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NEW JERSEY REGISTER

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(Includes adopted rules filed through April 10, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 18, 1992
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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **June 3, 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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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 58(1992)
Tribute to State Trooper Thomas Joseph Hanratty

Issued: April 6, 1992.
Effective: April 6, 1992.
Expiration: Indefinite.

WHEREAS, Thomas Joseph Hanratty joined the New Jersey State Police on February 10, 1989, and was assigned to Troop B, northern New Jersey; and

WHEREAS, through his all too brief assignment, he served with impeccable professionalism, genuine courtesy and abiding commitment to the finest traditions of the New Jersey State Police; and

WHEREAS, Trooper Thomas Joseph Hanratty served proudly as part of a long line of dedicated law enforcement officials; and

WHEREAS, Trooper Hanratty has made the ultimate sacrifice, giving his life in the line of duty and, therefore, it is appropriate and fitting for the State of New Jersey to mark his passing and to honor his memory.

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours on Monday, April 6, 1992 in recognition and mourning of New Jersey State Trooper Thomas Joseph Hanratty, Badge 4971.

2. This Order shall take effect immediately.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Insect Control

Dangerously Injurious Insects

Proposed Readoption: N.J.A.C. 2:22

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

Authority: N.J.S.A. 4:1-21.5, 4:6-20 and 4:71.

Proposal Number: PRN 1992-182.

Submit comments by June 3, 1992 to:
William W. Metterhouse, Director
New Jersey Department of Agriculture
Division of Plant Industry
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:22, Insect Control, is due to expire on July 6, 1992. The Department of Agriculture has reviewed the rules regarding insect control and has found them to be appropriate, reasonable and suited to the purpose for which they were originally promulgated. The Department therefore proposes to readopt Chapter 22, which includes prohibitions against the harboring or importation of the Wax Scale, Mediterranean Fruit Fly, Africanized Honeybee and Khapra Beetle.

On May 30, 1974, Wax Scale was declared to be a dangerously injurious insect in accordance with N.J.S.A. 4:1-12.5, 4:6-20 and 4:7-1. On January 18, 1982 the same process was followed for the Mediterranean Fruit Fly, on June 2, 1986 for the Africanized Honeybee and on July 6, 1987 for the Khapra Beetle. While there are no present outbreaks of these insects in New Jersey, they do exist in the world or other states. Their entry into the State would still cause serious destruction and reduced crop yields of fruits, vegetables, nursery crops and grains. New Jersey, because it is one of the largest port's of entry in the world and is a corridor state, is at risk for the introduction of plant pests. Therefore, once a pest is introduced into the State the Department must have the authority to quarantine, eradicate or control injurious pests to protect the agricultural and natural resources of this State.

Social Impact

The readoption of this chapter would have no immediate impact as the insects are not present in the State. The readoption would give the Department the ability to investigate and examine for such infestations or possible outbreaks and allow a faster response time in taking such measures as would be needed to eradicate or control any possible infestation. The benefit of prompt action in any quarantine or infestation will minimize both the costs and time involved and will, therefore, be a less expensive and time consuming operation to both the Department and the public. This will be a positive social impact to the State of New Jersey and its agricultural related industries.

Economic Impact

The purpose of these rules is to provide protection from four highly destructive and injurious insects not native to North America. The cheapest and most efficient method of control of these pests is to prevent their entry and establishment in this State and country. The economic impact of any of these four insects into New Jersey and North American agriculture would be devastating as they are capable of untold damage if unabated.

Environmental Impact

Prohibiting the introduction of injurious, non-native insects into this State and country is important to prevent agricultural and environmental imbalances and destruction of native species to which the native flora may not have resistance. Since natural control factors do not exist within the State or North America, such insect introductions can build to outbreak proportions and quickly spread.

Regulatory Flexibility Analysis

With the threat in the endangerment of the public health, welfare and safety, small businesses of New Jersey, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., cannot be exempt from compliance with these rules. It must be pointed out that the rules themselves, which are of a scientific finding and based upon the best available entomologic information, do not, in and of themselves, impose any burden on the small businesses of this State. However, should control and quarantine measures have to be implemented, then a burden may be imposed upon the individual business affected. This burden, of course, is in counterpoise to the overwhelming risks that the unabated spread of these insects would have upon the rest of New Jersey and North American agriculture. Thus, a fuller explanation of the ramifications of actions which could be undertaken under these rules is needed.

The rules and their enforcement do not impose any reporting or recordkeeping on the part of any business or individual. However, accurate records that are kept in the ordinary course of business are extremely helpful in determining the possible spread of the insects. The identification of any problem would come through routine and current inspections and the ordinary care of crops and plants by any honest and alert grower, dealer or gardener. It is not presumed that everyone will become an expert entomologist, but the appearance of damage caused by these insects is such that any prudent person will seek help from the New Jersey Department of Agriculture, county extension agents, or professionals involved in the sale and cultivation of plants.

Relatively cheap and effective control measures are available through the proper use of pesticides and other control agents applied early in the identification or outbreak. The cost of such treatments would fall upon the businesses affected in proportion to the locations of the infestation or amount of acreage affected and the difficulty of treatment. Delay in treatment requiring prolonged quarantine of premises or stock will, of course, effect the operation of the business and must be assumed to fall disproportionally on a small business with its smaller resources.

The rapid and early cooperation with the Department will minimize economic impacts in the enforcement of the rules. The harboring of these insects, failure to allow inspection and violation of a quarantine are offenses of and in themselves of the statutes of the State of New Jersey.

There is no provision in the statutes nor are funds provided by the Legislature for the reimbursement of the destruction of any infected crop, stock, or plant. It may be that the costs of control due to the virulence of or large scale spread of such an outbreak could be borne by the Department through an area wide control program. If that should occur, it would be the Department's responsibility to secure funding to deal with the problem either in cooperation with the Federal government or on its own.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:22.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Consumer Checking Accounts

Reproposed New Rules: N.J.A.C. 3:1-19

Authority: N.J.S.A. 17:16N-1, specifically 17:16N-3.

Proposal Number: PRN 1992-188.

Submit comments by June 3, 1992 to:
Robert M. Jaworski, Deputy Commissioner
Division of Regulatory Affairs
Department of Banking
20 W. State Street, CN 040
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

This is a reproposal of new rules regarding Consumer Checking Accounts in the December 16, 1991 issue of the New Jersey Register at 23 N.J.R. 3682(b).

In enacting the Consumer Checking Act (the "Act", P.L. 1991, c.210 codified at N.J.S.A. 17:16N-1 et seq., effective July 16, 1991), the Legislature found and declared that increased costs in recent years have made it increasingly difficult for many of the State's consumers, particularly young, low-income and elderly consumers, to afford basic checking services, and that those without access to banking and financial services due to increased costs are forced to operate on a cash-only basis, placing them at greater risk for their personal safety and well-being, and to use relatively high cost check-cashing services to cash social security or welfare benefit checks, thereby undermining the effectiveness of these public assistance programs. N.J.S.A. 17:16N-1.

The Act requires depository institutions to make New Jersey Consumer Checking Accounts available to New Jersey residents who request one. The new rules provide that a credit union may require a consumer to become a member of the credit union in accordance with the credit union's rules of membership before being required to offer the consumer a New Jersey Consumer Checking Account. The Act specifies that the accounts are to be used primarily for personal, family or household purposes.

The Commissioner is obligated under the Act to establish the features of the account by regulation. Depository institutions, including Federally-chartered ones, who wish to offer an account, the features of which do not conform to those specified in these rules, are entitled under the Act to apply to the Commissioner for approval to offer such an account in lieu of the New Jersey Consumer Checking Account defined by proposed N.J.A.C. 3:1-19.2. The procedure for such application is set forth in proposed N.J.A.C. 3:1-19.3.

No depository institution is required under the Act to offer a New Jersey Consumer Checking Account at a cost to customers which is below the cost to the depository institution to provide it. Accordingly, the features of New Jersey Consumer Checking Account established by these proposed rules are intended to define an account which will not cost depository institutions more to provide the account than they receive in fees from the customers of those accounts. In the event a depository institution decides to terminate an account because the costs associated with it exceed revenues, the rules would require the depository institution to notify the Department at least 30 days prior to the discontinuance and to provide data supporting its conclusions.

Under the Act, the Commissioner is obligated to survey the terms and conditions of low cost checking accounts currently available to consumers in New Jersey and to consider those terms and conditions when establishing the features of a New Jersey Consumer Checking Account or approving a non-conforming account for use in lieu thereof. Last summer, in anticipation of this requirement, the Commissioner surveyed all depository institutions in New Jersey to ascertain what types of basic checking accounts they offered and the costs associated with those accounts. The survey was completed in August, 1990. The results of this survey were published in the prior proposal on this matter which was published in the New Jersey Register on December 16, 1991. Those results were also taken into consideration in making the current proposal.

On September 3, 1991, the Department published a pre-proposal on this matter in the New Jersey Register at 23 N.J.R. 2617(a) that invited preliminary comments on the features which should define a "New Jersey Consumer Checking Account." The comments which the Department received regarding the characteristics of the account, as well as on other aspects of the preproposal are set forth, with the Department's responses to those comments, in the summary to the proposal in the December 16, 1991 issue of the New Jersey Register.

In addition, the Department has received 20 written comments to the December 16, 1991 proposal. There were comments from the industry, trade associations, public interest groups, governmental agencies at the Federal, State, and municipal levels, and members of the public.

On January 10, 1992, the Department conducted a public hearing in the Camden City Council chambers at City Hall in Camden, New Jersey. Commissioner Connor presided over the meeting, and Assemblyman Joseph Roberts, the sponsor of the legislation, and Deputy Commissioner Robert M. Jaworski were also present on the rostrum. Approximately 21 people attended the hearing and nine persons offered comments. The testimony was recorded by a certified stenographer.

All of these comments, both written and oral, were considered in making the current proposal. The thrust of the comments was as follows:

(1) Among consumer (non-industry) representatives, there was unanimous agreement that the initial deposit amount of $100.00 is too high and would render the account unavailable to precisely those individuals the law was intended to serve. Most commenters suggested that the initial deposit amount be set at $50.00. The Department shares these commenters' concerns that a $100.00 opening balance requirement may substantially discourage use of the account by those who need it most, and has therefore proposed to reduce the figure to $50.00.

(2) Among consumer representatives, there was unanimous objection to the minimum balance requirement of $25.00 because, in their view, many depositors for whom the account is intended would have difficulty in reserving money to simply maintain their account balance. The Department also shares this concern, and has therefore eliminated this requirement in the current proposal by setting the minimum balance at $0.00.

(3) Among consumer representatives, there was general opposition to allowing depository institutions to adjust the amounts of the fees on the basis of changes in the Consumer Price Index. They maintained that the relationship of this index to the cost to institutions to process checks is unclear, and that the cost to institutions is more closely dependent on changes in the technology of processing checks than on the general inflation rate. As a consequence, and since, as explained below, the Department does not consider an automatic adjustment mechanism as necessary, the Department has eliminated that provision in the current proposal.

The Department recognizes the importance of providing a reasonable fee structure which allows depository institutions to cover their costs connected with these accounts. Therefore, the Department intends to survey the accounts after one year of operation to evaluate their impact upon the depositories. The Department plans to monitor the accounts regularly and, pursuant to the "Sunset" provision of Executive Order No. 66(1978) is required to reevaluate this regulation after five years as well. In addition, the Department expects that institutions will contact it individually regarding profitability problems connected with the accounts.

(4) Industry representatives expressed concern over the provision of the original proposed rules which allows unlimited withdrawals by withdrawal slip without charge. Testimony was offered that commercial banks do not use withdrawal slips, but allow for withdrawals by check. They also debit accounts through a variety of devices, such as pre-arranged debits, debits for electronic transfers, debits for printing checks, debits for overdrafts, and debits for Automated Teller Machine (ATM) use. The Department intends that no institution should be required to provide withdrawal slips for making withdrawals if it does not provide them for its other checking account customers. The reproposed rules provide that each check used by a customer to withdraw funds from an account will count as one of the "without charge" checks, if eight or fewer per periodic cycle, or may be billed up to $0.50 if in excess of eight checks. Moreover, the depository institution may charge for any of the other types of withdrawals to the same degree that it charges its other checking account customers, although it may not count them as checks.

(5) The commenters did not generally object to the requirement of eight checks per periodic cycle without charge or to the requirement for unlimited deposits per periodic cycle without charge, so those provisions have been left as proposed on December 16, 1991.

As a consequence of these comments, therefore, the Department proposes that New Jersey Consumer Checking Accounts have the following characteristics: (1) A $50.00 intitial deposit amount to open an account; (2) $0.00 minimum balance required to maintain the account; (3) Eight free checks per periodic cycle; (4) Unlimited number of non-check withdrawals per periodic cycle; (5) A $3.00 limit on the periodic cycle service charge; (6) Unlimited number of deposits per periodic cycle; and (7) A $0.50 limit on checks over eight.

The Department asked for, and received, comments regarding the applicability of the Act to Federally-chartered depositories. Some commenters questioned whether the Act was applicable at all to Federally-chartered institutions while others suggested that, under principles of Federal preemption, a Federally-chartered depository's primary regulator, rather than the Department, is the appropriate agency to which that depository should apply for approval for non-conforming accounts.

The position of the Department is that Federally-chartered depository institutions are required to comply with the terms as set forth in the clear language of the Act. The purpose of P.L. 1991, c.210 is consistent with the purpose of Federal laws in this area and operates in furtherance

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of them. Therefore, the Act is not preempted. However, the Department recognizes the role of Federal regulators in enforcing compliance with the Act. The Department will entertain proposals from both State and Federally-chartered depository institutions regarding seeking approval of non-conforming accounts.

Social Impact

The goal of the legislation is to make available low-cost, basic checking accounts to the residents of this State. The accounts will meet the needs of citizens for checking accounts which can be used to make a small number of transactions for personal, family or household purposes.

Economic Impact

The Act provides that no depository institution is required to offer a New Jersey Consumer Checking Account if the revenue which the depository institution obtains through fees charged to the customer is less than the cost to the Institution to provide the account. The intention is to assure that, by being required to offer these accounts, depository institutions are not thereby being required to lose money on them. The proposed rules reiterate this provision.

Regulatory Flexibility Analysis

Because of the nature of the financial services industry, many depository institutions, both large and small, fall within the definition of "small business" as set forth in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Neither N.J.S.A. 17:16N-1 et seq. nor these rules impose any special reporting, bookkeeping, or other compliance requirements on depository institutions except for generating a lobby notice and a pamphlet explaining New Jersey Consumer Checking Accounts, N.J.S.A. 17:16N-5. Because depository institutions commonly generate a variety of similar pamphlets in the normal course of business, the production of such a pamphlet for this type of account can be done through existing procedures and will not therefore burden the depository institution.

The depository institution is required to keep accurate records of New Jersey Consumer Checking accounts; however, this recordkeeping (for example, counting of transactions) is no more elaborate than is common with checking accounts generally. As these are activities which depository institutions perform normally in the course of their business, they do not represent a special burden associated with this type of account.

As a final way that depository institutions can minimize any burdens of providing the accounts, the statute and the rules provide that they may propose non-conforming, individualized New Jersey Consumer Checking Accounts to the Commissioner for approval to satisfy the requirements of the Act.

Depository institutions are not required to provide a greater value in servicing these accounts than the amount of the fees which they collect in connection with the accounts. In short, if the depository institution can establish that it is losing money providing the accounts, it may cease to offer them after following the procedure outlined in the rules.

For the above reasons, the Department rejected establishing different standards for depository institutions which fall within the definition of "small business."

Full text of the reproposed new rules follows:

SUBCHAPTER 19. NEW JERSEY CONSUMER CHECKING ACCOUNTS

3:1-19.1 Definitions

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

"Account agreement" means the agreement governing a New Jersey Consumer Checking Account.

"ATM" means automated teller machine.

"Check" means any check as defined in N.J.S.A. 12A:3-104, share draft, negotiable order of withdrawal, or similar means of making payment or transfers to third parties, the customer, or others, which is drawn on an account in a depository institution and is payable on demand. It shall not include debits to the account for maintenance charges, fees, printing checks, pre-arranged automatic withdrawals, and other similar services.

"Consumer" means a natural person who resides in this State, except that a credit union may require that the natural person be a member of the credit union in accordance with the credit union's rules of membership.

"Customer" means a consumer who has a New Jersey Consumer Checking Account.

"New Jersey Consumer Checking Account" or "account" means a deposit account established pursuant to N.J.S.A. 17:16N-3 and with respect to which the account holder is permitted to make payments to third parties or others by check.

"Non-conforming account" means a New Jersey Consumer Checking Account which does not contain the characteristics set forth in N.J.A.C. 3:1-19.2 but has been individually approved by the Commissioner pursuant to N.J.A.C. 3:1-19.3.

3:1-19.2 Features of New Jersey Consumer Checking Accounts

(a) A New Jersey Consumer Checking Account which is subject to subsection c of N.J.S.A. 17:16N-3 shall have all of the following features:

1. The account agreement shall not require more than $50.00 as an initial deposit amount;

2. The account agreement shall not require the customer to maintain a minimum balance of more than $0.00 in order to maintain the account;

3. The account agreement shall allow the customer to make at least eight withdrawals by check per periodic cycle from the account without charge. For the purpose of this paragraph, the withdrawal shall be deemed made when paid by the depository institution. This minimum number of withdrawals is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the minimum number shall be adjusted accordingly;

4. The account agreement shall not authorize a charge exceeding $0.50 for each transaction in excess of the number required by (a)3 above;

5. The account agreement shall allow a customer, of a depository institution which permits withdrawals to be made from checking accounts by means of withdrawal slips, to make unlimited withdrawals by withdrawal slip from the account without charge;

6. The account agreement shall allow a customer to make unlimited deposits into the account without charge;

7. The account agreement shall not authorize a charge for maintaining the account which exceeds $3.00 per periodic cycle. Also, the maximum amount of the charge is based on the assumption that the periodic cycle is approximately 30 days. If the periodic cycle is substantially longer or shorter than 30 days, the maximum amount shall be adjusted accordingly;

8. The account agreement shall not authorize a charge to the customer for printing checks for the account which is more than its charge to its regular checking account holders for that service; and

9. The account agreement may provide that the depository institution may charge customers for ATM usage and for banking services not specified in this chapter if, and to the same degree that, it charges its regular checking account holders for that usage and services.

3:1-19.3 Non-conforming accounts

(a) A depository institution may apply to the Commissioner for approval of any account, which does not conform to the criteria set forth in N.J.A.C. 3:1-19.2, as a New Jersey Consumer Checking Account.

(b) Each application for approval of a non-conforming account shall provide:

1. The initial deposit amount necessary to open the account;

2. The minimum balance required to maintain the account;

3. The maximum number of checks that may be written per month without charge;

4. The maximum number of non-check withdrawals per month without charge;

5. The maximum maintenance charge per month;

6. The maximum number of deposits which may be made per month without charge;

7. The maximum per transaction charge per month for transactions in excess of those specified in (b)3, 4, and 6 above;

8. The length of the periodic cycle of the account; and

9. Any other fees which will be charged the customer.

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(c) In deciding whether to approve such an account, the Commissioner shall consider whether the account meets the stated purpose of the Act to make New Jersey Consumer Checking Accounts available to consumers at low cost, and has substantially equivalent characteristics to the account in N.J.A.C. 3:1-19.2.

(d) The Commissioner shall issue a decision on an application for approval of non-conforming accounts within 30 days of receipt of the application, although the Commissioner may extend the time for issuing such decision by notifying the depository institution of such extension within the 30-day period. If neither a decision or a notice of extension has been issued within that time, the application shall be deemed approved.

3:1-19.4 Closing New Jersey Consumer Checking Accounts

(a) A depository institution may refuse to open or may close a New Jersey Consumer Checking Account for the following reasons:

1. For fraudulent activity or overdrafts under the same standards which it applies to holders of its regular checking accounts;

2. If the consumer has a regular checking account or another New Jersey Consumer Checking Account in that depository institution or in any other depository institution;

3. If the consumer makes an intentional material misrepresentation to the depository institution in connection with the account; or

4. If the fees and other revenue obtained from the account are less than the cost to the depository institution to provide the account, provided that the depository institution complies with the requirements of (b) through (d) below.

(b) No depository institution is required to offer a New Jersey Consumer Checking Account at a cost to a customer which is less than the cost to the depository institution to provide the account. In computing the cost of the account, the depository institution shall deduct the investment value of deposits in the account.

(c) A depository institution which determines that the revenue which it obtains through fees which it charges to the account holder is less than its cost for offering a New Jersey Consumer Checking Account, and which intends to discontinue offering the account on that basis, shall notify the Department 30 days prior to such discontinuance, and shall submit with such notice the data supporting its determination regarding cost.

(d) A depository institution which discontinues an account pursuant to (c) above shall not thereby be relieved from its statutory obligation to provide a New Jersey Consumer Checking Account to consumers unless it provides data supporting a conclusion by the Commissioner that the depository institution would lose money on any account which would satisfy the requirements of P.L. 1991, c.210.

3:1-19.5 Consumer information requirements

(a) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking Account shall provide reasonable in-person information and assistance to customers regarding New Jersey Consumer Checking Accounts, checking accounts generally, and related financial services.

(b) A depository institution which is required by P.L. 1991, c.210 to offer a New Jersey Consumer Checking Account shall post in a conspicuous place in the lobby of each office of the depository institution a sign and make material available in the public area which indicates that the office offers New Jersey Consumer Checking Accounts. The notice and material shall explain the material features and limitations of such an account. A depository institution may identify its New Jersey Consumer Checking account by any name, provided that it also indicates conspicuously that the account is a "New Jersey Consumer Checking Account."

(a)

DIVISION OF REGULATORY AFFAIRS

Capital Requirements; Depository Institutions

Proposed New Rules: N.J.A.C. 3:4

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1.

Proposal Number: PRN 1992-192.

Submit comments by June 3, 1992 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to adopt capital requirements for banks, savings banks and savings and loan associations which are under its supervision. Currently, the Department relies on the requirements set by the Federal Deposit Insurance Corporation ("FDIC") and the Office of Thrift Supervision.

The proposed new rules first establish a minimum leverage capital ratio of Tier 1 capital (core capital) to total assets of four percent. However, the Commissioner pursuant to the proposed new rules may establish for a depository institution a minimum ratio of Tier 1 capital to total assets of more than four percent based on the following factors: (1) The financial history and condition of a depository institution, and its future earnings prospects; (2) The managerial resources of the depository institution; (3) The funding and liquidity of the depository institution; (4) The interest-rate risk exposure of the depository institution; (5) The concentration of assets of the depository institution; and/or (6) The volume of assets classified as substandard, doubtful or loss, or subject to special mention. Tier 1 capital or core capital is defined at 12 CFR 325.2(m).

Pursuant to the proposed new rules a depository institution must also maintain qualifying capital or at least eight percent of its risk weighted assets. At least four percent of this qualifying capital shall be in the form of Tier 1 capital. The four percent minimum leverage capital requirement is identical to the minimum ratio set by the FDIC, except that the FDIC permits three percent leverage capital for an institution which is not anticipating or experiencing significant growth and has well-diversified risk, including no undue interest rate risk exposure, excellent asset quality, high liquidity, good earnings and in general is considered a strong banking organization rated composite 1 under the CAMEL rating system. It is unusual for such an institution to have less than four percent leverage capital. 12 C.F.R. §325.3.

The eight percent risk-based capital requirement is also consistent with FDIC policy. Pursuant to Appendix A to Part 325 of FDIC's regulations, state nonmember banks generally are expected to maintain a minimum risk-based capital ratio of qualifying total capital to risk-weighted assets of eight percent by December 31, 1992.

A depository institution which has leverage capital and/or risk-based capital below the minimum required levels shall be deemed to be operating in an unsafe or unsound manner for purposes of N.J.S.A. 17:9A-266 et seq., and N.J.S.A. 17:12B-177 et seq. Accordingly, a depository institution not in compliance with these minimum requirements would be subject to a cease and desist order.

A depository institution which has entered into and is in compliance with a written agreement with the Department of Banking or has submitted to the Department of Banking and is in compliance with a plan approved by the Department of Banking to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice on account of its capital ratios. The Department of Bank is not precluded by these proposed rules from taking any authorized action against a depository institution with capital above the minimum requirements if the specific circumstances deem such action to be appropriate.

Also pursuant to the proposed new rules, a depository institution which has a ratio of Tier 1 capital to total assets of less than two percent shall be deemed to be in an unsafe condition for purposes of N.J.S.A.

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17:9A-269 or N.J.S.A. 17:12B-179. These sections permit the Commissioner to take possession of the property and business of any depository which is in an unsafe condition.

A depository institution which has entered into and is in compliance with a written agreement with the Department of Banking to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated in a safe and sound manner will not be deemed to be in an unsafe condition on account of its capital ratio. The Commissioner is not precluded from taking action against a depository institution which has a ratio of Tier 1 capital to total assets equal to or greater than two percent if the depository institution is otherwise in an unsafe condition, or such action is otherwise authorized.

Social Impact

Reviewing capital ratios is an important way to measure the safety of a depository institution. A depository with a higher capital ratio has a larger cushion for protection in the event of business decline. By periodically reviewing capital ratios, the Department is able to identify potential problem institutions and assist said institutions to recover before the problems become insurmountable. To the extent that the Department is able to assist in this regard, the proposed rules will have a positive social impact.

Economic Impact

The proposed rules do not impose any fees or other charges on banks, savings banks or savings and loan associations. However, by defining unsafe operations and unsafe condition, the rules specify when the Department may take enforcement action against a depository. For example, the Department may issue a cease and desist order against institutions conducting unsafe operations. This will affect the activities in which such an institution may engage, and thus could have a dramatic economic impact.

Regulatory Flexibility Analysis

These rules set standards for capital of banks, savings banks and savings and loan associations. Many of those institutions are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No differentiation in standards is made based on business size because it is critical for all depositories, regardless of their size, to maintain adequate capital reserves.

Full text of the proposed new rules follows:

CHAPTER 4
DEPOSITORY INSTITUTIONS

SUBCHAPTER 1. CAPITAL REQUIREMENTS

3:4-1.1 Definitions

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

"Bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-1.

"Capital stock association" shall have the meaning ascribed to it in N.J.S.A. 17:12B-244.

"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

"Classified assets" means assets, or portions thereof, which have a well defined weakness or weaknesses attributable to the unfavorable record of the obligor, insufficiency of security, or other factors noted in the examiners comments.

"Depository institution" shall mean a bank, savings bank, capital stock savings bank, capital stock association or mutual association.

"Mutual association" shall have the meaning ascribed to it in N.J.S.A. 17:12B-5.

"Qualifying capital" shall have the same meanings ascribed to it in Appendix A to 12 C.F.R. Part 325.

"Risk weighted assets" for a bank and savings bank shall have the meaning ascribed to it in Appendix A to 12 C.F.R. Part 325, and for a savings and loan association shall have the meaning ascribed to it in 12 C.F.R. 567.6.

"Savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-1(13).

"Tier 1 capital" shall have the meaning ascribed to it in 12 C.F.R. §325.2(m).

"Total assets" shall have the meaning ascribed to it in 12 C.F.R. §325.2(n).

3:4-1.2 Minimum leverage capital requirement

(a) The minimum leverage capital for a depository institution shall be a ratio of Tier 1 capital to total assets of four percent.

(b) Notwithstanding (a) above, the Commissioner may establish for a depository institution a minimum ratio of Tier 1 capital to total assets of more than four percent based on the following factors:

1. The financial history and condition of a depository institution, and its future earnings prospects;
2. The managerial resources of the depository institution;
3. The funding and liquidity of the depository institution;
4. The interest-rate risk exposure of the depository institution;
5. The concentration of assets of the depository institution; and/or
6. The volume of assets classified as substandard, doubtful or loss, or subject to special mention.

3:4-1.3 Minimum risk-based capital requirement

A depository institution shall maintain qualifying capital of at least eight percent of its risk weighted assets. At least four percent of this qualifying capital shall be in the form of Tier 1 capital.

3:4-1.4 Unsafe operations

(a) A depository institution which has leverage capital and/or risk-based capital below the minimum required levels shall be deemed to be operating in an unsafe or unsound mannner for purposes of N.J.S.A. 17:9A-266 et seq., and N.J.S.A. 17:12B-177 et seq.

(b) A depository institution which has entered into and is in compliance with a written agreement with the Department of Banking or has submitted to the Department of Banking and is in compliance with a plan approved by the Department of Banking to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice on account of its capital ratios.

(c) Notwithstanding (a) above, the Department of Banking is not precluded from taking any authorized action against a depository institution with capital above the minimum requirements if the specific circumstances deem such action to be appropriate.

3:4-1.5 Unsafe condition

(a) A depository institution which has a ratio of Tier 1 capital to total assets of less than two percent shall be deemed to be in an unsafe condition for purposes of N.J.S.A. 17:9A-269 or N.J.S.A. 17:12B-179.

(b) A depository institution which has entered into and is in compliance with a written agreement with the Department of Banking to increase its capital ratios to such levels as the Department deems appropriate and to take such other action as may be necessary for the depository institution to be operated in a safe and sound manner will not be deemed to be an unsafe condition on account of its capital ratio.

(c) Notwithstanding (a) above, the Department of Banking is not precluded from taking action against a depository institution which has a ratio of Tier 1 capital to total assets equal to or greater than two percent if the depository institution is otherwise in an unsafe condition, or such action is otherwise authorized.

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(a)

DIVISION OF REGULATORY AFFAIRS

License Fees

Proposed Readoption: N.J.A.C. 3:23

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 17:10-3.9 and 23; 17:11A-38 and 54; 17:15-1; 17:15A-4 and 6; 17:15B-7 and 17; 17:16C-7, 8, 82(a), (b) and (c); 17:16D-4 and 8; and 45:22-4 and 11.

Proposal Number: PRN 1992-193.

Submit comments by June 23, 1992 to:
Deputy Commissioner Robert M. Jaworski
Office of Regulatory Affairs
Department of Banking, CN-040
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), N.J.A.C. 3:23, License Fees, expires on July 6, 1992. The Department has reviewed these rules and finds them to be satisfactory for the purpose for which they were originally promulgated and is therefore proposing to readopt the rules at this time.

The proposed readoption sets forth the license fees which the Department charges consumer loan lenders, foreign money remitters, check cashers, check sellers, sales finance companies, motor vehicle installment sellers, home financing agencies, home repair contractors, home repair salesmen, insurance premium finance companies, and pawnbrokers. The fees help defray the Department's expenses in regulating these licensees. The amounts of the fees are not changed.

Social Impact

The Legislature has given the Department the responsibility for regulating these licensees to assure that satisfactory standards for the conduct of business are maintained. This benefits the licensees as well as the public. To help defray the Department's expenses in performing its statutorily assigned role, the Legislature has given the Department the authority to promulgate rules setting license fees. Failing to readopt the rules would result in either a sharp curtailment of the Department's oversight of these industries or a shifting of the economic burden of such oversight to the taxpayers of this State, both of which the Department concludes is contrary to Legislative intent.

Economic Impact

The economic burden for the Department's regulatory activities is borne mainly by the licensees in the regulated industries, which seems fair as they benefit economically from engaging in those lines of business. To the extent that there is a negative economic impact on the licensees, there is a corresponding positive impact on the Department and the State.

Regulatory Flexibility Analysis

Most licensees are small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The license fees collected from them are used to reimburse the State for some of the costs it incurs in providing regulatory services. Thus, the fees are related to the services provided to these businesses and not on their size. Accordingly, the Department does not differentiate the fees based on the size of the business.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:23.

PERSONNEL

(b)

MERIT SYSTEM BOARD

Notice of Pre-Proposal
General Rules and Department Organization
Appeals, Discipline and Separations
Veterans and Disabled Veterans Preference
Equal Employment Opportunity and Affirmative Action
Political Subdivisions
Violations and Penalties
N.J.A.C. 4A:1, 4A:2, 4A:5, 4A:7, 4A:9 and 4A:10

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d).

Pre-Proposal Number: PPR 1992-3.

Take notice that the Merit System Board, pursuant to its authority to promulgate rules in accordance with the Civil Service Act, N.J.S.A. 11A, will receive preliminary comments on a possible readoption of N.J.A.C. 4A:1, 4A:2, 4A:5, 4A:7, and 4A:9, all due to expire on October 5, 1992. The board also will receive comments on a possible readoption of N.J.A.C. 4A:10, due to expire on November 2, 1992.

N.J.A.C. 4A:1 contains definitions of merit system concepts used throughout Title 4A of the New Jersey Administrative Code, explains the scope of Title 4A, provides guidelines on access to appointing authority and Department of Personnel records, describes Department of Personnel organization, and permits the commencement of pilot programs and delegation of certain merit system functions by the Department of Personnel.

N.J.A.C. 4A:2 contains rules on the filing of appeals and includes a cross-reference section on rules concerning appeals on specific subjects. The chapter also includes rules on major and minor disciplinary procedures, working test period termination, appeals concerning reprisals against employees and requirements for resignation in good standing and not in good standing.

N.J.A.C. 4A:5 contains rules defining veteran for purposes of veteran's preference in the merit system, explaining disabled veteran's preference and detailing how the preference is used in the competitive examination process and in appointments to the non-competitive division.

N.J.A.C. 4A:7 contains rules on equal employment opportunity requirements, prohibits sexual harassment in State government and prohibits discriminatory preemployment inquiries, provides for the responsibilities of the Division of Equal Employment Opportunity and Affirmative Action, creates an Equal Employment Opportunity Advisory Commission and establishes discrimination appeal procedures for State service.

N.J.A.C. 4A:9 contains rules on local government units adopting Title 11A, jurisdictions becoming subject to Title 11A through consolidation with a merit system jurisdiction or through legislation, and the status of affected employees in either of those situations.

N.J.A.C. 4A:10 contains rules on violations of Title 11A, enforcement of the provisions of Title 11A, salary disapprovals and other penalties and remedies for such violations, and prohibitions against certain types of political activity of public employees.

Interested persons may submit written comments on the possible readoption of the aforementioned rule chapters.

Submit comments by June 3, 1992 to:
Janet Share Zatz
Director
Division of Appellate Practices
CN 312
Trenton, New Jersey 08625

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Readoption of these chapters must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.A.C. 52:14B-1, et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

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COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Limited Dividend and Nonprofit Housing Corporations and Associations

Proposed Readoption with Amendments: N.J.A.C. 5:13

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

Authority: P.L. 1991, c.431, section 21.

Proposal Number: PRN 1992-175.

Submit written comments by June 3, 1992 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:13, Limited Dividend and Nonprofit Housing Corporations and Associations, are scheduled to expire on December 24, 1992.

The Statute under which these rules were adopted, N.J.S.A. 55:16-1 et seq., has been repealed by the "Long Term Tax Exemption Law," P.L. 1991, c.431, effective April 17, 1992. However, subsection 20b of that law provides that "an urban renewal entity (defined so as to include low and moderate income housing projects subject to N.J.S.A. 55:16-1 et seq.) organized and operating under a law repealed by this act shall not be affected by that repeal." Consequently, the Department has reviewed these rules and finds that, with the exception of N.J.A.C. 5:13-1.4, which pertains to the organization of new corporations and associations and the building of new projects, and which has been repealed, the rules continue to be necessary in order to properly regulate existing projects.

The other change that is being proposed is the elimination of all references to condominiums. The Attorney General has ruled that condominiums cannot be organized under the Limited Dividend and Nonprofit Housing Corporations and Associations Law (N.J.S.A. 55:16-1 et seq.) because, unlike the case with a cooperative, condominium units are owned by separate individuals and not by the corporation or association.

N.J.A.C. 5:13 contains two subchapters. Subchapter 1 includes general rules; Subchapter 2, rules on limited dividend housing corporations.

N.J.A.C. 5:13-1.1 contains the definitions used in the chapter, and has been amended to delete references to condominiums.

N.J.A.C. 5:13-1.2 defines the scope of the rules and has been amended to delete references to condominiums.

N.J.A.C. 5:13-1.3 (reserved), formerly contained requirements concerning the formation, operation and management of a housing corporation or association.

N.J.A.C. 5:13-1.4 contains the requirements concerning the formation of a housing corporation or association, and has been deleted as a result of the provisions of the Long Term Tax Exemption Law.

N.J.A.C. 5:13-1.5 contains the requirements concerning the operation of a housing corporation or association.

N.J.A.C. 5:13-1.6 contains the requirements concerning the meetings of stockholders and directors.

N.J.A.C. 5:13-1.7 contains the requirements concerning tenant application, selection and the assignment of priorities where the HMFA is involved.

N.J.A.C. 5:13-1.8 contains the requirements concerning general assignment of priorities in tenant applications.

N.J.A.C. 5:13-1.9 contains the requirements concerning applications for priority status.

N.J.A.C. 5:13-1.10 contains the requirements concerning public notice to applicants of their rights.

N.J.A.C. 5:13-1.11 contains the requirements concerning applications for dwelling leases and rentals, including the notation of priority status and the incorporation into the lease of the application. This rule permits the termination of the lease, should the application be found to contain any misrepresentation.

N.J.A.C. 5:13-1.12 contains the requirements concerning the maintenance by the project management office of a list of persons who have indicated an interest in application, but did not formally apply.

N.J.A.C. 5:13-1.13 contains the requirements concerning the lease.

N.J.A.C. 5:13-1.14 contains the requirements concerning rents and charges, and includes the formula for the amount of payment in lieu of taxes.

N.J.A.C. 5:13-1.15 contains general reporting requirements imposed on the housing sponsor.

N.J.A.C. 5:13-1.16 contains nondiscrimination requirements.

N.J.A.C. 5:13-1.17 contains the requirements concerning administrative remedies and procedures, and includes a provision allowing the Authority to conduct investigations pertaining to any requirement of the Act.

N.J.A.C. 5:13-1.18 contains the requirements concerning the manner in which an offending party is notified of a complaint and the issuance of an order as deemed appropriate by the Authority.

N.J.A.C. 5:13-1.19 contains the requirements concerning the hearing rights of any person or housing sponsor.

N.J.A.C. 5:13-1.20 contains the requirements concerning the manner in which a hearing is to be requested.

N.J.A.C. 5:13-1.21 through 1.24, currently reserved, contained rules regarding hearings.

N.J.A.C. 5:13-1.25 contains the requirements concerning the granting of a stay of action.

N.J.A.C. 5:13-1.26, currently reserved, contained requirements concerning final report and order.

N.J.A.C. 5:13-1.27 contains the requirements concerning declaratory rulings made by the State Administrator, and specifies that such a ruling shall be deemed an action subject to review by the Office of Administrative Law.

N.J.A.C. 5:13-1.28 permits the informal disposition of a contested case by stipulation, agreed settlement or consent order.

N.J.A.C. 5:13-2.1 delineates the scope of Subchapter 2.

N.J.A.C. 5:13-2.2 describes the requirements for the management, operation and maintenance of cooperative projects.

N.J.A.C. 5:13-2.3 describes the requirements for the transfer of stock, and includes a provision for a waiver from these requirements.

Social Impact

Failure to readopt the rules will leave those housing sponsors and projects that continue to be subject to the requirements of the repealed law without standards that are necessary to protect the interests of residents and prospective residents and to ensure that the projects continue to be operated in a manner consistent with their original purpose, which is to provide affordable housing for those who need it.

Making it clear that condominiums are not subject to this chapter will eliminate a contradiction between the rules, on one hand, and the statute, as interpreted by the Attorney General, on the other.

Economic Impact

Since the rules proposed for readoption contain provisions concerning rent schedules, reports, and priorities in tenant selection, failure to readopt them would eliminate provisions protecting the economic interests of tenants and prospective tenants and provisions imposing costs for the preparation of the required reports, assuming that they would not be prepared for other purposes in any event.

Regulatory Flexibility Analysis

The chapter proposed for readoption with amendments regulates the operation of limited dividend and nonprofit housing corporations and associations, including tenant selection, hearing provisions and reporting requirements. In order to effectuate the requirements of the statutes covering such corporations and associations, and to provide affordable housing to those in need of it, the Department has concluded that no differentiation based upon business size is appropriate or necessary. It should be noted that all the regulated sponsors can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and are subject to the uniform application of the requirements of this chapter.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:13.

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

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5:13-1.1 Definitions

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

"Act" means the Limited Dividend Nonprofit Housing Corporations or Associations Law [C.184, P.L. 1949], **P.L. 1949, c.184, which was repealed by P.L. 1991, c.431, but the requirements of which, and of this chapter, continue to be applicable to housing projects organized and operating under it on or before April 17, 1992.**

...

["Condominium" means any project, as defined in this Section, which was created under the provisions of the Condominium Act (N.J.S.A. 46:8B-1 et seq.) or the Horizontal Property Act (N.J.S.A. 46A-1 et seq.)]

...

"Gross shelter rent" means the gross rent or carrying charge less the cost of utilities furnished by the project; utilities shall include gas and electricity if supplied by the project, cost of heating fuel, cost of water supplied and sewage charges, if any [except that, in the case of condominiums, "gross shelter rent" shall be determined by a formula based on what the annual interest and amortization would be when computed on the initial gross selling price of all the condominium units at the maximum lawful rate of interest set pursuant to N.J.S.A. 31:1-1 et seq., for the number of years of the tax agreement with the municipality, plus the total annual amount of common expenses charged to the unit owners, excluding the cost of utilities furnished by the project.]

...

"State Deputy Administrator" means the Deputy Administrator of the Public Housing and Development Authority, who is also the Director, Division of Housing and [Urban Renewal] **Development,** Department of Community Affairs, State of New Jersey.

...

5:13-1.2 Scope

(a) These [regulations] **rules** shall apply to and control all housing sponsors formed under the provisions of the Limited Dividend Nonprofit Housing Corporations or Assocations Law, [C. 184,] P.L. 1949, **c.184**[)], as amended **(N.J.S.A. 55:16-1 et seq.) and remaining subject to the jurisdiction established under that act in accordance with the "Long Term Tax Exemption Law," P.L. 1991, c.431**; [excepting] **provided,** however, **that** the provisions of [Subchapter] **N.J.A.C. 5:13-2** (Limited Dividend Housing Corporations **and Associations** as Cooperatives) shall apply only to housing sponsors **organized** as cooperatives financed under a FHA insured (Section 213) mortgage, and provided **further** that nothing herein shall be construed to abrogate or set aside such regulatory agreements [that] **as** have been approved by the Authority prior to the date of these regulations insofar as the provisions thereof are not inconsistent with the regulations.

(b)-(f) (No change.)

5:13-1.4 [Formation of a housing corporation or housing assocation] **(Reserved)**

[(a) An application for approval of the formation or incorporation of a housing sponsor shall be approved or disapproved by the Authority in accordance with the Act.

(b) The application for approval of a housing sponsor shall be submitted on forms as approved by the Authority.

(c) The application may be accompanied by an application for approval of a project; if the application for formation is not accompanied by an application for approval of a project, such application must contain preliminary information on an approved form concerning the project.

(d) The Authority may approve or disapprove the application for approval of the project or approve the same conditionally pursuant to Section 15 of the Act, in which event the housing sponsor shall agree to the conditions set up by the Authority.]

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Exemptions from Taxation
One and Two-Unit Residences; Multiple Dwellings
Proposed Repeals: N.J.A.C. 5:22-1 and 2.

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: P.L. 1991, c.441, section 19.
Proposal Number: PRN 1992-179.

Submit comments by June 3, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

P.L. 1991, c.441, signed by Governor Florio on January 18, 1992, repealed P.L. 1975, c.104 and P.L. 1977, c.284 (N.J.S.A. 54:4-3.72 et seq.) and P.L. 1979, c.233 (N.J.S.A. 54:4-3.121 et seq.), the statutes under which subchapters 1 and 2 of N.J.A.C. 5:22 were adopted. P.L. 1992, c.441 established standards for determining whether areas are in need of rehabilitation, and whether properties in those areas are eligible for tax exemptions and abatements, that do not require reference to any standards established by the Department of Community Affairs, although areas designated in the past using such standards continue to be so designated. Since the rules are no longer necessary, their repeal is proposed.

Social Impact

This repeal will have no social impact, since the rules have been superseded by new legislation.

Economic Impact

This repeal will have no economic impact, since the rules have been superseded by new legislation.

Regulatory Flexibility Statement

This repeal will have no effect on small businesses, since the rule has been superseded by new legislation.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 5:22-1 and 2.

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Licensing of Interns
Proposed Amendment: N.J.A.C. 5:23-5.4

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1992-176.

Submit comments by June 3, 1992 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

This proposed amendment sets forth the employment qualifications, duties and necessary supervision for "interns." The Department succeeded in establishing an associate's degree program in code enforcement when the Department of Higher Education approved the program for Atlantic Community College in 1990. Courses at Atlantic Community

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College began in January 1991. The Department expects the first such individuals to graduate from approved college programs in May 1993. Interns are persons who have completed an associate degree program in some aspect of code enforcement, but who have no documented, relevant work experience.

Despite the fact that they will have received academic training, interns' lack of practical experience will make it appropriate for them to work initially at more limited code enforcement tasks, under careful supervision. Experienced officials will benefit from interns' knowledge and enthusiasm, while interns will become familiar with field procedures and other practical aspects of code enforcement.

Social Impact

This proposed amendment will allow for the employment of interns, who have graduated from approved associate degree programs. This mode of entry into the workforce allows a fair opportunity to some people who would otherwise be excluded from this job market. It provides licensed code officials and inspectors with knowledgeable help, while assuring that educated entry level personnel will be well-supervised.

Economic Impact

This proposed amendment will help provide jobs for educated individuals in the code enforcement field. It will help municipalities by providing individuals who have a background in math, English and computer science, as well as knowledge of construction. Interns are required to register annually, for which a fee of $20.00 is charged. The intern's supervisor must perform quarterly evaluations and notify the Department of successful completion of the internship.

Regulatory Flexibility Analysis

The proposed amendment establishes standards for the registration and employment of individuals as code enforcement interns, employed by code enforcing agencies. Some of these enforcing agencies may be small businesses, as the term is described in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While the amendment imposes restrictions on the functions an intern can perform, no other compliance requirements are imposed on the enforcing agency. The intern, as an individual, is required to register in the same manner as other code enforcement personnel, in accordance with the provisions of Subchapter 5. The person at the agency who serves as the intern's supervisor is required to maintain a written file and prepare a quarterly written evaluation of the intern's progress. Upon successful completion of the internship, the supervisor must notify the Bureau of Technical Services. No significant cost to the code enforcement agency is anticipated. In order to provide the maximum benefit to the interns, lesser requirements or exemptions for small businesses are not provided. Enforcing agencies will benefit by the increased supply of qualified code enforcement personnel, which the internship program is expected to provide.

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

5:23-5.4 Licenses required

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

(e) Enforcing agencies may establish code enforcement intern positions subject to the following:

1. Persons applying for an intern position with an enforcing agency must be officially registered in accordance with this subchapter with the Department of Community Affairs on the form provided by the Licensing Unit of the Bureau of Technical Services prior to being hired as an intern.

i. Interns shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Technical Services, Licensing Unit within one month of any change in employment status prior to accepting any new position and of any change of address. A non-refundable processing fee of $20.00 is required for the initial Intern Registration Request and for each subsequent renewal request.

2. Persons meeting the following requirements shall be eligible to be employed as interns:

i. Fire protection inspector intern: possession of an associate degree in code enforcement with a major in the fire protection subcode;

ii. Building inspector intern: possession of an associate degree in code enforcement with a major in the building subcode area;

iii. Plumbing inspector intern: possession of an associate degree in code enforcement with a major in the plumbing subcode area; and

iv. Electrical inspector intern: possession of an associate degree in code enforcement with a major in the electrical subcode area.

3. Interns shall be evaluated by their supervisors on a quarterly basis.

i. The evaluation must include a brief description of the intern's code enforcement activities and an assessment of the intern's performance in these activities.

ii. Interns who receive satisfactory evaluation ratings from their supervisors and who occupy enforcing agency intern positions while registered with the Department may use the intern experience toward satisfying the experience requirement for licensure.

iii. The period of intern experience begins at the time a person is hired as a registered intern by an authorized agency.

4. The following conditions apply to work performed by interns:

i. Interns may perform all inspections allowed for a trainee as described in (d)5i and ii above.

ii. In addition, with the written approval of an intern's supervisor, the intern may perform the following types of inspections without the supervisor being present during the inspection:

(1) Reinspections of previously failed documented inspections for one and two family dwellings;

(2) Footing inspections as described in N.J.A.C. 5:23-2.18(b)1i(1) for one and two family dwellings (building inspector interns with written approval of their supervisors only).

iii. An intern shall not act as a subcode or construction official nor sign any permits, stickers, approved plans or inspection reports, except as permitted in (e)5i and ii above.

5. The supervisor of the intern must possess a valid code enforcement license in the same subcode as the registered intern working under his or her supervision.

i. A qualified licensed inspector shall not supervise more than one intern.

ii. Failure of a supervisor to properly oversee a registered intern in accordance with the provisions of this subsection may result in disciplinary action against the supervisor.

iii. The supervisor must complete the quarterly reports and keep a written file on the progress of the intern. This file must include written authorization to perform inspections as listed in N.J.A.C. 5:23-5.4(e)5. At the end of one year of full time internship, the supervisor shall forward notice to the Department of Community Affairs, Bureau of Technical Services, Licensing Unit of successful completion of the internship. If the internship is not for a full year, or is part time, that time may also be documented.

6. To remain employed by an enforcing agency, an intern must pass the appropriate module(s) of the National Certification Test in his or her specific code area within one year of the effective date of employment.

Redesignate existing (e) as **(f)**. (No change in text.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Establishment of Pupil Assistance Committees

Proposed New Rules: N.J.A.C. 6:26

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, and 18A:7A-5(e).

Proposal Number: PRN 1992-194.

Submit written comments by June 3, 1992 to:
Irene Nigro, Rules Analyst
N.J. Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

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The agency proposal follows:

Summary

In April 1982, at the recommendation of the State Legislature, the New Jersey Special Education Study Commission was created to conduct an extensive review of the State's system for providing special education programs and services. A report on the Commission's findings and recommendations, The Turning Point: New Directions in Special Education, was presented to the State Board of Education in January 1985. In that report, the Commission identified concerns regarding the delivery of services to pupils with learning problems. These concerns included:

- A limited capacity in regular education to serve pupils with mild learning and behavior problems, which results in an overreliance on special education;
- Inadequate coordination and/or communication between special and regular education;
- A reliance on a system of special education that labels handicapped pupils by their disability rather than focusing on their educational needs; and
- Limited flexibility in the organization and provision of special education programs at the school-building level.

Based on the Commission's report, the Department of Education's Division of Special Education developed the Plan to Revise Special Education in New Jersey. One of the major goals of the Department's plan to revise special education was to increase the capacity of regular education to serve pupils with learning behavior problems without having to unnecessarily label them as handicapped. This goal resulted in the formation of the Department's School Resource Committee (SRC) pilot initiative.

The SRC initiative had two purposes. The first initiative was to design and recommend interventions for nonhandicapped pupils experiencing difficulties in the regular class. Second, the SRC was to develop annual recommendations for a "building improvement plan." This broad-based initiative was successfully piloted in New Jersey between 1987 and 1990. Members and users of the SRC were generally pleased with the performance of their committees and felt the SRC process benefited both pupils and staff and increased the capacity of regular education to assist pupils with learning and behavior problems. In most cases, the SRC process reduced the number of inappropriate referrals to the child study team and facilitated the provision of appropriate assistance in regular education to pupils who would have been inappropriately placed in special education. The SRC expanded teachers' abilities to work with pupils with learning and behavior problems. The SRC process improved teachers' instructional and behavioral techniques, and gave regular and special education staff a way to share their expertise. Teachers became more aware of the needs of their pupils and gave them a place to go for support and assistance.

The SRC made districts more aware of the needs of pupils in their buildings and the need for new and refined programs and services. The SRC process also resulted in increased communication among staff in the school building.

The proposed new rules requiring the establishment of Pupil Assistance Committees are modeled after the School Resource Committee pilot initiative. If adopted, N.J.A.C 6:26 would require all public school districts in New Jersey to establish at least one Pupil Assistance Committee in each of their schools. The purpose of these committees would be to design and monitor the implementation of strategies for assisting nonhandicapped pupils who are experiencing difficulties in their classes, and to develop an annual report of referrals to the committees along with plans and activities responsive to the needs identified in the report.

A review of each of the subchapters N.J.A.C. 6:26 follows:

Subchapter 1. General Provisions

This subchapter describes the purpose for establishing Pupil Assistance Committees, and defines the words and phrases used to articulate the rules.

Subchapter 2. Pupil Assistance Committee Structure and Functions

This subchapter delineates the governance structure and functions of the Pupil Assistance Committee. The Pupil Assistance Committees required in N.J.A.C 6:26-2.1 would be made up of at least three core members. The composition of the core committee would be the building principal or a designee with administrative authority to implement the decisions of the committee, a regular education teacher, and a school staff member selected from one of the following professional titles: a guidance counselor; a learning disabilities teacher-consultant; a school social worker; a school nurse; a school psychologist; a speech-language specialist or speech correctionist; or a substance awareness coordinator. In addition to the core members, the teacher who initiated the request for service of the Pupil Assistance Committee for a particular pupil would be included in the committee meetings.

The major functions of the Pupil Assistance Committee(s) are:

(1) To design and recommend interventions for nonhandicapped pupils experiencing difficulties in their regular classes. Once these pupils are found to have learning or behavior problems, they will be brought to the attention of the Pupil Assistance Committee. The Pupil Assistance Committee would meet to develop interventions that could include curricular changes for the pupil, new instructional methods or materials, or other assistance provided in the regular education program. These interventions are designed to assist individual nonhandicapped pupils with learning or behavior problems so that they will be able to succeed in regular education and not require an inappropriate placement in special education; and

(2) To develop an annual "Pupil Assistance Committee Report." After analyzing the various educational needs and concerns brought to the attention of the Pupil Assistance Committee regarding individual pupils, the Committee would develop plans and activities that address these needs.

Subchapter 3. Pupil Assistance Committee Procedures and Plans

This subchapter outlines the procedures for review and planning and for providing services to referred pupils. N.J.A.C. 6:26-3.1 and 3.2 require the chief school administrator to approve procedures for the referral of pupils to the Pupil Assistance Committee and for the implementation of Pupil Assistance Plans. The role of parents and guardians in working with the Pupil Assistance Committee is specified, as well as the requirements for monitoring and documenting committee plans and their disposition.

Subchapter 4. Pupil Assistance Committee Report

This subchapter describes the procedure by which schools will identify annually local issues and needs based on referrals to the Pupil Assistance Committees, and plan activities in response to the identified issues and needs for the coming year.

Social Impact

It is expected that these new rules will have a positive effect on the general population of public school pupils throughout the State who are nonhandicapped but are experiencing difficulties in their education program. The use of Pupil Assistance Committees will increase the capacity of regular education to serve pupils with learning behavior problems without having to unnecessarily label them as handicapped. Teachers would also benefit from the educational assistance such a committee can provide in designing and assisting in the implementation of plans for meeting the needs of all of their students. The establishment of Pupil Assistance Committees is also a means for schools to organize their resources to provide all pupils with comprehensive, coordinated, and integrated support services system essential to pupil success.

Economic Impact

The only significant cost to district boards of education associated with establishing Pupil Assistance Committees would be the potential cost for release time for instructional staff participating in training and committee meetings. The Department of Education plans to offer training without charge to all New Jersey public school districts over a two year period. The estimated cost of release time for training for all school districts, based on that plan, will be between $75,000 and $140,000, depending on the level of participation in training. The annual per building cost for teacher release time to implement the program is estimated at $540.00. Based on the evaluation of the Plan to Revise Special Education pilot districts, considerable savings in child study team costs can be expected because of the significant decrease in numbers of inappropriate referrals for evaluation of pupils for special education services that will be realized through the new school problem-solving structure.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these 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 rules impact solely upon New Jersey school districts and on schools operated by the New Jersey State Department of Education.

Full text of the proposed new rules follows:

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CHAPTER 26
PUPIL ASSISTANCE COMMITTEES

SUBCHAPTER 1. GENERAL PROVISIONS

6:26-1.1 Purpose

The purpose of these rules is to set standards and provide guidance for the establishment of school-based teams, called Pupil Assistance Committees, in all New Jersey public schools.

6:26-1.2 Words and phrases defined

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

"Pupil Assistance Committees" are school-based teams which design and monitor the implementation of strategies for educating non-classified pupils who are referred because they are experiencing difficulties in their classes. Pupil Assistance Committees coordinate and/or deliver intervention and referral services for these pupils, and develop an annual Pupil Assistance Committee Report describing the needs and issues identified through referrals to the committee.

"Pupil Assistance Committee Report" is the annual report developed by the building principal, based on referrals to the Pupil Assistance Committee, for the purpose of identifying and making recommendations to improve school programs and services.

"Regular education pupils" means pupils in grades K through 12, who have not been determined to be in need of special education programs and/or related services pursuant to N.J.A.C 6:28.

SUBCHAPTER 2. PUPIL ASSISTANCE COMMITTEE STRUCTURE AND FUNCTIONS

6:26-2.1 Establishment of committee

(a) Each district board of education shall establish at least one standing committee known as the Pupil Assistance Committee in each of its schools by the beginning of the 1994-95 school year.

(b) The chief school administrator shall submit an annual report to the county superintendent of schools on the functioning of the Pupil Assistance Committee. This report shall include, but not be limited to, a summary of the components found in N.J.A.C. 6:26-4.1.

(c) District boards of education shall, on an annual basis, provide training for new Pupil Asssistance Committee team members.

6:26-2.2 Committee structure

(a) Pupil Assistance Committees shall be composed of, at a minimum:

1. The building principal or designated regular education staff member with the authority of the principal to implement the recommendations of the committee;

2. A regular education teacher; and

3. A school staff member selected from one of the following professional titles:

i. A guidance counselor;

ii. A learning disabilities teacher-consultant;

iii. A school social worker;

iv. A school nurse;

v. A school psychologist;

vi. A speech-language specialist or speech correctionist; or

vii. A substance awareness coordinator.

(b) The membership of the Pupil Assistance Committee shall be determined by procrdures developed by the chief school administrator and approved by the district board of education.

(c) The principal or designated regular education staff member shall serve as chairperson of the Pupil Assistance Committee.

(d) The Committee shall include the staff member who referred the pupil in need of assistance or who identified the issue which may be adversely affecting pupil performance or behavior in a particular class or in the school.

(e) The membership of the Committee may be expanded to include other school staff to aid in the process of developing and implementing the Pupil Assistance Plan.

6:26-2.3 Committee functions

(a) The Pupil Assistance Committee shall serve referred pupils by:

1. Providing support and guidance to classroom teachers;

2. Coordinating the access to and the delivery of school services for referral pupils;

3. Planning and providing for apropriate interventions for referred pupils;

4. Actively involving parents and guardians in the development and implementation of the Pupil Assistance Plan; and

5. Coordinating the services of community-based social and health provider agencies.

SUBCHAPTER 3. PUPIL ASSISTANCE COMMITTEE PROCEDURES AND PLANS

6:26-3.1 Procedures

(a) The chief school administrator shall approve procedures for the operation of Pupil Assistance Committees in each school which have been developed at the building level based on the specific needs of the individual school. The procedures should include, but not be limited to:

1. Requesting services of the Pupil Assistance Committee;

2. Planning and implementing committee recommendations;

3. Notifying parents that their child has been referred to the Pupil Assistance Committee;

4. Communicating with and involving parents in the development and implementation of Pupil Assistance Plans; and

5. Maintaining records of all referrals to the Committee, including changes in the status and the disposition of Pupil Assistance Plans.

(b) If an educationally handicapping condition is indicated, the pupil may be referred to the child study team by the Pupil Assistance Committee or parent/guardian in accordance with N.J.A.C. 6:28-3.3 to determine eligibility for special education and or related services.

(c) The Pupil Assistance Committee shall gather relevant information regarding the educational status, attendance, classroom behavior, and conduct of a referred pupil in consultation with the classroom teacher, as well as additional relevant information from any school district employee, the pupil's parents or guardian.

1. The school nurse shall review the pupil's health records and apprise the committee of all relevant information about the pupil being discussed.

2. Community-based social and health provider agencies providing services to the referred pupil or the pupil's family should be contacted to obtain relevant information when appropriate.

6:26-3.2 Pupil Assistance Plans

(a) The Pupil Assistance Committee shall prepare a written plan for pupils who require supportive services, modifications to their regular education program, or assessment and referral to school or community-based social and health provider agencies.

(b) The Pupil Assistance Plan shall:

1. Detail the modification(s) in the pupil's education program;

2. List the persons to be involved in the implementation of the plan;

3. Specify the recommendations for assessment and referral to specified school or community-based social and health services; and

4. Document that the pupil's parent(s) or guardian(s) were notified that their child was referred to the Pupil Assistance Committee and advised of any changes made in their child's program. In cases of suspected child abuse pursuant to the provisions of N.J.A.C. 6:3-5, or cases in which the drug and alcohol confidentiality requirements established in Federal regulations 42 CFR Part II apply, notification may be restricted.

(c) The Pupil Assistance Plan shall be reviewed by the Committee within eight calendar weeks of the beginning of its implementation. The review shall include an assessment of the plan's implementation and effectiveness by the requesting school staff members.

(d) Parents and guardians shall be:

1. Encouraged to participate in the development of the plan;

2. Given the necessary support to participate in the implementation of the plan; and

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3. Assisted in finding and utilizing services and resources needed for family problems affecting the pupil's educational progress.

(e) The district shall implement the recommendation(s) contained in the Pupil Assistance Plan and shall identify:

1. The person(s) responsible for implementing the recommendations contained in the plan; and

2. A Committee member who will serve as case monitor to review the pupil's progress.

(f) If implementation of the recommendations of the Pupil Assistance Plan are ineffective, the plan shall be reviewed and amended as necessary. If an educationally handicapping condition is indicated, based on this review, the pupil shall be referred to the child study team in accordance with N.J.A.C. 6:28-3.3 to determine eligibility for special education and/or related services.

SUBCHAPTER 4. PUPIL ASSISTANCE COMMITTEE REPORT

6:26-4.1 Report development

(a) At the end of each school year, the building principal shall, in consultation with the Pupil Assistance Committee, develop a report based on, but not limitd to, concerns and problems identified through the Pupil Assistance Committee discussions and documented in the Pupil Assistance Plans. The report shall include, but not be limited to, the following components:

1. A description of the needs and issues identified through referrals to the Pupil Assistance Committee;

2. An identification and analysis of significant needs and issues which could facilitate school planning for the subsequent year; and

3. A description of activities planned in response to the needs and issues significant for school planning.

(b) A copy of the Pupil Assistance Committee Report shall be on file at the district board of education and be subject to review by the Commissioner or his or her designee.

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert Kowalski, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1992-195.

A **public hearing** concerning these proposed amendments will be held on Tuesday, May 26, 1992, at 2:00 P.M. at the following address:

Department of Health
Room 804, Eighth Floor
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by June 3, 1992 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council, Room 501
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360
609-292-1304

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

At this time, specific products are proposed for deletion, based on their unavailability, so as to make the Formulary more up-to-date and uncluttered.

Social Impact

There would be little social impact of the proposed deletions on prescribers, pharmacies or patients, because the medications would continue to be available, to those who need them, from other manufacturers. The proposed products are no longer manufactured and not available.

Economic Impact

To the extent that some medications from involved manufacturers cannot be returned to suppliers for credit, a impact would be felt by certain pharmacies that stocked these medications. However, this is counterbalanced by lack of a continuing source to keep these items available.

Overall, it is anticipated that very few persons will be adversely affected economically by these deletions.

Regulatory Flexibility Statement

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting, recordkeeping or other requirements imposed upon pharmacies or small generic drug manufacturers by these deletions.

Full text of the proposed amendments follows:

The following products are proposed for **deletion** from the List of Interchangeable Drug Products:

Allopurinol tabs 100 mg, 300 mg	Chelsea
Amitriptyline/perphenazine tabs 10/2	Chelsea
Amitriptyline/perphenazine tabs 10/4	Chelsea
Amitriptyline/perphenazine tabs 25/2	Chelsea
Amitriptyline/perphenazine tabs 25/4	Chelsea
Amitriptyline/perphenazine tabs 50/4	Chelsea
Baclofen tabs 10 mg, 20 mg	PharmBasics
Benztropine tabs 0.5 mg, 1 mg, 2 mg	PharmBasics
Cefadroxil monohydrate caps 500 mg	Biocraft
Cefadroxil monohydrate caps 500 mg	IBSA
Cefadroxil monohydrate caps 500 mg	Zenith
Cefadroxil monohydrate tabs 1000 mg	Zenith
Chlordiazepoxide HCl caps 5 mg, 10 mg, 25 mg	Mylan
Chlorthalidone tabs 25 mg	Purepac
Clonidine tabs 0.1, 0.2, 0.3 mg	Duramed
Cyproheptadine syrup 2mg/5ml	PharmBasics
Cyproheptadine tabs 4 mg	Duramed
Diazepam tabs 2, 5, 10 mg	Duramed
Diazepam tabs 2 mg, 5 mg, 10 mg	Chelsea
Dipyridamole tabs 25, 50, 75 mg	Duramed
Doxycycline hyclate caps 50 mg, 100 mg	Heather
Doxycycline hyclate tabs 100 mg	Heather
Fiorinal w/codeine #3 caps substitute	Anabolic
Fiorinal w/codeine #3 caps substitute	J. Stevens
Furosemide tabs 20 mg, 40 mg	Heather
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Duramed
Hycomine ped. syrup substitute	PharmBasics
Hydrochlorthiazide tabs 50 mg	Heather
Hydrocholothiazide tabs 25 mg, 50 mg	Mylan
Hydrocortisone cream 1%	Purepac
Hydroxazine pamoate caps 25, 50, 100 mg	Duramed
Indomethacin caps 25, 50 mg	Duramed
Isosorbide dinitrate tabs 10 mg	Purepac
Meclofenamate tabs 50 mg, 100 mg	Chelsea
Metaproterenol tabs 10 mg, 20 mg	PharmBasics
Methocarbamol tabs 500 mg, 750 mg	Mylan
Methocarbamol tabs 500 mg, 750 mg	Heather
Methychlothiazide tabs 2.5 mg	Mylan
Methylclothiazide tabs 5 mg	PharmBasics
Methyldopa tabs 125 mg, 250 mg, 500 mg	Chelsea
Methylprednisolone tabs 4 mg	Heather
Metoclopramide HCl tabs 10 mg	Chelsea
Oxybutrin tabs 5 mg	PharmBasics
Prazepam caps 15 mg, 30 mg	PharmBasics
Prednisone soln 5mg/5ml	PharmBasics

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Probanthine bromide tabs 15 mg	Heather
Propantheline bromide tabs 15 mg	Mylan
Propoxyphene HCl caps 65 mg	Mylan
Propoxyphene NAPS/APAP tabs 100/650	Chelsea
Propoxyphene NAPS/APAP tabs 50/325	Chelsea
Propranolol tabs 10, 20, 40, 60, 80, 90 mg	Duramed
Propranolol tabs 10 mg, 20 mg, 40 mg, 60 mg, 80 mg	Chelsea
Propranolol/HCTZ tabs 40/25, 80/25	Duramed
Sulfamethoxazole/trimethoprim tabs 400/80	Heather
Sulfamethoxazole/trimethoprim tabs 800/160	Heather
Sulfisoxazole tabs 500 mg	Heather
Sulfisoxazole tabs 500 mg	Mylan
Temazepam caps 15, 30 mg	Duramed
Tetracycline HCl caps 250 mg, 500 mg	Heather
Thiothixene HCl caps 2 mg, 5 mg, 10 mg	Chelsea
Timolol tabs 5 mg, 10 mg, 20 mg	PharmBasics
Tolazamide tabs 100, 250, 500 mg	Duramed
Trazadone tabs 50 mg, 100 mg	Chelsea
Trazodone tabs 50 mg, 100 mg	PharmBasics
Verapamil tabs 40 mg	Chelsea
Warfarin tabs 2 mg, 2.5 mg, 5 mg	PharmBasics

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Robert Kowalski, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1992-196.

A **public hearing** concerning these proposed amendments will be held on Tuesday, May 26, 1992, at 2:00 P.M. at the following address:

Department of Health
Room 804, Eighth Floor
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Trenton, New Jersey 08625-0360

Submit written comments by June 3, 1992 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council, Room 501
New Jersey Department of Health
CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

For example, the proposed piroxicam 10 mg and 20 mg capsules could be used as a less expensive substitute for Feldene, a branded prescription medicine. Similarly, the proposed Diltiazem tablets could be substituted for the more costly branded product, Cardizem.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Albuterol sulfate inh. soln. 0.083%, 3ml	Dey
Albuterol sulfate syrup 2mg/5ml	Lemmon
Amiloride HCl/HCTZ tabs 5/50	Royce
Amoxicillin caps 250, 500 mg	Atral
Baclofen tabs 10mg, 20 mg	Biocraft
Benzoyl peroxide gel 2.5, 5, 10%	Stiefel/Glades
Benzoyl peroxide wash 2.5, 5, 10%	Stiefel/Glades
Berocca tabs substitute	Pioneer
Cephalexin caps 250, 500 mg	Atral
Cinoxacin caps 250 mg, 500 mg	Biocraft
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Blue Ridge Labs
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Lederle
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mylan
Doxepin HCl caps 10 mg, 25 mg	Royce
Doxepin HCl caps 50 mg	Royce
Fiorinal caps substitute	Lannett
Gemfirbozil caps 300 mg	Purepac
Granulex spray substitute	Copley
Guaifenesin tabs 600 mg	Theraids
Hydrocortisone acetate supp 25 mg	Able
Iodinated glycerol tabs 30 mg	Able
Hycodan tablet substitute	Daniels
Hydrocortisone lotion 1%, 2.5%	Stiefel/Glades
Hyoscyamine sulfate oral soln 0.125 mg/ml	Pegasus
Ibuprofen tabs 400 mg, 600 mg, 800 mg	Upjohn
Ketoprofen caps 25 mg, 50 mg, 75 mg	Lederle
Lactulose soln 10g/15ml	Technilab
Lorazepam tabs 0.5 mg, 1 mg	Royce
Lorazepam tabs 2 mg	Royce
Metaproterenol sulfate syrup 10mg/5ml	Biocraft
Metoclopramide HCl syrup 5mg/5ml	Lemmon
Metoprolol tartrate tabs 100 mg	Geneva
Metoprolol tartrate tabs 50 mg	Geneva
Minocycline HCl caps 50 mg, 100 mg	Biocraft
Nifedipine caps 10 mg	Novopharm

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Nifedipine caps 10 mg	R.P. Scherer
Nifedipine caps 20 mg	R.P. Scherer
Perphenazine/Amitriptyline HCl tabs 2/10, 2/25	Royce
Perphenazine/Amitriptyline HCl tabs 4/10, 4/25	Royce
Piroxicam caps 10 mg, 20 mg	Royce
Sucralfate tabs 1 g	Blue Ridge Labs
Tetracycline caps 250, 500 mg	Atral
Tolmetin sodium capsules 400 mg	Baker Cummins
Valproic acid capsules 250 mg	R.P. Scherer
Vancomycin HCl oral soln powder 1g, 2g, 5g	Lederle
Verapamil tabs 240 mg extended release	Baker Cummins
Yohimbine tabs 5.4 mg	Royce

(a)

OFFICE OF HEALTH POLICY AND RESEARCH

Notice of Administrative Correction

State Health Plan

Economic Impact of Proposed N.J.A.C. 8:100-16

Take notice that the Department of Health has discovered an error in that portion of the Economic Impact statement for proposed new rules, N.J.A.C. 8:100, the State Health Plan (see 24 N.J.R. 1164(a), April 6, 1992), which addresses the impact of N.J.A.C. 8:100-16, Long-Term Care Services, at 24 N.J.R. 1170. The Department did not intend the second paragraph of that portion of the Economic Impact statement to be published, but it was inadvertently included in the notice of proposal. Instead, the Department wanted to include, and does by this notice include, the following paragraph:

It is anticipated that there will be cost savings to the long-term care system within the decade as a result of expanding the availability of affordable home and community-based care options and reducing reliance on costly nursing home institutionalization. It is nonetheless recognized that increased Medicaid outlays will be necessary in the early, transitional years when new alternatives are initially being established.

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

HIGHER EDUCATION

(b)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY

Policy Governing New Jersey College Loans to Assist State Students (NJCLASS)

Proposed Amendments: N.J.A.C. 9:9-7.2, 7.3 and 7.8

Authorized By: New Jersey Higher Education Assistance Authority, Philip Koebig, Chairman.

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

Proposal Number: PRN 1992-183.

Submit comments by June 3, 1992 to:
Brett Lief
Acting Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (NJHEAA) is statutorily responsible for the creation and administration of student loan programs in New Jersey. Last year the NJHEAA adopted rules governing a new State loan program, New Jersey College Loans to Assist State Students (NJCLASS) (see 23 N.J.R. 2338(b)). The NJCLASS program is intended to assist New Jersey students who cannot obtain Federally guaranteed loans because they either are not available or the students do not meet program eligibility requirements as defined by the Federal government or the students have additional financial need unmet by the Federally subsidized student loans. These proposed amendments expand and clarify participant eligibility and participation in the Program.

N.J.A.C. 9:9-7.2 increases the NJCLASS eligible family income cap ceiling for families from $85,000 to $95,000. This increase is primarily intended to assist families with more than one student in college. Given the high and rising costs of financing a college education, substantial proportions of the disposable income of families with gross incomes of up to $95,000 are required to meet these expenses.

N.J.A.C. 9:9-7.3 increases the annual NJCLASS loan limit from $5,000 to $7,000 and the cumulative loan limits from $25,000 to $30,000. Periodic loan limit increases are necessary to ensure that the loan amounts provided by the Program are realistically sufficient to enable families to meet rising educational costs.

N.J.A.C. 9:9-7.8 establishes a program-specific loan repayment deferment policy. When originally implemented, the NJCLASS program utilized those deferments currently authorized under the Federal Stafford Loan Program. The NJHEAA has determined that remaining tied to the Federal deferment provisions will prove to be confusing for borrowers.

Under the Strattford Program, during periods of deferment borrowers make no principal or interest payments. Interest during this period is paid by the Federal government. Under the NJCLASS program, periods of deferment can only permit a borrower to defer payment of loan principal. The NJHEAA does not have the financial ability under the program's tax exempt bond fiscal structure to pay a borrower's accruing loan interest during these deferment periods. Additionally, the proposed amendment establishes four available deferments. These four are the most commonly occurring situations which would motivate a borrower to seek loan repayment deferment. The NJHEAA will consider granting borrowers forbearance (see N.J.A.C. 9:9-7.8(e)) in other situations which may arise where borrowers wish to temporarily postpone the repayment of their loan(s).

Social Impact

The proposed amendments will provide financial aid to an increased number of New Jersey families, especially those with more than one student in college, who otherwise might not be able to afford the costs necessary to send their children to school. The increased borrowing limits will more effectively address the rising costs of a college education. The development of a loan deferment policy specifically for the NJCLASS program will eliminate confusion on the part of borrowers arising from connecting a State-sponsored, unsubsidized loan program to a Federally-insured loan program.

Economic Impact

The proposed amendment expands eligibility, increases loan limits, and establishes a loan repayment deferment policy for the NJCLASS Supplementary loan program. These changes will serve to increase the potential pool of applicants to the program and provide increased educational financing to assist New Jersey families in paying their college costs. Under the proposed amendment borrowers would be able to defer principal payments on their loan(s) under certain circumstances. They would, however, be responsible for the payment of interest accruing on their loan(s) during the periods of deferment.

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 by the Regulatory Flexibility Act, N.J.S.A. 52:13B-16 et seq. The proposed amendments expand eligibility for NJCLASS loans to families with an adjusted gross income up to $95,000, increases loan limits for borrowers, and establishes a program-specific loan repayment deferment policy.

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

9:9-7.2 Eligibility

(a) To be eligible for a NJCLASS loan, each applicant must:

1. Have an annual adjusted gross family income no greater than [$85,000] **$95,000**;

2.-4. (No change.)

(b) (No change.)

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9:9-7.3 Loan amounts

(a) The maximum amount a parent borrower may borrow for each student for each academic year is [$5,000] **$7,000**; the maximum amount a student borrower may borrow for each academic year is [$5,000] **$7,000**.

(b) The total aggregate amount borrowed by any one student or parent borrower on behalf of a student shall not exceed [$25,000] **$35,000**.

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

9:9-7.8 Deferments and forbearance

(a) [Deferments under the NJCLASS Program shall be governed by the Federal Stafford Loan provisions concerning this area, 34 CFR 682.210, including all subsequent amendments and supplements thereto.] **Under certain conditions borrowers will be permitted to defer payments of loan principal for specified periods of time. During periods of authorized deferment, borrowers remain responsible for the payment of the interest accruing on their loan(s). The following are available NJCLASS Program deferments and their requirements.**

1. Full-time or half-time study at an eligible institution;

2. Unemployment:

i. The borrower must be currently unemployed and conscientiously seeking but unable to find full-time employment;

ii. Every three months the borrower must provide a signed written statement describing his or her conscientious search (at least three attempts) for full-time employment which includes:

(1) The names, addresses and phone numbers of the firms contacted;

(2) The name of the contact person at each firm; and

(3) A certification of registration with a public or private employment agency; and

iii. In order to remain eligible for the deferment, the borrower may not restrict his or her search to specific fields, positions, or salaries.

3. Service as an intern:

i. Borrower must be currently participating in an eligible internship which is supervised training which is required by a State licensing agency prior to certification for professional practice or service.

ii. Borrower must provide certification from the appropriate State licensing agency attesting to the necessity of the internship.

iii. Borrower must provide certification from the organization with which the internship is being undertaken which specifies:

(1) Acceptance of the borrower into the internship program; and

(2) Anticipated beginning and completion dates of the program.

4. Active duty status in the armed forces:

i. The borrower must provide a statement from his or her commanding officer attesting to full-time active duty status.

(b) Maximum allowable time periods for each of these deferments shall be established by the lender.

(c) Upon receipt of a borrower request for a deferment and all required documentation, the NJHEAA will notify the borrower regarding the deferment's authorization.

(d) Periods of authorized deferment do not extend the 15 year maximum loan repayment time.

[(b)]**(e)** The lender may **also**, in its discretion, grant borrowers periods of forbearance in the repayment of their NJCLASS loan(s).

CORRECTIONS

(a)

THE COMMISSIONER

Close Custody Units
Definitions; Temporary Close Custody
Proposed Amendment: N.J.A.C. 10A:5-1.3
Proposed New Rules: N.J.A.C. 10A:5-7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1992-187.

Submit comments by June 3, 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

The proposed amendment to N.J.A.C. 10A:5-1.3 defines temporary close custody as the non-punitive removal of an inmate from the inmate general population, with restriction to the inmate's cell or to an Administrative Segregation Unit for a period not to exceed 72 hours, for special observation or investigation.

The proposed new rules, at N.J.A.C. 10A:5-7, establish the policies and procedures to be followed for placement in or removal from temporary close custody and authorizes the Superintendent or his or her designee to place an inmate in or to remove an inmate from temporary close custody.

Social Impact

The proposed amendment and new rules will ensure that inmates, identified as exhibiting certain types of behavior which are regarded as dangerous or potentially so, are placed in temporary close custody for special observation and investigation. Assigning certain inmates to temporary close custody contributes to the safety of these inmates, staff and to the maintenance of security and orderly operation of the correctional facility.

Economic Impact

The proposed amendment and new rules will have no economic impact because additional financial resources will not be required to implement or maintain the amendment or new rules. The proposed new rules do not require additional facilities or staffing to implement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment and new 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 amendment and new rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:5-1.3 Definitions

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

. . .

"Temporary close custody" means the non-punitive removal of an inmate from the inmate general population, or other assigned housing, with restriction to the inmate's cell or to a close custody unit for a period not to exceed 72 hours, for special observation or investigation.

. . .

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SUBCHAPTER 7. TEMPORARY CLOSE CUSTODY

10A:5-7.1 Placement in temporary close custody

(a) An inmate may be placed in temporary close custody for a period not to exceed 72 hours, unless exceptional circumstances, such as other information received or other substantial evidence found, warrant extension of this time period.

(b) Criteria for placement of an inmate in temporary close custody status are:

1. Reasonable suspicion exists to indicate that the inmate is engaged in, or is planning a serious violation (asterisked offenses under N.J.A.C. 10A:4-4.1(a)) of correctional facility rules, on which disciplinary action is considered premature;

2. Reasonable suspicion exists to indicate that the inmate is in possession of, or plans to obtain, contraband which may pose a danger to the inmate or others;

3. The inmate exhibits assaultive, self-mutilating and/or threatening behavior related to a medical or psychiatric condition, in the written opinion of a psychiatrist, psychologist or medical doctor; and/or

4. Any other reason, which, in the opinion of the Superintendent, or his or her designee, requires temporary close custody confinement to protect the inmate, staff, general public, and/or the security and control of the correctional facility.

(c) When placement of an inmate in temporary close custody is ordered by the Superintendent's designee, the designee shall, as soon as possible, within 72 hours inform the Superintendent and shall provide a written report to the Superintendent setting forth the reason for every such placement.

(d) On or before the expiration of the 72 hour period, unless there are emergent reasons for extension, the inmate shall be released from temporary close custody to:

1. General population;

2. Pre-hearing detention;

3. Detention in connection with a disciplinary action pursuant to N.J.A.C. 10A:4;

4. A medical or psychiatric housing unit for continued observation, treatment, or commitment procedures (N.J.A.C. 10A:16-13); or

5. Another close custody unit in accordance with procedures set forth in this chapter, such as, Protective Custody, Management Control Unit.

(e) Release from temporary close custody may be ordered only by the Superintendent or his or her designee.

(f) In consideration of the reason for an inmate's placement in temporary close custody, the chief custody officer, or his or her designee, shall determine the personal property and other services, such as visits and telephone calls, which the inmate may be afforded while in temporary close custody.

(g) The Superintendent shall forward a monthly written report to his or her designated Assistant Commissioner for review of all placements and releases from temporary close custody.

(a)

THE COMMISSIONER

Medical and Health Services
Lethal Injection

Proposed New Rules: N.J.A.C. 10A:16 and 10A:23-1
Proposed Recodification: N.J.A.C. 10A:16-10 to 10A:23-2

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2C:11-3.

Proposal Number: PRN 1992-189.

Submit comments by June 3, 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:16, Medical and Health Services, expired on April 6, 1992. The Department of Corrections has reviewed these rules and, with the exceptions of the proposed amendments, has determined these rules to be necessary, reasonable and proper for the purpose for which the rules were originally promulgated and is, therefore, proposing them for readoption at this time. Due to the expiration of the rules at N.J.A.C 10A:16, the rules are proposed as new rules, but since the expiration is so recent the changes are being treated as amendments to the recently expired text.

Subchapter 1 provides the purpose and the scope of the chapter, definitions of words and terms used, and a list of forms that are utilized in the medical and health service areas. Proposed amendments to N.J.A.C. 10A:16-1.1 will delete paragraph (a)9, "Executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3," because this purpose has been moved to N.J.A.C. 10A:23-1.1. Medical Unit Annex has been changed to Special Medical Unit and two new purposes have been added at paragraphs (a)9 and (a)11. The definition of "formulary" at N.J.A.C. 10A:16-1.3 has been deleted since this term is not used within the chapter. The proposed amendment at N.J.A.C. 10A:16-1.3 renames Annex Classification Committee as Special Medical Unit Classification Committee (S.M.U.C.C.) and renames Medical Unit Annex as Special Medical Unit. These names were amended within Subchapter 11, effective April 4, 1988, see 20 N.J.R. 810(a). The definition of Special Medical Unit has also been redefined as any unit within the New Jersey Department of Corrections designated for the assignment of inmates with chronic illnesses. The proposed amendment to N.J.A.C. 10A:16-1.4 changes the incorrect Form cited at paragraph (a)3 from DMH-H to DMH-8, and adds Forms 301-VII through 301-XI, and Form 980-I to subsection (b). There is a new subsection (c) which explains where Form "Petition for Executive Clemency" can be obtained.

Subchapter 2 provides the rules for the provision of medical services to inmates assigned to the correctional facilities within the Department of Corrections. The proposed amendments add minor changes in language for the purpose of clarification. The title of Health Services Coordinator has been changed to Health Services Supervisor. N.J.A.C. 10A:16-2.1 has been rewritten in order to clarify and provide more specificity as to the medical care provided to inmates. A proposed amendment to N.J.A.C. 10A:16-2.3(a) has been added to require that the Health Services Unit be informed as to who is administratively and who is clinically responsible for each correctional facility's medical services and/or program. N.J.A.C. 10A:16-2.3(b) has been rewritten in order to clarify the Chief Physician's responsibilities of treating conditions outlined in N.J.A.C. 10A:16-2.1. A new subsection (c) has been added to allow consultants to conduct peer review. For the sake of clarity, the Department of Corrections proposes that the text at N.J.A.C. 10A:16-2.4, Licensure, be repealed and new language adopted in order to incorporate the numerous changes in language and organization of material. The new language specifies types of licenses/certificates required, gives more responsibility to the correctional facilities, and deletes requirements which are now covered by State law. An amendment to N.J.A.C. 10A:16-2.5 adds residents to the persons who might be utilized within the Department of Corrections. The words "must receive," when used in N.J.A.C. 10A:16-2.5(a), have been changed to "shall obtain." N.J.A.C. 10A:16-2.6(a) has been made discretionary by the use of the terms "may" and "deemed necessary." A proposed amendment to N.J.A.C. 10A:16-2.7 changes the use of the word restrictive to restricted in the subtitle. At N.J.A.C. 10A:16-2.9, language has been simplified at paragraph (a)1. For the sake of clarity, the Department of Corrections proposes that the text at N.J.A.C. 10A:16-2.11, Medical examinations, be repealed and new language adopted in order to incorporate the numerous changes in language, organization of material and policies. Changes made specify different timelines for routine complete physical examinations, when initial history and physical examinations should be done, and under what conditions a correction officer can be present during a medical examination of an inmate of the opposite sex. The section heading of N.J.A.C. 10A:16-2.12 was amended. The requirement of medical examination at N.J.A.C. 10A:16-2.12(a) has been made discretionary by the use of the term "may." The proposed amendment at N.J.A.C. 10A:16-2.12(b) clarifies when food handlers must be given medical examinations. In order to incorporate new regulations for destroying medical wastes, the last sentence in N.J.A.C. 10A:16-2.13(b) has been deleted and rewritten as subsection (c). N.J.A.C. 10A:16-2.13(c)

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has been recodified as subsection (d). The Department of Corrections proposes that the text in N.J.A.C. 10A:16-2.14 be repealed and new language adopted in order to incorporate the numerous changes in language, organization of material and policies. The new language specifies that the Chief Physician or the O.I.S.S. Director of Medical Services shall approve the contents of the first aid kits, and that the correctional facility staff person administratively responsible for the management of the medical services and/or program shall be responsible for overseeing the monthly inspections and restocking of the first aid kits and for developing written procedures pertaining to such. N.J.A.C. 10A:16-2.15(d) has been amended to require that copies of all reports submitted to the New Jersey Department of Health shall be sent to the O.I.S.S. Health Services Unit. A proposed amendment to N.J.A.C. 10A:16-2.16(a) specifies that all prosthetic devices must be approved by the physician. An amendment at N.J.A.C. 10A:16-2.17 adds "home confinement" to the subsection heading and to the text. N.J.A.C. 10A:16-2.18(a)1 and 2 have been amended to read "Initial intake medical history" and "Initial intake physical examination." A proposed amendment at N.J.A.C. 10A:16-2.18(c) requires physicians and health care providers to use a name stamp. N.J.A.C. 10A:16-2.18(h) has been amended to include that inmate medical records be released in accordance with N.J.A.C. 10A:22-2, the subchapter regarding release of inmate records. A new subsection (i) has been added to N.J.A.C. 10A:16-2.18 which requires that computerized medical records shall be utilized and maintained according to procedures established by the Bureau of Management Information Systems, Division of Policy and Planning. N.J.A.C. 10A:16-2.20(c) has been rewritten to clarify what form to use when requesting to conduct a research project. A new subsection (d) has been added which states that the Commissioner shall retain the final review authority in all research projects. For the sake of clarity, the Department of Corrections proposes that the text at N.J.A.C. 10A:16-2.21(a) be repealed and new language adopted in order to explain how monthly and annual reports are to be prepared.

Subchapter 3 provides the rules for the provision of dental services to inmates assigned to correctional facilities within the Department of Corrections. A proposed amendment to 3.4 changes the word restrictive to restricted in the subtitle. N.J.A.C. 10A:16-3.4(b) has been rewritten to require that an approval for rule exemption (N.J.A.C. 10A:1-2.7) shall be obtained before any correctional facility may use an inmate to perform or assist in direct or indirect dental care and that the specific duties the inmate is to perform or assist with must be delineated. A cross reference has been added at N.J.A.C. 10A:16-3.19(b).

Subchapter 4 provides the rules for the provision of psychological services to inmates assigned to correctional facilities within the Department of Corrections. The title of Chairperson has been changed to the Director of Psychology throughout the text in N.J.A.C. 10A:16-4. A proposed amendment at N.J.A.C. 10A:16-4.1(b) requires that the O.I.S.S. Director of Psychological Services be a New Jersey licensed psychologist. The incorrect citation at N.J.A.C. 10A:16-4.4(c) has been changed from (c) to (b) and reference to the Chairperson changed to Director of Psychology. At N.J.A.C. 10A:16-4.4(j), the title of Special Assistant for Legal Affairs, Office of the Deputy Commissioner has been changed to Regulatory Officer, Division of Policy and Planning. A proposed amendment to N.J.A.C. 10A:16-4.5(d) has been added to require the psychological department manual to have procedures as required by N.J.A.C. 10A:16-12, Suicide. At N.J.A.C. 10A:16-4.7, a cite to a more specific applicable rule has been added. For the sake of clarity, the Department of Corrections proposes that the text in N.J.A.C. 10A:16-4.8(a) and (b) be repealed and new language adopted in order to explain how monthly and annual reports are to be prepared.

Subchapter 5, contains rules for obtaining informed consent to perform certain medical procedures and the procedures to be followed for application for guardianship of an adult inmate. N.J.A.C. 10A:16-5.1(e) has been amended to require the O.I.S.S., Health Services Unit Supervisor to be notified if there is doubt as to the inmate's mental capacity to make an informed decision. The Department of Corrections proposes that the text in N.J.A.C. 10A:16-5.6 be repealed and new language adopted requiring adherence to the New Jersey Court Rule 4:86-12, Special Medical Guardianship. At N.J.A.C. 10A:16-5.7(b), the title of Special Assistant for Legal Affairs, Office of the Deputy Commissioner has been changed to Regulatory Officer, Division of Policy and Planning, and the word "legal" has been deleted since it appears to be in conflict with Executive Order Number 6(1990), which established that legal review can only be done by the State Attorney General's office.

Subchapter 6 provides an outline of services that are offered to pregnant inmates to include services that assist the pregnant inmate in making the decision to continue or to terminate the pregnancy, and services that assist in placement of infants.

Subchapter 7 provides rules to be followed in the notification of next of kin in the event of an inmate's critical illness or death; the claiming of bodies of deceased inmates, the burial or cremation of unclaimed bodies, and the distribution of money and personal belongings of deceased inmates. N.J.A.C. 10A:16-7.2(a) has been amended to add the medical examiner's officer as a place of contact for persons claiming the body of a deceased inmate.

Subchapter 8 provides the guidelines for applying for medical clemency. Since it is the Superintendent, not the Director of Medical Services, who makes the recommendation regarding the medical clemency petition, the words "and recommendations" have been deleted from N.J.A.C. 10A:16-8.5(a). N.J.A.C. 10A:16-8.5(d) has been changed to reflect that the requirements are related to insuring that the inmate is getting medical care. All references to SPB-3A have been deleted since that reference number is no longer used.

Subchapter 9 establishes the policy that donation of blood by inmates is prohibited and that there shall be no exceptions to this prohibition.

N.J.A.C. 10A:16-10, Lethal Injection, which provides the rules for executing persons sentenced to death, is being recodified as a separate new subchapter 2 at N.J.A.C. 10A:23. Subchapter 1, Introduction, has been added to the new chapter. This recodification is necessary since subchapter 10 does not fit in logically with N.J.A.C. 10A:16. Subchapter 2 contains the rules recodified from N.J.A.C. 10A:16-10. All references to Health Services Coordinator were changed to Health Services Supervisor. Subchapter 10 shall be reserved for future medical rules.

Subchapter 11 provides rules for the operation of all Special Medical Units within the Department of Corrections.

Subchapter 12 provides procedures to govern the identification, placement and monitoring of inmates who are deemed by qualified staff persons to be at risk for suicide. The title of Director of Professional Services has been changed to Director of Psychology throughout N.J.A.C. 10A:16-12. A proposed amendment to N.J.A.C. 10A:16-12.4(c) adds psychologist to the list of persons who can advise that an inmate be placed on close observation or constant observation. At N.J.A.C. 10A:16-12.10(a), the Director of Psychology has been added to the list of persons who may order the inmate released from suicide watch. N.J.A.C. 10A:16-12.14 has been deleted since this section is now incorporated into N.J.A.C. 10A:16-1.4(b).

Subchapter 13 establishes the policies and procedures for providing mental health services to all inmates assigned to State owned or operated correctional facilities who are 18 years of age and older or juveniles who have been assigned adult status by the sentencing court.

Social Impact

The readoption with amendments of these rules and the recodification of N.J.A.C. 10A:16-10 to N.J.A.C. 10A:23-2 will continue to ensure that medical or health services and any related medical concerns or procedures are provided to inmates at a standard that is equal to the minimum standard for local health departments to protect the public health of all community residents.

Economic Impact

The proposed readoption of Chapter 16 with amendments and proposed recodification of N.J.A.C. 10A:16-10 to N.J.A.C. 10A:23-2 should not result in any new economic impact because additional funding is not required to implement or maintain these rules. The financial resources to provide these services and/or procedures are obtained by the Department of Corrections through established State budgetary process.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed readoption with amendments and recodification 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 with amendments and recodification impacts on inmates and the New Jersey Department of Corrections and has no effect on small businesses.

Full text of the expired rules proposed as new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10A:16.

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Full text of the rules proposed for recodification may be found at N.J.A.C. 10A:16-10.1 through 10.7.

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

10A:16-1.1 Purpose

(a) The purpose of this chapter is to establish guidelines for:

1.-7. (No change.)

8. Applying for medical clemency[.];

9. [Executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3; and] **Governing the identification, placement and monitoring of inmates who are deemed to be at risk for suicide;**

10. Assigning inmates to the **Special** Medical Unit [Annex.]; **and**

11. Providing mental health services.

10A:16-1.3 Definitions

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

"[Annex] **Special Medical Unit** Classification Committee **(S.M.U.C.C.)" means a group of Office of Institutional Support Services and Special** Medical Unit [Annex] staff persons who provide classification and program monitoring services for inmates assigned to the **Special** Medical Unit [Annex].

. . .

["Formulary" means a book or listing containing the names of pharmaceutical substances and their uses.]

. . .

Special Medical Unit [Annex]" means [a unit, on the grounds of the New Jersey State Prison, that is] **any unit within the New Jersey Department of Corrections** designated for the assignment of inmates with chronic illnesses.

. . .

10A:16-1.4 Forms

(a) The following forms related to Medical and Health Services are printed by the Bureau of State Use Industries **(DEPTCOR)** and each correctional facility shall purchase a supply of these forms by contacting the Bureau[.]**:**

1.-2. (No change.)

3. [DMH-H] **DMH-8** Oral Diagnosis Card.

(b) The following forms related to Medical and Health Services shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1.-4. (No change.)

5. 301-VII Suicide Watch Notice;

6. 301-VIII Daily Psychological Suicide Monitoring Report;

7. 301-IX Change in Type of Observation;

8. 301-X Daily Correction Officer Suicide Watch Report;

9. 301-XI Release from Suicide Watch;

10. 301-XII Inmate Request for Copies of Medical Records;

[5.]**11.** 306-I Consent of Medical, Dental and Surgical Treatment; [and]

[6.] **12.** 520-I Inmate-Therapist Confidentiality[.;] **and**

13. 980-I Research Project Request.

(c) The following form related to medical clemency is printed by the New Jersey State Parole Board and is available by contacting the State Parole Board;

1. Petition For Executive Clemency.

10A:16-2.1 Medical services provided

(a) Medical services [within the Department of Corrections shall] **will** be provided [in the disciplines of medicine, surgery and psychiatry.] **for the following:**

1. Emergency and life threatening/limb threatening conditions;

2. Accidental or traumatic injuries occurring while incarcerated;

3. Acute illnesses;

4. Chronic conditions which are considered life threatening or if untreated would likely lead to a significant loss of function; and

5. Any other medical condition which the treating physician believes will cause deterioration of the patient's health or uncontrolled suffering.

(b) Primary care shall be provided by correctional facility physicians, nurses, technicians, and other support staff. Specialty care may be arranged and provided according to community medical standards and N.J.A.C. 10A:16-2.6.

(c) There shall be no cosmetic or elective surgery provided.

10A:16-2.2 Director of Medical Services

(a) The Director of Medical Services of the Department **of Corrections** serving under the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor**, shall be responsible for formulating directives and policies for the operation of the medical programs within the Department.

(b) (No change.)

10A:16-2.3 Administration of medical services and program

(a) Each correctional facility shall designate a staff member who will be administratively and/or clinically responsible for the management and direction of the **correctional** facility's medical services and/or program. **The Office of Institutional Support Services (O.I.S.S.), Health Services Unit, shall be notified as to who is administratively and who is clinically responsible for the correctional facility's medical services and/or program.**

[(b) In all correctional facilities, a physician shall be designated Chief Physician and he or she shall be clinically responsible for the correctional facility's medical program. The Chief Physician shall be responsible for insuring that medical conditions which existed prior to incarceration or developed during incarceration are treated.]

(b) The Chief Physician shall be responsible for insuring that medical conditions as described in N.J.A.C. 10A:16-2.1 are treated.

(c) A consultant(s) may be employed to conduct peer review as deemed necessary by the O.I.S.S. Health Services Unit.

10A:16-2.4 Licensure

[(a) All consulting physicians and allied health staff shall maintain valid and current licenses or certifications, as appropriate, to practice within their respective disciplines in the State of New Jersey.

(b) An applicant with exemption licensure shall not be considered for employment.

(c) The Personnel Officer of a correctional facility shall be responsible for forwarding the license of each medical staff member to the Office of Institutional Support Services (O.I.S.S.) Health Services Coordinator immediately after the initial decision to hire a medical staff person.

(d) The Personnel Officer of the facility shall also forward copies of renewal licenses to the O.I.S.S. Health Services Coordinator within fourteen days of renewal.

(e) Copies of the licenses required by this section shall be maintained both within the staff member's personnel file at the correctional facility and at the Office of the O.I.S.S. Health Services Unit.

(f) The O.I.S.S. Health Services Coordinator shall develop a license expiration list which shall be utilized, if necessary, to request copies of renewed licenses from the medical staff.

(g) All persons taking dental x-rays shall be licensed by the State of New Jersey in accordance with N.J.S.A. 45:25-1 et seq.

(h) A physician may not begin employment until the O.I.S.S. Health Services Unit has verified the authenticity of his or her license.]

(a) All consulting physicians and medical service providers shall maintain valid and current licenses or certifications, as appropriate, to practice within their respective disciplines in the State of New Jersey.

(b) The Personnel Officer of a correctional facility shall be responsible for forwarding the licenses and certifications of each medical service provider to the Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor immediately after the initial decision to hire a medical staff person.

(c) The following physician's licenses and certificates must be forwarded to the O.I.S.S. Health Services Supervisor:

1. The physician's New Jersey license to practice medicine;

2. The physician's Drug Enforcement Administration Federal Narcotics License; and

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3. The physician's State of New Jersey Consumer Health Service Certificate of Registration for Controlled Dangerous Substances (C.D.S.).

(d) Copies of the licenses and certifications required by this section shall be maintained with the medical service provider's personnel file at the correctional facility.

(e) The Personnel Officer and/or designated administrator of the medical services and/or program shall report all disciplinary action, license suspension, and/or disbarments to the O.I.S.S. Health Services Unit Supervisor and other State regulatory bodies, as required by law.

(f) All persons taking x-rays shall be licensed by the State of New Jersey in accordance with N.J.S.A. 45:25-1 et seq.

(g) The final approval to hire physicians and nurses may be granted only with credential review approval by the Health Services Unit.

(h) It shall be the responsibility of the medical service provider to provide proof of license(s) and certification(s) renewal to the Personnel Officer. The designated administrator of the medical services and/or program shall conduct an annual review of license and certification currency.

10A:16-2.5 Medical students [and], interns, **and residents**

(a) Any program to utilize students [or], interns, **or residents** in health care delivery to inmates **within the Department's correctional facilities** [must receive] **shall obtain** the prior written approval of the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor**.

(b) The Chief physician of the correctional facility shall be responsible for the overall supervision of any medical student [or], intern, **or resident**.

(c) All medical students [and], interns, **or residents** shall be directly supervised by a licensed or certified medical professional.

(d) The correctional facility shall formulate written policy and procedures which limit student [or], intern, **or resident** services to a level commensurate with the program training goals.

10A:16-2.6 Use of community facilities and consultants

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator shall] **Unit may** contract with community medical facilities to provide inpatient and outpatient hospital care when [in-house treatment is unavailable] **deemed necessary**.

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

10A:16-2.7 [Restrictive] **Restricted** use of inmates as employees in medical services

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

10A:16-2.9 Correctional facility infirmary care

(a) (No change.)

(b) Written policies and procedures for infirmary care shall be developed which include, but are not limited to, requirements that:

1. A description [of the scope] of infirmary care services be prepared;

2.-6. (No change.)

10A:16-2.11 Medical examinations

[(a) A preliminary history and physical examination shall be made on each new admission within 24 hours which shall include, but is not limited to:

1. A medical history;
2. A physical examination;
3. A pregnancy test for female inmates; and
4. Any test determined necessary by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) A preliminary history and physical examination will not be done on inmates who are transferred from other correctional facilities within the Department of Corrections.

(c) Inmates 50 years of age or over and inmates with known medical problems shall be given annual physical examinations. All other inmates shall receive complete physical examinations biennially.

(d) Each inmate shall be given a physical examination and clinical evaluation not more than two calendar weeks prior to release from the correctional facility. A summary report of findings shall be prepared, signed and dated by the physician. This summary shall include a resume of any significant medical problems encountered during the inmate's incarceration, and it shall be made part of the inmate's medical record.

(e) No correction officer of the opposite sex shall be present during a physician's medical examination of an inmate. Female attendants shall always be present during the physical examination of female patients by a male physician.]

(a) At a Department of Corrections' reception facility, an initial history and physical examination shall be made on each new admission within 24 hours which shall include, but is not limited to:

1. A medical history;
2. A physical examination;
3. A pregnancy test for female inmates; and
4. Any test determined necessary by the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) In the event a Department of Corrections' reception facility is bypassed, the receiving correctional facility shall perform the initial history and physical examination outlined in (a) above.

(c) An initial history and physical examination will not routinely be done on inmates who are transferred from other correctional facilities within the Department of Corrections.

(d) Routine complete physical examinations for inmates without known serious medical problems shall be offered to all inmates, if reasonably feasible, in accordance with the following schedule:

1. Inmates 50 years of age or over, once every two years; and
2. Inmates under 50 years of age, once every four years.

(e) Each inmate shall be offered a physical examination and clinical evaluation not more than two calendar weeks prior to scheduled release from the correctional facility. A summary report of findings shall be prepared, signed and dated by the physician. This summary shall include any significant medical problems encountered during the inmate's incarceration, and it shall be made part of the inmate's medical record.

(f) Unless there are emergent circumstances or an unusual security problem is present, no correction officer of the opposite sex shall be present during a physician's medical examination of an inmate. A female attendant shall always be present during the medical examination of a female patient by a male physician.

10A:16-2.12 [Athletes and food] **Food** handlers **and special activity** medical examinations

(a) If deemed appropriate, medical examinations [shall] **may** be given to inmates prior to participation in **certain** sports **such as boxing matches**.

(b) All food handlers shall be given a medical examination[, to the extent that the Superintendent and medical staff may require, to ensure cleanliness and freedom from communicable diseases] **prior to their beginning food service job duties, and subsequently, as deemed necessary**.

10A:16-2.13 Medical facilities and equipment

(a) (No change.)

(b) Hypodermic needles and syringes shall be of the single service variety and their control shall be in strict compliance with N.J.S.A. 24:21-5. [Hypodermic needles and syringes shall be destroyed immediately after use and in the manner described in N.J.S.A. 2A:170-17.]

(c) All "sharps" such as hypodermic needles, syringes, and scalples shall be destroyed in the manner described in N.J.S.A. 2A:170-17 or disposed of in accordance with medical waste rules of N.J.A.C. 10A:16-7:26-3A.

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

10A:16-2.14 First aid kits

[(a) First aid kit(s) and equipment shall be available in designated areas of the correctional facility based on need. The Chief Physician of the correctional facility or the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services, in the case of community based facilities, shall approve the:

1. Contents of kits;
2. Numbers of kits; and

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3. Locations of kits.

(b) Written procedures for the use and monthly inspection of all kits shall be established. All kits shall be numbered and a record shall be maintained of:

1. Location;
2. Contents; and
3. Dates of inspections.

(c) First aid kits shall contain material in sufficient amounts to meet the emergency needs of the population where the first aid kits are located.

(d) The contents shall be arranged so that the desired package can be found quickly without unpacking the entire kit.

(e) The materials in the kits shall be wrapped so that unused portions do not become contaminated when handled.]

(a) First aid kit(s) and equipment shall be available in designated areas of the correctional facility based on need. The Chief Physician of the correctional facility or the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services, in the case of community based facilities, shall approve the contents of the first aid kits.

(b) The correctional facility staff member administratively responsible for the management of the medical services and/or program shall be responsible for overseeing the monthly inspection and restocking of the first aid kits and for developing written procedures pertaining to such.

10A:16-2.15 Reportable diseases

(a) (No change.)

(b) Information on reportable diseases shall also be available by contacting the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor.**

(c) (No change.)

(d) Copies of [these] **all** reports **submitted to the New Jersey Department of Health** shall be sent to the O.I.S.S. Health Services [Coordinator] **Unit.**

10A:16-2.16 Prosthetic devices

(a) Medical services include the provision of prosthetic devices[, including:] **which must be approved by the physician. Examples of prosthetic devices are as follows:**

1.-4. (No change.)

10A:16-2.17 Satellite units [and], community based facilities **and home confinement**

Written policy and procedure shall specify the provision of medical services (nonemergency and emergency illness or injury) for inmates housed at correctional facility satellite units [and], community based facilities, **and home confinement.**

10A:16-2.18 Medical records

(a) A complete medical record shall be maintained for each inmate to accurately document all health care services provided throughout the inmate's period of incarceration. This record shall contain the following items:

1. [Completed receiving screening] **Initial intake medical history;**
2. [Physical examination forms] **Initial intake physical examination;**

3.-11. (No change.)

(b) (No change.)

(c) Each patient encounter shall be recorded in the appropriate section of the medical record. Each entry in the medical record shall be written in ink[,] or typed, [and] signed, and **clearly** dated by the appropriate health care staff. All non-physician medical staff entries shall be co-signed by the physician or health care provider. **In addition to a physician or health care provider's signature, a name stamp must be used.**

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

(h) Confidentiality of inmate records shall be maintained **and records released** in accordance with N.J.A.C. 10A:22-2 [RECORDS].

(i) Computerized medical records shall be utilized and maintained according to data processing procedures established by the Bureau of Management Information Systems, Division of Policy and Planning.

10A:16-2.20 Medical research or experimentation prohibited

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

(c) [Nonmedical] **Any person or agency who wishes to conduct nonmedical,** nonpharmaceutical and noncosmetic research projects shall [be conducted in accordance with N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT] **complete and submit Form 980-I RESEARCH PROJECT REQUEST to the Superintendent or Unit Administrator.**

(d) The Commissioner shall retain the final review authority on all research projects.

10A:16-2.21 Reporting responsibilities of all medical services

[(a) Monthly and annual reports shall be prepared and submitted in accordance with 10A:21 REPORTS.

(b) A copy of each medical program's monthly and annual report to the Superintendent shall be submitted to the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services for purposes of information and program review.]

(a) Monthly and annual reports shall be prepared and submitted to the correctional facility Superintendent and to the Office of Institutional Support Services (O.I.S.S.) Director of Medical Services.

(b) The monthly and annual reports shall include, but not be limited to, the following:

1. Major developments and highlights;
2. Number of inmates admitted to infirmary or hospital;
3. Number of inmates transferred to St. Francis Unit;
4. Number of inmates transferred to outside hospitals;
5. Types of medical and dental services provided;
6. Special or unusual activities such as x-rays, mass inoculations;
7. Future plans for services;
8. Problem areas;
9. Number of inmates who received controlled medication;
10. Number of inmates taken off controlled medication;
11. Meetings, conferences, workshops, and the like attended by staff;
12. Official visits by government representatives and other community groups;
13. Statistical comparisons with the previous monthly or annual report; and
14. Any information as directed by the correctional facility Superintendent and/or Office of Institutional Support Services (O.I.S.S.) Health Services Unit.

10A:16-3.4 [Restrictive] **Restricted** use of inmates as employees in dental clinics

(a) (No change.)

(b) [Correctional facilities using inmates to perform or assist in direct or indirect patient dental care shall submit a request for a variance in accordance with 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT clearly delineating the specific duties of these inmates]. **An approval for rule exemption (N.J.A.C. 10A:1-2.7) shall be obtained before any correctional facility may use an inmate to perform or assist in direct or indirect dental care. The specific duties the inmate is to perform or assist with must be delineated.**

10A:16-3.19 Dental research

(a) (No change.)

(b) Dental research projects shall be conducted in accordance with [10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT] **N.J.A.C. 10A:16-2.20.**

10A:16-4.1 Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services

(a) (No change.)

(b) The O.I.S.S. Director of Psychology Services shall be **a New Jersey licensed psychologist and shall be** reponsible for:

1.-9. (No change.)

(c) (No change.)

10A:16-4.4 Inmate/therapist confidentiality

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

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(c) When a clinical practitioner receives information concerning the exception categories listed in (c) **(b)** above, he or she shall immediately confer with [his or her Chairperson] **the correctional facility Director of Psychology** to determine whether disclosure is necessary. Relevant considerations, in addition to the information given to the clinical practitioner may include, but are not limited to[;] whether:

1.-5. (No change.)

(d) In any case in which the clinical practitioner and [his or her Chairperson] **the correctional facility Director of Psychology** agree and conclude that the information does not fall within any of the exception categories described in [(c)] **(b)** above, no disclosure need be made.

(e) If the clinical practitioner and [his or her Chairperson] **the correctional facility Director of Psychology** believe that the subject matter falls within one of the exception categories, they shall immediately make this information known to the correctional facility Superintendent, and they shall provide the Superintendent with the facts and background information that are necessary to give the Superintendent a clear understanding of the case.

(f) In any case in which the clinical practitioner and [his or her Chairperson] **the correctional facility Director of Psychology** disagree as to whether disclosure should be made, the staff person who believes that the matter should be disclosed shall notify the Superintendent immediately.

(g)-(i) (No change.)

(j) Questions concerning the interpretation of the policy on inmate/therapist confidentiality shall be addressed to the [Special Assistant for Legal Affairs, Office of the Deputy Commissioner] **Regulatory Officer, Division of Policy and Planning.**

10A:16-4.5 Psychology department manual

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

(d) The psychology manual shall include, but not be limited to:

1.-4. (No change.)

5. Method of reporting results of psychological services; [and]

6. Method of establishing accountability for obtained results[.]; **and**

7. Procedures as required by N.J.A.C. 10A:16-12, Suicide.

10A:16-4.7 Psychological research

Psychological research projects shall be conducted in accordance with [N.J.A.C. 10A:1 ADMINISTRATION, ORGANIZATION AND MANAGEMENT] **N.J.A.C. 10A:16-2.20.**

10A:16-4.8 Reporting responsibilities

[(a) Monthly and annual reports shall be prepared and submitted in accordance with N.J.A.C. 10A:22 RECORDS.

(b) A copy of each monthy and annual report of the Psychology Department to the Superintendent shall be submitted to the Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services for purposes of information and program review.]

(a) Monthly and annual reports shall be prepared and submitted to the correctional facility Superintendent and to the Office of Institutional Support Services (O.I.S.S.) Director of Psychology.

(b) The monthly and annual reports shall include, but not be limited, to the following:

1. Major developments and highlights;

2. Types of psychological services provided;

3. The testing program;

4. Problem areas;

5. Future plans for services;

6. Meetings, conferences, workshops, and the like attended by staff;

7. Official visits by government representatives and other community groups;

8. Statistical comparisons with the previous monthly or annual reports; and

9. Any information as directed by the correctional facility Superintendent and/or Office of Institutional Support Services (O.I.S.S.) Health Services Unit.

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

10A:16-5.1 Express written consent required

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

(e) If there is doubt as to the inmate's mental capacity to make an informed decision, he or she shall be examined by the psychiatrist of the correctional facility and the [Special Assistant for Legal Affairs] **Office of Institutional Support Services (O.I.S.S.) Health Services Supervisor** shall be notified.

10A:16-5.6 [Guardianship] **Special medical guardianship** of adult inmates

[(a) An application for guardianship of an inmate may be submitted to the Attorney General's Office for legal action under the following circumstances:

1. The inmate lacks sufficient mental capacity to make a reasonably informed decision regarding his or her well being; or

2. The inmate is refusing treatment and the medical staff determines that the inmate's condition is or may soon become life threatening; or

3. The inmate is engaging in a hunger strike and the medical staff determines that the inmate's condition is or may become life threatening.

(b) The following information shall be provided to the Attorney General's Office in memorandum form when application is made for guardianship:

1. The name, age, race, height, weight, offense, sentence and parent institution of the inmate;

2. The name and relationship of family member(s) contacted regarding guardianship;

3. The name, address and telephone number of family member(s) agreeing to be appointed guardian;

4. A request, when no family member is available, that the Health Services Unit Supervisor, Office of Institutional Support Services (O.I.S.S.) be appointed guardian when inmates are assigned to the Saint Francis Medical Center or a Special Medical Unit, for a request that the Superintendent of the parent institution be appointed guardian when inmates are assigned to other medical facilities;

5. A letter from the inmate's treating physician which details the history of the inmate's condition, the consequences of treatment refusal and that physician's opinion as to the inmate's competency; and

6. A letter from a psychiatrist which describes the inmate's mental condition and competency.

(c) An examination by the treating physician and the psychiatrist shall be conducted within 20 days prior to the application for guardianship. The date of the most recent examination shall be documented in the physician's respective reports. The physician shall indicate whether they are related, by either blood or marriage, to the inmate.]

The Department of Corrections shall follow the guidelines and procedures set forth by New Jersey Court Rule 4:86-12, Special Medical Guardianship.

10A:16-5.7 Written procedures

(a) (No change.)

(b) These procedures shall be submitted for [legal] review to the [Special Assistant for Legal Affairs, Office of the Deputy Commissioner] **Regulatory Officer, Division of Policy and Planning,** on or before February 15 of each year.

10A:16-7.2 Claiming bodies of deceased inmates

(a) Persons claiming the body of a deceased inmate must contact the hospital where the inmate expired or **appropriate medical examiners office where the body** was taken in order to obtain the release of the body.

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

10A:16-8.2 Petition for medical clemency

(a) (No change.)

(b) The inmate who wishes to apply for Medical Clemency shall obtain and complete Form [SPB-3A] PETITION FOR EXECUTIVE CLEMENCY. The completed Form shall be forwarded to the Superintendent for submission to the **New Jersey** State Parole Board.

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(c) The Superintendent or his or her designee may complete Form [SPB-3A] **PETITION FOR EXECUTIVE CLEMENCY** on behalf of an inmate who is eligible for consideration.

10A:16-8.3 Role of the Superintendent

(a) Upon receipt of a completed Form [SPB-3A] **PETITION FOR EXECUTIVE CLEMENCY,** the Superintendent shall obtain from the Classification Office up-to-date classification material which shall include, but is not limited to:

1.-4. (No change.)

(b) (No change.)

(c) The Superintendent shall send the following to the Deputy Commissioner, Department of Corrections:

1.-2. (No change.)

3. Completed Form [SPB-3] **PETITION FOR EXECUTIVE CLEMENCY;** and

4. (No change.)

10A:16-8.5 Role of the Deputy Commissioner

(a) The Deputy Commissioner, upon receipt of the material outlined in N.J.A.C. 10A:16-8.3(c), shall notify the Office of Institutional Support Services (O.I.S.S.) Health Service [Coordinator] **Supervisor** and request that the O.I.S.S. Director of Medical Services review the inmate's medical status and submit a report of his or her findings [and recommendations].

(b) The Department of Corrections may recommend to the **New Jersey** State Parole Board special conditions that the inmate should be required to meet **to insure that the inmate is getting necessary medical care** if granted Medical Clemency[; for example, whether the inmate must receive cobalt treatments as prescribed by the treating physician].

SUBCHAPTER 10. [LETHAL INJECTION] **(RESERVED)**

Agency Note: N.J.A.C. 10A:16-10, Lethal Injection is recodified as **N.J.A.C. 10A:23-2, Lethal Injection**

10A:16-12.4 Temporary placement on suicide watch

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

(c) The shift commander, the Superintendent or his or her designee, the Director of [Professional Services] **Psychology**, or the Director of Custody Operations may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition and upon the advice of a psychiatrist [or], physician, **or psychologist.**

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

10A:16-12.8 Personal property

(a) The shift commander, after consultation with the Director of [Professional Services] **Psychology** or a designated professional person, shall determine the items of personal property which an inmate on suicide watch is permitted to possess in the inmate's cell. This decision shall depend on the inmate's:

1.-3. (No change.)

10A:16-12.10 Release from suicide watch

(a) The Medical Director [or], psychiatrist, **or Director of Psychology** may order the inmate released from suicide watch by filling out FORM 301-XI RELEASE FROM SUICIDE WATCH.

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

[10A:16-12.14 Forms

(a) The following forms related to suicide watch shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 301-VII SUICIDE WATCH NOTICE;

2. 301-VIII DAILY PSYCHOLOGICAL SUICIDE MONITORING REPORT;

3. 301-IX CHANGE IN TYPE OF OBSERVATION;

4. 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT; and

5. 301-XI RELEASE FROM SUICIDE WATCH.]

CHAPTER 23
LETHAL INJECTION

SUBCHAPTER 1. INTRODUCTION

10A:23-1.1 Purpose

The purpose of this chapter is to establish guidelines for executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3.

10A:23-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections.

10A:23-1.3 Definitions

The following term, when used in this chapter, shall have the following meaning.

"Capital Sentence Unit (C.S.U.)" means the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3, are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

SUBCHAPTER 2. LETHAL INJECTION

Recodify 10A:16-10.1 through 10.7 as **10A:23-2.1 through 2.7.** (No change in text.)

[10A:16-10.8] **10A:23-2.8** Operational staff in attendance at an execution

(a) Two physicians shall be in attendance for an execution.

1. (No change.)

2. The second physician shall be selected from a list of volunteers from correctional facilities other than the New Jersey State Prison.

i. The second physician shall be notified in writing, at least five days prior to the scheduled execution, by the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor** through the correctional facility Superintendent.

ii. In the event no facility physician volunteers, or is available to attend the execution, the O.I.S.S. Health Services [Coordinator] **Supervisor** shall contract with physicians in the community to perform this service.

(b) One Registered Nurse (team Nurse) from the same correctional facility as the selected physician, if feasible, shall be assigned by the O.I.S.S. Health Services [Coordinator] **Supervisor.**

(c) One Certified Intravenous Therapist shall be hired on a consultant basis by the O.I.S.S. Health Services [Coordinator] **Supervisor.** The Therapist shall provide proper identification documents to the New Jersey State Prison Superintendent at least 48 hours prior to the scheduled execution.

(d) (No change.)

[10A:16-10.9] **10A:23-2.9** Medical supplies and equipment

(a) The Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor** and Medical Director of the Department **of Corrections** shall prepare a list of medical supplies and equipment to be utilized at each execution. These items shall be purchased at least five working days prior to the scheduled execution and shall be set up under the supervision of the Medical Director.

(b) (No change.)

[10A:16-10.10] **10A:23-2.10** Preparation of the condemned inmate

Medical and custody preparation of the condemned for execution shall be initiated and completed in accordance with written operational procedures developed by the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor** and the New Jersey State Prison Superintendent or his or her designee.

[10A:16-10.11] **10A:23-2.11** Staff training

(a) During the 48 hour period preceding an execution, the Office of Institutional Support Services (O.I.S.S.) Health Services [Coordinator] **Supervisor** shall arrange for training all medical personnel in execution procedures.

(b) (No change.)

[10A:16-10.12] **10A:23-2.12** Execution suite

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

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(c) The executioner's room shall contain equipment, supplies and medications as are specified in N.J.A.C. [10A:16-10.9] **10A:23-2.9.**

Recodify 10A:16-10.13 through 10.21 to **10A:23-2.13 through 2.21.** (No change in text.)

LABOR

(a)

DIVISION OF WORKERS' COMPENSATION

Investigation of Discrimination Complaints Appeal Procedures

Proposed Amendment: N.J.A.C. 12:235-9.4

Authorized By: Oliver Quinn, Deputy Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); and 34:15-64.

Proposal Number: PRN 1992-200.

Submit comments, in duplicate, by June 3, 1992 to both:
Linda Flores, Special Assistant
External and Regulatory Affairs
Department of Labor
CN 110
Trenton, New Jersey 08625-0110; and
Mark E. Litowitz, Director and Chief Judge
Division of Workers' Compensation
Department of Labor
CN 381
Trenton, New Jersey 08625-0381

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 34:15-39.1 and N.J.A.C. 12:235-9, the Division of Workers' Compensation (Division) is responsible for investigating discrimination complaints filed by individuals who believe they were discriminated against by their employers, because they claimed or attempted to claim Workers' Compensation benefits, or because they testified or are about to testify in a Workers' Compensation proceeding. The proposed amendment sets forth the procedures to be followed in the event either the complainant or the employer wishes to contest the decision of the Director or his or her designee.

Specifically, the proposed amendment provides for an informal Departmental hearing procedure which can be requested by the complainant or the employer to contest the decision of the Director or his or her designee regarding a discrimination complaint. The proposed amendment sets forth a time schedule for requesting a hearing, notifying the parties, and rendering a decision.

Additionally, the proposed amendment provides for a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:141B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, should either party wish to contest the decision of the Departmental Hearing Officer.

Social Impact

The Department anticipates that this proposed amendment will have a positive impact on employers and complainants involved in alleged discriminatory situations, as it allows both sides an avenue of appeal should they be dissattisfied with the determination of the Division. The proposed amendment will also establish a long-needed formal process for requesting and conducting hearings on discrimination complaints.

Economic Impact

The Department does not expect any costs to be associated with these hearings, as they are conducted only at the request of either party, and there is no requirement that the adversary party appear. There will be some increased administrative costs to the Division of Workers' Compensation, but it is expected that these costs will be absorbed in the existing budget.

Regulatory Flexibility Analysis

The proposed amendment does not impose any reporting or recordkeeping requirements. It does impose compliance requirements on complainants and employers electing to appeal a discrimination determination made by the Director or his or her designee. Some of these employers may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are that a written request for an informal appeal hearing be filed within 10 days from the receipt of the determination, and that a written request for a formal appeal hearing be filed within 10 days after receipt of the informal appeal decision. Small business employers will incur some administrative costs in the preparation of the written requests; representation by counsel, though permitted, is not required. In order to ensure a fair and efficient appeals process, no lesser requirements or exemptions can be provided based on the employers' business size.

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

12:235-9.4 Investigation of discrimination complaints**; appeal procedures**

(a) Upon receipt of a complaint for discrimination, the Division shall conduct an investigation and forward the complaint and results of the investigation to the Director within 90 days.

(b) The Director or his or her designee, upon review of the investigative report, shall make a determination as to whether discrimination exists. This determination shall be forwarded to the complainant and the employer within 30 days of the receipt of the investigative report.

(c) Any individual who wishes to appeal the determination of the Director or his or her designee may request an informal administrative hearing.

1. The individual shall submit to the Division a written request for a hearing within 10 days from the date the individual receives the determination of the Director or his or her designee.

2. The Department shall conduct the hearing within 20 days from the date the Division receives the request for an informal hearing.

3. The Division shall notify both parties in writing as to the time and location of the hearing not less than seven days prior to the hearing.

4. The parties may be represented by counsel or any other representative, or may represent himself or herself at the hearing.

5. The parties may present evidence, call witnesses and cross-examine witnesses at the hearing.

6. The Division shall mail to the parties the written decision of the Hearing Officer within 20 days from the date of the hearing.

(d) Any individual who disagrees with the decision of the Hearing Officer may submit to the Division a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the date of the receipt of Hearing Officer's decision.

PUBLIC UTILITIES

(b)

BOARD OF REGULATORY COMMISSIONERS

Administrative Orders

Proposed New Rules: N.J.A.C. 14.11

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. 48:2-12, 48:2-13, 48:2-14, 48:3-9, 48:10-2 et seq. and 48:17-14.1.

BRC Docket Number: AX92020133.

Proposal Number: PRN 1992-173.

Submit written comments by June 3, 1992 to:
Chrys Wilson, Secretary
Board of Regulatory Commissioners
44 South Clinton Avenue
CN 350
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the provisions of N.J.A.C. 14:11, Administrative Orders, expired on January 27, 1992. The rules had served over an extended time in the regulation of public utilities subject to the jurisdiction of the Board of Regulatory Commissioners (formerly the Board of Public Utilities) (Board) in such areas as petitions for relief, reporting of accidents, utility tariffs and the construction, operation and maintenance of pipelines for the transmission of natural gas within and through the State of New Jersey.

The rules proposed herein are identical to the expired rules which can be found in the New Jersey Administrative Code at N.J.A.C. 14:11, except for those changes which are specifically identified herein below. The proposed changes are, for the most part, to correct previous typographical errors, to conform to current rule form, to reflect the Board's designation as the Board of Regulatory Commissioners, and to eliminate references to solid waste operations as the regulation of that industry is no longer within the jurisdiction of the Board pursuant to Reorganization Plan No. 002-1991 effective August 19, 1991. The Board would further note that the proposed changes to N.J.A.C. 14:11-5.7, Accident reports privileged, set forth herein below, are intended to bring that rule into conformance with the existing case law of this State. *Irval Realty, Inc. v. New Jersey Public Utility Commissioners,* 61 *N.J.* 366 (1972).

The remaining rules are necessary in that they relate directly to the provision of safe, adequate and proper service by New Jersey utilities. Thus, although this chapter is proposed as a new rulemaking, it continues procedures previously in effect.

The substantive provisions of the rules proposed to be adopted by the Board are summarized as follows:

N.J.A.C. 14:11-1.1 pertains to the approval of privileges or franchises granted by municipalities.

N.J.A.C. 14:11-1.2 through 1.4 are reserved.

N.J.A.C. 14:11-1.5 pertains to information to be included in a request for the approval of a municipal consent which has a limited term of years.

N.J.A.C. 14:11-1.6 pertains to matters involving proposed security issues.

N.J.A.C. 14:11-1.7 pertains to reports regarding approved issuances of securities.

N.J.A.C. 14:11-1.8 and 1.9 are reserved.

N.J.A.C. 14:11-1.10 pertains to the reporting of threatened interruptions of service.

N.J.A.C. 14:11-1.11 is reserved.

N.J.A.C. 14:11-1.12 pertains to proposed changes in rates of depreciation.

N.J.A.C. 14:11-1.13 sets out the requirements to be included in a utility filing with the Board providing for an adjustment to rates for a utility service or product based upon changes in the cost of a basic raw material.

N.J.A.C. 14:11-1.14 pertains to telegraph company registration.

N.J.A.C. 14:11-1.15 pertains to petitions for the sale or lease of property.

N.J.A.C. 14:11-1.16 and 1.17 are reserved.

Subchapters 2, 3 and 4 are reserved.

N.J.A.C. 14:11-5.1 pertains to the scope of the subchapter dealing with the reporting of accidents.

N.J.A.C. 14:11-5.2 and 5.3 are reserved.

N.J.A.C. 14:11-5.4 defines what constitutes a reportable accident and provides for the recording and reporting thereof.

N.J.A.C. 14:11-5.5 pertains to corrective measures and recommendations of the utility following an accident.

N.J.A.C. 14:11-5.6 pertains to the numbering of accident reports.

N.J.A.C. 14:11-5.7 pertains to the use of accident reports.

Subchapter 6 is reserved.

N.J.A.C. 14:11-7.1 sets forth the scope of the subchapter dealing with utility tariffs.

N.J.A.C. 14:11-7.2 pertains to the filing and effectiveness of utility tariffs relating to the rates, charges and conditions of utility services.

N.J.A.C. 14:11-7.3 pertains to the arrangement and form of filed tariff sheets.

N.J.A.C. 14:11-7.4 pertains to the obligation of a utility to assist its customers in the selection of the rate schedule most favorable for their individual requirements.

N.J.A.C. 14:11-7.5 contains forms which are illustrative of the requirements of the subchapter.

N.J.A.C. 14:11-7.6 through 7.9 are not being proposed as new rules, but are being allowed to remain expired because they pertain to solid waste regulation which is no longer under the jurisdiction of the Board.

N.J.A.C. 14:11-8.1 sets forth the scope of the subchapter dealing with the construction, operation and maintenance of natural gas transmission lines.

N.J.A.C. 14:11-8.2 provides that all pipelines with an internal gas pressure in excess of 125 pounds per square inch gauge (psig) must comply with the applicable provisions of the American Standard Code for Pressure Piping.

N.J.A.C. 14:11-8.3 pertains to the classification of gas pipelines subjected to pressures of 125 psig or more.

N.J.A.C. 14:11-8.4 provides that gas pipelines to be operated in excess of 250 psig shall not be installed within 100 feet of any building intended for human occupancy unless such installation is approved by the Board.

N.J.A.C. 14:11-8.5 pertains to the specifications regarding welds on steel pipe.

N.J.A.C. 14:11-8.6 pertains to the quality control applicable to field welding.

N.J.A.C. 14:11-8.7 sets forth the accepted fabrication requirements pertaining to the construction of gas pipelines.

N.J.A.C. 14:11-8.8 pertains to construction in those areas where a gas pipeline intersects a railroad or highway.

N.J.A.C. 14:11-8.9 pertains to construction in those areas where a gas pipeline is under or adjacent to a railroad or highway.

N.J.A.C. 14:11-8.10 pertains to the appropriate spacing of shut-off valves.

N.J.A.C. 14:11-8.11 limits the installation of automatic valves to those circumstances that indicate that they will contribute to safer operation.

N.J.A.C. 14:11-8.12 requires that pressure relieving devices be operated in such a manner as to avoid hazards to persons and nearby property.

N.J.A.C. 14:11-8.13 requires adequate inspection of pipe to insure that it is free of nicks and other forms of damage that would tend to produce a concentration of stresses or otherwise reduce the strength of the pipe.

N.J.A.C. 14:11-8.14 pertains to the minimum cover that is required above the top of the pipe.

N.J.A.C. 14:11-8.15 requires the proper marking of any portion of the pipeline that protrudes above the ground.

N.J.A.C. 14:11-8.16 sets forth the requirements when investigation indicates that corrosion protection is needed.

N.J.A.C. 14:11-8.17 provides for the testing of a gas pipeline after it has been constructed and before it has been placed in operation.

N.J.A.C. 14:11-8.18 provides for the purging of air from pipelines that have been classed as Location 2, 3 or 4 piping systems.

N.J.A.C. 14:11-8.19 sets forth the standard applicable to gas piping in gas compressor stations.

N.J.A.C. 14:11-8.20 pertains to the installation of adequate pressure relief devices and the safe disposal of gas released from such devices.

N.J.A.C. 14:11-8.21 requires that each compressor station with installed horsepower in excess of 1,000 and operating at pressures of more than 250 psig shall be provided with remote emergency shut-down devices.

N.J.A.C. 14:11-8.22 sets out the clearance necessary between compressor stations and buildings not under the control of the utility which are intended for human occupancy.

N.J.A.C. 14:11-8.23 sets forth measures designed to prevent fires.

N.J.A.C. 14:11-8.24 sets forth standards for all electric wiring, fixtures and devices within compressor buildings.

N.J.A.C. 14:11-8.25 requires that all compressor stations be provided with adequate natural draft ventilating devices.

N.J.A.C. 14:11-8.26 pertains to the standards for gas piping in meter and regulator stations.

N.J.A.C. 14:11-8.27 sets forth standards for all electric wiring, fixtures and devices within meter and regulator buildings.

N.J.A.C. 14:11-8.28 pertains to the location of ventilation and protection devices at meter and regulator stations.

N.J.A.C. 14:11-8.29 requires sufficient odorization of natural gas.

N.J.A.C. 14:11-8.30 pertains to the recording and reporting of all reportable accidents.

N.J.A.C. 14:11-8.31 pertains to the reporting of service interruptions affecting customers.

N.J.A.C. 14:11-8.32 pertains to the filing of notice with the Board prior to and during the construction or reconstruction of any gas pipeline intended to be subjected to pressure in excess of 125 psig.

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N.J.A.C. 14:11-8.33 sets forth those provisions that must be contained in a statement to the Board before a pipeline is placed in operation.

N.J.A.C. 14:11-8.34 provides that whenever the Board participates in the payment of the expense for the construction of a bridge or passage over or under and across a railroad right-of-way or the installation of protective devices at railroad grade crossings, the design work may be performed by a competent consultant.

Social Impact

The proposed rules relate directly to the provision of safe, adequate and proper service by New Jersey utilities. Said rules are necessary to ensure, among other things, that a utility plant is constructed, installed, operated and maintained in a manner that will protect the safety and well-being of the public; that petitions will include that information that will allow the Board to render fair and complete determinations in the public interest; that utilities will expeditiously and completely report all accidents that may occur as a result of the operation of their plant and equipment; and that all utilities will have on file clear and concise tariffs setting forth their charges for and terms and conditions of service.

Economic Impact

As a result of the proposed rules, utilities, as they have in the past, will incur expenses for, among other things, inspecting and testing their plant; reporting accidents and construction information; and maintaining required records. Since all expenses associated with compliance with these proposed rules represent appropriate business activities, all reasonable levels of costs associated therewith will be allowed to be passed along to ratepayers through rates for service.

Regulatory Flexibility Analysis

Many of the public utilities subject to the jurisdiction of the Board, most notably small water and sewerage utilities, may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ fewer than 100 full-time employees. The proposed new rules will not impose additional reporting, recordkeeping or compliance requirements as they continue prior requirements regarding the filing of petitions, accident reports, tariffs and the standards pertaining to the construction, operation and maintenance of gas transmission lines, with the attendant costs mentioned in the Economic Impact above. No utility operating a gas transmission line in this State can be classified as a small business pursuant to the Regulatory Flexibility Act.

Said requirements are necessary in order that the Board may carry out its statutory responsibilities to process all applications which are appropriately brought before it, to ensure that utility tariffs reflect only those rates and services that have been approved and to assure that utility plant is constructed, operated and maintained in a manner that will preserve the public interest. Accordingly, as the submissions and requirements imposed by the proposed rules are essential, and as all reasonable levels of expense incurred as a result thereof will be recoverable through rates to customers, the Board does not find any reason to distinguish between large and small businesses and therefore does not establish differing standards based on business size.

Full text of the expired rules, proposed as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 14:11.

Full text of the rules not proposed as new rules, but remaining expired, can be found in the New Jersey Administrative Code at N.J.A.C. 14.11-7.6, 7.7, 7.8 and 7.9.

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

14:11-1.5 Grants of franchise and privileges to public utilities

[(a) By the terms of N.J.S.A. 48:3-15, every consent granted by a municipality is limited to a term of years.]

[(b)] **(a)** Under the terms of N.J.S.A. 48:2-14, [the] **a** privilege or franchise granted by [such consent] **a municipality** is not effective until approved by the Board.

[(c)] **(b)** Because such approval is required, the Board indicates in advance its opinion that, in general, grants **which are** limited to a term of years should contain provisions:

1.-3. (No change.)

14:11-1.6 Proposed security issues

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

(c) Various cases involving the approval of proposed security issues have been acted upon by the Board under the law. An analysis of many of these cases discloses certain general principles upon which these applications should be determined. These general principles will control unless and until good reason can be shown for departing therefrom. For the information of public utilities petitioning or intending to petition for the approval of security issues, certain of these general principles are set forth as follows:

1.-7. (No change.)

8. The declaration of dividends in the form of stock by public utilities is permissible only in such cases as this Board with or without hearing may authorize. To declare such a stock [divided] **dividend** without first obtaining the approval of the Board is a misdemeanor, and all such securities issued without the Board's approval are illegal. In general, the Board will approve the issue of stock dividends by public utilities only after hearing or investigation, and after being satisfied that as the outcome of such issues the property and other net assets of the company over and above other liabilities resting thereon shall be equal to the par or stated value of the total stock outstanding after such stock dividends have been made. Adequate depreciation reserves and surplus must also be provided by a public utility petitioning to issue a stock dividend, and a careful inquiry will be made by the Board into the methods by which were accumulated assets or property against which the additional stock dividend is to be justified. In addition, the petition must contain a reasonably detailed inventory of its property used or useful, or held for future use and priced at original cost, estimated if not known.

9. For the information of all public utilities intending to petition this Board for the approval of proposed security issues, reference should be made to **the** Board's rules. The requirements of this Order and the rules as to the form and content of petitions should be carefully observed. Petitions should be filed sufficiently in advance of the time at which approval of securities is desired to insure the [Board's] **Board** reasonable time to make the relevant inquiries. The larger the proposed issue, and the more complex the conditions surrounding it, the earlier should the petition be filed with the Board. The petitions will be acted upon hereafter in the order of their filing as indicated by the dating stamp of the Secretary's office. Petitions essentially defective in form or content will not be listed for consideration until properly amended. Where such petitions involve the necessity of inventorying property or checking accounts, the public utility applying for such authorization is requested to give such assistance as is within its power by putting its engineers, managers, and accountants in touch with the Board's [inspectors,] engineers or other Board authorized representatives. Where the annual reports required of public utilities have not been promptly filed as by the rules of this Board, or where such accounts, when filed, disclose failure upon the part of the public utility to comply with the requirements of law or with the terms upon which previous security issues of said utilities [has] **have** been approved by this Board, any subsequent petition for the approval of securities by a public utility shown to be **in** default may be postponed until the requisite and legal compliance with the law and the lawful rules of this Board has been made by said public utility.

14:11-1.14 Telegraph company registration

(a) Every telegraph company operating within New Jersey shall register with the Board the names and addresses of all [lesses] **lessees** and users of tickers, teleprinters and other terminal equipment located within the State of New Jersey and used in connection with the following classes of telegraph service:

1.-4. (No change.)

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

14:11-5.1 Scope

Unless otherwise ordered or permitted by the Board, the instructions contained in this [Subchapter] **subchapter** shall apply to the reporting of accidents.

14:11-5.7 Accident reports [privileged] **use**

Accident reports [are for the sole use of] **may be used by** the Board in determining what safety practices should be recommended

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[and are not available as evidence in any collateral civil proceeding]. In a proceeding before the Board, accident reports shall be evidential only at the discretion of the Board.

14:11-7.2 General

(a) (No change.)

(b) All tariffs legally filed with the Board and now in effect shall continue in force until legally changed. All tariffs and amendments thereto, hereafter filed, shall conform to this [Subchapter] **subchapter.** The Board may direct the reissue or modification, as to form, of any tariff or any part thereof at any time.

(c) [Effective January 2, 1990 all] **All** new tariffs submitted to the Board shall be filed to conform with the format and language as outlined in N.J.A.C. 14:11-7.3[,] **and** 7.4. [and 7.6 through 7.9. All tariffs currently accepted and on file with the Board shall conform with the format and language outlined in N.J.A.C. 14:11-7.3, 7.4 and 7.6 and 7.7 as of January 2, 1990, and sections 7.8 through 7.9 as of December 31, 1990.]

14:11-7.3 Arrangement and form of filed schedules

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

(c) Each tariff shall consist of:

1.-4. (No change.)

5. The set of rate schedules.

i. All rates which a given kind of service [(], **such as** electric, gas, and so forth [)], is available throughout the service area of a utility shall be included in a single tariff. [(] General exchange, local exchange and toll service, and so forth, may be regarded as a separate kind of utility service for the purposes of this provision.[)] The rates for each separate and distinct class of service rendered by a utility shall be filed as a separate schedule and shall whenever feasible and practical begin on a separate sheet.

(d) (No change.)

(e) Each sheet of every tariff shall bear a sheet number [(], or section and sheet number, [)] which shall be placed in the upper right-hand corner of the sheet in a position opposite the name of the company, except that, where separate sheets are filed for each of a given number of specified areas, designation by area may be used in lieu of a sheet number. Upon the first filing of the sheet it shall be designated as Original Sheet No. _____, or Original Sheet where no number is required. This same sheet number, [(] or section and sheet number [)], shall appear on all subsequent issues of the sheet, and the revisions of the sheet shall be numbered, as follows:

1.-6. (No change.)

7. When tariffs are to be revised in conformity with an order or authorization of the Board, the changes made pursuant thereto shall be established by supplements to or reissues of the tariff or tariff sheets affected, filed and posted as provided in this [Subchapter] **subchapter.** Each page containing rates or provisions established pursuant to such order or authorization shall bear the following notation:

"Filed pursuant to (here insert nature of authorization including docket number if any) of the Board of [Public Utilities] **Regulatory Commissioners,** State of New Jersey, dated _____."

(f) (No change.)

(g) The table of contents of each tariff, [(] except tariffs using the section or area designation method [)], shall contain a complete and accurate list of contents by schedule number, description of class of service, and sheet numbers. Whenever a new schedule of rates or new sheet not already listed in the table of contents is added, the table of contents shall be revised to show the title of the new sheet, the schedule number and sheet number.

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

14:11-8.1 Scope

Unless otherwise ordered or permitted by the Board, the following rules [and regulations] shall be observed and followed in connection with the construction, operation and maintenance of pipelines for the transmission of natural gas within and through the State of New Jersey.

14:11-8.2 Compliance with Standard Code

Any gas pipeline, other than a gas gathering pipeline, constructed after the effective date of this [Subchapter] **subchapter** which is subjected to, or is intended to be subjected to, an internal gas pressure in excess of 125 pounds per square inch gauge (psig) (above atmospheric pressure) shall be constructed and operated in compliance with the applicable provisions of the current edition of the American Standard Code for Pressure Piping, ASA B31.1.8—1955, formulated under the auspices of the American Standards Association of New York, New York, [(]hereinafter referred to as the "Standard Code"[)]**,** or such other standard as the Board may from time to time prescribe. Any such pipeline which comes within the scope of the provisions of N.J.S.A. 48:10-2 to 10-9 and which was constructed prior to the effective date of these rules shall be deemed to be subject to any provisions of the Standard Code pertaining to operation and maintenance.

14:11-8.5 Welding

Welds, other than factory welds, on steel pipe of the physical and chemical properties for which the effective joint American Petroleum Institute and American Gas Association "Specifications for Field Welding and Radiographic Inspection of Pipelines", [(] hereinafter referred to in this [Subchapter] **subchapter** as Welding Specifications[)]**,** are applicable shall be made in accordance with such Welding Specifications.

14:11-8.7 Fabrication details

(a) The requirements set forth in [subsections] (b) through (d) [of this section] **below** in addition to the requirements of the Standard Code shall be applicable to the construction of gas pipelines.

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

14:11-8.8 Crossings

At points where a gas pipeline intersects a railroad or a highway, when such pipeline is, or is intended to be, subjected to an internal pressure in excess of 50 psig and having a diameter of six inches or more, the pipeline shall be enclosed in casing as herein provided and shall cross the railroad or highway in such a manner that the angle between the center line of the pipeline and railroad or highway shall be as near as practicable to 90 degrees. A gas carrying pipeline with the scope of this [Section] **section** crossing a railroad shall be enclosed in casing which at least meets the requirements of the specification in American Petroleum Institute Code No. 1102, "Recommended Practice on Form of Agreement and Specifications for Pipe Line Crossings under Railroad Tracks," [(]hereinafter referred to in this [Subchapter] **subchapter** as Specifications for Pipe Line Crossings[)]. A gas carrying pipe within the scope of this [Section] **section** crossing a highway shall be enclosed in a casing which at least meets the requirements of the Specifications for Pipe Line crossings, except that the minimum distance from the top of the casing to the used surface of the road shall be three feet six inches and where terrain permits, the casing shall extend beyond the edge of the pavement a distance of not less than 25 feet or to the line of right-of-way, whichever is less. When a highway is widened, the casing shall be extended so that it shall still meet the requirements of this [Section] **section.** As used in this [Subchapter] **subchapter**, the term "highway" shall mean only a public road, other than a city or village street, with a hard surface which is intended for use throughout the year.

14:11-8.9 Lines under or adjacent to railroads and highways

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

(c) Whenever reasonably possible to avoid doing so a gas pipeline subjected to or intended to be subjected to pressure in excess of 125 psig, should not be installed beneath and parallel to or within 25 feet of any public hard surface road or street. When such a gas pipeline is so installed the construction shall conform, as far as casing is concerned, to the provisions of [Section 8.8 (Crossings) of this Chapter] **N.J.A.C. 14:11-8.8** to the extent reasonably practicable.

(d) Notwithstanding the provisions of [Section 8.8 (Crossings) of this Chapter and this Section] **N.J.A.C. 14:11-8.8**, all applicable rules of other State or local agencies having jurisdiction which exceed the requirements of said rules shall be effective.

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14:11-8.10 Valve spacing

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

(d) Each pipeline company shall designate a representative or representatives in New Jersey who are familiar with the location and operation of the shut-off valves. The names, addresses and telephone numbers of these representatives shall be furnished to the [secretary] **Secretary** of [this] **the** Board and to the clerks of the municipalities through which the line is laid. Such representatives shall be available at all times for emergency services.

14:11-8.14 Minimum cover

(a) Gas pipelines within the scope of this [Subchapter] **subchapter** shall be laid with a cover of not less than 24 inches above the top of the pipe except where interference with other subsurface structures makes it impracticable to maintain this depth of cover, in which event the pipe shall be cased or protected with a suitable shield of metal. Gas pipelines shall be laid so as to avoid other subsurface structures and such pipelines shall not be laid within the distance of less than 12 inches from any other subsurface structure whenever reasonably practicable to avoid doing so. A structure providing a space in which a substantial volume of an explosive mixture might accumulate in the event that gas escapes from the pipeline shall be avoided when reasonably practicable to do so and preference shall be given to crossing over rather than under such structures.

(b) (No change.)

14:11-8.17 Testing

(a) A section of pipeline classed as Location Class 1 gas transmission pipeline under [Section 8.2 (Classification of system) of this Chapter] **N.J.A.C. 14:11-8.3** shall be subjected to an internal fluid (gas, air or water) pressure test after the line is completed and before it is placed in operation at a test pressure established in accordance with the provisions of the Standard Code for such lines, but in any event at a pressure of at least 50 psig more than the maximum allowable working pressure.

(b) A section of pipeline classed as Location Class 2, 3, or 4 pipeline under [Section 8.3 (Classification of system) of this Chapter] **N.J.A.C. 14:11-8.3** shall be subjected to a water pressure test after the line is completed and before it is placed in operation at a test pressure of not less than 150 percent of the maximum allowable working pressure.

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

14:11-8.18 Purging

Air shall be purged from pipelines classed under [Section 8.2 (Classification of system) of this Chapter] **N.J.A.C. 14:11-8.3** as Location Class 2, 3, or 4 piping systems by introducing a suitable quantity of inert gas into the pipelines ahead of the combustible gas, or by any other suitable method which prevents formation of an explosive mixture in the pipeline.

14:11-8.30 Accidents

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

(c) The [board] **Board** shall be notified promptly by the speediest means of communication available of all accidents which are clearly reportable and those which there is good reason to believe may result in "reportable accidents" as defined herein. If such notification is not given in any case for the reason that the accident is not considered reportable, and it subsequently develops that the accident is reportable, the gas pipeline company involved shall notify the Board immediately after it has been ascertained that such accident is reportable.

14:11-8.34 Design consultants

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

[(c) This administrative order shall be effective on all Board orders directing construction or reconstruction of bridges or grade crossing protection issued on and after April 20, 1972.]

STATE

(a)

DIVISION OF ELECTIONS

Notice of Extension of Comment Period
Distribution of State Voter Registration Forms through Public Agencies
Proposed New Rules: N.J.A.C. 15:10-7
Proposed Amendment: N.J.A.C. 15:10-1.5

Take notice that the Division of Elections of the Department of State is extending until May 10, 1992 the period for public comment on proposed new rules N.J.A.C. 15:10-7 and the proposed amendment to N.J.A.C. 15:10-1.5, published in the March 2, 1992 New Jersey Register at 24 N.J.R. 736(a).

Submit written comments by May 10, 1992 to:
Lillian Midge Trainor
Department of State
Division of Elections, CN 304
Trenton, NJ 08625

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Route N.J. 23 in Passaic County
Proposed Amendment: N.J.A.C. 16:28-1.25

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1992-185.

Submit comments by June 3, 1992 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Ave.
CN 600
Trenton, N.J. 08625

The agency proposal follows:

Summary

Due to construction which has changed conditions on Route 23, the Department is proposing revised speed limits in the specified areas to aid in the efficient and safe flow of traffic. The Bureau evaluated the traffic conditions in the vicinity of Willowbrook Mall and the New Jersey Motor Vehicle Inspection Station in Wayne Township during their investigation and found that, in general, reductions in speed, as specified below, were necessary and appropriate.

Social Impact

The proposed amendments would establish reduced speed limits in the areas specified along N.J. Route 23, for the enhancement of safety and the well-being of the populace. Appropriate signs will be set to advise the motoring public.

Economic Impact

The Department will incur costs for personnel, equipment and mileage for the installation of the speed limit signs. The costs for these signs vary, according to the materials, 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 rules place no requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required. The rules impose

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requirements on the individual members of the motoring public and upon the governmental entities responsible for the enforcement of the traffic rules.

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

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-vii. (No change.)

[viii. Zone eight: 55 mph in Wayne Township, Passaic County between the Route U.S. 46—Route N.J. 23—Route I-80 interchange (Singac Brook) and 3,170 feet north of Packanack Lake Road (at U-turn) (milepost 5.62 to 8.9); thence

ix. Zone eight: 45 mph in Wayne Township, Passaic County to a point 200 feet south of center line of Van Ness Place (milepost 7.4); thence

x. Zone nine: 55 mph to the intersection of Laguna Drive (milepost 7.4).]

viii. Zone five in Passaic County, Wayne Township: 55 mph between the Route I-80 Ramp B overpass and the Route U.S. 202 connector (approximate mileposts 5.68 to 9.21);

ix. Zone six in Passaic County, Wayne Township: 40 mph between the Route U.S. 202 connector and the Township of Wayne—Township of Pequannock corporate line (approximate mileposts 9.21 to 9.64).

2. For northbound traffic:

i. Zone one: 50 mph in [Wayne Township,] Pequannock Township, Riverdale Borough, Kinnelon Borough, Butler Borough, West Milford Township from the intersection of Laguna Drive to [a point 2,300 feet north of the center line of High Crest Drive(] milepost 17.5[)]; thence

ii.-iv. (No change.)

v. [40 mph in Wayne Township, Passaic County between 3,170 feet north of Packanack Lake Road (at U-Turn) and the Black Oak Ridge Road Connection (at traffic signal) (milepost 8.9 to 9.59).] **40 mph between the Township of Little Falls—Township of Wayne corporate line (Passaic River) and the Route I-80 Ramp B overpass (approximate mileposts 4.54 to 5.68).**

3. For southbound traffic:

i.-iii. (No change.)

iv. Zone four: 50 mph in Kinnelon Borough, West Milford Township, Butler Borough, Pequannock Township[, Wayne Township] to the intersection of Laguna Drive (milepost 7.4).

(1) (No change.)

v.-vi. (No change.)

vii. Zone two in Wayne Township, Passaic County: 40 mph between the Route I-80 Ramp B overpass and the Route U.S. 46 Eastbound Ramp (approximate mileposts 5.68 to 5.56);

viii. Zone three in Wayne Township, Passaic County: 30 mph between the Route U.S. 46 Eastbound Ramp and the North Leg Entrance to Willowbrook Mall) (approximate mileposts 5.56 to 4.89);

ix. Zone four in Wayne Township, Passaic County: 40 mph between the Township of Little Falls—Township of Wayne corporate line and the North Leg (Entrance to Willow Brook Mall) (approximate mileposts 4.89 to 4.54).

4. For both directions of traffic:

i.-iv. (No change.)

[v. In Wayne Township, Passaic County:

(1) 55 mph between Black Oak Ridge Road Connection (at traffic signal) and the Pompton River (Wayne Township—Pequannock Township line (milepost 9.59 to 9.63).]

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Route U.S. 46 in Passaic County

Proposed Amendment: N.J.A.C. 16:28A-1.32

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 and 39:4-198.

Proposal Number: PRN 1992-181.

Submit comments by June 3, 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

The agency proposal follows:

Summary

The proposed amendment will establish a "no stopping or standing" zone along Route U.S. 46 in the City of Clifton, Passaic County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government, in the interest of safety, and as 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 a "no stopping or standing" zone along Route U.S. 46 in the City of Clifton, Passaic County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.32 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a "no stopping or standing" zone along Route U.S. 46 in the City of Clifton, Passaic 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 amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.32 Route U.S. 46

(a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected.**

1.-17. (No change.)

18. No stopping or standing in the City of Clifton, Passaic County:

i. Along both sides:

(1) For the entire length within the corporate limits, including all ramps and connections thereto which are under the jurisdiction

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of the Commissioner of Transportation, except in areas covered by other parking rules.

(b) (No change.)

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

International Government and Agency Obligations

Proposed Amendments: N.J.A.C. 17:16-20.1 and 20.3

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1992-184.

Submit comments by June 3, 1992 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
50 West State Street, 9th floor
CN 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 17:16-20.1 and 20.3 would add as permissible investments the obligations of political subdivisions of an approved sovereign government and obligations of agencies of the Canadian Government or Canadian Provinces which qualify under N.J.A.C. 17:16-16 to the Approved List of International Governments and Agencies. Additionally, they further modify existing language contained in the current rules, for the purpose of clarity.

Social Impact

The addition of the obligations of political subdivisions of an approved sovereign government and obligations of agencies of the Canadian Government or Canadian Provinces allows for investment in obligations which will provide a broader diversification and, potentially, increased earnings for the State's international stock and bond portfolios without any increase of risk.

Economic Impact

The proposed amendments may produce slightly increased earnings for the pension funds, which, in return, would help fund the plans and would, in turn, benefit the taxpayers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments have no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

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

17:16-20.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund except the Consolidated Police and Firemen's Pension Fund, in: [obligations which are the direct]

1. Direct obligations of sovereign governments;

2. Obligations of political subdivisions of an approved sovereign government;

3. Obligations of [or] the sovereign's agencies [whose] **which** [obligations] are unconditionally guaranteed as to principal and interest by the sovereign's full faith and credit; [or]

4. Obligations of international agencies [whose obligations] **which** are directly backed by the collective credit of regional countries[:]; **and**

5. Obligations of agencies of the Canadian Government or Canadian Provinces which qualify under N.J.A.C. 17:16-16.

[1.]**(b)** The Director shall submit a list of international governments, their **subdivisions and their** agencies, and international agencies to the Council for its approval. Such list may be amended or enlarged from time to time [subject to] **by the Council and shall constitute the** "Approved List of International Governments and Agencies."

[2.]**(c)** The Director shall only select issues of international government and agency obligations from the "Approved List" [to be recommended] for purchase by the pension and annuity group, including Common Pension Fund D.

17:16-20.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained a **public** prospectus or circular describing the issue.

(b) In the case of an issue [not registered with the Securities and Exchange Commission] **which is privately placed**, the Director shall obtain, in addition to the requirements of (a) above:

1.-2. (No change.)

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Official Zoning Map

Proposed Amendment: N.J.A.C. 19:4-6.28

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Dirctor.

Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C 19:4-6.27.

Proposal Number: PRN 1992-191.

A **public hearing** concerning this proposed amendment will be held on May 21, 1992 at 10:00 A.M. at:
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by June 3, 1992 to:
Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

AGENCY NOTE: These amendments are being proposed as a result of a petition. See Petition for Rulemaking, published April 6, 1992, at 24 N.J.R. 1403(a), and Notice of Action on the petition, published elsewhere in this issue of the New Jersey Register.

Summary

The proposed amendment to the Hackensack Meadowlands Development Commission Official Zoning Map consists of the changes listed below to the areas indicated on the attached map.

LIST OF PROPERTIES BY LOT AND BLOCK NUMBER PROPOSED FOR REZONING TO THE HEAVY INDUSTRIAL ZONE

BLOCK/LOT	MUNICIPALITY	PRESENT ZONING
449/A1-2A	North Bergen	Light Industrial/Distribution
449/17B	North Bergen	Light Industrial/Distribution
449A/A1-2B	North Bergen	Light Industrial/Distribution
449A/A1-1	North Bergen	Light Industrial/Distribution
449A/2-1	North Bergen	Light Industrial/Distribution
449A/6A2	North Bergen	Light Industrial/Distribution
449A6B1	North Bergen	Light Industrial/Distribution
449A/5	North Bergen	Light Industrial/Distribution
449A/4	North Bergen	Light Industrial/Distribution
449A/3-1	North Bergen	Light Industrial/Distribution
449A/3-2	North Bergen	Light Industrial/Distribution
449A/1-2	North Bergen	Light Industrial/Distribution
449A/1-1	North Bergen	Light Industrial/Distribution
449A/1B	North Bergen	Light Industrial/Distribution
485	North Bergen	Public Service Electric & G R.O.W.

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442	North Bergen	Public Service Electric & Gas R.O.W.
449-A 2-2	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
445/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	Jersey City	Light Industrial/Distribution A
.000/4	Jersey City	Light Industrial/Distribution A
000/8	Jersey City	Light Industrial/Distribution A
000/9	Jersey City	Light Industrial/Distribution A
000/10	Jersey City	Light Industrial/Distribution A
000/11	Jersey City	Light Industrial/Distribution A
001/1	Jersey City	Light Industrial/Distribution A
001/8	Jersey City	Light Industrial/Distribution A
001/2	Jersey City	Light Industrial/Distribution A
001/6 (portion)	Jersey City	Light Industrial/Distribution A
001/7	Jersey City	Light Industrial/Distribution A
050/1	Jersey City	Light Industrial/Distribution A
050/2	Jersey City	Light Industrial/Distribution A
050/3	Jersey City	Light Industrial/Distribution A
050/4	Jersey City	Light Industrial/Distribution A
050/5	Jersey City	Light Industrial/Distribution A
050/6	Jersey City	Light Industrial/Distribution A
050/9	Jersey City	Light Industrial/Distribution A
002/1	Jersey City	Light Industrial/Distribution A

These changes were requested by New York, Susquehanna and West-n Railway for the following reasons:

A number of present existing non-conforming uses would now be nforming land uses, consistent with the earlier HMDC zoning require-ents;

Rezoning would permit the development and construction of ad-tional warehouse buildings and support facilities;

Rezoning would assist in the rational development of the area in an vironmentally sound manner, with a reduction in traffic volumes and pollution;

Rezoning would permit the siting of solid waste and recycling facilities;

The New Jersey State Rail Plan would be supported by the rezoning; d

Rezoning would expand the ratable base of the HMDC and its consti-nt communities, and will expand the number of jobs.

The HMDC recognizes that there are many issues involved in these posed changes, and has scheduled a public hearing to address them.

Social Impact

The proposed rezoning will allow heavy industrial uses in an area eady developed in a mixed pattern of permitted light, and pre-existing n-conforming heavy industrial uses. The rezoning would allow uses t are consistent with the existence of the adjacent terminus of a major ss-country freight carrier.

Economic Impact

The proposed rezoning would allow heavy industrial uses in an area rently zoned for light industrial uses. This rezoning may have a itive economic impact on the applicant, the New York, Susquehanna Western Railway; however, the economic impact of the amendments other entities cannot be determined at this time, due to the variety actors involved, including, but not limited to, job creation, ratables, of infrastructure and the specific nature of the development planned the area.

Regulatory Flexibility Statement

The effect of this proposed amendment would be to rezone certain properties in the municipalities of North Bergen and Jersey City. The amendment will have no impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the uses that would be permitted in the rezoned properties. There being no regulation over small businesses in any other manner, no regulatory flexibility analysis is required.

19:4-6.28 Official Zoning Map

Change the zoning designation of the parcels listed below as indicated:

LIST OF PROPERTIES BY LOT AND BLOCK NUMBER PROPOSED FOR REZONING TO THE **HEAVY INDUSTRIAL ZONE**

BLOCK/LOT	MUNCIPALITY	PRESENT ZONING
449/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
485	North Bergen	Public Service Electric & Gas R.O.W.
442	North Bergen	Public Service Electric & Gas R.O.W.
449-A 2-2	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	Jersey City	Light Industrial/Distribution A
1000/4	Jersey City	Light Industrial/Distribution A
1000/8	Jersey City	Light Industrial/Distribution A
1000/9	Jersey City	Light Industrial/Distribution A
1000/10	Jersey City	Light Industrial/Distribution A
1000/11	Jersey City	Light Industrial/Distribution A
1001/1	Jersey City	Light Industrial/Distribution A
1001/8	Jersey City	Light Industrial/Distribution A
1001/2	Jersey City	Light Industrial/Distribution A
1001/6 (portion)	Jersey City	Light Industrial/Distribution A
1001/7	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	Jersey City	Light Industrial/Distribution A
1050/6	Jersey City	Light Industrial/Distribution A

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1050/9	Jersey City	Light Industrial/Distribution A
1002/1	Jersey City	Light Industrial/Distribution A

OFFICE OF ADMINISTRATIVE LAW NOTE: The Official Zoning Map is not reproduced herein, but may be viewed at the following locations:

Hackensack Meadowlands Development Commission
One De Korte Park Plaza
Lyndhurst, New Jersey 07071

Office of Administrative Law
Quakerbridge Plaza, Building 9
Quakerbridge Road
Trenton, New Jersey 08625

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Financial Disclosure by Lobbyists and Legislative Agents

Lobbying Fee Schedules

Notice of Extension of Comment Period:

Proposed Amendments: N.J.A.C. 19:25-20.8 and 20.19

Take notice that the period for submission of written comments to the Election Law Enforcement Commission, on the above captioned proposal, has been extended to May 15, 1992. The **full text** of the proposal appears at 24 N.J.R. 1245(a) (April 6, 1992).

Interested persons may submit written comments until May 15, 1992 to:

Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
CN 185
Trenton, New Jersey 08625-0185

(b)

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

Project Eligibility, Contracts with Casino Licensees, Affirmative Action, Investment, Fees, Debarment and Waivers

Proposed Readoption: N.J.A.C. 19:65

Proposed New Rules: N.J.A.C. 19:65-4.1, 6.2

Proposed Recodification: N.J.A.C. 19:65-2.6 through 2.11 as 2.5 through 2.10

Authorized By: Casino Reinvestment Development Authority, Nicholas R. Amato, Executive Director.

Authority: N.J.S.A. 5:12-144.1 and N.J.S.A. 5:12-161(f).

Proposal Number: PRN 1992-190.

Submit comments by June 3, 1992 to:

Nicholas R. Amato
Executive Director
Casino Reinvestment Development Authority
1301 Atlantic Avenue
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

This chapter was originally filed and became effective as an Emergency New Rule on April 3, 1986 (expired June 2, 1986). See: 18 N.J.R. 852(a). The chapter was readopted as New Rules, effective July 7, 1986 (expired July 7, 1991) as R.1986 d.256. See: 18 N.J.R. 852(a), 18 N.J.R. 1405(a).

These rules, proposed for readoption, govern the procedures and criteria followed by the Casino Reinvestment Development Authority (the "Authority") to determine the eligibility of projects under P.L. 1984, c.218, as amended (the "Act"), the terms and conditions of contracts by and between the Authority and holders of current and valid casino licenses, issued by the New Jersey Casino Control Commission (the "Licensees") pursuant to the Act, targeting requirements for contractors and subcontractors for Authority projects, debarment requirements and a schedule of authority fees. Pursuant to the "sunset" requirements of Executive Order No. 66(1978), N.J.A.C. 19:65 expired on July 7, 1991. The Authority proposes to readopt the chapter with the addition of new rules designed to bring the Authority's standards on targeting into accord with analogous targeting rules recently adopted by the State of New Jersey, Department of the Treasury, and the requirements of Federal law, to publish the authority's administrative fee schedule and to make other technical amendments.

In preparing to amend and readopt the rules, they were thoroughly reviewed. The Authority's conclusion, after review, was that the chapter continues to be reasonable, necessary and proper for the reasons it was originally adopted. The readoption of the rules, with amendments, will allow the Authority to continue to promote the urban redevelopment of the State of New Jersey, and, in particular, the City of Atlantic City, by providing eligible projects in which casino licensees may invest. The following summarizes the proposed text of the rules.

Subchapter 1 contains rules of general applicability.

N.J.A.C. 19:65-1.1 states the purpose and objectives of the rules.

N.J.A.C. 19:65-1.2 is the definition section.

Subchapter 2 contains rules relating to applications, eligibility, priority and hearings.

N.J.A.C. 19:65-2.1 discusses applications generally. The Authority will act upon applications which involve projects that meet the requirements of the Act, the regulations and the goals of the Authority as determined from time to time by the Authority.

N.J.A.C. 19:65-2.2 discusses the time for application. In general, an applicant may apply to the Authority for a determination of eligibility in connection with its project at any time before the commencement of the project. This subchapter also provides rules governing projects which were commenced prior to the effective date of the proposed rules. Failure to apply timely for determination of eligibility as provided in the proposed rules will render the project ineligible, unless cause is shown for such failure.

N.J.A.C. 19:65-2.3 provides that an application will be filed with the Authority's Executive Director.

N.J.A.C. 19:65-2.4 provides that the Executive Director shall review the application for completeness and submit the application for the authority's consideration.

Thereafter, the Authority will review and approve projects pursuant to a three-step process. The first step consists of a preliminary determination by the Authority that a project is of the character and type as to be eligible, which is followed by a public hearing. The second step is the determination that a project is an approved project and the reservation of Authority funds to finance such approved project. The third step involves the Authority's approval (i) of a bond resolution and other legal documents relating to any loan of Authority funds or (ii) of an agreement for credit with a casino licensee in connection with an equivalent investment or donation.

The section places certain time limits on the reservation of funds and allows the Authority to impose such terms and conditions on any approved project and the funding thereof as the Authority deems necessary and appropriate.

N.J.A.C. 19:65-2.5 establishes the criteria the Authority will use when approving a project.

N.J.A.C. 19:65-2.6 sets forth the priorities the Authority will consider when approving projects submitted for its approval.

N.J.A.C. 19:65-2.7 requires that the authority conduct hearings as may be necessary or appropriate when determining whether a project satisfies the standards, criteria and guidelines set forth in the Act and in the proposed regulations.

N.J.A.C. 19:65-2.8 sets forth the requirements pursuant to which a casino licensee may request and the Authority may approve an equivalent investment in lieu of the purchase of bonds.

N.J.A.C. 19:65-2.9 sets forth the requirements pursuant to which a casino licensee may request and the Authority may approve a donation of money or realty in lieu of the purchase of bonds.

N.J.A.C. 19:65-2.10 requires certification of costs of an approved project by an independent entity.

In addition, further technical changes have been made to the subchapter in the form of a renumbering of certain subparts, as noted in the text.

Subchapter 3 discusses contracts with casino licensees.

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N.J.A.C. 19:65-3.1 sets forth the requirement that there will be no investment tax credit for purchase of bonds under N.J.S.A. 5:12-144.1, unless the casino licensee has entered into a contract with the Authority.

N.J.A.C. 19:65-3.2 sets forth the various provisions the contract must contain.

Subchapter 4 discusses female and minority business targets in Authority financed construction projects and casino licensee direct investment construction projects.

N.J.A.C. 19:65-4.1 sets forth the authority's target requirements for female and minority businesses.

These provisions are patterned after rules recently adopted by the State of New Jersey, Department of the Treasury. They depart from the provisions of N.J.S.A. 5:12-181, in the sense that the provision required mandatory "set-asides" for minority and women's businesses, whereas these proposed amendments establish targets for applicants and contractors in the awarding of subcontracts to minority and women's businesses, together with a procedures pursuant to which the Authority reviews whether the targets are being satisfied and whether the applicant, contractor, or subcontractor has engaged in unlawful race or sex discrimination. Remedies are provided in the event such unlawful discrimination is demonstrated. This modification is made on the advice of counsel that the imposition of mandatory "set-asides" as required by N.J.S.A. 5:12-181 and formerly required by this subchapter lack the evidentiary predicate necessary to establish a compelling State interest in eradicating prior discrimination and were not a sufficiently narrowly tailored remedy for actual identified discrimination as required by the United States Supreme Court in *City of Richmond v. J.A. Croson Company*, 488 U.S. 469, 109 S. Ct. 706, 102 L.Ed. 854 (1989). The amended provisions do not seek to remedy past discrimination and do not assume engagement in unlawful discrimination by an applicant, contractor or subcontractor.

Subchapter 5 discusses investments by casino licensees pursuant to N.J.S.A. 5:12-144.

N.J.A.C. 19:65-5.1 states that eligibility of investments or contributions by casino licensees required to be made in accordance with the provisions of N.J.S.A. 5:12-144 shall be determined by the Authority pursuant to rules of the New Jersey Casino Control Commission set forth at N.J.A.C. 19:54-1 to and including N.J.A.C. 19:54-2.237.

Subchapter 6 discusses fees and charges.

N.J.A.C. 19:65-6.1 discusses application fees.

N.J.A.C. 19:65-6.2 discusses administrative fees. This is new material, while the subpart has previously been reserved for an administrative fee schedule, the authority has not heretofore published the schedule.

Subchapter 7 states rules governing disqualification, debarment and suspension.

N.J.A.C. 19:65-7.1 is a definitional section.

N.J.A.C. 19:65-7.2 discusses causes for debarment.

N.J.A.C. 19:65-7.3 describes the conditions affecting debarment.

N.J.A.C. 19:65-7.4 sets forth the procedures the authority will undertake when debarring a person and the period of debarment.

N.J.A.C. 19:65-7.5 states the causes for suspension of a person.

N.J.A.C. 19:65-7.6 describes the conditions for suspension of a person.

N.J.A.C. 19:65-7.7 discusses the procedures, period of suspension and scope of suspension affecting persons suspended by the Authority.

N.J.A.C. 19:65-7.8 explains the extent of debarment and suspension resulting from a determination by the Authority.

N.J.A.C. 19:65-7.9 provides for notice of debarment to the Attorney General and the State Treasurer.

N.J.A.C. 19:65-7.10 allows the Authority to rely upon lists of persons suspended or debarred by other government agencies.

N.J.A.C. 19:65-7.11 provides that nothing in this subchapter is intended to limit the discretion of the Authority in determining eligibility for financial or other assistance or to contract or refrain from contracting with any person.

N.J.A.C. 19:65-7.12 states that the Executive Director is authorized to take all necessary action to implement and administer the provisions of this subchapter.

Subchapter 8 discusses waivers.

N.J.A.C. 19:65-8.1 specifies that nothing in the proposed regulations shall be construed to prohibit the Authority from granting waivers from the provisions thereof or the provisions of the Act as expressly provided in the Act.

N.J.A.C. 19:65-8.2 contains rules relating to the procedure which would allow a party desiring a waiver to submit a written request to the Authority for such a waiver.

The members of the Authority and the Executive Director of the Authority will bear responsibility for implementing the proposed new rules.

Social Impact

The readoption of the proposed rules will permit the Authority to continue financing eligible projects in connection with the provision of housing for persons of low and moderate income and the urban redevelopment of blighted areas in the State and, in particular, Atlantic City in the manner it has been financing such projects in the past. The infusion of new capital into the economy of Atlantic County in the short term will stimulate the creation of new jobs, the construction of affordable housing for persons of low and moderate income and the provision of other facilities which directly serve pressing social and economic needs of the residents of the State of New Jersey. Such projects will have the effect of not only improving the living standards of the residents of the State of New Jersey but also maintaining and expanding the tourist industry in the State of New Jersey. In the long term, the financing of eligible projects will benefit the housing stock and employment opportunities for the public at large.

Economic Impact

The Authority believes that the readoption of the proposed rules will present a minimal cost, if any, to the State. The cost of the authority's operations will be paid out of application fees and administrative fees to be borne by applicants for the Authority's assistance. The economic impact upon casino licensees consists of the credit casino licensees will receive against the investment alternative tax imposed pursuant to N.J.S.A. 5:12-144.1 when they purchase the bonds of the Authority, make direct investments in eligible projects or donate cash or property to eligible projects.

The proposed rules continue to effectuate the Legislature's policy that casino licensees receive a tax credit to the extent they make investments in projects found to be eligible by the Authority, purchase bonds of the Authority or donate cash or property to eligible projects. The economic benefits to be received by the citizens of New Jersey from such investments outweigh any impact the proposed new rules might have on the Casino Revenue Fund.

Regulatory Flexibility Analysis

The proposed rules govern the operation of the funding process undertaken by the Casino Reinvestment Development Authority, in accordance with the requirements of N.J.S.A. 5:12-144.1 and 161(f), for the benefit of Atlantic City and other urban areas within the State of New Jersey. Regulated entities include small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Special provisions have been included at N.J.A.C. 19:65-4.1 which benefit small businesses, and those businesses which are owned by women or members of minority groups. While such businesses are required, as in other State rules, to provide evidence of their status, such documentation is not considered burdensome, and is balanced by the economic benefit obtained by the businesses. Additional differential requirements are not considered appropriate by the Commission.

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

SUBCHAPTER 4. [AFFIRMATIVE ACTION IN AUTHORITY FINANCED CONSTRUCTION PROJECTS] **FEMALE AND MINORITY BUSINESS TARGETS IN AUTHORITY FINANCED CONSTRUCTION PROJECTS** AND LICENSEES' DIRECT INVESTMENT CONSTRUCTION PROJECTS

19:65-4.1 [(Reserved)] **Subcontracting targets**

(a) The Authority, in connection with approved projects financed each year by or through bonds issued by the Authority or direct investments by licensees, shall require the following in its relevant contracts relating to the approved project:

1. Each applicant, its respective contractors and subcontractors shall seek to provide that construction contracts comprising at least 20 percent of the aggregate total expenditures on an approved project will be awarded to female or minority businesses as defined in and qualified under N.J.A.C. 17:14-1 et seq.

2. Upon request by the applicant and a determination by the Authority that there are not sufficient, relevant or qualified female

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or minority business enterprises whose market areas include the project location, the Authority may decrease the target requirement.

3. If the above levels are satisfied, the applicant, contractor or subcontractor, as the case may be, will be presumed not to be engaging in unlawful race or sex discrimination in the selection of contractors or subcontractors.

4. If the above target levels are not satisfied, the Authority shall review the contracting and subcontracting practices to determine if there has been unlawful race or sex discrimination.

5. If the Authority determines, after such review, that an applicant, contractor or subcontractor has engaged in unlawful race or sex discrimination, the Authority may begin debarment procedures pursuant to N.J.A.C. 19:65-7.1.

6. In determining whether the targets in N.J.A.C. 19:65-4.2(a) have been satisfied, a business may only be treated once as a female or minority business.

7. Each applicant, contractor and subcontractor shall provide such information as is deemed necessary by the Authority to permit the Authority to make a determination as to the number of contracts awarded to female or minority businesses.

19:65-6.2 Administrative fees [Reserved]

(a) Initial Fees.

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge an initial fee equal to two percent of the initial amount of the loan.

2. With respect to approved projects in which the Authority is a participant (alone or with other participants), the Authority will charge an initial fee equal to two percent of the sum of the total costs of the project and administrative and other expenses related to the project.

3. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge an initial fee equal to one percent of the amount of the equivalent investment.

(b) Annual Fees.

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge a fee payable monthly in advance equal to 1/12 of one-half of one percent of the outstanding amount of the loan on the date of payment.

2. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge a fee payable monthly in arrears equal to 1/12 of one-quarter of one percent of the amount of the equivalent investment made as of such date of payment.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES
BOAT REGULATION COMMISSION
Boating Regulations
Rotating Lights; Personal Watercraft
Proposed Amendments: N.J.A.C. 7:6-1.24 and 9.2

Authorized By: Boat Regulation Commission, Robert J. Del Tufo, Attorney General, Department of Law and Public Safety.

Authority: N.J.S.A. 12:7-23.1 et seq. and 12:7-34.36 et seq. particularly, 12:7-34.40, 12:7-34.49, and 12:7A-29.

Proposal Number: PRN 1992-186.

Submit written comments by June 3, 1992 to:
Captain William J. Gronikowski
New Jersey State Police
Marine Law Enforcement Bureau
P.O. Box 7068
W. Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

The New Jersey Boat Regulation Commission "(Commission)" and the Department of Law and Public Safety ("Department") propose to amend their rules regarding the operation of boats on tidal and nontidal waters of the State. Specifically, the agencies propose to amend the rules regarding rotating lights and the definition of personal watercraft.

The proposed amendment to N.J.A.C. 7:6-1.24, Rotating lights, would add subsection (c) to conform to the amendment of Coast Guard regulations (33 CFR Part 88, Inland Navigation Rules; Annex V: Pilot Rules, effective August 21, 1991; specifically, 33 CFR 88.12) to allow vessels engaged in public safety activity recognized by the Coast Guard to display rotating red and yellow lights. Examples of public safety activity are patrolling marine parades, regattas, or special water celebrations; traffic control; salvage; firefighting; medical assistance; assisting disabled vessels; and search and rescue. Use of these lights is for identification only and does not confer any additional rights or privileges on vessels.

The proposed amendment to N.J.A.C. 7:6-9.2 would delete paragraph 3 to clarify the definition of personal watercraft and recognize the development of a reverse capability in new models of these craft. This will ensure uniform applicability of the regulations.

Social Impact

The proposed amendments will have a positive social impact on the people of the State by continuing and refining the State's regulation of boating activities and the enforcement of the regulations regarding those activities. In this way, boating on the waterways of New Jersey will be conducted in a safe manner, increasing the enjoyment of boating for all vessel operators while also protecting the health and property of all persons.

Maintaining uniformity with Coast Guard regulations will prevent confusion and ensure that boaters engaging in public safety activity recognized by the Coast Guard are not in violation of State regulations. Amending the definition of personal watercraft to recognize changing technology will ensure uniform application of regulations to these vessels and avoid inconsistent applicability due to technical differences in craft that do not affect the intent and purpose of the regulations.

Economic Impact

The proposed amendments will have little or no economic effect on the approximately 200,000 water vessels in the State since they require compliance with standards of operation that involve no additional equipment or other costs.

Regulatory Flexibility Analysis

The proposed amendments would apply to water vessels in New Jersey. It is estimated that of the approximately 200,000 water vessels subject to the boating regulations, 5,000 are owned by "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No new compliance requirements are imposed on such businesses by the proposed amendment to N.J.A.C. 7:6-1.24; the permitted display of a rotating red and yellow light is at the option of the vessel owner. The proposed amendment to the definition of personal watercraft subjects certain newer vessels to the operating limitations of N.J.A.C. 7:6-9.3. It is not anticipated that compliance with such limitations will cause any capital costs to be incurred, nor will professional services be required. In the interest of boating safety, lesser requirements or exemptions for small businesses are not provided.

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

7:6-1.24 Rotating lights

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

(c) Any vessel engaged in activity recognized by the U.S. Coast Guard as being eligible for its use may display a rotating red and yellow light.

7:6-9.2 Definitions

"Personal watercraft" means a power vessel which:

1. Is designed to be operated by a person or persons, sitting, standing or kneeling; **and**

2. Uses an internal combustion engine to power a water jet pump which propels the vessel through the water[; and].

[3. Uses an internal combustion engine that does not have the ability to reverse the pump's thrust so as to allow the vessel to b

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operated in reverse or have the ability to disengage the pump so as to prevent the vessel from making headway.]

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

SITE REMEDIATION PROGRAM

Technical Requirements for Site Remediation

Proposed New Rules: N.J.A.C. 7:26E

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., 58:10-23.11a et seq., 58:10A-1 et seq., and 58:10A-21 et seq.

DEPE Docket Number: 013-92-04.

Proposal Number: PRN 1992-197.

A **public hearing** concerning this proposal will be held on:
June 3, 1992, beginning at 10:00 A.M. at:
Multipurpose Room C
Cook Campus Center
Rutgers, The State University
Biel Road
New Brunswick, New Jersey
June 4, 1992 beginning at 10:00 A.M. at:
Veterans Room
New Jersey War Memorial
West Lafayette and John Fitch Way
Trenton, New Jersey
Submit written comments on or before July 20, 1992 to:
Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The Department is initiating procedures which should reduce the time nd resources necessary to respond to public comments on this proposal. 'he Department invites any commenter, who has access to any of the 'ord processing software packages listed below, to submit comments on ıe proposed rule to the Department on paper as well as on diskettes either 3½ inch or 5¼ inch). The Department will then be able to upload ıe comments onto the Department's office automation equipment, ıereby saving the Department considerable time in not having to retype ıe comments. The Department would then use the paper version of ıe comments to ensure that the uploading was accomplished successful-. Please note that this is not a requirement, and that the Department ill accept all comments submitted in writing prior to the end of the ›mment period noted above.

The word processing software which are compatible with the Depart-ent's office automation equipment are as follows: MultiMate; lultiMate 4.0; WordPerfect 4.2; WordPerfect 5.0; WordPerfect 5.1; 'ord for DOS; DisplayWrite RFT; OfficeWriter; Professional Write 2.0; 'ord for Windows; WordStar; Wang PC; and ASCII. Any commenter ith access to any other software is encouraged to contact Mr. Samuel 'olfe, at the address given above, to check the compatibility with any her software.

The Department appreciates your cooperation in this Department itiative to improve the efficiency and productivity of the Department's sponse to the comments on proposed rules. If this effort is successful, e Department may consider expanding this option for submitting mments to other proposals.

ıe agency proposal follows:

Summary

The Technical Requirements for Site Remediation (technical regula-ıns) are the Department's rules on remediating contaminated sites roughout the State. These regulations provide predictable, consistent, t flexible guidance on investigating and remediating sites which are ntaminated or at which contamination is suspected.

New Jersey has enjoyed the rewards of the industrial revolution and has suffered many of its burdens. Over the last century, and particularly in the last half-century, New Jersey has been a leader in ths era of industrial growth. To a large extent, it has been the development of chemicals, used in industrial and consumer products, that has helped to foster economic growth in New Jersey. However, years of use and improper discharge, disposal treatment and transportation of these chemicals and the waste products associated with these products have resulted in vast numbers of contaminated sites to be located throughout the State.

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 sites in need of limited cleanup. The potential number of contaminated sites that will need to be addressed is in the tens of thousands. The Department has the responsibility to ensure that the investigation and cleanup of such sites is protective of human health and the environment and is accomplished in a timely manner.

The necessity to remediate contaminated sites is evident. These sites pose a risk to the health of New Jersey residents and our environment. There has been a continual loss of potable water supplies throughout the State caused by contamination. These factors demand 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 environmentally impacted sites first. The cleanups were either conducted by the government using public funds or by private parties using private funds. In both cases, the technical requirements for the investigation and cleanup of sites were determined on a case-by-case basis using Departmental guidance, or Federal regulations and guidance. Often this approach led to charges of inconsistent decisions being made concerning the technical investigation of individual sites.

Today, important societal changes have occurred which have identified the need for private parties to be able to remediate sites on a voluntary basis without having to wait for the Department to address the site. Buyers do not want to purchase contaminated property. 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. Many companies, on their own initiative, have developed internal environmental audit programs which can lead to the identification of contaminated sites.

In response to these needs the Department has developed these technical regulations. The purpose of the technical requirements in this chapter is to ensure the thoroughness and reliability of investigations and cleanups of contaminated sites or sites at which contamination is suspected. The regulations will also ensure consistent application of these requirements. The regulations achieve these goals by providing specific minimum standards for conducting remediations.

Contaminated sites vary in their complexity due to a number of factors including the types of environmental media which are contaminated and the actual contaminants involved. Therefore, the requirements for the cleanup at one site may be inappropriate at another site and could result in either an inadequate investigation and cleanup or an excessive process that would unnecessarily increase the cost and time required for the cleanup. These regulations will allow for consistent technical decisions to be made at all sites, while allowing the flexibility necessary to address variable site complexity.

These regulations (technical requirements), together with the "Cleanup Standards for Contaminated Sites" (cleanup standards) which the Department proposed on February 3, 1992 (24 N.J.R. 373(a)), and the "procedures for Department Oversight of the Remediation of Contaminated Sites" (oversight rules) which the Department proposed on April 6, 1992 (24 N.J.R. 1281(b)), establish the regulatory core of the Department's site remediation program. This will ensure that all sites are investigated in accordance with minimum technical standards and that the same process for determination of cleanup levels will occur regardless of the party conducting the work.

Regulatory Background

Statutory Framework

New Jersey's statutes concerning the protection of human health and the environment from uncontrolled discharges of contaminants focus on four main areas. These are:

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- establishing public policy goals that protect the quality of human health and natural resources of the State;
- developing regulatory programs which limit and control the discharge of contaminants into the environment;
- overseeing how and when cleanups are conducted; and
- identifying the parties responsible for conducting cleanups of contaminated sites.

A group of regulations, taken as a whole, address these four main areas. The primary focus of these regulations is as follows. The cleanup standards establish the numerical criteria to address the first area. Previously established programs define the State's efforts to control discharges as described in the second area, including discharge prevention control and countermeasures, regulation of underground storage of hazardous substances, and New Jersey pollutant discharge elimination system permits. The proposed technical regulations address the third area. The oversight rules, which detail responsible parties' involvement in the remediation of contaminated sites, address the fourth area.

Public Policy Goals

The Legislature has clearly articulated a strong public policy to maintain a clean and safe environment, and has mandated that the central role of the Department lies in implementing that policy (see N.J.S.A. 13:1D-9). Among the Department's many statutorily mandated duties in this area are the formulation of policies for the conservation of natural resources, the promotion of environmental protection, and the prevention of pollution of the environment (see N.J.S.A. 13:1D-9).

The Legislature has also recognized the unique value of New Jersey's natural resources to the people of this State. New Jersey's lands and waters constitute a delicately balanced resource. The State's surface and ground waters are a precious and vulnerable resource (see N.J.S.A. 58:10-23.11a and N.J.S.A. 58:11A-2). The State's water resources are public assets held in trust by New Jersey for its citizens. Water resources are essential to the health, safety, economic welfare, recreational and aesthetic enjoyment, and general welfare, of the people of New Jersey (see N.J.S.A. 58:10A-2). The protection and preservation of these lands and waters promotes the health, safety and welfare of the people of this State (see N.J.S.A. 58:10-23.11a).

The threat of serious and in some cases irreversible environmental pollution caused by unremediated contaminated sites throughout the State 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). The Department is proposing technical regulations consistent with these strong public policy goals. The technical regulations along with the oversight rules and the cleanup standards will move the Department closer to achieving the goal of remediating sites quickly, efficiently and effectively.

Discharge Prevention Programs

New Jersey has a number of regulatory programs designed to prevent the discharge of contaminants into the environment. For example, the discharge of contaminants into the environment, except pursuant to and in compliance with a Department permit, is strictly prohibited (see, for example, N.J.S.A. 58:10-23.11c and N.J.S.A. 58:10A-6). The Department has developed regulatory programs to prevent, detect and identify prohibited discharges, and to limit the volume and concentrations of contaminants which may be discharged pursuant to Department issued permits. Examples of preventative regulatory programs include the discharge prevention, countermeasures and control requirements, N.J.A.C. 7:1E; the requirements for leak detection systems for underground hazardous substance storage tanks, N.J.A.C. 7:14B; and the design of new sanitary landfills to prevent contaminated leachate from reaching ground water, N.J.A.C. 7:26-2A.

Through the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program, the Department limits and controls the discharge of pollutants at levels which are designed to maintain the quality of ground and surface waters, N.J.A.C. 7:14A. The Department's Pollution Prevention program is developing regulations to encourage industry practices which use and generate less hazardous substances and wastes which will result in less hazardous substances being discharged to the environment. While these regulatory programs focus on prevention, New Jersey has an inventory of thousands of sites which were contaminated prior to the implementation of preventative regulation.

How Cleanups are Conducted

There are several major Federal and State programs currently regulating contaminated sites in New Jersey. These programs specify the parties which are responsible for conducting the cleanups at the contaminated sites.

At the Federal level, the Environmental Protection Agency (EPA) has identified 109 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. 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 the Environmental Cleanup Responsibility Act (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. Approximately, one third of these establishments have or are currently obtaining ECRA compliance.

Another State regulatory cleanup 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.

Department Responsibilities

The statutory programs referenced above, while directed at a variety of environmental concerns, establish the backdrop for a private party's participation in the remediation of contaminated sites. The Department's challenge is to develop consistent and comprehensive yet flexible regulations to allow for sites to be remediated by private parties without the intensive Department oversight historically used to address these sites. Limiting the degree of Department oversight necessary at most sites will conserve the limited amount of public resources dedicated to the remediation of contaminated sites at any one time to those sites where oversight is truly warranted based on their high environmental priority.

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. The establishment of technical requirements which can be applied consistently to determine how sites throughout the State shall be remediated, and yet be flexible enough to take into account the conditions unique to each site, will greatly enhance this mission.

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The proposed technical regulations provide a critical piece in the Department's strategy for the remediation of contaminated sites in the most timely and efficient manner possible. Without these technical regulations, the Department would have to review each site on a case-by-case basis to determine the appropriate investigatory and remedial requirements applicable to the site. This has proven to be a time-consuming, costly, and cumbersome process. This process often delays not only commercial transactions which are contingent upon site remediation, but, more importantly, it delays the protection of human health and the environment from the contaminants at the site.

In addition, the Department seeks to encourage the regulated community to conduct cleanups and eliminate the need for the Department to be involved in every step of the cleanup process at all sites. The technical regulations, along with the proposed cleanup standards and oversight rules, will significantly decrease the amount of Department involvement needed because the regulations will define the process and end points that must be achieved by the remediation of all contaminated sites. The Department expects these regulations to encourage the initiation of numerous cleanups, particularly at less complex contaminated sites. 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 is in the process of implementing 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 organizational structure will allow the Department to meet its mission of ensuring more consistent, efficient and effective remediation 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 regulations which will establish the technical and procedural requirements for site remediation. The first set of regulations, the oversight regulations (see 24 N.J.R. 281(b)), define when and how a party may participate in remediation activities and the degree of Department oversight of those activities. The second set of regulations, those proposed herein, will provide detailed requirements 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 Department's statutory programs relating to the remediation of contaminated sites. This proposal includes a joint public hearing on the two proposals. The Department has staggered 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 regulations at the same time.

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). The Department has examined the various regulations, guidance, and policies of the Department's remedial programs, the publicly funded programs, and has consolidated the Department's technical requirements into these rules.

These rules articulate the minimum requirements the Department would apply when remediating a site itself. The Department has included the flexibility needed to address the unique conditions which are often encountered at sites which have varying levels and degrees of complexity by allowing parties who are conducting the remediation to exercise professional judgment in applying these technical requirements in certain prescribed circumstances.

Over the last several years, the Department has been working with various interested parties to develop systematic and consistent remediation methodologies. In developing the technical regulations, the Department has taken into consideration the comments, criticisms, and suggestions which the Department received from these parties. For example, the Division of Responsible Party Site Remediation's "Remedial Investigation Guide" and "Cleanup Plan Guide," which have been consolidated into these regulations, were developed in consultation with the Technical Advisory Subcommittee of the Industrial Advisory Committee. The Subcommittee is made up of representatives of the Department, consulting firms and laboratories from around the State. These regulations also incorporate the technical appendices of the Division's Administrative Consent Orders which were developed and revised based on comments which the Department received from the regulated community through hundreds of case interactions.

The technical requirements contained in these regulations are not new. Rather, the Department has merely consolidated and refined the rules, guidance and policies from its various statutory programs. These regulations represent the consolidation of the Division of Responsible Party Site Remediation's "Remedial Investigation Guide," "Cleanup Plan Guide," and Administrative Consent Order technical appendices, the Bureau of Underground Storage Tank's "Scope of Work" and the Division of Publicly Funded Site Remediation's Request for Proposals.

These regulations provide one set of standards for the remediation of any site, whether the site is a complex chemical plant with dozens of areas of concern, a medium sized industrial establishment which is going through the ECRA process, or a small operation with a single leaking underground storage tank. These regulations provide for the uniform application of technical requirements at the many types of sites throughout the State, while allowing the flexibility required to address the individual circumstances of each site. These regulations were developed to be applied in conjunction with the cleanup standards and the oversight regulations to provide for the environmentally sound and expeditious cleanup of contaminated sites throughout the State.

Issue Analysis

This section presents a discussion of issues concerning the technical regulations that are considered to be of major importance to those persons that have to comply with these regulations.

Applicability of the Technical Regulations

The technical regulations are being promulgated pursuant to a number of statutes, including the Spill Compensation and Control Act which allows the Department to delegate its authority to remediate a site to a private party. What the Department cannot delegate, however, is its statutory mandate to ensure that all contaminated sites are cleaned up in a manner to protect human health and the environment. These regulations apply, then, to any person conducting any type or phase of a site investigation or remediation, whether or not the work is being done pursuant to an oversight document.

By codifying its requirements for the remediation of a contaminated site, the Department is specifying what needs to be done to remediate a site so that private parties, spending private funds, can do so without the Department having to review all the work being done at the site. However, all sites will eventually come under the Department's overview, either when the party remediating the site requests that the Department

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review the work done at the site through a Memorandum of Agreement, or when the site becomes a priority site, requiring the responsible party to sign an Administrative Consent Order.

Bias for Action

During all phases of remediation at contaminated sites, it is necessary to proceed with a "bias for action" to expedite any steps necessary and/or possible to contain or stabilize the contamination before initiating long-term remedial activities. The objective is to stabilize and/or contain the source of contamination (such as leaking drums) and to control the immediate threat to human receptors (such as contaminated potable water supplies). Concurrently with the stabilization/containment, the appropriate remedial investigation and feasibility study should be conducted and a remedial alternative should be designed and constructed as a final remedy.

Technical Regulations as Minimum Requirements

These regulations are the minimum standards which the Department would follow if it were to conduct the remediation of a site itself. It would be impossible to describe every situation which may be encountered at every site in the State and reduce these requirements to writing. Instead, these regulations detail the minimum requirements needed to address the conditions which are generally encountered at most sites throughout the State, and provide a mechanism to identify additional requirements applicable to a specific site. As explained in subchapter 1 of these regulations, the Department can require additional remediation necessary to protect human health and the environment.

If the remedial work is being done at a site with Department oversight (such as with an oversight document or through a remedial program such as ECRA or UST), the Department will ensure through the oversight process that the investigation or cleanup is the same work which would be done if the Department were doing the work itself.

Work being conducted without extensive Department oversight will be reviewed if submitted to the Department for approval as part of a voluntary remediation. The Department will review the reports which are submitted in accordance with these regulations and determine if the site remediation was properly conducted or if additional remediation is required. Any such additional work must be completed prior to receiving a Department determination that "no further action" is necessary in order to protect human health and the environment.

Rule Flexibility

Although many aspects of sites are similar, there are also unique aspects of certain sites to which the general rules may not necessarily apply. This is why these regulations allow for a certain amount of flexibility. In certain circumstances which are specified in the rules, alternative methods or use of professional judgment are allowed. The proposed rules contain the general sampling requirements for a site investigation. This section requires that samples must be biased toward those areas most likely contaminated, based on professional judgment, as well as area history, discolored soil, and stressed vegetation.

The regulations require that sampling and analyses must be conducted pursuant to acceptable professional methods, such as the procedures listed in the NJDEPE "Field Sampling Procedures Manual." However, this section allows alternate sampling methods to be used if the party conducting the investigation deems it appropriate, as long as the reason for using the alternate method is documented.

If the remediation is being conducted pursuant to an oversight document, any deviation from the regulations will be addressed through workplans and reports submitted pursuant to the oversight document. However, if alternate methods are to be employed by the party conducting the remediation without prior Department approval or oversight, the method used and the rationale for using the method must still be carefully documented. Sufficient information must be submitted to support the determination that the cleanup adequately protects human health and the environment. This will ensure that when the reports which were prepared in accordance with the regulations are submitted for Department review, the Department can analyze the deviations from the regulations and determine whether or not the deviations were appropriate.

The regulations detail when an alternate method may be employed or when deviations from the regulations through use of professional judgment may be appropriate. In all other situations, the requirements of the regulations must be implemented.

In addition, for any remediation which was initiated prior to the effective date of this chapter, the Department will review such work to determine whether or not the work was in substantial compliance with this chapter. Additional work may be necessary in such circumstances to ensure that the remediation adequately protects human health and the environment.

Finally, the regulations provide flexibility by specifying the minimum requirements that must be met during site remediation. In certain cases it may be necessary to conduct activities that are not specified in the regulations. These situations and the associated work to be conducted will be determined on a case-by-case basis. This can be done by the person responsible for conducting the remediation or by the Department. An example of this situation is where potential health impacts may have occurred due to exposure from a contaminated site. In this situation, special sampling of residential homes or individuals may be necessary to determine the extent and degree of contamination from a contaminated site and whether or not remedial action is necessary to protect the health of any individual that may have been exposed or could be exposed to the contamination.

Meaning of "No Further Action"

The technical regulations describe a phased approach to site investigations and cleanups. Generally, at the end of each phase a determination needs to be made as to whether or not to proceed with the next phase, or whether no further action is required, and the investigation or cleanup is complete. (The exception to this phased approach is the conjunction between the Remedial Investigation and Feasibility Study phases which are often interactive and overlap.) If an investigation reveals the absence of all contaminants, or the presence of contaminants which are below the applicable cleanup standards, a "no further action" determination can be made.

The "no further action" determination for a site must include an evaluation of historical use of the property. This is necessary because previous activities at the site that are not related to current operations may have resulted in the discharge of contaminants that are in need of remediation. This requirement is unrelated to the liability of the person conducting the site investigation to remediate the historical discharges at a site.

The Department will provide a "no further action" determination based on reports submitted pursuant to existing program regulations (for example, ECRA or UST) or oversight documents. If upon review of the report, the Department determines that the "no further action" recommendation was made based upon an incomplete site investigation or cleanup, further remediation will be required at this site to determine that the site is not contaminated or that all necessary remediation has been completed. After the Department reviews and concurs with such a recommendation, the Department will then provide written confirmation of no further action.

A no further action determination is based on the information available to the Department at the time of the determination that the site does not pose any unacceptable risks to human health or the environment and that the conditions at the site are in compliance with the cleanup standards in N.J.A.C 7:26D. If, however, the conditions at the site are no longer protective of human health and the environment based upon either additional information becoming available to the Department, or changes to the cleanup standards, additional remediation may be required.

A Department determination that no further action is necessary for all or part of a site is not a release or waiver of liability. A person's continuing liability for any contaminants remaining at the site depends on the person's relationship to the discharge which caused the contamination. The discharger, including all those who are in any way responsible for the discharge, remains liable if additional remediation is necessary (that is, more stringent standards are adopted). Those persons who are not in any way responsible for the discharge, but conduct remediation to the current cleanup standards or get a determination that no further action is required based on the current standards, have no continuing liability when the Department amends the cleanup standards to be more stringent.

Single-phased Remediations

Although the remedial process can logically be made into a multi phase effort even for simple site problems, single phase investigation are often appropriate. The contamination from a leaking tank can be delineated using field instrumentation and cleaned up in a single phase. This single phase effort can be completed by simply excavating the tank along with obviously contaminated soil and conducting field analysis or

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remaining soils in the excavation to determine whether or not any additional soil is contaminated above the applicable soil cleanup standard.

This process can be applied to any area of concern where the contaminants are known. If the contaminants are unknown, the same process can occur after initial site characterization sampling is conducted to identify which contaminants are present. Even where contaminants are unknown, instrumentation is available to identify contaminants in the field with a high degree of confidence so that contaminant identification and delineation can occur in a single phase.

Requirements for Ground Water Sampling

The expense and time required to conduct a ground water investigation is often considerable. Therefore, the regulations do not require a ground water investigation at every site, but only at sites at which certain conditions exist which indicate that a discharge impacting ground water may have occurred.

The need for a ground water investigation is generally indicated when soil contamination in excess of the applicable subsurface soil cleanup standard is found near the water table or when there is other evidence of ground water contamination. However, in certain areas of the State, there is a need to obtain a ground water sample before determining that no further action is required at a site. This ground water sample can be obtained using any generally accepted sampling method. In these areas, even though the contaminants may be present in very small quantities in the soil, the occurrence of a discharge necessitates an evaluation of ground water quality. The contaminant concentration in the soil may be low because the discharge occurred in the past and the contaminant has migrated to the ground water at levels in excess of the applicable ground water cleanup standards.

Feasibility Study

In the proposed regulations, the Department has established a strong preference for achieving protection of human health and the environment through the use of remedial actions which utilize permanent solutions and alternative treatment technologies that destroy or reduce the inherent hazards posed by the contaminants to the maximum extent practicable. This goal is consistent with EPA's approach in the National Contingency Plan. 40 CFR 300.430. The Department is proposing to implement this goal by requiring the submission of feasibility studies for Department approval in those situations that do not achieve a permanent solution to the contamination at a site.

A feasibility study is a process used to identify and evaluate potential remedial alternatives for all or part of a contaminated site. A feasibility study will be required at all sites unless an on-site permanent remedy or an off-site permanent remedy when the volume of contaminated media is less than 100 cubic yards. This policy ensures the elimination of contamination in the environment whenever practicable and will minimize the number of sites throughout the State which will have to be continually monitored and controlled as a result of contaminants remaining after the remedial alternative has been implemented.

This requirement will apply to all cleanups being conducted, including those undergoing an ECRA review. Due to the impacts of ECRA on business transactions, the Department will adopt an internal standard for the review of feasibility studies submitted as part of an ECRA review. This standard will provide for the timely review of the feasibility studies in order to minimize the impact of this requirement on business transactions.

Summary of Rules

General Provisions

Subchapter 1 includes the scope of the proposed regulations, certifications, definitions, construction, and severability provisions.

Subchapter 1 also addresses health and safety plans. The subchapter requires that all remediation, including sampling or cleanup, must be completed in accordance with a health and safety plan. The Department has not developed specific requirements for health and safety plans, but requires that activities be in compliance with applicable Federal laws.

General Sampling and Quality Assurance Requirements

Subchapter 2 establishes general sampling and quality assurance/quality control (QA/QC) requirements for all sampling and laboratory analysis activities. Pre-qualification of analytical laboratories is discussed along with sampling and analytical method requirements, and laboratory data deliverables.

This subchapter also specifies the requirements for the preparation of the Quality Assurance Project Plan (QAPP), the document which describes the specific quality assurance/quality control activities implemented which will achieve the data quality goals or objectives for a specific remedial activity. The Department acknowledges that certain sites will be less complex than others and thus require less sampling and analysis. The proposed regulations, therefore, establish a lower level of sampling and analysis for such sites. The Department, based on its experience dealing with a wide range of site complexity, has established this distinction between sites based upon the number of areas of concern. Sites with less than 10 areas of concern will be subject to the lower level of sampling and analysis.

Preliminary Assessment and Site Investigation

Subchapter 3 establishes requirements, workplan items and report items for the preliminary assessment and site investigation phases. The preliminary assessment is a thorough "paper review" of site history, operations and physical setting to determine if there are areas of concern on the site. The preliminary assessment may be verified with a site visit to certify the findings in the preliminary assessment. If through the preliminary assessment one or more areas of concern are identified, a site investigation is required to determine if contamination in excess of applicable cleanup standards pursuant to N.J.A.C. 7:26D is present at the site. This subchapter specifies the minimum sample frequency and location for determining if areas of concern are contaminated. If contamination in excess of cleanup standards is found on the site, then additional remediation is required.

As a general rule, areas of concern only need to be sampled if either there has been a discharge in the area of concern, or if there is physical evidence that a discharge may have occurred, such as soil discoloration or stressed vegetation.

However, contaminants discharged at low concentrations and contaminants that are colorless may not leave physical evidence when discharged. Therefore, sampling is required at potential discharge locations to determine whether or not a discharge has occurred.

The site investigation may be conducted using a phased approach. A few areas of concern which, based on the preliminary assessment, are the most likely to be contaminated may be selected for sampling first. As soon as any contamination in excess of the cleanup standards is found, the site can then move into the remedial investigation phase, even though all areas of concern on the site have not been sampled. However, if the first phase of the site investigation does not indicate any contamination above cleanup standards, the additional areas of concern at the site must be sampled.

Remedial Investigations

Subchapter 4 establishes requirements, workplan items and report items for remedial investigations. The remedial investigation is conducted to determine the nature and extent of site contamination. The vertical and horizontal limits of contamination in soil, ground water, sediment, building interiors or other media is determined. The remedial investigation also collects the data necessary to analyze alternatives to cleanup the contaminated site. For example, although site contaminants may be readily biodegradable, physical characteristics of the site must be well understood before in-situ bioremediation can be selected as the cleanup method. Bench scale laboratory studies or field pilot studies may be required in order to select an effective cleanup strategy.

Subchapter 4 also contains the information required to be included in the remedial investigation report and the format in which the information is to be reported. By requiring uniform reporting requirements and formats, Department review of the reports can be conducted more efficiently and expeditiously.

Feasibility Study

Subchapter 5 establishes the requirements for conducting feasibility studies. The purpose of a feasibility study is to identify all possible remedial action alternatives that may be appropriate for a site based on the remedial investigation, to screen each of those alternatives based on its effectiveness, implementability and timeliness, and then compare each of the alternatives that remain after the initial screening to aid in selecting a remedial action for the site. A feasibility study is not required to be submitted to the Department if the selected remedy is a permanent on site remedy, or is a permanent off site remedy involving less than 100 cubic yards of contaminated material. The feasibility study process is recommended, however, to ensure that a cost effective and environmentally sound remedy is selected.

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Subchapter 5 also contains the information required to be included in the feasibility study report and the format in which the information is to be reported. As stated above, by requiring uniform reporting requirements and formats, Departmental review of the reports can be conducted more efficiently and expeditiously.

Remedial Action

Subchapter 6 establishes requirements, workplan items and report items for remedial actions and post-remediation requirements. General requirements for remedial actions and post-remediation sampling frequency and location are provided along with site restoration requirements. Specific remedies are not identified because these will vary widely depending on site complexity and available technology.

Subchapter 6 also establishes schedule and progress report items for cleanups which take more than three months to complete. In addition to notifying the Department as to project progress, the progress reports require that any problems encountered during cleanup implementation be reported and addressed.

Permit Identification and Application

Subchapter 7 establishes the permit application requirements that are designed to ensure that the person implementing the remedial action identifies all permits and approvals early on in the process. This will allow for the permits to be obtained without delaying the cleanup. The Department proposes to waive hazardous waste permitting requirements pursuant to N.J.A.C. 7:26 for any remediation activities conducted at a contaminated site pursuant to an administrative consent order or other oversight document which obligates a person to implement the remedial action. The oversight document will provide the Department with sufficient control of the remediation, thus removing the need for a hazardous waste permit for this purpose.

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, is a major concern of the citizens of New Jersey. The proposed regulations will have a positive social impact by resulting in the expedited cleanup of contaminated sites throughout the State in an efficient, effective and consistent manner. Cleanups will occur more expeditiously because parties wishing to remediate a site will no longer have to wait for the Department's input as to what technical standards to apply in remediating a site. By applying these regulations, a party remediating a site, as well as the public, can be assured that the site is being cleaned up in an environmentally sound manner.

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 five years. The estimated cost of doing a preliminary assessment and site investigation at a site in accordance with the proposed regulations will average approximately $24,000. Cost will vary depending on a number of variables, including site complexity, extent and degree of contamination, historical use of the site, and remedy selected. For example, the cost of conducting a remedial investigation and feasibility study can range from about $10,000 to $2 million; the cost of a remedial action can be anywhere from $100,000 to over $50 million.

These regulations will encourage more parties to come forward and remediate sites on their own using private funds. These regulations 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 the party responsible for remediating a site cannot be identified or is unwilling to remediate a contaminated site.

There are certain instances in the regulations where the Department allows for reduced requirements in circumstances where the reduced requirements will allow a cost savings while at the same time maintaining the level of environmental protection achieved. For example, a feasibility study is not required if the amount of contaminated media being disposed of off-site as part of a permanent remedy is less than 100 cubic yards.

In addition, these regulations will allow the Department to respond to external economic forces to clean up lower priority sites. For example, a developer can use these regulations to determine if environmental problems exist at a site earmarked for development without waiting for the site to be addressed by the Department. These regulations 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.

Environmental Impact

By standardizing the manner in which a site must be remediated, a greater number of sites will be cleaned up in a more expeditious and environmentally sound manner. These regulations allow for those persons conducting remediation to perform 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 regulations 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 regulations will affect a significant number of small businesses (as defined in the Regulatory Flexibility Act), **such as those that require an environmental evaluation or remediation of their site.**

These regulations do not represent new Department initiatives. Rather they codify existing Department policy and guidance concerning site remediation. **As such, the regulations do not impose any new reporting, recordkeeping or compliance requirements on small businesses.** Rather the regulations give small businesses the ability to respond to changing economic circumstances by determining the need for site remediation based on their needs.

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. Any contaminated site must be remediated to levels that are protective of human health and the environment, regardless of the size of the business conducting the remediation. Therefore, these regulations can not establish separate requirements for small businesses.

The capital costs of implementing these regulations will vary greatly depending on what phase of remediation is being conducted at the site, and the nature and complexity of the site conditions. For example, as stated in the Economic Impact section above, the cost of a remedial investigation and feasibility study can range from about $10,000 to $2 million. This cost estimate includes the cost of hiring an environmental consultant, which will be needed in most instances.

These regulations will assist all businesses, including small businesses, in decision-making concerning sites with known or suspected contamination. Such businesses will be in a position to perform remedial activities at a site at their own pace and, in conjunction with the Oversight Rules, proposed at N.J.A.C. 7:26C (24 N.J.R. 1281(b)), allows for the business to decide what level of Department oversight it wishes to have in remediating the site.

Full text of the proposal follows:

CHAPTER 26E
TECHNICAL REQUIREMENTS FOR SITE REMEDIATION

SUBCHAPTER 1. GENERAL INFORMATION

7:26E-1.1 Scope

(a) This chapter constitutes the minimum technical requirements to investigate and remediate contamination at any site.

(b) Any remediation performed pursuant to this chapter shall not relieve any person from:

1. Complying with more stringent requirements or provisions imposed by any other Federal, State or local applicable statutes or regulations; or

2. Obtaining any and all permits required by State, Federal or local statute or regulation, except as expressly provided herein.

(c) No provision of this chapter shall be construed to limit the Department's authority to require additional remediation based upon site-specific conditions in order to protect human health and the environment.

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7:26E-1.2 Liberal construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the Commissioner and the Department to effectuate the purposes of N.J.S.A. 13:1D-1 et seq., 13:1E-1 et seq., 13:1K-6 et seq., 26:1A-45 et seq., 58:10-23.11a et seq., 58:10A-1 et seq., and 58:10A-21 et seq.

7:26E-1.3 Applicability

(a) The requirements of this chapter apply to any person conducting remediation at any site in New Jersey whether or not the Department is overseeing the remediation, including, without limitation, those sites and activities subject to:

1. The Environmental Cleanup and Responsibility Act (ECRA);
2. The New Jersey Underground Storage of Hazardous Substances Act (UST);
3. The Spill Compensation and Control Act;
4. The Solid Waste Management Act; and
5. The Water Pollution Control Act.

(b) Any person seeking Department review of work undertaken pursuant to this chapter shall:

1. Execute an oversight document with the Department pursuant to N.J.A.C. 7:26C;
2. Comply with the requirements of N.J.A.C. 7:26B; or
3. Comply with the requirements of N.J.A.C. 7:14B.

(c) For any site at which a particular phase of remediation was commenced prior to the effective date of this chapter, the Department may evaluate such work to determine whether the work is in substantial compliance with this chapter, and therefore acceptable to the Department.

7:26E-1.4 Notification

(a) Prior to the start of any remediation at a site pursuant to this chapter, the person responsible for implementing the remedial action shall notify the Department in writing and include the following information:

1. The name and address of the person responsible for implementing the remedial action;
2. The name of the site;
3. The street address of the site;
4. The lot and block of the site;
5. A brief description of the current use and occupancy of the site;
6. The nature of the remedial action to be performed; and
7. The anticipated start date of the remedial action.

(b) The information required pursuant to (a) above shall be submitted to:

Division of Responsible Party Site Remediation
Bureau of Site Assessment
CN-028
401 E. State Street
Trenton, NJ 08625

7:26E-1.5 Certifications

(a) Any person making a submission to the Department pursuant to 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 investigation and/or 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 person designated in (c)2 below shall sign the following certification:

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. 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 person authorized by a resolution of the board of directors to sign the document. A copy of the resolution, certified as a true copy by the secretary of the corporation, shall be submitted along with the certification;

ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official; and

iv. For a natural person, by that person, provided that if the person is a minor, incompetent as defined under New Jersey law, or is deceased, the signatory should be the parent, guardian, executor, or court appointed representative, as applicable.

7:26E-1.6 Documenting compliance with the technical requirements

(a) All work being conducted at a site pursuant to this chapter, whether or not being done with Department oversight, shall be documented and included in reports which follow the format and contain the information required pursuant to the reporting sections of N.J.A.C. 7:26E-2 through 7 and shall contain the certifications required by N.J.A.C. 7:26E-1.5.

(b) When the remediation is conducted with Department oversight (see N.J.A.C. 7:26E-1.3 above), the person responsible for conducting the remediation shall submit workplans (if applicable) and reports pursuant to the schedule contained in the oversight document which the person executed with the Department pursuant to N.J.A.C. 7:26C, or as the Department requires pursuant to ECRA or UST. The workplan and/or report shall comply with the format and contain the information required pursuant to N.J.A.C. 7:26E-2 through 7.

(c) In order to provide flexibility in the technical requirements for site remediation described in this chapter, the Department has identified certain limited situations when alternate sampling, analytical, or investigatory methods may be used.

1. Such alternate methods may be used if the person responsible for conducting the remediation:

i. Documents in the applicable remedial phase report (that is, preliminary assessment, site investigation, remedial investigation, remedial action) rationale acceptable to the Department for using the alternate method; and

ii. The Department reviews and approves the alternate method.

2. The Department will review the documentation, either as part of the Department's oversight during the remediation or at a later time when the site becomes a Department priority for site remediation.

3. The Department will evaluate the alternate method in terms of its site-specific application, based upon the documentation provided and other appropriate information available to the Department, in terms of the extent to which the alternate method:

i. Has previously been either used successfully or approved by the Department in writing in other similar situations;

ii. Reflects current technology as documented in peer-review professional journals;

iii. Provides results which are verifiable and reproducible;

iv. Can be expected to achieve the same results or objectives as the method which it proposes to replace;

v. Furthers the attainment of the goals of the specific remedial phase for which it is used; and

vi. Is consistent with the overall scheme of this chapter to ensure the remediation of contaminated sites in a manner which is protective of human health and the environment.

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7:26E-1.7 Criteria for going beyond the minimum technical requirements

(a) The Department may require additional work beyond the minimum technical requirements set forth in this chapter whenever necessary for the Department to ensure adequate protection of human health and the environment based upon a review of the following areas:

1. The number or magnitude of the discharge(s) being investigated;

2. The nature of the substances discharged;

3. A change in the certification or other authorization of the laboratory performing analyses previously submitted for the site in question or any other site;

4. The identification of additional exposure pathways not otherwise fully investigated pursuant to the minimum requirements;

5. The identification of additional receptors not otherwise fully investigated pursuant to the minimum requirements;

6. Distance to and sensitivity of receptors;

7. When the Department determines based on its review of data or other information submitted, that additional data or information is needed to fully evaluate the conditions for which the data or information was submitted; and

8. Any other site-specific conditions the Department identifies which necessitate the need for additional work.

7:26E-1.8 Definitions

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

"Area of concern" means any existing or former location where hazardous substances, hazardous wastes, hazardous constituents or pollutants are or were known or suspected to have been discharged, generated, manufactured, refined, transported, stored, handled, treated, disposed, or where hazardous substances, hazardous wastes, hazardous constituents or pollutants have or may have migrated, including, but not limited to, all current and former:

1. Bulk storage tanks and appurtenances, including, without limitation:

i. Tanks and silos;

ii. Rail cars;

iii. Piping, above and below ground pumping stations, sumps and pits; and

iv. Loading and unloading areas;

2. Storage and staging areas, including:

i. Storage pads and areas;

ii. Surface impoundments and lagoons;

iii. Dumpsters; and

iv. Chemical storage cabinets or closets;

3. Drainage systems and areas, including, without limitation:

i. Building floor drains and piping, including trenches and piping from sinks that potentially received process waste;

ii. Roof leaders (when process operations vent to roof);

iii. Drainage swales and culverts;

iv. Storm sewer collection systems;

v. Storm water detention ponds and fire ponds;

vi. Surface water bodies;

vii. Leach fields; and

viii. Dry wells and sumps;

4. Discharge and disposal areas, including, without limitation:

i. Areas of discharges pursuant to N.J.A.C. 7:1E;

ii. Waste piles as defined by N.J.A.C. 7:26;

iii. Waste water treatment, collection and disposal systems, including, without limitation, septic systems, seepage pits and dry wells;

iv. Landfills;

v. Landfarms;

vi. Sprayfields; and

vii. Incinerators;

5. Other areas of concern, including, without limitation:

i. Electrical transformers and capacitors;

ii. Building material and insulation with asbestos;

iii. Building interiors including, without limitation:

(1) Floor drains;

(2) Trenches;

(3) Pits or sumps;

(4) Hazardous materials storage or handling areas;

(5) Equipment;

(6) Loading or transfer areas;

(7) Air vents and ducts;

(8) Areas around boilers/mechanical device areas;

(9) Transformers;

(10) Laboratory;

(11) Waste treatment areas; and

(12) Discolored areas or spill areas;

iv. Open areas away from production operations;

v. Areas with stressed vegetation;

vi. Other discharge areas;

vii. Underground piping;

viii. Compressor vent discharges;

ix. Non contact cooling water discharges;

x. Areas that may have received floodwater or stormwater runoff from potentially contaminated areas; and

xi. Any other area suspected of containing contaminants;

6. Ground water areas of concern, including, without limitation, present or past regulated activities under the New Jersey Pollutant Discharge Elimination System (NJPDES) Discharge to Ground Water regulations, N.J.A.C. 7:14A, including: seepage pits; dry wells; lagoons; and septic systems which received industrial waste; and

7. Surface water areas of concern, including, without limitation, all surface water areas and associated sediment which receive or may have received any point or non-point source discharge from the site.

"Base neutral organic compound" means semivolatile compounds amenable to analysis by extraction of the sample with a pH neutral and a pH basic organic solvent. For the purposes of this chapter, analysis of base neutral organic compounds means the analysis of a sample for either:

1. Those priority pollutants listed as base neutral compounds in Appendix B, Table II of N.J.A.C. 7:14A; or

2. Those target compound list compounds identified as semivolatiles except phenol and phenolic compounds in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.

"Coastal wetland" means any area defined as such pursuant to N.J.S.A. 13:9A-1 et seq.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy.

"Containment" or "containment activities" means actions to limit or prevent discharges or the spread of contamination.

"Contaminant" means any discharged hazardous substance, hazardous constituent, hazardous waste or pollutant.

"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 individual establishment, facility or other site, and all contamination which is emanating or has emanated therefrom.

"Contract laboratory program" or "CLP" means a program of chemical analytical services developed by the EPA to support CERCLA.

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

"Department certified laboratory" means a laboratory that is currently certified pursuant to N.J.A.C. 7:18, the Regulations Governing Laboratory Certification and Standards of Performance, to perform laboratory analyses for a specific certification category and a specific parameter within the certification categories.

"Diligent inquiry" means:

1. Conducting a diligent search of all documents which are reasonably likely to contain information related to the object of the inquiry, which documents are in such person's possession, custody or control, or in the possession, custody or control of any other

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person from whom the person conducting the search has a legal right to obtain such documents; and

2. Making reasonable inquiries of current and former employees and agents whose duties include or included any responsibility for hazardous substances, hazardous wastes, hazardous constituents, or pollutants, and any other current and former employees or agents who may have knowledge or documents relevant to the inquiry.

"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 and 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" means a study to develop and evaluate options for remedial action. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the Remedial Investigation. The feasibility study process uses data gathered during the remedial investigation to develop conceptual remedial action alternatives based on the characterization of the nature and extent of contamination. The remedial investigation 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 feasibility study 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.

"Fill material" means any material not indigenous to the site or area of concern including, but not limited to, non-homogeneous, unconsolidated material such as demolition debris, dredge spoils, or ash by-products of fossil fuels, which has been used as fill or as cover.

"Free product" means a separate phase material present in concentrations greater than a contaminant's residual saturation point.

"Freshwater wetland" means any area defined as such pursuant to N.J.S.A. 13:9B-1 et seq.

"Full laboratory data deliverables" means those deliverables identified as follows:

1. For non-EPA/Contract Laboratory Program analyses, the regulatory format data deliverables listed in the version of the Professional Laboratory Analytical Services contract issued by the New Jersey Department of Treasury, Division of Purchase and Property in effect as of the date on which the laboratory is performing the analysis; and

2. For EPA/Contract Laboratory Program analyses, the deliverables listed in the EPA Contract Laboratory Program "Statement of Work" documents in effect as of the date on which the laboratory is performing the analysis as modified by specific requirements listed in Appendix A, incorporated herein by reference.

"Ground water" means the portion of the water beneath the land surface that is within the zone of saturation (below the seasonally high water table) where all pore spaces of the geologic formation are filled with water.

"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 Regulation, 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.

"Highly permeable soils" means soils having less than 15 percent silts and/or clays.

"Impermeable" means a layer of natural and/or man-made material of sufficient thickness, density and composition so as to have a maximum permeability for water of 10^{-7} cm/sec at the maximum anticipated hydrostatic pressure.

"Landfill" means a sanitary landfill as defined pursuant to N.J.S.A. 13:1E-1 et seq.

"Natural resources" means all land, biota, fish, shellfish, and other wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

"Non-targeted compound" means a hazardous substance, hazardous waste, hazardous constituent or pollutant detected in a sample using a specific analytical method that is not a targeted compound, a surrogate compound or an internal standard compound.

"Oversight document" means any document defined as an oversight document pursuant to N.J.A.C. 7:26C.

"Permanent remedy" means a remedy resulting in chemical or biochemical transformation of the contaminant from a concentration that is above the then-applicable residential cleanup standard pursuant to N.J.A.C. 7:26D to a concentration that is below the then-applicable residential cleanup standard, such that no further action is required to ensure the contaminant remains at a concentration that is below the then-applicable residential cleanup standard, or a remedy that allows the contaminant to be reused as a product. Permanent remedies for organic contaminants include, without limitation, thermal destruction, biotransformation, chemical oxidation, or vitrification. Permanent remedies are currently considered unavailable for metallic contaminants except where metal-contaminated media can be reprocessed or reused. If the applicable cleanup standards pursuant to N.J.A.C. 7:26D are amended, however, additional remediation may be necessary in order for a previously implemented "permanent remedy" to meet the amended cleanup standard.

"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.

"Person responsible for conducting the remediation" includes any person who executes or is otherwise subject to an oversight document, and any person who is performing the remediation or has control over the person (for example, contractor or consultant) who is performing the remediation, including, without limitation, an owner or operator who is subject to either ECRA or UST.

"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" means the initial search and evaluation of existing site specific operational and environmental information to determine if further investigation concerning the documented, alleged, suspected or potential discharge of any contaminant is required by the Department. The preliminary assessment is the first phase in the process of determining whether hazardous substances, hazardous wastes, hazardous constituents or pollutants are present at a site.

"Priority pollutant plus 40" or "PP+40" means the priority pollutant list of 126 compounds and elements developed by the EPA pursuant to Section 307(a)(1) of the Clean Water Act and 40 non-targeted organic compounds detected by gas chromatography/mass spectroscopy (GC/MS) analysis. For the purposes of this chapter, a PP+40 scan means the analysis of a sample for all priority pollutants except asbestos and 2,3,7,8-tetrachloro-dibenzo-p-dioxin, and up to 15 non-targeted volatile organic compounds and up to 25 non-targeted semivolatile organic compounds as analyzed using GC/MS analytical methods. Non-targeted compound criteria shall be used pursuant to the version of the EPA "Contract Laboratory Program Statement of Work for Organic Analysis, Multi-media,

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Multi-concentration" in effect as of the date which the laboratory is performing the analysis.

"Quality assurance" means the total integrated program for assuring the reliability of monitoring and measurement data which includes a system for integrating the quality planning, quality assessment and quality improvement efforts to meet data end-use requirements.

"Quality assurance project plan" means a document which presents in specific terms the policies, organization, objectives, functional activities and specific quality assurance/quality control activities designed to achieve the data quality goals or objectives of a specific project or operation.

"Quality control" means the routine application of procedures for attaining prescribed standards of performance in the monitoring and measurement process.

"Receptor" means any human, ecosystem or part thereof, surface water, well (other than a monitoring well), structure (for example, basement) which is or may be affected by a contaminant from a contaminated site.

"Reduced laboratory data deliverables" means, for both EPA/Contract Laboratory Program and non-EPA/Contract Laboratory Program analyses, the laboratory data deliverables listed in Appendix B.

"Remedial action" means those actions taken at a contaminated site as may be specified in a decision document, record of decision or other document the Department determines appropriate. The term includes, but is not limited to, actions at the location of a contaminated site in compliance with the applicable clean up standards, storage, confinement, perimeter protection using dikes, trenches, or ditches, clay or other covers, neutralization, cleanup of 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 human health or the environment. The term includes the temporary or 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 the human health and the environment.

"Remedial investigation" means a process to determine the nature and extent of site contamination and the problems presented by a discharge. The remedial investigation emphasizes data collection and site characterization, and is generally performed concurrently and in an interactive fashion with the feasibility study. The remedial investigation includes sampling and monitoring, as necessary, and includes the gathering of sufficient information, to determine the necessity for remedial action.

"Remedial phase" means a distinct component of the remediation process. Such components may include preliminary assessment, site investigation, remedial investigation, feasibility study, and remedial action.

"Remediation" means all necessary actions to investigate and cleanup any known or suspected discharge or threatened discharge of contaminants, including, without limitation, preliminary assessment, site investigations, remedial investigation, feasibility studies, and remedial actions.

"Semivolatile organic compounds" means compounds amenable to analysis by extraction of the sample with an organic solvent. For the purposes of this chapter, analysis of semivolatile organic compounds means the analysis of a sample for either:

1. Those priority pollutants listed as base neutral and acid compounds in Appendix B, Table II of N.J.A.C. 7:14A; or

2. Those target compound list compounds identified as semivolatiles in the version of the EPA Contract Laboratory Program Statement of Work for Organic Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis.

"Site investigation" means the collection and evaluation of data adequate to determine whether or not contaminants exist at the site in excess of the applicable cleanup standards pursuant to N.J.A.C. 7:26D.

"Soil" means the unconsolidated mineral and organic matter on the surface of the earth that has been subjected to and influenced by geologic and other environmental factors.

"Spill Act" means the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq.

"Surface soil" means the top two feet of soil below existing grade.

"Surface water" means water defined as surface water pursuant to the Surface Water Quality Regulations, N.J.A.C. 7:9-4.

"SWMA" means the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

"Tank" means a stationary device designed to contain an accumulation of hazardous substances, hazardous constituents, hazardous wastes, or pollutants which is constructed of non-earthen materials (for example, concrete, steel, plastic) that provide structural support.

"Target analyte list" or "TAL" means the list of inorganic compounds/elements designated for analysis as contained in the version of the EPA Contract Laboratory Program Statement of Work for Inorganics Analysis, Multi-Media, Multi-Concentration in effect as of the date on which the laboratory is performing the analysis. For the purpose of this chapter, a Target Analyte List scan means the analysis of a sample for Target Analyte List compounds/elements.

"Targeted compounds" means a hazardous substance, hazardous waste, hazardous constituent or pollutant for which a specific analytical method is designed to detect that potential contaminant both qualitatively and quantitatively.

"Target compound list plus 30" or "TCL+30" means the list of organic compounds designated for analysis (TCL) as contained in the version of the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date on which the laboratory is performing the analysis, and up to 30 non-targeted organic compounds (plus 30) as detected by gas chromatography/mass spectroscopy (GC/MS) analysis. For the purposes of this chapter, a Target Compound List +30 scan means the analysis of a sample for Target Compound List compounds and up to 10 non-targeted volatile organic compounds and up to 20 non-targeted semivolatile organic compounds using GC/MS analytical methods. Non-targeted compound criteria shall be pursuant to the version of the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date on which the laboratory is performing the analysis.

"Tentatively identified compound" or "TIC" means a non-targeted compound detected in a sample using a GC/MS analytical method which has been tentatively identified using a mass spectral library search. An estimated concentration of the TIC is also determined.

"Unknown compound" means a non-targeted compound which cannot be tentatively identified. Based on the analytical method used, the estimated concentration of the unknown compound may or may not be determined.

"Underground storage tank" means any one or combination of tanks, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, hazardous constituents, hazardous wastes or pollutants the volume of which, including the volume of the appurtenant pipes lines, fixtures and other related equipment, is ten percent or more beneath the surface of the ground.

"UST" means the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.

"Volatile organics" means organic compounds amenable to analysis by the purge and trap technique. For the purposes of this chapter, analysis of volatile organics means the analysis of a sample for either those priority pollutants listed as amenable for analysis using EPA method 624 or those target compounds identified a

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volatiles in the version of the EPA "Contract Laboratory Program Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date on which the laboratory is performing the analysis.

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

"Wetland" means any freshwater or coastal wetland.

"WPCA" means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:26E-1.9 Health and safety plan

Any person conducting remediation activities shall prepare a site-specific health and safety plan which shall be adhered to by all personnel involved in the remediation. The plan shall be in accordance with the most recently adopted and applicable general industry (29 CFR 1910) and construction (29 CFR 1926) standards of the Federal Occupational Safety and Health Administrative (OSHA), U.S. Department of Labor, as well as any other Federal, State or local applicable statutes or regulations.

7:26E-1.10 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

SUBCHAPTER 2. QUALITY ASSURANCE FOR SAMPLING AND LABORATORY ANALYSIS

7:26E-2.1 Quality assurance requirements

(a) The person responsible for conducting the remediation shall ensure that the following quality assurance procedures shall be followed for all sampling and laboratory analysis activities.

1. Laboratories performing analysis shall conform to the following:

i. For the analysis of aqueous samples, the laboratory shall be a New Jersey Certified Laboratory for all parameters or appropriate category of parameters for which analysis will be performed for which certification exists pursuant to N.J.A.C. 7:18;

ii. For the analysis of aqueous and non-aqueous samples for applicable organics and inorganics including polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, the laboratory shall be a participant in good standing in the EPA Contract Laboratory Program (CLP) for the applicable Statement of Work protocol as described in the version of the EPA Contract Laboratory Program "Invitation for Bid" (IFB) contract documents in effect as of the date on which the laboratory is performing the analysis;

iii. For the analysis of aqueous and non-aqueous sampes for applicable organics and inorganics, the laboratory shall be a contract awardee able to perform sample analyses in the applicable analytical task under the version of the Professional Laboratory Analytical Services contract issued by the New Jersey Department of Treasury, Division of Purchase and Property, in effect as of the date on which the laboratory is performing the analysis;

iv. For the analysis of non-aqueous samples for selected organics and inorganics using methods contained in the edition of EPA Publication SW-846, "Test Methods for Evaluating Solid Waste" in effect as of the date on which the laboratory is performing the analysis, the laboratory shall be a New Jersey Certified Laboratory which is certified in a specific category of analysis as described in Table 2-1; or

v. For the analysis of aqueous and non-aqueous samples for contaminants/parameters not applicable to (a)1i through iv above, the person responsible for conducting the remediation is also responsible for ensuring that the selected laboratory is capable of performing the analysis.

TABLE 2-1

Laboratory Requirements for Non-Aqueous Samples Analysis

USEPA SW-846 Analytical Method	Required NJDEPE Drinking Water or Water Pollution method/category certification
8240—Volatile Organics by GC/MS	624 or 524.1 or 524.2
8250, 8270—Semivolatile Organics by GC/MS	625 or 525
8080—Organochlorine Pesticides and PCBs by GC	608 or 508 or 505 or "Organochlorine Pesticides—Drinking Water" or "Pesticides—Water Pollution"
8010—Halogenated Volatile Organics by GC	601 or 502.1 or 502.2 or "Trihalomethanes—Drinking Water"
8020—Aromatic Volatile Organics by GC	602 or 502.2 or 503.1
8120—Chlorinated Hydrocarbons by GC	612
8150—Chlorinated Herbicides by GC	515.1 or "Chlorophenoxy Acid Herbicides"

2. The Department shall reject all applicable analytical data generated after the date of:

i. Decertification or suspension of a laboratory by the Department pursuant to N.J.A.C. 7:18;

ii. Suspension of a laboratory by the EPA from the Contract Laboratory Program;

iii. Loss of a Contract Laboratory Program contract;

iv. Placement of a laboratory on non-engagable status by the New Jersey Department of Treasury for the Professional Analytical Services contract; or

v. Loss of the Professional Analytical Services Contract.

3. Except as provided in (a)4 below, analytical methods used shall have been published by organizations with recognized expertise in the development of standardized analytical methods. These organizations include, without limitation:

i. The EPA;

ii. The American Society for Testing and Materials (ASTM);

iii. The American Public Health Association (APHA);

iv. The National Institute for Occupational Safety and Health (NIOSH);

v. The Association of Official Analytical Chemists (AOAC);

vi. The U.S. Army Toxic and Hazardous Materials Agency (USATHEMA);

vii. The American Water Works Association (AWWA); and

viii. The Department.

4. If an analytical method as described in (a)3 above does not exist for a specific contaminant or parameter, then the laboratory shall:

i. Select an appropriate method from another source;

ii. Document the rationale for selecting the method pursuant to N.J.A.C. 7:26E-1.6(c); and

iii. Develop a standard operating procedure for the method, including a quality control section.

5. All quality assurance/quality control requirements and criteria specified in the analytical methods used shall be met.

6. Sampling methods, sample preservation requirements, sample handling times, decontamination procedure for field equipment, and frequency for field blanks, field duplicates and trip blanks shall conform to applicable industry methods such as those specified in the NJDEPE "Field Sampling Procedures Manual" in effect as of the date on which samping is performed. The person responsible

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for conducting the remediation shall document the rationale for any deviations from the methods in the "Field Sampling Procedures Manual" pursuant to N.J.A.C. 7:26E-1.6(c).

7. Samples shall be preserved in the field immediately after collection and submitted to the laboratory as soon as possible and no later than 24 hours after sample collection for a one day sampling effort, or if either overnight carrier is required or if sampling effort exceeds one day, no later than 48 hours after sample collection.

8. For solid sample analysis, including without limitation, soils and sediments, all results shall be reported on a dry weight basis, except for those results required by the method to be otherwise reported.

9. Sample matrix cleanup methods shall be performed if:

i. Petroleum contaminated soils, sediments, or other solids are analyzed for semivolatile organics, and the method detection limits are elevated above the applicable cleanup standard pursuant to N.J.A.C. 7:26D because of matrix interference;

ii. Gas chromatographic peaks are not adequately separated due to matrix interference (inadequate peak separation is indicated by baseline elevation at the analyte retention time which is greater than three times the peak height of the nearest interval standard);

iii. So specified by the analytical method; or

iv. Matrix interferences prevent accurate quantification and/or identification of target compounds.

10. Acceptable matrix cleanup methods include, without limitation, those methods contained in the EPA Publication SW846 or the EPA "Contract Laboratory Statement of Work for Organics Analysis, Multi-Media, Multi-Concentration" in effect as of the date of sample analysis.

11. Laboratory data deliverables shall be as follows unless otherwise specifically required pursuant to a NJPDES permit:

i. Full laboratory data deliverables shall be submitted for all potable water and polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans sample results;

ii. Reduced laboratory data deliverables shall be submitted for all other analyses; and

iii. Analytical results without all quality control and raw data as required in full and reduced laboratory data deliverables, may be provided for all delineation samples which necessitate additional delineation sampling, provided the following information is submitted:

(1) A cover page, including facility name and address, laboratory name and address, laboratory certification number, if applicable, date of analytical report preparation and signature of laboratory director;

(2) A listing of all field sample identification numbers and corresponding laboratory sample identification numbers;

(3) A listing of all analytical methods used;

(4) The method detection limit for each analyte for each sample analysis;

(5) All sample results including date of analysis;

(6) All method blank results; and

(7) All chain of custody documentation.

iv. Upon written request, the Department may require that a "reduced" data deliverables package shall be upgraded to a "full" data deliverables package for any sample analysis pursuant to N.J.A.C. 7:26E-1.7.

(b) Field screening methods are limited as follows:

1. Field screening methods for all sampling matrices (soil, water, air, interior surfaces) can only be used under the following conditions:

i. For contaminant delineation if contaminant identity is known or if there is reasonable certainty that a specific contaminant may be present (for example, benzene, toluene, ethylbenzene, xylene in the case of sampling for a gasoline release); or

ii. To bias sample location to the location of greatest suspected contamination.

2. Field screening methods shall not be used to verify contaminant identity or clean zones. However, where 10 or more samples are required for initial characterization sampling at an area of concern, field screening methods listed in (b)3 and 4 below may be used to document that up to 50 percent of sampling points within the area of concern are not contaminated.

3. The field analytical methods described in the version of the following references in effect as of the date of the field screening activities may be used:

i. The NJDEPE "Field Sampling Procedures Manual";

ii. The NJDEPE Site Remediation Program "Field Analysis Manual";

iii. "Field Measurements," EPA/530/UST-90-003; or

iv. The "Field Screening Methods Catalog," EPA/540/2-88/005.

4. Other field analytical methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

(c) The following requirements apply for selection of analytical parameters:

1. Samples from each area of concern shall be analyzed for contaminants which may be present provided that gas chromatography methods with a mass spectrometer detector system are used for analysis of volatile/semi-volatile contaminants (exclusive of herbicides, pesticides, and PCBs);

2. A mass spectrometer detector system pursuant to (c)1 above is not required if:

i. Contaminant identity is known;

ii. The contaminant chromatographic peak is 100 percent resolved from any other peak; and

iii. At least 10 percent of the sample analyses are confirmed using gas chromatography/mass spectrometry.

3. If analytical methods are not available for a contaminant, analysis of indicator parameters (for example, pH may be used as an indicator parameter for acid or base discharges) may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

4. Analysis of Target Compound List plus 30/Target Analyte List (TCL+30/TAL) or Priority Pollutant plus 40 (PP+40) scans, petroleum hydrocarbons, and pH shall be conducted when contaminants in an area are unknown or not well documented, although a limited contaminant list may be used subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

5. Analysis of soil and sediment samples for petroleum hydrocarbons may be in accordance with the "Interim Petroleum Hydrocarbon Guideline" prepared by the Department.

(d) For all petroleum storage and discharge areas, sample analysis shall be conducted pursuant to the requirements in Table 2.2. Samples taken in non-petroleum storage and discharge areas shall be analyzed for the stored material.

TABLE 2-2

ANALYTICAL REQUIREMENTS FOR PETROLEUM STORAGE AND DISCHARGE AREAS

Sampling Objective	Soil Initial Screening/ Post-Remediation[1]	Water Initial Screening
Gasoline, Mineral Spirits	VO+10[2], Lead[7]	VO+10[2], MTBE[3] TBA[3]
Kerosene, Jet Fuel	VO+10[2] Napthalene[5]	B/N+15[10], VO+10[2] TPHC[6]
Fuel Oil No. 2, Diesel Fuel	TPHC[6,9]	TPHC[6], B/N+15[10], VO+10[2]
Fuel Oil Nos. 4 & 6, Hydraulic Oils, Cutting Oil, Crude Oil, Lubricating Oil	PAH[8], TPHC[6]	B/N+15[10], VO+10[2]
Waste Oil and Unknown Hazardous Waste	VO+10[2], TPHC[6], BN+15[10], PCBs, Priority Pollutant Metals	PP+40 or TCL/TAL[4]

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1. Analytical parameters may be limited based on previous analytical results.
2. EPA target compound list volatile organic or priority pollutant volatile organic scans with a library search.
3. Methyl-tertiary-butyl-ether (MTBE), tertiary-butyl alcohol (TBA).
4. Priority Pollutant plus forty (PP+40) or EPA Target Compound List plus 30 and EPA Target Analyte List.
5. Napathalenes, including Napathalene, Methyl Napathalene, Dimethylnaphthalene; may be analyzed in BN+15 fraction or in VO fractions; if analyzed in VO fraction, instrument must be calibrated for these analytes.
6. Total Petroleum Hydrocarbon (TPHC) analysis of soil using EPA Method 418, modified for soil.
7. Lead Analysis required if source was or is leaded gasoline.
8. Polynuclear aromatic hydrocarbons (per EPA Priority Pollutant List).
9. VO+10 analysis required if TPHC level in soil exceeds 1000 PPM.
10. EPA Target Compound List Base Neutral or Priority Pollutant Base Neutral scan with a library search.

(e) If tentatively identified compounds or unknown compounds are detected at concentrations in excess of the applicable cleanup standard pursuant to N.J.A.C. 7:26D, they shall be addressed in either of two ways:

1. If the area will be remediated and it is likely that the concentration of the tentatively identified compounds/unknown compounds will be reduced by the remediation, the tentatively identified compounds/unknown compounds shall be analyzed in post remediation samples to document that it is no longer present in excess of the applicable cleanup standard; or

2. An attempt shall be made to positively identify and accurately quantify the tentatively identified compounds/unknown compounds using an analytical method consistent with this section.

7:26E-2.2 Quality assurance project plan

(a) If the Department requires a Quality Assurance Project Plan (QAPP) pursuant to an oversight document or the ECRA, UST, or any other regulatory program, the person responsible for conducting the remediation shall submit the Quality Assurance Project Plan in accordance with the schedule contained in the oversight document or applicable regulation, and in a format that corresponds directly to the outline of this section.

1. For each remedial phase at a site involving less than 10 areas of concern, the following shall be included in the Quality Assurance Project Plan:

i. The project's scope and complexity and how the project relates to the overall site remediation strategy;

ii. The data quality objectives specific to the site and sampling event (for example, initial site characterization, delineation of contamination, selection of a remedial action);

iii. The names and addresses of the laboratories to be used for sample analysis;

iv. The name and telephone number of each of the individuals responsible for the following functions. (This shall be updated if changes occur during the project):

(1) Overall project coordination;

(2) Sampling activities, including quality assurance and quality control; and

(3) Laboratory activities, including quality assurance and quality control;

v. An "Analytical Methods/Quality Assurance Summary Table" which shall include the following information for all environmental, performance evaluation, and quality control samples:

(1) Matrix type;

(2) Number of samples to be collected per matrix;

(3) Number of field and trip blanks per matrix;

(4) Analytical parameters to be measured per matrix;

(5) Analytical methods to be used per matrix pursuant to N.J.A.C. 7:26E-2.1;

(6) If proposed, the number and type of duplicate samples to be collected;

(7) If proposed, the number and type of split samples to be collected;

(8) If proposed, the number and type of performance evaluation samples to be analyzed;

(9) Sample preservation to be used per analytical method and sample matrix;

(10) Sample container volume and type to be used per analytical method and sample matrix; and

(11) Sample holding time to be used per analytical method and sample matrix;

vi. A detailed description of site specific sampling methods to be used pursuant to N.J.A.C. 7:26E-2.1(a)6, sample storage in the field and sampling handling time requirements;

vii. A detailed description of all calibration and preventative maintenance procedures for all field analytical instrumentation;

viii. A detailed description of procedures used to obtain duplicate and split samples, if applicable;

ix. A detailed description of the chain of custody procedures to be utilized in the field and in the laboratory;

x. A detailed description of sample storage procedures to be utilized by the laboratory; and

xi. Laboratory data deliverable formats to be used.

2. For any remedial phase at a site involving 10 or more areas of concern, the following shall be included in the Quality Assurance Project Plan:

i. The requirements contained in (a)1i through iii and (a)1v through x above;

ii. The name and telephone number of each of the individuals responsible for the following functions. (This shall be updated if changes occur during the project):

(1) Overall project coordination;

(2) Overall project quality assurance;

(3) Health and safety coordination;

(4) Sampling procedures;

(5) Sampling quality control;

(6) Laboratory analyses;

(7) Laboratory quality control;

(8) Laboratory data processing;

(9) Laboratory data processing quality control;

(10) Systems auditing (field and laboratory); and

(11) Technical advisory groups, if applicable.

iii. A detailed description of field quality control audit procedures to be used, including without limitation, corrective action procedures;

iv. The procedures to be followed to ensure the complete documentation of all field sampling activities;

v. A detailed description of laboratory audit procedures to be used, including without limitation, corrective action procedures; and

vi. A detailed description of the data reporting procedures and format for all analytical data generated by the laboratory, including without limitation, the following:

(1) Laboratory data deliverable format(s);

(2) The laboratory's review and cross-check procedures for the elimination of errors during routine data transfer, in calculations, preparation of data deliverable packages and off-line storage; and

(3) If required by the Department, a description of the laboratory's capability to provide EPA Contract Laboratory Program analytical methodology data on diskette in standard EPA Contract Laboratory Program format utilizing the requirements in the versions of the applicable EPA Contract Laboratory Program Statements of Work documents in effect as of the date on which the laboratory is performing the analysis.

SUBCHAPTER 3. PRELIMINARY ASSESSMENT AND SITE INVESTIGATION

7:26E-3.1 Preliminary assessments

(a) The purpose of a preliminary assessment is to identify the presence of any potentially contaminated areas of concern. If any potentially contaminated areas of concern are identified, then there is a need for a site investigation pursuant to N.J.A.C. 7:26E-3.3. If no potentially contaminated areas of concern are identified, then no further action is required at the site.

(b) A preliminary assessment is the first step in the process to determine whether or not a site is contaminated.

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(c) A preliminary assessment shall be based on diligent inquiry and include an evaluation of the following:

1. Historical information concerning the site history shall be part of the preliminary assessment unless the remediation is directed at either, a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system. The site history shall include an evaluation of the following to the extent available from diligent inquiry:

i. Site history information from the following sources:

(1) Sanborn Fire Insurance Maps;

(2) MacRae's Industrial Directory;

(3) Title and Deed;

(4) Site plans and facility as-built drawings; and

(5) Federal, State, county and local government files;

ii. The industrial/commercial site history from the time the site was naturally vegetated or utilized as farmland, including without limitation:

(1) Names of all owners and operators;

(2) Dates of ownership of each owner;

(3) Dates of operation of each operator;

(4) Current addresses of each owner and operator; and

(5) Brief descriptions of the past industrial/commercial usage of the site by each owner and operator;

iii. All raw materials, finished products, formulations and hazardous substances, hazardous wastes, hazardous constituents and pollutants which are or were present on the site, including intermediates and by-products;

iv. Present and past production processes, including dates, and their respective water use and shall be identified and evaluated, including ultimate and potential discharge and disposal points and how and where materials are or were received onsite (for example, rail, truck);

v. All former and current containers, container or bulk storage areas, above and below ground tanks, above and below ground waste and product delivery lines, surface impoundments, landfills, septic systems and other structures, vessels, conveyances or units that contain or previously contained hazardous substances, hazardous waste, hazardous constituents and pollutants, including:

(1) Type;

(2) Age;

(3) Dimension of each container;

(4) Location;

(5) Chemical content;

(6) Integrity (for example, tank test reports);

(7) Volume; and

(8) Construction materials;

vi. If the site area exceeds two acres, an interpretation of the aerial photographical history of the site, based on all available current and historical color, black and white and infrared aerial photographs (scale 1:18,000 or less) of the site and surrounding area. The photographic history shall date back to when the site was naturally vegetated or farmland, or to the earliest photograph available;

vii. Any data or information concerning known discharges that have occurred on the site;

viii. Remediation activities previously conducted or currently underway at the site including dates of previous discharges, remedial actions, and all existing sampling data concerning contaminants at the site. If a government agency was involved, the name of the lead government agency, case identification number, and current case status;

ix. All existing sampling data concerning contaminants at the site;

x. Any known changes in site conditions or new information developed since completion of previous sampling or remediation;

xi. All Federal, State and local environmental permits including permits for all previous and current owners or operators, applied for or received, or both, for the site including:

(1) The name and address of permitting agency;

(2) The reason for the permit;

(3) The permit identification number;

(4) The application date;

(5) The date of approval, denial, or status of application;

(6) The name and current address of all permittees;

(7) The reason for denial, revocation or suspension if applicable; and

(8) The permit expiration date; and

xii. All administrative, civil and criminal enforcement actions for alleged violations of environmental laws concerning the site, including:

(1) The name and address of agency that initiated the enforcement action;

(2) Date of the enforcement action;

(3) The section of statute, rule or permit allegedly violated;

(4) The type of enforcement action;

(5) A description of alleged violations;

(6) The resolution or status of violation and enforcement action; and

(7) A description of any potential environmental impact which may have resulted from the alleged violation.

2. The person certifying the preliminary assessment pursuant to N.J.A.C. 7:26E-1.5 shall conduct a site visit to verify the findings in (c)1 above.

7:26E-3.2 Preliminary assessment report

(a) The person responsible for conducting the remediation shall prepare a preliminary assessment report which:

1. Presents and discusses all of the information identified, evaluated or collected pursuant to N.J.A.C. 7:26E-3.1;

2. Is presented in a format that corresponds to the outline of N.J.A.C. 7:26E-3.1(c);

3. Shall also include:

i. Scaled historical and current site plans and facility as-built construction drawings detailing lot and block numbers, property and leasehold boundaries, construction or destruction of buildings, areas where fill or cover material has been brought onsite, paved and unpaved areas, vegetated and unvegetated areas, all areas of concern and active and inactive wells; and

ii. A summary of the data and information evaluated pursuant to N.J.A.C. 7:26E-3.1(c)1vii, viii and ix shall be presented by area of concern and all phases of work for a particular area of concern shall be integrated into a single discussion of that area; and

4. For each area of concern identified at the site, the report shall contain a recommendation that either:

i. The area of concern is potentially contaminated, and thus additional investigation or remediation is required; or

ii. The area of concern is not believed to contain contaminants above the applicable cleanup standards, in which case the preliminary assessment report shall include documentation for this belief, pursuant to N.J.A.C. 7:26E-1.6(c).

(b) Previous submissions or other previously completed work may satisfy specific items required for the preliminary assessment if approved in advance by the Department (for example, through the MOA process or an ECRA or UST approval). The Department will determine the extent to which prior submissions or completions may satisfy the specific items required for the preliminary assessment. If the Department approves any such prior work in writing, then that work may be included as part of the preliminary assessment.

7:26E-3.3 Site investigations

(a) The purpose of a site investigation is to determine if any contaminants are present at the site above any of the applicable cleanup standards pursuant to N.J.A.C. 7:26D or if no further action is required. If such contaminants are present at the site, then additional remediation is necessary prior to a Department determination that no further action is necessary.

(b) A site investigation shall be developed based upon the information collected pursuant to the preliminary assessment requirements in N.J.A.C. 7:26E-3.1 and shall satisfy all of the following requirements:

1. The general sampling requirements in N.J.A.C. 7:26E-3.4;

2. The building interior sampling requirements in N.J.A.C. 7:26E-3.5;

3. The soil sampling requirements in N.J.A.C. 7:26E-3.6;

4. The ground water sampling requirements in N.J.A.C. 7:26E-3.7

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5. The surface water, wetlands and sediment sampling requirements in N.J.A.C. 7:26E-3.8; and

6. The area specific sampling requirements in N.J.A.C. 7:26E-3.9.

(c) If required pursuant to an oversight document or other applicable rule, the person responsible for conducting the remediation shall submit reports pursuant to N.J.A.C. 7:26E-3.10 in accordance with the schedules contained in the oversight document or other applicable rule.

(d) It is often appropriate to phase the site investigation so that the areas of concern most likely to be contaminated above the applicable cleanup standards are sampled first. If at any time during the site investigation, any contamination is found above the applicable cleanup standards, then the site investigation may be discontinued and the remediation continued at either the remedial investigation or remedial action phase.

7:26E-3.4 Site investigation - general sampling requirements

(a) Sampling shall be conducted in all areas of concern, whether relating to current or former uses of the site to determine whether or not any contaminants are present above the applicable cleanup standard.

1. Sampling shall be biased to the suspected location of greatest contamination.

2. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor, or other field indicators.

3. Sampling locations shall comply with requirements listed in N.J.A.C. 7:26E-3.5 through 3.9.

(b) All sampling methods and laboratory analyses shall be conducted pursuant to N.J.A.C. 7:26E-2.1.

(c) Composite sampling shall not be conducted, except as necessary for waste classification pursuant to N.J.A.C. 7:26-8.

(d) Inventory control records shall be reviewed for all hazardous substances, hazardous wastes, hazardous constituents, and pollutants. Any indications of hazardous substances, hazardous wastes, hazardous constituents, and pollutants loss shall be investigated by sampling at potential leak areas.

7:26E-3.5 Site investigation—building interiors

(a) The site investigation of building interiors shall be conducted for the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(c) according to the following:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1;

2. If there is reason to believe interior building surfaces are contaminated, wipe or chip sampling shall be conducted;

3. Sampling frequency shall be as follows:

i. One sample for every 900 square feet for each area of concern of 9,000 square feet or less;

ii. For areas of concern greater than 9,000 square feet, one additional sample shall be taken for every additional 9,000 square feet. For example, an area of concern of 9,001 to 18,000 square feet would require a minimum of 11 samples;

4. The presence and extent of asbestos containing material (ACM) in buildings shall be determined. ACM may be present as surfacing material, thermal system insulation, or in miscellaneous material such as ceiling tiles and vinyl asbestos tiles. Asbestos surveys shall be conducted in accordance with 40 CFR 763, Subpart E (The Asbestos Hazard Emergency Response Act Statute and Regulations, "AHERA", 10-30-87); and

5. If the person responsible for the site investigation can provide documentation acceptable to the Department in the site investigation report that the contaminant present above the applicable cleanup standard in the building materials is not the result of a discharge, remediation is not required. This documentation shall include, without limitation, data from at least two samples collected from each building material type being evaluated. Samples shall be collected from a non-production area that has not received any discharges and analyzed for any contaminants present above the applicable cleanup standard.

7:26E-3.6 Site investigation—soil

(a) The site investigation shall satisfy the following requirements for all soil investigations:

1. A survey for buried drums, tanks or waste using test pits, ground penetrating radar, magnetometry electromagnetics, or other techniques capable of detecting metal containers and other waste to an average depth of 20 feet or deeper shall be conducted if:

i. There have been any reports of buried drums, tanks or waste;

ii. Ground water contamination is detected and no source has been identified; or

iii. Aerial photographic history of the site indicates the presence of drums, tanks or waste in or adjacent to regraded and/or filled areas.

2. Soil borings shall be extended to a depth appropriate for collection of soil samples, and to provide a profile of subsurface conditions. The profile shall meet the following:

i. Logs shall be prepared for all borings to document subsurface conditions including, without limitation, soil types and description of non-soil materials, depth to ground water, if ground water is encountered, soil mottling, field instrument measurements, presence of odor, vapors, soil discoloration, and free product;

ii. Soil shall be classified according to one of the standard systems (for example, Burmeister, Unified, or United States Department of Agriculture);

iii. All borings shall be performed in accordance with the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq., which requires, among other things, that a permit be obtained prior to drilling a boring to first water or greater than 25 feet below grade; and

iv. Soil sample locations may be photo-documented.

3. Initial characterization soil samples (except samples being analyzed for volatile organics) shall be collected at zero to six inches below grade except as required pursuant to N.J.A.C. 7:26E-3.9 (Area Specific).

4. All soil samples collected for volatile organics analysis and shall comply with the following:

i. If field screening is conducted for volatile organics in the surface soil (zero to two feet), a soil core shall be collected beginning at a depth of approximately six inches below ground surface and ending at approximately 24 inches.

(1) The core shall be field-screened with a properly calibrated photoionization detector or flame ionization detector (PID/FID) or other suitable instrument pursuant to N.J.A.C. 7:26E-2.1(b).

(2) An undisturbed sample from the six inch interval registering the highest field measurement shall be sub-sampled from the core and lab-analyzed for volatile organics.

(3) If surface soil consists of less than 15 percent silt/clay, the six inch interval above the saturated zone shall be sampled, or a six inch interval within the next lower soil horizon consisting of 15 percent or more silt/clay, or at 9.5 to 10 feet, whichever is encountered first.

ii. If field screening is not conducted, surface volatile organics sample depth shall be based on soil type (soil type may be field-determined). The following guidelines shall apply:

(1) Sample at six to 12 inches if soil consists of 50 percent or more silt/clay.

(2) Sample at 18 to 24 inches if soil consists of 15 to 50 percent silt/clay.

(3) If surface soil consists of less than 15 percent silt/clay, sample the six inch interval above the saturated zone or a six inch interval within the next lower soil horizon consisting of 15 percent or more silt/clay, or at 9.5 to 10 feet, whichever is encountered first.

(4) Sampling soil for volatile organics shall be performed using a coring device to minimize contaminant loss during sampling.

5. In all cases, samples shall be collected in discrete six inch increments. If more or less than a six inch increment is sampled because of poor sample recovery or other field logistical problems, an explanation shall be provided in the soil log.

6. Additional sampling of increments below those specified in (a)3 and 4 above shall be completed in cases where the surface has been

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regraded or if physical evidence in borings indicate the possible presence of contamination.

7. If the designated soil sampling point is within the saturated zone, a sample of the saturated soil shall be collected, when sample recovery is possible, and analyzed.

(b) Soil gas detection methods may be used to bias soil or ground water sample locations.

(c) The site investigation of soil shall be conducted:

1. For the purposes of a site investigation pursuant to N.J.A.C. 7:26-3.3(a); and

2. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.1.

7:26E-3.7 Site investigation of ground water

(a) Except as provided in (b) below, the site investigation of each area of concern shall include at least one ground water sample if:

1. Any contaminant in the area of concern has a water solubility greater than 100 milligrams per liter as documented by a peer-reviewed reference; and

2. All of the soil between the contaminant and the saturated zone is less than 15 percent silt and clay.

(b) Ground water sampling may not be necessary during a site investigation for a particular area of concern if the person responsible for conducting the remediation documents that ground water contamination from the discharge is unlikely based on the following criteria:

1. The date and duration of the discharge is known;

2. The identity and the volume of the contaminants are known;

3. The date the remediation in response to the single discharge was completed;

4. Post remediation sampling data establish that the remediation meets all applicable cleanup standards at the time of the site investigation; and

5. Any other data or information that is relevant to the determination of the likelihood of ground water contamination.

(c) The site investigation of ground water shall be conducted for the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(a) according to the following:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Groundwater samples may be taken pursuant to any generally acceptable sampling method; any method-specific requirements pursuant to N.J.A.C. 7:26E-4.4(f) shall be conducted, if ground water monitoring wells or peizometers are used; and

3. The ground water sampling points shall be located in:

i. The excavation of a tank which is the source of contaminants, if possible; or

ii. The expected downgradient flow direction of the area of concern and within 10 feet of the area of concern; ground water flow direction shall be predicted based on topographic controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table.

(d) The minimum number of ground water samples collected shall be as follows:

1. At least one ground water sample for each area of concern which is classified as an Underground Injection Control (UIC) unit including, without limitation, seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5;

2. At least one ground water sample for sites with leaking underground storage tanks and tank fields containing up to three tanks with a maximum capacity of 10,000 gallons per tank. If a leaking tank is excavated, the ground water sampling point shall be located within the excavation, if possible;

3. Pump islands and associated piping greater than 25 feet from the tank field shall be considered separate areas of concern and shall require a separate ground water sample location; and

4. At least one ground water sample for all other areas of concern unless the area of concern is within 10 feet hydraulically upgradient of a ground water sampling location.

(e) The results of any ground water site investigation analysis shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable ground water cleanup standard pursuant to N.J.A.C. 7:26D, no further remediation is necessary for ground water;

2. If the contaminant concentrations found in any ground water samples exceed the applicable ground water cleanup standard pursuant to N.J.A.C. 7:26D, the ground water may be resampled to confirm the presence of contamination; this confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable ground water cleanup standard; and

3. If ground water contamination is confirmed, a ground water remedial investigation shall be conducted.

7:26E-3.8 Site investigation surface water, wetlands and sediment

(a) The site investigation shall satisfy the following requirements for surface water, wetlands and sediment investigation when all other media at the site have been investigated and no further remediation is necessary for the site to be in compliance with cleanup standards pursuant to N.J.A.C. 7:26D. If contamination is found in any of the other environmental media at a site, then the surface water and sediment investigation shall be investigated as part of the remedial investigation.

(b) The site investigation of surface water, wetlands and sediment shall be conducted for the purposes of a site investigation pursuant to N.J.A.C. 7:26E-3.3(a) according to the following:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2;

2. Surface water samples are required to evaluate standing water bodies, or, for flowing water, upgradient, downgradient, and discharge point water samples are required when there is reason to believe site contaminants may have been discharged to surface water. Sampling shall be designed to account for seasonal or short-term flow and water quality fluctuations due to dry versus wet weather flow, system hydraulics (obtaining flow-proportioned samples where applicable) and potential contaminant characteristics (for example, density, solubility); and

3. Sediments in surface water bodies or wetlands shall be analyzed when there is reason to believe the sediments contain potential contaminants.

i. Sediment sampling for streams and similar water bodies shall be completed in accordance with N.J.A.C. 7:26E-3.9(d)3 (Swales/Culverts).

ii. Sediment sampling for ponded bodies of water shall be completed in accordance with N.J.A.C. 7:26E-3.9(c) (Surface Impoundments).

iii. In addition to other required analyses, surface water sediments shall also be analyzed for total organic carbon, pH, and particle size. These data are required to develop appropriate cleanup numbers pursuant to N.J.A.C. 7:26D.

7:26E-3.9 Site investigation area specific requirements

(a) The site investigation shall also satisfy the following sampling requirements for bulk storage tanks and appurtenances, including, without limitation, all in-use and out of service storage tanks with a storage capacity greater than 55 gallons, and associated piping and fill points.

1. For above ground tanks over unpaved soil:

i. Sampling around tanks with shell or bottom in direct contact with soil now or in the past shall meet all the following criteria:

(1) Sampling to detect surface contamination shall be conducted around the base of the tank with at least one sample per 100 linear feet, and shall include expected areas of contamination based on soil discoloration/odors, history of repairs/replacement, soil beneath valves, or low areas where spills or leaks from valves may accumulate.

(2) To verify tank integrity, at least one boring shall be located adjacent to or within two feet of the tank and continuous two foot split spoon sampling performed to the water table (if water table is less than 10 feet). The sample in each boring evidencing the highest apparent contamination based on soil discoloration, odor,

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field screening result or other field indicator shall be laboratory analyzed. At least one boring shall be located in the expected downgradient ground water flow direction from the tank. For tanks in excess of 100 feet in circumference, at least three borings, spaced equidistantly, are required.

(3) In cases where the depth to ground water is greater than 10 feet, sampling shall be conducted to 10 feet as in (a)1i(2) above.

ii. Elevated tanks (that is, shell or bottom not in contact with ground) require soil sampling when there is any physical or documentary evidence of discharges, when soil discoloration is observed or when field monitoring or other evidence indicates that a discharge has occurred.

(1) At least one soil sample shall be taken below tanks which store or may have stored hazardous substances, hazardous wastes, hazardous constituents or pollutants that do not cause obvious soil discoloration (such as volatile organics), in the area most likely to be contaminated, including without limitation, valve or former leak or rupture areas. If samples cannot be obtained from below the tank because soils are not accessible to sampling equipment, the sample may be located within two feet of the tank.

2. Soil around above ground tanks on paved surfaces shall be sampled pursuant to (b)1 below (Pads) if there are stained soils adjacent to pad or if the potential contaminant would not cause discoloration (volatile organics), or if there is a history of spillage or other evidence that a discharge has occurred.

i. Tanks within a paved containment area shall be sampled at the drainage discharge point, if one exists, pursuant to (d) below (Drainage Areas).

ii. Soil sampling below the pavement shall be conducted only when the pavement has deteriorated so as to allow potential contaminant contact with the soil, or if pavement was not present over the life of the tank or former tanks.

iii. Instead of sampling soil beneath pavement, samples around the pad may be taken pursuant to (b)1 below subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why boring through pavement was not considered practical (for example, concrete slabs with berms, synthetic liners).

3. For underground storage tanks:

i. Underground storage tanks and distribution systems containing potential contaminants shall be evaluated to identify any past or present discharges or to document the integrity of the tank system. No sampling is required for tanks and distribution systems which have always had double-walled containment with leak detection per N.J.A.C. 7:14B and no discharge history. If tanks will be removed, refer to N.J.A.C. 7:26E-6.3(a) for requirements.

ii. At least four soil borings or test pits around each tank shall be used to document the integrity of existing or former tank systems in situ. Precision tests pursuant to N.J.A.C. 7:14B-4.3(j) may be used in lieu of soil borings if tanks are beneath buildings or otherwise inaccessible.

(1) The soil boring or test pit shall be within two feet of the tank with one sampling location located at each end, and additional sampling locations located along the length of the entire tank system, including distribution and fill pipelines;

(2) The total number of required sampling locations, by tank capacity (assuming cylindrical tank configurations), are as follows:

Total Capacity (Gallons)	Approximate Length (Feet)	Minimum Number of Sampling Locations
56-2,000	to 10′	4
2,001-10,000	to 30′	6
10,001-25,000	to 40′	8
25,000+	to 40′+	10

(3) Detailed soil logs shall be completed for each sampling location pursuant to N.J.A.C. 7:26E-3.6 (Soil);

(4) Soil samples collected for analysis shall be taken at zero to six inches below the tank bottom unless the tank is within the saturated zone (see (a)3ii(6) below);

(5) In case of any soils or bedding material that is less than 15 percent silt/clay, samples for volatile organics shall be collected at the first less permeable soil horizon encountered below the bottom of the tank, or at zero to six inches above the saturated zone, or at 9.5 to 10 feet below the tank bottom, whichever is encountered first;

(6) If the tank is within the saturated zone, sample zero to six inches above the saturated zone if the potential contaminant's density is less than water, and zero to six inches below tank bottom if the potential contaminant's density is greater than water;

iii. To verify tank contents for out of service tanks, one sample shall be taken of any product or residue remaining in the tank and analyzed using ASTM fingerprint method D3328 or other appropriate method.

4. For all above grade piping:

i. Sampling is necessary if there is evidence of a discharge (for example, discolored soil, etc.) or reports of past discharges.

ii. Any sampling conducted shall be pursuant to (e) below (Discharge/Disposal Areas).

5. For all below grade piping:

i. Below grade piping associated with underground storage tanks shall be tested for integrity along with the storage tank using soil borings unless the system has always had double-walled containment with leak detection and no discharge history. Precision tests pursuant to N.J.A.C. 7:26B-4.3(j) may be used if the piping is original and there is no history of discharges or repairs.

ii. For total piping length up to 50 feet, one soil sample shall be collected for each 15 linear feet of piping, including joints and other potential discharge areas. For total piping length in excess of 50 feet, sampling frequency may be reduced subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced number was considered adequate.

6. For all loading and unloading areas:

i. Exposed soils at loading or unloading areas associated with tanks shall be sampled at a minimum rate of one sample per fill connection or valved discharge point;

ii. For loading or unloading points located over impervious cover, sampling shall be conducted pursuant to N.J.A.C. (b)1 below (Pads).

(b) The site investigation shall also satisfy the following requirements for all storage and staging areas, dumpsters and transformers, whether temporary or permanent, including exposed soil areas adjacent to above ground vessels on pads; tank loading/unloading areas on pads; dumpster staging areas; electrical transformers, heat exchanger and other outdoor equipment and drum storage pads.

1. For all pads:

i. Pads shall have a minimum of one sampling location per side adjacent to exposed soil for sides up to 30 feet long; for sides greater than 30 feet long, one additional sample location is required for each additional 30 feet of length;

ii. Each sampling point shall be located immediately adjacent to the pad and biased toward the suspected location of greatest of contamination;

iii. If a pad shows evidence of deterioration that may allow contaminant contact with the soil, or its surface has been modified (repaved), or aerial photographs or site history indicate potential for previous discharges to the soil, soil samples beneath the pad shall be collected pursuant to N.J.A.C. (b)2ii below; and

iv. Bermed pads and pads surrounded by impermeable cover shall be sampled at any drainage discharge point pursuant to (d) below (Drainage Areas).

2. For all storage and staging areas over permeable cover:

i. Storage and staging areas with evidence of discharges which are or were used for storage of hazardous substances, hazardous wastes, hazardous constituents or pollutants shall be sampled pursuant to (e) below (Spills/Disposal Areas).

ii. Sample frequency shall be one per 400 square feet of surface area to characterize soils below a storage or staging area up to 300 feet in perimeter with a minimum of one sample. Sample frequency may be reduced for larger areas subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why sample frequency was considered adequate. Sampling locations shall be biased toward the suspected location of greatest contamination

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based on low points, drainage patterns, discoloration, stressed vegetation, field instrument measurements or other field indicators.

(c) The site investigation shall satisfy the following requirements for all surface impoundments, including without limitation, lagoons, fire ponds, waste ponds or waste pits, storm water detention basins, excavations, natural depressions or diked areas, which are designed to hold an accumulation of liquid substances or substances containing free liquids.

1. Sediments within all unlined surface impoundments shall be sampled if the impoundment receives runoff from areas of potential contaminant sources;

2. Sediment sample locations shall be biased towards inflow/outflow areas, and areas where sediments may be expected to accumulate;

3. Core samples shall be taken for contaminant analysis and to fully characterize sediment type, thickness of sediment layers, and vertical extent of sediment.

4. Distinct layers of sediments thicker than six inches, as evidenced by color, particle size, or other physical characteristics, shall be sampled individually.

5. Sediment quantity within the surface impoundment shall be estimated.

6. Surface impoundments with impermeable liners shall have liner integrity verified by physical inspection and evaluation of monitoring well water quality data, if available.

(d) The site investigation shall also satisfy the following requirements for all drainage systems.

1. For all building floor drains and collection systems:

i. The point of discharge for any floor drain or collection system shall be sampled if the system discharges onsite to soil, ground water or surface water;

ii. If the point of discharge is unknown, tracer tests (for example, dye or smoke) shall be conducted to determine the discharge point(s);

iii. Collection system integrity shall be documented by representative soil sampling at potential leak areas, video inspection, hydrostatic test or pressure test. Other methods may be acceptable, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the methods were considered effective; and

iv. Sampling soil below floor drains, or collection system laterals, shall be conducted when corrosives (as defined in N.J.A.C. 7:26 or, if plastic piping is or was used, organic solvents are considered corrosive) are or were discharged to floor drains or the collection system or there has been a history of collection system discharges, rupture or repairs. In such cases, representative soil sampling at known or suspected leak areas is required for potential contaminants.

2. Soil at each roof leader discharge point shall be sampled if storage units or process operations using hazardous substances, hazardous wastes, hazardous constituents, or pollutants vent or have vented to the roof;

3. For all swales and culverts:

i. Sampling shall be conducted when the swale/culvert receives or received runoff from other contaminated areas of concern;

ii. Sediment and soil sampling shall be conducted at the points where contamination from runoff/spills enter or have entered the drainage system; and

iii. If flow could have scoured sediments from the receiving structure, sampling shall be conducted at onsite downgradient structures laden with sediments;

4. For all storm sewer and spill containment collection systems:

i. Sampling shall be conducted when the collection system is or was the runoff/spill discharge point from other contaminated areas of concern;

ii. Sediment sampling shall be conducted at the manhole, catchbasin, sump, or other structure where contaminated runoff or discharges enter the drainage system;

iii. Sampling shall be conducted in the soils around catchbasins, manholes, sumps or other structures which contain or may have contained hazardous substances, hazardous wastes, hazardous constituents or pollutants, and are not hydraulically sound (that is, water percolates through the floor and walls), through the use of adjacent soil borings. A single boring located within two feet of the downstream side of the structure shall be sampled at a depth corresponding to the bottom of the structure. If highly permeable soils are encountered and volatile organics sampling is required, sample at the next lower permeability soil horizon or zero to six inches above the saturated zone, or at 9.5 to 10 feet, whichever is encountered first;

iv. Additional sampling of sediments within the system shall be conducted to assess the migration of potential contaminants through the drainage network; and

v. Ground water discharging from storm sewer systems which contain dry weather flow (that is, five days following the most recent rainfall) shall be sampled at the discharge point and analyzed for potential contaminants discharged or potentially discharged into the system; and

5. For all boiler and compressor discharges, if there is reason to believe a potential contaminant discharge has occurred, sampling shall be conducted pursuant to (e) below (Discharge/Waste Disposal Areas).

(e) The site investigation shall also satisfy the following requirements for all discharge and waste disposal systems and areas.

1. For any discharge areas and areas of discolored soil or stressed vegetation where specific requirements are not otherwise provided in this section:

i. Each distinct area shall be evaluated independently as an area of concern; and

ii. Initial characterization samples shall be biased based on field indicators such as soil discoloration, stressed vegetation, or field instrument measurements toward those areas of greatest suspected contamination. Sample frequency shall be sampled at the rate of at least one sample for every 400 square feet for areas up to 300 feet in perimeter. Sample frequency may be reduced for larger areas, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why the reduced sample frequency was considered adequate.

2. Above ground treatment systems shall be sampled pursuant to the requirements for the functional portions of the system pursuant to (a) above (Tanks). For example, any above ground waste treatment tanks over unpaved soil shall be sampled pursuant to (a)1 above.

3. For below grade wastewater treatment systems:

i. For tanks, septic tanks, separators, and neutralization pits, two samples shall be collected from within the tank, one aqueous and one sludge sample, for analysis unless documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the site investigation report (N.J.A.C. 7:26E-3.10) specifying why such sampling was not considered necessary to confirm that only sanitary waste was discharged to the system during the entire life of the system. Documentation shall include, without limitation, an affidavit certifying that only sanitary waste was ever discharged to the system and that no present or former floor drains, sinks, or other units in process areas were ever connected to the system.

ii. For septic disposal fields:

(1) Soil borings shall be completed as specified below for on-site disposal fields unless documentation acceptable to the Department is provided in the site investigation report (N.J.A.C. 7:26E-3.10) specifying why soil boring were not considered necessary to confirm that only sanitary waste was discharged to the system pursuant to (e)3i above.

(2) At least one boring per 500 square feet of field area shall be completed, with a minimum of four borings per field.

(3) Borings shall be located within two feet of the perimeter laterals in active fields, and directly below laterals within abandoned fields.

(4) Borings shall be located to include the first five feet of discharge area and shall be spaced so that samples are representative of the entire disposal field.

(5) Soil samples shall be taken at a depth corresponding to the bottom of the absorption trench.

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(6) If soils or bedding material with less than 15 percent silt/clay are encountered and volatile organics samples are required, volatile organics soil samples shall be taken at the first lower permeability soil horizon or at zero to six inches above the saturated zone, or at 9.5 to 10 feet, whichever is encountered first.

iii. For seepage pits and dry wells:

(1) One representative sample of sludge/sediments in each pit shall be obtained for analysis;

(2) At least one soil boring shall be located within two feet of the outside of the pit wall;

(3) At a minimum soil samples from the boring shall be collected at zero to six inches below the pit bottom; and

(4) If soils or bedding material with less than 15 percent silt/clay are encountered below the pit bottom and volatile organics samples are required, samples for volatile organics shall be collected at the first less permeable soil horizon below the pit or at zero to six inches above the saturated zone or at 9.5 to 10 feet, whichever is encountered first.

iv. Collection lines shall be sampled pursuant to (d)1 above (Floor Drains).

(f) The site investigation shall also satisfy the following requirements for any other areas away from process areas not otherwise addressed pursuant to (a) through (e) above:

1. The sample locations shall be biased toward suspected areas of the greatest contamination. If there is no basis for biasing, then random sampling of these areas is required as follows, except as provided in (f)2 below:

i. The area to be sampled shall be gridded and each grid node given an identification number;

ii. The grid nodes chosen for sampling shall be based on the numbers selected from a random number chart;

iii. Areas of less than 10 acres shall be sampled at a rate of at least one sample for every two acres; and

iv. Areas greater than 10 acres may be sampled at a reduced frequency subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c) specifying why a reduced frequency was considered appropriate, but a minimum of five locations shall be sampled.

2. If the person responsible for conducting the remediation documents, pursuant to N.J.A.C. 7:26E-1.6(c), that the area is not and has not been used for any purpose which may have included hazardous substances, hazardous wastes, hazardous constituents, or pollutants, including, without limitation, the activities described in (a) through (e) above, then no samples are required. Such documentation shall be based upon the following:

i. An aerial photographic history pursuant to N.J.A.C. 7:26E-3.1(c)1vi (Preliminary Assessment); and

ii. An affidavit signed by the person certifying the site investigation attesting that, based on diligent inquiry, no potential contaminants were discharged in the area.

7:26E-3.10 Site investigation report

(a) The site investigation report shall present and discuss all of the information identified or collected pursuant to N.J.A.C. 7:26E-3.3 through 3.9.

(b) The site investigation report shall include the following:

1. Historical information pursuant to N.J.A.C. 7:26E-3.2 (preliminary assessment report) unless the remediation is directed at either a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system;

2. A physical setting section which shall include descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system:

i. The physical conditions of the site and surroundings, including a general description of soils, geology, hydrogeology, and topography;

ii. Use of, distance to, flow direction, and names of surface water bodies within one-half mile of the site with emphasis upon water bodies topographically or hydraulically downgradient of the site that may receive site discharges or runoff;

iii. A copy of the United States Geologic Survey (USGS) 7.5 minute topographic quadrangle that includes the site and an area of at least a one mile radius around the site shall be required. This map shall be the most recent USGS revision and shall clearly note the facility location and property boundaries. When a portion of the USGS quadrangle is used, the scale, north arrow, contour interval, longitude and latitude, along with the name and date of the USGS quadrangle shall be noted on the map; and

iv. A wetlands map from the "National Wetlands Inventory" which provides a wetlands map superimposed on a USGS 7.5 minute topographic quadrangle shall be included;

3. A technical overview which shall present a general profile of the site investigation execution and results. The following items shall be discussed in the technical overview:

i. Reliability of laboratory analytical data as indicated by compliance with sample holding times, ability to achieve method detection limits and precision and accuracy criteria for the analytical method, and other indicators of data quality;

ii. A summary of the overall nature of contamination on the site, including, without limitation, the numbers of areas of concern requiring further remediation; and

iii. Any significant events or seasonal variation which may have influenced sampling procedures or analytical results; and

4. Findings/recommendations which shall include;

i. A discussion, by area of concern, of the site investigation execution and analytical results. The discussion shall consist of specific findings at the areas of concern;

ii. A discussion of the following items, for each area of concern:

(1) A detailed description of each area of concern including dimensions, suspected and actual comtamination, and suspected source of discharge;

(2) Results and implications of field measurements or area-specific changes in sampling protocol due to field conditions;

(3) Significance of information generated in the library search of tentatively identified compounds/unknown compounds; and

(4) Recommendations for either additional remediation or no further action for each area of concern.

(c) The site investigation report shall also include the following data and information:

1. Results of all analyses, copies of all laboratory data sheets and the required laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1 (Quality Assurance Requirements). Laboratory data deliverables may be submitted as a separate attachment;

2. A summary table of analytical methods and quality assurance indicators pursuant to N.J.A.C. 7:26E-2.2(a)1v;

3. A table summarizing all sampling results, including sample location, media, sample depth, and field and laboratory identification numbers, analytical results, and comparison to applicable cleanup standards pursuant to N.J.A.C. 7:26D:

i. All contaminant concentrations exceeding the applicable cleanup standard pursuant to N.J.A.C. 7:26D shall be identified; and

ii. Samples with method detection limits (MDLs) (or practical quantitation levels (PQLs) if available) exceeding the applicable cleanup standard per N.J.A.C. 7:26D shall be identified and an explanation provided in the table key;

4. Stratigraphic logs, which include soil/rock physical characteristics and field instrument readings detected during drilling for each soil boring, test pit and monitoring well;

5. Stratigraphic cross sections of the site using information from monitoring wells, test pits and borings;

6. All soil boring, piezometer, and monitoring well records, including the State permit numbers and as-built specifications;

7. A summary of the review of inventory control records to identify product loss and any actions taken to investigate potential leak areas; and

8. Any other data and information obtained pursuant to N.J.A.C. 7:26E-3.3 through 3.9.

(d) The site investigation report shall also include the following legible maps and diagrams:

1. Site and area of concern base maps pursuant to N.J.A.C. 7:26E-3.2(a)3i;

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2. Sample location map(s), including:

i. All sample locations, sample depth and contaminant concentration shall also be plotted on the map;

ii. Map scale and orientation;

iii. Field identification numbers for all samples; and

iv. If more than one map is submitted, maps shall be presented as overlays, keyed to the base map in (d)1 above; sample locations may be superimposed on the site or area of concern map in (d)1 above;

3. If applicable, a map of the distribution of surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations; and

4. Photos may be submitted to document the location of all soil and sediment sample locations.

SUBCHAPTER 4. REMEDIAL INVESTIGATIONS

7:26E-4.1 Remedial investigation requirements

(a) The purposes of a remedial investigation are to:

1. Delineate the horizontal and vertical extent of contaminants in all media at the site pursuant to (b) below;

2. Determine the general surface and subsurface characteristics of the site, including, without limitation, the depth to ground water;

3. Identify the migration paths and actual or potential receptors of contaminants on or through air, soil, bedrock, sediment, ground water, surface water, and structures at a contaminated site;

4. Collect and evaluate all data necessary to evaluate remedial action alternatives, including, without limitation:

i. Treatability studies, bench scale studies and pilot scale studies (these studies may be conducted pursuant to EPA 540/2-89/058 "Guide for Conducting Treatability Studies Under CERCLA"). These studies shall be initiated as soon as the general extent of contamination is known, usually after the first delineation phase and, at a minimum, these studies shall be initiated by the end of the second delineation phase; and

ii. A feasibility study if required pursuant to N.J.A.C. 7:26E-5.1;

5. Collect and evaluate all data necessary to evaluate the ecological impacts of the contaminants pursuant to N.J.A.C. 7:26D-5;

6. Collect all data necessary to develop permit limitations for any discharge to an environmental medium which may be required for any remedial action alternative under consideration;

7. Characterize all natural resource damages, including the nature and extent of injury or damage to flora and fauna, caused by the potential contaminants at the site; and

8. Identify containment and/or stabilization activities to prevent contaminant exposure to onsite receptors and to prevent the offsite migration of contaminants while remedial alternatives are being evaluated.

(b) The delineation of the horizontal and vertical limits of contamination for all media shall be conducted as part of the remedial investigation. Delineation samples shall be biased to identify any migration paths of the contaminant. Samples shall be biased based on professional judgment, area history, discolored soil, stressed vegetation, drainage patterns, field instrument measurements, odor and other field indicators. If soil samples within the saturated zone are required to identify the vertical limit of contamination, a sample of the saturated soil shall be collected, if sample recovery is possible, and analyzed. Delineation shall be accomplished by either:

1. Presentation of sample data that indicates contamination is below the applicable cleanup standard pursuant to N.J.A.C. 7:26D. This may be accomplished after a remedial action has been implemented; or

2. By establishment of a contaminant gradient as follows:

i. Contaminant levels decrease by:

(1) Ten percent or more between the initial characterization sample and each of two sequential delineation samples; or

(2) A factor of five or more between the initial characterization sample and a single delineation sample; and

ii. Once a contaminant gradient has been established, the approximate limits of contamination may be reasonably estimated by extrapolation.

7:26E-4.2 Remedial investigation of building interiors

(a) The remedial investigation shall include an investigation of all building interiors which may contain contaminants above the applicable building interior cleanup standards pursuant to N.J.A.C. 7:26D.

(b) The remedial investigation of each building shall be conducted pursuant to N.J.A.C. 7:26E-4.1 and according to:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and

2. The technical requirements for a building investigation pursuant to N.J.A.C. 7:26E-3.5.

7:26E-4.3 Remedial investigation of soil

(a) The remedial investigation shall include an investigation of all soil which may contain contaminants above the applicable soil cleanup standards pursuant to N.J.A.C. 7:26D.

(b) The remedial investigation of the soil shall be conducted for the purposes of a remedial investigation pursuant to N.J.A.C. 7:26E-4.1 according to:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and

2. The technical requirements for soil investigation pursuant to N.J.A.C. 7:26E-3.6.

7:26E-4.4 Remedial investigation of ground water

(a) A remedial investigation of ground water for an area of concern shall be conducted if:

1. A ground water sample previously collected from that area of concern contains a contaminant above the applicable ground water cleanup standard;

2. A soil sample collected from that area of concern within two feet of the saturated zone or bedrock contains a contaminant above the applicable subsurface soil cleanup standard;

3. A soil sample collected in the area of concern anywhere in the soil column contains a contaminant above the applicable subsurface soil cleanup standard and the contaminant is not going to be actively treated or removed; or

4. Any contaminant in an area of concern has a water solubility greater than 100 milligrams per liter as listed in a peer reviewed reference; and all of the soil between the contaminant and the saturated zone is less than 15 percent silt and clay, except as follows:

i. A ground water sample may not be necessary in a remedial investigation for a particular area of concern if the person responsible for conducting the remediation documents that ground water contamination from the discharge is unlikely based on the following criteria:

(1) The date and duration of the discharge is known;

(2) The identity and the volume of the contaminants are known;

(3) The date the remediation in response to the single discharge was completed;

(4) Post remediation sampling data establish that the remediation meets all applicable cleanup standards at the time of the remedial investigation; and

(5) Any other data or information that is relevant to the determination of the likelihood of ground water contamination.

(b) The remedial investigation of ground water shall be conducted for the purposes of a remedial investigation pursuant to N.J.A.C. 7:26E-4.1 according to:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and

2. The requirements in (c) through (i) below.

(c) Ground water samples shall be taken pursuant to acceptable professional methods, such as those described in the NJDEPE Field Sampling Procedures Manual in effect as of the date the samples were taken. The person responsible for conducting the investigation may implement an alternate sampling method not described in the Manual, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c).

(d) All ground water sampling points shall be located in:

1. The excavation of a tank which is the source of the contaminants, if possible; or

2. The expected downgradient flow direction of the area of concern and within 10 feet of the area of concern; ground water flow

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direction shall be predicted based on topographic relief, the location of surface water bodies, structural controls in the bedrock or soils, location of pumping wells and subsurface conduits at or below the water table.

(e) The minimum number of ground water samples collected shall be as follows:

1. At least one ground water sample for each area of concerned which is classified as an Underground Injection Control (UIC) unit including, without limitation, seepage pits, septic systems, dry wells or other injection wells regulated under N.J.A.C. 7:14A-5;

2. At least one ground water sample for sites with leaking underground storage tanks and tank fields containing up to three tanks with a maximum capacity of 10,000 gallons per tank. If a leaking tank is excavated, the ground water sampling point shall be located within the excavation, if possible;

3. Pump islands and associated piping greater than 25 feet from the tank field shall be considered separate areas of concern and shall require a separate ground water sample location; and

4. At least one ground water sample for all other areas of concern unless the area of concern is within 10 feet hydraulically upgradient of a ground water sampling location.

(f) All ground water samples taken pursuant to (e) above shall be obtained from groundwater monitoring wells or piezometers.

(g) All ground water monitoring wells and piezometers shall:

1. Be constructed pursuant to generally accepted methods, such as those described in the NJDEPE Field Sampling Procedures Manual in effect as of the date the wells or piezometers were constructed. The person responsible for conducting the investigation may implement an alternate sampling method not described in the Manual, subject to the Department's review of documentation pursuant to N.J.A.C. 7:26E-1.6(c). Variations on the well design shall be approved by the Department prior to installation;

2. Be installed after the required well drilling permits are obtained pursuant to N.J.S.A. 58:4A et seq.;

3. Be installed by a licensed New Jersey well driller pursuant to N.J.S.A. 58:4A-4.1 et seq.;

4. Have split spoon samples collected during drilling through unconsolidated or overburden material using American Society of Testing Materials (ASTM) Method D1586-84, incorporated herein by reference, if appropriate. Split spoon samples shall be collected every five feet and at any change in soil lithology and at all zones that show obvious signs of contamination. At least one drilling location per area of concern shall include continuous split spoon samples to define the subsurface stratigraphy. Drilling logs shall include all data pursuant to N.J.A.C. 7:26E-3.6 (Soil Investigations);

5. Have a sufficient number of rock cores collected during the drilling of bedrock monitoring wells, piezometers and other borings, if appropriate, to obtain a general understanding of the fracture patterns beneath the site including strike and dip of bedding planes; orientation of faults, joints and fractures; plunges and trends of folds. The corings shall be conducted using Diamond Drilling Method ASTM 2113-70, incorporated herein by reference. Other methods may be used if documentation acceptable to the Department is provided indicating that the methods were appropriate. The core logs shall include:

i. Lithology;

ii. Fracture frequency;

iii. Degree of weathering;

iv. Fracture fit;

v. Fracture spacing;

vi. Orientation of fractures;

vii. Odors and discoloration in the rock core; and

viii. Percent recovery;

6. Be surveyed by a New Jersey licensed surveyor as follows:

i. The inner well casing must be surveyed to the nearest hundredth (0.01) foot above mean sea level in relation to the New Jersey Geodetic Control survey datum and horizontally by an accuracy of one-tenth of a second latitude and longitude; and

ii. A permanent water level measurement mark shall be etched into the top of the inner well casing to allow for accurate reproducible water level measurements over time.

7. Be developed to yield a non-turbid discharge, where possible; and

8. Be sealed upon completion of the investigation in accordance with N.J.A.C. 7:9-9 unless otherwise approved by the Department.

(h) The results of initial ground water analyses shall be evaluated as follows:

1. If the contaminant concentrations found in all ground water samples are below the applicable standards pursuant to N.J.A.C. 7:26D, no further remediation is necessary for ground water;

2. If the contaminant concentrations found in any ground water samples exceed the applicable standard pursuant to N.J.A.C. 7:26D, the ground water may be resampled to confirm the presence of contamination. This confirmation sampling shall include at least two additional samples taken over a 30 day period, the results of which may be averaged with the original result to determine compliance with the applicable standard; and

3. Upon confirmation of ground water contamination, the remedial investigation shall include the collection of ground water samples to:

i. Delineate the vertical and horizontal extent of ground water contamination;

ii. Determine the direction of ground water flow as follows:

(1) A minimum of three ground water monitoring wells or piezometers in each affected aquifer or water bearing zone to determine the ground water flow direction in that zone;

(2) A minimum of two rounds of static water levels shall be obtained at a minimum of 30 days apart to provide a more accurate indication of the ground water flow direction. The water levels may be taken to evaluate seasonal variations in flow direction;

(3) If the site is located in an area that is tidally influenced, synoptic static water level measurements shall be completed over two tidal cycles for at least two sampling events each separated by at least two weeks; and

(4) Water level measurements and ground water flow determinations shall take into account activities in the area which affect flow direction, such as pumping wells or seasonably used pumping wells; and

iii. If ground water contamination above the applicable cleanup standards pursuant to N.J.A.C. 7:26D has been confirmed, the person responsible for the remediation shall:

(1) Conduct aquifer tests (pump tests, packer tests, slug tests) to adequately define aquifer characteristics including hydraulic conductivity (K), transmissivity (T), storativity (S) and the rate of ground water and contaminant flow in the aquifer; and

(2) Use a model to further define characteristics of the ground water flow system if documentation acceptable to the Department is provided in the remedial investigation report (N.J.A.C. 7:26E-4.9) indicating that the model was appropriate. Specific details on the type of model, input parameters used and referenced, boundaries and limitations of the model shall be submitted to the Department upon request along with a justification as to why the model was selected.

(i) When ground water contamination above cleanup standards pursuant to N.J.A.C. 7:26D has been confirmed pursuant to (g)3 above, the person responsible for conducting the remediation shall perform the following tasks:

1. A well search of all wells, including:

i. A physical, documentary and field search for all irrigation, monitoring, and domestic wells within one-half mile of the site and all industrial, public supply wells, and wells with water allocation permits within one mile of the site;

ii. The type of well, the status of the well (active, inactive, properly abandoned pursuant to N.J.A.C. 7:9-9.1), total depth, casing length, open bore hole or screened interval, copies of well records and/or well logs on file with the Department's Bureau of Water Allocation, and any additional records available in county or municipal records shall be included; and

iii. A listing of all sources referenced in performing the well search; if a referenced agency was unable to provide the information requested, written documentation as to whom was contacted and

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when, and that the request for information was either denied or that the information was unavailable.

2. Any wells identified pursuant to the well search which are suspected to be contaminated shall be sampled;

3. An evaluation of any surface water body that may be impacted by the contaminated ground water pursuant to N.J.A.C. 7:26E-4.5 (Surface Water Investigations);

4. An evaluation of any subsurface utilities, basements or other structures which may pose a vapor hazard as a result of the ground water contamination; and

5. An evaluation of the current and potential ground water uses based on a 25-year planning horizon utilizing municipality and water purveyor planning data.

(j) Soil gas studies shall be conducted to locate sources of ground water contamination when ground water contamination is identified but no apparent source is identified.

7:26E-4.5 Remedial investigation of surface water, wetlands and sediment

(a) The remedial investigation shall include an investigation of any surface water, wetlands and sediments which may contain contaminants above the applicable cleanup standards pursuant to N.J.A.C. 7:26D.

(b) The remedial investigation of surface water, wetlands and sediment shall be conducted for the purposes of a remedial investigation pursuant to N.J.A.C. 7:26E-4.1 according to:

1. The quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2; and

2. The technical requirements for the investigation of surface water, wetlands and sediment pursuant to N.J.A.C. 7:26E-3.8.

(c) The surface water investigation shall be conducted pursuant to (d) below to evaluate the relationship between contaminated ground water, sediments and surface waters, unless:

1. Documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided with the remedial investigation report (N.J.A.C. 7:26E-4.9) specifying why this migration pathway was not considered significant; or

2. The Department approves a less stringent water quality analysis:

i. Based on site-specific conditions; and

ii. Supported by appropriate supporting documentation.

(d) The surface water investigation shall include:

1. Sampling designed to account for seasonal or short-term flow and water quality fluctuations (dry vs. wet weather), system hydraulics (obtaining flow proportioned samples) and potential contaminant characteristics (density, solubility).

2. A receiving water body analysis on any surface water body to which contaminated ground water is discharging, including the following:

i. A water quality analysis program with sampling stations upstream and downstream of the contaminated site, any existing point source discharges at that site, and any proposed discharge locations;

(1) Procedures in accordance with the methods identified in (d)2i(2) below, including, without limitation:

(A) Eight weeks of water quality sampling for each parameter which has a surface water quality criterion pursuant to N.J.A.C. 7:9-4 or is in Appendix C, incorporated herein by reference, including any contaminant which is discharging to surface water;

(B) At least two sample sets must be taken during critical, low flow conditions; and

(C) At least one sediment sample shall be taken and analyzed for the appropriate parameters identified in (d)2i(1)(A) above, during one of the sampling events;

(D) For non-tidal water bodies, samples shall be taken at the area of discharge, and at least one location downstream;

(E) For tidal water bodies, samples shall be taken at the area of discharge at high, low, and slack tides; and

(F) Depending upon site-specific conditions, additional samples may be necessary to define loads from other point sources, tributaries, and other non-point sources; and

(2) All methods shall be consistent with generally accepted professional methods, such as those described in the NJDEPE "Field Procedures Manual For Water Data Acquisition," or the EPA Handbook "Instream Sampling for Waste Load Allocation Applications;" any deviations from these two documents shall be documented pursuant to N.J.A.C. 7:26E-1.6.

ii. A determination of the critical instream waste concentration (IWC), consistent with N.J.A.C. 7:9-4.6, shall also be conducted if a point source discharge to surface water is a potential part of a remedial action at the site. For tidal water bodies, a determination of the critical instream waste concentration may include, but is not limited to, computer plume modelling and dye studies.

7:26E-4.6 Remedial investigation of landfills

(a) The remedial investigation shall include, unless the remedial investigation is being conducted pursuant to ECRA, an investigation of all landfills which may contain contaminants above the applicable cleanup standards pursuant to N.J.A.C. 7:26D.

(b) The remedial investigation of landfills shall be conducted pursuant to N.J.A.C. 7:26E-4.1 according to the quality assurance and quality control requirements pursuant to N.J.A.C. 7:26E-2.

(c) Landfill investigations shall characterize the contents and horizontal and vertical extent of fill material and impact on the soil, ground water, air and surface waters.

(d) The boundaries of the landfill shall be identified through geophysical sensing techniques, or subsurface exploration techniques including test pits or borings, or an aerial photographic history, or local government records. Other methods may be used if documentation acceptable to the Department pursuant to N.J.A.C. 7:26E-1.6(c) is provided in the remedial investigation report (N.J.A.C. 7:26E-4.9) specifying why the methods were considered appropriate.

(e) The person responsible for the investigation shall review all records pertaining to the landfill to determine if any hazardous waste pursuant to N.J.A.C. 7:26 was ever disposed in the landfill.

7:26E-4.7 Remedial investigation of ecological receptors (Reserved)

7:26E-4.8 Remedial investigation workplan

(a) If a remedial investigation workplan is required by the Department in an oversight document or by the ECRA or UST programs, the workplan shall include proposals to complete all requirements pursuant to N.J.A.C. 7:26E-4.1 through 4.7. The remedial investigation workplan shall be presented in a format that corresponds to the outline of this subsection.

(b) The remedial investigation workplan shall include:

1. A detailed schedule for all remedial investigation activities, including timelines and target dates for:

i. Start and completion of all field activities;

ii. Receipt of analytical results required in N.J.A.C. 7:26E-4.1 through 4.7; and

iii. Submission of all reports to the Department;

2. A description of the role of principal personnel who will participate in the remedial investigation:

i. The following information about project personnel including the project manager and, if applicable, a facility contact, legal contact, and contractor and subcontractor contacts shall be provided:

(1) Telephone numbers;

(2) Responsibilities; and

(3) Authority on the project.

ii. If the principal personnel designated on the project change, information for the new personnel shall be submitted to the Department within 10 calendar days of such change;

3. The following historical information unless the remediation is directed at either a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system:

i. Historical site plans and facility as-built construction drawing detailing, at a minimum, all information pursuant to N.J.A.C. 7:26E-3.2(a) and in addition, topography using two foot contours, potential contaminant conduits including all subsurface utilities. Maps depicting the entire site shall be scaled at one inch to 200 feet or less and individual area of concern maps shall be scaled at one inch to 40 feet or less. If more than one map is submitted, maps shall be presented as overlays, keyed to a base map; and

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ii. An interpretive aerial history pursuant to N.J.A.C. 7:26E-3.1(c)1vi including all photos. Photos shall be enlarged to a scale of one inch to 200 feet or less. Matched pairs shall be provided, if available, to allow for stereo viewing. Photos shall include a north arrow, date and source of photo, and site boundaries. Matte finish reproductions shall be provided;

4. Descriptions of the following unless the remediation is directed at either a specific discharge event, rather than a particular area of a site, or any underground tank or underground tank system:

i. The physical conditions of the site and surroundings, including a general description of soils, geology, hydrogeology, and topography.

ii. Usage, distance to, flow direction, and names of surface water bodies within one half mile of the site with emphasis upon water bodies topographically or hydraulically downgradient of the site that may receive site discharges or runoff;

iii. A copy of the United States Geologic Survey (USGS) 7.5 minute topographic quadrangle that includes the site and an area of at least a one mile radius around the site shall be required. This map shall be the most recent USGS revision and shall clearly note the facility location and property boundaries. When a portion of the USGS quadrangle is used, the scale, north arrow, contour interval, longitude and latitude, along with the name and date of the USGS quadrangle shall be noted on the map;

iv. In addition, a wetlands map from the "National Wetlands Inventory" which provides a wetlands map superimposed on a USGS 7.5 minute topographic quadrangle shall be included;

v. Copies of boring logs from on-site construction;

vi. Land use within a 1,000 foot radius of the site including proximity of the site to sensitive human and/or environmental receptors (for example, residences, endangered species habitats, wetlands, hospitals, nursing homes, schools, parks) and

vii. An estimate of the percentage of total land area within a 1,000-foot radius of site covered by structures and other impermeable surface covers shall be required to evaluate ground water recharge potential;

5. A description of each area of concern including dimensions, suspected contaminants, and suspected source of discharge;

6. An area of concern sampling summary table of proposed sampling and analysis shall be presented in the remedial investigation workplan text or on the sample location map specified in (b)7 below, according to the following headings (A suggested format is included in Table 4-1):

i. Location: use the same alpha or numeric designation as shown on the scaled sampling location map;

ii. Matrix: building interior, waste, soil, surface water, ground water, or sediment;

iii. Sample depth:

(1) Soil/sediment—depth of sample increment which will be analyzed;

(2) Ground water—indicate water bearing zone to be sampled (water table, confined, and unconfined) and sample depth;

(3) Surface water—indicate depth of water sample.

iv. Analytical parameters for each sample (for example, priority pollutant metals, full priority pollutant scan); and

v. Sampling method;

TABLE 4-1

SUGGESTED FORMAT
SAMPLING SUMMARY TABLE

LOCATION	MEDIUM	SAMPLE DEPTH	ANALYTICAL PARAMETERS	SAMPLING METHOD
Area T: Seepage Pit				
MWT-1	Ground Water	Water Table (20′)	Priority Pollutants	Bailer
MWT-2	Ground Water	Water Table (20′)	Priority Pollutants	Bailer
MWT-3	Ground Water	Water Table (20′)	Priority Pollutants	Bailer
MWT-4	Ground Water	Confined (50′)	Priority Pollutants	Bailer
Area S: Drum Storage Pad				
S-1	Soil	0-6″	Priority Pollutant Metals and Cyanide	Trowel
S-2	Soil	0-6″	Priority Pollutant Metals and Cyanide	Trowel
		18-24″	Priority Pollutant Volatile Organics	Coring Device
S-3	Soil	0-6″	Priority Pollutant Metals and Cyanide	Trowel

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7. Sample location map: proposed sample locations shall be indicated on a sample location map, scaled as in (b)3i above. Sample locations may be superimposed on maps presented pursuant to (b)3i above;

8. Other sampling proposals including any proposals to conduct the following studies:

i. Treatability, bench scale, pilot studies pursuant to N.J.A.C. 7:26E-4.1(a)4i;

ii. Data necessary to develop discharge permit effluent limitations; and

iii. Characterization of natural resource damages pursuant to N.J.A.C. 7:26D-5;

9. Quality assurance project plan including proposed sampling/analytical methods pursuant to N.J.A.C. 7:26E-2.2; and

10. Health and safety plan pursuant to N.J.A.C. 7:26E-1.9.

7:26E-4.9 Remedial investigation report

(a) The remedial investigation report shall comply with all requirements in N.J.A.C. 7:26E-3.10 (site investigation report) and in addition shall present and discuss any additional information collected pursuant to N.J.A.C. 7:26E-4.1 through 4.7 and the approved remedial investigation workplan as outlined in N.J.A.C. 7:26E-4.8, if applicable. The remedial investigation report shall be presented in a format that corresponds to the outline of this subchapter.

(b) The remedial investigation report shall include the following:

1. Historical information pursuant to N.J.A.C. 7:26E-4.8(b)3;

2. Physical setting pursuant to N.J.A.C. 7:26E-4.8(b)4. In addition, if a well search was conducted, it shall be presented pursuant to Appendix B, incorporated herein by reference;

3. Technical overview pursuant to N.J.A.C. 7:26E-3.10(b)3 and, in addition, the following items shall be discussed:

i. A summary of the results of any treatability, bench scale, or pilot studies conducted to support remedy selection;

ii. A summary of the results of any data collected to develop permit limitations for any permits which may be required during potential remedial actions; and

iii. A summary of the results of any ecological assessments conducted pursuant to N.J.A.C. 7:26-5; and

4. Findings/recommendations pursuant to N.J.A.C. 7:26E-3.10(b)4.

(c) The remedial investigation report shall include the following data and information:

1. Results of all analyses, copies of all laboratory data sheets and the required laboratory data deliverables pursuant to N.J.A.C. 7:26E-2.1 (Quality Assurance Requirements). Laboratory data deliverables may be submitted as a separate attachment;

2. A summary table of analytical methods and quality assurance indicators pursuant to N.J.A.C. 7:26E-2.2 (Quality Assurance Workplan);

3. Sampling Results Summary Table(s) of all analyses, including sample location, media, sample depth, and field and lab identification numbers pursuant to N.J.A.C. 7:26E-3.13(c)3 and, in addition:

i. All summary tables shall be organized by area of concern, and for each area of concern, average concentrations for each contaminant shall be presented along with individual sample results. The average shall be the arithmetic average pursuant to N.J.A.C. 7:26D and the following shall apply:

(1) All contaminant concentrations exceeding the applicable cleanup standard pursuant to N.J.A.C. 7:26D shall be identified; and

(2) Samples with MDLs (or PQLs if available) exceeding the applicable cleanup standard per N.J.A.C. 7:26D shall be identified and an explanation provided in the table key; and

ii. If data for more than 25 samples are presented for an area of concern, the data in the summary table pursuant to (c)3i above may be presented using the database format outlined in detail in Tables 4.2 and 4.3.

(1) The basic database structure shall contain two database files. The first (Site Definition) shall consist of a single form per site and will be used to locate the site in relation to other sites in the area. A unique Identification Number shall be used for each site. This number shall be the permanent EPA ID Number assigned to the site. If no EPA ID number exists, then the number field can be left blank and added by the Department when the data are received. An absolute (latitude-longitude) coordinate system shall be used to locate each sample. Sample depth shall be included to allow for development of a three dimensional diagram of the site subsurface. This system, whether absolute or relative, shall be defined in the Site Description database and a reference sample point will be equated with the absolute latitude and longitude of the site. In the case of sites less than five acres, the site absolute coordinates shall be measured from the approximate center of the site and any centrally located sample used as a reference point. Both targeted and non-targeted compounds shall be reported on the database. The database structure shall not be duplicated as a hardcopy deliverable

(2) Databases shall be constructed and delivered in any commonly available commercial database product compatible with the IBM type PC running under a DOS operating system and that can be converted into line, or comma quote-delimited ASCII format. The .DBF format, common to dBase, Foxpro, First Choice, Clipper, Alpha 4 and other commercial software, is the preferred format. Alternate formats may be accepted by the Department if simple conversion capabilities exist and if prior approval is provided by the Department The databases shall be delivered to the Department on a DOS 3.0 or more recent formatted removable media. These are 360k and 1200k 5¼ inch disks and 720k and 1440k 3.5 inch floppy disks. The new 2880k media are currently not accepted by the Department

TABLE 4-2

SITE DEFINITION DATABASE

Field	Field Name	Variable Type	Field Width	Description
1	SITEID	Character	12	Unique Identification Number (Same as SITEID found in Sample Results Database and the same as the CSL ID #)
2	LATITUDE	Numeric	8	Absolute Latitude (degree, min, seconds [dd.mm.ssss])
3	LONGITUDE	Numeric	8	Absolute Longitude (degree, min, seconds [dd.mm.ssss])
4	SITENAME	Character	40	Official Site Name
5	ALIASNAME	Character	48	Other Common Names (separate by semicolons)
6	SITESTREET	Character	40	Street Address of Site
7	SITECITY	Character	15	City
8	SITESTATE	Character	2	New Jersey (NJ)
9	SITEZIP	Character	10	Zip Code
10	MUNICIPALI	Character	30	Municipality

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11	COUNTY	Character	10	County
12	BLOCKS	Character	12	Block Number
13	LOTS	Character	12	Lot Number
14	ACTIVE	Logical	1	(Y)es or (N)o
15	LAND USE	Character	60	Industrial, Residential, Recreational
16	SITESIZE	Numeric	15	Area in Acres
17	CO SYS	Character	15	Coordinate System Used to Locate Samples
18	COORUNIT	Character	5	Units of Coordinate System (ft, meters, yards)
19	XDIRECT	Character	9	Compass Direction of X Coordinate
20	REFNCE	Character	9	Field ID of Sample Location that Corresponds to Absolute Reference Point (Lat., Log.)
21	SIC CODE	Character	10	Industrial SIC Code for Industrial Sites

TABLE 4-3

SAMPLE RESULTS DATABASE

Field	Field Name	Variable Type	Field Width	Description
1	SITEID	Character	12	Unique Site Identification Number (Same as SITEID in Site Definition Database and the same as the CSL ID #)
2	LABID	Character	10	Identification Number Assigned by Lab
3	FIELDID	Character	10	Identification Number Assigned by Sampler
4	MATRIX	Character	4	Air = AIR, Chip = CHIP, Ground Water = GW, Sediment = SED, Soil = SOIL, Surface Water = SW, Wipe = WIPE
5	ANALYTE	Character	12	Chemical or Property Analyzed
6	CAS	Character	14	CAS Number of Analyte, if available
7	CONC	Numeric	3	Numeric Concentration Value
8	CONCUNIT	Character	12	Unit of Concentration
9	QAQUAL	Character	4	Quality Assurance Qualifier(s) Separate by Semicolons
10	MDL	Numeric	4	Minimum Detection Level for the Analyte (Express in CONCUNIT)
11	XCOOR	Numeric	12	Relative or Absolute X-Coordinate
12	YCOOR	Numeric	9	Relative or Absolute Y-Coordinate
13	DEPTH	Numeric	4	Depth (ft)
14	SAMPDATE	Date	8	Sampling Date
15	FTNOTE	Character	256	Specific or Non-Standard Information for Sample Results

4. Stratigraphic logs, which include soil/rock physical characteristics and field instrument readings detected during drilling for each soil boring, test pit and monitoring well;

5. Stratigraphic cross sections of the site using information from monitoring wells, test pits and borings;

6. All soil boring, piezometer, and monitoring well records, including the State permit numbers and as-built specifications;

7. If applicable, well casing elevations to the nearest hundredth (0.01) foot above mean sea level, taken at the top of casing with locking cap removed;

8. If applicable, ground water elevation, for each monitoring well, to the nearest hundredth (0.01) foot above mean sea level, taken prior to evacuation, from the top of well casing with locking cap removed;

9. A summary of the review of inventory control records to identify product loss and any actions taken to investigate potential discharge areas;

10. Results of any treatability, bench scale, or pilot studies or other data collected to support remedy selection;

11. Any data collected to develop permit limitations;

12. The results of any ecological assessments conducted pursuant to N.J.A.C. 7:26D-5;

13. For landfills, a summary of any records pertaining to the nature of waste disposed at the landfill. Copies of the records shall be submitted as a separate attachment to the report; and

14. Any other data and information obtained pursuant to N.J.A.C. 7:26E-4.1 through 4.8.

(d) The remedial investigation report shall include the following legible maps and diagrams:

1. Site and area of concern base maps pursuant to N.J.A.C. 7:26E-4.8(b)3i. If more than one map is submitted pursuant to (d)2 below, maps shall be presented as overlays, keyed to the base maps. Sample locations may be superimposed on the base maps;

2. Sample location map(s), including:

i. All ground water, soil sediment and other sample locations; sample depth and contaminant concentration shall also be plotted on the map;

ii. Map scale and orientation;

iii. Field identification numbers for all samples;

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iv. Ground water elevation contour maps with flow direction specified for each set of static water level measurements for each aquifer if monitoring wells were installed for flow direction;

v. Top of bedrock contour map if bedrock was encountered;

vi. Isopleth maps for ground water contaminant concentrations, including horizontal/vertical extent of any free product zones, for each round of sampling; isopleth maps for soil sample results may also be provided; and

vii. If data for more than 25 samples are presented for an area of concern, soil, ground water and sediment contaminant isopleth maps and cross section diagram(s) showing concentrations of potential contaminants shall be submitted, including:

(1) Horizontal and vertical distribution of contaminants in the soil and sediment, with sample point location numbers and contaminant concentrations; and

(2) Horizontal and vertical distribution of contaminants in the ground water, with sample point location numbers and contaminant concentrations; and

viii. All monitoring well, piezometer, or other ground water sampling point locations including depth of the open borehole interval and/or screened interval;

3. If applicable, map of the distribution of surface water, structure and airborne contaminants, including sample location numbers and contaminant concentrations;

4. The same alpha or numeric labels, if assigned in the remedial investigation workplan, shall be used in the remedial investigation report; and

5. Photos may be submitted to document the location of all soil and sediment sample locations.

SUBCHAPTER 5. FEASIBILITY STUDY

7:26E-5.1 Feasibility study trigger

(a) The purpose of a feasibility study is to identify and evaluate remedial action alternatives that are appropriate to the particular characteristics of the area of concern which is undergoing remediation.

(b) The person remediating the site shall select a permanent remedy for the site or area of concern unless otherwise approved by the Department. The Department's preference for remedy selection is, in order of decreasing preference:

1. Onsite permanent remedies;
2. Offsite permanent remedies;
3. Onsite disposal; and
4. Offsite disposal.

(c) The person responsible for conducting the remediation shall conduct a feasibility study pursuant to this subchapter unless one of the following remedies is implemented:

1. An onsite permanent remedy; or

2. An offsite permanent remedy when the total volume of contaminated material taken offsite from the entire site, not just the individual area of concern undergoing remediation, is less than 100 cubic yards.

7:26E-5.2 Feasibility study requirements

(a) A feasibility study is a multi-step process including:

1. The initial identification of remedial action alternatives which may be appropriate for the site or the area of concern;

2. An initial screening of the remedial action alternatives identified;

3. A detailed analysis of each of the remedial alternatives which remain after the initial screening; and

4. A comparative analysis of the potential performance of each of the remedial action alternatives which remain after the initial screening.

(b) The identification of potential remedial action alternatives, including innovative and emerging treatment technologies, shall be assembled for each area of concern.

(c) The remedial action alternatives which are identified pursuant to (b) above shall undergo an initial screening based on the following:

1. The effectiveness of each remedial action alternative in protecting human health and the environment, including:

i. Its effectiveness in meeting the applicable cleanup standards pursuant to N.J.A.C. 7:26D. Alternatives that do not meet cleanup standards shall be eliminated from further consideration; and

ii. The degree to which each alternative reduces toxicity, mobility, or volume of potential contaminants through treatment, minimizes residual risks and affords long-term protection and minimizes short-term impacts.

2. The implementability of each alternative, including:

i. The technical feasibility and availability of the technologies that each alternative would employ; alternatives that are technically infeasible or that would require equipment, specialists, or facilities that are not available within a reasonable period of time may be eliminated from further consideration; and

ii. If treatability, bench scale, or pilot studies have been conducted pursuant to N.J.A.C. 7:26E-4.1(a)4, these results shall be utilized to determine whether or not an alternative is technically feasible;

3. The timeliness of each alternative including:

i. How quickly each alternative achieves the applicable cleanup standard; and

ii. Alternatives where the time needed to achieve the applicable cleanup standard is grossly excessive compared to the timeliness of other alternatives may be eliminated from further consideration, however, timeliness shall not be used to select non-treatment over treatment alternatives; and

4. The cost of each alternative including those costs listed below; alternatives where the cost of achieving the applicable cleanup standard is grossly excessive compared to the cost of other alternatives may be eliminated from further consideration, however, cost shall not be used to select non-treatment over treatment alternatives:

i. Capital costs (both direct and indirect);

ii. Annual operation, maintenance and monitoring costs; and

iii. Net present value of capital and operation, maintenance and monitoring costs.

(d) Each of the remedial action alternatives which remain after the initial screening shall be analyzed in detail and evaluated according to the following criteria:

1. The ability of the alternative to:

i. Reduce the toxicity, mobility or volume of contaminants through treatment;

ii. Employ reuse, recycling or treatment that reduces toxicity, mobility or volume of potential contaminants, or results in the reuse or recycling of the contaminants or contaminated media; and

iii. Address the threats to human health and the environment posed by the site;

2. The implementability of the alternative including:

i. The degree of difficulty of implementing the alternatives by considering the technical feasibility, including technical difficulties associated with construction and operation of the alternative;

ii. The reliability of the technology;

iii. The degree to which the alternative may interfere with or restrict other remedial actions taken or to be taken at the site;

iv. The ability to monitor the effectiveness of the alternative;

v. The administrative feasibility including:

(1) The activities needed to coordinate with appropriate offices and agencies; and

(2) The ability and time needed to obtain any necessary approvals and permits from appropriate agencies; and

vi. The availability of services and materials necessary to implement the alternative;

3. The long-term effectiveness and permanence of the alternative, and the degree of certainty that the remedial action will prove successful;

4. The short-term effectiveness of the alternative including:

i. The short-term impacts of alternatives including the risks that might be posed to the community and workers during implementation of the alternative;

ii. The potential environmental impacts of the alternatives and the effectiveness and reliability of measures to mitigate the negative human health or environmental impacts of the alternative during implementation; and

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iii. The time required for all applicable cleanup standards are achieved for the area of concern;

5. The cost of the alternative including:

i. The capital costs, both direct and indirect;

ii. The annual operation, maintenance and monitoring costs; and

iii. The net present value of capital, operation, maintenance, and monitoring costs; and

6. Community concerns, if applicable, including which alternatives interested persons in the community support, have reservations about or oppose.

(e) The final step in a feasibility study is a comparative analysis of the alternatives which remain after the initial screening to evaluate the relative performance of the alternatives in relation to each criteria specified in (d) above, including identifying the advantages and disadvantages of each alternative.

1. A narrative discussion shall be included describing the strengths and weaknesses of the alternatives relative to one another with respect to each criterion, and how reasonable variations or uncertainties could change the expectations of their relative performance.

2. The alternative that performs the best overall for each criterion, with other alternatives discussed in the relative order in which they perform, shall be identified.

3. If innovative technologies are being considered, their potential advantages with respect to cost or performance and the degree of uncertainty with respect to expected performance (as compared with more demonstrated technologies) shall also be discussed.

4. The presentation of differences among alternatives shall be measured both qualitatively and quantitatively, and shall identify substantive differences between alternatives (for example, greater short-term effectiveness concerns, greater cost, etc.).

5. Quantitative information that was used to assess the alternatives (for example, specific cost estimates, time until all applicable cleanup standards would be achieved, and levels of residual contamination) shall be included in these discussions.

:26E-5.3 Feasibility study report

(a) The feasibility study report shall contain the information included in this section and shall be presented in a format that corresponds directly to the outline of this section and shall provide;

1. A list of the cleanup standards applicable to the contamination in the area of concern;

2. A discussion of the initial screening process including a presentation of all remedial action alternatives considered for the site pursuant to N.J.A.C. 7:26E-5.2(c);

3. A list of the remedial action alternatives that remain after initial screening;

4. The evaluation and assessment of each remedial action alternative against the criteria specified in N.J.A.C. 7:26E-5.2(d); and

5. A comparative analysis of the alternatives to evaluate the relative performance of each remedial action alternative in relation to each specific evaluation criterion in N.J.A.C. 7:26E-5.2(d).

(b) The feasibility study report shall be based on all data and information obtained pursuant to N.J.A.C. 7:26E-4.1(a)4i including treatability, bench or pilot scale studies.

UBCHAPTER 6. REMEDIAL ACTION

26E-6.1 Remedial action requirements

(a) The person responsible for implementing any remedial action at a contaminated site shall notify the Department pursuant to N.J.A.C. 7:26E-1.4.

(b) Each remedial action implemented at a contaminated site shall:

1. Be approved by the Department prior to implementation, unless the remedial action is a permanent remedy pursuant to N.J.A.C. 7:26E-5.1(b);

2. Achieve all applicable cleanup standards pursuant to N.J.A.C. 7:26D;

3. Comply with all applicable Federal, State, and local laws, regulations, and requirements;

4. Not in itself cause an uncontrolled discharge or merely transfer contaminants from one media to another; and

5. If contaminants remain onsite after remediation in excess of the applicable cleanup standards pursuant to N.J.A.C. 7:26D, be reevaluated at regular intervals, no less frequently than once every five years, to determine whether or not the remediation continues to ensure adequate protection of human health and the environment.

7:26E-6.2 Remedial action workplan

(a) If a remedial action workplan is required by the Department in an oversight document or pursuant to the ECRA or UST programs, the workplan shall be submitted in accordance with the schedule contained in that document and shall be presented in a format that corresponds directly to the outline of this section. The workplan shall include:

1. A statement that all requirements in N.J.A.C. 7:26E-6.3 and 6.4 (specific remedial action requirements and post-remedial action requirements) will be completed;

2. The remedial investigation report, pursuant to N.J.A.C. 7:26E-4.9, shall be presented as the first section of the remedial action workplan. If the remedial investigation report was previously submitted to the Department, a summary of the report may be submitted;

3. A description of soil and sediment erosion control and monitoring, and dust and odor control and monitoring procedures to be implemented during remedial activities;

4. If any construction activity is planned, the following items shall be included in the workplan:

i. The location of any such construction facilities with additional details describing construction design;

ii. All applicable requirements and standards relating to construction for onsite remedial units including, without limitation:

(1) Inspection and professional engineer certification;

(2) Measurement and daily logging procedures;

(3) Field performance and destructive testing procedures;

(4) As built drawing and construction logs; and

(5) Testing criteria for approval or rejection of the work conducted;

5. The identification of all applicable cleanup standards pursuant to N.J.A.C. 7:26D;

6. The identification of all areas where remedial action will be conducted on a scaled site map pursuant to N.J.A.C. 7:26E-4.9 (remedial investigation report). In addition, the map shall specify:

i. The volume of each medium to be remediated;

ii. The vertical and horizontal extent of area to be remediated;

iii. The location, depth and concentration of all contaminants in excess of the cleanup standard; and

iv. Sample locations, depths and parameters for all post-construction samples;

7. A sampling summary table pursuant to N.J.A.C. 7:26E-4.8 (remedial investigation workplan);

8. A quality assurance project plan including proposed sampling and analytical methods pursuant to N.J.A.C. 7:26E-2.2;

9. A detailed description of the remedial action and the remedial technology to be conducted for each area;

10. A detailed description of site restoration plans to comply with N.J.A.C. 7:26E-6.4 (post-remediation action requirements);

11. A detailed description of source and quality of backfill pursuant to N.J.A.C. 7:26E-6.4 (post-remediation action requirements);

12. A description of procedures for dismantling and removal of remedial structures and equipment from the site;

13. A cost estimate of the remedial action pursuant to N.J.A.C. 7:26E-5.2;

14. A schedule is not required if the remedial action will not exceed three months from the proposed start date and the proposed completion date of the remedial action shall be provided;

15. If remedial actions will exceed three months in duration, refer to N.J.A.C. 7:26E-6.5 (remedial action schedule and progress reports) for specific schedule and progress report requirements;

16. A health and safety plan pursuant to N.J.A.C. 7:26E-1.9; and

17. A list of all required permits.

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7:26E-6.3 Specific remedial action requirements

(a) As a first priority during remedial action, contaminants in all media shall be contained and/or stabilized to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway.

(b) The following requirements shall be followed for the removal of an underground storage tank:

1. The associated piping shall be drained and the tanks pumped out and cleaned thoroughly;

2. All of the openings in the tank shall be plugged except for one vent hole;

3. The soil around the tank shall be excavated and the tank shall be removed and secured;

4. After the tank is secured, it shall be examined for holes and the NJDEPE HOTLINE, (609) 292-7172, shall be called if any holes are found;

5. The tank shall then be prepared for disposal by labeling the tank regarding its site or origin, ultimate destination site and the substance(s) that were stored in it during its use as a storage tank; and

6. The tank shall be removed from the site according to all applicable laws and regulations.

i. During tank removal, the following observations shall be made and documented:

(1) A description of tank condition (with photographic documentation);

(2) A description of adjacent soils and any physical evidence of soil contamination;

(3) When tanks that contained volatile organics are removed, the excavation floor and sidewalls shall be field screened with a properly calibrated flame ionization detector (FID), or photoionization detector (PID) along transects spaced no more than five feet apart. Post-remediation soil samples for laboratory analysis shall be taken immediately after tank and/or contaminated soil removal at a frequency of one per five linear feet along the center line of the excavation. At least two sample locations shall be biased to the locations of the two highest field measurements;

(4) A presence and physical description (for example, odor, sheen) quality of ground water (including any perched water); and

(5) A description of product type and quantity spilled from tank or tank system during excavation.

ii. If documentation acceptable to the Department is provided in the remedial action report that the conditions below existed, the owner or operator of an underground storage tank system may abandon the system in place only if:

(1) The underground storage tank is located under a permanent structure; or

(2) The owner or operator submits a certification, signed and sealed by a New Jersey professional engineer, stating that removal of the underground storage tank will cause damage to the other structure, or that the tank is difficult to remove from the ground because of inaccessibility or type of tank construction.

iii. If tank systems are abandoned in place, the following requirements shall be met:

(1) The tank system and associated piping shall be drained and the system pumped out and cleaned thoroughly;

(2) Decommissioning of the tanks shall then be completed by introducing sand, cement or other material with similar physical/chemical properties into the system through existing openings in the tank or through holes cut in the top of the tank. Because vapors in the tank atmosphere will be displaced during the tank filling operation, particular emphasis shall be placed on health and safety concerns; and

(3) Procedures shall comply with any local ordinances.

(c) Any asbestos abatement activities shall be in accordance with requirements in N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode.

7:26E-6.4 Post-remedial action requirements

(a) The following sampling shall document the effectiveness of the remedial action:

1. All sampling shall be conducted pursuant to N.J.A.C. 7:26E-3.3 through 3.9 and 4.1 through 4.7.

2. For soils, if excavation is conducted, the minimum post remediation sampling frequency shall be:

i. For excavations less than 20 feet in perimeter, at least one bottom sample and one sidewall sample biased in the direction of surface runoff.

ii. For excavations 20 to 300 feet in perimeter, one sample from each sidewall for every 30 linear feet of sidewall and one sample from the excavation bottom for every 900 square feet of bottom area.

iii. For larger excavations, sampling frequency may be reduced if documentation acceptable to the Department is provided in the remedial action report (N.J.A.C. 7:26E-6.6) specifying why the sample frequency was considered adequate.

iv. For volatile organics bottom samples taken within 24 hours of excavation, samples shall be taken from the zero to six inch interval at the excavation floor. Samples taken after 24 hours shall be taken at six to 12 inches. For excavations open longer than two weeks, volatile organics sample depth for bottom samples shall be in accordance with N.J.A.C. 7:26E-3.9 (site investigation requirements).

3. For soils, if in situ remediation is conducted, the minimum post-remediation sampling frequency shall be one sample per 900 square feet of contaminated area. Where the contaminated zone exceeds two feet in depth, one additional sample per 900 square feet of contaminated area shall be taken for each two feet of depth.

4. For building interiors, post-remediation sample frequency shall be as follows:

i. One sample for every 900 square feet for each area of concern of 9,000 square feet or less.

ii. For areas of concern greater than 9,000 square feet, one additional sample shall be taken for every additional 9,000 square feet. For example, an area of concern of 9,001 to 18,000 square feet would require a minimum of 11 samples.

5. Post-remediation sample locations and depth shall be biased towards the areas and depths of highest contamination identified during previous sampling episodes unless field indicators such as field instrument measurements or visual contamination identified during the remedial action indicate that other locations and depths may be more heavily contaminated. In this case, post-remediation samples shall be biased towards locations and depths of the highest expected contamination.

(b) All areas subject to remediation shall be restored, to the extent practicable, to pre-remediation conditions with respect to topography, hydrology and vegetation.

1. Sites located adjacent to or in wetlands or in or near other critical habitat areas as defined in N.J.A.C. 7:26D-5, may have further requirements under N.J.A.C. 7:7E (Coastal Zone Management) or N.J.A.C. 7:7A (Wetlands Act).

2. Fill material used to restore a site after the remediation has been completed shall be similar in physical properties and soil type to the material removed unless otherwise approved in advance by the Department.

i. If the excavated material is native soil, the fill shall be of equal or less permeability than the soil removed.

ii. If the excavated material is not native soil, the fill material shall be of equal or less permeability than the native soil in or adjacent to the area of concern.

iii. Fill shall be uncontaminated pursuant to residential cleanup standards in N.J.A.C. 7:26D and free of extraneous debris or solid waste.

iv. Documentation of the quality of the fill shall be provided by a certification stating that it is virgin material from a commercial or noncommercial source or decontaminated recycled soil.

v. Uncontaminated soil from the site pursuant to N.J.A.C. 7:26D may be returned to excavations.

vi. The bills of lading shall be provided to the Department to document the source(s) of fill. The documentation shall include:

(1) The name of the affiant and relationship to the source of the fill;

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(2) The location where the fill was obtained, including the street, town, lot and block, county, and state, and a brief history of the site which is the source of the fill; and

3. A statement that to the best of the affiant's knowledge and belief the fill being provided is not contaminated pursuant to N.J.A.C. 7:26D and a description of the steps taken to confirm such.

(c) After completion of remediation all monitoring wells shall be sealed in accordance with N.J.A.C. 7:9-9, unless otherwise approved by the Department.

7:26E-6.5 Remedial action schedule and progress reports

(a) If the Remedial Action activities at a site are being performed pursuant to N.J.A.C. 7:26C or the ECRA or UST programs, and require more than three months for completion, a schedule for completion of the remedial action by task and final completion schedule is required in addition to progress reports at a frequency which shall be specified by the Department in the oversight document or by the ECRA or UST program. The remedial action schedule shall contain the following elements:

1. Schedules shall utilize monthly timeframes, when possible, for the initiation or completion of tasks;

2. The remedial action workplan shall not list specific dates as these will be contingent upon Department approval of the remedial action workplan;

3. After remedial action workplan approval is obtained, the schedule shall be revised to identify the projected month/year for each task;

4. All tasks for all areas of concern shall be identified in the schedule;

5. Contractor bidding/review/acceptance process timeframe shall be included in the schedule;

6. The schedule shall consider timeframes for permit applications (municipal, NJDEPE, etc.) and final permit approvals. A critical path schedule shall be included when any permits are involved because certain tasks cannot proceed without permit approval;

7. When projecting dates for submission of reports to the Department, the schedule shall consider review time of not only the person preparing the report but all other persons who are deemed necessary to finalize the report;

8. The schedule shall identify all anticipated report submittals (month/year) to the Department including, without limitation, progress reports, ground water monitoring reports, post-remediation data reports for individual areas of concern, construction design reports and final remedial action reports. Laboratory analysis time shall be accounted for in projecting report submittal dates;

9. The schedule shall allow for Department review time of submitted reports;

10. The schedule shall include time for obtaining waste classification from the Department for disposal or treatment of waste material generated during remediation;

11. The schedule shall include a timeframe for site restoration (backfill, regrade, pave, etc.) and Department final inspection; and

12. The schedule shall include projected date for full compliance with the Department program overseeing the remediation.

(b) A progress report shall include, at a minimum, the following information:

1. Specification/reporting of all remedial actions accomplished during the reporting period and the percent of the total number of all proposed remedial action tasks completed to date;

2. Proposal of any deviations from and/or modifications to the approved remedial action workplan. All modifications shall be approved by the Department prior to enactment;

3. Reporting of problems or delays in the implementation of the remedial action workplan. Proposed corrections shall be presented with changes to the approved project schedule and shall be approved by the Department prior to the reporting period. A revised schedule shall be submitted as part of the progress report. The status of all permit applications shall be included in this schedule;

4. Identification of the remedial actions for the next reporting period;

5. Presentation annually of the actual costs of remediation incurred to date;

6. If required in an oversight document pursuant to N.J.A.C. 7:26C or by ECRA or UST, the following shall be provided:

i. Tabulation of all sample results received during this period with sample date, sample location, laboratory identification, matrix sampled, depth, analyses performed, analytes detected, and concentrations detected and submission of a report summarizing the data and presenting conclusions; and

ii. Tabulation of waste classification and/or characterization samples collected including the physical state of the material (solid, liquid, sludge), the volume of material, number of samples collected, analyses performed and results;

7. A listing of all types and quantities of waste generated during the reporting period and to date. Include the name of the disposal facilities, and transporters' dates of disposal, and if appropriate, the manifest numbers of each waste load; and

8. Any additional support documentation that is available (e.g. photographs) shall be submitted.

(c) If the Department determines in writing that oversight of some of the remedial activities will occur pursuant to Federal, State or local permits, then the requirements of this subchapter may be waived for those activities. The Department may request a summary of permitted activities.

7:26E-6.6 Remedial action report

(a) Any remedial action report submitted to the Department for approval shall present and discuss all data and information collected in compliance with N.J.A.C. 7:26E-6.3 (specific remedial action requirements) and N.J.A.C. 7:26E-6.4 (specific post-remedial action requirements), if applicable. The report shall be presented in a format that corresponds directly to the outline of this section.

(b) Any remedial action report submitted to the Department for approval shall include the following:

1. All information contained in the remedial investigation report pursuant to N.J.A.C. 7:26E-4.9;

2. The remedial investigation report section entitled "Findings/Recommendations," shall be renamed "Findings/Remedial Action Report" and shall include a description of how each area of concern was addressed;

(c) The Findings/Remedial Action report section shall state for each area of concern either "no remediation was conducted for this area of concern." Where remedial actions were completed, the following shall be included:

1. A summary by area of concern of all remedial actions completed;

2. A list of the cleanup standards applied to the remedial actions;

3. Tables and figures pursuant to N.J.A.C. 7:26E-4.8 (remedial investigation report) containing all pre and post remedial data keyed appropriately so that completion of the remedial action is documented. The figures shall clearly indicate the volume of contaminated media which was remediated;

4. A detailed description of site restoration activities pursuant to N.J.A.C. 7:26E-6.4 (Post-Remedial Action Requirements);

5. A detailed description of source and quality of fill pursuant to N.J.A.C. 7:26E-6.4;

6. A detailed report of actual costs pursuant to N.J.A.C. 7:26E-5.2;

7. "As-built" diagrams for any permanent structures including, without limitation, caps, slurry walls, treatment units, or other remedial structures which will remain in place after completion of the remedial action;

8. Manifests documenting any offsite transport of waste material; and

9. Details of any use restrictions pursuant to N.J.A.C. 7:26D.

SUBCHAPTER 7. PERMIT IDENTIFICATION AND APPLICATION SCHEDULE

7:26E-7.1 Permit identification

(a) Any person conducting a remedial action shall identify all relevant Federal, State and local permits or permit modifications or certifications needed to implement the selected remedial action including, but not limited to:

1. Soil Erosion and Sediment Control Plan Certification for Land Disturbance Control (N.J.A.C. 2:90);

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2. Permit to Construct/Install/Alter Air Quality Control Apparatus/Equipment (N.J.A.C. 7:27-8);
3. Certificate to Operate Air Quality Control Apparatus/Equipment (N.J.A.C. 7:27-8);
4. Coastal Area Facility Review Act (CAFRA) Permit (N.J.S.A. 13:19-1 et seq.);
5. Waterfront Development/Upland Waterfront Permit (N.J.S.A. 12:5-3);
6. Wetlands Permit (N.J.S.A. 13:9A-1 et seq.);
7. Freshwater Wetlands/Open Water Fill Permit (N.J.S.A. 13:98-1 et seq.);
8. Stream Encroachment Permit (Construction within a Flood Plain) (N.J.S.A. 58:16A-50 et seq.; N.J.A.C. 7:8-3.15);
9. State Water Quality Certificate (N.J.S.A. 58:10A-1 to 13; 33 U.S.C. 1251, §401);
10. Dewatering Permit and/or Water Diversion Permit (N.J.S.A. 23:5-29);
11. U.S. Army Corps of Engineers Dredge and Fill Permit;
12. Delaware River Basin Commission Docket Approval (N.J.S.A. 32:20-1 et seq.);
13. Hackensack Meadowlands Development Commission—Zoning Certificate (N.J.S.A. 13:17-1 et seq.);
14. New Jersey Pinelands—Letter of Approval (N.J.S.A. 13:18A-1 et seq.);
15. Discharge Prevention and Discharge Cleanup and Removal Plans (Pertaining to Storage and Transfer of Petroleum and other Hazardous Substances) (N.J.S.A. 58:10-23.11 et seq.; N.J.A.C. 7:1E);
16. Registration of Underground Storage Tank; UST Installation Permit and Closure Approval (N.J.S.A. 58:10A-21 et seq.);
17. Water Quality Management Plan Consistency Determination (N.J.S.A. 58:11A-1 et seq; N.J.A.C. 7:15);
18. New Jersey Pollutant Discharge Elimination System (NJPDES) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
i. NJPDES—Discharge to Surface Water (DSW)—Industrial (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
ii. NJPDES—Significant Indirect User (SIU) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A); and
iii. NJPDES—Discharge to Ground Water (DGW) (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
19. Treatment Works Approval (TWA) (N.J.S.A. 58:12A-1 et seq.; N.J.A.C. 7:10-11);
20. Sewer Connection Permit (N.J.S.A. 58:10A-1 et seq.; N.J.A.C. 7:14A);
21. Employer License (Asbestos) (N.J.A.C. 8:60-4), (N.J.A.C. 12:120-4);
22. Asbestos Worker or Asbestos Supervisor Permit Certification of Training Agencies (Asbestos) Asbestos Work Notification Requirements (N.J.A.C. 8:60-6), (N.J.A.C. 12:120-6);
23. National Emission Standards for Hazardous Air Pollutants (NESHAPs) Written Notification Requirements;
24. Landfill Disruption/Closure Approval (N.J.S.A. 13:1E-1 et seq.; N.J.A.C. 7:26-2.7);
25. Hazardous Waste Facility Registration (N.J.S.A. 13:1E-1 et seq.; N.J.A.C. 7:26);
26. Short Term Water Use Report;
27. Well Drilling Permit, and Well Certification Forms A & B; (N.J.S.A. 58:4A-14; N.J.A.C. 7:8-3.11);
28. Well Abandonment Form;
29. Exemption of Waste Flow Rule (Soil Reuse);
30. Hazardous Waste Generator Identification Number (N.J.A.C. 7:26);
31. RCRA TSD Facility Permit, except that hazardous waste treatment, storage, or disposal facility permits pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Hazardous Waste Permitting regulations at N.J.A.C. 7:26, shall not be required for any remediation conducted on site pursuant to either:
i. An administrative consent order pursuant to N.J.A.C. 7:26C; or
ii. A memorandum of agreement expressly executed for the implementation of a Department approved remedial action pursuant to a Department approved schedule; provided, however, that if the remedial action is not implemented pursuant to the approved schedule, then this provision does not apply and the otherwise applicable hazardous waste permits shall be required; and
32. Any other Federal, State or local approvals that may be required.

(b) Any person conducting a remedial action shall apply for and obtain all required permits prior to initiating the remedial action.

(c) Any person conducting a remedial action pursuant to an oversight document or the ECRA or UST programs, shall develop a permit application schedule to identify the timeframes for application and issuance/approval pursuant to N.J.A.C. 7:26E-6.5(a)6.

APPENDIX A
Laboratory Data Deliverables Formats

I. Full Laboratory Data Deliverables—USEPA/CLP Methods

Full laboratory data deliverables for USEPA/CLP analyses may be requested when the following Statements of Work are employed:
"USEPA Contract Laboratory Program Statement of Work for:
A) Organics Analysis, Multi-Media, Multi-Concentration"
B) Inorganics Analysis, Multi-Media, Multi-Concentration"
C) Organics Analysis, Multi-Media, High-Concentration"
D) Inorganics Analysis, Multi-Media, High-Concentration"
E) Low Concentration Water for Organic Analysis"
F) Low Concentration Water for Volatile Organic Analysis"
G) Low Concentration Water for Inorganic Analytes"
H) Polychlorinated Dibenzo-p-dioxins and Polychlorinated Dibenzofurans"

The Full laboratory data deliverables required for USEPA/CLP analyses are listed in the versions of the above noted Statements of Work in effect as of the date of sample analysis by the laboratory. Additionally, mass spectral negative proofs are required where applicable, "clean" soil method blanks for nonaqueous samples are not permitted, and laboratory internal chain of custody documentation is required.

II. Full Laboratory Data Deliverables—Non-USEPA/CLP Methods

These deliverables shall be the "Regulatory Format" data deliverables listed in the version of the Professional Laboratory Analytical Services contract issued by the N.J. Department of Treasury, Division of Purchase and Property in effect as of the date of sample analysis by the laboratory.

III. Reduced Laboratory Data Deliverables—USEPA/CLP Methods

Reduced laboratory data deliverables for USEPA/CLP analyses may be required when the "USEPA Contract Laboratory Program Statement of Work for Organic Analyses, Multi-Media, Multi-Concentration" and/or the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, Multi-Media, Multi-Concentration" are employed. Data generated via the other above noted Statements of Work may NOT be delivered in the reduced format.

A. Organics

All laboratory data deliverables required for USEPA CLP analyses for organics via the appropriate Statement of Work are the same as those listed above in the **Full Laboratory Data Deliverables—USEPA/CLP** requirements and must be submitted with the following exceptions:
1. Chromatograms of standards (calibrations) are not required.
2. Chromatograms and spectra for matrix spikes and matrix spike duplicates are not required.

B. Inorganics

The Reduced laboratory data deliverables required for USEPA CLP analyses for inorganics are all the Inorganics Data Reporting Forms as specified in the version of the above noted Statement of Work for Inorganics in effect of the date of sample analysis by the laboratory.

IV. Reduced Laboratory Data Deliverables—Non-USEPA/CLP Method

This attachment presents reduced laboratory data deliverables requirements for Non-USEPA/CLP Methods. The deliverable package is divided into six (6) sections:
1. General Requirements
2. GC/MS Requirements
3. GC Requirements
4. Metals Requirements
5. General Chemistry Requirements
6. Petroleum Hydrocarbons Requirements

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1. **General Requirements**

A. The data deliverable package shall be bound and paginated with margins, bindings and of reproduction quality such that all pages are legible.

B. **Title/Cover Page**

The format for QA/QC documentation shall be simplified as much as possible for ease of review and reference. The report shall begin with a cover page that includes the laboratory certification number, if applicable, facility name, address and date of report preparation.

The report shall include a summary table that cross-references the field identification number to the laboratory identification number for each sample. This table is needed to locate laboratory information for specific field samples. Sample numbers used in the field are always different than those used in the laboratory and therefore shall be reconciled before submitting the results to Department.

C. **Chain of Custody**

The Chain of Custody (COC) shall ensure the secure and appropriate handling of samples from the site to the laboratory as well as the movement of the sample within the laboratory until analysis is completed. The COC remains with the samples at all times and bears the name of the person assuming responsibility of the samples and the date. The COC is acceptable when there are no lapses in sample custody.

D. **Methodology Review**

The Methodology Review shall list method numbers, with a detailed discussion of any method modification.

E. **Laboratory Chronicle**

The laboratory chronicle shall detail actual sample holding times and specify the sample condition upon receipt at the laboratory (including sample temperature and pH when pH adjustment is required). Holding time begins at the time of sample collection.

F. **Conformance/Non-Conformance Summary**

A non-conformance summary shall be completed and signed by the laboratory. This summary states that the laboratory has reviewed the quality assurance and quality control measures for sample analysis. It identifies any deviations from the accepted practices or results.

2. **GC/MS Requirements**

A. Analytical Results Summary—An analytical results summary form shall be submitted for each sample and for each GC/MS analytical fraction (i.e., volatiles and semi-volatiles). Each form shall contain the following information: date sample received, date sample extracted, date sample analyzed, sample weight/volume, sample moisture content, dilution factor, GC column used, list of analytes, method detection limit and detected analyte concentrations. In addition a separate form for tentatively identified compounds (TICs) shall be submitted for each sample and for each GC/MS analytical fraction. Each TIC shall be identified by compound name or class (if it can be determined) and CAS number along with its retention time and estimated concentration.

B. Tuning Results Summary—Tuning results for all initial and continuing calibrations that are associated with all samples shall be submitted for each GC/MS analytical fraction. Each form shall contain the following information: laboratory file ID, instrument ID, injection date and time, the m/e (mass to ion charge) listing for the key ions, the reported ion relative abundance, the ion abundance criteria and a listing of all standards, blanks, QC samples and field samples (including date and time of analysis) associated with the tune.

C. Method Blank Results Summary—An analytical results form shall be submitted for all method blanks associated with all field samples for each analytical fractions. Each form shall contain the information listed in Section 2A above, as well as a listing of all field and QC samples associated with each method blank. In addition, a separate form for TICs shall be submitted which contains the information listed in Section 2A above.

D. Calibration Summary—A summary of all initial and continuing calibrations that are associated with all samples and blanks shall be submitted for each GC/MS analytical fraction. The following information shall be provided for each initial calibration: instrument ID, calibration date and time, listing of standard concentrations used, laboratory file ID for each calibration standard, listing of all associated field samples, QC samples and blanks, listing of the relative response factor (RRF) for each analyte and surrogate compound, the average RRF for each target analyte and surrogate compound, and percent relative standard deviation for each target analyte and surrogate compound. The following information shall be provided for each continuing calibration: instrument ID, calibration date and time, date and time of the associated initial calibration, the standard concentration used, the laboratory file ID for the calibration standard, listing of all associated field samples, QC samples and blanks, the average RRF for each target analyte and surrogate compound from the associated initial calibration, the RRF for each analyte and surrogate compound from the continuing calibration and the percent difference for each target analyte and surrogate compound.

E. Surrogate Compound Recovery Results Summary—If required by the analytical method, a summary form shall be submitted which contains the following information for all field samples, method blanks and QC samples for each GC/MS analytical fraction: sample identification number, sample matrix, surrogate compound names, concentration of surrogate compounds used, surrogate compound recoveries and QC limits for each surrogate compound.

F. Matrix Spike/Matrix Spike Duplicate Results Summary—If required by the analytical method, a summary form shall be submitted for each sample matrix and each GC/MS analytical fraction which contains the following: sample identification number for the sample selected for spiking, list of compounds being spiked, concentration of each spiked compound, matrix spike concentration, matrix spike percent recovery, matrix spike duplicate concentration, matrix spike duplicate percent recovery, relative percent difference and QC limits for percent recovery and relative percent difference.

G. Internal Standard Summary—A summary form shall be submitted which contains the following information for all standards, field samples, method blanks and QC samples for each analytical fraction: sample ID number, ID of laboratory calibration standard, internal standard compound names, concentration of internal standards compounds, retention times of each internal standard, area of each internal standard, and QC criteria (where applicable) for internal standard areas and retention times.

H. Chromatograms—The total ion chromatograms for all field samples and method blanks. All peaks on the chromatograms shall be identified as either an internal standard, surrogate compound, target compound or non-target compound.

3. **GC Requirements**

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the information contained in Section 2A above.

B. Method Blank Results Summary—An analytical results form shall be submitted for all method blanks as well as a listing of all field and QC samples associated with each method blank. Each form shall contain the information contained in Section 2A above.

C. Standards Summary—A summary form containing GC standards information for all associated samples shall be submitted for both primary and confirmation (if applicable) analyses. This summary shall contain the following information: instrument ID number, GC column used and notation if primary or confirmation analysis, date and time of standard(s) analysis, listing of all associated field, QC and method blank samples, listing of target compounds, retention time windows of each target compound and calibration factor for each target compound.

D. Surrogate Compound Recovery Results Summary—If required by the analytical method, a summary form shall be submitted which contains the following information for all field samples, method blanks, and QC samples: sample identification number, sample matrix, surrogate compound names, concentration of surrogate compounds used, surrogate compound recoveries and QC limits for each surrogate compound.

E. Matrix Spike/Matrix Spike Duplicate Results Summary—If required by the analytical method, a summary form shall be submitted for each sample matrix which contains the information contained in Section 2F above.

F. Retention Time Shift Summary—If required by the analytical method, a summary form containing retention time shift results shall be submitted for both the primary and confirmation (if applicable) analyses. The form shall contain the following information: instrument ID number, GC column used and notation if primary or confirmation column analysis, name of retention time shift marker compound, list of all field samples, method blanks and QC samples, date and time of analysis of all field samples, method blanks and QC samples, percent difference of the retention time shift and QC limits for the retention time shift.

G. Chromatograms—The primary analysis chromatograms and confirmation analysis chromatogram (when applicable) for all field samples and method blank shall be submitted. All peaks on the chromatogram attributable to target and surrogate compounds shall be identified as such along with the retention time for each peak. The reference standard chromatogram for all multi-peak target compounds (e.g., toxaphene,

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PCBs) for both the primary and the confirmation analysis (when applicable) shall also be submitted.

4. **Metals Requirements**

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample identification number (laboratory and/or field ID), Sample matrix, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes and detected analyte concentrations and method detection limits.

B. Blank Results Summary—A blank results form shall be submitted for all instrument calibration blanks and reagent blanks associated with all field and QC samples. Each form shall contain the following information: list of all target analytes, matrix of the reagent blank, concentration units of the reagent blank, reported concentration of all target analytes found in all calibration and reagent blanks and method detection limits.

C. Calibration Summary—A calibration summary shall be submitted for all initial calibration standards and check standards associated with field samples, blanks and QC samples. Each form shall contain the following information: list of all target analytes, the true concentration for the initial calibration standards, the reported (or found) concentrations for the initial calibration standards and check standards, the percent recovery for each initial calibration standard and check standard and the percent recovery QC limits for each target analyte. In addition, this form shall also list the method detection limit and instrument detection limit for each target analyte.

D. ICP Interference Check Sample Results Summary—If metals analysis is being conducted by ICP methodology, results of the interference check samples analysis shall be reported. The following information shall be reported: list of all target analytes in the interference check sample, the true concentration of analytes in the interference check sample, the reported concentrations of analytes found in the interference check sample for both the initial and final check samples analyses, the percent recovery of the target analytes found in the initial and final check samples analyses and the QC control limits for percent recovery values.

E. Spike Sample Results Summary—A summary of the spike sample analysis shall be submitted. The following information shall be reported: ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte.

F. Duplicate Sample Results Summary—A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate samples, sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyse and the QC limit for relative percent difference for each target analyte.

G. Laboratory Control Sample Results Summary—When specified by the analytical method, the results of the laboratory control (quality control) sample shall be submitted. The following information shall be reported: control sample matrix, list of all target analyte, the true concentration for each analyte in the control sample, the reported concentration for each target analyte in the control sample, the percent recovery for each target analytes and the QC limit for percent recovery for each target analyte.

H. Serial Dilution Summary—If required by the analytical method, a summary of the serial dilution results shall be submitted. The following information shall be reported: ID number of the original sample and the serial dilution samples, sample matrix, results of the original sample analysis, results of the serial dilution sample analysis, the percent difference of each target analyte compared to the original analytes' results and the QC limit for percent difference for each target analyte.

5. **General Chemistry Requirements**

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample identification number (laboratory and/or field ID), sample matrix, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), list of target analytes and detected analyte concentrations and method blank detection limits.

B. Blank Results Summary—A blank results form shall be submitted for all method samples associated with all field and QC samples. Each form shall contain the following information: list of all target analytes, matrix of the method blank, concentration units of the method blank, reported concentration of all target analytes found in all method blanks.

C. Spike Sample Results Summary—A summary of the spike sample analysis shall be submitted. The following information shall be reported: ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte.

D. Duplicate Sample Results Summary—A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate samples sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte.

6. **Petroleum Hydrocarbon Requirements**

A. Analytical Results Summary—An analytical results form shall be submitted for each sample. Each form shall contain the following information: sample identification number (laboratory and/or field ID) sample matrix, date sample received, date sample analyzed, sample moisture content, dilution factor (if any), and detected analyte concentrations and method detection limits.

B. Blank Results Summary—A blank results form shall be submitted for all method blank samples associated with all field and QC samples Each form shall contain the following information: list of all target analytes, matrix of the method blank, concentration units of the method blank, reported concentration of all target analytes found in all method blanks.

C. Spike Sample Results Summary—A summary of the spike sample analysis shall be submitted. The following information shall be reported ID number of the sample chosen for spiking, sample matrix, the concentration of each spiked target analyte, the results of the unspiked sample analysis, the results of the spiked sample analysis, the percent recovery for each spiked analyte and the QC limit for percent recovery for each spiked analyte.

D. Duplicate Sample Results Summary—A summary of the duplicate sample analysis shall be submitted. The following information shall be reported: ID number of the original sample and the duplicate sample sample matrix, results of the original sample analysis, results of the duplicate sample analysis, the relative percent difference of each target analyte for the original duplicate sample analyses and the QC limit for relative percent difference for each target analyte.

E. IR spectra for standards, blanks, samples.

F. If GC fingerprinting was conducted, submit chromatograms for standards, blanks, samples.

APPENDIX B
Well Search Format

Preparer _____

Name of Site _____

Case Number _____

Street Address _____

Township _____

County _____

USGS Quadrangle _____

Latitude _____

Longitude _____

Instructions:

1. All sources of well records/information shall be clearly document
2. List all wells and State well permit numbers, including acti inactive and abandoned, within ½ mile of the site boundary. Include wells, active, inactive and abandoned at the site.
3. Locate all listed wells on a site locus map.
4. Sources that shall be used:

a. Well records search of the Bureau of Water Allocation. There no cost if this search is performed by the individual. Appointments sh

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be made to examine well records by contacting the Bureau of Water Allocation at (609) 292-2957. Upon written request, the Bureau will provide the well search for a fee.

b. Contact local or county Health Department or equivalent.
5. Submit any available analyses from wells as an attachment.
6. Complete chart on back.

	WELL OWNER	ADDRESS	TOTAL DEPTH	LENGTH OF CASING	STATIC WATER ELEV.	USE CODE	SOURCE OF INFORMATION
1.							
2.							
3.							
4.							
5.							
6.							

USE CODES

A =
B = Boring
C =
D = Domestic
E = Recovery/Decontamination Pollution Control/Leachate with Pump Capacity
F = Fire
G = Irrigation
H = Heat Pump/Geothermal
= Industrial
= Injection/Waste Discharge
K =
L = Livestock
M = Monitoring
N = Public Non-community
O = Oil/Gas Exploration
P = Public Supply
Q = Recharge
= Sealed
S = Test
T = Non-public
U = Gas Vent
V = Dewatering
X = Cancelled
Y = Cathodic Protection
Z = Piezometer

EW REPLACEMENT WELL CODES

= Domestic
= Public Community
= Public Non-Community
= Industrial
= Irrigation
= Monitoring
= Piezometer
= Heat Pump/Geothermal
= Recovery
= Gas Vent

APPENDIX C

JBSTANCE

enaphthylene
rolein
rylonitrile
drin
uminum (Total recoverable)
nmonia, un-ionized (24-hr average)
thracene
timony
senic (Total recoverable)
bestos
rium
nz(a)anthracene
nzene
nzidine
3,4 Benzofluoranthene (Benzo(b)fluoranthene)
Benzo(a)pyrene (BaPO)
Benzo(ghi)perylene
Benzo(k)fluoranthene
Beryllium
alpha-BHC (alpha-HCH)
beta-BHC (beta-HCH)
gamma-BHC (gamma-HCH/Lindane)
Bis(2-chloroethyl)ether
Bis(2-chloroisopropyl)
Bis(2-ethylhexyl)phthalate
Bromodichloromethane (Dichlorobromomethane)
Bromoform
Butylbenzyl phthalate
Cadmium (Total recoverable)
Carbon tetrachloride
Chlordane
Chloride
Chlorine Produced Oxidants (CPO)
Chlorobenzene
Chloroform
2-Chlorophenol
Chlorpyrifos
Chromium (Total recoverable)
Chrysene
Copper (Total recoverable)
Cyanide
4,4'-DDD (p,p'TDE)
4,4'-DDE
4,4-DDT
Demeton
Dibenz(a,h)anthracene
Dibromochloromethane (Chlorodibromomethane)
Di-n-butyl phthalate
1,2-Dichlorobenzene
1,3-Dichlorobenzene
1,4'-Dichlorobenzene
3,3'-Dichlorobenzidine
1,2-Dichloroethane
1,1-Dichloroethylene
trans-1,2-Dichloroethylene
2,4-Dichlorohphenol
1,3-Dichloropropene
Dieldrin
Diethyl phthalate
Dimethyl phthalate
4,6-Dinitro-o-cresol
2,4-Dinitrophenol
2,4-Dinitrotolune
1,2-Diphenylhydrazine
Endosulfans (alpha and beta)
Endosulfan sulfate
Endrin
Endrin aldehyde
Ethylbenzene
Fluoranthene
Fluorene

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Guthion
Heptachlor
Heptachlor epoxide
Hexachlorobenzene
Hexachlorobutadiene
Hexachlorocyclopentadiene
Hexachloroethane
Indeno(1,2,3-cd)pyrene
Iron
Isophorone
Lead (Total recoverable)
Malathion
Manganese
Mercury (Total recoverable)
Methoxychlor
Methyl bromide (Bromomethane)
Methyl chloride (Chloromethane)
Methylene chloride
Mirex
Nickel (Total recoverable)
Nitrate (as N)
Nitrobenzene
N-Nitrosodi-n-butylamine
N-Nitrosodiethylamine
N-Nitrosodimethylamine
N-Nitrosodipheylamine
N-Nitrosopyrrolidine
Parathion
Pentachlorobenzene
Pentachlorophenol
Penanthrene
Phenol
Phosphorous (yellow)
Polychlorinated biphenyls (PCBs-1242, 1254, 1221, 1232, 1248, 1260, and 1016)
Pyrene
Selenium (Total recoverable)
Silver (Total recoverable)
Sulfide-hydrogen sulfide (undissociated)
1,2,4,5-Tetrachlorobenzene
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
1,1,2,2-Tetrachloroethane
Tetrachloroethylene
Thallium
Toluene
Toxaphene
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol
Vinyl chloride
Zinc (Total recoverable)

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Patient Supervision at State Psychiatric Hospitals

Proposed Readoption: N.J.A.C. 10:36

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12 and 30:4-27.212.

Proposal Number: PRN 1992-177.

Submit comments by June 3, 1992 to:
Raymond M. Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625-0727

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), Patient Supervision at State Psychiatric Hospitals (N.J.A.C. 10:36) expires on June 30, 1992. The Department of Human Services has reviewed these rules and determined that they continue to be necessary for the purpose for which they were originally promulgated.

N.J.A.C. 10:36 is comprised of three subchapters. N.J.A.C. 10:36-1 provides a uniform process for each State psychiatric hospital patient to receive the level of clinical supervision appropriate to his or her condition while hospitalized. N.J.A.C. 10:36-2 provides a mechanism for the comprehensive review of the clinical treatment and management of certain hospitalized special status patients at State psychiatric hospitals, including those involved with the criminal justice system. N.J.A.C. 10:36-3 defines factors and delineates procedures related to evaluation of the need for transfers between State psychiatric hospitals. The purpose and effect of these rules is to provide uniform policies and procedures regarding patient supervision at State psychiatric hospitals within various applicable legal parameters.

N.J.A.C. 10:36 was readopted with amendments on July 31, 1991 following discussions between the Departments of Human Services and the Public Advocate regarding the facilities' authority to transfer and individual patient rights as governed by N.J.A.C. 10:36-3 (see 23 N.J.R. 1652(a) and 2637(a)). At that time the Department had hoped to complete a comprehensive review of the rules contained in N.J.A.C. 10:36-1, Level of Supervision System, and N.J.A.C. 10:36-2, Clinical Review Procedures for Special Status Patients, for shorter than the maximum term permitted by the Executive Order No. 66(1978). However, the review of these rules requires an additional six months due to their complexity and diversity of opinion regarding their current functioning. Accordingly, with this readoption the Department is now establishing an expiration date of December 31, 1992 for N.J.A.C. 10:36.

Social Impact

By providing uniform policies and procedures regarding patient supervision at State psychiatric hospitals within applicable legal parameters, the rules proposed for readoption will have a positive social impact on the patients at those facilities and other parties interested in the quality of their care. The rules will help ensure that these patients receive appropriate treatment in an appropriate program consistent with applicable law and balanced with the need to protect the general public from potentially dangerous behavior by some patients.

Economic Impact

By providing uniform hospital policies and procedures regarding patient supervision, the rules proposed for readoption foster cost-effective programs, which is a form of social savings for both patients and the general public. The Department does not anticipate a direct economic effect on any specific individuals by these rules. No additional administrative costs are required by them and no funding sources are affected by them.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments govern patient supervision at the seven State psychiatric hospitals. Being public institutions, these hospitals are not small businesses as defined under 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 rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Chapter

Basic Requirements for Recipients and Providers

Proposed Repeal and New Rules: N.J.A.C. 10:49

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-1; Section 1901-1930 of the Social Security Act, codified as 42 U.S.C. 1396 et seq.; Title 42 C.F.R

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Agency Control Number: DMAHS 91-P-15.
Proposal Number: PRN 1992-180.

Submit comments by June 3, 1992 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

This proposal is designed to repeal the existing text of N.J.A.C. 10:49, currently referred to as the Administration Manual, and replace it with proposed new rules, which shall be known as the Administration Chapter. The full text of the proposed new Administration Chapter appears below. This chapter serves two functions. First, the chapter contains regulatory material which describes the basic requirements of the New Jersey Medicaid (Title XIX) Program. This material applies both to Medicaid providers and to Medicaid applicants and/or recipients. Second, this chapter serves as an introduction to the other manuals which describe in more detail the services available under the Medicaid program, and any limitations on said services. The services are generally listed by provider types. For example, N.J.A.C. 10:50 contains the specific provisions for Transportation Services, N.J.A.C. 10:51 contains the specific provisions for Pharmaceutical Services, etc.

There are 23 subchapters in this proposed new chapter replacing the 11 subchapters in the existing chapter.

There will be a brief description of each subchapter summarizing the substantive contents and indicating where there is new material, as opposed to recodification of existing material. In addition, some portions of the text are being rearranged, placing some sections within different topics from where the sections may have originally appeared: these changed locations will be noted in the Summary.

There will be a brief description of the 17 appendices which include 5 forms, a copy of the PAAD eligibility card and the Medicaid District Office directory, included with this chapter.

N.J.A.C. 10:49-1 General Provisions

Subchapter 1 of the proposed rules is new material, discussing the organizational structure within which the Program functions, and describing the groups of eligible persons.

The new subchapter contains a brief overview of the Medicaid program, the responsibility of the Division of Medical Assistance and Health Services (the Division) within the State Department of Human Services (the Department) to administer the Medicaid program, a brief description of persons eligible and services available, including a reference to delivered programs, and an overview of the nineteen other manuals.

Once a person establishes financial eligibility for Medicaid under one of the statutory criteria listed in N.J.S.A. 30:4D-3, the person is entitled to receive the services enumerated in N.J.S.A. 30:4D-6, subject to any statutory or regulatory limitations. The primary basis or criterion for all Medicaid services is that services be "medically necessary."

Services are rendered by providers that participate in the Medicaid program. Providers are required to hold a current valid license when this is applicable. When providers render a service, they are responsible for submitting a claim timely and correctly to the fiscal agent for processing.

The fiscal agent is responsible for adjudicating the claims that are submitted to them for the Medicaid program, other special programs, and the PAAD program.

Included in N.J.A.C. 10:49-1.8(c), is a description of the citations to the New Jersey Administrative Code which notes the meaning of each component numeral, to enable readers to locate material.

N.J.A.C. 10:49-2 New Jersey Medicaid Recipients

This subchapter indicates who is eligibility for Medicaid. These eligibility criteria currently appear in N.J.A.C. 10:49-1.1.

Recipients eligible under the categorical assistance programs receive the full range of Medicaid services. Recipients eligible under the Medically Needy Program receive a limited range of services as specified in N.J.A.C. 10:49-2.3 below.

Three new eligibility groups are being included with these proposed new rules. One of these newly qualified groups is comprised of those children up to the age of six whose income is below 133 percent of the Federal poverty level. The emergency rule was filed as R.1991 d.223, and was published in the April 15, 1991, issue of the New Jersey Register at 23 N.J.R. 1200(a). The concurrent proposal accompanying the emergency rule has been adopted. The second group of persons newly covered for health benefits is comprised of pregnant women and children up to the age of one year whose income does not exceed 185 percent of the Federal poverty level. Both of these groups are already included in the appropriate eligibility manual (N.J.A.C. 10:72). The inclusion of these groups in N.J.A.C. 10:49 will make the manuals consistent.

Medicaid coverage now includes any aged, blind or disabled person whose income is below 100 percent of the Federal poverty level, and whose assets are below 200 percent of the SSI asset limits (see N.J.A.C. 10:49-2.2(a)16). This is a reference to the persons who qualify under N.J.A.C. 10:72, the New Jersey Care ... Special Medicaid Program Manual.

It should be noted that with respect to N.J.A.C. 10:49-2.2(a)7, there is a pending proposal in the New Jersey Register at 23 N.J.R. 1657(a). In addition, N.J.A.C. 10:49-2.5(a)1i requires the provider to file a PA-1C immediately after the birth of the newborn. The PA-1C is filed with the county welfare agency (CWA). This process is designed to facilitate the newborn being added to the Medicaid eligibility file.

It should also be noted that N.J.A.C. 10:49-2.5(b) explains the procedures by which hospitals may file a PA-1C with the CWA for any individual admitted to the facility. The process permits inpatients to protect their filing date for the formal application process, which is initiated as soon as the individual is able to do so. This is codification of a long-standing administrative policy.

With respect to the provisions in N.J.A.C. 10:49-2.4 through 2.16, the procedures for determination of eligibility, these provisions are basically the same as those currently contained in N.J.A.C. 10:49-1.2.

Subchapter 2 contains descriptions of available services for the categorically eligible and the medically needy. The subchapter defines the services available under categorical assistance (regular Medicaid Program) at N.J.A.C. 10:49-2.2. The subchapter defines the services available under the Medically Needy Program at N.J.A.C. 10:49-2.3. There are no changes in the service packages associated with the proposal.

N.J.A.C. 10:49-3 Provider Participation

The provisions governing provider participation are currently codified at N.J.A.C. 10:49-1.3 and are basically being recodified into this section. In addition, the section discussing providers with multi-locations previously located at existing N.J.A.C. 10:49-6.2 is being incorporated into this subchapter.

Three new provider groups are being added. They include health maintenance organizations, hospice and residential treatment facilities (see N.J.A.C. 10:49-3.1(a)6, 9 and 23).

The criteria for multi-location providers have been amended to indicate that services rendered to Medicaid recipients at an unapproved satellite location shall not be reimbursed by Medicaid (see N.J.A.C. 10:49-3.3(b)).

Each participating Medicaid practitioner shall be assigned an individual Medicaid Provider Services Number. The individual Medicaid Provider Services Number is a unique seven digit number that is required on all Medicaid providers' claim forms as a condition of payment. This number has replaced the IMP (Individual Medicaid Practitioner) Number. A physicians' group will be assigned a seven character group billing number which must appear on the claim form. In addition, each practitioner rendering a service must include their own individual Medicaid Provider Service Number.

In a Shared Health Care Facility (SHCF) each individual provider will be assigned a seven character billing number, but the SHCF itself will not be assigned the seven digit individual Medicaid Provider Services Number. The SHCF will be assigned a registration code that each member of the SHCF will be required to put on their claim forms.

N.J.A.C. 10:49-4 Provider's Role in a Shared Health Care Facility

The subchapter defines a shared health care facility.

For the most part, provisions in this proposal concerning SHCF's are continued as in the previous manual. However, N.J.A.C. 10:49-4.4(g) now refers to the provider manual for "each respective discipline" in respect to services rendered at a SHCF.

This material currently appears in N.J.A.C. 10:49-9 and is being recodified into this subchapter. The only new material is the reference to the individual Medicaid Provider Services Number as described above.

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N.J.A.C. 10:49-5 Services Covered by Medicaid Program

This subchapter describes services covered by the Medicaid Program. The services listed in N.J.A.C. 10:49-5.2 are services available to Medicaid recipients under the categorical assistance programs. The services listed in N.J.A.C. 10:49-5.3 are services available to Medicaid recipients under the Medically Needy Program. Some services available to categorical assistance recipients are not available to Medically Needy recipients. Much of the material in this subchapter contains material already codified in N.J.A.C. 10:49-1.4 and 1.5.

Services being added are case management services in connection with the mental health program, and hospice room and board services in a nursing facility. Speech-language pathology services can now be provided in several settings, including a physician's office (see N.J.A.C. 10:49-5.2(a)29iii).

The language describing transportation services now indicates that it encompasses transportation provided by independent clinics or through arrangements with a county welfare agency.

This subchapter also lists those services not covered by the Medicaid Program. They are currently listed in N.J.A.C. 10:49-1.5 and are now being recodified as N.J.A.C. 10:49-5.4.

In general, services or items furnished during periods of non-eligibility will not be covered except for certain services that were authorized and initiated before the recipient lost eligibility. The types of services described in the rule are hospital inpatient services, dental services, vision care, prosthetics and orthotics, and durable medical equipment (see N.J.A.C. 10:49-5.4(a)8).

The subchapter detailing services for which New Jersey Medicaid does not pay is being amended to omit "services rendered by chiropractors and psychologists not licensed by the State of New Jersey, N.J.A.C. 10:49-1.5(a)5 of the existing chapter. This represents a policy change in order to permit reimbursement of out-of-State providers, duly licensed to practice in that state, for services rendered to New Jersey Medicaid recipients in certain circumstances.

At proposed N.J.A.C. 10:49-5.4(a)6, "services provided outside the United States and territories" has been added to the list of non-covered services. At proposed N.J.A.C. 10:49-5.4(a)9, material is being added to clarify coverage of services to the newly-eligible recipient and for persons who have recently lost eligibility.

The provisions at N.J.A.C. 10:49-1.5(a)13 concerning the audit of provider patient records have been expanded at proposed N.J.A.C. 10:49-5.4(a)13, providing fuller discussion of the requirements for provider documentation of services.

At proposed N.J.A.C. 10:49-5.4(a)14, the listing of services excluded from program coverage is being amended to permit, in an emergency, prescriptions to be dispensed by pharmacies other than a Special Status recipient's restricted pharmacy.

N.J.A.C. 10:49-6 Authorizations Required by Medicaid Program

The current provisions for prior authorization appear at N.J.A.C. 10:49-1.8 and are now being incorporated into this subchapter. Prior authorization for certain Medicaid services has been an integral part of the Medicaid Program. N.J.A.C. 10:49-6.1 contains general provisions applicable to all providers. The individual provider service manuals (N.J.A.C. 10:50 through 10:68) describe the specific services that require prior authorization.

There is some new material included in the proposed new rules. In general, prior authorization is service specific and applies across the board to all recipients and providers. However, there is one situation described in N.J.A.C. 10:49-6.1 when prior authorization is applied to an individual provider. If, in the judgment of the Director, the provider engages in conduct which would constitute good cause for suspension, debarment, or disqualification under N.J.A.C. 10:49-11.1(d), then the provider my be required to submit some or all of his or her services for prior authorization. Prior authorization may be imposed prior to a hearing in this limited situation.

As a broad general rule, the Division does not intend to waive prior authorization requirements when the provider was negligent in failing to observe the requirements of this chapter or any additional regulatory requirements contained in the individual service manuals. However, the Division recognizes that there may be situations that warrant the waiver of a prior authorization requirement. One situation in which prior authorization is always waived is in the case of a medical emergency (see N.J.A.C. 10:49-6.1(a)2). This "medical emergency" provision has been a long-standing Medicaid policy. The provider must supply relevant clinical information explaining the nature of the emergency.

There is also a provision for "retroactive authorization" (see N.J.A.C. 10:49-6.1(b)). There are situations, which are evaluated on a case-by-case basis, that allow for retroactive authorization if certain conditions are met. The types of situations include the unavailability of the agency staff on nights or weekends, that is, an "administrative emergency," a determination of recipient eligibility retroactively, and the existence of other third party coverage, such as Medicare (Title XVIII) and/or private insurance. Prior authorization is required for all inpatient and outpatient hospital services provided outside the State of New Jersey with three exceptions, which are listed at N.J.A.C. 10:49-6.2(c).

The requirements for prior authorization for out-of-State services and the exceptions thereto, remain the same. The provisions for out-of-State services are currently codified at N.J.A.C. 10:49-1.9 and are being recodified as N.J.A.C. 10:49-6.2. This latter text has been transferred verbatim.

N.J.A.C. 10:49-7 Submitting Claims for Payment

There are several existing code sections being incorporated into this subchapter. The provision for timely claim submittal currently appears in N.J.A.C. 10:49-1.12; the third party liability requirements in N.J.A.C. 10:49-1.7; the prohibition against factoring in N.J.A.C. 10:49-1.13; and the use of a service bureau or management agency in N.J.A.C. 10:49-1.14.

A Medicaid claim is defined as the form itself plus any additional documentation that is required by the Medicaid Program. For example, if a service requires prior authorization, the provider must follow the procedures contained in the respective service manual (N.J.A.C. 10:51 through 10:68).

Providers are responsible for ensuring that claims are submitted and received by the Medicaid Fiscal Agent within one year from date of service pursuant to Federal regulations (42 C.F.R. 447.45(d)). The word "received" is replacing the word "submitted" in the existing text. The Division believes that the word "received" is necessary to ensure compliance with the cited Federal regulations because the Division can readily verify timely receipt. This change requires Medicaid to allow time for mailing so that the claim arrives at the Fiscal Agent before the 365th day.

With respect to claims associated with a retroactive eligibility application (FD-74, or 80), the date of receipt will be the date the application is received by the Division's retroactive eligibility unit, because this is the initial filing of both the application and any claim(s) referenced on the application (see 1902(a)34 of the Social Security Act allowing for "retroactive Medicaid coverage").

Proposed N.J.A.C. 10:49-7.1 describes the information and instructions for billing, specific to the particular provider type, which can be found in the Fiscal Agent Billing Supplement at the end of each Provider Services Manual. The Fiscal Agent Billing Supplement provides information about forms related to services rendered through New Jersey Medicaid, as well as information about billing.

The rules explain how the time frames are computed for institutional providers (N.J.A.C. 10:49-7.2), nursing facilities and similar providers (N.J.A.C. 10:49-7.2(b)2, and non-institutional providers (N.J.A.C 10:49-7.2(c)).

There is a separate policy for Medicare/Medicaid claims set forth in N.J.A.C. 10:49-7.2(d). The policy applies to both institutional and non-institutional providers, and is an exception permitted under the cited Federal regulations.

There are four exceptions affecting the agency's ability to pay claims and receive Federal matching funds beyond 12 months from date of receipt. These four exceptions are listed in N.J.A.C. 10:49-7.2(h), and are based on Federal regulations 42 C.F.R. 447.45(d)(4)(i) through (iv). The four exceptions include retroactive adjustments for providers reimbursed under a retrospective payment system; Medicare/Medicaid crossover claims; claims involving providers under investigation for fraud or abuse; and claims associated with administrative or legal actions including hearings. The procedures for Medicare/Medicaid crossover claims are described in more detail in N.J.A.C. 10:49-7.2(d) because the frequency and dollar volume of these types of claims required a specific administrative procedure. These exceptions do not alter the requirement that providers are required to submit cliams within 12 months from date of service.

In essence, the provider must ensure that the Medicare claim is filed with, and received by, Medicare within one year, and that the Medicaid claim is filed with, and received by, Medicaid within 90 days following Medicare adjudication.

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The rule also contains the requirements for providing additional information or making a follow-up inquiry on a non-adjudicated claim, which is 90 days after the end of the applicable timely submission period. With respect to an inquiry about an adjudicated claim, the request must be made within 90 days of the date indicated on the Remittance Advice Statement (see the current text of N.J.A.C. 10:49-1.12(d)).

The subsection on third party liability (TPL) concerns those Medicaid recipients who have other health insurance or who may have initiated a tort action to recover from a potentially liable third party. The Medicaid program requires that the other health insurance be used first. When the provider files a Medicaid claim, the Explanation of Benefits (EOB) or denial of payment from the other carrier must be attached. However, the provider is still required to meet the Medicaid requirement for one year timely claim receipt by the Medicaid Fiscal Agent (see N.J.A.C. 10:49-7.3(j)).

There are certain situations where the provider is not required to exhaust a claim for TPL prior to billing Medicaid. These situations include (1) TPL benefits derived from a parent who is under an order to pay support being enforced by the State Title IV-D Agency, (2) a claim for prenatal care for a pregnant woman or preventive pediatric services, (3) a claim for labor, delivery and post-partum care not involving costs associated with the inpatient hospital stay, or (4) a claim involving a service for which the Health Care Financing Administration (HCFA) has granted a waiver (see N.J.A.C. 10:49-7.3(h)).

If the provider receives an insurance payment after Medicaid has made payment to the provider, the provider must immediately reimburse the Medicaid Program, not the recipient.

Proposed N.J.A.C. 10:49-7.5 relates the conditions by which the use of a billing service is acceptable to the Program. The section includes procedures to be followed in order to obtain approval for a provider/agent agreement.

The provisions of proposed N.J.A.C. 10:49-7.3(k) are new subject matter. The rule requires an individual who undertakes to provide legal representation of a Medicaid recipient in an action for damages against a liable third party to provide written notice to the Division within 20 days of filing or commencing of the action. The notice is required in those cases when medical expenses have been paid by the Division.

The term "legal representative" includes such persons as an attorney, administrator/administration, executor/executrix, conservator, guardian or guardian ad litem.

N.J.A.C. 10:49-8 Payment for Services Provided

This subchapter refers to the claims payment methodology that will be used by Unisys when they take over the responsibilities for Medicaid claim processing. In addition, information about reimbursement can be found in the Fiscal Agent Billing Supplement at the end of the specific Provider Services Manual.

The major vehicle for communicating claim status to the provider is the Remittance Advice (RA) statement. The RA document contains a record of provider claims and actions taken on said claims. The RA statement will contain an indication of whether the claim is paid, suspended or denied. Providers are expected to reconcile the RA Statement with their billing services.

In the event a claim is denied, providers may file for a hearing pursuant to N.J.A.C. 10:49-10.2.

The rule provides for an electronic funds transfer which enables the Medicaid Fiscal Agent to make direct deposit to the provider's account. The provider must file an application for this optional method of receiving payment.

N.J.A.C. 10:49-9 Provider and Recipient's Rights and Responsibilities

These sections are basically the same as contained in the current Administrative Code, as indicated by the following conversion chart:

New Citation	Current Citation	Caption
10:49-9.1	10:49-1.18	Civil Rights
10:49-9.2	10:49-1.19	Observance of Religious Belief
10:49-9.3	10:49-1.20	Free Choice by Recipient and Provider
10:49-9.4	10:49-1.22	Confidentiality of Records
10:49-9.5	10:49-1.23	Provider Certification and Record Keeping
10:49-9.6	10:49-1.23	Patient's (Recipient) Certification
10:49-9.7	10:49-1.21	Integrity of Medicaid Program
10:49-9.8	10:49-1.15	Fraud and Abuse
10:49-9.9	10:49-5.2	Informing Individuals of Their Rights
10:49-9.10	10:49-1.16	Fair Hearings

Because the substantive material and concepts remain the same, there is no need to summarize them in this proposed new chapter.

N.J.A.C. 10:49-10 Appeals and Fair Hearings

The material in this subchapter previously appeared in N.J.A.C. 10:49-5. The appeals process covers both recipient and provider hearings.

With respect to claims submitted to, processed by and denied by Unisys, the 20-day time period for filing the hearing request commences with the date in the right hand corner of the RA statement. The provider must submit a written request for hearing, together with a copy of the RA statement, and other identifying information as the Division may require to the Fair Hearing Unit within the specified time frame.

The essential information needed by the Division is the patient's name, HSP (Medicaid) number, dates of service, dates of non-covered services if different, a copy of relevant documents, a brief explanation of the circumstances surrounding the denial, and the reason(s) why the provider feels they are entitled to payment.

Providers should not delay filing a hearing request if they do not have all the information immediately available, but must be prepared to submit sufficient information so that the Division can determine whether this is a contested case pursuant to N.J.A.C. 1:1-2.1, Definitions.

With respect to recipient hearings, these must be filed within 20 days from the notice of adverse action including those instances when the claimant (recipient) is being terminated due to information obtained through a Federal data bank match.

There is also a provision which is being newly presented with this proposal concerning public notice (see N.J.A.C. 10:49-10.2). The proposed new rule indicates that the Department of Human Services (the Department) and/or the Division of Medical Assistance and Health Services may print a notice of prospective policy changes affecting Medicaid recipients in one or more newspapers throughout the State. The public notice will be accompanied by a proposal in the New Jersey Register. The actual notice in these newspapers may precede, or be subsequent to, the Register publication. The Department may then proceed to adopt the rule without further public notice.

N.J.A.C. 10:49-11 Exclusion from Participation in the N.J. Medicaid Program (Suspension, Debarment and Disqualification)

This section currently appears at N.J.A.C. 10:49-1.17. There is virtually no change between the current text and the existing text except a generic reference, rather than specific reference, to the Fiscal Agent.

Language has been added to N.J.A.C. 10:49-11.1(j)5, which was previously codified as N.J.A.C. 10:49-1.17(j)5, to clarify one of the bases for suspension. A provider can be suspended from participation in the Medicaid program if there is reasonable suspicion of the existence of a cause described in N.J.A.C. 10:49-11.1(d), which may be established by a judgment or order of an administrative agency, court of competent jurisdiction, or by a judgment of conviction, grand jury indictment, accusation, or arrest. The new language allows the Medicaid program to suspend in cases where there is an accusation or where an administrative agency has so ordered.

N.J.A.C. 10:49-12 Provider Reinstatement

This material currently appears in N.J.A.C. 10:49-7. It is basically the same as the existing text.

There are three new criteria listed at N.J.A.C. 10:49-12.6(a)7 through 9. These criteria indicate that the Provider Reinstatement Committee and the Director may consider full satisfaction of interest payments, compliance with consent orders or court orders, and satisfaction of any conditions or requirements previously imposed by the Division in determining whether to reinstate the provider. The existing criteria in subsection (a) remain in effect.

N.J.A.C. 10:49-13 Program Controls

The provisions governing field audits currently appear in N.J.A.C. 10:49-1.27. This is a recodification.

N.J.A.C. 10:49-14 Recovery of Payments and Sanctions

N.J.A.C. 10:49-14.1 of the proposed new rules defines the conditions under which correctly paid benefits will be recovered from the estate of a recipient. This language was previously codified as N.J.A.C. 10:49-6.5. The definition of "child" that had previously appeared at N.J.A.C. 10:49-6.5(b) is being deleted because of a New Jersey Supreme Court decision, *Merker v. Department of Human Services,* 193 N.J. Super.

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68, 472 A.2d. 161 (A.D. 1984); certification granted 97 N.J. 592, 483 A.2d. 133.

N.J.A.C. 10:49-14.2 describes the Special Status Program which is a method of limiting Medicaid recipients to certain providers. The proposed rule enables the Medicaid program to issue restrictive identification cards to recipients whose Medicaid benefits have been misused, abused or overutilized. The rule indicates that overutilization occurs when a recipient has utilized Medicaid services or items at a frequency or amount that is not medically necessary.

Examples of misuse or abuse include, but are not limited to, medically harmful or inappropriate use of different drugs or provider services and forgery or alteration of prescriptions.

One remedy to curb overutilization, misuse or abuse of provider services is for the Division to restrict the individual to one provider. Under the Special Status Program, the individual has the right to select the provider, and may request a hearing to challenge the restriction. The individual also has the right to request a change of providers, and may request a hearing if the change is denied. However, the Division will grant the change only if there is good cause.

The provisions of N.J.A.C. 10:49-14.3 are currently codified at N.J.A.C. 10:49-6.8, and give the Commissioner, Department of Human Services, or his or her authorized designees the right to settle or compromise claims, liens and certificates of debt. This authority has been delegated to the Director and, in certain instances and within certain dollar limits, to the Assistant Director of Program Integrity, and the Chief, Bureau of Administrative Control. The Fiscal Agent may compromise, settle or waive claims arising under N.J.S.A. 30:4D-7(h) within dollar limits specified by the Director. The statutory reference indicates this situation would occur as the result of a hearing arising out of the claims payment process.

The provisions of N.J.A.C. 10:49-14.5, County welfare agency recoveries, appeared in the September 4, 1990 Register at 22 N.J.R. 2672(a). This rule has been adopted at 23 N.J.R. 856(a) without change. The adopted text currently appears at N.J.A.C 10:49-6.6. There is no significant change in the text.

The provisions of N.J.A.C. 10:49-14.6, concerning administrative charges and service fees, currently appear at N.J.A.C. 10:49-6.9. The section (N.J.A.C. 10:49-14.6) prohibits a provider from charging or requiring a service fee for the privilege of doing business with another provider.

N.J.A.C. 10:49-15 Availability and Maintenance of Program Policy Issuances

This is basically a recodification of the material currently in N.J.A.C. 10:49-2. The subchapter describes the availability of materials describing policy issuances which affect the public.

The manuals will be issued to entities described as custodians who are willing to assume the responsibility for filing and updating the material, and making it available to the public.

Persons who request copies of manuals, or portions thereof, or other agency documents, may be charged in accordance with New Jersey law, unless the person requesting the material is an applicant, recipient or representative who has requested a fair hearing.

N.J.A.C. 10:49-16 Demonstration Projects

This is a recodification of the material currently in N.J.A.C. 10:49-8. The Division wishes to retain this regulatory material concerning demonstration projects in the event funding becomes available under the applicable provisions of the cited Federal and State law. At present, this area of the law is not too active, but if, at some future date, there is activity in this area, the Division has rules in place that are generally applicable to any demonstration project. As is explained in the "Purpose" section, providers will receive specific information when the project is implemented.

N.J.A.C. 10:49-17 Home and Community-Based Service Waivers

This section contains a synopsis of the Medicaid waiver programs that pertain to services available to allow the recipient to remain in the community as an alternative to being cared for in a nursing facility or hospital setting.

These waivered programs are described in more detail as part of the Home Care Services Manual at N.J.A.C. 10:60.

N.J.A.C. 10:49-18 Home Care Expansion Program

This subchapter contains a synopsis of the Home Care Expansion program (HCEP) which is described in more detail at N.J.A.C. 10:60. HCEP is a completely State-funded program which provides certain home care services to persons whose income exceeds the Medicaid income ceiling, up to $18,000 for a single person, or $21,000 for a married couple.

N.J.A.C. 10:49-19 Prepaid Health Care Services: Medicaid Eligibles

This material has been processed as a separate proposal and adoption; reference is made to 24 N.J.R. 64(a) and 24 N.J.R. 1342(a). The texts, this proposal and that previously proposed as N.J.A.C. 10:49-10.1, are synonymous except that this proposal deletes the prohibition on out-of-State psychologists, as indicated previously in this summary. (Reference is made to N.J.A.C. 10:49-5, Services Covered by the Medicaid Program.)

N.J.A.C. 10:49-20 Garden State Health Plan (GSHP)

The Garden State Health Plan (GSHP) is a public Health Maintenance Organization (HMO) operated by the Division of Medical Assistance and Health Services. The GSHP has been approved by the Federal Government, and has a Certificate of Authority from the New Jersey Department of Health.

The primary component of the GSHP is the medical case management system whereby a Physician Case Manager (PCM) is responsible for the provision of all primary care services and for the referral of specialist and other health care provider services, as well as ancillary and inpatient services. PCMs participating in the GSHP are reimbursed through a capitation system. Physician participation is voluntary, but a physician must be an approved Medicaid provider before he or she can participate in GSHP.

A Medicaid eligible individual who elects to participate in the GSHP is guaranteed up to 12 months of Medicaid eligibility in two six-month segments. The individual must be Medicaid eligible the first day of each six-month period.

N.J.A.C. 10:49-21 Pharmaceutical Assistance to the Aged and Disabled (PAAD)

This section provides a synopsis of the PAAD Program, which provides prescription medicines and certain pharmacy items for aged and disabled New Jersey residents whose income does not exceed the established income limits. At N.J.A.C. 10:49-21.6(a), a toll-free telephone number and a mailing address are provided for the PAAD information service.

The PAAD Program is described in more detail at N.J.A.C. 10:69A. This program is completely State-funded.

N.J.A.C. 10:49-22 Lifeline Programs

This section provides a synopsis of the Lifeline Programs, which provide a utility assistance benefit to qualified aged and disabled persons.

The Lifeline Programs are described in more detail at N.J.A.C. 10:69B. The programs are completely State funded.

N.J.A.C. 10:49-23 Hearing Aid Assistance to the Aged and Disabled

The Hearing Aid Assistance to the Aged and Disabled Program (HAAAD) provides up to $100.00 reimbursement to eligible residents who purchase a hearing aid during a calendar year.

The HAAAD Program is described in more detail at N.J.A.C. 10:69. The HAAAD Program is completely State funded.

N.J.A.C. 10:49 Appendices

There are 17 individual appendices included in the appendix to this chapter. This material consists primarily of copies of various forms that are mentioned in N.J.A.C. 10:49 and are included for reference.

Several forms related to recipient eligibility, including the Medicaid Eligibility Identification Card (FD 73/178), which recipients should present to providers to show proof of current Medicaid eligibility. The Public Assistance Inquiry (PA-1C) enables a provider, usually a hospital, to refer an individual to the appropriate county welfare agency for an eligibility determination. The Certification of Presumptive Eligibility is form FD-334. The Application for Payment of Unpaid Medical Bills, form FD-74, is commonly referred to as "Retroactive Eligibility."

There are two forms relating to the Garden State Health Plan, one of which is an information sheet and the other lists conditions for membership (GSHP-4(a)). There are forms pertaining to programs administered by the Division, including the PAAD eligibility card and the Hearing Aid Assistance for the Aged and Disabled (HAAAD) Application. Both the PAAD and HAAAD Programs are completely State funded.

There are also some forms that would be used by providers, including the Provider Application (FD-20) and Provider Agreement (FD-62

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which are required for providers enrolling in, or who participate in, the N.J. Medicaid Program. The form concerning Disclosure of Ownership and Control Interest Statement is a Federal requirement (Form HCFA-1513).

The Medicaid District Office (MDO) Directory currently appears as Appendix A to N.J.A.C. 10:49-1 and is being recodified with the proposed new rules. The MDO Directory will now appear at the end of the appendix to this entire chapter.

Social Impact

The proposed new rules impact on all Medicaid recipients because they set forth the basic eligibility criteria for, and describe the types of services available under, the respective categories of assistance, including the waivered programs. However, the basic policies, eligibility criteria and service provisions are essentially unchanged, and thus, the new rules themselves will not have a significant social impact.

The proposed new rules similarly impact on Medicaid applicants because they describe generally the requirements they would have to meet in order to qualify for Medicaid coverage. The rules do not, however, establish new requirements.

The rules also impact on persons who qualify for State-funded programs, such as PAAD, Lifeline, HAAAD, and HCEP.

The proposed new rules impact generally on all Medicaid providers because they describe the basic qualifications for provider participation and contain some general instructions on claim processing and timely submittal. The general conditions for suspension, disqualification or debarment are also set forth at N.J.A.C. 10:49-11. Some provider groups also have specific instructions governing their responsibilities as providers.

With respect to the three new eligibility groups mentioned under the caption (in this summary) "N.J.A.C. 10:49-2, New Jersey Medicaid Recipients," the impact is that persons who qualify under these new eligibility criteria may receive all medically necessary services covered by the N.J. Medicaid Program.

The proposed new rules allow chiropractors and psychologists who practice in a state other than New Jersey to participate in the New Jersey Medicaid Program so long as they comply with provider enrollment procedures (Reference is made to N.J.A.C. 10:49-3).

Under the proposed new rules, recipients who participate in the special status programs are restricted to a specific provider(s) but are not denied Medicaid coverage.

Economic Impact

The scope of these rules is rather extensive. The number of substantive changes, however, is not great. However, the following general observations can be made. In SFY '92, Medicaid expenditures are estimated at $2,936.8 million (Federal-State share combined), PAAD expenditures $126.4 million, Lifeline $65.5 million, and HAAAD $291,000. The expenditures for PAAD, Lifeline, and HAAAD are completely State funded.

Medicaid recipients are generally not required to contribute to the cost of their care, except that some recipients in nursing facilities and other long term care facilities are required to pay towards the cost of their care from their available income.

Persons who qualify under State-funded programs may be asked to contribute to the cost of their care depending on specific program requirements. For example, PAAD beneficiaries are required to pay a $2.00 copayment for each prescription.

Publication of these new rules is expected to have no economic impact upon the Division. There is no change in reimbursement.

The economic impact of policies described here upon providers varies, depending on the number of Medicaid patients treated and type of reimbursement received for the provided services. In general, non-institutional providers are reimbursed on a fee-for-service basis utilizing the Health Care Financing Administration Common Procedure Coding System (HCPCS Codes). Institutional providers, such as nursing facilities, are reimbursed on a cost-related basis. Some providers, such as HMOs and other pre-paid health plans, are reimbursed on a capitation basis. While these policies are described here, there are no significant changes that will have an economic impact on providers.

Regulatory Flexibility Analysis

There is no regulatory flexibility analysis required for Medicaid recipients or person who qualify for State-funded programs. These persons are not small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The governmental agencies that process applications for eligibility and authorize and pay for services are not considered small businesses under the terms of the Act.

There are some Medicaid providers that would not be considered small businesses because they employ more than 100 full-time employees. However, there are many Medicaid providers that would be considered small businesses under the terms of the act. While it is difficult to do a regulatory flexibility analysis on such a wide variety of providers, there are some statutory requirements that are applicable to all providers (see N.J.S.A. 30:4D-12). All Medicaid providers, regardless of their size, are required to keep and maintain individual patient records to indicate the name of the recipient, date of service, nature of service, etc. Providers may be required by rule to maintain additional documentation. The Department has the right to examine and make copies of books, records, and documentation maintained by providers if they relate in any way to services rendered to a recipient under N.J.S.A. 30:4D-1 et seq.

In addition, the proposed new rules set forth the time requirements for claim submittal, and the procedural requirements for filing a request for a hearing on denied claims, which are the same for all providers. The costs incurred by the providers meeting the requirements of these rules will be administrative in nature and will vary based upon the nature of the provider and the extent of Medicaid services provided. There is no differentiation in requirements based on provider size.

In general, the Medicaid program maintains uniform standards for provider groups regardless of the size of the group because the standard of care is the same.

There are no capital costs associated with the proposed new rules.

Full text of the rules proposed for repeal may be found at N.J.A.C. 10:49.

Full text of the proposed new rules follows:

CHAPTER 49
ADMINISTRATION

SUBCHAPTER 1. GENERAL PROVISIONS

10:49-1.1 Scope and purpose

The Division of Medical Assistance and Health Services, under the Department of Human Services, administers the New Jersey Medicaid Program and other special programs. This chapter provides general and specific information about the regular Medicaid Program; special Medicaid services or programs (such as HealthStart, Prepaid Health Plans, and Waivered Programs); and other special (State) funded programs.

10:49-1.2 The Medicaid Program: definitions, organization, services and eligibility

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

"Medicaid" means medical assistance provided to certain persons with low income and limited resources as authorized under Title XIX (Medicaid) of the Social Security Act.

"County welfare agency" means that agency of county government which is charged with the responsibility for determining eligibility for public assistance programs including Aid to Families with Dependent Children, the Food Stamp Program, and Medicaid. Depending on the county, the county welfare agency might be identified as the board of social services, the welfare board, the division of welfare, or the division of social services.

"Fiscal Agent" means an entity that processes and adjudicates provider claims on behalf of the New Jersey Medicaid Program, other Special Programs, and the Pharmaceutical Assistance to the Aged and Disabled Program.

"Provider" means any individual, partnership, association, corporation, institution, or any other public or private entity, agency, or business concern, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program, other Special Programs and the Pharmaceutical Assistance to the Aged and Disabled program, and where applicable, holding a current valid license, and lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto.

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"Recipient" means a person who is a resident of the State of New Jersey and is determined to need medical care and services under N.J.S.A. 30:4D-1 et seq. and amendments thereto, and falls within the eligibility criteria set forth therein.

(b) Regarding the organization of the Division of Medical Assistance and Health Services, the Department of Human Services is the single State agency for receipt of Federal funds under Title XIX (Medicaid) of the Social Security Act. The Division of Medical Assistance and Health Services, Department of Human Services, administers the New Jersey Medicaid Program through its Central Office and through Medicaid District Offices (MDO) located throughout the State of New Jersey. A listing of the MDOs is provided in the chapter Appendix.

1. The Program is jointly financed by the Federal and State governments and administered by the State. The New Jersey Medicaid Program is conducted according to the Medicaid State Plan approved by the Secretary, United States Department of Health and Human Services.

(c) Regarding Medicaid Program services and eligibility, the New Jersey Medicaid Program became effective January 1, 1970 (P.L. 1968, c.413; codified as N.J.S.A. 30:4D-1 et seq.). The Program originally provided a broad array of medical services for individuals (aged, or blind, or disabled, or specified members of families with dependent children) categorically eligible for public assistance under the Social Security Act. Since then Medicaid coverage has been extended to the following:

1. Individuals who qualify under the Medically Needy provisions, codified as N.J.S.A. 30:4D-6(g);

2. Pregnant women and children (up to the age of six) whose income is less than 133 per cent of the Federal poverty level, codified as N.J.S.A. 30:4D-3(i)(9). These individuals are determined by the County Welfare Agency to be eligible for the New Jersey Care ... Special Medicaid Programs;

3. Pregnant women and children (up to the age of one) whose income is less than 185 percent of the Federal poverty level, codified as N.J.S.A. 30:4D-3(i)(13); and

4. Individuals 65 years of age and older, or individuals who are blind or disabled (pursuant to Federal regulations either 42 CFR 435.530 et seq. or 42 CFR 455.540 et seq.) whose income cannot exceed 100 percent of the Federal poverty level adjusted for family size. These individuals are determined by the county welfare agency to be eligible for the New Jersey Care ... Special Medicaid Programs, codified as N.J.S.A. 30:4D-3i(11).

10:49-1.3 Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

(a) EPSDT is a Federally mandated comprehensive child health program for Medicaid recipients from birth through 20 years of age. The Omnibus Budget Reconciliation Act of 1989 (OBRA '89) codified EPSDT. Accordingly, the term "EPSDT Services" means the following:

1. EPSDT Screening Services;
2. Vision Services;
3. Dental Services;
4. Hearing Services; and
5. Such necessary health care diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services.

(b) A physician, independent clinic, or hospital outpatient department may provide EPSDT screening services.

10:49-1.4 HealthStart

HealthStart is a program to provide comprehensive maternity care services for all pregnant women (including those determined to be presumptively eligible) and child health care services for children (through two years of age) who are eligible for Medicaid benefits. Detailed information about this program is included in the Physician Services Manual or N.J.A.C. 10:54, Independent Clinic Services Manual or N.J.A.C. 10:66, Nurse-Midwifery Services Manual or N.J.A.C. 10:58 and the Hospital Services Manual or N.J.A.C. 10:52.

10:49-1.5 Prepaid health plans

"Prepaid health plan" means an entity that provides medical services to enrolled Medicaid eligibles under a contract with the Medicaid agency on the basis of prepaid capitation fees but does not necessarily qualify as an HMO. For policies and procedures concerning prepaid health care services see N.J.A.C. 10:49-19. For a description of the State operated HMO, the Garden State Health Plan, see N.J.A.C. 10:49-20.

10:49-1.6 Waivered programs

(a) The Division of Medical Assistance and Health Services also administers Respite and the following Home and Community-Based Services Waivers: Community Care Program for the Elderly and Disabled (CCPED); Home and Community-Based Services Waivers for Blind or Disabled Children and Adults (Medicaid Model Waivers I, II, and III); and AIDS Community Care Alternatives Program (ACCAP). An overview of these programs is provided at N.J.A.C. 10:49-17.

(b) The Division also provides oversight to the Division of Developmental Disabilities in its administration of its Home and Community-Based Services Waiver for developmentally disabled individuals.

10:49-1.7 State-funded programs

(a) In addition to the New Jersey Medicaid Program, the Division of Medical Assistance and Health Services also administers the following four State-funded programs:

1. Pharmaceutical Assistance to the Aged and Disabled Program (PAAD), see N.J.A.C. 10:49-21;

2. Lifeline Programs (utility assistance programs), see N.J.A.C. 10:49-22;

3. Hearing Aid Assistance for the Aged and Disabled, see N.J.A.C. 10:49-23; and

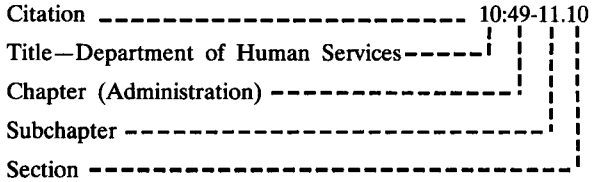
4. The Home Care Expansion Program, see N.J.A.C. 10:49-18.

10:49-1.8 Overview of provider manuals

(a) There are 19 New Jersey Medicaid provider manuals. Each is designed for use by a specific type provider that provides services to Medicaid recipients. Each manual is written in accordance with Federal and State laws, rules, and regulations, with the intent to ensure that such laws, rules, and regulations are uniformly applied.

(b) Each Medicaid provider manual consists of two chapters, broken down into subchapters. The first chapter is referred to as N.J.A.C. 10:49 (Administration) and outlines the general administrative policies of the New Jersey Medicaid Program and other special programs. The second chapter of each manual specifies the rules and regulations relevant to the specific provider-type and the services provided. Following the second chapter of the manuals is the Fiscal Agent Billing Supplement.

(c) Codification of manual material follows that of the New Jersey Administrative Code (N.J.A.C.). The citation for a particular section of the provider manual reflects the same material under the same citation in the N.J.A.C. The following is an example of a citation in the N.J.A.C. or a provider manual:



(d) There is an individual New Jersey Medicaid provider manual for each of the following services. These services are listed in the New Jersey Administrative Code (N.J.A.C.) under Title 10 (Department of Human Services) Chapters 10:50 through 10:68, and 10:73, as follows:

1. 10:50—Transportation Services Manual
2. 10:51—Pharmacy Services Manual
3. 10:52—Hospital Services Manual
4. 10:53—(Reserved)
5. 10:54—Physician Services Manual

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6. 10:55—Prosthetic and Orthotic Services Manual
7. 10:56—Dental Services Manual
8. 10:57—Podiatry Services Manual
9. 10:58—Nurse-Midwifery Services Manual
10. 10:59—Medical Supplier Services Manual
11. 10:60—Home Care Services Manual
12. 10:61—Independent Clinical Laboratory Services Manual
13. 10:62—Vision Care Services Manual
14. 10:63—Long Term Care Services Manual
15. 10:64—Hearing Aid Services Manual
16. 10:65—Medical Day Care Services Manual
17. 10:66—Independent Clinic Services Manual
18. 10:67—Psychological Services Manual
19. 10:68—Chiropractic Services Manual
20. 10:73—Case Management Services Manual

(e) Regarding manual updates, revised pages or additions to the provider manual are issued, as required, for new policy, policy clarification, and/or revisions to the New Jersey Medicaid Program. A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Newsletters should be filed at the back of the manual and replacement pages should be added to the manual in accordance with instructions provided. Manual revisions shall be substantially made through the rulemaking process, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(f) Regarding provider responsibility, this manual and all subsequent updates are distributed as a guide to assist providers in their participation in the New Jersey Medicaid Program. The provider is ultimately responsible for knowing and abiding by current laws and regulations pertaining to this Program.

SUBCHAPTER 2. NEW JERSEY MEDICAID RECIPIENTS

10:49-2.1 Who is eligible for Medicaid?

Medicaid recipients are divided into two categories: those eligible for all services under the regular New Jersey Medicaid Program (see N.J.A.C. 10:49-2.2); and those eligible for a limited range of services under the Medically Needy Program (see N.J.A.C. 10:49-2.3).

10:49-2.2 Persons eligible under the regular New Jersey Medicaid Program

(a) The following groups are eligible for medical and health services covered under the regular New Jersey Medicaid Program when provided in conjunction with specific Program requirements as outlined in the second chapter of each Provider Services Manual. The list is not all-inclusive.

1. Persons who are eligible to receive Supplemental Security Income (SSI) payments as determined by the Social Security Administration and those persons who meet the SSI standards but apply for the Medicaid Only program through the county welfare agency. Those persons are the aged (65 and over), the blind, and the disabled;

2. A person who qualifies under the Supplemental Security Income (SSI) Program as the "ineligible spouse" of an SSI recipient determined by the Social Security Administration;

3. Children and caretaker relatives eligible for and receiving Aid to Families with Dependent Children (AFDC);

4. Deemed recipients of AFDC including:

i. Persons denied AFDC solely because the payment would be less than $10.00;

ii. Persons whose AFDC payment is reduced to zero ($0.00) because of an over-payment recovery; and

iii. For a period of four months, persons losing AFDC because of the receipt of child or spousal support;

5. For a period of up to 12 months from the first month of ineligibility, persons losing eligibility for AFDC as a result of earnings or hours of employment, or the receipt of New Jersey Unemployment or Temporary Disability Insurance benefits;

6. Persons ineligible for AFDC because of requirements that do not apply under Medicaid;

7. For a period of one year, a child born to a woman who is a Medicaid recipient, so long as the woman remains eligible for Medicaid, or would remain eligible if pregnant;

8. Persons for whom adoption assistance agreements are in effect pursuant to Section 473 of the Social Security Act (42 U.S.C. 673) or for whom foster or adoption assistance is paid under Title IV-E of the Act;

9. Persons ineligible for Supplemental Security Income (SSI) because of requirements that do not apply under Medicaid;

10. Persons receiving only mandatory State supplemental payments administered by the Social Security Administration;

11. Certain former recipients of Supplemental Security Income (SSI) who would still be eligible for SSI except for entitlement to or increase in the amount of Social Security benefits;

12. Persons eligible for but not receiving AFDC or an optional State benefit;

13. Children under the age of 21 years who meet the income and resource requirements for AFDC but do not qualify as dependent children;

14. Persons who are in institutions for at least 30 consecutive days and who are eligible under a special income level (the Medicaid "cap") that is higher than the income level for a non-institutionalized SSI or State supplement recipient;

15. Pregnant women and children up to the age of one whose income is below 185 percent of the Federal poverty level, and children up to the age of six whose income is below 133 percent of the Federal poverty level, codified as 42 U.S.C. 1396a, or 1902 (1) of the Social Security Act.

16. Aged, blind, and disabled persons whose income is below 100 percent of the Federal poverty level and whose assets are within 200 percent of the SSI asset limits;

17. For a period of 60 days, women who have applied for Medicaid benefits before the last day of pregnancy and who are eligible for Medicaid on the last day of pregnancy;

18. Persons 65 years of age or older who do not meet the eligibility standards of the categorically needy or medically needy and who are eligible for the Medical Assistance to the Aged Continuance (MAA) program. (No new applications are accepted for this coverage); and

19. Refugees who are eligible under the Refugee Resettlement program.

10:49-2.3 Persons eligible under the Medically Needy Program

(a) A Medicaid recipient under the Medically Needy Program is limited to those medical services listed in N.J.A.C. 10:49-5.3. Services shall be provided in conjunction with specific Program requirements as outlined in the second chapter of the applicable Provider Services Manual.

(b) To be determined Medically Needy under the Medicaid Program, it is necessary for the person to meet categorical eligibility requirements, have income and/or resources in excess of the categorical standards, and have insufficient funds to meet his or her medical expenses. Medically Needy persons shall be in one of the following groups:

1. Pregnant women;
2. Needy children (under 21 years of age); or
3. The aged (65 years of age or older), the blind or the disabled.

(c) There are special income and resource levels established for the Medically Needy. If a person meets one of the categories listed in (b) above and has income and/or resources above categorical program levels but less than or equal to the Medically Needy income and resource levels, he or she shall be determined as Medically Needy eligible. However, if a person meets one of the categories listed in (b) above and meets the Medically Needy resource level but has income which exceeds the Medically Needy income level, eligibility may be established through the "spend-down" process.

1. "Spend-down" is the process whereby a person may apply incurred medical expenses to offset income above the Medically Needy income level, and thereby adjust his or her income to meet the Medically Needy income limit.

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(d) Medically Needy eligibility for all groups, including the aged, blind and disabled, shall be determined by the county welfare agency for both the retroactive and prospective period.

1. Each Medically Needy applicant/recipient shall reapply for benefits every six months. Eligibility may be established the first day of that six-month period or on any date during the six-month period that spend-down is met.

2. Eligibility shall be verified by providers on each visit by reviewing the Medicaid Eligibility Identification Card (MEI) (FD-73/178) (see N.J.A.C. 10:49-2.13—Validation Form). For those cards issued for the month within the six month period in which the spend-down is met, the card will reflect the date that eligibility begins after the spend-down is met.

(e) Claims for Medically Needy covered services provided during an eligible period may be submitted to the Program for reimbursement using standard Medicaid procedures. Services provided prior to the effective date of eligibility shall be the client's liability, except for certain "special" claims.

1. "Special" claims are claims for Medically Needy covered services that were not used to meet the spend-down and were rendered between the first of the month in which eligibility is established and the date of eligibility that appears on the Medicaid Eligibility Identification Card.

2. The county welfare agency shall identify "special" claims which may be reimbursed under the Program and shall provide a Medically Needy Claim Transmittal (Form FD-311, see Appendix, N.J.A.C. 10:49). Such claims shall be submitted hard copy with Form FD-311 attached.

10:49-2.4 Eligibility process (variations to routine procedure)

There are variations to the routine procedure for determining Medicaid eligibility. These variations are relevant to applying for eligibility for a newborn infant or for an inpatient upon admission to a hospital (see N.J.A.C. 10:49-2.5); to determining presumptive eligibility for pregnant women (see N.J.A.C. 10:49-2.6); and to determining retroactive eligibility (see N.J.A.C. 10:49-2.7).

10:49-2.5 Applying for Medicaid eligibility for a newborn infant or for an inpatient upon admission to a hospital

(a) There are limited variations to the eligibility process for a newborn infant of a woman who is a Medicaid recipient. The policy and procedures follow:

1. Although both the mother and newborn infant may be Medicaid recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number (see N.J.A.C. 10:49-2.10). In order to expedite payment to any provider before this number is assigned, the provider is permitted to bill for services provided to the newborn using the mother's HSP (Medicaid) Case Number and Person Number on the claim form.

i. Immediately after the birth of a newborn infant, the hospital shall submit a "Public Assistance Inquiry" (Form PA-1C, see Appendix, N.J.A.C. 10:49) to the county welfare agency. This will facilitate the assignment of a Person Number and addition of the newborn's name to the Medicaid eligibility file. The PA-1C Form shall include the date of birth of the newborn and the signature of the mother.

2. The period for which newborn services may be billed under the mother's HSP (Medicaid) Case Number and Person Number shall extend from the date of birth until the last day of the month in which a 60 day time frame ends, or until the newborn is assigned his or her own Person Number, whichever happens first.

Example: If a newborn's date of birth is January 5th, the 60 day period ends March 6th. Claims may be submitted through March 31st using the mother's HSP (Medicaid) Case Number and Person Number, provided the newborn has not been assigned his or her own Person Number in the meantime. Claims for services provided to the newborn after March 31st would be processed only if the required information about the newborn is used (Person Number, name, age, sex, etc.).

3. The newborn's Person Number shall be used as soon as it is available to the provider. The practitioner or any other type of provider shall request the newborn's Person Number from the mother at each encounter.

4. Billing instructions for services provided a newborn infant under his or her mother's HSP (Medicaid) Case Number and Person Number are provided in the Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual, as applicable.

(b) The following procedures shall apply when application is made for Medicaid eligibility for an inpatient upon admission to a hospital:

1. A Hospital may submit a "Public Assistance Inquiry" (Form PA-1C, see Appendix, N.J.A.C. 10:49) when an individual is admitted to the facility and financial or medical indigency is a factor in the coverage of care. Under this arrangement, if the patient is determined to be eligible for Medicaid, the effective date of eligibility is the date of the hospital inquiry.

i. A PA-1C Form should be directed to either the Social Security Administration District Office in the area where the hospital is located or the county welfare agency as follows:

(1) The Social Security Administration is responsible for establishing Medicaid eligibility for the aged (persons 65 years and over), for the blind, and for the disabled who apply for Supplemental Security Income (SSI).

(2) The county welfare agency is responsible for establishing Medicaid eligibility for the individual who applies for Aid to Families with Dependent Children (AFDC), or for the individual who is aged, blind, or disabled and applies for "Medicaid Only," or for any individual who applies for New Jersey Care ... Special Medicaid Programs.

2. Before preparing a PA-1C Form, the hospital shall screen the patient to determine the following:

i. Whether or not the patient is already eligible for Medicaid;

ii. Whether or not the patient has health insurance to cover the cost of hospital care and treatment; and

iii. Whether or not the person has sufficient income and/or resources to meet the cost of hospital care.

3. In the event that the date of the Medicaid eligibility which was established by the Social Security Administration or the county welfare agency is later than the date of admission, the recipient may apply directly to the New Jersey Medicaid Program for retroactive Medicaid payment of unpaid bills for allowable medical services within the three month period prior to the month of application (see N.J.A.C. 10:49-2.7).

10:49-2.6 Presumptive eligibility

(a) "Presumptive eligibility" means an expedited process whereby selected certified HealthStart Comprehensive Maternity Care providers make preliminary Medicaid eligibility determinations on behalf of pregnant women (see HealthStart in applicable Provider Services Manuals). This is a preliminary process to determine presumptive eligibility prior to the determination of Medicaid eligibility or ineligibility by the county welfare agency.

1. Approved HealthStart Maternity Care providers (independent clinics and hospital outpatient departments) may determine presumptive eligibility for pregnant women who require ambulatory prenatal services from Medicaid participating providers.

(b) A presumptively eligible pregnant woman is entitled to all Medicaid covered services with the exception of inpatient hospital and nursing facility care services. Although Medicaid HealthStart services must be provided only by a HealthStart provider, other Medicaid covered services may be provided to a presumptively eligible pregnant woman by any appropriate Medicaid provider.

(c) A presumptively eligible pregnant woman is eligible for a period of time which will end:

1. If the woman has not filed an application with the county welfare agency, on or before the last day of the month subsequent to the date of the presumptive eligibility determination; or

2. If the woman has filed an application with the county welfare agency, on the last day of the month subsequent to the month in which she was determined presumptively eligible, or on the day eligibility or ineligibility for Medicaid benefits is determined by the county welfare agency.

(d) A presumptively eligible pregnant woman is identified by the two messages which appear on the "Medicaid Eligibility Identification Card" (Form FD-73/178) (see Appendix, N.J.A.C. 10:49). One

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message is above the woman's name on the upper left side: **PRESUMPTIVELY ELIGIBLE PREGNANT WOMAN.** The second message appears in the message box on the upper right hand corner: **PROVIDERS ONLY:** CALL 1-800-328-0065 TO VERIFY ELIGIBILITY **BEFORE PROVIDING SERVICES.** This card is the only document acceptable for the identification of a presumptively eligible pregnant woman.

1. As part of the presumptive eligibility process, a presumptively eligible pregnant woman will be given an FD-334 Form, Certification of Presumptive Eligibility (see Appendix, N.J.A.C. 10:49). This is not valid proof of eligibility for Medicaid and should not be used by the provider for presumptive eligibility purposes. A request for reimbursement based solely upon the presentation of the FD-334 form does not guarantee payment.

2. Even with the identification through the MEI card, each time a service is rendered the provider shall verify the presumptive eligibility status of a pregnant woman, prior to the delivery of ambulatory services, by calling the toll free telephone number, 1-800-323-0065, during normal business hours (Monday through Friday, 8:30 A.M.-4:30 P.M.) or as soon as possible if the services are delivered other than during normal business hours.

3. When the provider requests verification for presumptive eligibility, he or she is required to provide the individual's name and HSP (Medicaid) Case Number, including the Person Number, to the operator.

4. The operator will advise the provider of the presumptive eligibility status on the date service is delivered and furnish him or her with an authorization number. The authorization number documents the verification of the Mediciad presumptive eligibility status for the provider.

5. Payment for services rendered without presumptive eligibility verification may be denied if the provider did not secure the required authorization number which verified the eligibility status, as noted in (d)4 above.

10:49-2.7 Medicaid Retroactive Eligibility

(a) Any person applying for Medicaid benefits shall be asked if he or she has unpaid medical bills incurred within the three-month period immediately prior to the month of application for Medicaid. Except for a Medically Needy applicant (see N.J.A.C. 10:49-2.3(e)), an individual indicating that there are such bills, may complete an FD-74 Form, Application for Payment of Unpaid Medical Bills (see Appendix, N.J.A.C. 10:49) and forward the application with all outstanding unpaid medical bills to the Medicaid Retroactive Eligibility Unit, Division of Medical Assistance and Health Services, CN-712-10, Trenton, New Jersey 08625.

1. An application for retroactive eligibility may be obtained by the applicant, or his or her authorized agent, from the county welfare agency, the Medicaid District Office, the Social Security Administration District Office, or from the Retroactive Eligibility Unit, Division of Medical Assistance and Health Services. The application shall be submitted within six months from the date of application for public assistance.

(b) If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was provided, providers shall be notified directly that the unpaid bills for any service covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures.

1. The provider shall then complete the appropriate Medicaid claim form and submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

2. For any Medically Needy recipient, a retroactive eligibility determination shall be completed by the county welfare agency (see N.J.A.C. 10:49-2.3, Persons eligible under the Medically Needy Program).

10:49-2.8 Verification of eligibility for Medicaid services

(a) Each Medicaid recipient, except Nursing Facility recipients, has an HSP (Medicaid) Case Number printed on a Medicaid form that validates eligibility. The recipient shall present this form to the provider, as a proof of Medicaid eligibility, every time a service is to be provided. See N.J.A.C. 10:49-2.10 for a description and information about the HSP (Medicaid) Case Number and see N.J.A.C. 10:49-2.11 for information about the Medicaid forms that are used to validate eligibility. The Recipient Eligibility Verification System (REVS) can be used, in some instances, as an alternative to viewing a form used to validate eligibility (see N.J.A.C. 10:49-2.9).

1. When extended plans of treatment have been approved, it is especially important to review the validation of eligibility form each time a service is provided.

i. Medical authorization or approval of a service by the Division shall not be construed as a guarantee that a person is eligible for the Medicaid Program.

ii. There shall be no reimbursement for services performed after termination of eligibility except as noted in N.J.A.C. 10:49-5.4(a)9.

10:49-2.9 Recipient Eligibility Verification System (REVS)

In the event a recipient is unable to produce a form that validates Medicaid eligibility (see N.J.A.C. 10:49-2.11) and the recipient's HSP (Medicaid) Case Number is known, the provider can verify eligibility by calling the Unisys Recipient Eligibility Verification System (REVS). REVS is accessed by dialing 1-800-676-6562 (or 587-1955 in the local Trenton area). Complete instructions for using REVS can be found in the Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual.

10:49-2.10 HSP (Medicaid) Case Number

(a) An HSP (Medicaid) Case Number consists of 12 digits, which includes a two-digit Person Number. The components of an HSP (Medicaid) Case Number as it is initially assigned to a recipient follows.

(b) The first two digits usually designate the county of residence as follows.

01 Atlantic	08 Gloucester	15 Ocean
02 Bergen	09 Hudson	16 Passaic
03 Burlington	10 Hunterdon	17 Salem
04 Camden	11 Mercer	18 Somerset
05 Cape May	12 Middlesex	19 Sussex
06 Cumberland	13 Monmouth	20 Union
07 Essex	14 Morris	21 Warren

1. For some adult recipients (that is, the Medicaid Only Program and New Jersey Care . . . Special Medicaid Programs for Aged, Blind, and Disabled) the first two digits of the HSP (Medicaid) Case Number designate the county of residence where eligibility was originally determined but not necessarily the location where the recipient is currently residing. In these instances, when the recipient moves to another county, the recipient retains the HSP (Medicaid) Case Number of the original county of application. However, the eligibility identification card will indicate the current address.

2. For recipients in certain State or county facilities, the first two digits of the HSP (Medicaid) Case Number designate the facility where the recipient resides. In a few unique situations the first two digits designate a special State program. The following list identifies the first two digits used to identify a State or county facility or a special State program. Following the name of the facility and enclosed in parentheses, is the Medicaid District Office serving that facility. For those facilities below marked by an asterisk(*), it should be noted that when the first two digits of an HSP (Medicaid) Care Number are used to identify more than one facility, a specific series of numbers for the fifth through tenth digit shall be used to designate the second or third facility as well as to designate the sequential identification number of the Medicaid recipient.

i. Identification of State and County Psychiatric Facilities

31—Greystone Park Psychiatric Hospital (Morris MDO)

32—Trenton Psychiatric Hospital (Mercer MDO)

*32—(300,000 series) Forensic Psychiatric Hospital (Mercer MDO)

*32—(600,000 series) Senator Garrett W. Hagedorn Center for Geriatrics—Psychiatric Section (Hunterdon MDO)

33—Marlboro Psychiatric Hospital (Monmouth MDO)

34—Ancora Psychiatric Hospital (Camden MDO)

36—Arthur Brisbane Child Treatment Center (Psychiatric Hospital) (Monmouth MDO)

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37—Bergen Pines Psychiatric Center (Bergen MDO)
38—Essex County Hospital Center—Cedar Grove (Essex—Suburban MDO)
39—Camden County Psychiatric Hospital (Camden MDO)
ii. Identification of Intermediate Care Facilities/Mental Retardation
*34—(800,000 series) Ancora Development Center (Camden MDO).
35—North Princeton Development Center (Hunterdon MDO)
41—Vineland Developmental Center (Cumberland MDO)
42—North Jersey Developmental Center (Totowa) (Passaic MDO)
43—Greenbrook Regional Center (Hunterdon MDO)
44—Woodbine Developmental Center (Cumberland MDO)
45—New Lisbon Developmental Center (Burlington MDO)
46—E. R. Johnstone Training and Research Center (Middlesex MDO)
47—Woodbridge Developmental Center (Middlesex MDO)
48—Hunterdon Developmental Center (Hunterdon MDO)
iii. 51—Soldiers Homes (Unit Dose Drugs) (MDO in county in which home is located)
iv. 90—Division of Developmental Disabilities Community Care Services (Waiver and Non-Waiver) and Special Residential Services, Statewide. (MDO in county in which the recipient resides.)

(c) The third and fourth of the 12-digit HSP (Medicaid) Case Number designate the category under which a person was determined eligible for the New Jersey Medicaid Program. For some adult recipients (that is, the Medicaid Only Program and New Jersey Care . . . Special Medicaid Programs for Aged, Blind, and Disabled) the third and fourth digits of the HSP (Medicaid) Case Number will not change from Program 20 and 25 (meaning the individual is disabled and under 65 years of age) to 10 and 15 (meaning the individual is aged—65 years of age or older) when recipients reach age 65.

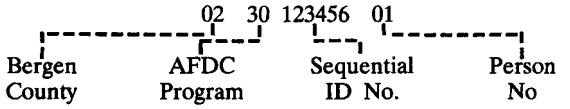
10—Aged—SSI related (65 years of age or older)
15—Aged—Medically Needed 65 years of age or older)
20—Disabled—SSI related (under 65 years of age)
25—Disabled—Medically Needy (under 65 years of age)
30—Aid to Families with Dependent Children (AFDC). New Jersey Care . . . Special Medicaid Programs for pregnant women and children are included in this category.
35—Medically Needy (children and pregnant women)
50—Blind—SSI related
55—Blind—Medically Needy
60—Children (If first two digits are 01 to 21, the individual is under supervision of the Division of Youth and Family Services. If the first two digits are greater than 21, the individual is institutionalized under the Institutional Services Section of the Division of Medical Assistance and Health Services).
70—Medical Assistance for Aged—A New Jersey State Program
80—Refugee Program

(d) The fifth through tenth digits of the HSP (Medicaid) Case Number designate the sequential identification number of the Medicaid recipient.

(e) The eleventh and twelfth digits of the HSP (Medicaid) Case Number designate the specific Person Number assigned to each recipient.

01–04	Adult (any age)
06–09	Adult (any age)
05	Pregnant Women
10–19	Ineligible Spouse
20–39	Children under 19
40–49	Medicaid Special (Children under 21 but not under 19)

(f) For example, an adult Medicaid recipient (caretaker/parent) from Bergen County receiving assistance under Aid to Families with Dependent Children (AFDC) Program could have the following HSP (Medicaid) Case Number:



10:49-2.11 Forms that validate Medicaid eligibility

(a) A New Jersey Medicaid provider may verify a person's Medicaid eligibility by means of one of the following four forms:
1. Department of Human Services—"Medicaid-ID" (FD-152) (see N.J.A.C. 10:49-2.12);
2. "Medicaid Eligibility Identification Card" (FD-73/178) (see N.J.A.C. 10:49-2.13);
3. "Validation for Health Services Program" (DYFS 16-36) (see N.J.A.C. 10:49-2.14); or
4. "Validation of Eligibility" (FD-34) (see N.J.A.C. 10:49-2.15).

10:49-2.12 Validation Form (FD-152) "Department of Human Services Medicaid-ID"

(a) The validation Form FD-152 (see Appendix, N.J.A.C. 10:49) is issued monthly to persons eligible for Aid to Families with Dependent Children (AFDC) and to persons eligible under the Refugee and Community Medicaid Only programs. The form indicates that the persons are currently eligible for coverage for the month shown on the form-"VALID ONLY FOR THE MONTH OF _____". The validation form shall be retained by the Medicaid recipient to whom it is issued.

1. This form is the indicator of Medicaid eligibility for the Medicaid recipient(s) listed on the form.

i. Any Medicaid recipient enrolled in an HMO shall also be required to show his or her HMO ID Card.

2. Providers shall enter the name, HSP (Medicaid) Case Number, including the Person Number, exactly as it appears on Form FD-152 when requesting authorization for services or submitting a claim form.

3. One of the following three messages may be printed on the FD-152 form issued by the County Welfare Agency. Only one message will appear on the form. If more than one applies, however, the message printed is chosen in the order of priority listed below. Providers shall be requested to take the specific action for the message which appears.

i. Message One: "HMO-CHECK GSHP ID CARD". This recipient and all members of his or her family listed on the Medicaid ID Card are enrolled in the Garden State Health Plan, a State-operated health maintenance organization. Each family member chooses a primary care physician known as a physician case manager. To obtain service, this recipient shall also present the Garden State Health Plan Identification Card. This gold colored card lists each family member and the name and telephone number of the member's physician case manager. The member's physician case manager shall either authorize or personally provide all medical services. (See N.J.A.C. 10:49-20, Garden State Health Plan.)

ii. Message Two: "RESTRICTED USE HMO-CALL (NUMBER LISTED)" or "HMO COVERAGE—CHECK HMO ID CARD". This recipient (and any member of his or her family on the AFDC grant) is enrolled in a Health Maintenance Organization (HMO). The provider shall call the telephone number listed on either the FD-152 validation card or on the HMO ID Card to determine whether the service or the item he or she is being asked to provide is provided by the HMO. If a provider provides a service available through the HMO, reimbursement will be denied by the New Jersey Medicaid Program, except in medical emergencies.

iii. Message Three: "OTHER COVERAGE"—There will be an asterisk (*) before the name of the recipient(s) covered by another health insurer. The provider shall determine the insurer and the policy number (see N.J.A.C. 10:49-7.3, Third party liability).

10:49-2.13 Validation Form (FD-73/178) Medicaid Eligibility Identification Card (MEI Card)

(a) The MEI Card, Validation Form FD-73/178 (see Appendix N.J.A.C. 10:49) is issued monthly or quarterly as indicated in (a) and 2 below.

1. The MEI Card is issued monthly to:

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i. Persons (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI) and their spouses, if eligible as an essential person;

ii. Persons determined by the county welfare agency to be eligible for the New Jersey Care ... Special Medicaid Programs and the Medically Needy Program; and

iii. Recipients in the Special Status Program (see (e)2 below); and

2. The MEI card is issued quarterly for children (Medicaid recipients) under the supervision of the Division of Youth and Family Services (DYFS).

(b) The MEI Card usually identifies eligibility for only one recipient. However, several special programs list all eligible persons in the family; for example, for New Jersey Care ... Special Medicaid Programs all Medicaid recipients in the family are listed on the MEI card; the Special Status Program also identifies all recipients in the family on the MEI card.

1. When the MEI Card is issued to the Medically Needy, more than one recipient may be listed with a service code indicated next to each name.

(c) The information on the MEI Card includes an address, date of birth, Social Security Account Number and the availability of any third-party health insurance; however, for the Medically Needy Program, the date of birth and Social Security Account Number are omitted and the words "Medically Needy" are printed in this space.

1. If the Medicaid recipient has health insurance, the name of the other insurer will be printed together with a corresponding policy number. Additionally, Medicare coverage and the HIC (Medicare) Number will be printed on the MEI Card for all Medicare/ Medicaid recipients.

(d) The MEI Card is valid only when signed by the Medicaid recipient or his or her representative payee/legal guardian.

(e) A message printed on the MEI card will indicate the cardholder's enrollment in any waivered or special programs such as Home and Community-Based Services Waivers (see N.J.A.C. 10:49-17); Home Care Expansion Program (see N.J.A.C. 10:49-18); and Garden State Health Plan (see 10:49-20).

1. The MEI Card for Garden State Health Plan members will have the printed message: "HMO-Check-GSHP ID Card" under the section "Additional Health Insurance." To obtain service, this recipient shall also present the Garden State Health Plan Identification Card. This gold colored card lists the recipient and the name and telephone number of the recipient's physician case manager. All medical services shall be either provided by or authorized by the recipient's physician case manager prior to rendering a service.

2. The MEI Card for the Medicaid "Special Status Program" either restricts the Medicaid recipient(s) listed on the MEI Card to a single provider, except in a medical emergency, or warns providers that the recipient's card has been used by an unauthorized person or persons, or for an unauthorized purpose. If a warning card is issued, a message will be printed on the card alerting the provider to ask the Medicaid recipient for additional identification or to take other appropriate action. (See N.J.A.C. 10:49-14.2, Sanctions—Special Status Program).

3. The MEI Card issued for the Medically Needy Program will have the following message printed on the top of the card: "Medically Needy Eligible, Check Provider Manual for Authorized Services." It is important for the provider to always review the eligibility dates and to be aware that eligibility is not always established for an entire month. Coverage may begin on any day during the month. Also, a provider shall always review the "service code" for each Medically Needy recipient. The service code will enable the provider to determine which services are available to each Medically Needy recipient (see N.J.A.C. 10:49-2.3 and 10:49-5.3 for service exceptions). The service codes for the three groups under Medically Needy are:

(A) Group A—Pregnant women

(B) Group B—Needy children

(C) Group C—Aged, blind and disabled.

10:49-2.14 Validation Form (DYFS-16-36)
Validation for Health Services Program (Medicaid)

(a) The DYFS-16-36 Validation Form (see Appendix, N.J.A.C. 10:49) is issued by the Division of Youth and Family Services (DYFS) to certain eligible children (Medicaid recipients). This form indicates eligibility for covered health for covered health services during the months shown on the form itself.

1. The validation form shall be retained by the recipient to whom it is issued.

2. The form is the indicator of eligibility for this group of children.

i. Any Medicaid recipient enrolled in a HMO shall also be required to show his or her HMO ID Card.

ii. The HSP (Medicaid) Case Number shall be entered exactly as it appears on the validation form on all requests for authorization of services and when submitting claim forms.

10:49-2.15 Validation Form (FD-34)
Validation of Eligibility

(a) The FD-34 Form, Validation of Eligibility (see Appendix, N.J.A.C. 10:49), identifies a Medicaid recipient who resides in a State or county institution.

1. The validation form shall be prepared and completed by the authorized Medicaid representative at the State or county institution. It is valid for the calendar month it is issued (up to a period of 31 days) to a Medicaid recipient (patient/resident) in a State or county governmental psychiatric hospital or an intermediate care facility/mental retardation, and is used to obtain Medicaid covered services outside of the institutional setting. The form shall be returned with the Medicaid resident.

2. Form FD-34 requires the signature, title, and telephone number of the authorized representative at the institution.

3. The Medicaid resident or patient of a State or county institution receiving covered health services in the community is identified by the 12-digit HSP (Medicaid) Case Number in which the first two digits identifies the institution. (See N.J.A.C. 10:49-2.10 (b)2).

(b) The New Jersey Medicaid Program has designated specific Medicaid District Offices to handle prior authorization requests for services for patients/residents from each institution and family care residents who are under the jurisdiction of the Division of Developmental Disabilities. If the patient/resident's HSP (Medicaid) Case Number begins with any of the following numbers, providers shall contact the Medicaid District Office (MDO) indicated (for MDO Directory, see Appendix at N.J.A.C. 10:49).

31—Morris MDO
32—Mercer MDO
32—Hunterdon MDO (Applicable only to 600,000 series)
33—Monmouth MDO
34—Camden MDO
35—Hunterdon MDO
36—Monmouth MDO
37—Bergen MDO
37—Hudson MDO (Applicable only to 600,000 series)
38—Essex—Suburban MDO
39—Camden MDO
41—Cumberland MDO
42—Passaic MDO
43—Hunterdon MDO
44—Cumberland MDO
45—Burlington MDO
46—Burlington MDO
47—Middlesex MDO
48—Hunterdon MDO
90—MDO in county in which recipient resides.

10:49-2.16 Medicaid application

(a) If a person has not applied for benefits, is unable to pay for services provided, and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider shall encourage the person, or his or her representative, to apply for benefits:

1. To the county welfare agency for programs such as Aid to Families with Dependent Children; Medicaid Only; New Jersey Care ... Special Medicaid Programs for pregnant women, children, and the aged, blind, or disabled; or for Medically Needy;

2. To the Social Security Administration for Supplemental Security Income benefits for the aged, blind, and disabled; or

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3. In certain cases, to the New Jersey Division of Youth and Family Services, Department of Human Services.

(b) If it is not known which agency is responsible for determining eligibility or which program might be applicable, the Medicaid District Office will be able to provide guidance in this matter (for MDO Directory, see Appendix N.J.A.C. 10:49).

(c) All providers are encouraged to refer pregnant women who may be eligible for Medicaid to a provider authorized to determine presumptive eligibility. The names and addresses of these providers may be obtained by calling the HOT LINE at 1-800-321-BABY.

SUBCHAPTER 3. PROVIDER PARTICIPATION

10:49-3.1 Provider types eligible to participate

(a) The following provider types are eligible to participate as Medicaid providers:

1. Chiropractors and/or chiropractic groups;
2. Clinics (independent outpatient health care facilities);
3. Clinical laboratories;
4. Dentists and/or dentist groups;
5. Hearing aid dealers;
6. Health maintenance organizations;
7. Home health agencies;
8. Homemaker agencies;
9. Hospices;
10. Hospitals;
i. General;
ii. Psychiatric; and
iii. Special;
11. Nursing facilities, including intermediate care facilities for the mentally retarded;
12. Medical suppliers;
13. Medical day care centers;
14. Nurse-midwives;
15. Opticians;
16. Optometrists;
17. Orthotists;
18. Pharmacies;
19. Physicians and/or physician groups;
20. Podiatrists and/or podiatrist groups;
21. Prosthetists;
22. Psychologists and/or psychologist groups;
23. Residential treatment facilities;
24. Transportation providers; and
25. State and county agencies that have agreed to provide personal care assistant services.

10:49-3.2 Enrollment process

(a) Providers shall be required to complete a Medicaid Provider Application and sign a Provider Agreement (see Appendix, 10:49) or a specialized agreement, and/or such other documentation as the Program may require, depending on the nature of the services provided.

1. Policies and rules pertaining to shared health care facilities are outlined in N.J.A.C. 10:49-4.

(b) All Medicaid providers other than an individual practitioner and/or group of practitioners shall be required to complete Form HCFA-1513, Ownership and Control Interest Disclosure Statement (see Appendix N.J.A.C. 10:49) at the time of application or reapplication. Providers prior to 1973 were not required to utilize provider agreement forms; however, they shall comply with all applicable State and Federal Medicaid laws, policies, rules and regulations.

1. As a condition of continued participation in the New Jersey Medicaid Program, a provider may, from time to time, be required to:

i. Complete a provider application form and sign a provider participation agreement; and/or

ii. Complete a Form HCFA 1513, Ownership and Control Interest Disclosure Statement. This requirement shall not be applicable to individual practitioners(s) or groups of practitioners.

2. The New Jersey Medicaid Program shall terminate any existing agreement or contract if the provider fails to disclose information required by (b)1ii above.

3. Enrollment documentation requested by the New Jersey Medicaid Program shall be furnished within 35 calendar days of the date of the written request.

(c) An out-of-State provider shall have a current, approved provider agreement with the New Jersey Medicaid Program and hold a current, valid certification and/or license from the appropriate agency under the laws of the respective state in which the provider is located.

(d) A provider application to enroll may be requested from the Fiscal Agent of the New Jersey Medicaid Program. An appropriate Medicaid Program enrollment package will be mailed to the requesting provider. The enrollment application must be completed in full and returned to the Fiscal Agent, along with all the necessary attachments.

1. The applicant's eligibility to participate in the New Jersey Medicaid Program will be confirmed in writing. A New Jersey Medicaid provider number will be assigned and returned to the applicant along with the appropriate Medicaid Program Provider Manual.

2. If the application is denied, the applicant will receive a notification which explains the decision to deny and the applicant's right to appeal the decision (see N.J.A.C. 10:49-10).

(e) If the applicant is found to be currently enrolled (for example, an inactive provider who now wants to actively participate), the applicant will be assigned an appropriate Medicaid provider number and the provider's existing record on the Provider Master File will be reactivated.

(f) The Division may refuse to enter into a provider participation agreement with any applicant who has been suspended, debarred, disqualified, or excluded by the Medicaid Program of another state.

(g) The Division shall enter into a provider participation agreement with an applicant who has been suspended or excluded from participation in the delivery of medical care or services under Medicare (Title XVIII), Medicaid (Title XIX), or the Social Services Block Grant Act (Title XX) of the Federal Social Security Act, by the Secretary of the United States Department of Health and Human Services.

10:49-3.3 Providers with multi-locations

(a) The New Jersey Medicaid Program requires that all providers (except independent clinical laboratories, nursing facilities, and pharmacies) applying to participate in the Program or presently participating in the Program, identify each and every branch or satellite location from which they shall provide services to Medicaid recipients.

(b) Each separate location shall meet all required standards for participation in the New Jersey Medicaid Program and shall be uniquely identified, if approved for participation. Services rendered to Medicaid recipients at an unapproved satellite shall not be billed and will not be paid under the approved parent organization's provider number.

(c) Billing through a central location for approved multi-location providers shall be allowed; however, providers shall utilize the preaddressed claims for each office location as the claims reflect the proper address and provider number for that location. Selection of central or localized billing shall be left to providers, who shall state their preference on the application.

10:49-3.4 Medicaid Provider Billing Number

(a) Each Medicaid provider is assigned a Medicaid Provider Billing Number. The seven digit provider billing number is required on all Medicaid claim forms as a condition of payment.

(b) Certain Medicaid providers are also assigned an individual Medicaid Provider Services Number which must also appear on certain claim forms as detailed in the Medicaid Fiscal Agent Billing Supplement.

(c) Providers who, for billing purposes, need a referring practitioner's individual Medicaid Provider Services Number shall contact that practitioner to obtain the number. A practitioner who does not

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participate in the Medicaid Program will not have a Medicaid Provider Services Number. In the absence of the referring practitioner's individual Medicaid Provider Services Number, providers must enter seven fives (5's) for non-participating out-of-State providers or seven sixes (6's) for non-participating in-State providers to indicate non-participation in the New Jersey Medicaid program.

1. Each Medicaid participating practitioner (that is, physician, certified nurse mid-wife, chiropractor, dentist, optometrist, podiatrist, or psychologist) shall supply his or her individual Medicaid Provider Services Number to other providers when referring a Medicaid recipient for services.

(d) A shared health care facility (SHCF) (see N.J.A.C. 10:49-4.1) is assigned a registration code (Shared Health Care Facility Number), which must appear on a claim form submitted to the Medicaid Fiscal Agent by every member of the SHCF. In addition, each practitioner rendering a service in a shared health care facility must indicate his or her Medicaid Provider Billing Number and individual Medicaid Provider Services Number on the claim form (see Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

SUBCHAPTER 4. PROVIDERS' ROLE IN A SHARED HEALTH CARE FACILITY

10:49-4.1 Definitions

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

"Department" means the Department of Human Services.

"Discipline" means a branch of instruction or learning such as medicine, dentistry, chiropractic, and so forth.

"Division" means the Division of Medical Assistance and Health Services.

"Patient" means anyone eligible to receive benefits from the Program.

"Program" means the New Jersey Medicaid Program.

"Provider" means any individual, partnership, association, corporation, institution or any other public or private entity, agency or business concern, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program, and where applicable, holding a current valid license, and lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto.

"Purveyor" means any person, firm, corporation or other entity other than a provider who, whether or not located in a building which houses a shared health care facility, directly or indirectly, engages in the business of supplying to ultimate users or providers within the shared health care facility any medical supplies, equipment and/or services for which reimbursement under the Program is received, including, but not limited to, clinical laboratory services or supplies; diagnostic radiology services; sick room supplies; physical therapy services or equipment; orthopedic or surgical appliances or supplies; drugs, medication or medical supplies; eyeglasses, lenses or other optical supplies or equipment; hearing aids or devices; and any other goods, services, supplies, equipment or procedures prescribed, ordered, recommended or suggested for medical diagnosis, care or treatment, and which amount to $10,000 per year.

"Shared health care facility" (SHCF) means four or more providers, two or more of whom are practicing within different specialties and/or disciplines, either independently or in association with each other, within a single structure; and

1. Two or more of whom share any of the following:

i. Common waiting areas;

ii. Examining rooms;

iii. Treatment rooms;

iv. Equipment;

v. Supporting staff;

vi. Common records; and

2. One or more of whom receives payment on a fee-for-service basis, and where the gross Medicaid income for the facility meets or exceeds $80,000 per year.

"Specialty" means a health care practice within a discipline such as pediatrics, obstetrics/gynecology, orthodontics, periodontics, and so forth.

10:49-4.2 Scope

(a) This subchapter shall apply to shared health care facilities as defined herein and to providers located in a specific health care facility.

(b) This subchapter shall apply to purveyors, whether or not located in a building which houses a shared health care facility.

(c) Nothing in this subchapter shall apply to an association of health care providers delivering health services on other than a fee-for-service basis.

(d) This subchapter shall not apply to hospitals participating in the Medicaid Program.

10:49-4.3 Registration of shared health care facilities

(a) No shared health care facility shall be operated under the Program unless it has been registered with the Division. The Office of Program Integrity Administration, CN-712, Trenton, New Jersey 08625 is responsible for registration.

1. Providers within the shared health care facility shall designate one provider member who shall be responsible for registration:

i. Said responsibility and liability by the designated provider, shall be limited to timely filing of accurate reports required under this section.

(b) Registration shall be made on forms furnished by the Division and shall contain the information required therein, including, but not limited to:

1. The name of the owner or owners of the facility;

2. The name, residence address and professional license number of every provider and purveyor working in the shared health care facility;

3. The name, residence address and curriculum vitae of the individual designated to asssume responsibility for the central coordination and management of the shared health care facility's activities, if so designated;

4. The owner, lessor or lessee shall furnish to the Division a copy of the lease agreement upon request;

5. The name of any person, firm or corporation providing administrative, clerical or billing services to providers in shared health care facilities, other than employees of providers; and

6. The name and address of lessor of any space or equipment in the shared health care facility.

(c) The registrant shall re-register on the June 1 next following initial registration, and annually thereafter on June 1.

(d) The Division shall be notified, in writing, within 30 days of any change in:

1. The owner or owners of the facility;

2. The termination of the services of the individual designated to assume responsibility for coordination and management of the shared health care facility's activities. The Division shall also be notified within 30 days of the name, residence address and professional qualifications of any new individual appointed to assume such central administrative responsibility; and

3. Any addition or termination of any provider or purveyor in the shared health care facility. Such notification shall include the name, residence address and license number of each person appointed in place of such individual.

10:49-4.4 Prohibited practices; administrative requirements

(a) The Division shall not enter into any agreement of Medicaid participation, nor shall any payment be made to any provider in a shared health care facility where the rental fee for the letting of space or supportive professional or clerical services to a provider in a shared health care facility is calculated in whole or in part, directly or indirectly, as a percentage of earnings or billings of the provider for services rendered on the premises in which the shared health care facility is located.

(b) No purveyor or provider, whether or not located in a building which houses a shared health care facility, shall directly or indirectly offer, pay or give, or permit or cause to be offered, paid or given to any provider or purveyor, and no provider or purveyor shall

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directly or indirectly solicit, request, receive or accept from any purveyor or provider any sum of money, credit or other valuable consideration for:

1. Recommending or procuring goods, services or equipment of such purveyor or provider to any other person;

2. Directing patronage or clientele to such purveyor or provider; or

3. Influencing any person to refrain from using or utilizing goods, services or equipment of any purveyor or provider.

(c) Patient referral rules require that:

1. No provider in a shared health care facility or person employed in such facility shall refer a patient to another provider located in such a facility, unless the records of the referring provider pertaining to such patient clearly sets forth the justification for such referral;

2. Every provider practicing in a shared health care facility who treats a patient referred to him or her by another provider practicing in the same facility shall communicate in writing to the referring provider, the diagnostic evaluation and the therapy rendered. The referring provider shall incorporate such information into the patient's permanent record; and

3. The claim submitted to the Program by the provider to whom such patient has been referred shall contain the full name and individual Medicaid Provider Services Number of the referring provider, and shall identify the medical problem that necessitated the referral.

(d) Any pharmacy maintaining a business in the same building in which a shared health care facility is located shall prominently post a notice informing patients that all pharmaceuticals prescribed in the Program may be obtained at any pharmacy of the recipient's choice.

(e) No purveyor or provider other than a physician, dentist, podiatrist, optometrist or chiropractor, who maintains a business in the building in which a shared health care facility is located, shall maintain a door or window opening into the offices or waiting room of the shared health care facility.

(f) All provider claims submitted for services rendered at a shared health care facility shall contain the registration code (SHCF Number) of the facility at which the service was performed. The individual Medicaid Provider Services Number of the practitioner rendering the service must also be entered on the claim form. The practitioner who rendered the service or his or her authorized representative must sign and date the claim form.

(g) The requirements set forth in the Medicaid Program Provider Services Manuals for each respective discipline shall apply to services rendered at a shared health care facility.

(h) It shall be unlawful for any provider to pay a bonus, commission or fee to any other provider based on business supplied or referred.

10:49-4.5 Quality of care requirements

(a) To ensure quality, continuity and proper coordination of medical care, each shared health care facility shall:

1. Where feasible, designate an individual who, on a full-time basis, shall coordinate and manage the facility's activities;

2. Devise an appropriate means of insuring that patients shall be scheduled to return for appropriate follow-up care and shall be treated by a provider familiar with patient's medical history;

3. Post conspicuously the names and scheduled office hours of all providers practicing in the facility;

4. Maintain proper records. Such records shall contain at least the following information:

i. The full name, address and Medicaid Number of the patient;

ii. The dates of all visits to all providers in the shared health care facility;

iii. The chief complaint for each visit to each provider in the shared health care facility;

iv. Pertinent history and all physical examinations rendered by each provider in the shared health care facility;

v. Diagnostic impressions for each visit to any provider in the shared health care facility;

vi. All medications prescribed at each visit by any provider in the shared health care facility who is qualified to issue prescriptions;

vii. The precise dosage and prescription regimens for each medication prescribed by a provider in the shared health care facility;

viii. All x-ray, laboratory work and electrocardiograms ordered at each visit by any provider in the shared health care facility;

ix. The results of all x-ray, laboratory work and electrocardiograms ordered as in (a)4viii above;

x. All referrals by providers in the shared health care facility to other medical providers and the reason for such referrals, and date of referral; and

xi. A statement as to whether or not the patient is expected to return for further treatment.

5. The Division shall have the right to inspect the business records, patient records, leases and other contracts executed by any provider in a shared health care facility. Such inspections may be by site visits to the shared health care facility.

SUBCHAPTER 5. SERVICES COVERED BY MEDICAID PROGRAM

10:49-5.1 Requirements for provision of services

(a) The services listed in N.J.A.C. 10:49-5.2 are available to recipients eligible for the regular New Jersey Medicaid Program. Services available to Medically Needy recipients are listed in N.J.A.C. 10:49-5.3. The services listed in N.J.A.C. 10:49-5.2 and 5.3 shall be provided in conjunction with Program requirements specifically outlined in the second chapter of each Provider Services Manual.

1. Any service limitations imposed will be consistent with the medical necessity of the patient's condition as determined by the attending physician or other practitioner and in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. Some services require authorization from the Program before the services are provided (see N.J.A.C. 10:49-6, Authorization Required).

10:49-5.2 Services available to recipients eligible for the regular Medicaid Program

(a) The services listed below, in alphabetical order, are available to recipients eligible for the regular Medicaid Program:

1. Case management services (Mental Health Program);

2. Chiropractic services;

3. Christian Science Sanatoria care and services (see Hospital Services Manual);

4. Clinic services (services in an independent outpatient health care facility, other than hospital, that provides services such as Mental Health, Family Planning, Dental, Optometric, Ambulatory Surgery, etc.);

5. Dental services;

6. Early and Periodic Screening, Diagnosis, and Treatment for recipients under age 21 (EPSDT): A preventative health care program for recipients under age 21 designed for early detection, diagnosis and treatment of correctable abnormalities. This program supplements the general medical services otherwise available;

7. Family planning services;

8. HealthStart maternity and pediatric care services include packages of comprehensive medical and health support services provided by independent clinics; hospital outpatient departments; local health departments meeting New Jersey Department of Health's improved pregnancy outcome criteria; physicians; and nurse midwives; either directly or through linkage with other HealthStart care providers. (See N.J.A.C. 10:49-1.4 for applicable Provider Services Manuals regarding HealthStart services, and requirements for provider participation);

9. Hearing aid services;

10. Home care services (home health care and personal care assistant services);

11. Hospice room and board services in a nursing facility (available to dually eligible Medicare/Medicaid recipients);

12. Hospital services—inpatient:

i. General hospitals;

ii. Special hospitals;

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iii. Psychiatric hospitals (inpatient): Limited to persons age 65 or older and children 21 years of age and under; and

iv. Inpatient psychiatric programs for children 21 years of age and under;

13. Hospital services—outpatient;

14. Laboratory (clinical);

15. Medical day care services;

16. Medical supplies and equipment;

17. Mental health services;

18. Nursing facility services, including intermediate care facilities for the mentally retarded;

19. Nurse-midwifery services;

20. Optometric services;

21. Optical appliances;

22. Pharmaceutical services;

23. Physician services;

24. Podiatric services;

25. Prosthetic and orthotic devices;

26. Radiological services;

27. Rehabilitative services (Payments are made to eligible Medicaid providers only. No payment is made to privately practicing therapists);

i. Physical therapy, as provided by a home health agency, independent clinic, nursing facility, hospital outpatient department, or in a physician's office;

ii. Occupational therapy, as provided by a home health agency, independent clinic, nursing facility, or hospital outpatient department;

iii. Speech-language pathology services, as provided by a home health agency, independent clinic, nursing facility, hospital outpatient department, or in a physician's office; and

iv. Audiology services provided in the office of a licensed specialist in otology or otolaryngology, or as part of independent clinic or hospital outpatient services; and

28. Transportation services which include ambulance, invalid coach, livery, and other transportation provided by independent clinics or through arrangements with a county welfare agency.

10:49-5.3 Services available to recipients eligible for the medically needy program

(a) Regular Medicaid services are available to Medically Needy recipients except for the following services which are not available or are only available to certain eligible Medically Needy groups: (See the service code next to the recipient's name on the Medicaid Eligibility Identification Card to ascertain the Medically Needy group under which the recipient's eligibility was established; that is, Group A—pregnant women, Group B—needy children, and Group C—aged, blind and disabled.)

1. Chiropractic services are available only to pregnant women (Group A).

2. EPSDT services are not available to any Medically Needy group.

3. Hospital services (inpatient) are available only to pregnant women (Group A).

4. Nursing facility services are not available to any Medically Needy group.

5. Medical day care services are available only to pregnant women, the aged, the blind and the disabled (Groups A and C).

6. Pharmaceutical services are available only to pregnant women and needy children (Groups A and B).

7. Podiatric services are available only to pregnant women, the aged, the blind and the disabled (Groups A and C).

8. Rehabilitative services are not available for reimbursement when provided through a hospital or nursing facility, except to pregnant women as part of their inpatient hospital services.

9. Case management services for the mentally ill are available to Medically Needy pregnant women only.

10:49-5.4 Services not covered by Medicaid Program

(a) Listed below are some general services and items excluded from payment under the New Jersey Medicaid Program. There are additional specific exclusions and limitations detailed in the second chapter of each Provider Services Manual. Payment is not made for the following:

1. Any service, admission, or item, which is not medically required for diagnosis or treatment of a disease, injury, or condition;

2. Services provided to all persons without charge shall not be billed to the Medicaid Program when provided for a Medicaid recipient. Services and items provided without charge through programs of other public or voluntary agencies (for example, New Jersey State Department of Health, New Jersey Heart Association, First Aid Rescue Squads, and so forth) shall be utilized to the fullest extent possible;

3. Any service or items furnished in connection with elective cosmetic procedures;

i. There are certain exceptions to this rule, but the exceptions require prior authorization. A written certification of medical necessity and a treatment plan shall be submitted by the physician to the appropriate Medicaid District Office for consideration;

4. Private duty nursing services (except for recipients under EPSDT);

5. Services or items furnished for any sickness or injury occurring while the covered person is on active duty in the military;

6. Services provided outside the United States and territories;

7. Services or items furnished for any condition or accidental injury arising out of and in the course of employment for which any benefits are available under the provisions of any workers' compensation law, temporary disability benefits law, occupational disease law, or similar legislation, whether or not the Medicaid recipient claims or receives benefits thereunder, and whether or not any recovery is obtained from a third-party for resulting damages;

8. That part of any benefit which is covered or payable under any health, accident, or other insurance policy (including any benefits payable under the New Jersey no-fault automobile insurance laws), any other private or governmental health benefit system, or through any similar third-party liability, which also includes the provision of the Unsatisfied Claim and Judgment Fund;

9. Services or items furnished prior to or after the period for which the recipient presents evidence of eligibility for coverage.

i. Payment is made for inpatient hospital services (excluding governmental psychiatric hospitals) when ineligibility occurs after admission to hospital as an inpatient. Payment is also made for certain services that were authorized and initiated before loss of eligibility such as dental, vision care, prosthetics and orthotics, and durable medical equipment. Also, see "Retroactive Eligibility" at N.J.A.C. 10:49-2.7(c);

10. Any services or items furnished for which the provider does not normally charge;

11. Any admission, service, or item, requiring prior authorization, where authorization has not been obtained or has been denied (see N.J.A.C. 10:49-6, Authorizations Required);

12. Services furnished by an immediate relative or member of the Medicaid recipient's household;

13. Services billed for which the corresponding health care records do not adequately and legibly reflect the requirements of the procedure described or procedure code utilized by the billing provider, as specified in the Provider Services Manual;

i. Final payment shall be made in accordance with a review of those services actually documented in the provider's health care record. Further, the medical necessity for the services must be apparent and the quality of care must be acceptable as determined upon review by an appropriate and qualified health professional consultant.

ii. All such determinations will be based on rules and regulations of the New Jersey Medicaid Program, the minimum requirements described in the appropriate New Jersey Medicaid Provider Services Manual, to include those elements required to be documented in the provider's records according to the procedure code(s) utilized for payment, and on accepted professional standards. (See N.J.A.C. 10:49-9.5, Provider Certification and Recordkeeping.)

iii. Any other evidence of the performance of services shall be admissible for the purpose of proving that services were rendered only if the evidence is found to be clear and convincing. "Clear and

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convincing evidence" of the performance of services includes, but is not limited to, office records, hospital records, nurses notes, appointment diaries, and recipient statements.

iv. Therefore, any difference between the amount paid to the provider based on the claim submitted and the Division's value of the procedure as determined by the Division's evaluation, may be recouped by the Division of Medical Assistance and Health Services;

14. Any claim submitted by a provider for service(s) rendered, except in a medical emergency, to a Medicaid recipient whose Medicaid Eligibility Identification Card (FD-73/178) has a printed message restricting the recipient to another provider of the same service(s). (See N.J.A.C. 10:49-2.13(e)2, Special Status Program); and

15. Services or items reimbursed based upon submission of a cost study when there are no acceptable records or other evidence to substantiate either the costs allegedly incurred or recipient income available to offset those costs. In the absence of financial records, a provider may substantiate costs or available income by means of other evidence acceptable to the Division. If upon audit, financial records or other acceptable evidence are unavailable for these purposes:

i. All reported costs for which financial records or other acceptable evidence are unavailable for review upon audit are deemed to be non-allowable; and/or

ii. Recipient income shall be presumed to equal the maximum income allowable for a Medicaid recipient for those recipients whose records relating to income are completely unavailable.

iii. The Division shall seek recovery of any resulting overpayments.

SUBCHAPTER 6. AUTHORIZATIONS REQUIRED BY MEDICAID PROGRAM

10:49-6.1 Prior and retroactive authorization (general)

(a) Under the Program, payment for certain services shall require prior authorization except in an emergency. It is the responsibility of the provider to obtain prior authorization before furnishing or rendering a service. Specific instructions are detailed in the appropriate Provider Services Manuals.

1. Prior authorization should not be construed as a guarantee that a person is eligible for the New Jersey Medicaid Program. At the time the serivce is to be provided, it is the provider's responsibility to verify eligibility.

2. "Medical emergency" means a critical illness or injury status for which prompt medical care may be crucial to saving life and limb or sparing the recipient significant or intractable pain. Services provided for a medical emergency are exempt from prior authorization. Any service classified as a medical emergency that would have been subject to prior authorization had it not been so classified, must be supported by a practitioner's statement which describes the nature of the emergency, including relevant clinical information, and must state why the emergency services rendered were considered to be immediately necessary. To simply state that an emergency did exist is not sufficient.

3. In addition to services that must be prior authorized under the previous subsections, a provider may be required to submit some or all services for prior authorization if in the judgment of the Director the provider has engaged in conduct which would constitute good cause for suspension, debarment or disqualification under N.J.A.C. 10:49-11.1(d). Prior authorization under this subsection may be imposed prior to a hearing under the same conditions applicable to suspensions under N.J.A.C. 10:49-11.1(j), except that the approval of the Attorney General shall not be necessary.

(b) Retroactive authorization may be granted under certain circumstances provided that the service is a part of continuing recipient care and, on the basis of medical judgment, would have been authorized at the time the service was rendered. Each case is considered on its own merit. Retroactive authorization is an exceptional measure granted only under the following unusual circumstances:

1. "Other coverage" (Medicare, Third-Party liability, other insurance, etc.) has denied or made only partial payment of a claim for services or items requiring prior authorization and it would have been unreasonable to expect the provider to have requested authorization prior to rendering the service;

2. Retroactive determination of eligibility;

3. An "administrative emergency" existed because communication between the provider and the staff of the New Jersey Medicaid Program could not be established (for example, during a weekend, holiday or evening) and provision of the service should not have been delayed. This differs from a medical emergency in that the recipient's condition would not be impaired if the service was not provided (see example below). In such instances, the request for retroactive authorization, including an explanation of the circumstances as well as the medical documentation supporting the services, shall be submitted to the Medicaid District Office or Central Office, as appropriate, within five calendar days after the service was provided or initiated. If verbal authorization was obtained, confirming written documentation shall follow.

Example: A physician orders a Medicaid recipient home from the hospital on a Friday evening. The recipient requires an electrical hospital bed, but the Medical Supplier is unable to contact the Medicaid District Office to obtain prior authorization. It is advantageous to the Medicaid Program, the hospital and the patient to discharge the recipient and not wait until authorization for the bed is requested on Monday; or

4. In situations not covered by (b)1, 2, and 3 above, the New Jersey Medicaid Program follows the doctrine of reasonableness which asks, "Is it reasonable to conclude that the situation presented warrants waiver of procedural rules?"

10:49-6.2 Out-of-State medical care and services

(a) Services provided outside the United States and territories are not covered by the New Jersey Medicaid Program.

(b) Any covered service that requires prior authorization as a prerequisite for reimbursement to New Jersey Medicaid providers shall also require prior authorization if it is to be provided in any other state.

1. Services which require prior authorization are described in the specific Medicaid Provider Services Manual.

(c) Prior authorization shall be required for all inpatient and outpatient hospital services provided outside the State of New Jersey except in the following situations:

1. Care provided in an emergency;

2. Interstate hospital transfers; and

3. Care provided to Medicaid recipients residing out-of-State at the discretion of the New Jersey Department of Human Services.

SUBCHAPTER 7. SUBMITTING CLAIMS FOR PAYMENT (POLICIES AND REGULATIONS)

10:49-7.1 General provisions

(a) The following information outlines the rules of the New Jersey Medicaid Program that the provider shall adhere to when submitting a claim and requesting payment for services provided to a New Jersey Medicaid recipient. (To identify a Medicaid recipient see N.J.A.C. 10:49-2.)

1. Each Provider Services Manual has information relevant to basis of payment for services and items of payment provided that is usually found in the second chapter of each manual.

(b) In addition to information in this subchapter about submitting claims for payment, a Fiscal Agent Billing Supplement is included following the second chapter of each Provider Services Manual. Included in the Supplement are prior authorization forms and instructions; information for the proper completion and submission of claim forms; the procedure to follow when claims are rejected and returned to the provider by the Fiscal Agent during the adjudication process; third party liability verification, procedure for submitting crossover claims, and examples of timely submission of claims; electronic media claims (EMC) submission; Remittance Advice statements; procedure for Electronic Funds Transfer (EFT); adjustments for overpayment and underpayment of claims, and adjustments by Medicare; procedure to follow when a claim is paid in error (voids); procedure for inquiries about claims; procedure for

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ordering forms; information about provider services; and item-by-item instructions for completing the claim form and other forms.

1. The Fiscal Agent Billing Supplement is not published in the New Jersey Administrative Code (N.J.A.C.) but is referenced as an appendix and is thus not a legal description of the New Jersey Medicaid Program's rules. Should there be any conflict between the Fiscal Agent Billing Supplement and the pertinent laws or rules governing the Medicaid Program, the latter takes precedence.

10:49-7.2 Timeliness of claim submission and inquiry

(a) A claim is defined as a request for payment from the New Jersey Medicaid Program for a Medicaid-reimbursable service provided to a Medicaid recipient. The claim may be submitted hard copy or by means of an approved method of automated data exchange. In order for a Medicaid claim to be considered for reimbursement, all appropriate documentation shall be included with the claim form.

1. It is the responsibility of the provider to ensure that each Medicaid claim submitted by that provider is received by the New Jersey Medicaid Program's Fiscal Agent within the time periods indicated in this section.

i. The New Jersey Medicaid Program shall not reimburse for a claim received outside the prescribed time periods. This policy also applies to inquiries concering a claim or claim related information received outside the prescribed time periods.

ii. For retroactive eligibility cases, a claim associated with a retroactive eligibility application will be considered as received on the date of receipt of the application on behalf of the applicant. For information about retroactive eligibility, see 10:49-2.7.

(b) An institutional claim is a claim submitted by a hospital; home health agency; nursing facility; intermediate care facility/mental retardation; residential treatment center; or governmental psychiatric hospital. The time requirements for submitting an institutional claim is as follows:

1. For claims submitted by home health agencies and hospitals (excluding governmental psychiatric hospitals), a claim for payment of a service provided to any Medicaid recipient shall be received by the New Jersey Medicaid Fiscal Agent within:

i. One year of the date of discharge on an inpatient hospital claim;

ii. One year of the date of service entered on an outpatient hospital claim or home health claim;

iii. One year of the earliest date of service entered on an outpatient hospital claim form or home health claim, if the claim carries more than one date of service; or

iv. For early and Periodic Screening, Diagnosis and Treatment (EPSDT) including pediatric HealthStart services, claims must be submitted to the Fiscal Agent within 30 days of the provision of services.

2. For claims submitted by a nursing facility; intermediate care facility/mental retardation; residential treatment center; or government psychiatric hospital, a claim for payment for services shall be received by the Fiscal Agent no later than one year after the "from date of service" on the claim form.

(c) A non-institutional claim is a claim submitted by all providers except a hospital, home health agency, nursing facility, intermediate care facility/mental retardation, residential treatment center, or governmental psychiatric hospital. The time requirements for submitting a non-institutional claim is as follows:

1. A claim for payment of a non-institutional service provided to any Medicaid recipient shall be received by the New Jersey Medicaid Fiscal Agent within:

i. One year of the date of service;

ii. One year of the earliest date of service entered on the claim form if the claim form carries more than one date of service;

iii. One year (365 days) of the dispensing date on a pharmacy claim form; or

iv. For early and Periodic Screening, Diagnosis and Treatment (EPSDT) including pediatric HealthStart services, claims must be submitted to the Fiscal Agent within 30 days of the provision of services.

(d) The time requirements for submitting a combination Medicare/Medicaid claim are as follows (Under Federal regulations, this applies only to Medicare/Medicaid claims and does not extend to claims involving any other third party insurance.):

1. A combination Medicare/Medicaid claim is defined as a request for payment from the New Jersey Medicaid Program for a medical service provided to any Medicare/Medicaid recipient.

i. The claim form shall contain both the HSP (Medicaid) Case Number and the Medicare HIC Number.

2. A combination Medicare/Medicaid claim shall be received by the Medicare Intermediary/Carrier within the applicable Medicaid timely submission period (see (b) and (c) above) to be considered for further payment by the New Jersey Medicaid Program.

i. The provider shall continue to have one year from the date of service for a claim to be received by the Medicaid Fiscal Agent. A claim received by the Medicaid Fiscal Agent after Medicare adjudication and within one year from the date of service shall be considered timely submitted.

ii. For combination Medicare/Medicaid claims received by the Medicare Intermediary/Carrier within the applicable Medicaid timely submission period and where Medicare adjudication occurs beyond the one year of the date of service, the provider shall submit a claim to be received by the Medicaid Fiscal Agent within 90 days of the date of the Medicare adjudication.

iii. For Medicare/Medicaid claims where the Medicare adjudication occurs within one year from the date of service, but less than 90 days remain within the timely filing period, the provider shall submit the claim to be received by Medicaid within the one year timely filing period or 90 days, whichever is later.

iv. A combination Medicare/Medicaid claim received outside the applicable Medicaid timely submission period shall not be reimbursed by the New Jersey Medicaid Program.

3. In most cases, when a recipient is eligible for both Medicare and Medicaid, a Medicare/Medicaid claim will cross over from the Medicare Carrier/Intermediary to the Medicaid Fiscal Agent. The provider is requested to allow 45 days from Medicare adjudication for the Medicaid Program to receive and process crossover claims. Failure to allow the 45 days for the transition from Medicare to Medicaid may result in payment delays due to duplicate claim errors. There are instances, however, where claims will not cross over from Medicare to Medicaid. In those instances, or when a Medicare/Medicaid crossover is not reflected on the provider's Medicaid Remittance Advise within 45 days of the Medicare Explanation of Benefits (EOB), the provider shall follow the billing instructions in the Fiscal Agent Billing Supplement following the second chapter of the Provider Services Manual.

(e) If additional information is required in order to process a claim, the provider shall supply the information as soon as possible, but not more than 90 days after the end of the applicable timely submission period.

(f) Regarding an adjudicated claim inquiry, a provider may inquire about a claim that has been paid or denied but shall make the inquiry within 90 days of the date of adjudication as indicated on the Remittance Advice Statement.

(g) Regarding a non-adjudicated claim inquiry, a provider may inquire about the status of a claim for which neither payment nor denial has been received. The inquiry may be made at any time after the claim is received, but not more than 90 days after the end of the applicable timely submission period.

(h) Claims may be paid beyond 12 months of the date of receipt with Federal financial participation (FFP) in the following situations:

1. When the claim invoice or retroactive adjustment is paid to a provider reimbursed under a retrospective payment system;

2. For a Medicare/Medicaid claim, timely filed, Medicaid payment may be made for services within six months after the Program or provider receives notice of the Medicare claim disposition for a timely filed Medicare/Medicaid claim;

3. For claims from providers under investigation for fraud or abuse; or

4. For claims associated with administrative or legal actions pursuant to a hearing action or agency corrective action mandate, whether for an eligible individual or for all those eligibles affected in a similar manner.

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10:49-7.3 Third party liability (TPL) benefits

(a) "Third party liability" (TPL) exists when any person, institution, corporation, insurance company, absent parent, Medicare program, public, private, or governmental entity is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the cost of medical assistance payable under this act.

1. It is a violation of section 1902(a)(25)(D) of the Federal Social Security Act to refuse to furnish covered services to any Medicaid recipient because of a third party's potential liability to pay for services.

(b) Medicaid benefits are last-payment benefits. All TPL, for example, health insurance, Medicare, CHAMPUS, prepaid health plans, workers' compensation and auto insurance, shall, if available, be used first and to the fullest extent in meeting the cost of the medical needs of the Medicaid recipient, subject to (h) below.

(c) The New Jersey Medicaid Program will supplement the amount paid by a third party, but the combined total paid to the provider shall not exceed the total amount payable under the Program in the absence of any TPL. The following exceptions should be noted:

1. Medicare: The Program will make payment in the full amount of the Medicare deductible and co-insurance for certain inpatient hospital services (see (e)1i(1) below).

2. Contracting practitioners: No Program payments shall be made when the third party calls for a contracting or participating practitioner to accept the TPL as payment in full.

(d) Medicaid participating providers are prohibited from billing Medicaid recipients for any amount, except:

1. For services, goods, or supplies not covered or authorized by the New Jersey Medical Assistance and Health Services Act (N.J.S.A. 30:4D-1 et seq.) if the recipient elected to receive the services, goods, or supplies with the knowledge that they were not covered or authorized; or

2. For payments made to the recipient by a third party on claims submitted to the third party by the provider.

(e) When a Medicaid recipient has other health insurance, the Program requires that such benefits be used first and to the fullest extent, subject to the exceptions in (h) below. Supplementation may be made by the Program, but the combined total paid shall not exceed the amount payable under the Program in the absence of other coverage. The Program shall not supplement coverage services rendered by a participating or contracting practitioner with any private health coverage program where the private plan calls for the practitioner to accept that plan's payment as payment in full. When other health insurance is involved, supplementation claims shall not be filed with the Program unless accompanied by a statement of payment, Explanation of Benefits (EOB), or denial from the other carrier. Attachment of such information will expedite Medicaid claim processing.

1. Medicare is a health insurance program which covers certain aged and disabled persons. When rendering Medicare-covered services to any Medicaid recipient, providers shall inquire about Medicare eligibility especially if the third digit of the HSP (Medicaid) Case Number is a 1, 2, 5, or 7. Medicaid supplementation of available Medicare benefits shall be as follows:

i. Medicare (Title XVIII): For any Medicaid recipient who is covered under Medicare, responsibility for payment by the New Jersey Medicaid Program shall be limited to the unsatisfied deductible and/or co-insurance to the extent that the combined total of payments does not exceed the maximum allowable under the Medicaid Program in the absence of other coverage. The following exceptions should be noted:

(1) The Program shall pay the full amount of any unsatisfied Medicare deductible and/or co-insurance for inpatient hospital services billable to the Program in accordance with Chapter 83, P.L. 1978 (that is, inpatient hospital services subject to payment by the Program according to the New Jersey DRG reimbursement methodology).

(f) When a Medicaid recipient has benefits available, such as those described above or from any other liable third party, an approved Medicaid provider shall be authorized to sign an insurance claim form for the Commissioner, based on the third party assignment of rights, in order to receive direct payment from the insurer. This is done pursuant to N.J.S.A. 30:4D-7.1(c). The following language shall be used by the provider when completing insurance claim forms: "(signature of authorized provider), Assignee for the Commissioner, New Jersey Department of Human Services."

(g) When recovery of benefits is sought by the Medicaid Program from a liable third-party, the Commissioner shall authorize the Director or his designee(s) to sign the recovery demand.

(h) TPL may be exhausted, but is not required to be, before a claim is submitted for Medicaid payment in any of the following circumstances:

1. The TPL benefits are derived from a parent whose obligation to pay support is being enforced by the State Title IV-D agency;

2. The claim is for prenatal care for a pregnant woman or for preventive pediatric services (including EPSDT services) that are covered by the Program;

3. The claim is for labor, delivery, and post-partum care and does not involve hospital costs associated with the inpatient hospital stay; or

4. The claim involves a service for which HCFA has granted a waiver of the TPL cost avoidance requirements in accordance with 42 C.F.R. 433.139(e). Waivers have been granted for:

i. Pharmacy services; and

ii. Services covered by Medicare Part B which are rendered at State and county governmental psychiatric hospitals, State and private ICFs/MR and Vineland Special Hospital.

(i) In those situations where an insurance payment is received from another payer after Medicaid has been billed and has made payment, the provider must reimburse the Medicaid payment to the Medicaid Program and not the Medicaid recipient. Reimbursement must be made immediately to comply with Federal regulations. To initiate the process, providers must submit an Adjustment/Void Request Form. (See Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

(j) Regardless of the status of a provider's claim with other third parties, all claims for Medicaid reimbursement must be received by the Medicaid Fiscal Agent within the time frames specified in N.J.A.C. 10:49-7.2, Timeliness of claim submission.

(k) Any individual who undertakes to legally represent any Medicaid recipient in an action for damages against any third party when medical expenses have been paid by the Division shall be required to give written notice to the Division within 20 days of filing or commencing the action.

1. The term "legal representative" shall include, but not be limited to, an attorney, administrator/administratrix, executor/executrix, conservator, guardian or guardian ad litem.

10:49-7.4 Prohibition of payment to factors

(a) A "factor" means an individual or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold or transferred to the individual organization for an added fee or deduction of a portion of the accounts receivable.

(b) Payment for any covered services furnished to any Medicaid recipient by an approved provider may not be made to or through a factor, either directly or by power-of-attorney.

10:49-7.5 Use of service bureau and/or management agency

(a) Payment may be made to a business agent, such as a billing service or an accounting firm, that furnishes statements and receives payment in the name of the provider if the agent's compensation for this service is:

1. Related to the cost of processing the billing;

2. Not related on a percentage or other basis to the amount that is billed or collected; and

3. Not dependent upon the collection of the payment.

(b) If a participating provider wishes to designate a business agent to perform management, clerical and/or other services related to the claims payment process, approval is required from the New Jersey Medicaid Program.

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(c) In order to obtain approval the provider/agent shall submit a copy of the signed agreement and power-of-attorney, if any, between the provider and the agent which shall contain a detailed statement of the powers and duties of the agent (including the power to sign Medicaid claim forms on behalf of the provider and the compensation arrangement) to Provider Enrollment, New Jersey Medicaid Program.

(d) Approval shall be obtained for each provider/agent agreement. Approval of an agent agreement with one provider does not confer an automatic approval of any additional provider/agent agreement.

(e) Standard Medicaid hard-copy claim forms shall be used unless the provider has been authorized for electronic media claims submission; however, in some instances hard-copy claims are required. These instances are detailed, as applicable, in the appropriate Provider Services Manual.

1. If standard Medicaid claim forms are not utilized, the provider/agent shall obtain approval from the New Jersey Medicaid Program.

2. In order to obtain approval, the provider/agent shall submit a printer's prototype of an exact replica of the Medicaid claim form and the programming instructions for completion of the form to the Fiscal Agent.

3. The provider/agent shall assume the entire cost of printing duplicate forms at all times.

(f) The New Jersey Medicaid Program in approving any provider/agent agreement, assumes no responsibility for the performance of the provider or agent. In the event that any error of the provider/agent requires special programming to be made by the Medicaid Fiscal Agent in order to have claims paid correctly, the provider/agent shall assume the entire cost of the special program.

SUBCHAPTER 8. PAYMENT FOR SERVICES PROVIDED

10:49-8.1 Fiscal Agent

The State of New Jersey uses a fiscal agent for the processing of claims and payment to providers for all health services.

10:49-8.2 Claim payment

(a) The Fiscal Agent will process claims daily and produce provider payments and associated Remittance Advice (RA) statements once each week. The RA is the provider's account statement and reflects the status of all claims currently entered into the Medicaid Management Information System. Provider payments in the form of checks and electronic funds transfers will be released following approval by the New Jersey Medicaid Program.

1. The Remittance Advice (RA) is the major vehicle for communicating to the provider the status of all Medicaid claims received by the Fiscal Agent. All of the provider's claims are processed and supporting records are updated during each payment cycle. RA statements are generated as a result of a payment cycle. All claims processed (entered into the Medicaid Management Information System) fall into one of three classifications: paid; suspended; or denied.

i. A claim that is correctly completed for a covered service provided to a Medicaid recipient by an approved provider will be paid. The claim will appear on the RA Claims Status page, or pages, along with all other claims for which a provider is being paid in that payment cycle. If the amount differs from the billed charges, an explanation will appear on the RA.

ii. Suspended claims are those claims held for review by the Fiscal Agent. The review will result in a claim being paid, denied, or additional information being requested. If additional information is required, a Claim Correction Form (CCF) will be forwarded to the provider. (Additional billing information is provided in the Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

iii. Reasons for denial of a claim will be provided on the RA in the form of a code.

(1) Messages explaining all codes reflected on the Remittance Advice will be printed on a separate page.

(b) A unique 13 digit Internal Control Number (ICN) is assigned to each Medicaid claim received by the Fiscal Agent. The ICN is reflected on the RA and can be used to track the status of a claim. For more information about the ICN, see Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual.

(c) For each claim processed in a payment cycle, the ICN, recipient name, dates of service and other claim information is printed on the RA. On the line immediately below this information, a code is printed representing a denial reason, suspense reasons, and payment reduction reasons, if any. The only type of claim status that will not have a code is one that is paid as billed. Messages explaining all codes found on the RA will be found on a separate page following the status listing of all claims. For more information about Remittance Advice see Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual.

10:49-8.3 Adjustments following payment of claims

(a) If a claim is incorrectly paid and the provider receives an overpayment or underpayment, the provider shall notify the Fiscal Agent in writing. (For the procedure to follow, see Fiscal Agent Billing Supplement, Adjustment/Void Form, following the second chapter of each Provider Services Manual).

(b) On occasion, a claim will be paid that should not have been paid; for example, a duplicate payment. If a claim is paid in error, the provider shall notify the Fiscal Agent by requesting that the claim be voided. (For the procedure to follow, see Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual.)

(c) Any adjustment made by Medicare will not cross over to Medicaid. If Medicare makes an adjustment that results in an overpayment or underpayment by Medicaid, the provider shall notify the Fiscal Agent. (For the procedure to follow, see the Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

10:49-8.4 Claims payment by direct deposit (electronic funds transfer (EFT))

(a) Through electronic funds transfer, a provider has the option of receiving claims payment automatically as a direct deposit to his or her checking account.

1. To enroll in the EFT payment program, the provider must complete an EFT Enrollment Request/Authorization form. A voided check displaying the provider's account number must accompany the complete authorization form. The enrollment form must be signed by the provider or an authorized official such as the business manager, owner, or facility administrator. Any change to the EFT information (for example, a change of account number, ownership, or authorized official) requires the completion of a new EFT Enrollment Request/Authorization form. (For detailed instructions about enrollment in the EFT payment program, see Fiscal Agent Billing Supplement following the second chapter of each Provider Services Manual).

10:49-8.5 Outstanding checks

(a) After Medicaid checks are outstanding for a period of six months, a follow-up letter shall be sent to the payee. This procedure shall only apply to checks of $5.00 or more.

(b) All Medicaid checks remaining outstanding after 12 months shall be cancelled in monthly lots rather than check by check. Listings of cancelled checks shall be in sufficient detail to identify providers and amounts of payment. These records shall be retained for audit.

SUBCHAPTER 9. PROVIDER AND RECIPIENT'S RIGHTS AND RESPONSIBILITIES; ADMINISTRATIVE PROCESS

10:49-9.1 Civil rights

Federal regulations require that services provided to any Medicaid recipient shall be given without discrimination on the basis of race, color, national origin, or handicap. Therefore, payments shall be limited to providers of service who are in compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

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10:49-9.2 Observance of religious belief

(a) Nothing in the Medicaid Program shall be construed to require any recipient to undergo any medical screening, examination, diagnosis, or treatment, or to accept any other health care or services provided under the Program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health) if such person or his or her parent or guardian objects thereto on religious grounds, except as specified in (b) below.

(b) If a physical examination is necessary to establish eligibility based on disability or blindness, the Medicaid Program may not find an individual eligible for Medicaid unless he or she undergoes the examination.

10:49-9.3 Free choice by recipient and provider

(a) The concept of freedom of choice shall apply to both provider and recipient.

1. A Medicaid recipient shall be free to choose providers of service who meet Program standards and who elect to participate in the Medicaid Program. The Medicaid District Office shall assist any recipient in obtaining services if the recipient cannot locate a provider. Exception: see N.J.A.C. 10:49-14.2, Special Status Programs.

2. A provider who accepts a recipient for care shall accept the Program's policies and reimbursement for all covered services and/or items provided or delivered during that period when, by mutual agreement, the recipient is under the provider's care. In the provision of professional services, the provider shall be bound by the code of ethics governing his or her profession.

10:49-9.4 Confidentiality of records

(a) All information concerning applicants and recipients acquired under this Program shall be confidential and shall not be released without the written consent of the individual or his or her authorized representative. If, because of an emergency situation, time does not permit obtaining consent before release, the Program shall notify the individual, his or her family, or authorized representative, immediately after releasing the information.

(b) The restriction on the disclosure of information shall not preclude the release of statistical or summary data or information in which applicants or recipients are not, and cannot be, identified; nor shall it preclude the exchange of information among providers furnishing services, Fiscal Agent of the Program, and State or local government agencies, for purposes directly connected with administration of the Program. Disclosure without the consent of the applicant or recipient shall be limited to purposes directly connected with the administration of the Program in accordance with Federal and State law and regulations.

1. Purposes directly connected with the administration of the Program shall include, but are not limited to:

i. Establishing eligibility;

ii. Determining the amount of medical assistance;

iii. Providing services for recipients; and

iv. Conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Program.

(b) The type of information about applicants and recipients that shall be safeguarded by the Program includes, but is not limited to:

1. Name and address;

2. Medical services provided;

3. Social and economic conditions or circumstances;

4. Program evaluations of personal information;

5. Medical data, including diagnosis and past history of disease or disability;

6. Any information received for verifying income eligibility and amount of medical assistance payments. Income information received from SSA or the Internal Revenue Service shall be safeguarded according to the requirements of the agency that furnished the data; and

7. Any information received in connection with the identification of legally liable third party resources as required under applicable Federal Regulations (42 C.F.R. 433.138).

10:49-9.5 Provider certification and recordkeeping

(a) All program providers, except institutional, pharmaceutical, and transportation providers, shall be required to certify that the services billed on any claim were rendered by or under his or her supervision (as defined and permitted by Program regulations); and all providers shall certify that the information furnished on the claim form is true, accurate, and complete.

1. All claim forms for covered services must be personally signed by the provider or by an authorized representative of the provider (for example, hospital, home health agency, independent clinic) unless the provider is approved for electronic media claims (EMC) submission by the fiscal agent. The provider must apply to the Fiscal Agent for EMC approval and sign an electronic billing certificate.

i. The following signature types are unacceptable:

(1) Initials instead of signature;

(2) Stamped signature; and

(3) Automated (machine-generated) signature.

(b) Providers shall agree to the following:

1. To keep such records as are necessary to disclose fully the extent of services provided;

2. To furnish information for such services as the Program may request;

3. That where such records do not document the extent of services billed, payment adjustments shall be necessary;

4. That the services billed on any claim and the amount charged therefore are in accordance with the regulations of the New Jersey Medicaid Program;

5. That no part of the net amount payable under any claim has been paid, except that all available third party liability has been exhausted, in accordance with Program regulations; and

6. That payment of such amount, after exhaustion of third party liability, will be accepted as payment in full without additional charge to the Medicaid recipient or to others on his behalf.

10:49-9.6 Patient's (recipient) certification

(a) A recipient's certification, authorization to release information and payment request, shall, under ordinary circumstances, be signed after the services identified on the claim form are provided and before a claim for payment is submitted by the provider. The recipient is:

1. Certifying that the service(s) covered by a claim has been received;

2. Requesting payment for those services made on his or her behalf; and

3. Authorizing any holder of medical or other information to release to New Jersey Medicaid or its authorized agents any information needed for this or a related claim.

(b) A provider who is submitting claims via an approved electronic media claims submission shall request a waiver to obtain the recipient or representative's certification on the standard Patient Certification (Form FD-197) which the provider shall keep on file for each service rendered and shall make available upon request to representatives of the New Jersey Medicaid Program. Initials instead of a signature are unacceptable on the Patient Certification Form.

1. If a signed Patient Certification Form is not on file for each service, Medicaid reimbursement for the service shall be subject to recoupment.

(c) A provider who is submitting a hard-copy Medicaid claim form shall, under ordinary circumstances, obtain the recipient's certification on the Medicaid hard-copy claim form (appropriate to the provider), unless a waiver is requested to use the standard Medicaid Patient Certification (Form FD-197, see Appendix, N.J.A.C. 10:49). A waiver application may be obtained from the Fiscal Agent.

(d) For certain providers, an individualized certification form, as indicated in the specific service chapter of the appropriate provider manual, may be used in place of the standard Medicaid Patient Certification (Form FD-197).

(e) A Medicaid hard-copy claim form or a Patient Certification Form shall be completed by a provider before it is presented to the recipient for signature. A Medicaid recipient may not sign a blank

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Medicaid hard-copy claim or a Patient Certification Form prior to receiving services or as a condition for receiving services.

(f) When the recipient's signature is unobtainable, the following procedures may be used:

1. An illiterate recipient may make his or her mark (x), and the mark shall be witnessed by another person who signs his or her name and address on the Patient Certification Form (FD-197) or on the Medicaid hard-copy claim form.

2. If a recipient is physically or mentally incapable of signing, or is deceased, the form(s) may be signed on his or her behalf by:

i. A parent;

ii. A legal guardian;

iii. A relation;

iv. A friend;

v. An individual provider;

vi. A representative of an institution providing care or support;

vii. A representative of a governmental agency providing assistance; or

viii. An administrator or executor.

3. A brief explanation of the reason the recipient was not personally able to sign the form(s) and the relationship of the signee to the recipient shall be noted directly on the Medicaid hard-copy claim form or the Patient Certification Form (FD-197).

10:49-9.7 Integrity of the Medicaid Program

The New Jersey Medicaid Program, in order to maintain the integrity of the Program, strictly prohibits its employees from accepting gifts or gratuities of any kind and of any value from individuals, representatives of provider organizations or institutions who provide services and are reimbursed through the Program. This includes the prohibition of offers of special employment, consultation fees and all other gratuities by a provider, individual or facility.

10:49-9.8 Fraud and abuse

The New Jersey Medicaid Program shall employ methods to identify situations in which a question of fraud and/or abuse in the Program may exist. The Division shall refer to law enforcement officials situations in which there is valid reason to suspect that fraud has or may have been committed.

10:49-9.9 Informing individuals of their rights

(a) All claimants shall be informed of the following, in writing, at the time of application and at the time of any action affecting their claim:

1. Of their right to a fair hearing;

2. Of the method by which they may obtain a hearing;

3. That they may be represented by legal counsel or by a relative, friend, or other spokesperson, or they may represent themselves; and

4. Of legal services within the community from which they may receive legal aid.

10:49-9.10 Provisions for appeals; fair hearings

(a) Pursuant to N.J.A.C. 10:49-10, Fair Hearings, both providers and Medicaid recipients with the New Jersey Medicaid Program shall have the right to file for fair hearings.

(b) A provider may be granted a hearing because of the denial of a prior authorization request or issues involving the provider's status; for example, termination, debarment, suspension, and so forth, as described in N.J.A.C. 10:49-11.1, or issues arising out of the claims payment process.

(c) A Medicaid recipient may be granted a hearing because his or her claim for medical assistance is denied or is not acted upon with reasonable promptness, or because the recipient is aggrieved by any other agency action resulting in non-eligibility, denial, termination, reduction or suspension of such assistance.

(d) In order to obtain a fair hearing, the provider or the recipient shall submit a request in writing to the Fair Hearing Unit, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625, outlining the reason for the request.

(e) Any nursing facility whose certification or Medicaid Provider Agreement is denied, terminated, or not renewed, may request a hearing in accordance with the appeals procedure described in the Nursing Facilities Services Manual.

SUBCHAPTER 10. NOTICES, APPEALS AND FAIR HEARINGS

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.

"Applicant" means any person who has made application for purpose of becoming a "qualified applicant."

"Claimant," when used within these rules, means applicant, qualified applicant or recipient as defined in this section.

"Department" means the Department of Human Services, the single State agency responsible for administering the New Jersey Medicaid Program and other special programs through the Division of Medical Assistance and Health Services.

"Notice" means an announcement of a policy decision by the Title XIX agency that may adversely affect the Medicaid recipient.

"Provider" means any person, public or private institution, agency or business concern lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto, holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

"Qualified applicant" means any person who is determined to be eligible to receive benefits in accordance with N.J.S.A. 30:4D-1 et seq. and amendments thereto.

"Recipient" means a person who is a resident of this State and is determined to need medical care and services under N.J.S.A. 30:40-1 et seq. and amendments thereto, and falls within the eligibility criteria set forth therein.

10:49-10.2 Notices

(a) The Department/Division may print a notice of prospective policy changes affecting Medicaid recipients generally in one or more newspapers in New Jersey.

1. This public notice will be accompanied by a proposed rulemaking on the subject of the notice in the New Jersey Register.

2. The public notice may precede or be subsequent to the Register publication.

3. The Department of Human Services may proceed to adopt the regulatory changes pursuant to N.J.S.A. 52:14B-4 without providing further notice.

10:49-10.3 Opportunity for fair hearing

(a) An opportunity for a fair hearing may be granted to any provider requesting a hearing on any valid complaint or issue arising out of the claims payment process.

1. Such issues shall include, but not be limited to, denials of prior authorization and denial of claims submitted for payment.

2. Such requests for hearing shall be made in writing within 20 days from the date of the notice of the agency action giving rise to said complaint or issue.

3. For claim denial or payment adjustment, the 20 days' notice starts from the date in the right hand corner of the Remittance Advice Claims Status returned to providers with the Remittance Advice cover page (see Fiscal Agent Billing Supplement following the second chapter of each Providers Services Manual regarding the Remittance Advice cover page and Claims Status explanations and examples). Providers should include a photocopy of the applicable Claims Status page, highlighting the recipient and applicable edit code(s) when submitting a hearing request.

(b) An opportunity for fair hearing shall be granted to all claimants requesting a hearing because their claims for medical assistance are denied or are not acted upon with reasonable promptness, or because they believe the agency has erroneously terminated, reduced or suspended their assistance. The agency need not grant a hearing if the sole issue is one of a Federal or State law requiring an automatic termination, reduction or suspension of assistance affecting some or all claimants. Under this requirement:

1. A request for hearing shall be defined as any clear expression (submitted in writing) by claimants (or someone authorized to act

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on behalf of claimants) to the effect that they desire the opportunity to present their case to higher authority;

2. The freedom to make such a request shall not be limited or interfered with in any way, and departmental emphasis shall be on helping claimants to submit and process their case if needed;

3. Claimants shall have 20 days from the date of notice of departmental action in which to request a hearing;

4. The fair hearing shall include consideration of:

i. Any departmental action, or failure to act with reasonable promptness, on a claim for medical assistance, which includes undue delay in reaching a decision on eligibility, suspension of assistance or denial of such assistance in whole or in part;

ii. Department decision regarding:

(1) Eligibility for medical assistance in both initial and subsequent determinations;

(2) Amount of medical assistance or change in such assistance;

5. The Department may respond to a series of individual requests for fair hearings by arranging for a single group hearing. A consolidation of cases by the Department may be allowed only in cases which the sole issue involved is one of federal or State law or policy;

6. In all group hearings, whether initiated by the Department or by claimants, the policies governing fair hearings shall be followed. Thus, each individual claimant shall be permitted to present his or her own case and be represented in accordance with the provisions of N.J.A.C. 10:49-9.9(a)3; and

7. The Department shall not deny or dismiss a request for a hearing except where it has been withdrawn by claimant in writing or abandoned.

(c) For purposes of these rules, the right to a hearing is considered abandoned if claimants or their representative fail to appear at a scheduled hearing and, within five days after receipt of an inquiry as to whether they desire any further action on their request, no reply is received. Refusal of acceptance of a registered letter inquiring into contemplated further action by claimants shall constitute abandonment effective the date of refusal.

10:49-10.4 Advance notice of intent to terminate, reduce, or suspend assistance

(a) In cases of any proposed action to terminate, reduce or suspend assistance, the Department shall give the claimant timely and adequate notice detailing the reasons for the proposed action. Under these requirements:

1. "Timely" means that the notice is dated at least 10 days before the action is to be taken; and

2. "Adequately advance notice" means a written notice that includes a statement of the action the Department intends to take, reasons for the proposed departmental action, the specific regulations that support, or the change in Federal or State law that requires, the action, the claimant's right to request a fair hearing, or in cases of a departmental action based on a change in law, the circumstances under which a hearing shall be granted, and the circumstances under which assistance shall be continued if a fair hearing is requested.

(b) In cases in which there is a request for a fair hearing within the advance notice period:

1. Assistance shall be continued until a decision is rendered unless:

i. It is determined at the hearing that the sole issue is one of Federal or State law or policy; and

ii. The Department promptly informs the claimant in writing that services shall be terminated or reduced pending the hearing decision.

2. If the Department's action is sustained by the hearing decision, the Department may institute recovery procedures against claimants to recoup the cost of any services furnished claimants to the extent the services were furnished solely by reason of this section.

(c) The Department may reinstate services if a claimant requests a hearing not more than 10 days after the effective date of the termination, suspension or reduction of eligibility or covered services.

1. If services are reinstated, they shall continue until a hearing decision is made unless it shall be determined at the hearing that the sole issue is one of Federal or State law or policy.

(d) The Department shall reinstate and continue services until a decision is rendered after a hearing if:

1. An action is taken to terminate, suspend or reduce eligibility or covered services without affording claimants adequate advance notice as defined herein;

2. Claimants request a hearing within 10 days of the date of the notice of action; and

3. The Department determines that the action to terminate, reduce or suspend assistance resulted from reasons other than the application of federal or State law or policy.

(e) If a claimant's whereabouts are unknown, as indicated by the return of unforwardable departmental mail directed to them, any discounted services shall be reinstated if their whereabouts become known during the time they are eligible for services.

10:49-10.5 Location of hearing

The hearing shall be conducted at a reasonable time, date and place after adequate written notice of the hearing is given.

10:49-10.6 Inpartiality of official conducting the hearing

The hearing shall be conducted by an Administrative Law Judge from the Office of Administrative Law or by other persons eligible to conduct hearings pursuant to the New Jersey Administrative Procedure Act, set forth in N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq.

10:49-10.7 Recipient's right to different medical assessment

When the hearing involves medical issues, such as those concerning a diagnosis or an examining physician's report or the medical review team's decision, and if the hearing officer considers it necessary to have a medical assessment other than that of the person or persons involved in making the original decision, such medical assessment shall be obtained at Departmental expense from a source satisfactory to the claimant and shall be made part of the record.

10:49-10.8 Hearing procedures

The hearing shall be conducted pursuant to the procedures set forth in the Administrative Procedures Act, the Uniform Administrative Procedure Rules (N.J.A.C. 1:1) and the Special Hearing Rules set forth at N.J.A.C. 1:10B. (See 42 C.F.R. 431.200, Subpart E).

10:49-10.9 Prompt, definitive and final action

Prompt, definitive and final administrative action shall be taken within 90 days from the date of the request for a fair hearing, except where claimant requests an adjournment.

10:49-10.10 Notification to claimants

Claimants shall receive a written final decision, in the name of the Department and shall be notified of their right to judicial review.

10:49-10.11 Action upon favorable decision to claimants

When the final hearing decision is favorable to claimants or when the Department decides in favor of claimants prior to the hearing, the Department shall make corrective payments retroactively to the date the incorrect action was taken or such earlier date as may be provided under State policy.

10:49-10.12 Hearing decision

(a) A final decision by the agency head shall specify the reasons for the decision and identify the supporting evidence or may incorporate by reference the findings, conclusions, and recommendations, contained in the initial decision.

(b) Final decisions shall be binding on the Department.

(c) Under this rule, no person who participated in the loca decision being appealed shall participate in a final administrative decision on such a case; the Department shall be responsible fo seeing that the decision is carried out promptly.

(d) The final decision shall be promptly implemented.

10:49-10.13 Accessability of hearing decisions to local agencies and the public

The Department shall establish and maintain a method for inform ing, at least in summary form, all local agencies of all fair hearin decisions by the hearing authority and the decisions shall be ac

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cessible to the public (subject to the provisions of safeguarding public assistance information).

SUBCHAPTER 11. EXCLUSION FROM PARTICIPATION IN THE NEW JERSEY MEDICAID PROGRAM (SUSPENSION, DEBARMENT, AND DISQUALIFICATION)

10:49-11.1 Program participation

(a) The provisions of this section were adopted and issued pursuant to Executive Order No. 34, dated March 29, 1976, and the authority vested in the Division of Medical Assistance and Health Services to implement the New Jersey Medicaid Program by rules and regulations set forth in N.J.S.A. 30:4D-5, and by N.J.S.A. 30:4D-17.1 a and c.

(b) Suspension, debarment, and disqualification are measures which shall be invoked by the Division of Medical Assistance and Health Services to exclude or render ineligible certain persons from participation in contracts and subcontracts with the Division, or in projects or contracts performed with the assistance of and subject to the approval of the Division, on the basis of a lack of responsibility. These measures shall be used for the purpose of protecting the interests of the Division and not for punishment. To assure the Division the benefits to be derived from the full and free competition between and among such persons and to maximize the opportunity for honest competition and performance, these measures shall not be invoked for any time longer than deemed necessary to protect the interests of the Division.

1. Any individuals, including, but not limited to, owners, officers, administrators, assistant administrators, employees, accountants, attorneys, and management services, who have been suspended, debarred or disqualified from participation in the Medicaid Program for any reason shall not be involved in any activity relating to the New Jersey Medicaid Program.

2. Providers reimbursed on a cost-related basis may not claim as allowable costs any amounts paid or credited to such individuals, and such amounts shall not be reimbursed by the New Jersey Medicaid Program.

3. Providers reimbursed on a fee-for-service basis may not submit claims and shall not be reimbursed for any goods supplied or services rendered by such individuals.

4. The above policy shall apply only for the period during which such individuals are suspended, debarred or disqualified from Medicaid participation.

(c) Definitions, as used in this section, shall include the following:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Debarment" means an exclusion from State contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in State contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Division" means the Division of Medical Assistance and Health Services, which administers Medicaid, Federally waivered programs (see N.J.A.C. 10:49-1.6) and state funded programs (see N.J.A.C. 10:49-1.7).

"Fiscal Agent" means an entity which processes and pays claims on behalf of the State of New Jersey.

"Person" means any natural person, company, firm, association, corporation or other entity.

"Provider" means any person, public or private institution, agency or business concern lawfully providing medical care, services, goods and supplies authorized under the New Jersey Medicaid Program (P.L. 1968, c.413 (N.J.S.A. 30:4D-1 et seq.), as amended, holding, where applicable, a current valid license to provide such services or to dispense such goods or supplies.

"State" means the State of New Jersey or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

"State contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the State, other than by virtue of State employment, or to supply anything to or perform any service for a private person where the State provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Suspension" means an exclusion from State contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

(d) Any of the following, among other things, shall constitute a good cause for suspension, debarment, or disqualification of a person engaged in State contracting, as defined herein, by the Division of Medical Assistance and Health Services:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the anti-kickback provisions of the Social Security Act at 42 U.S.C. 1320 a-7b (b), subject to the exceptions set forth in 42 CFR 1001.952;

4. Violations of any of the laws governing the conduct or elections of the State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq. as supplemented by P.L. 1975, c.127), or of the "Act Banning Discrimination in Public Works Employment" (N.J.S.A. 10:2-1 et seq.) or of the "Act Prohibiting Discrimination by Industries Engaged in Defense Work in the Employment of Persons Therein" (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violations of any laws, regulations or code of ethics governing the conduct of occupations or professions or regulated industries;

8. Willful failure to perform in accordance with contract specifications or within contractual time limits;

9. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

10. Violations of contractual or statutory provisions regulating contingent fees;

11. Presentment for allowance or payment of any false or fraudulent claim for services or merchandise;

12. Submitting false information for the purpose of obtaining greater compensation than that to which the person is legally entitled;

13. Submitting false information for the purpose of obtaining authorization requirements;

14. Failure to disclose or make available to the Division of Medical Assistance and Health Services or its authorized agent, records of services provided to or payments made on behalf of Medicaid recipients;

15. Failure to provide and maintain quality services to Medicaid recipients within accepted medical community standards as adjudged by a body of peers;

16. Engaging in a course of conduct or performing an act deemed improper or abusive of the New Jersey Medicaid Program following notification that said conduct should cease;

17. Breach of the terms of the Medicaid provider agreement entered into with the Division or failure to comply with the terms of the provider certification on the Medicaid claim form;

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18. Overutilizing the New Jersey Medicaid Program by inducing, furnishing or otherwise causing an individual to receive service(s) or merchandise not otherwise required or requested by the recipient;

19. Rebating or accepting a fee or portion of a fee or charge for a Medicaid recipient referral;

20. Violating any provision of N.J.S.A. 30:4D-1 et seq. (New Jersey Medical Assistance and Health Services Act) as amended, or any rule or regulation promulgated by the Commissioner of Human Services pursuant thereto;

21. Conviction of any crime involving moral turpitude;

22. Submission of a false or fradulent application for provider status to the Division or to its fiscal Agent;

23. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Division to warrant debarment, including such conduct as may be proscribed by the laws or contracts enumerated in this subsection, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

24. Debarment by some other department or agency in the executive branch;

25. Suspension, debarment, disqualification or exclusion from participation in the Medicaid Program of another state; or

26. Suspension or exclusion from participation in the delivery of medical care or services under Title XVIII, XIX or XX of the Federal Social Security Act by the Secretary of the United States Department of Health and Human Services.

(e) Conditions for debarment shall be as follows:

1. Debarment shall be made only upon approval of the Director of the Division, except as otherwise provided by law.

2. The existence of any of the causes set forth in (d) above shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Director of the Division unless otherwise required by law, and shall be rendered in the best interests of the Division.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in (d)1 through 7 above shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in (d)8, 9, 10 and 23 above shall be established by evidence which the Division or agency determines to be clear and convincing in nature.

6. The existence of a cause set forth in (d)1 through 7, 11 through 22, and 24 above shall be established by a preponderance of the believable evidence.

7. Debarment for the cause set forth in (d)24 above shall be proper, provided that one of the causes set forth in (d)1 through 23 above was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

(f) If the Division seeks to debar a person or his or her affiliates, the Division shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment and indicating that such party will be afforded an opportunity for a hearing if he or she so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act. However, where one department or agency has imposed debarment upon a party, a second department or agency may also impose a similar debarment without affording an opportunity for a hearing, provided that the second agency furnishes notice of the proposed similar debarment to that party and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(g) Debarment shall be a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is accorded an opportunity to present information in his or her behalf to explain why the additional period of debarment should not be imposed.

(h) Scope of debarment rules shall be as follows:

1. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the debarring agency upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

2. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his or her official duty or was effected by him or her with the knowledge or approval of such person.

3. Debarment by the Director of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its Fiscal Agent for any services or supplies he or she has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the debarment. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the Division or its Fiscal Agent for any services or supplies provided by a person within such organization who has been debarred by the Director, except for services or supplies provided prior to the debarment.

4. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may debar such organization and/or any individual person within said organization who is responsible for such violation.

(i) The Division may suspend a person in the public interest for any cause specified in (d) above, or upon a reasonable suspicion that such cause exists, or when, in the opinion of the Director, such action is necessary to protect the public welfare and the interests of the medical assistance Program.

(j) Conditions for suspension shall be as follows:

1. Suspension shall be imposed only upon approval of the Director of the Division and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Director of the Division and of the Attorney General, and shall be rendered in the best interests of the Division.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in (d) above may be established by a judgment or order of an administrative agency, or court of competent jurisdiction, or by a judgment of conviction, grand jury indictment, accusation, arrest, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by the Division for any of the causes described in (d) above may be the basis for the imposition of a concurrent suspension by another agency, which may impose such suspension without the approval of the Attorney General.

(k) The Division may suspend a person or his affiliates provided that within 10 days after the effective date of the suspension, the

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Division provides such party with a written notice stating that a suspension has been imposed and its effective date, setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed, stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue, and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party shall be given either a statement of the reasons for the suspension and an opportunity for a hearing, if he so requests, or a statement declining to give such reasons and setting forth the agency's position regarding the continuation of the suspension. Where a suspension by the Division has been the basis for suspension by another agency, the latter shall note that fact as a reason for its suspension.

(1) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

(m) Scope of suspension rules are as follows:

1. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he or she is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him or her with the knowledge or approval of such person.

2. Suspension, by the Director, of any provider of service shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the Division of Medical Assistance and Health Services or its Fiscal Agent for any services or supplies he or she has provided under the New Jersey Medicaid Program, except for services or supplies provided prior to the suspension. No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the Division or its Fiscal Agent for any services or supplies provided by a person within such organization who has been suspended by the Director, except for services or supplies provided prior to the suspension.

3. When the provisions of this section are violated by a provider of service which is a clinic, group, corporation or other association, the Director may suspend such organization and/or any individual person within said organization who is responsible for such violation.

(n) Exclusion from State contracting by virtue of debarment, suspension or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the Division. However, when it is determined essential to the public interest by the Director of the Division, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

(o) Insofar as practicable, prior notice shall be given to the Attorney General and the Treasurer of any proposed debarment or suspension.

(p) The Division shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

(q) This section shall be applicable to all persons, providers, contractors, Fiscal Agent, and their affiliates who engage in State contracting with the Division as defined in this section.

SUBCHAPTER 12. PROVIDER REINSTATEMENT

10:49-12.1 Definitions

As used in this subchapter, the following words shall have the following meanings, unless the context clearly indicates otherwise:

"Committee" means the Provider Reinstatement Committee.

"Director" means the Director of the Division of Medical Assistance and Health Services.

"Division" means the Division of Medical Assistance and Health Services.

"Person" means any natural person, company, firm, corporation, professional association, partnership, or other entity, who has been excluded from participation in the New Jersey Medicaid Program.

10:49-12.2 Requests for reinstatement

Persons who have been debarred, disqualified or suspended from participating in the New Jersey Medicaid Program or programs administered by the Division shall petition the Director for reinstatement in writing.

10:49-12.3 Petition by debarred, disqualified or suspended person

(a) Persons debarred or disqualified for a definately stated period of time may petition the Director for reinstatement 90 days prior to the expiration of the period of debarment or disqualification.

(b) Persons disqualified for an indefinitely stated period of time may petition the Director for reinstatement after a disqualification period of eight years.

(c) Persons who have been suspended, debarred or disqualified as the result of an indictment, conviction or license revocation may immediately petition the Director for reinstatement upon acquittal, reversal of the conviction upon appeal or restoration of the license, whichever is applicable.

10:49-12.4 Director's powers

The Director may on his or her own motion order the reinstatement of debarred, disqualified or suspended persons or may refer the matter to the Provider Reinstatement Committee.

10:49-12.5 Provider Reinstatement Committee

(a) The Provider Reinstatement Committee shall be a non-standing committee that is convened for the purpose of evaluating requests for reinstatement.

1. The Committee shall be composed of three impartial officials of the Division appointed by the Director.

i. Under this requirement, the Committee members shall not have been directly involved in the debarment, disqualification or suspension of persons requesting reinstatement.

ii. The Chairperson of the Committee shall be an attorney from the Office of Legal and Regulatory Liaison/Division of Medical Assistance and Health Services.

iii. Whenever possible, the associate members of the Committee shall be one member of the Division staff from the same discipline as the debarred, disqualified or suspended persons and one member from the general administrative staff of the Division.

10:49-12.6 Criteria for reinstatement

(a) Reinstatement will not be granted unless it is reasonably certain that the causes which led to the debarment, disqualification or suspension shall not be repeated. In determining a person's fitness for reinstatement, the Committee and the Director may consider, among other factors:

1. Statements from debarred, disqualified or suspended persons setting forth the reasons why they should be reinstated;

2. Statements from private health insurers, indicating whether there have been any questionable claims submitted during the period of exclusion from Program participation;

3. Statements from peer review bodies, probation or parole officers or professional associates, attesting to their belief, supported by facts, that the causes which led to the debarment, disqualification or suspension shall not be repeated;

4. The absence of any pending criminal, licensing, or professional disciplinary proceedings;

5. Full restitution and the payment of any criminal fines imposed;

6. Full satisfaction of any civil penalties imposed;

7. Full satisfaction of interest payments;

8. Compliance with the terms and conditions of Consent Orders or Court Orders; and

9. Satisfaction of any conditions or requirements previously imposed by the Division.

10:49-12.7 Committee procedures

(a) The Committee shall meet at the Division's central offices.

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(b) Persons requesting reinstatement and/or their representative shall be notified, in writing, as to the time, date and place of the meeting.

(c) All correspondence concerning the meeting shall be directed to the Chairperson of the Committee.

(d) Persons requesting reinstatement may appear on their own behalf or be represented by counsel.

(e) The Committee shall be governed by the New Jersey Administrative Procedure Act concerning admissibility of evidence at the meeting.

(f) The Chairperson of the Committee shall rule on all procedural questions and objections that may be raised at the meeting.

(g) Persons requesting reinstatement shall have the burden of providing their fitness for reinstatement by a preponderence of the evidence.

(h) Persons may present evidence of their fitness for reinstatement by the testimony of witnesses under oath or by documentary evidence, or both.

(i) After reviewing the testimony and documentation presented, the Committee shall prepare a written report which discusses the testimony, contains findings of facts and recommended disposition.

(j) At least two members of the Committee shall concur in the recommended dispostion.

(k) Copies of the Committee's report shall be sent to all parties at the meeting. Upon receipt of the Committee's report, the parties shall have the opportunity to submit written objections or exceptions to said report within the time period specified by the committee.

(l) After the expiration of the time period prescribed for the filing of the exceptions, the Committee's report, exceptions or objections thereto, evidence and any transcripts shall be forwarded to the Director.

(m) The Director shall have final decisional authority and may adopt, reverse or modify the Committee's recommended determination. The Director may also, for cause, remand the matter back to the Committee for further testimony.

SUBCHAPTER 13. PROGRAM CONTROLS

10:49-13.1 Medical review and evaluation

Under the provisions of Federal and State law, the Division of Medical Assistance and Health Services shall provide continuing review and evaluation of the care and services provided under the Program. This includes review of utilization of services of practitioners and other providers.

10:49-13.2 Audits

(a) A field audit shall be subject to the following:

1. "Completion of the field audit" for nursing facility providers for purposes of N.J.S.A. 30:4D-17(f) shall be defined in the following manner:

i. For all such audits and audit recovery cases pending on March 1, 1983, it shall mean the date that field work is completed, or the date information requested from the provider during the course of that field work is received, whichever is later.

ii. For all such audits and audit recovery cases pending on March 1, 1983, which are, have been or will be referred either to the Legal Action Committee, or to the Division of Criminal Justice or other agency for criminal investigation, it means the date the Office of Program Integrity Administration (OPIA) receives authorization to take administrative action.

iii. For all such audits initiated on or after March 1, 1983, it means the date the exit conference is completed or the date information requested from the provider during the course of the exit conference is received, whichever is later.

2. "Completion of the field audit" for all other providers for purposes of N.J.S.A. 30:4D-17(f) shall be defined in the following manner:

i. For all such audits and audit recovery cases pending on March 1, 1983, it means the date of final screening of the case file by the Assistant Director, Office of Program Integrity Administration (OPIA) or, if the case is referred to the Legal Action Committee or the Division of Criminal Justice, the date OPIA receives authorization to take administrative action;

ii. For all such audits initiated on or after March 1, 1983, it means the date of final screening of the case file by the Assistant Director, OPIA.

3. Notwithstanding any of the previous subsections, if after the screening of any provider audit initiated on or after March 1, 1983, the Assistant Director, OPIA, determines with reasonable justification that an act or omission on the part of the provider requires additional field work, the field audit shall be considered completed when the additional field work is completed.

4. Notwithstanding any of the previous subsections, if after the screening of any provider audit initiated on or after March 1, 1983, the Assistant Director, OPIA, determines with reasonable justification that an act or omission on the part of the provider requires that additional information or documentation be obtained from the provider, then a completed field audit shall be considered reopened and interest shall again accrue for the period beginning 20 days from the date the request for such information or documentation is received by the provider and ending on the date that all of the requested information or documentation is received by the agency making the request.

5. Notwithstanding any of the previous paragraphs, if all or part of any provider audit initiated on or after March 1, 1983, is referred to the Division of Criminal Justice or other agency for criminal investigation:

i. In the event no criminal action results from the referral the field audit shall be considered completed one year from the date the decision was made to refer the matter for criminal investigation; and

ii. In the event criminal action does result from the referral, the field audit shall be considered completed on the date OPIA receives authorization to take administrative action.

(b) "Final audit," for purposes of N.J.S.A. 30:4D-7m only, means that point in the audit process when the Division issues to the provider an audit report specifically designated as the "final audit" for a specified period audited.

SUBCHAPTER 14. RECOVERY OF PAYMENTS AND SANCTIONS

10:49-14.1 Recovery of payments correctly made

(a) Correctly paid benefits shall only be recoverable from the estate of an individual who was 65 years of age or older when he or she received medical assistance if:

1. The individual leaves no surviving spouse;
2. The individual leaves no surviving child;
3. The amount to be recovered is in excess of $500.00; and
4. The gross estate is in excess of $3,000.

(b) Paragraphs (a)3 and 4 above shall apply to recoveries from the estates of individuals who died on or after July 20, 1981, the effective date of P.L. 1981, c.217 (N.J.S.A. 30:4D-7.2a).

10:49-14.2 Sanctions—Special Status Program

(a) The "Special Status Program" either restricts the Medicaid recipient(s) listed on the Medicaid Eligibility Identification (MEI) Card to a single provider, except in a medical emergency, or warns providers that the recipient's card has been used by an unauthorized person or persons, or for an unauthorized purpose. If a warning card is issued, a message will be printed on the card alerting the provider to ask the Medicaid recipient for additional identification or to take other appropriate action.

1. The restrictive card is issued to Medicaid recipients determined to have misused, abused or overutilized their Medicaid benefits. Overutilization occurs when a recipient has utilized Medicaid services or items at a frequency or amount that is not medically necessary. Examples of misuse or abuse include, but are not limited to, medically harmful or inappropriate use of different drugs or provider services and forgery or alteration of prescriptions. A determination that there has been misuse, abuse or overutilization of benefits obtained by use of an MEI Card shall create a presumption that the recipients listed on the MEI Card were responsible for such actions. If this presumption is successfully rebutted by the Medicaid recipient, he or she shall not be enrolled in the Special Status Program.

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i. A recipient shall be permitted to change the designated provider upon demonstration of good cause and the Division may grant the request.

ii. The Division may change the provider to which the recipient is restricted if a pattern of continued misuse, abuse or overutilization is evident.

iii. The recipient may request a contested case hearing in the following situations:

(1) If the recipient objects to being included in the special status program;

(2) If the recipient requests a change and the request is denied;

(3) If the agency causes undue delay in responding to the recipient's request for change.

2. The warning card is issued to Medicaid recipients determined to have had their MEI Card used by an unauthorized person or persons, or for an unauthorized purpose. The purpose of the warning card is to notify providers that the recipient's MEI Card has been used by an unauthorized person or persons, or for an unauthorized purpose. A message will be printed on the card alerting the provider to ask the Medicaid recipient for additional identification or to take other appropriate action. A determination that an MEI Card has been used by an unauthorized person or for an unauthorized purpose shall create a presumption that the recipients listed on the MEI Card were responsible for such actions. If this presumption is successfully rebutted by the recipient, the recipient shall not be issued a warning card.

10:49-14.3 Authority to adjust, compromise, settle or waive claims, liens, and certificates of debt

(a) The Commissioner, Department of Human Services; Director, Division of Medical Assistance and Health Services; Assistant Director, Office of Program Integrity Administration; or anyone serving in an acting capacity in any of those positions shall have the authority to adjust, compromise, settle or waive any claim, lien or certificate of debt arising under this act (N.J.S.A. 30:4D-1 et seq.), and to execute an appropriate release or document of discharge with respect to that claim, lien or certificate of debt.

(b) Such authority may be exercised by other officials only in the following limited circumstances:

1. The Chief of the Bureau of Administrative Control may compromise, settle or waive any claim or lien not arising under N.J.S.A. 30:4D-7(h) within the dollar limits specified by the Director, Division of Medical Assistance and Health Services; and

2. The Fiscal Agent may compromise, settle or waive claims arising under N.J.S.A. 30:4D-7(h) within the dollar limits specified by the Director, Division of Medical Assistance and Health Services.

10:49-14.4 Recoveries involving county welfare agencies

(a) The purpose of this section is to define areas of responsibility and establish basic principles and procedures in those collection activities in which the Division of Medical Assistance and Health Services (DMAHS), the Division of Economic Assistance (DEA) and/or a county welfare agency (CWA) may be involved. It is intended that maximum conservation of public funds be effected without duplication of effort. It is recognized that certain situations may fall into more than one of the following categories. Any such matter will be processed in accordance with the provisions of the first occuring applicable category.

(b) The following pertain to incorrectly granted assistance (cash and/or medical assistance):

1. In instances involving incorrect eligibility for medical assistance, whether or not in combination with cash assistance, the CWA shall determine the period(s) of ineligibility and ascertain from DMAHS the amount of medical assistance incorrectly granted. The CWA shall then attempt recovery of medical assistance incorrectly granted either by administrative collection, or by way of restitution in a criminal or disorderly persons proceeding.

i. Recoveries or attempts at recoveries can be made from those persons specified in N.J.S.A. 30:4D-7i.

2. When recovery cannot be obtained by these methods in a case generated by the Internal Revenue Service (IRS) unearned income component of the Income and Eligibility Verification System (IEVS), the case shall be referred by the CWA to DMAHS for possible initiation of recovery proceedings.

3. When in any other case not generated by IEVS, recovery cannot be obtained by these methods, the CWA is authorized after securing DMAHS approval to initiate recovery proceedings as DMAHS' agent. If the CWA does not initiate such recovery proceedings, it shall refer the case to DMAHS for possible initiation of recovery proceedings.

4. When collection occurs in a case involving both cash assistance and medical assistance, the CWA shall, in the absence of court instruction to the contrary, apply the net proceeds, after deducting identifiable costs of collection such as filing fees and advertising costs but not including such costs as CWA staff time, supplies, counsel fees or overhead, to the repayment of cash assistance and the reimbursement of DMAHS.

5. When in any other case a CWA recovers only medical assistance improperly granted, the CWA shall reimburse itself for those cash expenses directly related to the recovery such as filing fees and advertising costs but not including costs such as CWA staff time, supplies, counsel fees or overhead. In addition, the CWA shall retain 10 percent of the gross amount of the recovery up to $250.00. The CWA shall remit the remaining proceeds to DMAHS. The reimbursement shall be payable to the Treasurer, State of New Jersey.

6. When any CWA action, whether alone or in combination with DMAHS, results in a recovery of improperly granted medical assistance from a case generated by the Internal Revenue Service (IRS) unearned income component of the IEVS match, all funds recovered shall be remitted to DMAHS, payable to the Treasurer, State of New Jersey, which shall then reimburse the CWA in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

(c) The following pertain to third party liability claims in tort actions:

1. Whenever either a CWA or DMAHS learns of a situation in any case in which the other may have a claim it will notify the other.

2. Unless the individual case circumstances intervene, the first claim after settlement or judgment is for any payments by DMAHS arising from the occurrence notwithstanding any CWA claim for recovery of cash assistance. The next claim is that which the CWA may assert in accordance with an agreement to repay or similar document. The DMAHS and the CWA will, insofar as their controls allow, maintain priority of payment in the above order.

(d) The following pertain to liquidation of potential resources:

1. The CWA will participate in the liquidation of potential resources according to the Program requirements under which eligibility has been established, regardless of whether cash assistance is being granted. Notification of the potential resource to be liquidated shall be forwarded to DMAHS, enabling it to seek a voluntary contribution. Sale of real property to which title is held by a CWA is subject to DEA approval in all instances regardless of the proposed distribution of the proceeds.

2. All funds arising from the liquidation of resources and which, by action of law, regulation, or agreement with the owner, fall under the jurisdiction of either a CWA or DMAHS for distribution will, insofar as possible, be allocated as follows:

i. Proceeds will be first applied to the cash costs of liquidation, such as advertising costs and filing fees but not including costs such as CWA staff time, supplies, counsel fees or overhead.

ii. Proceeds will be next applied to any claims superior to that of the CWA (for example, taxes).

iii. Proceeds will be next applied to any funds owing to and collectible by the CWA.

iv. Any residue remaining after the above payments are allocated would, in the absence of circumstances to the contrary, be the property of the client and thereby subject to (d)3 below.

3. All funds properly belonging to a client free of any agency claim are to be remitted to the client as promptly as possible or otherwise disbursed at the client's instruction. The CWA will promptly reevaluate eligibility following such distribution, taking into consideration any voluntary repayment to DMAHS.

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(e) The following pertains to recovery from estates of deceased clients:

1. The CWA shall normally undertake recovery activity as agent for DMAHS in any case in which the CWA is or will be undertaking activities on its own account. However, in those cases where the recovery of medical assistance is possible and where the entire CWA claim is for burial expenses only, DMAHS shall initiate recovery activity inclusive of CWA burial costs. DMAHS may, in certain cases, assume direct jurisdiction in recovery of its claim concurrent with CWA activity. DMAHS shall make the CWA aware of its activity in such cases.

2. CWA recoveries and distribution shall be in accord with the following procedures:

i. From the proceeds of liquidation, the CWA shall first recover the amount necessary to satisfy its own claim, including costs of liquidation and the claims of other New Jersey CWAs. The CWA shall recover funds from the clearing account in the order in which the funds were received in the clearing account. If any part of any remaining surplus has been received from the proceeds of assigned life insurance for which there was a named beneficiary other than the client's estate, that surplus or the policy benefit, whichever is less, is the property of the beneficiary and should be so directed.

ii. All other surplus funds are part of (or the entire) the client's estate and are payable to the legally designated representative of the estate. If the representative of the estate is unknown or if no representative has been appointed and there are no known next of kin, the CWA shall forward to the DMAHS an amount not to exceed the amount of the proper medical assistance claim as determined by communication with the Chief, Bureau of Administrative Control, DMAHS. Any remaining funds will escheat to the State of New Jersey.

iii. When there are known next of kin, the CWA shall request the next of kin to take appropriate legal action to be appointed administrator if the amount to be disbursed is greater than the claim of DMAHS. If the claim of DMAHS will equal or exceed the estate, the CWA shall request the next of kin to sign a consent to transfer his or her rights to DMAHS and, upon receipt of such signed consent, the CWA shall forward the funds to DMAHS.

iv. When the next of kin will not sign a consent to transfer his or her right to DMAHS and will not file to become the administrator, the CWA may, at its option, arrange for someone to file to become administrator or the CWA may refer the information to DMAHS for action.

v. In any questions or dispute among two or more claimants on surplus funds, the CWA shall withhold payment pending resolution by mutual consent of all claimants or by court order.

3. DMAHS recoveries and distribution shall be in accordance with the following procedures:

i. DMAHS shall undertake recovery activity in medical assistance payment cases in which no CWA shall be submitting a claim. However, should information from the CWA be necessary to such DMAHS activity, the CWA shall communicate with DMAHS, supplying such material as may be required.

ii. In cases in which DMAHS is acting for a CWA in collection of burial expenses, DMAHS shall accord payment of the burial claim priority over its own recovery.

(f) The CWA may at any time accept an offer of voluntary repayment, either on its own behalf or on behalf of DMAHS, up to but not in excess of the amount of assistance granted. To any inquiry as to amount granted, the CWA shall supply the appropriate information, identifying the respective amounts granted by the CWA and DMAHS. In the absence of instruction from the payer, the CWA will reimburse cash assistance first and then remit any balance to DMAHS.

(g) Regarding compromise settlements:

1. Compromise settlements of cash assistance are subject to DEA approval.

2. Compromise settlements of medical assistance are subject to DMAHS approval.

(h) This section shall apply to all pending and future recovery cases, except that (b)6 above shall apply to all IEVS-related recoveries received on or after July 1, 1989 by either DMAHS or the CWA, whichever agency is handling the recovery.

10:49-14.5 Administrative charges/service fees

(a) A provider shall not pay nor require payment of an administrative charge or service fee for the privilege of doing business with another provider or for services for which reimbursement is included as part of the Medicaid fee.

1. An example of a prohibited practice is that a nursing facility may not require a pharmacy to pay an administrative charge or service fee to the facility for handling of the nursing facility resident's medications, drugs and/or related pharmaceutical records.

2. An administrative charge may be made for the collection of a copayment on behalf of pharmacies from beneficiaries of the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program who are residents in nursing facilities. Such administrative charges may not exceed 10 percent of the billed amount, or $2.00, whichever is less.

10:49-14.6 Contracts with county welfare agencies

Payment shall be made by the Department of Human Services/ Division of Medical Assistance and Health Services to county welfare agencies for conducting investigations and for determining whether applicants qualify for benefits under the New Jersey Medicaid Program.

SUBCHAPTER 15. AVAILABILITY AND MAINTENANCE OF PROGRAM POLICY ISSUANCES

10:49-15.1 Maintenance of public policy issuances

Program manuals and other policy issuances which affect the public, including the Divisions' rules and regulations governing eligibility, need and amount of assistance, recipient's rights and responsibilities, and services offered by the agency, shall be maintained in the State office and in each Medicaid District Office for examination during regular workdays and regular office hours by individuals, and upon request, for study or reproduction by such individuals. These manuals and other policy issuances are also distributed to entities which serve as custodians such as the State Library, County Welfare Agencies, and regional legal services offices.

10:49-15.2 Availability of material

(a) In order to facilitate public access, a current copy of material described in N.J.A.C. 10:49-15.1 shall be made available without charge to custodians who request the material for this purpose.

(b) Custodians shall meet the following requirements:

1. They shall be centrally located and publicly accessible to a substantial number of the recipient population they serve; and

2. They shall agree to accept responsibility for filing all amendments forwarded by the agency.

10:49-15.3 Reproduction of policy material

(a) The specific policy materials necessary for an applicant or recipient (or his or her representative) to determine whether a fair hearing should be requested, or to prepare for a fair hearing, shall be reproduced without charge upon request.

(b) The Division may impose a charge for copying or reproducing materials. If a charge is imposed, it shall be computed pursuant to N.J.S.A. 47:1A-1.

SUBCHAPTER 16. DEMONSTRATION PROJECTS

10:49-16.1 Purpose

This subchapter sets forth the basic parameters for demonstration projects established pursuant to N.J.S.A. 30:4D-1 et seq., as amended, and Section 1115 of the Social Security Act. Any time a demonstration project is implemented, New Jersey Medicaid providers will receive information and instructions if the project is relevant to the services they provide.

10:49-16.2 Definitions

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

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"Beneficiary" means any person certified eligible for receipt of ervices in accordance with Title XIX of the Social Security Act and Chapter 413 of the Public Laws of New Jersey, including those ersons who are covered by virtue of the waiver granted under ection 1115 of the Social Security Act.

"Commissioner" means the Commissioner of the Department of Human Services.

"Department" means the Department of Human Services.

"Eligible beneficiaries" means those beneficiaries who meet the equirements to become a recipient.

"Principal" means all management personnel.

"Project" means any demonstration project authorized through a aiver of certain requirements under Title XIX of the Social Security ct as provided under Section 1115 of the Social Security Act.

"Provider" means providers of medical and health services under project.

"Recipient" means any beneficiary who receives services from the roject.

"Services" means medical or health services rendered as an intera part of the project.

0:49-16.3 Implementation of projects

The Department may implement projects directly or through conactual arrangements with any legal entity, including, but not limited , corporations organized pursuant to Title 14A, New Jersey statutes N.J.S.A. 14A:1-1 et seq.) and Title 15 revised statutes (R.S. 15:1-1 t seq.), as well as boards, groups, agencies, persons and other public r private entities.

0:49-16.4 Necessary criteria for a project

(a) The following shall apply to all projects implemented under is subchapter:

1. All projects shall have approval from the United States Departent of Health and Human Services;

2. All projects entered into under this subchapter shall be subject all relevant State and Federal statutes and regulations, except to e extent that appropriate waivers shall have been granted;

3. The Commissioner shall have the authority to review and apove in writing arrangements and agreements, whether formal or herwise, between all projects and third parties prior to the execuon thereof;

4. All projects in their hiring policies shall not discriminate against y individual on the basis of race, sex, religion, ethnicity or age, d shall comply with all the requirements of Title VI of the Civil ights Act of 1964, as amended, and other applicable Federal and ate laws or regulations pertaining to the civil rights of individuals;

5. No project shall deny services to any eligible person on the sis of race, sex, religion, ethnicity or age, and shall comply with l the requirements of Title VI of the Civil Rights Act of 1964, amended, pertaining to the civil rights of individuals;

6. All projects shall institute procedures for safeguarding of inrmation in compliance with applicable Federal and State regulaons and shall strictly adhere to same;

7. All projects shall collect and report data relevant to the project a periodic basis, in a manner and fashion prescribed by the epartment, including, but not limited to, the following:

i. Financial data, such as line item expenditure statements and dit reports;

ii. Data necessary to the project regarding the characteristics of e population involved in the project and the control population, any; and

iii. Program data, such as number and type of service rendered;

8. All projects shall furnish to the Department, in a manner and shion prescribed by the Department, periodic progress reports;

9. The Department, at its option, may require receipt of copies all project reports;

10. Any project entered into under this subchapter may include mponents fundable from sources other than that authorized by ction 1115 of the Social Security Act. These funds cannot be itched under the provisions of Section 1115 if they are federal ids or if these funds are not otherwise matchable;

11. Nothing herein shall abridge the Commissioner's statutory authority to implement and administer demonstration programs under Section 1115 of Title XIX of the Social Security Act and N.J.S.A. 30:4D-7, as amended;

12. Each project shall have the organizational and administrative capabilities to carry out its duties and responsibilities under the contract. This shall include as a minimum the following:

i. A full-time administrator to manage the day-to-day business activities of the project;

ii. Data reporting capabilities sufficient to provide necessary and timely reports to the Department;

iii. Financial reports and books of accounts maintained in accordance with general accepted accounting principles, which are sufficient to fully disclose the disposition of all program funds received; and

iv. An annual independent audit arranged for by the project;

13. Each project director shall advise the Department of the project's administrative organization and changes thereto. This includes the functions and responsibilities of each principal. An organization chart, and a list of all personnel, and providers used either directly by the project or through contractual arrangements. For each principal and each provider, not previously reported, the following information shall be included:

i. Full name;

ii. Business address;

iii. Date and place of birth;

iv. Social Security Account Number;

v. IRS employer number;

vi. Professional license number (when applicable); and

vii. Medical specialty (when applicable);

14. Each project director shall submit to the Commissioner for written approval a manual of administrative procedures which shall include personnel, purchasing and internal fiscal procedures. This manual shall be in conformance with approved management procedure; and

15. In those instances where a project involves the delivery of services, the following shall apply where appropriate and necessary:

i. The project shall demonstrate, to the satisfaction of the Commissioner, the capability to provide for and/or arrange for the provision of those services which are required as components of the project;

ii. All individuals 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;

iii. The project shall develop and establish grievance procedures for recipients in addition to fair hearing procedures established pursuant to this paragraph;

iv. The project shall take steps to insure that it is rendering services that are consistent with and utilizes existing related Federal and State programs such as the EPSDT;

v. The project shall insure that there will be periodic peer review and quality of care audits;

vi. The project shall utilize eligibility criteria for eligibles to receive services as defined by the Department, and the Department shall insure, by a review process, that the project is in conformance with these criteria;

vii. The project shall take appropriate action to insure that the eligibility criteria provided per (a)15vi above is faithfully executed;

viii. The project shall obtain written approval from the Commissioner prior to implementing the following:

(1) The methods of enrollment and enrollment forms to be used to enroll beneficiaries;

(2) The form and content of informational and instructional materials to be distributed to beneficiaries outlining the nature and scope of covered services provided by the project;

(3) The form and content of informational and instructional materials to be distributed to inform enrollees of changes in program scope or administration; and

(4) Provider claim forms and instructions for their use where such claim forms are unique to this contract;

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ix. The project shall provide to the Department, for written approval prior to use, the form and content of all public information releases pertaining to the project; and

x. The project shall insure that all marketing representatives have received instruction, as appropriate, from the Department, on acceptable enrollment practices.

10:49-16.5 Sanctions

The Commissioner, in addition to any and all other authority, shall have the authority to totally suspend or partially reduce payment in order to enforce compliance with this subchapter.

SUBCHAPTER 17. HOME AND COMMUNITY-BASED SERVICES WAIVERS

10:49-17.1 Introduction

(a) Home and Community-Based Services Waivers are five-year, renewable Federal waiver programs, prepared by the Division of Medical Assistance and Health Services in response to the Omnibus Budget Reconciliation Act of 1981 (Section 2176, Public Law 97-35 and amendments under P.L. 99-509). These Home and Community-Based Services Waivers were submitted to the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services. The purpose of these programs is to help eligible individuals remain in the community, or return to the community, rather than be cared for in a nursing facility or hospital setting.

(b) Retroactive eligibility is not available to waiver program recipients; no waiver service received prior to the date of enrollment shall be considered for reimbursement.

(c) Total program costs are restricted by limits on the number of community care slots and on per-person costs. The case manager is responsible for the development of the service plan with the client/family, with input from provider agencies, and for monitoring the cost of the service package.

(d) Any questions regarding Home and Community-Based Services Waivers may be directed to the Office of Home Care Programs, located in the Division of Medical Assistance and Health Services' Central Office, telephone number (609) 588-2620.

(e) The Division administers the following five Statewide waivers that are described in N.J.A.C. 10:49-17.2, 17.3 and 17.4 respectively:

1. Community Care Program for the Elderly and Disabled (CCPED);

2. Home and Community-Based Services Waivers for Blind or Disabled Children and Adults (Medicaid's Model Waivers I, II, and III); and

3. AIDS Community Care Alternatives Program (ACCAP).

10:49-17.2 Community Care Program for the Elderly and Disabled (CCPED)

(a) CCPED became effective October 1, 1983. The program allows for community care slots, allocated on a county basis in accordance with the needs of the county.

(b) The seven services listed below are available under CCPED. Other Medicaid (Title XIX) services are not available to the waivered population. There is a cost cap on each individual service package.

1. Case management;
2. Home Health;
3. Homemaker;
4. Medical day care;
5. Medical transportation (non-emergency);
6. Respite care; and
7. Social day care.

(c) Eligibility requirements for CCPED are as follows:

1. All individuals must be assessed to be in need of nursing facility care.

2. Individuals age 65 or over must be eligible for Medicare or have other health insurance coverage which includes hospital and physician coverage.

3. Individuals under 65 must be determined disabled by the Federal Social Security Administration and be eligible for Medicare or be determined disabled by the Division of Medical Assistance and Health Services' Disability Review Section and have other health insurance, including hospital and physician coverage.

4. An individual's own income must exceed the SSI community standard up to the institutional cap or be ineligible in the community because of SSI Deeming Rules. An individual's resources may not exceed those required in the institutional program. A spouse's income also is not considered. While the spouse's resources are considered in the determination of eligibility, up to one-half of the couple's total resources are protected for the use of the spouse.

5. In order to be enrolled in the program, a waiver slot must be available.

10:49-17.3 Medicaid's Model Waivers—I, II and III

(a) The Model Waivers are Home and Community-Based Service Waivers for Blind or Disabled Children and Adults. Included are Model Waiver I (effective September 1, 1983), Model Waiver I (effective April 1, 1985) and Model Waiver III (effective April 1 1986).

1. Model Waivers I and II serve a maximum of 50 individual each. Model Waiver III serves 150. There are no geographic limitations nor limitations on the number of individuals who can be served within any one county.

(b) The Model Waiver programs offer, with the exception o nursing facility services, all New Jersey Medicaid (Title XIX services, plus case management. Model Waiver III also offer private-duty nursing. "Private duty nursing" means individual an continuous care, in contrast to part-time or intermittent care provided by licensed nurses. Private duty nursing is limited to maximum of sixteen hours per day per person and will be provide only when there is a live-in primary caregiver (adult relative o significant other adult) who accepts 24-hour responsibility for th health and welfare of the recipient.

1. Each individual's service package must be no more than th cost of institutional care, determined at a projected weighted cos of hospital care or net average cost of nursing facility care.

(c) Eligibility requirements for the Model Waivers are as follow

1. Individuals must be in need of institutional care and meet th minimum nursing facility (NF) level of care criteria. Model Waive III also requires that individuals need private-duty nursing servic

2. For Model Waivers I and II, individuals must meet option categorically needy standards. Total income must exceed the SS community standard up to the institutional CAP, or the individu must be ineligible in the community because of SSI Deeming Rule Parental income or resources are not considered in determinin eligibility. While a spouse's income is not considered towar eligibility, up to one-half of the couple's total resources are protecte for the use of the spouse.

3. Model Waiver III applicants can either be optional categoricall eligible or categorical eligible. In other words, MW III also serve individuals who are eligible under SSI, DYFS or AFDC program

4. Individuals must be blind or disabled children and adult Individuals who have not been determined disabled under the Soci Security Act must be determined disabled by the Division of Medic Assistance and Health Services' Disability Review Section.

5. In order to be enrolled in the program, a waiver slot must b available.

10:49-17.4 AIDS Community Care Alternatives Program (ACCAI

(a) ACCAP became effective March 1, 1987. The program allow for an allocation of a specific number of slots in accordance wit the needs of each county in the State.

(b) ACCAP offers, with the exception of nursing facility service all New Jersey Medicaid (Title XIX) services, plus those listed i (a)1 through 7 below. Total program costs are restricted by th number of community care slots each year and on per-person cost Each individual's service package must be no more than the co of institutional care, determined at a projected weighted cost hospital care or net average cost of nursing facility care.

1. Case management;

2. For children:

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i. Intensive supervision to children who reside in Division of Youth and Family Services' foster homes; and
ii. Specialized group foster home;
3. Hospice care services at home;
4. Medical day care (specialized);
5. (Certain) Narcotic and drug abuse treatments at home;
6. Personal care assistant services (no limitation on the number of hours); and
7. Private-duty nursing.
(c) Eligibility requirements for ACCAP are as follows:
1. Individuals must be in need of institutional care and meet, at a minimum, the nursing facility level of care criteria.
2. Individuals must be diagnosed as having AIDS or ARC. Children under the age of five may also be diagnosed HIV positive.
3. Individuals who are categorically needy or optional categorically needy are served under the program.
4. There is no deeming or parental income or resources in the determination of eligibility. A spouse's income also is not considered. While the spouse's resources are considered in the determination of eligibility, up to one-half of the couple's total resources are protected for the use of the spouse.
5. Optionally categorically eligibles under age 65 must be determined disabled by the Social Security Administration (SSA) or by the Disability Review Section, Division of Medical Assistance and Health Services.
6. In order to be enrolled in the program, a waiver slot must be available.

SUBCHAPTER 18. HOME CARE EXPANSION PROGRAM

10:49-18.1 Introduction
(a) The Home Care Expansion Program (HCEP) (P.L. 1988, c.92), as set forth in N.J.S.A. 30:4E-6, is a Casino Revenue funded program. The intent of the legislation is to offer home care services to elderly and disabled persons in New Jersey who are at risk of institutionalization and whose income and resources exceed the financial requirements for Medicaid or the Community Care Program for the Elderly and Disabled (CCPED). It is anticipated that the provision of home care service will delay or prevent institutionalization. HCEP is available Statewide. Program slots are allocated to each county.
(b) The Division of Medical Assistance and Health Services has the responsibility for overall administration of the program and for monitoring the case management sites. The determination of eligibility and cost-share billing and collection is the responsibility of the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD).

10:49-18.2 Services
(a) HCEP can provide payment for a limited package of services including:
1. Case management services;
i. Case management is provided by a nurse or social worker. Case managers are responsible for assessing need for care, planning, locating, coordinating and monitoring the services designed to meet individual needs of persons being served. Case management services, provided by a variety of agencies, also include responsibility for the development of a service plan with input from the client/family, attending physician and provider agencies, and for monitoring the cost of the service package, and calculating cost-share liability;
2. Home health care over and above what Medicare allows;
3. Homemaker services;
4. Medical day care;
5. Non-emergency medical transportation;
6. Respite care to relieve caregiver for short periods of time; and
7. Social day care.
(b) Cost limitations/requirements for HCEP are as follows:
1. Total costs for HCEP are restricted by the amount of money appropriated to the Division of Medical Assistance and Health Services from the Casino Revenue Fund. The number of HCEP slots and the per person costs are limited in order to stay within these appropriated monies. The cost for care for each individual is limited to a percentage of the cost of nursing home care which will be determined periodically. There is no payment for services provided before enrollment in the program.
2. Clients may be required to share in the cost of their care. The amount of this cost-share is determined by the individual's income, the cost of the services, and the additional medical or remedial care received. Non-payment of this cost-share will result in termination from the program.

10:49-18.3 Eligibility requirements
(a) To qualify for HCEP services, an individual 65 or over must:
1. Need long-term home care services which are medically necessary to avoid or delay institutionalization;
2. Be eligible for Medicare or have other health care insurance which includes hospital and physician coverage; and
3. Have an annual income of less than $18,000 if single, or if married, less than $21,000 in combination with that of his/her spouse. Liquid resources must be less than $15,000 for single or married persons.
(b) To qualify for HCEP services, an individual under 65 must also:
1. Be receiving Social Security disability benefits; or
2. Be determined disabled by the Social Security Administration, or the New Jersey Division of Medical Assistance and Health Services, Disability Review Section; and also
3. Be eligible for Medicare or have other health care insurance which includes hospital and physician coverage.

10:49-18.4 Application
Application for HCEP can be made to PAAD, by calling the toll-free number, 1-800-792-9745. Inquiries about the program should be directed to the Division's Office of Home Care Programs at (609) 588-2620.

SUBCHAPTER 19. PREPAID HEALTH CARE SERVICES: MEDICAID ELIGIBLES

10:49-19.1 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 shall be provided by the contractor under the terms of the contract is specified in N.J.A.C. 10:49-19.3.
"Capitation rate" means a stated sum due the contractor for a stated group of services for each enrollee for a period of time specified in the contract.
"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" means county welfare agency, that agency of county government which is charged with the responsibility for determining eligibility for certain public assistance programs.
"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

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person, in writing, to participate in the contractor's plan and meets specific Medicaid eligibility requirements for Plan enrollment agreed 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 shall limit their 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" or "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:

i. Is organized primarily for the purpose of providing health care services;

ii. 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

iii. Makes provision, satisfactory to the Division, against the risk of insolvency, and assure 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 all 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 447.382 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 this 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.

"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.

10:49-19.2 Criteria for contracting with the Department

(a) The contractor shall:

1. Comply with the requirements of the New Jersey Certificate of Authority (P.L. 1973, c.337, 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;

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 requirements 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. This 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 shall be 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 subcontractual arrangements. For each principal and each provider not previously reported, include the following information:

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);

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8. Comply with eligibility requirements of the program which, for :xample, include but are not limited to: contractor shall only enroll ndividuals who are covered under specified Medicaid categories of ıssistance and who reside in the agreed upon market area;

9. Identify and provide financial disclosure of subcontractors with vhom it has had business transactions in excess of $25,000 per year, ınd 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 any information reported to the State, and pon request, to the Secretary of the U.S. Department of Health nd Human Services, the Office of the Inspector General, the Comptroller General and to its enrollees. The State or Secretary ıay request that the information be in the form of a consolidated nancial statement;

11. Disclose to the Division the identity of each person with a ontrolling interest or ownership of five percent or more; and

12. The contractor may not employ or contract with:

i. Any individual or entity excluded from Medicaid participation nder Sections 1128 or 1128A of the Social Security Act for the rovision of health care, utilization review, medical social work, or dministrative services; or

ii. Any entity for the provision of such services (directly or in-irectly) through an excluded individual or entity.

(b) The contractor shall also comply with the Federal regulations overning HMOs or PHPs, as currently exist or hereinafter may be nended. The federal regulations governing prepaid health care ervices may be found in the Code of Federal Regulations at 42 FR 434 and 42 CFR 110.

):49-19.4 Benefits

(a) Rules on the scope of benefits require that:

1. The Division shall be responsible for providing all non-HMO overed services that are Medicaid benefits to Medicaid enrollees. his means that any service or item normally provided under the ew Jersey Medicaid Program shall be provided to members if it not covered under the terms of the contract with the HMO or HP. The same limitations, such as prior authorization and medical ecessity, shall still be applicable for Medicaid services provided ıtside the contract.

2. The benefits available under a nonrisk contract shall be those rvices and/or items that are specified in the contract.

3. The benefits available under a risk contract shall be those rvices and/or items that are specified in the contract.

4. Pursuant to Federal regulations (42 CFR 434.21), risk comehensive contracts are risk contracts for furnishing comprehensive rvices, which shall include inpatient hospital services and any of e following services, or any three or more of the following services groups of services:

i. Outpatient hospital services;

ii. Other laboratory and x-ray services;

iii. Covered long-term care services provided in nursing facilities, rly and periodic screening, diagnosis and treatment (EPSDT), and mily planning;

iv. Physicians' services;

v. Home Health services.

(b) Responsibilities of the contractor are as follows:

1. The contractor shall make available emergency services, as fined in N.J.A.C. 10:49-19.1, on a 24-hour-a-day, seven-day-a-week sis.

2. The contractor shall offer health education services as an inte-ıl part of its health care delivery system to its enrollees in order assure appropriate use of health care services and to promote maintenance of health.

3. The contractor shall provide EPSDT equivalent services for all edicaid enrollees under 21 years of age in accordance with the otocols approved by the Division.

i. Initial physical examinations shall be provided. All further treat-ents indicated shall be provided in an appropriate and timely manner and shall be appropriately documented as specified by EPSDT requirements. The above shall be in accordance with EPSDT regulations.

(1) The Division shall monitor the EPSDT equivalent 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 comforms to generally acceptable professional standards as set forth in the Federal Social Security Act, 42 U.S.C. 1302 et seq., and all other applicable Federal and State laws.

(c) Limitations on services in an HMO setting are as follows:

1. The following service limitations are consistent with those of the fee-for-service Medicaid Program and are not included in the contractual service package or capitation payments even if provided by the HMO:

i. Services of podiatrists shall be provided with the exceptions of routine foot care and treatment of flat foot conditions, unless medical necessity determines otherwise.

ii. 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 shall not be eligible for payment under the capitation rate unless:

(1) The Physical therapist holds a current license to practice in New Jersey;

(2) The physical therapist is under contract with the contractor and will abide by the provisions of the contract; and

(3) The costs of these services are specifically identified in the contractor's proposed capitation rate.

iii. 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) Exclusions: The following 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 regulations issued pursuant thereto;

6. All services not provided, approved, or arranged by the HMO physician except in emergency services as defined in N.J.A.C. 10:49-19.1;

7. Services provided in an inpatient psychiatric institution that is not an active care hospital to individuals under 65 years of age and over 21 years of age; and

8. Private duty nursing.

(e) Availability of services rules require that:

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; and

4. Generally, the contractor shall have only one market area for all Medicaid parties served, including those served under these

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regulations. Modifications of such market area for purposes of contracting under this subchapter shall be subject to approval by the Division.

10:49-19.4 Marketing and enrollment

(a) The following pertain to marketing:

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. That all marketing presentations make clear that HMO enrollment is voluntary; and

v. The marketing representatives shall be 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 pertain to information provided to enrollees:

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 rules in (d) below and the termination provisions in the contract between the contractor and the Department, enrollment shall be 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 nature and administration. Such information shall be provided to each enrolled family household at least 10 days prior to such change.

(c) The following pertain to 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 Medicaid eligible individual's voluntary signing of an enrollment application agreeing to utilize only the health care services provided or arranged by the contractor, and completion of the enrollment procedures specified by the Division.

3. Enrollment shall be for the entire Medicaid case (family household). The contractor may 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 becomes effective, such coverage shall not commence until the date such person is discharged from the hospital.

(d) The following pertain to 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 Federal 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).

10:49-19.5 Medical records; peer review; quality assurance

(a) The following pertain to medical records:

1. Each contractor shall maintain a medical record on each member 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 Federal Social Security Act, 42 CFR 431.306, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.4 and 9.5.).

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

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1902(a)(7) of the Federal Social Security Act, 42 CFR 431.300, N.J.S.A. 30:4D-7(g), and N.J.A.C. 10:49-9.6).

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 pertain to peer review:

1. Each contractor shall submit a description of its system of internal peer review to the Division for approval to assure that acceptable professional practice shall be followed by the contractor as well as its subcontractors.

2. There shall also be an explanation of how such peer review procedures will relate to the applicable peer review organization (PRO) 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) The following pertain to quality assurance:

1. The Division and the U.S. 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 and Federal requirements.

2. The contractor shall offer assurances that all health care services required by its enrollees 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 shall be followed by the organization and its subcontractors. This shall include a proposed system for continuing performance review and health care evaluation, that is, explanation of the methods which the contractor proposes to follow in guaranteeing that the services provided each enrollee shall meet criteria required by appropriate Federal and State statutes and 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 members, 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 member, authorized personnel of the Division, appropriate agencies of the State of New Jersey, or the United States Government.

10:49-19.6 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 procedure 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 and of the contractor's grievance review procedures. This may be accomplished by an annual mailing as noted in N.J.A.C. 10:49-19.4, a member handbook, or any other method approved by the Division.

(c) The contractor shall report all completed girevances to the Division with a brief statement of the problem and resulting outcome on a quarterly basis.

10:49-19.7 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 rates 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 the stop loss 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 C.F.R. 434.38 and as specified by the Division.

(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 provided 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 the amount and nature of third party payments recovered for Title XIX members 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; or

iii. Contained in Diagnosis Codes 800 through 999 (ICD-9-CM) with the exception of Code 994.6.

3. The Division shall 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.

10:49-19.8 Capitation payments to contractors

(a) For Medicaid enrollees enrolled in accordance with N.J.A.C. 10.49-19.4(c)2, the Division shall 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).

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10:49-19.9 General reporting requirements

(a) Each contractor shall furnish such timely information and reports as the Division may find necessary, and on such forms or in such format as the Division may prescribe. 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 C.F.R. 74, and applicable law, 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.

10:49-19.10 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 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 42 U.S.C. 1396b(m)(5)(A), the Secretary of the U.S. 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 the 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:

i. Secretary of the Department of Health and Human Services or the State; or

ii. 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)4i if not more than $100,000 for each such determination, plus, with respect to a determination under (d)2 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.

SUBCHAPTER 20. THE GARDEN STATE HEALTH PLAN (GSHP)

10:49-20.1 Introduction

The Garden State Health Plan (GSHP) is a State-operated health maintenance organization (HMO) with a Certificate of Authority from the New Jersey State Department of Health to operate in selected counties. It was formerly a Federal demonstration project known as the Medicaid Personal Physician Plan.

10:49-20.2 Physician case manager (PCM)

(a) The primary component of the Garden State Health Plan is the medical case management system whereby the physician case manager (PCM) is responsible for the provision of all primary care services and for the management of referral, ancillary and inpatient services, Participating providers who are acting as PCMs can be in solo practice; group practice; professional corporation or association; health maintenance organization (HMO); independent, free-standing clinic; or in a hospital affiliated unity which allows for primary care services and is not subject to DRG reimbursement principles.

(b) The PCM must review and approve all medical services and expenditures on behalf of the patient (including referrals for ancillary services, specialty care, and inpatient hospital care) and provide or arrange for the provision of 24-hour, seven-day-a-week medical coverage.

(c) Participation by physicians in the Garden State Health Plan is voluntary and on a contractual basis. A physician can participate in both the Garden State Health Plan and the Medicaid fee-for-service program. A Physician, however, must be a Medicaid approved provider before he or she can participate in the Garden State Health Plan.

(d) The physician case manager must submit a claim form for each encounter with a patient who is included in his or her panel for GSHP members. The form is required for utilization data, quality assurance and reporting, not for billing purposes. Information on the claim is the same as that which is required on a regular fee-for-service claim. See the Fiscal Agent Billing Supplement for instructions to complete the claim form.

10:49-20.3 Capitation payment system

(a) Physician case managers (PCMs) participating in the Garden State Health Plan are reimbursed through a capitation payment system. The capitation payment system is divided into three funds:

1. The Monthly Prepayment Fund;
2. The Referral Services Fund; and
3. The Inpatient Services Fund.

10:49-20.4 Medicaid recipient

(a) The Garden State Health Plan is offered to the Medicaid recipient as an alternative to the existing Medicaid fee-for-service program. Participation by the Medicaid recipient is voluntary.

(b) A Medicaid recipient who joins the Plan is guaranteed up to 12 months of Medicaid eligibility. This guarantee is granted in six month segments and the individual must be Medicaid eligible the first day of each six month period.

(c) A Medicaid recipient who enrolls in the Plan selects a physician case manager from a list provided by the enrolling agent. Each Medicaid eligible has his or her own PCM. Each family member may have the same PCM or may choose a different physician. A Medicaid eligible family may enroll in the GSHP only if all the Medicaid eligible family (case) members join.

(d) When a Medicaid recipient enrolls in GSHP, the enrolling agent completes a GSHP Enrollment Application which the Medicaid recipient signs. The recipient is then given a copy of the application, a GSHP Conditions of Membership form and a GSHP Information Sheet at the time of application. (See Appendix, N.J.A.C. 10:49).

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(e) Beginning on the effective date of enrollment in the GSHP, a message is printed on the Medicaid ID card (FD-152 Form, see N.J.A.C. 10:49-2.12 and Appendix, N.J.A.C. 10:49). The message states "HMO-CHECK GSHP ID CARD." This message alerts providers to ask the member for his or her GSHP identification card. The GSHP ID card lists each family member and his or her physician case manager's name and telephone number.

10:49-20.5 Action required by providers

(a) When providing services and requesting payment for services rendered GSHP members, providers are required to:

1. Check the Medicaid eligibility card for GSHP message;
2. Ask to see the GSHP Member Identification card for physician case manager's name and telephone number;
3. Contact the physician case manager to receive prior authorization to provide services; and
4. Follow billing instructions in the Fiscal Agent Billing Supplement.

10:49-20.6 GSHP services

(a) The following services are covered under the GSHP. Those services in (a)18 through 22 below do not require prior authorization from a physican case manager.

1. Chiropractic services;
2. Clinical laboratory services;
3. Clinic services at free-standing clinics;
4. Drugs (prescription);
5. EPSDT;
6. Hearing aids;
7. Home health services;
8. Hospital services, including

i. Emergency room service;

(1) True life- or organ-threatening conditions may be treated, with notification to the PCM as soon as possible;

ii. Inpatient hospitalization; and

iii. Outpatient clinic;

9. Medical equipment;
10. Medical supplies;
11. Mental health services including psychologist services; only one mental health service every six months (requires prior authorization by the physician case manager);
12. Optical appliances;
13. Optometric services;
14. Physician services, including inpatient physician services;
15. Podiatric services;
16. Radiological services;
17. Rehabilitative services (physical therapy, occupational therapy, audiology and speech-language pathology services);
18. Second surgical opinion consultations;
19. Physician fee for routine in-hospital newborn care;
20. Pediatrician attendance at at-risk vaginal deliveries or caesarian sections;
21. Practitioner fee for normal prenatal, delivery and post partum services; and
22. Certified nurse midwife services.

(b) The following services are non-covered services under the GSHP. Non-covered GSHP services are still available to the GSHP client, outside of the Plan, as long as the client retains his or her Medicaid eligibility. Such services must be provided in accordance with policies described in the appropriate manual.

1. Dental services;
2. Medical day care;
3. Nursing facility care;
4. Prosthetics and orthotics; and
5. Transportation services.

10:49-20.7 Emergency medical care situations for GSHP members

(a) Emergency medical care is available to all GSHP members on a 24-hour, seven-day-a-week basis. Listed below are the guidelines for assessing (for reimbursement and reconciliation purposes) the levels of care in an emergent, urgent or routine situation. These guidelines can be applied to any setting.

1. Level I—Emergency life-threatening or organ-threatening or potentially life-or-organ-threatening condition that requires immediate care. The treating provider must notify the physician case manager as soon as possible after stabilizing the patient.
2. Level II—Urgent condition that is potentially harmful to a patient's health and determined by the physician to be medically necessary for medical treatment within 12 hours to prevent deterioration. The PCM must be called by the treating provider for authorization of the services before providing treatment.
3. Level III—Routine medical care (non-emergent/urgent—that which would have no adverse effects if not treated within 24 hours or could be treated in a less acute setting (for example, physician's office) or by the patient himself or herself. The physician case manager must be called by the treating provider for authorization of the services before providing treatment.

10:49-20.8 GSHP reimbursement policy for emergency services

(a) Level I emergency care will be reimbursed without the requirement of the PCM's prior authorization. However, the PCM must be notified as soon as the patient is stabilized. The GSHP office shall be contacted for exception for payment processing (telephone 1-800-525-0047).

(b) Services classified under Levels II and III will be reimbursed only when prior authorized by the PCM. If the PCM is contacted for authorization and he or she does grant his or her approval, the provider may then treat the patient and when billing for the service, include the PCM's authorization number in the appropriate portion of the claim form. The completed claim can then be submitted directly to the Fiscal Agent for payment.

1. In situations for services classified under Levels II and III where the provider and PCM do not agree and the provider renders service without authorization but feels reimbursement is warranted, the provider may request of the Plan Office payment consideration by stating and documenting his or her reasons for treatment on the GSHP 16 form, "Exception Payment Request Form" (obtained through the Plan Office). To receive consideration for reimbursement, it will be necessary for the provider to submit the completed GSHP-16 and a hard copy claim to the Garden State Health Plan Office.

i. The New Jersey Medicaid Program's policy on timeliness of claim submission and inquiry applies to the Garden State Health Plan; thus, the GSHP-16 must be submitted to and received by the Garden State Health Plan, in accordance with time frames stated in N.J.A.C. 10:49-7.2.

10:49-20.9 Exception Payment Request Form (GSHP-16)

(a) If due to unusual circumstances a provider failed to obtain authorization from the PCM before rendering a service, he or she may request a review by and retroactive approval from the PCM.

(b) After contacting the PCM, the provider will either be sent the authorization by the PCM, or will be refused. The PCM does have the right to refuse a request for a retroactive approval.

1. If retroactive authorization is refused by the PCM and the provider feels the care was appropriately rendered, he or she may request an Exception Payment Request Form (GSHP-16), for each occurrence, from the GSHP Office, DMAHS, CN-712, Trenton, N.J. 08625-0712. Detailed information about the nature of the service as well as the circumstances of the failure to obtain prior approval will be required. For more information, providers may contact the Plan office at 1-800-525-0047.

SUBCHAPTER 21. PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED (PAAD)

10:49-21.1 Introduction

(a) Pharmaceutical Assistance to the Aged and Disabled (PAAD) is a unique State-funded program to help certain New Jersey residents pay for prescription medicines and certain pharmacy items. A person who applies and is approved will receive a PAAD Eligibility Card (see Appendix, N.J.A.C. 10:49). A PAAD eligible person must pay a $2.00 copayment for each prescribed drug to the pharmacy. PAAD pays the rest.

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1. Legend drugs, insulin, insulin syringes and needles and certain diabetic testing materials are covered. Drugs that the Food and Drug Administration determines to be proven not effective are not covered.

10:49-21.2 Eligibility requirements

(a) To qualify for PAAD, a person:

1. Must have been a New Jersey resident at a permanent address for at least 30 days before applying. Residence must not be seasonal or temporary but a legally established residence; and

2. Must meet the annual income criteria established by the New Jersey State Legislature for a single individual and/or married couples; and

3. Must be 65 years of age or older; or

4. Must be receiving Federal Social Security Disability benefits and be at least 18 years of age and under 65; or

5. Must not have any other health insurance or retirement benefits which provide prescription coverage, equal to, or better than, PAAD benefits, or may not be receiving Medicaid prescription benefits.

(b) A person under age 65 receiving Federal Social Security Disability benefits on behalf of someone else is not eligible for PAAD.

(c) A person in a nursing facility is eligible if he or she meets all the other standards. A person, whether married or single, who has been in a nursing facility for more than 30 days, can receive benefits if his or her own individual income is within the established income limit for single persons and if this income goes directly to the nursing facility. The single income limit similarly applies to the husband or wife of the patient who is not in a nursing facility but who would otherwise be eligible. For a stay of less than 30 days, the established limit for married couples applies.

10:49-21.3 Eligibility renewal

(a) The PAAD beneficiary must renew his or her eligibility every year unless his or her income is below the established biennial income eligibility limit. In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years.

(b) Approximately four months prior to his or her expiration date, PAAD will notify the beneficiary if he or she is eligible for biennial eligibility or if he or she must complete a renewal form. Renewal applications must be returned to the PAAD Bureau by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

(c) Under the PAAD Quality Control Program, a person's name may be chosen at random for a review of eligibility. Selection of a person's name does not mean that a problem exists with that person's eligibility.

10:49-21.4 Loss of eligibility

(a) A person will be considered ineligible and PAAD will no longer pay for prescription drugs if:

1. Eligibility is not renewed;

2. The participant moves outside the State of New Jersey;

3. The participant's income increases above the established income limits;

4. A change occurs in a participant's marital status (for example, through divorce, death, remarriage) that increases his or her income above the allowable income limits; or if a spouse is discharged from a nursing home to the community altering a person's income eligibility;

5. The participant loses his or her Federal Social Security Disability benefits;

6. False information is submitted on or with the application; or

7. The participant obtains other health insurance or retirement benefits which provide prescription coverage equal to, or better than, PAAD benefits.

(b) By law, any changes that will affect a person's eligibility must be promptly reported to PAAD. If for any reason a person becomes ineligible, the PAAD card must be returned to PAAD immediately.

10:49-21.5 Applications

Applications for PAAD may be obtained from local pharmacies, senior citizens centers, Medicaid District Offices, County Offices on Aging or directly from PAAD. All documents of proof required must be submitted with the application. If married, and both husband and wife wish to apply, each must file separate applications, even though the joint income appears on both applications.

10:49-21.6 Inquiries

(a) Questions regarding PAAD may be directed to:

PAAD, CN 715, TRENTON, N.J. 08625

1. A toll-free number is also available: 1-800-792-9745.

2. A special teletypewriter telephone (TTY) is available for the hearing impaired by calling: (609) 588-7180. This is not a toll-free number.

SUBCHAPTER 22. LIFELINE PROGRAMS

10:49-22.1 Introduction

Lifeline Programs provide an annual benefit to eligible persons toward the cost of electricity and natural gas. The Lifeline Credit Program (LCP) provides the benefit as a credit on recipients' gas and/or electric bills. The Tenants Lifeline Assistance Program (TLAP) provides the benefit check to tenants whose utility costs are included in their rent. Supplemental Security Income (SSI) beneficiaries receive the benefit as a Special Utility Supplement (SUS) in their monthly SSI checks. For additional information, refer to N.J.A.C. 10:69B.

10:49-22.2 Eligibility requirements

(a) To qualify for Lifeline, a person must:

1. Be a New Jersey resident; and

2. Have annual income within the requirements established by the New Jersey Legislature; and

3. Be at least 65 years old; or receive Federal Social Security disability benefits from the month of July of one year through the month of January of the next year; and

4. Receive electric and/or gas bills in his or her name; or be a tenant who does not receive utility bills but has the cost of utilities included in the rent; or

5. Be eligible for or receiving benefits under the Federal Supplemental Security Income (SSI) program.

10:49-22.3 Lifeline Credit Program

(a) The credit is granted to utility customers as follows:

1. If the customer pays utility bills directly to a single utility company, a $225.00 credit will appear on the customer's utility bill. If the customer receives utility service from two different companies, (gas and electric), the credit will be divided and $112.50 applied to each company's bill. (A Special Utility Supplement (SUS) payment will be made to SSI beneficiaries instead of a Lifeline credit. See N.J.A.C. 10:49-22.5.)

(b) When a customer is billed directly:

1. The customer's application must apply to his or her primary place of residence, meaning the home where the customer lives most of the time during the year. Seasonal or temporary residence in New Jersey is not considered the primary residence.

2. When two or more related or unrelated persons live in a single household, Lifeline will accept only one application from that household. The application must be in the name of the person (or his or her spouse) whose name appears on the utility bills.

3. If the customer pays utility bills to two different companies and one bill is in the customer's name and the other in the spouse's name, the customer should report this at the time the application is made. In this instance, the credit would be divided with $112.50 applied to each of the two accounts.

10:49-22.4 Tenants Lifeline Assistance Program (TLAP)

(a) The benefit is granted to tenants as follows:

1. Tenants who do not pay utility bills directly receive a check for $225.00 toward the cost of utilities. Only one tenant in a household is entitled to the payment. (A Special Utility Supplement (SUS) payment is made to SSI beneficiaries instead of a TLAP payment. See N.J.A.C. 10:49-22.5.)

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(b) When utilities are included in the rent:

1. The tenant's rental must be for his or her primary residence and not for seasonal or temporary rental.

2. A "residential tenant" means a person renting or leasing real property, including a mobile home park site as a personal residence, a net lease residential tenant, as well as a person who is a resident shareholder in a non-profit residential cooperative or mutual housing corporation, or an owner of a condominium, as defined by law.

3. Only one application may be filed per household. When two or more related or unrelated persons live in the same rented household, the person whose name is on the lease or who is the primary tenant or head of household should complete the form.

10:49-22.5 Lifeline for Supplemental Security Income (SSI) beneficiaries

(a) The benefit is granted to SSI beneficiaries as follows:

1. Recipients of Supplemental Security Income (SSI) receive the benefit as Special Utility Supplement (SUS) which is added to their monthly SSI checks. At the end of the fiscal year, those SUS recipients who did not receive the full benefit are sent a check for the difference.

(b) Eligibility for the Special Utility Supplement (SUS) is as follows:

1. Persons receiving SSI benefits who are not in a nursing facility or hospital may receive the SUS.

2. SSI beneficiaries will not receive an application and should not apply. The Lifeline benefit is automatically included in the SSI check. Persons who do not receive the full annual benefit in a year, receive a 13th payment for the balance not received through their SSI checks.

10:49-22.6 Review of eligibility for Lifeline

(a) Eligibility for participation in the Lifeline Programs will be reviewed.

1. If any person is found ineligible for Lifeline or became eligible by providing false or incorrect information, he or she will be required by law to repay the State of New Jersey the full amount of any payment made to, or credit made on his or her behalf.

2. A Lifeline representative may contact a person about his or her eligibility and application if additional information is required.

3. Under the Lifeline Quality Control Program, a person's name may be chosen at random for a review of eligibility. Selection of a person's name does not mean that a problem exists with that person's eligibility.

4. Refusal to be interviewed could result in recovery of a person's Lifeline benefit by the State of New Jersey.

10:49-22.7 Applications

(a) Applications for the Lifeline Programs are sent automatically to persons benefitting from the following programs:

1. Pharmaceutical Assistance to the Aged and Disabled (PAAD);
2. Medical Assistance to the Aged (MAA);
3. Medical Assistance Only (MAO); and
4. New Jersey Care ... Special Medicaid Programs

10:49-22.8 Inquiries

(a) Persons who have not received an application in the mail may call the Lifeline toll-free number: 1-800-792-9745.

1. A special teletypewriter telephone (TTY) is available for the hearing and/or speech impaired (609) 588-7180. This is not a toll-free number.

SUBCHAPTER 23. HEARING AID ASSISTANCE TO THE AGED AND DISABLED

10:49-23.1 Introduction

The Hearing Aid Assistance to the Aged and Disabled Program (HAAAD) is a New Jersey program which provides a $100.00 reimbursement to eligible residents who purchase a hearing aid during a calendar year. Purchases made in subsequent calendar years may be reimbursed upon reapplication. Medicaid recipients or persons who have other health insurance coverage or retirement benefits that provide full hearing aid coverage are not eligible. However, individuals who have only limited or partial coverage are eligible for a supplementary payment.

10:49-23.2 Eligibility requirements

(a) To meet the requirements for eligibility an individual must:

1. Have purchased a hearing aid;

2. Have been a New Jersey resident at a permanent address for at least 30 days;

3. Have gross income within the requirements established by the New Jersey Legislature; and

4. Be 65 years of age or older; or

5. Be receiving Social Security disability benefits.

10:49-23.3 Administration and application

(a) Applications may be obtained by calling the following toll-free number: 1-800-792-9745.

(b) Individuals not currently enrolled in the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, should complete a PAAD Eligibility Application (AP-2). Those having a current PAAD card should complete a Hearing Aid Assistance to the Aged and Disabled (HA-1) Application (see Appendix, N.J.A.C. 10:49).

(c) A special teletypewriter telephone (TTY) is available for the hearing impaired by calling: 609-588-7180. This is not a toll-free number.

APPENDIX

Medicaid Eligibility Identification Card (FD-73/178)	Form #1
Medically Needy Claim Transmittal (FD-311)	Form #2
Public Assistance Inquiry (PA-1C)	Form #3
Certification of Presumptive Eligibility (FD-334)	Form #4
Application for Payment of Unpaid Medical Bills (FD-74)	Form #5
Department of Human Services Medicaid ID (FD-172)	Form #6
DYFS Validation for Health Services Program (DYFS-16-36)	Form #7
Validation of Eligibility (FD-34)	Form #8
Provider Application (FD-20)	Form #9
Provider Agreement (FD-62)	Form #10
Disclosure of Ownership and Control Statement (HCFA-1513)	Form #11
Patient Certification Form (FD-197)	Form #12
Garden State Health Plan Information Sheet	Form #13
Garden State Health Plan Conditions of Membership (GSHP-4(a))	Form #14
Hearing Aid Assistance Application (HA-1)	Form #15
PAAD Eligibility Card	Form #16
Medicaid District Office Directory	Form #17

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STATE OF NEW JERSEY
DEPARTMENT OF
HUMAN SERVICES
DIVISION OF
MEDICAL ASSISTANCE
AND
HEALTH SERVICES

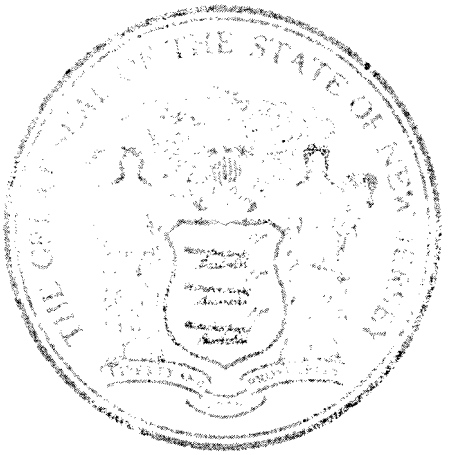
MEDICAID ELIGIBILITY IDENTIFICATION CARD 1939902

ADDITIONAL HEALTH INSURANCE*

HSP (MEDICAID) CASE NO. PERSON NO.

VALID FROM TO

SOC. SEC. ACCT. NO. DATE OF BIRTH



USE THIS CARD WHEN YOU NEED MEDICAL SERVICES

RECIPIENT'S SIGNATURE

FD-73/178 (REV. 3/91)

IMPORTANT NOTICE

You must sign the front of this card on the line above the Recipient's Signature. If you are unable to sign the card, the individual representing you must sign your name, initial the card and explain his/her relationship to you.

Immediately notify the Medicaid District Office or the Division of Youth and Family Services case manager or the County Welfare Agency (as appropriate):

1. If you have Medicare coverage or other health insurance not listed or incorrectly listed; or
2. If any changes are necessary to the front of this card; or
3. If you have any questions regarding the use of this card; or
4. If this card is lost or stolen. (Unless the report of the loss or theft can be documented at the appropriate agency, you may be liable to repay Medicaid for any benefits obtained through its unauthorized use).

FEDERAL and STATE LAW make it a crime and set the punishment for persons who have been found guilty of making any false statement or representation of a material fact to receive any benefit or payment under the Medicaid Program. The Department of Human Services is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.

THIS CARD IS NON-TRANSFERABLE UNDER PENALTY OF LAW.

NOTICE TO PROVIDERS

The printed name which appears directly above the line for Recipient's Signature on this card is the MEDICAID eligible person. This name identifies that person ONLY (except AFDC can include spouse/child(ren) listed with PERSON NUMBERS) as being eligible for MEDICAID benefits within the time period shown. If the name of a "REPRESENTATIVE PAYEE" appears on this card, that individual is not eligible for Medicaid benefits.

* Ask the cardholder if there is Medicare coverage or other health insurance not listed. Please indicate this information in the appropriate area on the claim form. Prior to billing Medicaid you are to bill other third party payers in accordance with N.J.A.C. 10:49.

Form #1

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State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

MEDICALLY NEEDY CLAIM TRANSMITTAL

RECIPIENT INFORMATION

HSP (Medicaid) CASE NO. _____

NAME _____

ADDRESS _____

PROVIDER INFORMATION

PROVIDER NO. _____

PROVIDER NAME _____

PROVIDER ADDRESS _____

TYPE OF SERVICE	DATE OF SERVICE	CHARGE	PAYMENT FROM OTHER SOURCE	CLIENT OBLIGATION	TOTAL FROM OTHER SOURCES
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					

Provider Instructions and Information:

- The services listed above were provided to the identified individual during a covered retroactive period.
- This transmittal does not guarantee payment. Your claim will be processed in accordance with current Medicaid and Medically Needy regulations.
- Each claim form submitted for payment for services listed above must be attached to this document.
- Please enter your provider number in the appropriate space in the upper right corner.
- Any amount listed in the column entitled "Client Obligation" is the responsibility of the client and should be paid by the client directly to you.

NUMBER OF ITEMS _____

SIGNATURE _____
Authorized Representative

FD-311 (5/86)

Form #2

You're viewing an archived copy from the New Jersey State Library.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PUBLIC ASSISTANCE INQUIRY

Referral for: ☐ SSI ☐ New Jersey Care ☐ Medicaid Only ☐ AFDC ☐ Newborn (complete items 1,2,4,11a,15 only)

TO: FROM:

_____ (SSA / DO) (County Welfare Agency) _____ Hospital

_____

Date: _____

_____

1. Name: _____ (Last) (First) (Middle) Sex ☐ M ☐ F
   (For newborn referral, enter name and sex of parent.)
2. Social Security Account Number: ___ ___ ___ – ___ ___ – ___ ___ ___ ___
3. Permanent Home Address: _____ Telephone: _____
4. Marital Status: *(Check one)* Married ☐ Single ☐ Divorced ☐ Separated ☐ Widowed ☐ Unknown ☐
5. Date of Admission: _____ Date of Birth: _____
6. Address From Which Admitted: _____ Telephone: _____
7. Diagnosis: _____
8. Prognosis: _____ (For SSI disability/blindness and AFDC incapacity)
9. Referring Physician: _____ Telephone: _____
10. Spouse: Name: _____ Age: _____ Telephone: _____
    Address: _____
11. Minor Children *(First Names and Ages)*: _____
    (a) Newborn Data: Name: _____ Date of Birth: _____ Sex ☐ M ☐ F
    Mother's HSP (Medicaid) Case No.: ___ ___ ___ ___ ___ ___ ___ ___ ___ ___ – ___ ___
12. Next of Kin (*If other than Spouse or Children*): _____
    Address: _____ Telephone: _____
13. Gross Monthly Income of Patient: _____ Source: _____
14. Gross Monthly Income of Family Members: _____
15. Hospital Insurance: Blue Cross ☐ I.D. No.: _____ Medicare ☐ H.I.C. No.: _____
    (a) Applicable to Newborn? Yes ☐ No ☐
    Other ☐ Carrier Name: _____ Policy No.: _____
16. Employer's Name: _____ Address: _____
17. Name of Spouse's Employer: _____ Address: _____

PA-1C (rev. 7/89)

Form #3

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18. What inquiries have been made regarding financial responsibility for the hospital bill?

_____

What were the results? _____

_____

19. Does patient, patient's authorized agent, or relatives know that an inquiry is being made for the previously checked program?

Yes ☐ No ☐

20. Whereabouts:

Is client still in hospital? Yes ☐ No ☐

If YES, anticipated address upon discharge: _____

If NO, date of discharge: _____

Present address if known: _____

21. Other Comments: _____

_____

22. The above patient is being cared for in the hospital since _____ (Date) on a ward service or general service basis as to professional and other personal services and I believe that such a patient may be eligible for the previously checked program.

Signature: _____ Title: _____ Date: _____

23. Signature of Patient or Relative: _____ Date: _____

PLEASE READ CAREFULLY BEFORE SIGNING

I understand that I must furnish certain information to the SSA/DO or the County Welfare Agency to establish eligibility and extent of need for Supplemental Security Income Benefits or public assistance, and that the appropriate agency will help to secure this information and verify it. I will supply complete and accurate information, within my knowledge, to representatives of the SSA/DO or the County Welfare Agency. I hereby authorize and direct my relatives, physician, hospital, employers, bankers, and any other person having information concerning the persons named above to furnish complete details to the appropriate agency investigating my application for such assistance. I understand that the information obtained will be used only in connection with the application for or receipt of assistance.

"I further authorize the Social Security Administration to release benefit information and entitlement dates to the hospital whose name appears on the reverse of this form. I understand the hospital will only use this information for purposes of establishing my eligibility to Medicaid."

Signature: _____ Relationship: _____ Date: _____

IF NOT SIGNED BY PATIENT, EXPLAIN WHY: _____

_____

NOTICE TO THE SSA/DO OR CWA INITIALLY RECEIVING THIS INQUIRY. WHEN IT IS NECESSARY TO REFER THE APPLICANT TO ANOTHER PUBLIC ASSISTANCE AGENCY, INCLUDE AT LEAST A COPY OF THIS PA-1C FORM.

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DMAHS USE ONLY

PROVIDER USE ONLY

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

CERTIFICATION OF PRESUMPTIVE ELIGIBILITY

CLIENT INFORMATION:

Name: _____ County of Residence _____

Address: _____ Birth Date: — — - — — - — —

_____ Social Security No. — — — - — — - — — — —

Telephone No.: ( ) _____ Household Unit: _____ *(No. of persons in household)*

(Check appropriate boxes below.)

Marital Status: ☐ Single ☐ Married ☐ Separated ☐ Divorced ☐ Widowed

Race: ☐ White ☐ Black ☐ American Indian ☐ Oriental ☐ Hispanic ☐ Other

Does client have a pending AFDC, SSI, Medicaid application? ☐ Yes ☐ No *(If yes, circle program.)*

Client is: ☐ U.S. Citizen ☐ Alien admitted for permanent residence
☐ Alien admitted for temporary residence ☐ Undocumented alien

Medicare Coverage: ☐ Yes ☐ No If Yes, HIC Number: _____

Other Insurance Company: _____ Other Insurance Policy No.: _____

INCOME INFORMATION:

Total Household Income:	Income	Frequency	Gross Monthly Amt.	Source
Gross Earnings				
Gross Earnings				
Gross Unearned Amount				
Gross Unearned Amount				
Gross Unearned Amount				
Gross Child Support Amount				
Gross Alimony Amount				

Total Monthly Gross Income $ _____

Child Care Expense Amount: _____ Weekly _____ BiWeekly _____ Monthly

PREGNANCY INFORMATION:

Date of L.M.P. _____ Pregnancy Due Date: _____

CERTIFICATION STATEMENT:

I, _____ attest that I have read and agree to the above statements and fully realize that the county welfare agency relies upon the truth and accuracy of my statements. I have received a copy and understand the Patient Guidelines.

_____ *Applicant Signature* _____ *Date*

I certify the above applicant is pregnant and presumptively eligible for limited Medicaid benefits in accordance with N.J.A.C. 10:72-6.1 et seq.

_____ *Provider Agency Name* _____ *Address* _____ *Telephone*

_____ *Provider Signature* _____ *Date*

IMPORTANT: THE ORIGINAL FORM MUST BE FORWARDED TO THE DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, ISS SECTION, AREA #3, PRESUMPTIVE ELIGIBILITY RECORDS, CN-712, TRENTON, NJ 08625, WITHIN TWO (2) DAYS OF COMPLETION.

Form #4 FD-334

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State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

APPLICATION FOR PAYMENT OF UNPAID MEDICAL BILLS
NEW JERSEY HEALTH SERVICES PROGRAM (MEDICAID)

NOTE: THIS FORM (FD-74) IS GIVEN ONLY TO APPLICANTS WHO INDICATE THEY HAVE UNPAID BILLS FOR MEDICAL SERVICES RECEIVED DURING THE THREE (3) MONTHS PRIOR TO APPLICATION FOR PUBLIC ASSISTANCE OR SUPPLEMENTAL SECURITY INCOME. THE FD-74 MUST BE SUBMITTED WITHIN SIX (6) MONTHS FROM THE DATE OF APPLICATION FOR PUBLIC ASSISTANCE OR SUPPLEMENTAL SECURITY INCOME.

The New Jersey Medicaid Program will evaluate this application to determine whether or not payment can be made by the program for covered Medicaid services received by the applicant and/or eligible person(s) living in the same household during the specified period. **This refers only to those services for which bills remain unpaid. The Medicaid Program will not consider payment of bills that have already been paid.**

PART 1 - APPLICANT INFORMATION

1. _____ *Name of Applicant*
2. _____ *Applicant's HSP (Medicaid) Case No.*
3. _____ *Applicant's Birthdate*

4. _____ *Street Address - Apartment Number* *City* *State* *Zip*

_____ *Telephone Number (area code)*
_____ *Social Security Account Number*
_____ *County of Residence*

5. _____ *Date of Application for Public Assistance or Supplemental Security Income*
6. _____ *Name and address of Agency processing application for Public Assistance or Supplemental Security Income (i.e., County Welfare Agency or Social Security Office, etc.)*

7. If the applicant has applied for Aid to Families with Dependent Children (AFDC) or Assistance to Families of the Working Poor (AFWP), list the full names, ages and relationship of each dependent child or eligible person(s) living with applicant.

_____

_____

_____

PART II - MEDICAL INFORMATION

A. PLEASE COMPLETE ALL QUESTIONS LISTED ON REVERSE SIDE AS ACCURATELY AS POSSIBLE.
B. YOU MUST ATTACH COPIES OF ALL UNPAID MEDICAL BILLS TO THIS APPLICATION.

8. List all unpaid medical bills and the dates incurred during the three (3) months before application for assistance.

Type of Services (Hospital, Physician, Etc.) Name of Hospital, Physician Etc.	Patient	Date(s) of Service	Total Amount Due

SEE OTHER SIDE

FD-74

Form #5

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PART III - FINANCIAL INFORMATION

9. Are any of the medical bills listed on this application the result of a job related injury, auto or other accident? Yes ( ) No ( )
If yes, explain and indicate the name of the insurance company and your legal representative.

_____ _____

_____

10. What were your income and resources at the time the medical bills were incurred for the **three month period before your application for Public Assistance or Supplemental Security Income?** If you had no income or resources during the three (3) months prior, please specify in the spaces provided. If you were under 18 years old, you must indicate your parent's income and resources.

Please check below the type of income you received and in which month(s) received. Also, please submit verification of your income (copies of checks, pay stubs, etc.) with your application.

	WHEN RECEIVED:	TOTAL MONTHLY AMOUNT RECEIVED:
_____ EMPLOYMENT		
_____ UNEMPLOYMENT	_____ 1st MONTH BEFORE APPLICATION	$_____
_____ DISABILITY	_____ 2nd MONTH BEFORE APPLICATION	$_____
_____ SOCIAL SECURITY	_____ 3rd MONTH BEFORE APPLICATION	$_____
_____ ALIMONY		
_____ CHILD SUPPORT	**HOW OFTEN RECEIVED:**	
_____ OTHER: _____	_____ WEEKLY _____ BI-WEEKLY _____ MONTHLY	

_____NO INCOME RECEIVED DURING THE THREE MONTHS BEFORE APPLYING FOR PUBLIC ASSISTANCE OR SUPPLEMENTAL SECURITY INCOME.

What resources did you have during this same time period?

_____ CHECKING ACCOUNT $_____ _____ STOCKS, BONDS, ETC. $_____
_____ SAVINGS ACCOUNT $_____ _____ SPECIFY: _____
_____ AUTOMOBILE: 1. Year 19 ___ make _____ _____ OTHER: _____
2. Year 19 ___ make _____
_____INSURANCE POLICY 1. Face Falue $_____ Cash Value $_____
2. Face Value $_____ Cash Value $_____
_____NO RESOURCE OF ANY KIND

11. Did you have any type of Medical or Health Insurance coverage, such as Blue Cross or Medicare? Yes ( ) No ( )
(If yes, explain below.)

NAME OF INSURANCE COMPANY OR PROGRAM	POLICY NUMBER OR MEDICARE NUMBER	NAME OF INSURED

12. I certify that the above information is true and correct to the best of my knowledge and that no facts have knowingly been omitted. I understand that my application may be investigated and I agree to cooperate in such an investigation. I further understand that the law provides for fine or imprisonment, or both, for a person hiding facts or not telling the truth.

_____ _____ _____
Signature of Applicant *Relationship to Applicant* *Date*

NOTE: This application must be signed by the applicant, or relative, or legal guardian or friend acting on behalf of the applicant. ***This application must not be signed by the applicant's physician or anyone representing a hospital or collection agency.***

MAIL THIS COMPLETED APPLICATION, TOGETHER WITH COPIES OF ALL UNPAID MEDICAL BILLS, TO THE RETRO—ACTIVE ELIGIBILITY UNIT, DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES, CN-712-10, TRENTON, NJ 08625.

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your **MEDICAID ELIGIBILITY CARD** is attached

DEPARTMENT OF HUMAN SERVICES
MEDICAID–ID

VALID ONLY FOR THE MONTH OF
MEDICAID HSP #

ELIGIBLE PERSONS		ELIGIBLE PERSONS	

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE & HEALTH SERVICES
MEDICAID ELIGIBILITY IDENTIFICATION

CARRY THIS CARD AT ALL TIMES

Present it to the pharmacy, hospital, physician or other providers for medical services rendered in behalf of eligible persons.

RECIPIENT'S SIGNATURE REQUIRED

No es valida si no este firmade. Entréguela a la farmacia, hospital, médicos u otros proveedores de servicios médicos prestados a personas que reunen las condiciones necessaries para poder usar Medicaid.

NOTICE TO PROVIDER

REQUEST PERSONAL IDENTIFICATION IF YOU DO NOT KNOW THE PATIENT.

PLEASE REPORT THE CASE NAME, CASE NUMBER AND PERSON NUMBER ACCURATELY ON ALL CLAIM FORMS AND OTHER APPLICATIONS RELATING TO THE CLAIM.

NOTICE

Federal law makes it a crime and sets punishments to persons who have been found guilty of making false statement or representation of a material fact, to receive any benefit or payment under the medical assistance program. This Department is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or for converting a benefit to the use of any person other than one for whom it was intended.

NON-TRANSFERABLE UNDER PENALTY OF LAW

AVISO

De acuerdo con la ley federal es un debto hacer XX declaración false a fin de reciber un beneficio o XX bajo of programa de assistencia médica, y dicha ley pena a les personas que le XX E Departamento le tiene que informar de XXX ley y tiene que advertir que no haga ninguna XX declaratión en una solicitud para determinar derecho a un beneficio, o para convertir el beneficio uso de otra persona que no XXX destinada a XX mismo.

INTRANSFERIBLE BAJO PENA DE LA LEY

Form #6

NOTICE TO CLIENT

THIS VALIDATION FORM INDICATES ELIGIBILITY FOR AUTHORIZED HEALTH SERVICES PROVIDED UNDER THE NEW JERSEY HEALTH SERVICES PROGRAM.

THIS VALIDATION MUST BE PRESENTED TO THE DOCTOR, HOSPITAL OR OTHER MEDICAL SERVICES PROVIDER WHEN SERVICES ARE RENDERED.

NOTICE TO PROVIDER OF MEDICAL SERVICES

YOUR CLAIM FOR PAYMENT OF HEALTH SERVICES IS TO BE SUBMITTED TO THE APPROPRIATE CONTRACTOR FOR THE STATE OF NEW JERSEY ON THE REQUIRED VENDOR CLAIM FORM.

PLEASE REPORT THE CASE NAME, CASE NUMBER AND PERSON NUMBER ACCURATELY ON ALL CLAIM FORMS AND OTHER COMMUNICATIONS RELATING TO THE CLAIM.

PLEASE CONTACT THE MEDICAID DISTRICT OFFICE SERVING YOUR AREA IF YOU HAVE QUESTIONS ABOUT THE MEDICAID PROGRAM.

Child's Medicaid No. **Name** **Case No.**

VALID ONLY FOR DATES OF

PLACEMENT REFERENCE

STATE OF NEW JERSEY
DIVISION OF YOUTH AND FAMILY SERVICES

VALIDATION
FOR HEALTH SERVICES PROGRAM

DYFS 16-36
(rev. 10/85)

Form #7

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

VALIDATION OF ELIGIBILITY

Last Name	First Name	Mi	Health Services Program Case No.	Person Number

NOTICE TO PROVIDERS

This form identifies the person listed above as eligible for authorized services under the New Jersey Health Services Program (Medicaid).

This form also serves as a validation of eligibility for up to 31 days from date of issue. All policies and procedures specified in the appropriate New Jersey Health Services Program Provider Manual are to be followed by providers when rendering services to this person.

The signature, title and telephone number of an authorized representative of the State Institution listed below must be included to validate this form.

THIS FORM IS THE PROPERTY OF THE STATE OF NEW JERSEY AND MUST BE RETURNED WITH THE PATIENT.

Signature and Title of State Institution Representative	Date of Issue

Name of State Institution	Telephone No.

FD-34 (rev. 5/83)

Form #8

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State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

PROVIDER APPLICATION

1. _____ Legal Name of Provider
2. _____ Type of Business or Facility

_____ Business Name, if Different From Above

3. _____ Address (Service Location Only) Street City County State Zip Code

4. _____ Employer ID Number
5. _____ Telephone Number
6. _____ Length of time at above address

7. _____ Billing Address, if different
8. _____ Name of Administrator, Chief Executive Officer, or other responsible official.

_____

9. Indicate legal status of your organization: Profit _____, Non-Profit _____, Private _____, Public _____, Municipal _____, State _____, Charity _____, School Nurse _____, County _____, Other _____. If other, please specify: _____

10. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program.

_____

11. Do you operate from more than one location? _____ Yes _____ No. If yes, list all other subsidiary or affiliated organizations below: (Name and service address)

1. _____ _____
2. _____ _____
3. _____ _____

Please attach additional sheet if necessary.

12. Please indicate if you are a member of a chain organization. _____ Yes _____ No. If yes, indicate name: _____

13. Please indicate your preference to receive central or local reimbursement:

_____ to each satellite location;
_____ to central location at _____

Billing through a central location is allowable and left to the provider's discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.

14. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? _____ Yes _____ No. If yes, attach a copy of the Certificate of Need. If no, explain why you do not require a certificate.

15. If your business or facility requires a license/permit, indicate type _____ and number _____ Please attach a copy of the license/permit, i.e., Independent Laboratory Certification.

16. CERTIFICATION, ACCREDITATION OR APPROVAL Specify type and attach copy. For example JCAHO (hospitals); New Jersey Department of Health (clinics); Division of Mental Health and Hospitals (mental health clinics); State Board of Dentistry (dental clinics); State Board of Pharmacy (providers offering pharmaceutical services); American Board for Certification in Prosthetics and Orthotics (Prosthetist and/or Orthotist). See Item 16.

17. Approved by Medicare? _____ Yes _____ No. If yes, please indicate Medicare provider number _____ and attach copy of your Medicare approval.

18. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid Program or the Medicaid Program of any other state or jurisdiction? _____ Yes _____ No. If Yes, list types of services provided and current status. If you were approved at one time and you no longer participate, explain the reason(s).

FD-20 (12 90)

Form #9

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19. Have any of the entities named in response to questions 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any license suspension, revocation, or other adverse licensure action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

20. Have any of the entities named in response to question 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been indicted, charged, convicted of, or pled guilty or no contest to any federal or state crime in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain.

21. Have any of the entities named in response to questions 1. or 11. or their officers or partners, or any of the individuals named in response to questions 8. ever been the subject of any Medicaid (Title XIX) or Medicare (Title XVIII) suspension, debarment, disqualification or recovery action in this state or any other jurisdiction? _____ Yes _____ No. If yes, please explain. _____

22. Do any of the entities named in response to question 1. or 11. or their officers or partners, or any of the other individuals named in response to questions 8. own or have any financial interest in any other provider participating in the New Jersey Medicaid (Title XIX) Program or the Medicaid (Title XIX) Progam of any other state or jurisdiction? _____ Yes _____ No If yes, please list provider name and nature of relationship.

23. Do you charge for goods and/or services? TO ALL _____, TO NONE _____, TO CERTAIN GROUPS ONLY _____. If you charge to all or only certain groups, please explain your arrangement and attach a copy of your fee schedule.

24. List days and hours of operation.

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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

NEW JERSEY HEALTH SERVICES PROGRAM
TITLE XIX (MEDICAID)

PROVIDER AGREEMENT
BETWEEN
NEW JERSEY DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
AND

_____
PROVIDER

PROVIDER AGREES:

1. To comply with all applicable State and Federal Medicaid laws and policy, and rules and regulations promulgated pursuant thereto:

2. To keep such records as are necessary to fully disclose the extent of services provided to individuals receiving assistance under the Medicaid Program;

3. To furnish the Division of Medical Assistance and Health Services, the Secretary of Health and Human Services and the Medicaid Fraud Section, Division of Criminal Justice with such information as may be requested from time to time, regarding any payments claimed for providing services under the Medicaid Program;

4. To comply with the requirements of Title VI of the Civil Rights Acts of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242 (c) which makes it a crime and sets the punishment for persons who have been found guilty of making any false statement or representation of a material fact in order to receive any benefit or payment under the Medical Assistance Program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended).

5. To comply with the disclosure requirements specified in 42 CFR 455.100 through 42 CFR 455.106.

The provider may, on thirty days written notice to the Division, terminate this Agreement.

_____ DATE

_____ SIGNATURE OF PROVIDER

_____ TITLE

FD-62 (rev. 6/86) Medicaid 3031-M Ed. 6/86

Form #10

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Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT

I. Identifying Information

(a). Name of Entity	D/B/A	Provider No.	Vendor No.	Telephone No.
Street Address		City, County, State		Zip Code

(b) *(To be completed by HCFA Regional Office)* Chain Affiliate No. ☐☐☐☐☐ LB1

II. Answer the following questions by checking "Yes" or "No". If any of the questions are answered "Yes", list names and addresses of individuals or corporations under Remarks on page 2. Identify each item number to be continued.

A. Are there any individuals or organizations having a direct or indirect ownership or control interest of 5 percent or more in the institution, organizations, or agency that have been convicted of a criminal offense related to the involvement of such persons, or organizations in any of the programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB2

B. Are there any directors, officers, agents, or managing employees of the institution, agency or organization who have ever been convicted of a criminal offense related to their involvement in such programs established by Titles XVIII, XIX, or XX?

☐ Yes ☐ No LB3

C. Are there any individuals currently employed by the institution, agency, or organization in a managerial, accounting, auditing, or similar capacity who were employed by the institution's, organization's, or agency's fiscal intermediary or carrier within the previous 12 months? (Title XVIII providers only)

☐ Yes ☐ No LB4

III. (a) List names, addresses for individuals, or the EIN for organizations having direct or indirect ownership or a controlling interest in the entity. (See instructions for definition of ownership and controlling interest.) List any additional names and addresses under "Remarks" on Page 2. If more than one individual is reported and any of these persons are related to each other, this must be reported under Remarks.

Name	Address	EIN
		LB5

(b) Type of Entity: ☐ Sole Proprietorship ☐ Partnership ☐ Corporation LB6
☐ Unincorporated Associations ☐ Other (Specify)

(c) If the disclosing entity is a corporation, list names, addresses of the Directors, and EINs for corporations under Remarks.

Check appropriate box for each of the following questions

(d) Are any owners of the disclosing entity also owners of other Medicare/Medicaid facilities? (Example, sole proprietor, partnership or members of Board of Directors.) If yes, list names, addresses of individuals and provider numbers.

☐ Yes ☐ No LB7

Name	Address	Provider Number

Form HCFA-1513

Form #11

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Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0086

IV. (a) Has there been a change in ownership or control within the last year?
If yes, give date _____ ☐ Yes ☐ No LB8

(b) Do you anticipate any change of ownership or control within the year?
If yes, when? _____ ☐ Yes ☐ No LB9

(c) Do you anticipate filing for bankruptcy within the year?
If yes, when? _____ ☐ Yes ☐ No LB10

V. Is this facility operated by a management company, or leased in whole or part by another organization?
If yes, give date of change in operations _____ ☐ Yes ☐ No LB11

VI. Has there been a change in Administrator, Director of Nursing or Medical Director within the last year?
☐ Yes ☐ No LB12

VII. (a) Is this facility chain affiliated? (If yes, list name, address of Corporation, and EIN)
Name EIN # ☐ Yes ☐ No LB13

Address

LB14

VII. (b) If the answer to Question VII.a. is No, was the facility ever affiliated with a chain?
(If YES, list Name, Address of Corporation and EIN)
Name EIN # ☐ Yes ☐ No LB18

Address

LB19

VIII. Have you increased your bed capacity by 10% or more or by 10 beds, whichever is greater, within the last 2 years?
☐ Yes ☐ No LB15

If yes, give year of change _____
Current beds _____ LB16 Prior beds _____ LB17

WHOEVER KNOWINGLY AND WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. IN ADDITION, KNOWINGLY AND WILLFULLY FAILING TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE OR WHERE THE ENTITY ALREADY PARTICIPATES, A TERMINATION OF ITS AGREEMENT OR CONTRACT WITH THE STATE AGENCY OR THE SECRETARY, AS APPROPRIATE.

Name of Authorized Representative (Typed)	Title

Signature	Date

Remarks

Form HCFA-1513

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PATIENT CERTIFICATION FORM

PATIENT'S NAME _____

HIC NO. _____ HSP NO. _____

MEDICARE PATIENT'S AUTHORIZATION

I authorize any holder of medical or other information about me to release to the Social Security Administration, or the Health Care Financing Administration or its intermediaries or carriers, any information needed for this or a related claim. I certify that the service(s) covered by this claim has been received and request payment in accordance with Program Policy either to Dr. _____ or myself if the doctor does not accept assignment.

MEDICAID PAYMENTS

Authorization to Release Information and Payment Request. I certify that the service(s) covered by this claim has been received and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release to the State Agency or its authorized Agents any information needed for this or a related claim.

Patient or Authorized Representative's Signature	Date of Service	Control Number	Other Comments

THIS FORM TO BE RETAINED IN PROVIDER'S OFFICE
THIS FORM HAS BEEN APPROVED BY
THE NEW JERSEY DEPARTMENT OF HUMAN SERVICES,
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
FOR USE IN THE MEDICAID PROGRAM

7445-M Ed. 7/82 FD-197-N.J. (rev. 7/8

Form #12

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YOUR PRESCRIPTION FOR GOOD HEALTH

WELCOME TO THE GARDEN STATE HEALTH PLAN

Thank you for applying for membership in the Garden State Health Plan (GSHP). After your eligibility for enrollment is verified, the GSHP will process your enrollment, which usually takes forty-five days. Your membership, therefore, should begin on . You will know when your membership begins when the message, "HMO-Check GSHP-ID Card," is printed on your Medicaid Identification (ID) Card which you receive each month.

A few weeks before your membership begins, you will receive a gold Garden State Health Plan Membership Card. When your GSHP membership begins, you must show both your Medicaid ID Card and your GSHP gold card each time you receive medical care.

Also, as a Plan member, it is important that you establish and maintain a close relationship with your primary care physician. Remember, all medical services you receive will be coordinated by your primary care physician. You must, therefore, call your physician for authorization before you go to any other health provider, such as an eye doctor, for X-rays, or to have a prescription filled, etc.

The Garden State Health Plan operates a toll-free number: **1-800-525-0047**. Please call if you have any questions or problems. Our goal is to keep each GSHP member healthy and satisfied. In addition, please notify our office immediately if you do not receive your gold card within 45 days of your application.

The Garden State Health Plan physician case manager(s) you have chosen is/are:

Name of Family Member	Physician	Telephone	Address

State of New Jersey
DEPARTMENT OF HUMAN SERVICES

Form #13

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SU RECETA PARA LA
BUENA SALUD

UNA CORDIAL BIENVENIDA AL GARDEN STATE HEALTH PLAN

Le agradecemos su solicitud para afiliarse al Garden State Health Plan (GSHP). Después de que se compruebe su elegibilidad para la inscripción, el GSHP tramitará su inscripción, lo que normalmente toma 45 días. Por consiguiente, su afiliación comenzaría el Usted sabrá la fecha del inicio de su afiliación cuando el mensaje "HMO-CHECK GSHP-ID CARD" esté impreso en su tarjeta de identificación de Medicaid, que recibirá mensualmente.

Unas semanas antes de que se inicie su afiliación, usted recibirá una Tarjeta dorada de Identificacion como Miembro del Garden State Health Plan. Cuando se inicie su afiliación en el GSHP, cada vez que reciba atención médica usted deberá presentar su tarjeta de identificación de Medicaid junto con su tarjeta dorada del GSHP.

Además, como miembro del Plan, es importante que usted establezca y mantenga unas relaciones estrechas con su médico de atención primaria. Tenga presente que todos los servicios médicos que usted reciba serán coordinados por su médico de atención primaria. Por consiguiente, usted deberá llamar a su médico para obtener autorización antes de acudir a cualquier proveedor de salud distinto, tal como el oculista, para radiografías o para que se le dispense una receta.

El Garden State Health Plan mantiene un número de teléfono gratis de tarifa: 1-800-525-0047. Le rogamos que llame si tiene preguntas o problemas. Nuestro objetivo es el de mantener sano y satisfecho a cada uno de los miembros del GSHP. Además, le rogamos que avise a nuestra oficina si no recibe su tarjeta dorada en un plazo de 45 días de remitir su solicitud.

El o los gerentes médicos para casos del Garden State Health Plan que usted seleccionó son:

Nombre del familiar	Medico	Teléfono	Dirección

Form #13

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State of New Jersey
DEPARTMENT OF HUMAN SERVICES
Division of Medical Assistance and Health Services

GARDEN STATE HEALTH PLAN (GSHP)

CONDITIONS FOR MEMBERSHIP

1. I have applied for membership in the Garden State Health Plan (GSHP). I have accepted no money nor rewards to enroll in the Plan, nor have I been forced by anyone to join the Plan.

2. I understand that I may choose my Physician Case Manager (PCM) from a list of participating physicians in my area according to the type of practice and availability of openings for that PCM.

3. I understand that I am eligible for all Medicaid services as a Plan member and I will not lose any Medicaid benefits by enrolling in this plan.

4. I understand and agree, as a Plan member, to *only* go to the doctor I have chosen for *all* medical services no matter what the problem. If an emergency occurs and my doctor cannot be contacted right away, I may go to a hospital emergency room and my PCM will be notified. I *will not* go to the hospital emergency room or to any other doctor if it is not an emergency situation.

5. I understand that the PCM I have chosen will send me for other health services whenever necessary. I will *only* use another physician's services or other health care provider's services (e.g. optometrist, chiropractor, etc.) if I have been sent by or have the approval of my PCM. Only my PCM will write any necessary prescriptions for me or will authorize another physician to write a prescription for me.

6. I understand that if I use any health services (for example, using the hospital emergency room for non-emergency or routine care) without the approval of my PCM, the Medicaid Program will not pay for these unauthorized services and I may become responsible for paying the bills.

7. I understand that my Plan participation begins when I receive my validation stub with the following message, "HMO—Check GSHP ID Card," printed on the stub. My membership in the Plan will automatically continue until my eligibility is terminated or my disenrollment is authorized. If I want to disenroll from the Plan or choose another PCM, I *must* contact the Plan Office listed below. Under certain circumstances, I may be guaranteed twelve (12) months of Medicaid eligibility upon enrollment which has been explained to me.

8. I understand that I am enrolling for six (6) month periods and that I may change my Physician Case Manager for any reason during the first thirty (30) days of membership in the Plan (which begins the first month the Plan message appears on my Medicaid Validation Card) and during the first thirty (30) days of each successive six (6) month period of membership.

9. I understand that in order to participate in the Plan I must be Medicaid eligible on the effective date of my enrollment in the Plan. If I should lose my Medicaid eligibility, my membership becomes null and void.

10. I understand that if I am currently receiving long-range medical services, (such as mental health counseling) or am under a "plan of care" of another physician, I will discuss this matter with my PCM as soon as possible. If there is any disagreement about continuing that care, I may call the designated Plan Office at the toll free number to discuss a possible solution.

11. I understand that under certain circumstances the County Welfare Agency (AFDC clients only) has the right and obligation to invalidate my twelve (12) month guarantee of eligibility if I fail to comply with public law which affect my eligibility for public assistance benefits.

Any questions or complaints about my Plan membership should be directed to:

Office of the Garden State Health Plan

Address: **CN 712, Trenton, New Jersey 08625**

Toll Free Telephone Number: **1 - 800 - 525 - 0047**
(This number can also be found on your GSHP Membership Card.)

GSHP-4(a) Form #14

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CONDICIONES DE MIEMBRO

1. He solicitado ser miembro del Plan de Salud del Estado del Jardín. No he aceptado ningún dinero o recompensa para inscribirme al Plan, ni se me ha obligado a unirme al Plan.

2. Tengo entendido que puedo escoger mi Gerente Médico para Casos (GMC) de un listado de médicos participantes en mi área, de acuerdo al tipo de práctica y a la disponibilidad de plazas exitentes para ese GMC.

3. Tengo entendido que soy elegible para todos los servicios de Medicaid como miembro del Plan y que no voy a perder ningún beneficio de Medicaid al participar en este plan.

4. Tengo entendido y estoy de acuerdo que, como miembro del Plan, visitaré para *todos* los servicios médicos *solamente* al médico que haya escogido, independientemente del problema. En caso de emergencia y no poder comunicarme con mi médico inmediatamente, puedo ir a la sala de emergencia de un hospital y se notificará a mi GMC. *No* iré a la sala de emergencia de un hospital o a ningún otro médico, a menos que sea una emergencia.

5. Tengo entendido que al GMC que haya escogido me enviará a otros servicios de salud cuando sea necesario. *Solamente* recurriré a los servicios de otro médico o de algún otro proveedor de servicios de salud (p.e. optómetra, quiropráctico, etc.), siempre y cuando me haya enviado y tenga la aprobación de mi GMC. Mi GMC será el único que podrá suministrarme las recetas necesarias o autorizar a otro médico a hacerlo.

6. Tengo entendido que si utilizo cualquier servicio de salud (por ejemplo, la utilización de la sala de emergencia hospitalaria para casos que no son de urgencia o para cuidado rutinario) sin la aprobación de mi GMC, el programa de Medicaid no pagará dichos servicios y puede que yo sea responsable de cubrir los gastos incurridos.

7. Tengo entendido que mi Plan de participación comienza en el momento en que reciba mi tarjeta de validación impresa con el siguiente mensaje: "HMO — Check GSHP ID Card," (HMO—Factue la tarjeta de identificación del Plan). Mi participación en el Plan continuará automáticamente hasta que termine mi elegibilidad o hasta que se autorice mi disociación. En caso de que desee disociarme del Plan o escoger a otro GMC, *deberé* comunicarme con la oficina del Plan cuyo nombre aparece al pie de la página. Bajo ciertas circunstanciás, se me podrán garantizar doce (12) meses de elegibilidad con Medicaid, lo cual me fue explicado al momento de la inscripción.

8. Tengo entendido que alisto para un período de seis meses y que puedo cambiar de Gerente Médico para Casos por la razón que sea durante los primeros treinta (30) días de participación en el Plan (el cual comienza a partir del primer mes en que aparezca en mi tarjeta de validación de Medicaid el mensaje de Plan) y durante los primeros treinta (30) días de cada periodo sucesivo de seis meses de participación.

9. Tengo entendido que para particpar en el Plan debo ser elegible para Medicaid en la fecha efectiva de mi subscripción al Plan. Si pierdiera mi elegibilidad de Medicaid, mi membrecía sará nula e inválida.

10. Tengo entendido que si actualmente estoy recibiendo servicos médicos a largo plazo, (tales como consejería de salud mental) o estoy bajo un "plan de cuidado" de otro médico, discutiré este asunto con mi GMC lo más pronto posible. En caso de surgir algún desacuerdo sobre la continuación de dicha atención, podré comunicarme con la oficina del Plan para discutir una posible solución.

11. Tengo entendido que bajo ciertas circunstanciás la Agencia de Bienestar del Condado (solamente para clientes del AFDC) tiene el derecho y la obligación de invalidar mi garantía de elegibilidad de doce (12) meses, en caso de que no cumpla con las leyes que gobiernan mi elegibilidad para los beneficios de asistencia pública.

Cualquier pregunta o queja sobre mi membrecia al Plan deberá dirigirse al:

Oficina del Plan de Salud del Estado del Jardín

Dirección: **CN 712, Trenton, New Jersey 08625**

Número del Teléfono Libre de Tarifa: **1-800-525-0047**

(Este número del teléfono lo puede encontrar en su tarjeta de miembro de GSHP)

Form #14

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State of New Jersey 10:49-Appendix-FORM #15
Department of Human Services
Division of Medical Assistance and Health Services

Address reply to
HAAAD Program
Cn-715
Trenton, NJ 08625-0715

ELIGIBILITY APPLICATION
HEARING AID ASSISTANCE TO THE AGED AND DISABLED (HAAAD)

Last Name _____ First Name _____ MI _____

Street Address _____

City _____ State _____ Zip Code _____

Applicant's Social Security Number _____ Applicant's Pharmaceutical Assistance to the Aged and Disabled Number _____

The following documentation must accompany this application:

1. A receipt for the purchase of the hearing aid.
2. A written statement from your physician attesting to the medical necessity for obtaining a hearing aid. You may obtain your physician's signature below or attach a copy of the prescription for the hearing aid.

TO BE COMPLETED BY YOUR PHYSICIAN

I have examined this applicant and have determined the medical necessity for obtaining a hearing aid.

Physician's Signature _____ Name & Address of Physician (PLEASE PRINT) _____

Applicant's Certification and Waiver: I certify that the information above is true and accurate to the best of my knowledge. I understand that if it is determined that HAAAD benefits have been improperly issued to me, I will be required to repay such benefits. I understand that to verify my eligibility for HAAAD, it may be necessary to obtain certain information from records of the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, and I authorize the release of that information. I hereby assign to the State of New Jersey any right to hearing aid coverage to which I may be entitled under any other plan of assistance or insurance or from any other liable third party.

Applicant's Signature _____ Date _____

HA-1 (rev.4/91) Form #15

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What Is Hearing Aid Assistance to the Aged and Disabled?

This is a State of New Jersey program which provides a $100 reimbursement to eligible residents who purchase a hearing aid.

How Do I Apply?

If you are currently enrolled in the Pharmaceutical Assistance to the Aged and Disabled Program (PAAD), you must complete a HAAAD application and submit the following documentation:

1. A receipt for the purchase of your hearing aid.
2. A written statement from your physician attesting to the medical necessity for obtaining a hearing aid.

If you are not currently enrolled in the PAAD program, you must complete a PAAD application as well. This is needed to verify your age or disability status, state residency, and annual income.

Applications may be obtained by calling the toll-free number:

1-800-792-9745

How Is The Term "Hearing Aid" Defined For The Purpose Of This Program?

"Hearing aid" means a custom-fitted ear-level or body-worn electronic device to enhance communication for the hearing impaired.

How Often May I Receive The HAAAD Benefit?

You may receive one $100 payment during a calendar year. If you purchase another hearing aid during a subsequent calendar year, you may reapply.

How Soon Will I Get My $100 Payment After I Apply?

Once your application has been approved, you should receive your payment in approximately six to eight weeks.

Would I Be Eligible If I Have Other Hearing Aid Coverage?

If you are a Medicaid recipient or have other health insurance coverage or retirement benefits that provide full hearing aid coverage, you would not be eligible. If you have only limited or partial coverage, you would be eligible for a supplementary payment.

How Do I Know If I Am Eligible?

You must be at least 65 years of age, or receiving Social Security Disability benefits.

You must be a New Jersey resident.

You must have an annual gross income of less than $15,700 if you are single, or less than $19,250 if you are married.

If you have any questions about HAAAD, write to:

HAAAD
CN-715
Trenton, NJ 08625-0715

or telephone the toll-free number:

1-800-792-9745

A special Teletypewriter Telephone (TTY) is available for the hearing impaired by calling:

609-588-7180*

NOTE:
This is NOT a toll-free number.

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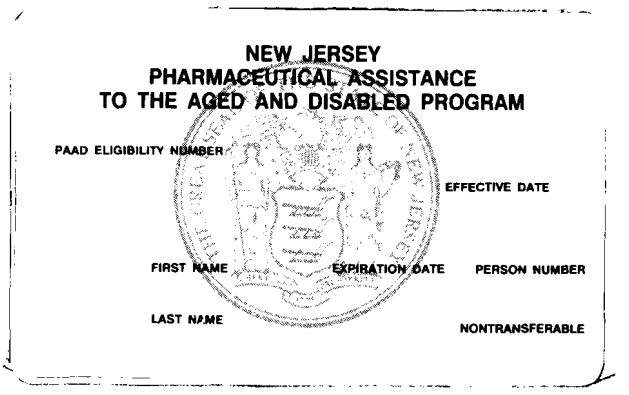
STATE OF NEW JERSEY
PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED

our plastic PAAD Identification card is attached. Persons violating any provision f the PAAD ACT shall be subject to applicable civil and criminal penalties N.J.S.A. 30: 40-1 Et Seq., and as may hereafter be amended, and to uspension of their eligibility for one year for a first offense and permanent evocation of their eligibility for a second offense. Names can have no ore than 7 letters in the first and 12 in the last.



You must return your eligibility card to PAAD, CN 715, Trenton, New Jersey 08625 if:

1. Your annual income exceeds the limits set by law.
2. You move out of the State of New Jersey.
3. You become eligible for Medicaid or any plan that offers coverage equal to PAAD pharmaceutical services.
4. You are under age 65 and your Social Security Disability benefits are terminated.

Use of your PAAD card if ineligible is a violation of law and will result in your owing the State for benefits paid, plus civil and criminal penalties.

You must notify PAAD if:

1. You change your address.
2. Your marital status changes.

Include your PAAD eligibility number on all correspondence.

250 (3-90)

Form #16

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DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

10:49 - Appendix - Form #17

MEDICAID DISTRICT OFFICE	PHONE NUMBER	ADDRESS
(01) Atlantic	Tel. 609-441-3620	1601 Atlantic Avenue, 7th Floor Atlantic City, NJ 08401
(02) Bergen	Tel. 201-488-5667	171-173 Main Street Hackensack, NJ 07601
(03) Burlington	Tel. 609-261-0448	50 Rancocas Road Mt. Holly, NJ 08060
(04) Camden	Tel. 609-757-2870	101 Haddon Avenue, 5th Floor Camden, NJ 08103
(05) Cape May (06) Cumberland	Tel. 609-696-6560	108 Landis Avenue Vineland, NJ 08360
(07) Essex-Newark	Tel. 201-648-2470 201-648-3700	153 Halsey Street, 4th Floor Newark, NJ 07102
(07) Essex-Suburban	Tel. 201-761-7441	76 S. Orange Avenue, 2nd Floor South Orange, NJ 07079
(08) Gloucester (17) Salem	Tel. 609-853-4177	251 N. Delsea Drive Deptwood Center Deptford, NJ 08096-1930
(09) Hudson	Tel. 201-433-8011	2815 Kennedy Boulevard, 2nd Floor Jersey City, NJ 07306
(10) Hunterdon (18) Somerset	Tel. 908-782-1130	84 Park Avenue, 2nd Floor Flemington, NJ 08822
(11) Mercer	Tel. 609-292-7315	314-316 E. State Street Trenton, NJ 08608
(12) Middlesex	Tel. 908-549-3541	Bldg. B, Suite 5 & 6 25 S. Main Street Edison, NJ 08837
(13) Monmouth	Tel. 908-308-1159	1003 Route 9 North-Suite 200 Howell, NJ 07731-1113
(14) Morris (19) Sussex (21) Warren	Tel. 201-267-1700	10 Park Place, 4th Floor Morristown, NJ 07960
(15) Ocean	Tel. 908-255-0731	1510 Hooper Avenue Toms River, NJ 08753
(16) Passaic	Tel. 201-977-4077	66 Hamilton Street Paterson, NJ 07505
(20) Union	Tel. 908-820-3135	24-52 Rahway Avenue, 3rd Floor United Jersey Bank Bldg. Elizabeth, NJ 07201
Northern Regional Medicaid Office	Tel. 201-977-4541	100 Hamilton Plaza Room 601, Box 2, Paterson, NJ 07505

Rev. 8/91

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Notice of Administrative Change
Mortgage Loans, Fees, and Obligations
Definition of "Receipt"
N.J.A.C. 3:1-16.1

Take notice that the Department of Banking has requested, and the Office of Administrative Law has agreed to permit, an administrative change to the N.J.A.C. 3:1-16.1 definition of "receipt" to subcodify, for clarity, the second paragraph of the definition (see 24 N.J.R. 1380(a)). This notice of administrative change is published in accordance with N.J.A.C. 1:30-2.7(c).

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

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.

. .

"Receipt" (or "received") means:

1. (No change.)

2. In the case of a borrower[,]:

1. [actual] **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**

ii. [the] **The** third calendar day following deposit in the regular U.S. mail.

. .

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Maintenance of Hotels and Multiple Dwellings
Administration and Enforcement
N.J.A.C. 5:10-1.3

Take notice that the Department of Community Affairs has discovered a typographic error in the current text of N.J.A.C. 5:10-1.3(b)6. The last phrase of the sentence constituting this paragraph reads, "and 75 percent prior to October 1 of each State fiscal year." As originally proposed (see 23 N.J.R. 387(b)), this phrase read, "and 75 percent prior to May 1 of each State fiscal year." However, in the Register publication of the adopted text (see R.1981 d.363), this phrase was subject to a printing error which resulted in the replacement of "May 1" with "October 1" (see 13 N.J.R. 704(a)) when the new paragraph was incorporated into the Code. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, the correct date is inserted in the Code.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

10-1.3 Administration and enforcement

(a) (No change.)

(b) However, each municipality and county of this State may be authorized by the Commissioner to enforce the provisions of this chapter within the corporate limits thereof, subject to the control and supervision of the Commissioner. Any such authorization shall be in accordance with the following terms and conditions.

1.-5. (No change.)

6. Twenty-five percent of the inspections required to be performed pursuant to (b)5 above shall be completed prior to October 1 of each State fiscal year, 50 percent prior to January 1 of each State fiscal year and 75 percent prior to [October] **May** 1 of each State fiscal year.

7.-28. (No change.)

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

EDUCATION

(c)

STATE BOARD OF EDUCATION

Child Nutrition Programs
Adopted Recodification and Amendments: N.J.A.C. 6:20-9

Proposed: February 3, 1992 at 24 N.J.R. 324(a).

Adopted: April 1, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: April 10, 1992 as R.1992 d.202, **with technical changes** not requiring further public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:33-4 and 18A:58-7.1.

Effective Date: May 4, 1992.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

No one spoke regarding the above captioned rules at the public testimony session provided by the State Board of Education held on February 19, 1992. Two letters with comments were received, one from Ms. Jean Paashaus and one from Mr. Samuel Petracca, Director of Food Services.

COMMENT: A commenter requested the deletion of language in N.J.A.C. 6:20-9.5(e) that allows a school on its own authority to authorize free or reduced-price meals on the recommendation of a teacher, nurse or other school official.

RESPONSE: The Department disagrees with the request since the language in N.J.A.C. 6:20-9.5(e) is based upon Federal regulations 7 CFR 210 and 245. This allows the school district the freedom to authorize free or reduced-price meals to children in cases where parents will not or cannot apply for benefits for their children. The application must be completed by a school official based on known economic need. This allows the district to feed students who come to school without the benefit of lunch money or a packed meal from home.

COMMENT: The commenter felt that the summary section of the code implies that the School Nutrition Programs include the school breakfast and the lunch program rather than specifically identifying the School Breakfast Program. The commenter suggests identifying each program by title where appropriate in the Summary section.

RESPONSE: The Department acknowledges the suggestion as valid as it relates to the Summary. However, no change is necessary since the rules as amended are sufficiently clear.

Agency initiated change upon adoption:

Wherever possible, the format of citations to sections of the Code of Federal Regulations were corrected upon adoption.

Full text of the rules recodified from N.J.A.C. 6:79 to 6:20-9 may be temporarily found in the New Jersey Administrative Code at N.J.A.C. 6:79.

Full text of the adopted amendments follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposals indicated in brackets with asterisks *[thus]*).

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SUBCHAPTER 9. CHILD NUTRITION PROGRAMS

6:20-9.1 Definitions

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

"Agreement for School Nutrition Programs" means the agreement entered into between the Department and each sponsor pursuant to Federal regulations 7 CFR Parts 210, 215, 220 and 245.

. . .

"Child Nutrition Programs" means the National School Lunch Program, School Breakfast Program, Special Milk and Split-Session Kindergarten Milk Programs, Child Care Food Programs and the Summer Food Service Program.

. . .

"Department's Consolidated Enrollment Report: Current School Enrollment Data" means a comprehensive report which districts are required to submit each October to provide information on school enrollment data, including the number of students eligible for free and reduced price meal benefits.

"Enrolled student" means all students enrolled in the school including pre-kindergarten, kindergarten and grades one through 12 regardless of participation in the School Nutrition Programs.

"Five percent threshold" means the point at which five percent or more of the total school enrollment of each school in the district is eligible for free or reduced price meals and/or free milk.

"Foods of minimal nutritional value" means those foods contained in the following categories as specified in the United States Department of Agriculture, regulations 7 CFR Part 210 Appendix B: soda water, water ices, chewing gum, certain candies: hard candy, jellies and gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn.

. . .

"Nutritional standards" means those standards established by the U.S. Department of Agriculture at 7 CFR Part 210 and incorporated by reference by the State Department of Education. These standards govern the type and nutritional value of all food items offered as part of the school lunch and breakfast meal pattern and a la carte food items.

"Policy" means the free and reduced-price policy required by applicable regulations of the United States Department of Agriculture, 7 CFR Parts 210, 215, 220 and 245.

. . .

"School food authority" means the governing body which is responsible for the administration of one or more schools; and which has the legal authority to operate the National School Lunch, School Breakfast or Special Milk Program.

"School Nutrition Programs" means those programs administered by the Bureau of Child Nutrition which include the National School Lunch Program, School Breakfast Program and Special Milk Programs.

"Sponsor" means the school district participating in any child nutrition program.

"Survey" means the procedure required of every school and sponsor to determine eligibility of every enrolled student for free and reduced-price meals regardless of whether the school has an agreement with the Department to participate in any of the School Nutrition Programs.

6:20-9.2 Policy and Agreement for School Nutrition Programs

(a) All school districts shall adopt a free and reduced price policy pursuant to Federal regulations 7 CFR Parts 210, 220 and 245 on the form prescribed by the Commissioner entitled "Policy for the Free and Reduced-price Meals or Free Milk." This form is available from the Bureau of Child Nutrition, Department of Education, CN 500, Trenton, NJ 08625.

(b) This policy shall be signed and returned to the Bureau no later than the end of the second calendar month for which any reimbursement can be claimed for meals and milk served under the child nutrition programs. However, for sponsors starting programs in September, the deadline for submission of the policy shall be September 30.

(c) The Agreement for School Nutrition Programs shall contain the policy referred to in (a) above and shall be submitted in accordance with the application prescribed by the Commissioner pursuant to 7 CFR *[Parts]* *§*210.9, 215.7, 220.7 and 245.10.

6:20-9.3 Eligibility

The Bureau shall administer Statewide eligibility standards pursuant to Federal regulations 7 CFR Part 245 for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools. Such standards shall be used by all sponsors participating in the child nutrition programs.

6:20-9.4 Survey

(a) By the last school day prior to October 16 of each school year, each school, under the supervision of its sponsor, shall survey the parent or guardian of each student enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The purpose of the survey is to determine the five percent threshold as defined in N.J.S.A. 18A:33-4.

(b) This survey shall be conducted using the "Application for Free and Reduced Price Meals or Free Milk" as prescribed by the Commissioner pursuant to Federal regulations (7 CFR Part 245). This application shall be distributed to the parent or guardian of every student enrolled in the school.

(c) The results of this survey shall be included in the Department's Consolidated Enrollment Report: Current School Enrollment Data for the school year in which the survey is made.

6:20-9.5 Application

(a) The Bureau shall prepare an application which shall be used by all school districts. A copy of the application used by each school district must be filed with the Bureau together with the policy described in N.J.A.C. 6:20-9.2.

(b) The parent or guardian shall be given at least two weeks from the date of receipt of the application to complete and submit the application to the school district which must provide adequate assistance to parents in completing these applications.

(c) Applications in languages other than English must be provided where non-English speaking parents are possible applicants. (An application in Spanish and French is available upon request from the Bureau.)

(d) Upon receipt of the completed application, the district must determine each student's eligibility for a free or reduced-price meal and/or free milk from the information submitted. Each student shall be offered free or reduced-price meals and/or free milk as soon as eligibility has been determined. If the school has reason to question the information provided, the student affected must continue to receive the free or reduced-price meals and/or free milk until completion of the appeal procedures set forth in the sponsor's policy pursuant to Federal regulations (7 CFR *[Part]* *§*245.7 Hearing Procedure for Families and School Food Authorities).

(e) Any school may authorize free or reduced-price meals and/or free milk on the recommendation of a teacher, nurse or other school official, based on known economic need, in cases where parents will not or cannot apply for free or reduced-price meals and/or free milk for their children. A school official must complete applications for these students.

6:20-9.6 Participation requirements

(a) Any school in which five percent or more of the school enrollment is found to be eligible for free or reduced-price meals shall offer lunch to all students enrolled in that school. Free and reduced price lunches must be offered to all qualifying children. Such lunches shall meet minimum nutritional standards established by the U.S. Department of Agriculture (7 CFR *[Parts]* *§*210.10 and 220).

(b) Any school may participate in the National School Lunch Program.

(c) The school food authority shall maintain a non-profit school food service. All revenues are to be used only for the operation or improvement of the school food service.

(d) (No change.)

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6:20-9.7 Nutritional standards

Nutritional standards established by the Department for lunches and breakfasts served under the National School Lunch Program and the School Breakfast Program or as mandated by N.J.S.A. 18A:33-4 shall be identical to those established in the United States Department of Agriculture regulations at 7 CFR *[Parts]* **§*210.10 and ***Part*** 220 respectively. These Federal regulations and all subsequent amendments are adopted herein by reference as published in the Department's Nutritional Standards for School Nutrition Programs available through the Bureau of Child Nutrition Programs, Department of Education, CN 500, Trenton, New Jersey 08625-0500.

5:20-9.8 Review and evaluation

(a) (No change.)

(b) Federal and State child nutrition program funds may be withheld and/or fiscal action taken against sponsors (see: 7 CFR ***§*** 210.19(c), 215.12(a) and 220.14(a)) found not to be in compliance with applicable Federal regulations (7 CFR Parts 210, 215 and 220).

(c) (No change.)

5:20-9.9 Maximum charge

(a) The Bureau shall annually establish the maximum per meal and milk charge pursuant to 7 CFR *[Parts]* **§*210.2 and 215.8(c); however, sponsors may appeal to the Bureau to increase such maximum per meal or milk charges.

1. The maximum milk charge shall be established based on the rate of reimbursement from the United States Department of Agriculture (USDA) per ½ pint of milk, consideration of the annual average statewide student price/charge for milk and the average cost of a ½ pint of milk as purchased from the dairy.

2. The maximum meal charge shall be established based on the rate of reimbursement from the USDA for a free meal minus the rate of reimbursement from the USDA for a paid meal, and consideration of the annual average statewide student price/charge for a paid meal in the elementary, middle and secondary grades.

(b) Adult meal prices shall be established to cover all costs associated with the production and service of the adult meal.

:20-9.10 Competitive food policy

(a) The sale or free promotion of extra food items of minimal nutritional value on the school property at any time before the end of the last lunch period shall not include those items prohibited by regulations promulgated by the United States Department of Agriculture for the administration of child nutrition programs and as contained in the Department's nutritional standards as referenced in N.J.A.C. 6:20-9.7. This policy also applies to all school districts required to make school lunch available pursuant to N.J.S.A. 18A:33-4 regardless of participation in the National School Lunch Program.

(b) All income derived from the sale of food and beverage items within a school during the hours when the school lunch and school breakfast programs are in operation must accrue to the accounts of said programs.

:20-9.11 Meal accountability

(No change in text.)

(a)

STATE BOARD OF EDUCATION

Private Vocational Schools

Readoption: N.J.A.C. 6:46

Proposed: February 18, 1992 at 24 N.J.R. 541(a).

Adopted: April 1, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: April 10, 1992 as R.1992, d.203, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54-1 et seq., 18A:69-1 et seq., and 34:1A-38.

Effective Date: April 10, 1992.

Expiration Date: April 10, 1997.

Summary of Public Comments and Agency Responses:

No comments were received.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:46.

(b)

STATE BOARD OF EDUCATION

Vocational Education Safety and Health Standards

Readoption with Amendments: N.J.A.C. 6:53

Proposed: February 18, 1992 at 24 N.J.R. 516(a).

Adopted: April 1, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: April 10, as R.1992, d.204, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 18A:4-15, 18A:33-1 et seq., 18A:40-12.1 and 12.2 and 18A:54-1 et seq.

Effective Date: Readoption, April 10, 1992;
Amendments, May 4, 1992.

Expiration Date: April 10, 1997.

Summary of Public Comments and Agency Responses:

One individual, Mr. Robert Broderick of the New Jersey Education Association, spoke at the February 19, 1992 public testimony session held by the State Board of Education. One letter was received from the American Industrial Hygiene Association and was signed by Ms. Donna Capizzi, Mr. Matthew M. Carmel and Mr. William Kerbel.

COMMENT: The commenter recommended that the code specify that an administrator perform the functions of the designee outlined in N.J.A.C. 6:53-2.2(b), since this is an administrative function which teachers do not have the time to perform.

RESPONSE: Designation of staff to implement identified responsibilities is a local district prerogative. Should a district designate a teacher, it could make provisions for the teacher to have the time necessary to implement the responsibilities.

COMMENT: The same commenter recommended that the code require staff training on the handling of blood and body fluids, as well as the provision, in instructional work areas, of the necessary materials to handle such fluids.

RESPONSE: N.J.A.C. 6:53-5.3 requires implementation of universal precautions in accordance with N.J.A.C. 6:29-2.5, which already specifies that a district must provide training and the required materials to district employees. It is unnecessary to repeat this requirement.

COMMENT: The writers recommended that the code specify that a district's vocational education safety and health program be developed, approved and implemented under the direct supervision of a Certified Industrial Hygienist or Safety Professional.

RESPONSE: As indicated above, the designation of a specific individual and the requirements for the position are a local district's prerogative.

Agency initiated change upon adoption:

The Department is making a correction in the text at N.J.A.C. 6:53-2.2. The word "made" is being changed to "make".

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:53.

Full text of the adopted amendments follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[thus]*).

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CHAPTER 53
VOCATIONAL EDUCATION SAFETY AND HEALTH STANDARDS

6:53-1.1 Scope and purpose

(a) The rules in this chapter prescribed and approved by the State Board of Education pursuant to N.J.S.A. 18A:1-1, 18A:4-15, 18A:33-1 et seq., 18A:40-12.1, 18A:40-12.2 and 18A:54-1 et seq. provide safety and health standards to govern the use of tools, machines, equipment, protective devices and hazardous substances in vocational education programs and courses.

(b) These programs and courses include those regulated by the Department of Education and offered in public schools, private vocational schools as defined in N.J.A.C. 6:43-1.2, approved private schools for the handicapped as defined in N.J.A.C. 6:28-1.3 and institutions or agencies receiving either State or Federal vocational education funds administered by the Department of Education.

6:53-1.2 Adoption by reference

(a) (No change.)

(b) The standards are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, New Jersey 08625.

6:53-1.3 Definitions

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

. . .

"Hazard analysis" means a method of reviewing vocational program equipment, materials, procedures and processes in order to identify potential causes of injury or illness.

"Hazardous substance" means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced or otherwise handled at a facility.

"NFPA" means the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269.

. . .

"Universal precautions" means routine procedures for sanitation and hygiene when handling body fluids including the use of barrier precautions to prevent direct skin contact with blood or any body fluid containing blood.

"Vocational education program and/or course" means any vocational or career orientation program and/or course as defined in N.J.A.C. 6:43-1.2.

6:53-2.1 Applicability and implementation of safety and health standards

(a) All tools, machines, equipment, personal protective devices and hazardous substances used in vocational education programs shall meet the safety and health standards contained in this chapter.

(b) Tools, machines, equipment, personal protective devices and hazardous substances not in compliance with these standards shall be removed from service.

6:53-2.2 Safety and health program

(a) All district boards of education and other institutions and agencies identified in N.J.A.C. 6:53-1.1(b) operating vocational education programs and/or courses shall organize, adopt and implement a vocational education safety and health program. A copy of the program, indicating the district board of education's, the agency's or institution's adoption and approval, shall be retained on file by the agency or institution and *[make]* ***made*** available, upon request, to the Department of Education.

(b) Each district board of education and other institution or agency as specified in N.J.A.C. 6:53-1.1(b) operating vocational education programs and/or courses shall designate a person or persons, other than the chief executive and/or chief administrative officer, who will implement the approved safety and health program.

(c) The safety and health program shall contain, as a minimum, the following:

1. Objectives of the safety and health program;

2. A safety and health hazard analysis for each vocational course and/or program in operation;

3. A statement of the general policies for the safe and healthy operation of all vocational courses;

4. Specific statements of practices and precautions required for safe and healthy operation within each separate course;

5. A plan and procedures for periodic inspections and maintenance of facilities, tools, machines, equipment, personal protective devices, hazardous substances, and for the elimination of potential or identified hazards;

6. (No change.)

7. Methods to be used for each vocational course to provide safety and health education to pupils including methods for incorporating the results of the hazard analysis;

8. Procedures and methods to be used to document and assess pupils' knowledge of safe and healthy practices and procedures;

9. A system, which may include disciplinary action, to ensure that pupils comply with safe and healthy practices; and

10. Procedures to ensure that all new vocational education staff and pupils receive appropriate initial safety and health program training prior to working or participating in any vocational course and/or program.

6:53-2.3 Reporting requirements

(a) (No change.)

(b) A reportable accident is any accident which requires treatment by a licensed medical doctor that occurs in a vocational education program, either on the school premises or at an approved off-premises training site including cooperative work training site and travel to and from that off-premises training site.

6:53-3.2 Unattended machines and equipment

Machines and equipment requiring the presence of an operator shall not be left unattended while in operation or still in motion.

6:53-3.3 Machine controls and equipment

(a) An electrical power control shall be provided on each machine to make it possible for the operator to cut off the power without leaving the operating position.

(b) On all nonportable motorized equipment and machinery, a magnetic-type switch shall be provided to prevent machines from automatically restarting upon restoration of power after an electrical failure or electric cutoff.

(c) Power controls and operating controls shall be located within easy reach of the operator while the operator is at the regular work location, thereby making it unnecessary to reach over the point of operation to make adjustments.

(d) Each machine operated by electrical power shall be provided with positive means for rendering it inoperative while repairs or tool changes are being made.

(e) Push-type emergency cutout switches shall be provided at appropriate locations within shops to de-energize the electrical supply to nonportable machinery in accordance with N.J.A.C. 6:22-5.4(f)1.

(f) Power tools and machines in shops which generate dust shall be provided with dust collecting equipment in accordance with N.J.A.C. 6:22-5.4(b)5.

6:53-4.1 Storage of flammable and combustible materials

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

(d) Flammable or combustible liquids shall be stored in accordance with the requirements as specified in NFPA 30-1990, "Flammable and Combustible Liquids Code" which with all subsequent amendments and supplements is hereby adopted as a rule.

1. This document is available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, New Jersey 08625.

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2. This document may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269.

5:53-4.2 Use and disposal of hazardous substances

(a) Hazardous substances shall be stored, handled and used in accordance with N.J.A.C. 8:59, Worker and Community Right to Know Act, promulgated pursuant to the authority of the Worker and Community Right to Know Act, P.L. 1983, c.315 and N.J.S.A. 34:5A-1 et seq.

1. These rules are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, New Jersey 08625.

2. (No change.)

(b) Hazardous waste shall be disposed of in accordance with N.J.A.C. 7:26-1, and 7:26-7 through 12, the Hazardous Waste Regulations, promulgated pursuant to the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

1. These rules are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, New Jersey 08625.

2. The rules may be requested from the State of New Jersey, Department of Environmental Protection, CN 028, Trenton, New Jersey 08625.

:53-5.1 Foundry operations

(a) Individuals engaged in the melting of metal to be cast or the pouring of molten metals shall be protected by the wearing of the following:

1.-2. (No change.)

3. Fire resistant or fireproof duckbib-type apron that extends below the top of leggings or equivalent;

4. Fire resistant or fireproof duckspring-type leggings;

5. (No change.)

6. Heat resistant, fireproof gloves; and

7. Closed leather footwear with metatarsal guards, or equivalent.

(b) (No change.)

:53-5.3 Handling of blood and body fluids

All individuals handling blood and body fluids in vocational education programs shall implement universal precautions in accordance with N.J.A.C. 6:29-2.5.

HEALTH

(a)

HEALTH FACILITIES EVALUATION AND LICENSING

Controlled Dangerous Substances
Manner of Issuance of a Prescription and Partial Filling of a Prescription for a Schedule II Substance
Adopted Amendments: N.J.A.C. 8:65-7.5 and 7.10

Proposed: December 2, 1991 at 23 N.J.R. 3618(a).

Adopted: April 9, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: April 10, 1992, as R.1992 d.205, **with substantive changes** not requiring additional notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 24:21-9.

Effective Date: May 4, 1992.

Expiration Date: June 17, 1996.

Summary of Public Comments and Agency Responses:

The Department received three comments:

COMMENT: The New Jersey State Board of Medical Examiners had no objections to the proposed amendments.

RESPONSE: The Department acknowledged their approval.

COMMENT: Automated Pharmaceutical Services Inc., Fairfield, N.J., commenting observed that the published language was taken from the Drug Enforcement Administration's proposed rule in the Federal Register, rather than 21 C.F.R. 1306.13, published as a final rule in the June 3, 1991 issue of the Federal Register which amended the text "prior to any subsequent filling, the pharmacist shall contact the physician to determine that additional partial filling is necessary" to read "Prior to any subsequent partial filling the pharmacist is to determine that the additional partial filling is necessary."

RESPONSE: The Department agrees with the comment and has made a change in the adoption notice which reflects the intent of the Federal requirement.

COMMENT: The Chief, Enforcement Bureau, Professional Boards, in the Division of Consumer Affairs, Department of Law and Public Safety, suggested that a prescription should contain the letters or title of the practitioner, that is, M.D., D.O., D.D.S., D.M.D., D.V.M., V.M.D., D.P.M., C.N.M., and possibly, in the future P.A., so that the prescribing practitioner may be appropriately identified.

RESPONSE: The Department noted that this was not part of the original proposal but such a change would not have any effect on the intent of the proposal. Therefore, the requested change has been incorporated in the adoption notice.

Full text of the adoption follows.

8:65-7.5 Manner of issuance of prescriptions

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the full name, address ***, proper academic degree or other definitive identification of the professional practice for which he or she is licensed*** and registration number of the practitioner. All prescriptions for controlled substances, regardless of schedules, shall be presented to the pharmacist for filling within 30 days after the date when issued. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (for example, J.H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written in ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescription may be prepared by a secretary or agent of the practitioner for the signature of the practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law or rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules.

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

8:65-7.10 Partial filling of prescription; Schedule II

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

(d) Prescriptions for schedule II controlled substances written for patients in a Long Term Care Facilities (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the practitioner prior to partially filling the prescription. Both the pharmacist and practitioner shall assure that a controlled substance is for a terminally ill patient. The pharmacist shall record on the prescription whether the patient is "terminally ill" or an "LTCF" patient. A prescription that is partially filled and does not contain the notation ***that*** the patient is "terminally ill" or ***a patient in a*** "LTCF" shall be deemed to have been filled in violation of N.J.S.A. 24:21. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. Prior to any subsequent partial filling, the pharmacist shall *[contact the practitioner to]* determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions, for patients in a LTCF, or patients with a medical diagnosis documenting

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a terminal illness, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

(e) Information pertaining to current Schedule II prescriptions for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if this system has the capability to permit:

1. Output (display or printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of patient, address of the LTCF or address of the hospital or residence of the patient, identification of medication authorized (to include dosage form, strength and quantity), listing of partial fillings that have been dispensed under each prescription and the information required in (d) above;

2.-3. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

New Jersey Municipal and County Correctional Facilities

Readoption with Amendments: N.J.A.C. 10A:34

Proposed: March 2, 1992, at 24 N.J.R. 683(a).
Adopted: April 6, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: April 6, 1992, R.1992 d.193, **without change.**
Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 2A:4A-37.
Effective Date: April 6, 1992, Readoption; May 4, 1992, Amendments.
Expiration Date: April 6, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendments follows.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:34.

10A:34-2.7 Cells specifications

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

(f) Cell fronts shall be constructed of six inch reinforced concrete or eight inch concrete block filled with cement containing reinforcement rods every 12 inches, or metal bars spaced not more than four inches on center. The bars shall be of a tool resistant type steel construction not less than seven-eighths inch thick.

(g) Cell doors shall be either barred or security type hollow core metal (minimum 12 gauge) steel. The doors shall slide or swing into the cell corridor and contain a standard food passage and pull type safety door handle. If barred, the doors shall be of a tool resistant type steel construction with the bars spaced not more than four inches on center and no less than seven-eighths inch thick. If the doors are security type hollow core metal, the doors shall provide an observation port of security glass at least nine-sixteenths inch thick or security type lexan at least one half inch thick. Doors shall be secured with detention type locks (preferably lever tumbler with paracentric keyway) with independent dead bolts.

(h) Natural light is recommended for each cell. All windows in the cell block area shall be of the approved security type (a tool resistant type steel frame with nine-sixteenths inch security glazing or one-half inch security type lexan).

(i) (No change.)

10A:34-2.8 Cell equipment

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

(c) Cells shall be equipped with a detention type toilet and lavatory with drinking font, preferably of stainless steel construction.

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

10A:34-2.9 Holding rooms

(a) (No change.)

(b) Construction and equipment of holding rooms shall be the same as required in N.J.A.C. 10A:34-2.7 and N.J.A.C. 10A:34-2.8 except the bunk shall be either:

1. A steel bench firmly affixed to the floor, wall, or both; or
2. A raised concrete platform.

(c) The hardwood topping on the steel bench or concrete platform shall be firmly affixed.

10A:34-2.10 Cell corridors

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

(g) Cell corridor ceilings in new or renovated municipal detention facilities shall be constructed of pre-cast concrete slabs or reinforced concrete.

Recodify existing (g) through (l) as (h) through (m) (No change in text.)

10A:34-2.11 Monitoring systems

(a) (No change.)

(b) The monitoring systems provide an added measure of safety and security but shall not be used as a substitute for physical cell checks of detainees. The monitoring system shall remain activated at all times when detainees are present.

(c) (No change.)

10A:34-2.19 Suicide prevention and control

(a) Each municipal detention facility shall develop written policies and procedures to govern the identification, placement and monitoring of detainees who are deemed to be at a risk for suicide. These policies and procedures shall include, but not be limited to;

1. Evaluation procedures at admission;
2. Close observation procedures for those deemed at risk; and
3. Procedures for handling attempts to commit suicide.

10A:34-2.21 Written policy and procedures

(a) Each municipal detention facility shall be responsible for developing written policies and procedures consistent with this subchapter.

(b) All written policies and procedures shall be available during inspection by the New Jersey Department of Corrections.

INSURANCE

(b)

DIVISION OF PROPERTY/LIABILITY

Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons

Adopted New Rules: N.J.A.C. 11:3-40

Proposed: December 16, 1991 at 23 N.J.R. 3736(a).
Reproposed: February 3, 1992 at 24 N.J.R. 336.
Adopted: April 13, 1992 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: April 13, 1992 as R.1992 d.207, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:33B-1 et seq.; 17:33B-15
Effective Date: May 4, 1992.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:
The Department received a total of 11 written comments from insurers and insurance-related associations. The insurance companies which responded are New Jersey Manufacturers, (NJM), Allstate, State Farm Selective, Foremost, United Services Automobile Association (USAA) and Pennsylvania Millers Mutual. The associations which responded are the National Motorists Association (NMA), the Alliance of American Insurers (AAI), the American Insurance Association (AIA), and the Professional Insurance Agents of New Jersey (PIA).

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COMMENT: Three commenters expressed their concern that, in its reproposal of N.J.A.C. 11:3-40, the Department indicated in the Summary that it had received no comments on the rule originally proposed as PRN 1991-627 and appearing in the New Jersey Register on December 16, 1991. Therefore, no comments were addressed in the reproposal. The commenters stated that they, in fact, submitted comments.

RESPONSE: The original comment deadline was January 15, 1992. The reproposal rule, however, was submitted to OAL for publication on January 3, 1992, and appeared in the New Jersey Register on February 3, 1992. At the time the reproposal was submitted for publication, no comments had been received by the Department.

COMMENT: One commenter asserted that the Commissioner has no legal authority to issue these rules, but provided no basis for its statement. Another submitted a comment stating that the Commissioner has no legal authority under the FAIR Act to exempt any insurers from their obligations under Section 27 of the FAIR Act (N.J.S.A. 17:33B-15(a)) (hereinafter Section 27). A third commented that there appears to be no statutory authority to exempt insurers having less than 1,000 exposures on December 31, 1983.

RESPONSE: As the Department stated in the Summary of its reproposal of these rules (See 24 N.J.R. 336), Section 27 appears on its face to require all insurers authorized or admitted to transact insurance business in New Jersey to provide private passenger automobile insurance to all eligible persons beginning April 1, 1992, notwithstanding the fact that not all insurers currently write or have ever written this type of insurance. However, the Department recognizes the inherent ambiguity of the language contained in Section 27, and as stated in the Summary, interprets that statutory provision consistent with the legislative intent that this provision of the FAIR Act applies only to insurers actually writing private passenger automobile insurance in New Jersey pursuant to a personal lines rating system. Therefore, those insurers not actively engaged in the business of writing private passenger automobile insurance under a personal lines rating system are logically exempt from complying with Section 27.

The exemption of those insurers having less than 1,000 private passenger automobile inforce exposures as of December 31, 1983 and as of September 30, 1988, is a further logical extension of the legislative intent that only private passenger automobile insurers actually writing such policies are required to comply with Section 27. Some of the companies having under 1,000 exposures continue to renew private passenger automobile policies, but have discontinued actively writing new policies in the State years ago. Others merely continue to insure no more than a handful of private passenger automobiles owned by individuals who moved to New Jersey from another state. These insurers are incapable of developing either the marketing or servicing systems necessary to comply with Section 27. The combined market presence of all companies with less than 1,000 inforce exposures is so negligible that there would be virtually no adverse impact on those insurers required under Section 27 to provide coverage to eligible persons if these exempt companies are excused from writing. By exempting these companies from compliance with Section 27, they are further alleviated from the burden of bearing the administrative and other expenses involved in complying that could place them in a financially unsafe or unsound position, for which the FAIR Act (N.J.S.A. 17:33B-19) expressly grants the Commissioner authority to suspend an insurer's obligation to issue policies in compliance with Section 27.

Accordingly, the Department believes that the Commissioner has the legal authority to exempt certain insurers from their obligations under Section 27 consistent with the Department's interpretation that it was the legislative intent that Section 27 applies only to personal lines private passenger automobile insurers actually engaged in writing such business in New Jersey.

COMMENT: One commenter stated that these rules should provide the Commissioner with the discretion to exempt an insurer from compliance with Section 27 where the insurer's "resources are severely stretched and prior to the insurer reaching the intractable state of financial unsoundness."

RESPONSE: The FAIR Act (N.J.S.A. 17:33B-19 and 20) provides for an exemption from compliance with Section 27 if it is determined that such compliance would place the insurer in a financially unsafe or unsound position. The Department believes these statutory provisions provide adequate relief to an insurer which may be placed in such a position. Contrary to the commenter's assertion that these existing provisions fail to provide insurers with any relief prior to their finding themselves in a financially unsafe or unsound position, the provisions allow for a suspension of an insurer's Section 27 obligations upon a showing that its compliance "would" result in an unsafe or unsound financial condition. In other words, the statutory language does not appear to indicate that an insurer must already have been placed in such an adverse financial position before it can apply for relief.

COMMENT: The Department received several comments concerning the provision at N.J.A.C. 11:3-40.3(b)3 exempting companies insuring less than 1,000 inforce exposures as of December 31, 1983 and as of September 30, 1988, and which further exempts insurers "authorized to transact private passenger automobile insurance after September 30, 1988 . . . until such time as the insurer has 1,000 or more . . . exposures." The comments regarding this exemption provision vary. One commenter is in complete agreement with the Department's position to exempt such insurers. A second does not believe a complete exemption for insurers with less than 1,000 exposures is appropriate; rather, it is the commenter's position that those insurers should be required not to limit coverage to individuals meeting the insurer's underwriting rules and they should not refuse to renew existing policies. A third commenter believes that these insurers should be required to comply with Section 27 after attaining 1,000 or more private passenger automobile inforce exposures. Two additional commenters, whose remarks addressed only the exemption as originally proposed, expressed their confusion as to which insurers are actually exempt, specifically inquiring whether the provision permanently exempts those insurers with less than 1,000 exposures as of December 31, 1983, regardless of the number of exposures now or in the future. One of these commenters likewise expressed its uncertainty as to whether that portion of the provision exempting insurers authorized after September 30, 1988 only until such time as they insure 1,000 exposures applies only to insurers which became authorized after September 30, 1988 or to those authorized as of September 30, 1988, including those insuring less than 1,000 on December 31, 1983 and September 30, 1988.

RESPONSE: In responding to these various comments concerning the exemptions from compliance with Section 27 of the FAIR Act under N.J.A.C. 11:3-40.3(b)3, the Department will attempt to clarify which insurers are included in this exemption and the reasons they are exempt. As explained in the Summary of the reproposal, the dates of December 31, 1983 and September 30, 1988 were used in the exemption provision because December 31, 1983 represents the last day before the Joint Underwriting Association (Association) became operative and was instrumental in the Department's determining the number of Association insureds the Association's member companies would be assigned to return to the voluntary market. September 30, 1988 was the approximate date on which the Department adopted the mandatory depopulation plan, under which Association member companies were required to depopulate a certain number of insureds from the residual market into the voluntary market.

The Department's rationale for exempting from compliance with Section 27 those insurers having less than 1,000 inforce exposures as of both December 31, 1983 and September 30, 1988 was to provide the same standard as is used for mandatory. Nevertheless, these insurers under these rules remain obligated to renew existing policies in accordance with N.J.A.C. 11:3-8. These insurers are permanently exempt from compliance with Section 27.

On the other hand, new insurers authorized to transact private passenger automobile insurance business in New Jersey after September 30, 1988, are exempt only until such time as they reach 1,000 or more inforce exposures. Those insurers newly entering the private passenger automobile insurance market in New Jersey after 1988 are entering with knowledge of their obligations under Section 27, and cannot expect to be exempt from complying with it.

The Department agrees that the language in N.J.A.C. 11:3-40.3(b)3 can be confusing, and has revised that provision to clarify its intended meaning.

COMMENT: One commenter stated that the language in N.J.A.C. 11:3-40.3(a) could wrongly be construed to require an insurer to offer whatever coverage a policyholder might demand, even though the insurer did not previously provide such coverage or limits.

RESPONSE: No provision in these rules requires an insurer to offer coverage or limits not previously filed and approved as part of its rating system. N.J.S.A. 17:29A-6 and 15 prohibit an insurer from offering or selling any policy other than in accordance with its filed and approved rating system. Additionally, N.J.A.C. 11:3-40.3(d) states that insurers providing only limited coverage since December 31, 1983, are required

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to comply with the requirements of N.J.A.C. 11:3-40.3(a) only to the extent that coverage is currently provided.

COMMENT: One commenter noted that although the rules define certain terms such as "automobile" and "personal lines automobile insurance," those terms are not consistently used throughout the rules. The commenter suggests that only the defined terms be used when that is intended. The commenter further suggested that the term "mobile home" used in N.J.A.C. 11:3-40.3(c) be changed to "motor home" since a motor home is a type of private passenger vehicle defined as an "automobile" in the rule, while a mobile home is not.

RESPONSE: The Department agrees with the commenter, and has revised the rules in accordance with these suggestions.

COMMENT: One commenter stated that only those insurers which have failed to meet their depopulation obligations should be required to comply with Section 27 for the reason that it would be unfair to place additional insuring obligations on those companies which have depopulated, while treating equally those that have not properly depopulated. The commenter additionally states that the Department in its Order No. A92-102 and proposed new rules at N.J.A.C. 11:3-2, which establish the New Jersey Personal Automobile Insurance Plan (PAIP) for assigned risks, incorporated depopulation quotas into assignment methodology under PAIP.

RESPONSE: The commenter is incorrect in stating that depopulation quotas were incorporated into the proposed PAIP plan. Under PAIP, an insurer's depopulation quotas are considered only for the purpose of determining the insurer's total market share of private passenger automobile insurance in New Jersey. The insurer is then required under PAIP to insure a certain percentage of assigned risks based on its total market share. Under these new rules implementing Section 27 of the FAIR Act, all insurers are treated equally with the exception of those few, reasonable exemptions set forth in the rule.

COMMENT: One commenter suggested that these rules be amended to conform with the exemptions set forth in the Department's Order No. A92-102 establishing PAIP.

RESPONSE: This comment was made concerning these rules as originally proposed, not as reproposed. The exemptions contained in the reproposed rules, in fact, conform with the exemptions set forth in the Department's Order No. A92-102, and later in PRN 1992-66 (N.J.A.C. 11:3-2) establishing PAIP, with only two exceptions. The proposed PAIP rules do not include the exemptions contained in these rules at N.J.A.C. 11:3-40.3(d) or (e). These exemptions involve respectively limited coverage insurers and insurers without a current private passenger automobile rating system on file, which would not be appropriate to include as exemptions under PAIP.

COMMENT: A few commenters disagreed with the Department's statements in its Summary of these new rules that insurers are responsible for the high population of insureds in the residual market, and that insurers benefited from "dumping" risks into the residual market.

RESPONSE: The Department is not required to address these general comments since they do not directly relate to these rules themselves. However, the Department notes that during the 1980's the number of drivers in the voluntary insurance market decreased, while the population of the residual market grew so dramatically that it eventually included over 50 percent of New Jersey drivers.

COMMENT: One commenter expressed its concern that in response to insurer obligations under Section 27 and these rules, many insurers will remove themselves from the marketplace by cancelling agent contracts, reducing agent commissions, or other actions to the point where their agents will no longer be able to afford to sell the insurers' products. Therefore, the commenter suggested that the Department include in these rules a provision, similar to that contained in the FAIR Act, protecting producers against such insurer actions. The commenter further suggests that the Department closely monitor insurers for any actions that may be adverse to producers.

RESPONSE: While the Department recognizes the commenter's concerns as legitimate, they are beyond the scope of these rules. Moreover, existing statutory and regulatory provisions protect producers against such insurer actions. As the commenter mentions in its comment, N.J.S.A. 17:33B-30 requires an insurer planning to withdraw its business from New Jersey to follow a plan of orderly withdrawal filed with and approved by the Commissioner. Rules at N.J.A.C. 11:2-29 set forth the requirements and procedures whereby insurers may undertake such orderly withdrawal. Moreover, Bulletin No. 92-11 issued by the Department on March 27, 1992, reminds all insurers of their obligations to provide notice to the Commissioner of any intended action which may qualify as withdrawal under N.J.A.C. 11:2-29. This Bulletin specifically addresses certain actions in which insurers may be engaging (for example, terminating agency contracts, reducing agency commissions), and advises insurers that the Department will continue to evaluate their impact on the market and determine whether such actions constitute withdrawal.

COMMENT: One commenter stated its concerns regarding the concept of "eligible person" as it relates to an insurer's coverage obligations when a particular insured household includes a combination of eligible and ineligible persons.

RESPONSE: The term "eligible person" as used in these rules is defined at N.J.A.C. 11:3-34.4. However, the commenter's stated concern with regard to the application of the "eligible person" concept is beyond the scope of these rules.

Agency Initiated Changes

N.J.A.C. 11:3-40.4(b) has been changed to reference the provision of the FAIR Act that provides for penalties, rather than the general penalty statute.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets wtih asterisks *[thus]*).

SUBCHAPTER 40. INSURERS REQUIRED TO PROVIDE AUTOMOBILE INSURANCE COVERAGE TO ELIGIBLE PERSONS

11:3-40.1 Purpose and scope

(a) The purpose of this subchapter is to implement N.J.S.A. 17:33B-15 by setting forth those insurers required under that statutory provision to provide automobile insurance to eligible persons.

(b) This subchapter applies to all insurers authorized or admitted to transact automobile insurance in this State, but does not include the Market Transition Facility created pursuant to N.J.S.A. 17:33B-11 et seq. or any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq.

11:3-40.2 Definitions

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

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired, and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; a motor vehicle with a pickup body, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes, owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meeting the definition contained in this section shall be considered a private passenger automobile owned by two or more relatives residing in the same household.

"Automobile insurance" means insurance for a private passenger automobile including one or more of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

"Commissioner" means the Commissioner of the Department of Insurance.

"Department" means the Department of Insurance.

"Eligible person" means a natural person who meets the qualifications of an "eligible person" as set forth at N.J.A.C. 11:3-34.4.

"Insurer" means an entity authorized or admitted to write private passenger automobile insurance in New Jersey, but does not include the Market Transition Facility created pursuant to N.J.S.A. 17:33B-7 or any residual market mechanism implemented pursuant to N.J.S.A. 17:29D-1 et seq.

"Personal lines automobile insurance" means direct automobile insurance issued by an insurer for personal, family or household

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purposes, and written in accordance with a rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

11:3-40.3 Insurers required to provide automobile insurance coverage to eligible persons

(a) In accordance with N.J.S.A. 17:33B-15, every insurer, except as provided in (b) below, shall provide automobile insurance coverage for eligible persons beginning April 1, 1992. No insurer, except as provided in (b) below, shall refuse to insure, renew, or limit coverage available for automobile insurance to an eligible person meeting the insurer's underwriting rules as filed with and approved by the Commissioner in accordance with N.J.S.A. 17:29A-46. An insurer shall provide all coverages, including physical damage coverages, in accordance with its rating system filed with the Department and approved pursuant to N.J.S.A. 17:29A-1 et seq.

(b) The requirements set forth in (a) above shall not apply to the following:

1. Insurers that have not issued or renewed policies of *[private passenger]* automobile insurance in New Jersey since December 31, 1983;

2. Insurers that have issued or renewed policies of *[private passenger]* automobile insurance in New Jersey since December 31, 1983, only in accordance with a commercial lines rating system filed and approved pursuant to N.J.S.A. 17:29AA-1 et seq;

3. Insurers with less than 1,000 *[private passenger]* automobile inforce exposures as of December 31, 1983 and as of September 30, 1988. *[An insurer]* ***Insurers newly*** authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter ***only*** until such time as the insurer has 1,000 or more *[private passenger]* automobile inforce exposures;

4. Insurers transacting *[personal private passenger]* automobile insurance business in New Jersey subject to a plan of orderly withdrawal approved in accordance with N.J.A.C. 11:2-29, but only to the extent provided by the terms of the approved plan of orderly withdrawal; or

5. Insurers transacting *[private passenger]* automobile insurance business in New Jersey subject to an order issued by the Commissioner in accordance with N.J.S.A. 17:33B-19 and 20, but only to the extent provided by the terms of the order.

(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of *[private passenger]* automobiles (for example, *[mobile]* ***motor*** homes, recreational vehicles or antique automobiles) shall comply with the requirements of (a) above, but only for the particular types of *[private passenger]* automobiles currently being insured.

(d) Insurers that currently provide, or have provided since December 31, 1983, only limited coverage (for example, physical damage coverage) shall comply with the requirements of (a) above, but only for the limited coverages *[currently]* being written.

(e) Insurers that are required to insure eligible persons, but that do not have a current *[private passenger]* ***personal lines*** automobile ***insurance*** rating system on file with the Department, shall file such a system with the Department in accordance with N.J.S.A. 17:29A-1 et seq. within 90 days of the effective date of this rule.

(f) Insurers identified within the provisions of (b), (c) or (d) above, shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the date of adoption of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC number and NAIC group number;

ii. A statement that the insurer is not required to comply fully with N.J.S.A. 17:33B-15;

iii. The factual basis upon which the insurer *[relief]* ***relied*** to determine that it is not required to comply fully with N.J.S.A. 17:33B-15;

iv. The particular provision of this rule under which the insurer is included; and

v. A certification by an officer of the insurer that the statement is complete, correct and accurate to the best of the officer's information, knowledge and belief, based upon the officer's personal review of all relevant records.

2. The certified statement shall be sent to the Department at the following address:

Division of Licensing, Enforcement and Consumer Protection
New Jersey Department of Insurance
20 West State Street
CN 328
Trenton, N.J. 08625-0328

11:3-40.4 Penalties

(a) The Commissioner may suspend, revoke or otherwise terminate the certificate of authority to transact automobile business in this State of any insurer failing to comply with the provisions of this subchapter requiring that the insurer provide automobile insurance in accordance with N.J.S.A. 17:33B-15.

(b) In addition ***to*** or in lieu of the penalty set forth in (a) above, the Commissioner may impose a fine as provided in N.J.S.A. *[17:33-2]* ***17:33B-21*** for any violation of the provisions of this subchapter.

(c) The Department shall follow the procedures set forth at N.J.A.C. 11:17D-2.1 *[prior to]* ***in*** imposing the penalties set forth at (a) or (b) above.

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Administrative Correction

Educational Requirements for Salespersons and Brokers in Making Applications for Licensure Examinations

N.J.A.C. 11:5-1.27

Take notice that the New Jersey Real Estate Commission has discovered an error in the text of N.J.A.C. 11:5-1.27(g)1xvi. As proposed (see 19 N.J.R. 1051(a)), this subparagraph was to conclude with the instruction course time of six hours after subparagraph (a)1xvi(6). Upon adoption (see R.1988 d.254), the Commission clarified this time requirement by moving the six hours reference from the end to the lead portion of the subparagraph. However, in the publication of the adoption (see 20 N.J.R. 1205(b)) and subsequent incorporation in the Code, the six hour reference at the end of the subparagraph was deleted and inadvertently not included in the lead portion. Through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7, this error is corrected.

Full text of the corrected rule follows (addition indicated in boldface thus):

11:5-1.27 Educational requirements for salespersons and brokers in making applications for licensure examination

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

(g) The 90 hour broker's pre-licensure course prescribed by N.J.S.A. 45:15-10.1(b) shall be conducted in accordance with the following syllabus and directives:

1. Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i.-xv. (No change.)

xvi. Business and management practices **(total of six hours for (a)1xvi(1) through (6) below)**, including:

(1)-(6) (No change.)

xvii.-xxiii. (No change.)

2.-4. (No change.)

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

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LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Moving Vehicle Requirement

Adopted Amendments: N.J.A.C. 13:44D-1.1, 2.1 and 4.6

Proposed: February 3, 1992 at 24 N.J.R. 341(a).
Adopted: March 31, 1992 by Emma N. Byrne, Director, Division of Consumer Affairs.
Filed: April 9, 1992 as R.1992 d.199, **without change.**

Authority: N.J.S.A. 45:14D-6.

Effective Date: May 4, 1992.
Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:44D-1.1 Words and phrases defined

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

"Agent" means the appointee of the public mover or warehouseman who shall be a party upon whom notice may be served along with the principal public mover or warehouseman.

. . .

"Long-term lease" means a lease entered into for at least one year.

"Moving vehicle" means any vehicle, machine, tractor, truck or semitrailer, or any combination thereof, propelled, driven or drawn by mechanical power and used upon the public highways in the transportation of household goods, office goods and special commodities in intrastate commerce. For purposes of this section, "moving vehicle" shall not include a passenger vehicle; that is, a station wagon.

13:44D-2.1 License to engage in the business of public moving and/or storage

(a) No license to engage in the business of public moving and/or storage shall be issued or remain in effect unless the applicant owns or leases pursuant to a long-term lease at least one moving vehicle and unless there shall be on file with the Director of the Division of Consumer Affairs:

1.-4. (No change.)

(b)-(f) (No change.)

13:44D-4.6 Occupational misconduct

(a) A public mover shall be deemed to have engaged in occupational misconduct within the meaning of N.J.S.A. 45:14D-7(f) if said public mover:

1. Books and/or attempts to perform a move where the mover knew or should have known that a moving vehicle of adequate size and containing adequate equipment to accommodate the shipper's goods and any necessary moving equipment would not be or in fact was not available to the mover on the scheduled date of the move;

2. Fails to arrive at the shipper's premises on the promised date of service and perform all contracted-for services; or

3. Fails to notify the shipper of the impossibility of meeting the promised date of service by written notice or by telephone no later than 12:00 o'clock noon on the promised date, or, if impractical under the circumstances, at the earliest possible time, and fails to offer the shipper the option of:

i.-iv. (No change.)

(b) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Pick-Seven

Adopted New Rule: N.J.A.C. 13:70-29.57

Proposed: June 3, 1991 at 23 N.J.R. 1769(b).
Adopted: March 31, 1992 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: April 9, 1992 as R.1992 d.200, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: May 4, 1992.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:70-29.57 Pick-Seven

(a) This section codifies procedures to allow New Jersey tc participate in a nationwide common pool in a Pick-Seven Wage in the Breeders' Cup.

(b) The payoff is calculated as follows:

1. Wagers select first-place finishers for seven Breeders' Cu races. The net pool is divided into major (75 percent) and mino (25 percent) shares. The major share is distributed to the ticket(s correctly selecting the first-place finishers in all seven races an calculated using the net pool pricing method. The minor share i distributed to tickets correctly selecting the first-place finishers i the most (but not all) of the seven races and calculated using th net pool pricing method.

2. To determine the net pool, there shall be a deduction fron gross wagers in each jurisdiction in an amount equal to the applicabl takeout for that jurisdiction. The remaining amount of the wager from all jurisdictions is combined to form the total net pool, on th basis of which a base payout price is determined. Each jurisdiction' winning payout price is determined by applying that jurisdiction' takeout rate to the base price. Each jurisdiction's individual rule relating to breakage and uncashed winning tickets shall also apply Any other questions that arise not specifically covered in this sectio shall be covered by the rules of racing of the New Jersey Racin Commission.

(c) Dead heat procedures are as follows:

1. If there is a dead heat for first in any race, the winnin combinations shall include all wagers selecting any dead hea finishes.

(d) No ticket sold procedures are as follows:

1. If no ticket is sold correctly selecting the seven first-plac finishers, then the entire net pool will be distributed to the wager selecting the most official winners of the seven Breeders' Cup races

(e) Refund procedures are as follows:

1. If three or more races are cancelled, then the entire Pick-Seve pool shall be refunded.

(f) The effect of a cancelled race on the pool is as follows:

1. In the event that one or more of the races, comprising the Pick Seven, is cancelled for any reason, the distribution of the net amoun subject to distribution in the Pick-Seven pool shall be among th holders of the pari-mutuel tickets which currently designate the mos official winners in all remaining races comprising the Pick-Seven

(g) The number of entries (or starters) required is as follows

1. As long as at least one horse remains within an entry or th field, that betting interest will not be deemed a scratch. If a bettin interest is scratched or declared a non-starter, the actual favorit as evidenced by Breeders' Cup host track win pool at the start o the race will be substituted. If the win pool amounts are equal, th substitute will be the lowest program numbered betting interest.

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(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Pick-Eight

Adopted New Rule: N.J.A.C. 13:71-27.55

Proposed: June 3, 1991 at 23 N.J.R. 1770(a).
Adopted: March 31, 1992 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: April 9, 1992 as R.1992 d.201, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: May 4, 1992.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:71-27.55 Pick-Eight

(a) This section codifies procedures to allow New Jersey to participate in a nationwide common pool on a Pick-Eight wager on the Breeders' Crown.

(b) The payoff is calculated as follows:

1. Wagers select first-place finishers for eight Breeders' Crown races. The net pool is divided into major (75 percent) and minor (25 percent) shares. The major share is distributed to the ticket(s) correctly selecting the first-place finishers in all eight races and calculated using the net pool pricing method. The minor share is distributed to tickets correctly selecting the first-place finishers in the most (but not all) of the eight races and calculated using the net pool pricing method.

2. To determine the net pool, there shall be a deduction from gross wagers in each jurisdiction in an amount equal to the applicable takeout for that jurisdiction. The remaining amount of the wagers from all jurisdictions is combined to form the total net pool, on the basis of which a base payout price is determined. Each jurisdiction's winning payout price is determined by applying that jurisdiction's takeout rate to the base price. Each jurisdiction's individual rules relating to breakage and uncashed winning tickets shall also apply. Any other questions that arise not specifically covered in this section shall be covered by the rules of racing of the New Jersey Racing Commission.

(c) Dead heat procedures are as follows:

1. If there is a dead heat for first in any race, the winning combinations shall include all wages selecting any dead heat finishers.

(d) No ticket sold procedures are as follows:

1. If no ticket is sold correctly selecting the eight first-place finishers, then the entire net pool will be distributed to the wagers selecting the most official winners of the eight Breeders' Crown races.

(e) Refund procedures are as follows:

1. If three or more races are cancelled, then the entire Pick-Eight pool shall be refunded.

(f) The effect of a cancelled race in the pool is as follows:

1. In the event that one or more of the races, comprising the Pick-Eight, is cancelled for any reason, the distribution of the net amount subject to distribution in the Pick-Eight pool shall be among the holders of the pari-mutuel tickets which currently designate the most official winners in all remaining races comprising the Pick-Eight.

(g) The number of entries (or starters) required is as follows:

1. As long as at least one horse remains within an entry or the field, that betting interest will not be deemed a scratch. If a betting interest is scratched or declared a non-starter, the actual favorite as evidenced by Breeders' Crown host track win pool at the start of the race will be substituted. If the win pool amounts are equal, the substitute will be the lowest program numbered betting interest.

TRANSPORTATION

(b)

DIVISION OF ROADWAY DESIGN
BUREAU OF UTILITY AND RAILROAD ENGINEERING

Utility Accommodation
Definitions; Limited Access Highways; Underground Fiber-Optics Communication Lines and Other Utility Facilities Longitudinally Occupying Limited Access Highways

Adopted Amendments: N.J.A.C. 16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4 and 11.3

Proposed: December 16, 1991, at 23 N.J.R. 3739(c).
Adopted: March 6, 1992, George Warrington, Deputy Commissioner Department of Transportation.
Filed: April 7, 1992 as R.1992 d.194, **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. 27:1A-5, 27:1A-6, 27:1A-13, 7-19, 7-44.1, 17A:7, 40:62-35, 62-65, 62-134, 48:7-1, 7-2, 9-17, 9-25.4, 13-10, 17-8, 17-10, 17-16 and 19-17.

Effective Date: May 4, 1992.
Expiration Date: August 15, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from Mr. Roger C. Poe, Supervisor, Outside Plant Engineering, AT&T Promenade II, 1200 Peachtree Street, N.E., Atlanta, Georgia 30309.

COMMENT: N.J.A.C. 16:25-7A.1 General consideration. In regard to subsection (c), AT&T will not provide to the Department fibers within the same AT&T cable sheath. Two spare ducts will be provided to the DOT for its sole use or to issue permits for future occupants. In regard to subsection (d), we suggest the text be amended as follows: "Future occupants, except the Department, shall reimburse the installer for its percentage share of the original installation costs and of the annual maintenance costs. The percentage share should be based on the number of ducts occupied by the future occupant compared to the total number of ducts in the system less those occupied by the Department's facilities, if any. If the Department elects or chooses to occupy one of both of the remaining ducts for its sole use, the Department shall not be responsible for any of the initial construction costs or maintenance costs for the conduit, duct or handholes. A signed maintenance agreement between the installer and future occupants is required and shall be submitted for the Commissioner's information prior to the issuance of the future occupant's permit."

RESPONSE: In regard to subsection (c), the Department recognizes that AT&T's comment is based on a concern for the security of their system. Therefore, the Department will delete the requirement to provide an 8 fiber pair in the installer's cable. However, the Department will maintain the requirement that the installer provide an 8 fiber pair cable in one of the remaining ducts, for the Department's future use.

In regard to subsection (d), AT&T raised this issue in the comment period when the rule was promulgated in 1989. The Department's response in 1989/1990 was to revise the rule and to permit the installer to occupy two instead of one duct. The lower occupancy fee of $5,000 per mile per year also attempted to recognize the initial investment of the installer. The discounted fee and the one duct bonus adequately accounted for the initial installation costs, in the Department's view.

AT&T again raises this issue. The Department will accede to AT&T's request; however, the one duct bonus will be deleted from the rule. Therefore, the installer will be entitled to be reimbursed for installation and maintenance costs by future occupants; however, the installer will receive only one duct at $5,000 per mile per year.

COMMENT: 16:25-7A.3 Location. We suggest that subsection (1) read "The fiber-optic system shall be installed to a depth which permits at least 42 inches of ground cover," rather than the 48 inches proposed, since we find 42 inches to be sufficient and in line with industry standards.

RESPONSE: The Department agrees with the installer to decrease the depth of cover from 48 inches to 42 inches. This revision will not affect Department operations or public safety.

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Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions to proposal indicated in brackets with asterisks *[thus]*.

16:25-1.1 Definitions

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

. . .

"Fiber-optic cable" means a communication cable utilizing hair-thin strands of ultra-pure glass, plastic or other transparent material that can carry high volumes of information via lightwave signals.

"Fiber-optic system" means a utility facility consisting of either:

1. One four-inch galvanized steel or PVC pipe or other approved encasement containing four each 1¼-inch PVC innerducts, buried directly in the ground (hereinafter referred to as a multi-duct system); or

2. Four each of two-inch galvanized steel or PVC pipes or other approved encasements, each pipe limited to use by one fiber-optic cable, buried directly in the ground (hereinafter referred to as a single-duct system).

. . .

16:25-1.7 Limited access highways

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

(c) The Department will take under consideration claims of extreme cases of need when a public utility can demonstrate that alternate locations are not available or cannot be implemented at reasonable cost, from the standpoint of providing efficient utility services in a manner conducive to safety, durability, and economy of maintenance and operations; that the accommodation will not adversely affect the design, construction, operation, maintenance, or stability of the limited access highways; that it will not interfere with or impair the present use or future expansion of the limited access highways; and that disapproval of the use of the right-of-way would result in the loss of productive agricultural land, or loss of productivity of agricultural land, if any.

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

(h) Whenever a utility installation is permitted within the right-of-way of limited access highways, a utility access control line between the proposed utility installation and the through roadway and ramps will be specified in the permit.

SUBCHAPTER 2. GENERAL CONSIDERATIONS

16:25-2.1 Location of utility lines

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

(g) The Department may allow a fiber-optic system to consist of more than four innerducts in the case of a multi-duct system, or more than four individual pipes in the case of a single-duct system, to be decided by the Department on a case-by-case basis.

16:25-7A.1 General considerations

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

(c) Where the longitudinal occupancy will involve a fiber-optic cable, and only where the Department so determines *[that such dedication would be feasible,]* the public utility company shall provide, free of any cost, including maintenance, *[up to eight operational fiber pairs]* ***an 8-pair fiber-optic cable in one of the remaining ducts in the fiber-optic system***, for the sole use of the Department.

(d) Where the longitudinal occupancy will involve a fiber-optic cable, the first public utility company, hereinafter "the installer," to be granted a longitudinal occupancy permit shall be required to install a fiber-optic system. The system may be either the multi-duct system or single-duct system, at the discretion of the installer. The installer shall by virtue of the permit, be entitled to occupy *[two]* ***one*** *[innerducts]* ***innerduct*** of the multi-duct system or *[two]* ***one*** two-inch *[ducts]* ***duct*** of the single-duct system. The unoccupied ducts shall be at the disposal of the Department and the Department may permit occupancy by the future permittees. The installer shall be responsible for the maintenance of the system. Future occupants, except the Department, shall reimburse the installer for its percentage share ***of the original installation costs and*** of the annual maintenance costs. The percentage share should be based on the number of ducts in the system less those occupied by Department facilities, if any. If the Department elects or chooses to occupy *[one or both]* ***any*** of the remaining ducts for its sole use, the Department shall not be responsible for any ***of the initial construction costs or*** maintenance costs for the conduit, duct or handholes. A signed maintenance agreement between the installer and the future *[occupant]* ***occupants*** is required and shall be submitted for the Commissioner's information prior to the issuance of the future occupant's permit. The installer, in its initial permit application or in subsequent permit applications, or another public utility company in a future permit application, may apply for occupancy of one or more of the remaining two ducts. Each occupied duct will be assessed an individual right of way occupancy permit fee. When all four ducts are occupied, the next permittee shall be considered the "first public utility company" and the above procedure shall be followed. In all cases, a permit issued for a duct shall be considered occupied by a fiber-optic cable and assessed in accordance with this subchapter.

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

16:25-7A.3 Locations

(a) Where the Department deems utility facility installations feasible, the Department will establish, within the right-of-way of limited access highways, a corridor, generally not closer than 30 feet to the edge of roadway, but contiguous to each side of the roadway's control of access line, for the installation of underground utility facilities, with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception. Should such an exception allow a utility facility to be placed within 15 feet of the edge of pavement, the facility shall be placed within a galvanized steel pipe casing.

(b) (No change.)

(c) At interchange areas, the installation corridor shall continue along the control of access boundary outside of the outermost roadway or ramp, with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.

(d) Transverse installations associated with longitudinal occupancy of the limited access highway shall be normal to the roadway's alignment and shall occur within interchange areas, with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.

(e) Installations shall continue along the respective control of access line even when encountering rest areas, scenic-overlook sites, truck weigh stations, and other such facilities, with possible exceptions to be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.

(f) (No change.)

(g) Facilities may be attached to structures, when at the Commissioner's sole discretion, alternative locations are not feasible. When attaching to structures, the facility shall be placed within a galvanized steel pipe casing and shall be located under the bridge deck and between the beams. Facilities shall not be attached to the railing, to the outside of the facia beam, or to otherwise constitute an attractive nuisance.

(h) (No change.)

(i) Where trees and/or shrubbery act as a buffer for the adjacent property, their removal is generally not permitted. However, if removal of vegetation is necessary, replacement trees and shrubs shall be provided by the permittee as required by the Department.

(j) (No change.)

(k) Service connections to adjacent properties from within the limited access highway right of way are prohibited; however, at interchanges and local road crossings, branch line and transmission line connections may be permitted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies a connection. When connections are permitted

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they shall be accomplished as close as feasible to the highway's right of way line.

(l) The fiber-optic system shall be installed to a depth which permits at least *[48]* ***42*** inches of ground cover. The utility company shall install along with the system a continuous plastic ribbon or marking tape at least 12 inches below the existing ground and above the fiber-optic system. The fiber-optic cable or marker shall be equipped with a system capable of emitting a signal readable by locator equipment operated on the surface. The width of excavation shall normally not exceed 18 inches. Exceptions may be granted by the Commissioner, at the Commissioner's sole discretion, where it is determined that the public good justifies an exception.

15:25-7A.4 Design of Facilities

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

(c) Handholes for the purpose of cable splicing and/or installation shall be permitted and shall not extend above the surrounding ground.

(d) Cable shall be encased in galvanized steel pipe or other approved encasement.

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

16:25-11.3 Private utilities

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

(c) Applications for longitudinal use and occupancy of Federal Aid highways by private lines shall be submitted *[for prior approval]* ***by the Department*** to the Federal Highway Administration Division Administrator, *[prior to submission to the Department]* ***for prior approval***.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 40 in Salem, Gloucester, and Atlantic Counties, U.S. 40 and 322 in Atlantic County

Adopted Amendment: N.J.A.C. 16:28-1.6

Adopted Repeal and New Rule: N.J.A.C. 16:28-1.56

Proposed: March 2, 1992 at 24 N.J.R. 687(a).

Adopted: April 3, 1992, Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: April 9, 1992 as R.1992 d.198 **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: May 4, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.6 Route U.S. 40[1]

(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Salem County:

(1) Carneys Point Township:

(A) Zone 1: 55 miles per hour between the New Jersey Department of Transportation—New Jersey Turnpike Jurisdiction and Route N.J. 48 (approximate mileposts 1.85 to 5.47; thence

(B) Zone 2: 50 miles per hour between Route N.J. 48 and the Carneys Point Township-Pilesgrove Township line (approximate mileposts 5.47 to 6.30); thence

(2) Pilesgrove Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township-Carneys Point Township line and Sharptown Auburn Road (approximate mileposts 6.30 to 8.03); thence

(B) Zone 2: 45 miles per hour between Sharptown Auburn Road and Green Street (approximate mileposts 8.03 to 8.25); thence

(C) Zone 3: 40 miles per hour between Green Street and the bridge at the Salem Creek (approximate mileposts 8.25 to 8.55); thence

(D) Zone 4: 50 miles per hour between the bridge at the Salem Creek and Route N.J. 45 (approximate mileposts 8.55 to 10.02); thence

(E) Zone 5: 45 miles per hour between N.J. 45 and Pilesgrove Township-Woodstown Borough line (approximate mileposts 10.02 to 10.22); thence

(3) Woodstown Boro:

(A) Zone 1: 45 miles per hour between the westernmost Woodstown Boro-Pilesgrove Township line and 100 feet west of Green Street (approximate mileposts 10.22 to 10.41); thence

(B) Zone 2: 30 miles per hour between 100 feet west of Green Street and East Wilson Avenue, except with a "25 MPH WHEN FLASHING" School Speed zone within the Woodstown High School Zone (approximate mileposts 10.41 to 10.86); thence

(C) Zone 3: 35 miles per hour between East Wilson Avenue and Kesswood Avenue (approximate mileposts 10.86 to 11.20); thence

(D) Zone 4: 45 miles per hour between Kesswood Avenue and the easternmost Pilesgrove Township-Woodstown Boro line (approximate mileposts 11.20 to 11.30); thence

(4) Pilesgrove Township:

(A) Zone 6: 45 miles per hour between the easternmost Woodstown Borough-Pilesgrove Township line and East Lake Drive (approximate mileposts 11.30 to 11.66); thence

(B) Zone 7: 50 miles per hour between East Lake Drive and the Pilesgrove Township-Upper Pittsgrove Township line (approximate mileposts 11.66 to 14.38); thence

(5) Upper Pittsgrove Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township line and the Upper Pittsgrove Township-Elmer Boro line (approximate mileposts 14.38 to 19.46); thence

(6) Boro of Elmer:

(A) Zone 1: 50 miles per hour between the Upper Pittsgrove Township-Elmer Boro line and 650 feet west of Fourth Street (approximate mileposts 19.46 to 19.54); thence

(B) Zone 2: 40 miles per hour between 650 feet west of Fourth Street and Second Street (approximate mileposts 19.54 to 19.82); thence

(C) Zone 3: 35 miles per hour between Second Street and 700 feet east of County Road 648 (approximate mileposts 19.82 to 20.18); thence

(D) Zone 4: 40 miles per hour between 200 feet east of County Road 648 and the Elmer Boro—Upper Pittsgrove Township-Pittsgrove Township line (bridge at Elmer Lake) (approximate mileposts 20.18 to 20.27); thence

(7) Upper Pittsgrove Township and Pittsgrove Township;

(A) Zone 2: 50 miles per hour between the Elmer Boro—Upper Pittsgrove Township-Pittsgrove Township line (bridge at Elmer Lake) and the Salem County-Gloucester County line (approximate mileposts 20.27 to 24.58); thence

ii. In Gloucester County:

(1) Franklin Township:

(A) Zone 1: 50 miles per hour between the Salem County-Gloucester County line and the bridge at Malaga Lake (approximate mileposts 24.58 to 26.42); thence

(B) Zone 2: 40 miles per hour between the bridge at Malaga Lake and 400 feet east of Elmwood Avenue (approximate mileposts 26.42 to 27.37); thence

(C) Zone 3: 50 miles per hour between 400 feet east of Elmwood Avenue and the Gloucester County-Atlantic County line (approximate mileposts 27.37 to 32.55); thence

iii. In Atlantic County:

(1) Boro of Buena:

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(A) Zone 1: 50 miles per hour between the Gloucester County-Atlantic County line and Melini Avenue (approximate mileposts 32.55 to 33.79); thence

(B) Zone 2: 40 miles per hour between Melini Avenue and 300 feet east of Summer Avenue (County Road 682) (approximate mileposts 33.79 to 34.40); thence

(C) Zone 3: 45 miles per hour between 300 feet east of Summer Avenue (County Road 682) and the Buena Vista Township-Buena Boro line (approximate mileposts 34.40 to 35.16); thence

(2) Buena Vista Township:

(A) Zone 1: 45 miles per hour between the Buena Boro-Buena Vista Township line and Buena-Tuckahoe Road (County Road 557) (approximate mileposts 35.16 to 35.21); thence

(B) Zone 2: 50 miles per hour between Buena-Tuckahoe Road (County Road 557) and 400 feet west of Cedar Avenue (County Road 540) (Approximate mileposts 35.21 to 38.12); thence

(C) Zone 3: 45 miles per hour between 400 feet west of Cedar Avenue (County Road 540) and Holly Avenue (approximate mileposts 38.12 to 38.62); thence

(D) Zone 4: 50 miles per hour between Holly Avenue and the Buena Vista Township-Hamilton Township line (approximate mileposts 38.62 to 39.14).

[1]See also N.J.A.C. 16:28-1.56 and 1.118.

16:28-1.56 Route U.S. 40 and U.S. 322

(a) The rate of speed designated for the certain parts of State highway U.S. 40 and U.S. 322 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. In Atlantic County:

(1) Egg Harbor Township:

(A) Zone 1: 55 miles per hour between the Hamilton Township-Egg Harbor Township line and 700 feet east of Pineview Avenue (approximate mileposts 53.15 to 56.48); thence

(B) Zone 2: 50 miles per hour between 700 feet east of Pineview Avenue and Washington Avenue (County Road 608) (approximate mileposts 56.48 to 56.86); thence

(C) Zone 3: 45 miles per hour between Washington Avenue (County Road 608) and the Garden State Parkway overpass (approximate mileposts 56.86 to 57.41); thence

(D) Zone 4: 50 miles per hour between the Garden State Parkway overpass and the westernmost Egg Harbor Township-Pleasantville City line (approximate mileposts 57.41 to 58.40); thence

(2) City of Pleasantville:

(A) Zone 1: 50 miles per hour between the westernmost Egg Harbor Township-Pleasantville City line and 400 feet west of Route U.S. 9 (approximate mileposts 58.40 to 59.02); thence

(B) Zone 2: 40 miles per hour between 400 feet west of Route U.S. 9 and the easternmost Pleasantville City-Egg Harbor Township line (approximate mileposts 59.02 to 59.82); thence

(3) Egg Harbor Township:

(A) Zone 5: 40 miles per hour between the easternmost Pleasantville City-Egg Harbor Township line and Athens Avenue (approximate mileposts 59.82 to 60.37); thence

(B) Zone 6: 45 miles per hour between Athens Avenue and Egg Harbor Township-Atlantic City line (Jonathan Thorofare) approximate mileposts 60.37 to 61.63); thence

(4) Atlantic City:

(A) Zone 1: 50 miles per hour between the Egg Harbor Township-Atlantic City line (Jonathan Thorofare) and West End Avenue (approximate mileposts 61.63 to 63.48); thence

(B) Zone 2: 40 miles per hour between West End Avenue and the New Jersey Department of Transportation-Atlantic City Jurisdiction (approximate mileposts 63.48 to 64.05).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 9 in Cape May County; N.J. 28 in Union County; N.J. 29 in Hunterdon County; U.S. 130 in Middlesex County; U.S. 206 in Mercer County and N.J. 50 in Atlantic County

Adopted Amendments: N.J.A.C. 16:28A-1.7, 1.19, 1.20, 1.46, 1.57 and 1.100

Proposed: March 2, 1992 at 24 N.J.R. 689(a).

Adopted: April 3, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: April 9, 1992 as R.1992 d.195 **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1 and 39:4-199.

Effective Date: May 4, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no stopping or standing" zones.

1.-13. (No change.)

14. No stopping or standing in Upper Township, Cape May County along both sides for the entire length within the corporate limits of Upper Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.

15.-20. (No change.)

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing in the City of Elizabeth, Union County:

i. Along the northerly side:

(1) Beginning at a point 475 feet west of the westerly curb line of Cherry Street to a point 95 feet westerly therefrom.

ii. Along both sides:

(1) Westfield Avenue—Beginning from the easterly curb line of Galloping Hill Road and extending 400 feet east therefrom.

2.-13. (No change.)

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

16:28A-1.20 Route 29

The certain parts of State highway Route 29 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-3. (No change.)

4. No stopping or standing in West Amwell Township, Hunterdon County along both sides for the entire length within the corporate limits of the Township of West Amwell, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones.

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

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16:28A-1.46 Route U.S. 130

The certain parts of State highway Route U.S. 130 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited.

1.-5. (No change.)

6. No stopping or standing in South Brunswick Township, Middlesex County along both sides for the entire length within the corporate limits of South Brunswick Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas.

7.-9. (No change.)

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

16:28A-1.57 Route U.S. 206

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no parking" bus stop zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

(1) Maplewood Avenue—Beginning at a point 35 feet north of the northerly curb line of Maplewood Avenue and extending 75 feet northerly therefrom.

(2) Irwin Place—Beginning at a point 35 feet north of the northerly curb line of Irwin Place and extending 75 feet northerly therefrom.

(3) Brearley Avenue—Beginning at a point 115 feet north of the prolongation of the northerly curb line of Brearley Avenue and extending 75 feet northerly therefrom.

(4) Roxboro Road—Beginning at a point 35 feet north of the northerly curb line of Roxboro Road and extending 85 feet northerly therefrom.

(5) Gainsboro Road—Beginning at a point 35 feet north of the northerly curb line of Gainsboro Road and extending 85 feet northerly therefrom.

(6) Millerick Avenue—Beginning at a point 35 feet north of the northerly curb line of Millerick Avenue and extending 75 feet northerly therefrom.

(7) Berwyn Place—Beginning at a point 35 feet north of the northerly curb line of Berwyn Place and extending 75 feet northerly therefrom.

(8) Windwood Road—Beginning at a point 35 feet north of the northerly curb line of Windwood Road and extending 75 feet northerly therefrom.

(9) Darrah Lane—Beginning at a point 35 feet north of the northerly curb line of Darrah Lane and extending 75 feet northerly therefrom.

(10) Skillman Avenue—Beginning at a point 35 feet north of the prolongation of the northerly curb line of Skillman Avenue and extending 75 feet northerly therefrom.

(11) Vanderveer Drive—Beginning at a point 35 feet north of the northerly curb line of Vanderveer Drive and extending 65 feet northerly therefrom.

(12) West Long Drive—Beginning at a point 129 feet north of the northerly curb line of West Long Drive and extending 75 feet northerly therefrom.

(13) Manning Lane—Beginning at a point 45 feet north of the prolongation of the northerly curb line of Manning Lane and extending 85 feet northerly therefrom.

(14) Greenwood Avenue—Beginning at a point 35 feet north of the northerly curb line of Greenwood Avenue and extending 75 feet northerly therefrom.

ii. Mid-block bus stops:

(1) Princeton Pike—Beginning at a point 220 feet north of the prolongation of the northerly curb line of Princeton Pike and extending 75 feet northerly therefrom.

(2) Between Princeton Pike and Fairfield Avenue—Beginning at a point 1589 feet north of the prolongation of the northerly curb line of Princeton Pike and extending 135 feet northerly therefrom.

(3) Monroe Avenue—Beginning at a point 168 feet south of the prolongation of the southerly curb line of Monroe Avenue and extending 95 feet southerly therefrom.

(4) Cold Soil Road—Beginning at a point 142 feet north of the prolongation of the northerly curb line of Cold Soil Road and extending 85 feet northerly therefrom.

(5) Between Carter Road and Provinceline Road—Beginning at a point 1560 feet south of the southerly curb line of Provinceline Road and extending 135 feet southerly therefrom.

iii. Near side bus stops:

(1) Franklin Corner Road—Beginning at a point 25 feet south of the southerly curb line of Franklin Corner Road and extending 95 feet southerly therefrom.

(2) Craven Lane—Beginning at a point 35 feet south of the southerly curb line of Craven Lane and extending 95 feet southerly therefrom.

(3) Gordon Avenue—Beginning at a point 50 feet south of the prolongation of the southerly curb line of Gordon Avenue and extending 95 feet southerly therefrom.

(4) Carter Road—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Carter Road and extending 85 feet southerly therefrom.

2. Along the westerly (southbound) side in Lawrence Township, Mercer County:

i. Far side bus stops:

(1) Greenwood Avenue—Beginning at a point 35 feet south of the southerly curb line of Greenwood Avenue and extending 75 feet southerly therefrom.

(2) Manning Lane—Beginning at a point 35 feet south of the southerly curb line of Manning Lane and extending 75 feet southerly therefrom.

(3) Phillips Avenue—Beginning at a point 25 feet south of the southerly curb line of Phillips Avenue and extending 85 feet southerly therefrom.

(4) Craven Lane—Beginning at a point 35 feet south of the southerly curb line of Craven Lane and extending 75 feet southerly therefrom.

(5) Monroe Avenue—Beginning at a point 35 feet south of the southerly curb line of Monroe Avenue and extending 75 feet southerly therefrom.

(6) Municipal Drive North—Beginning at a point 35 feet south of the southerly curb line of Municipal Drive North and extending 75 feet southerly therefrom.

(7) Oaklyn Terrace—Beginning at a point 125 feet south of the prolongation of the southerly curb line of Oaklyn Terrace and extending 75 feet southerly therefrom.

(8) Review Avenue—Beginning at a point 61 feet south of the prolongation of the southerly curb line of Review Avenue and extending 85 feet southerly therefrom.

(9) Pilla Avenue—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Pilla Avenue and extending 75 feet southerly therefrom.

(10) Meadowbrook Avenue—Beginning at a point 35 feet south of the southerly curb line of Meadowbrook Avenue and extending 75 feet southerly therefrom.

(11) Fernwood Lane—Beginning at a point 35 feet south of the southerly curb line of Fernwood Lane and extending 75 feet southerly therefrom.

(12) Wittenborn Drive—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Wittenborn Drive and extending 75 feet southerly therefrom.

(13) Brunswick Circle—Beginning at a point 120 feet south of the southerly curb line of Brunswick Circle and extending 110 feet southerly therefrom.

ii. Mid-block bus stops:

(1) Between Carter Road and Provinceline Road—Beginning at a point 1235 feet south of the southerly curb line of Provinceline Road and extending 135 feet southerly therefrom.

(2) Franklin Corner Road—Beginning at a point 318 feet south of the southerly curb line of Franklin Corner Road and extending 85 feet southerly therefrom.

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(3) Between Fairfield Avenue and Princeton Pike—Beginning at a point 582 feet south of the prolongation of the southerly curb line of Fairfield Avenue and extending 135 feet southerly therefrom.

iii. Near side bus stops:

(1) Carter Road—Beginning at a point 35 feet north of the northerly curb line of Carter Road and extending 85 feet northerly therefrom.

(2) Cold Soil Road—Beginning at a point 35 feet north of the northerly curb line of Cold Soil Road and extending 85 feet northerly therefrom.

(3) Vanderveer Drive—Beginning at a point 45 feet north of the prolongation of the northerly curb line of Vanderveer Drive and extending 85 feet northerly therefrom.

(4) Skillman Avenue—Beginning at a point 35 feet north of the northerly curb line of Skillman Avenue and extending 85 feet northerly therefrom.

(5) Princeton Avenue—Beginning at a point 35 feet north of the westerly curb line of Princeton Avenue and extending 85 feet northerly therefrom.

(6) Lanning Avenue—Beginning at a point 35 feet north of the northerly curb line of Lanning Avenue and extending 85 feet northerly therefrom.

(7) Mulberry Street—Beginning at a point 35 feet north of the northerly curb line of Mulberry Street and extending 85 feet northerly therefrom.

(8) Myrtle Avenue—Beginning at a point 35 feet north of the northerly curb line of Myrtle Avenue and extending 85 feet northerly therefrom.

3. Along the northbound side in Princeton Borough, Mercer County:

i. (No change.)

4. Along the southbound side in Princeton Borough, Mercer County:

i.-ii. (No change.)

5. Along the northbound side in Princeton Township, Mercer County:

i.-iii. (No change.)

6. Along the southbound side in Princeton Township, Mercer County:

i.-iii. (No change.)

7.-12. (No change.)

(c) (No change.)

16:28A-1.100 Route 50

(a) The certain parts of State highway Route 50 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.

1. No stopping or standing in Atlantic County:

i. Along both sides:

(1) In Egg Harbor City:

(A) For a distance of 95 feet south of the southerly curb line of Route U.S. 30.

(2) In Hamilton Township:

(A) Beginning at a point 200 feet south of the southerly curb line of Third Street to the northerly curb line of Fourth Street.

(3) In Weymouth Township:

(A) For the entire length within the corporate limits of Weymouth Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit parking areas.

2. No stopping or standing in Cape May County:

i. Along both sides:

(1) In Upper Township:

(A) From Dennisville Road—School House Lane Reading Road to the Upper Township-Corbin City corporate line.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Stopping and Parking
Routes N.J. 27 in Union County

Adopted Amendments: N.J.A.C. 16:28A-1.18

Proposed: March 2, 1992 at 24 N.J.R. 692(a).

Adopted: April 3, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: April 9, 1992 as R.1992 d.196 **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1 and 39:4-199.

Effective Date: May 4, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate private signs at the following established bus stops:

1.-10. (No change.)

11. Along the northbound side in the City of Rahway, Union County:

i. Far side bus stops:

(1)-(12) (No change.)

ii. Near side bus stops:

(1) Linden Avenue (105 feet).

12. Along the southbound side in the City of Rahway, Union County:

i. (No change.)

13.-24. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Stopping and Parking
Routes N.J. 57 in Warren County; U.S. 202 in Somerset County; N.J. 41 in Camden County; N.J. 32 in Middlesex County; U.S. 1 Business in Mercer County

Adopted Amendments: N.J.A.C. 16:28A-1.36, 1.55, 1.64, 1.73, and 1.97

Proposed: March 2, 1992 at 24 N.J.R. 693(a).

Adopted: April 3, 1992, by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: April 9, 1992 as R.1992 d.197 **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: May 4, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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16:28A-1.36 Route 57

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

(c) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing during certain hours" zones where stopping or standing is prohibited as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

1. No stopping or standing during certain hours in Washington Borough, Warren County:

i. (No change.)

16:28A-1.55 Route U.S. 202

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

(c) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-5. (No change.)

6. Along (Mine Brook Road) the easterly (northbound) side in Bernardsville Borough, Somerset County:

i. Far side bus stop:

(1) Depot Square—Beginning at the northerly curbline of Depot Square and extending 100 feet northerly therefrom.

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

16:28A-1.64 Route 41

(a) (No change.)

(b) The certain parts of State highway Route 41 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. (No change.)

2. Along the westerly (southbound) side in Cherry Hill Township, Camden County:

i.-ii. (No change.)

iii. Far side bus stop:

(1) Chelton Parkway—Beginning at the prolongation of the southerly curb line of Chelton Parkway and extending 135 feet south therefrom.

6:28A-1.73 Route 32

(a) The certain parts of State highway Route 32 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.

1. No stopping or standing in South Brunswick Township, Middlesex County along both sides for the entire length within the corporate limits of the Township of South Brunswick, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated Bus Stops and Time Limit Parking areas.

6:28A-1.97 Route U.S. 1 Business

(a) The certain parts of State highway Route U.S. 1 Business 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.

1. No stopping or standing in Lawrence Township, Mercer County:

i. Along both sides:

(1) Beginning at milepost 0.0 at the intersection of the U.S. 1 Freeway to the northerly curbline of Carnegie Road (milepost 2.31) Lawrence Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

(b) The certain parts of State highway Route U.S. 1 Business described in this subsection shall be designated and established as "no parking" bus stop zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In Lawrence Township, Mercer County:

i. Along the westerly (southbound) side:

(A) Mid-block bus stop:

(1) Lake Drive Jughandle—Beginning at a point 515 feet north of the northerly curbline of the Lake Drive jughandle at the Traffic Signal and extending 85 feet northerly therefrom.

(B) Near side bus stops:

(1) Lake Drive—Beginning at a point 35 feet north of the northerly curb line of Lake Drive and extending 85 feet northerly therefrom.

(2) Bunker Hill Avenue—Beginning at a point 35 feet north of the northerly curb line of Bunker Hill Avenue and extending 85 feet northerly therefrom.

(3) Hope Street—Beginning at a point 35 feet north of the northerly curb line of Hope Street and extending 85 feet northerly therefrom.

(C) Far side bus stops:

(1) Cherry Tree Lane—Beginning at a point 35 feet south of the southerly curb line of Cherry Tree Lane and extending 75 feet southerly therefrom.

(2) Maplewood Avenue—Beginning at a point 35 feet south of the southerly curb line of Maplewood Avenue and extending 75 feet southerly therefrom.

ii. Along the easterly (northbound) side:

(A) Mid-block bus stop:

(1) Colonial Lake Drive—Beginning at a point 249 feet south of the southerly curb line of Colonial Lake Drive and extending 85 feet southerly therefrom.

(B) Far side bus stops:

(1) Puritan Avenue—Beginning at a point 35 feet north of the northerly curb line of Puritan Avenue and extending 75 feet northerly therefrom.

(2) Trumbull Avenue—Beginning at a point 35 feet north of the northerly curb line of Trumbull Avenue and extending 75 feet northerly therefrom.

(3) Mayflower Avenue—Beginning at a point 35 feet north of the northerly curb line of Mayflower Avenue and extending 75 feet northerly therefrom.

(4) Lake Drive—Beginning at a point 35 feet north of the northerly curb line of Lake Drive and extending 75 feet northerly therefrom.

(C) Near side bus stops:

(1) Putnam Avenue—Beginning at a point 35 feet south of the southerly curb line of Putnam Avenue and extending 85 feet southerly therefrom.

(2) Texas Avenue Jughandle—Beginning at a point 35 feet south of the southerly curb line of Texas Avenue Jughandle and extending 85 feet southerly therefrom.

(a)

DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT
BUREAU OF MAINTENANCE SUPPORT
Roadside Sign Control and Outdoor Advertising
Adopted New Rules: N.J.A.C. 16:41C
Adopted Repeals: N.J.A.C. 16:41-8 and 16:41A

Proposed: March 2, 1992, at 24 N.J.R. 695(a).

Adopted: April 9, 1992 by George Warrington, Deputy Commissioner, Department of Transportation.

Filed: April 10, 1992, as R.1992 d.206, **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. 27:1A-5, 27:1A-6, and the Roadside Sign Control and Outdoor Advertising Act, N.J.S.A. 27:5-5 et seq. (P.L. 1991, c.413).

Effective Date: May 4, 1992.

Expiration Date: May 4, 1997.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Transportation is adopting new rules at N.J.A.C. 16:41C pertaining to "Roadside sign control and Outdoor

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Advertising" in compliance with N.J.S.A. 27:5-5 et seq. (P.L. 1991, Chapter 413). N.J.S.A. 27:5-5 et seq. which was signed into law on January 17, 1992. It repealed various preexisting State laws pertaining to outdoor advertising and sign control and replaced them with a single comprehensive law. The new statute and the adopted regulations are consistent with applicable requirements of the Federal Highway Administration. The rule was proposed in the March 2, 1992 New Jersey Register at 24 N.J.R. 695.

The newly adopted rule, N.J.A.C. 16:41C "Roadside Sign Control and Outdoor Advertising", unites and continues many provisions previously found in N.J.A.C. 16:41-8 "Outdoor Advertising On Limited Access Highways and Nonlimited Access Highways On the Federal Aid Primary System" and N.J.A.C. 16:41A "Outdoor Advertising Tax Act." These prior rules are now repealed under the provisions of this adoption. As with the new statute, a significant feature of the new rules is that they consolidate two older and separate outdoor advertising programs into a single program.

A public hearing on the Roadside Sign Control and Outdoor Advertising rule, N.J.A.C. 16:41C, was held on March 19, 1992 at the Department of Transportation headquarters in Ewing, New Jersey. Thirty-three persons were present at the public hearing. Six persons made oral presentations to the docket. A transcript of the hearing, the hearing sign-in sheet, a tape recording of the hearing, and written comments to the docket are available for review by appointment during normal DOT business hours. (Contact Charles L. Meyers, Administrative Practice Officer, at 609-530-2041.)

The rule has been adopted with substantive and technical changes not requiring additional public notice and comment, see N.J.A.C. 1:30-4.3. Numerous comments raised issues that require additional study and analysis. The major issues include standards for "on-premise" signs, "multiple-message" sign restrictions, and special standards for "Casino Districts". The Department will initiate a review of these issues. Where appropriate, the Department may propose rule amendments or supplements.

With respect to "multiple message" signs, the Department intends to initiate detailed studies, tests, and demonstrations. Studies will be done in cooperation with the regulated industry, interested independent toll road authorities, and other interested parties. The Department will be studying multiple message sign traffic safety impacts, testing alternative message timing standards, and evaluating benefits when multiple message signs include periodic public service and traffic condition/safety messages. As previously noted, when study results indicate it is appropriate, the Department may propose rule amendments or supplements.

The comment period closed April 1, 1992. The following persons submitted written and/or oral comments to the docket:

1. William Nierstedt, P.P., A.I.C.P.
2. Andrew D. Bertucci, Executive Director, the New Jersey Sign Association
3. David L. Steinberg, Sign Consultant, Forman Sign Company
4. Jeffrey M. Hall, Esq, for the Outdoor Advertising Association of New Jersey
5. David C. Maxwell, the R. C. Maxwell Company
6. Charles W. Buttz, New Jersey Shelter All
7. Bob Prewitt, Dana Communications
8. Franklin Nataro, Boisclair Advertising
9. Mr. Mametech, Synad, Inc.
10. Carl S. Primavera, Esq., Boisclair Advertising
11. John C. Jennings, P.P., A.I.C.P.
12. David R. Baughn, Centaure U.S.A.
13. Philip J. Perski, Esq., Hamilton Assoc.
14. Donald J. Mauer, Jr., P.E., P.P., C.M.E. Remington and Vernick Engineers for the New Jersey Expressway Authority
15. Clarence Bullock
16. Linda B. Kellner, Public Policy Advisors, Inc. for Continental Outdoor Advertising
17. JoAnn Martin, Esq., for the New Jersey Turnpike Authority

A summary of Agency-initiated changes and a summary of public comments received and agency responses to each comment follow:

Summary of Agency-Initiated Changes:

The Department has found certain technical deficiencies in the "Definitions" portion of the rule as published in the March 2, 1992, New Jersey Register. The Department is making six amendments to the "Definitions" portion of the adopted rule at N.J.A.C. 16:41C-1.1 for reasons of technical accuracy and clarity. None of the changes alter the original intended scope or requirments of the rule. The changes are as follows:

"Commercial or Industrial Activities for purposes of unzoned commercial or industrial areas"—Item five refers to "activities more than 600 feet from the nearest edge of the right-of-way". The number 600 is a typographical error and has been amended to read "660 feet".

"Cutouts/extensions"—This has been amended to make specific reference to the "advertising surface area" to clarify that "cutout/extension" refers to the advertising surface area.

"Incorporated municipalities"—This has been amended to assure that it specifically includes all forms of State-authorized municipal corporations.

"Natural area"—Has been deleted because the term is superseded in the rule by the term "scenic area".

"Outdoor Advertising Act"—Reference therein to "of 1991" is a technically incorrect citation, thus "of 1991" is deleted.

"Permit"—The phrase "and/or maintain" has been inserted following the word "erect".

General Comments:

COMMENT: In the Definition of "protected areas" in 16:41C-1.1, the phrase "limited access highways" should be inserted following the phrases "interstate and primary systems". With this change, the term "protected areas" would also apply to limited access highways.

RESPONSE: The term "protected areas" has its origin with Federal requirements and applies only to Federal Interstate and Primary road systems. In New Jersey there are some limited access highways which are not part of the interstate and primary system. Examples of this include portions of the New Jersey Turnpike, the Atlantic City Expressway and the Garden State Parkway. Given these circumstances, it is inappropriate to amend the definition of protected areas to include all limited access highways.

COMMENT: The definition of "thickly settled district" means a commercial or industrial zoned or unzoned area where business buildings or houses are less than 200 feet apart along the street for at least ¼ mile. This definition is entirely too restrictive. The separation criteria should be more on the order of 300 feet as some areas which are plainly thickly settled do not meet the 200 foot criteria.

RESPONSE: The Department agrees that some areas which are plainly "thickly settled" would not necessarily qualify with the proposed 200 foot building separation. The Department believes that it is both reasonable and well within the original intent of the proposed regulation to increase this figure to 300 feet.

COMMENT: Can the Department be more definitive in defining the meaning of "temporary cut-outs or extensions".

RESPONSE: Temporary cut-outs and extensions are defined in 16:41C-1.1. The term means any cut-out, extension, or attachment or addition to the original sign that increases or enhances the advertising surface area. The Department believes that this term is sufficiently clear in the rule as proposed.

COMMENT: There is a definition of "limited access highway". This makes it unnecessary to have a definition for "Parkway" and "Turnpike"

RESPONSE: The Department agrees that the term "limited access highway" includes facilities such as the Parkway and Turnpike. It is however, not desirable to delete these definitions as they are used in the body of the rule.

COMMENT: In the definition of "unzoned commercial or industrial areas" and the definition of "zoned commercial or industrial areas" the following phrase should be added:

"The granting of a use or any other variance by a local zoning or governing body shall not change in any way the zoning of the property as defined in these rules."

RESPONSE: As indicated in 16:41C-5.1(a)3, 4, 5, and 6, off-premise advertising is generally restricted to areas that are zoned industrial or commercial or where the use of land is industrial or commercial. The Department may not issue a permit in circumstances where a local variance is in conflict with the sections cited above. Insertion of the recommended language in the definition for unzoned and zoned commercial or industrial areas is consistent with the intent of the Department and has been done in the adopted rule.

COMMENT: It is recommended that in 16:41C-3.1 the words "except where specifically permitted by the Department" be inserted at the front of the paragraph. The paragraph currently provides that there will be no advertising signs on NJDOT right-of-way.

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RESPONSE: Since the Department may periodically decide to lease portions of right of way on a temporary basis, it is appropriate to include the recommended language in the adopted rule.

COMMENT: There should be standards in the rule to establish height limitations of 25 to 40 feet for off-premise signs.

RESPONSE: Department regulations provide for standards and limits on the total square footage of signs and the permissible dimensions of the advertising copy area. Vertical height limits of structures are usually regulated by local building code and zoning standards.

COMMENT: N.J.A.C. 16:41C-3.2(a) sections 5 and 9 prohibit signs from having scrolling and moving lights and animated or moving parts. An exemption from these standards should be established for the casino district of Atlantic City. This is a special district and signs with these features should be permitted.

RESPONSE: The Department agrees that the casino district of Atlantic City is unique. The Department believes, however, that there needs to be considerably more public dialoque and study on this issue prior to proposing any changes to these regulations. It is important to note that "multiple message" signs are now permitted under the provisions of 16:41C-3.1(a)12. Multiple message signs had previously been prohibited. The newly adopted provisions allowing multiple message signs will give advertisers, including those in the casino district, new flexibility.

COMMENT: The Department now allows multiple message signs. It requires that multiple message sign copy remain fixed for at least two and one half minutes between changes. Off-premise multiple message signs are also prohibited within five hundred feet of a traffic signal or ramp, and they may not be within five-thousand feet of each other on the same roadway in the same direction. Although several persons said at the hearing they applaud the progressive intent of the multiple message regulations, it was recommended that provisions restricting multiple message signs be made more lenient or eliminated entirely. This applies to both on-premise and off-premise advertising activities.

RESPONSE: Prior to the new statute and these regulations, multiple message signs were prohibited. The Department believes that the new regulations, as adopted, provide considerable new latitude to advertisers and that a significant number of existing signs will be converted to multiple message signs. In the years ahead there will be significant changes and improvements in sign technologies. The Department expects that regulations pertaining to multiple message signs will evolve with changing technologies.

COMMENT: With multiple message signs, each message must remain fixed for at least 2½ minutes. With a 2½ minute restriction, multiple message signs will not be cost-effective for on-premise advertisers.

RESPONSE: The new regulations permit, for the first time, on-premise advertisers to use multiple message signs. The Department expects many businesses to take advantage of this new opportunity. With 2½ minutes between message changes, the adopted standard allows 576 copy changes daily per sign. Despite concern that 2½ minutes is too restrictive, this standard provides considerable new flexibility and creative opportunities for on-premise advertisers. The Department notes there has been considerable comment on the 2½ minute limitation and that it intends to study this issue further in the future.

COMMENT: The rules provide that multiple message signs may not be placed within 500 feet of a traffic signal or ramp. This is too restrictive because many shopping centers and malls have locations within 500 feet of a traffic intersection.

RESPONSE: The cited 500 foot spacing requirement for multiple message signs does not apply to on-premise advertising signs. Therefore, shopping centers and malls will not be adversely impacted.

COMMENT: In lieu of regulating multiple message signs by use of a spacing standard, it is suggested that multiple message signs be permitted at any location contingent upon study of the impacts upon the motoring public and surrounding areas. If study shows that no hazards would be created by the installation of a multiple message sign, it would be permitted. The applicant would submit applicable studies, documents, maps, plans, pictures, videos and consultants reports to support their application for a multiple message sign.

RESPONSE: The Dpartment previously considered this approach and rejected it for several reasons. Firstly, the Department believes that an approach which universally mandates the preparation of potentially subjective traffic safety, engineering and other consultant reports for all signs in a given class would increase costs for both the applicant, in preparing the reports, and the Department, in reviewing the reports. It is the intent of the Department to utilize procedures which will reduce administrative costs and delays to both the applicant and Department. The Department is also concerned that requirements for extensive background studies may be an impediment to smaller advertisers who lack financial resources. Another concern is that consultant reports and traffic studies may prove to be prone to subjective interpretation and generate costly contested permit actions. The Department believes that the adopted methodology will minimize both applicant and DOT costs, while providing an objective and consistent standard to guide the permitting process.

COMMENT: On multiple message signs, public service messages could be required as a "give back" to the community at large.

RESPONSE: Although the Department encourages advertisers to provide access to public service and traffic safety messages, the adopted rules do not make this a condition for obtaining a permit. The Department believes it is in the public interest to have cooperative agreements with outdoor advertisers regarding public service and traffic advisory messages.

COMMENT: Does NJDOT restrict signs where there are vertical or horizontal curves along the highway which may impose further demands on the drivers attentiveness?

RESPONSE: There are no separate or distinct standards for signs in the vicinity of vertical or horizontal roadway curves. There has been no affirmative indication that special or more restrictive standards are necessary.

COMMENT: The Department could set permit fees on a "per square foot" basis.

RESPONSE: It is appropriate and equitable to assess smaller permit fees to small signs and larger permit fees to larger signs. The table of permit fees adopted in these regulations does exactly that.

COMMENT: If the Federal government were to require new restrictions upon multiple message signs for off-premise advertising, it is requested that multiple message signs used for on-premises advertising remain as unrestricted as possible.

RESPONSE: Multiple message sign technologies are an important communications tool for on-premise advertisers. It is the intent of the Department to both stay in compliance with applicable federal requirements and to permit on-premise advertisers the opportunity to use multiple message signs in accordance with the provisions of the adopted rules.

COMMENT: The following comment was addressed to the docket: "Under the proposed paragraph 16 of N.J.A.C. 16:41C-3.2 you intend to disallow any sign which would "adversely affect the public interest". The proposal places the administrator of outdoor advertising in the position of determining what adversely affects the public interest and public good. Perhaps the title should be changed to Outdoor Advertising Czar (and that suggestion is only slighly facetious). Now we will have another government agency meddling in what is and is not appropriate; what is and is not good for our citizens and out-of-state visitors to view."

RESPONSE: The role of the Department in the oversight of outdoor advertising does not include the review and censorship of advertising copy. The Department does not involve itself in disputes regarding the content and messages in signs. The Department, however, reserves the right to take appropriate actions against signs where a clear and definable public interest is adversely affected. When the Department revokes a permit or imposes penalties, the sign owner or the advertiser has the right to several levels of appeal and administrative and judicial protection. It would have to be proven by the Department, on a case-by-case basis, that a compelling public interest existed. The Department believes that the existing language and applicable procedures provide adequate protections for all parties.

COMMENT: The following comment was addressed to the docket: "I advertise my business on four of the roadside signs I own. I cannot afford to have slick art panels repapered, repainted and replaced every six months or so as the large firms do. I cannot afford to have some State employee advise me that my signs are "aesthetically blighted" because "... 25% of the surface requires a reconditioning ...". Who wrote these regulations, some interior decorator? Some people find slight decay, aging and weathering aesthetically pleasing. Is their opinion less correct?"

RESPONSE: In the interest of safety and highway beautification, it is the intent of the Department to take the appropriate action against any advertising structure which is abandoned, destroyed, or in disrepair for a period of one year after being cited by the Department. These provisions give outdoor advertisers ample opportunity to take corrective action or to appeal or challenge the findings of the Department.

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COMMENT: The rule provides that multiple message signs can change copy no more often than every 2½ minutes. Can the Department of Transportation demonstrate that there would be a significant increase in accidents if this interval was reduced to 1 minute or less if the Department is unable to do so, the standard should be reduced from 2½ minutes to 1 minute or less.

RESPONSE: The adopted rule, for the first time, allows the general installation and operation of multiple message signs in New Jersey. The Department wishes to take every reasonable step to ensure that the systemwide introduction of multiple message signs is done in a manner which conforms with applicable federal requirements and would not adversely impact highway safety. The adopted regulation provides opportunity for substantial and immediate introduction, but in a controlled manner, of multiple message signs and technologies. It is a belief of the Department that the adopted regulation is both prudent and fair.

COMMENT: 16:41C-3.2(5) says, "Signs which contain, include or are illuminated by any flashing, intermittent, scrolling or moving light or lights shall be prohibited, except those giving time, date and/or temperature." Strict compliance would effectively prohibit the use of any current technology employed by light emitting multiple message signs. Although our light emitting diode (LED) technology appears to be desirable for multiple message signs, it could be construed as an intermittent light and perhaps prohibited.

RESPONSE: There are many potential multiple message sign technologies. It is expressly not the purpose of the adopted rule to impose barriers to any particular multiple message sign technology. Some sign technologies involve message "pixels" that turn on and off to form letters, words, and pictures. LED pixel technologies may prove to be useful for multiple message signs. Since the Department has not evaluated the particular LED technology referred to in the comment or its application, it is impossible for the Department to herein conclusively determine either that the LED technology should be prohibited as a flashing or intermittent light or should be permitted as another form of pixel technology. In cases where a question exists, it is the intent of the Department to review each circumstance on its own merits and reach an appropriate resolution.

COMMENT: 16:41C-3.2(a)9 provides in part that "no outdoor advertising sign shall be permitted which has any animated or moving parts." It is recommended that the phrase "except where provided in these regulations" be added to this sentence.

RESPONSE: Although not expressly stated, it appears that the commenter is concerned that provisions pertaining to animated or moving parts may nullify other provisions in the regulations permitting multiple message signs. The Department believes that there is a distinction between animated or moving parts, which are prohibited under federal requirements, and copy changes on multiple message signs. The Department allows copy changes on multiple message signs but does not permit animated or moving parts as traditionally interpreted by the Federal Highway Administration. The Department does not believe that it needs to include the suggested language at 3.2(a)9.

COMMENT: The Department does not have the statutory authority to establish a prohibition of outdoor advertising signs adjacent to either the Garden State Parkway or the New Jersey Turnpike.

RESPONSE: The Department is not establishing a new prohibition of outdoor advertising along the Parkway and portions of the Turnpike. Rather, it is continuing an existing regulatory prohibition. The Outdoor Advertising Act gives the Department broad regulatory authority regarding the appropriate placement and location of roadside signs and outdoor advertising. In its deliberation concerning the Outdoor Advertising Act, the Legislature was well aware of the existing prohibitions on the Turnpike and Parkway and did not challenge them or establish new legislative direction and intent. The Department is acting within its statutory authority to continue the existing regulatory prohibitions on these highways.

COMMENT: Under 16:41C-3.2(a)12 it states that "If a licensed dealer accumulates five violations for multiple message signs, his outdoor advertising license shall be suspended for one year." It is possible to accumulate five "technical" violations that are truly only minor infractions. A mandatory one year suspension of an outdoor advertising license is too extreme.

RESPONSE: The Department agrees that it is entirely possible to accumulate minor violations whose seriousness would not appear to warrant a mandatory license suspension. This language is too inflexible, perhaps unnecessary, and has been deleted from the adopted rule. If the Department deems it appropriate to seek the suspension of a license, it could do so under its general enforcement powers. This section also prescribes that multiple message signs deemed to be in violation of the regulations must remain fixed until the matter is resolved. In the interest of fairness, the Department is amending this section to allow the Commissioner the discretion to permit the continued operation of a multiple message sign during the appeal of a violation.

COMMENT: It would be clearer and more appropriate for 16:41C-3.2(a)15 to read as follows:

"The permit for any outdoor advertising structure may be revoked if it remains abandoned, destroyed or in an aesthetically blighted condition for a period of one year after being so cited by the Department, provided that remedial action could have been, but was not taken by the permit holder for such sign during that time period."

RESPONSE: The above language has been reviewed by the Department Outdoor Advertising section and Department Legal Counsel. It is the belief of the Department that the proposed alternative language is clearer and more descriptive than the original language. It has therefore been adopted.

COMMENT: Most off-premise advertising is restricted to zoned and unzoned commercial or industrial areas. A commenter suggests that off-premise advertising be restricted exclusively to zoned and unzoned commercial or industrial areas as they exist on April 1, 1992.

RESPONSE: Under this proposal, areas zoned commercial or industrial after April 1, 1992, would not be permitted to have off-site advertising. The Department believes that establishing such a "cut-off" date is overly restrictive and not within the intent of the newly enacted "Roadside Sign Control and Outdoor Advertising Act". The Department is not incorporating the suggested cut-off date in the adopted rule.

COMMENT: 16:41C-5.3(c) provides that when real property is leased to a person to erect a sign, the lease shall include specific provisions giving the Department right of entry. This is unnecessary as the Department already has general enforcement and inspection powers under which it can exercise right of entry. Renegotiating and amending existing leases to include such a provision may create potential problems for sign owners. This section should be deleted.

RESPONSE: The Department agrees that it has a right of entry under its general enforcement and inspection powers. This provision is being deleted.

COMMENT: 16:41C-5.4 provides in part that "when a permittee desires to enlarge or reduce the surface area of the sign, an application for a new permit shall be made and the applicable application and permit fees shall be paid." It should not be necessary to apply for a permit to reduce the area of a sign.

RESPONSE: The Department does not believe that it is necessary to amend the rule regarding this transition period since it expects that all existing signs will be in compliance within a reasonable period of time.

COMMENT: 16:41C-5.5 provides in part that the name of a permittee and the application number of a sign shall be placed upon the sign within 30 days. In respect to existing signs the regulation should be amended to include some form of schedule for compliance, other than 30 days which is acceptable to all parties.

RESPONSE: The Department does not believe it is necessary to amend the rule regarding this transition period since it expects that all existing signs will be in compliance within a reasonable period of time.

COMMENT: When applying for a new permit, there is a fifty dollar application fee for off premise signs with advertising surface area of fifty square feet or less and a two hundred dollar application fee for signs with an advertising surface area exceeding fifty square feet. Please see N.J.A.C. 16:41C-6.1. This application fee is too high.

RESPONSE: This is a one time cost to the advertiser and is submitted only with the initial permit application or for the enlargement of an existing sign. The application fee offsets Department of Transportation costs in reviewing the initial permit application. The Department agrees that it is appropriate to increase the sign area threshold for the two hundred dollar fee from 50 to 100 square feet. Having changed this threshold, the Department views the application fee as a relatively minimal cost to the advertiser.

COMMENT: Permit fees have been increased. The fee increases will particularly impact smaller advertisers where the overall "percentage" increase has been the greatest.

RESPONSE: The fees for permits were last revised in 1971, over twenty years ago. There were twenty-one fee categories ranging from two dollars to one hundred and twenty-five dollars. Total revenue from these fees is less than it costs to administer the program. Under the

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ıew law, the Department is authorized to set fees so as to offset the :ost of administering the program. The new table of fees ranges from ive dollars to three hundred and fifty dollars, in nine fee categories. The Department has discussed these fees extensively with the outdoor ıdvertising industry and believes that it has proposed and adopted an ıcceptable and equitable table of fees. The Department believes that his table of fees reasonably distributes applicable costs throughout the ndustry without creating hardships.

COMMENT: The permit fees for signs are too low. The State should et sign fees as a function of the value of advertising rental and not y program administration cost.

RESPONSE: The Department is required to set the schedule of fees o that the total revenue received does not exceed the cost of adminis- ering the outdoor advertising program. This is specified in section 15 aragraph A of the new law.

COMMENT: The proposed rule is unclear regarding how to ask for permit to trim vegetation in State right-of-way.

RESPONSE: The Department has specific rules regarding the trim- ıing of vegetation which appear at N.J.A.C. 16:41. The Department does ot believe it is necessary to amend the outdoor advertising rules to estate the applicable contents of 16:41.

COMMENT: The Department should not allow Outdoor Advertising ompanies to prune brush, trees and landscaping in order for advertising igns to be more visible.

RESPONSE: Outdoor advertisers do not have a right to prune vegeta- on on State right-of-way to improve sign visibility. Advertising com- anies may apply to the Department for a permit to prune vegetation. he Department is absolutely not obliged to issue a permit. The Depart- ıent may issue a permit if a vegetation pruning request complies with pplicable federal guidelines and is deemed by the Department to be onsistent with right-of-way maintenance and management needs for the pplicable section of highway. Permits are issued on a case by case basis n their individual merits.

COMMENT: In 16:41C-8.2, the permitted size of directional signs of p to 150 square feet seems excessive. In contrast, the restrictions in aragraphs J and K on the number of allowed directional signs seem o restrictive, especially in urban areas where more than 3 signs may e needed to guide persons to a facility. The 3 sign limit should be ropped, clarified, or made more liberal.

RESPONSE: The standards for directional signs in the newly adopted 6:41C are the same standards that previously existed in the former .J.A.C. 16:41-8.6. Where applicable, the Department also conforms with ıe provisions regarding directional signs as found in the Federal Manual on Uniform Traffic Control Devices". In general, there has een minimal activity regarding directional signs and the Department ırely receives correspondence on this matter. If, in the future, it is ecessary to reevaluate this issue, the Department will do so.

COMMENT: At 16:41C-8.4(c), the spacing set back from interchanges ıd intersections is too restrictive.

RESPONSE: These standards are unchanged from the prior rules and eviously appeared at N.J.A.C. 16:41-8.6. They were readopted at 6:41C-8.4 in the new rules. There does not appear to be a record of ırrespondence from impacted persons indicting that the standards esent a hardship. In the absence of such a record, the Department leaving the standards unchanged. The cited standards pertain to service ub and church notices.

COMMENT: On-premise signs should be regulated solely by local ıning regulations, planning and zoning boards, and other municipal and unty officials.

RESPONSE: In January of 1992, the Legislature passed and the overnor signed the "Roadside Sign Control and Outdoor Advertising ct". The Act provides for the control of both on-premise and off- emise roadside signs and outdoor advertising. Although most Depart- ent efforts are focused on off-premise outdoor advertising, the Depart- ent also maintains a regulatory presence for on-premise advertising. ocal regulations and requirements are frequently more restrictive than e applicable Department standards. In some cases, however, there are local standards for on-premise outdoor advertising. In these instances, ate standards for roadside signs and outdoor advertising are the appli- ble guidelines. With over 550 local governing bodies and widely varying vels of sign expertise, the legislatively mandated regulatory presence the Department in both on-premise and off-premise signage is both cessary and desirable.

COMMENT: 16:41C-8.6 deals with on-premise signs on limited access and nonlimited access highways. Paragraphs (d) and (e) in that section are too restrictive. Paragraph (d) provides that:

"Not more than one on-premise sign shall be erected at a distance greater than 50 ft. from the advertised activity. If, however, such property fronts on more than one street, such a sign may be erected on each street frontage. Such signs shall not exceed twenty feet in length, width, or height, or one-hundred fifty square feet in area, including border, trim, cutouts and extensions."

Paragraph (e) provides that:

"Not more than one sign shall be erected within fifty feet of the advertised activity. Signs erected within fifty feet of the advertised activity shall not exceed twenty-five feet in height or sixty feet in horizontal dimensions or one-thousand feet in area, including borders, trim, cutouts, and extensions."

On-premise advertisers should be permitted more than one sign, especially when there is more than one access road on the same road frontage. The twenty foot length, width or height restriction should be eliminated. The one-hundred and fifty square foot restriction is entirely too low and should either be eliminated or increased to five hundred square feet.

RESPONSE: Although the standards for on-premise signs are a continuation of preexisting standards, there were numerous comments regarding on-premise sign issues. The standards in paragraphs (d) and (e) above are the same standards that have been in effect for many years (see N.J.A.C. 16:41-8.6(a)3, Standard Requirements). The Department can agree, however, that the 150 square foot limitation is restrictive and can be increased. The Department is amending the rule to increase the maximum size to 400 square feet. In this adoption the Department is not changing any other standard pertaining to on-premise signs, but will initiate a comprehensive review of these standards and initiate a dialogue with interested parties.

COMMENT: 16:41C-8.6 is unclear regarding what is and what isn't an on-premise sign.

RESPONSE: The Department does not concur that these sections are unclear. At this time, the Department does not believe it is necessary to amend the existing language for purposes of clarity.

COMMENT: 16:41C-8.6(h) provide that "no on-premise sign or structure shall be owned by a licensee, except when a sign is erected on his or her property and advertises his or her business." The Outdoor Advertising Act does not prohibit an outdoor advertiser from owning on-premise advertising signs. This section should be deleted.

RESPONSE: This language was carried over from prior Department regulations on outdoor advertising. After reviewing this matter with appropriate legal counsel, the Department concurs that this section can be deleted. The prior intent of this section was to insure that there was no confusion between on-premise and off-premise advertising. Continuation of this section is not necessary as it no longer substantially assists the Department in making determinations between what is on-premise and what is off-premise advertising.

COMMENT: 16:41C-9.1(a) provides in part that a sign may continue if it has not been "destroyed, abandoned or unused". This provision is inconsistent with section 21 of the Outdoor Advertising Act. That section sets the test as "totally destroyed or abandoned". The regulations should read in a similar manner.

RESPONSE: The Department agrees that the recommended language is more consistent with section 21 of the Outdoor Advertising Act. The adopted rule has been amended to conform more closely to the original language of the Outdoor Advertising Act.

COMMENT: Cut-outs and/or extensions which were part of a nonconforming sign should be allowed to continue if they existed at the time the sign became nonconforming.

RESPONSE: Cut-outs and extensions are by definition temporary additions to signs. Allowing a temporary feature to become a permanent feature on a nonconforming sign is entirely inappropriate. The Department deems this as an expansion of a nonconforming use and will continue to disallow it.

COMMENT: 16:41C-9.1 provides in part that approval of the Department shall be obtained prior to any maintenance involving more than 25% of a sign at one time, except for emergency repairs. This percentage should be increased to 50% and the licensee should only notify the Department not acquire Department approval.

RESPONSE: The Department is reviewing this issue and if that review indicates that it would be appropriate to alter the 25% standard, it will do so in the future.

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COMMENT: In 16:41C-10.1, "Notice and Hearings", it is recommended that the Administrator of Outdoor Advertising, the Commissioner, or a court of competent jurisdiction be permitted to stay penalties or removal orders when it is in the interest of equity to do so.

RESPONSE: The Department believes that the Commissioner or a court of competent jurisdiction already has the authority to stay penalties or removal orders when it is in the interest of equity. To clarify this, however, the Department has no objection to adding language to 16:41C-10.1(e) to affirm this.

COMMENT: 16:41C-10.3(a) establishes seven circumstances under which an advertising license may be revoked. These seven circumstances are not consistent with the Outdoor Advertising Act. Section 10 of the Act limits circumstances under which a license may be revoked. The rule should be amended to conform with the statute and provide that a license may be revoked when it is found that an application for a license is materially false and/or if the licensee has repeatedly been found to be in willful and intentional violation of the Outdoor Advertising Act and has refused without cause or justification to correct the violations.

RESPONSE: The Department has reviewed the applicable sections of law and has adopted new language in response to the above comments.

COMMENT: Does the NJDOT have a process to remove a sign or not permit a sign along a highway segment that has a record of higher than average accident rates?

RESPONSE: When the Department comes upon situations where traffic safety is adversely affected by a sign, it takes the necessary regulatory action to correct the situation. This may or may not involve sign removal.

COMMENT: The Department should do all it possibly can to prohibit visual signage and roadside outdoor advertising.

RESPONSE: Department regulation of roadside signs and outdoor advertising must be done in accord with the provisions of N.J.S.A. 27:5-5 et seq., the "Roadside Sign Control and Outdoor Advertising Act", signed into law January 17, 1992. The act specifically provides that Department regulations must balance the:

"promotion of safety, convenience and enjoyment of travel on the highways of this state with the protection of the recreational value and public investment therein, to preserve and enhance the natural scenic beauty and aesthetic features of the highways and adjacent areas while promoting development and economic vitality and facilitating the flow of speech and expression, of which providing messages of commercial, public and social value conveyed through the medium of road side signs and outdoor advertising is an important part"

The adopted rules implement the letter and the spirit of the new law. Outdoor advertising and roadside signs which do not comply with statutory requirements or the Department's regulatory program will be cited and the proper enforcement or corrective actions taken. In the promotion of highway beautification, the Department anticipates using a portion of its federal funding to remove billboards which do not conform with applicable Federal Highway Administration requirements.

COMMENT: The Department should develop a more comprehensive policy of working with municipalities to develop local zoning ordinances that are more restrictive toward signs.

RESPONSE: The laws of New Jersey give municipalities considerable authority to establish local policies and to enact and enforce local ordinances and zoning requirements. It is not the intent of the Department to interfere in local zoning matters. Section 22 of the new law speaks to the issue of powers of local political subdivisions and the enforcement of local ordinance and zoning regulations. Local governments have separate local permit processes with which they can express and implement local policies and standards.

COMMENT: The Department should get together with municipal officials to have them increase the ratable value (and local taxes) of outdoor advertising signs.

RESPONSE: Local government proceedings regarding the assessment of property for local taxation purposes do not involve the Department. The Department does not have the authority to intervene in or direct local taxation policies.

COMMENT: Accident rates are related to the frequency of roadside signs.

RESPONSE: The Department is committed to a policy to minimize roadside distractions, especially in the vicinity of intersections and ramps where driver attentiveness to road conditions is particularly significant.

COMMENT: Is there any "grandfathering" of outdoor signs under the proposal?

RESPONSE: The word "grandfathering" is not used in either the outdoor advertising statutes or the adopted rules. We take this question to mean, however, "What rights do preexisting signs have under the program?" The answer to this question is found in Section 21 of the newly enacted "Roadside Sign Control and Outdoor Advertising Act" Section 21 provides that:

"A sign erected and maintained with a valid permit issued before the effective date of this act, which does not comply with this act or the rules or regulations adopted pursuant hereto, may continue to be maintained, repaired and restored at the size, location, height, and set back set forth in the permit, including in the event of the partial destruction thereof, without limitation as to time, unless it is totally destroyed or abandoned, or the Commissioner finds, pursuant to the authority granted under subsection b of Section 10 of this act, any grounds for revocation of the permit."

The rules conform to the act.

COMMENT: The following comment was addressed to the docket

"The fact is that both the legislation and the rule changes proposed in 24 N.J.R. 695 et seq., protect the interests of large, monied advertising concerns and thwart any participation in the market share, economically speaking, by making a continued participation by the small owner, virtual economic suicide."

RESPONSE: The Department does not concur with any portion of the above comment. The adoption of these rules was preceded by an extensive and exhaustive two year outreach effort to all interested parties and the regulated industry in particular. Advertising firms, both large and small, maintained a continuing dialogue with the Department during this two year outreach. The Department continually went above and beyond the standard legal requirements to give interested parties the opportunity to comment on the issues and make specific proposals. The Department took exhaustive steps to involve and notify members of the regulated community, both large and small, of the proceedings related to this rule making action.

COMMENT: The following comment was addressed to the docket

"Consider a scenario where someone wishes to buy advertising space from me to advance a political cause which is unpopular in my region And, consider further that the advertising czar may be of a different political persuasion and may have a vested interest (e.g., job security etc.) in disallowing this advertisement as "injurious to the public interest". Say the bill board encourages Americans to join some communist or socialist party. How can the advertising czar strike down such advertising as adverse to the public interest simply because residents object? As political speech, it is my understanding that it must be allowed to stand."

RESPONSE: Outdoor Advertising is used as a medium for political expression by candidates and political parties of all persuasions. The Department does not regulate or censor political speech.

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

CHAPTER 41C
ROADSIDE SIGN CONTROL AND OUTDOOR ADVERTISING

SUBCHAPTER 1. DEFINITIONS

16:41C-1.1 Definitions

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

"Act" means section 131 of Title 23, United States Code (1965) commonly referred to as Title 1 of the Highway Beautification Act of 1965.

"Advertisement" means the use of any outdoor display or sign upon real property within public view, which is intended to invite or draw the attention of the public to any goods, merchandise property, business, services, entertainment, amusement or other commercial or noncommercial messages.

"Advertising structure" means any rigid or semi-rigid material with or without advertisement displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

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"Advertising surface" means the total surface area of a sign upon vhich advertising may be placed, including cutouts and extensions, ıut excluding decorative bases and supports.

"Area of advertising surface" means the area in square feet neasured by the smallest rectangle which will encompass the entire ign including cutouts and extensions.

"Back to back sign"—See "back up."

"Back up" means an advertising structure erected upon the ground n the rear of another structure, at a distance of not more than 25 eet to allow for crossbraces, which conforms with the lines and neasurements of the other structure.

"Business of outdoor advertising" means the engaging by any ıerson in the sale of outdoor advertising for profit through the rection, use or maintenance of advertising structures or spaces, or he placement of advertisements.

"Commercial or industrial activities for purposes of unzoned comıercial or industrial areas" means those activities generally recgnized as commercial or industrial by zoning authorities in this tate, except that none of the following activities shall be considered ommercial or industrial:

1. Outdoor advertising activities;
2. Agricultural, forestry, ranching, grazing, farming and related ctivities, including, but not limited to, wayside fresh produce stands;
3. Transient or temporary activities;
4. Activities not visible from the main traveled way;
5. Activities more than *[600]* **660* feet from the nearest edge f the right of way; and
6. Activities conducted in a building principally used as a reslence.

"Commissioner" means the Commissioner of Transportation.

"Controlled portion of the Interstate System" means any portion f an interstate highway which is constructed upon any part of right-f-way, the entire width of which was acquired subsequent to July , 1956, excluding those segments which traverse commercial or ıdustrial zones within the boundaries existing on September 21, 959, wherein the use of real property adjacent to the Interstate ystem is subject to municipal regulation or control, and which averse other areas where the land use, as of September 21, 1959, as clearly established by the laws of the State as industrial or ɔmmercial.

"Customary maintenance" means all manner of reasonable repair r maintenance of an advertising structure, including replacement f worn or damaged portions of the structure.

"Cutouts/extensions" means any attachment or addition to the original sign]* ***advertising service area*** that increase or enhance ıe advertisement on the sign.

"Department" means the New Jersey Department of Transportaɔn.

"Entrance roadway" means any public road or turning roadway, cluding acceleration lanes, by which traffic may enter the mainaveled way of any limited access or non-limited access highway om the general road system, irrespective of whether traffic may so leave the main-traveled way by such road or turning roadway.

"Erect" means to construct, build, raise, assemble, place, affix, tach, create, paint, draw, or in any other way bring into being or tablish, but it shall not include any of the foregoing activities when erformed as incidental to the change of an advertising message or e normal maintenance or repair of a sign or sign structure.

"Exit roadway" means any public road or turning roadway, includg deceleration lanes, by which traffic may leave the main-traveled ay of a limited access or non-limited access highway to reach the neral road system, irrespective of whether traffic may also enter e main-traveled way of such road or turning roadway.

"Expressway" means the Atlantic City Expressway and any other ghway especially designed for through mixed traffic over which ıutters have no easement or right of light, air, or direct access, reason of the fact that their property abuts upon such way.

"Federal-aid primary highway" means any highway within that ırtion of the State highway system as designated or as may reafter be so designated by the State, which has been approved by the Secretary of Transportation pursuant to subsection (b) of Section 103 of Title 23, United States Code.

"Freeway" means a State highway especially designed for through mixed traffic over which abutters have no easement or right of light, air or direct access, by reason of the fact that their property abuts upon such way.

"Ground structure" means any advertising structure or display erected upon the ground, however supported thereon.

"Highway" means any road, thorofare, street, boulevard, lane, court, trailway, right-of-way or easement used for, or laid out and intended for public passage of vehicles or people.

"Imprint" means the name, mark, symbol, seal or signature of a licensee.

"Incorporated municipalities" means cities, towns, townships, villages, boroughs and any *[municipalities governed by a Board of Commissioners or an Improvement Commission]* ***other municipal corporations of this State***.

"Informational site" means an area or a site established and maintained within or adjacent to the right-of-way of a limited access highway by or under the supervision or control of the Department of Transportation, wherein panels for display of advertising and informational signs may be erected and maintained.

"Interstate System" means those highways constructed within this State and approved by the Secretary of Transportation of the United States as an official portion of the National System of Interstate and Defense Highways pursuant to the provisions of Title 23, "Highways" of the United States Code, as amended.

"Licensee" means any person, firm, corporation, co-partnership or association which is the holder of any valid and unrevoked license to engage in the outdoor advertising business in this State.

"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air or direct access by reason of the fact that their property abuts upon such limited access highway. For purposes of these rules, interstate highways, parkways, expressways and freeways shall be considered limited access highways.

"Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each separate roadway carrying traffic in opposite directions is a main-traveled way. Main-traveled way shall not include frontage roads, turning roadways, or parking areas.

"Multiple message sign" means a sign, display or device which changes message or copy electronically or by the movement or rotation of panels or slats.

["Natural area" means any area measured along one side of a highway between two commercial or industrial points separated by a distance of one mile or more.]

"Non-limited access highway" means any highway, excluding freeways, expressways, parkways and the interstate system, where the right of access is permitted.

"Nonconforming sign" means a sign, display or device which was lawfully erected and maintained prior to the enactment, revision or amendment of N.J.S.A. 27:7A-11 et seq. (P.L. 1971, c.371), or of the rules promulgated thereto, but which fails to conform with requirements of said statute, rules, revisions or amendments.

"Outdoor Advertising Act" means the Roadside Sign Control and Outdoor Advertising Act *[of 1991]*, P.L. 1991, c.413.

"Parkway" means a State highway especially designed for through passenger traffic over which abutters have no easement or right of light, air, or direct access, by reason of the fact that their property abuts upon such way.

"Permit" means a certificate, issued by the Outdoor Advertising Section, granting permission to erect ***and/or maintain*** a sign at the location described thereon.

"Permitted location" means a place, spot, site or space for which an outdoor advertising permit has been duly issued for the erection or maintenance of an advertising structure or display to be used for advertising purposes without regard to whether the same has actually been constructed, painted or posted.

"Permittee" means any person holding a valid and unrevoked outdoor advertising permit.

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"Person" means any individual, group, corporation, partnership, association or combination thereof.

"Premises" means that portion of the property wherein any industry, commerce, business, occupation, trade or service is conducted.

"Protected areas" means all areas inside the boundaries of this State which are adjacent to and within 660 feet of the edge of the right-of-way of highways in the Interstate and Primary Systems and those areas inside the boundaries of this State which are visible from the highway but beyond 660 feet of the edge of the right-of-way of the Interstate and Primary Systems and are outside urban areas.

"Ramp" means either an "entrance roadway" or an "exit roadway."

"Route" means a highway or set of highways, including roads, streets, boulevards, parkways, bridges, and culverts needed to provide direct commutation between designated points.

"Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way and under public supervision or control, for the convenience of the traveling public.

"Scenic area" means any public park or area of scenic beauty or historical significance, as designated by the Commissioner of Transportation or other State agency having and exercising such authority.

"Sign" means any outdoor display or advertising on real property within public view which is intended to attract, or which does attract, the attention of pedestrians or the operators, attendants, or passengers of motor vehicles using the roads, highways, and other public thoroughfares and places, and shall include any writing, printing, painting, display, emblem, drawing, sign, or other device whether placed on the ground, rocks, trees, tree stumps or other natural structures, or on a building, structure, signboard, billboard, wallboard, roofboard, frame, support, fence, or elsewhere, and any lighting or other accessories used in conjunction therewith.

"Space" means the surface area used or to be used for each advertisement. A double-faced sign is deemed to have two spaces.

"State highway" means a road taken over, controlled, built, maintained, or otherwise under the jurisdiction of the State.

"Thickly settled district" means a commercial or industrial zoned or unzoned area where business buildings or houses are less than 200 feet apart along the street for at least one-quarter mile.

"Trade name" means the brand name, trademark, distinctive symbol or any other device used to identify particular products or services.

"Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

"Turnpike" means the New Jersey Turnpike.

"Unzoned commercial or industrial areas" means those areas which are not zoned by State or local law, rule or ordinance, and on which there are located one or more permanent structures devoted to commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon, and the area along the highway extending outward 800 feet from and beyond the edge of such activity. Each side of the highway will be considered separately in applying this definition. All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing and landscaped areas of the commercial or industrial activities, not from the property lines of the activities, and shall be along or parallel to the edge or pavement of the highway. ***The granting of a use or any other variance by a local zoning or governing body shall not change the zoning of the property as defined in these rules.***

"Urban area" means a place designated by the U.S. Bureau of the Census as having a population of 5,000 or more within boundaries to be fixed by responsible State and local officials in cooperation with each other, subject to approval by the Secretary of Transportation of the United States. The boundaries shall, at a minimum, encompass the entire place designated by the U.S. Bureau of the Census.

"Visible" means capable of being seen and comprehended without visual aid by persons traveling on the highway.

"V-type construction" means a single structure having two face in the shape of the letter "V" when viewed from above, with th faces oriented in opposite directions.

"Zoned commercial or industrial areas" means those areas whicl are zoned for business, industry, commerce, office, or trade pursuan to a State or local zoning ordinance or rule, or those areas othe than residential, agriculture, forest, conservation, recreation, educa tion or preservation where the prevalent land use is business, in dustry, commerce, office or trade. ***The granting of a use or an other variance by a local zoning or governing body shall not chang the zoning of the property as defined in these rules.***

SUBCHAPTER 2. GENERAL PROVISIONS

16:41C-2.1 Purpose

(a) The purpose of this chapter is to balance the need to contrc and regulate roadside signs and outdoor advertising, promote th scenic beauty of the State, provide for the safety and convenienc of the public, and the need to stimulate economic and commercia activity within the State of New Jersey. This chapter requires an provides for the issuing of licenses and permits for roadside sign and outdoor advertising and their establishment, use, maintenanc and removal.

(b) Consistent with the Act and Outdoor Advertising Act, th Commissioner is authorized to promulgate rules, in a manner consis tent with the Administrative Procedure Act, governing outdoo advertising including spacing, size, lighting and other requirement pertaining to the issuance or denial of permits for the erection o maintenance of outdoor advertising signs within protected areas c limited access and non-limited access highways, prescribing th number, locations and types of and specifications for outdoo advertising signs, and designating the conditions under which out door advertising signs may be erected and maintained.

(c) In connection with the issuance of permits for outdoo advertising signs, the Commissioner is authorized to charge an collect fees in such amounts as set forth in N.J.A.C. 16:41C-6, Fees for the issuance of such permits. The moneys received from suc fees shall be deposited with the State Treasurer, and be subject t disbursement on order of the Commissioner to defray the expens of administering the provisions of this chapter.

(d) The Commissioner is authorized to designate certain roadsid areas as "safety rest areas" or "informational sites" and to provid by rules for the erection and maintenance of signs in such areas

(e) The Commissioner is authorized to acquire by gift, purchas or condemnation, real and personal property or the right to maintai outdoor advertising signs in any protected area of limited access an non-limited access highways for the purpose of implementing th rules in this chapter. All persons whose property is purchased c otherwise acquired, except by gift to the State of New Jersey, sha receive just compensation therefor.

16:41C-2.2 License and permit effectiveness and expiration date

All licenses and permits issued prior to March 31, 1992 sha remain in effect until May 15, 1992. Thereafter, all licenses an permits will expire on May 15 following the date of issue or renewa unless earlier revoked or cancelled.

SUBCHAPTER 3. RESTRICTIONS

16:41C-3.1 General restriction

[No] ***Except where specifically permitted by the Departmen no*** outdoor advertising signs shall be erected or maintained withi the right-of-way of any portion of limited access or non-limite access highways within the State of New Jersey*[,]**.* *[except tha this]* ***This*** prohibition shall not apply to signs, public notices c markers erected or maintained by the Department of Transportatior or to the signs erected or maintained at the "informational sites designated by the Commissioner pursuant to N.J.A.C. 16:41C-2.1(d

16:41C-3.2 Sign requirements

(a) Any roadside signs allowed by N.J.A.C. 16:41C-5 shall be b permit from the Commissioner and consistent with the conditior set forth in such permits and the standards set forth below:

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1. No off-premise outdoor advertising sign shall be erected along he Garden State Parkway or along portions of the New Jersey urnpike which are not incorporated into the Federal Aid Interstate Highway System.

2. No outdoor advertising sign shall interfere or be likely to nterfere with the ability of the operator of a motor vehicle to have clear and unobstructed view of streets or highways ahead, approaching, merging or intersecting traffic, or official signs, signals r traffic control devices.

3. No outdoor advertising sign shall direct or appear to direct the novement of traffic or interfere with, imitate, or resemble any fficial traffic sign, signal or device.

4. Illumination of outdoor advertising signs shall be effectively nielded so as to prevent light from being directed at any portion f the main-traveled way of the street or highway, or if not so nielded, be of such low intensity or brilliance as not to cause glare r impair the vision of operators of motor vehicles on such street r highway, or otherwise impair the operation of a motor vehicle. ll such lighting shall also be subject to any other provision relating lighting of signs applicable to highways under the jurisdiction of e State of New Jersey.

5. Signs which contain, include or are illuminated by any flashing, ntermittent, scrolling or moving light or lights shall be prohibited, xcept those giving time, date and/or temperature.

6. No outdoor advertising sign shall be painted, drawn, erected r maintained upon trees, rocks or other natural features.

7. No outdoor advertising sign shall be of such a type, size, or naracter as will endanger or injure public safety, health, or morals r be injurious to property in the vicinity thereof.

8. No outdoor advertising sign shall be permitted which advertises ctivities that are illegal under Federal, State or local law in effect the location of those signs or at the location of those activities.

9. No outdoor advertising sign shall be permitted which has any nimated or moving parts.

10. No outdoor advertising sign shall be permitted which contains eflectorized materials that move or distract, such as discs, beads other attachments to the advertising surface.

11. Multiple message signs shall be prohibited on the Interstate ystem.

12. Multiple message signs shall be permitted on Federal Aid imary and other highways under the following conditions:

i. Each message shall remain fixed for at least 2.5 minutes.

ii. When the message is to be changed, it shall be accomplished one second or less with all panels/parts changing simultaneously. hen panels are rotated to effect a message change, they shall rotate the same direction as nearside traffic.

iii. Multiple message signs shall be prohibited within 500 feet of traffic signal or ramp.

iv. Multiple message signs shall not be placed within 5,000 feet each other along the same roadway traveling in the same direction.

v. Multiple message signs shall contain a default design that will eeze the sign in one position if a malfunction occurs.

vi. If a multiple message sign on a Federal Aid Primary or other ghway is in violation of any of the above conditions, its permit all be revoked and the sign removed. *[If a licensed dealer acmulates five violations for multiple message signs, his Outdoor dvertising License shall be suspended for one year.]* During the peal of any of the above violations, the signs shall remain fixed ntil the matter is resolved. ***The Commissioner may allow the ntinued operation of a multiple message sign during part or all the appeals process.***

13. All outdoor advertising signs shall be maintained in a safe ndition with due regard for climate, weather and terrain.

14. All advertising signs shall be clean or in good condition.

15. *[The permit shall be revoked for any advertising structure nich remains abandoned, unused, destroyed or in disrepair for a riod of one year after being cited by the Outdoor Advertising ction.

i. A sign shall be considered abandoned or destroyed when it is ucturally unsound, as determined by a licensed professional gineer, or it is in an aesthetically blighted condition. An aesthetically blighted condition exists when 25 percent of the surface requires a reconditioning of the protective or decorative coating as evidenced by, but not limited to, peeling or flaking paint.

ii. A sign which remains blank or void of advertising copy for a period of one year shall be considered unused.]*

The permit for any outdoor advertising structure may be revoked if it remains abandoned, destroyed or in an aesthetically blighted condition for a period of one year after being so cited by the Department, provided that remedial action could have been, but was not taken by the permit holder for such sign during that time period.

16. *[No outdoor advertising sign will be permitted which would adversely affect the public interest. In determining whether the issuance of a permit would adversely affect the public interest, the Administrator of Outdoor Advertising shall consider the purpose of the Federal and State Acts, these rules and public sentiment as expressed by the governing authorities and agencies of the United States, State of New Jersey or the county or municipality within whose boundaries the application is made or by residents of those counties or municipalities.]*

A permit for a new or enlarged sign will not be issued if such permit would conflict with public policy relating to outdoor advertising as declared by the Congress of the United States, and as reflected in the statutory enactments and judicial decisions of this State. In determining whether such public policy is contravened, the Department shall consider the law of this State, and the United States, including the Highway Beautification Act, the Outdoor Advertising Act, and these regulations. The Department shall review public sentiment in the form of written comment which may be expressed by the governing authorities and agencies of the United States, the State of New Jersey, or the county or municipality within whose boundaries the application is made, or any resident of such counties or municipalities.

17. Off-premise advertising signs will only be permitted in zoned or unzoned commercial and industrial areas. Under no circumstances will signs be permitted in areas zoned residential, agricultural, recreational, educational or conservation. Along the Interstate System, off-premise signs may only be erected in areas zoned commercial or industrial prior to September 21, 1959.

18. Adjustment, alteration, or removal of existing natural landscape within the right-of-way in order to increase or enhance the visibility of an advertising structure is prohibited unless accomplished pursuant to this chapter.

19. The maximum area for the advertising surface of any one sign shall be 1,000 square feet. The advertising surface of the sign shall not exceed a maximum height of 25 feet and a maximum length of 60 feet, except where the sign is erected upon or attached to a building. In such event, the maximum area of a wall or roof mounted sign may be 1,200 square feet, the maximum height 30 feet and the maximum length 60 feet. All dimensions include border, trim, cutouts and extensions, but exclude decorative bases and supports.

20. The maximum size limitations shall apply to each side of a sign structure. If two signs are placed back-to-back, side-by-side or in a V-type construction, the maximum advertising surface area allowed shall be 1,000 square feet each direction of travel.

21. Signs that are erected side-by-side must be equal in size and dimensions. Signs erected back-to-back or in a V-type construction must be equal in size and dimensions, excluding temporary cutouts or extensions.

22. The provisions relating to the spacing between structures do not apply to structures separated by a building or other obstructions in such a manner that only one sign facing located within the spacing distances is visible from the highway at any one time.

SUBCHAPTER 4. LICENSE PROVISIONS

16:41C-4.1 When license required

Any person, municipality or other jurisdictional authority which shall engage in the business of outdoor advertising for compensation received for the erection, use or maintenance of outdoor advertising

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structures and other objects upon real property within public view is required to obtain a license.

16:41C-4.2 Applications and fees

(a) An application for a license may be obtained from the New Jersey Department of Transportation, Outdoor Advertising Section.

(b) The annual fee for an outdoor advertising license shall be as follows:

Number of Signs	Annual Fee
0-50	$250.00
51 and over	$500.00

16:41C-4.3 Duration

A license shall remain in effect until May 15 following the date of issue or renewal, unless earlier revoked or cancelled. An application for renewal shall be filed with the Department on or before May 1 preceding expiration of the license.

16:41C-4.4 Bond for non-resident

If a licensee does not reside in New Jersey or is a foreign corporation not authorized to do business in this State, it shall file with its application a bond running to the State in the sum of $5,000, satisfactory to the Commissioner and with surety approved, conditioned upon the observing and fulfilling by the applicant of all the provisions of the law and the rules contained in this chapter. Upon default in the condition of such bond, appropriate action shall be taken to enforce the collection thereof in a court of competent jurisdiction. A bond shall remain in full force and effect so long as any obligation to the State in such license shall remain unsatisfied.

SUBCHAPTER 5. PERMITS

16:41C-5.1 Types of signs permitted

(a) No permit shall be issued by the Commissioner for outdoor advertising signs to be erected or maintained in any protected area visible from the main-traveled way of any portion of limited access or non-limited access highways except such signs as set forth in (a)1 through 5 below. All such signs are subject to all of the rules in this chapter.

1. Directional and other official signs and notices outside the State right-of-way. These signs are categorized as follows:

i. Directional signs: Signs deemed by the Commissioner to be in the interest of the traveling public and containing directional information about public places owned or operated by Federal, State or local governments or their agencies; publicly or privately-owned natural phenomena; historic, cultural, scientific, educational and religious sites; and areas of natural scenic beauty or those naturally suited for outdoor recreation;

ii. Official signs and notices: Signs and notices erected and maintained by public officers of public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with Federal, State or local law. Historical markers authorized by State law and erected by State or local governmental agencies or nonprofit historical societies may be considered official signs;

iii. Public utility signs: Warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned public utilities and are essential to their operation;

iv. Service club and religious notices: Signs and notices whose erection is permitted by law, relating to meetings of nonprofit service clubs, charitable associations or religious services; and

v. Public service signs: Signs located off the right-of-way on benches or school bus stop shelters, which are authorized or approved by city, county or State law, regulation or ordinance, and at places approved by the city, county or State agency controlling the highway involved.

2. On-premise signs, which may be categorized as follows:

i. Signs advertising the sale or lease of property on which they are located; and

ii. Signs advertising activities conducted on the property on which they are located.

3. Off-premise advertising signs within the protected area of th Interstate System may be permitted in the following areas:

i. Commercial or industrial zones within the boundaries of in corporated municipalities as they existed on September 21, 1959

ii. Areas where the land use as of September 21, 1959, was clearl established by State law as commercial or industrial within 660 fee of the nearest edge of the right-of-way; and

iii. Zoned and unzoned commercial and industrial areas withi 660 feet of the nearest edge of the right-of-way, any part of whic was acquired on or before July 1, 1956.

4. Off-premise advertising signs within the protected area on th Primary System may be permitted in the following areas:

i. Areas which are zoned industrial or commercial under th authority of State law; and

ii. Signs located in areas determined to be industrial or com mercial pursuant to State law.

5. Off-premise signs in any other area not covered by (a)3 or above may be permitted as follows:

i. Signs located in areas which are zoned industrial or commerci pursuant to State law; and

ii. Signs located in areas determined to be industrial or com mercial pursuant to State law.

6. In those instances where the Commissioner deems it to be i the public interest, he or she may issue a permit for a sign on publi property which would not otherwise be permitted under th provision of the State Act and impose conditions as he or she deem appropriate.

16:41C-5.2 Permit requirements

(a) Any person, municipality or other jurisdictional authorit whether required to be licensed or not, must obtain a permit fror the Department for each outdoor advertising display before erectin maintaining or using any outdoor advertising structure or othe object other than those erected by the Department and directiona and other official signs and notices for the display of outdoc advertising.

(b) No permit issued to a person required to obtain a licens pursuant to this chapter shall be valid unless the license is in fu force and effect.

(c) A permit shall be in force from the date issued to the followin May 15, unless revoked.

16:41C-5.3 Permit applications

(a) An application for a permit may be obtained from the Ne Jersey Department of Transportation, Outdoor Advertising Sectior Completed applications should be returned to the New Jersey De partment of Transportation, Outdoor Advertising Section.

(b) Each application shall specify the location where the sign i to be placed and maintained. If, after approval of such applicatio and issuance of a permit, the sign is removed or placed in a differer location from the approved location, such permit shall be null an void.

[(c) Each application shall contain a certification signed by th property owner or his agent granting permission to the applicar to erect a sign on the property and granting right of entry to th Department for inspection of the sign during and after erection. I lieu of said certification the Department will accept a signed leas between the applicant and the property owner granting the Depar ment the same right of entry.]

*[(d)]**(c)* An application for a permit shall be accompanied b a drawing or sketch of the structure (that is, pylon, tower, and th like) indicating what area of it will be put to advertising use.

*[(e)]**(d)* If the name or address of a permittee changes, notic of the change shall be filed with the Department's Outdoor Advertis ing Section within thirty days of the change.

*[(f)]**(e)* A single application may cover a double-faced, back to-back, side-by-side or V-type sign. The fee charged will be for th total advertising surface area at the permitted location.

16:41C-5.4 Alteration of surface area

(a) Multiple message signs are limited to the restrictions c N.J.A.C. 16:41C-3.2(a)12.

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(b) When a permittee desires to enlarge *[or reduce]* the surface area of a sign, an application for a new permit shall be made and the applicable application and permit fees shall be paid.

(c) Any permittee seeking to add *[one or more panels]* to an already existing advertising structure or object for which he has a valid permit shall apply for a new permit and pay the applicable application and permit fees ***if the area to be added exceeds the permitted area***. *[Any additional panels shall have measurements identical with those of the existing panels.]*

(d) Cutouts and/or extensions may be added to an existing conforming sign, provided the sign's permit authorizes an area equal to or larger than the smallest rectangle enclosing the sign and all cutouts. The area of the sign including cutouts shall not exceed 1,000 square feet for ground mounted signs or 1,200 square feet for wall or roof mounted signs. The advertising surface of the sign, including cutouts, shall not exceed 25 feet in height (30 feet for wall or roof mounted signs) or 60 feet in width.

i. When cutouts are added to signs with back-ups, their back side shall be painted to blend in with the existing backdrop.

ii. The dimension of conforming signs authorized by a permit of 1,000 square feet (1,200 square feet for wall or roof) or less will be allowed to vary in order to accommodate cutouts and/or extensions. Up to an additional 2.5 feet will be allowed on either side as well as 5.5 feet on the top and two feet on the bottom of the existing sign providing all additions are within the rectangular envelope authorized by the sign's permit.

16:41C-5.5 Permit holders

(a) The name of the permittee and the application number of the sign shall be placed in a conspicuous location on the sign structure within 30 days after issuance of the permit or erection of the sign, whichever is sooner, except as specified in (b) below.

(b) If a ground structure is not built within 60 days of the date of issuance of the permit, the permittee must place a sign 18 inches by 24 inches at the site parallel to the roadway and within 10 feet of the right-of-way line. The sign must be fabricated on aluminum, fiberglass or approved equal with two inch black letters on a white background. It shall contain the name of the permit holder and application number for the sign. The sign shall be mounted on a steel post at a height seven feet above ground.

SUBCHAPTER 6. FEES

16:41C-6.1 Permit application fees

(a) A $50.00 application fee shall be submitted with each new application for an off-premise outdoor advertising permit for signs with an advertising surface area of *[50]* ***100*** square feet or less.

(b) A $200.00 application fee shall be submitted with each new application for an off-premise outdoor advertising permit for signs with an advertising surface area exceeding *[50]* ***100*** square feet.

(c) No application fee will be charged for a change of name or address or no fee permits.

(d) No refund will be made after an application for a permit has been filed.

(e) If an outdoor advertising sign is erected or modified prior to submitting an application and obtaining a permit for same, the following late application charges shall be imposed in addition to the regular fees:

When The Annual Fee Is More Than	But Less Than	Late Filing Charge Is
$0.00	$50.00	$50.00
$50.00	$100.00	$100.00
$100.00	$150.00	$150.00
$150.00		$200.00

16:41C-6.2 Permit fees

(a) If an application for an off-premise advertising permit is approved, the permit fee based on the advertising surface area must be submitted prior to issuance of the permit and, thereafter, on an annual basis.

(b) The annual permit fee for each sign requiring a permit will be based upon the size of the advertising surface area as follows:

Advertising Surface Area In Square Feet		Annual Fee
Over	Not More Than	
0	50	$5.00
50	100	$15.00
100	300	$35.00
300	450	$65.00
450	600	$100.00
600	750	$125.00
750	900	$150.00
900	1,000	$175.00
1,000 or more		$350.00

(c) A no-fee permit shall be issued to educational, veterans, religious, charitable or civic organizations, providing the signs are erected and maintained in accordance with the provisions of this chapter and advertising space is not being sold or leased.

(d) A no fee permit shall be granted for directional signs and notices as detailed in N.J.A.C. 16:41C-5.1.

1. An application for a no fee permit may be obtained from the Department of Transportation, Outdoor Advertising Section.

2. Before a no fee permit is issued, the sign must be in conformance with the applicable provisions of the law and this chapter. The permit is subject to the same terms and conditions regarding revocation set forth in this chapter.

3. A no fee permit shall remain in effect until May 15, following date of issue or renewal, unless earlier revoked or cancelled.

4. A no fee permit may be renewed by filing with the Outdoor Advertising Section on or before May 1, preceding its expiration, an application for renewal on forms available from the Outdoor Advertising Section.

16:41C-6.3 Renewal of permits and late renewal charges

(a) Permits for signs erected and maintained with a valid permit issued before the effective date of the Outdoor Advertising Act shall be renewed, unless the Commissioner finds that a statement made in the permit application is materially false or the sign has been erected or maintained contrary to the terms of the issued permit, in the event of which the Commissioner may take any appropriate action under the authority of the act or regulations promulgated thereof.

(b) Renewal of any permit may be refused for any ground sufficient for the revocation of a permit.

(c) If an application for the renewal of a permit is made after the expiration date of the last valid permit, the following late charges shall be imposed in addition to the regular fees:

When Annual Fee Is More Than	But Less Than	Reinstatement Charge
$0.00	$50.00	$20.00
$50.00	$100.00	$30.00
$100.00		$50.00

(d) A permittee who chooses not to renew a permit shall be required to remove the sign not later than the expiration date of the permit.

SUBCHAPTER 7. VEGETATION CONTROL

16:41C-7.1 Control of vegetation

A temporary permit issued in accordance with N.J.A.C. 16:41 by the Department's Regional Permits Office is required before anyone may perform control of vegetation on State right-of-way. An application with appropriate fee should be submitted to the Regional Maintenance Office.

SUBCHAPTER 8. STANDARD REQUIREMENTS

16:41C-8.1 General requirements

A sign is subject to the requirements of its type as indicated in this subchapter. In those cases where a sign is erected so that it

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is visible to two or more types of roadways, the more stringent requirements shall be applicable.

16:41C-8.2 Directional signs

(a) Activities or attractions eligible for directional signing shall be limited to natural wonders, scenic attractions, historical attractions, educational, cultural, scientific and religious institutions or activities, and outdoor recreational areas.

(b) To be eligible, privately-owned attractions or activities must be nationally or regionally known and of outstanding interest to the traveling public. Final determination of eligibility shall be made by the Commissioner.

(c) The message on directional signs shall be limited to the identification of the attraction or activity and directional information which is useful to the traveler in locating the attraction. Superfluous information or pictorial or photographic representation of the activity or its environs shall be prohibited.

(d) Directional signs shall not exceed 20 feet in length, width or height, or 150 square feet in area including border, trim, cutouts and extensions, but excluding decorative bases and supports.

(e) Double-faced, back-to-back or V-type signs shall be considered as two signs. Maximum size of signs shall apply to each face.

(f) Illumination of directional signs is permitted as set forth in N.J.A.C. 16:41C-3.2.

(g) Each location of a directional sign shall be submitted to the Commissioner for his or her approval.

(h) No directional sign shall be located within 2,000 feet of an interchange or intersection at grade along a limited access highway or within 500 feet of an interchange or intersection at grade along a non-limited access highway (measured along the highway from the nearest tip of the gore or comparable point).

(i) Signs shall not be located within 2,000 feet of any of the following areas or sites which are adjacent to limited access highways or within 500 feet of any of the following areas or sites:

1. Scenic areas designated as such by the Commissioner or other State agency having and exercising such authority;

2. Safety rest areas; or

3. Informational sites.

(j) No two directional signs facing the same direction of travel shall be spaced less than one mile apart.

(k) Not more than three directional signs pertaining to the same activity and facing the same direction shall be erected along a single route approaching the activity.

(l) Directional signs on limited access highways shall be within 75 miles of the activity and directional signs on non-limited access highways shall be within 50 miles of the activity.

16:41C-8.3 Public utility signs

(a) The Commissioner shall determine the size, spacing, lighting, location and number of public utility signs, notices or markers on limited access and non-limited access highways, essential to the operation of a particular public utility installation.

(b) In no event shall public utility signs exceed 10 feet in length, width or height or 100 square feet in area, including border, trim, cutouts and extensions, but excluding decorative bases and supports.

16:41C-8.4 Service club and religious notices

(a) No more than one service club or religious sign or notice shall be erected on each side of a highway.

(b) Such signs shall be located no further than two miles from the organization or activity and shall not exceed eight square feet in area.

(c) No sign shall be located within 2,000 feet of an interchange or intersection at grade along a limited access highway or within 500 feet of an interchange or intersection at grade along a non-limited access highway (measured along the highway from the nearest tip of the gore or comparable point).

(d) Illumination of these signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

(e) No sign shall be located within 500 feet of any of the following areas or sites adjacent to the highway:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such determinations;

2. Safety rest areas; or

3. Informational sites.

(f) Double-faced, back-to-back or V-type signs shall be prohibited.

16:41C-8.5 Public service signs on bus stop shelters

(a) No public service signs on bus stop shelters shall be permitted on the Interstate System.

(b) Public service signs on bus stop shelters adjacent to the Primary System shall not exceed 32 square feet, 50 percent of which must contain safety slogans or messages.

(c) Signs adjacent to all other roads shall not exceed 32 square feet of advertising copy and shall also contain a public safety slogan or message.

(d) Not more than one sign on each shelter shall face in any one direction.

16:41C-8.6 On-premise signs on limited access and non-limited access highways

(a) A sign shall be considered to be an on-premise sign if it has as its purpose the identification of the activity located on the premises, its product or services, or the sale or lease of the property on which the sign is located, rather than the business of outdoor advertising.

(b) When a sign brings rental income to the property owner consists principally of brand name or trade advertising, or the product or service advertised is only incidental to the principal activity ***conducted*** on the premises, it shall be considered the business of outdoor advertising and not an on-premise sign.

(c) The premises on which an activity is conducted shall be determined by physical facts rather than property lines. The following will not be considered to be part of the premises on which the activity is conducted and any signs located on such lands will be considered off-premises advertising:

1. Land separated by a roadway, highway or other obstruction;

2. Undeveloped land or land not used by the activity that may be contiguous to the land actually used by such activity; or

3. Narrow strips of land that are contiguous to the property but separated from the activity.

(d) Not more than one on-premise sign shall be erected at a distance greater than 50 feet from the advertised activity. If, however, such property fronts on more than one street, such a sign may be erected on each street frontage. Such signs shall not exceed 20 feet in length, width or height, or *[150]* ***400*** square feet in area, including border, trim, cutouts and extensions.

(e) Not more than one sign shall be erected within 50 feet of the advertised activity. Signs erected within 50 feet of the advertised activity shall not exceed 25 feet in height or 60 feet in horizontal dimensions or 1,000 square feet in area, including borders, trim, cutouts and extensions.

(f) Illumination and writings or other advertisements on these signs shall be subject to the general restrictions set forth in N.J.A.C. 16:41C-3.2.

(g) When the advertised activity is business, commercial or industrial land use, the sign distance shall be measured from the regularly used buildings, parking lots, storage or other structures which are essential and customary to the conduct of the business.

[(h) No on-premise advertising sign or structure shall be owned by a licensee, except when the sign is erected on his or her property and advertises his or her business.]

*[1.]***(h)*** No fees shall be required or permits issued for on-premise signs.

16:41C-8.7 Off-premise advertising signs permitted within the uncontrolled portion of Interstate Highways and within the protected area of all other Limited Access Highways in zoned and unzoned commercial or industrial areas

(a) Off-premise advertising signs permitted within the uncontrolled portion of Interstate Highways and within the protected area of all other Limited Access Highways in zoned and unzoned commercial or industrial areas shall not be located within 2,000 feet of any of the following areas or sites adjacent to the highway:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such designations;

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2. Safety rest areas; or
3. Informational sites.

(b) Spacing between signs along each side of the highway shall be a minimum of 1,000 feet.

(c) No sign shall be located within 2,000 feet of an interchange or intersection at grade (measured along the Limited Access Highway or freeway from the nearest tip of the gore or comparable point).

(d) Illumination of such signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

16:41C-8.8 Off-premise advertising signs erected within the protected area of Non-Limited Access State and Federal Aid Primary highways in zoned and unzoned commercial or industrial areas

(a) Off-premise advertising signs erected within the protected area of Non-Limited Access State and Federal Aid Primary highways in zoned and unzoned commercial or industrial areas shall not be located within 500 feet of any of the following which are adjacent to the highways:

1. Scenic areas designated as such by the Commissioner or other State agency authorized to make such designations;
2. Safety rest areas; or
3. Informational sites.

(b) Outside of all incorporated cities and/or thickly settled districts, no two signs shall be spaced less than 300 feet apart. Within the thickly settled districts of incorporated cities, no two signs shall be spaced less than 100 feet apart.

(c) Illumination of these types of signs is permitted, subject to the general restrictions outlined in N.J.A.C. 16:41C-3.2.

16:41C-8.9 Off-premise advertising signs along all other highways

(a) Outside of all incorporated cities and/or thickly settled districts, no two off-premise advertising signs shall be spaced less than 500 feet apart. Within the thickly settled districts of incorporated cities, no two off-premise advertising signs shall be spaced less than 100 feet apart.

[(b) An application for a permit to erect an off-premise advertising sign will not be granted if it would be in a defined natural area.]

16:41C-8.10 General standards

(a) Official and on-premise signs, as defined in N.J.A.C. 16:41C-5.1, shall not be counted nor shall measurements be made from them for purposes of determining compliance with spacing requirements.

(b) The minimum distance between structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

(c) The provisions contained herein pertaining to size, lighting and spacing of outdoor advertising signs permitted in zoned and unzoned commercial and industrial areas shall apply only to those signs erected subsequent to the effective date of P.L. 1971, c.353, December 15, 1971.

SUBCHAPTER 9. NONCONFORMING SIGN STRUCTURES

16:41C-9.1 General provisions

(a) A sign erected and maintained with a valid permit issued before the effective date of the Outdoor Advertising Act, January 17, 1992, which does not comply with the Act or the rules adopted pursuant to it, may continue to be maintained, repaired and restored under the following criteria:

1. The sign shall be lawfully erected and shall continue to be maintained, in accordance with this chapter.
2. It has not been ***totally*** destroyed ***or abandoned*** *[, abandoned or unused]*.
3. The sign's size is the same as it was on the effective date of the adoption, revision or amendment of the law or regulation which rendered the sign nonconforming.
4. Its basic structure remains the same as on the effective date of the adoption, revision, or amendment of the law or regulation which rendered the sign nonconforming.

(b) Cutouts and/or extensions may not be added to a nonconforming sign. However, the advertising surface of a nonconforming sign may be reduced (and later rebuilt) to allow for cutouts and/or extensions to be added within its permitted rectangular envelope.

(c) Customary maintenance of a nonconforming sign structure will be permitted in order to maintain the sign's structural integrity, safety and aesthetics. Approval of the Department shall be obtained prior to any maintenance involving more than 25 percent of the sign at one time, except for emergency repairs.

SUBCHAPTER 10. VIOLATIONS AND PENALTIES

16:41C-10.1 Notice and hearings

(a) When it shall appear to the Administrator of Outdoor Advertising that any person, municipality, or jurisdictional authority has committed a violation or offense as defined in N.J.A.C. 16:41C-10.3, such person, municipality or authority will be given a written notice of violation or revocation, including a copy of the violation report stating the violation or offense, and within 30 days, such person, municipality or authority shall:

1. Correct the violation, if same is subject to correction or compliance;
2. Remove all signs, spaces, advertisements and advertising structures; or
3. File a protest in writing signed by the protestor or a duly authorized agent, stating the reason for protest.

(b) If requested by the protestor, the Administrator of Outdoor Advertising shall schedule an informal hearing or formal hearing.

(c) An informal hearing shall be scheduled within 30 days of receipt of such request.

(d) If the protestor requests a formal hearing, the Administrator of Outdoor Advertising shall transmit the matter to the Office of Administrative Law within 30 days of receiving the request.

(e) The filing of a protest and request for an informal hearing or formal hearing does not abate any penalties due, nor stay the right of the Administrator of Outdoor Advertising to remove any signs, space, advertisements and advertising structures within 30 days of giving of notice, unless the licensee furnishes security of the kind and in an amount satisfactory to the Administrator of Outdoor Advertising ***or the Commissioner or a court of competent jurisdiction stays such penalties or removal***.

16:41C-10.2 Nature of hearings

(a) An informal hearing before the Administrator of Outdoor Advertising may be with or without representation on behalf of the licensee or protestor.

(b) Within 15 days of an informal hearing, the Administrator of Outdoor Advertising shall issue a written decision confirming, modifying or vacating any finding or determination of the Outdoor Advertising Section.

(c) Within 30 days of receipt of the Administrator's written decision, a protestor may appeal the decision by requesting the Administrator of Outdoor Advertising to transmit the matter to the Office of Administrative Law for a formal hearing.

(d) All formal hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:41C-10.3 Causes for revocation of license or permit

(a) A license may be revoked for any of the following reasons:

1. Whenever any statement made in the application for a license *[or permit]* is materially false;
2. *[Whenever a sign has been erected contrary to the approved application and conditions of the permit;]* ***The licensee has repeatedly been found to be a willful and intentional violator of the Outdoor Advertising Act and the regulations adopted thereunder as to a substantial percentage of its advertising structures in this State, has refused to cure such violations in the time provided by the Department to do so, and the penalties assessed at times have been either unchallenged or sustained on administrative or judicial review.***

*[3. Whenever a sign has been erected without first obtaining a permit;

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4. Whenever a licensee has established a history of multiple violations which demonstrate disregard of the outdoor advertising law and rules;

5. Whenever a violation has not been corrected and/or applicable penalties paid;

6. Whenever the existing natural landscape of the right-of-way has been trimmed, altered, or destroyed in any way by the licensee or agent thereof, without the approval of the Department; or

7. Whenever any provision of the Roadside Sign Control and Outdoor Advertising Act is violated.]*

(b) A permit may be revoked for any of the following reasons:

1. Whenever a statement in the application is materially false;

2. Whenever a sign has been erected contrary to the approved application and conditions of the permit;

3. Whenever a sign has been cited for ***and found in violation of*** the same violation more than twice.

4. Whenever any provision of the law or rules contained in this chapter is violated;

5. Whenever the advertising area used is in excess of the permitted area;

6. Whenever a permitted structure is not maintained in a safe, sound and good condition;

7. Whenever a permitted display is being maintained upon public property without the express permission of the governing authority;

8. Whenever the permitted display is being maintained without the consent of the owner of the property or a duly authorized agent;

9. Whenever the existing natural landscape of the right-of-way has been trimmed, altered or destroyed in any way by the permittee or agent thereof, without approval of the Department;

[10. Whenever any violation has not been corrected within 30 days of notification; or]

*[11.]****10.*** Whenever a permittee fails to place his name and the sign's application number on the structure at the location authorized by the permit.

16:41C-10.4 Removal provisions

(a) If, within 30 days of mailing of a notice of revocation of license or permit, or a notice of violation, the violation or offense cited has not been corrected to the satisfaction of the Administrator of Outdoor Advertising, the Commissioner may order the *[immediate]* removal ***within 30 days after the receipt of the order by the permittee*** of the advertising structure or other object used or to be used for the display of outdoor advertising and may recove from the owner or person, in addition to any other penalties provide by law, the cost of removal or the sum of $500.00, whichever i greater. ***An appeal from such order shall stay the right of remova hereunder unless the Commissioner, on notice to the permittee shall find that immediate removal is required to avoid substantia property damage or physical injury.***

(b) Whenever the power of removal is exercised, the Com missioner may, without further notice to the owner of the unlawfu structure, deputize any person or persons to enter upon privat property, without liability, to effect said removal.

16:41C-10.5 Penalties

(a) In addition to all penalties set forth in this chapter, any perso who erects, uses or maintains any sign, structure, or other objec covered by the Outdoor Advertising Act and this chapter, o authorizes the use of his name in connection therewith, in violatio of any of the provisions of the act and these regulations, is liabl to a penalty of not less than $50.00, nor more than $500.00, pe day for each day the sign, structure, or object covered by thes regulations remains in violation. However, except for cases wher the violation is egregious, the maximum penalties assessed shall no exceed the gross income of the sign.

(b) A penalty of not less than $50.00 shall be assessed for al violations. Liability for penalties in excess of $50.00, and the pe diem accumulation thereof provided for in (a) above, shall begi 30 days from the date of service, by the Commissioner on the perso in violation, of written Notice of Violation, unless the accumulatio of penalties has been stayed, or rolled back, by consent, injunctio or order, or the violation has been corrected prior to the accumulation of any penalties.

(c) In the interest of equity, the Commissioner shall have th power, at any time, to abate all or any portion of penalties that ma have accrued.

(d) In determining the amount of any penalty assessed, or to b assessed, for violating any rule contained in this chapter, the Commissioner shall consider, among other facts, the gross income an net profit produced by the sign, structure or object in violation, th egregiousness of the violation, whether the violation was intentiona or accidental, whether the violator has a history of repeated violations, and the egregiousness thereof, and such other facts as wil assist in arriving at a penalty commensurate with the violation.

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PUBLIC NOTICES

EDUCATION

(a)

DIVISION OF EDUCATIONAL PROGRAMS AND STUDENT SERVICES

Notice of Availability of Chapter 2 Evaluation Report

The 1990-91 Evaluation Report of Chapter 2, P.L. 100-297, has been published by the New Jersey State Department of Education and is made available for public review from May 5, 1992 through May 15, 1992 in each of the twenty-one County Offices of Education.

Copies may be obtained by calling (609) 633-6681.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System

Notice of Adoption of Amendments to Management Plan, Island Beach Northern Natural Area

Authority: N.J.S.A. 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and N.J.A.C. 7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and the recommendation of the Natural Areas Council (Council), Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy, has adopted amendments to the management plan for Island Beach Northern Natural Area.

The Island Beach Northern Natural Area, located within Berkeley Township, Ocean County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Island Beach State Park (hereinafter referred to as the administering agency). In May of 1984, the Department adopted a management plan for Island Beach Northern Natural Area. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the area in accordance with its designation objective (see N.J.A.C. 7:5A-1.8). The amendments to this management plan concern removal of several management duties no longer relevant to management of the area and several revisions and additions to the plan to ensure preservation of the natural area. At a meeting held on October 30, 1991, the Natural Areas Council recommended that these amendments be submitted to the Commissioner of Environmental Protection and Energy for his approval.

The management plan for Island Beach Northern Natural Area is hereby amended to remove the following management duties:

1. There will no longer be a requirement that signs be placed at the beginning of the nature trail to direct visitors to register prior to trail use.

This requirement is waived because it has been determined by the Superintendent of Island Beach State Park that the limited public use of the nature trail does not justify such registration, which was originally intended to control impacts of public use on the primary and secondary dune system.

2. There will no longer be a requirement that if an increase in use levels of the nature trail results in a similar increase in the impacts of straying, the Office of Natural Lands Management (ONLM), in coordination with Park Service staff may decrease the volume through the register system.

This requirement is waived because of the removal of the above registration system. Should the volume of public use increase precipitously in the future, the Park Superintendent will take actions to limit public use.

3. There will no longer be a requirement that the Fence Maintenance Road dune crossing will be realigned using snow fencing, and stabilized within two years.

This requirement is waived because according to the Park Superintendent Fence Maintenance Road is no longer in use.

4. There will no longer be a requirement that State Park Service staff, in cooperation with ONLM, will collect data on dune and beach profiles in the Natural Area. Specific requirements deleted from the management plan include the collection of data, using the modified Emery method, on a biweekly basis for one year, and more frequently to bracket storms or to follow the beach rebuilding process. This study was scheduled to begin within six months of adoption of the management plan. ONLM was to receive copies of data collection sheets on a monthly basis.

This requirement is waived because information obtained subsequent to management plan adoption indicates that the Emery method is not effective in accurately measuring beach profiles. As a result of this, and the fact that the beach is highly dynamic with elevation changes occurring daily, staff of ONLM believes that these measurements would not provide useful information. Further, in the eight years since adoption of the Island Beach Northern Natural Area Management Plan, the lack of adequate staff by the State Park Service and the ONLM has prevented the collection of any of the above data on dune and beach profiles. According to the Park Superintendent and staff of ONLM, it is not anticipated that staff will become available to perform such detailed field studies.

5. There will no longer be a requirement that ONLM evaluate the reports supplied by the Park staff and conduct an annual inspection of the beach and primary dune system, as well as the motor vehicle access points and walk-on trails for fishermen. Photos shall not be taken of the same sites (beach, primary dune system, motor vehicle access points and walk-on trails for fishermen) each year and staked reference points shall not be examined for both vertical and horizontal change in the location of the toe of the primary dune.

This requirement is waived because of the highly dynamic nature of the beach system, and because staff of ONLM believes that these subjective observations would not provide useful information.

6. There will no longer be a requirement that ONLM shall prepare an evaluation, including recommendations, based on the reports and inspections for continued or revised use of the beach and access points. Additional related requirements deleted from the management plan include the following: The evaluation shall be reviewed by the Director of the Division of Parks and Forestry and State Park Service staff. Thereafter the New Jersey Beach Buggy Association, and other groups expressing an interest in beach use, will be consulted for their views regarding the recommendations for the future. A final evaluation will then be presented to the Natural Areas Council for consideration and recommendation to the Department.

This requirement is waived because of the removal of the above reporting and inspection requirements. Revised rules, since preparation of the plan, allow the Superintendent to restrict public use of the beach (see N.J.A.C. 7:5A-1.9). The Park Superintendent currently coordinates his plans and actions with numerous public interest groups that use the beach in the natural area, and will continue this dialogue in the future.

The management plan for Island Beach Northern Natural Area is hereby amended to add the following management duties:

1. The administering agency shall post Two-Bit Road and parking area F1 "for fishing purposes and walking on wet sand only."

This allowance is added because the Park Superintendent feels that a need exists for the non-fishing public to be allowed to at least walk on these two sections of the natural area as long as they are restricted to areas of wet sand. The reason for the wet sand restriction is that these areas are tidally affected and are not subject to the negative impacts of foot traffic which characteristically occur on the dry sand of the primary and secondary dunes.

2. The administering agency shall add the following two questions to the existing Beach Buggy Permit Application—"Do you use the Island Beach Northern Natural Area?" and "if so, approximately how many times a year?"

This amendment is made because adding two questions to the current application will provide the needed information about public use of the natural area without necessitating the creation and distribution of a new survey, thereby reducing paperwork.

3. The administering agency, in cooperation with the Division of Fish, Game and Wildlife, shall initiate a program aimed at trapping and removal of feral cats within the Northern Natural Area, in hope that

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removal of this predator will make the dune system more suitable for use by endangered beach nesting birds.

This new requirement is being added to the management plan because cats, abandoned in the natural area or originating from residences in adjacent Seaside Park, are believed to be establishing wild breeding populations in the natural area, and because these feral cats are believed to be having a detrimental effect on endangered beach nesting bird species, including the least tern, black skimmer and piping plover, that attempt to establish nest sites within the Northern Natural Area. This view is supported by the Park Superintendent and by a draft report entitled *New Jersey Endangered Beachnesting Birds Management Plan* prepared by the Division of Fish, Game and Wildlife, Endangered and Nongame Species Program, and dated December, 1990.

Copies of the adopted plan and amendments may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Station Plaza Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

DIVISION OF PARKS AND FORESTRY

Natural Areas System

Notice of Adoption of Management Plan for Bull's Island Natural Area

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C. 7:5A

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and the recommendation of the Natural Areas Council, Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy, has adopted a management plan for the Bull's Island Natural Area.

The Bull's Island Natural Area, located within Delaware and Raritan Canal State Park in Delaware Township, Hunterdon County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Delaware and Raritan Canal State Park (hereinafter referred to as the administering agency). The designation objective for Bull's Island Natural Area is preservation of a northern floodplain habitat, and rare species habitat. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the area in accordance with its designation objective (see N.J.A.C. 7:5A-1.8).

At the June 10, 1991 Council meeting, the Natural Areas Council reviewed a draft management plan prepared by the Department and received staff recommendations regarding the management of the Bull's Island Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Bull's Island Natural Area and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection and Energy for his approval. The Commissioner of Environmental Protection and Energy approved the Bull's Island Natural Area Management Plan on April 8, 1992.

Following is a summary of the management techniques prescribed in the Bull's Island Natural Area Management Plan along with the reason for each:

1. The administering agency will post State Natural Area signs on signposts along the roads at the northern boundary of the natural area and along the Canal trail at a maximum density of at least 10 signs per mile by June 1, 1992. The Office of Natural Lands Management (ONLM) will provide the administering agency with State Natural Area boundary signs as needed.

Posting of the boundaries of all natural areas is required in accordance with the Natural Areas System Rules at N.J.A.C. 7:5A-1.9(e)1. The ONLM, which is responsible for overall administration of the Natural Areas System, designs and distributes paper boundary signs for posting of all State Natural Areas.

2. The ONLM will provide the administering agency with a map indicating locations for endangered and threatened species, and plant species of concern in the vicinity of the natural area by June 1, 1992. If locations for species are not specifically known or the species are only historically known, ONLM should attempt to locate these species within the boundaries of the natural area through field survey conducted between June 1, 1992 and December 31, 1993. Should this survey locate extant populations of endangered and threatened species or plant species of concern, their specific locations will be mapped by ONLM and provided to the administering agency by December 31, 1993. The administering agency shall regularly consult the species map to avoid any disturbance to populations.

This technique is required because information in the Department's Natural Heritage Database indicates that the Bull's Island Natural Area may support up to six species of plants that are listed on New Jersey's Endangered Plant Species List (see N.J.A.C. 7:5C), or are otherwise tracked by the Database as plant species of concern, and up to three wildlife species of endangered or threatened status in New Jersey (see N.J.A.C. 7:25-4). It is essential that the locations of these species, if known or determined through field survey, be provided to the administering agency so as to insure that they are not inadvertently impacted by normal natural area maintenance activities.

3. The administering agency will remove all surface refuse within and outside of the gated area in the northwestern section of the natural area by June 1, 1992. Use of this area for permanent or temporary storage or disposal of such materials shall be discontinued upon adoption of this plan.

This management requirement was included in the plan because the disposal or storage of materials is prohibited in State Natural Areas in accordance with N.J.A.C. 7:5A-1.9(e)7. Removal of these refuse materials and discontinuation of this use, as provided in the management plan, will eventually allow this area to revert to its natural state.

4. The administering agency will discontinue mowing of the small field to allow it to revert to its natural state.

This management requirement was included in the plan because this field is currently being used as a storage area for vegetative debris as well as overflow parking for the nearby boat ramp. Because these uses are inconsistent with the designation objective of the natural area, because storage of such materials is prohibited in natural areas in accordance with N.J.A.C. 7:5A-1.9(e)7, and because there is no additional ecological benefit to be gained from continued mowing, mowing of this area is to be discontinued. Further, the Natural Areas Council, upon inspection of this natural area on June 10, 1991, determined that the reason for mowing of this field was not apparent.

5. In accordance with the existing lease agreement between the New Jersey Water Supply Authority (hereinafter referred to as the Authority) and the DEPE, the Authority will notify the administering agency in advance of any maintenance activities to be conducted within the Transmission Complex adjacent to the natural area. The administering agency will inspect the trail after each maintenance event by the Authority to determine if any damage has been caused to the Transmission Complex or natural area. The administering agency will notify the Authority of any damage caused by their maintenance activities and, as specified in the lease agreement, with the approval of the D & R Canal Commission, repair and restore the damaged area in a timely manner. The administering agency shall also notify the ONLM of any damage to the Transmission Complex or natural area caused by the Authority.

This management technique was included in the management plan because past activities of the Authority have resulted in aesthetic and ecological damage to the Transmission Complex that could potentially impact the natural area, and because the existing lease agreement calls for such notification of the administering agency. To date, however, this requirement has largely been ignored by the Authority.

6. The ONLM will obtain and comment on any proposed plans by the Authority to rehabilitate the Lumberville wing dam.

This technique is provided as a safeguard against potential impacts to the natural area and its biota from off-site construction. Although outside the boundaries of the natural area, the Lumberville wing dam is located in the Delaware River approximately one half mile upstream. In March of 1990, a Draft Environmental Assessment was prepared by EBASCO environmental consultants for the Authority concerning rehabilitation of the dam. This project would entail using the access road to Bull's Island from Route 29 to get equipment to a staging area in

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the campground at the north end of the island, and may involve the cutting of trees for the staging area.

7. The administering agency will receive all applications to conduct research or collect specimens, forward a copy to the Office of Natural Lands Management (ONLM), and provide a response within 30 days of application submittal. The administering agency shall coordinate response with ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas as outlined in N.J.A.C. 7:5A-1.10.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Station Plaza Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

DIVISION OF PARKS AND FORESTRY

Notice of Public Hearing
Proposed Easement on Lands Comprising Part of the Delaware and Raritan Canal State Park

Take notice that the State of New Jersey Department of Environmental Protection and Energy (DEPE) will hold a public hearing to seek comments on the proposed sale of easements to the New Jersey Department of Transportation on State-owned land administered by the Division of Parks and Forestry, located at the Delaware and Raritan Canal State Park, designated as portions of Lots 32.01, 34, 37, and 44 in Block 484 in the Township of Hamilton, County of Mercer.

These easements are more specifically identified as three utility easements (a total of 0.727 acres), a temporary construction easement (0.358 acres), and a bridge easement (2.055 acres).

The value of these easements has been appraised at $6,550.

The sale of these easements is proposed to allow the Department of Transportation to construct the Route I295 and Route I195 intersection.

Conveyance of this property will not interfere with or affect the use and enjoyment of the DEPE lands.

The public hearing will be held on:

Friday, June 5, 1992 at 10 A.M. at the
Hamilton Township Municipal Building
Council Room—2nd Floor
2090 Greenwood Avenue
Trenton, New Jersey 08609

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.

Interested persons may submit written comments until June 5, 1992 to:

Gregory Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection and Energy
CN 404
Trenton, New Jersey 08625

(b)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Availability of Approved Budget and List of Fees for Fiscal Years 1992 and 1993, and Most Recent Annual Audit

Take notice that, pursuant to N.J.A.C. 7:60-1.4(f), the approved budget and list of fees calculated in accordance with N.J.A.C. 7:60-1.6, and the results of the most recent annual audit, are available from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board (Board). On April 23, 1992, the Board held its meeting to approve the budget for Fiscal Years 1992 and 1993, July 1, 1991 through June 30, 1992 and July 1, 1992 through June 30, 1993, respectively. A copy of the approved budget, the list of fees and the results of the most recent annual audit may be obtained from the NJ Low-Level Radioactive Waste Disposal Facility Siting Board, CN 410, Trenton, N.J. 08625-0410, or call (609) 777-4247.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking comment on a proposed amendment to the Monmouth County Water Quality Management (WQM) Plan. This amendment, proposed by the Township of Middletown Sewerage Authority (TOMSA), would adopt a Wastewater Management Plan (WMP) for the TOMSA planning area. The TOMSA WMP area is a portion of the WMP area for the Monmouth County Bayshore Outfall Authority (MCBOA) and the TOMSA WMP is submitted on behalf of MCBOA; MCBOA retains WMP responsibility for this area. The WMP addresses wastewater management planning for the Township of Middletown and the Boroughs of Atlantic Highlands and Highlands.

The WMP delineates all of the wastewater management planning area as the existing and future sewer service for the TOMSA wastewater treatment facility. The WMP area and service area are changed at the Keansburg school site at Palmer and Euclid Avenues in Middletown Township; this area becomes, upon adoption of the WMP, part of the WMP area and service area of the Bayshore Regional Sewerage Authority. An expansion of the TOMSA facility is proposed to allow for the treatment of a wastewater flow increase, exclusive of infiltration and inflow, for the WMP area for the year 2010 of .55 million gallons per day (MGD), the existing permitted flow is 10.8 MGD.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, CN-029, 401 East State Street, Thrid Floor, 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 should submit written comments on the amendment to Mr. Ed Frankel, Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to Mr. Robert Eckert, Executive Director, Township of Middletown Sewerage Authority, Box 205, Center Avenue, Belford, New Jersey 07718. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by 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 or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Ed Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the date of the public hearing.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Cape May County Water Quality Management Plan
Public Notice

Take notice that on March 27, 1992, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the

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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 the U.S. Coast Guard. The amendment allows for the nine U.S. Coast Guard housing units in Upper Township, Cape May County to disconnect from the New Jersey Marine Sciences Consortium's (NJMSC) sewage treatment plant (STP) and treat the wastewater on site via an on-site groundwater disposal system. The average population of the nine homes is 24 and the average daily flow is 2,400 gallons per day. If a groundwater discharge is found not to be feasible, the housing units will remain connected to the NJMSC STP.

(a)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on March 26, 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 Lower Delaware Water Quality Management Plan was adopted by the Department. This amendment proposal was requested by the Upper Pittsgrove Township Board of Education for the Upper Pittsgrove Township Elementary School. The amendment identifies an on-site relocation and expansion of the existing ground water discharge from the Upper Pittsgrove Township Elementary School located at Block 38, Lot 9, in Upper Pittsgrove Township, Salem County to serve a proposed 47,700 square foot building addition. The proposed school expansion will bring the total school population to 600 students and staff.

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on March 20, 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 Tri-County Water Quality Management Plan was adopted by the Department. The amendment was proposed by Archway Programs. This amendment modified the Atlantic Basin—Pinelands Area Wastewater Management Plan (WMP) by expanding the sewer service area of the Camden County Municipal Utilities Authority Delaware No. 1 sewage treatment plant (STP) and the Waterford Township Municipal Utilities Authority (MUA) STP to serve the Archway Program facilities located on Block 45, Lots 1, 2, 4, 4A, 5, 9, and 11A in Waterford Township, Camden County and Block 91, Lots 17 and 20 in Evesham Township, Burlington County. This amendment also modified the Evesham Township WMP which previously identified the Evesham Township portion of the amendment site as unsuitable for sewer service. The sewer service area expansion will serve only existing Archway Program buildings. The proposed wastewater flow from these facilities is 12,115 gallons per day. The wastewater flow from the Archway Project will be applied against the Waterford Township MUA's allocation identified in the Atlantic Basin—Pinelands Area WMP. The Archway Program sites contain wetlands; however, wetlands issues will be addressed during the Pinelands Commission approval process.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on March 26, 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 Tri-County Water Quality Management Plan was adopted by the Department. The amendment was proposed by the Winslow Township Board of Education for the Winslow Township School #6. This amendment updates the Winslow Township Wastewater Management Plan by identifying an expansion to the sewer service area of the Winslow Township Wastewater Treatment Facility in Sicklerville, which is owned and operated by the Camden County Municipal Utilities Authority, to serve the proposed Winslow Township School #6. The proposed school is to be located on former Green Acres land at Block 1203, Lots 1 and 2, Block 1204, Lots 1, 2, 4 through 10, and portions of Lots 3 and 11, and Block 2206, portions of Lots 1, 9, 10, 11, 11.01, 11.02, 12 and 14 of Winslow Township, Camden County. The 86,550 square foot school will house a student and staff population of 900 and has a projected wastewater flow of 13,500 gallons per day.

(d)

OFFICE OF REGULATORY POLICY

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on March 27, 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 Mercer County Water Quality Management Plan was adopted by the Department. This amendment proposal, which was requested by the Stony Brook Regional Sewerage Authority, adopts a Wastewater Management Plan (WMP) for the Borough of Pennington, Mercer County. The WMP updates population and wastewater flow information.

HEALTH

(e)

DIVISION OF EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Notice of Receipt of Petition for Rulemaking and Emergency Rulemaking

Extend the Shelf-Life Expiration Date for Milk to 12 Days Following the Date of Pasteurization and Emergency Rulemaking Permitting a 12 Day Date Code Pending Consideration of a Rule Change

N.J.A.C. 8:21-10.12

Petitioners: Steven Kudatzky and Deborah I. Hollander of Duane, Morris and Heckscher, on behalf of the New Jersey Milk Industry Association.

Take notice that on April 6, 1992, the Office of the Commissioner, New Jersey Department of Health received a petition from Steven Kudatzky and Deborah I. Hollander of Duane, Morris and Heckscher on behalf of the New Jersey Milk Industry Association, Inc., requesting that the Department extend the shelf-life expiration date for milk to 12 days following the date of pasteurization and issue an emergency rule permitting a 12 day date code while the petition is being considered.

(f)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Action on Petition for Rulemaking

Recoupment of Medicare Overpayment

Petitioner: Murray Klein, Esq.

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

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the Federal government of alleged Medicare overpayments. (See 24 N.J.R. 1402(b).) 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.

The petition was properly considered, which consideration included a thorough review by the department's Division of Health Planning and Resources Development. As a result of such consideration, the petition is hereby declined. The Department of Health is currently taking action on several fronts to minimize, or eliminate, the impact of any recoupment on New Jersey hospitals and those who pay for and use hospital services in the State.

First it is in the process of developing the recoupment plan requested by the Health Care Financing Administration (HCFA) and will propose it to the Hospital Rate Setting Commission for its approval by the May 1, 1992 deadline, assuming this deadline remains steadfast. However, recent discussions suggest that the deadline will be extended based on HCFA's inability to respond to the state's request for additional data (as discussed below) until April 8, 1992.

Second, the Department of Health staff has worked closely with the New Jersey Hospital Association, Blue Cross, individual hospitals around the State and the federal Health Care Financing Administration to review HCFA's estimate that a Medicare overpayment of $109 million was made to New Jersey hospitals during the period of time the State enjoyed a waiver from Medicare. Substantial doubt remains about the validity and distribution of this estimate and HCFA has agreed to consider compilation of DRG-specific information in sufficient detail to support the current estimate.

Current circumstances suggest that there is a very long way to go before hospitals' payments from Medicare would be reduced by any recoupment, and we cannot at this time accurately forecast which hospitals will have their payments reduced and by how much, if at all. In light of these uncertainties the Department does not recommend that those who pay for health care in New Jersey pre-fund a liability for which the timing and scope is unknown.

The Department recognizes that the New Jersey Congressional delegation has demonstrated support for the State's hospitals as the Department pursues an analysis of the waiver overpayment estimate. The Commissioner is concerned that a shift in the public focus of efforts away from whether the liability exists and toward how this liability can be passed on to consumers of health care will completely undermine both the political and legal remedies the Department has yet to exhaust with the federal government, and could jeopardize the Department's efforts to reduce, if not eliminate, the assessment.

The Department expressed a shared concern over the proposed recoupment of the Medicare waiver overpayment by HCFA and stated that, should the worst case happen and a hospital experienced financial distress as a result of federal actions, the Commissioner would support an immediate Hospital Rate Setting Commission hearing to consider any necessary rate actions. Absent the need for emergency action, however, the Department's resources dedicated to this matter are best devoted at this time to an analysis of HCFA's estimated overpayment and to development of an alternative recoupment plan.

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Notice of Availability of Grant Funds
Hospital Census Reduction/Community Expansion Project (450 Plan)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5, 34.6, the Department of Human Services hereby announces the availability of the following grant program funds:

Name of Program: Division of Mental Health and Hospitals—Hospital Census Reduction/Community Expansion Project (450 Plan).

Purpose: The purpose of the funding is to establish supportive mental health services in a residential setting for 30 Northern Region clients to be discharged from Greystone Park Psychiatric Hospital under the Hospital/Census Reduction/Community Services Expansion Plan (450 Plan). These services include, but are not limited to, room and board, housekeeping and laundry service, 24-hour supervision through on-site staff, optional on and off-site programming, financial assistance, transportation to community appointments, activities and events, psychiatric nursing consultation and medication monitoring.

Amount of available funding under this program: The Division anticipates that the State share of program funding will not exceed $600,000 ($20,000/client). This amount is net of third party income and/or fees which are also expected to offset program operational costs.

Organizations which may apply for funding under this program: Any non-profit agency/hospital in New Jersey which meets qualifications of Department of Human Services as specified in the Contract Policy and Information Manual and currently provides mental health or related services, or is capable of providing mental health services needed by those clients. Such an agency/hospital may itself provide residential services or subcontract for such service to a licensed Residential Health Care Facility (RHCF) or Class C Boarding Home. A Residential Health Care Facility is licensed by the Department of Health. A Class C boarding home shall be one licensed by the Department of Community Affairs. If a new community residence is to be developed for 15 or fewer clients, the final site selected must comply with the Division of Mental Health and Hospitals' licensing regulations and, if applicable, an interim location of the program must be provided. The award of capital funds is not guaranteed and applications must be made separately once awards of program funding have been made. Consideration for capital funding will be based on available resources and capital feasibility requirements.

Procedure for eligible organizations to apply: Interested applicants may request an application package from the Division of Mental Health and Hospitals' Northern Region Office, 100 Hamilton Plaza, 8th Floor, Paterson, New Jersey 07505 or by calling Maryellen Garvey, Assistant Regional Coordinator at (201) 977-4397. Application packages will also be available (pick up only) at the Division of Mental Health and Hospitals offices at 50 East State Street, Capital Center, CN 727, 3rd Floor, Trenton, New Jersey 08625. A technical assistance conference will be held on Friday, May 15, 1992 from 10 A.M.-12 Noon at Greystone Park Psychiatric Hospital. Potential applicants are required to attend. Specific information regarding the client population to be served and the expected services will be discussed. Please call the Northern Regional Office at (201) 977-4397 to confirm date and location of this meeting. Completed applications (five copies) must be submitted to Anne DeMuro, Assistant Director for the Northern Region by close of business Friday, June 12, 1992. Fax submissions will not be accepted.

(Copies of completed applications must also be submitted to the County Mental Health Administrator in each of the six Northern Region Counties. Addresses are included in the application package.)

Deadline by which applications must be submitted: June 12, 1992.

Date the applicant is to be notified of acceptance or rejection: July 30, 1992.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of Grant Funds
Group Home Care for Children With Special Emotional Needs

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

A. Name of grant program: Group Home Care for Children with Special Emotional Needs.

B. Purpose for which the grant program funds shall be used: This program is intended to prevent unnecessary institutionalization by providing enhanced group home services to children with special emotional needs (males and females), between 5 and 18 years of age, residing in Mercer, Middlesex, Monmouth, Essex, Hunterdon, Ocean, Union, or Somerset counties (the Central Region of the Division of Youth and Family Services). Modification of existing group home services as well as new development of such services will be considered for funding.

C. Amount of money in the grant program: Funding in the amount of $400,000.00 in State Grant-in-Aid funds, on an annualized basis, is available for this program. No match is required.

D. Organizations which may apply for funding under this program: Public or private, not-for-profit or for-profit social service agencies serv-

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ing Mercer, Middlesex, Monmouth, Essex, Hunterdon, Ocean, Union, and/or Somerset counties.

E. Qualifications needed by an applicant to be considered for funding: Applicants should be able to meet the standards set by N.J.A.C. 10:128, Manual of Requirements for Children's Group Homes, or other regulations as they may become applicable for homes serving this population. Applicants may be new or existing group home providers.

F. Procedure for eligible organizations to apply: Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from Gena Haranis, New Jersey Division of Youth and Family Services—Central Region, CN 717, 50 East State Street, Trenton, New Jersey, 08625-0717, telephone number (609) 777-2000.

G. Address to which applications must be submitted: Agencies interested in applying for these funds should submit an original (1) and nine (9) copies of the completed Request for Proposal and all required supporting materials to Colleen Maguire, Regional Administrator, New Jersey Division of Youth and Family Services, CN 717, 50 East State Street, Trenton, New Jersey, 08625-0717.

H. Deadline by which applications must be submitted: The completed application and all required supporting materials and copies must be postmarked by midnight on May 22, 1992; or, if hand-delivered, must be received before 5:00 p.m. on May 22, 1992 at the offices of the New Jersey Division of Youth and Family Services, 50 East State Street, Trenton, New Jersey 08625.

I. Date by which applicants shall be notified of acceptance or rejection: June 26, 1992.

(a)

OFFICE OF THE ASSOCIATE COMMISSIONER

Notice of Availability of Grant Funds
Community Challenge Grants under the Department of Human Services' Minority Males Initiative

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Department of Human Services hereby announces the availability of the following grant program funds:

A. Name of Program: Community Challenge Grant Program for Minority Males.

B. Purpose: The purpose for which these grants are issued is to fund projects which address the multitude of health and human services problems afflicting minority males in New Jersey. Specifically, grant funds must be used to develop and support family unity; prevent or remedy health conditions in minority males; encourage young men to stay in school and to reach their full potential; prepare the workforce for the technical skills that will be needed in the future; and/or reduce the likelihood that young men will become involved in the criminal justice system. Projects should seek opportunities to empower communities and local organizations to be active participants in creating solutions to the health and human services problems afflicting minority males in New Jersey. Grant funds may be used for personnel, equipment, supplies, domestic travel, and other costs directly related to the project described in the approved application. Funds may not be used for construction of facilities, including additions and extensions, or for the acquisition of land.

C. Amount of available funding for each project: Current funds available equal $40,000. Grants of up to a maximum of $10,000 will be awarded to eligible agencies and organizations.

D. Organizations which may apply for funding under this program: Agencies must be New Jersey based not-for-profit agencies and organizations. Eligible applicants may be community coalitions. The applicant is responsible for the management of the project and will serve as the fiscal agent for funds awarded by the state.

E. Qualifications which may apply for funding under this program: Through written proposals, agencies must demonstrate the capacity to carry out the purposes of the grant. Applicants must demonstrate their ability to develop and implement an innovative project in the community that can provide support to high risk minority males, or foster community solutions to the complex range of problems facing minority males.

F. Procedure for eligible organizations to apply: Agencies may request a copy of the Community Challenge Grant Application in writing from the Office of the Associate Commissioner, New Jersey Department of Human Services, CN 700, Trenton, New Jersey 08625 or via telephone by calling the Office at (609) 984-7262.

G. Address to which applications must be submitted:
Larry J. Lockhart
Office of the Associate Commissioner
New Jersey Department of Human Services
Capital Place One, 5th Floor
CN 700
Trenton, NJ 08625
ATTN: Vivian Martin

H. Deadline by which applications must be submitted: June 12, 1992.

I. Date the applicant is to be notified of acceptance or rejection: No later than June 30, 1992.

INSURANCE

(b)

DIVISION OF PROPERTY AND CASUALTY

Notice of Receipt and Action on Petition for Rulemaking
Self-Storage Personal Property Insurance-Limited Insurance Representatives
N.J.A.C. 11:17 and 11:17A

Petitioner: Self-Storage Insurance Agency, Inc.
Authority: N.J.S.A. 17:22A-2(m); N.J.A.C. 11:17-2.10 and N.J.A.C. 11:17A-1.2(b).

Take notice that on February 27, 1992, the Department of Insurance (Department) received a petition for rulemaking from Self-Storage Insurance Agency, Inc. through its counsel, David B. Ward. Esq. The petitioner requests the Department to include within pending proposals for credit unemployment insurance as noted in 24 N.J.R. 659(a), February 18, 1992, an addition to that rulemaking process. Specifically, the petitioner requests the inclusion of "self-storage property insurance" as category of insurance which may be marketed through a limited insurance representative under N.J.A.C. 11:17-2.10(a). The self-storage property insurance would be marketed only to renters or potential renters of personal property self-storage units and would provide for an extended coverage for such property while stored in the rental unit. Marketing of this type of insurance will occur either at the site of the rental units or by mail to storage unit renters or potential renters, but not to the public at large. Petitioner represents that the storage insurance coverage, premium computations and manner of marketing of the product are all simple, easily understood and will be standard without endorsements and options. A plain language certificate will be utilized along with a brochure containing a toll free number to assist the consumer with any questions. Self-storage personal property insurance will provide coverage for business, individual and household personal property against loss due to fire, burglary or theft while stored at the self-storage facility.

Petitioner asserts that self-storage insurance is analogous to credit property insurance, a type of coverage now included under the limited representative status pursuant to N.J.A.C. 11:17-2.10(a), except that the renter of the self-storage unit is the only beneficiary under the policy. The self-storage facility itself is not covered under the policy; rather the contents of the individual storage units are covered. The sale of self-storage property insurance, by virtue of the nature of the line of business and the manner by which it is marketed, may not require the professional competency demanded for a producer license.

As a result, petitioner requests that the Department promulgate a rule which defines self-storage property insurance in N.J.A.C. 11:17A-1.2(b) to read as follows:

"Self-storage insurance" means insurance coverage for the renter's interest against loss of or damage to renter's personal property, including debris removal and extra rental expense, while located in the rented self-storage space."

The Commissioner hereby certifies that the petition was duly considered pursuant to law. Upon due deliberation, the Commissioner hereby refers the matter to the Department for further deliberations to be concluded by June 1, 1992. The reasons for further deliberation are that the petitioner has requested that the Department include these proposals together with the proposal for credit involuntary unemployment insurance as set forth at 24 N.J.R. 659(a). As the Department then noted, it is considering a number of revisions to its rules regarding

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producer licensing codified at N.J.A.C. 11:17. It expects consideration of these revisions to be concluded by the end of May 1992. Since a proposed rule as requested by Petitioners would be proposed together with other revisions, it is appropriate to refer this petition for further deliberation. Therefore, pursuant to N.J.A.C. 11:1-15.3(c), this petition for rulemaking is referred to the Department for further deliberations, which shall conclude on or before June 1, 1992.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Notice of Receipt of and Actions on Petitions for Rulemaking

Wage and Hour: Exemptions from Overtime N.J.A.C. 12:56-7.1

Petitioners: New Jersey Business and Industry Association, New Jersey Food Council and New Jersey Retail Merchants Association.

Authority: N.J.S.A. 34:1-20.

Take notice that the Department of Labor (the Department) received petitions on March 9, 1992 from the New Jersey Business and Industry Association, on March 10, 1992 from the New Jersey Food Council, and on March 31, 1992 from the New Jersey Retail Merchants Association for rulemaking concerning N.J.A.C. 12:56-7, the Department's rules governing the New Jersey Wage and Hour Law, N.J.S.A. 34:1-20. Specifically, petitioners request the repeal of the definition of executive found at N.J.A.C. 12:56-7.1 which provides that effective April 1, 1992, the required salary for an executive exempt from overtime shall be increased from $350.00 to $400.00 per week. Petitioners maintain that the referenced regulation imposes a financial burden which is inflationary and counterproductive to improving the economy and business climate.

Take further notice that, in accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further consideration. Accordingly, the Commissioner has delegated this matter to staff for further study and examination of the issues raised by the petitioners. This further review shall be concluded by April 30, 1992.

Upon the conclusion of the Department's deliberations, the decision will be mailed to the petitioners and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioners, as required by N.J.A.C. 1:30-3.6.

OTHER AGENCIES

(b)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Action on Petition for Rulemaking

Amendments to the HMDC Official Zoning Map N.J.A.C. 19:4-6.28

Petitioner: Judy A. Verrone, Esq., on behalf of New York, Susquehanna and Western Railway.

Take notice that, on February 24, 1992, the Hackensack Meadowlands Development Commission received a petition to amend the Hackensack Meadowlands Development Commission Zoning Map to permit the New York, Susquehanna and Western Railway to establish an intermodal rail terminal operation, in accordance with the New Jersey State Rail Plan recommendations (see 24 N.J.R. 1403(a)).

Take further notice that the Commission has proposed such changes in this issue of the New Jersey Register (see Proposals section). The Commission may adopt these amendments after June 3, 1992. If adopted, these changes will become effective upon publication of the adoption notice in the New Jersey Register.

(c)

PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD

Notice of Denial of Petition for Rulemaking Representation Fee in Lieu of Dues N.J.A.C. 19:17-3.4 and 4.1

Petitioner: New Jersey Education Association.

Authority: N.J.S.A. 34:13A-5.9.

Take notice that on January 27, 1992 the New Jersey Education Association (NJEA) by Betty Kraemer, President, and Robert H. Chanin, Esq., and Richard A. Friedman, Esq., attorneys, requested that the Public Employment Relations Commission and the Public Employment Relations Commission Appeal Board amend N.J.A.C. 19:17-3.4(a) and N.J.A.C. 19:17-4.1(a), part of the rules enacted by the Commission pursuant to N.J.S.A. 34:13A-5.9 to administer L.1979, c.477.

The changes proposed by NJEA would have allowed a majority representative to retain that portion of a representation fee in lieu of dues which supports activities of a partisan political or ideological nature only incidentally related to the terms and conditions of employment unless the person paying the representation fee objects. Under the current version of N.J.A.C. 19:17-3.4(a), no representation feepayer—not simply those who object—may be charged for such expenditures. The NJEA petition contends that charging nonmembers for such activities is unconstitutional only when the nonmember objects.

Because the petition addressed issues which ordinarily fall under the jurisdiction of the Public Employment Relations Commission Appeal Board, the Commission, pursuant to N.J.A.C. 1:30-3.6(c)3, referred the petition for further deliberations to the Appeal Board. A notice acknowledging receipt of the petition and referral of it to the Appeal Board was published in the March 2, 1992 edition of the New Jersey Register at 24 N.J.R. 868(c).

The issue first arose when these rules were originally adopted. The NJEA and other unions at that time urged the Commission and the Appeal Board to adopt a rule which made political expenses refundable only if an objection is made. The agencies declined to do so believing that the New Jersey Supreme Court in *Boonton Bd. of Ed. v. Kramer,* 99 *N.J.* 523, 549-550 (1985), *cert. den.* 106 *S.Ct.* 1388 (1986) had construed the legislation to prohibit collection of a fee which included political and ideological expenses unrelated to bargaining. See 19 *N.J.R.* 1105-1106.

On March 18, 1992, the members of the Public Employment Relations Commission Appeal Board, by a vote of 2 to 1, recommended that the petition be denied. Appeal Board Chairman William Noto and Board Member Gerald Dorf noted that because the law had been unchanged since *Boonton,* the amendments to the original rules proposed by the NJEA were unwarranted. Appeal Board member Donald B. Dileo disagreed and recommended that the Commission take action to implement the amendments suggested by the NJEA. He agreed with the arguments made by the NJEA in support of its petition.

On March 30, 1992 the Public Employment Relations Commission, pursuant to N.J.A.C. 1:30-3.6(c)(1) and N.J.A.C. 19:10-6.1(f), denied the NJEA petition. Chairman James W. Mastriani and Commissioners Louis C. Goetting IV, John R. Grandimo, Jeremiah F. Regan and O.F. Wenzler voted to follow the recommendation of the Appeal Board. Commissioner Peter Smith voted in favor of the NJEA petition. Commissioner Jack Bertolino did not participate in the Commission's consideration of the petition.

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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 March 2, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.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 FEBRUARY 18, 1992

NEXT UPDATE: SUPPLEMENT MARCH 16, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
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	24 N.J.R. 1417 and 1658	April 20, 1992
23 N.J.R. 3061 and 3192	October 21, 1991	24 N.J.R. 1659 and 1840	May 4, 1992
23 N.J.R. 3193 and 3402	November 4, 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)		
1:6, 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 1992-2 (supplement February 18, 1992)				
AGRICULTURE—TITLE 2				
2:24-4	Volunteer Inspector Program: noncommercial apiaries and bees	24 N.J.R. 1140(a)		
2:32	Sire Stakes Program	24 N.J.R. 1142(a)		
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)		
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3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-16.1	Mortgage processing: administrative change regarding definition of "receipt"	_____	_____	24 N.J.R. 1791(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)
3:12-1.1, 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)		
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5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(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)
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5:18-2.4A	Uniform Fire Code: administrative correction concerning Type Ac life hazard uses	———	———	24 N.J.R. 1475(a)
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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	Continuing care retirement communities	24 N.J.R. 1146(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	Uniform Construction Code	24 N.J.R. 1420(b)		
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5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)		
5:23-2.15, 2.18, 2.20, 3.14	Uniform Construction Code: special inspections	24 N.J.R. 1147(a)		
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
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5:23-3.10, 5	UCC: enforcing agency classification; licensing of enforcement officials	24 N.J.R. 1446(a)		
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)		
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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)	R.1992 d.186	24 N.J.R. 1484(a)
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7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
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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)
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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)		
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7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
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7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
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7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
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8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)	R.1992 d.185	24 N.J.R. 1495(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)
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8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)	R.1992 d.131	24 N.J.R. 940(a)
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8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)	R.1992 d.133	24 N.J.R. 945(a)
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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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8:71	Interchangeable drug products	24 N.J.R. 59(b)	R.1992 d.137	24 N.J.R. 949(a)
8:71	Interchangeable drug products	24 N.J.R. 61(a)	R.1992 d.134	24 N.J.R. 947(b)
8:71	Interchangeable drug products	24 N.J.R. 735(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)	R.1992 d.160	24 N.J.R. 1338(a)
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9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)		

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10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:52-1.6	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:53-1.5	Medicaid reimbursement for outpatient laboratory services	24 N.J.R. 917(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)	R.1992 d.98	24 N.J.R. 845(a)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	24 N.J.R. 651(a)	R.1992 d.191	24 N.J.R. 1498(b)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:72-4.1	New Jersey Care income eligibility limits: administrative correction	_____	_____	24 N.J.R. 851(a)
10:81-11.7	Child support and paternity: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:82-1.2, 1.6, 1.7, 1.10, 1.11, 2.1, 2.2, 2.3, 2.6–2.9, 2.11–2.14, 2.19, 2.20, 3.13, 3.14, 4.4, 4.5, 4.15, 5.10, 5.11	Assistance Standards Handbook: AFDC program revisions regarding Standard of Need, prospective budgeting, and AFDC-N equalization	24 N.J.R. 1194(a)		
10:82-2.14	Established monthly earnings: administrative correction	_____	_____	24 N.J.R. 851(b)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)	R.1992 d.106	24 N.J.R. 852(a)
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)	R.1992 d.175	24 N.J.R. 1500(a)
10:82-5.11	AFDC supplemental payments: administrative correction	_____	_____	24 N.J.R. 1499(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		
10:83-1.11	Supplemental Security Income payment levels	24 N.J.R. 300(a)	R.1992 d.124	24 N.J.R. 952(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-3.1, 3.3, 4.1	General Assistance allowance determination: household size concept	24 N.J.R. 926(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	24 N.J.R. 300(b)	R.1992 d.125	24 N.J.R. 952(b)
10:89-3.4	Emergency energy assistance: administrative change	_____	_____	24 N.J.R. 1502(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)	R.1992 d.176	24 N.J.R. 1502(b)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
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)	R.1992 d.177	24 N.J.R. 1503(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		

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10A:1	Department administration, organization, and management	24 N.J.R. 1465(a)		
10A:18	Inmate mail, visits, and telephone use	24 N.J.R. 1204(b)		
10A:20-4	Residential Community Release Agreement Programs: administrative correction to adoption notice	_____	_____	24 N.J.R. 953(a)
10A:34	Municipal and county correctional facilities	24 N.J.R. 683(a)	R.1992 d.193	24 N.J.R. 1796(a)

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11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(a)		
11:3-2	Personal automobile insurance plan	24 N.J.R. 331(a)		
11:3-3	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)		
11:3-15.6, 15.7, 15.9	Automobile insurance Buyer's Guide and Coverage Selection Form	24 N.J.R. 523(a)		
11:3-16.5, 16.8, 16.10, 16.11, App.	Private passenger automobile insurance: rate filing requirements	23 N.J.R. 3199(a)	R.1992 d.189	24 N.J.R. 1504(a)
11:3-20.5, App.	Automobile insurance: Excess Profits Report	24 N.J.R. 529(a)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(a)	R.1992 d.170	24 N.J.R. 1347(a)

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11:3-33	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)	R.1992 d.142	24 N.J.R. 953(b)
11:3-40	Insurers required to provide automobile coverage to eligible persons	24 N.J.R. 336(a)	R.1992 d.207	24 N.J.R. 1796(b)
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:3-43	Private passenger automobile insurance: personal lines rating plans	23 N.J.R. 3221(a)		
11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36	BASIC health care coverage	24 N.J.R. 1205(a)		
11:4-16.5	Individual health insurance: disability income benefits riders	24 N.J.R. 338(a)		
11:4-16.8, 23, 25	Medicare supplement coverage: minimum standards	24 N.J.R. 12(a)		
11:5-1.13	Real Estate Commission: preservation of brokers' files	23 N.J.R. 3428(a)	R.1992 d.107	24 N.J.R. 852(b)
11:5-1.13	Real Estate Commission: extension of comment period regarding preservation of brokers' files	23 N.J.R. 3739(a)		
11:5-1.27	Real Estate Commission: administrative correction concerning requirements for broker's licensure examination	_____	_____	24 N.J.R. 1799(a)
11:5-1.38–1.42	Real Estate Commission: dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3424(b)		
11:5-1.38–1.42	Real Estate Commission: extension of comment period regarding dual agency for dual compensation practices; kickbacks for referrals; written disclosures; exclusion of outside mortgage lenders	23 N.J.R. 3739(b)		
11:16-4	Automobile insurance: fraud and theft prevention/ detection plans	23 N.J.R. 3236(a)	R.1992 d.190	24 N.J.R. 1505(a)
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	24 N.J.R. 546(a)	R.1992 d.192	24 N.J.R. 1510(a)

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12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		

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13:20-34.2, 34.3, 34.5, 34.7	License plate identifying marks	24 N.J.R. 1467(b)		
13:20-42	Purple Heart emblems on license plates	24 N.J.R. 219(a)	R.1992 d.168	24 N.J.R. 1365(a)
13:21-23	Commercial driver licensing	24 N.J.R. 219(b)	R.1992 d.138	24 N.J.R. 960(a)
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)
13:31-1.11, 1.17	Electrical contractor's business permit: telecommunications wiring exemption	24 N.J.R. 339(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)	Expired	
13:33-1.20, 1.21, 1.22, 1.23, 1.41	Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians: fees	23 N.J.R. 3631(a)	R.1992 d.103	24 N.J.R. 852(c)
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)	R.1992 d.169	24 N.J.R. 1367(a)
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6A	Medical practice: declaration of death upon basis of neurological criteria	23 N.J.R. 3635(a)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-3.9	Pharmaceutical practice: reciprocal registration	24 N.J.R. 553(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)	R.1992 d.166	24 N.J.R. 1371(a)
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40-5.1	Land surveys: extension of comment period regarding setting of corner markers	24 N.J.R. 554(a)		
13:40-6.1	Board of Professional Engineers and Land Surveyors: fee schedule	24 N.J.R. 1231(a)		

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13:41-3.2	Board of Professional Planners: fee schedule	24 N.J.R. 554(b)		
13:43-3.1, 4.1	Board of Shorthand Reporting: fee schedule	24 N.J.R. 1232(a)		
13:44D-1.1, 2.1, 4.6	Public movers and warehousemen: moving vehicle requirement	24 N.J.R. 341(a)	R.1992 d.199	24 N.J.R. 1800(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late license renewal fee	23 N.J.R. 3638(a)	R.1992 d.127	24 N.J.R. 968(a)
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:44E-2.7	Chiropractic practice: referral fees	24 N.J.R. 1470(a)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-9.2, 9.3, 9.4	Advertising of merchandise by manufacturer	24 N.J.R. 684(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(a)	R.1992 d.101	24 N.J.R. 853(a)
13:45A-26.1, 26.2, 26.4, 26.14	Automotive dispute resolution: motor vehicles purchased or leased in State	24 N.J.R. 53(a)		
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:47	Legalized games of chance	23 N.J.R. 3638(b)	R.1992 d.96	24 N.J.R. 854(a)
13:47K-5.2	Weights and measures: magnitude of allowable variations for packaged commodities	24 N.J.R. 1233(a)		
13:51-1.1	Chemical breath testing: administrative correction	_____	_____	24 N.J.R. 857(a)
13:70-13A.8	Thoroughbred racing: stay pending appeal of officials' decision	24 N.J.R. 555(a)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)	R.1992 d.200	24 N.J.R. 1800(b)
13:71-3.3	Harness racing: stewards appeal hearings	24 N.J.R. 555(b)		
13:71-3.8	Harness racing: stay pending appeal of officials' decision	24 N.J.R. 556(a)		
13:71-20.6	Harness racing: passing lane in homestretch	24 N.J.R. 686(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)	R.1992 d.201	24 N.J.R. 1801(a)
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)	R.1992 d.155	24 N.J.R. 1373(a)
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)	R.1992 d.156	24 N.J.R. 1373(b)
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)	R.1992 d.157	24 N.J.R. 1374(a)
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)	R.1992 d.158	24 N.J.R. 1374(b)

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14:0	Open Network Architecture (ONA): preproposal and public hearing regarding Board regulation of enhanced telecommunications services	23 N.J.R. 3239(a)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:3-7.5	Interest rate on customer deposits	24 N.J.R. 686(b)		
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14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:10-7	Telephone access to adult-oriented information	24 N.J.R. 1238(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-3.19	Cable television: interest on uncorrected billing errors	24 N.J.R. 1470(b)		
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14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)

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15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)
15:5	Division of the State Museum	24 N.J.R. 1239(a)
15:10-1.5, 7	Distribution of voter registration forms through public agencies	24 N.J.R. 736(a)

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16:28-1.6, 1.56	Speed limit zones along U.S. 40 in Salem, Gloucester, and Atlantic counties; and along U.S. 40 and 322 in Atlantic County	24 N.J.R. 687(a)	R.1992 d.198	24 N.J.R. 1803(a)
16:28-1.41	Speed limit zone along U.S. 9 and parts of Route 444 in Bass River Township	24 N.J.R. 342(a)	R.1992 d.171	24 N.J.R. 1518(a)
16:28-1.44, 1.72	Speed limit zones along Route 27 in Princeton, Franklin Township, and South Brunswick, and U.S. 206 in Trenton and Lawrence Township	24 N.J.R. 342(b)	R.1992 d.159	24 N.J.R. 1374(c)
16:28-1.113	Speed limits along Route 139 in Jersey City	24 N.J.R. 928(a)		
16:28A-1.7	Restricted parking and stopping along U.S. 9 in Middle Township, Cape May County	24 N.J.R. 77(a)	R.1992 d.111	24 N.J.R. 858(a)
16:28A-1.7, 1.19, 1.20, 1.46, 1.57, 1.100	Restricted parking and stopping along U.S. 9 in Cape May, Route 28 in Elizabeth, Route 29 in West Amwell, U.S. 130 in South Brunswick, U.S. 206 in Mercer County, and Route 50 in Atlantic and Cape May counties	24 N.J.R. 689(a)	R.1992 d.195	24 N.J.R. 1804(a)
16:28A-1.15, 1.54	No stopping or standing zones along Route 23 in Hardyston Township and Route 181 in Jefferson Township	24 N.J.R. 1240(a)		
16:28A-1.18	Bus stop zone along Route 27 in Rahway	24 N.J.R. 692(a)	R.1992 d.196	24 N.J.R. 1806(a)
16:28A-1.36, 1.55, 1.64, 1.73, 1.97	Restricted parking and stopping along Route 57 in Warren County, U.S. 202 in Bernardsville, Route 41 in Cherry Hill, Route 32 in South Brunswick, and U.S. 1 Business in Lawrence Township	24 N.J.R. 693(a)	R.1992 d.197	24 N.J.R. 1806(b)
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	23 N.J.R. 3742(a)	R.1992 d.108	24 N.J.R. 858(b)
16:28A-1.57	No stopping or standing zone along U.S. 206 in Lawrence Township	24 N.J.R. 929(a)		
16:31-1.1	Left turn prohibition along U.S. 206 in Lawrence Township	24 N.J.R. 78(a)	R.1992 d.115	24 N.J.R. 968(b)
16:32-1	Designated routes for double-trailer trucks	24 N.J.R. 929(b)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:41-8	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41A	Repeal (see 16:41C)	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:41C	Roadside sign control and outdoor advertising	24 N.J.R. 695(a)	R.1992 d.206	24 N.J.R. 1807(a)
16:44-1.8	Renewal of contractor classification rating	24 N.J.R. 703(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)	R.1992 d.181	24 N.J.R. 1518(b)
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)	R.1992 d.182	24 N.J.R. 1631(a)
16:51	Practices and procedures before the Office of Regulatory Affairs	24 N.J.R. 78(b)	R.1992 d.116	24 N.J.R. 968(c)
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:73	NJ TRANSIT: Reduced Fare Transportation Program for Elderly and Handicapped	24 N.J.R. 556(b)		

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17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:26	Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J)	24 N.J.R. 1255(a)		
17:30	Urban Enterprise Zone Authority	24 N.J.R. 343(a)	R.1992 d.161	24 N.J.R. 1375(a)
17:32-6, 7, 8	State Planning Rules: letters of clarification; consistency review of plans; Resource Planning and Management Map	24 N.J.R. 1241(a)		

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18:7-4.5, 5.2	Corporation Business Tax: indebtedness and entire net worth	24 N.J.R. 175(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:7-13.1	Corporation Business Tax: abatements of penalty and interest	23 N.J.R. 3275(a)		
18:24-1.4	Sales tax: manufacturers' coupons	23 N.J.R. 3433(b)	R.1992 d.139	24 N.J.R. 969(a)

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18:24-2.16	Sales tax: registration of amusement event promoters	23 N.J.R. 3275(b)	R.1992 d.140	24 N.J.R. 969(b)
18:35-1.9	Gross Income Tax: exempt interest income	24 N.J.R. 177(a)	R.1992 d.141	24 N.J.R. 970(a)
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)	Expired	

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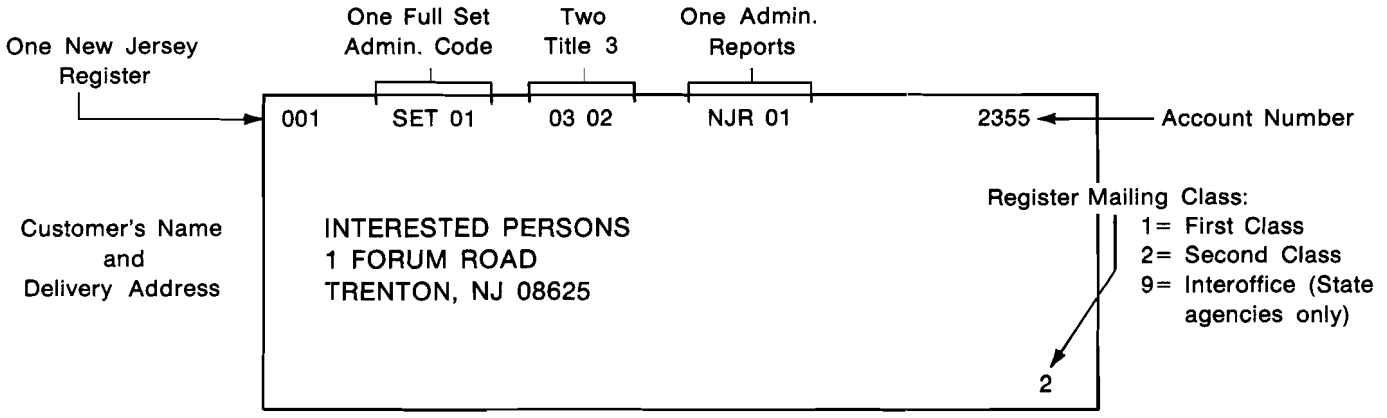

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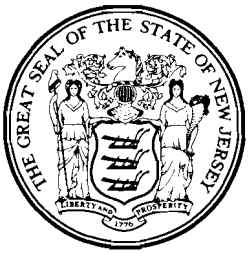

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