed in a simple, brief statement of their rights to a fair hearing (10:49-5.1) and of the contractor's grievance review procedures. This may be

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accomplished by an annual mailing, a member handbook, or any other method approved by the Division.

(c) The contractor shall report all completed grievances to the Division with a brief statement of the problem and resulting outcome on a quarterly basis.

10:49-10.7 Financial arrangements

(a) The contractor shall submit for Division approval information in sufficient detail to describe:

1. The exact capitation rate requested for each category of medical assistance covered under the contract;

2. The major cost components that constitute each capitation rate, including at a minimum the projected costs of hospital services, physician services, administration, and other components as approved by the Division; and

3. A detailed description of the underlying assumptions and procedures followed by the contractor in determining its rate.

(b) The annual capitation rate for any contractor may not exceed the expected per capita, fee-for-service cost for similar services provided to an actuarially equivalent non-enrolled population who reside in the contractor's market area.

(c) Capitation rates shall be subject to negotiation before the contract renewal, but shall not be revised more often than annually.

(d) Any capitation rate paid to the contractor shall not include payment for recoupment of losses incurred by the contractor from prior years.

(e) A stop loss provision may be made available for risk contracts as determined appropriate by the Division, the amount of which would be specified in the contract.

(f) The contractor is responsible for payment of all contracted covered services, including emergency services as defined in the contract, rendered to an enrollee whether or not such services are provided at the contractor's facilities.

(g) The contractor shall make available to the Division for inspection and audit any financial records of the contractor or its subcontractors in accordance with 42 CFR 434.38.

(h) If third party liability exists for an enrollee, for example, by health insurance contract, subrogation or tort, the Division shall require the contractor to recover, or attempt to recover, all appropriate payments from any and all liable third party sources for services rendered to enrollees. Likewise, the Division shall require that the contractor use its best efforts to insure that its subcontractors utilize these same payment sources.

1. It is the contractor's responsibility to recover monies from liable third parties and any monies so recovered are the property of the contractor.

2. The contractor shall include in its periodic reporting to the Division a complete disclosure demonstrating its efforts to obtain payment from liable third parties and of the amount and nature of third party payments recovered for Title XIX enrollees, including, but not limited to, services and conditions which are:

i. Employment-related injuries or illnesses;

ii. Related to motor vehicle accidents, whether injured as pedestrians, drivers, passengers or bicyclists; and

iii. Contained in Diagnosis Codes 800 through 999 (ICD-9-CM) with the exception of Code 994.6 (see International Classification of Diseases. 9th ed.).

3. The Division will thereafter pursue a policy of deducting an amount actuarially determined to be representative of the availability of third party coverage from the capitation rate, unless the capitation rate already includes an allowance for the recovery of third party payments.

10:49-10.8 Capitation payments to contractors

(a) For Medicaid enrollees enrolled in accordance with N.J.A.C. 10:49-10.4(c)2, the Division will pay the capitation rate no later than the 15th day of the month in which that individual will be eligible to receive services.

(b) The Division shall make monthly payments to the contractor based upon the total number of certified enrollees and negotiated capitation rate(s).

10:49-10.9 General reporting requirements

(a) Each contractor shall furnish such timely information and reports as the Division may find necessary or may require. Such reports shall include information sufficient for Division management and evaluation purposes in at least the following areas:

1. Marketing and enrollment performance;

2. Enrollee identification data, such as age, sex, and residence;

3. Utilization data for covered services provided under the contract;

4. Financial data; and

5. Third-party payment recoveries for enrollees.

(b) The contractor shall submit to the Division at least annually information specified by the Division on non-Medicaid enrollees for purposes of comparative analyses of services use and cost patterns.

(c) Each contractor shall maintain records in accordance with 45 CFR 74 and make available to authorized personnel of the Division all records created pursuant to the contracts entered into under this subchapter.

(d) All significant changes that may affect the contractor's performance under the contract shall be immediately reported to the Division.

(e) The contractor, with the prior written approval of the Division as to form and content, shall arrange for the distribution of informational materials to all subcontractors providing services to enrollees, outlining the nature, scope and contract requirements.

10:49-10.10 Contract sanctions

(a) If the Division finds that a contractor fails to comply with any of the appropriate laws, regulations or terms of the contract, or for other good cause, the Division may impose one or all of the following:

1. A letter of admonishment to the contractor indicating that continued violations may lead to the imposition of sanctions listed in (a)2, 3 or 4 below;

2. A suspension of further enrollments and one or more marketing activities;

3. A withholding of all or part of the capitation payments; and/or

4. Termination of the contract.

(b) The Division shall give reasonable written notice of its intention to impose sanctions to the contractor, and, if necessary as determined by the Division, to enrollees and others who may be directly interested. Such written notice shall state the effective date of, and the reason for, the sanctions.

(c) The contractor or Division shall have the right to terminate the contract with at least 90 days' written notice to the other party, or as otherwise stated in the contract.

(d) Pursuant to Section 1903(m)(5)(A) of the Social Security Act, codified as 42 U.S.C. 1396b, the Secretary of the Department of Health and Human Services may impose substantial civil money penalties on the contractor if:

1. It has failed to substantially provide required medically necessary items and services if that failure has adversely affected the enrollees or has substantial likelihood of adversely affecting the enrollees;

2. It imposes premiums on enrollees in excess of the premiums allowed by law;

3. It discriminates among enrollees on the basis of their health status or requirements for health care services by expulsion or refusal to re-enroll an enrollee or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment by eligible persons whose medical condition or history indicates a need for substantial future medical services; or

4. It misrepresents or falsifies information that is furnished to (a) the Secretary or the State or (b) to any person or to any other entity under this subsection.

(e) The Secretary may provide, in addition to any other remedies available under law, for any of the following remedies:

1. Civil money penalties of not more than $25,000 for each determination under (d) above, or, with respect to a determination under (d)3 or (d)4a above, of not more than $100,000 for each such determination, plus, with respect to a determination under (d)2

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above, double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and, plus, with respect to a determination under (d)3 above, $15,000 for each individual not enrolled as a result of a practice described in such paragraph.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage

Adopted Amendments: N.J.A.C. 11:3-29.2, 11:3-29.4 and 11:3-29.6

Proposed: November 4, 1991 at 23 N.J.R. 3203(a).
Adopted: March 16, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: March 17, 1992 as R.1992 d.170, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:6A-4.6.

Effective Date: April 6, 1992.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
The Department received a total of 32 written responses from physical therapists, chiropractors, physicians and surgeons, nurses, radiologists, medical equipment suppliers, lawyers, insurers and claim review services; and agencies, associations and societies that represent these varied interests. Many of the comments that follow reflect concerns that were expressed by more than one commenter. A list of the commmenters follows:

New Jersey Chapter American Physical Therapy Association
Bay-Sea Physical Therapy
Mark Friedman, M.D., P.A.
Princeton Physical Therapy Center, P.C.
Shore Orthopedic and Athletic Rehabilitation, P.A.
Wayne Physical Therapy Center
New Jersey Chiropractic Society
Charschan Chiropractic and Sports Injury Center
Chiropractic Alliance of New Jersey
Essex County Medical Society
New Jersey Chapter of the American College of Surgeons
E. Robert Wilson, M.D., F.A.C.S., P.A.
Medical Society of New Jersey
New Jersey State Nurses Association
Nursing Service Associates
Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Goldstone
Gilbert S. Melnick, M.D., FACR
Associated Radiologists, P.A.
Jersey Association of Medical Equipment Suppliers
Allcare Surgical
C-Hap Corporation
Major Medical Supply Company
Mount Holly Surgical Supply
The American Insurance Association
Baker, Garber, Duffy and Pedersen
Motor Club of America Insurance Company
The Prudential Property and Casualty Insurance Company of New Jersey
Selective Insurance Company of America
Market Transition Facility of New Jersey
Computer Sciences Corporation
New Jersey Automobile Full Insurance Underwriting Association
State Farm Insurance Companies

COMMENT: Our understanding is that the multiple procedures rules set forth in N.J.A.C. 11:3-29.4(f)1 would apply in the case of physiotherapy type services where there are multiple procedures performed on the same patient by the same provider during the same medical visit. However, the reference to specific body parts in N.J.A.C. 11:3-29.4(f)2 would only apply to surgical procedures and not to nonsurgical services provided during the same visit notwithstanding the fact that they are performed on different parts of the body.

RESPONSE: The stated "understanding" is correct. The multiple procedures reduction formula of 100-50-25 percent is intended to apply to surgical and nonsurgical procedures and services alike including physiotherapy type services. Language has been added to the last sentence of N.J.A.C. 11:3-29.4(f)2 to clarify that the body parts language is not applicable to nonsurgical or physiotherapy type services or procedures except as a means of describing the treatment rendered. Thus, 100 percent reimbursement should not be expected by the provider for two or more services or procedures simply because two or more body parts or body regions are treated. However, physiotherapy providers should continue to refer to specific body parts or regions as a means of describing their services. The Department considers reference to body regions or body parts to be synonymous.

COMMENT: A technical change is needed in the first sentence of N.J.A.C. 11:3-29.4(f)1. The first sentence adds the phrase "or during the same medical visit." The word "medical" is unneeded and could be construed as exempting chiropractors and other nonmedical doctor providers from this regulation. Chiropractors often insist that they are **not** medical doctors and they may argue that a chiropractic visit during which multiple procedures are performed is a "chiropractic visit"; not a "medical visit" and therefore not subject to N.J.A.C. 11:3-29.4(f)1.

RESPONSE: The Department agrees. The word "medical" has been removed from the first sentence of paragraph (f)1 and also from paragraph (f)3. For the same reason, the Department had proposed removal of the word "operative" from the second sentence of N.J.A.C. 11:3-29.4(f)1 because the multiple procedures language including the reduction formula is intended to apply to surgical and nonsurgical or physiotherapy type providers alike.

COMMENT: The reference in N.J.A.C. 11:3-29.4(f)2 to "different body regions" should be changed to "non-contiguous body regions." Surgical procedures often encompass two regions, such as chest and abdomen, but through the same incision. Conversely, in cases where there are two incisions, they should be reimbursed at 100 percent each, whether on the same body part or not.

RESPONSE: The Department believes that the present language is sufficient even though it agrees that, from time to time, varying situations will arise where two body parts or body regions may be treated through the same incision or one body part or region may be subject to two or more separate procedures through two or more separate incisions. For this reason, the Department has emphasized that reference to specific body parts or regions is included "as a guideline" recognizing that, from time to time, there will be exceptions to which insurers and providers alike will be expected to reasonably adjust.

COMMENT: Most insurance companies follow the 100-50-50 percent rule rather than the New Jersey approach of 100-50-25 percent where the third procedure is reimbursed at 25 percent—considerably less than the usual fee. This encourages multiple admissions. It creates financial disincentive to take care of everything at the same time.

RESPONSE: The Department believes that the 100-50-25 percent reduction formula is fair and will be effective in reasonably containing personal injury protection (PIP) medical expenses incurred by auto accident victims in New Jersey.

COMMENT: Some physical therapy providers obviously misunderstood the proposal when they concluded that they would not be reimbursed at all, in cases involving multiple procedures, beyond the principal procedure.

RESPONSE: The Department's intention is that all providers, including providers of physiotherapy type services, will be subject to the multiple procedures reduction formula of 100-50-25 percent as set forth in N.J.A.C. 11:3-29.4(f)1.

COMMENT: We understand the proposed revisions relating to multiple procedures to mean that billings for multiple procedures for the same patient during the same visit would be unbundled without reference to body regions. For example, a provider renders treatment to the back, right elbow and the right knee; such treatment including nine modalities. This would be reimbursed in the following manner: 100 percent of the principal (or most expensive) modality, 50 percent of the second most expensive modality and 25 percent of the remaining seven modalities.

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RESPONSE: The Department generally agrees. However, the principal procedure may or may not be the most expensive. CPT coding guidelines require that the principal procedure be listed first.

COMMENT: N.J.A.C. 11:3-29.4(f)3, which remains unchanged from its original wording, may allow individual insurers to establish their own "reasonable and appropriate fees" when multiple services or procedures are billed for less than the amounts set forth in the fee schedule. We understand that the fees set forth in the fee schedule were based on a review of charges submitted to major insurers. It is not reasonable to allow individual insurers to set their own limits as to what is reasonable and customary. To do so would allow for wide variations in reimbursement based on arbitrary standards.

RESPONSE: The medical fee schedules establish upper limits based on an evaluation of "the reasonable and prevailing fees of 75 percent of the practitioners within the region" which, in most instances, will exceed the usual, customary and reasonable fee of a particular provider. The provider's billing should be based on his or her usual, customary and reasonable fee for the service or procedure provided—not on the uper limit shown in the fee schedule unless that upper limit happens to coincide with the usual, customary and reasonable fee. The provider, in submitting the billings, makes the initial determination as to what his or her usual, customary and reasonable fee is. It is incumbent upon the insurer, based on its experience with the particular provider or other providers in the region, to determine whether, in fact, the usual, customary and reasonable fee has been billed. The effectiveness of the medical fee schedules in reducing the cost of auto insurance in New Jersey is dependent upon adherence by insurers to this review process. The Department believes it is unnecessary to make any changes to the language of paragraph (f)3 other than deletion of the word "medical" as previously explained.

COMMENT: We note that a new code (A0222) has been added to the fee schedule for Ambulance Services permitting a $125.00 charge for a return trip. This code, coupled with the ambulance emergency transport code (A0010), guarantees a minimum of $250.00 before mileage is added. This would seem to apply even in cases involving, for example, transport to an outpatient physical therapy facility. It is our recommendation that code A0010 be limited to emergency transport from the scene of an accident, etc., and that code A0222 be eliminated and replaced by a code for outpatient transportation. Such a code would reflect that it is without life support and not emergency-based. The charge might be $50.00 each way with an allowance of $5.00 per mile to and from the treatment center.

RESPONSE: The issue here should not be the level of reimbursement but whether the level of transportation used was medically necessary. If ambulance services are medically necessary to transport the patient, the maximums listed in the fee schedule would be applicable. If, however, the patient's condition does not warrant that level of transportation, these maximums would not apply despite the fact that the transportation may have been provided by an ambulance. Expenses for other levels of transportation, to the extent they are medically necessary, should be reimbursed on a usual, customary and reasonable basis. The Department has added the word "patient" to the description of code A0222 to clarify that this fee is not permitted unless the patient is transported.

COMMENT: With regard to the proposed changes in the Medical Fee Schedule for durable medical equipment and prosthetic devices, we are opposed to establishing any fees that mirror Medicare. Such fees create a problem for the supplier community in that it is currently using selectivity practices. The current fees listed in the proposal would make many of the items unavailable. A number of suppliers in New Jersey are no longer accepting Medicare assignment on many items, and would also be unable to accept the PIP fees.

RESPONSE: With regard to Medicare fees, the provider has the option of accepting or not accepting the assignment. The New Jersey Medical Fee Schedule rules do not provide for that option. N.J.A.C. 11:3-29.4(a) provides that an auto insurer's limit of liability for medically necessary expenses payable under PIP coverage shall not exceed "the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's limit of liability as set forth in the fee schedules." The language prohibiting balance billing is set forth in the FAIR Act (N.J.S.A. 39:6A-4.6) and restated at N.J.A.C. 11:3-39.5 as follows:

"No health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules."

The Department cannot support attempts by providers to evade the impact of these laws by refusing to accept assignment of insurance benefits in order that they may charge their customers in excess of the eligible charge as defined at N.J.A.C. 11:3-29.2.

COMMENT: An appropriate way to bill for physical therapy services is a flat rate with an increase dependent upon time that is required to treat the patient. My billing procedure has always been based on a flat fee which is presently $65.00 per treatment no matter what the patient receives, with an extended visit billing if the treatment exceeds one hour of time. That fee is one-half the base fee which would be $33.00. The new PIP fee schedule has forced physical therapists into billing by modality which has driven up the cost to the third party carriers and the consumers of health care in New Jersey.

RESPONSE: The Department intends to propose a new time-based fee schedule which would apply to physiotherapy type services to which the present physician's fee schedule would no longer be applicable. In the meantime, physical therapists may continue to bill (and insurers reimburse) on the basis of a flat fee as long as the nature of the services are adequately described and the fee accurately reflects the eligible charge.

COMMENT: At N.J.A.C. 11:3-29.4(e), the medical fee schedule rules state that for services and equipment not on the schedule, the limit of PIP liability is a reasonable amount considering the fee schedule for similar services or equipment in the region. The reality experienced by most providers is that if the procedure is not listed, it is not being reimbursed.

RESPONSE: The Department disagrees. Although there have been problems with respect to services or equipment not on the schedules, the frequency of such problems has decreased as familiarity with the fee schedule rules has increased. There are literally hundreds of codes that are not included in the New Jersey Medical Fee Schedules, so it is important that insurers and providers alike understand the rules that apply in such instances. In addition to the "similar services or equipment" guideline stated above, subsection (e) provides that "where the fee schedule does not contain a reference to similar services or equipment . . ., the insurer's limit of liability . . . for any service or equipment not set forth in the fee schedules shall not exceed the usual, customary and reasonable fee."

COMMENT: Should the multiple procedures reduction formula of 100-50-25 percent be applied to charges for diagnostic testing procedures such as x-rays, MRIs and thermograms?

RESPONSE: No. Nor should the reduction formula be applied to office visit or consultation charges. In all of these instances, standards relating to medical necessity should be applied and reimbursement should be consistent with the definition of "eligible charge" at N.J.A.C. 11:3-29.2. For purposes of clarification, the Department has added the word "treatment" to the multiple procedures reference at N.J.A.C. 11:3-29.4(f).

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

11:3-29.2 Definitions

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

. . .

"Eligible charge" means the provider's usual, customary and reasonable charge or the upper limit on the fee schedule, whichever is lower.

11:3-29.4 Application of Medical Fee Schedules

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

(f) The following shall apply to multiple ***treatment*** procedures:

1. When multiple procedures are performed on the same patient by the same provider at the same time or during the same *[medical]* visit, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principle procedure at a single session shall be paid at 100 percent of the eligible charge, the second procedure at no more than 50 percent of the upper limit on the fee schedule for that particular procedure, and if performed, any additional procedures at no more than 25 percent of the upper limits on the fee schedule for those particular procedures. If the total amount resulting from application of the multiple procedures reduction formula is in excess of the total

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amount of the billing, the billing may be submitted and paid without change assuming it is not in excess of usual, customary and reasonable charges for the services provided. If the total amount is less than the total amount of the billing, then the total amount of the billing must be reduced accordingly. When appropriate, providers may apply this multiple procedures reduction formula in the process of preparing their billings, clearly indicating that this has been done.

2. If two or more providers in different specialties perform procedures or if one provider performs multiple procedures on different body ***parts or*** regions, each individual provider, or each individual body region ***or body part*** procedure may be reimbursed separately. For purposes of such billing, the body shall be divided into: head (including skull and brain); face; neck; chest; abdomen; back; and pelvic regions. In addition, the extremities shall be subdivided into right and left: upper arm, elbow, forearm, wrist and hand; and thigh, knee, lower leg, ankle and foot. This reference to specific body parts ***or regions*** is included as a guideline to be used in billings for operative and surgical procedures. It is not intended to apply to nor should it be used in connection with billings submitted for nonsurgical ***or physiotherapy type*** services provided during the same visit ***except as a means of describing the treatment rendered***.

3. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same *[medical]* visit.

(g) (No change.)

11:3-29.6 Medical Fee Schedules

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

(d) The following is the Medical Fee Schedule for ambulance services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE

AMBULANCE SERVICES

Code	Description	Fee
A0010	Ambulance service basic life support (BLS, base rate, emergency transport, one way	125.00
A0020	Ambulance service (BLS) per mile transport, one way	5.00
A0070	Ambulance service, oxygen administration and supplies life sustaining situation	30.00
Z0224	Cardiac monitoring during an ambulance trip	50.00
A0222	Ambulance service transport, ***patient*** return trip	125.00

(e) The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES
CODES BEGINNING WITH "A"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQUIPMENT
A4214	Sterile saline or water, 30 cc vial	.81
A4310	Insertion tray without drainage bag and without catheter (accessories only)	6.61
A4311	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastometer, or hydrophilic, etc.)	8.34
A4312	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way, all silicone	8.34
A4313	Insertion tray without drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	8.34
A4314	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer, or hydrophilic, etc.)	15.46
A4315	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way, all silicone	15.46
A4316	Insertion tray with drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	15.46
A4320	Irrigation tray for bladder irrigation with bulb or piston syringe	5.00
A4322	Irrigation syringe, bulb or piston	2.50
A4323	Sterile saline irrigation solution, 1000 ml	8.00
A4328	Female external urinary collection device; pouch, each	10.00
A4329	External catheter starter set, male/female, includes catheter/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7 days supply	39.95
A4338	Indwelling catheter; Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer or hydrophilic, etc.)	8.14
A4340	Indwelling catheter; specialty type, (e.g., Coude, Mushroom, Wing, etc.)	10.00
A4344	Indwelling catheter, Foley type, two-way, all silicone	15.52
A4346	Indwelling catheter, Foley type, three-way, for continuous irrigation	10.34
A4347	Male external catheter with or without adhesive, with or without anti-reflux device; per dozen	17.29
A4351	Intermittent urinary catheter; straight tip	5.00
A4352	Intermittent urinary catheter; Coude (curved) tip	5.00
A4354	Insertion tray with drainage bag but without catheter	9.00
A4355	Irrigation tubing set for continuous bladder irrigation through a three-way indwelling Foley catheter	6.86
A4356	External urethral clamp or compression device (not to be used for catheter clamp)	37.03
A4357	Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube	7.94
A4358	Urinary leg bag; vinyl, with or without tube	7.12
A4359	Urinary suspensory; without leg bag	27.00
A4361	Ostomy faceplate	6.20
A4362	Skin barrier; solid, 4 × 4 or equivalent; each	5.03
A4363	Skin barrier; liquid (spray, brush, etc.) powder or paste; per oz.	4.07
A4364	Adhesive for ostomy or catheter; liquid (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.	4.58
A4367	Ostomy belt	6.98

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A4398	Irrigation supply, bags	2.25
A4399	Irrigation supply, cone/catheter	11.25
A4400	Ostomy irrigation set	24.61
A4402	Lubricant	1.08
A4404	Ostomy rings	1.22
A4555	Primary surgical dressing kit; e.g., sterile dressings, pads, etc.	8.00

HCPCS CODE	DESCRIPTION	FEE IF NEW	FEE IF USED	MONTHLY RENTAL
A4611	Battery, heavy duty; replacement for patient-owned ventilator	161.25	128.74	16.12
A4612	Battery cables; replacement for patient-owned ventilator	41.76	35.66	4.18
A4613	Battery charger; replacement for patient-owned ventilator	137.10	102.46	13.73
A4615	Cannula, nasal	7.50	—	—
A4616	Tubing (oxygen), per foot	1.00	—	—
A4617	Mouth piece	5.00	—	—
A4618	Breathing circuits	8.60	7.78	.86
A4619	Face tent	10.00	—	—
A4620	Variable concentration mask	10.00	—	—
A4621	Tracheotomy mask or collar	10.17	—	—
A4622	Tracheostomy or laryngectomy tube	75.00	—	—
A4623	Tracheostomy, inner cannula (replacement only)	6.00	—	—
A4624	Tracheal suction catheter, any type, each	2.00	—	—
A4625	Tracheostomy care or cleaning starter kit	8.00	—	—
A4626	Tracheostomy cleaning brush, each	3.00	—	—
A4630	Replacement batteries. Medically necessary T.E.N.S. owned by patient	2.84	—	—
A4631	Replacement batteries for medically necessary electronic wheelchair owned by patient	76.15	57.04	7.62
A4635	Underarm pad, crutch, replacement, each	9.40	6.36	.94
A4636	Replacement, handgrip, cane, crutch, or walker, each	2.83	1.90	.28
A4637	Replacement, tip, cane, crutch, walker, each	1.73	1.35	.17
A4640	Replacement pad for use with medically necessary alternating pressure pad owned by patient	47.73	32.85	4.77
A5051	Pouch, closed; with barrier attached (1 piece)	3.05	—	—
A5052	Pouch, closed; without barrier attached (1 piece)	3.05	—	—
A5053	Pouch, closed; for use on faceplate	3.05	—	—
A5054	Pouch, closed; for use on barrier with flange (2 piece)	3.05	—	—
A5055	Stoma cap	2.00	—	—
A5061	Pouch, drainable; with barrier attached (1 piece)	4.07	—	—
A5062	Pouch, drainable; without barrier attached (1 piece)	4.07	—	—
A5063	Pouch, drainable; for use on barrier with flange (2 piece system)	4.07	—	—
A5064	Pouch, drainable; with faceplate attached; plastic or rubber	4.07	—	—
A5065	Pouch, drainable; for use on faceplate; plastic or rubber	4.07	—	—
A5071	Pouch, urinary; with barrier attached (1 piece)	4.07	—	—
A5072	Pouch, urinary; without barrier attached (1 piece)	4.07	—	—
A5073	Pouch, urinary; for use on barrier with flange (2 piece)	4.07	—	—
A5074	Pouch, urinary; with faceplate attached; plastic or rubber	4.07	—	—
A5075	Pouch, urinary; for use on faceplate; plastic or rubber	4.07	—	—
A5081	Continent device; plug for continent stoma	3.50	—	—
A5082	Continent device; catheter for continent stoma	11.00	—	—
A5093	Ostomy accessory; convex insert	1.65	—	—
A5102	Bedside drainage bottle, rigid or expandable	28.00	—	—
A5105	Urinary suspensory; with leg bag, with or without tube	31.90	—	—
A5112	Urinary leg bag; latex	7.12	—	—
A5113	Leg strap; latex, per set	4.00	—	—
A5114	Leg strap; foam or fabric, per set	8.95	—	—
A5119	Skin barrier; wipes, box per 50	9.50	—	—
A5121	Skin barrier; solid, 6 × 6 or equivalent, each	5.03	—	—
A5122	Skin barrier; solid, 8 × 8 or equivalent, each	5.03	—	—
A5123	Skin barrier; with flange (solid, flexible or accordian), any size, each	6.00	—	—
A5126	Adhesive; disc or foam pad	1.25	—	—
A5131	Appliance cleaner, incontinence and ostomy appliances, per 16 oz.	16.25	—	—

CODES BEGINNING WITH "E"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	FEE FOR USED EQPT	MONTHLY RENTAL
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	15.37	11.59	1.54
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	39.48	28.92	3.95
E0110	Crutches forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tips and handgrips	57.92	43.43	5.79
E0111	Crutch forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrip	59.61	42.05	5.96

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E0112	Crutches underarm, wood, adjustable or fixed, pair, with pads, tips and handgrips	41.64	31.68	4.16
E0113	Crutch underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	21.63	13.44	2.16
E0114	Crutches underarm, aluminum, adjustable or fixed, pair with pads, tips and handgrips	59.27	43.32	5.93
E0116	Crutch underarm, aluminum, adjustable or fixed, each, with pad, tip and handgrip	20.43	14.09	2.04
E0130	Walker, rigid (pickup), adjustable or fixed height	54.88	41.92	5.49
E0135	Walker, folding (pickup), adjustable or fixed height	59.43	43.76	5.94
E0141	Walker, wheeled, without seat	95.86	70.21	9.59
E0142	Rigid walker, wheeled, with seat	284.42	204.18	26.37
E0143	Folding walker, wheeled, without seat	105.41	76.83	10.54
E0145	Walker, wheeled, with seat and crutch attachments	176.60	132.45	15.29
E0146	Walker, wheeled, with seat	318.23	238.68	10.35
E0147	Heavy duty, multiple breaking system, variable wheel resistance walker	226.41	183.91	22.64
E0153	Platform attachment, forearm crutch, each	55.37	44.41	5.54
E0154	Platform attachment, walker, each	65.28	51.41	6.53
E0155	Wheel attachment, rigid pick-up walker attachments	25.18	20.28	2.52
E0156	Seat attachment, walker	21.09	14.71	2.11
E0157	Crutch attachment, walker, each	55.37	42.09	5.54
E0158	Leg extensions for a walker	29.64	23.09	2.96
E0160	Sitz type bath, portable, fits over commode seat	15.35	9.42	1.54
E0161	Sitz type bath, portable, fits over commode seat, with faucet attachments	47.93	28.59	4.68
E0163	Commode chair, stationary, with fixed arms	89.12	61.41	8.91
E0164	Commode chair, mobile, with fixed arms	186.36	76.25	18.64
E0165	Commode chair, stationary with detachable arms	181.01	163.74	14.45
E0166	Commode chair, mobile with detachable arms	265.35	199.00	20.15
E0167	Pail or pan for use with commode chair	10.06	7.64	1.01
E0175	Foot rest, for use with commode chair, each	63.63	33.51	4.49
E0176	Air pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0177	Water pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0178	Gel pressure pad or cushion, nonpositioning	88.62	66.47	8.86
E0179	Dry pressure pad or cushion, nonpositioning (e.g., Eggcrate)	88.62	66.47	8.86
E0180	Pressure pad, alternating with pump, light duty	240.44	187.93	21.04
E0181	Pressure pad, alternating with pump, heavy duty	263.73	188.25	22.74
E0182	Pump for alternating pressure pad	291.08	161.36	29.11
E0183	Flotation pad for wheelchair	88.62	66.47	8.86
E0184	Dry pressure mattress (e.g., Eggcrate)	150.70	61.64	15.07
E0185	Gel pressure pad for mattress	119.36	104.33	11.94
E0186	Air pressure mattress	250.82	210.71	25.08
E0187	Water pressure mattress	250.82	210.71	25.08
E0188	Synthetic sheepskin pad	22.03	14.70	2.20
E0189	Lambswool sheepskin pad, any size	27.94	19.10	2.79
E0190	Decubitus care mattress, includes flotation or gel mattress	250.82	210.71	25.08
E0191	Heel or elbow protector, each	10.20	7.13	1.02
E0192	Low pressure and positioning pad for wheelchair	316.39	237.26	31.64
E0193	Powered air flotation bed (low air loss therapy)	7377.14	5532.85	737.71
E0194	Air fluidized bed	31110.00	—	2471.30
E0196	Gel pressure mattress	250.82	210.71	25.08
E0197	Air pressure pad for mattress	62.22	62.22	6.22
E0198	Water pressure pad for mattress	62.22	62.22	6.22
E0199	Dry pressure pad for mattress (e.g., Eggcrate)	62.22	62.22	6.22
E0200	Heat lamp, without stand (table model), includes bulb, or infrared element	52.00	39.91	5.20
E0202	Phototherapy (bilirubin) light with photometer	—	—	139.78
E0205	Heat lamp, with stand, includes bulb, or infrared element	71.42	44.30	7.14
E0210	Electric heat pad, standard	27.07	24.29	2.71
E0215	Electric heat pad, moist	40.36	31.31	4.04
E0225	Hydrocollator unit, includes pads	100.58	93.87	9.55
E0235	Paraffin bath unit, portable	194.38	124.38	15.53
E0236	Pump for water circulating pad	—	—	30.45
E0237	Water circulating heat pad with pump	179.65	116.45	17.32
E0238	Non-electric heat pad moist	30.10	18.69	3.01
E0239	Hydrocollator unit, portable	359.00	280.91	35.90
E0249	Pad for water circulating heat unit	98.15	93.33	9.82
E0250	Hospital bed, fixed height, with any type side rails, with mattress	881.42	777.72	73.72
E0251	Hospital bed, fixed height, with any type side rails, without mattress	672.33	672.33	56.31
E0255	Hospital bed, variable height, Hi-lo, with any type side rails, with mattress	964.20	896.30	80.57
E0256	Hospital bed, variable height, Hi-lo, with any type side rails, without mattress	—	—	67.64
E0260	Hospital bed, semi-electric (head and foot adjustment), with any type side rails, with mattress	1542.26	1262.39	123.10
E0261	Hospital bed, semi-electric (head and foot adjustment), any type side rails, without mattress	—	—	110.17
E0265	Hospital bed, total electric (head, foot and height adjustments), any type side rails, w. mattress	1909.20	1504.12	152.40
E0266	Hospital bed, total electric (head, foot and height adjustments), any type side rails, w/o mattress	1940.52	1455.39	154.89
E0271	Mattress, innerspring	166.81	126.40	16.68
E0272	Mattress, foam rubber	150.54	107.61	15.05

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E0275	Bed pan, standard, metal or plastic	14.90	11.37	1.49
E0276	Bed pan, fracture, metal or plastic	12.60	11.51	1.26
E0280	Bed, cradle, any type	29.53	21.13	2.95
E0290	Hospital bed, fixed height, without side rails, with mattress	—	—	61.41
E0291	Hospital bed, fixed height, without side rails, without mattress	—	—	44.93
E0292	Hospital bed, variable height, Hi-lo, without side rails, with mattress	—	—	68.25
E0293	Hospital bed, variable height, Hi-lo, without side rails, without mattress	—	—	55.32
E0294	Hospital bed, semi-electric (head and foot adjustment), without side rails, with mattress	—	—	110.78
E0295	Hospital bed, semi-electric (head and foot adjustment), without side rails, without mattress	—	—	97.85
E0296	Hospital bed, total electric (head, foot and height adjustments), without side rails, with mattress	—	—	140.08
E0297	Hospital bed, total electric (head, foot and height adjustments), without side rails, w/o mattress	—	—	118.17
E0305	Bed side rails, half length	143.77	107.83	11.92
E0310	Bed side rails, full length	152.90	123.56	15.29
E0325	Urinal; male, jug type, any material	6.62	5.78	.66
E0326	Urinal; female, jug type, any material	9.05	6.96	.90
E0430	Portable gaseous oxygen system, includes regulator with flow guage, humidifier, cannula or mask and tubing	—	—	56.57
E0435	Oxygen system, liquid, portable, includes portable container, supply reservoir, flow humidifier, cannula or masks, tubing and refill adaptor	—	—	56.57
E0450	Volume ventilator; stationary	10546.29	7909.72	885.50
E0451	Volume ventilator; portable (includes battery, battery charger, and battery cables)	5728.74	4296.56	502.23
E0457	Chest shell (cuirass)	414.80	—	41.48
E0458	Negative pressure pump	4981.74	—	498.17
E0459	Chest Wrap	539.24	—	42.62
E0460	Negative pressure ventilator; portable (e.g., Porta-lung)	—	—	445.33
E0461	Negative pressure ventilator; stationary (e.g., Iron-lung)	1898.33	1423.75	189.83
E0462	Rocking bed with or without side rails	—	—	268.33
E0480	Percussor, electric or pneumatic, home model	279.47	178.17	27.95
E0500	IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization	469.32	351.98	46.93
E0505	IPPB machines with manual valves, electrically driven with internal power source, built-in nebulization	685.51	514.13	68.55
E0510	IPPB machines with automatic valves, external power source includes cylinder regulator, built-in nebulization	685.51	514.13	68.55
E0515	IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization	469.32	351.99	46.93
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade	315.33	236.50	31.53
E0560	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.	95.54	57.25	9.55
E0565	Compressor, air power source for equipment which is not self-contained or cylinder driven	506.07	302.54	41.11
E0570	Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid	166.19	118.52	16.62
E0575	Nebulizer, self-contained, ultrasonic	732.97	549.73	73.30
E0580	Nebulizer, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter	121.29	90.97	12.13
E0585	Nebulizer, with compressor and heater	121.29	90.97	12.13
E0600	Suction pump, home model, portable	409.72	307.29	40.97
E0601	Nasal continuous airway pressure (CPAP) device	1054.63	790.97	84.31
E0605	Vaporizer, room type	29.10	22.94	2.91
E0606	Postural drainage board	158.19	118.64	13.44
E0607	Home blood glucose monitor	156.49	122.17	15.65
E0608	Apnea monitor	—	—	167.75
E0609	Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)	463.73	353.98	46.37
E0610	Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)	324.54	252.32	32.45
E0615	Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)	340.54	209.15	34.05
E0620	Seat lift chair, motorized to assist patient in standing and sitting	828.88	549.99	26.39
E0621	Sling or seat, patient lift, canvas or nylon	63.36	55.41	6.34
E0630	Patient lift, hydraulic, with seat or sling	932.66	716.05	76.80
E0635	Patient lift, electric with seat or sling	770.15	426.93	77.02
E0650	Pneumatic compressor, non-segmental home model, (lymphedema pump)	522.05	391.54	52.20
E0651	Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure	843.56	549.73	84.36
E0652	Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure	3482.19	3128.44	342.85
E0655	Pneumatic appliance for use with pneumatic compressor, half arm	83.42	76.27	8.34
E0660	Pneumatic appliance for use with pneumatic compressor, full leg	133.20	89.28	13.32
E0665	Pneumatic appliance for use with pneumatic compressor, full arm	90.25	67.31	9.02
E0666	Pneumatic appliance for use with pneumatic compressor, half leg	120.96	95.91	12.10
E0667	Pneumatic appliance for use with segmental pneumatic compressor, leg	273.29	215.42	27.03
E0668	Pneumatic appliance for use with segmental pneumatic compressor, arm	262.15	213.90	26.22

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E0680	Ultraviolet cabinet, appropriate for home use	766.25	753.58	76.62
E0720	TENS, two lead, localized stimulation	452.02	—	45.20
E0730	TENS, four lead, larger area/multiple nerve stimulation	448.08	—	44.81
E0744	Neuromuscular stimulator for scoliosis	1031.82	773.86	82.36
E0745	Neuromuscular stimulator, electronic shock unit, non-clinical model	1049.36	787.02	79.47
E0746	Electromyography (EMG), biofeedback device	694.79	521.09	69.48
E0747	Osteogenesis stimulator (non-invasive)	2713.36	2010.26	271.34
E0749	Osteogenesis stimulator (surgically implanted)	—	—	205.61
E0776	IV pole	92.02	69.74	9.20
E0781	Ambulatory infusion pump with administrative equipment, worn by patient	630.97	473.23	63.10
E0782	Infusion pump, implantable	3901.77	2957.64	390.18
EO791	Parenteral infusion pump, stationary, single or multi-channel	1965.12	1473.84	168.02
E0840	Traction frame, attached to headboard, simple cervical traction	42.63	29.82	4.26
E0850	Traction stand, free standing, simple cervical traction	46.45	32.90	4.64
E0860	Traction equipment, overdoor, cervical	27.17	20.86	2.72
E0870	Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)	83.84	57.06	8.38
E0880	Traction stand, free standing, simple extremity traction (e.g., Buck's)	77.88	51.41	7.79
E0890	Traction frame, attached to footboard, simple pelvic traction	85.35	63.95	8.54
E0900	Traction stand, free standing, simple pelvic traction (e.g., Buck's)	85.31	66.63	8.53
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	163.74	163.74	15.51
E0920	Fracture frame, attached to bed, includes weights	394.43	295.82	31.49
E0930	Fracture frame, free standing, includes weights	394.43	295.82	32.14
E0935	Passive motion exercise device	—	—	530.14
E0940	Trapeze bar, free standing, complete with grab bar	314.78	221.21	25.13
E0941	Gravity assisted traction device, any type	384.94	288.71	33.28
E0942	Cervical head harness/halter	15.82	11.87	1.58
E0943	Cervical pillow	33.65	30.01	3.36
E0944	Pelvic belt/harness/boot	32.74	23.46	3.27
E0945	Extremity belt/harness	35.75	27.56	3.58
E0946	Fracture, frame, dual with cross bars, attached to bed, (e.g., Balken, 4 poster)	894.33	670.75	62.19
E0947	Fracture frame, attachments for complex pelvic traction	464.14	343.23	46.41
E0948	Fracture frame, attachments for complex cervical traction	458.95	341.49	45.90
E0950	Tray	82.78	60.44	8.28
E0951	Loop heel, each	14.28	11.28	1.43
E0952	Loop toe, each	14.01	11.28	1.40
E0953	Pneumatic tire, each	73.96	55.47	7.40
E0954	Semi-pneumatic caster, each	44.28	32.88	4.43
E0958	Wheelchair attachment to convert any wheelchair to one arm drive	421.32	270.51	33.63
E0959	Amputee adapter (device used to compensate for transfer of weight due to lost limbs to maintain proper balance)	71.13	55.37	7.11
E0961	Brake extension, for wheelchair	12.47	10.39	1.22
E0962	1″ cushion, for wheelchair	47.46	35.60	4.75
R0963	2″ cushion, for wheelchair	58.71	41.03	5.87
E0964	3″ cushion, for wheelchair	64.55	47.57	6.46
E0965	4″ cushion, for wheelchair	72.23	57.25	7.22
E0966	Hook on head rest extension	51.67	39.60	5.16
E0967	Wheelchair hand rims with 8 vertical rubber tipped projection, pair	105.46	79.10	10.35
E0968	Commode seat, wheelchair	181.39	136.04	14.48
E0969	Narrowing device, wheelchair	115.27	87.50	11.53
E0970	No. 2 footplates, except for elevating legrest	77.60	64.66	7.57
E0971	Anti-tipping device wheelchairs	50.28	37.16	5.03
E0972	Transfer board, wheelchair	37.69	27.99	3.77
E0973	Adjustable height detachable arms, desk or full length, wheelchair	81.47	72.35	8.13
E0974	"Grade-Aid" (device to prevent rolling back on an incline) for wheelchair	66.56	50.16	5.89
E0975	Reinforced seat upholstery, wheelchair	50.82	37.42	5.08
E0976	Reinforced back, wheelchair, upholstery or other material	55.10	37.42	5.28
E0977	Wedge cushion, wheelchair	52.24	37.18	3.90
E0978	Belt, safety with airplane buckle, wheelchair	36.35	26.87	3.48
E0979	Belt, safety with velcro closure, wheelchair	25.93	24.23	2.59
E0980	Safety vest, wheelchair	25.63	19.58	2.56
E0990	Elevating legrests, each	77.14	63.52	7.71
E0991	Upholstery seat	36.27	27.69	3.39
E0992	Solid seat insert	52.95	37.88	5.30
E0993	Back, upholstery	29.25	26.90	2.84
E0994	Arm rest, each	13.70	10.07	1.34
E0995	Calf rest, each	21.65	17.76	2.16
E0996	Tire, solid, each	24.33	17.39	2.41
E0997	Caster with a fork	56.46	42.71	5.65
E0998	Caster without fork	31.93	24.15	3.19
E0999	Pneumatic tire with wheel	89.85	72.73	8.98

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E1000	Tire, pneumatic caster	47.23	30.42	4.72
E1001	Wheel, single	85.06	77.79	8.23
E1031	Rollabout chair, any and all types with castors 5" or greater	—	—	47.60
E1050	Fully-reclining wheelchair, fixed full length arms, swing-away detachable elevating legrests	1222.53	677.70	113.49
E1060	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	1222.53	682.41	89.87
E1065	Power attachment (to convert any wheelchair to motorized wheelchair; e.g., Solo)	2360.43	1735.90	207.26
E1066	Battery charger	220.54	181.92	22.05
E1069	Deep cycle battery	92.99	67.77	8.80
E1070	Fully-reclining wheelchair, detachable arms, desk or full length, swing-away detachable footrests	909.61	672.33	90.96
E1083	Hemi-wheelchair, fixed full length arms, swing-away detachable elevating legrests	717.15	693.13	57.24
E1084	Hemi-wheelchair, detachable arms, desk or full length arms, swing-away detachable elevating legrests	1049.29	787.81	81.72
E1085	Hemi-wheelchair, fixed full length arms, swing-away detachable footrests	829.21	769.52	59.30
E1086	Hemi-wheelchair, detachable arms, desk or full length, swing-away detachable footrests	1105.41	658.89	84.84
E1087	High strength lightweight wheelchair, fixed full length arms, swing-away detachable elevating legrests	1152.71	775.19	92.01
E1088	High strength lightweight wheelchair, detachable arms desk or full length, swing-away detachable elevating legrests	1536.80	1004.46	122.64
E1089	High strength lightweight wheelchair, fixed length arms, swing-away detachable footrests	1133.99	732.16	74.86
E1090	High strength lightweight wheelchair, detachable arms desk or full length, swing-away detachable footrests	1499.05	831.00	93.33
E1091	Youth wheelchair, any type	1335.05	1001.37	90.50
E1092	Wide heavy duty wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	1367.22	1161.15	108.47
E1093	Wide heavy duty wheelchair, detachable arms, desk or full length, swing-away detachable footrests	1255.01	941.25	91.25
E1100	Semi-reclining wheelchair, fixed full length arms, swing-away detachable elevating legrests	1054.63	790.97	82.61
E1110	Semi-reclining wheelchair, detachable arms (desk or full length), elevating legrests	1139.73	800.07	87.58
E1130	Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests	424.49	408.72	36.09
E1140	Wheelchair, detachable arms, desk or full length, swing-away detachable footrests	697.26	494.38	55.66
E1150	Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	776.52	638.29	61.98
E1160	Wheelchair, fixed full length arms, swing-away detachable elevating legrests	601.55	526.42	48.75
E1170	Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests	1179.70	884.78	68.05
E1171	Amputee wheelchair, fixed full length arms, without footrests or legrests	682.35	511.76	58.04
E1172	Amputee wheelchair, detachable arms (desk or full length) without footrests or legrests	877.45	658.09	70.04
E1180	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests	937.91	777.52	74.87
E1190	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	1083.63	886.87	86.50
E1195	Heavy duty wheelchair, fixed full length arms, swing-away detachable elevating legrests	1029.11	771.83	78.50
E1200	Amputee wheelchair, fixed full length arms, swing-away detachable footrests	807.14	660.47	64.42
E1210	Motorized wheelchair w/micro switch fixed full length arms, swing-away detachable elevating legrests	3010.10	2257.58	301.01
E1211	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	3270.64	2452.98	327.06
E1212	Motorized wheelchair, fixed full length arms, swing-away detachable footrests	2330.40	1747.80	233.04
E1213	Motorized wheelchair, detachable arms, desk or full length, swing-away detachable footrests	2730.77	2048.08	273.08
E1221	Wheelchair with fixed arm, footrests	758.38	568.79	33.25
E1222	Wheelchair with fixed arm, elevating legrests	955.49	664.26	70.76
E1223	Wheelchair with detachable arms, footrests	831.05	623.29	63.70
E1224	Wheelchair with detachable arms, elevating legrests	1174.02	650.81	117.40
E1225	Semi-reclining back for customized wheelchair	449.27	336.95	33.29
E1226	Full-reclining back for customized wheelchair	498.32	352.12	41.14
E1227	Special height arms for wheelchair	221.47	166.11	21.78
E1228	Special back height for wheelchair	189.83	142.38	15.64
E1230	Power-operated vehicle (3 or 4 wheel non-highway), specify brand name & model number	1624.13	1028.27	162.41
E1240	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable elevating legrests	1057.14	621.90	82.78
E1250	Lightweight wheelchair, fixed full length arms, swing-away detchable footrests	630.67	580.13	56.28
E1260	Lightweight wheelchair, detachable arms (desk or full length), swing-away detachable footrests	870.81	870.81	82.19
E1270	Lightweight wheelchair, fixed full length arms, swing-away detachable elevating legrests	727.69	727.69	60.93
E1280	Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests	1272.04	1272.04	97.42
E1285	Heavy duty wheelchair, fixed full length arms, swing-away detachable footrests	999.66	638.71	78.35
E1290	Heavy duty wheelchair, detachable arms (desk or full length), swing-away detachable footrests	1386.25	768.47	99.49
E1295	Heavy duty wheelchair, fixed full length arms, elevating legrests	943.05	707.29	92.61
E1296	Special wheelchair seat height from floor	282.64	224.82	28.26
E1297	Special wheelchair seat depth, by upholstery	61.36	56.02	6.14
E1298	Special wheelchair seat depth and/or width, by construction	296.63	237.85	29.66
E1310	Whirlpool, non-portable (built-in type)	3269.35	2090.80	279.03
E1355	Stand/rack	46.67	35.00	4.67
E1372	Immersion external heater for nebulizer	161.18	47.70	16.12

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E1375	Nebulizer portable with small compressor, with limited flow	174.02	130.52	17.40

CODES BEGINNING WITH "L"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT
L0100	Cervical, craniostenosis, helmet molded to patient model	279.68
L0110	Cervical, craniostenosis, helmet, non-molded	76.28
L0120	Cervical, flexible, non-adjustable (foam collar)	14.03
L0130	Cervical, flexible, thermoplastic collar, molded to patient	125.00
L0140	Cervical, semi-rigid, adjustable (plastic collar)	30.51
L0150	Cervical, semi-rigid, adjustable molded chin cup (plastic collar with mandibular/occipital piece)	67.17
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	127.13
L0170	Cervical, collar, molded to patient model	274.59
L0172	Cervical, collar, semi-rigid, thermoplastic foam, two-piece	85.43
L0174	Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension	142.38
L0180	Cervical, multiple post collar, occipital/mandibular supports, adjustable	208.23
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types)	305.10
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	249.17
L0210	Thoracic, rib belt, custom fitted	14.05
L0220	Thoracic, rib belt, custom fabricated	86.45
L0300	Thoracic-lumbar-sacral-orthoses, (TLSO), flexible dorso-lumbar surgical support, custom fitted	106.37
L0310	TLSO, flexible dorso-lumbar surgical support, custom fabricated	268.49
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	150.00
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	175.00
L0320	TLSO, anterior-posterior control (Taylor type), with apron front	345.27
L0330	TLSO, anterior-posterior-lateral control (Knight-Taylor type), with apron front	349.29
L0340	TLSO, anterior-posterior-lateral-rotary control (Arnold, Magnuson, Steindler types), with apron front	330.53
L0350	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, custom fitted	483.08
L0360	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, molded to patient	1,017.00
L0370	TLSO, anterior-posterior-lateral-rotary control, hyperextension (Jewett, Lennox, Baker, Cash types)	313.24
L0380	TLSO, anterior-posterior-lateral-rotary control, with extensions	330.53
L0390	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model	1,067.85
L0400	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,210.94
L0410	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model	940.73
L0420	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model, with interface material	971.24
L0430	TLSO, anterior-posterior-lateral control (body jacket), with interface material, custom fitted	866.00
L0440	TLSO, anterior-posterior-lateral control (body jacket), with overlapping front section, spring steel front, custom fitted	813.60
L0500	Lumbar-sacral-orthoses, (LSO), flexible, (lumbo-sacral surgical support), custom fitted	82.36
L0510	LSO, flexible (lumbo-sacral surgical support), custom fabricated	118.75
L0515	LSO, flexible (lumbo-sacral surgical support), elastic type, with rigid posterior panel	86.45
L0520	LSO, anterior-posterior-lateral control (Knight, Wilcox types), with apron front	320.36
L0530	LSO, anterior-posterior control (Macausland type), with apron front	244.08
L0540	LSO, lumbar flexion, (Williams flexion type)	285.00
L0550	LSO, anterior-posterior-lateral control (body jacket), molded to patient model	966.15
L0560	LSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,118.70
L0565	LSO, anterior-posterior-lateral control (body jacket), custom fitted	533.93
L0600	Sacroiliac, flexible (sacroiliac surgical support), custom fitted	50.85
L0610	Sacroiliac, flexible (sacroiliac surgical support), custom fabricated	172.89
L0700	Cervical-thoracic-lumbar-sacral-orthoses (CTLSO), anterior-posterior-lateral control, molded to patient model (Minerva type)	1,474.65
L0710	CTLSO, anterior-posterior-lateral control, molded to patient model, with interface material, (Minerva type)	1,627.20
L0810	Halo procedure, cervical halo incorporated into jacket vest	1,525.50
L0820	Halo procedure, cervical halo incorporated into plaster body jacket	1,525.50
L0830	Halo procedure, cervical halo incorporated into Milwaukee type orthosis model	1,881.45
L0860	Addition to halo procedures, magnetic resonance image compatible system	575.00
L0900	Torso support, ptosis support, custom fitted	79.33
L0910	Torso support, ptosis support, custom fabricated	152.55
L0920	Torso support, pendulous abdomen support, custom fitted	130.50
L0930	Torso support, pendulous abdomen support, custom fabricated	220.00
L0940	Torso support, post surgical support, custom fitted	125.00
L0950	Torso support, post surgical support, custom fabricated	213.57
L0960	Torso support, post surgical support, pads for post surgical support	50.85
L0972	LSO, corset front	69.00
L0976	LSO, full corset	80.00
L0978	Axillary crutch extension	122.04
L0980	Peroneal straps, pair	10.00

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L1000	Cervical-thoracic-lumbar-sacral orthosis (CTLSO) (Milwaukee), inclusive of furnishing initial orthosis, including model	1,441.60
L1010	Addition to cervical-thoracic-lumbar-sacral orthosis (CTLSO) of scoliosis, axilla sling	35.60
L1020	Addition to CTLSO or scoliosis orthosis, kyphosis pad	42.00
L1025	Addition to CTLSO or scoliosis orthosis, kyphosis pad, floating	96.62
L1030	Addition to CTLSO or scoliosis orthosis, lumbar bolster pad	35.60
L1040	Addition to CTLSO or scoliosis, lumbar of lumbar rib pad	45.77
L1050	Addition to CTLSO or scoliosis orthosis, sternal pad	60.00
L1060	Addition to CTLSO or scoliosis orthosis, thoracic pad	76.28
L1070	Addition to CTLSO or scoliosis orthosis, trapeze sling	70.00
L1080	Addition to CTLSO or scoliosis orthosis, outrigger	40.68
L1085	Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions	110.00
L1090	Addition to CTLSO or scoliosis or orthosis, lumbar sling	71.19
L1100	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather	111.87
L1110	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model	142.38
L1120	Addition to CTLSO or scoliosis orthosis, cover for upright, each	20.34
L1210	Addition to TLSO (low profile), lateral thoracic extension	152.55
L1220	Addition to TLSO (low profile), anterior thoracic extension	152.55
L1230	Addition to TLSO (low profile), Milwaukee type superstructure	406.80
L1240	Addition to TLSO (low profile), lumbar derotation pad	55.94
L1250	Addition to TLSO (low profile), anterior asis pad	55.94
L1260	Addition to TLSO (low profile), anterior thoracic derotation pad	55.94
L1270	Addition to TLSO (low profile), abdominal pad	55.94
L1280	Addition to TLSO (low profile), rib gusset (elastic), each	60.00
L1290	Addition to TLSO (low profile), lateral trochanteric pad	50.85
L1300	Other scoliosis procedure, body jacket molded to patient model	1,206.00
L1310	Other scoliosis procedure, post-operative body jacket	1,206.00
L1500	Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame, (Newington, Parapodium types)	966.15
L1510	THKAO, standing frame	508.50
L1600	Hip orthosis (HO), abduction control of hip joints, flexible, freika type with cover	65.00
L1610	HO, abduction control of hip joints, flexible, frejka cover only	36.00
L1620	HO, abduction control of hip joints, flexible, Pavlik harness	101.70
L1630	HO, abduction control of hip joints, semi-flexible (Von Rosen type)	89.50
L1640	HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs	256.28
L1650	HO, abduction control of hip joints, static, adjustable, custom fitted (llfled type)	162.72
L1660	HO, abduction control of hip joints, static, plastic, custom fitted	93.56
L1680	HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type)	603.64
L1685	HO, abduction control of hip joints post-operative hip abduction type, custom fabricated	762.75
L1686	HO, abduction control of hip joints post-operative hip abduction type, custom fitted	750.00
L1700	Legg Perthes orthosis, Toronto type	750.00
L1730	Legg Perthes orthosis, Scottish Rite type	579.69
L1755	Legg Perthes orthosis, pattern bottom type	1,067.85
L1800	Knee orthosis, KO, elastic with stays	34.17
L1810	KO, elastic with joints	56.66
L1815	KO, elastic with condylar pads	60.00
L1820	KO, elastic with condylar pads and joints	90.51
L1825	KO, elastic knee cap	35.60
L1830	KO, immobilizer, canvas longitudinal	58.25
L1832	KO, adjustable knee joints, positional orthosis, rigid support, custom fitted	400.00
L1834	KO, without knee joint, rigid, molded to patient model	485.00
L1840	KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model	661.05
L1845	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted	584.78
L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	661.05
L1850	KO, Swedish type	188.15
L1855	KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model	762.75
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)	762.75
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	694.61
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	610.20
L1880	KO, double upright, non-molded thigh and calf cuffs/lacers with knee joints	457.65
L1900	Ankle-foot orthosis (AFO), spring wire, dorsiflexion assist, calf band	150.00
L1902	AFO, ankle gauntlet, custom fitted	61.02
L1904	AFO, molded ankle gauntlet, molded to patient model	355.95
L1906	AFO, multiligamentus ankle support	61.02
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	254.25
L1920	AFO, single upright with static or adjustable stop, (Phelps or Perlstein type)	198.32
L1930	AFO, custom fitted, plastic	142.38
L1940	AFO, molded to patient model, plastic	569.98
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	675.00

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L1950	AFO, spiral, molded to patient model, (IRM type), plastic	493.25
L1960	AFO, posterior, solid ankle, molded to patient model, plastic	490.26
L1970	AFO, plastic molded to patient model, with ankle joint	381.38
L1980	AFO, single upright, free dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	291.88
L1990	AFO, double upright free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	365.10
L2000	Knee-ankle-foot-orthosis (KAFO), single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	722.93
L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	610.20
L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf hands/cuffs (double bar "AK" orthosis)	690.72
L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis), without knee joint	1,118.70
L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,271.50
L2037	KAFO, full plastic, single upright, free, molded to patient model	1,125.00
L2038	KAFO, full plastic, without knee joint, multi-axis, molded to patient model (lively orthosis or equal)	1,250.00
L2040	HKAFO, torsion control, bilateral rotation straps, pelvic band/belt	142.38
L2050	HKAFO, torsion control, bilateral torsion cables, hip joint, pelvic band/belt	223.74
L2060	HKAFO, torsion control, bilateral torsion cables, ball bearing hip joint, pelvic band/belt	300.00
L2070	HKAFO, torsion control, unilateral rotation straps, pelvic band/belt	86.45
L2080	HKAFO, torsion control, unilateral, torsion cables, hip joint, pelvic band/belt	284.05
L2090	HKAFO, torsion control, unilateral torsion cables, ball bearing hip joint, pelvic band/belt	193.23
L2102	Ankle-foot-orthosis (AFO), fracture orthosis, tibial fracture cast orthosis, plaster type casting material, molded to patient	203.40
L2104	AFO, fracture orthosis, tibial fracture cast orthosis, synthetic type casting material, molded to patient	254.25
L2106	AFO, fracture orthosis, tibial fracture cast orthosis, thermoplastic type casting material, molded to patient	355.95
L2108	AFO, fracture orthosis, tibial fracture cast orthosis, molded to patient model	711.90
L2112	AFO, fracture orthosis, tibial fracture orthosis, soft custom fitted	305.10
L2114	AFO, fracture orthosis, tibial fracture orthosis, semi-rigid custom fitted	401.72
L2116	AFO, fracture orthosis, tibial fracture orthosis, rigid custom fitted	457.65
L2122	Knee-ankle-foot-orthosis (KAFO), fracture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	635.63
L2124	KAFO, fracture orthosis, femoral fracture cast orthosis, synthetic type casting material, molded to patient	711.90
L2126	KAFO, fracture orthosis, femoral fracture cast orthosis, thermoplastic type casting material, molded to patient	813.60
L2128	KAFO, fracture orthosis, femoral fracture cast orthosis, molded to patient model	1,118.70
L2132	KAFO, fracture orthosis, femoral fracture cast orthosis, soft custom fitted	610.20
L2134	KAFO, fracture orthosis, femoral fracture cast orthosis, semi-rigid custom fitted	661.02
L2136	KAFO, fracture orthosis, femoral fracture cast orthosis, rigid custom fitted	788.18
L2180	Addition to lower extremity fracture orthosis, plastic shoe insert with ankle joints	67.12
L2182	Addition to lower extremity fracture orthosis, drop lock knee joint	61.02
L2184	Addition to lower extremity fracture orthosis, limited motion knee joint	86.45
L2186	Addition to lower extremity fracture orthosis, adjustable motion knee joint, lerman type	127.13
L2188	Addition to lower extremity fracture orthosis, quadrilateral brim	254.25
L2190	Addition to lower extremity fracture orthosis, waist belt	61.02
L2192	Addition to lower extremity fracture orthosis, hip joint, pelvic band, thigh flange, and pelvic belt	254.25
L2200	Addition to lower extremity, limited ankle motion, each joint	42.94
L2210	Addition to lower extremity, dorsiflexion assist, (plantar flexion resist), each joint	54.07
L2220	Addition to lower extremity, dorsiflexion and plantar flexion assist/resist, each joint	113.21
L2230	Addition to lower extremity, split flat caliper stirrups and plate attachment	79.32
L2240	Addition to lower extremity, round caliper and plate attachment	61.02
L2250	Addition to lower extremity, foot plate, molded to patient model, stirrup attachment	254.25
L2260	Addition to lower extremity, reinforced solid stirrup (Scott-Craig type)	110.00
L2265	Addition to lower extremity, long tongue stirrup	40.00
L2270	Addition to lower extremity, varus/valgus correction ("T") strap, padded/lined or malleolus pad	66.06
L2280	Addition to lower extremity, molded inner boot	254.25
L2300	Addition to lower extremity, abduction bar (bilateral hip involvement), jointed, adjustable	190.07
L2310	Addition to lower extremity, abduction bar, straight	80.00
L2320	Addition to lower extremity, non-molded lacer	122.04
L2330	Addition to lower extremity, lacer, molded to patient model	193.23
L2335	Addition to lower extremity, anterior swing band	152.55
L2340	Addition to lower extremity, pre-tibial shell, molded to patient model	350.00
L2350	Addition to lower extremity, prosthetic type "BK" socket, molded to patient model (used for "PTB" "AFO" orthosis)	559.35
L2360	Addition to lower extremity, extended steel shank	45.22
L2370	Addition to lower extremity, patten bottom	205.00
L2375	Addition to lower extremity, torsion control, ankle joint and half solid stirrup	85.00
L2380	Addition to lower extremity, torsion control, straight knee joint, each joint	40.00
L2385	Addition to lower extremity, straight knee joint, heavy duty, each joint	66.11
L2390	Addition to lower extremity, offset knee joint, each joint	66.11
L2395	Addition to lower extremity, offset knee joint, heavy duty, each joint	91.53
L2405	Addition to knee joint, drop lock, each joint	30.51

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L2415	Addition to knee joint, cam lock (Swiss, French, Bail types), each joint	127.13
L2425	Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint	142.38
L2435	Addition to knee joint, polycentric joint, each joint	122.04
L2492	Addition to knee joint, lift loop for drop lock ring	86.40
L2500	Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring	149.50
L2510	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model	432.33
L2520	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted	279.68
L2525	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, molded to patient model	825.00
L2526	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, custom fitted	475.00
L2530	Addition to lower extremity, thigh/weight bearing, lacer, non-molded	183.06
L2540	Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model	247.13
L2550	Addition to lower extremity, thigh/weight bearing, high roll cuff	89.00
L2570	Addition to lower extremity, pelvic control, hip joint, clevis type, two position hip joint, each	355.95
L2580	Addition to lower extremity, pelvic control, pelvic sling	305.10
L2600	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, free, each	165.00
L2610	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, lock, each	137.30
L2620	Addition to lower extremity, pelvic control, hip joint, heavy duty, each	203.40
L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	213.57
L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	152.55
L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	1,050.00
L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	1,050.00
L2630	Addition to lower extremity, pelvic control, band and belt unilateral	127.13
L2640	Addition to lower extremity, pelvic control, band and belt bilateral	256.28
L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	86.45
L2660	Addition to lower extremity, thoracic control, thoracic band	75.00
L2670	Addition to lower extremity, thoracic control, paraspinal uprights	116.96
L2680	Addition to lower extremity, thoracic control, lateral support uprights	103.50
L2750	Addition to lower extremity orthosis, plating chrome or nickel, per bar	50.00
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	40.68
L2770	Addition to lower extremity orthosis, stainless steel, per bar or joint	40.68
L2780	Addition to lower extremity orthosis, non-corrosive finish, per bar	30.51
L2785	Addition to lower extremity orthosis, drop lock retainer, each	20.34
L2795	Addition to lower extremity orthosis, knee control, full knee cap	66.11
L2800	Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull	81.36
L2810	Addition to lower extremity orthosis, knee control, condylar pad	60.00
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	50.85
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	50.85
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	35.00
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal each	42.00
L3300	Lift-elevation, heel, tapered to metatarsals, per inch	36.61
L3310	Lift-elevation, heel and sole, noeprene, per inch	40.68
L3320	Lift-elevation, heel and sole, cork, per inch	61.02
L3330	Lift-elevation, metal extension (skate)	81.36
L3334	Lift-elevation, heel, per inch	15.25
L3340	Heel wedge, Sach	50.85
L3350	Heel wedge	15.25
L3360	Sole wedge—outside sole	20.34
L3370	Sole wedge—between sole	34.58
L3380	Clubfoot wedge	30.51
L3390	Outflare wedge	30.51
L3400	Metatarsal bar wedge—rocker	20.34
L3410	Metatarsal bar wedge—between sole	35.60
L3420	Full sole and heel wedge—between sole	40.68
L3590	Miscellaneous shoe addition, convert instep to velcro closure	24.41
L3600	Transfer of an orthosis from one shoe to another, caliper plate existing	61.02
L3610	Transfer of an orthosis from one shoe to another, caliper plate new	96.62
L3620	Transfer of an orthosis from one shoe to another, solid stirrup existing	45.00
L3630	Transfer of an orthosis from one shoe to another, solid stirrup new	96.62
L2640	Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes	35.60
L3650	Shoulder orthosis (SO), figure of "8" design abduction restrainer	40.68
L3660	SO, figure of "8" design abduction restrainer, canvas and webbing	76.28
L3670	SO, acromio/clavicular (canvas and webbing type)	85.00
L3700	Elbow orthosis (EO), elastic with stays	45.77
L3710	EO, elastic with metal joints	76.28
L3720	EO, double upright with forearm/arm cuffs, free motion	450.00
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	450.00
L3740	EO, double upright with forearm/arm cuffs, adjustable position lock with active control	503.42
L3800	Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments	95.00
L3805	WHFO, long opponens, no attachment	254.25
L3810	WHFO, addition to short and long opponens, thumb abduction "C" bar	35.60
L3815	WHFO, addition to short and long opponens, second M.P. abduction assist	35.60

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L3820	WHFO, addition to short and long opponens, I.P. extension assist with M.P. extension stop	76.28
L3825	WHFO, addition to short and long opponens, M.P. extension stop	35.60
L3830	WHFO, addition to short and long opponens, M.P. extension assist	55.94
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	61.02
L3840	WHFO, addition to short and long opponens, spring swivel thumb	40.68
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with M.P. stop	45.77
L3850	WHFO, addition to short and long opponens, action wrist with dorsiflexion assist	81.36
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	61.02
L3860	WHFO, addition to short and long opponens, adjustable M.P. flexion control and I.P.	96.62
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	1,017.00
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	1,123.79
L3902	WHFO, external powered, compressed gas	1,118.70
L3904	WHFO, external powered, electric	1,525.50
L3906	WHFO, wrist gauntlet, molded to patient model	455.00
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	355.95
L3908	WHFO, wrist extension control cock-up, canvas or leather design, non-molded	45.00
L3910	WHFO, Swanson design	274.60
L3912	WHFO, flexion glove with elastic finger control	71.19
L3914	WHFO, wrist extension cock-up	50.00
L3916	WHFO, wrist extension cock-up, with outrigger	91.53
L3918	WHFO, knuckle bender	40.68
L3920	WHFO, knucle bender, with outrigger	76.28
L3922	WHFO, knuckle bender, two segment to flex joints	52.00
L3924	WHFO, Oppenheimer	76.28
L3926	WHFO, Thomas suspension	71.19
L3928	WHFO, finger extension with clock spring	50.85
L3930	WHFO, finger extension, with wrist support	45.00
L3932	WHFO, safety pin, spring wire	25.00
L3934	WHFO, safety pin, modified	25.43
L3936	WHFO, Palmer	61.02
L3938	WHFO, dorsal wrist	61.02
L3940	WHFO, dorsal wrist, with outrigger attachment	76.28
L3942	WHFO, reverse knuckle bender	40.68
L3944	WHFO, reverse knuckle bender, with outrigger	76.28
L3946	WHFO, composite elastic	61.02
L3948	WHFO, finger knuckle bender	45.77
L3950	WHFO, combination Oppenheimer, with knuckle bender and two attachments	122.04
L3952	WHFO, combination Oppenheimer, with reverse knuckle bender and two attachments	122.04
L3954	WHFO, spreading hand	66.11
L3960	Shoulder-elbow-wrist-hand orthosis SEWHO, abduction positioning, airplane design	575.00
L3962	SEWHO, abduction positioning, Erbs Palsey design	533.93
L3963	SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint	864.45
L3964	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, adjustable	477.99
L3965	SEWHO, radial arm support attached to wheelchair, balanced and fitted to patient, adjustable Rancho type	762.75
L3966	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, reclining	666.14
L3968	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal joints)	813.60
L3969	SEWHO, mobile arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support	508.50
L3970	SEWHO, addition to mobile arm support, elevating proximal arm	254.25
L3972	SEWHO, addition to mobile arm support, offset or lateral rocker arm with elastic balance control	160.00
L3974	SEWHO, addition to mobile arm support, supinator	135.00
L3980	Upper extremity fracture orthosis, humeral	275.00
L3982	Upper extremity fracture orthosis, radius/ulnar	215.00
L3984	Upper extremity fracture orthosis, wrist	152.55
L3985	Upper extremity fracture orthosis, forearm, hand with wrist hinge	457.65
L3986	Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example—Colles fracture)	340.70
L3995	Addition to upper extremity orthosis, sock, fracture or equal, each	18.50
L4000	Replace gridle for Milwaukee orthosis	884.79
L4010	Replace trilateral socket brim	335.61
L4020	Replace quadrilateral socket brim, molded to patient model	566.10
L4030	Replace quadrilateral socket brim, custom fitted	244.08
L4040	Replace molded thigh lacer	213.57
L4045	Replace non-molded thigh lacer	175.00
L4050	Replace molded calf lacer	200.00
L4055	Replace non-molded calf lacer	100.00
L4060	Replace high roll cuff	152.55
L4070	Replace proximal and distal upright for "AKO"	116.96
L4080	Replace metal bands "KAFO", proximal thigh	75.25
L4090	Replace metal bands "KAFO-AFO", calf or distal thigh	53.90

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L4100	Replace leather cuff "KAFO", proximal thigh	76.28
L4110	Replace leather cuff "KAFO-AFO", calf or distal thigh	66.11
L4130	Replace pretibial shell	279.68
L4310	Multi-Podus or equal orthotic preparatory management system for lower extremities	250.00
L4320	Addition to AFO, Multi-Podus (or equal) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface for AFO, with velcro closure, custom fitted	90.00
L4350	Pneumatic ankle control splint (aircast or equal)	65.00
L4360	Pneumatic walking splint (aircast or equal)	200.00
L4370	Pneumatic full leg splint (aircast or equal)	110.00
L4380	Pneumatic knee splint (aircast or equal)	70.00
L5000	Partial foot, shoe insert with longitudinal arch, toe filler	300.02
L5010	Partial foot, molded socket, ankle height, with toe filler	864.45
L5020	Partial foot, molded socket, tibial tubercle height, with toe filler	1,322.10
L5050	Ankle Symes, molded sock, Sach foot	1,728.90
L5060	Ankle Symes, metal frame, molded leather socket, articulated ankle/foot	1,703.48
L5100	Below knee, molded socket, shin, Sach foot	1,223.14
L5105	Below knee, plastic socket, joints and thigh lacer, Sach foot	2,500.00
L5150	Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot	3,457.80
L5160	Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot	3,457.80
L5200	Above knee, molded socket, single axis constant friction knee, shin, Sach foot	1,528.10
L5210	Above knee, short prosthesis, no knee joint ("stubbies"), with foot blocks, no ankle joints, each	1,728.90
L5220	Above knee, short prosthesis, no knee joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each	2,135.70
L5230	Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot	2,008.58
L5250	Hip disarticulation, Canadian type; molded socket, hip joint, single axis constant friction knee, Sach foot	3,864.60
L5300	Below knee, molded socket, Sach foot, endoskeletal system including soft cover and finishing	1,700.14
L5310	Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing	3,559.50
L5320	Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	1,983.02
L5330	Hip disarticulation, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	3,559.50
L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	5,085.00
L5400	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee	894.96
L5410	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	355.95
L5420	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation	915.30
L5430	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment	457.65
L5450	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee	254.25
L5460	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee	305.10
L5500	Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	923.70
L5505	Initial, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	1,228.03
L5510	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model	923.70
L5520	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,220.40
L5530	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,260.00
L5535	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,250.00
L5540	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,260.84
L5560	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,423.80
L5570	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,525.50
L5580	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,678.05
L5585	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,561.10
L5590	Preparatory, above knee—knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,475.29
L5595	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,650.00
L5600	Preparatory, hip disarticulation—hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	2,800.00

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L5611	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control	960.00
L5613	Addition to lower extremity, above knee—knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control	1,550.00
L5616	Addition to lower extremity, above knee, universal multiplex system, friction swing phase control	915.30
L5618	Addition to lower extremity, test socket, Symes	203.40
L5620	Addition to lower extremity, test socket, below knee	175.00
L5622	Addition to lower extremity, test socket, knee disarticulation	305.10
L5624	Addition to lower extremity, test socket, above knee	298.00
L5626	Addition to lower extremity, test socket, hip disarticulation	381.38
L5628	Addition to lower extremity, test socket, hemipelvectomy	380.00
L5629	Addition to lower extremity, below knee, acrylic socket	350.00
L5630	Addition to lower extremity, Symes type, expandable wall socket	355.95
L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	400.00
L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	177.98
L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	200.00
L5636	Addition to lower extremity, Symes type, medial opening socket	101.70
L5637	Addition to lower extremity, below knee, total contact	200.00
L5638	Addition to lower extremity, below knee, leather socket	305.10
L5639	Addition to lower extremity, below knee, wood socket	750.00
L5640	Addition to lower extremity, knee disarticulation, leather socket	508.50
L5642	Addition to lower extremity, above knee, leather socket	406.80
L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	864.45
L5644	Addition to lower extremity, above knee, wood socket	254.25
L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	406.80
L5646	Addition to lower extremity, below knee, air cushion socket	330.53
L5647	Addition to lower extremity, below knee, suction socket	488.00
L5648	Addition to lower extremity, above knee, air cushion socket	381.38
L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,423.80
L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	472.81
L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	661.05
L5652	Addition to lower extremity, suction suspension, above knee or knee disarticulation, socket	207.00
L5653	Addition to lower extremity, knee disarticulation, expandable wall socket	279.68
L5654	Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	203.40
L5655	Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	217.57
L5656	Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	254.25
L5658	Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	228.83
L5660	Addition to lower extremity, socket insert, Symes, silicone gel or equal	406.80
L5661	Addition to lower extremity, socket insert, multi-durometer, Symes	432.23
L5662	Addition to lower extremity, socket insert, below knee, silicone gel or equal	381.38
L5663	Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal	483.08
L5664	Addition to lower extremity, socket insert, above knee, silicone gel or equal	483.08
L5665	Addition to lower extremity, socket insert, multi-durometer, below knee	279.68
L5666	Addition to lower extremity, below knee, cuff suspension	48.67
L5668	Addition to lower extremity, below knee, molded distal cushion	75.95
L5670	Addition to lower extremity, below knee, molded supracondylar suspension ("PTS" or similar)	188.15
L5672	Addition to lower extremity, below knee, removable medial brim suspension	249.17
L5674	Addition to lower extremity, below knee, latex sleeve suspension, each	45.00
L5675	Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each	50.85
L5676	Addition to lower extremity, below knee, knee joints, single axis, pair	201.21
L5677	Addition to lower extremity, below knee, knee joints, polycentric, pair	254.25
L5678	Addition to lower extremity, below knee, joint covers, pair	23.42
L5680	Addition to lower extremity, below knee, thigh lacer, non-molded	208.28
L5682	Addition to lower extremity, below knee, thigh lacer, gluteal/ischial, molded	483.08
L5684	Addition to lower extremity, below knee, fork strap	39.93
L5686	Addition to lower extremity, below knee, back check (extension control)	40.68
L5688	Addition to lower extremity, below knee, waist belt, webbing	51.01
L5690	Addition to lower extremity, below knee, waist belt, padded and lined	66.11
L5692	Addition to lower extremity, above knee, pelvic control belt, light	87.97
L5694	Addition to lower extremity, above knee, pelvic control belt, padded and lined	111.87
L5695	Addition to lower extremity, above knee, pelvic control, sleeve suspension, neoprene or equal, each	125.00
L5696	Addition to lower extremity, above knee or knee disarticulation, pelvic joint	145.50
L5697	Addition to lower extremity, above knee or knee disarticulation, pelvic band	40.47
L5698	Addition to lower extremity, above knee or knee disarticulation, silesian bandage	83.99
L5699	All lower extremity prosthesis, shoulder harness	101.70
L5710	Addition, exoskeletal knee-shin system, single axis, manual lock	211.09
L5711	Addition, exoskeletal knee-shin system, single axis, manual lock, ultra-light material	355.95
L5712	Addition, exoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	282.37
L5714	Addition, exoskeletal knee-shin system, single axis, variable friction swing phase control	355.95
L5716	Addition, exoskeletal knee-shin system, polycentric mechanical stance phase lock	533.93
L5718	Addition, exoskeletal knee-shin system, polycentric friction swing and stance phase control	533.93

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L5722	Addition, exoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	579.69
L5724	Addition, exoskeletal knee-shin system, single axis, fluid swing phase control	1,118.70
L5726	Addition, exoskeletal knee-shin system, single axis, external joints, fluid swing phase control	1,250.00
L5728	Addition, exoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,957.73
L5780	Addition, exoskeletal knee-shin system, single axis, pneumatic hydrapneumatic swing phase control	762.75
L5785	Addition, exoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	254.25
L5790	Addition, exoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	381.38
L5795	Addition, exoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	508.50
L5810	Addition, endoskeletal knee-shin system, single axis, manual lock	330.53
L5811	Addition, endoskeletal knee-shin system, single axis, manual lock, ultra-light material	406.80
L5812	Addition, endoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	355.95
L5814	Addition, endoskeletal knee-shin system, single axis, variable friction swing phase control	500.00
L5816	Addition, endoskeletal knee-shin system, polycentric, mechanical stance phase lock	483.08
L5818	Addition, endoskeletal knee-shin system, polycentric, friction swing and stance phase control	690.00
L5822	Addition, endoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	1,280.00
L5824	Addition, endoskeletal knee-shin system, single axis, fluid swing phase control	762.75
L5828	Addition, endoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,800.00
L5830	Addition, endoskeletal knee-shin system, single axis, pneumatic swing phase control	1,345.00
L5850	Addition, endoskeletal system, above knee or hip disarticulation, knee extension assist	81.00
L5910	Addition, endoskeletal system, below knee, alignable system	342.00
L5920	Addition, endoskeletal system, above knee or hip disarticulation, alignable system	315.00
L5940	Addition, endoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	279.68
L5950	Addition, endoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	584.78
L5960	Addition, endoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	584.78
L5970	All lower extremity prosthesis, foot, external keel, Sach foot	97.83
L5972	All lower extremity prosthesis, flexible keel foot (Safe, Sten, Bock, Dynamic or equal)	152.55
L5974	All lower extremity prosthesis, foot, single axis ankle/foot	136.76
L5976	All lower extremity prosthesis, energy storing foot (Seattle Carbon Copy II or equal)	355.95
L5978	All lower extremity prosthesis, foot, multi-axial ankle/foot (Greissinger or equal)	169.18
L5980	All lower extremity prosthesis, flex foot system	2,542.50
L5982	All exoskeletal lower extremity prosthesis, axial rotation unit	508.50
L5984	All endoskeletal lower extremity prosthesis, axial rotation unit	381.38
L5986	All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal)	381.38
L6010	Partial hand, Robin-Aids, little and/or ring finger remaining (or equal)	900.00
L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,423.80
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	1,983.15
L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,423.80
L6110	Below elbow, molded socket (Muenster or Northwestern suspension types)	1,805.18
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,383.12
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	1,601.78
L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,830.60
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	3,152.70
L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	2,008.58
L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,695.05
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	2,339.10
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,525.50
L6350	Interscapular thoracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm	3,025.58
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,932.30
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,779.75
L6380	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension of components and one cast change, wrist disarticulation or below elbow	864.45
L6382	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment and suspension of components and one cast change, elbow disarticulation or above elbow	1,017.00
L6384	Immediate post surgical or early fitting, appication of initial rigid dressing including fitting, alignment and suspension of components and one cast change, shoulder disarticulation	1,220.40
L6386	Immediate post surgical or early fitting, each additional cast change and realignment	279.68
L6388	Immediate post surgical or early fitting, application of rigid dressing only	254.25
L6400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,505.16
L6450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue	1,627.20
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,922.13
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,237.40
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,745.90
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, molded to patient model	1,017.00
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, direct formed	864.45
L6584	Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	1,449.23
L6586	Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,245.83

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L6588	Preparatory, shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	2,166.21
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,983.15
L6600	Upper extremity additions, polycentric hinge, pair	122.04
L6605	Upper extremity additions, single pivot hinge, pair	147.47
L6610	Upper extremity additions, flexible metal hinge, pair	96.62
L6615	Upper extremity addition, disconnect locking wrist unit	137.30
L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	75.00
L6620	Upper extremity addition, flexible-friction wrist unit	315.27
L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	483.08
L6625	Upper extremity addition, rotation wrist unit with cable lock	320.00
L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	355.95
L6630	Upper extremity addition, stainless steel, any wrist	86.45
L6632	Upper extremity addition, latex suspension sleeve, each	40.68
L6635	Upper extremity addition, lift assist for elbow	152.55
L6637	Upper extremity addition, nudge control elbow lock	255.00
L6640	Upper extremity additions, shoulder abduction joint, pair	162.72
L6641	Upper extremity addition, excursion amplifier, pulley type	122.04
L6642	Upper extremity addition, excursion amplifier, lever type	172.89
L6645	Upper extremity addition, shoulder flexion-abduction joint, each	193.23
L6650	Upper extremity addition, shoulder universal joint, each	190.00
L6655	Upper extremity addition, standard control cable, extra	40.68
L6660	Upper extremity addition, heavy duty control cable	50.85
L6665	Upper extremity addition, teflon or equal, cable lining	30.51
L6670	Upper extremity addition, hook to hand, cable adapter	61.02
L6672	Upper extremity addition, harness, chest or shoulder, saddle type	137.30
L6675	Upper extremity addition, harness, figure of "8" type, for single control	61.02
L6676	Upper extremity addition, harness, figure of "8" type, for dual control	66.11
L6680	Upper extremity addition, test socket, wrist disarticulation or below elbow	137.30
L6682	Upper extremity addition, test socket, elbow disarticulation or above elbow	177.98
L6684	Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic	188.15
L6686	Upper extremity addition, suction socket	450.00
L6687	Upper extremity addition, frame type socket, below elbow or wrist disarticulation	305.10
L6688	Upper extremity addition, frame type socket, above elbow or elbow disarticulation	355.95
L6689	Upper extremity addition, frame type socket, shoulder disarticulation	406.80
L6690	Upper extremity addition, frame type socket, interscapular thoracic	457.65
L6691	Upper extremity addition, removable insert, each	305.10
L6692	Upper extremity addition, silicone gel insert or equal, each	300.00
L6700	Terminal device, hook, dorrance, or equal Model #3	269.51
L6705	Terminal device, hook, dorrance, or equal Model #5	188.15
L6710	Terminal device, hook, dorrance, or equal Model #5X	264.42
L6715	Terminal device, hook, dorrance, or equal Model #5Xa	183.06
L6720	Terminal device, hook, dorrance, or equal Model #6	544.10
L6725	Terminal device, hook, dorrance, or equal Model #7	210.52
L6730	Terminal device, hook, dorrance, or equal Model #7L0	390.00
L6775	Terminal device, hook, dorrance, or equal Model #555	265.00
L6780	Terminal device, hook, dorrance, or equal Model #SS555	304.00
L6790	Terminal device, hook, "ACCU" hook or equal	376.29
L6795	Terminal device, hook "2" load or equal	884.80
L6800	Terminal device, hook—APRL VC or equal	701.73
L6805	Terminal device, modifier, wrist flexion unit	234.93
L6806	Terminal device, hook, TRS grip, VC	1,169.55
L6807	Terminal device, hook, TRS adept, child, VC	889.88
L6808	Terminal device, hook, TRS adept, infant, VC	737.33
L6809	Terminal device, hook, TRS Super Sport, passive	244.08
L6810	Terminal device, hook, pincher tool, Otto Bock or equal	127.13
L6825	Terminal device, hand, dorrance, VO	860.00
L6830	Terminal device, hand, APRL, VC	986.50
L6835	Terminal device, hand, Sierra, VO	864.45
L6860	Terminal device, hand, Robin-Aids, VO soft	508.50
L6865	Terminal device, hand, passive hand	213.57
L6867	Terminal device, hand, Detroit infant hand, (mechanical)	762.75
L6868	Terminal device, hand, Passive infant hand, (Steeper, Hosmer or equal)	152.55
L6872	Terminal device, hand, NYU child hand	711.90
L6873	Terminal device, hand, mechanical infant hand, Steeper or equal	203.40
L6875	Terminal device, hand, Bock, VC	686.48
L6880	Terminal device, hand, Bock, VO	406.80
L6890	Terminal device, glove for above hands, production glove	106.79
L6895	Terminal device, glove for above hands, custom glove	376.29

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L6900	Hand restoration (cast, shading and measurements included), partial hand, with glove, thumb or one finger remaining	1,271.25
L6905	Hand restoration (casts, shading and measurements included), with glove, multiple fingers remaining	1,271.25
L6910	Hand restoration (cast, shading and measurements included), partial hand, with glove no fingers remaining	1,037.34
L6915	Hand restoration (shading, and measurements included), replacement glove for above	406.80
L7010	Electronic hand, Otto Bock, Steeper or equal switch controlled	1,728.90
L7015	Electronic hand, Systemteknik, Variety Village or equal switch controlled	3,966.30
L7020	Electronic Greifer, Otto Bock or equal switch controlled	2,440.80
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,339.10
L7030	Electronic hand, Systemteknik, Variety Village or equal, myoelectronically controlled	4,068.00
L7035	Electronic Greifer, Otto Bock or equal, myoelectronically controlled	2,339.10
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,830.60
L7045	Electronic hook, child, Michigan or equal, switch controlled	889.88
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,712.05
L7186	Electronic elbow, child, Variety Village or equal, switch controlled	6,000.00
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	6,340.00
L7260	Electronic wrist rotator, Otto Bock or equal	1,678.05
L7261	Electronic wrist rotator, for Utah arm	3,051.00
L7266	Servo control, Steeper or equal	610.20
L7272	Analogue control, UNB or equal	1,423.80
L7274	Proportional control, 12 volt, Utah or equal	4,576.50
L7360	Six volt battery, Otto Bock or equal, each	203.40
L7362	Battery charger, six volt, Otto Bock or equal	172.89
L7364	Twelve volt battery, Utah or equal, each	325.44
L7366	Battery charger, twelve volt, Utah or equal	432.23
L8000	Breast prosthesis, mastectomy bra	21.69
L8010	Breast prosthesis, mastectomy sleeve	59.42
L8020	Breast prosthesis, mastectomy form	165.00
L8030	Breast prosthesis, silicone or equal	156.79
L8300	Truss, single with standard pad	56.12
L8310	Truss, double with standard pads	114.49
L8320	Truss, addition to standard pad, water pad	30.51
L8330	Truss, addition to standard pad, scrotal pad	31.53
L8400	Prosthetic sheath, below knee, each	15.26
L8410	Prosthetic sheath, above knee, each	14.29
L8415	Prosthetic sheath, upper limb, each	14.24
L8420	Prosthetic sock, wool, below knee, each	16.95
L8430	Prosthetic sock, wool, above knee, each	18.35
L8435	Prosthetic sock, wool, upper limb, each	10.17
L8440	Prosthetic shrinker, below knee, each	36.61
L8460	Prosthetic shrinker, above knee, each	46.51
L8465	Prosthetic shrinker, upper limb, each	42.21
L8470	Stump sock, single ply, fitting, below knee, each	3.22
L8480	Stump sock, single ply, fitting, above knee, each	5.00

CODES BEGINNING WITH "Q" THRU "Z"

HCPCS CODE	DESCRIPTION	FEE FOR NEW EQPT	FEE FOR USED EQPT	RENTAL PER MONTH
Q0036	Oxygen concentrator high humidity	—	—	292.06
Q0037	Oxygen and water vapor enriching system	—	—	292.06
Q0038	Oxygen contents, gaseous, per unit (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned; 1 unit = 50 cubic feet)	200.33	—	—
Q0039	Oxygen contents, liquid, per unit (for use with owned stationary liquid systems or when both a stationary and portable liquid system are owned; 1 unit = 10 lbs.)	200.33	—	—
Q0040	Portable oxygen contents, gaseous per unit (for use only with portable gaseous systems when no stationary gas system is used; 1 unit = 5 cubic ft.)	29.21	—	—
Q0041	Portable oxygen contents, liquid, per unit (for use only with portable liquid systems when no stationary liquid system is used; 1 unit = 1 lb.)	29.21	—	—
Q0042	Stationary compressed gas system rental, includes contents (per unit), regulator with flow gauge, humidifier, nebulizer, cannula or mask and tubing, 1 unit = 50 cubic ft.	—	—	292.06
Q0043	Stationary liquid oxygen system rental, includes content (per unit), use of reservoir, contents indicator, flowmeter, humidifier, nebulizer, cannula or mask and tubing; 1 unit of contents = 10 lbs	—	—	292.06
Q0046	Portable liquid oxygen system rental, includes flowmeter, refill adapter, contents guage, cannula and tubing	—	—	56.57
V2620	Prosthetic, eye, glass, stock	223.00	—	—
V2621	Prosthetic, eye, plastic, stock	261.00	—	—
V2622	Prosthetic, eye, glass, custom	628.56	—	—
V2623	Prosthetic, eye, plastic, custom	628.56	—	—
Y2624	Reglazing of ocular prosthesis	31.64	—	—

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Z0010	Hospital bed, variable height, Hi-Lo, with mattress	983.42	717.18	98.34
Z0015	Hospital bed, semi-electric, head and foot adjustment, with mattress	1352.25	1175.22	135.22
Z0020	Hospital bed, total electric, head, foot, and height adjustment, with mattress	1909.20	1504.12	190.92
Z0460	Hand-held nebulizer	5.28	—	.53
L0462	Regulator (placement)	98.41	73.81	9.84
Z0520	Aerosol therapy unit with compressor	153.35	115.01	15.34
Z0783	Drug maintenance/supply kit for home infusion therapy—subcutaneous line or implanted access device	41.48	—	—
Z3255	Orthopedic shoes attached to brace	74.96	—	—
Z4330	Catheter plug	.89	—	—
Z4331	Irrigation solution, 500 ml	10.08	—	—
Z4332	Irrigation solution, 1000 ml	11.80	—	—
Z4351	Catheter irrigation tray with bulb syringe	5.28	—	—
Z4352	Urethral catheter tray	6.33	—	—
Z4353	Foley catheter tray	6.33	—	—
Z4405	Ostomy wafers	10.55	—	—
Z4406	Ostomy deodorant	8.31	—	—
Z4407	Skin prep wipes	6.54	—	—
Z4442	Tracheostomy suction kit	6.65	—	—

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Purple Heart Emblems on License Plates

Adopted New Rules: N.J.A.C. 13:20-42

Proposed: January 21, 1992 at 24 N.J.R. 219(a).
Adopted: March 10, 1992, by Stratton C. Lee, Jr., Director, Division of Motor Vehicles.
Filed: March 16, 1992 as R.1992 d.168, **without change**.
Authority: P.L. 1991, c.232, §2.
Effective Date: April 6, 1992.
Expiration Date: December 13, 1995.

Summary of Public Comments and Agency Responses:
Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. **No comments were received** from the public with regard to the proposal.

Full text of the adoption follows.

SUBCHAPTER 42. PURPLE HEART EMBLEMS ON LICENSE PLATES

13:20-42.1 Use
A person who is an active member of the Military Order of the Purple Heart may, pursuant to P.L. 1991, c.232 and this subchapter, affix a purple heart emblem to a New Jersey purple heart license plate issued in accordance with N.J.S.A. 39:3-27.35 et seq. for a motor vehicle owned or leased by that member. Such an emblem may only be affixed to a New Jersey purple heart license plate.

13:20-42.2 Design
The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be of a design similar to that set forth in 32 CFR §578.14(b), and shall be no larger in size than the replica of the purple heart which is already embossed on the purple heart license plate.

13:20-42.3 Materials
The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be made of reflectorized material.

13:20-42.4 Placement
The purple heart emblem to be affixed to a purple heart license plate as set forth in N.J.A.C. 13:20-42.1 shall be placed upon the replica of the purple heart which is already embossed on the license plate, and shall not obscure or cover any portion of the letters or numbers which appear on the license plate.

(b)

DIVISION OF CONSUMER AFFAIRS

Board of Dentistry

Announcement of Practice in a Special Area of Dentistry

Adopted Amendment: N.J.A.C. 13:30-8.4

Proposed: November 18, 1991 at 23 N.J.R. 3429(a).
Adopted: March 4, 1992 by the State Board of Dentistry, William Cinotti, D.D.S., President.
Filed: March 13, 1992 as R.1992 d.165, **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. 45:6-7.
Effective Date: April 6, 1992.
Expiration Date: March 12, 1995.

The Board of Dentistry afforded all interested parties an opportunity to comment on the reproposed amendment, N.J.A.C. 13:30-8.4, relating to announcement of practice in a special area of dentistry. The official comment period ended on December 18, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 18, 1991, at 23 N.J.R. 3429(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the New Jersey Hospital Association, the New Jersey Dental Association, the New Jersey Department of Health, the Federal Trade Commission, the American Dental Association, and to 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 Dentistry, Post Office Box 45005, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:
During the 30-day comment period, the Board of Dentistry received 11 letters regarding the reproposed amendment. Comments in support of the amendment were received from the following:
American Association of Endodontists
New Jersey Association of Endodontists
The American College of Prosthodontists
New Jersey Society of Oral and Maxillofacial Surgeons, Inc.
Robert Varjan, D.M.D.
New Jersey Association of Orthodontists
John M. Pellecchia, Esq., representing the following dental specialty organizations:

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New Jersey State Association of Endodontics
New Jersey Society of Oral and Maxillofacial Surgeons
New Jersey Association of Orthodontists
New Jersey Academy of Pediatric Dentistry
New Jersey Society of Periodontists
American College of Prosthodontists, New Jersey Section
American Association of Orthodontists
New Jersey Dental Association

A summary of the additional comments received, together with the Board's responses, follows.

COMMENT: John M. Pellechia, Esq., commented on behalf of the specialty groups represented by his law firm that the summary to the rule indicates an intent to provide that non-compliance "shall" be deemed professional misconduct, but the proposal itself states that non-compliance "may" be deemed professional misconduct. He recommended that the proposal be amended to reflect the intent stated in the summary.

RESPONSE: The Board determined that it was preferable to retain discretion in order to determine whether non-compliance with the rule should be considered professional misconduct in order to be able to take into consideration all of the circumstances of the case.

COMMENT: The New Jersey Dental Association and the New Jersey Academy of General Dentistry expressed concerns about subsection (h) of the rule which requires a dentist, other than a specialist granted a permit by the Board, who wishes to advertise services in one or more of the special areas of dentistry to place the phrase "General Dentist" immediately preceding or following each specialty area claim. It was suggested that this requirement would be burdensome in a case where a general dentist wished to list a number of specialty areas as available services in his or her practice. In such a case the term "General Dentist" would have to appear more than once.

RESPONSE: The purpose of this subsection of the rule is to assure that prospective patients are able to clearly distinguish between dental services offered by a general dentist and those offered by a specialist. The Board recognizes that a sole practitioner who wishes to list more than one specialty area in an advertisement presents a unique circumstance in which the repetition of the phrase "General Dentist" does not further the stated aim of this provision. In such a case a single disclosure that the practitioner is a general dentist would be adequate to satisfy the requirements of the rule. The Board further recognizes that other irregular or anomalous circumstances may be presented by advertisers. These will be addressed on a case by case basis as they arise. The Board's primary criteria for evaluating these advertisements will be whether they clearly distinguish between the specialist and the general dentist.

COMMENT: Morton A. Winner, D.D.S., recommended that the Board prohibit the use of any license or permit number in any advertisement other than the specialty permit number in order to prevent causing confusion on purpose by listing a dental license number in lieu of a specialty permit number. Dr. Winner also suggested that the Board place the word "actual" in front of the word specialist and emphasize the word "exclusively" in subsection (h).

RESPONSE: The Board does not object to the utilization of a dental license number in an advertisement. In fact, the use of the dental license number can be a useful piece of information to a potential patient if he or she seeks to obtain further information about the dentist from the Board office. In regard to the emphasized words recommended by Dr. Winner, the Board after careful review believes that the rules are quite clear as written.

Summary of Agency-Initiated Change:

The Board of Dentistry, upon adoption, has amended N.J.A.C. 13:30-8.4(m) in order to provide its current street address and to correct a typographical error in its post office box number.

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

13:30-8.4 Announcement of practice in a special area of dentistry

(a) Any licensee who seeks to announce to the public that he or she is a specialist or specializes in one or more area(s) of dental practice listed in (b) below shall first obtain a permit to do so from the Board of Dentistry.

(b) The following special areas of dentistry are hereby recognized as suitable for the announcement of specialty dental practices:

1. Endodontics;
2. Oral surgery;
3. Oral pathology;
4. Orthodontics;
5. Pediatric dentistry (also called Pedodontics);
6. Periodontics;
7. Prosthodontics;
8. Public health.

(c) The Board shall grant permission to announce specialty or specialization to:

1. Any licensed dentist who is currently certified or currently eligible for certification by a specialty board recognized by the American Dental Association appropriate to that area of dental practice listed in (b) above; or

2. Any licensed dentist who first meets the educational requirements and standards approved by the Board. The educational requirements and standards of the Board shall be the successful completion of a post-doctoral education of two or more years in duration in one or more of the special areas listed in (b) above and which, at the time of completion, was accredited or provisionally accredited by the American Dental Association Council on Dental Education.

i. The Board may review the credentials and educational background of any licensed dentist eligible by (c)2 above and approve or deny permission to announce specialization in a special area of dentistry.

(d) A licensed dentist permitted to announce by (c) above shall avoid any inference, implication or announcement by press, sign, card, letterhead or printed matter or any other means of public advertising that another licensed dentist not permitted to announce, and associated or employed in the same practice, is also qualified for the announcement in the specialty practice area.

(e) These rules regarding the announcement of specialty practice shall not prohibit any licensed dentist from engaging in any aspect of the practice of dentistry in accord with applicable laws or other rules and regulations of the Board.

(f) Prior to making any announcement of specialty in accord with the preceding paragraphs, a licensed dentist shall apply to the Board for permission to do so. Application to the Board for permission to announce in a special area of dental practice shall be upon such form and contain such information as the Board may direct. When granted a permit of announcement of specialty in a designated area(s) of dentistry, a licensee shall display this permit or a copy thereof in all office location(s) during the period of specialty practice. If a licensee discontinues a specialty practice, the Board shall be so notified.

(g) All advertisements and public representations of a licensee granted a permit of announcement of specialization shall contain the licensee's name and the phrase "N.J. Specialty Permit No. _____." A licensee advertising or publicly representing that his or her practice specializes in or has licensees on staff who specialize in one or more of the special areas of dentistry in (b) above shall list the licensee's name and the phrase "N.J. Specialty Permit No. _____."

(h) If a dentist, other than a specialist granted a permit by the Board, wishes to advertise services in one or more of the special areas of dentistry in (b) above, such advertisement shall contain the licensee's name and the phrase "General Dentist" immediately preceding or following each specialty area claim in a type size and style at least as prominent as any service described as being offered in the practice. The advertisement shall not use the terms "specialist," "specialty," "specializing," "practice limited to," or any other word or phrase connoting that the licensee is a specialist. The advertisement of services exclusively in one specialty area shall be limited to those licensees who practice that specialty at all times and in all locations.

(i) If a dentist advertises under a banner heading for any of the special areas of dentistry in (b) above in any directory (for example, telephone book yellow pages), such advertisement shall contain the licensee's name and either the phrase "General Dentist" or "N.J. Specialty Permit No. _____."

(j) If a dentist wishes to advertise services in an area of dentistry other than the recognized special areas of dentistry in (b) above,

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such advertisement shall not use the terms "specialist," "specialty," "specializing," "practice limited to," or any other word or phrase connoting that the licensee is a specialist or that the area of dentistry is a recognized specialty.

(k) The Board may require a licensee to substantiate the truthfulness of any objective assertion or representation set forth in an advertisement.

(l) Noncompliance with these rules may be deemed professional misconduct and may subject the licensee to suspension or revocation of his or her license to practice dentistry.

(m) Applications for a permit pursuant to (a) above may be obtained by writing to the Office of the Board of Dentistry, *[1207 Raymond Boulevard]* ***124 Halsey Street***, P.O. Box *[45029]* ***45005***, Newark, New Jersey 07101.

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Medical Examiners

Medical Standards Governing Screening and Diagnostic Medical Testing Offices

Adopted Repeal and New Rule: N.J.A.C. 13:35-2.5

Proposed: September 16, 1991 at 23 N.J.R. 2858(a).

Adopted: November 13, 1991 by the New Jersey Board of Medical Examiners, Sanford Lewis, M.D., President.

Filed: March 16, 1992 as R.1992 d.169, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2.

Effective Date: April 6, 1992.

Operative Date: April 6, 1992 except as to subsections (d), (e), (f) and (g) which are operative July 6, 1992.

Expiration Date: September 21, 1994.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners announced the opportunity of all interested parties to comment on the proposed repeal and new rule in the New Jersey Register on September 16, 1991. Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Asbury Park Press, the State Department of Health, the Radiologic Technology Board of Examiners, the Medical Society of New Jersey, the New Jersey Association of Osteopathic Physicians and Surgeons, the Radiological Society of New Jersey, the New Jersey Hospital Association, the University of Medicine and Dentistry of New Jersey, various professional groups and practitioners and other interested parties. A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Room 602, 28 West State Street, Trenton, New Jersey 08608.

The Board of Medical Examiners received nine comments on the proposed repeal and new rule. Four comments were received beyond the cut-off date but were considered nevertheless. Comments were received from the Department of Environmental Protection and Energy Commission on Radiation Protection (DEPE); the Radiologic Technology Board of Examiners, the New Jersey Chapter of the American Physical Therapy Association (NJAPTA), the Radiological Society of New Jersey (RSNJ), from two radiologists, from the New Jersey Academy of Opthalmology and Otolaryngology (NJAOO), from the Medical Society of New Jersey, and from U.S. HealthCare, a health maintenance organization. Following is a summary of the comments received and Board responses.

N.J.A.C. 13:35-2.5

COMMENT: Herman M. Robinson, M.D., a Board-certified radiologist, commented with approval on the rule in the form proposed, suggesting that the public is entitled to the protection afforded by the proposed wording.

The Medical Society of New Jersey commented that it was generally supportive of the rule but believes there are sections which have an impact on radiology and pathology and suggests that those specialties should be given an opportunity to work with the Board on such matters. No specifics were mentioned, and no additional comment time was requested.

RESPONSE: The Board appreciates the favorable response from the commenters, and assures that it is always available to consider any unusual impact a rule may have on particular specialties. Where modification is found to be in the public interest, the Board will consider appropriate action.

N.J.A.C. 13:35-2.5(a) and (b)

COMMENT: NJAPTA expressed concern that the proposed rule should not encourage establishment of joint ventures which are currently prohibited by the Health Care Cost Reduction Act of 1991. Also, request was made to clarify a reference in this subsection to "diagnosis" as meaning "medical diagnosis" not affecting other kinds of health care practitioners.

RSNJ suggested that, to assure competence, the physician ownership of screening and diagnostic services should be limited to those whose primary practice is in those services. RSNJ also suggested the protective provisions of this subsection should be applicable to every medical practice offering either of these services even if it is not the primary offering of that office; otherwise the patients of specialists such as orthopedists and gynecologists would not receive the protections the rule is intended to provide.

NJAOO addressed the concept of "screening test" in paragraph (a)2. The Society approved such tests, as for glaucoma, when sponsored by a municipal or regional health department or a volunteer screening by a non-profit professional society at no cost to examinees. But the Society urged that such screenings be done by a physician who is directly on the premises, and disapproved screenings performed by unlicensed personnel. The Society expressed concern that private physicians might use the guise of a "community screening" to solicit surgical procedures which would then be referred to that physician.

U.S. HealthCare, a health maintenance organization, expressed concern that its mobile van mammography examinations might be precluded because the HMO is owned not by licensed health care professionals but by the HMO general business corporation.

RESPONSE: The definitions provided in this subsection make clear that the rule does not apply to screening or diagnostic facilities licensed by the State. A health maintenance organization is licensed by the State Department of Health. Thus, U.S. HealthCare, as an HMO organized as a general business corporation but licensed by this State, is not precluded from offering screening medical or diagnostic services, and its mobile van used for mammography screenings is unaffected by the ownership limitations otherwise governing the offering of medical services. The rule applies to all private medical offices, excluding only the designated community health screening modalities, but the Board does not at present have statutory authority to limit the physician ownership of offices offering screening or diagnostic medical services to specialists in a particular field of medical practice. However, all practitioners are required to comply with accepted standards of practice.

Nothing in the rule encourages avoidance or evasion of the new law prohibiting or limiting physician referral of patients to entities wherein the referrer has a financial interest. Rather, the rule is intended to address identified and/or potential abuses occurring despite compliance with those aspects of the new law.

With regard to NJAOO concerns, the rule does regulate screening tests. However, the paragraph cited by the Society already specifically excludes from Board rule constraints the designated types of public screening organizations of which the Society approves. Subsection (b) of the rule specifically addresses both stationary and mobile screening facilities and requires that all testing be performed under the authority of a designated responsible physician, with results being interpreted by a physician in a written report. Subsection (d) already requires that when the physician is not present at the screening site, the testing may be delegated only to another licensed health care practitioner; tasks of a non-medical nature can be done by non-licensed personnel but only under the supervision of a licensed employee. Thus, the Board believes that the concerns of the Society are already fully addressed in the rule as proposed.

Although the rule is already replete with references to medical services and licensees of the Medical Board, an additional reference to "medical diagnosis" has been inserted.

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N.J.A.C. 13:35-2.5(c)

COMMENT: RSNJ suggested that three business days is an impractical time limit for provision of test reports, contending that some tests, such as certain nuclear medical exams, require more time for computer processing and interpretation. Other exams may require comparison with an earlier study, which in turn may require delivery of that report from another location. Postal delivery may cause delay. RSNJ acknowledged that interim reports are commonly provided if a comparison study will be delayed, but suggested that receipt of an interim report may cause unnecessary concern to the patient and will require the testing doctor to incur the time and expense of sending two reports. No estimate was offered by RSNJ of the numbers of tests requiring additional time, nor was any alternative timeframe proposed.

RSNJ also objected to the directive not to provide a specific interpretation of an abnormal or questionable test result to an examinee who has no current treating physician, coupled with a letter to strongly urge the examinee to seek medical consultation with an appropriate physician. RSNJ believes that the proposed wording unduly limits the ability of radiologists to communicate "openly and honestly with their patients."

NJAOO believed three business days was unrealistic for a screening test report to be provided.

RESPONSE: Three business days from receipt of the report by the testing facility is the requirement under the current rule and was unchanged by the proposal. To accommodate postal delay, the Board has revised the verb "provide" in the sense of "deliver," to "issue," and has added specific notice that an interim report will be supplemented promptly after receipt and review of additional reports which were requested. Interim reports should be provided where a full report cannot be completed within the designated time period.

The directive not to disclose with specificity a diagnosis of cancer, for example, is carried over directly from the current rule. It was intended to reduce the risk that an examinee not under current medical care might misconstrue the meaning of medical terminology or might panic; further, the test report might be inaccurate and might produce an unwarranted anxiety in the examinee before corroborative testing had been done. However, the Board respects the concerns raised by RSNJ, especially in light of the more knowledgeable consumer market these days, and has revised the wording to authorize an interpretation in the advisory letter sufficient to strongly advise the examinee to seek medical consultation.

The modification authorizing preliminary verbal report when necessary should accommodate the concerns of NJAOO regarding screening tests. But more fundamentally, the rule does not require issuance of a report within three days of the testing. No arbitrary time limitation has been placed on the physician who shall evaluate the data from the screening test. But after the physician has so evaluated and then prepared a brief written (perhaps a form) report on the result of the screening tests, the rule requires issuance of the report within three days of that point. Thus, the Board finds no need to modify the rule.

N.J.A.C. 13:35-2.5(d)1

COMMENT: RSNJ questioned the Board advice to physicians that medical services performed from mobile facilities parked on the premises of or providing services to a licensed health care facility must have approval from the State Department of Health. RSNJ believes there is no obligation for an entity conducted as the private practice of medicine to conform with DOH regulations, suggesting that the relationship with the hospital is no more than a tenant/landlord arrangement. Therefore, RSNJ suggested that it is beyond Medical Board scope and jurisdiction to direct its own licensees to obtain such approval before offering such services.

RESPONSE: P.L.1991, c.187, the Health Care Cost Reduction Act, clarified the earlier provisions of N.J.S.A. 26:2H-7 by enacting, in section 30, a requirement that a physician who initiates a health care service which is the subject of a health planning regulation or who purchases major moveable equipment as discussed in that section, must obtain a Certificate of Need from the State Department of Health or must seek a waiver therefrom. It is the Board's understanding that these provisions apply to medical services as discussed in the proposed rule subsection and the proposed wording, providing advance warning to its licensees, is unchanged.

N.J.A.C. 13:35-2.5(e)

COMMENT: RSNJ urged that the requirement of keeping annual statistics on issuance of abnormality reports and advisory letters to examinees in screening services be applicable to all medical offices doing diagnostic medical testing even if that is not the primary service in that office.

RESPONSE: The Board believes that such an additional requirement is unnecessary at this time. When a person seeks a screening test at the office of a physician whose practice is not limited to screening, that doctor would be expected to provide the regular follow-up which must be given to all patients. Since that office is presumptively a "full service" facility, with staff trained to follow up on appointments and abnormal test reports, there is no apparent need at this time to require a separate accounting to the Board of the types required in this subsection. Any individual problems of failure to do appropriate follow-up will be handled, as now, on a disciplinary case-by-case basis. The Board has already approved for publication a proposed amendment to its patient record rule regarding a licensee's obligation to follow up with patients regarding test results warranting prompt action (see 24 N.J.R. 50(a)).

N.J.A.C. 13:35-2.5(f)

COMMENT: DEPE commended the Board for its intent to elevate the standards of medical practice and safety with regard to radiation matters. However, DEPE suggests that the Radiation Protection Act and the Radiation Protection Code provide adequate regulatory coverage for the issues addressed in proposed subsection (f). DEPE believes regulatory activity should be handled by the Commission and the Radiologic Technology Board of Examiners rather than having this Board exercise an overlapping jurisdiction with consequent possible confusion. RSNJ made a similar comment.

RESPONSE: The Board appreciates the DEPE comments indicating an intent to vigorously monitor the areas under its jurisdiction. The Board also recognizes the concerns of overlap and the goals of the DEPE and the Radiologic Technology Board of Examiners, and has modified the subsection accordingly in reliance upon investigation and enforcement by the commenting agencies.

N.J.A.C. 13:35-2.5(g)

COMMENT: DEPE suggested that responsibility for mammography equipment standards lies primarily in that office and it is equipped to assure compliance. DEPE advises it is presently completing a revision of its rules addressing medical diagnostic x-ray installations which will include an extensive section on mammography and its equipment, quality assurance programs, and specific requirements for mammography technologists. A pending legislative bill may also address the Radiologic Technologist Act.

DEPE raised similar concerns about the proposed requirements for minimum qualifications to be required of those technologists to whom a Medical Board licensee would be allowed to delegate mammography testing, reminding that licensure responsibilities for radiologic technologists is vested in the Radiologic Technology Board of Examiners. DEPE noted that a pending bill would establish a specific category of mammography radiologic technologist and would require that board to determine training curricula, exams, and continuing education requirements.

The Radiologic Technology Board of Examiners presented similar comments, emphasizing its role as the only agency with the statutory authority to establish the qualifications of radiologic technologists and to determine the eligibility of individuals applying for licensure.

RSNJ agreed that additional training for mammography technologists is needed, is required by the American College of Radiology (ACR) accreditation program, and is readily available. RSNJ also agreed that doctors supervising and interpreting mammography require specialized training. The Society noted that the ACR accreditation program and also Medicare rules for screening mammography require continuing medical education (CME) in mammography. Particularly, RSNJ pointed out that current ACR and Medicare requirements for CME are much stricter than those proposed by the Board rule (that is, 40 hours of mammography training prior to accreditation and at least 15 hours every three years thereafter).

The Society also objected to a Board rule requirement mandating CME only for practitioners with mobile mammography units, observing that quality care would be furthered by applying that requirement to private medical offices which probably do less frequent mammography and may do it without the benefit of supervision by a qualified radiologist. Exempting such offices would omit gynecologists, obstetricians and cardiologists performing mammography exams in non-mobile offices from the continuing medical education requirement. Also omitted is a restriction on performance of ultrasounds on the patients of such

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specialists which RSNJ believes is often done on equipment which is less costly, older, and less adequate than that used by radiologists, and it is those offices which may be most in need of a quality assurance program.

Fred M. Palace, M.D., a Board-certified radiologist in private practice and the medical director of a mammographic screening facility, commended the Board's efforts to improve quality assurance, and urged some modification to that part of this subsection requiring that a screening program also teach breast self-examination. He noted that while this is a worthy endeavor and is done at his facility, some facilities may be able to provide the testing alone at a lower cost by not providing that intensive service.

RESPONSE: The Board points out to all the commenters that the rule proposal under discussion is addressed solely to the responsibilities of Medical Board licensees and the extent to which—and circumstances when—they would be permitted to delegate any medical responsibilities. The Board also notes that as of the time of this rule proposal and adoption, there are still no State rules addressing the minimum qualifications for a technologist doing mammography studies. Nevertheless, the Board appreciates knowing that the current DEPE rules and/or law shall be updated and tightened for needed public protection and agrees that the pertinent subsection can be revised to rely upon the enforcement representations and initiatives proposed by the sister agencies for the overlapping areas of concern. The Board has chosen a revision which anticipates establishment of the special category of mammography technologist, whether by statute or by rule of the DEPE or the technologists' board.

With regard to Dr. Palace's suggestion, the Board has revised the subsection to clarify that the instruction in breast self-examination can be provided in written form. Such written materials are readily available in the mammography field. The requirement for palpation has been clarified to provide that this shall be done by a physician or by a registered nurse.

With regard to adding CME requirements to practitioners in traditional non-mobile offices doing mammography as well as other kinds of testing, the Board notes the desirability of applying CME requirements to all areas of practice but has determined that such refreshed training is particularly critical in mammography work done in a mobile setting which is unlikely to have full-time on-site physician presence. A better trained interpreter of films taken in a mobile van is deemed more likely to identify inadequately taken or processed films, and to so notify the examinee of the need for a more comprehensive examination. Specific problems arising in the other contexts will be addressed, for the time being, on a case-by-case basis.

As for any nonconformance between the Board CME requirement and those of ACR and Medicare, the Board's wording explicitly denotes the CME as "minimum," thus allowing a more stringent standard to prevail for practitioners needing to qualify for specific programs or accreditation. However, to minimize any confusion which might result, the Board has added a sentence pointing out that a practitioner must in fact satisfy any criteria specified by a representation that ACR or Medicare requirements are met by that practitioner.

N.J.A.C. 13:35-2.5(h)

COMMENT: Dr. Palace questioned the wisdom of requiring a clinical exam of the patient, when feasible, before doing a requested radiologic study, to assure its appropriateness and sufficiency. He suggested that radiologists do not always have special training in physical diagnosis, especially in mammographic exams.

RSNJ, while agreeing that both radiologist and patient would often benefit from such examination, raised similar concerns, noting that few radiologists are proficient in all of the areas of clinical exam which would be involved in evaluating the appropriateness of all radiological studies requested by a referring doctor. The Society also suggested that doing a detailed exam or history-taking would "undermine patient confidence in their own physicians." RSNJ agreed it is reasonable to require that written indications and routines be part of a quality assurance program, and suggested that via the radiologist's protocol, technologists are already trained to obtain sufficient history from each patient to assure that the requested and scheduled exam is indicated. Only where the appropriate indication or routine is not apparent to the technologist would the radiologist be contacted.

RESPONSE: The Board calls attention to the definition subsection of the rule, noting that this rule does not apply to State-licensed facilities such as a hospital. Nevertheless, the Board believes it is important for radiologists to bear in mind that they, as specialists in the kinds of diagnostic studies requested for suspected pathology, are in an important position to identify both appropriateness and sufficiency of the particular study requested in light of the clinical problem to be solved. Some referring doctors request inappropriate studies based on outdated or insufficient medical knowledge. Some radiologists accept a referral and perform the requested test unquestioningly, even when they would recognize that procedure as unnecessary if they knew the purpose of the referral. In order to limit radiation exposure to the patient, and/or to prevent the patient from incurring large expense for inappropriate or unnecessary radiologic studies, it is essential for the radiologist to bring his or her professional expertise to bear on a diagnostic problem, and not simply to accept a referral in an automatic manner. Affirmance of the concept of independent professional responsibility of a specialist has been addressed in this connection in a prior Board matter, *Brodie v. State Board of Medical Examiners,* 177 *N.J. Super.* 523 (App. Div. 1981), *certif. den.* 87 *N.J.* 386 (1981) and related Federal proceedings.

Nevertheless, the Board recognizes the concerns expressed, especially with regard to a mandatory clinical examination without limitation as to type of case, and has revised the wording to require that the radiologist ascertain that sufficient information has been provided by the referring doctor to indicate the appropriateness of the requested diagnostic test for the apparent problem. If a reasonable radiologist would find that more information is needed, the radiologist shall, whenever feasible, consult directly with the referring doctor (for example, telephone call) prior to performing the test. The radiologist retains the professional discretion to perform a focused clinical examination in appropriate cases of suspected pathology.

Summary of Agency Response to Public Comment:

The Board has made certain revisions to clarify its intent with regard to applicability of the rule to its licensees in their varied practice formats, locations and specialties. The Board has deleted certain specific training requirements which physicians would have had to verify in their mammography technologist employees, based upon the representation that sister agencies having primary responsibility for the licensure of technologists are in the process of upgrading and specifying the necessary requirements. The Board has also deleted detailed reference to certain obligations of physicians utilizing radiological equipment, and substituted a cross reference reminding Board licensees that they must be aware of and compliant with all requirements imposed by the Department of Environmental Protection and Energy Commission on Radiation Protection. The radiologist will consult directly with a referring doctor prior to carrying out a requested radiological study on a patient referred for suspected pathology, and a clinical exam will be performed only at the discretion of the radiologist on appropriate cases.

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

13:35-2.5 Medical standards governing screening and diagnostic medical testing offices

(a) As used in this section, the following terms shall have the following meanings:

1. "Screening facility or office" means a private practice location not licensed by the State Department of Health, which practice offers services to the medical profession or to the public in the form of one or more types of medical testing. Such a practice shall be owned and under the control, supervision and direction of a physician or group of physicians licensed and currently registered in New Jersey.

2. "Screening test" means a test which results in a determination less complete than a physical examination performed by a licensed physician and does not purport to substitute for a complete examination. The definition is not intended to include a community-sponsored one-modality service such as, for example, a hypertension or glaucoma screening sponsored by a municipal or regional health department or a community screening volunteered by a non-profit professional society at no cost to examinees.

3. "Diagnostic center" means a practice not licensed by the State Department of Health, which practice offers services to the medical profession or to the public and which contains the equipment and medical staff necessary to establish a ***medical*** diagnosis and which may recommend a course of treatment for the examinee who elects

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to become a patient. Such a practice shall be owned and under the control, supervision and direction of a physician or group of physicians licensed and currently registered in New Jersey.

(b) Medical screening or medical diagnostic testing (other than clinical laboratory testing), conducted primarily for persons not receiving medical treatment from the testing entity, is nevertheless deemed to be a medical service. Such a practice shall be owned and under the responsibility of one or more physicians each of whom holds a plenary license from the State Board of Medical Examiners. All such testing, irrespective of the stationary or mobile nature of the facility, shall be performed under the authority of a designated responsible physician who shall establish a protocol and a quality assurance program for the specific type of screening or study. Results of all such procedures shall be interpreted by a physician holding a plenary license in this State, and documented in a written report which is preserved by the physician as required by N.J.A.C. 13:35-6.5.

(c) A copy of the test report shall be *[provided]* ***issued*** promptly, ***by preliminary verbal report when necessary*** and no later than three business days from the date of receipt of the report by the testing facility, to the referring physician, if any, and upon request to the examinee or other authorized person, to the extent authorized by N.J.A.C. 13:35-6.5. ***An interpretation delayed pending receipt of additional material shall be issued as soon as possible thereafter.*** In the event that a report is directed by an examinee to a designated physician who has not personally ordered the test, said physician shall incur no obligation with respect to such report and the testing facility shall formally advise all examinees of this at the time of testing. All abnormalities shall be clearly identified for the attention of a physician. For an examinee without physician referral, an abnormal or questionable result shall be identified in the report *[without specific interpretation, strongly advising]* ***with interpretation sufficient to strongly advise*** the examinee to seek medical consultation. The facility protocol shall make available a referral source for examinees with suspicious findings or suspected disease, which source identifies specialists pertinent to the pathology involved, such as internal medicine, gynecology, hematology, general surgery, surgical and medical oncology and radiation oncology, for follow-up when the examinee does not indicate a primary care provider as recipient of test results.

(d) Requirements for a screening or diagnostic facility not having a full-time physician presence on the premises are as follows:

1. Non-invasive screening tests or diagnostic studies may be performed in facilities at which the responsible physician is not physically present at all times of facility operation. For such testing services, the responsible physician may delegate certain tasks to another licensed health care practitioner, such as a registered professional nurse or x-ray technician, consistent with that person's scope of practice. Tasks of a non-medical nature may be delegated to non-licensed employees under the supervision of a licensed employee, where not inconsistent with applicable law or rule and with accepted standards of practice pertinent to that screening or diagnostic procedure. The physician responsible for such screening or diagnostic service shall take the necessary measures to assure compliance with the requirements of this section and accepted standards of practice. Services performed from mobile facilities parked on the premises of or providing services to a licensed health care facility must have approval from the State Department of Health.

2. There shall be a written protocol which specifies at a minimum: equipment operation, procedure manuals, eligibility criteria for persons to be accepted for examination, methods for securing informed consent, record documentation, and provision for follow-up to examinees and/or referring physicians, as applicable. There shall be procedures for authorized billing, and other factors consistent with accepted standards of practice pertinent to the screening test or diagnostic procedure.

3. There shall be a quality assurance program which requires the following:

i. At least annually, documented inspection of personnel credentials upon hire and at least annually thereafter or sooner as required by circumstances including dates of certification and license renewal; review of the procedure manuals; determination of the qualifications, identity and supervision of employees designated to perform specific functions; and assessment of accuracy in test results;

ii. At least quarterly, evaluation of personnel skills and review of test performance techniques and data recordation or more frequently as required by demonstrated staff performance; verification of billing accuracy; and observance of other factors consistent with accepted standards of practice pertinent to the screening test or diagnostic study procedure;

iii. The required quality assurance program shall include documented regular mechanical inspections as customary for that equipment, but no less frequently than four times per year, and before re-use after the reporting of a mechanical or pertinent personnel problem; and

iv. Minimum safety precaution standards shall be established, observed by all personnel and confirmed by the supervising physician.

(e) For screening services accepting examinees without physician referral, the responsible physician shall prepare and produce, at the request of the Board, a report for a specified calendar year(s) designating the total number of examinees issued abnormality reports and the advisory letter required by (c) above.

(f) For radiologic procedures, the responsible physician shall assure ***compliance with the applicable requirements of the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. and the Radiation Protection Code, N.J.A.C. 7:28.*** *[provision of adequate radiation shielding for patients, personnel and facilities. There shall be procedures for measurement of radiation exposure of operating personnel and for periodic inspection of the equipment by a medical physicist, with certification]* ***Certification*** of inspection results ***shall be*** kept on the premises. The responsible physician may delegate certain tasks to a New Jersey-licensed x-ray technologist within that person's scope of practice, provided that the physician has complied with (d) above.

(g) In addition to compliance with all other subsections of this rule, a mammography screening program shall establish a written protocol which shall be documented in the facility policy and procedure manual and which shall be brought to the attention of pertinent personnel.

1. The protocol shall include specific criteria for screening: for example, age, family history, personal medical history, permissible frequency of testing and other indicators. It shall provide for palpation by ***a physician or by*** instructed ***licensed registered nurse*** personnel, ***and*** for appropriate positioning preparatory to the test *.* *[, and for the teaching of breast self-examination as part of the]* ***The*** screening program ***shall include instruction in breast self-examination, which may be provided in the form of written materials***.

2. The physician shall require *[a two-view procedure for testing: a cranio-caudal and medial lateral oblique view of each breast]* ***that anyone other than a physician operating mammography equipment shall be currently licensed as a diagnostic (or mammographic) radiologic technologist as shall be required by the Department of Environmental Protection and Energy in accordance with N.J.S.A. 26:2D-1 et seq. and N.J.A.C. 7:28-19 et seq.***. The equipment used shall conform to *[FDA performance standards for diagnostic x-ray systems and shall be specifically designed for mammography only (including devices appropriately compressing and immobilizing the breast)]* ***the applicable sections of N.J.A.C. 7:28***. Baseline mammography images and periodic images shall be maintained as part of the record of the examinee or referred patient and preserved for seven years from date of last entry. The physician may release the original of any image, providing that signed documentation thereof is retained in the patient's file.

3. Mammography services offered in mobile settings shall be furnished only under the supervision of a doctor of medicine or of osteopathy who is certified by the American Board of Radiology or by the American Osteopathic Board of Radiology or who possesses equivalent certification requirements as determined by the Board of Medical Examiners and who successfully completes a minimum of 20 hours of post-graduate work in mammography interpretation every 24 months after the date he or she begins reading mammo-

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graphies. Documentation shall be kept on the premises. ***Physicians practicing in any setting, mobile or otherwise, who offer mammography services as authorized Medicare providers or as meeting requirements of the American College of Radiology, must meet the more stringent training requirements of those programs.***

4. The physician shall require that anyone operating mammography equipment, other than a physician, shall be currently licensed *[and registered by the State to perform radiological procedures and certified in radiography by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiographic Technologists, or have equivalent certification qualifications as determined by the Board of Radiation Technology or, if such evaluation is not available, then by the Board of Medical Examiners. Said person shall also have successfully completed a program of formal training in radiologic technology of not less than 24 months' duration in a school that meets Federal standards for accreditation of education programs for radiographers or that is approved by the Council on Allied Health Education and Accreditation; and shall also have completed specialized training in mammographic positioning, compression and technique factor settings in the 24 months preceding the effective date of this rule (or in the 24 months preceding the time said person begins to perform mammographies in this State). Said person shall further complete this specialized training every 24 months thereafter]* ***by the New Jersey Radiologic Technologist Board of Examiners to perform radiographic procedures***. Documentation shall be kept on the premises.

(h) *[Whenever feasible, a patient who has been referred by a physician for radiologic diagnostic services to confirm or rule out a suspected pathology shall be scheduled for clinical examination to be performed by the physician offering diagnostic radiology services. When personal examination is not practicable in the specific circumstances,]* ***A physician may request a radiologist to perform diagnostic radiology services intended to confirm or rule out suspected pathology. The radiologist shall ascertain whether sufficient objective or clinical data have been provided to determine that the tests are appropriate to the apparent problem. When, in the opinion of a reasonable radiologist, further information is needed to select the appropriate test, then the radiologist, whenever feasible, shall personally consult with the referring doctor in advance of performing the test. In addition or as an alternative, at the professional discretion of the radiologist, he or she shall perform a focussed clinical examination in appropriate cases. Whenever feasible,*** the radiologist shall be notified of the patient's appearance at the radiologic facility and shall direct the licensed x-ray technologist as to procedure, method of obtaining the test data, scheduling of the physician's oral and written report, and timely notification to the patient or referring physician of results or the need to repeat the test.

(i) A patient or examinee shall not be billed for a test result which is professionally incomplete, or which is found to be non-diagnostic due to inadequate equipment or technique.

(j) This rule shall be effective *[upon promulgation]* ***April 6, 1992***, except that subsections (d), (e), (f) and (g) shall be operative *[three months after promulgation]* ***July 6, 1992***.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY
Prescriptions and Medication Orders Transmitted by Technological Devices
Adopted New Rule: N.J.A.C. 13:39-5.8

Proposed: August 19, 1991 at 23 N.J.R. 2469(a).

Adopted: February 19, 1992, by the State Board of Pharmacy, Elaine Dunn, President.

Filed: March 13, 1992 as R.1992 d.166, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14-26.2 and 45:14-36.1.

Effective Date: April 6, 1992.
Expiration Date: June 19, 1994.

The State Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:39-5.8, relating to prescriptions and medication orders transmitted by technological devices. The official comment period ended on September 18, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 19, 1991, at 23 N.J.R. 2469(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Department of Health, the New Jersey Pharmaceutical Association, the New Jersey Society of Hospital Pharmacists, Rite-Aid Corporation, Wakefern Food Corporation, Supermarkets General Corporation, and a number of pharmacists and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Pharmacy, Post Office Box 45013, Newark, New Jersey, 07101.

Summary of Public Comments and Agency Responses:

The Board of Pharmacy received comments from the following persons:

Charles A. Janousek, Executive Director
State Board of Medical Examiners

Melanie L. Willoughby, Government Affairs Director
New Jersey Council of Chain Drug Stores

Joseph Ascolese, Director of Legal and Public Affairs
New Jersey Society of Hospital Pharmacists

Jeannine L. Cirillo, President
New Jersey Society of Hospital Pharmacists

Lucius A. Bowser, Chief, Drug Control Program
Department of Health

L.J. Kolek, Senior Vice President
Automated Pharmaceutical Services

Leon R. Langley, Director of Government Affairs
New Jersey Pharmaceutical Association

Sam Schiffman, Director of Pharmacy Services
Fair Oaks Hospital

Edward J. Pantle, Director of Pharmacy
Helene Fuld Medical Center

The New Jersey Society of Hospital Pharmacists, the Board of Medical Examiners and the New Jersey Council of Chain Drug Stores expressed support for the proposed rule. The remaining commenters, while generally supportive of the rule, raised specific concerns which are addressed in detail below.

N.J.A.C. 13:39-5.8(b)1

COMMENT: Requiring the pharmacist to obtain and file the original signed prescription before releasing medication for a controlled dangerous substance listed in schedules III, IV and V will not allow greater speed in filling medication orders and prescriptions, as stated in the Social Impact Statement, because the physician would have to send or give the patient a hard copy before the prescription is filled.

RESPONSE: Although medication may not be released prior to receipt of the hard copy, the prescription may be **filled** prior to receipt. The patient's waiting time at the pharmacy is therefore reduced.

COMMENT: Retail pharmacies which service hospitals should have the same privilege as institutional pharmacies with regard to accepting FAXed prescriptions; that is, they should be permitted to release schedules III, IV and V medications without first having to obtain and file the original signed prescription. The commenters stated that this would avoid delay in instituting therapy.

RESPONSE: The Board agrees and is amending this section to correct its oversight in this regard. This rule was intended to apply only to outpatient dispensing. Subsection (b) was intended to ensure that all prescriptions for controlled dangerous substances are properly documented and verified prior to release of the medication. This type of verification is unnecessary in the case of prescriptions dispensed for use by patients in long-term care facilities or hospitals and would, as the commenter stated, delay the institution of therapy.

COMMENT: Why must a signed prescription be obtained prior to releasing medication for a controlled dangerous substance listed in schedules III, IV or V when, under the Controlled Dangerous Substances Act, this medication may be released upon an oral prescription?

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RESPONSE: In the Board's opinion, a prescription transmitted by a technological device cannot be verified as readily as an oral prescription. In most instances when a pharmacist receives an oral prescription, the pharmacist is able to recognize the voice of the physician or members of the physician's staff. If not, the Board expects that the pharmacist will question the caller further to substantiate the caller's medical knowledge; that is, the pharmacist may ask the indications for the medication being prescribed. On the other hand, if the prescription has been received by FAX, this verification mechanism is not available to the pharmacist. The Board believes, therefore, that when the prescription has been FAXed, the best interests of the public require receipt of the hard copy prior to release of any schedules III, IV and V medications.

COMMENT: This section requires a pharmacist to obtain the original prescription before dispensing schedules III, IV and V medications. For all other medications, however, a physician may, at the patient's request, give the original prescription to the patient. This creates a control and accountability problem when a prescription is FAXed, since patients may use the original prescription to obtain an additional supply of medication.

RESPONSE: This is an ongoing problem which presently exists with regard to telephoned prescriptions for legend drugs. In the Board's opinion, the proposed new rule does not exacerbate this problem, which the Board believes should be controlled by the prescribing physician in all instances.

N.J.A.C. 13:39-5.8(c)

COMMENT: This subsection, which permits institutional pharmacies to accept all in-patient medication orders transmitted by FAX, does not address the issue of ultimately obtaining the original signed prescription, as required by N.J.A.C. 8:65-7.5(a).

RESPONSE: Department of Health regulation N.J.A.C. 8:65-7.5(a), entitled "Manner of issuance of prescriptions," refers only to prescriptions; the Board's proposed rule concerns medication orders.

COMMENT: This subsection, which appears to allow institutional pharmacies to accept a FAXed copy of a schedule II substance as the permanent pharmacy record of that order, may be contrary to Federal and State DEA requirements.

RESPONSE: Again, this subsection addresses medication orders only. There are no Federal or State controlled drug requirements regarding medication orders.

N.J.A.C. 13:39-5.8(f)

COMMENT: Many retail contract pharmacies place their own FAX machines in the long term care facility. Accordingly, if this subsection—which prohibits a licensee from providing a technological device to a practitioner licensed to write prescriptions—applies to long term care facilities, it is not in the best interests of the facility's patients.

RESPONSE: As stated, this rule was intended to apply only to outpatient dispensing practices. As written, this subsection prohibits a pharmacy from providing a FAX machine to, or accepting a FAX machine from, a physician. The intent here was to avoid the providing or accepting of a technological device as an incentive for an exclusive relationship. However, this subsection does not prohibit a pharmacy from providing a FAX machine to, or accepting a FAX machine from, a **facility**, where it may be used by any number of physicians for the purpose of facilitating the filling of the patients' prescriptions.

N.J.A.C. 13:39-5.8(g)

COMMENT: This subsection appears to be inconsistent with the Federal requirement that long-term care facilities contract with a single pharmacy.

RESPONSE: This subsection does not apply to long-term care facilities. As written, the subsection prohibits a pharmacist from entering into an agreement with a physician. For the reasons set forth above, a pharmacist is not prohibited from entering into an agreement with a facility.

General Comments

COMMENT: One commenter stated that although he found the proposed rule to be helpful for patient care and a very much needed practice, certain issues (summarized below) required clarification prior to adoption of the rule.

RESPONSE: The Board believes the rule is sufficiently clear and that amendments to address the issues raised by this commenter are not necessary at this time. If required, the rule can be clarified at a later date. The commenter's questions and the Board's responses follow.

1. Must the in-patient pharmacy directly receive a complete formatted medical chart order?

No, your existing format is acceptable. As stated, this rule was not intended to have any impact upon currently accepted institutional pharmacy practice.

2. May the in-patient pharmacy fill a photocopy of a FAXed order?

Yes.

3. Must there be verification that the medication order was FAXed by the prescriber; that is, must it contain the prescriber's name, title, office address, signature, telephone number and DEA number?

No.

4. Must prescriptions not containing the generic substitution format [as required by the Prescription Drug Price and Quality Stabilization Act ("the generic substitution law)"] be generically substituted?

No. The generic substitution law does not apply to institutional pharmacies, which have their own formulary.

Summary of Changes Between Proposal and Adoption:

Paragraph (b)1, which requires receipt of the original signed prescription prior to the dispensing of any medications listed in schedules III, IV or V, has been amended to reflect the Board's intent that this section does not apply to medications dispensed to an in-patient of a health care facility. The rationale for this requirement is to ensure proper verification prior to dispensing. Requiring such verification in connection with in-patients of a health care facility is both unnecessary and impractical since it would delay the institution of therapy.

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

13:39-5.8 Prescriptions and medication orders transmitted by technological devices

(a) A pharmacist may, subject to the conditions set forth in this section, accept for dispensing a prescription or a medication order transmitted by a facsimile (FAX) machine or other technological device as approved by the Board.

(b) A registered pharmacist at a retail pharmacy and a registered pharmacist filling prescriptions under an institutional permit for employees of the institution and their dependents and for outpatients who are treated by staff members of the institution in their respective clinics, as permitted pursuant to N.J.S.A. 45:14-32, may accept for dispensing prescriptions for all substances other than Schedule II controlled dangerous substances which have been transmitted by technological device, under the following conditions only:

1. Before releasing to *[the patient]* ***other than an in-patient of a health care facility, as defined in N.J.A.C. 13:39-9.1,*** any prescription medication for a controlled dangerous substance listed in schedules III, IV or V, the pharmacist shall obtain and file the original signed prescription.

2. The pharmacist shall, within 24 hours, reduce to hard copy, that is, record in his or her handwriting or enter into a computer, all prescriptions received by technological device other than prescriptions for schedules III, IV and V controlled dangerous substances and shall place the copy in the permanent prescription file records.

(c) A registered pharmacist who is authorized to fill in-patient medication orders, as defined in N.J.A.C. 13:39-9.1, in an institutional pharmacy may accept all in-patient medication orders, including orders for schedule II substances, which have been transmitted by technological device.

(d) Whenever a pharmacist has reason to question the accuracy or authenticity of a prescription or medication order transmitted by technological device, the pharmacist shall verify the transmission directly with the prescribing practitioner.

(e) It shall be deemed professional misconduct for a pharmacist to use a technological device in order to circumvent his or her responsibilities with regard to documenting, authenticating and verifying medication orders and prescriptions or in order to circumvent other standards of pharmacy practice.

(f) No licensee or permit holder registered under N.J.S.A. 45:14-1 et seq. shall under any circumstances provide a technological device to, or accept a technological device from, any practitioner licensed to write prescriptions.

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(g) No licensee or permit holder shall enter into any agreement with an authorized practitioner which denies the patient the right to have his or her prescription transmitted by technological device to a pharmacy of the patient's choice.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility Claims

Adopted Amendment: N.J.A.C. 13:75-1.6

Proposed: January 6, 1992 at 24 N.J.R. 54(a).
Adopted: February 28, 1992 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 6, 1992 as R.1992 d.155, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14B-9.

Effective Date: April 6, 1992.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Youth and Family Services commented that the proposed amendments would broaden, perhaps beyond the original legislative authorization and by rulemaking, the scope of eligibility for possible compensation. Further, the Division questioned whether this small liberalization might not create a problem by opening up the Board's process to other applicants who should not be allowed access to the fund established for assisting innocent victims.

RESPONSE: The Board finds that there is no statutory language prohibiting individuals injured while participating in certain illegal activities from being compensated for their losses. The change the Board has proposed, while appearing to broaden the scope of eligibility, is technical in nature, emphasizing the Board's ability to decide each claim before it on a case-by-case basis. The Board should not be placed in a position of having to deny compensation where the illegal activity is in the nature of a violation of a city ordinance against spitting on the sidewalk or parking in a no stopping zone.

If the illegal activity is the type that is of such a serious nature that it would place the claimant in a set of circumstances that contributed to the injury, no compensation would be awarded.

Summary of Agency-Initiated Change:
Pursuant to the requirements of P.L. 1990, c.64, §3, the date of March 4, 1991 in N.J.A.C. 13:75-1.6(c) and (c)1 is changed to July 17, 1990, the effective date of the act.

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

13:75-1.6 Eligibility of claims
(a)-(b) (No change.)
(c) Any claimant who is held by the Board to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender is not eligible for compensation. For incidents occurring after March 3, 1983 and continuing through *[March 4, 1991]* ***July 17, 1990***, a relative of the offender or a victim living with the offender as a member of the offender's family relationship group may recover; if subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.
1. For incidents and injuries occurring on or after *[March 4, 1991]* ***July 17, 1990***, the Board will apply the same standards that are applied to claims filed by victims of other violent crimes regardless of the familial relationshp of the offender and the victim or the fact that they share a residence. However, no award will be made if compensation to the victim proves to be substantial unjust enrichment to the offender. Where the enrichment is inconsequential or minimal, compensation shall not be denied nor reduced. The factors to be considered in determining whether the unjust enrichment is substantial include, but are not limited to:
i.-viii. (No change.)
(d) The Board reserves the right to consider any circumstances it deems to be relevant, including, but not limited to, provocation, consent, participation in an illegal activity or behavior on the part of the victim which directly, or indirectly, contributed to his or her injury or death, the prior case history of the victim which may also include matters pertaining to the victim's medical history, and whether the victim cooperated with reasonable requests of law enforcement authorities or showed a compelling health or safety reason why they could not cooperate.
(e)-(f) (No change.)

(b)

VIOLENT CRIMES COMPENSATION BOARD

Compensable Damages
Reimbursement for Loss of Earnings

Adopted Amendment: N.J.A.C. 13:75-1.7

Proposed: January 6, 1992 at 24 N.J.R. 54(b).
Adopted: February 28, 1992 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 6, 1992 as R.1992 d.156, **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. 52:14B-9.

Effective Date: April 6, 1992.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:75-1.7 Compensable damages
(a) (No change.)
(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq. and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death. The Board may also award payment for such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.
1. The Board may order the payment of compensation for the loss of earning power as a result of the total or partial incapacity of the victim. Said loss includes work loss or loss of income the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he or she would have performed for income. In computing the earnings loss, the Board may consider any income received from substitute work actually performed by the claimant or any income that would have been earned through available appropriate substitute work he or she was capable of performing but unreasonably failed to undertake, and reduce the award, accordingly.
2. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum

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contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should the claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed as of *[the effective date of this amendment]* ***April 6, 1992***, the maximum reimbursement for loss of earnings shall not exceed a total of 52 weeks and for loss of support a total of 36 months.

(c)-(j) (No change.)

(a)

VIOLENT CRIMES COMPENSATION BOARD

Procedure to Request Board Action to Promulgate, Amend or Repeal Rules

Adopted New Rule: N.J.A.C. 13:75-1.29

Proposed: January 6, 1992 at 24 N.J.R. 55(a).
Adopted: February 28, 1992 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 6, 1992 as R.1992 d.157, **without change**.

Authority: N.J.S.A. 52:14B-9.

Effective Date: April 6, 1992.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.29 Procedure to request Board action to promulgate, amend or repeal rules

(a) Persons requesting Board action to promulgate, amend or repeal rules shall comply with P.L. 1981, c.27, §11 (N.J.S.A. 52:24B-4(f)) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.

(b) Such persons may obtain forms for petitioning this Board's Administrative Code rules from the Violent Crimes Compensation Board.

(c) When considering the petition, the Board shall comply with time lines and procedures contained in P.L. 1981, c.27, §11 (N.J.S.A. 52:14B-4(f)).

(b)

VIOLENT CRIMES COMPENSATION BOARD

Determinations, Presumptions and Burdens of Proof

Adopted New Rule: N.J.A.C. 13:75-1.30

Proposed: January 6, 1992 at 24 N.J.R. 55(b).
Adopted: February 28, 1992 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: March 6, 1992 as R.1992 d.158, **without change**.

Authority: N.J.S.A. 52:14B-9.

Effective Date: April 6, 1992.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.30 Determinations, presumptions and burdens of proof

(a) Applicants filing petitions for compensation have the burden of proof as to eligibility of the claim filed and as to all its elements and items of compensation. This burden of proof is met by a preponderance of the credible evidence.

(b) The Board may give substantial weight to conclusions of investigative law enforcement agencies and dispositions of criminal proceedings including, but not limited to, pleas of guilt and jury verdicts, but considered along with all other evidence, the ultimate determination made on a claim application is the obligation of the Board uncontrolled by determinations of others.

TRANSPORTATION

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes N.J. 27 in Mercer, Somerset, and Middlesex Counties; and U.S. 206 in Mercer County

Adopted Amendments: N.J.A.C. 16:28-1.44 and 1.72

Proposed: February 3, 1992 at 24 N.J.R. 342(b).
Adopted: March 6, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: March 6, 1992 as R.1992 d.159, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: April 6, 1992.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.44 Route 27

(a) The rate of speed designated for the certain parts of State highway Route 27 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. Zone 1: 25 miles per hour between Route U.S. 206 (Bayard Lane) and Linden Lane, Princeton Borough, Mercer County (approximate mileposts 0.00 to 0.81); thence

(A) Zone 1A: 30 miles per hour between Linden Lane and Cedar Lane, Princeton Borough, Mercer County (approximate mileposts 0.81 to 1.28); thence

ii. Zone 2: 35 miles per hour between Cedar Lane and a point 300 feet north of Snowden Lane, Princeton Township, Mercer County (approximate mileposts 1.28 to 1.49); thence

(A) Zone 2A: 45 miles per hour between a point 300 feet north of Snowden Lane and Church Street-Academy Street (Kingston) South Brunswick Township, Middlesex County and Franklin Township, Somerset County (approximate mileposts 1.49 to 3.30); thence

Recodify iv.-xx. as iii.-xix. (No change in text.)

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

(a) (No change.)

(b) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Mercer County:

(1) City of Trenton and Lawrence Township:

(A) Zone 1: 25 miles per hour between Spruce Street and the traffic circle at Route U.S. 1 Business (approximate mileposts 44.50 to 45.01); thence

(B) Zone 2: 30 miles per hour between the traffic circle at Route U.S. 1 Business and Princeton Pike (Harveys Corner) (approximate mileposts 45.01 to 45.36); thence

(C) Zone 3: 40 miles per hour between Princeton Pike and Titus Avenue, except for 30 miles per hour when passing through the Notre Dame High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 45.36 to 48.71); thence

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(D) Zone 4: 30 miles per hour between Titus Avenue and Manning Lane (approximate mileposts 48.71 to 49.11); thence
(E) Zone 5: 40 miles per hour between Manning Lane and Concord Avenue (approximate mileposts 49.11 to 49.59); thence
(F) Zone 6: 45 miles per hour between Concord Avenue and the Lawrence Township-Princeton Township corporate line (approximate mileposts 49.59 to 51.80); thence
(2) Princeton Township:
(A) 45 miles per hour between the southerly Princeton Township line (approximately 1,600 feet north of Province Line Road) and the southerly Princeton Borough line (Lovers Lane) (approximate mileposts 51.8 to 53.4); thence
(3) Princeton Borough:
(A) Zone 5: 35 miles per hour between the southerly Princeton Borough line (Lovers Lane) and Route N.J. 27 (Nassau Street) (approximate mileposts 53.4 to 54.1); thence
(B) Zone 6: 30 miles per hour between Route N.J. 27 (Nassau Street) and Cleveland Lane (approximate mileposts 54.1 to 54.4); thence
(C) Zone 7: 35 miles per hour between Cleveland Lane and the northerly Princeton Borough line (Leigh Avenue) (approximate mileposts 54.4 to 54.5); thence
(4) Princeton Township:
(A) 35 miles per hour between the northerly Princeton Borough line (Leigh Avenue) and 850 feet north of Birch Avenue (approximate mileposts 54.5 to 54.7); thence
(B) Zone 8: 40 miles per hour between 850 feet north of Birch Avenue and Ewing Street (approximate mileposts 54.7 to 54.9); thence
(C) Zone 9: 45 miles per hour between Ewing Street and Hillside Avenue (approximate mileposts 55.9 to 57.0); thence
(D) Zone 10: 40 miles per hour between Hillside Avenue and northerly Princeton Township line (Cherry Valley Road-Mount Rose Road) (approximate mileposts 57.0 to 57.35)
(c)-(d) (No change.)

TREASURY-GENERAL

(a)

STATE TREASURER

Urban Enterprise Zone Authority

Readoption: N.J.A.C. 17:30

Proposed: February 3, 1992 at 24 N.J.R. 343(a).
Adopted: March 10, 1992 by Samuel Crane, State Treasurer.
Filed: March 11, 1992 as R.1992 d.161, **without change**.

Authority: N.J.S.A. 52:18A-30(d) and N.J.S.A. 52:27H-88.

Effective Date: March 11, 1992.
Expiration Date: March 11, 1997.

Summary of Public Comments and Agency Responses:
The Department **received no comments.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:30.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Alcoholic Beverage Tax

Tax Rates on Alcoholic Beverages

Adopted Amendment: N.J.A.C. 18:3-2.1

Proposed: November 18, 1991 at 23 N.J.R. 3433(a).
Adopted: March 12, 1992 by Leslie A. Thompson, Director, Division of Taxation.
Filed: March 12, 1992 as R.1992 d.162, **without change**.

Authority: N.J.S.A. 54:42-1; 54:50-1; and 54:43-1.

Effective Date: April 6, 1992.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

18:3-2.1 Tax rates on alcoholic beverages
(a) The Alcoholic Beverage Tax Law levies and imposes upon any sale of alcoholic beverages made within this State, or upon any delivery of alcoholic beverages made within or into this State, the following excise taxes:
1. Beer—at the rate of $0.10 a gallon or fraction thereof from July 1, 1990 through June 30, 1992. On and after July 1, 1992, the rate will be $0.12 a gallon or fraction thereof;
2. Liquors—at the rate of $4.20 a gallon thereof from July 1, 1990 through June 30, 1992. On and after July 1, 1992, the rate will be $4.40 a gallon thereof;
3. Wines, vermouth and sparkling wines—at the rate of $0.50 per gallon from July 1, 1990 through June 30, 1992. On and after July 1, 1992, $0.70 a gallon including wines, vermouth and sparkling wines manufactured by holders of a farm winery license, or wines, vermouth and sparkling wines manufactured from grapes or fruit grown in New Jersey by holders of a plenary winery license issued pursuant to the provisions of N.J.S.A. 33:1-10.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

General Provisions

Organization and Operation of the Commission

Adopted Amendments: N.J.A.C. 19:40-2.1

Adopted: March 4, 1992 by Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 6, 1992 as R.1992 d.150.

Authority: N.J.S.A. 5:12-69(a) and 52:14B-4(b).

Effective Date: March 6, 1992.
Expiration Date: August 24, 1994.

These proposed amendments are organizational and, as such, in accordance with N.J.S.A. 52:14B-4(b) may be adopted without prior notice or hearing and are effective upon filing.

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

19:40-2.1 Organization
(a)-(b) (No change.)
(c) The Commission's staff shall be comprised of the divisions set forth below. Each division shall be organized into such operational units, and each unit shall have such assigned positions, as the Chair shall direct.
1. The [Administrative Division] **Division of Administration** shall provide the personnel, budget, data processing and administrative services necessary for the operation of the Commission; maintain the official records of the Commission and a record of all Commission proceedings; and serve as the central filing location for petitions and submissions to the Commission.
2. (No change.)
3. The [License Division] **Division of Licensing** shall process and review casino, casino key employee, casino employee, and junket representative license applications and renewals, hotel registrations and Employee License Internal Control Submissions; monitor the business relationships between ancillary industries and casino licensees and casino applicants; process gaming, non-gaming and junket-related casino service industry license applications and renewals, Vendor Registration Forms and Internal Control Sub-

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missions for Purchasing and Disbursing; process contested case matters; and review all facility related matters which affect a casino licensee and casino[-]hotel alcoholic beverage related matters.

4. The [Compliance Division] **Division of Compliance** shall review and evaluate petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games; monitor compliance with regulations regarding accounting and internal controls, gaming equipment and rules of the games; receive patron complaints; and monitor and promote compliance by casino licensees, gaming schools, casino service industries and construction industries with State equal employment opportunity, affirmative action, and minority and women's business enterprise requirements.

5. The Office of the Commissioners shall consist of the General Counsel, the Public Information Officer, the Director of Governmental and Community Relations, **the Director of Organizational Development** and the Executive Secretary, together with the members of their respective staffs. The members of the office shall, together with the Chair and the directors of the several divisions, constitute the management team of the Commission, and shall execute general Commission policies as established by the Commissioners.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Casino Licensee's Organization
Adopted Amendment: N.J.A.C. 19:45-1.11

Proposed: November 18, 1991 at 23 N.J.R. 3434(a).
Adopted: March 4, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 6, 1992 as R.1992 d.151, **without change**.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j) and 99.
Effective Date: April 6, 1992.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendment were submitted by the Division of Gaming Enforcement (Division); and by two casino licensees, the Boardwalk Regency Corp. (Caesars), and Greate Bay Hotel and Casino Corp. (Sands).

COMMENT: The Division supports adoption of the proposed amendment as published for several reasons; namely, that the requirement of a Management Information Systems (MIS) department acknowledges the significant role of the MIS function in an operating casino; and, because a comprehensive audit of MIS departments conducted by the Division disclosed operational deficiencies which it is believed closer scrutiny by the Commission and Division can rectify; and, because the proposed amendment has been previously discussed with the Casino Association of New Jersey (CANJ) and revised to incorporate concerns identified by CANJ.

RESPONSE The Commission concurs with the Division's comments.

COMMENT: Caesars commented that in its opinion the regulation is unnecessary; and infeasible in view of the decentralized nature of computer operations; that it is overly broad in requiring "sole" organizational responsibility for the quality and accuracy of computer systems by the MIS department; and that it is philosophically objectionable for the MIS department to have sole responsibility for any particular computer system because such responsibilities should be reflected in equal responsibility in operating departments.

RESPONSE The Commission disagrees with these comments. The requirement for an MIS department is recognition of the powerful influence of the computer in assuring the quality and accountability of operations in the modern casino industry. The decentralized nature of computer operations has been taken into account in the proposed amendment which places technical policy and procedural development responsibilities in the MIS department but does not inhibit extensive shared responsibility for operations. In fact, the Commission specifically amended its proposal published on May 6, 1991 (see 23 N.J.R. 1302 (a) and 2323 (a)) to accommodate the practical management needs of licensees with decentralized computer operations.

It is a recurring feature of modern business that technical aspects of the MIS function are managed by MIS personnel, with routine operations managed at the department level by staff or technicians who receive specialized direction, consultation and training from an MIS department, the object of which is uniform quality, consistency of approach to systems development, and cost control.

The philosophical concern for "sole" responsibility for all computer operations by the MIS department is understandable, but not required by the regulation. Licensees can include as many managers as they deem advisable in management of data operations. The regulation simply recognizes that in the fast-advancing computer field, it is appropriate to appoint a management executive whose prime responsibility it is to see that the licensee's use of computers results in the quality and consistency of operations, and audit readiness required by the Casino Control Act and these regulations.

COMMENT: The Sands commented that it disagrees with the proposal because no cogent reason is given for requiring an MIS department when one was not required in the past; and that employee license changes made necessary by the proposal will prevent certain staff from performing their jobs.

RESPONSE: The Commission disagrees with the comments. The proposal to require an MIS department was made because the accuracy and auditability of casino activity has become increasingly governed by the quality of its computer operations. Further, an industry-wide survey of computer operations conducted by the Division evidenced serious qualitative flaws in the operation of certain licensee's computer operations. Based on the responsibilities encompassed by N.J.S.A. 5:12-70(j) and 99, the Commission is required to assure that the control of such a vital element in the financial management of gaming operations as computer operations is appropriately recognized and controlled through adoption of clear and effective administrative regulations. The Sands also believes that the regulation should not be adopted on the basis that it would require the upgrading of employee licenses for certain MIS department staff; and that the employees affected would automatically be ineligible to perform their jobs until the license requirements are met. Certain MIS employees would be required to apply for a non-gaming casino license, the requirement is a simple and uncomplicated one. The Commission has procedures in effect which will guide the necessary application process without interference in the work or job security of MIS department staff.

Full text of the adoption follows.

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-2. (No change.)

3. A management information system ("MIS") department supervised by a casino key employee holding a license endorsed with the position of executive employee. The MIS department shall be responsible for the quality, reliability and accuracy of all computer systems used by the casino licensee in the conduct of casino operations including, without limitation, specification of appropriate computer software, hardware, and procedures for security, physical integrity, audit, and maintenance of:

i. Access codes and other data-related security controls used to insure appropriately limited access to computers and the system-wide reliabilty of data;

ii. Computer tapes, disks, or other electronic storage media containing data relevant to casino operations; and

iii. Computer hardware, communications equipment and software used in the conduct of casino operations.

4.-9. (No change.)

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

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(a)

CASINO CONTROL COMMISSION

Internal Controls
Procedures for Granting Credit
Patron Request for Suspension of Credit Privileges
Adopted Amendment: N.J.A.C. 19:45-1.27
Adopted New Rule: N.J.A.C. 19:45-1.27A

Proposed: November 18, 1991 at 23 N.J.R. 3434(b).
Adopted: March 4, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: March 6, 1992 as R.1992 d.153, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(a) and 101(j).

Effective Date: April 6, 1992.
Expiration Date: March 24, 1993.

Summary of Agency-Initiated Changes:
Upon publication of the proposal, portions of the certification statement in the request for suspension of credit form were inadvertently omitted from N.J.A.C. 19:45-1.27A(b)5. Language added upon adoption merely makes this provision consistent with the certification statement for reinstatement of credit privileges in N.J.A.C. 19:45-1.27A(d).

Summary of Public Comments and Agency Responses:
Comments were received from the Division of Gaming Enforcement (Division), the Sands Hotel, Casino and Country Club (Sands), Caesars Atlantic City (Caesars), the Showboat Casino Hotel (Showboat) and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: Thirty days after an individual requests to be included on the credit suspension list, that person may request that the Commission remove his or her name from the list. The Sands, TropWorld and the Showboat object to N.J.A.C. 19:45-1.27A(d)3, which requires that each casino licensee "reinstate such person's credit privileges." The commenters argue that "the State should not be in the business of telling casinos who they must grant credit privileges to," and suggest extensive additional language to indicate that casino licensees have an "option" to reinstate credit privileges, in their "sole and absolute discretion." The Division likewise suggests that "reinstatement of a patron's credit privileges should not be effective until bank information, other casino indebtedness and other debt is reverified in accordance with N.J.A.C. 19:45-1.27(i)."

RESPONSE: The commenters misinterpret this language, which obviously was not intended to mandate that casino licensees offer credit to any particular patron. N.J.A.C. 19:45-1.27A was purposefully drafted to refer throughout to the suspension and reinstatement of credit "privileges." Removal of an individual's name from the master list simply allows the casino licensee to exercise its discretion in approving a credit limit for that patron, subject, of course, to the prerequisite verifications required for any reinstatement or extension of credit by N.J.A.C. 19:45-1.27. To avoid any possible confusion, N.J.A.C. 19:45-1.27A(d)3 has been modified upon adoption to expressly state the Commission's intent.

COMMENT: The Sands, TropWorld and the Showboat comment that the new rules do not specify exactly how the Commission will transmit to each casino licensee an updated master list of persons who have requested suspension of credit privileges. They suggest either a "systematic correspondence to counsel or a receipt-signing process." Caesars suggests amending N.J.A.C. 19:45-1.27A(c) to provide that the Commission shall notify each casino of additions to or deletions from the master list "by providing a copy of an updated list."

RESPONSE: The new rules already provide that the Commission will give written notice of any additions to or deletions from this master list to each casino credit department. No regulatory provision can or should be so comprehensive as to specify every detail of its implementation by the agency.

Further, the Commission does not agree that the notice should instead be forwarded to casino counsel, since it is the casino credit department which is required to maintain the updated master list. Modifications upon adoption to the confidentiality provision in N.J.A.C. 19:45-1.27A(e) clarify that casino personnel "whose duties and functions require access to such information" may also have access to the master list.

COMMENT: Caesars commented that daily computer updates regarding the status of patron credit files are transmitted to its credit reporting services, and inquired as to whether the confidentiality provision in N.J.A.C. 19:45-1.27A(e) would impact upon this process.

RESPONSE: Commission credit regulations require that, prior to approving a patron's credit limit, the casino licensee must verify the patron's current casino credit limits and outstanding balances, and determine whether there is any derogatory information concerning the patron's credit history, by contacting a casino credit bureau. N.J.A.C. 19:45-1.27(c)and (d). The effectiveness of this process depends upon the maintenance of updated and accurate information regarding the status of each credit file.

The Legislature, in directing that the Commission maintain a list of persons to whom the extension of credit would be prohibited, expressly mandated that such list remain confidential. N.J.S.A. 5:12-101(j). Clearly, the Legislature intended to protect the privacy of those persons who find it necessary, for whatever reason, to place themselves on this prohibitory list. The Commission does not believe that such goal will be compromised in any respect by the credit reporting process. The casino credit bureaus track the status of patron credit files through a uniform system of codes, indicating whether a particular file is pending, active, suspended, rejected or inactive. Where the Commission, by the patron's request, prohibits the extension of credit to a particular patron, any existing file for a previously established line of credit will merely reflect the "suspended" status of that account, with no indication of the reasons for that suspension. N.J.A.C. 19:45-1.27(e) has been modified to clarify that if a casino licensee, in the ordinary course of business, is requested to provide additional information regarding such account, the casino may not divulge any additional information other than that the suspension is a voluntary one. This will avoid any implication of derogatory credit information, while assuring the confidentiality required by subsection 101(j) of the Act. It should be noted that, notwithstanding the updated information that is forwarded to the casino credit bureaus, the casino licensee's responsibility under the new rule is to note the suspension or reinstatement of credit privileges in any existing credit file for that patron, and to verify that a patron is not designated on the master list before extending credit.

COMMENT: The Division suggests mail-in procedures for requests for suspension of credit, through use of a notarized request form.

RESPONSE: In drafting the proposal, the Commission considered and rejected the possibility of implementing mail-in requests for suspension of credit. The Commission has determined that in-person application is imperative to enable the Commission staff to properly verify the requesting individual's identity. Although the new rules reflect the Commission's concern for assisting those with compulsive gambling problems, the Commission also recognizes its responsibility to ensure that an individual's credit privileges can only be suspended by his or her own choice.

COMMENT: The Division opined that the authorized Commission employees should sign the request form only to indicate its receipt, not to verify the requesting patron's identity. The Division commented that such provision might unduly subject the Commission and the Commission staff to legal recourse by a person whose credit privileges have been suspended through impersonation and/or forgery.

RESPONSE: Proper verification of the requesting patron's identity is the only means by which the Commission can deter such fraudulent acts. An authorized Commission employee will indicate on the request form that the signature on the requesting patron's identification credentials appears to agree with that on the form, and that any photograph or description contained therein appears to agree with his or her actual appearance. Through such procedures, the Commission acknowledges its responsibility to protect the gaming public from the potential embarrassment and inconvenience which may result from unauthorized suspensions of credit.

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

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

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(c) Prior to the casino licensee's approval of the patron's credit limit, a credit department representative with no incompatible functions shall:

1.-2. (No change.)

3. Verify the patron's outstanding indebtedness;

4. Verify the patron's personal checking account information which shall include, but not be limited to, the following:

i.-vi. (No change.)

vii. Name and title of the person supplying the information; and

5. Verify that the patron's name is not designated on the master list of persons who have voluntarily requested suspension of credit privileges pursuant to N.J.A.C. 19:45-1.27A.

(d)-(p) (No change.)

19:45-1.27A Patron request for suspension of credit privileges

(a) Any person may voluntarily suspend his or her credit privileges at all licensed casinos by submitting a written request to the Commission in accordance with this section.

1. Such request shall be submitted in person at the offices of the Casino Control Commission, Employee License Information Unit, Arcade Building, 2nd Floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey, or at the Commission inspector's booth at any licensed casino.

2. Any person requesting suspension of credit privileges shall present valid identification credentials containing the person's signature and either a photograph or a general description of that person.

(b) A request for suspension of credit privileges shall be in a form prescribed by the Commission, which shall include the following:

1. The name of the person requesting suspension of credit privileges;

2. The address of the person's residence;

3. The person's date of birth;

4. The name of each licensed casino where the person currently has an approved line of credit;

5. The signature of the person requesting suspension of credit privileges, indicating acknowledgement of the following statement: "I certify that the information which I have provided above ***is true and accurate. I am aware that my signature below*** authorizes the Casino Control Commission to direct all New Jersey casino licensees to suspend my credit privileges for a minimum period of 30 days from the date of this request and indefinitely thereafter, until such time as I submit a written request to the Commission for the reinstatement of any such credit privileges";

6. The type of identification credentials examined containing the person's signature, and whether said credentials included a photograph or general description of the person; and

7. The signature of a Commission employee authorized to accept such request, indicating that the signature of the person requesting suspension of credit privileges appears to agree with that contained on his or her identification credentials and that any physical description or photograph of the person appears to agree with his or her actual appearance.

(c) The Commission shall maintain an updated master list of all persons who have requested suspension of credit privileges pursuant to this section, and shall notify the credit department of each casino licensee in writing of any additions to or deletions from the list. The casino licensee shall date and time stamp any such notice immediately upon receipt.

1. Each casino licensee shall suspend the credit privileges of any listed person, effective immediately upon receipt of notice that such person's name has been added to the list.

2. An updated master list of persons who have requested suspension of credit privileges shall be maintained by the credit department of each licensed casino.

3. Each casino licensee shall note any suspension or reinstatement of credit privileges pursuant to this section in any existing credit file for the affected patron, including the following:

i. A copy of any applicable Commission notice of the suspension or reinstatement of credit privileges; and

ii. The date, time and signature of the credit department representative making the suspension or reinstatement entry in the credit file.

(d) Any person whose credit privileges have been suspended pursuant to this section may, no sooner than 30 days after the request for suspension of credit privileges, request reinstatement of his or her credit privileges by submitting a written request to the Commission in accordance with the procedures specified in (a)1 and 2 above.

1. Such request shall be in a form prescribed by the Commission, which shall include the following:

i. The information specified in (b)1, 2, 3, 4, 6 and 7 above; and

ii. The signature of the person requesting reinstatement of credit privileges, indicating acknowledgement of the following statement: "I certify that the information which I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previous request for suspension of credit privileges, and authorizes the Casino Control Commission to permit any New Jersey casino licensee to reinstate my credit privileges."

2. The Commission shall delete such person's name from the list established pursuant to (c) above, and so notify the credit department of each casino licensee, no later than three days from submission of the written request for reinstatement of credit privileges. The casino licensee shall date and time stamp any such notice immediately upon receipt.

3. *[Each casino licensee shall reinstate such person's credit privileges, effective immediately upon]* ***Upon*** receipt of notice that *[his or her]* ***such person's*** name has been deleted from the list***, a casino licensee may reinstate such person's credit upon reverification of the information required by N.J.A.C. 19:45-1.27(c), or may extend credit to such person in accordance with the procedures set forth in N.J.A.C. 19:45-1.27*.**

(e) Information furnished to or obtained by the Commission pursuant to this section shall be deemed confidential, and shall not be disclosed except in accordance with this section and N.J.A.C. 19:40-4. No casino licensee shall *[disclose the name of any person who has requested suspension of credit privileges]* ***divulge that any person's name is designated on the master list maintained pursuant to subsection 101(j) of the Act and this section***, other than to authorized credit department employees or other casino personnel whose duties and functions *[are involved in the extension of credit]* ***require access to such information.***

1. If, in the ordinary course of business, a casino licensee is requested to provide information regarding the status of the patron's credit account, the casino licensee shall not disclose any information other than to identify the credit account as voluntarily suspended.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Granting Credit
Adopted Amendment: N.J.A.C. 19:45-1.27

Proposed: January 21, 1992 at 24 N.J.R. 178(a).

Adopted: March 4, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: March 6, 1992 as R.1992 d.152, **without change**.

Authority: N.J.S.A. 5:12-69(a) and 101.

Effective Date: April 6, 1992.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division) and the Sands Hotel, Casino and Country Club (the Sands).

COMMENT: The Division submitted comments in support of the proposal, which it stated would strengthen the regulation of casino credit practices.

RESPONSE: The Commission agrees, as evidenced by the adoption herein.

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COMMENT: The Sands stated its support for the proposed amendments. However, the Sands commented that the phrase "reason to believe" in proposed N.J.A.C. 19:45-1.27(i)4 "may cause some confusion," since "with the benefit of hindsight, one can find that there was 'reason to believe' a fact that was not patent at the time." The commenter therefore suggests that such standard, as applied, "must be purely objective; no subjective interpretation should be allowed."

RESPONSE: The Commission does not believe that any additional modification upon adoption is necessary or appropriate to clarify the standard set forth in N.J.A.C. 19:45-1.27(i)4. In applying this standard, the Commission will consider whether the particular facts and circumstances demonstrate that the casino licensee in question had reason to believe that the requisite information had changed.

Full text of the adoption follows.

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

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

(i) The casino licensee's credit department shall:

1.-3. (No change.)

4. Verify the information required by (a)2 and (a)6 above, in accordance with the procedures in (d) above, whenever the casino licensee has reason to believe that this information has changed.

(j)-(o) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Removal of Slot Drop Buckets and Slot Cash Storage Boxes; Meter Readings
Adopted Amendment: N.J.A.C. 19:45-1.42

Proposed: January 6, 1992 at 24 N.J.R. 57(a)

Adopted: March 4, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman

Filed: March 6, 1992, as R.1992 d.154, **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. 5:12-63(c), 69(a) and 70(j)

Effective Date: April 6, 1992.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement, Harrah's Casino Hotel, TropWorld Casino and Entertainment Resort, and Sands Hotel, Casino and Country Club all indicated that they supported the proposed amendment, which simply codifies existing practice.

RESPONSE: Accepted.

COMMENT: The Casino Association of New Jersey did not oppose the proposed amendment. However, it questioned whether the presence of the security department was necessary during the transport procedure, and it requested the deletion of the requirement that a security department member be present during the removal of slot drop buckets and slot cash storage boxes.

RESPONSE: Rejected. The proposal only addressed the garment requirements applicable to security department personnel taking part in the collection and transport of slot drop buckets and slot cash storage boxes, not whether their presence was necessary. Accordingly, the comment is beyond the scope of the proposal and is rejected for that reason.

Upon adoption, the Commission has made a technical change to N.J.A.C. 19:45-1.42(b)1ii, as adopted effective March 2, 1992 (see 24 N.J.R. 858(c)), to conform the reference to "security department members" in that subparagraph to the amendments adopted herein, that is, "casino security department members."

Full text of the adoption follows (addition indicated in boldface with asterisks ***thus***) (**Agency Note:** The following text of N.J.A.C. 19:45-1.42 conforms the proposed amendments to the text of the rule as adopted effective March 2, 1992 at 24 N.J.R. 858(c)).

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

(a) (No change.)

(b) Procedures and requirements for removing a drop bucket or slot cash storage box from its compartment shall be the following:

1. If the drop bucket or slot cash storage box meets the requirements of N.J.A.C. 19:45-1.36(b), (c), (d) and (e):

i. (No change.)

ii. When the casino is open to the public, the removal of a slot drop bucket or slot cash storage box shall be performed by at least four employees, two of whom shall be ***casino*** security department members and two of whom shall be accounting department members. Such removal shall in the presence of a Commission inspector.

2. If the slot drop bucket meets the requirements of N.J.A.C. 19:45-1.36(h), the removal of a slot drop bucket shall be performed by at least one employee of the casino security department and one employee of the accounting department.

(c) Procedures and requirements for removing slot drop buckets and slot cash storage boxes from the casino shall be the following:

1. If the slot drop buckets and slot cash storage boxes are removed in conformity with (b)1 above:

i.-ii. (No change.)

iii. All persons participating in the slot drop bucket and slot cash storage box removal procedure, except for casino security department employees and representatives of the Commission and Division, shall wear as outer garments only a full-length, one piece, pocketless garment with openings only for the arms, feet and neck.

2. If the slot drop buckets are removed in conformity with (b)2 above:

i. (No change.)

ii. All slot drop buckets removed from compartments shall be transported by at least a Commission inspector, a casino security department member and a count room supervisor directly to, and secured in, the count room for the count of the contents, except that slot cash storage boxes removed on an emergency basis shall be transported by at least a Commission inspector, a casino security department member and a cage supervisor or count room supervisor directly to and secured in the count room.

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

(b)

CASINO CONTROL COMMISSION

Temporary Adoption of Amendments
Accounting and Internal Controls
Slot Machines and Bill Changers; Coin and Slot Token Containers; Slot Cash Storage Boxes; Entry Authorization Forms

Authority: N.J.S.A. 5:12-63(c), 69(e), 70(l), 99(a)10 and 11, and 100(c)

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments concerning the design and operation of bill changers and slot cash storage boxes should be adopted on a permanent basis. The experiment will be conducted in accordance with temporary rules, which will be posted in each casino participating in the experiment, and which will also be available from the Commission upon request.

Specifically, this test would allow any casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Commission, to utilize a bill changer of a different internal design, beginning after April 13, 1992, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment, and which will also be available from the Commission upon request. This experiment would continue for the maximum period of time permissible under section 69(e) of the Act, unless otherwise terminated by the Commission or any of the participating licensees prior to that time, pursuant to the terms and conditions of the experiment.

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Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for permanent adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Loans, Fees, Obligations

Adopted Amendments: N.J.A.C. 3:1-16

Proposed: September 3, 1991 at 23 N.J.R. 2613(b).

Adopted: February 26, 1992 by Jeff Connor, Commissioner, Department of Banking.

Filed: March 3, 1992 as R.1992 d.149, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:11B-5 and 13.

Effective Date: April 6, 1992.

Operative Date: April 6, 1992, except for Federally-chartered financial institutions, for which the operative date is June 5, 1992.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

Joseph G. Antonucci, Tax Collector, Township of West Orange
James V. Beaman, Sr. Vice President, Lomas Mortgage USA
Leonard A. Bernstein, Esq., Blank, Rome, Comisky & McCauley, Esqs.
Helen B. Billups, Assistant Vice President, Loyoia Federal Savings and Loan Association
Linda S. Chandler, Assistant Vice President, Maryland National Mortgage Servicing
Cynthia P. Clark, Regulatory Compliance Officer, Chase Manhattan Financial Services, Inc.
D. Cobb, Assistant Vice President, Associates National Mortgage Corporation
Samuel J. Damiano, President, New Jersey Counsel of Savings Institutions
Anthony DeAmorin, Asst. Vice President, Constellation Mortgage Company
Joy Derechailo, Escrow Supervisor, Margaretten & Company, Inc.
Thomas A. Dolce, Vice President, Midlantic Mortgage Corporation
Ann M. Esposito, Vice President, Fidelity Bond & Mortgage
Claudia H. Evers, Manager, Escrow Services, Dominion Bankshares
Susan R. Frank, Tax Supervisor, Anchor Mortgage Services, Inc.
Richard A. Grano, Vice President, The Provident Savings Bank
Leonard S. Gudelski, President, Hudson City Savings Bank
Michael Gutierrez, Asst. Vice President, First American Services
John C. Hill, Senior Vice President, The Money Store
James A. Imbriale, Managing Director, NatWest Mortgage Corporation
Jeffrey V. Jacobus, Sr. Exec. Branch Manager, Transamerica Financial Services
Linda Johnson, Vice President, Anchor Mortgage Services, Inc.
Debra L. Jones, Vice President, Knutson Mortgage Corporation
Gerard J. Jones, Vice President, Lincoln Savings Bank
Jo Anne R. Lambusta, C.T.C., Township of Brick
E. Robert Levy, Executive Director, Mortgage Bankers Association of New Jersey
William C. Mack, Vice President, People's Bank
Bernandette McDonnell, Asst. Vice President, Dovenmuehle Mortgage, Inc.
Susie M. McFarlind, Associate General Counsel, Citicorp Mortgage, Inc.
Renita McMillen, Supervisor, Tax Dept., Transohio Savings Bank
Jody Midtgard, Loan Manager, Atlantic Federal Credit Union
Mary Pace, A.V.P., Citizens Savings Bank
Michael Palladino, Vice President, General Foods Federal Credit Union
John M. Pellechia, Esq., Riker, Danzig, Scherer, Hyland, and Perretti, Esqs.
Joyce Perriello, Vice President, Penn Federal Savings Bank
Vincent R. Sciarrillo, Senior Vice President, Emigrant
Lisa A.E. Shook, Asst. Vice President, The Huntington Mortgage Company
John G. Shorten, Asst. Vice President, Meritor Mortgage Corp.-East
Ellen Siena, Vice President, Carteret Savings Bank, F.A.
James R. Silkensen, Executive Vice President, New Jersey Savings League
Rugenia Silver, V.P. and Associate General Counsel, Prudential Home Mortgage
Richard Sobocinski, Assistant Treasurer, Williamsburgh Mortgage Services
Patricia A. Speer, Vice President, Edison Federal Savings & Loan
Susan Stapp, Supervisor, Escrow Administration, Investors Residential Mortgage Corporation
Rosalia Todaro, Escrow Manager, Empbanque Capital Corp.
Anthony R. Vaccaro, Vice President, Mortgage Services Inc.
Paul Wade, President, Jersey Pacific Mortgage Co., Inc.

Forty commenters wrote in favor of the Department's proposal to allow licensees to charge a tax service fee to borrowers. The Department agrees with these comments and has adopted this provision as proposed.

The other commenters addressed a variety of issues. In this adoption, the Department adopts all of the proposed amendments that were not changed from the proposal as well as some additional technical changes which were pointed out in the comments. The Department also adopts some substantive changes not in violation of N.J.A.C. 1:30-4.3.

The comments and responses are as follows:

N.J.A.C. 3:1-16.1

COMMENT: A commenter suggested that the Department change its definition of "application" to provide that it shall only include those cases in which the lender receives an agreement of sale for the property. Such a change would eliminate any disclosure requirement for mere preapprovals.

RESPONSE: The Department rejects this suggestion. It wishes to continue its current policy of requiring the disclosures before a lender may take an application fee, because this seems the simplest and most meaningful marker for allowing the collection of the fee.

COMMENT: A commenter suggested that the lender be allowed to select any of the co-borrowers as the borrower for the purpose of the rules because this would provide lenders greater flexibility.

RESPONSE: The Department rejects this suggestion. It does not seem a heavy burden on lenders to allow co-borrowers to designate which of them shall receive disclosures and have the rights and obligations of a "borrower" under these regulations. Because it may be important to the convenience of the co-borrowers which of them will interact with the lender, the language is adopted as proposed.

COMMENT: The proposed definition of commitment excludes promises to make a loan which are "contingent on a satisfactory appraisal, a satisfactory credit analysis or the approval of a party which is not the lender." Several commenters objected, arguing that the exclusionary language is vague and overbroad and would nullify many commitments which contained only reasonable and necessary contingencies. Several commenters pointed out that the inclusion of contingencies in commitments allows lenders to issue their commitments to borrowers more quickly. Others suggested that commitment fees could be made refundable if the loan did not close.

RESPONSE: The Department accepts the comments with regard to the vagueness and overbreadth of the proposed exclusionary language. The Department has therefore, upon adoption, clarified and narrowed the definition at N.J.A.C. 3:1-16.1 to indicate that a commitment must be based on a satisfactory underwriting analysis of the appraisal and credit report, if those documents are required in connection with the loan, and may not be subject to approval by a party to whom the lender seeks to sell the loan.

The Department rejects the notion of allowing for any contingency in a commitment, even if subject to a requirement that the commitment fee be refunded if the contingency does not materialize. The Department's view is that certain contingencies make a promise to loan illusory and that a lender making such a promise should not be entitled to collect a fee therefor, regardless of any requirement to refund later.

COMMENT: A commenter suggested that the Department permit commitments to be issued which are contingent on obtaining private mortgage insurance because, otherwise, the commitment process would be slowed in times of heavy demand.

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RESPONSE: The Department agrees with this comment. The language as described in the preceding response would permit such a contingency.

COMMENT: Commenters objected to the current provisions of the regulations which provide that lock-in fees are collectible, and lock-in agreements can be executed, only prior to the issuance of a commitment. They argued that lock-in fees should be collectible and lock-in agreements should be able to be executed, both prior to and after the issuance of a commitment.

RESPONSE: The Department agrees and has amended the definition of "lock-in agreement" to provide that licensees and borrowers may enter into such agreements at any time up to three days prior to closing.

Because the original rules allowed lenders to collect a fee for converting a "floating rate" commitment into a fixed-rate commitment, this change upon adoption to allow the collecting of a post-commitment lock-in fee is basically a matter of the labeling of the fee rather than a substantive change which requires reproposal.

COMMENT: A commenter pointed out that the proposed amendatory language to the definition of "lock-in agreement" would have required that lenders provide the "specified date" on which the lock-in agreement expires. This, it was asserted, would preclude certain products regarding which a specified date cannot be ascertained at the time the lock-in agreement is issued, for example, where the agreement provides that the lock-in period shall last until the expiration date of the commitment.

RESPONSE: The Department agrees with this comment and has amended the provision so that a specific date is required in those cases in which it can be ascertained, but may be replaced by a specified period of time in those cases in which a specific date cannot be ascertained.

N.J.A.C. 3:1-16.2

COMMENT: Several commenters objected to the amendment to the definition of "application fee" which provides that the fee shall be collectible only at the time of application. Many lenders prefer to have the application fees collectible following application.

RESPONSE: The Department agrees with these comments and has deleted the proposed amendment. Such a deletion is consistent with the general policy of the regulations to minimize up-front fees. The Department cautions, however, that application fees which are deferred until closing and, hence, probably collected only from those who obtain the credit, may have to be included in the APR as a finance charge pursuant to Regulation Z, 12 C.F.R. §226.

COMMENT: Several commenters objected to the proposed amendments to the definitions of "credit report fee" and "appraisal fee," on the ground that it is difficult to determine the exact amount of such fees at the time of application. They suggested allowing lenders to make such charges on the basis of a reasonable estimate of the average cost of such services, provided that any excess is refunded to the consumer at closing.

RESPONSE: The Department accepts this suggestion and has added appropriate amendatory language.

COMMENT: A commenter suggested that lenders not be required to refund any subsequent discount or rebate offered to the lender by a vendor of credit reports or appraisals.

RESPONSE: The Department rejects this suggestion because it would only encourage the proliferation of such arrangements, to the detriment of borrowers.

COMMENT: Several commenters suggested that the definition of "warehouse fee" was vague.

RESPONSE: The Department agrees and has clarified the definition to refer to the particular loan concerned.

COMMENT: A commenter asked whether a borrower may be charged a fee for outside counsel's review services which occur either before or during a closing.

RESPONSE: Yes.

COMMENT: A commenter noted that the proposed language would allow lenders to pass along to borrowers "one-time mortgage insurance premiums." She noted that some mortgage insurance programs do not collect premiums on a one-time basis. They customarily collect a year of premiums at closing plus an additional amount for escrow. The commenter wished to expand the proposed language to permit the collecting of premiums in such cases.

RESPONSE: The Department agrees with this comment and has amended the language at N.J.A.C. 3:1-16.2(a)7viii to permit lenders to collect up to one year of mortgage premiums at closing. The collection of mortgage insurance premiums following closing is unregulated.

COMMENT: A commenter suggested that the Department allow passing through of an assignment fee as the making of the loan is frequently dependent on its subsequent sale in the secondary market.

RESPONSE: The Department rejects this suggestion because the borrower receives no direct benefit from the assignment. Rather, the costs incurred by the lender in assigning the loan are part of its cost of doing business in the manner it has chosen and, hence, should be accommodated in its fee structure (application fee and points), not as a reimbursable third party charge.

COMMENT: A commenter suggested that the Department confirm that the list of fees does not exclude a lender's passing through to the borrower in advance at closing a "service fee" for cancelling a mortgage as authorized by P.L. 1991, c.289 (N.J.S.A. 46:18-11.2 and 11.3).

RESPONSE: The Department agrees that this statute authorizes lenders to collect such a fee at closing and has therefore added it to the list of those third-party fees which are permitted to be passed through at closing.

COMMENT: A commenter asked that the words "and title" be inserted after "document" in line 2 of N.J.A.C. 3:1-16.2(a)7v to make the scope of the second line of the subparagraph consistent with the first line of the subparagraph.

RESPONSE: The Department agrees and has added the suggested words.

N.J.A.C. 3:1-16.3

COMMENT: A commenter expressed a preference for "business days" rather than "calendar days" as the type of days whose number must be given in N.J.A.C. 3:1-16.2(a)4. She indicated that her company's computer system operates on the basis of business days.

RESPONSE: The Department rejects this comment because counting calendar days is significantly easier for consumers and is less likely to lead to confusion and misunderstanding.

COMMENT: Two commenters suggested that the reference to Regulation Z should be supplemented by a reference to Regulation X as either regulation may be applicable.

RESPONSE: The Department agrees. The reference to Regulation Z in paragraph (d)3 has been changed to Regulation X, which may be found at 24 C.F.R. §3500.

N.J.A.C. 3:1-16.4

Although no amendments were originally proposed to N.J.A.C. 3:1-16.4, upon adoption a technical change was made to the language in subsection (b) to conform to changes made elsewhere allowing the collecting of post-commitment lock-in fees.

COMMENT: Even though no amendments were proposed for this section, a commenter suggested that subsection (d) provide that a lock-in agreement be effective upon execution by the borrower if returned in accordance with the lender's requirements so that the lender could effectively control his outstanding lock-in agreements.

RESPONSE: The Department rejects this suggestion as unnecessary. The current rule would allow for lock-in agreements to be pre-executed by lenders, and hence, effective when signed by the borrower. Any requirements the lender wishes to impose could be included in the agreement.

COMMENT: A commenter suggested that the Department amend the definition of "mortgage loan" to exclude home equity loans which happen to be closed-end, first lien loans. The commenter suggested that these types of loans are outside the intent of the regulations and operationally difficult for lenders to isolate from the more typical type of home equity loan involving a second or subsequent lien.

RESPONSE: The Department appreciates the operational difficulty which may be involved in having to administer one loan product under two different regulatory schemes, but is unable to formulate a definitional distinction between these loans and a traditional first lien refinance. The Department invites suggestions as to how this distinction could be made.

N.J.A.C. 3:1-16.5

COMMENT: Commenters objected to what they perceived as a requirement in subsection (a) to make, prior to accepting a commitment fee, a redisclosure of information which had previously been disclosed, for example, in the Good Faith Estimate.

RESPONSE: The language in subsection (a) reads "at *or before* issuance of a commitment, the lender shall disclose . . ." [Emphasis added.] Therefore, lenders are not obligated to redisclose information which they

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have previously disclosed in a Regulation X or Regulation Z statement. However, they are required to disclose any information required by this section but not previously disclosed. See subsection (b) on this point.

COMMENT: A commenter suggested that the Department amend its requirements regarding disclosures for commitments where the interest rate is subject to change before closing to require only that lenders state whether the rate they give is guaranteed.

RESPONSE: The Department concludes that such a requirement does not go far enough because there are two possibilities: the rate may not be fixed but may be determinable through an index (in which case the index and manner of computing the rate must be disclosed) or the rate may be set at the discretion of the lender (in which case the lender must clearly disclose that fact). The Department concludes that a simple statement of whether or not the rate is guaranteed does not adequately address the situation of the indexed rate.

COMMENT: A commenter questioned the word "other" in the last line of N.J.A.C. 3:1-16.5(a)(4)iii.

RESPONSE: The Department agrees and has deleted "other" and added "the".

COMMENT: A commenter suggested that the reference to N.J.A.C. 3:1-16.5(d) which is contained in subparagraph (a)4v is deleted as that subsection is deleted by this adoption.

RESPONSE: The Department agrees. Note, however, that because of redesignation of subparagraphs, N.J.A.C. 3:1-16.5(c) will appear as the new N.J.A.C. 3:1-16.5(d).

COMMENT: Two commenters suggested that the reference to Regulation Z should be supplemented by a reference to Regulation X as either regulation may be applicable.

RESPONSE: The Department agrees.

COMMENT: Commenters objected to what they perceived as a requirement in subsection (a) to make, prior to accepting a commitment fee, a redisclosure of information which had previously been disclosed, for example, in the Good Faith Estimate.

RESPONSE: The language in subsection (a) reads "at *or before* issuance of a commitment, the lender shall disclose . . ." [Emphasis added.] Therefore, lenders are not obligated to redisclose information which they have previously disclosed in a Regulation X or Regulation Z statement. However, they are required to disclose any information required by this section but not previously disclosed. See paragraph (b) on this point.

Pursuant to comment, a technical amendment is made to the adopted amendatory language of paragraph (a)4iii.

Pursuant to comment, the reference to N.J.A.C. 3:1-16.5(d) which is contained in subparagraph (a)5 is deleted as the original subsection (d) was deleted by this adoption.

Pursuant to comments, the reference to Regulation Z in paragraph (b) is supplemented by a reference to Regulation X.

COMMENT: A commenter suggested that the Department amend its requirements regarding disclosures for commitments where the interest rate is subject to change before closing to require only that lenders state whether the rate they give is guaranteed.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

SUBCHAPTER 16. MORTGAGE LOANS, FEES, OBLIGATIONS

3:1-16.1 Definitions

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

"Application" means the document(s) or information, including the payment of any fees, that a particular lender or broker requires a borrower to submit for the purpose of having the lender or broker begin to process the loan document(s) to determine whether to grant or deny a mortgage loan.

"Borrower" means a natural person or persons who applies for credit or to whom credit is offered or extended primarily for personal, family or household purposes, and shall mean all co-borrowers, except that the lender may require the co-borrowers to designate one of the co-borrowers as the borrower for the purposes of these rules or, at the election of such natural person or persons, shall mean the attorney for the natural person or persons, but shall not mean other agents of the borrower.

. . .

"Commitment" means a signed statement issued by a lender in which the lender promises to make a loan of specified terms to a specified borrower, ***and which is based on a satisfactory underwriting analysis of the appraisal, if an appraisal is required in connection with the loan, and a satisfactory underwriting analysis of the credit report, if a credit report is required in connection with the loan,*** except that any document indicating approval of a loan application which is contingent on *[a satisfactory appraisal, a satisfactory credit analysis, or]* the approval of a party *[which is not the lender]* ***to whom the lender seeks to sell the loan*** shall not be deemed a commitment.

[3.] Lender means a State- or Federally-chartered bank, savings bank, savings and loan association, credit union, or a mortgage banker as defined in N.J.S.A. 17:11B-1c.

"Lock-in agreement" means an agreement between the lender and the borrower*[, executed at any time prior to issuance of a commitment,]* whereby the lender guarantees until a specified date the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and/or specific number of discount points, provided the loan is approved and closed by the specified date. ***If a specified date is not determinable, the lender may fulfill the requirement of this provision by setting forth with specificity the method by which the duration of the lock-in period will be determined.*** The term "lock-in agreement" does not include an agreement to fix the rate executed three or fewer calendar days before closing where appropriate disclosures have been made under the provisions of this subchapter.

. . .

"Receipt" (or "received") means

1. (No change.)

2. In the case of a borrower, actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service, or the third calendar day following deposit in the regular U.S. mail.

"Substantial fault of the borrower" means that the borrower or the borrower's agent:

1.-2. (No change.)

3. Failed to produce on or before the date specified by the lender all of the documentation specified in the commitment or closing instructions as being required for closing, which date may be less than seven calendar days following the date of receipt of the commitment or closing instructions; or

4. Failed to be ready, willing and able to close the loan or before the date specified by the lender.

5. For purposes of this section:

i.-ii. (No change.)

. . .

3:1-16.2 Fees

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise authorized by State or *[federal]* ***Federal*** law, either explicitly or as interpreted by the appropriate regulator in official staff commentary, regulatory bulletins, or memoranda.

1. Application fee: Defined as a fee imposed by a lender or broker for accepting or processing a mortgage loan application. The application fee shall *[be collectible only at the time of application and shall]* not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee, which may not exceed the amount paid, or to be paid, to the party providing the credit report***, except that that initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the credit report is refunded to the borrower at or prior to closing***;

3. Appraisal fee, which may not exceed the amount paid, or to be paid, to the party providing the appraisal, provided that if the

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appraisal is done in-house, the fee shall not exceed the going charge for such appraisals by third parties ***and, except that the initial charge to the borrower may be based on a reasonable estimate provided that any amount in excess of the amount paid to the party providing the appraisal is refunded to the borrower at or prior to closing***;

4. Commitment fee: Defined as a fee, exclusive of third-party fees, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of the lock-in agreement. A lock-in fee may comprise all of the commitment fee. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged by a lender not to exceed the *[average]* cost associated with holding ***the particular*** mortgage *[loans]* ***loan*** pending sale to a permanent investor and payable at closing. The fee shall be based on the *[average]* ***actual*** holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to the lender from the fee *[over any calendar or fiscal year]*;

7. Third party fees: Limited to the following fees paid or actually incurred by a lender on behalf of a borrower:

i. Overnight delivery, messenger, fax, and other special delivery fees, provided that the type of service is authorized by the borrower in advance in writing or the specific service is authorized by the borrower in writing;

ii. Flood certification fees;

iii. Pest inspection or certification fees;

iv. Final inspection fee, not to exceed the amount of the fee paid or actually incurred to a third party or, if the final inspection is done in-house, not to exceed the going charge for such inspections by third parties;

v. Outside counsels' document and title review fees, provided that they are for document ***and title*** review services only, and are properly designated and documented as being a fee of outside counsel;

vi. Certified check fees, not to exceed the amount of the fee paid or actually incurred by the lender to the issuer of the certified check or, if the lender issues the certified check, not to exceed its usual fee for providing this service to its customers;

vii. Update fees to update the borrower's credit report and appraisal, not to exceed the amount of the fee paid or actually incurred by the lender to the credit reporting agency or appraiser or, if the appraisal is done in-house, not to exceed the going charge for such updates by third parties;

viii. One-time mortgage insurance premiums ***or, if the premiums are not collected on a one-time basis, not more than one-year of premiums***;

ix. Survey fees;

x. Recording fees which shall not exceed the statutory amount for recording the deed, mortage, and note, and which shall not include any amount for recording an assignment of the mortgage;

xi. Title and title search fees, including title insurance premiums;

xii. Taxes;

xiii. Tax service fees;

xiv. Radon test fees; *[and]*

xv. Service fees for cancellation of mortgages as provided by P.L. 1991, c.289; and

*[xv.]***xvi.*** Fees not included among the above third party fees may be charged provided that prior written approval is obtained from the Department. The Department will only approve third party fees which are of benefit to the borrower and represent a cost not associated with the lender's overhead. Accordingly, the Department will not approve fees for document preparation, processing, underwriting, file updates, lender reviews, copying, funding, and miscellaneous.

8. (No change.)

(b) If a lender or broker uses a term for a fee which is different than a term listed in (a) above, the lender or broker shall be able to document to the Department that the fee fits the definition and description of a permissible fee listed above, and that the fee functions accordingly.

(c) This section does not restrict the imposition of fees after the closing of a mortgage loan, such as late fees and variable-to-fixed rate conversion fees.

3:1-16.3 Application process

(a) Before a lender or broker accepts any application fee in whole or in part, any credit report fee, appraisal fee or any fee charged as reimbursement for third party fees, the lender or broker shall make written disclosure to the borrower (which disclosure may be contained in the application) as required by this section or N.J.A.C. 3:1-16.10, respectively, setting forth:

1. A description and the amount of each such fee;

2. Whether all or any part of such fees are refundable;

3. The terms and conditions for the refund, if all or any part of the fees are refundable, provided that, where applicable, the terms and conditions may be disclosed by making reference to these rules with proper citation;

4. A realistic estimate of the number of calendar days required to issue a commitment following receipt of *[the terms]* such fees by the lender. If the lender subsequently determines that the estimate is unrealistic, it may return the application and all fees paid and offer the borrower the opportunity to reapply subject to a new estimate; and

5. (No change.)

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender or broker and a copy of such acknowledgment shall be given to the borrower.

(c) Except where explicitly authorized to return an application, or for other reasons consistent with due diligence, a lender is obligated to process an application submitted to it and to exert conscientious effort to either grant or deny the application within the realistic estimate disclosed as required in (a) above.

(d) Not later than three business days after the lender receives the borrower's application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each fee for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a service related to the origination, processing, or closing of a mortgage loan, and for which the lender anticipates the borrower will pay a fee at or before settlement based upon the lender's general experience.

2. With respect to the settlement service fees imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

3. Good faith estimates of fees for settlement services which are made pursuant to, and conform to, Federal Regulation *[Z]* ***X*** shall satisfy the disclosure requirement of this subsection***, provided that the lender also makes the disclosures required by (d)2 above***.

(e) The borrower may, without penalty or responsibility to pay additional fees, withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender or broker shall be responsible to refund to the borrower only those fees to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender or broker has failed to provide the borrower with the written disclosure required by (a) above, the lender or broker shall promptly refund to the borrower all funds paid to the lender or broker;

2. Where the lender has failed to issue a commitment or justifiable credit denial and its realistic estimate of the time needed to do so

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has expired through no substantial fault of the borrower and the borrower has withdrawn his or her application as a result, the lender shall promptly refund to the borrower all funds paid to the lender;

3. (No change).

3:1-16.4 Lock-in agreements

(a) (No change.)

(b) The lender shall make a good faith effort to process the mortgage loan application *[and]* ***and/or*** stand ready to fulfill the terms of its commitment before the expiration date of the lock-in agreement and any extension thereof.

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

3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose in writing the following:

1. (No change.)

2. The amount financed, which shall have the same meaning as that term is defined in Federal Regulation Z;

3. In the event the interest rate is not subject to increase before expiration of the commitment:

i.-iii. (No change.)

4. In the event the interest rate is subject to increase before expiration of the commitment:

i. (No change.)

ii. A statement in at least 10-point bold type that "The interest rate will be a rate established by the lender in its discretion" followed by a statement in the same type indicating when the rate would be set and advising the borrower of his or her right to demand disclosure of the rate and points pursuant to subsection (c) below once they are so set; and

iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule based on the rate at which a lender is closing or committing loans on the date the disclosure is made, together with a statement in at least the same size type as the disclosure, either immediately above or immediately below the disclosure, to *[other]* ***the*** effect that:

"These figures are for illustrative purposes only. They reflect the rate now in effect, NOT necessarily the rate you will pay at closing, which will be established as indicated in this commitment."

5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable, provided that, where applicable, the latter disclosure may be made by referencing *[N.J.A.C. 3:1-16.5(d)]* and either N.J.A.C. 3:1-16.6(a) or N.J.A.C. 3:1-16.6(b) of these rules;

6. All other fees yet to be paid by the borrower, including, but not limited to, warehouse fees and discount points, except that fees previously disclosed by the lender need not be redisclosed;

7.-8. (No change.)

9. Whether any fees or discount points charged by the lender and set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

(b) The information required to be disclosed in this section may be contained in one or more documents, for example, in a Federal Regulation ***X or Federal Regulation*** Z form disclosure and a supplement containing the information required under this section but not required by Regulation ***X or Regulation*** Z***, as the case may be***.

(c) (No change in text.)

(d) If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees charged by the lender and set forth in the commitment are subject to increase before closing, such terms shall be fixed no later than midnight of the third business day before the date the loan closes. The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the lender shall promptly comply with any such demand. The right conferred by this subsection is not permitted to be modified or waived by the borrower except for a bona fide personal financial emergency. To modify or waive the right, the borrower shall give the lender a dated written statement that describes the emergency, specifically modifies or waives this right, and bears the signatures of all borrowers. Printed forms for this purpose are prohibited.

3:1-16.6 Expiration of lock-in or commitment

(a) In the event a lock-in agreement has been executed, and the loan does not close before the expiration date of either the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may:

1. (No change.)

2. Have the lock-in agreement extended for no more than 14 calendar days following expiration of the commitment or, where no commitment issued before expiration of the lock-in, for no more than 14 calendar days following issuance of the commitment. If the borrower elects to extend the lock-in agreement, the lender may elect either to close the loan at or below the lock-in rate, in which case the lender may keep the lock-in fee, or may elect to close the loan above the lock-in rate but no higher than that which would provide a current market yield but no gross profit or "spread" to the lender, in which case the lender shall refund the lock-in fee to the borrower. All other terms and conditions of the loan shall be as specified in the commitment, regardless whether the loan closes before or after the expiration date of the commitment.

(b) In the event a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

1. (No change.)

2. Have the commitment extended for a reasonable period of time, not to exceed 14 calendar days, to permit closing.

3:1-16.10 Special rules for brokers

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof. A broker may collect a fee on behalf of a lender provided that the entire amount of the fee is transmitted to the lender.

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1.-2. (No change.)

3. The amount of any discount points which are payable to the broker for its services;

4. (No change.)

5. A detailed listing of the specific services that will be provided or performed by the broker, together with a statement that all fees which are payable to the broker will be refunded if the broker does not perform the services indicated; and

6. (No change.)

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

3:1-16.11 Operative date

This subchapter shall become operative on July 16, 1989, and shall apply to all applications taken on or after that date. ***The amendments to this subchapter which were adopted effective April 6, 1992 shall take effect immediately on that date, except that such amendments shall not apply to Federally-chartered financial institutions until June 5, 1992.***

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighborhood Preservation Balanced Housing Program

Adopted Amendments: N.J.A.C. 5:14-1.1, 1.2, 1.3, 1.4, 4.5 and 4.10

Adopted Repeal and New Rules: N.J.A.C. 5:14-2.1, 3.1 and 3.2

Adopted New Rules: 5:14-1.5, 2.2, 2.3 and 3.3 through 3.12

Proposed: April 15, 1991 at 23 N.J.R. 1075(a).

Adopted: February 24, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: March 2, 1992, as R.1992 d.144, **with substantive and technical changes** not requiring additional public notice and comment, (see N.J.A.C. 1:30-4.3), **and with portions not adopted (N.J.A.C. 5:14-1.6 and 3A).**

Authority: N.J.S.A. 52:27D-320.

Effective Date: April 6, 1992.

Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:

The Department of Community Affairs' Neighborhood Preservation Balanced Housing Program received comments from the following persons, agencies and organizations: State Senator John A. Lynch; New Jersey Council on Affordable Housing (COAH); New Jersey Housing and Mortgage Finance Agency (HMFA); New Jersey State League of Municipalities; Housing Authority of the City of Jersey City; City of New Brunswick; City of Trenton; Center for Non-Profit Corporations; Non-Profit Affordable Housing Network of New Jersey (Non-Profit Network); Association for the Advancement of the Mentally Handicapped; Brand New Day, Inc.; Bridgeton Housing Development Corporation; Donald Jackson Neighborhood Coprporation; Fair Share Housing Development, Inc.; PCH Development Corp.; Interfaith Housing Committee; New Community Corporation; K. Hovnanian Companies of North Jersey; Barry Poskanzer, AIA; The Metro Company; David N. Kinsey; Isles; and Runsen Associates, Inc.

COMMENT: Two commenters disagreed with the Department's assertion that the proposed rules will increase housing opportunities for low- and moderate-income households and encourage housing construction, thereby resulting in more jobs. The commenters interpreted the rules as discouraging the involvement of the not-for-profit sector in the development and management of low income housing and did not accept the premise that the new rules will "make the funding process simple and more predictable." One commenter indicated that his "experience has been just the opposite and nothing [the commenter] has read encouraged [him] to think otherwise."

RESPONSE: The Department believes that the rules will have the indicated positive effect and will assist the funding process. The Department has removed distinctions between profit and not-for-profit sponsors. Additionally, a proposal published elsewhere in this issue of the New Jersey Register addresses those concerns which involve changes too substantive to be made upon adoption.

COMMENT: N.J.A.C. 5:14-1.1 provides that ". . . a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14." A commenter suggested a set aside of a minimum percentage of program awards for these municipalities.

RESPONSE: The language in this rule is taken directly from the statute. The Department believes that this requirement is adequately addressed in the priorities and does not believe that a set aside is either needed or appropriate.

COMMENT: One commenter inquired regarding N.J.A.C. 5:14-1.2(a), which provides that "municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program." The commenter questioned the restriction of eligible applicants exclusively to municipalities.

RESPONSE: The language regarding eligible applicants is statutory and, therefore, cannot be changed by the Department.

COMMENT: One commenter questioned the reasoning behind the Fiscal Year 1988 cutoff date for inclusion as an Urban Aid municipality, as set forth in N.J.A.C. 5:14-1.2(b)6.

RESPONSE: The 1988 cut off date was determined by COAH in their authority under P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq., specifically 320c) via a resolution dated March 19, 1990.

COMMENT: The HMFA questioned why its Housing Assistance Corporation was not included as an eligible applicant.

RESPONSE: Again, the Department presumes no authority to change the list of eligible applicants as provided in section 20 of the Fair Housing Act of 1985.

COMMENT: Two respondents requested clarification of "reasonable percentage," as used in N.J.A.C. 5:14-1.3(a)7 which includes, as an eligible activity, "other housing programs for low and moderate income housing including infrastructure projects directly facilitating the construction of low and moderate income housing, not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided."

RESPONSE: To date, the Department has considered such costs in a project budget as "off-site improvements." Since these costs are generally insignificant in terms of the total cost of a feasible project, the Department has not needed to establish a percentage. The Department welcomes further comment regarding the need for clarification of reasonable percentage as well as suggestions as to the content of such a rule.

COMMENT: Several commenters inquired about the definitions included in the rules. The definitions in question included "affordable," "eligible neighborhood," "equity," "new unit" and "project." N.J.A.C. 5:14-1.4 states a unit is affordable "if the monthly carrying costs, including principal and interest . . . taxes, insurance, condominium fees, do not exceed 28 percent of an eligible houshold's income." One commenter stated that sewer, water and trash collection costs that are not included in property taxes ought to be considered within the 28 percent for housing expenses. A second commenter noted that the term "eligible neighborhood" is not identified in the statute and, therefore, must be clarified. A third commenter requested an examination of the definition of "equity" as well as of the term "project". A commenter also questioned whether the term "new unit" referred to new construction only.

RESPONSE: While recognizing the impact of such fees on affordability, the Department's stated rule (regarding affordability) is consistent with standard underwriting procedures adopted by both private and public sector lenders. Therefore, this portion of the definition will remain unchanged; however, for purposes of clarification, occupancy assumptions have been added. Additionally, the revised rules correct the reference to "viable" in the definition of "eligible neighborhood" to conform to the statute. N.J.A.C. 5:14-1.4 defines "equity" as "the total cost of a project, minus subsidies and any loans secured by the project (including cash, real estate and professional fees dedicated to the project)." The Department has examined this definition and believes that it is adequate for the purpose used herein. The specific language has been changed somewhat in the interest of clarity but the essence of the definition remains unchanged. The proposed definition of "new unit" included units created through both new construction and substantial rehabilitation. The Department has clarified that definition to make explicit that adaptive reuse would also be part of this definition, as was the Department's intent when proposing the rule.

COMMENT: A commenter noted that the term "may," as used in the definition of "single room occupancy (SRO)," made the definition inconsistent with the COAH definition of SRO.

RESPONSE: To maintain consistency, the Department has deleted the word "may." The effect of this change will be to require eligible SRO's to contain kitchen facilities, plumbing facilities, central heat and common areas.

COMMENT: A commenting housing corporation requested definitions for "not-for-profit" and "for-profit" developers.

RESPONSE: The rules do not include a definition of these terms, because all distinctions between the two have been removed.

COMMENT: Several commenters responded to the establishment of a maximum allowable project cost for new construction. N.J.A.C. 5:14-1.6(a) provides that maximum allowable project cost shall be "the lesser of the actual project cost of the units or the total of several listed items," including "total residential square feet" multiplied by one of four different square footage dollar amounts.

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Five commenters questioned the basis for square footage costs, as there are no adjustments made for prevailing wage requirements and environmental issues. One commenter asked the Program to use guidelines rather than fixed requirements. Another commenter requested a definition of "residential" and noted that the rules omit costs for single family detached units. In calculating Maximum Allowable Project Costs, the rules indicate that the combined "developer fee and overhead" in homeownership projects are not to exceed 10 percent of the cost of the project. One commenter stated that the 10 percent profit is "unacceptable and unrealistic regardless of the economic environment." The commenter further noted that when housing is produced for sale, profits are either "earned" or "lost" at one time, not over the life of the project as in the case of a rental project. Commenters further noted the alleged "arbitrariness" of the maximum allowable project cost figure for substantial rehabilitation or conversion projects. A commenter noted that, in older cities, rehabilitation projects have costs comparable to or higher than new construction on a per square foot basis. Finally, the rules define the calculation of land value as the lowest of the actual acquisition price for the land, appraised value for the land or $20,000 per dwelling unit. Three commenters insisted it is necessary to include demolition and removal costs and environmental testing in the calculation of land value.

RESPONSE: Because of the considerable comment generated by the rules governing maximum allowable project cost, the Department held discussions with respondents and hosted round table discussions with interested parties. With respect to "maximum allowable cost" there was a general consensus that, while cost containment was a desirable objective, the variation in construction types and conditions throughout the State necessitated a more flexible rule. The rule has been rewritten and reproposed to specify that costs must be reasonable and to allow for higher costs; if justified. The new rule, proposed elsewhere in this issue of the Register, is based on an analysis of all Balanced Housing projects funded to date and provides some flexibility in exceeding that standard.

COMMENT: Thirteen commenters responded regarding N.J.A.C. 5:14-1.6(a)6 which provides that "in lieu of developer fee and overhead, a not-for-profit developer may take up to a five percent administrative fee." The commenters requested an equal developer's fee for not-for-profit and for-profit developers.

N.J.A.C. 5:14-1.6(a)5ii and iii provide, in pertinent part, that for rental projects receiving Low Income Housing Tax Credits, a developer may take a fee and overhead not to exceed 20 percent of the construction costs. For rental projects not receiving tax credits, developer fee and overhead may not exceed 14 percent of the construction costs. A commenter did not understand the use of differentials in developer's fees based upon utilization of tax credits. Additionally, the rule allows the Department to "reserve the right to review all project costs to ensure reasonableness and to lower the maximum allowable project subsidy accordingly." A commenter noted that the rules did not provide a definition of "reasonableness."

RESPONSE: The discussion on developer fee focused on two issues. One was the distinction between for-profit and not-for-profit sponsors. The other was the method used to calculate the fee. The not-for-profit developers argued that the distinction made between not-for-profit and for-profit developers was unfair and that they (the not-for-profits) needed adequate developer fees to maintain staffing and cover the predevelopment costs of the "next housing project." The small developer fees for not-for-profits keep them financially dependent on the State and foundations. Thus, if the State is serious about capacity building for not-for-profits, the fee distinction should be dropped. It was also acknowledged that, in most cases, the economics of an affordable housing project require that some or all of the fee is pledged to the project as equity. The for-profit developers consulted by the Department did not object to allowing the not-for-profits equal fees so long as the entire "playing field" was level. Specifically, they objected to provisions which specified higher interest rates on loans for for-profits (N.J.A.C. 5:14-3.1(j)) and the Department's policy of not allowing the use of Balanced Housing funds during construction for for-profit projects (N.J.A.C. 5:14-3.4(a)). The latter, according to the developers, is particularly troublesome, given the current lending climate.

The revised rules drop the distinctions between for-profit and not-for-profit developers in terms of fees, interest rates and construction financing. In the latter case, all developers will become eligible to receive funding during construction. In the case of interest rates, the proposed for-profit rule is adopted. A new rule has been proposed elsewhere in this issue of the New Jersey Register regarding the fees. The proposed new text on fees is founded on the Department's discussions with private developers who stated that their bottom line is based on a given amount of money per unit, not a percentage of total project cost, as the rule was structured. They also pointed out that the originally proposed rule ran counter to the Department's interest in cost containment by rewarding expensive projects with a higher developer fee.

The Department is now reproposing N.J.A.C. 5:14-1.6 as a flat per-unit developer fee, which rewards larger units (more bedrooms), rental projects, and projects located in the most distressed cities.

COMMENT: Three commenters responded to the rule regarding the funding cycles and application procedures. One commenter indicated that the policy change from a funding deadline to a continuous funding cycle is appropriate. Two other commenters, noted the following error in the proposal, "notice for the competitive cycle shall be provided by the Department to each of the municipalities listed in Appendix A." The rule should read "notice for the competitive cycle shall be provided by the Department to each of the **eligible applicants**". The term "eligible applicants" is broader and includes more than those listed in Appendix A, and thus is more appropriate.

RESPONSE: The wording of this provision has been corrected.

COMMENT: The rules establish a priority system to evaluate projects for funding in the event that funds are limited. Several commenters responded to the appropriateness of the priority system. One commenter indicated that the priority system which gives suburban projects second priority conflicts with the regionalization approach of the *Mount Laurel* decision. Another commenter stated that first priority should go to projects in furtherance of a Regional Contribution Agreement in connection with substantive certification by COAH on affordable housing.

A third commenter listed the following concerns: 1) for-sale housing in urban areas should be considered a number one priority since it has a stabilizing effect on the entire neighborhood; 2) it is questionable whether public housing authorities using HUD loans should be a number one priority while landlord projects, which are essentially prohibited from using HUD financing, are a lesser priority; 3) new construction is a first priority while acquisition/rehabilitation is a third priority. There should be a distinction between substantial and moderate rehabilitation making substantial rehabilitation synonymous with new construction; and 4) senior housing should be higher than a number four priority.

A fourth commenter would like to see the phrase "except for replacement public housing units" deleted from subsection N.J.A.C. 5:14-2.2(b)ii.

RESPONSE: The Department has reviewed these priorities and believes that they are equitable and consistent with the Fair Housing Act. Therefore, no changes have been made. The Department acknowledges that the concerns of the commenter are legitimate; however, the use of any such priority system must ultimately be subjective. The Department notes that "substantial" and "moderate" rehabilitation are defined at N.J.A.C. 5:14-1.4.

COMMENT: A commenter requested a clarification of the definition of "limited" funds. The commenter stated that projects which are already in the review pipeline should not be subjected to the priority system, and noted that it is unclear under which category an "adaptive reuse of non-residential space to residential space" would be classified.

RESPONSE: The reference to limited funds has been deleted from the adopted rule. The Department will use these priorities at all times, not simply when funds are limited, as the Department believes that these priorities are valid at all times.

COMMENT: One agency commented on the use of the phrase "will be considered" in N.J.A.C. 5:14-2.2(c), since the Fair Housing Act "clearly requires substantive certification or a builder's remedy . . . ." A second commenter opined that this criterion is biased against communities which have achieved substantive certification with COAH and further indicated that it is unclear "whether the evaluation criteria will be used only in the event of limited program funding or whether they will be used in all cases."

RESPONSE: The intent of this rule is to give preference to projects which are specifically included in a municipality's substantively certified plan, as opposed to those which a community does above and beyond its certification process. The wording has been changed in order to clarify this intent.

COMMENT: A commenter stated that the provision of N.J.A.C. 5:14-2.2(d) providing that "the use of Balanced Housing funds to provide replacement public housing generally shall not be considered to be the best use of these funds," should be deleted and that replacement housing would be an eligible use of State funds. The commenter argues that U.S. Department of HUD criteria require that replacement housing plans

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require the public housing authority to show that the existing project is obsolete and that rehabilitation is not feasible.

RESPONSE: The Department agrees. This provision has been deleted, because it does not provide specific guidance and has proved difficult to enforce.

COMMENT: One commenter requested the deletion of N.J.A.C. 5:14-2.2(e) providing that "Balanced Housing funds shall not be used to convert public housing units to homeownership." The commenter opined that "this rule is contrary to Department policy to create additional units of low income housing." Additionally, a commenting agency questioned why the Program is prohibiting the use of State funds for the above purpose when this type of conversion is one of the key elements of the new Federal HOPE program.

RESPONSE: The conversion of public housing units to homeownership does not create new units nor does it make units affordable or bring them from substandard to standard condition. Therefore, Balanced Housing funding will not be used for that purpose.

COMMENT: One commenter could not see the reason for the distinction made in ranking the priorities, as provided in N.J.A.C. 5:14-2.3(a), if they are combined in the funding allocation. In addition, the respondent stated that it is unclear under which priority category an owner-occupied homeowner rehabilitation program falls.

RESPONSE: Although dollar amounts are combined, the priority system demonstrates the Department's preferences within each group. Owner-occupied rehabilitation is funded under Neighborhood Rehabilitation, which is given a separate allocation of funds.

COMMENT: A commenting agency indicated that N.J.A.C. 5:14-2.3(c), regarding the allocation of Balanced Housing funds to specific projects, is contrary to the process of awarding a grant to a municipality.

RESPONSE: The Department has corrected the text to make clear that all Balanced Housing grants are made to municipalities on behalf of specific projects. This change has been made in accordance with statutory requirements that funds be allocated to municipalities. The Department has clarified that commitments are made on behalf of specific projects.

COMMENT: A commenting developer questioned whether the limitation on the maximum amount of funding in any one municipality, noted in N.J.A.C. 5:14-2.3(d), refers to the $3 million cap per municipality applied in Fiscal Year 91.

RESPONSE: Yes, the limitation does apply to the cap in Fiscal Year 1991. No cap has been imposed in Fiscal Year 1992. The rule is flexible enough to allow a cap of any amount.

COMMENT: Three respondents opposed the waiver of the 50 percent low-income requirement, as set forth at N.J.A.C. 5:14-3.1(d). One respondent stated that, by waiving this rule, for-profit developers will continue to build sales units for moderate rather than low income households.

Another commenter favored the exemption only if "other projects in the community taking place during the same period provide enough low income housing so that at least 50 percent of the total number of units being provided are affordable to low income households."

A third respondent approved of the waiver because of the problems in qualifying low-income households for mortgages.

RESPONSE: The Department has encountered difficulties in its efforts to place low income households in homeownership units. The "back end ratio," in which a lender limits overall debt to 38 percent of income, precludes most low income households from obtaining a mortgage. In many cases, units have been priced to households at 30 to 35 percent range of affordability in order to sell them to households in the 45 to 50 percent range. The Department does not believe that such a pricing policy, which was often a necessity under the 50 percent rule, effects an efficient use of its subsidy.

The waiver will provide municipalities with more flexibility in developing realistic pricing strategies. Combined with a lowering of the average range of affordability to 57.5 percent and new affordability assumptions (five percent down payments and smaller household sizes), the Department believes that this change will allow the program to better serve those households who can sustain homeownership.

COMMENT: The affordability controls of N.J.A.C. 5:14-3.1(e) provide, in pertinent part, "... units funded through the Balanced Housing program must remain affordable for 10 years in municipalities listed in Appendix A to this chapter or 20 years in all other municipalities." Two commenters requested an extension of these minimum affordability controls.

RESPONSE: The proposed rule is consistent with the standards adopted by COAH. Therefore, no change has been made at this time. The Department welcomes further comment on this issue, however.

COMMENT: The rules provide that, "... when used during construction, Balanced Housing funds shall be allocated as contingency to be used only to the extent necessary." Seven commenters indicated that the Department should allow the use of Balanced Housing funds at the onset of the project or during construction and not just for contingency.

RESPONSE: The intent of this rule was not to limit the allocation of funds during construction. Rather, the intent was to make it clear that Balanced Housing funds are to be provided only where a gap exists. Since that point is made explicit in N.J.A.C. 5:14-2.2(c)2 and 3.1(h), the reference here to contingency has been deleted.

COMMENT: A commenting developer questioned the provision requiring that an outside public accountant perform the cost certification. The commenter noted that this would be time consuming and more costly than an in-house controller or accountant who could provide the State with the "level of comfort it needs regarding the proper expenditure of public funds."

RESPONSE: The Department concurs with the commenter. The wording of the adopted rule has been modified from independent public accountant to certified public accountant, since the certification requirements to be met by every C.P.A. provide assurance of proper supervision of expenditures.

COMMENT: A commenter inquired whether the developer loan, referenced in N.J.A.C. 5:14-3.1(i), is repayable to the municipality or to the Department. A second commenter stated that this provision should be modified to allow grants to rental projects and further noted that the use of Balanced Housing funds as a loan will be the preferred funding method as long as the Federal Low Income Housing Tax Credit program is authorized.

RESPONSE: This rule has been modified in order to make it clear that all loans are to be repaid to the Department. In response to the second concern, since many of the loans made to rental projects are non-amortizing and do not become due so long as affordability is maintained, the Department sees no purpose for making grants rather than loans.

COMMENT: One commenter inquired why the maximum interest rate should be tied to the interest rate on a 30-year Treasury Bond at the time of commitment for for-profit sponsors and half of the rate for not-for-profit sponsors.

RESPONSE: There is no "necessity" to tie the maximum interest rate to the 30-year Treasury Bond rate. In the absence of an alternative, however, the Department believes that this is a useful gauge of long term interest rates.

N.J.A.C. 5:14-3.1(j) has been rewritten in order to eliminate the distinction between for-profits and not-for-profits, as noted previously and in response to numerous comments. The Department sees no need for such distinction.

COMMENT: N.J.A.C. 5:14-3.1(k) provides that "a commitment by the Department to fund a project shall not constitute a commitment to subordinate the Balanced Housing loan at a future date ..." Four respondents agreed that the rule appears to be restrictive and also unclear. As one respondent stated, "It can be interpreted as restricting the subordination of Balanced Housing funds at the inception of a project, not just at refinancing ..."

RESPONSE: The suggested changes cannot be made on adoption. Subsections (k) and (l) have been deleted and this rule has been rewritten in order to clarify that it applies to a refinancing which occurs after the project has been in service. The Department recognizes the need to subordinate its construction loan to the project's permanent lender, and has reproposed provisions elsewhere in this issue of the New Jersey Register.

COMMENT: One commenter wanted to add lease/purchase projects to the list of projects eligible for funding, with detailed rules developed to govern such projects.

RESPONSE: The Department rules do not preclude the funding of lease/purchase projects under the discretionary category. The Department welcomes any comments regarding rules which should be applicable in the event that Lease-Purchase is to be identified as a specific project type. The Department is also considering the development of rules to apply to "Two-fer Projects" (a two-unit house, one of which is owner-occupied, with the other being rental) and would appreciate public comments and suggestions.

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COMMENT: Although the term "eligible municipalities" is used in the rules, one commenter noted that this term is not defined in the rules and should be changed to "eligible applicants."

RESPONSE: The Department acknowledges that the commenter is correct. The rules have been rewritten in order to eliminate the confusion, making clear that only municipalities can be applicants by substituting the word "applicant" for "municipality."

COMMENT: The rules provide that the average range of affordabilty for the units funded shall not exceed 57.5 percent. One commenter stated, however, that the reduction in this percentage from the 60 percent figure included in the previous rules is unfair, as no additional funding is available to achieve the lower range of affordability. Another commenter found the average range of affordability too limiting for effective project development, since the range of affordability does not include the calculation of realistic housing expenses.

RESPONSE: The 57.5 percent was adopted in part because it was consistent with COAH and in part because of the Department's desire to assist more needy households.

Actually, the reduction in range of affordability is not from 60 percent but from 65 percent to 57.5 percent. Regarding the amount of subsidy available, the new funding charts do provide additional subsidy, particularly at the lower ranges of affordability.

COMMENT: A commenter stated that urban areas with a "plethora of old houses [which] require substantial rehabilitation" will suffer because of the "narrow range of affordability." The commenter indicated that the program needs to have rehabilitation funding available to the broadest possible range of buyers.

RESPONSE: The Department disagrees. The rule, as adopted, will expand the range of affordability.

COMMENT: Seven commenters responded to the requirement that applicants apply for Low Income Housing Tax Credits (LITC) or demonstrate good cause not to seek the credit. The commenters believed this requirement is too restrictive and that it should be the decision of the developer whether to apply for tax credits or not. There is also confusion regarding the statement that the Balanced Housing subsidy will be reduced "accordingly" if tax credits are obtained. No group wants to see Balanced Housing funds further limited.

Another commenter stated that this requirement should be deleted "as eligible rental projects may not be designed to meet the LITC requirements . . ." Additionally, one commenter noted a conflict between the Federal Government's stance on the use of Low Income Tax Credits and that of the Balanced Housing Program. The commenter stated, "if the Federal government is saying that the amount of the Tax Credit can be reduced if the project doesn't need it and DCA is saying that the project must apply for Tax Credits and, if successful, its commitment is reduced, we have a potential conflict which could prove frustrating to potential developers."

RESPONSE: Although the Department cannot control the extent to which HUD Low-Income Housing Tax Credits are available, it will continue to seek their use in Balanced Housing Projects. The Department acknowledges the inherent conflict; however, no problems have been encountered with it to date. Should the funding gap increase due to a Federal Low-Income Housing Tax Credit reduction, then nothing in the rules would prohibit the applicant from receiving the maximum balanced housing subsidy. The Department believes that eligible rental projects should be designed to meet the LITC requirements, and refers the commenters to the newly-proposed waiver provisions, published elsewhere in this issue of the New Jersey Register.

COMMENT: One commenter recommended the modification of N.J.A.C. 5:14-3.7, which provides that "the Balanced Housing Program may provide assistance to eligible municipalities for use by for-profit and not-for-profit housing sponsors who provide homeownership opportunities to low and moderate income households through new construction." The commenter recommended modifying this section to "make clear that buy-downs of new market-rate units [for the purpose of making units affordable] are also eligible for funding."

RESPONSE: The rule has been revised in order to clarify this point.

COMMENT: A respondent commented on N.J.A.C. 5:14-3.7(d), which provides that "condominium and cooperative, as well as fee simple ownership forms may be eligible." The commenter would like to replace "may be eligible" with the phrase "are eligible" so that the rule is less equivocal.

RESPONSE: The Department will implement this recommendation.

COMMENT: An agency commenter questioned why the Balanced Housing subsidy for an acquisition/rehabilitation project is increased for seniors or single parents. The commenter understood the reasoning for the increase for handicapped persons because of necessary structural modifications, but not that for seniors or single parents. The commenter inquired whether the affected units are permanently restricted for occupany by these special populations.

RESPONSE: The Department agrees with the commenter, and, therefore, the bonus has been deleted for senior citizen and single parents, since these uses do not involve structural change. In the case of handicapped households, the bonus is only applied if the unit is to be made handicapped-accessible. There are no permanent restrictions on occupancy.

COMMENT: A commenting agency inquired why, in accordance with N.J.A.C. 5:14-3.8(c), "all units assisted must be vacant at the time of acquisition . . . ." The commenter further noted that "if there are substandard units to be rehabilitated, why then is vacancy required?"

RESPONSE: If the units are not vacant, then the applicant should be seeking funds under the landlord program.

COMMENT: One commenter took issue with N.J.A.C. 5:14-3.10 which states that funds shall be committed to implement a Neighborhood Rehabilitation Project according to the municipality's ranking on the Municipal Distress Index. The commenter noted that, according to section 311(d) of the Fair Housing Act, "a municipality is not required to raise or expend municipal revenues in order to provide low and moderate income housing."

RESPONSE: As COAH has demonstrated in its rules regarding municipal bonding for affordable housing, the decision to seek Balanced Housing funding in order to meet indigenous need is completely at the option of the community. The match is a requirement for participation. However, participation is entirely voluntary.

COMMENT: In a general comment, a respondent city recommended "an administrative payment to the municipality to cover the cost of the required recertification of [landlord projects] at intervals of no more than two years."

RESPONSE: The purpose of the recertification is to secure continuing municipal involvement in a project which the municipality has allowed to become substandard; therefore, we do not believe the financial burden on a municipality to be inappropriate or onerous.

COMMENT: One commenter objected to the duration of the affordability controls for landlord projects. The commenter stated that, although the rules provide that the length of the controls shall be no less than 20 years or until such time thereafter that the units become vacant, the COAH-mandated 20-year controls should be reduced to 10 years. This commenter asserted that "the proposed requirement of 20 years restricts the use of the property long after the expected life of most of the repairs funded by Balanced Housing. This long term will discourage use of the program to rehabilitate rental units by landlords."

RESPONSE: As noted in the discussion of N.J.A.C. 5:14-3.1(e), in this Summary the Department is seeking further comment on the length of controls.

COMMENT: A respondent city recommended that bridge loans and predevelopment loans to not-for-profit organizations be deemed appropriate uses for Balanced Housing funds.

RESPONSE: The Department believes that the current rule is adequate and notes that nothing in the rules precludes the activities recommended by the city.

COMMENT: The Department received two comments regarding N.J.A.C. 5:14-3A, Terms of Funding Agreement with the Department. One commenter indicated that each grantee should have 20 days to submit its quarterly report, rather than the 10 days presently allowed. The respondent also commented on N.J.A.C. 5:14-3A.11(a)4, which restricts the use of sectarian or religious symbols or decorations. The commenter opined that the provision was "ludicrous" and should be eliminated.

RESPONSE: N.J.A.C. 5:14-3A, which, as proposed, contained general DCA grant requirements, has been deleted, as the Department, on reconsideration, does not believe that all of the terms of a general DCA grant agreement are specific to every balanced housing project. The Department will include in a grant agreement such portions of the general DCA grant agreement as are appropriate to the specific project. Additionally, in N.J.A.C. 5:14-3.1(a), the Department has deleted a reference to N.J.A.C. 5:14-3.13, which was intended to refer to N.J.A.C. 5:14-3A, but was incorrectly proposed, and has added text which states that Balanced Housing agreements between a successful applicant and the Department are subject to the conditions set by this chapter and the conditions set by the Department in the agreement. The provision

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regarding the use of sectarian or religious symbols or decorations comports with applicable laws and rules regarding non-discrimination. The Department points out that subsection (b) of the proposed rule prohibits the limitation of the religious practices of any individual occupant. The Department believes, regarding the request for 20 days in which to submit quarterly reports, that timely quarterly reporting from grantees is important to facilitate the Department's proper administration and supervision of the funds.

COMMENT: Thirteen respondents commented regarding Appendices B and C. The commenters made the following six comments. 1) Units should be built according to HUD and FHA standards. 2) Square footage minimums discourage development of units with a large number of bedrooms. 3) Balanced Housing square footage minimums will increase construction costs and thereby reduce the number of units built. 4) The amount of reduction in the subsidy as a penalty is too restrictive and arbitrary. 5) The square footage requirement will place a great burden on cities concentrating on rehabilitation projects. 6) Do the minimum square footage requirements reflect only unit occupancy size or project size which includes unit size?

Conversely, one comment received stated that the Balanced Housing minimum unit sizes are "inappropriately" small.

Five commenters also offered the following recommendations. 1) DCA should encourage greater efficiency in unit layout in the interest of economy within the limits of what represents a sound living environment for the family size. 2) The Department should modify the formula ($50.00 penalty per square foot) to create less of a penalty for sponsors forced to build smaller units which still provide adequate living space for lower income households. 3) Since penalties seem logical for new construction units but not logical for rehabilitation/retrofit projects, a waiver provision should be instituted. 4) Instead of penalizing developers for building small units, reward those builders proposing larger units with an increased subsidy. 5) Increase per-unit subsidy amounts.

RESPONSE: Based on the volume of comment, and discussions with interested parties the Department has revised the rule in three respects. 1) The proposed unit sizes have been decreased, which relate to comments number 1 and 5. 2) The penalty has been halved, in response to comments 2, 3 and 4. 3) Reference is made to waivers based on the use of good design. (See also N.J.A.C. 5:14-2.2(c)). The Department does not, as suggested by the commenter, believe it is appropriate to increase the subsidy for larger units, nor are the requirements inappropriate or unduly burdensome. The minimum square footage requirements refer to unit size. The Department believes that the changes made will satisfy commenters' concerns, in that the changes have been discussed with interested parties and that individual situations can be accommodated through the use of waivers.

COMMENT: The applicable multiplier, for units located in municipalities listed in Appendix A, is 20 percent of the maximum subsidy. One commenter would like to increase the multiplier to 30 percent.

RESPONSE: The 20 percent rule is provided as an incentive to developers to work in the inner-city neighborhoods. Any additional incentive would adversely affect the Department's ability to address need in other eligible municipalities throughout the State.

The Department also solicited public comment regarding the advisability of prohibiting the use of Balanced Housing funds in connection with a Regional Contribution Agreement. All 11 commenters were strongly opposed to this suggestion. The predominant comment was that affordable housing projects need to attract as many funding sources as possible. Also, several commenters suggested that such a prohibition would be contrary to both the letter and intent of the Fair Housing Act. One commenter noted the absence of any mention of a Regional Contribution Agreement (RCA) as another source of funding in other sections of the rules. The Department will not impose this prohibition.

Summary of Agency-Initiated Changes:

In addition to the changes enumerated in the Summary of Comments and Responses, the Department is adopting a number of changes made for the purpose of clarification or correction. These are:

The deletion of references to profit and not-for-profit from N.J.A.C. 5:14-3.4(a), 3.5(a), and 3.6(a). (Also see response to comment on N.J.A.C. 5:14-1.6(a)6).

N.J.A.C. 5:14-3.10(a) has been revised to clarify the requirements. The Department has made an addition to N.J.A.C. 5:14-3.10(f) to clarify the maximum grant for municipalities not required to match grants.

In N.J.A.C. 5:14-3.10(h), the completion threshold was deleted. The Department instituted this requirement at a time when Neighborhood Rehabilitation applications were being accepted on a continuous basis. The Department believes that this is no longer appropriate, given the once-a-year funding process in current use.

A redundancy in N.J.A.C. 5:14-3.10(i) was deleted, as it was covered in N.J.A.C. 5:14-3.10(a).

Errors in Appendix A were corrected. Appendix B contained an error in the listing for a four-bedroom $52,500 unit which was corrected. Clarification was added to Appendices B and C, in the profile adjustment, that the adjustment may be used to accommodate variations, since proposed. N.J.A.C. 5:14-2.2(c) has limited the number of occupants of an assisted unit in accordance with size.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal inidcated with brackets and asterisks *[thus]*):

5:14-1.1 Purpose

The purpose of the Neighborhood Preservation Balanced Housing Program shall be to assist in the delivery of housing affordable to low and moderate income households in viable neighborhoods in fulfillment of Section 20 of the Fair Housing Act of 1985. Consistent with the Act, a substantial percentage of Program awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

5:14-1.2 Eligible applicants

(a) Municipal governments shall be the only eligible applicants to the Neighborhood Preservation Balanced Housing Program.

(b) Applications shall only be accepted from municipalities meeting at least one of the following criteria:

1.-5. (No change.)

6. The municipality has, at any time since Fiscal Year 1988, been eligible to receive State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.).

5:14-1.3 Eligible activities

(a) *[For Program awards, eligible]* ***Eligible*** activities shall include those activities listed below:

1.-2. (No change.)

3. Conversion of nonresidential space to residential purposes provided more than 20 percent of the resulting housing units are to be occupied by low and moderate income households;

4.-6. (No change.)

7. Other housing programs for low and moderate income housing including infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided.

5:14-1.4 Definitions

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

"Affordable" means capable of being afforded without undue burden by an eligible household. A rental unit shall be considered "affordable" if the monthly rent, including utilities, does not exceed 30 percent of an eligible household's income. Homeowner units shall be considered "affordable" if the monthly carrying costs, including principal and interest (based on a mortgage equal to 95 percent of the purchase price), taxes, insurance and condominium fees, do not exceed 28 percent of an eligible household's income. ***In calculating the affordability of both homeowner and rental units the following occupancy is assumed: a studio is occupied by a one person household; a one bedroom unit is occupied by a one and one-half person household; a two bedroom unit is occupied by a three person household; a three bedroom unit is occupied by a four and one-half person household; and a four bedroom unit is occupied by a six person household.***

"Balanced Housing units" means those units within a project receiving Balanced Housing funds which are subject to affordability controls in accordance with N.J.A.C. 5:14-4 or a mortgage in accordance with N.J.A.C. 5:14-4, regardless of whether such controls or mortgages are waived or modified.

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"Division" means the Division of Housing and Development in the Department of Community Affairs.

"Eligible household" means a low or moderate income household.

"Eligible neighborhood" means a neighborhood that will be viable, as defined by N.J.S.A. 52:27D-*[152]***143** et seq. (P.L. 1975, c.*[249]***248***), ***the maintenance of Viable Neighborhoods Act,*** after the implementation of the proposed project.

"Equity" means the *[total cost of a project, minus subsidies and any loans secured by the project. It may include cash, real estate and professional fees dedicated to the project.]* ***total development cost minus the sum of public subsidies, such subsidies including, without limitation, low income housing tax credits, and loans secured by the project.***

"Low income household" means a household whose gross annual earnings are not more than 50 percent of the median income as adjusted by geographic region and family size in accordance with HUD Section 8 Income Guidelines or N.J.A.C. 5:92. (Where variation occurs, N.J.A.C. 5:92 shall govern.)

"Moderate income household" means a household whose gross annual earnings are greater than 50 percent and less than 80 percent of the median income as adjusted by geographic region and family size in accordance with HUD Section 8 Income Guidelines or N.J.A.C. 5:92. (Where variation occurs, N.J.A.C. 5:92 shall govern.)

"Moderate rehabilitation" means any rehabilitation costing less than 50 percent of the physical value of the unit.

"Neighborhood" means an area which is recognized as a distinct entity by virtue of certain factors, such as: definite boundaries, natural or man-made; history; architecture; facilities which attract people within a certain radius; or a shared sense of identity or social cohesion. This definition is equally applicable to neighborhoods in urban, suburban, and rural communities.

"New unit" means any unit that has been constructed***,*** *[or]* substantially rehabilitated ***or created through the conversion of a non-residential building*** within the three years preceding submission of an application, meets all applicable code requirements and has not been occupied since the time of its construction or rehabilitation.

"Physical value" means the current replacement cost of a structure as calculated using the latest edition of the "Building Valuation Data Report", incorporated herein by reference, as amended and supplemented, published by BOCA International, Inc., 4051 West Flossmoor Road, Country Club Hills, Ilinois 60477-5795.

"Range of affordability" means the household income, expressed as a percentage of the median income, at which a given unit is affordable.

"Senior citizen" means any person age 62 years or older.

"Single room occupancy unit (SRO)" means a unit within a structure in which households maintain private rooms yet *[may]* share kitchen and plumbing facilities, central heat and common areas.

"Substandard" means when used to characterize a structure or dwelling unit, that the local construction official has certified that health and safety code violations exist and that, in order to abate those violations, one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating, or load-bearing structural systems.

"Substantial rehabilitation" means any rehabilitation of a housing unit which will both cost more than 50 percent of the physical value of the unit and result in the entire structure in which that unit is located being brought into compliance with the provisions of the State Uniform Construction Code (N.J.S.A. 52:27D-119 et seq., N.J.A.C. 5:23 and the adopted subcodes) applicable to newly-constructed units.

5:14-1.5 Waiver

Any applicant desiring a waiver or release from the express requirements of any provision of this chapter may make such request, in writing, to the Division. A waiver shall be granted only by the Division Director in writing and then only when such waiver does not contravene the provisions of the Fair Housing Act. The decision of the Division Director shall be final.

5:14-1.6 *[Maximum allowable project cost]* ***(Reserved)***

*[(a) Maximum allowable project cost for new construction shall be the lesser of the actual project cost of the Balanced Housing units or the sum of the items in (a) through 6 below.

1. Total residential square feet as applied to the Balanced Housing units multiplied by:

i. $52.00 for modular construction;

ii. $64.00 for stick built townhouse construction;

iii. $76.00 for mid-rise construction; and

iv. $88.00 for high-rise construction;

2. The cost of nonresidential space, as determined by the most recent issue of the Building Valuation Data Report with an annual allowance of 22.5 percent for professional and financial services and other "soft" costs;

3. Land calculated at the lowest of:

i. The actual acquisition price, if under option or if acquired within the last two years;

ii. Appraised value; or

iii. $20,000 per dwelling unit;

4. Contractor fee as determined in accordance with Appendix D to this chapter, incorporated herein by reference;

5. Developer fee and overhead fee of for-profit developers only shall be calculated as follows:

i. For Homeownership Projects, a developer fee and overhead not to exceed 10 percent of the items in (a)1 through 4 above;

ii. For Rental Projects receiving Low Income Housing Tax Credits, a developer fee and overhead not to exceed 20 percent of the items in (a)1 through 4 above;

iii. For Rental Projects not receiving Low Income Housing Tax Credits, a developer fee and overhead not to exceed 14 percent of the items in (a)1 through 4 above;

6. In lieu of developer fee and overhead, a not-for-profit developer may take up to a five percent administrative fee.

(b) The maximum allowable project cost for substantial rehabilitation or conversion projects shall be the lesser of:

1. The sum of the items in (a)1 through 5 above multiplied by .9; or

2. Actual project cost.

(c) The Department shall reserve the right to review all project costs to ensure reasonableness and to lower the maximum allowable project subsidy accordingly.]*

5:14-2.1 Funding cycles and application procedures

(a) With the exception of applications for Neighborhood Rehabilitation, the Department shall accept applications on a continuous basis.

(b) The Department shall hold one competitive cycle each year for Neighborhood Rehabilitation projects. Notice for the competitive cycle shall be provided *[by the Department]* to each *[of the municipalities listed in Appendix A]* ***eligible applicant***.

5:14-2.2 Priorities

(a) In general, projects shall be funded in the order in which they are ready to go to contract.

(b) In the event that funds are limited, the following priority system *[will]* ***shall*** be used in order to evaluate projects.

1. First priority shall be given to:

i. New or acquired units for the handicapped, either independent or group homes;

ii. New rental family units in urban aid municipalities and units produced by public housing authorities, except for replacement public housing units; and

iii. Single Room Occupany Projects.

2. Second priority shall be given to:

i. New rental family units in non-urban aid municipalities; and

ii. New for-sale family units in urban aid municipalities.

3. Third priority shall be given to:

i. New for-sale family units in non-urban aid municipalities;

ii. Landlord projects with private not-for-profit sponsors, with the exception of projects financed with HUD loans; and

iii. Acquisition/rehabilitation projects.

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4. Fourth priority shall be given to rental and for-sale senior citizen projects, including HUD 202 senior citizen projects*[.]***;***

5. Fifth priority shall be given to:

i. Replacement *[of]* public housing units;

ii. Landlord projects with private sponsors and public not-for-profit sponsors and projects financed with HUD loans; and

iii. Inclusionary developments in which Balanced Housing funds are used to lower the range of affordability.

(c) Additionally, the following evaluation criteria *[will]* ***shall*** be considered in reviewing applications for funding:

1. Whether the project will assist the municipality in *[achieving substantive certification from]* ***providing the affordable housing units specified in its plan which has been substantively certified by*** the Council on Affordable Housing or ***in*** a judicially approved compliance agreement;

2. Whether there is any other source of funds which can be used to undertake this activity***. The Department expects the applicant to use all possible resources and non-Balanced Housing subsidies***;

3. Whether *[or not]* the project *[would]* ***will*** be achieved without Balanced Housing funds;

4. Whether funding this project *[would be]* ***is*** in keeping with allocating funds in accordance with regional need as determined by the Council on Affordable Housing; and

5. Whether affordability controls for the project will be in place for a longer period than *[would be]* required by N.J.A.C. 5:14-4.

[(d) The use of Balanced Housing funds to provide replacement housing generally shall not be considered to be the best use of these funds.]

*[(e)]***(d)*** Balanced Housing funds shall not be used to convert public housing units to homeownership.

*[(f)]***(e)*** The following criteria shall be favorably considered in evaluating applications for Neighborhood Rehabilitation projects:

1. Indication of community support as evidenced by:

i. Intent to develop an in-house community development capacity, if appropriate; and

ii. Dedication of funds for housing construction beyond the program's matching requirement.

2. The existence of an active, systematic code enforcement program;

3. In ongoing programs, a backlog of applicants evidencing need for additional funding;

4. The use of Balanced Housing funds to support the activities of a Neighborhood Preservation Program or Small Cities Program or used in neighborhoods where rehabilitation is needed to support another Balanced Housing project;

5. The existence of extensive indigenous need; and

6. Clear evidence of need as demonstrated by placement on the Municipal Distress Index.

5:14-2.3 Allocation of funds

(a) Until March 31 of each fiscal year, 60 percent of the funds available for that fiscal year shall be reserved for projects in priorities one and two; 15 percent shall be reserved for projects in priorities three and four; and five percent shall be reserved for projects in priority five. Five percent shall be reserved for amendments to existing contracts. Fifteen percent, but not to exceed $2.5 million, will be set aside for Neighborhood Rehabilitation.

(b) Funds not allocated by March 31 shall be available for *[all]* projects ***in any category***.

(c) All Balanced Housing funds *[will be allocated to specific projects, not to developers, applicant municipalities or geographic regions. Any reallocated funds will be subject to the same funding priorities and conditions as were the original funds]* ***shall be allocated to municipalities on behalf of specific projects. In the event that the project does not proceed, the funds shall be reallocated by the Department in accordance with existing funding priorities and conditions regardless of the original applicant, developer or geographic region***.

(d) In order to maximize the distribution of funds, the Commissioner may limit the maximum amount of funding in any one municipality.

5:14-3.1 General provisions

(a) Successful applicants to the Neighborhood Preservation Balanced Housing Program shall be invited to enter into ***a*** grant agreement*[s]* with the Department. *[Any such agreement shall be subject to the terms and conditions set forth in this subchapter, including the specific provisions set forth in N.J.A.C. 5:14-3.13.]* ***Except as otherwise set forth in this chapter, the successful applicant and the Department shall be bound solely by the terms and conditions of any such agreement.***

(b) All projects proposed for funding must be in an eligible neighborhood. Municipalities with an indigenous need of 30 units or less may, for the purpose of a Neighborhood Rehabilitation application, designate the entire municipality.

(c) Applicants to the Balanced Housing Program shall be required to demonstrate their ability, both administrative and financial, to carry out the proposed project.

1. The qualifications of key participants, including the sponsor/developer, consultant, administering agent and the municipality, will be examined. Failure to perform by any of those participants in past contracts with the Department may be grounds for disqualifying an application.

(d) At least 50 percent of the low and moderate income units to be funded shall be affordable to low income households. The following are exempt from this requirement:

1. Homeownership projects which are part of a 100 percent affordable development; and

2. Neighborhood Rehabilitation Projects funded in municipalities with an indigenous need of 30 or less.

(e) With the exception of owner-occupied units funded through Neighborhood Rehabilitation Projects, units funded through the Balanced Housing Program must remain affordable for 10 years in municipalities listed in Appendix A to this chapter or 20 years in all other municipalities.

(f) If a sponsor/developer is undertaking substantial rehabilitation and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and N.J.S.A. 52:31B-1 et seq.

(g) The methodology for determining the maximum Balanced Housing subsidy is explained in N.J.A.C. 5:14-3.3 through 3.12 for each type of project***, with each project type description***. Notwithstanding such provisions, the Department may, at its discretion, award less than the maximum subsidy, structure the assistance as a loan, with or without interest, or provide additional assistance for short term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

(h) The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application and shall fund only the gap between project cost and other revenue. *[When used during construction, Balanced Housing funds shall be allocated as contingency to be used only to the extent necessary.]* The developer must submit a detailed cost break out and, upon completion of construction and prior to *[final release of funds]* ***project close out***, cost certification by *[an independent]* ***a certified*** public accountant.

1. Balanced Housing funding shall not be used as a substitute for private financing where the latter is feasible and attainable.

*[1.]***2.*** If a proposed project is located in a municipality not listed in Appendix A and is to be undertaken by a for-profit developer, the Department's subsidy shall be based upon the number of units representing an increase above 20 percent affordable units or the number of units negotiated by the municipality and the developer, whichever is greater; and/or the subsidy required to lower the range of affordability below that which is eligible for credit by the Council on Affordable Housing.

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(i) In all instances, Balanced Housing funds shall be awarded to the municipality as a grant. With the exception of Neighborhood Rehabilitation and Landlord Projects, *[the municipality shall provide Balanced Housing funds for assistance to a rental unit in the form of a loan to the developer which shall be assigned to the Department.]* ***Balanced Housing funds for a rental unit shall be provided to the developer in the form of a loan. All such loans shall be repayable to the Department.*** All terms and conditions of the loan agreement shall be *[at the discretion of]* ***subject to approval by*** the Department.

(j) The maximum interest rate shall be equal to the *[interest rate]* ***yield*** on a 30 year Treasury bond at the time of commitment *[for for-profit sponsors and half of that rate for not-for-profit sponsors]*.

(k) *[A for-profit developer must provide at least 10 percent equity and may take out no more than eight percent return on equity yearly from project cash flow until the Balanced Housing loan has been repaid.]* ***(Reserved)***

(l) *[A commitment by the Department to fund a project shall not constitute a commitment to subordinate the Balanced Housing loan at a future date. However, the Department shall consider subordination, provided that the sponsor/developer provides evidence to the satisfaction of the Department that the project income can service an increased level of private debt, and that some public benefit will result from the subordination.

1. The sponsor/developer shall submit a request for subordination to the Division Director. The decision of the Division Director shall be presented in writing and shall be final. The request for subordination shall include:

i. An up-to-date income and expense statement;

ii. A mortgage commitment regarding the proposed refinancing;

iii. Verification that reserves are at required levels;

iv. A statement regarding project vacancies, turnover and anticipated major expenditures; and

v. Explanation of the public benefit that will occur. It shall be considered to be of public benefit if refinancing the project results in cash that will be utilized to:

(1) Perform necessary repairs in the project that cannot be funded by the accumulated reserves;

(2) Provide a source of development funding to create additional units that will be affordable to low and moderate income occupants; or

(3) Allow the sponsor/developer to increase the time period during which units shall be affordable to low and moderate income households.]* ***(Reserved)***

5:14-3.2 Types of projects

(a) The Department shall only fund projects falling into at least one of the following categories, which are further described in N.J.A.C. 5:14-3.3 through 3.12:

1. Permanent Housing for the Handicapped Projects;
2. Rental Projects;
3. Purchase/Rental Projects;
4. Single Room Occupancy Projects;
5. Homeownership Projects;
6. Acquisition/Rehabilitation Projects;
7. Section 202 and Public Housing New Construction Projects;
8. Neighborhood Rehabilitation Projects;
9. Landlord Projects; and
10. Discretionary/Demonstration Projects.

5:14-3.3 Permanent Housing for the Handicapped Projects

(a) The Balanced Housing Program may provide funding for the construction, substantial rehabilitation or conversion of units that ***will*** provide permanent housing for income-eligible handicapped persons.

1. Eligible projects must qualify for credit from the Council on Affordable Housing.

2. Eligible projects may include, but are not limited to, residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department, but shall not exceed *[the]* ***that*** amount ***which is*** provided by other public and private funding sources (that is, 50 percent of total project cost).

5:14-3.4 Rental Projects

(a) The Balanced Housing Program may provide assistance to eligible *[municipalities]* ***applicants*** for use by for-profit or not-for-profit housing sponsors who provide new rental housing units for occupancy by low and moderate income households. Eligible activities shall include new construction, substantial rehabilitation and the conversion of non-residential structures. *[In the case of a not-for-profit developer, Balanced Housing funds may be provided to a project during the development phase. In the case of a for-profit developer, Balanced Housing funds may be used to reduce the amount of the permanent mortgage upon project completion.]*

(b) The average range of affordability for the units funded shall not exceed 57.5 percent.

(c) The maximum allowable subsidy for a rental project shall be determined in accordance with Appendix C to this chapter, incorporated herein by reference.

[(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause not to seek the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.]

*[(e)]***(d)*** Applicants for rental projects shall demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means that the Department may approve.

*[(f)]***(e)*** Applicants may combine a rental project with a homeownership project.

5:14-3.5 Purchase/Rental Projects

(a) The Balanced Housing Program may provide assistance to *[municipalities]* ***applicants*** on behalf of not-for-profit sponsors for the purpose of acquiring new units and maintaining them as rental units for occupancy by low and moderate income households. Balanced Housing funds shall be provided to the project at the time of purchase in order to reduce the amount of the permanent mortgage.

(b) The average range of affordability for the units funded may not exceed 57.5 percent.

(c) The maximum allowable subsidy for a purchase/rental project shall be determined in accordance with Appendix C.

[(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause for not seeking the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.]

5:14-3.6 Single Room Occupancy Projects

(a) The Balanced Housing Program may provide assistance to eligible *[municipalities]* ***applicants*** for use by for-profit or not-for-profit housing sponsors who provide new single room occupancy units for low and moderate income households. Eligible activities include new construction, substantial rehabilitation and the conversion of nonresidential structures. *[In the case of a not-for-profit developer, Balanced Housing funds may be provided to the project during the development phase. In the case of a for-profit developer, Balanced Housing funds may be used to reduce the amount of the permanent mortgage upon project completion.]*

(b) The average range of affordability for units funded may not exceed 57.5 percent.

(c) The maximum allowable subsidy for a Single Room Occupancy Project shall be determined in accordance with Appendix C.

[(d) Applicants shall be required to apply for Low Income Housing Tax Credits or to demonstrate good cause for not seeking the credit. If the credit is obtained, the Balanced Housing subsidy shall be reduced accordingly.]

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*[(e)]***(d)*** Applicants must demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means which the Department may approve.

5:14-3.7 Homeownership Projects

(a) The Balanced Housing Program may provide assistance to eligible *[municipalities]* ***applicants*** for use by for-profit and not-for-profit housing sponsors who provide homeownership opportunities to low and moderate income households through new construction, substantial rehabilitation or the conversion of nonresidential structures. *[Balanced Housing funds are provided to the project as a capital grant after the units have been completed. In the case of a not-for-profit developer, funds may be used during the development phase.]*

1. The buy-down of new units off the open market in order to make them affordable is also eligible.

(b) Qualifying units must be new and must be sold at affordable prices.

(c) The average range of affordability for the units funded may not exceed 57.5 percent.

(d) Condominium and cooperative as well as fee simple ownership forms *[may be] ***are*** eligible.

(e) The maximum subsidy for homeownership projects shall be determined in accordance with Appendix B to this chapter, incorporated herein by reference.

(f) Applicants must demonstrate control of the project site, whether by holding title, by a sales contract, by an option to purchase or by any other means that the Department may approve.

(g) Applicants may combine a homeownership project with a rental project.

5:14-3.8 Acquisition/Rehabilitation Projects

(a) The Balanced Housing Program may provide assistance to eligible *[municipalities]* ***applicants*** for use by not-for-profit sponsors wishing to acquire or acquire and moderately rehabilitate existing, vacant housing for occupancy by low and moderate income households. Occupancy may be either rental or homeownership as long as the unit is affordable. Units acquired up to two years prior to the application that are substandard at the time of application are eligible.

(b) The maximum Balanced Housing subsidy for an Acquisition/Rehabilitation Project shall be $10,000 for a one bedroom unit and $2,500 for each additional bedroom, plus $5,000 per unit if the household to be served is *[senior citizen,]* handicapped *[or single parent]* ***and the unit is or will be made handicapped accessible***.

(c) All units assisted must be vacant at the time of acquisition. The Division may waive this requirement if the population to be served is *[an elderly]* ***a senior citizen***, handicapped or single-parent household or if the applicant can demonstrate that this project will prevent the imminent loss of affordable units and the displacement of low and moderate income households. Condominium conversion is not, in and of itself, considered evidence of imminent loss.

(d) Upon occupancy, units must meet HUD Section 8 Housing Quality Standards, incorporated herein by reference, as amended and supplemented, available from the Department of Housing and Urban Development, 451 Seventh St. SW, Washington, D.C. 20410, or any applicable State or local housing code that is more stringent. The Sponsor need not identify specific buildings when applying for funds but should identify a neighborhood or group of buildings.

(e) Except as noted in (c) above, the acquisition or acquisition and rehabilitation of units that are already in standard condition and affordable to low and moderate income households shall only be permitted insofar as the proposed activity will lower the range of affordability.

(f) Sponsors of rental projects shall be required to demonstrate ongoing management capacity and financial feasibility of the project for the length of the control period.

5:14-3.9 Section 202 and Public Housing New Construction Projects

(a) The Balanced Housing Program may provide assistance to *[municipalities]* ***eligible applicants*** applying on behalf of public housing authorities and not-for-profit sponsors to construct Federal Section 202 projects and public housing new construction projects as authorized by the U.S. Housing Act of 1937 (42 U.S.C. 1401 et seq.). These grants are subject to the following limitations:

1. The total Balanced Housing subsidy shall not exceed 15 percent of the total project cost;

2. The improvements shall be reasonable and functional and shall benefit the residents of the project; and

3. The improvements to be funded by Balanced Housing shall either be prohibited by the HUD cost containment policy or add to the project cost beyond the amount that can be supported by the HUD loan.

(b) Eligible Balanced Housing costs *[may]* include the following: outdoor lighting, access roads, land, air conditioning, sprinkler systems, on and off-site improvements, intercoms, and directly related "soft" costs, such as fees for professional and financial services, within standard underwriting limits, landscaping to buffer the building, and improvements required by applicable municipal codes that are more strict than required by the State, provided that a responsible municipal official submits an adequate written justification.

1. Cosmetic and facade improvements, and improvements made solely for the purpose of allaying public opposition or to improve the esthetics of the surrounding neighborhood, are ineligible.

(c) Applications for a Section 202 or Public Housing New Construction Project *[shall]* ***must*** include a conditional or final commitment from HUD.

5:14-3.10 Neighborhood Rehabilitation Projects

(a) *[A Neighborhood Rehabilitation Project shall be one in which a municipality is funded for the purpose of identifying and moderately rehabilitating]* ***The Balanced Housing Program may provide assistance to eligible applicants to identify and moderately rehabilitate*** substandard units in one-to-four family owner occupied structures within a specified eligible neighborhood.

(b) Municipal funds shall be committed to implement a Neighborhood Rehabilitation Project as follows:

1. For municipalities that rank in the first 40 percent of the Municipal Distress index published and revised periodically by the New Jersey Department of the Treasury, Office of Management and Budget (municipalities ranked 1-227), and municipalities eligible to receive State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.), no commitment of funds is required.

2. For municipalities that rank from 41 percent to 70 percent on the Municipal Distress Index (ranked 228-397), and that are not eligible for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.), one non-Balanced Housing dollar shall be committed to match every two Balanced Housing dollars.

3. For municipalities that rank from 71 percent to 100 percent on the Municipal Distress Index (ranked 398-567), one non-Balanced Housing dollar must be committed to match every Balanced Housing dollar.

(c) Funds committed as matching funds shall be either local revenues or derived from non-State grants received by the municipality. Commitments from homeowners or from lending institutions to provide home improvement loans do not qualify.

(d) Municipal funds committed as matching funds must be used to pay actual costs of administration and/or rehabilitation in the project. Ancillary services, improvement of the target area (such as roads and sewers) and "soft" costs, such as fees for professional and financial services, do not qualify.

(e) Matching funds shall be subject to the requirements of this subchapter, except that any such funds provided as direct assistance to homeowners may carry a lower interest rate and/or a shorter term. Matching funds provided as loans to homeowners shall be subordinate to the Balanced Housing loan.

(f) The maximum Balanced Housing grant to a municipality under a Neighborhood Rehabilitation Agreement shall be the least of $300,000 for continuing Neighborhood Rehabilitation projects or $240,000 for first year projects or $15,000 times the number of units to be rehabilitated. Of that amount, the municipality may use the lesser of 16 percent or $1,920 per unit to administer the program.

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1. For municipalities not required to provide matching funds, the maximum grant shall be the least of $300,000 for continuing Neighborhood Rehabilitation projects or $240,000 for first year projects or $15,000 times the number of units to be rehabilitated.

*[1.]***2.*** For municipalities required to provide a match of one non-Balanced Housing dollar for every two Balanced Housing dollars, the maximum Balanced Housing grant shall be $200,000 for continuing Neighborhood Rehabilitation projects or $160,000 for first year projects.

*[2.]***3.*** For municipalities required to provide a match of the non-Balanced Housing dollar for every Balanced Housing dollar, the maximum grant shall be $150,000 for continuing Neighborhood Rehabilitation projects or $120,000 for first year projects.

(g) Applicants shall demonstrate to the satisfaction of the *[Department]* ***Division*** the existence of an active, systematic code enforcement program or a commitment to establish one within 90 days of the start date of a Balanced Housing contract.

[(h) Any agent administering a Balanced Housing Neighborhood Rehabilitation Project must complete 75 percent of the units to be rehabilitated before the municipality may submit an application on behalf of that agent for an additional Neighborhood Rehabilitation Project. Prior to the Department funding such an application, the agent must have obligated 100 percent of the original grant.]

*[(i)]***(h)*** The following shall apply to municipalities administering a Neighborhood Rehabilitation Project:

1. Neighborhood Rehabilitation assistance is limited to one-to-four unit, owner-occupied structures; and

2. No Balanced Housing assistance shall be provided to occupied housing units unless the occupants have been certified as low or moderate income.

*[(j)]***(i)*** In cases where a two-to-four unit structure is rehabilitated with Balanced Housing funds, and one or more of the units is not assisted with Balanced Housing or required matching funds, a percentage of the cost of common area and system wide improvements equal to the percentage of unassisted units shall be paid by the owner. If the structure is owner-occupied and the owner can demonstrate extreme financial hardship, the *[Department]* ***Division*** may modify or waive this requirement.

*[(k)]***(j)*** The maximum Balanced Housing Program assistance to any one unit shall not exceed the following:

1. For owner-occupied units, $18,000; or

2. For renter*****-*****occupied units, the lesser of $10,000 or 75 percent of the rehabilitation cost; *[provided]* ***except*** that, if an owner can demonstrate extreme financial hardship, the *[Department]* ***Division*** may waive or modify the requirement to match funds for rental units.

*[(l)]***(k)*** The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, that health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

*[(m)]***(l)*** Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official or other public official having jurisdiction to be free of code violations in accordance with the HUD Section 8 Housing Quality Standards or any applicable State or local housing code that is more stringent.

*[(n)]***(m)*** Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Improvements that are strictly cosmetic, and the purchase of free-standing appliances (including refrigerators, but not including stoves)*[,]* with Balanced Housing funds***,*** are prohibited.

5:14-3.11 Landlord Projects

(a) *[Landlord Projects shall be those projects in which a municipality is funded for the purpose of assisting]* ***The Balanced Housing Program may provide assistance to eligible applicants for use by*** one or more landlords in the moderate rehabilitation of their units affordable to low and moderate income households.

(b) The maximum Balanced Housing grant to a municipality for a Landlord Project provided on behalf of a for-profit landlord shall be $7,500 multiplied by the number of units to be rehabilitated, not to exceed a total of $250,000, except as specified in (e) below. The for-profit landlord shall match Balanced Housing dollars on a one to one basis.

(c) The maximum Balanced Housing grant to a municipality for a Landlord Project provided on behalf of a not-for-profit landlord shall be $10,000 multiplied by the number of units to be rehabilitated, not to exceed a total of $300,000, except as specified in (e) below.

(d) Housing Authorities may qualify as not-for-profit owners, but must demonstrate that they are in good standing with HUD and that insufficient Comprehensive Improvement Assistance Program (C.I.A.P.) funding is available to complete *[the]* ***this*** project.

(e) In cases where a landlord is rehabilitating a single building and rehabilitation on a smaller scale is not practical, the maximum grant may be exceeded to equal the sum of the per unit subsidies.

(f) All units to be rehabilitated must be identified prior to a funding commitment from the Department.

(g) The following shall apply to all Balanced Housing Landlord Project grant agreements:

1. The owner must agree to maintain the units in standard condition for the life of the affordability controls. Units with violations must be repaired at the owner's expense;

2. The municipality must agree to recertify the units as standard at regular intervals of two years or less; and

3. For units in municipalities not listed in Appendix A to this chapter, the length of the controls shall be no less than 20 years or until such time thereafter that the units become vacant.

(h) In cases where a structure is rehabilitated with Balanced Housing funds and one or more of the units is not affordable, the cost of common area and systemwide improvements to be paid by the owner shall be proportionate to the number of units that are not Balanced Housing units as compared to the total number of units.

(i) The local construction official or licensed housing inspector must certify that each unit to be rehabilitated with Balanced Housing funds is substandard, that is, health and safety code violations exist, and that abating those code violations requires that one or more of the following major systems must be replaced or extensively repaired: roof, electrical, plumbing, sanitary plumbing, heating or load bearing structural systems.

(j) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified by the local construction official or other public official having jurisdiction to be free of code violations in accordance with the HUD Section 8 Housing Quality Standards or any applicable State or local housing code that is more stringent.

(k) Balanced Housing funds may be used only for work and repairs required to make a unit standard and any other work or repairs (including finishing and painting) that is directly related to the required activities. Luxury improvements, improvements that are strictly cosmetic, and the purchase of free-standing appliances (including refrigerators, but not including stoves)*[,]* with Balanced Housing funds***,*** are prohibited.

5:14-3.12 Discretionary and Demonstration Projects

(a) In addition to the previously listed types of Balanced Housing projects, the Department *[may]* ***reserves the right to*** fund projects that do not fit into any of these formats. Such projects may include, but shall not be limited to, those that are unique in terms of development, ownership, occupancy characteristics and/or those in which Balanced Housing funds are used to secure additional public financing that would be otherwise lost to the State of New Jersey.

(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department.

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*[SUBCHAPTER 3A. TERMS OF FUNDING AGREEMENT WITH THE DEPARTMENT

5:14A-3A.1 Audit requirements

(a) Any audit required under the grant agreement between the Department and the municipality shall be conducted on an organization-wide basis and for the grantee's fiscal year.

(b) All audits must meet the audit requirements as delineated in the grant agreement.

(c) Audits shall be performed by a registered municipal auditor retained by the grantee, certified public accountant retained by the Grantee or independent auditor appointed by the Department.

(d) The cost of any required single audit shall not be provided for under the agreement, but shall be at the expense of the grantee.

5:14-3A.2 Program specifications; revisions

(a) Changes or revisions to the program specifications shall require the written approval of the Division Director and shall be subject to the following conditions:

1. The grantee shall have made all reasonable attempts to implement the original activities to be changed or deleted and it is unlikely that continued efforts to implement the original activities will result in their timely completion;

2. The added or changed activities are likely to result in program benefits comparable to those originally proposed; and

3. The changed or added activities can be completed in a timely manner.

5:14-3A.3 Method of payment

(a) Prior to the release of funds provided for under the agreement, the grantee shall prepare and submit the following documents:

1. A New Jersey State Invoice (AR 50/54) requesting payment; and

2. Fiscal and programmatic reports, drawdown schedule, certification regarding amount and quality of work completed, and any other information required by the assigned Department program manager.

(b) Any payment request shall not exceed the required amount of fidelity bond insurance coverage.

(c) The required fiscal and programmatic reports shall be current.

5:14-3A.4 Third party contracts

(a) Any contract with a separate entity to serve as the sponsor/developer for the project or for professional/consultant services paid for in whole or in part with the funds provided for under the agreement must be reviewed and approved by the Department.

5:14-3A.5 Financial and performance reporting

(a) Interim expenditure reports and performance reports shall be submitted on a quarterly basis. These reports, certified by the project coordinator and chief financial officer, shall be submitted, in a format provided by the Department, in accordance with the following schedule:

Date Due	Report Period
April 10	January—March
July 10	April—June
October 10	July—September
January 10	October—December

(b) The Department may, at its option, require more frequent reporting.

(c) A final report, in a format provided by the Department, shall be submitted by the grantee no later than 60 days after the ending date of the agreement.

(d) Should the Department wish to issue a report concerning the program, its results, the techniques involved, and the conclusions reached, the grantee shall cooperate fully by making available to the Department for publication or other use such information as the Department may request.

5:14-3A.6 Program income

The use of program income, if any, as defined in the grant agreement, and any interest earned on Department payments, shall be determined by the Department.

5:14-3A.7 Bonding and insurance

Proof of fidelity bonding for at least the period of the agreement shall be provided. Further, the grantee shall agree to procure and maintain any other insurance coverage that may be required by the Department.

5:14-3A.8 Unexpended Fund Balances

Funds obligated but not disbursed at the end of the agreement period shall be liquidated within 60 days after the ending date of the agreement.

5:14-3A.9 Financial management monitoring system

(a) For Neighborhood Rehabilitation Projects, the grantee shall submit to the Department a financial-related audit on the grant and required matching funds, specifically, a Balance Sheet and Statement of Revenue, Expenditures and Changes in Fund Balance—Variances between Budget and Actual.

1. The financial-related audit is to be performed by a Certified Public Accountant, as directed by the Department, and shall include, but not be limited to, the following:

i. A statement in the auditor's report that the audit was made in accordance with generally accepted government auditing standards;

ii. A written report on the auditor's test of compliance with applicable laws and regulations and this chapter; and

iii. A written report on the auditor's understanding of the entity's internal control structure and the assessment of control risks.

(b) For all other project types, there shall be a project specific cost certification performed by an entity approved by the Department prior to final disbursement of funds.

5:14-3A.10 Certification of compliance

(a) The grantee shall assure and certify that the project activities, goals and timetables are in compliance with all applicable Federal and State laws and regulations as they relate to the acceptance and use of funds for this program. The grantee's assurances must include, without limitation, the following:

i. That it possesses legal authority to accept the grant, as evidenced by a resolution, motion or similar action that has been duly adopted as an official act by the governing body authorizing the acceptance of the agreement, including all attachments contained therein;

2. That it shall provide and maintain competent and adequate staff supervision and inspection at the construction site, where applicable, to ensure that the completed work conforms with the approved plans and specifications and it shall furnish progress reports and such other information as the Department may require; and

3. That it shall establish safeguards to prohibit local officials and employees from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties. Any such occurrences must be disclosed to the Department in writing for remedial action.

5:14-3A.11 Nondiscrimination

(a) A Statement of Nondiscrimination shall be signed by predominantly religious organizations and entities receiving funds provided for under the agreement in support of affordable housing. The Statement of Nondiscrimination must contain the name and title of the person signing the Statement, the name of the organization and the date. The organization must state that:

1. It shall not discriminate against any applicant for housing on the basis of religion and shall not limit occupancy, or give preference in occupancy, to persons on the basis of religion;

2. It will not discriminate against any employee on the basis of religion and will not limit employment or give preference to persons on the basis of religion;

3. It will provide no religious instruction or counselling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in connection with the provision of housing or services assisted in any way under this agreement; and

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4. The portion of the structures developed with funds provided in whole or in part under the agreement shall contain no sectarian or religious symbols or decorations.

(b) This section shall not be construed as limiting any individual occupant in the free practice of religion.]*

5:14-4.5 Owner-occupied Neighborhood Rehabilitation Projects

(a) Owner-occupied units in Neighborhood Rehabilitation Projects shall be restricted by a deferred loan agreement that is secured by a note and mortgage from the property owner to the Department of Community Affairs. The mortgage shall be subordinate to a senior mortgage and additional liens as identified at the time of the signing of the mortgage. An income-eligible owner-occupant who is the recipient of a deferred payment loan for rehabilitation of a substandard unit shall be subject to the following restrictions:

1.-4. (No change.)

5. The Department shall not subordinate its lien to any subsequent mortgage. This requirement may be waived by the Department under the following circumstances:

i. The proceeds of the new loan are required to make major repairs of the property that were not addressed in the original rehabilitation project or to address items which have become substandard subsequent to the rehabilitation;

ii. The proceeds of the new loan are required for the payment of medical expenses;

iii. The proceeds of the new loan are required for educational expenses; and/or

iv. The overall debt remains essentially unchanged but the mortgage has been refinanced in order to obtain more favorable terms.

6. Requests for waivers should be addressed to the Division Director no less than 45 days in advance of the loan closing. The written decision of the Director shall be final.

5:14-4.10 Length of restrictions

(a) The municipality shall provide contractual guarantees and procedures that will ensure that all units funded with Balanced Housing funds for low and moderate income households, with the exception of Neighborhood Rehabilitation 1-4 unit projects, shall remain affordable to such households from the date the initial restrictions encumber the unit until such time as stated below.

1. Sales units located in those municipalities listed in Appendix A, incorporated herein by reference, shall remain affordable to low and moderate income households for at least 10 years. At the first non-exempt sales transaction after the restricted period, the owner shall be entitled to the maximum allowable resale price as calculated by the index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

2. Sales units located in municipalities not listed in Appendix A shall remain affordable to low and moderate income households for at least 20 years. At the first non-exempt sales transaction after the restricted period, the owner shall be entitled to the maximum allowable resale price as calculated by the Index and five percent of the price differential. The balance of the price differential shall be returned to the Balanced Housing Fund for additional housing development purposes.

3. At least 10 years for rental units located in municipalities listed in Appendix A.

4. At least 20 years for rental units located in municipalities not listed in Appendix A.

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

APPENDIX A

Atlantic: None
Bergen: *[None]* ***Lodi, Garfield***
Burlington: Pemberton Township
Camden: Camden
Cape May: None
Cumberland: Vineland, Bridgeton
Essex: Belleville, Bloomfield, East Orange, Irvington, Montclair, Newark, Orange
Gloucester: Deptford
Hudson: Bayonne, Hoboken, Jersey City, North Bergen, Union City, Weehawken, West New York
Hunterdon: None
Mercer: Trenton
Middlesex: Carteret, New Brunswick, Perth Amboy
Monmouth: Asbury Park, Keansburg, Long Branch, Neptune
Morris: None
Ocean: Lakewood
Passaic: Passaic, Paterson
Salem: None
Somerset: None
Sussex: None
Union: Elizabeth, Hillside, Plainfield, Roselle *[Park]*
Warren: Phillipsburg

APPENDIX B

Maximum Subsidy Homeownership Units

Sales Price (1000's)	Studio/1BR	2BR	3BR	4BR
80	0	0	0	5,000
77.5	0	0	250	6,250
75	0	0	1,500	7,500
72.5	0	0	2,750	8,750
70	0	0	4,000	10,000
67.5	0	0	5,250	11,250
65	0	0	6,500	12,500
62.5	0	1,250	7,750	13,750
60	0	2,500	9,000	15,000
57.5	0	3,750	10,250	16,250
55	0	5,000	11,500	17,500
52.5	0	6,250	12,750	***1*8,750**
50	625	7,500	14,000	21,250
47.5	1,875	8,750	15,250	23,750
45	3,125	10,000	17,750	26,250
42.5	4,375	12,500	20,250	27,500
40	5,625	15,000	22,750	27,500
37.5	6,875	17,500	25,000	27,500
35	8,125	20,000	25,000	27,500
32.5	10,375	22,500	25,000	27,500
30	12,875	22,500	25,000	27,500
27.5	15,375	22,500	25,000	27,500
25	17,875	22,500	25,000	27,500
22.5 or less	20,000	22,500	25,000	27,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding *[minimum]* unit size. These assumptions are:

Studio	*[600]* ***500*** Sq. Ft.
1 Bedroom	*[700]* ***600*** Sq. Ft.
2 Bedrooms	*[850]* ***750*** Sq. Ft.
3 Bedrooms	*[1000]* ***950*** Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units of smaller square footage, deduct from the maximum subsidy *[$50.00]* ***$25.00*** for each square foot below the minimum.

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

2. Purchaser Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If, during occupancy, there is a need to alter the purchase price based on the actual *[purchase]* ***purchaser*** profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If the price is lowered in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that

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requires a three bedroom unit), add one dollar in subsidy for each dollar that the purchase price is reduced.

For adjustments made in the price of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

Units in which the occupancy has been restricted in accordance with N.J.A.C. 5:14-2.2(c) shall not be eligible for a purchaser profile adjustment.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.

APPENDIX C

Maximum Subsidy Rental Units

Monthly Rent	SRO	Studio/1BR	2BR	3BR	4BR
900	0	0	0	250	5,000
875	0	0	0	1,500	6,250
850	0	0	0	2,750	7,500
825	0	0	0	4,000	8,750
800	0	0	0	5,250	10,000
775	0	0	0	6,500	11,250
750	0	0	0	7,750	12,500
725	0	0	0	9,000	13,750
700	0	0	1,250	10,250	15,000
675	0	0	2,500	11,500	16,250
650	0	0	3,750	12,750	17,500
625	0	0	5,000	14,000	18,750
600	5,000	500	6,250	15,250	20,000
575	7,500	1,750	8,750	16,500	22,500
550	10,000	3,000	10,000	19,000	25,000
525	12,500	4,250	11,250	21,500	27,500
500	15,000	5,500	12,500	24,000	30,000
475	15,000	6,750	15,000	26,500	32,500
450	15,000	8,000	17,500	29,000	32,500
425	15,000	10,250	20,000	30,000	32,500
400	15,000	13,000	22,500	30,000	32,500
375	15,000	15,250	25,000	30,000	32,500
350	15,000	18,000	27,500	30,000	32,500
325	15,000	20,500	27,500	30,000	32,500
300	15,000	23,000	27,500	30,000	32,500
275	15,000	24,250	27,500	30,000	32,500
250 or less	15,000	25,000	27,500	30,000	32,500

ADJUSTMENTS:

1. Unit Size:

The Balanced Housing funding charts are based on certain assumptions regarding *[minimum]* unit size. These assumptions are:

Studio	*[600]* ***500*** Sq. Ft.
1 Bedroom	*[750]* ***600*** Sq. Ft.
2 Bedrooms	*[850]* ***750*** Sq. Ft.
3 Bedrooms	*[1000]* ***950*** Sq. Ft.
4 Bedrooms	1,150 Sq. Ft.

For units of smaller square footage, deduct from the maximum subsidy *[$50.00]* ***$25.00*** for each square foot below the minimum.

In determining unit size, the Department will consider the net square foot size, that is the area inside the unit. Excluded from the calculation are common halls, stairways, unfinished basements and attics, garages, balconies and porches. See N.J.A.C. 5:14-2.2(c) for waiver provisions.

2. Renter Profile:

The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application. If during occupancy there is a need to alter the rent based on the actual renter profile, the Department may, at its discretion and subject to the availability of funds, adjust the subsidy as follows:

If an adjustment in the rent is made in order to accommodate a household at the targeted range of affordability which does not meet the standard occupancy assumptions (for example, a three person household that requires a three bedroom unit) add $10.00 for each one dollar reduction in rent.

For adjustments made in the rent of a unit based on an altered range of affordability, the adjusted subsidy shall be calculated off the funding chart.

The total additional subsidy shall not exceed $15,000 per unit.

Units in which the occupancy has been restricted in accordance with N.J.A.C. 5:14-2.2(c) shall not be eligible for a renter profile adjustment.

3. Location: For units located in municipalities listed on Appendix A, add 20 percent to the maximum subsidy.

APPENDIX D

Contractor's Fee Schedule
(Interpolate as Required)

Fee Schedule: The Contractor's fee shall be based on a percentage of the construction cost in accordance with the following schedule:

Construction Cost	Percentage	Contractor's Fee
Under $2 Million	10.0	—
$ 2,000,000.00	10.0	$ 200,000.00
3,000,000.00	9.5	285,000.00
4,000,000.00	9.0	360,000.00
5,000,000.00	8.5	425,000.00
6,000,000.00	8.2	492,000.00
7,000,000.00	7.9	553,000.00
8,000,000.00	7.6	608,000.00
9,000,000.00	7.3	657,000.00
10,000,000.00	7.0	700,000.00
11,000,000.00	6.7	737,000.00
12,000,000.00	6.6	792,000.00
13,000,000.00	6.5	845,000.00
14,000,000.00	6.4	896,000.00
15,000,000.00	6.3	945,000.00
16,000,000.00	6.2	992,000.00
17,000,000.00	6.1	1,037,000.00
18,000,000.00	6.0	1,080,000.00
19,000,000.00	5.9	1,121,000.00
20,000,000.00	5.8	1,160,000.00
21,000,000.00	5.7	1,197,000.00
22,000,000.00	5.6	1,232,000.00
23,000,000.00	5.5	1,265,000.00
24,000,000.00	5.4	1,296,000.00
25,000,000.00	5.3	1,325,000.00
26,000,000.00	5.2	1,352,000.00
28,000,000.00	5.0	1,400,000.00
30,000,000.00	4.8	1,440,000.00
32,000,000.00	4.6	1,472,000.00
34,000,000.00	4.4	1,496,000.00
36,000,000.00	4.2	1,512,000.00
38,000,000.00	4.0	1,520,000.00
Over $38 Million	4.0	—

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Building Subcode; Elevator Safety Subcode
Adopted Amendments: N.J.A.C. 5:23-2.23, 3.4, 3.11, 4.20, 4.24, 12.4, 12.5 and 12.6

Proposed: January 21, 1992 at 24 N.J.R. 170(a).
Adopted: February 27, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: March 3, 1992 as R.1992 d.147, **without change.**

Authority: N.J.S.A. 52:27D-124.

Effective Date: April 6, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Robert H. Karen, President of the New Jersey Builders Association (NJBA), and from William R. Abrams, Vice President of the New Jersey Association of Health Care Facilities (NJAHCF).

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COMMENT: NJBA finds that the proposal accurately reflects its recommendations concerning elevators entirely within dwelling units of Use Group R-2 and it therefore supports the proposal.

COMMENT: NJAHCF asks that the exemption from registration and periodic inspection be extended to elevators in I-1 structures, including residential health care facilities, and I-2 structures, including nursing homes, that are "not located in common areas and not accessible to the public" on the grounds that a significant potential hazard to the public does not exist with regard to such elevators.

RESPONSE: Elevators wholly within dwelling units in R-2 buildings are exempted because they, like elevators in R-3 and R-4 single family dwellings, are used exclusively for domestic purposes by the residents of the unit or their guests. Elevators in health care facilities, like those in any other commercial facility, are used by workers even if they are not used by facility residents or visitors. Workers are part of the "public" that the rules are intended to protect. Moreover, even if the Department were to agree to NJAHCF's request, the change would not be within the scope of the original proposal and therefore could not be made in an adoption.

Full text of the adoption follows.

5:23-2.23 Certificate of Occupancy requirements

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

(j) Elevator devices as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the construction official for the time period specified. No device shall be operated unless a valid certificate of compliance has been issued. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance may be granted to keep in service a device on which repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days. The elevator subcode official shall provide written notice to the construction official whenever temporary approval is granted.

1. No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1991 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. Elevator devices wholly within R-2 residences, not accessible to the general public, shall also be exempt.

2. No certificate of occupancy shall be issued for any new structure that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12, except that structures classified as R-3 or R-4, and R-2 structures in which all elevator devices are wholly within dwelling units and not accessible to the general public, shall be exempt.

3. (No change.)

4. Elevator devices in structures classified as Use Groups R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. Elevator devices wholly within dwelling units in R-2 structures and not accessible to the general public shall also be exempt. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance tests witnessed by, the enforcing agency.

(k)-(l) (No change.)

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 513.0, 514.0, 601.0 through 604.0, 606.0, 607.0, 609.0 through 620.0, and 624.0 articles 8 and 9; sections 2002.0, 2301.0 and 2302.0 articles 24 and 25; sections 2606.0 through 2611.0 for elevator devices not accessible to the general public in structures classified as Use Groups R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and 3018.0 and 3020.0 shall be enforced jointly by the building subcode official and fire protection subcode official.

i. Plan review functions of 2606.0 through 2611.0 for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and for elevator devices that are accessible to the general public in structures classified as Use Groups R-2, R-3 or R-4, shall be enforced jointly by the building, elevator, and fire protection subcode officials.

2.-9. (No change.)

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

5:23-3.11 Enforcement activities reserved to the Department

(a) (No change.)

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in Use Groups other than R-3, R-4, or R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, in all buildings and structures other than those that:

1. Are in a municipality that has an elevator subcode official; and

2. Are otherwise within the plan review jurisdiction of the local enforcing agency.

(c)-(g) (No change.)

5:23-4.20 Department fees

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

(c) Departmental (enforcing agency) fees shall be as follows:

1.-5. (No change.)

6. The fee for plan review for elevator devices in structures in Use Groups R-3, R-4 and for elevator devices wholly within dwelling units in R-2 structures shall be $50.00 for each device.

7. The fee for plan review for elevator devices in structures in Use Groups other than R-3, R-4 and devices in R-2s exempted by (c)6 above shall be $260.00 for each device.

8. (No change.)

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i. (No change.)

ii. Special or hazardous uses and types of construction:

(1)-(4) (No change.)

(5) Installations of elevators, escalators, and moving walks, except devices in structures of Use Groups R-3, R-4 and those devices in R-2 structures that are otherwise exempted in N.J.A.C. 5:23-3.11(b), shall require Departmental plan review and release.

(b) (No change.)

5:23-12.4 Registration of elevator devices

(a) On or before July 1, 1992, and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator device, other than a structure in Use Group R-3 or R-4, or other than an elevator device wholly within a dwelling unit in an R-2 structure that is not accessible to the general public, shall register each elevator device with the Department on a form provided by the Commissioner.

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

(e) If the ownership of a structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, or a device in an R-2 structure exempted under (a) above, is transferred, whether by sale, gift, assignment, interstate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file a notice of change of ownership, with the appropriate re-registration fee, with the Department within 60 days of the date of transfer. A device in an R-2 structure exempted by (a) above, which, because of alterations in design or changes in ownership or management, is no longer wholly within one residential unit, or which otherwise becomes accessible to the general public, shall be registered within 60 days of its change in status.

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5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 or that is not in an exempted R-2 structure shall be $50.00. A re-registration fee of $50.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4, or in an exempted R-2 structure, shall be as follows:

i.-vi. (No change.)

2. (No change.)

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be $150.00. This fee shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. (No change.)

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be as follows:

1.-4. (No change.)

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Enforcing Agencies
Municipal Enforcing Agency Fees
Adopted Amendment: N.J.A.C. 5:23-4.17

Proposed: January 21, 1992 at 24 N.J.R. 169(a).

Adopted: February 27, 1992, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: March 3, 1992, as R.1992 d.148, **without change**.

Authority: N.J.S.A. 52:27D-124.

Effective Date: April 6, 1992.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

5:23-4.17 Municipal enforcing agency fees

(a) (No change).

(b) On or before February 10 of each year, in a municipality that budgets according to the calendar year (January 1 to December 31), or on or before August 10 of each year, in a municipality that budgets according to the State fiscal year (July 1 to June 30), the construction official shall, with the advice of the subcode officials and in consultation with the municipal finance officer, prepare and submit to the governing body a report detailing the receipts and expenditures of the enforcing agency and indicating his recommendations for a fee schedule, based on the operating expense of the agency.

1. The report shall be structured in accordance with (c) below and with such guidelines as shall be issued from time-to-time by the Commissioner so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.

2.-3. (No change.)

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

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PUBLIC NOTICES

EDUCATION

(a)

DIVISION OF EXECUTIVE SERVICES

Notice of Action on Petition for Rulemaking N.J.A.C. 6:8-9

Petitioner: Board of Education of the School District of South Orange-Maplewood.

Take notice that in accordance with N.J.A.C. 1:30-3.6 the State Board of Education approved the Commissioner's recommendation to further deliberate on the Petition for Rulemaking submitted by the South Orange-Maplewood School District on January 10, 1992, pertaining to alternatives for remedial course instruction during summer sessions (see 24 N.J.R. 653(b), Feburary 18, 1992, New Jersey Register). A report of the deliberations was made at the March 4, 1992 State Board meeting.

Department of Education staff studied the proposed petition and recommended that it was untimely to address the petition in isolation due to the major code revisions that will be forthcoming from the recommendations made by the Task Force on Monitoring and Assessment and the current study of the Quality Education Commission report. South Orange-Maplewood's petition and the Task Force recommendations for developing student outcomes and assessment standards are parallel. Thus, it would be prudent to have the committee responsible for drafting the new monitoring regulations for N.J.A.C. 6:8 consider the specifics of the petition during their deliberations. The rules pertaining to summer sessions are contained in this chapter.

Subsequently, the Commissioner recommended and the State Board approved referring the specific suggestions concerning remedial course program options for summer sessions to the committee drafting the new monitoring rules. The committee will be instructed to seek input from the Division of Educational Programs and Student Services, intensely study the issue at hand, and report to the Commissioner when the rules are scheduled for Preliminary Discussion Level on June 3, 1992 on how the matter should be addressed.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on January 22, 1992, 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 Cape May County Water Quality Management Plan was adopted by the Department. This amendment was submitted by Grover Webber of the Cape May County Planning Board on behalf of the Cape May County Board of Chosen Freeholders. The amendment adopts a Wastewater Management Plan (WMP) for Woodbine Borough. The WMP allows for a projected wastewater flow of 46,500 gallons per day (gpd) to be treated by the Carol-Lynn Campground on-site groundwater disposal system and delineates a service area for this facility. The WMP also delineates a service area of the Woodbine Developmental Center wastewater treatment facility. The rest of the Borough is delineates as an on-site groundwater discharge service area for facilities with design capacities of less than 20,000 gpd.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that on February 10, 1992, 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 Water Quality Management Plan was adopted by the Department. The amendment was submitted by Fellows, Read and Associates on behalf of New Beginnings at Lakehurst. This amendment designates the site of New Beginnings at Lakehurst, Manchester Township, Block 77, Lot 18, as a groundwater discharge (under 20,000 gallons per day) service area. This is an existing facility which is proposing to expand. The proposed expansion would result in a total wastewater generation of 9,150 gallons per day. This site is within the service area of the Ocean County Utility Authority's Central Water Pollution Control Facility served by the Union Branch interceptor. At this time, the collection system does not extend to the vicinity of the project site. The Manchester Township Wastewater Management Plan adopted December 28, 1987, contains wetland restriction language restricting development in wetlands. Wetlands issues will be addressed through the Pinelands Commission approval process.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on February 10, 1992, 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 Delaware Water Quality Management (WQM) Plan was adopted by the Department. The amendment was proposed by the Lawrence Township Board of Education for the Myron Powell School. This amendment identifies an on-site relocation and expansion of the existing ground water discharge from the Myron Powell School located at Block 191, Lot 9, in Lawrence Township, Cumberland County to serve a proposed 35,900 square foot building addition. The proposed school expansion will bring the total school population to 454 students and staff.

(e)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Mercer County Water Quality Management (WQM) Plan. This amendment, requested by Coca-Cola Foods, would modify the sewer service areas of both the East Windsor Municipal Utilities Authority (MUA) and the Borough of Hightstown sewage treatment plants. The Coca-Cola Foods Hightstown Citrus Plant currently has five points of discharge or connection to three separate sewage treatment agencies and two surface water discharges. The amendment request is to consolidate sewer service to one agency, the Hightstown Sewage Treatment Plant (STP). The two surface water discharges will be retained. All food process washwaters and sanitary wastes will be conveyed to the Hightstown STP. All food process wastewater will first be directed to a pretreatment facility. The amendment would modify the East Windsor MUA Wastewater Management Plan by removing Lots 26, 32, and

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35 of Block 48 in Hightstown Borough, and Lot 106, Block 53.03 in East Windsor Township from the East Windsor MUA sewer service area and including them in the Borough of Hightstown STP.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Mercer County Planning Division, McDade Administration Building, Room 412, 640 South Broad Street, P.O. Box 8068, Trenton, New Jersey 08650; and the NJDEPE, Office of Regulatory Policy, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling either the Mercer County Planning Division at (609) 989-6545 or the Office of Regulatory Policy at (609) 633-7021.

The Mercer County Planning Board will hold **a public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, May 13, 1992, at 8:30 A.M. in Room 211 of the McDade Administration Building. **Interested persons** may submit written comments on the proposed amendment to the Secretary, Mercer County Planning Board at the address cited above; and to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 15 days following the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Planning Board and the County Executive with respect to this amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Mercer County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. This amendment, proposed by Montgomery Township, would amend the Montgomery Township Wastewater Management Plan. Among the changes proposed are: expansion of the Pike Brook and Cherry Valley sewage treatment plants and sewer service areas, proposed discharge to groundwater facilities for the Princeton Montessori School and Princeton Research Instruments, and deletion of the previously proposed Belle Mead Business Park wastewater facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Edward Frankel, at the NJDEPE address cited above with a copy sent to Mr. Donald Johnson, Township of Montgomery, Municipal Building, 2261 Route 206, Belle Mead, New Jersey 08502. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on January 22, 1992, 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 Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment identifies a discharge to groundwater treatment facility proposed to serve three commercial office/warehouse buildings of the Errico development totalling 104,800 square feet and having a planning flow of 7,850 gallons per day, located at Block 4.03, Lots 28, 28.01, and 28.02 of Clinton Township, Hunterdon County. This amends the Clinton Township Wastewater Management Plan (WMP). This site is presently identified in the WMP as being part of the service area of the proposed Township of Clinton East Sewage Treatment Plan (STP). The proposed facility will be abandoned and flows conveyed to the Clinton East STP when service is available.

This amendment was noticed in the New Jersey Register on July 15, 1991. Comments on this amendment were received during the comment period and are summarized below with the Department's responses.

COMMENT: Comments were received from the Township of Clinton regarding the amendment proposal. The Township felt they had not been able to fully evaluate the project as a whole since very little information had been submitted to the Township and no site plan application had yet been filed. They were also concerned with regard to the project's effect on the Clinton East STP.

RESPONSE: The applicant and Township subsequently met to discuss the project and the Township's concerns. The Township's concerns were resolved and it has endorsed the amendment proposal.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Delaware and Upper Raritan Water Quality Management Plans

Public Notice

Take notice that on February 25, 1992, 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 Upper Delaware and Upper Raritan Water Quality Management Plans was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for West Amwell Township, Hunterdon County. The WMP, which was proposed by West Amwell Township, identifies expansion of the Lambertville Sewerage Authority sewer service area to include a portion of West Amwell Township. The remainder of the Township will continue to be served by individual subsurface sewage disposal systems.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on February 10, 1992, pursuant to the provisions of the New Jersey 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 Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment proposal, which was requested by the Harmony Township Board of Education, allows for a new wastewater treatment facility utilizing groundwater disposal to serve the Harmony Elementary School. The facility will be sized to accommodate wastewater flow from 600 persons. The three existing on-site disposal systems will be abandoned and all flows conveyed

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to the new treatment facility. When, in the future, service becomes available to Brainards/Buck Horn Creek Sewage Treatment Plant (STP) the school will connect to the STP.

(a)

GREEN ACRES PROGRAM

Notice of Public Hearing Proposed Easement on Lands Comprising Part of Allaire State Park

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, Green Acres Program, will hold a **public hearing** to seek comments on a proposed easement on the following State-owned land to allow for the installation of a sewer meter chamber.

All of that certain land located at Allaire State Park identified as a proposed 30 foot x 30 foot easement designated as a portion of Block 48, Lot 4 on the current tax map of the Township of Howell, Monmouth County.

The consideration for this easement is the right of the Department of Environmental Protection and Energy to tie into the proposed sewer line at any time in the future for needed sewer service to Allaire State Park.

This proposed easement is necessitated by the Department of Taxation, Division of Building and Construction's planned construction of a force main and sewage pumping station along Monmouth County Route 524, to connect to the Manasquan River Regional Sewerage Authority (MRRSA) collector sewer at the intersection of Route 524 and 547. This station will service the Arthur Brisbane Child Treatment Center which is administered by the Department of Human Services. A stipulation of the MRRSA is the installation of a meter chamber to be located upstream of the connection point.

The easement documents will be available for review at the Allaire State Park office during regular office hours, Monday through Friday.

This easement will not interfere with or affect the use and enjoyment of State-owned lands.

The public hearing will be held on:

Friday, May 8, 1992 at 10 A.M. at the
Allaire State Park Office
Route 524
Farmingdale, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until May 8, 1992 to:

Thomas Wells, Administrator
Green Acres Program
Department of Environmental Protection and Energy
CN-412
Trenton, New Jersey 08625

HEALTH

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Receipt of Petition for Rulemaking Recoupment of Medicare Overpayment

Petitioner: Murray Klein, Esq.

Take notice that on March 10, 1992, the Department of Health received a petition from Murray Klein, Esq., representing 22 New Jersey hospitals, requesting that the Department promulgate a rule concerning recoupment by the Federal government of alleged Medicare overpayments. The petitioner suggests a payment mechanism which would increase hospital rates Statewide to assure equitable distribution of the burden of collecting, and the burden of paying, the funds by all non-Medicare payers. He proposes that the funds collected be placed into a trust fund administered by the Department and utilized to repay the Federal government should repayment be unavoidable.

PUBLIC UTILITIES

(c)

BOARD OF REGULATORY COMMISSIONERS

Notice of Board Action Initiating a Water Management Task Force

Take notice that by Order dated March 6, 1992, in Docket Number WX92030273, the Board of Regulatory Commissioners directed the creation of a Water Management Task Force to "... develop recommendations, alternatives and solutions to water quality issues ..."

The full text of the Board's Order of March 6, 1992 follows:

IN THE MATTER OF THE INITIATION)
ORDER
OF A WATER MANAGEMENT TASK)
FORCE) DOCKET NO. WX92030273

BY THE BOARD:

On September 17, 1977, the Safe Drinking Water Act, N.J.S.A. 58:12A-1, et seq., enacted by the New Jersey State Legislature became effective. This Act, which essentially mirrors and heightens the Federal Safe Drinking Water Act, 42 U.S.C. 300, et al., has as its purpose the protection and improvement of the quality of potable water available to all citizens.

With the passage of the foregoing legislation and the promulgation of subsequent State and Federal quality controls, the ability of water purveyors to comply with existing and future requirements and meet the economic costs associated therewith is of great concern to this Board. The Board is cognizant that the quality controls and the resulting economic impact may well have dramatic consequences on the ability of water purveyors to continue to provide safe, adequate and proper service to the residents of New Jersey. This will be particularly true with regard to some small or publicly owned systems.

As it is required by statute to ensure that water purveyors provide safe, adequate and proper service, the Board believes that it is imperative that the problems that face these purveyors, now and in the future, be resolved in an expeditious and cohesive manner. Towards this end, the Board is of the opinion that one of its major roles is to facilitate, in the most economic manner possible, the ability of the affected purveyors to achieve the goals of the aforementioned legislation.

In order that it may satisfy its legislative mandate, the Board HEREBY DIRECTS the creation of a Water Management Task Force. The purpose of this Task Force, which will be chaired by a representative of the Board and comprised of individuals representing all affected and interested groups, including but not limited to the private, governmental, and commercial sectors, will be to develop recommendations, alternatives and solutions to water quality issues either proposed by the Board or brought to the Board for its consideration.

The initial membership of the Water Management Task Force will be comprised of the following individuals:

Honorable Jeremiah F. O'Connor, Chairman
Donald L. Correll, Hackensack Water Company
Richard Thompkins, Middlesex Water Company
Thomas Cawley, Elizabethtown Water Company
Daniel Kelleher, New Jersey-American Water Company
Richard B. McGlynn, Esq.
Stephen B. Genzer, Esq.
Stephen Nieswand, Department of Environmental Protection and Energy
Barker Hamill, Department of Environmental Protection and Energy
I. Paul Slevin, Board of Regulatory Commissioners

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In addition, the Board has extended an invitation to the Office of the Governor, both houses of the New Jersey Legislature and the New Jersey State League of Municipalities to designate representatives to serve as members of the Water Management Task Force.

The Board FURTHER DIRECTS its Secretary to forward a copy of this Order to those water purveyors and other interested parties known to the Board and, in addition, to forward this Order to the Office of Administrative Law for publication as a public notice in the New Jersey Register.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Receipt of Petition to Amend N.J.A.C. 19:4-6.28 Official Zoning Map

Petitioners: New York Susquehanna & Western Railway.
Authority: N.J.S.A. 13:17-1 et seq.

Take notice that on February 24, 1992, petitioners filed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, the petitioners are requesting the following rezoning:

LIST OF PROPERTIES BY LOT AND BLOCK NUMBER PROPOSED FOR REZONING TO THE HEAVY INDUSTRIAL ZONE

BLOCK/LOT	MUNICIPALITY	PRESENT ZONING
449A/A1-2A	North Bergen	Light Industrial/Distribution A
449/17B	North Bergen	Light Industrial/Distribution A
449A/A1-2B	North Bergen	Light Industrial/Distribution A
449A/A1-1	North Bergen	Light Industrial/Distribution A
449A/2-1	North Bergen	Light Industrial/Distribution A
449A/6A2	North Bergen	Light Industrial/Distribution A
449A/6B1	North Bergen	Light Industrial/Distribution A
449A/5	North Bergen	Light Industrial/Distribution A
449A/4	North Bergen	Light Industrial/Distribution A
449A/3-1	North Bergen	Light Industrial/Distribution A
449A/3-2	North Bergen	Light Industrial/Distribution A
449A/1-2	North Bergen	Light Industrial/Distribution A
449A/1-1	North Bergen	Light Industrial/Distribution A
449A/1B	North Bergen	Light Industrial/Distribution A
449A/1		
485	North Bergen	Public Service Electric & Gas R.O.W.
442	North Bergen	Public Service Electric & Gas R.O.W.
449-A2-2	North Bergen	Light Industrial/Distribution A
449/6A	North Bergen	Light Industrial/Distribution A
449/10	North Bergen	Light Industrial/Distribution A
449/7	North Bergen	Light Industrial/Distribution A
449/8	North Bergen	Light Industrial/Distribution A
449/9	North Bergen	Light Industrial/Distribution A
449/B2	North Bergen	Light Industrial/Distribution A
449/C1	North Bergen	Light Industrial/Distribution A
449/C2	North Bergen	Light Industrial/Distribution A
449/C3	North Bergen	Light Industrial/Distribution A
449/C4	North Bergen	Light Industrial/Distribution A
446A/2	North Bergen	Light Industrial/Distribution A
446/1	North Bergen	Light Industrial/Distribution A
446/B2C2	North Bergen	Light Industrial/Distribution A
446/B1C1	North Bergen	Light Industrial/Distribution A
446/A	North Bergen	Light Industrial/Distribution A
1000/1	Jersey City	Light Industrial/Distribution A
1000/6(portion)	Jersey City	Light Industrial/Distribution A
1000/13(portion)	Jersey City	Light Industrial/Distribution A
1000/12	Jersey City	Light Industrial/Distribution A
1000/2(portion)	Jersey City	Light Industrial/Distribution A
1000/4(portion)	Jersey City	Light Industrial/Distribution A
1000/8(portion)	Jersey City	Light Industrial/Distribution A
1000/9(portion)	Jersey City	Light Industrial/Distribution A
1000/10(portion)	Jersey City	Light Industrial/Distribution A
1000/11(portion)	Jersey City	Light Industrial/Distribution A
1001/1	Jersey City	Light Industrial/Distribution A
1001/8	Jersey City	Light Industrial/Distribution A
1001/2(portion)	Jersey City	Light Industrial/Distribution A
1001/6(portion)	Jersey City	Light Industrial/Distribution A
1001/7(portion)	Jersey City	Light Industrial/Distribution A
1050/1	Jersey City	Light Industrial/Distribution A
1050/2	Jersey City	Light Industrial/Distribution A
1050/3	Jersey City	Light Industrial/Distribution A
1050/4	Jersey City	Light Industrial/Distribution A
1050/5(portion)	Jersey City	Light Industrial/Distribution A
1050/6(portion)	Jersey City	Light Industrial/Distribution A
1050/9(portion)	Jersey City	Light Industrial/Distribution A
1002/1	Jersey City	Light Industrial/Distribution A

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1991, Ending December 31, 1991

Take notice that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13c-23, hereby publishes Notice of Availability of the Quarterly Report of Legislative Agents for the fourth quarter of 1991, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Fourth Quarter of 1991, the Notices of Representation filed with this office reflect that 560 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the fourth calender quarter of 1991, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

—The names of registered Agents, their registration numbers, their business addresses and whom they represent.

—A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.

—A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the Fourth Calendar Quarter of 1991:

No. 463 Robert Stears representing Issues Management, Inc.

No. 723 Vincent Brinkerhoff representing Veterans of Foreign Wars of the U.S. Dept. of NJ

Following is a listing of all Legislative Agents who have filed Notices of Termination during the fourth calendar quarter of 1991.

Legislative Agent	Registration Number
Janine Gail Bauer	204
Geri Colombaro	702
James Connerton	13
Jack Coppola	221
Robert Corcoran	684
John D'Amico	629
Gregory DeLozier	575
Patricia Dorsey	602
John English	660
Jeannine Frisby-LaRue	18
Hillary Horn	513
Stephen Matthews	666
Peter McDonough	279

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Malcolm McPherson	642
Ellen Edwards Mushinski	21
Sean Reilly	169
Jean Reock	21
Fred Shaffer	78
Charles Stapleton	345
Robert Stears	587
Robert Stuart	602
Frank Willis	45

For further information, contact the staff of the Commission at (609) 292-8700.

No. 724 Jane Majcher representing Health Insurance Association of America
No. 725 Samuel Cunninghame representing NJ Motor Truck Association
No. 602 Jennifer Leigh Kohn representing NJ Public Interest Research Group
No. 21 Celeste Carpiano representing NJ School Boards Association
No. 726 Anthony DiSimone representing South Jersey Adjustment Bureau
No. 727 Richard Meyer representing NJ Self Insurers Association
No. 728 Mark Husik representing Mark L. Husik & Associates, Inc.
No. 729 William Flynn representing NJ State Firemen's Mutual Benevolent Association
No. 730 Charles Steinel representing NJ State Firemen's Mutual Benevolent Association
No. 731 Francis Block representing Mackay Disposal
No. 732 Edward Rosenblum representing NJ State League of Municipalities
No. 733 Francis Perkins representing NJ Cable Television Association
No. 365 Peter McDonough representing Princeton Public Affairs Group, NJ Liquid Propane Gas Association/Modern Gas Service, Midlantic National Bank, Six Flags/Great Adventure, A.G. Edwards & Sons, Inc., and NJ Soft Drink Association
No. 734 Thomas Kelly representing NJ Cable Television Association
No. 735 Kathryn Koles representing NJ Cable Television Association
No. 21 Michael Vrancik representing NJ School Boards Association
No. 736 Raymond Makul representing NJ Cable Television Association
No. 737 Cynthia Povich representing Citizens for a Sound Economy
No. 738 John Renna, Independent Legislative Agent
No. 739 Edward McGlynn, Independent Legislative Agent
No. 740 Gail Levinson representing Community Health Law Project, National Council of Jewish Women, NJ State Public Affairs Committee, and Mid Bergen Community Mental Health Center

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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 February 3, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

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 JANUARY 21, 1992

NEXT UPDATE: SUPPLEMENT FEBRUARY 18, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991	24 N.J.R. 509 and 672	February 18, 1992
23 N.J.R. 2447 and 2560	August 19, 1991	24 N.J.R. 673 and 888	March 2, 1992
23 N.J.R. 2561 and 2806	September 3, 1991	24 N.J.R. 889 and 1138	March 16, 1992
23 N.J.R. 2807 and 2898	September 16, 1991	24 N.J.R. 1139 and 1416	April 6, 1992
23 N.J.R. 2899 and 3060	October 7, 1991		

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	Uniform administrative procedure	24 N.J.R. 321(a)		
1:1-10.6	Discovery in conference hearings	24 N.J.R. 675(a)		
1:1-18.1	Initial decision in contested cases	23 N.J.R. 3406(a)	R.1992 d.46	24 N.J.R. 404(a)
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules	24 N.J.R. 321(a)		
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 3682(a)		
1:31	Organization of OAL	24 N.J.R. 321(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
AGRICULTURE—TITLE 2				
2:50	Milk producers	24 N.J.R. 893(a)		
2:76-3.12, 4.11	Farmland Preservation Program: pre-existing nonagricultural uses of enrolled lands	24 N.J.R. 893(b)		
2:76-6.15	Farmland Preservation Program: pre-existing nonagricultural uses on lands permanently deed restricted	24 N.J.R. 896(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)	R.1992 d.149	24 N.J.R. 1380(a)
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)		
3:3-1.1	Organization of Department	Exempt	R.1992 d.112	24 N.J.R. 934(a)
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)	R.1992 d.73	24 N.J.R. 580(a)
3:6-4.5, 4.6	Banks and savings banks: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:12-1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1–5.5, 5.7	Qualified corporations as fiscal or transfer agents	24 N.J.R. 675(b)		
3:21	Credit unions	23 N.J.R. 3686(b)	R.1992 d.92	24 N.J.R. 580(b)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)	R.1992 d.74	24 N.J.R. 580(c)
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:21-1	Low-income credit unions: extension of comment period	24 N.J.R. 3(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)	R.1992 d.73	24 N.J.R. 580(a)
3:26-3.1, 3.2	Savings and loan associations: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
	Most recent update to Title 3: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
	Most recent update to Title 4A: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)	R.1992 d.144	24 N.J.R. 1385(a)
5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18-1.5, 4.7	Uniform Fire Code: eating and drinking establishments; exemption from fire suppression system equipment	24 N.J.R. 677(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)	R.1992 d.105	24 N.J.R. 740(a)
5:18A-2.6	Fire Code enforcement: collection of fees	23 N.J.R. 3552(a)	R.1992 d.104	24 N.J.R. 739(a)
5:18A-2.9, 4.6	Fire Code enforcement: conflict of interest	24 N.J.R. 678(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(b)	R.1992 d.114	24 N.J.R. 934(b)
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)	R.1992 d.147	24 N.J.R. 1397(a)
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)	R.1992 d.67	24 N.J.R. 404(b)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-3.21	Uniform Construction Code: one and two-family dwellings in flood zones	24 N.J.R. 680(a)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.11, 4.14	UCC enforcement: conflict of interest	24 N.J.R. 678(a)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)	R.1992 d.47	24 N.J.R. 405(a)
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)	R.1992 d.148	24 N.J.R. 1399(a)
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)	R.1992 d.68	24 N.J.R. 406(a)
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:70	Congregate Housing Services Program	24 N.J.R. 513(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)	R.1992 d.50	24 N.J.R. 407(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)	R.1992 d.51	24 N.J.R. 407(b)
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)	R.1992 d.53	24 N.J.R. 408(a)
	Most recent update to Title 5: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)	R.1992 d.56	24 N.J.R. 409(a)
5A:3-1, 2	Military service medals: reopening of comment period	23 N.J.R. 3409(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)	R.1992 d.57	24 N.J.R. 410(a)
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
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6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:21-5, 6, 6A, 6B, 6C, 8, 9	Pupil transportation: school bus and small vehicle standards	24 N.J.R. 898(a)		
6:46	Private vocational schools	24 N.J.R. 514(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
6:53	Vocational education safety and health standards	24 N.J.R. 516(a)		
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)		
	Most recent update to Title 6: TRANSMITTAL 1992-1 (supplement January 21, 1992)			
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1A	Water supply loan programs	24 N.J.R. 707(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1E-5.3	Discharges of petroleum and other hazardous substances: administrative correction	———	———	24 N.J.R. 581(a)
7:1F	Industrial Survey Project	24 N.J.R. 717(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System (recodified to 7:5A-1)	23 N.J.R. 1985(b)	R.1992 d.77	24 N.J.R. 581(b)
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:5A-1.3–1.9, 1.12, 1.13, 1.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)	R.1992 d.77	24 N.J.R. 581(b)
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)	R.1992 d.117	24 N.J.R. 975(b)
7:7A	Freshwater Wetlands Protection Act rules: waiver of sunset provision of Executive Order No. 66(1978)	24 N.J.R. 912(a)		
7:7A1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-9.2	Freshwater wetlands protection: public hearing and request for public comment on Statewide general permits	24 N.J.R. 975(a)		
7:7A-17.3	Freshwater wetlands protection: administrative correction regarding civil administrative penalties	———	———	24 N.J.R. 1333(a)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)	R.1992 d.146	24 N.J.R. 1333(b)
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)	R.1992 d.145	24 N.J.R. 1334(a)
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)	R.1992 d.99	24 N.J.R. 787(a)
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
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7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)	R.1992 d.143	24 N.J.R. 1113(a)
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		

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7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions	23 N.J.R. 2458(a)		
7:26-4.3	Fee schedule for solid waste facilities: administrative correction	———	———	24 N.J.R. 1121(a)
7:26-4.3(b)	Thermal destruction facilities: operative date of new annual compliance monitoring fees	———	———	24 N.J.R. 584(a)
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)	R.1992 d.65	24 N.J.R. 412(a)
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)	R.1992 d.78	24 N.J.R. 584(b)
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)	R.1992 d.102	24 N.J.R. 792(a)
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
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7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)	R.1992 d.52	24 N.J.R. 416(a)
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)	R.1992 d.91	24 N.J.R. 832(a)
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)	R.1992 d.109	24 N.J.R. 840(a)

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8:24-1.3, 2.5, 3.3, 13.2	Retail food establishments: "community residence"; eggs and egg dishes	24 N.J.R. 915(a)		
8:31A-7.4, 7.5	SHARE Hospital system: rebasing and Minimum Base Period Challenge	24 N.J.R. 734(b)		
8:31B	Hospital rate setting	23 N.J.R. 3097(a)	R.1992 d.62	24 N.J.R. 425(a)
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8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
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8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)	R.1992 d.128	24 N.J.R. 935(a)

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8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)	R.1992 d.113	24 N.J.R. 938(a)
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)	R.1992 d.63	24 N.J.R. 585(a)
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8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
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8:71	Interchangeable drug products (see 23 N.J.R. 3336(a))	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products (see 23 N.J.R. 3334(b); 24 N.J.R. 144(b))	23 N.J.R. 2610(a)	R.1992 d.135	24 N.J.R. 948(a)
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10:35	County psychiatric facilities	24 N.J.R. 208(a)		
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10:50	Transportation Services Manual	23 N.J.R. 3619(a)	R.1992 d. 83	24 N.J.R. 610(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
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10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
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10:123-3.4	Personal needs allowance for SSI and general assistance recipients in residential health care facilities and boarding houses	24 N.J.R. 330(a)		
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10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
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13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)	R.1992 d.165	24 N.J.R. 1365(b)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)	R.1992 d.66	24 N.J.R. 471(b)
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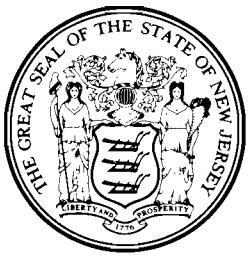

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