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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 24 NUMBER 3
February 3, 1992 Indexed 24 N.J.R. 319-508
(Includes adopted rules filed through January 10, 1992)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 18, 1991
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 16, 1991

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 4, 1992.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

The official publication containing notices of proposed rules and rules adopted by State agencies pursuant to the New Jersey Constitution, Art. V, Sec. IV, Para. 6 and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Issued monthly since September 1969, and twice-monthly since November 1981.

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Special Hearing Rules

Proposed Readoptions with Amendments: N.J.A.C. 1:1, 1:6, 1:7, 1:10, 1:11, 1:13, 1:20, 1:21 and 1:31

Proposed Repeal: N.J.A.C. 1:10A

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1992-65.

Submit comments by March 4, 1992 to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the above-listed chapters on Special Hearing Rules will expire on May 4, 1992, except for N.J.A.C 1:31, which expires June 17, 1992. These rules were comprehensively reviewed and revised by the Office of Administrative Law in 1987. At this time, the Office of Administrative Law has reviewed the rules and found them to be reasonable and efficient procedures for the conduct of contested case hearings. Therefore, OAL proposes to readopt these rules without substantial change.

There are several proposed amendments to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, which are discussed below.

N.J.A.C. 1:1-1.3(a) now provides that in the absence of a rule, the New Jersey Court rules may be utilized, but that the court rules regarding third-party practice and class action designations may not be applied. The proposed amendment permits class action designations when a statute specifically authorizes such procedures in administrative hearings. This change is in response to the Family Leave Act, which specifies that an individual may file a complaint with the agency on either an individual or class basis. N.J.S.A. 34:11B-11. Although the rules already provide that they are subject to any superseding Federal or State law, N.J.A.C. 1:1-1.1, the amendment is intended to eliminate any confusion on this point.

Proposed N.J.A.C. 1:1-5.4 includes several clarifications. All references to the Division of Public Welfare have been changed to the Division of Economic Assistance since that agency's title has been changed. The situations where a non-lawyer may represent a party at a hearing has been expanded to include an additional category permitting individuals who represent parents or children to appear in special education proceedings. By Order, the New Jersey Supreme Court has relaxed R. 1:21-1(e) so that non-lawyer advocates could continue to represent parties in special education hearings at the Office of Administrative Law. An application for representation from a non-lawyer who seeks to represent parents in a special education hearing must set forth his or her knowledge or training with respect to handicapped pupils and their educational needs. This can include relevant education, work experience or other qualifications. Proposed N.J.A.C. 1:1-5.4(b).

The proposed amendment to N.J.A.C. 1:1-5.5 specifies that non-lawyer representatives must be guided by the appropriate standards of conduct in the Rules of Professional Conduct for attorneys and that failure to comply with these standards may result in revocation of the non-lawyer's right to appear.

Proposed N.J.A.C. 1:1-7.5 is a new rule which would permit emergency relief applications to be filed by fascimile transmission. Other matters could be filed by facsimile transmission when permitted by the judge. Facsimile transmissions must comply with all other requirements of the subchapter and must be accompanied by a certification indicating the method of service upon the parties. The original must be available for filing if required by the judge or a party. Facsimile transmittals are filed as of the date of receipt. Costs for receipt of a facsimile transmittal will be assessed upon a party using this procedure. The proposed amendment to N.J.A.C. 1:1-11.1 permits a signed subpoena to be transmitted by facsimile transmission to the person seeking to serve the subpoena.

The extension rule, N.J.A.C. 1:1-18.8, has been clarified in several respects. The rule now requires either the Director or agency head to act on a proposed extension order within 10 days. The Proposed amendment clarifies that the Director must sign proposed extension order by the deadline for the initial decision and that other approvals for extensions must occur within 10 days from receipt of the extension request. The amendment also provides that an extension order must set forth the factual basis constituting good cause for the extension and the dates of any previous extensions. Finally, the amendment provides for additional extensions of up to 45 days each for good cause.

A summary of each subchapter in N.J.A.C. 1:1 follows:

Subchapter 1 provides that these rules shall govern all contested case hearings, that other agencies may no longer propose rules to regulate contested cases, and that in the absence of a rule, the judge may proceed in accordance with the New Jersey Court Rules.

Subchapter 2 defines words and terms relating to the contested case hearing process.

Subchapter 3 provides that cases shall originate in the agency with the appropriate subject matter jurisdiction, that the Office of Administrative Law acquires jurisdiction only after transmittal by the agency and that a case may be returned to the transmitting agency upon written notice from the agency head. The subchapter also provides that the Director of the Office of Administrative Law is the agency head for purposes of review for issues impacting the administration of the Office of Administrative Law.

Subchapter 4 provides that agencies shall determine whether a matter is a contested case and that the agency may attempt settlement prior to transmitting the matter to the OAL.

Subchapter 5 sets forth standards and procedures for representation by attorneys and authorized non-lawyer representatives.

Subchapter 6 provides that pleading requirements shall be established by the agency with subject matter jurisdiction and that pleadings may be freely amended.

Subchapter 7 specifies the method for service and filing of papers.

Subchapter 8 sets forth the method of transmittal of a contested case to the Office of Administrative Law.

Subchapter 9 establishes the method for scheduling proceedings, describes the required notices and establishes policies for adjournments and the use of the inactive list.

Subchapter 10 describes the types and availability of various discovery mechanisms.

Subchapter 11 describes the process for subpoenaing witnesses or documents.

Subchapter 12 explains the procedure for filing motions, including motions for emergency relief.

Subchapter 13 establishes the procedure for prehearing conferences.

Subchapter 14 establishes the procedures for plenary hearings, conference hearings, in-person hearings, and proceedings on the papers. It also sets forth the policy for use of interpreters, the procedure to be followed when a party fails to appear, the procedure for interlocutory review, for obtaining a transcript and for disqualifying a judge.

Subchapter 15 sets forth the evidence rules applicable to contested case hearings.

Subchapter 16 sets forth the standards and procedures for intervention and participation in a contested case.

Subchapter 17 explains the mechanism for consolidating two or more cases and for determining predominant interest.

Subchapter 18 describes the required elements of initial decisions, whether written or oral, for exceptions and for final agency decisions. It also establishes the procedure for requesting an extension of time.

Subchapter 19 describes the settlement and withdrawal process.

Subchapter 20 describes a mediation process.

Subchapter 21 sets forth the procedures which will be followed when the OAL conducts a hearing which does not constitute a contested case.

The OAL has also reviewed the following special hearing rules and found them, on the whole, to be reasonable and necessary as special

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procedures designed to meet the needs of those cases. OAL is proposing the elimination of Chapter 10A since the statutory provision providing a contested case hearing has been amended and, therefore, the Department of Corrections no longer transmits these cases to the OAL. A proposed amendment also would make Chapter 21 applicable to all cases involving a trade secret claim, not only to those arising under the New Jersey Worker and Community Right to Know Act. Finally, there are two proposed clarifications to Chapter 21 which describes the organization of the OAL. The first makes clear that uncontested matters are heard by the OAL only if the Director concurs in a request by the agency to hear such matters. The proposed amendment also sets forth the new procedure for publishing the New Jersey Administrative Reports Second.

A summary of each chapter follows:

Chapter 6 establishes special procedures for budget hearings from the Department of Education.

Chapter 7 establishes procedures for emergency water supply allocation cases from the Department of Environmental Protection.

Chapter 10 establishes the procedures, in conformity with Federal law, for economic assistance cases from the Department of Human Services.

Chapter 10A establishes procedures for inmate discipline cases from the Department of Corrections. Since the statutory provision resulting in transmittal of these cases to the OAL has been amended, OAL proposes to repeal these special rules.

Chapter 11 establishes procedures for hearings concerning insurance rate filings.

Chapter 13 establishes procedures for cases transmitted from the Division of Motor Vehicles.

Chapter 20 sets forth procedures for hearings before the Public Employment Relations Appeal Board.

Chapter 21 sets forth procedures applicable to trade secret claims under the New Jersey Worker and Community Right to Know Act. The proposed amendment would make these procedures applicable to any case involving a trade secret claim, whether arising under this Act or any other provision.

Chapter 31 describes the organization of the Office of Administrative Law. The proposed amendment makes clear that uncontested matters are heard by the OAL only if the Director concurs in a request by the agency to hear such matters. The proposed amendment also sets forth the new procedure for publishing the New Jersey Administrative Reports Second.

Social Impact

The rules have proven effective in creating a fair, efficient and effective contested case hearing process. The proposed amendments simply clarify several provisions and eliminate special rules which have not proven to be necessary.

The amendments to the non-lawyer representation rule clarify the existing practice, which was authorized pursuant to Supreme Court Order, by explicitly permitting non-lawyer representatives to appear in special education cases and setting forth the process for such appearance. The rules also set forth OAL's expectation that a non-lawyer representative should adhere to an appropriate standard of conduct when dealing with a judicial tribunal. These standards are best articulated in the Rules of Professional Conduct, which should guide a non-lawyer in their capacity as a representative in a contested case proceeding.

By providing for facsimile transmissions in emergent and other appropriate circumstances, the new rule, N.J.A.C. 1:1-7.5, should make filing of documents less burdensome on parties in those circumstances.

Economic Impact

The proposed readoption with amendments is not anticipated to have any substantial economic impact. As the rules establish procedures for contested case matters, their economic effects are administrative in nature (preparation of documents, etc.) or related to possible employment of legal counsel.

Regulatory Flexibility Analysis

The rules proposed for readoption in N.J.A.C. 1:1, 1:7, 1:11 and 1:21 impose compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., who may be parties in a contested case proceeding. These requirements are procedural in nature and apply to all who are involved in litigation before the OAL. Attendant costs may include those which are administrative (preparation of documents, etc.) and/or related to possible employment of legal counsel. The uniform application of these requirements is necessary to ensure fairness and efficiency in contested case matters; therefore, lesser requirements or exemptions for small businesses are not provided.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 1:10A.

Full text of the proposed readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 1:1, 1:6, 1:7, 1:10, 1:11, 1:13, 1:20, 1:21 and 1:31.

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

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of **a** rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied **unless such procedures are specifically statutorily authorized in administrative hearings**.

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

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) In conformity with New Jersey Court Rule R.1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal services paralegals or assistants;
5. Close corporation principals; [and]
6. Union representatives in Civil Service cases[.]**; and**
7. **Individuals representing parents or children in special education proceedings.**

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of [Public Welfare] **Economic Assistance**, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i.-iii. (No change.)

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of [Public Welfare] **Economic Assistance**, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements of representation set forth in (b)2i below.

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of [Public Welfare] **Economic Assistance**, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i.-iii. (No change.)

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she [satisfies the Federal and State requirements for non-lawyer representation] **has knowledge or training with respect to handicapped pupils and their educational needs so as to facilitate the presentation of the claims or defenses of the parent or child. The applicant shall describe his or her relevant education, work experience or other qualifications related to the child's condition.**

v. (No change.)

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vi. Any non-lawyer applicant filing a Notice of Appearance/Application shall [state in] **submit a certification with** the Notice **stating** that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii.-viii. (No change.)

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

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

(g) Non-lawyer representatives are expected to be guided in their behavior by appropriate standards of conduct, such as contained in the following Rules of Professional Conduct for attorneys: RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 3.2 (Expediting Litigation); RPC 3.3 (Candor Toward the Tribunal); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 3.5 (Impartiality and Decorum of the Tribunal); and RPC 4.1 (Truthfulness in Statements to Others). For failure to comply with these standards, the judge may revoke a non-lawyer representative's right to appear in a case or may order sanctions as provided in (c) above.

1:1-7.5 Filing by facsimile transmission

(a) A paper may be filed by facsimile transmission if:

1. It is an application for or response to a request for emergency relief pursuant to N.J.A.C. 1:1-12.6; or

2. When permitted by the judge for good cause shown upon timely application.

(b) Facsimile transmissions must comply with all requirements of this subchapter except N.J.A.C. 1:1-7.3(c) and 1:1-7.4(b).

(c) The party filing a document by facsimile transmission must include a certification indicating the method of service upon each party and stating that the original document is available for filing if requested by court or a party.

(d) Facsimile transmittals are filed as of the date of receipt by the Clerk or the judge.

(e) A party requesting a facsimile transmittal from the Clerk or the judge shall be assessed a charge at the rate provided in the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, [the Clerk shall determine whether the matter should] **it may** be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

(b)-(g) (No change.)

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents; **facsimile transmittals.**

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

(d) Upon request by a party, subpoena issued by the Clerk or by a judge may be forwarded to that party by facsimile transmission. Facsimile transmitted subpoenas shall be served in the same manner and shall have the same force and effect as any other subpoena pursuant to this subchapter. A party requesting a facsimile transmittal shall be charged for such transmittal pursuant to N.J.A.C. 1:1-7.5(e).

1:1-18.8 Extensions of time limits

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

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall [within 10 days] **sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall** forward [a] **the** proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days **of receipt of the proposed order** sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) (No change.)

(e) [Requests to extend] **If the agency head requests an extension of** the time limit for filing a final decision [shall be submitted in writing to the transmitting agency head. If the agency head concurs in the request], he or she shall [within 10 days] sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within 10 days **of receipt of the proposed order** sign and issue the order and cause it to be served on all parties.

(f) Any order granting an extension must **set forth the factual basis constituting good cause for the extension, set forth the dates of any previous extensions, and** establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted [only in case of extraordinary circumstances] **for good cause.**

1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim [under the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. and N.J.A.C. 7:1G-1 et seq. and N.J.A.C. 8:59-3 et seq]. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

1:21-8.1 Transmission of cases; the trade secret documentation of information

[Whether the] **When a** case is transmitted to the Office of Administrative Law **involving a trade secret claim,** [under N.J.A.C. 1:1-8.2, by the Department of Environmental Protection or the Department of Health,] any information or documentation which reveals the trade secret shall not be transmitted with the case file.

1:21-8.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of [DEP or DOH] **the** representatives **of the transmitting agency.**

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

1:21-12.1 Written motions

Written motions shall be made directly to the judge [without the necessity of filing with the Clerk].

1:31-1.1 Functions of the Office

(a) The Office of Administrative Law (OAL), created by statute in 1978, is independent of any executive department, board, division, commission, agency, council, authority, office or officer of the State of New Jersey. The OAL performs four major functions:

1. Conducts contested case hearings, as provided in N.J.S.A. 52:14B-10 and N.J.S.A. 52:14F-8, and **with the consent of the Director** conducts other administrative hearings [as requested] **if requested by an agency head.** In general, the Office of Administrative Law acquires contested case jurisdiction over a matter after an agency head determines that a contested case exists and subsequently files the case with the OAL, as provided in N.J.A.C. 1:1-1;

2. Promulgates rules for the conduct of contested case hearings. Rules are promulgated to assist judges, attorneys, and contested case parties by clarifying [statutory] **legal** requirements;

3. Supervises, coordinates and records rulemaking proceedings within the Executive Branch. Under the authority of N.J.S.A. 52:14F-5(f), the OAL oversees agency compliance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and through N.J.A.C. 1:30-1 has established standards to guide agency rulemaking.

4. Publishes the New Jersey Register, **and** the New Jersey Administrative Code [and the New Jersey Administraive Reports]; **distributes New Jersey Administrative Reports, Volumes 1-13; and contracts with a private vendor to publish New Jersey Administrative Reports Second.** The publication function of the OAL is multifaceted:

i. Publication of proposed rules in the New Jersey Register gives an interested person an opportunity to comment and object;

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ii. Publication of adopted rules in both the New Jersey Register and New Jersey Administrative Code provides a ready, updated reference to State agency rules; and

iii. Publication of contested cases in the New Jersey Administrative Reports **and New Jersey Administrative Reports Second** provides the public with [references and precedents for] **access to** administrative adjudications.

1:31-1.3 Public information requests and submissions

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

(c) Any person may obtain copies of initial decisions or State agency rules, or may obtain information about or subscriptions to the New Jersey Register, Administrative Code or Administrative Reports by written request to Administrative Publications and Filings, Quakerbridge Plaza, Building No. 9, CN 301, Trenton, New Jersey 08625. **Copies of decisions published in the New Jersey Administrative Reports Second and subscription information may be obtained by contacting Barclays Law Publishers, File No. 52030, P.O. Box 60000, San Francisco, CA 94160-2030.**

(d) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

Child Nutrition Programs

Proposed Recodification and Amendments: N.J.A.C. 6:79 recodified to 6:20-9

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, 18A:33-4 and 18A:58-7.1

Proposal Number 1992-38.

Submit written comments by March 4, 1992 to:
Irene Nigro, Rules Analyst
NJ Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

These proposed amendments made pursuant to Federal regulations 7 CFR 210, 220 and 245 will expand and clarify existing rules and are intended to maintain the nutritional integrity of school nutrition programs.

Current Federal school nutrition regulations define and prohibit the sale of foods of minimal nutritional value during the school lunch periods. These amendments expand the restriction of foods of minimal nutritional value to include the free promotion of extra food items prohibited by regulations promulgated by the United States Department of Agriculture for the administration of child nutrition programs and contained in the New Jersey Department of Education's *Nutritional Standards for School Nutrition Programs.* The State Board has adopted Federal regulations 7 CFR Parts 210 and 220 herein by reference. Further, the amendments clarify the application of these rules 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.

These proposed amendments will encourage school districts to improve the nutritional value of foods offered both inside and outside the food service area and the lunch periods. In addition, they will reinforce nutrition education programs and promote healthful eating habits.

Federal regulations use specific terms and definitions within the enabling program regulations. These amendments contain general clarification of various definitions pertaining to the requirements of the program implementation.

The following amendments are proposed:

N.J.A.C. 6:20-9.1 Definitions

Terminology specific to these rules has been added for clarification. The following terms have been defined: child nutrition programs, enrolled student, five percent threshold, nutritional standards, school food authority and school nutrition programs. The terms survey and sponsor have been amended.

N.J.A.C. 6:20-9.2 Policy and Agreement for School Nutrition Programs

As specified under N.J.S.A. 18A:33-4, each school district is required to survey the student population enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The words "school districts" were added since the survey requirement applies to all operating school districts, not just those participating in the school nutrition programs. The title was amended and additional clarifying language was added regarding the Agreement for School Nutrition Programs.

N.J.A.C. 6:20-9.4 Survey

Clarifying language has been included to coordinate the data reporting date as specified under the Quality Education Act of 1990, the purpose of the survey requirement and the method for reporting required information to the Department of Education.

N.J.A.C. 6:20-9.5 Application

As specified under N.J.A.C. 6:20-9.4, each school district is required to survey the student population enrolled to determine which students are eligible to receive free or reduced-price meals and/or free milk. The words "school districts" were added since the survey requirement applies to all operating school districts, not just those participating in the school nutrition programs. Additionally, an amendment has been added denoting availability of an application for free and reduced price meals/free milk in French in addition to Spanish. Furthermore, new language was added to include the Federal citation (7 CFR 245.7) regarding appeal and hearing procedures.

N.J.A.C. 6:20-9.6 Participation requirements

Clarifying language has been added regarding requirements under N.J.S.A. 18A:33-4. The language specifies that free and reduced price lunches must be offered to all qualifying children and those lunches must meet minimum nutritional standards established by the U.S. Department of Agriculture at 7 CFR 210.10 and 7 CFR 220.

N.J.A.C. 6:20-9.7 Nutritional standards

This amendment has been expanded to include the School Breakfast Program, and adopt by reference the Federal regulations 7 CFR 220 as published in the New Jersey Department of Education's *Nutritional Standards for School Nutrition Programs.*

N.J.A.C. 6:20-9.8 Review and evaluation

This amendment now includes language regarding fiscal action taken against sponsors for noncompliance. Fiscal action will be taken in accordance with Federal regulations as prescribed in 7 CFR 210 and 220, Fiscal Action. Fiscal action includes, but is not limited to, the recovery of overpayments through direct assessment or offset of future claims, disallowance of overclaims as reflected in unpaid Claims for Reimbursement, and correction of records to ensure that unfiled Claims for Reimbursement are corrected when filed.

N.J.A.C. 6:20-9.9 Maximum charge

Two amendments have been added based upon Federal regulations 7 CFR Parts 210.2 and 215.8(c). One amendment establishes the amount school districts must charge when establishing adult meal prices when participating in the school nutrition programs. The other amendment further clarifies the establishment of a maximum charge established by the Bureau of Child Nutrition Programs for milk sold to students as part of the school nutrition programs.

N.J.A.C. 6:20-9.10 Competitive food policy

This amendment expands the requirements for all schools in which over five percent of the students are classified as needy (those eligible for free or reduced price meal benefits) to ban the sale or free promotion of extra food items of minimal nutritional value on school property at any time before the end of the last lunch period regardless of participation in the National School Lunch Program.

Lastly, this proposal recodifies these rules from N.J.A.C. 6:79 (Bureau of Child Nutrition Programs) to N.J.A.C. 6:20-9 (Business Services Code) since the child nutrition programs are administered through the Division of Finance, which regulates other business and regulatory functions in local school districts. It will be simpler for local school districts to

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administer these regulations if they are grouped with other rules governing Division of Finance functions.

Social Impact

The proposed amendments increase the restrictions on the availability of foods of minimal nutritional value on school property. These amendments will assure that all local district boards of education maintain nutritional integrity of school nutrition programs.

Economic Impact

Adoption of the proposed amendments will not increase State or local expenditures. The need to survey nonparticipating districts is stipulated by N.J.S.A. 18A:33-4 and is not new to these rules. Therefore, there is no additional administrative cost imposed based on the amendment.

The amendments at N.J.A.C. 6:20-9.9(a) which establish minimum prices to cover all costs associated with the production of adult meals does not pose economic impact for the school district and merely ensures that Federal and State child nutrition monies will not be diverted from the intended purpose and used to defray the cost of such meals. This amendment will have slight economic impact on the adult purchasing the meal, since purchase of the meal is optional.

The establishment of a maximum amount for milk pricing as per N.J.A.C. 6:20-9.9(a) is based upon existing Federal regulation (7 CFR 215.8(c) which is being introduced for the first time in this rule. The regulation states that schools having pricing programs shall utilize Federal reimbursements received to reduce the price of milk to children. The Bureau establishes a maximum price for milk to ensure that the pricing structure for students is kept at an affordable level, benefiting from the Federal subsidy. This amendment, therefore, does not impose any new economic impact upon school districts since the Federal regulations have been in effect since 1970.

Regulatory Flexibility Statement

The proposed amendments will impose no additional reporting, recordkeeping or other compliance requirements beyond those currently required by Federal regulations. A regulatory flexibility analysis is not necessary. The proposed amendments do not affect small busineses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules impact solely upon local boards of education.

Full text of N.J.A.C. 6:79 proposed for recodification as N.J.A.C. 6:20-9 may be found in the New Jersey Administrative Code at N.J.A.C. 6:79.

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

SUBCHAPTER 9. CHILD NUTRITION PROGRAMS

[6:79-1.1] **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 [promulgated by the Federal government] **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.**

[6:79-1.2] **6:20-9.2** Policy **and Agreement for School Nutrition Programs**

[The Bureau shall develop a free and reduced-price policy pursuant to Federal regulations which shall be adopted by all sponsors.]

(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. [This policy shall become a part of the sponsor's Agreement for School Nutrition Programs with the Department.]

(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.

[6:79-1.3] **6:20-9.3** Eligibility

The Bureau shall administer Statewide eligibility standards [for free and reduced-price meals and/or free milk] **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.

[6:79-1.4] **6:20-9.4** Survey

(a) By [September 30] **the last school day prior to October 16** of each school year, each school, under the supervision of its sponsor, shall survey the [families] **parent or guardian** of [the students it has] **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 [according to procedures required by the Bureau which shall include, but not be limited to,] **using the "Application for Free and Reduced Price Meals or Free Milk" as prescribed by the Commissioner pursuant to Federal**

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regulations (7 CFR Part 245). This application shall be [the distribution of an application] **distributed** to the [family] **parent or guardian** of every student enrolled in the school.

(c) The results of this survey shall be [filed with the Bureau by October 15 of] **included in the Department's Consolidated Enrollment Report: Current School Enrollment Data for** the school year in which the survey is made.

[6:79-1.5] **6:20-9.5** Application

(a) The Bureau shall prepare an application which shall be used by all [sponsors participating in the child nutrition programs] **school districts**. A copy of the application used by each [sponsor] **school district** must be filed with the Bureau together with the policy described in N.J.A.C. [6:79-1.2] **6:20-9.2**.

(b) [Parents] **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 [sponsor who] **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 [meal] **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. [The school] **A school official** must complete applications for these students.

[6:79-1.6] **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 [lunch program] **National School Lunch Program**.

(c) [School food authorities] **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.)

[6:79-1.7] **6:20-9.7** Nutritional standards

Nutritional standards established by the Department for lunches **and breakfasts** served under the [national school lunch program] **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 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.**

[6:79-1.8] **6:20-9.8** Review and evaluation

(a) (No change.)

(b) Federal and State child nutrition program funds may be withheld [from] **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 [and State] regulations **(7 CFR Parts 210, 215 and 220)**.

(c) (No change.)

[6:79-1.9] **6:20-9.9** 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 [charge] **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.

[6:79-1.10] **6:20-9.10** 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 [child nutrition] **the school lunch and school breakfast** programs are in operation must accrue to the accounts of said programs.

[6:79-1.11] **6:20-9.11** Meal accountability

(No change in text.)

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Special Payments Handbook; Aged, Blind and Disabled

Emergency Assistance

Proposed Repeal and New Rule: N.J.A.C. 10:83-1.2

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38 and 44:7-43.

Proposal Number: PRN 1992-57.

Submit comments by March 4, 1992 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

While the provision for granting Emergency Assistance (EA) payments to the elderly, blind and disabled was removed by the enactment of P.L. 1973, c.256, in response to the start-up of the Federal Supplemental Security Income (SSI) program, the Department retained authority to make such payments. This was done in recognition of the lack of any Federal response to the emergency needs of this population. In this context, the Department now is proposing this repeal and new rule at N.J.A.C. 10:83-1.2 so as to address the problem of homelessness or imminent homelessness when individuals are faced with those situations.

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As proposed, N.J.A.C. 10:83-1.2 aligns EA benefits available to SSI recipients with those granted under eligibility provisions of the General Assistance (GA) and Aid to Families with Dependent Children (AFDC) programs. The GA/EA rules were adopted in support of the decision by the New Jersey Supreme Court in the case of *Floyd Williams et al., v. the Department of Human Services and Sam Jimperson et al., v. the Department of Human Services*, 116 N.J. 102, 114-115 (1989). The current text at N.J.A.C. 10:83-1.2 is replaced in its entirety by the proposed new rule. The current text cross references to N.J.A.C. 10:82-5.10 for procedures to be followed for the provision of EA to SSI recipients. The proposed new rule eliminates the need to cross reference to AFDC procedures and set forth guidelines that more closely pertain to the needs of SSI recipients.

N.J.A.C. 10:83-1.2 sets forth regulatory provisions to cover three major areas: prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance.

N.J.A.C. 10:83-1.2(a) delineates circumstances which must exist before EA may be granted. These include homelessness arising from fire or natural disaster, domestic violence and pending eviction. In cases of pending eviction, retroactive rental or mortgage payments may be authorized for up to three months if such aid will prevent homelessness. Retroactive utility payments may be authorized for up to six months if such action will prevent homelessness.

N.J.A.C. 10:83-1.2(a)3iii provides for the circumstances as to when "lack of realistic capacity" to plan on the part of the EA applicant can occur. Elements of this evaluation include lack of time, funds or physical inability to cope on the part of applicants to resolve the emergency themselves.

N.J.A.C. 10:83-1.2(b), (c) and (d) represent no change in current policy except for the update of SSI exempt resource amounts that appear in N.J.A.C. 10:83-1.2(d). N.J.A.C. 10:83-1.2(b) provides that SSI recipients shall be identified by the most recent SSI/State Data Exchange System. N.J.A.C. 10:83-1.2(c) provides that applications for SSI/EA will be completed on Form PA-1G. N.J.A.C. 10:83-1.2(d) stipulates that SSI recipients must exhaust any SSI exempt resources they may have before eligibility for SSI/EA can be established.

N.J.A.C. 10:83-1.2(e) delineates CWA and client responsibilities pursuant to resolving the emergency situation and working toward securing and ultimately maintaining a permanent housing arrangement without EA. CWA and client responsibilities include the immediate authorization of EA and the development and signing of a service plan to provide an individualized plan of action, based on the client's physical, mental and functional abilities. In addition to housing searches, the service plan includes provisions for transportation, appropriate referrals to other available benefit entitlements or services, as well as possible involvement in a training or rehabilitation program.

N.J.A.C. 10:83-1.2(f) establishes procedures for the personal delivery of EA due process notices, provides for EA appeal rights and EA fair hearings. Because of the emergent nature of EA, the provisions ensure that the EA client is duly notified of any EA denial or termination action and is provided with the opportunity to appeal the action and receive a fair hearing.

N.J.A.C. 10:83-1.2(g)1 establishes the initial EA period as a continuous three month time frame. The rule also provides that in making shelter arrangements, the client's mental and physical needs shall be taken into account. The rule here and also at N.J.A.C. 10:83-1.2(g)1ii provides that emergency shelter/suitable housing be found, wherever possible, in the municipality of customary residence.

N.J.A.C. 10:83-1.2(g)1i deals with treatment of the regular SSI benefit in the determination of EA payments.

N.J.A.C. 10:83-1.2(g)1iii provides for the authorization of furniture storage, moving expenses, advance rent and security deposits to establish the client in a new permanent living arrangement.

N.J.A.C. 10:83-1.2(g)2 establishes temporary rental assistance that may be authorized initially to resolve an emergency situation as well as at any other time during the receipt of EA. Temporary rental assistance supplements an EA recipient's regular monthly income to meet his or her shelter costs in a permanent housing arrangement, inclusive of basic utilities. The rule provides that the EA client who is receiving temporary rental assistance shall retain 35 percent of his or her monthly income. An amount in excess of 35 percent may be authorized when it is determined that the client has special needs. Provisions are also established at N.J.A.C. 10:83-1.2(g)3 and (g)4 for EA extensions beyond the initial three-month period that provide EA to eligible recipients for temporary shelter arrangements.

N.J.A.C. 10:83-1.2(h) authorizes payment for emergency food.

N.J.A.C. 10:83-1.2(i) authorizes payment for emergency clothing.

N.J.A.C. 10:83-1.2(j) authorizes payment for household furnishings.

N.J.A.C. 10:83-1.2(k) provides services that may be offered to SSI individuals granted EA benefits.

Social Impact

The proposed new rule, designed to meet the critical needs of homeless, low income individuals served through the SSI program, is expected to have a positive social impact. The eligibility for EA entitlement is expanded beyond the initial three-month period to ensure that those individuals who continue to need EA will be provided such aid. Shared CWA and EA client responsibilities are established at the outset to address the client's immediate EA needs and to develop a service plan that will be signed by the EA client and the CWA. The service plan will provide an individualized plan of action aimed at mutually resolving the emergency situation and working toward securing and ultimately maintaining permanent housing without EA. The service plan will be reviewed and updated in accordance with changes in the EA client's needs and circumstances.

The proposed new rule establishes temporary rental assistance that may be authorized, as appropriate, at the outset or at any time during the receipt of EA to enable the EA client to retain or secure permanent housing. Elimination of a 30 calendar day stipulation for EA eligibility will ensure that individuals who are SSI recipients will not be denied EA because they did not apply within a specific time period. The concept that the client's mental and physical state must be taken into account pursuant to the provision of EA will have a positive social impact inasmuch as the services provided will more closely match the recipient's needs.

Economic Impact

Due to lack of adequate emergency shelters, EA is often provided in hotels and motels at varying rates but averaging close to $1,000 per month. The proposed new rule, while continuing to provide for this kind of assistance, also makes it possible to provide temporary rental assistance from the onset of the emergency. This will allow clients to stay in or acquire more permanent living arrangements at a much lower cost than hotel or motel placement. The proposed new rule is not expected to result in a significant increase in expenditures. The proposed new rule also allows for incremental one month extensions of EA beyond the initial three months. Since CWAs will be required to begin planning for the resolution of the emergency situation from the onset of the emergency, the number of individuals reaching the end of the five months without other alternatives and, therefore, requiring extensions should be minimal and should not result in a significant increase in expenditures.

The overall effect of the proposed new rule is expected to be a reprogramming of funds currently being spent on serving homeless SSI recipients in ways that result in more humane and cost effective response to this problem.

There will be no Federal matching for SSI/EA payments. SSI recipients will be required to exhaust any SSI exempt resources they may have in an attempt to resolve the emergency situation before they may receive EA.

In State Fiscal Year 1991, total State costs for SSI/EA recipients was $3,095,863 with 26 persons served on an average monthly basis. For fiscal 1992, total expenditures are estimated to amount to $3,431,307 with a monthly average of 32 persons served.

Regulatory Flexibility Statement

The proposed new rule has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rule governs a public assistance program designed to certify eligibility to a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:83-1.2.

Full text of the proposed new rule follows:

10:83-1.2 Emergency assistance

(a) Emergency assistance (EA), as delineated in this section, provides for the prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance. EA

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shall be authorized to or for an individual(s) receiving SSI benefits when circumstances set forth in (a)1 through 3 below exist:

1. When there has been substantial loss of shelter, food, clothing and/or househould furnishings by fire, flood or other similar disaster, and the eligible individual(s) is in a state of homelessness and the agency determines that the provision of one or more of these basic needs is essential for the health and safety of the individual;

2. When the state of homelessness results from imminent or demonstrated violence which imperil the health and safety of the individual; or

3. Where there is documentation, subject to CWA verification, of a pending eviction, such as a letter from the landlord or other person who is providing shelter or dwelling space to the client, a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, EA shall be authorized in accordance with (a)3i and ii below.

i. Payment may be authorized for three calendar months of retroactive rental or mortgage payments if it will prevent actual eviction or foreclosure. Retroactive utility payments may authorized for six months if it will prevent actual eviction or foreclosure. Payments for more than three months of retroactive/rental/mortgage and/or six months of retroactive utility payment may only be made in extraordinary circumstances subject to DEA authorization.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior shelter is no longer available, payment shall be authorized for emergency shelter in accordance with (g)1 below.

iii. Lack of realistic capacity to plan for substitute housing exists in the following circumstances:

(1) When the eligible person(s) can demonstrate that there was insufficient time to secure substitute housing between receipt of notice of imminent loss of shelter and actual eviction, foreclosure or loss of prior permanent shelter;

(2) When the eligible person(s) can demonstrate or signs a document, prepared by the CWA, certifying that available funds were exhausted in payment of necessary household and living expenses, such as food, clothing, shelter, or unreimbursed medical expenses, and that payment of such expenses resulted in homelessness; or

(3) When the eligible person(s) demonstrates functional incapacity (see (g)1 below) which would prevent him or her to plan for or secure substitute housing.

(b) Recipients of SSI will be identified on the basis of the most recent SSI/State Date Exchange System (SDX) listing. Individuals in the Medicaid Only program are not eligible for EA.

(c) An application, Form PA-1G, will be completed in all situations involving EA payments. The CWA will attach to the application a written report of pertinent information concerning the amount and purpose of the payment.

(d) While SSI recipients are permitted to retain certain resources of up to $2,000 for an individual, or up to $3,000 per couple, for purposes of eligibility relative to the situations covered by this subchapter, this resource is to be considered by the CWA as available.

(e) The goal of the SSI/EA shelter program is to provide for the initial and continuing emergency shelter needs of SSI recipients. EA is designed to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county, and State levels. The CWA and client shall have a shared obligation to resolve the emergency situation and to secure a shelter arrangement which he or she will be able to ultimately maintain without EA. Upon contact with the EA eligible individual, the CWA shall have responsibility to:

1. Immediately authorize appropriate EA benefits to alleviate the emergency situation;

2. Review the circumstances which contribute to the client's homeless situation and limit his or her ability to secure and/or maintain permanent housing (for example, substance abuse, mental illness, insufficient funds);

i. Since SSI recipients are elderly and/or disabled these factors must also be evaluated in conjunction with the above;

3. Explain to the client, as well as provide a written copy of, his or her EA rights and responsibilities;

4. Discuss with the EA client the emergency shelter arrangement which the CWA determines, in accordance with (e)2 above, will meet his or her immediate emergency shelter needs;

5. Explain that a written service plan shall be mutually developed, within five working days of the EA authorization date, to provide an individualized plan of action aimed at working toward securing permanent shelter and also, where directly related to securing such shelter, at resolving the circumstances that contributed to his or her emergency situation. Refusal, without good cause, to cooperate with conditions set forth in the service plan that are directly related to the recipient's search for permanent housing or with the initial development of the service plan shall render the client ineligible for continuing EA benefits, until such time as cooperation has been resumed; and

6. Arrange a face-to-face meeting with the client to prepare the service plan at a time and place convenient to both the client and the CWA.

i. The service plan shall be signed by both the client and the CWA.

ii. The CWA shall retain the original plan and provide a copy to the client.

iii. The service plan shall include, but is not limited to:

(1) Selection of shelter arrangement which takes into consideration the client's individual circumstances, such as, but not limited to, mental and/or physical problems;

(2) Client responsibility to seek alternative permanent shelter or an optional permanent housing arrangement and to document such efforts in writing. The CWA shall have an obligation to assist the client in the search for permanent housing and document such assistance in the case record;

(A) Such permanent housing searches are to begin no later than the eleventh day after the date the service plan is signed.

(B) The CWA shall determine a reasonable number of contacts to be made per week by the client, taking into consideration his or her medical and/or social circumstances and availability of potential housing. For example, it shall be considered reasonable for a person who is not suffering from physical or mental incapacity to conduct up to 10 contacts per week, if potential housing resources are available. Where good cause for non-participation in housing searches exists, the service plan shall reflect the applicable reason(s).

(C) Contacts may be made by telephone, personal visit or a combination of both.

(D) Written documentation shall consist of the date of the contact, the telephone number (if applicable), the address (location) of the housing site, and the name of the person contacted (landlord or agent);

(3) Provision of services as set forth at (k) below, emphasizing the reasonable transportation needs of the client associated with the areas identified at (e)6iii(A)-(E) below. Reasonable is defined as the least expensive mode of transportation that can be provided to accomplish the activity or need identified;

(A) Transportation to shelters or to alternate temporary housing;

(B) Search for alternate temporary or permanent shelter;

(C) Negotiation of Food Stamp Program authorizations to participate at issuance sites which are inaccessible to the client;

(D) Visits to the appropriate CWA office for case processing purposes and/or to secure assistance payments or visits to any other appropriate service agency for assistance; and

(E) Attendance at counseling sessions; and

(4) Referral to and/or application for other available benefit entitlements or services (for example, drug and alcohol rehabilitation program, Department of Community Affairs, Home Energy Assistance Program, Food Stamp Program, Community Mental Health Services, Section 8 Housing Certificates).

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iv. The CWA shall monitor the EA client's compliance with the service plan, as well as document CWA support activities at least once a month.

v. The CWA shall reevaluate and/or revise the service plan as warranted by changes in the EA client's shelter needs and/or other pertinent circumstances.

(f) An EA client shall be entitled to receive a written notice, inclusive of appeal rights, concerning a decision made by the CWA to deny or terminate EA benefits.

1. Denial notices shall be provided to the client immediately upon denial determination.

2. Termination notices shall be provided at least 10 days in advance of the EA termination effective date.

3. Written notice shall be provided by the CWA at a face-to-face meeting with the EA client. At such time the CWA shall explain to the client the action to be taken, the reason(s) for such action, and his or her right to request a fair hearing.

4. Upon receipt of a notice of EA denial or termination, the client has a right to request a fair hearing provided that such request is made on or before the effective date of the EA termination or within 10 days of the personal delivery receipt date of a denial notice. Such appeals shall be resolved through the fair hearing process in accordance with N.J.A.C. 10:81-6.

i. When a fair hearing is requested because of receipt of an EA termination notice and such request is made on or before the effective date of the EA termination, EA shall continue unaltered until the fair hearing is held and a final decision is rendered by the Director of DEA.

(g) Rules concerning emergency shelter assistance are as follows:

1. The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed three calendar months which shall include any portion of the initial month of EA, with extensions for temporary housing for up to two additional months. In addition, in extraordinary circumstances, individualized extensions may be provided on a month-by-month basis for temporary shelter/housing subject to authorization by DEA. The shelter arrangement shall also be reasonably related to the client's mental and physical needs (for example, if a client is suffering from a mental or physical incapacity, and the shelter arrangement would be detrimental to his or her condition, for instance in a situation where a client has recently been discharged from a hospital, requiring bed rest, he or she should be placed in a shelter arrangement that is available for 24 hours, enabling bed rest). Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i. SSI benefits are not to be counted in the determination of eligibility for or the amount of EA payments authorized for temporary emergency shelter.

(1) When plans for more permanent living arrangements are made, any funds actually available to the client are to be counted in the determination of EA payments for shelter, utility deposits, furniture storage, moving expenses, purchase of furniture and appliances.

ii. Every effort shall be made to locate suitable housing in the community of prior permanent residence. If, however, the CWA locates suitable permanent housing, not necessarily in the municipality of prior residence, the client must accept the arrangement. Refusal to relocate without good cause renders the person ineligible for further EA for temporary shelter. Good cause may include, but is not limited to, the need to travel more than one hour each way to and from a place of employment by public or private transportation.

iii. Payment may be authorized for furniture storage, moving expenses, advance rent and security deposits for rent and/or utilities when the CWA determines it is necessary to establish the client in a new permanent living arrangement.

2. Temporary rental assistance may be authorized by the CWA upon initial authorization of EA or at any other time during the receipt of EA. Temporary rental assistance benefits, as authorized in accordance with (g)2i and ii below, shall be expedited by the CWA to preclude the loss of an existing or potential housing arrangement.

i. The individual is facing pending eviction from permanent housing, which had previously been affordable, for reasons such as, but not limited to, loss of employment, temporary unemployment or under employment, or it is anticipated that such permanent housing will be affordable within a three-month period.

ii. The individual is able to locate a housing arrangement or can be accommodated in a housing arrangement in lieu of a temporary shelter arrangement.

(1) The determination of the CWA to authorize temporary rental assistance shall be based on conclusions reached as a result of the development of the action plan as set forth at (e) above, which indicates the individual's cooperation to comply with the case management efforts of the CWA and that there is reasonable assurance that:

(A) The individual's anticipated income from other sources, will support the ongoing housing expenses without continued temporary rental assistance: or

(B) The individual shall continue to conduct permanent housing searches to find a more affordable housing arrangement.

iii. Issuance of temporary rental assistance is governed by the following:

(1) Temporary rental assistance shall be provided for those housing arrangements which can be considered of "permanent nature" by the client and/or the community.

(2) The amount of the authorized temporary rental assistance shall take into account all shelter costs including basic utilities.

(3) CWAs shall authorize temporary emergency rental assistance of up to $250.00 per month to supplement an EA recipient's recurring income SSI benefit. CWAs shall ensure, however, that the recipient is able to retain at least 35 percent of his or her monthly income. Amounts in excess of the 35 percent may be authorized when it is determined that the client has special needs which must be documented in the case record. The portion of the client's regular income in excess of 35 percent or a higher approved amount shall represent his or her contribution towards the monthly shelter costs. The recipient shall, as a condition of eligibility for temporary rental assistance, cooperate in making application for other benefits for which he or she has potential entitlement, such as Section 8 housing Certificates and/or the Home Energy Assistance Program, with the assistance of the CWA.

(4) Request for temporary rental assistance in amounts in excess of $250.00 must be approved by DEA prior to issuance.

(5) The CWA shall authorize temporary rental assistance on a case-by-case basis up to a period of one year. In no event shall such temporary rental assistance exceed a total of 12 months when computed in combination with the number of months of back rent and EA temporary rental assistance. Such authorization shall be based on a review of the individual's circumstances and in keeping with the mutually developed service plan.

3. Monthly EA shelter extensions beyond the three-month maximum EA period shall be authorized by the CWA to individual(s) because of any of the following:

i. Due to illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, the individual(s) is unable to perform activities of daily living including participating in permanent shelter searches and/or complying with any of the other provisions of the service plan;

ii. Alternate permanent housing is anticipated to be available or a change in circumstance, for example, other sources of income, is expected within two months subsequent to the extension month which will obviate the need for such shelter extensions; or

iii. The EA recipient has satisfactorily fulfilled his or her permanent housing search responsibilities or was determined unable to make such permanent housing searches and continues to require additional EA shelter assistance.

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4. Upon authorization of EA extensions beyond the five-month maximum period, the CWA shall conduct a face-to-face interview with the EA client to reinstate the provisions of the service plan or to adjust the service plan for a more appropriate plan of action. If, for reasons of "good cause," the CWA determines that the EA client will be unable to fulfill any or all of the provisions of the service plan, such reasons shall be duly noted on the service plan and shall be substantiated by appropriate documentation in the case file.

(h) As authorized in (a) above, when food is not available from any other source, an amount of $4.50 per day per person shall be allowed for a specified number of days only, and in no event beyond such time as other funds become available (for example, next regular benefit payment, support payment, receipt of earnings, receipt of food stamps, and so forth).

1. When it is necessary to provide temporary living arrangements in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the CWA to be inadequate, payment for restaurant meals shall not exceed $7.50 per person per day and shall be allowed until such time as other funds become available (for example, next regular benefit payment, receipt of food stamps, and so forth).

(i) When authorized under (a) above to the individual(s) to purchase minimum essential clothing for physical health and safety, payment may be granted not to exceed the amounts stated below:

Age	Amount
Adult	$86.00
Child: 13 and over	86.00
Child: 5 through 12	48.00
Child: Birth through 4	29.00

(j) When authorized under (a) above, EA for house furnishings which the CWA deems urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximum allowances in the following table.

	Persons					
Number of persons in Eligible Unit:	1	2	3	4	5	6 or more
Kitchen furnishings:						
Range	$130	$130	$130	$130	$130	$160
Refrigerator	200	200	220	220	220	260
Washing Machine			200	200	200	200
Dinette Set	45	45	65	65	85	85*
Kitchen Equipment	50	60	60	72	72	80
Living Room Furnishings:						
Couch and Chair(s)	125	175	175	225	225	225
Table	20	20	20	20	20	20
Lamp(s)	20	20	20	35	35	35
Floor Covering	25	25	25	25	25	25

*Over 6-$12 each additional person

Bedroom and furnishings:		
Box Spring, Mattress, and Frame, per set	$110 Twin	$130 Double
Bunk Beds, per set of 2 (complete)	$135	
Crib with Mattress	$50	
Chest(s) of Drawers		
Bed and Bath Linens and Miscellaneous Furnishings	$36 Per Person	(Not to exceed $200 per family)
Window Coverings	$2.50 Per Window	

(k) The following services shall be performed by agency personnel and must, where appropriate, be provided to all cases granted EA benefits:

1. Information;
2. Referral;
3. Counseling;
4. Assistance in securing shelter, including transportation; and
5. Referral for legal services.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Amendment: N.J.A.C. 10:123-3.4

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-87.
Proposal Number: PRN 1992-53.

Submit comments by March 4, 1992 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10:123-3.4, Amount, increases the amount of personal needs allowance for certain residents of residential health care facilities and boarding houses. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding houses, for the use of Supplemental Security Income or General Public Assistance recipient residents, is being increased by three dollars from $62.00 to $65.00. This increase is based on a proportionate share of the total 1992 Federal cost of living increase in the Federal Supplemental Security Income (SSI) rate, published at 55 Fed. Reg. 55325 (October 25, 1991).

Social Impact

The personal needs allowance increase will have a beneficial impact on residents in that it will allow residents who rely on Supplemental Security Income or General Public Assistance to maintain their spending power in equilibrium with the cost of living. The personal needs allowance may be used at the resident's discretion to purchase clothing and

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incidentals which the residential health care facilities and boarding homes do not provide.

Economic Impact

The approximately 8,000 residents in over 500 New Jersey residential health care facilities and boarding houses who are eligible to receive a personal needs allowance will benefit by having their spending power increased to keep pace with the cost of living. There will be no negative impact on facility owners, since they also will benefit from the Federal cost of living increase in the Supplemental Security Income rate.

Regulatory Flexibility Statement

The proposed amendment will not result in any increase in the amount or type of reporting, recordkeeping or compliance requirements relating to personal needs allowances; it increases the dollar amount of the personal needs allowance for certain residents of residential health care facilities and boarding houses. Fewer than 500 facilities Statewide serve Supplemental Security Income or General Public Assistance residents. The proposed amendments are not expected to have any adverse or additional economic impact on these facilities or on any small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

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

10:123-3.4 Amount

The owner or operator of each residential health care facility or boarding home shall reserve to each Supplemental Security Income recipient residing therein, and the owner or operator of each residential health care facility shall reserve to each General Public Assistance recipient residing therein, a personal needs allowance in the amount of at least [$62.00] **$65.00** per month. No owner or operator or agency thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance.

INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

New Jersey Personal Automobile Insurance Plan

Proposed New Rules: N.J.A.C. 11:3-2

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 17:29D-1.

Proposal Number: PRN 1992-66.

Submit comments by March 4, 1992 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

N.J.S.A. 17:29D-1 provides that the Commissioner of Insurance (Commissioner) may adopt rules establishing a plan for the providing and apportionment of insurance coverage for applicants who are entitled, but are unable to procure such coverage through ordinary methods. This is also reflected in the Fair Automobile Insurance Reform Act of 1990 (see N.J.S.A. 17:33B-22). Currently, persons who are unable to procure personal private passenger automobile insurance through the voluntary market may obtain coverage through the Market Transition Facility (MTF) (which succeeded the New Jersey Automobile Full Insurance Underwriting Association) pursuant to N.J.S.A. 17:33B-11. Insureds who are unable to obtain insurance coverage for commercial vehicles and private passenger automobiles that are ineligible for coverage through the MTF may obtain coverage through the Commercial Automobile Insurance Procedure established pursuant to N.J.S.A. 17:29D-1. Pursuant to N.J.S.A. 17:33B-11(b), the MTF may not issue or renew any policy of automobile insurance after September 30, 1992. It is therefore necessary to provide a residual market mechanism by which insureds who are not eligible to receive coverage in the voluntary market may obtain mandated automobile coverage beginning October 1, 1992.

The Department of Insurance (Department) proposes these new rules in order to provide the regulatory framework for a personal automobile assigned risk plan in accordance with N.J.S.A. 17:29D-1. The rules create a New Jersey Personal Automobile Insurance Plan (PAIP) for the administration and apportionment of personal private passenger automobile insurance for qualified applicants. Generally, the rules provide for the administration of the PAIP by a governing committee and specify the duties of the committee; provide for the establishment of a plan of operation to be submitted by the governing committee for approval by the Commissioner; set forth the minimum coverages that the PAIP must provide to qualified applicants; specify the eligibility requirements for coverage under the PAIP; and provide procedures by which an applicant, insured, producer, servicing carrier, or participant may petition for an appeal to the Commissioner from an adverse decision of the governing committee.

Proposed N.J.A.C. 11:3-2.1 sets forth the purpose and scope of these rules.

Proposed N.J.A.C. 11:3-2.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:3-2.3 provides for the creation of the New Jersey Personal Automobile Insurance Plan.

Proposed N.J.A.C. 11:3-2.4 provides exemptions from the provisions of this subchapter.

Proposed N.J.A.C. 11:3-2.5 provides for the apportionment of the governing committee of the PAIP, and the membership requirements and duties of such committee.

Proposed N.J.A.C. 11:3-2.6 provides for the establishment of the plan of operation of the PAIP, the minimum provisions of the plan, and procedures for approval of the plan and amendments thereto by the Commissioner.

This rule requires that the governing committee submit a proposed plan of operation by March 1, 1992 to permit sufficient time for review and approval by the Commissioner of the plan, so that policies of personal private passenger automobile insurance may be issued through the PAIP beginning October 1, 1992. To ensure implementation of the PAIP by the statutory deadline, the Commissioner has issued an Order (A-92-102) establishing the administrative framework for the PAIP consistent with these proposed rules.

Proposed N.J.A.C. 11:3-2.7 sets forth the minimum coverages the PAIP must provide qualified applicants.

Proposed N.J.A.C. 11:3-2.8 sets forth the minimum eligibility requirements for coverage through the PAIP.

Proposed N.J.A.C. 11:3-2.9 provides for the filing and approval of the PAIP's rating system.

Proposed N.J.A.C. 11:3-2.10 authorizes the PAIP to provide for the payment of premiums through installments.

Proposed N.J.A.C. 11:3-2.11 sets forth procedures for the determination and fulfillment of quotas.

Proposed N.J.A.C. 11:3-2.12 provides procedures for the appeal to the Commissioner from a decision of the governing committee.

Proposed N.J.A.C. 11:3-2.13 sets forth penalties for violation of this subchapter.

Social Impact

The proposed rules establish the regulatory framework by which a plan may be established to provide automobile insurance to qualified applicants who are not eligible to obtain personal private passenger automobile insurance in the voluntary market. The rules will thus benefit insureds not able to obtain coverage in the voluntary market by providing such a residual market mechanism, and will stabilize the insurance market by providing for the equitable apportionment of such risks among all insurers licensed to transact automobile insurance in this State.

Economic Impact

All insurers which are licensed to transact automobile insurance in this State will be required to be a member of the PAIP and bear those costs associated with servicing business assigned to it in accordance with the plan of operation approved by the Commissioner. Insurers, however, that write risks in certain territories designated by the Commissioner will receive one assigned risk credit for every two voluntary risks written in those territories, pursuant to N.J.S.A. 17:29D-1f. Further, an insurer may request a suspension of its obligation to provide insurance to assigned risks if compliance would result in the insurer being or becoming

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in an unsafe or unsound financial condition, pursuant to N.J.S.A. 17:33B-23, 17:33B-24 and N.J.A.C. 11:2-35. The Department believes that these provisions should reduce any undue economic burden imposed by these proposed rules.

Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules may apply to "small businesses" which are insurers authorized to transact private passenger automobile insurance in this State. These small businesses will be required to bear costs associated with servicing business assigned by the PAIP in accordance with these rules and PAIP plan of operation approved by the Commissioner. To the extent the proposed new rules apply to small businesses they may impose a greater impact on small businesses in that they may have to devote proportionately more staff and financial resources to comply with these rules. The proposed new rules exempt insurers with less than 1,000 private passenger automobile in-force exposures as of December 31, 1983 and as of September 30, 1988. An insurer authorized to transact private passenger automobile insurance after September 30, 1988 shall also be exempt until such time as it has 1,000 or more private passenger automobile in-force exposures. The rules further authorize the governing committee to establish procedures in the plan of operation for approval by the Commissioner to permit a company to transfer its obligations to accept assignments to another participating insurer. In addition, the amount of business assigned to an insurer is related to the amount of business written by the insurer in the voluntary market. Accordingly, an insurer that writes a large amount of business in the voluntary market will incur greater expense than an insurer that writes a small amount of business. Further, insurers receive assigned risk credits for voluntary risks written in designated territories. Finally, as previously noted, an insurer may request the suspension of its obligation to provide insurance for automobiles. The Department believes that these provisions should reduce any additional cost which may be imposed on small businesses through implementation of these proposed rules.

Full text of the proposal follows:

SUBCHAPTER 2. NEW JERSEY PERSONAL AUTOMOBILE INSURANCE PLAN

11:3-2.1 Purpose and scope

(a) This subchapter establishes a plan pursuant to N.J.S.A. 17:29D-1 for the providing and apportionment of personal private passenger automobile insurance coverage for automobiles which are owned or operated by qualified applicants.

(b) The purposes of this subchapter are:

1. To provide the coverages described herein, subject to the conditions stated;

2. To establish a procedure for the equitable distribution of risks assigned to insurance companies; and

3. To preserve to the public the benefits of price competition by encouraging maximum use of the voluntary private insurance system.

(c) The provisions of this subchapter shall apply to all insurers admitted to transact private passenger automobile insurance in this State and all qualified applicants for automobile insurance through the PAIP, except as otherwise provided in this subchapter.

11:3-2.2 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 camper type vehicle used for recreational purposes, owned by an individual or by a 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; and solely for the purpose of this plan, a motorcycle as defined in N.J.S.A. 39:1-1. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets this definition, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance or use of automobiles, including, but not limited to, personal injury protection insurance, bodily injury liability insurance, property damage liability insurance, physical damage insurance, and uninsured and underinsured motorist insurance.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person or persons, corporation, association, partnership, company, or other legal entity authorized to transact the business of private passenger automobile insurance in this State, except any residual market mechanism created by or pursuant to statute.

"LAD carrier" means a limited assignment distribution carrier which is a participating insurer which agrees to accept the assignments of another insurer pursuant to this subchapter and procedures set forth in the plan of operation.

"LAD servicing carrier" means a limited assignment distribution servicing carrier which is an insurer or other qualified entity appointed by a participating insurer in accordance with requirements established by regulation by the Commissioner to perform certain duties, such as underwriting and claims processing, but which shall not assume any of the risk of the participating insurer.

"PAIP" means the Personal Automobile Insurance Plan established pursuant to this subchapter.

"Personal private passenger automobile insurance" means a policy of automobile insurance principally used to provide primary insurance on private passenger automobiles which are owned individually, or by a husband and wife, and used for personal, family, or household needs.

11:3-2.3 Creation of the plan

(a) There is created in the State of New Jersey a plan for the administration and apportionment of personal private passenger automobile insurance for qualified applicants to be known as the New Jersey Personal Automobile Insurance Plan, hereafter referred to as "PAIP."

(b) The PAIP shall be administered by a governing committee pursuant to this subchapter and a plan of operation approved by the Commissioner.

(c) The administrative offices of the PAIP shall be located within the State of New Jersey.

11:3-2.4 Exemptions

(a) Every insurer shall participate in the PAIP to the extent required by this subchapter and the plan of operation.

(b) The requirements of this subchapter 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 in-force exposures as of December 31, 1983 and as of September 30, 1988. An insurer authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter until such time as the insurer has 1,000 or more private passenger automobile in-force 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-23 and 24, but only to the extent provided by the terms of the order.

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(c) Insurers that currently insure, or have insured since December 31, 1983, only certain types of private passenger automobiles (for example, mobile homes, recreational vehicles or antique automobiles) shall participate in the PAIP, but only for the particular types of private passenger automobiles currently being insured.

(d) Insurers identified within the provisions of (b) or (c) above shall comply with the following:

1. Such insurers shall file with the Department no later than 60 days from the effective date of this rule a certified statement containing the following information:

i. The insurer's name, including the NAIC group number;

ii. A statement that the insurer is not required to participate in the PAIP or receive assignments through the PAIP;

iii. The factual basis upon which the insurer relied to determine that it is not required to comply fully with this subchapter;

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:

ARM Unit
New Jersey Department of Insurance
20 West State Street
CN-325
Trenton, New Jersey 08625-0325

11:3-2.5 Governing committee

(a) The PAIP shall be administered by a governing committee of 14 members.

1. Eight members shall be salaried employees of an insurer which is a participant in PAIP.

2. Three members shall be licensed producers.

3. Two members shall be public representatives who are knowledgeable about automobile insurance matters but who are not employed by, or otherwise affiliated with, insurers, insurance producers, or other entities of the insurance industry.

4. The Commissioner shall be an ex-officio, non-voting member of the committee. The Commissioner may designate an alternate.

(b) The following organizations shall each nominate two members to represent participants of PAIP:

1. The Alliance of American Insurers;

2. The American Insurance Association; and

3. The National Association of Independent Insurers.

(c) Insurers which are not members of the organizations in (b) above shall nominate two members to represent participants in accordance with a fair method set forth in the plan of operation.

(d) The following organizations shall each nominate one member to represent producers:

1. Independent Insurance Agents of New Jersey;

2. Insurance Brokers Association of New Jersey; and

3. Professional Insurance Agents of New Jersey.

(e) All members shall be appointed by the Commissioner and shall serve for one year or until a successor is appointed. Each member may designate an alternate. In the event the Commissioner fails to appoint a nominee, the organization shall nominate another representative.

(f) All meetings of the governing committee shall be conducted in accordance with this subchapter and the plan of operation.

(g) The governing committee shall have the power and duty to:

1. Develop and submit for approval to the Commissioner:

i. A plan of operation;

ii. A rating system, including rates, rules and forms; and

iii. A plan for a producer certification program, which may not exclude those producers with no affiliation with an insurer.

2. Appoint, conditionally appoint or terminate:

i. A PAIP manager, subject to approval by the Commissioner, which shall be located in this State, to be responsible for the conduct and administrative affairs of the PAIP; and

ii. Other employees, professionals, and contractors required to administer the PAIP.

3. Enter into contracts as are necessary or proper to carry out the provisions of this subchapter;

4. Sue or be sued in the name of the PAIP, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against members. A judgment against the PAIP shall not create any direct liability against the governing committee or its individual members, or the individual participating members of the PAIP. The PAIP shall not be liable for claims made on or pursuant to individual policies issued through the PAIP;

5. Budget expenses, levy assessments, and disburse funds;

6. Investigate complaints and hear appeals from applicants, insureds, producers, LAD carriers, LAD servicing carriers or insurers about any matter pertaining to the proper administration of the PAIP;

7. Arrange for the independent audit of the PAIP each year;

8. Furnish all insurers with:

i. An annual written operations report;

ii. The approved annual budget upon request;

iii. A copy of the annual audit upon request;

iv. A copy of the plan of operation, and all amendments;

v. A copy of all policy forms, rates, rules and manuals upon request; and

vi. A copy of the minutes from all meetings upon request;

9. Audit the records of any insurer relating to the subject matter of PAIP and establish such policies, records, books of account, documents and related material which shall be maintained for the proper administration of PAIP;

10. Indemnify each member of the governing committee and PAIP employees for any and all claims, suits, costs of investigations, cost of defense, and settlements or judgments against them on account of an act or omission in the scope of the member's duties or employee's employment. The PAIP shall refuse to indemnify if its determine that the act or failure to act was due to actual fraud, willful misconduct or actual malice;

11. Appoint from among its members appropriate legal, actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the PAIP, policy and other contract design, and any other function within the authority of the PAIP;

i. The Commissioner may serve as an ex-officio, non-voting member of any committee established pursuant to this section. The Commissioner may designate an alternate; and

12. Perform such other functions as may be necessary and proper to administer PAIP in accordance with this subchapter and the approved plan of operation.

11:3-2.6 Plan of operation

(a) The plan of operation shall provide for the prompt and efficient provision of personal private passenger automobile insurance to qualified applicants. The plan of operation shall provide for, among other matters:

1. The internal organization and proceedings of the governing committee;

2. Standards and procedures for:

i. The appointment, compensation, and termination of producers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;

ii. The appointment, compensation, and termination by insurers of LAD carriers and LAD servicing carriers (consistent with any requirements established by regulation by the Commissioner);

3. Performance standards for insurers, producers, LAD carriers, LAD servicing carriers, the PAIP manager, and other employees, professionals and contractors required to administer the PAIP;

4. A producer certification program, which may not exclude producers with no affiliation with a voluntary market insurer;

5. The extent of coverage to be offered by PAIP to qualified applicants;

6. Procedures to apply for coverage;

7. Commissions to be paid producers;

8. Procedures for cancellation or the nonrenewal of policies;

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9. Methods and means for the collection, investment and disbursement of funds;

10. Development and maintenance of a statistical plan and manuals incorporating that plan, which shall be subject to the prior approval by the Commissioner in the same manner as the plan of operation; and

11. Such other provisions as are deemed necessary by the governing committee for the operation of the PAIP.

(b) The governing committee shall, by March 1, 1992, submit to the Commissioner, for his or her review and approval, a proposed plan of operation. The governing committee may propose an amendment to the plan of operation at any time.

(c) The proposed plan and any amendments shall be submitted to the Commissioner for his or her review and approval. If approved, the Commissioner shall certify approval to the governing committee.

1. If the Commissioner disapproves all or any part of the plan of operation or any amendment, he or she shall return same to the governing committee with a statement that sets forth the reasons for his or her disapproval and may include other recommendations he or she may wish to make.

2. If the governing committee does not submit a plan of operation by March 1, 1992, or a new plan which is acceptable to the Commissioner within 30 days after the disapproval of a proposed plan, the Commissioner may promulgate a plan of operation and certify same to the governing committee.

3. The Commissioner may review the plan of operation at any time and may propose amendments to the governing committee. If the governing committee does not adopt amendments acceptable to the Commissioner within 30 days, the Commission may certify amendments and their effective date to the governing committee. For good cause shown, the Commissioner may certify proposed amendments two days after copies of the proposal are provided to the governing committee.

11:3-2.7 Coverage

(a) PAIP shall provide to qualified applicants bodily injury liability, property damage liability, personal injury protection, uninsured/underinsured motorists and physical damage coverages at the minimum levels required by law, including all options related thereto.

(b) PAIP shall provide a variety of increased limits for the above coverages up to the following:

1. $250,000 per person/$500,000 per accident for bodily injury liability coverage, and $100,000 for property damage liability coverage, or a combined single limit of $500,000 for bodily injury liability and property damage liability coverage;

2. $250,000 per person/$500,000 per accident for uninsured/underinsured motorists bodily injury liability coverage and $100,000 for uninsured/underinsured motorists property damage liability coverage, or a combined single limit of $500,000 for uninsured/underinsured bodily injury liability and property damage liability coverages.

(c) The PAIP shall provide additional personal injury protection coverages as set forth in N.J.S.A. 39:6A-10.

(d) The PAIP shall provide physical damage coverages with no less than the minimum deductibles required pursuant to N.J.S.A. 17:29A-39. PAIP shall offer higher deductibles as provided by N.J.A.C. 11:3-13.3.

1. All physical damage coverages shall be on an "actual cash value" basis, less deductible, subject to a maximum loss payable of $30,000.

2. For purposes of this section, "actual cash value" means the replacement cost of the automobile, less physical depreciation.

11:3-2.8 Eligibility

(a) The PAIP shall not provide coverage to an eligible person as defined in N.J.S.A. 17:33B-13 and N.J.A.C. 11:3-34.

(b) PAIP shall provide coverage to all qualified applicants. For purposes of this subchapter, a "qualified applicant" means:

1. A person who is not an "eligible person" as defined in N.J.A.C. 11:3-34.2; and

2. A person domiciled in New Jersey, who is an owner of an automobile registered and principally garaged in this State or will be registered and principally garaged in this State within 60 days.

(c) "Qualified applicant" shall also include:

1. A member of the United States military forces, if otherwise eligible for insurance coverage insured by the PAIP, with respect to an automobile if, at the time application is made, the applicant is either a nonresident who is stationed in this State, whose automobile is registered in another State and garaged in this State; or a resident who is stationed in another state, whose automobile is registered in this State and garaged in another state; and

2. A resident student attending a school in another state who holds a valid New Jersey driver's license, whose automobile is registered in this State and garaged in another state.

(d) No person shall, however, be deemed a qualified applicant, if the principal operator of the automobile to be insured does not hold a driver's license which is valid in this State; or if a regular operator of the automobile other than the principal operator does not hold such a license; or if timely payment of premium is not tendered; or if the principal operator of the automobile does not furnish the information necessary to effect insurance; or if such person rents or leases automobiles to others which are used for commercial purposes.

(e) As a prerequisite to consideration for assignment under the PAIP, the applicant must certify, in the prescribed application form approved by the Commissioner, that he or she has attempted, within 60 days prior to the date of application, to obtain automobile insurance in the State and that he or she is a qualified applicant as set forth in (b), (c) and (d) above. An applicant so certifying shall be considered for assignment upon making application in good faith to the PAIP. An application shall be considered in good faith if he or she reports all information of a material nature and does not willfully make incorrect or misleading statements in the prescribed application form approved by the Commissioner.

(f) The governing committee shall establish procedures in the plan of operation with respect to documentation to be provided by the applicant and producer showing the reasons for termination of previous insurance coverage, including, but not limited to:

1. Previous insurance company name and policy number;
2. Reasons for termination and effective date of termination;
3. Claim history for the preceding three years;
4. Driving history for each operator; and
5. Copies of vehicle registration(s).

(g) The governing committee shall establish procedures for the cancellation or nonrenewal of policies to persons who are not or are no longer qualified applicants.

11:3-2.9 Rates and policy forms

(a) The governing committee shall file for prior approval by the Commissioner, a rating system including rates, rules and forms which shall be used by insurers writing risks through the PAIP. Proceedings to review rate filings shall be conducted pursuant to N.J.S.A. 17:29A-1 et seq. All rates shall reflect the experience of the risks insured by the PAIP and shall not be excessive, inadequate or unfairly discriminatory.

1. Rates established for liability insurance coverages with limits in excess of $50,000 per person and $100,000 per accident for bodily injury or death and $25,000 for property damage, or in lieu thereof, $100,000 for a combined single limit of liability, shall be experience rated with respect to the rate applicable to the coverage in excess of those limits;

2. Rates established for collision and comprehensive coverages on automobiles with a value of $25,000 or more at the time those coverages are issued or renewed shall be experience rated, and for automobiles with a value of more than $15,000, but less than $25,000 at the time those coverages are issued or renewed, that part of the rate applicable to the value between $15,000 and $25,000 shall be experience rated.

(b) For purposes of this subchapter, "experience rated" means that rates for liability coverages with limits in excess of the amount specified in (a)1 above, or for collision and comprehensive coverages for automobiles with a value over the amount specified in (a)2 above, shall reflect the experience of those risks insured by the PAIP with liability coverages with limits, and collision and comprehensive coverages on automobiles valued over, the amounts specified in (a)1

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and (a)2 above. "Experience rated" shall not be construed to mean retrospectively rated.

11:3-2.10 Installment payment option

(a) The PAIP shall provide for an installment premium payment option in accordance with procedures established by the governing committee in the plan of operation. With respect to the installment premium payment option, the plan of operation shall specify:

1. The minimum initial deposit required, which shall be no more than 30 percent of the estimated total premium;

2. The schedule for the payment of premiums on an installment basis which shall provide for installment payments over a period of not less than nine months;

3. Installment charges;

4. The minimum "per installment" amounts; and

5. Any other procedures deemed necessary by the governing committee.

(b) Additional premium resulting from changes to the policy shall be spread over the remaining installments, if any, or may be billed immediately as a separate transaction.

(c) Return premium resulting from changes to the policy shall be used to reduce the outstanding balance. If the outstanding balance is eliminated, any amount remaining shall be returned immediately. If an outstanding balance remains, the number and amounts of the remaining installments shall be adjusted accordingly, except when the return amount is less than $20.00, in which event it may be treated as a separate transaction.

11:3-2.11 Determination and fulfillment of quotas

(a) The governing committee shall establish procedures in the plan of operation to distribute risks eligible for coverage to insurers on an equitable basis based on the proportion that the insurer's share of the voluntary market for personal private automobile insurance (including the insurer's apportionment share for the depopulation of the Market Transition Facility pursuant to N.J.S.A. 17:33B-11c(5)) relates to the Statewide total of the voluntary market for personal private passenger automobile insurance in the State.

1. The PAIP shall not provide insurance coverage for more than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile insurance market in this State.

2. The PAIP shall cease acceptance of applications for new policies upon certification by the Commissioner that the Plan has reached or exceeded 10 percent of the private passenger automobile non-fleet exposures.

3. The PAIP shall resume acceptance of applications for new policies upon certification by the Commissioner that the PAIP is insuring less than 10 percent of the aggregate number of private passenger automobile non-fleet exposures being written in the total private passenger automobile market in the State.

4. Each insurer shall receive credit against its respective portion of assigned risks for private passenger automobile risks written voluntarily in the State that are garaged in those urban territories designated by the Commissioner. Such credit shall be given in the amount of one assigned risk credit for every two voluntary risks written in those designated territories. Each insurer shall also receive one assigned risk credit for each risk which is not an eligible person written in accordance with the insurer's approved rating system, regardless of the territory in which the risk is located.

5. No insurer whose surplus as regards policyholders is less than $1,500,000, as reported on page three of the most recent statutory annual statement, shall be assigned a risk requesting or required by law to carry limits of liability in excess of 50/100/10.

(b) An insurer that issues only policies that provide physical damage coverage shall not be subject to assignments from the PAIP, but shall be entitled or obligated, as the case may be, to receive or pay a cash settlement of its obligation, in lieu of receiving assignments, for the current year, in accordance with procedures established by the governing committee in the plan of operation.

(c) Each insurer or statistical agencies designated by such insurers shall report to the PAIP manager all data necessary to comply with the distribution procedures. Each insurer shall permit its statistical agent to release such data to the PAIP manager and shall permit its statistical agent to furnish the PAIP manager with statements of its PAIP experience.

(d) There shall be no exceptions to the type or class of risks assigned to an insurer other than as provided in this subchapter nor shall there be any agreement with an insurer to refrain from assigning risks in any territory or area of the State.

(e) The PAIP shall not suspend assignments to an insurer for any period of time, for any reason, other than a suspension of insurer obligations granted by the Commissioner pursuant to N.J.S.A. 17:33B-23, 17:33B-24 and N.J.A.C. 11:2-35. The PAIP shall promptly notify all insureds of such action.

(f) If an insurer is ordered or permitted to discontinue writing automobile insurance in this State in accordance with a plan of orderly withdrawal approved pursuant to N.J.A.C. 11:2-29, or other Order of the Commissioner, or Order by a court of competent jurisdiction, the insurer's obligations to pay assessments, receive assignments and run-off existing business shall be pursuant to such Order of the Commissioner or Order of a court of competent jurisdiction.

(g) In the event an insurer is merged with another insurer, there is a consolidation of insurers, or an insurer acquires another insurer's book of business, the continuing insurer shall receive the assignments and assessments of the insurer merged, consolidated, or acquired until the quota of such merged, consolidated, or acquired insurer, as established by its writings prior to such merger, consolidation, or acquisition has been filled; provided, however, the continuing insurer may be relieved from such obligations if another insurer has agreed, in a manner satisfactory to the governing committee, to assume such obligations.

(h) Groups of insurers under the same ownership and management shall be treated as a single insurer. Groups of insurers under either the same ownership or management, but not both, may elect to be treated either separately or as a single company.

(i) The governing committee shall establish procedures in the plan of operation permitting an insurer by mutual agreement to transfer its obligations to accept assignments to another insurer (to be known as a LAD carrier). All agreements and LAD carriers shall be separately approved by the Commissioner. With respect to the transfer of an insurer's obligations to accept assignments to a LAD carrier, the plan shall address the following:

1. Eligibility criteria for an insurer to act as a LAD carrier and accept additional assignments;

2. The maximum number of additional assignments a LAD carrier may assume;

3. Minimum provisions for contracts between insurers and LAD carriers, including the minimum time duration for such contracts;

4. The parameters for fees to be paid to LAD carriers by the participating insurer for the assumption of the insurer's assigned risk quota;

5. Procedures by which the allocation of assignments to LAD carriers are adjusted to reflect additional assignments as a result of entering into a contract to assume additional assigned risks; and

6. Any other procedures deemed necessary to provide for a LAD carrier distribution system.

(j) An insurer which seeks to appoint an insurer or other entity to perform certain duties of the participating insurer, such as underwriting and claims processing, but which shall not assume any of the risk of the participating insurer (to be known as a LAD servicing carrier) may appoint such an insurer or entity in accordance with requirements established by regulation by the Commissioner.

11:3-2.12 Right to petition for appeal to the Commissioner

(a) An applicant, insured, producer, LAD carrier, LAD servicing carrier, or insurer may petition for appeal to the Commissioner from an adverse decision of the governing committee by filing a request in writing within 20 days of the date of receipt of the written decision of the governing committee.

1. The written request to appeal shall set forth the facts upon which it is based and include a copy of the written decision of the governing committee.

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2. The Commissioner shall notify the petitioner and the governing committee within 30 days whether the request to appeal shall be granted.

3. Notice from the Commissioner that an appeal has been granted shall also provide a statement about whether the action of the governing committee has been stayed pending the disposition of the appeal.

(b) An appeal to the Commissioner granted pursuant to this rule shall be conducted in accordance with applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:3-2.13 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law.

(a)

DIVISION OF PROPERTY/LIABILITY

Insurers Required to Provide Automobile Insurance Coverage to Eligible Persons

Reproposed New Rules: N.J.A.C. 11:3-40

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:33B-1 et seq.; 17:33B-15.

Proposal Number: PRN 1992-67.

Submit comments by March 4, 1992 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These reproposed rules at N.J.A.C. 11:3-40 appeared as PRN 1991-627 in the New Jersey Register on December 16, 1991, at 23 N.J.R. 3736(a), which invited comments until January 15, 1992. No comments have thus far been received from the public addressing this proposal; therefore, none are addressed in this reproposal. These rules are now being reproposed to ensure that those insurers actually affected by the rules are those same insurers to whom the Department has assigned mandatory depopulation obligations from the New Jersey Automobile Full Insurance Underwriting Association in accordance with N.J.S.A. 17:30E-14(a) beginning September 30, 1988. Accordingly, this reproposal amends N.J.A.C. 11:3-40.3(b)3 in order to achieve such consistency.

Section 27 of the Fair Automobile Insurance Reform Act of 1990 (FAIR Act) (N.J.S.A. 17:33B-15) states that beginning April 1, 1992, every insurer, in accordance with rating plans filed pursuant to N.J.S.A. 17:29A-45 will be required to provide private passenger automobile insurance to all eligible persons (N.J.S.A. 17:33B-15(a)). That section further states that no private passenger automobile insurer shall refuse to insure, renew or limit coverage available for automobile insurance to eligible persons meeting the insurer's underwriting rules. (N.J.S.A. 17:33B-15(b)).

Insurance companies authorized or admitted to transact insurance business in New Jersey are authorized by their certificates of authority to transact certain kinds of insurance (N.J.S.A. 17:17-10). Not all insurers actually write all those kinds of insurance for which they are authorized. For example, certain insurers may be authorized to write private passenger automobile coverage, but have never elected to do so in New Jersey. Moreover, some kinds of insurance may be written under either personal or commercial lines rating systems. For instance, insurers may write private passenger automobile insurance under a personal lines policy, a commercial lines policy, or both.

Section 27 of the FAIR Act on its face appears to require that all insurers so licensed provide private passenger automobile insurance to eligible persons beginning April 1, 1992, notwithstanding that some insurers have never written such policies and others may only write private passenger automobile insurance under a commercial lines rating system. Those insurers not currently writing, or never having written, personal private passenger automobile insurance may be uncertain as to whether they will now be required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15). The Department of Insurance (Department) recognizes the ambiguity inherent in the language of Section 27 of the FAIR Act. These proposed rules (N.J.A.C. 11:3-40) address this issue by identifying those insurers required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

The Department interprets Section 27 of the FAIR Act to apply only to insurers that actually write private passenger automobile coverage, or have done so in the recent past, pursuant to a personal lines rating system. Nothing in the statute itself nor in its legislative history addresses either the difficulties or benefits of requiring insurers that have never actually offered personal automobile insurance to now offer it. Rather, the Legislative Fiscal Estimate to Assembly Bill No. 1, which became the FAIR Act, stated that "[a]utomobile insurers would be required to insure 'good' drivers in the voluntary market." The Department construes this language to mean insurers that actually offer or have offered automobile insurance, not those who are authorized to provide automobile insurance but have never done so. Furthermore, the Assembly Appropriations Committee Statement to Assembly Bill No. 1 stated that "[t]he bill contains several provisions modeled after the Michigan Essential Insurance Act which require automobile insurers to provide insurance in the voluntary market to 'good drivers' . . ." Again, the term "automobile insurers" is used, which the Department interprets to mean those who actually insure automobiles.

In further support of its view that Section 27 of the FAIR Act was intended to apply only to personal private passenger automobile insurers, the Department notes that the rating plans referred to in Section 27 and set forth at N.J.S.A. 17:29A-45 concern only personal lines automobile insurance. N.J.S.A. 17:29A-1 et seq. in its entirety applies only to personal lines insurance. Since 1982, commercial lines have been regulated in accordance with N.J.S.A. 17:29AA-1 et seq. (the Commercial Lines Deregulation Act). Additionally, the definition of "eligible persons" as that term is used in Section 27 could only include individuals personally owning and/or registering automobiles within the State. Accordingly, the Department concludes that Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies only to insurance of private passenger automobiles under a personal lines rating system. Therefore, these proposed rules provide that only those insurers transacting the business of private passenger automobile insurance under a personal lines rating system since December 31, 1983, are required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

December 31, 1983 was selected by the Department as the cutoff date for insurers of private passenger automobiles under a personal lines rating system. The New Jersey Automobile Full Insurance Underwriting Association (Association) became operative on January 1, 1984. N.J.S.A. 17:30E-4. That date is further referenced in N.J.S.A. 17:30E-14a (as amended by P.L. 1988, c.119 Section 25, which langauge was left undisturbed by the FAIR Act amendments), which requires consideration of a company's increase or decrease in volume of private passenger automobile insurance business since January 1, 1984 in the "equitable apportionment procedure" whereby Association insureds are assigned to member insurers. The Department, in turn, utilized data as of December 31, 1983, in determining the amount of additional business that the companies would be required to return to the voluntary market from the Association beginning January 1, 1984. Therefore, it is reasonable to use the December 31, 1983 date to identify insurers required to provide private passenger automobile insurance to "eligibile persons" under Section 27 of the FAIR Act (N.J.S.A. 17:33B-15).

However, these proposed rules exempt from compliance with Section 27 of the FAIR Act those insurers with less than 1,000 private passenger automobile inforce exposures as of December 31, 1983 and as of September 30, 1988. These insurers represent only a handful of the total number of private passenger automobile insurers in the State. Moreover, their combined market presence is only about one-tenth of one percent of the total State private passenger automobile insurance market. To exempt these insurers with virtually no market presence would reasonably alleviate them from the burden of bearing the administrative and other expenses that would be involved in complying with Section 27 of the FAIR Act. Additionally, this exemption is not inconsistent with the statutory requirement that every insurer provide coverage to all eligible persons. Since the FAIR Act was intended to apply only to those insurers actually writing private passenger coverage, it is not contrary to that intent to exempt from compliance with Section 27 of the Act only those

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insurers with a clearly negligible share of the private passenger automobile insurance market.

The correlation between the automobile insurers in the New Jersey market at the time of the Association's establishment and the mandate to insure "eligible persons" under Section 27 of the FAIR Act is further reasonable in light of the history of the Association. Throughout its existence, automobile insurers refused to insure many drivers in the voluntary market, such that over one-half of New Jersey's drivers were in the Association, a large percentage of whom had never had an accident or a serious traffic violation (Governor's Reconsideration and Recommendation Statement to Senate No. 2637—P.L. 1988, c.119, at N.J.S.A. 17:28-1.4). It therefore makes sense that those insurers who collectively benefited from dumping risks into the Association should be the same insurers who are now required to insure "eligible persons" under Section 27 of the FAIR Act.

Of course, those insurers required to insure "eligible persons" under Section 27 of the FAIR Act would not be bound to provide automobile insurance in New Jersey indefinitely. Certain insurers may seek to withdraw from the market pursuant to N.J.S.A. 17:17-10 and 17:33B-30, as amended by Sections 71 (N.J.S.A. 17:17-10) and 72 (N.J.S.A. 17:33B-30) of the FAIR Act. Upon the Department's close examination of the individual insurer and the overall market, the general duty to insure all eligible persons may be modified or superseded in accordance with an approved plan of orderly withdrawal. Moreover, insurers determined to be in an unsafe or unsound financial condition and operating pursuant to an order issued by the Commissioner under N.J.S.A. 17:33B-19 and 20 may be exempt from compliance with Section 27 to the extent provided by the order.

These proposed rules exempt entirely certain insurers from complying with Section 27 of the FAIR Act. Insurers that have not issued or renewed any private passenger automobile policies since December 31, 1983, are exempt, as are insurers that have issued or renewed policies only in accordance with a commercial lines rating system since December 31, 1983. Insurers with less than 1,000 private passenger automobile inforce exposures as of December 31, 1983 and as of September 30, 1988, are additionally exempt from compliance.

These proposed rules require only limited compliance with Section 27 of the FAIR Act by some insurers. Insurers that write limited coverage only (for example, physical damage only), as well as those that insure only specialty type private passenger vehicles (for example, mobile homes, recreational vehicles or antique cars), are required under these rules to insure all "eligible persons" only for the types coverage and vehicle they currently insure. Certain insurers may be required to comply with Section 27, but do not have a current rating system on file with the Department. In that case, the insurer would be required to file a rating system with the Department within 90 days of the effective date of these rules. The Department intends that these rules become operative on April 1, 1992.

Social Impact

These proposed rules, by clarifying those insurers to whom Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies, will have a positive social impact on all insurers insofar as they adopt a reasonable and fair system for determining those insurers to whom Section 27 of the FAIR Act applies. Only those insurers actively engaged in the business of personal lines private passenger automobile insurance in New Jersey will reasonably be required to comply with the requirements of Section 27 of the FAIR Act. Insurers merely authorized to transact such insurance, but who have never actually done so, will not now unfairly be required to write such policies.

Economic Impact

These proposed rules will have a positive economic impact on those insurers not required under Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) to provide personal lines private passenger automobile insurance to eligible persons beginning April 1, 1992, insofar as they will not now be burdened with administrative and other costs involved in providing personal private passenger automobile insurance if they have not written such policies in the past. However, those insurers not required to comply with Section 27 will be required by these proposed rules to file with the Department a certified statement that they are not subject to the requirements of Section 27 of the FAIR Act and setting forth the factual and legal basis for their exemption from those requirements. As a result, those insurers will be subject to the minimal, one-time costs involved in preparing and filing the certified statement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed rules will not impose any reporting, recordkeeping or other compliance requirements on small businesses. There may be insurers to whom Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) applies that are, in fact, small businesses. However, these proposed rules will not impose any further reporting, recordkeeping or other compliance requirements on those insurers than those to which they are presently subject as private passenger automobile insurers.

A minimal, one-time cost may be incurred by those small business insurers not required to comply with Section 27 of the FAIR Act (N.J.S.A. 17:33B-15) insofar as they will be required by these proposed rules to file with the Department a certified statement indicating that they are not subject to the requirements of Section 27 of the FAIR Act and setting forth the factual and legal basis for their exemption. This minimum-cost requirement is necessary for the proper monitoring of insurers by the Department, and no lesser requirement for small businesses can be imposed.

Full text of the proposed new rules follows:

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 purposes, and written in accordance with a rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

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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 authorized to transact private passenger automobile insurance after September 30, 1988 shall be exempt from this subchapter 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 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 automobile 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 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 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 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 imposing the penalties set forth at (a) or (b) above.

(a)

ACTUARIAL SERVICES

Minimum Standards for Individual Health Insurance

Proposed Amendment: N.J.A.C. 11:4-16.5

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17B:26-1 et seq.

Proposal Number: PRN 1992-68.

Submit comments by March 4, 1992 to:

Verice M. Mason, Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

It has been the long-standing public policy of this State to prohibit the issue and delivery of specified disease policies in this State. This policy of prohibition is based on the belief that specified disease policies generally are not in the public interest; and serve no public purpose. By their very nature, specified disease policies provide benefits in only very limited situations, and typically impose significant additional restrictions. Most individuals are better served by the purchase of a more comprehensive health policy which covers most conditions and illnesses than by the purchase of one or more specified disease policies for which they probably never will have any use, and hence, will collect no benefits. (The insurers' underwriting guidelines typically are such that those people most likely to benefit from the purchase of a specified disease policy are not eligible for coverage, or are subject to significant preexisting condition provisions, large deductibles, curtailed benefit maximums or a combination of such additional restrictions.)

Recently, however, the Department of Insurance ("Department") has been persuaded to reconsider this position with respect to riders for disability income benefits which become part of policies or contracts which otherwise meet the requirements of the laws of this State, specifically policies in which the primary purpose is indemnification for professional liability, such as medical malpractice. Although the Department still has reservations that such disability income benefits riders provide any significant benefit or enhance the public policy goals of this State, when applied to other areas, the Department acknowledges that certain characteristics of disability income benefits in connection with professional liability coverages may make the cost of the product more worthwhile for certain individuals and could serve a broader social purpose. For instance, disability income benefits tend not to duplicate benefits which are available under policies providing hospital, medical and/or major medical benefits. Further, disability income benefits typically are payable upon different contingencies than is true of most individual

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health insurance policies. Thus, a disability income benefits rider, even if restricted to a specified disease or condition, such as HIV infection, may represent a reasonable and cost-effective supplemental benefits package for some people.

For these reasons, the Department is proposing to allow specified disease disability income benefits riders under restricted conditions. As proposed, such riders may be offered only to persons engaged in occupations involving practices which facilitate transmittance of the specified disease from one person to another. This effectively not only limits the individuals to whom such riders may be offered, but also the diseases for which such riders may be offered. That is, the specified disease must be transmittable from human to human, and the person's occupation must be such that certain practices inherent in the job tend to facilitate transmittance of the disease agent to and from the insured person, even if such transmittance is rare in documentation.

Additionally, the rider must be designed so that the definition of disability is contingent upon no more restrictive a condition than diagnosis of the disease. This should clarify that, in addition to providing some financial security for the insured, the underlying goal is to reduce professional liability and decrease further spread of the disease, by encouraging insureds diagnosed as having the specified disease to refrain from practicing their occupation until such time as their disease is cured, or the risk of transmittance is negated, even though the insured may not be so physically incapacitated as to be unable to continue working in their occupation. These restrictions, the Department believes, serve to make specified disease disability income benefits riders more meaningful in the benefits to be provided, and creates in them a public policy goal which heretofore had been lacking.

Persons interested in disability income benefits riders are reminded that such riders may only be issued by entities authorized to do the business of health insurance in New Jersey. Furthermore, such riders are subject to all other laws of this State applicable to individual health insurance policies, including, for instance, from filing in accordance with N.J.S.A. 17B:26-1, all of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., and rules promulgated thereunder, including rules on advertising, and the minimum standards for disability income policies set forth throughout N.J.A.C. 11:4-16.

Social Impact

No significant social impact is expected initially, but over time new insurance products will become available in the marketplace, adding to consumer choice.

Economic Impact

The economic impact for insurers should be modestly favorable, inasmuch as the specified disease policy design and disability income design separately represent revenue enhancing products, despite the typically low premium associated with these products. (Low additional premiums should be favorable to consumers.) The Department anticipates that the costs which may be associated with the review of the disability income benefits rider forms, rates and loss ratios will be within available staffing and resource levels, and will not be adverse.

Regulatory Flexibility Statement

The proposed amendment does not impose additional recordkeeping, reporting or compliance requirements. Further, the Department does not believe that any insurer which may be affected by the proposed amendment is a "small business" as that term is defined at N.J.S.A. 52:14B-16 et seq. Therefore, the Department does not believe that a regulatory flexibility analysis is required for this proposed amendment.

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

SUBCHAPTER 16. MINIMUM STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

11:4-16.5 Prohibited policy provisions

(a) No policy shall provide coverage for specified disease(s) or for procedures or treatments which are limited to specified diseases**, except that this provision shall not apply to riders for disability income benefits meeting the requirements specified below and otherwise meeting the requirements of this subchapter when such riders become a part of a policy issued in compliance with the laws of this State, other than a policy for life insurance, annuity, or such similar policies. This exception shall not exempt disability income benefits riders or insurers from compliance with other laws of this State applicable to individual health insurance policies including the provisions of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq. Such disability income benefits riders shall:**

1. Be provided only with respect to persons engaged in occupations involving practices which may transmit the specified disease from one person to another; and

2. Provide that persons covered under the disability income benefits rider shall be determined to be disabled under the rider by virtue of no more than diagnosis of the disease, or diagnosis of the disease and continuance of that diagnosis, and adherence to protocols specified for the disease, if any, rather than inability to engage in their occupation.

(b)-(q) (No change.)

LAW AND PUBLIC SAFETY

(a)

BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Telecommunications Wiring Exemption

Proposed Amendment: N.J.A.C. 13:31-1.11
Proposed New Rule: N.J.A.C. 13:31-1.17

Authorized By: Board of Examiners of Electrical Contractors, Christine DeGregorio, Executive Director.

Authority: N.J.S.A. 45:5A-6 and 45:5A-18.

Proposal Number: PRN 1992-64.

A **public hearing** concerning the proposal will be held on Wednesday, March 11, 1992 at 10:00 A.M. at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625.

Persons wishing to speak at this hearing should provide written notice to the Board, at the address set forth below, no later than March 2, 1992. So that the Board may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data, the notice should include a synopsis of the proposed statement and should specify the numerical section of the regulation to which the statement relates.

Submit written comments by March 11, 1992 to:

Christine DeGregorio, Executive Director
Board of Examiners of Electrical Contractors
Post Office Box 45006
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Electrical Contractors Licensing Act of 1962 provides, in part, that "no person shall enter into, engage in or work in business as an electrical contractor" unless such person holds a business permit and at least one supervisory employee engaged in the business is licensed by the New Jersey Board of Examiners of Electrical Contractors. N.J.S.A. 45:5A-9(a). The Act also provides that certain types of electrical work are exempt from the business permit requirement and gives the Board the authority to exempt other electrical activities warranting exclusion from the licensing requirement. Pursuant to this section of the Act, N.J.S.A. 45:5A-18, the Board is proposing a new rule, N.J.A.C. 13:31-1.17, that will establish a limited exemption from the business permit requirement for qualified businesses engaged in telecommunications wiring; that is, wiring which connects telephone and related telecommunications equipment to telephone company lines.

The Board is also proposing to amend its fee schedule, N.J.A.C. 13:31-1.11, to provide for a $120.00 fee for processing the required application and issuing an identification card to entities which qualify as exempt. There is no requirement to renew this exemption; however, an exempt entity must report to the Board any change in name or form of ownership.

A Board subcommittee met on May 23, 1990 and June 27, 1990 with representatives of various trade associations, unions and telecommunications businesses in order to discuss issues raised in petitions for exemption the Board had received from AT&T and other businesses. Among those attending the meetings were representatives of the International Brotherhood of Electrical Workers, the New Jersey Council of Electrical

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Contractors, M.C.S. Communications Systems, Inc., the Northern and Southern New Jersey Chapters of the National Electrical Contractors Association and the Department of Community Affairs.

Based upon the report of the subcommittee and upon further deliberations, the Board determined to establish a limited telecommunications wiring exemption for qualified businesses. In the Board's opinion, such an exemption is warranted because telecommunications wiring is similar to other exempt work described in N.J.S.A. 45:5A-18. Although the work does not fall within the exemption for work with a potential of less than 10 volts (N.J.S.A. 45:5A-18(j)), telecommunications wiring is of relatively low voltage and is highly specialized, thus not requiring the full expertise of the licensed contractor.

For the protection of the consumer, the rule has been carefully drafted to provide Board oversight of exempt businesses. A business applying for an exemption must certify that it is familiar with Federal and State regulations concerning telecommunications wiring, including the requirement that all the work be inspected, and must also certify that the business will not perform electrical wiring work other than that permitted by the limited exemption. As previously stated, any change in name or ownership of the exempt entity must be reported to the Board. The Board may revoke an exemption if the exempt entity engages in the unlicensed practice of electrical contracting involving non-exempt electrical work or if the exempt business has a history of failing to pass local inspections or to obtain required permits, or for other good cause.

Social Impact

This proposed new rule will enable qualified businesses to obtain a limited telecommunications wiring exemption. The Board estimates that several hundred businesses may qualify for this exemption. The proposed rule will enable these businesses to obtain the permits required to engage in telecommunications wiring and will provide businesses so engaged with clear knowledge of their responsibilities under existing Federal and State regulations. The consumer will benefit from the assurance that the work will be performed by qualified businesses which are familiar with and will comply with applicable standards of safe and competent work as set by State and Federal regulations.

Economic Impact

Other than the $120.00 fee for processing the application and issuing an identification card, the proposed new rule imposes no new expenses upon businesses seeking a limited telecommunications exemption. The rule enables these businesses to operate lawfully without obtaining a business permit from the Board, thus avoiding the expenses associated with the licensing and business permit requirements for non-exempt electrical contracting businesses. No economic impact upon the consumer is expected.

Regulatory Flexibility Analysis

The proposed new rule will apply to an estimated several hundred businesses presently engaged in telecommunications wiring. With a few exceptions, most of these businesses would be considered small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements include filing of an application for limited exemption. The application must contain specific certifications concerning the applicant's knowledge of pertinent Federal and State regulations. The Board may also require a personal interview with the applicant. Reporting requirements include the requirement that the exempt business notify the Board in writing within 10 days of any address change. The Board must also be notified of any change in the business name, ownership or form of ownership of the business. Professional services will not be needed in order to comply with the rule.

There are no initial capital costs. The cost of compliance (the application fee) is, as a business expense, minimal. The rule in fact provides a less expensive alternative to full licensure as an electrical contractor for businesses wishing to limit their electrical work to telecommuications wiring. Therefore, no exemption has been provided for small businesses.

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

13:31-1.11 Fee Schedule

(a) The following fees shall be charged by the Board:

1.-5. (No change.)

6. Telecommunications wiring exemption—application fee and issuance of identification card.. $120.00

13:13-1.17 Limited telecommunications wiring exemption

(a) Pursuant to N.J.S.A. 45:5A-18, the Board may grant an exemption from the license and business permit requirements of N.J.S.A. 45:5A-9(a) to a business engaged in telecommunications wiring.

(b) For purposes of this subsection, "telecommunications wiring" means wiring inside a building for voice and/or data transmission at voltage(s) compatible with the system being installed and connected to an FCC recognized communication network.

(c) An applicant for a telecommunications wiring exemption shall provide the following to the Board:

1. The full name and address of the applicant together with the nature of the business entity (for example, corporation, partnership or individual proprietorship) and the names and addresses of the owners, partners and/or officers of the entity;

2. A certification that the applicant is familiar with and is in full compliance with Part 68 of the Federal Communications Commission regulations (47 C.F.R. section 68.1 et seq.) concerning installation of telecommunications wiring and any other applicable Federal regulations;

3. A certification that the applicant is familiar with and will comply with the applicable National Electrical Code provisions and the regulations of the New Jersey Department of Community Affairs and that the applicant will be responsible for obtaining any required local permits and inspections for all work;

4. A certification that the applicant shall not perform the following work unless or until an electrical contractor's business permit is obtained from the Board:

i. Power wiring/branch circuit wiring;

ii. Telecommunications wiring from telecommunications equipment to power operated controlled equipment; or

iii. Installation of work in hazardous/classified areas as defined by Article 500 of the National Electrical Code. Classified areas are those in which hazardous liquids, vapors, gases, dusts and fiber are normally present (Division 1 locations) or may be present due to maintenance or equipment malfunction (Division 2 locations); and

5. A certification that the business shall not subcontract telecommunications wiring work to a person or business entity not having a business permit or a telecommunications wiring exemption issued by the Board.

(d) The application shall be accompanied by a processing fee as set forth in N.J.A.C. 13:31-1.11.

(e) The Board may require a personal interview with the applicant.

(f) If the applicant meets Board requirements for exemption set forth in this subsection, the Board shall issue a letter and an identification card designating the business as exempt.

(g) The exempt entity shall notify the Board in writing of any change of address within 10 days of the address change.

(h) The exempt entity shall notify the Board in writing of any change in name, ownership or form of ownership within 30 days of such change.

(i) After an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., a telecommunications wiring exemption may be revoked on a showing that the exempt entity has engaged in the unlicensed practice of electrical contracting involving non-exempt electrical work; or that the exempt entity has a history of failure to pass local inspections or to obtain required permits; or for any reason which may serve as a basis to suspend, revoke or deny a license to engage in electrical contracting as more particularly set forth in N.J.S.A. 45:1-21 et seq.

(j) Nothing in this section shall preclude a licensed electrical contractor from performing telecommunications wiring.

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(a)

DIVISION OF CONSUMER AFFAIRS

Advisory Board of Public Movers and Warehousemen Moving Vehicle Requirement

Proposed Amendments: N.J.A.C. 13:44D-1.1, 2.1 and 4.6

Authorized By: Emma N. Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 45:14D-6.

Proposal Number: PRN 1992-61.

Submit written comments by March 4, 1992 to:
Diane I. Romano, Executive Director
Advisory Board of Public Movers and Warehousemen
P.O. Box 45018
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Director of the Division of Consumer Affairs is proposing amendments to the rules governing public movers.

First, N.J.A.C. 13:44D-1.1 and 2.1 are being amended to clarify that ownership or long-term lease of a moving vehicle is a precondition to licensure and relicensure. The Advisory Board notes that even on in-house moves a vehicle is necessary to transport personnel and the required equipment and that this requirement has been the subject of confusion among some applicants for licensure. The Director's position is that in enacting the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., the legislature intended that all licensees own or lease on a long-term basis at least one moving vehicle; specifically, N.J.S.A. 45:14D-9(b)2 requires a description of the applicant's moving vehicles on the license application. Accordingly, the proposed amendment to N.J.A.C. 13:44D-1.1 adds definitions of "moving vehicle" and "long-term lease" and the proposed amendment to N.J.A.C. 13:44D-2.1 makes clear that ownership or long-term lease of a moving vehicle is a precondition to licensure and relicensure.

In response to consumer complaints of movers attempting to perform moves with vehicles of inadequate size to accommodate the consumer's goods, the Director is also proposing to amend N.J.A.C. 13:44D-4.6, Failure to perform moving services. This section has been retitled "Occupational misconduct" and a provision has been added which lists as occupational misconduct booking or attempting to perform a move where the licensee knew or should have known that a moving vehicle of adequate size to accommodate the shipper's goods would not be or in fact was not available on the scheduled date of the move. This amendment is intended to advise licensees that if their owned or leased vehicle is not of adequate size to accommodate the shipper's goods, the licensee must ensure that an adequately sized vehicle leased under a short-term lease is available on the scheduled date of the move.

Social Impact

The proposed amendments to N.J.A.C. 13:44D-1.1 and 2.1 will have no impact upon licensees or consumers since they merely clarify that ownership or long-term lease of a moving vehicle is a precondition to licensure and relicensure.

The proposed amendment to N.J.A.C. 13:44D-4.6 will have a positive social impact upon the consumer, who will be assured that the licensee has a moving vehicle available of the type and size needed to protect the consumer's belongings.

Economic Impact

The proposed amendment to N.J.A.C. 13:44D-1.1 and 2.1 will not have an economic impact on licensees or consumers, since it merely clarifies the requirement of vehicle ownership or lease contained in the statutory mandate that a mover describe the vehicle when applying for licensure. The Advisory Board points out that in any event all currently licensed movers own or lease at least one moving vehicle. Applicants for licensure who do not own or lease a vehicle will incur the expense of purchasing or leasing one under a long-term lease.

The proposed amendment to N.J.A.C. 13:44D-4.6 may have an economic impact upon licensees, since it states that booking or attempting a move with an inadequately sized vehicle constitutes occupational misconduct. If the licensee's vehicle is inadequate to accommodate the shipper's goods, the licensee may need to arrange for a vehicle of proper size under a short-term lease, with attendant expense. The economic impact upon the consumer, however, will be decidedly positive. The proposed amendment should eliminate losses resulting from damage to personal belongings by movers who do not own or lease a moving vehicle of the size and type needed to protect the consumer's goods. The consumer will also be protected from a possible additional charge for two trips by a licensee whose vehicle is inadequate to accommodate the consumer's goods in one trip.

Regulatory Flexibility Statement

The proposed amendments apply to all currently licensed public movers and applicants for licensure, the majority of which would be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The proposed amendments impose no additional reporting or recordkeeping requirements. Compliance requirements for small businesses may include purchase or long-term lease of a moving vehicle, or short-term lease of an adequately sized vehicle, if the applicant or licensee, respectively does not have one. While this may create expense for a few small businesses, the Director believes these requirements to be so vital to the protection of the consumer that no exemption is possible.

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

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 [warehousemen] **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 [Failure to perform moving services] **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[, on the promised date of service] said public mover [fails to]:

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;

[1.]**2.** [Arrive] **Fails to arrive** at the shipper's premises **on the promised date of service** and perform all contracted-for services; or

[2.]**3.** [Notify] **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.)

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TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Route U.S. 9, including Parts of Route 444 in Bass River Township, Burlington County

Proposed Amendment: N.J.A.C. 16:28-1.41

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 1992-60.

Submit comments by March 4, 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 revised "speed limit" zone along Route U.S. 9, including parts of Route 444, in Bass River Township, Burlington County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace, in response to a petition for rulemaking.

Based upon a petition for rulemaking (see 23 N.J.R. 3660(b)) to lower the speed limit from Mrs. Joan A. Zarych, RD #1, Box 299B, New Gretna, New Jersey, including a petition with 138 signatures of citizens, 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 the revised "speed limit" zone along Route U.S. 9 in Bass River Township, Burlington County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.41 based upon the request from the local citizenry and the traffic investigation.

Social Impact

The proposed amendment will reduce the speed limit from 40 miles per hour to 35 miles per hour along Route U.S. 9 in Bass River Township, Burlington County, for the enhancement of safety of the children who use the route to walk to and from school. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments incurred direct and indirect costs for mileage, personnel and equipment requirements, for the evaluation of the traffic conditions. The Department will bear the costs for the installation of "speed limit" 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 in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.41 Route U.S. 9

(a) (No change.)

(b) The rate of speed designated for State highway Route U.S. 9 including parts of Route 444 (and excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. (No change.)

2. [40]**35** miles per hour to Green Bush Road (Co. Rd. 654) in Bass River Township, **Burlington County** ([milepost] **mileposts 56.00 to** 57.28); thence.

3.-32. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes N.J. 27 in Mercer, Somerset and Middlesex Counties; and U.S. 206 in Mercer County

Proposed Amendments: N.J.A.C. 16:28-1.44 and 1.72

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 1992-51.

Submit comments by March 4, 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 amendments will establish revised "speed limit" zones along Routes N.J. 27 in Princeton Borough, Princeton Township, Mercer County; Franklin Township, Somerset County; and South Brunswick Township, Middlesex County, and U.S. 206 in the City of Trenton and Lawrence Township, Mercer County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request from the local governments 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 traffic investigations. The investigations proved that the establishment of the revised "speed limit" zones along Routes N.J. 27 in Princeton Borough, Princeton Township, Mercer County; Franklin Township, Somerset County; South Brunswick Township, Middlesex County; and U.S. 206 in the City of Trenton and Lawrence Township, Mercer County were warranted.

The Department therefore proposes to amend N.J.A.C 16:28-1.44 and 1.72 based upon the request from the local governments, and the traffic investigations.

In addition, the speed zones have been revised by changing their locations and designating them by mileposts and other landmarks within the respective counties by municipality. The rules have also been recodified in accordance with the Department's rulemaking format.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Routes N.J. 27 in Mercer, Somerset and Middlesex Counties and U.S. 206 in Mercer 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 "speed limit" 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.

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Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28-1.44 Route 27

(a) The rate of speed designated for **the** certain parts of State highway Route 27 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

[i. 30 miles per hour from the intersection of Route U.S. 206 and 27, to a point 100 feet south of the centerline of Cedar Lane, Princeton Borough, Mercer County; thence

ii. 35 miles per hour to the intersection of Snowden Lane, Princeton Township, Mercer County; thence

iii. 45 miles per hour to the intersection of Church Street-Academy Street, South Brunswick Township, Middlesex County, Franklin Township, Somerset County; thence]

i. Zone 1: 25 miles per hour between Route U.S. 206 (Bayard Lane) and Linden Lane, Princeton Borough, Mercer County (approximate mileposts 0.00 to 0.81); thence

(A) Zone 1A: 30 miles per hour between Linden Lane and Cedar Lane, Princeton Borough, Mercer County (approximate mileposts 0.81 to 1.28); thence

ii. Zone 2: 35 miles per hour between Cedar Lane and a point 300 feet north of Snowden Lane, Princeton Township, Mercer County (approximate mileposts 1.28 to 1.49); thence

(A) Zone 2A: 45 miles per hour between a point 300 feet north of Snowden Lane and Church Street-Academy Street (Kingston) South Brunswick Township, Middlesex County and Franklin Township, Somerset County (approximate mileposts 1.49 to 3.30); thence

Recodify iv.-xx. as **iii.-xix.** (No change in text.)

16:28-1.72 Route U.S. 206 including [US] **U.S.** 206 and [US] **U.S.** 130

(a) (No change.)

(b) The rate of speed designated for the certain [part] **parts** of State highway Route [US] **U.S.** 206 described in this [section] **subsection** shall be established and adopted as the maximum legal rate of speed [thereat for both directions of traffic]:

[1. Zone one: 40 mph between traffic circle at Route US 1 Alternate and Craven Lane, Lawrence Township (milepost 45.1 to 48.9); except

i. School zone: 30 mph in the Notre Dame High School zone, during recess or while children are going to or leaving school, during opening or closing hours;

2. Zone two: 30 mph in Lawrence Township between Craven Lane and 300 feet north of Gordon Avenue (milepost 48.9 to 49.1);

3. Zone three: 40 mph in Lawrence Township between 300 feet north of Gordon Avenue and Greenwood Avenue (milepost 49.1 to 49.6);

4. Zone four: 45 mph between Greenwood Avenue, Lawrence Township and through Princeton Township to the southerly Princeton Borough line (Lovers Lane; milepost 49.6 to 53.4);

5. Zone five: 35 mph in Princeton Borough between the southerly Princeton Borough line (Lovers Lane) and Route 27 (Nassau Street; milepost 53.4 to 54.1);

6. Zone six: 30 mph in Princeton Borough between Route 27 (Nassau Street) and Cleveland Lane (milepost 54.1 to 54.4);

7. Zone seven: 35 mph between Cleveland Lane in Princeton Borough and 850 feet north of Birch Avenue in Princeton Township (milepost 54.4 to 54.7);

8. Zone eight: 40 mph in Princeton Township between 850 feet north of Birch Avenue and Ewing Street (milepost 54.7 to 55.9);

9. Zone nine: 45 mph in Princeton Township between Ewing Street and Hillside Avenue (milepost 55.9 to 57.0);

10. Zone ten: 40 mph in Princeton Township between Hillside Avenue and the northerly Princeton Township line (Cherry Valley Road-Mount Rose Road; milepost 57.0 to 57.35).]

1. For both directions of traffic:

i. In Mercer County:

(1) City of Trenton and Lawrence Township:

(A) Zone 1: 25 miles per hour between Spruce Street and the traffic circle at Route U.S. 1 Business (approximate mileposts 44.50 to 45.01); thence

(B) Zone 2: 30 miles per hour between the traffic circle at Route U.S. 1 Business and Princeton Pike (Harveys Corner) (approximate mileposts 45.01 to 45.36); thence

(C) Zone 3: 40 miles per hour between Princeton Pike and Titus Avenue, except for 30 miles per hour when passing through the Notre Dame High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 45.36 to 48.71); thence

(D) Zone 4: 30 miles per hour between Titus Avenue and Manning Lane (approximate mileposts 48.71 to 49.11); thence

(E) Zone 5: 40 miles per hour between Manning Lane and Concord Avenue (approximate mileposts 49.11 to 49.59); thence

(F) Zone 6: 45 miles per hour between Concord Avenue and the Lawrence Township-Princeton Township corporate line (approximate mileposts 49.59 to 51.80); thence

(2) Princeton Township:

(A) 45 miles per hour between the southerly Princeton Township line (approximately 1,600 feet north of Province Line Road) and the southerly Princeton Borough line (Lovers Lane) (approximate mileposts 51.8 to 53.4); thence

(3) Princeton Borough:

(A) Zone 5: 35 miles per hour between the southerly Princeton Borough line (Lovers Lane) and Route N.J. 27 (Nassau Street) (approximate mileposts 53.4 to 54.1); thence

(B) Zone 6: 30 miles per hour between Route N.J. 27 (Nassau Street) and Cleveland Lane (approximate mileposts 54.1 to 54.4); thence

(C) Zone 7: 35 miles per hour between Cleveland Lane and the northerly Princeton Borough line (Leigh Avenue) (approximate mileposts 54.4 to 54.5); thence

(4) Princeton Township:

(A) 35 miles per hour between the northerly Princeton Borough line (Leigh Avenue) and 850 feet north of Birch Avenue (approximate mileposts 54.5 to 54.7); thence

(B) Zone 8: 40 miles per hour between 850 feet north of Birch Avenue and Ewing Street (approximate mileposts 54.7 to 54.9); thence

(C) Zone 9: 45 miles per hour between Ewing Street and Hillside Avenue (approximate mileposts 55.9 to 57.0); thence

(D) Zone 10: 40 miles per hour between Hillside Avenue and northerly Princeton Township line (Cherry Valley Road-Mount Rose Road) (approximate mileposts 57.0 to 57.35)

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

TREASURY-GENERAL

(a)

STATE TREASURER
Urban Enterprise Zone Authority
Proposed Readoption: N.J.A.C. 17:30

Authorized By: Nathan Scovronick, Executive Director, Department of the Treasury.

Authority: N.J.S.A. 52:18A-30(d) and N.J.S.A. 52:27H-88.

Proposal Number: PRN 1992-56.

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Submit comments by March 4, 1992 to:
Steven B. Frakt
Administrative Practice Officer
Office of the State Treasurer
State House
CN 002
Trenton, New Jersey 08625-0002

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:30 expires on May 4, 1992. As required by the Executive Order, the Office of the State Treasurer and the Urban Enterprise Zone Authority have reviewed these rules and have determined that they continue to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

Under the New Jersey Urban Enterprises Zones Act, N.J.S.A. 52:27H-60 et seq., the State Treasurer maintains an enterprise zone assistance fund. The fund is the repository for sales tax revenues collected from certified businesses in those urban enterprise zones in which the sales tax is collected at half of its normal rate. The revenue is maintained in a separate account for each zone and is utilized for undertaking public improvements and upgrading municipal services within the zone upon application from the municipality and approval by the Urban Enterprise Zone Authority. These rules specify the procedures for application and evaluation of proposals under which qualifying municipalities may apply for the use of moneys in the fund.

Social Impact

The rules provide the procedure for assisting qualifying municipalities in which enterprise zones are designated in undertaking public improvements and in upgrading municipal services. The rules afford the qualifying municipalities with an avenue to financial assistance for the purpose of enhancing the quality of municipal services and projects in the areas of public safety, including improved police and fire protection in the enterprise zones. Further, the rules assist the qualifying municipalities in obtaining the necessary financial assistance in the formulation and implementation of projects designated to reverse the negative social impacts of blight and urban decay. Also, the rules encourage the submission of proposals from the qualifying municipalities to the Urban Enterprise Zone Authority for the purpose of maximizing their potential for success.

Economic Impact

The rules will continue to have a positive impact on the financial resources of the qualifying municipalities and will relieve stress on the municipalities' financial reserves by providing the mechanism for the receipt of financial assistance in the implementation of their goals and objectives for public improvements and in upgrading municipal services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules apply only to the application and award of urban enterprise zone funds directly to the qualifying municipalities for public improvements and services.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 17:30.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Notice of Change of Public Hearing Date, Time and Location and Extension of Public Comment Period

Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System

Proposed Amendments: N.J.A.C. 7:11-4.3, 4.4, 4.9 and 4.13

Take notice that the Department of Environmental Protection and Energy has changed the date, time and location of the public hearing on the above-referenced proposed rate adjustments, scheduled for February 13, 1992 at 10:00 A.M. as published in the December 16, 1991 New Jersey Register at 23 N.J.R. 3688(a), from 10:00 A.M. on February 13, 1992 at the Manasquan Reservoir System Administration Building to 7:00 P.M. on February 21, 1992 in the:
Court Room—Wall Township Municipal Building
2700 Allaire Road
Wall, New Jersey 07719

The period for submission of written comments pursuant to N.J.A.C. 7:11-4.13(a)8, has also been extended from March 23, 1992 to March 27, 1992.

(b)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Statewide Water Quality Management Planning

Proposed Amendments: N.J.A.C. 7:14A-1.2, 1.3, 1.8, 1.9, 2.1, 2.3, 2.4, 2.5, 2.8, 2.9, 2.12, 3.11, 3.13, 3.14, 5.17, 6.15, 7.2, 7.3, 8.1, 8.4, 8.5, 8.9, 8.11, 9.6, 9.8, 10.3, 10.5, 10.7, 10.9, 10.10, 10.11, 11.1, 11.2, 11.3, 12.1, 12.2, 12.5, 12.7, 12.8, 12.9, 12.11, 12.12, 12.14, 12.21, 12.23, 12.25, 12.26, 13.1, 13.2, 13.4, 13.5, 13.6, 14.2, 14.4, 14.5, 14.6; 7:15-1.5, 3.4, 3.6 and 5.22

Proposed New Rule: N.J.A.C. 7:14A-13.10

Proposed Repeal: N.J.A.C. 7:14A-13.6, 14.3 and Appendix F; 7:15-4.1

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

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 58:11-18.10 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., P.L. 1990, c.28.

DEPE Docket Number: 02-92-01.

Proposal Number: PRN 1992-62.

A **public hearing** concerning this proposal will be held on Wednesday, April 1, 1992 at 10:00 A.M. at:
Labor Education Center
Rutgers University
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey

Submit written comments by April 3, 1992 to:
Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (the Department) is proposing to amend N.J.A.C. 7:14A, entitled "New Jersey Pollutant Discharge Elimination System" (NJPDES), to include the requirements mandated by the Clean Water Enforcement Act (CWEA), P.L. 1990, c.28. This recent legislation, which modified the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., revises the Department's regulation of pollutant discharges into the ground and surface waters of the State, and places additional responsibilities upon permit holders. In preparing this proposal, the Department attempted to utilize exact language directly from the CWEA wherever possible. However, in some areas, to preserve readability or through the insertion of regulatory citations, some minor changes were necessary. The Department believes that these minor changes are consistent with the intent of the CWEA as passed by the Legislature.

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The Department is also proposing some changes which do not relate to the CWEA, but are necessary to reflect current policy, or eliminate potentially confusing or conflicting language and terminology.

Lastly, the Department is also proposing to amend N.J.A.C. 7:14A-2.1 and repeal N.J.A.C. 7:15-4.1 (part of N.J.A.C. 7:15, entitled "Statewide Water Quality Management Planning"), to delete the co-permittee requirements invalidated by the Superior Court in *New Jersey Builders Association v. Fenske*, 249 *N.J. Super.* 60 (App. Div. 1991) (see Notice of Rule Invalidation, 23 N.J.R. 2346(b)).

Chapter 14A—New Jersey Pollutant Discharge Elimination System

Subchapter 1

The Department is proposing to amend N.J.A.C. 7:14A-1.2 and 7:14A-1.3 so as to have them conform with the provisions of N.J.S.A. 58:10A-6.

The Department is proposing amendments to N.J.A.C. 7:14A-1.8(a)8 to allow the Department to prorate fees in delegated service areas as a result of Department permit revocation. (See discussion of amendments to N.J.A.C. 7:14A-10.5 below regarding permit revocation.) This change also allows the Department the ability to refund NJPDES permit fees paid by any NJPDES significant indirect user (SIU) which no longer qualifies as a SIU pursuant to N.J.A.C. 7:14A-10.5(g) after the Department revokes their NJPDES permit. Without this revision, only NJPDES permittees that cease discharging and request to have their NJPDES permit terminated would be entitled to an adjustment to their NJPDES permit fee. The Department has stated in the Agency Response of the 1989-90 and 1990-91 Annual Fee Report adoption notice that NJPDES/SIUs in delegated service areas would be entitled to a refund for fees paid since the expiration of their NJPDES permit. Pursuant to the proposed amendments to N.J.A.C. 7:14A-1.8(a)8, the Department may refund any permit fees paid by a Department-regulated SIU permittee upon permit revocation in a delegated service area and when a facility no longer qualifies as an SIU.

The Department is proposing to add a definition at N.J.A.C. 7:14A-1.9 for "approved industrial pretreatment program." Local agencies with approved industrial pretreatment programs are delegated local agencies within the meaning of the CWEA and these rules. As such, they have certain rights and duties (for example, N.J.A.C. 7:14A-3.11(a)10).

The Department is proposing to delete the definition of "endorse" at N.J.A.C. 7:14A-1.9 and to replace the word "endorse" (and all of its forms) with "consent" wherever it appears in the text of N.J.A.C. 7:14A-2, 10, and 12. This will provide consistency between N.J.A.C. 7:14A and both the Sewerage Authorities Law N.J.S.A. 40:14A-1 et seq.) and the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-1 et seq.). In addition, the term "consent" more accurately describes the action taken by the local authorities, and it does not carry the potentially confusing connotations carried by "endorse" (for example, the concept of "endorsement" is central to the Uniform Commercial Code). The meaning of the proposed term "consent" shall be as expressed in the text of this proposal.

The Department is proposing amendments to the definition of "significant indirect user" at N.J.A.C. 7:14A-1.9 for various reasons. On July 24, 1990 an amendment to 40 CFR 403.3 was adopted by the United States Environmental Protection Agency (EPA) to define the term "Significant Industrial User." Important aspects of this Federal definition required the inclusion of industries subject to categorical pretreatment standards, allowed a Control Authority as defined in 40 CFR 403.12(a) (essentially either (1) the Department in areas of the state served by a local agency without an approved industrial pretreatment program, or (2) the delegated local agency in all other areas of the state) to designate additional users on the basis of potential impact to the domestic treatment works (DTW), and enabled the Control Authority to make a determination that a user meeting the criteria of 40 CFR 403.3(t) is not a significant industrial user (excluding categorical users).

Accordingly, the Department is proposing to modify the definition of "significant indirect user" (SIU) to reflect the 40 CFR 403 amendment. The Department's definition, however, remains somewhat broader than the Federal definition because the Department's experience has indicated that certain users (for example, those discharging landfill leachate) that are not included within the Federal definition nevertheless pose a substantial risk to the operation of the local agency's plant. In light of the CWEA's definition of (N.J.S.A. 58:10A-3(cc)) and imposition of requirements upon (for example, N.J.S.A. 58:10A-6(f)(5)) SIUs, the proposed definition also makes it clear that delegated local agencies have the discretion to determine which users within their service areas are SIUs, provided that all users subject to Categorical Pretreatment Standards are deemed to be SIUs.

Clarification is also proposed with respect to ground water decontamination. A DTW user has been defined as an SIU if the discharge exceeds "25,000 gallons per day; or ... significant quantities of polluted ground water." A prior amendment at N.J.A.C. 7:14A-10.5(a)1v indicated that ground water decontamination projects resulting in more than 25,000 gallons per day required permits. The Department proposes to amend the definition of SIU for consistency with the amendment at N.J.A.C. 7:14A-10.5(a)1v.

On January 22, 1991, the Department pre-proposed amendments to the Department's pretreatment rules (see 23 N.J.R. 149(a)). Comments were received at the pre-proposal public hearing held by the Department on February 8, 1991, as to which facilities should be considered "significant industrial users." Mary Jo Aiello, Chief of the Bureau of Pretreatment and Residuals (part of the Department's Wastewater Facilities Regulation Program), served as the hearing officer at the public hearing. After reviewing the testimony given at the public hearing, Chief Aiello felt that the responses to this testimony and the subsequent changes made to the proposed regulations to address the concerns raised by the public should be accepted as written in the proposal package for these rules. A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Several commenters suggested criteria which are consistent with the definition in the proposed rules. One commenter suggested that the Department specify one SIU definition and require all DTWs with an approved pretreatment program abide by it. The Department does not concur with this sentiment. Although general criteria can be and are established for determining which facilities are significant, each DTW with an approved pretreatment program must be able to make further determinations of significance on a class-by-class and/or case-by-case basis due to the fact that industrial discharges may affect one DTW differently than another, either due to volume of flow or constituents in the wastestream. By modifying the definition of SIU, the Department's definition is more consistent with that noted in 40 CFR 403.3(t).

The Department is also proposing minor revisions to the following definitions: "average monthly discharge limitation," "average weekly discharge limitation," and "maximum daily discharge limitation." These revisions will clarify the analytical data required for completing discharge monitoring reports by eliminating confusing terminology. The Department is proposing to add the definition of "control authority" to reflect 40 CFR 403 and to alleviate the need for numerous references to 40 CFR 403 throughout the NJPDES regulations. Finally, the Department has amended its definition of "State Act" to make it clear that that term includes all amendments to the Water Pollution Control Act, including those amendments reflected in the CWEA.

Subchapter 2

The Department is proposing various revisions throughout subchapter 2 which either comply with the CWEA, are necessary to implement a judicial decision, or reflect current policies and procedures.

The Department is proposing to modify N.J.A.C. 7:14A-2.1(c) to allow the Department discretion in determining when permits should be consolidated for processing, which will be in contrast to the existing rules which suggest that consolidation is mandatory. This will enable the Department to issue individual permits for specific regulated activities at a given facility in a more timely manner. This measure recognizes and will help to alleviate some of the problems associated with conflicting program priorities. This revision will also provide consistency with N.J.A.C. 7:14A-1.4.

In N.J.A.C. 7:14A-2.1(k), the Department is proposing (1) to replace the word "endorse" (and all of its forms) with "consent" as was discussed in the summary statement for N.J.A.C. 7:14A-1.9, and (2) to make several other changes to clarify the subsection's description of the Department's processing of local agencies' comments regarding certain applications filed with the Department. The changes clarify (1) that the requirements apply to indirect discharges and to renewal applications, although they

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do not apply to applications for the renewal of SIU permits where the discharge is to remain unchanged; (2) that all statements of consent must be in writing and provided by the local agency's governing body or its official delegate; and (3) the options that are available to the Department when the local agency either objects to the applicant's request or simply fails to respond to it. The foregoing amendments do not make any substantive or procedural changes to the Department's existing policies.

The Department is proposing to delete N.J.A.C. 7:14A-2.1(l), (m), (n), and (o), and thereby eliminate co-permittee requirements invalidated by the Superior Court in *New Jersey Builders Association v. Fenske*, 249 *N.J. Super.* 60 (App. Div. 1991).

The Department's proposed amendment to N.J.A.C. 7:14A-2.3(c) simply clarifies that the Department has available the remedies set forth in N.J.A.C. 7:14A-2.3(c)1 through (c)4 even if the permittee's permit has been "continued" pursuant to N.J.A.C. 7:14A-2.3.

In N.J.A.C. 7:14A-2.4(c), the Department is adding signatory requirements for discharge monitoring reports (DMR). DMRs are Departmental forms used by permit holders to report monthly effluent data, which data is used to assess discharge permit compliance. This addition, which was derived from the CWEA, requires a high ranking official of the permittee to sign every DMR, and it provides that the highest ranking official with day to day responsibility is liable for the information contained therein. The amendment also identifies who that high ranking official will usually be.

In N.J.A.C. 7:14A-2.5(a)1, 7, 12, 14, 14vi, and 15, the Department has added or corrected language incorporating various requirements of N.J.S.A. 58:10A-6(f).

The Department proposes to revise N.J.A.C. 7:14A-2.5(a)14vii to require the submission of a written report of any serious violations within 30 days of the violation(s). This subparagraph is an exact excerpt from the CWEA with the exception of the word "written" before report. The Department inserted "written" into this requirement for recordkeeping purposes.

In N.J.A.C. 7:14A-2.5(a)16, the Department is proposing to add the CWEA requirement of prohibiting the issuance, renewal, or modification of any permit, which will relax a water quality standard or effluent limitation, until the applicant or permit holder has paid all fees, penalties, or fines due, or has entered into an agreement with the Department that establishes a payment schedule.

The Department is proposing to amend N.J.A.C. 7:14A-2.8(a)1iv to provide the authority for establishing schedules of compliance for water quality based effluent limitations. This change reflects current policy and is a clarification needed due to the stayed order of the USEPA Administrator in *the matter of Star-Kist Caribe* (April 16, 1990). In that decision the Administrator stated "schedules of compliance for water quality based limitations may not be included in National Pollutant Discharge Elimination System (NPDES) permits unless explicitly authorized by the State in its water quality standards or implementing regulations." Compliance schedules for water quality standards adopted prior to July 1, 1977 are not allowed because the language of Section 301(b)(1)(C) of the Federal Act required compliance with limitations necessary to meet those water quality standards by July 1, 1977.

The Department proposes to revise N.J.A.C. 7:14A-2.12(b)7 to provide consistency with the proposed revisions to N.J.A.C. 7:14A-10.5. These revisions allow for the revocation of certain NJPDES/SIU permits while allowing the discharge activity to continue, and the termination of NJPDES/SIU permits wherein the discharge shall cease. See discussion pertaining to subchapter 10 below.

Subchapter 3

The Department is proposing to amend N.J.A.C. 7:14A-3 to include the requirements mandated by the CWEA and to reflect current policy.

The Department attempted to utilize the exact language in the CWEA wherever possible. However, to remain consistent with the nomenclature used in the NJPDES regulations, the following terms were changed throughout:

- "Department" for Commissioner
- "Paragraph" for subsection

In N.J.A.C. 7:14A-3.11, the proposed amendment clarifies the existing requirements that DTWs identify significant indirect users; notify the Department of influent changes; establish an effective regulatory program to assure compliance by industrial users with pretreatment standards and other relevant requirements; and comply with capacity assurance requirements.

In order to provide clarification of requirements applicable to all DTWs and delegated local agencies, the following sections were renumbered to provide centralized listings:

- N.J.A.C. 7:14A-3.11(a)2 and (a)3 were deleted and included in N.J.A.C. 7:14A-3.11(a)2i and ii
- N.J.A.C. 7:14A-3.13(a)10i was moved to N.J.A.C. 7:14A-3.11(a)2i
- N.J.A.C. 7:14A-3.13(a)10ii was moved to N.J.A.C. 7:14A-3.11(a)2ii
- N.J.A.C. 7:14A-3.13(a)10iii was moved to N.J.A.C. 7:14A-3.11(a)2iii

N.J.A.C. 7:14A-3.11(a)2v contains the CWEA requirement that all DTWs must develop terms and conditions for acceptance of wastewater into their treatment works. Previously, the New Jersey Water Pollution Control Act (NJWPCA) authorized, but did not require, DTWs to do this. This change requires DTWs to act proactively, to set local limits to ensure compliance with applicable sludge and water quality standards.

The Department is proposing to amend N.J.A.C. 7:14A-3.13(a)9i(4) to state that the Department may specify in a permit the use of a particular analytical method when more than one approved method exists for a particular parameter. This represents a codification of long standing Department practice. Since different analytical methods often have differing analytical sensitivities, the Department must select the analytical method with a quantification level that is appropriate for the magnitude of the calculated effluent limit. This is particularly important when the effluent limit is below any quantification level, because in that case the Department sets a permit compliance level equal to the quantification level for the most sensitive approved analytical method.

The Department is proposing to delete N.J.A.C. 7:14A-3.13(a)9ii since it is inconsistent with the requirements of the CWEA, in that it specifies that monitoring reporting shall be at "... a frequency dependent on the nature and effect of the discharge, but in no case less than once a year." On August 5, 1991, the Department adopted at N.J.A.C. 7:14A-2.5(a)12 new monitoring reporting requirements applicable to all discharges that are consistent with the CWEA (see 23 N.J.R. 2366(a), 2425).

A requirement to include chemical specific toxics limitations for delegated local agencies and providing the Department with the option to allow the use of surrogate parameters is proposed at N.J.A.C. 7:14A-3.13(a)10iii to bring the NJPDES regulations into conformance with the CWEA (N.J.S.A. 58:10A-7b(3)). The substance of this language is taken from the Act, with only minor language changes being made to retain the consistency of the NJPDES language.

The Department is proposing to update and clarify the language at N.J.A.C. 7:14A-3.14(d)2. Since the Department is proposing to delete the obsolete Appendix F in its entirety, the language referring to toxic substances listed in Appendix F is being replaced by a reference to Section 307(a) of the Federal Act. The toxic pollutants included in Appendix F were based on the list of Section 307(a) toxic pollutants. The Department also proposes to update the EPA document number to reflect the latest edition of the Technical Support Document. In addition, a typographical error concerning daily maximum and average monthly concentration limits is being corrected.

The Department is also proposing to delete N.J.A.C. 7:14A-3.14(l), which sets forth a technically outdated procedure. It is dependent on Appendix F, which the Department also proposes to delete. N.J.A.C. 7:14A-3.14(l) contains a method to calculate approximate water quality based effluent limits based on the values in Appendix F. This procedure was designed to be used where the Department did not have the necessary scientific information to establish a true water quality based effluent limitation where needed. The Department is required by the Federal Clean Water Act to impose true water quality based effluent limits where appropriate. Since the Department is now either imposing true water quality based effluent limitations where appropriate or requiring permittees to collect the necessary scientific information to enable the Department to do so, this approximate methodology is no longer used or needed. Its continued presence in the rules causes permittee confusion about the Department's procedures for setting effluent limitations. Therefore, the Department proposes to delete it. Most importantly, the Department's development of true water quality based effluent limits, based on scientifically valid and up to date criteria, improves the protection of the State's waters.

Subchapter 5

The Department is planning to propose substantial amendments to N.J.A.C. 7:14A-5, Additional Requirements for Underground Injection Control Program (UIC), during 1992. In addition, the Department is proposing to modify N.J.A.C. 7:14A-5.17 now. It has been suggested that the Department modify paragraph (b)4 so as to exempt drainage from

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certain rooftops from the inventory requirements applicable to all other Class V wells permitted-by-rule under N.J.A.C. 7:14A-5.5. The Department agrees with that suggestion because such drainage has a minimal or extremely low impact on ground water resources and therefore does not necessitate the submission of the inventory information required for other Class V wells.

Subchapter 7

The Department is proposing to modify N.J.A.C. 7:14A-7.2(a)5, in accordance with the CWEA, to provide an opportunity for a permittee or the person deemed a party to an action (N.J.A.C. 7:14A-8.9(d)) to contest a Departmental determination in an administrative hearing. Under the current rules only an applicant or permittee may request an adjudicatory hearing and the opinions of the general public may only be expressed during the public comment period.

The proposed amendment to N.J.A.C. 7:14A-7.3(a)1 clarifies that although the Department will not require the preparation of extensive permit applications by those who seek to operate under permits by rule or general permits, it may require the filing of other less formal documents.

The Department is proposing an amendment to N.J.A.C. 7:14A-7.3(b)2 to clarify the source of the Department's authority to take enforcement action, and an amendment to N.J.A.C. 7:14A-7.3(c) to incorporate the CWEA's provisions requiring site inspections.

Subchapter 8

The Department is proposing a revision to N.J.A.C. 7:14A-8.1(e)3 to include the CWEA requirement of publishing a notice of all major and minor permit modifications in the DEPE Bulletin. Under the present regulations, notifications are required annually in the New Jersey Register.

The proposed amendments in N.J.A.C. 7:14A-8.9 reflect the CWEA procedures for contesting a Departmental determination in an adjudicatory hearing. Specifically, the Department is proposing to add provisions setting forth the factors to be used in determining whether persons, other than the applicant/permittee, will be considered a party to an action. Persons may be deemed a party to an action if they raised their objections during the public comment period (N.J.A.C. 7:14A-8.3), demonstrate the existence of a significant issue of law or fact, show that the significant issue of law or fact is likely to affect the permit determination, and can show an environmental, aesthetic, recreational, or other interest which may be affected by the permit decision (see full text). The Department's recently proposed N.J.A.C. 7:1-2 (see 23 N.J.R. 3278(a)) would also allow third parties to participate in hearings regarding any Departmental permitting decisions under certain conditions. However, there is no conflict between that proposal and the current one because that proposal does not apply to the extent that it would conflict with a statute, while the current proposal incorporates statutory requirements.

N.J.A.C. 7:14A-8.9(f) has been excerpted from the CWEA and will require any applicant/permittee wishing to contest a Departmental determination to escrow an amount of money equal to the permit fee.

Subchapter 9

The Department is proposing very minor revisions to N.J.A.C. 7:14A-9.6 and 9.8 to correct typographical errors in internal cross-references.

Subchapter 10

The Department is proposing to replace the term "endorsement" with "written statement of consent" in N.J.A.C. 7:14A-10.3(c)2, 10.7(d), 10.9(f), 10.10(f), and 10.11(f) in accordance with the explanation provided in the summary statement for N.J.A.C. 7:14A-1.9.

The Department is proposing revisions to N.J.A.C. 7:14A-10.5. The Department has approved 22 pretreatment programs, pursuant to 40 CFR 403, since the promulgation of the NJPDES regulations. Seven additional programs are expected to be approved over the next three years. The Department, at the time of approval, ensures that the DTW has adequate resources and enforcement authorities to implement the pretreatment program in accordance with 40 CFR 403.8(f). The Department oversees the implementation of the approved program by conducting annual audits to ensure that the programs are implemented as approved. It was the Department's intention not to issue individual permits to the industries discharging to those DTWs with approved pretreatment programs. However, due to the DTWs' limited authority to enforce the DTW issued permits, the Department issued individual NJPDES/SIU permits to selected SIUs, which the Department felt had the potential for the greatest impact on the DTW, in accordance with N.J.A.C. 7:14A-10.5(a)1.

The CWEA, as revised by P.L. 1991, c.8, provides the DTWs with approved pretreatment programs enforcement authorities equivalent to the Department's. Hence, the Department, in order to eliminate duplicate permitting and enforcement, proposes the deletion of existing N.J.A.C. 7:14A-10.5(a)1.

N.J.A.C. 7:14A-10.5(a)3, proposed to be recodified at N.J.A.C. 7:14A-10.5(a)1, has been revised to delete references to DTWs whose programs are in the approval process. The deleted language was originally included in the NJPDES regulations when DTWs were under a compliance schedule to develop a pretreatment program. This is no longer true; therefore the phrase has been deleted.

The Department has proposed in the new N.J.A.C. 7:14A-10.5(a)3 to retain authority to issue individual NJPDES/SIU permits to users required to obtain permits by Administrative Consent Orders issued by the Department prior to adoption of these revisions. This will enable the Department to complete enforcement actions that it has already commenced.

In N.J.A.C. 7:14A-10.5(g) and (h), the Department sets forth the determinations that must be made before a NJPDES/SIU permit will be revoked or terminated and the procedures that will be used to make those determinations. Essentially, the permittee must establish that it no longer meets the criteria of a NJPDES/SIU permit and that it is not subject to an administrative consent order requiring it to obtain a NJPDES/SIU permit from the Department.

Subchapter 11

The Department is proposing minor revisions to N.J.A.C. 7:14A-11 which serve to provide consistency between the rules and the CWEA. In N.J.A.C. 7:14A-11.2(a), the Department is proposing to insert the CWEA limited access requirement for information deemed to be confidential by the Department. This proposed subsection will limit the access of any information deemed to be confidential by the Department to authorized officers or employees of the Department, the local agency, and the Federal government.

Subchapter 12

The Department is proposing revisions throughout N.J.A.C. 7:14A-12 to correct minor language differences between the rules and the CWEA, and address current policy.

The Department is proposing to amend N.J.A.C. 7:14A-12.1(b) so that the 20 days within which the Department must determine whether the applicant must seek treatment works approval (TWA) runs from the issuance of a final permit, rather than from the filing of the application for the TWA. This amendment is necessary because in most cases permit limits must be set before it can be determined whether a TWA is necessary.

The Department proposes in N.J.A.C. 7:14A-12.1(b) to prohibit local construction approvals on facilities that do not conform with the requirements of the subchapter and identifies the enforcement action associated with any regulatory violations. This proposed revision will clarify the Department's regulatory authority over local governments that approve the construction of treatment works that require the prior approval of the Department.

The Department is proposing to replace the term "endorsement" with "written statement of consent" in N.J.A.C. 7:14A-12.9(b), 12.11(a)4, 12.12(a)2 and (e), and 12.14(a)3 in accordance with the explanation provided in the summary statement for N.J.A.C. 7:14A-1.9.

In N.J.A.C. 7:14A-12.9 the Department is proposing to add the requirement of obtaining a written statement of consent from the affected sewage authority even if the proposed project will not contribute additional flow to the authority's treatment works as presently planned. This amendment reflects a current Departmental policy that requires applicants to obtain the consent of the affected sewage authority for on site discharges located within the authority's area of jurisdiction. This will enable sewage authorities to plan and authorize the final disposition of all wastewater generated within their respective service areas.

The proposed amendments to N.J.A.C. 7:14A-12.11(a)2 will require an applicant to obtain a Discharge Allocation Certificate (DAC) prior to the submission of a Treatment Works Approval application.

In N.J.A.C. 7:14A-12.12(a)4 the Department proposes to express the current policy of accepting only unaltered engineering certifications on Departmentally prepared forms, when applicable. In such certifications, a New Jersey Licensed Professional Engineer attests to the adequacy

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of the treatment works construction and its conformance with the Department's prior construction approval. N.J.A.C. 7:14A-12.12(c) has been amended to include the regulatory reference in N.J.A.C. 7:14A-2.4(a)2i that identifies the qualifying requirements for responsible officials. Responsible individuals are those persons authorized to sign treatment works applications on behalf of an applicant.

The Department proposes in N.J.A.C. 7:14A-12.12(d) to delete (1) the requirement of obtaining a certification from the 201 sewerage agency, (2) the reference to "208" in the term areawide plan, and (3) the requirement for water quality management planning agencies to review new projects for consistency with areawide plans. These deletions are necessary to conform the regulations to current circumstance and practices. As part of their application for Federal grants for the construction of sewerage treatment works, public agencies were required by section 201 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1281) to prepare detailed facilities plans. The agencies making these applications were referred to as "201 sewerage agencies" and their plans were referred to as "201 Plans." In addition, section 208 of the FWPCA (33 U.S.C. 1288) required the states to prepare areawide waste treatment management plans, which plans became known as "208 Plans."

As of 1990, the Federal grant program was terminated. In addition, the Department has consolidated the former 201 Plans and 208 Plans into its areawide water quality management plans, N.J.A.C. 7:15. It, rather than the local agencies, is now responsible for ensuring that new projects are consistent with applicable plans.

The Department is proposing to replace the term "endorse" in N.J.A.C. 7:14A-12.21(b), and "endorsement" in N.J.A.C. 7:14A-12.23(a)3, with "consent" in accordance with the explanation provided in the summary statement for N.J.A.C. 7:14A-1.9.

The Department is proposing a modification in N.J.A.C. 7:14A-12.25(c)4 which requires the rescission of a sewer connection ban, if applicable, prior to approving the operation of a "construction only" permit that was issued to an applicant that did not qualify for a sewer ban exemption. This change reflects current policy and practice, and is designed to ensure that no increased demands are placed upon inadequate systems.

The Department has prepared a working paper which further discusses the subject of sewer bans and TWAs. This paper has been issued to the public to solicit comments and ideas on the Department's future plans to propose additional amendments to this subchapter.

Subchapter 13

The Department is proposing to amend N.J.A.C. 7:14A-13 to include the requirements mandated by the CWEA, P.L. 1990, c.28 and to reflect current policy.

The Department has corrected an incorrect citation in N.J.A.C. 7:14A-13.2(a) to require applications to be submitted in accordance with N.J.A.C. 7:14A-10.5(c).

The Department is proposing a new subsection N.J.A.C. 7:14A-13.4(d) to require that all users of a DTW comply with interim enforcement limits established in an administrative order or administrative consent order as required by the CWEA.

The Department is proposing revisions to N.J.A.C. 7:14A-13.5(b)1 to be consistent with revisions proposed in N.J.A.C. 7:14A-10.5. Individual NJPDES/SIU permits will no longer be required in those areas of the State where the DTW has an approved pretreatment program. Therefore, it is necessary to clarify that NJPDES/SIU permit-by-rule status may only be revoked in those areas of the state where the Department is the control authority, thereby limiting issuance of SIU permits in accordance with N.J.A.C. 7:14A-10.5.

The Department has proposed to repeal N.J.A.C. 7:14A-13.6 because it has proven to be unworkable and because it is dependent upon Appendix F, which appendix the Department also has proposed to delete because of its obsolescence. (A more detailed description of the reasons for deleting Appendix F is set forth below.) The Department is developing a new approach for regulating SIU impacts on water quality. This approach will involve the inclusion of chemical specific water quality based effluent limitations into discharge permits issued to POTWs. The POTWs' limitations would then serve as the basis for calculating the SIU's limitations. The Department intends by September 1992 to propose a new rule setting forth how to perform this calculation. It will invite public participation prior to the formal proposal of the rule.

In N.J.A.C. 7:14A-13.10, the proposed new rule requires DTWs with approved pretreatment programs to conduct inspections of permitted facilities in accordance with CWEA requirements; to perform priority pollutant scans of their influent and effluent annually at a minimum; to not allow the relaxation of a permit effluent standard unless in accordance with the applicable CWEA requirements; to comply with the procedures for public comment on proposed compliance schedules described in N.J.A.C. 7:14-8.3A as in accordance with CWEA; to submit an annual report on enforcement actions taken in the previous year in conformance with the CWEA; and to limit through their permits the permittees' discharges pursuant to the environmental criteria listed in the CWEA. The amendment also requires that pretreatment program approval submissions address CWEA requirements.

The requirement that delegated local agencies perform industrial user inspections has been added to N.J.A.C. 7:14A-13.10(a) pursuant to the CWEA. Delegated local agencies are currently required to inspect all **SIUs** as noted in 40 CFR 403. The CWEA expands this requirement by requiring that **all permittees** be inspected. Also, N.J.A.C. 7:14A-13.10(b) requires that permittees identified as being in "significant non-compliance" be inspected at a greater frequency as required by the CWEA. The proposed regulation lists all of the CWEA inspection requirements. The CWEA requires that a complete inspection include a sampling of the industrial user's wastewater. However, it does not specify that these activities be performed concurrently. As noted in the pre-proposal, the Department is not requiring that sampling be performed concurrently with the inspection. Many commenters, while acknowledging that both inspections and samplings must be performed as part of the IPP, agreed with the Department in that they should not be required to perform both of these activities concurrently in that pretreatment inspections are generally scheduled in advance while compliance monitoring is unannounced. One commenter objected to the Department's position and suggested that the Department was proposing to allow delegated POTWs to perform inspections without taking any samples. This is not correct. All delegated local agencies have minimum requirements for sampling and inspection frequencies which, in many cases, are above and beyond the frequency noted in the CWEA.

N.J.A.C. 7:14A-13.10(c) requires that delegated local agencies perform a complete priority pollutant analysis of the influent and effluent, annually at a minimum. Although this requirement is new in the regulation, this requirement had previously been included in the delegated local agency permits.

The following subsections are new requirements for DTWs and are included in the proposed NJPDES rule N.J.A.C. 7:14A-13.10. These subsections are verbatim from the CWEA.

Proposed Subsection	From CWEA
N.J.A.C. 7:14A-13.10(f)	58:10A-6i(2)
N.J.A.C. 7:14A-13.10(g)	58:10A-6o

N.J.A.C. 7:14A-13.10(f) requires that DTWs deposit 10 percent of all monies collected from enforcement actions into the "Wastewater Treatment Operators Fund." N.J.A.C. 7:14A-13.10(g) specifies that DTWs must comply with public access to industrial user and DTW records procedures, as well as confidentiality requirements.

Several proposed modifications in N.J.A.C. 7:14A-13.10 were discussed at the pre-proposal public hearing regarding Industrial Pretreatment Requirements held by the Department on February 8, 1991. Among the topics discussed at the pre-proposal hearing and relevant to the modifications proposed herein are the CWEA requirements that DTWs with an approved industrial pretreatment program submit an annual report on enforcement actions taken in the previous calendar year, and conduct inspections of permitted facilities.

Many commenters were opposed to submitting the "second" annual report on enforcement actions because they now submit an annual report, in accordance with 40 CFR 403.12(i), covering the actions related to implementation of their approved industrial pretreatment program (IPP). The Department nonetheless proposes to require both reports for the reasons that follow. The annual report required pursuant to the CWEA, which is based on a calendar year, requires that information and actions related to enforcement of the approved IPP be tabulated and submitted in order to supplement the Department's Report to the Governor. N.J.S.A. 58:10A-14.1 and 10A-14.2. By contrast, the annual report submitted pursuant to 40 CFR 403.12(i) is utilized by the Department as a mechanism for determining the local agencies compliance status with their pretreatment program requirements in accordance with 40 CFR 403, and as approved by the Department. Also, this latter report is submitted on a six month interval from the IPP on-site audit, and therefore enables the Department to oversee the Authority's IPP compliance status once every six months. The Department is currently investigating the elimination of any duplication of information and effort

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between the reports. The Department would appreciate any comments in that regard. Further, the Department remains open to any specific suggestions as to how it could comply with both the CWEA and 40 CFR 403.12 without requiring that two separate reports be filed.

Pursuant to the NJWPCA, N.J.A.C. 7:14A-13.10(i) requires that all delegated local agencies limit concentrations of contaminants which are discharged into their treatment works.

Subchapter 14

The Department is proposing to amend N.J.A.C. 7:14A-14 to correct inconsistencies, delete irrelevant provisions, clarify monitoring and reporting requirements and expand sampling protocols.

The Department is proposing to clarify the definition specified in N.J.A.C. 7:14A-14.2 for "oil and grease" and to include a new definition for "petroleum hydrocarbons" to be consistent with analytical methodologies established in 40 CFR Part 136. The existing definition of oil and grease is misleading and causes confusion. There are separate analytical methods for oil and grease, and for petroleum hydrocarbons. The method for oil and grease is an aggregate measure that includes petroleum hydrocarbons as a component, but does not distinguish them from non-petroleum based components.

The Department proposes to delete all of N.J.A.C. 7:14A-14.3(a) and (b), and parts of N.J.A.C. 7:14A-14.4(a) and 14.4(c), as they concern the provision for two separate sets of effluent limitations for "new" and "existing" discharges of oil and grease which are no longer relevant. Since these regulations became effective July 2, 1984, the time period for interim compliance has long since expired. Therefore, at this time all discharges must meet the effluent limitations set forth for "new" dischargers. Inclusion of unneeded separate language for "existing" dischargers and "new" dischargers causes confusion.

The Department proposes to clarify the language in N.J.A.C. 7:14A-14.5(c)1 by adding that monitoring is dependent on the timing of precipitation events and will not necessarily be conducted on the same date of every month. Some permittees mistakenly believed that the precipitation events had to be 30 days apart, and that if a precipitation event did not occur until at least 30 days after the last sample was taken, then no monitoring would be required for that month.

The Department proposes to clarify the language in N.J.A.C. 7:14A-14.5(c)2 concerning the multiple grab monitoring frequency for precipitation events by indicating that the effluent must be sampled after the onset of the discharge even if it does not rain long enough to obtain three samples. Again, some permittees interpreted the existing regulation as requiring that the stormwater flow from a precipitation event had to continue for at least 45 minutes from the onset of discharge. If it did not so continue, these permittees incorrectly thought that they should discard all of their previous samples.

In N.J.A.C. 7:14A-14.6(a)5 the Department proposes to include the sampling preservation protocol for petroleum hydrocarbons as defined in 40 CFR Part 136, and to distinguish it from the sampling preservation protocol for oil and grease.

The Department proposes to correct the holding times specified in N.J.A.C. 7:14A-14.6(a)6 for oil and grease and for petroleum hydrocarbons to be consistent with 40 CFR Part 136.

In N.J.A.C. 7:14A-14.6(b)1 the Department proposes to clarify the Froude number by expressing the denominator as a one-half exponential power instead of a square root. This change was made because of difficulties in printing the square root sign. Mathematically, the two expressions are identical.

Appendix F

The Department proposes to delete Appendix F of the NJPDES regulations. The values in Appendix F were based on criteria guidance published by the United States Environmental Protection Agency (EPA) on November 28, 1980 in the Federal Register (Vol. 45, pp. 79318 through 79379). These values could be used to calculate effluent limitations for DSW and SIU permits in the absence of limitations based on surface water quality standards, in accordance with procedures contained in N.J.A.C. 7:14A-3.14(l) and 13.6, respectively.

At the time that Appendix F was adopted into the NJPDES regulations, the New Jersey Surface Water Quality Standards (SWQS) (N.J.A.C. 7:9-4) did not contain surface water quality criteria for the majority of toxic pollutants contained in Appendix F. Since its original adoption there have been numerous significant revisions and additions to the EPA criteria that have never been incorporated into Appendix F.

The 1987 amendments to the Federal Clean Water Act require each state to adopt, as part of their surface water quality standards, water quality criteria for each pollutant for which EPA has developed a criteria. In 1989, the New Jersey SWQS were amended to allow the use of the best available scientific information, including EPA criteria, for developing water quality based effluent limitations (N.J.A.C. 7:9-4.6(c)4iii), in the absence of a specific criteria in the SWQS. As a result the Department now uses scientifically valid and up to date criteria, including EPA criteria, to develop effluent limitations as authorized by the Surface Water Qualty Standards. Since, by Federal statute States are required to include and regularly update the criteria in their SWQS, it is unnecessary and confusing to continue to include a second set of criteria in Appendix F. Therefore, the Department proposes to delete Appendix F in its entirety.

Chapter 15—Statewide Water Quality Management Planning

7:15-1.5 Definitions

N.J.A.C. 7:15-1.5 contains an outdated definition of "BPU-regulated sewer or water utilities", that is, sewer or water utilities regulated by the former Board of Public Utilities (BPU), which has been renamed the Board of Regulatory Commissioners (BRC). In compliance with Governor Florio's Reorganization Plan No. 002-1991 (23 N.J.R. 2811), the definition of "BPU-regulated sewer or water utilities" is being replaced by a definition of "BRC-regulated sewer or water utilities." For the same reason, the references in N.J.A.C. 7:15-3.4 to "BPU-regulated" utilities have been changed to "BRC-regulated" utilities.

N.J.A.C. 7:15-3 also includes outdated references to the "BWQP," that is, the former Bureau of Water Quality Planning in the former Division of Water Resources. As part of the continuing reorganization of the Department, the functions formerly performed by the Bureau of Water Quality Planning are now performed by the Office of Regulatory Policy (ORP). Therefore, these provisions are being amended to refer to the "ORP," and a definition of "ORP" is being added to the rule.

Subchapter 3

As is described in more detail in the summary regarding the changes to N.J.A.C. 7:14A-1.9, the Department is proposing to replace the term "endorse" with the word "consent" in N.J.A.C. 7:15-3.4 and 3.6 because the latter word is more accurate and precise.

Several provisions in N.J.A.C. 7:15-3.4 also include outdated references to "BPU-regulated" sewer or water utilities and to the "BWQP." For reasons explained above, these references are being changed to "BRC-regulated water or sewer utilities" and to the "ORP," respectively.

In N.J.A.C. 7:15-3.4(g)4i, the phrase "sewer and water utilities" is being corrected to read "sewer or water utilities." Many sewer utilities are not water utilities (and vice versa), and the Department never intended to exclude such sewer utilities or water utilities from the scope of N.J.A.C. 7:15-3.4(g)4i.

N.J.A.C. 7:15-3.4(g)4ii is being expanded to require parties who object in writing to the proposed amendment to state all reasons in writing. Such statements will assist the Department in evaluating the merits of such objections.

N.J.A.C. 7:15-3.4(g)4iii is being amended to clarify that only written comments on the proposed amendment shall be copied and forwarded to the Office of Regulatory Policy.

Subchapter 4

The Department is proposing to repeal N.J.A.C. 7:15-4.1, and thereby eliminate co-permittee requirements invalidated by the Superior Court in *New Jersey Builders Association v. Fenske,* 249 *N.J. Super.* 60 (App. Div. 1991).

Subchapter 5

The Department is proposing to replace the word "endorsements" in N.J.A.C. 7:15-5.22 with "written statements of consent" as is explained in the summary for N.J.A.C. 7:14A-1.9.

Social Impact

Chapter 14A—New Jersey Pollutant Discharge Elimination System

Most of the presently proposed amendments to N.J.A.C. 7:14A are required by the CWEA. As to those amendments, the Department has accepted the Legislature's assessment of their social impact.

Subchapter 1

The modifications proposed in subchapter 1 will benefit the regulated community in that they provide more consistency between the CWEA,

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the Federal regulations (40 CFR 403), and the NJPDES regulations. The Department's proposal to modify the definitions for "average monthly discharge limitation," "average weekly discharge limitation," and "maximum daily discharge limitation" will benefit permit holders by clarifying reporting terminology which is necessary for completing monthly discharge monitoring reports.

Subchapter 2

Most of the amendments proposed in subchapter 2 will have an insignificant social impact upon the general public; however, some of the changes require more accountability on the part of permittees, which will promote and enforce the Department's environmental protection goals.

The amendments proposed in N.J.A.C. 7:14A-2.1(k) will have the socially beneficial impact of clarifying the existing consent requirements by consolidating redundant text and providing better organization.

Subchapter 3

The Department's amendments at N.J.A.C. 7:14A-3, which include revisions to implement the CWEA, will have a positive social impact by further discouraging noncompliance by indirect dischargers, and by further clarifying DTW requirements.

The amendments proposed at N.J.A.C. 7:14A-3.13(a)10iii will provide for higher quality effluents by requiring that limits be imposed on the discharge of certain toxic pollutants.

Subchapter 5

The proposed amendment to N.J.A.C. 7:14A-5.17 will have a beneficial social impact as the Department will consume less time managing uncontaminated rooftop drainage and thereby be able to direct more resources towards the management of other types of underground injections that do have a significant impact on ground water contamination.

Subchapter 7

As stipulated in the CWEA, the proposed amendment of N.J.A.C. 7:14A-7.2(a)5 will provide an opportunity for a person, other than the permittee, to contest a determination by the Department in an adjudicatory hearing (effective July 1, 1992). This amendment will have the positive social impact of affording the public an additional forum to participate in the regulatory process.

Subchapter 8

The proposed amendment at N.J.A.C. 7:14A-8.9(e), which identifies the procedures necessary to be considered a party to an action, will have the positive significant social impact of providing the interested public an additional forum (beyond a public hearing) to participate in the regulatory process.

Subchapter 9

The revisions proposed to N.J.A.C. 7:14A-9.6 and 9.8 will have no social impact on the general public since no new requirements are imposed. The regulated community will benefit by these revisions since they will eliminate ambiguity in the regulations.

Subchapter 10

The proposed changes to N.J.A.C. 7:14A-10.5 will allow more efficient use of the Department resources, and will expedite both the issuance and enforcement of new control mechanisms where necessary for protection of DTWs without approved pretreatment programs.

Subchapter 11

The amendments proposed in N.J.A.C. 7:14A-11 will have no significant social impact because the amendments do not alter the substance of the current rules.

Subchapter 12

The Department's amendments in N.J.A.C. 7:14A-12, which include revisions to implement the CWEA, will have a positive social impact by further discouraging noncompliance. The modifications that reflect current policy and practice, or correct potentially confusing language and terminology, will benefit the regulated community by clarifying and defining the present treatment works approval procedures.

Subchapter 13

The proposed revisions to N.J.A.C. 7:14A-13.4 will have a positive social impact by further discouraging noncompliance of indirect dischargers.

For proposed revisions to N.J.A.C. 7:14A-13.5, refer to Social Impact under subchapter 10 above.

Proposed new rule N.J.A.C. 7:14A-13.10 will have a positive social impact by further clarifying requirements for delegated local agencies and by requiring DTWs to comply with public participation activities.

Subchapter 14

The Department's amendments to N.J.A.C. 7:14A-14 to correct inconsistencies, delete irrelevant provisions, and clarify sampling protocol will have the positive social impact of making the NJPDES rules easier to apply.

The Department's amendments concerning the monitoring requirements for precipitation events will have a positive social impact as these amendments will clarify these monitoring requirements which will help to eliminate inaccurate reporting of stormwater runoff.

Appendix F

The deletion of Appendix F and related changes will have the positive impact of eliminating possible confusion on the part of the regulated community and the general public.

In addition to the proposed amendments discussed above, the Department has also made a number of minor clarifications to the rules, which clarification should have the positive social impact inherent in any clarification of any legal requirement.

Chapter 15—Statewide Water Quality Management Planning

The repeal of N.J.A.C. 7:15-4.1 will have no significant social impact, as the co-permittee requirements in that section have already been invalidated by the Superior Court in *New Jersey Builders Association v. Fenske,* 249 *N.J. Super.* 60 (App. Div. 1991).

Economic Impact

Chapter 14A—New Jersey Pollutant Discharge Elimination System

Most of the presently proposed amendments to N.J.A.C. 7:14A are required by the CWEA. As to those amendments, the Department has accepted the Legislature's assessment of their economic impact.

Subchapter 1

The proposed amendments in N.J.A.C. 7:14A-1.9 should have no adverse economic impact to permittees since the amendments impose no additional requirements for sampling, reporting or fee assessments. The proposed changes will have a positive impact on certain permittees in that those permittees may be released from the requirements of obtaining individual NJPDES/SIU permits in areas where the Department is not the Control Authority. In addition, certain persons presently defined as SIUs may be excluded from the proposed definition of SIU and thereby may be able to avoid the costs involved in obtaining and complying with an SIU permit.

Subchapter 2

The majority of the amendments in N.J.A.C. 7:14A-2 will have no new economic impact. Because it makes only a relatively minor procedural change, the revision proposed in N.J.A.C. 7:14A-2.1(c) is unlikely to have any significant economic impact.

The amendments in N.J.A.C. 7:14A-2.5(a)16, which require the payment of all fees, penalties, and fines, or the establishment of a payment schedule with the Department prior to the issuance, renewal, or modification of a permit, should not have a significant economic impact because these payments must be made even absent the current proposal. The proposed language in N.J.A.C. 7:14A-2.8(a)1iv provides authority to establish compliance schedules for water quality based effluent limitations. Without this addition, dischargers would have to immediately comply with NJPDES effluent limitations upon permit issuance, and would be subject to civil administrative penalties of up to $50,000 per day per violation pursuant to N.J.A.C. 7:14-8. Since this may not be possible for many wastewater treatment facilities, the proposed amendment will allow time for the discharger to implement the improvements necessary to achieve full NJPDES permit compliance and to thereby avoid penalties that otherwise would be imposed.

Subchapter 3

The proposed revisions to N.J.A.C. 7:14A-3.11 will not have any new economic impacts because they are existing requirements which have been either relocated from different sections in the current NJPDES rule for clarity, or incorporate pre-existing requirements from the original Water Pollution Control Act. (See the NJPDES Cross Reference Table

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at the proposal notice statements for a listing of the present citations and the new citations.)

As a result of the proposed amendment to N.J.A.C. 7:14A-3.13, permits for most delegated local agencies will probably include effluent limitations for additional parameters. The inclusion of those limits will require the delegated local agencies to incur the cost of sampling, and possibly the costs of increased treatment if the samples reveal that the limits are being violated. The extent of the increased costs would vary widely, depending on the number of new parameters and on whether there are any violations. Those costs will probably be substantial in at least some cases.

Subchapter 5

Economically, the public will benefit from the proposed amendment to N.J.A.C. 7:14A-5.17, in that less information will be required to be submitted to and reviewed by the Department.

Subchapter 7

It is difficult to definitively assess the economic impact upon any specific person or class of persons that will result from the proposed N.J.A.C. 7:14A-7.2(a)5. That amendment will allow persons other than permittees to contest a determination by the Department in an administrative hearing. The economic effect of this amendment is dependent on a variety of unpredictable factors such as: the number of hearings requested, the number of parties involved, the length of time for each hearing and the associated administrative/legal costs, and the issues contested. While the effects of this revision cannot be predicted with any degree of certainty, this amendment will probably increase the administrative costs of the Department and those permittees involved in contested cases, regardless of any final decision rendered at a hearing. Furthermore, if a party were to successfully contest a determination that resulted in stricter effluent requirements, a positive economic impact would result for those that are involved in the design and construction of wastewater treatment facilities. However, the costs of implementing the necessary treatment modifications would be borne by the permittee and ultimately its users. Conversely, if a party were to successfully contest a determination that reduced the level of treatment necessary for a particular discharge, a positve economic benefit would result for permittees and their users, since the need for less treatment would normally result in a reduction of equipment and cosntruction costs. It is probable that most third parties will seek to impose stricter effluent limits.

Subchapter 8

As identified in the subchapter 7 economic impact statement, the revisions proposed in N.J.A.C. 7:14A-8.9(e) will most likely increase the administrative costs of the Department and those permittees involved with contested permit conditions. Individuals utilizing the permittee's facilities may also be subject to increased user fees if a hearing decision requires the construction of additional treatment facilities. Again, the variability of the issues contested and the individual interests of those challenging a determination, make a definitive assessment of economic impacts difficult.

Subchapter 10

The proposed revisions to N.J.A.C. 7:14A-10.5 will have a positive economic impact, since NJPDES/SIU permittees who meet the requirements for permit revocation will no longer pay a NJPDES/SIU permit fee.

Subchapter 12

The amendment in N.J.A.C. 7:14A-12.1 which prohibits the approval of facilities that violate the provisions of the subchapter will have an economic impact only on violators. The extent of the economic impact on the violators will depend on a variety of factors including the conduct of the violator, the particular provision violated, and the extent of the enviromental damage. The requirement in N.J.A.C. 7:14A-12.9(b) for obtaining the approval of the affected sewage authority for on site discharges will have an economic impact in terms of the time and fees associated with each municipality's specific review process. However, this is not a new procedure, and is being proposed at this time to express a current policy. Similarly, the amendment at N.J.A.C. 7:14A-12.11(a)2 which requires the applicant to obtain a Discharge Allocation Certificate prior to filing a Treatment Works Approval application is not a new requirement and there will be no new economic impact associated with this change. In N.J.A.C. 7:14A-12.12(a)4 and (c), the requirement to execute a Departmentally prepared certification report and the identification of a responsible individual will not have any economic impact. The elimination of the reference to the 201 sewerage agency in N.J.A.C. 7:14A-12.12(d) will have the beneficial economic impact of reducing the time and work required in the consent process, thereby decreasing the associated administrative costs. The modification in N.J.A.C. 7:14A-12.25(c)4, which requires the rescission of a sewer connection ban prior to permitting the operation of a construction only permit, may increase the overall time to complete and utilize a facility and may therefore increase a project's carrying costs. However, this is not a new requirement and serves only to express a current policy.

Subchapter 13

The proposed revisions to N.J.A.C. 7:14A-13.4 will have an economic impact only on violators. The extent of the economic impact on the violators will depend on a variety of factors including the conduct of the violator, the particular provision violated, and the extent of the environmental damage.

For proposed revisions to N.J.A.C. 7:14A-13.5, refer to Economic Impact under subchapter 10.

As a result of proposed new rule N.J.A.C. 7:14A-13.10, DTWs with an approved pretreatment program will incur significant costs for additional inspections of all permitted industrial users, industrial users in significant noncompliance (SNC), and the administrative costs of submitting the additional annual report and local limit development. Costs associated with local limit development average $100,000 and may fluctuate with the size of the DTW and its service area. Furthermore, additional economic impacts are dependent upon the surface water quality standards and the sludge quality standards which are to be promulgated at a later date. These standards will dictate where additional local limits, and therefore pretreatment, will be required. Costs associated with performing additional inspections of all permitted industrial users and industrial users in SNC is DTW specific and cannot be determined at this time. The economic impact associated with the submittal of the annual report will be minimal. The economic impact of the factors noted above may be offset, in whole or in part, by any fines collected by the DTW in accordance with N.J.S.A. 58:11-55.

Subchapter 14

The Department's amendments to correct inconsistencies, delete irrelevant provisions and expand sampling protocol will not have a significant economic impact as these amendments simply clarify the NJPDES regulations.

The Department's amendments concerning the monitoring requirements for precipitation events will have a minimal economic impact, by way of increasing analytical costs for permittees who were incorrectly monitoring their stormwater runoff.

Appendix F

Because they are outdated portions of the regulations, that are no longer in use, there will be no costs directly associated with the proposed deletions of Appendix F, N.J.A.C. 7:14A-3.14(l), and N.J.A.C. 7:14A-13.6. Further, to the extent any impact can be attributed to the deletion of these regulations, that impact is not significant because the development of water quality based limits would generally be similar in magnitude to those that would have been set through the use of the values listed in Appendix F and the procedures stated in the deleted regulations.

In addition, there are a number of proposed amendments that the Department expects to have no significant economic impact in that the amendments constitute minor clarifications or procedural changes.

Chapter 15—Statewide Water Quality Management Planning

The repeal of N.J.A.C. 7:15-4.1 will have no significant economic impact, as the co-permittee requirements in that section have already been invalidated by the Superior Court in *New Jersey Builders Association v. Fenske,* 249 *N.J. Super.* 60 (App. Div. 1991).

Environmental Impact

Chapter 14A-New Jersey Pollutant Discharge Elimination System

Most of the presently proposed amendments to N.J.A.C. 7:14A are required by the CWEA. As to those amendments, the Department has accepted the Legislature's assessment of their environmental impact.

Subchapter 2

The proposed change in N.J.A.C. 7:14A-2.1(b) will have a positive significant environmental impact in that it will assign responsibility to

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past dischargers/owners for regulatory violations that, at present, may be causing environmental problems. The revisions proposed in N.J.A.C. 7:14A-2.1(c) and the signatory requirements in N.J.A.C. 7:14A-2.4(c) will not have a significant environmental impact. The deletion of N.J.A.C. 7:14A-2.1(l), (m), (n), and (o) will have no significant environmental impact, as the co-permittee requirements in those provisions have already been invalidated by the Superior Court in *New Jersey Builders Association v. Fenske,* 249 *N.J. Super.* 60 (App. Div. 1991). The Department and the Board of Regulatory Commissioners are currently exploring legislative and administrative options that would achieve the same environmental protection purposes as those that were achieved by the invalidated provisions.

The language added to N.J.A.C. 7:14A-2.5(a)14i from the original Water Pollution Control Act will not have an environmental impact. The modification to N.J.A.C. 7:14A-2.5(a)14vii which requires the reporting of serious violations within 30 days of the violation will have a positive environmental impact by promoting more accountability on the part of permittees. The amendments of N.J.A.C. 7:14A-2.5(a)16 will not have a significant environmental impact. The proposed addition in N.J.A.C. 7:14A-2.8(a)1iv, which allows the Department to establish compliance schedules for water quality based effluent limitations, may result in some negative environmental impacts for an interim period of time. However, feasible alternatives are not available, since many wastewater treatment plants will not have the existing facilities necessary to immediately achieve full compliance upon NJPDES permit issuance. Ultimately, the issuance of more stringent NJPDES permits containing water quality based effluent limitations with appropriate compliance schedules will result in an overall improvement to the State's water quality.

Subchapter 3

The proposed revisions to N.J.A.C. 7:14A-3 will have a positive environmental impact by discouraging DTW and industrial user noncompliance and by requiring DTWs to better control nondomestic discharges into their plants. The quantities of toxic pollutants will be regulated and controlled, leading to a higher quality of effluent and improving the water quality in the receiving streams. The revisions will discourage noncompliance and will encourage DTWs to better control the toxic pollutants that are discharged to the facility by the users of the DTWs. Specifying the analytical method to be utilized will ensure that monitoring is performed properly, thus enabling the Department to more accurately determine whether permittees are in compliance.

Subchapter 5

The proposed amendment to N.J.A.C. 7:14A-5.17 will improve the Department's ability to regulate and manage underground injections that pose a significant threat to ground water resources by eliminating the review and processing of inventory information for underground injections of uncontaminated rooftop drainage, which injections have a minimal or extremely low impact on ground water resources. The elimination of inventory requirements for these discharges will not adversely impact the environment, since these discharges are still subject to certain construction, operation and closure requirements under the existing permit-by-rule.

Subchapter 7

The environmental impacts associated with the revisions proposed in N.J.A.C. 7:14A-7.2(a)5 are difficult to predict when considering the number and variety of issues that could possibly be adjudicated in a hearing by a person(s) other than the permittee. This variability can promote both positive and negative impacts depending on the goals of the specific party(ies) seeking the right to participate in the adjudicatory hearing and on the decision that eventually results from the adjudicatory hearing.

Subchapter 8

The environmental impacts associated with the revisions proposed in N.J.A.C. 7:14A-8.9(e) are difficult to predict when considering the number and variety of the issues that could possibly be adjudicated in a hearing by a person other than the permittee. This variability can promote both positive and negative impacts depending on the goals of the specific party(ies) seeking the right to participate in the adjudicatory hearing and on the decision that eventually results from the adjudicatory hearing.

Subchapter 10

The proposed changes to N.J.A.C. 7:14A-10.5 will have a positive environmental impact in that it will allow the Department to concentrate its efforts on control of the specific discharges with the greatest actual and potential adverse environmental impact in those areas of the State where the Department is the control authority. Because the delegated local agencies now have the same enforcement powers as the Department, and because the Department oversees the implementation and enforcement of the delegated local agencies' pretreatment programs, the revocation of the Department's SIU permits will have no impact on the environment.

Subchapter 12

The revision in N.J.A.C. 7:14A-12.1 which prohibits local approvals that violate the subchapter will have a positive environmental impact by discouraging local construction approvals of environmentally damaging projects. The amendment to N.J.A.C. 7:14A-12.9 to require local consent for on site discharges not directly impacting a local authority's treatment works will have a positive environmental impact in that it will promote more awareness and enable local governments to plan and control the development of treatment works in their respective future service areas. The changes proposed in N.J.A.C. 7:14A-12.11 will not have a significant environmental impact. The amendment in N.J.A.C. 7:14A-12.12(a) will not have a significant environmental impact, nor will the revision in subsection (d), which eliminates the need for the 201 sewerage agency endorsement, since the requirement to comply with environmental restrictions contained in EPA grant conditions, or with restrictions that are part of the areawide WQM plans under N.J.A.C. 7:15-3.4(k), will not change. The proposed revision in N.J.A.C. 7:14A-12.25(c)4 will not have a significant environmental impact and will only provide a regulatory mechanism for the enforcement of the Department's current policy of prohibiting the operation of "construct only" permits until a sewer connection ban has been rescinded.

Subchapter 13

The proposed revisions to N.J.A.C. 7:14A-13.4 will have a positive environmental impact by discouraging violations of interim enforcement limits by indirect dischargers.

For proposed revisions to N.J.A.C. 7:14A-13.5, refer to Environmental Impact under subchapter 10 above.

The proposed revisions to N.J.A.C. 7:14A-13.10 will have a positive environmental impact by discouraging DTW and industrial user noncompliance and requiring DTWs to better control nondomestic discharges into their plants. The quantities of toxic pollutants will be regulated and controlled, leading to a higher quality of effluent and increasing the water quality in the receiving streams.

Subchapter 14

The proposed amendments to N.J.A.C. 7:14A-14 will have a positive environmental impact by improving the NJPDES regulations as well as helping to prevent inaccurate reporting of sampling results from precipitation events, which will aid the Department in tracking those facilities which do not comply with their NJPDES permit.

Appendix F

The deletion of Appendix F, N.J.A.C. 7:14A-3.14(l), and N.J.A.C. 7:14A-13.6 in and of itself will have no environmental impact. The fact that the Department is now implementing water quality based effluent limitations based on scientifically updated criteria for DSW permits will have a beneficial environmental impact.

In addition, there are a number of proposed amendments that the Department expects to have no significant environmental impact in that the amendments constitute minor clarifications or procedural changes.

Chapter 15—Statewide Water Quality Management Planning

The repeal of N.J.A.C. 7:15-4.1 will have no significant environmental impact, as the co-permittee requirements in that section have already been invalidated by the Superior Court in *New Jersey Builders Association v. Fenske,* 249 *N.J. Super.* 60 (App. Div. 1991). The Department and the Board of Regulatory Commissioners are currently exploring legislative and administrative options that would achieve the same environmental protection purposes as those that were achieved by the invalidated provisions.

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Regulatory Flexibility Analysis

These proposed amendments and new rules are not directed at small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but the Department expects that some small businesses that utilize DTWs will be indirectly affected by some of the amendments. Specifically, DTWs will probably be required to impose more stringent requirements on some of their users in order to comply with the more stringent requirements that the proposed rules will impose on the DTWs. Because the relationship between the Department and those that utilize DTWs is indirect, it is difficult for the Department to estimate the number and type of small businesses that will be impacted by these rules. However, based upon the information available to the Department, it appears that an extremely wide variety of small businesses use DTWs, and that the businesses using those DTWs number in the thousands. Although the vast majority of those users will not be affected by these rules other than in that they may be required to pay increased user fees to the DTWs, indirect users of DTWs imposing stricter limits will incur additional costs if new treatment equipment must be installed to achieve the stricter limits set by the DTWs.

As to small businesses that are direct permit holders, the Department's filing system focuses on the size and type of the discharge rather than the size and type of the business. Thus, there is no practical way for the Department to reliably determine the number of small businesses that may be affected by these rules.

For the reasons set forth above, it is virtually impossible for the Department to explain the effect of the rules on small businesses in terms of reporting, recordkeeping, compliance requirements, the type of professional services they will require, and the capital and annual costs they will incur. To the extent that it is possible to do so, the descriptions are set forth below in the context of specific subchapters. Other than as set forth below, the relevant statutes and concerns for the public health, safety, and general welfare do not permit the Department to exempt small businesses from the requirements of these rules.

Chapter 14A—New Jersey Pollutant Discharge Elimination System

Subchapter 1

The proposed revisions in N.J.A.C. 7:14A-1.9 do not impose any new reporting, recordkeeping, or other compliance requirements on small businesses. The proposed changes will reduce these requirements for certain dischargers in that they may be excluded from the definition at 40 CFR 403.3 (t) by the Control Authority, and thereby may not be required to obtain a permit. For additional regulatory flexibility analysis, see subchapter 10 below.

Subchapter 2

The only reporting proposed in N.J.A.C. 7:14A-2 is the provision in N.J.A.C. 7:14A-2.5(a)11 which requires the reporting of serious violations within 30 days of the violation. This will impose only minimal costs on those to whom it applies. Any exemption from its requirements would violate the CWEA and endanger public health and the environment.

The amendment to N.J.A.C. 7:14A-2.8 relates to schedules of compliance that are to be placed in permits. In setting those schedules for small businesses, the Department will consider the resources available to small businesses, to the extent that it can without violating relevant statutory requirements or endangering human health or the environment.

Subchapter 3

The proposed amendments to N.J.A.C. 7:14A-3 may impose additional requirements on small businesses. Local limits developed by a DTW to comply with surface water quality standards and sludge quality standards, in accordance with the CWEA, are placed in the DTW's sewer use ordinance or rules and regulations. All industrial users, regardless of size, are required to comply with the limitations noted therein. Achieving compliance with the limits may require expenditures by the industrial user including, but not limited to, expenditures related to applying or discharge permits, submitting monitoring reports, and installing additional pretreatment. These amendments are required by the CWEA, which does not allow the Department to minimize its impact on small businesses.

Subchapter 5

The proposed revision to N.J.A.C. 7:14A-5.17 does not alter the number of underground injections subject to regulation. It does, however, exempt certain underground injections from the inventory requirements of the permit-by-rule for Class V wells. Although this proposed exemption is not limited to the small business community, many small businesses will benefit by no longer having to provide the subject information to the Department.

Subchapters 7, 8 and 9

The revisions proposed in N.J.A.C. 7:14A-7, 8 and 9 will not impose any new reporting, recordkeeping, or compliance requirements on small businesses.

Subchapter 10

The proposed revisions to N.J.A.C. 7:14A-10.5 will reduce existing redundancies in reporting and recordkeeping. No new compliance requirements are proposed.

Subchapter 11

The revisions proposed in N.J.A.C. 7:14A-11 will not impose any new reporting, recordkeeping, or compliance requirements on small businesses.

Subchapter 12

The proposed revisions in N.J.A.C. 7:14A-12 do not impose any new reporting, recordkeeping, or other compliance requirements on small businesses. They are largely editorial changes which define current policies or procedures and incorporate the requirements of the CWEA.

Subchapter 13

The proposed amendments to N.J.A.C. 7:14A-13 may impose additional requirements on small businesses. Local limits developed by a DTW to comply with surface water quality standards and sludge quality standards, in accordance with the CWEA, are placed in the DTW's sewer use ordinance or rules and regulations. All industrial users, regardless of size, are required to comply with the limitations noted therein. Achieving compliance with the limits may require expenditures by the industrial user including, but not limited to, expenditures related to applying for discharge permits, submitting monitoring reports, and installing additional pretreatment. These amendments are required by the CWEA, which does not allow the Department to minimize its impact on small businesses.

Subchapter 14

The proposed revisions to N.J.A.C. 7:14A-14 do not impose any new reporting, recordkeeping, or other compliance requirements on small businesses.

Appendix F

The deletion of Appendix F and related changes does not impose any new reporting, recordkeeping, or other compliance requirements.

Chapter 15—Statwide Water Quality Management Planning

The repeal of N.J.A.C. 7:15-4.1 will not impose any compliance or reporting requirements on small businesses.

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

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NJPDES CROSS-REFERENCE TABLE

Present Cite	New Cite	Title
7:14A-2.4(c)	7:14A-2.4(d)	Signatories
7:14A-2.5(a)14vii	7:14A-2.5(a)14viii	Conditions Applic.
7:14A-2.5(a)14viii	7:14A-2.5(a)14ix	Conditions Applic.
7:14A-3.11(a)2 & 3	7:14A-3.11(a)2i & ii	DTWs
7:14A-3.13(a)9ii	Deleted	Monitoring Req.
7:14A-3.13(a)10i	7:14A-3.11(a)2i	DTW Permits
7:14A-3.13(a)10ii	7:14A-3.11(a)2ii (from CWEA 58:10A-6.h(1))	DTW Permits
7:14A-3.13(a)10iii	7:14A-3.11(a)2iii	DTW Permits
7:14A-3.13(a)10iv	7:14A-3.11(a)2iv	DTW Permits
7:14A-3.13(a)10v	7:14A-3.13(a)10ii	DTW Permits
7:14A-3.14(l)	Deleted	Limits for Toxic Substances
7:14A-8.9(d)	7:14A-8.9(g)	Adjudicatory Hearing
7:14A-8.9(e)	7:14A-8.9(h)	Adjudicatory Hearing
7:14A-8.9(f)	7:14A-8.9(i)	Adjudicatory Hearing
7:14A-8.9(g)	7:14A-8.9(j)	Adjudicatory Hearing
7:14A-8.9(h)	7:14A-8.9(k)	Adjudicatory Hearing
7:14A-10.5(a)1	Deleted	Discharges into DTWs
7:14A-10.5(a)3	7:14A-10.5(a)1	Discharges into DTWs
7:14A-13.6	Deleted	Water Qlty. Violation
7:14A-14.3(a) & (b)	None (Reserved)	Implementation
7:14A-14.4(a)1 and 7:14A-14.4(a)2	7:14A-14.4(a)	Oil and Grease Effluent Limitations
7:14A-14.4(a)2i 14.4(a)2ii 14.4(a)2iii	7:14A-14.4(a)1 14.4(a)2 14.4(a)3	Oil and Grease Effluent Limitations
7:14A-14.4(c)1 and 7:14A-14.4(c)2	7:14A-14.4(c)1	Oil and Grease Effluent Limitations
7:14A-14.4(c)3	7:14A-14.4(c)2	Oil and Grease E.L.
Appendix F	Deleted	Toxic Values

7:14A-1.2 Scope

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

(c) No person shall discharge any pollutant except in conformity with a valid NJPDES permit **that has been issued by the Department pursuant to the State Act or a valid NJPDES permit issued by the Administrator pursuant to the Federal Act, as the case may be**. A discharger which existed prior to the effective date of this chapter who has submitted a complete application shall be deemed to satisfy only the requirement of applying for a permit. This shall not preclude the Department from taking any appropriate enforcement action for violation of the State Act, this chapter, or other applicable law or regulation.

(d) It is the intent of the Department to regulate, at a minimum, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program:

1.-6. (No change.)

7. The storage of any liquid or solid pollutant[, in a significant quantity,] in a manner designed to keep it from entering the waters of the State;

8.-14. (No change.)

(e) (No change.)

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1.-3. (No change.)

4. For any discharge [inconsistent] **which conflicts** with any areawide plan or plan amendment **adopted pursuant to law;**

5. (No change.)

6. For any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

7. For any discharge to which the Administrator has objected in writing pursuant to the Federal Act;

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) The general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-7. (No change.)

8. The Department, upon the termination of a NJPDES permit, **or revocation of a NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g)** shall **upon written request of the permittee** prorate the fee for the number of days that the facility was in operation **or was discharging under a valid NJPDES/SIU permit** during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9.-10. (No change.)

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

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Approved industrial pretreatment program" means an industrial pretreatment program prepared by a local agency and approved by the Department in accordance with 40 CFR Part 403 and N.J.A.C. 7:14A-13.1(a).

...

"Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month [or any 30 consecutive days,] calculated as the sum of all daily discharges measured during a calendar month [or any 30 consecutive days,] divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of "daily discharges" over [a calendar week or] any seven consecutive days, calculated as the sum of all daily discharges measured during [a calendar week or] any seven consecutive days,

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divided by the number of daily discharges measured during that seven day period.

...

"Control Authority" means the entity responsible for administering an industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a) and shall be the Department in areas of the State served by a local agency without an approved industrial pretreatment program or the delegated local agency in all other areas of the State.

...

["Endorse" means that the sewerage authority under a Departmentally imposed ban accepts and approves of the project and that the project is in conformance with all ordinances, rules and regulations of the sewerage authority. This is not a judgment by the sewerage authority that an exemption is justified.]

...

"Maximum daily discharge limitation" means the highest allowable "daily discharge" **during the reporting period.**

...

"Significant indirect user" ("SIU") means, solely for the purposes of this chapter[, any user, excluding municipal collection systems, who discharges on any one day wastewater into a DTW where]:

1. Any user in the State including, but not limited to, any Significant Industrial User as defined in 40 CFR 403.3(t) but excluding municipal collection systems, who discharges wastewater into a local agency where:

i. The user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or

[1.]**ii.** The **user's average** volume of [industrial] process wastewater exceeds 25,000 gallons per day; or

[2.]**iii.** The amount of BOD, COD or Suspended Solids in the [industrial] **user's** process wastewater discharge exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected [DTW] **local agency**; or

[3.]**iv.** The volume of [industrial] process wastewater in the discharge exceeds five percent or more of the average daily **dry weather** flow of the [DTW] **local agency**; or

[4.]**v.** The **user's** discharge of [industrial] process wastewater contributes[, prior to any pretreatment,] five percent or more of the daily mass loading of any of the pollutants listed in Appendix B Tables II-VI; or

[5. The user of a DTW is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1; or

6. The user is determined to be an Industrial Waste Management Facility under N.J.A.C. 7:14A-4; or

7. The user has been found by the Department to be in violation of State laws or regulations, or local ordinances concerning environmental issues; or

8. The discharge consists of landfill leachate, either pure, treated or diluted by ground water or surface runoff; or

9. The discharge consists of significant quantities of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; or]

vi. The user is designated as an SIU by the Control Authority on the basis that the user has a reasonable potential for adversely affecting the local agency's operation; or

vii. The user is designated as an SIU by the Control Authority on the basis that the user has been in violation of any Federal, State, or local pretreatment standard or requirement, including but not limited to, significant noncompliance as defined in 40 CFR 403.8(f)(2)(vii); or

[10.]**viii.** The [department] **Control Authority** determines it would be consistent with the intent of the Pretreatment Act or State Act to require a permit for the indirect discharger[.]**; and**

2. Any user in areas of the State in which the Department is the Control Authority where:

i. The user is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1; or

ii. The user is determined to be an Industrial Waste Management Facility under N.J.A.C. 7:14A-4; or

iii. The user's discharge consists of landfill leachate, which is either pure, treated or diluted; or

iv. The user's discharge consists of 25,000 gallons per day or more of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; however

3. Upon finding that any user in the State has no reasonable potential for adversely affecting the local agency's operation or for violating any Federal, State, or local pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from a user or a local agency, and in accordance with 40 CFR 403.8(f)(6), determine that any user specified in paragraphs 1 or 2 above, unless the user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, is not a significant indirect user.

...

"State Act" means the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq. **and any amendments thereto.**

...

7:14A-2.1 Application for a NJPDES permit

(a) (No change.)

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which includes [an] **a discharge or** activity regulated pursuant to this chapter; [and]

2. A person who currently operates any **part of a** facility which includes [an] **a discharge or** activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or **(b)**2 above, more than one person is required to obtain a NJPDES permit for one or more **discharges or** activities at a specific site, the Department [shall] **may** issue a single permit [which] **and may** list[s] all of these persons as permittees.

(d)-(j) (No change.)

(k) Applicants for NJPDES permits **(other than those applying for the renewal of SIU permits where there is to be no change in the discharge identified in the existing permit), DACs, treatment works approvals, or sewer connection approvals** shall provide [endorsements] **written statements of consent** and comments as follows:

1. Prior to the submission of an application [for a permit to discharge to surface or groundwater, DAC, or to gain approval for a treatment works or sewer connection], the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they [endorse] **provide a written statement of consent to** the application.

i. [Permit applications] **Applications** submitted to the Department [for a new discharge to surface water or groundwater, DAC, or to gain approval for a treatment works or sewer connection] shall include [the endorsement] **a written statement of consent** from both the affected sewage authority(ies) and municipality in which the discharge(s) will be located. **Applications which are submitted without a written statement of consent shall be reviewed by the Department in accordance with (k)4iv and v below.**

[ii. Applications submitted to the Department for renewal of NJPDES permits or discharges which exist as of March 6, 1981 shall include a copy of all endorsements and comments received or a copy of the request for an endorsement and receipt (return receipt requested) sent to the affected authority(ies) and municipality in which the discharge(s) will be located.]

2. [An endorsement] **A written statement of consent** by a municipality shall be as follows:

i. [An endorsement] **A written statement of consent** by a municipality concerning a proposed discharge or treatment works shall include the following [statements]:

(1)-(2) (No change.)

ii. [An endorsement] **A statement of consent** shall be in the form of a resolution by the governing body**, or it may be a written**

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statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.

[iii. Proof that the applicant has made a request for endorsement shall be submitted to the Department by the applicant with the application.

iv. If the endorsement is to be signed by anyone other than the mayor, the municipality shall file with the Department an official resolution by the governing body delegating such responsibility to a named individual.]

3. [An endorsement] **A written statement of consent** by an affected sewage authority shall be as follows:

i. (No change.)

ii. [An endorsement] **A written statement of consent** by an affected sewage authority concerning a proposed discharge of pollutants or a treatment works shall include the following [statements]:

(1) The project as proposed is in conformance with [the applicable 201 facilities plan and] all ordinances, rules, or regulations of the authority.

(2) (No change.)

iii. [The endorsement] **A statement of consent** must be in the form of a resolution by the governing body, **or it may be a written statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.**

[iv. Proof that the applicant has made a request for an endorsement shall be submitted to the Department by the applicant with the application.]

4. [The lack of endorsement for renewal of NJPDES permits of discharges which exist as of March 6, 1981 may have the following effect] **An applicant's request for a written statement of consent from an affected sewage authority or municipality shall be processed as follows**:

i. The affected sewage authority or municipality must [endorse] **consent to** the application or submit comments **to the Department** within 60 days of the request for [endorsement] **consent**. Prior to the expiration of the 60-day period to [request an endorsement] **respond to a request for a written statement of consent,** the municipality or sewage authority may request a 30-day extension for review of a request for [endorsement] **consent.**

ii. Any document issued by a sewage authority or a municipality which is tentative, preliminary, or conditional approval shall not be considered [an endorsement] **a statement of consent.**

iii. [Where] **When** the affected sewerage authority or municipality [denies endorsement] **does not consent** to a project, it shall state all reasons for rejection or disapproval in a resolution and send a certified copy of the resolution to the Department.

[iv. Where the municipality or affected sewage authority denies an endorsement or does not issue an endorsement, the Department shall review the reasons for denial or lack of endorsement, if known. These reasons shall be considered by the Department in making a determination of whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6.

5. The lack of an endorsement or denial of an endorsement for a new discharge to surface or groundwater, DAC, or approval of a treatment works or sewer connection shall have the following effect:]

[i.]**iv.** When the affected sewage authority or municipality **expressly** denies [endorsement] **a request for a written statement of consent** [to] **for** a project, the permit application may be determined by the Department to be incomplete for processing; **or in the alternative, the Department may review the reasons for denial. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12.**

[ii.]**v.** [Where] **When** the affected municipality or sewage authority [denies an endorsement or] does not issue [an endorsement] **a written statement of consent in accordance with (k)4i above, or a denial in accordance with (k)4iv above,** the Department, **upon receipt of proof that the applicant has delivered to the affected agency a written request for a written statement of consent,** shall review the reasons [for denial or for the lack of endorsement, if known] **therefor, if known on the basis of reasonably reliable information. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12. The Department may, in its discretion, deem the application to be incomplete pending the expiration of the time period set forth in (k)4i above.**

[(1) After December 5, 1985, the Department shall not, except as provided in (n) below, issue a permit under N.J.A.C. 7:14A for the following new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW:

1. DTW that, using subsurface sewage disposal systems or any other means, serve more than one property, dwelling unit, commercial unit, or other premises, whether or not such DTW require NJPDES discharge permits; and

2. Any other DTW that require NJPDES discharge permits.

(m) For purposes of (l) above through (o) below, a "new or expanded DTW" means:

1. A DTW that was not in existence or under construction on or before December 5, 1985; or

2. A DTW whose actual or proposed capacity exceeds the capacity identified for that DTW in the areawide WQM Plan that was in effect on December 5, 1985.

(n) Subsections (l) above through (o) below do not apply to the following new or expanded DTW:

1. Sewers or pumping stations;

2. New or expanded DTW whose only new or expanded components handle sludge only, except as required in Department rules on sludge management adopted pursuant to N.J.S.A. 13:1E-1 et seq.; or

3. New or expanded DTW owned by a BPU-regulated sewer utility, if that DTW replaces or expands a DTW that discharges at the same location, if:

i. A DTW that discharged at the same location was owned by that BPU-regulated sewer utility prior to October 2, 1989; and

ii. That sewer utility was a BPU-regulated sewer utility prior to October 2, 1989.

(o) A school district shall not be the sole permittee or co-permittee under N.J.A.C. 7:14A for any DTW that serves any property other than property of that school district.]

7:14A-2.3 Continuation of expired permits

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

(c) When the permittee is not in compliance with the conditions of the expired **or continued** permit, the Department, in its discretion, may choose to do one or more of the following:

1.-4. (No change.)

(d) (No change.)

7:14A-2.4 Signatories

(a) (No change.)

(b) All reports required by permits **except Discharge Monitoring Reports**, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above, who shall make the certifications set forth in (a)2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1.-5. (No change.)

(c) All discharge monitoring reports shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, which responsibilities usually include authorizing capital expenditures and hiring personnel. For private entities this will usually be a person identified in (a)2ii above, and for public entities it will usually be a plant manager, an executive director of a public authority, or a ranking elected official. The above described official may, in his or

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her absence, authorize another responsible high ranking official to sign the report. Authorizations for other individuals to sign in accordance with this subsection shall be made in accordance with (b) above. The following requirements shall also apply to the signing of discharge monitoring reports:

1. The highest ranking official shall be liable in all instances for the accuracy of all of the information provided in the monitoring report. However, the highest ranking official may file within seven days of his or her return, amendments to the monitoring report to which he or she was not a signatory.

i. The filing of amendments to a monitoring report in accordance with(c)1 above shall not be considered a late filing of a report for the purposes of N.J.A.C. 7:14-8.9(e), or for the purposes of determining a significant noncomplier.

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

7:14A-2.5 [Conditions] **Requirements** applicable to all [permits] **permittees**

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit[.] **including, but not limited to, effluent limitations based upon guidelines or standards established pursuant to the Federal Act or the State Act together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements.** [No] **All discharges shall be consistent at all times with the terms and conditions of the permit and no** pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

2.-6. (No change.)

7. The permittee shall at all times maintain in good working order and operate as [efficiently] **effectively** as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes, at a minimum, effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including appropriate quality assurance procedures as described in 40 CFR 136 and applicable State law and regulations. All permittees who operate a treatment works shall satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act", N.J.S.A. 58:11-64 et seq., or other applicable law. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit or where required by applicable law or regulation.

8. A permit may be modified, revoked and reissued, or terminated for cause **by the Department**. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance shall not stay any permit condition. **A permit condition may be administratively stayed by the Department in accordance with N.J.A.C. 7:14A-8.10.**

9.-10. (No change.)

11. The permittee shall allow [the Department, or] an authorized representative **of the Department**, upon the presentation of credentials, to:

i.-iv. (No change.)

12. **The permittee shall install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the Department reports of monitoring results as may be stipulated in the permit, or required by the Department pursuant (a)14 below.** The permittee shall provide for monitoring, reporting and records as follows:

i.-xi. (No change.)

13. (No change.)

14. The permittee shall conform to the reporting requirements as follows:

i. The permittee shall give notice to the Department, as soon as possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of pollutants discharged.

ii.-iv. (No change.)

v. **Where applicable,** [The] **the** permittee shall [submit] **meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance.** [reports]**Reports** of compliance or noncompliance with, or any progress reports on, **the** interim and final requirements contained in any compliance schedule of [its] **a** permit **shall be submitted** no later than 14 days following each schedule date.

vi. The permittee shall include the following in each report:

(1) The permittee shall report [any noncompliance which may endanger health or the environment] **to the Department any noncompliance including, but not limited to, exceedances of effluent limitations that cause, or have the potential to cause, injury to persons or damage to the environment, or poses a threat to human health or the environment**. The permittee shall provide the Department with the following information:

(A)-(B) (No change.)

(C) Steps being taken to reduce, **remediate** and eliminate the noncomplying discharge **and the damage to the environment**;

(D) (No change.)

(E) The cause of the noncompliance; [and]

(F) Steps being taken to reduce, eliminate, and prevent reoccurence of the noncomplying discharge[.]**; and**

(G) An estimate of the danger to human health or the environment posed by the discharge.

(2) The permittee shall orally provide the information in (a)[12]**14**vi(1)(A) through (C) above to the DEP Hotline (609) 292-7172 within two hours **of the occurrence,** or [from the time the] **of the** permittee [becomes] **becoming** aware of the [circumstances] **occurrence, whichever occurs later**.

(3) The permittee shall orally provide the information in (a)[12]**14**vi(1)(D) through [(E)](**G**) above to the DEP Hotline within 24 hours **of the occurrence or** of the [time the] permittee [becomes] **becoming** aware of the [circumstances] **occurrence, whichever occurs later.**

(4) A written submission shall also be provided within five days **of the occurrence or** of the [time the] permittee [becomes] **becoming** aware of the [circumstances] **occurrence, whichever comes later.** The written submission shall contain the information in (a)[12]**14**vi(1)(A) through [(F)](**G**).

vii. The permittee shall submit a written report to the Department of any serious violation within 30 days of the violation, together with the information specified in (a)14vi(1)(A) through (G) above, and a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

[vii.]**viii.** The permittee shall report all instances of noncompliance not reported under (a)12i, iv, v, and vi above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in (a)[12]**14**vi(1) **above.**

[viii.]**ix.** Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the

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Department, the permittee shall promptly submit such facts or information **within 10 days of the time the permittee becomes aware of the correct information.**

15. [The] **Where applicable, the** permittee shall **limit the concentrations of heavy metals, pesticides, organic chemicals, and other contaminants in the sludge and shall** conform with the requirements for the management of residuals under:

i.-v. (No change.)

16. No permit may be issued, renewed or modified so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to the State Act or has entered into an agreement with the Department establishing a payment schedule therefore. However, if a penalty or fine is contested, the applicant or permit holder shall satisfy the above requirement by posting financial security as required pursuant to N.J.A.C. 7:14-8.4(a)9. The provisions of this paragraph with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

7:14A-2.8 Schedules of compliance

(a) The Department may, when appropriate, specify in the permit a schedule of compliance [leading to], **including interim deadlines for progress or reports of progress towards** compliance with the State and Federal Acts and all other applicable authority for this chapter.

1. The Department shall establish schedules of compliance under this section as follows:

i.-iii. (No change.)

iv. Compliance schedules may be issued when it is demonstrated by a discharger that new or revised water quality based effluent limitations, based on ambient criteria adopted or revised after July 1, 1977, cannot be consistently met with the facility's existing treatment process. No schedule of compliance may be allowed for parameter specific water quality based effluent limitations where the parameter specific ambient water quality criterion, which was the basis for developing that limitation, was adopted prior to July 1, 1977 and has not been revised since adoption.

2.-3. (No change.)

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

7:14A-2.9 Requirements for recording and reporting of monitoring results

(a) All permits shall specify:

1.-2. (No change.)

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in N.J.A.C. 7:14A-3.13 (DSW), 4.4 (IWMF), 5.13 through 5.17 (UIC) and subchapter 6 (DGW). [Reporting shall be no less frequent than specified in the above sections.]

(b) (No change.)

7:14A-2.12 Modification, suspension, or revocation of permits

(a) (No change.)

(b) The following are causes for modification, suspension, or revocation of a permit:

1.-6. (No change.)

7. For an individual NJPDES/SIU permit the wastewater unit has actual or potential discharge only into a delegated local agency or information has been received by the Department that a permittee has ceased to meet all criteria under which an individual NJPDES/SIU permit is required pursuant to N.J.A.C. 7:14A-10.5(a).

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

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. (No change.)

2. [DTWs:] All DTWs [must provide adequate notice to the Department of the following] **shall:**

[i. Any new introduction of pollutants into that DTW from an indirect discharger which would be subject to Sections 301 or 306 of the Federal Act and Section 6 of the State Act, if it were directly discharging those pollutants; and

ii. Any substantial change in the volume or character of pollutants being introduced into that DTW by a source introducing pollutants into the DTW at the time of issuance of the permit.]

i. Identify, in terms of character and volume of pollutants, any significant indirect user discharging into the local agency subject to pretreatment standards under Section 307(b) of the Federal Act or Sections 4 or 6 of the State Act, 40 CFR Part 403, and the Pretreatment Act and regulations promulgated thereunder;

ii. Notify the Department in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility. For introductions of nonindustrial pollutants not requiring a treatment works approval pursuant to N.J.A.C. 7:14A-12, the Department may exempt this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

iii. Establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State Act and toxicity standards adopted pursuant to the State Act and adopted pretreatment standards;

iv. Comply with the capacity assurance program provisions of N.J.A.C. 7:14A-12.20; and

v. Prescribe terms and conditions, consistent with applicable State and Federal law, or requirements adopted pursuant thereto by the Department, upon which pollutants may be introduced into treatment works. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the Department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or established pursuant to the Federal Act or any regulations adopted pursuant thereto.

[3. For purposes of (a)2 above, adequate notice shall include information on:

i. The quality and quanity of effluent introduced into the DTW; and

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the DTW.]

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-8. (No change.)

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

i. To assure compliance with permit limitations, requirements to monitor:

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

(4) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods. (See N.J.A.C. 7:14A-2.5(a)10iii.) **If more than one approved method exists for a pollutant the Department may specify a particular method in the permit.**

[ii. Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.]

10. Pretreatment program requirements for [POTWs to:] **delegated local agencies (shall comply with the requirements set forth at N.J.A.C. 7:14A-3.11(a)2.**

[i. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreat-

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ment standards under Section 307(b) of the Federal Act or Sections 4 or 6 of the State Act, 40 CFR Part 403, and the "Pretreatment Standards for Sewerage", N.J.S.A. 58:11-49 et seq. and regulations promulgated thereunder.

ii. Notify the Department in advance of the quality and quantity of all new introduction of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility; except for such introductions of nonindustrial pollutants as the department may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notifications shall estimate the effects of such changes on the effluents to be discharged from the facility.

iii. To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with toxicity standards and pretreatment standards adopted pursuant to Sections 4 or 6 of the State Act and the "Pretreatment Standards for Sewerage", N.J.S.A. 58:11-49 et seq.

iv. As actual flows to the facility approach design flow or design loading limits, to submit to the Department for approval, a program which the permittee and the persons responsible for building and maintaining the contributory system shall pursue in order to prevent overload of the facilities.]

[v.]**i.** [Submit]**A local agency shall submit** a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under Section 307(b) **of the Federal Act.** The local program shall be incorporated into the permit as described in 40 CFR Part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403, [Subchapter 13] **N.J.A.C. 7:14A-13,** [and "Pretreatment Standards for Sewerage", N.J.S.A. 58:11-49 et seq., and regulations promulgated thereunder] **the Pretreatment Act and the State Act.**

ii. A permit for a delegated local agency shall include effluent limits for all pollutants listed under the USEPA Categorical Pretreatment Standards, adopted pursuant to 33 U.S.C. 1317, and such other pollutants for which effluent limits have been established for a permittee discharging into the municipal treatment works of the delegated local agency, except those categorical or other pollutants that the delegated local agency demonstrates to the Department are not discharged above detectable levels by the municipal treatment works. The Department by permit may authorize the use by a delegated local agency of surrogate parameters for categorical and other pollutants discharged from a municipal treatment works, except that if a surrogate parameter is exceeded, the permit shall include effluent limits for each categorical or other pollutant for which the surrogate parameter was used, for such period of time as may be specified in the permit.

11.-17. (No change.)

7:14A-3.14 Calculating NJPDES permit conditions

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

(d) Continuous discharges: For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impractible be stated as:

1. (No change.)

2. Average weekly and average monthly discharge limitations for POTWs, except that effluent limitations for any toxic substance listed in N.J.A.C. 7:9-4.14 or [Appendix F,] **in accordance with section 307(a) of the Federal Act** shall be stated as a daily maximum **and average monthly** concentration. [Average monthly limitations] **Limitations** may be calculated using applicable scientific or statistical procedures including "Technical Support Document for Water Quality Based Toxics Control" (EPA publication number, [EPA-440/4-85-032, September 1985] **EPA-505/2-90-001, March 1991),** and subsequent revisions.

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

[(l) The values assigned to the toxic substances listed in Appendix F shall be used in computing limitations of an individual toxic substance being discharged from a source into surface waters. The limitation derived through use of these values shall determine the permissible effluent concentration of an individual toxic substance provided that the effluent standard for toxic discharges, as set forth at N.J.A.C. 7:9-5.7(a) and where applicable, 40 CFR Section 125.3, is not exceeded.

1. Where any substance(s) listed in Appendix F are discharged by any source over any 24-hour period in an amount that exceeds the amount (W) calculated in accordance with the procedure specified in this subsection, the discharger shall make all reasonable efforts to mitigate the discharge of the substance(s) and shall notify the Department in writing, within 30 days, of the remedial measures it proposes to take.

2. Where any substance(s) listed in Appendix F are discharged by any source over any 24-hour period in an amount that is less than the amount (W) calculated in accordance with the procedure specified in (e)2 of this section, the discharger shall not exceed the more stringent of:

i. The levels reported in their NJPDES permit application for those substances; or

ii. Any other applicable effluent limitations.

3. The limitation (W) established through use of the following formula(e) shall apply only when the Department, through more rigorous scientific analysis (including where applicable, bioassays) does not establish revised effluent limitations in conformance with the wasteload allocation procedures in N.J.A.C. 7:9-4.6. The Department reserves the right to set toxic effluent limitations for existing dischargers in conformance with such wasteload allocation procedures.

i. For effluent discharges into surface waters of the State with essentially one dimensional flow (stream discharge):

$W = 0.0864 \times C \times Q$

W = The maximum total weight in kilograms per day (kg/d) which may be discharged by the treatment works of any pollutant listed in Appendix F, over any 24-hour period.

C = The values for determination of NJPDES Permit toxic effluent limitations in micrograms per liter (ug/l) of any pollutant listed in Appendix F.

Q = The seven day, 10 year, low flow in cubic meters/second (m^3/sec) of the receiving stream immediately downstream of the treatment works outfall.

ii. For effluent discharges into surface waters of the State with essentially multi-dimensional flow:

$W = 0.0864 \times C \times Q^e \times S$

W = The maximum total weight in kilograms per day (kg/d) which may be discharged by the treatment works of any pollutant listed in Appendix F, over any 24-hour period.

C = The values for determination of NJPDES permit toxic effluent limitations in micrograms per liter (ug/l) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S in figure 1 of Appendix F.

Q^e = The effluent discharge flow rate of the treatment works in cubic meters per second (m^3/sec).

S = The dilution factor of the effluent at the surface as shown in figure 1 of Appendix F. S shall be calculated based on the type of diffuser as follows:

(1) For multiport diffusers:

$$S = \frac{0.38(g')^{(1/3)}(y)}{q^{(2/3)}}$$

(2) For single outlet discharges:

$$S = \frac{0.089(g')^{(1/3)}(y)^{(5/3)}}{{Q^e}^{(2/3)}}$$

Where $g' = g\frac{\Delta D}{D}$ and $q = \frac{Q^e}{L}$

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g = Gravitational acceleration constant which is equal to 9.80 meters per second square (m/sec^2).
ΔD = The difference between the specific gravity of the sewage and the specific gravity of the receiving water.
D = Specific gravity of the sewage.
y = Depth to outfall in meters (m) measured from the centerline of the diffuser port to the mean low tide elevation.
q = Discharge volume per unit length of diffuser (m^2/sec).
L = Length of diffuser unit in meters (m).]

7:14A-5.17 Criteria and standards applicable to Class V injection wells

(a) (No change.)

(b) Inventory requirements: All Class V injection wells covered by rule shall submit inventory information to the Department. The authorization by rule for any Class V well which fails to comply within the time specified in [(b) 3] **(b)3 below** shall be automatically terminated.

1. Contents: As part of the inventory, the following information is required:

i. (No change.)

ii. Facility name and location, if different than the information on the well **permit**;

iii.-vi. (No change.)

2.-3. (No change.)

4. Exceptions: The requirements of this subsection do not apply to underground injection of stormwater runoff from the roofs of buildings, so long as the roofs are devoid of pollutant point sources and devices (for example, motors, tanks, pipelines, drums) that contain pollutants.

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

7:14A-6.15 Criteria for ground water protection and response

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

(e) The Department will specify in the permit the concentration limits in the ground water for hazardous constituents established under (d) above.

1.-3. (No change.)

[4. The Department may utilize the criteria specified in Appendix F of N.J.A.C. 7:14A to establish concentration limits for parameters not contained in (e)1, above.]

(f)-(k) (No change.)

7:14A-7.2 Procedures for decision-making

(a) Initial issuance of a new source NJPDES permit (except a DSW new source which shall comply with N.J.A.C. 7:14A-3.3 and (b) below) includes the following procedural stages:

1. No person shall build, install, **operate,** or substantially modify a facility for the collection or treatment of any pollutant prior to the issuance of a final draft NJPDES permit. The final draft NJPDES permit shall serve as approval for such action in accordance with Section 6(b) of the State Act, unless the Department specifically requires the applicant to apply for a treatment works approval in accordance with N.J.A.C. 7:14A-12. All treatment works shall conform with the requirements of N.J.A.C. 7:14A-12, even though not specifically required to obtain Department approval.

2.-4. (No change.)

5. The permittee, [or] applicant, **or any other person considered a party to the action pursuant to N.J.A.C. 7:14A-8.9** may request an adjudicatory hearing to contest the final determination [of] **by** the Department to grant, deny, modify, suspend or revoke a permit **in accordance with the procedures identified under N.J.A.C. 7:14A-8**. The Department shall determine [whether] **if** a hearing shall be granted[. The Department]**, and** shall refer all hearings to the Office of Administrative Law, except as provided in N.J.S.A. 52:14F-1 et seq.

6.-14. (No change.)

(b) (No change.)

7:14A-7.3 Application review by the Department

(a) Permit application is as follows:

1. Any person who requires a NJPDES permit shall complete, sign and submit to the Department an application in accordance with, but not limited to, N.J.A.C. 7:14A-2.1, 3.2 (DSW), 4.4 (IWMF), 5.8 (UIC) and subchapter 10 of this chapter. Applications are not required for IWMF and UIC permits-by-rule (N.J.A.C. 7:14A-4.5, 4.6, and 5.5), and DSW general permits. **However, the Department may require the filing of requests, authorizations, or other less formal documents as a prerequisite for permits-by-rule or general permits.**

2.-3. (No change.)

(b) Completeness for reviewing application is as follows:

1. (No change.)

2. If the applicant fails or refuses to correct said deficiencies within the 30 day time period, and if an extension has not been granted by the Department, the permit may be denied and any appropriate enforcement action may be taken [under the applicable statutory provisions] **pursuant to the State Act or N.J.A.C. 7:14-8.**

3.-4. (No change.)

(c) The Department shall [determine whether a site visit and inspection are necessary requirements and part of the application in order to evaluate the discharge completely and accurately. If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a date shall be scheduled] **conduct site inspections in accordance with the provisions of the State Act.**

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

7:14A-8.1 Public notice of permit actions and public comment period

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

(c) The Department shall provide public notice according to the following schedule:

1. Public notice of an action set forth in (a)1, 2, 3 or 5 above, except for minor modification of a permit under N.J.A.C. 7:14A-2.14, shall be provided at least 30 days prior to the end of the public comment period unless otherwise required pursuant to N.J.A.C. 7:26-12.12(c). [In addition, public notice of all major and minor modifications to permits shall be provided annually in the New Jersey Register.]

2. (No change.)

(d) (No change.)

(e) To provide public notice of activities described in (a) above, the Department shall:

1.-2. (No change.)

3. Publish [annual] notice of all [major and minor] modifications to permits in the [New Jersey Register] **DEPE Bulletin.**

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

7:14A-8.4 Obligation to raise issues and provide information during the public comment period

(a) Applicants/permittees **or persons interested in being considered a party to an action, pursuant to N.J.A.C. 7:14A-8.9,** who believe that any action under N.J.A.C. 7:14A-8.1(a)1, 2, or 3 is inappropriate, shall raise all reasonably ascertainable issues and submit in writing to the Department by certified mail (return receipt requested) all reasonably ascertainable arguments and factual grounds supporting their position, including all supporting materials, by the close of the public comment period. If [the] **an** applicant/permittee **or any person** fails to raise any reasonably ascertainable issues at this time, [the applicant/permittee shall be deemed to have waived] the right to raise or contest any such issues in any subsequent adjudicatory hearing or appeal **shall be deemed to have been waived**. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available at the request of the Department.

7:14A-8.5 Action subsequent to public comment

(a) [The Department may, upon a determination] **Upon determining** that any data, information or argument submitted during the comment period raises significant legal and/or factual issues concern-

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ing a permit or DAC[,] **that is likely to affect the permit determination, the Department may** take one or more of the following actions:

1.-3. (No change.)

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

7:14A-8.9 Adjudicatory hearing

(a) [The permittee, within 30 days following the service of notice of the Department's issuance of a final permit or DAC decision under N.J.A.C. 7:14A-8.6, may submit a written request to the Department under (b) below for an adjudicatory hearing to contest the conditions of that permit.] **A permittee may submit to the Department a written request for an adjudicatory hearing pursuant to (b) below, with 30 days following the Department's service of notice under N.J.A.C. 7:14A-8.6 of the issuance of a final permit or DAC decision. A person other than the permittee, interested in being considered a party to an action shall submit a written request by certified mail to be so considered in accordance with (d) below, within 30 days of the publication of the notice of the decision to grant, deny, modify, suspend, or revoke a permit.**

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

(d) Beginning July 1, 1992, the Department may review requests from persons, other than the permittee, that are seeking to be considered a party to an action. The administrative law judge upon referral, or the Commissioner, if the Commissioner decides to make the determination, shall find whether a person other than the applicant/permittee is a party to the action within 30 days of the submission of the request or the referral to the administrative law judge. A person shall be deemed a party to the action only if:

1. The person's objections to the action to grant, deny, modify, suspend, or revoke a permit were raised by that person in the hearing held pursuant to N.J.A.C. 7:14A-8.3 or, if no hearing was held, the objections were raised in a written submission in accordance with the public comment period identified under N.J.A.C. 7:14A-8.1;

2. The person demonstrates the existence of a significant issue of law or fact;

3. The person shows that the significant issue of law or fact is likely to affect the permit determination;

4. The person can show an interest, including an environmental, aesthetic, or recreational interest, which is or may be affected by the permit decision and that the interest can be fairly traced to the challenged action and is likely to be redressed by a decision favorable to that person. An organization may contest a permit decision on behalf of one or more of its members if the organization's member or members could otherwise be a party to the action in their own right, and the interests the organization seeks to protect are germane to the organization's purpose; and

5. The person submits the following information with the request to be considered a party to an action:

i. A statement of each legal or factual question alleged to be at issue and its relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication;

ii. Information pursuant to (b)1 through 5 above;

iii. The name, mailing address, and telephone number of the person making the request;

iv. A clear and concise factual statement of the nature and scope of the interest of the requester;

v. The names and addresses of all affected persons whom the requester represents;

vi. A statement by the requester that, upon motion of any party granted by the hearing officer, or upon order of the hearing officer sua sponte, the requester shall make available to appear and testify at the administrative hearing, if granted, the following: the requester, all affected persons represented by the requester, and all officers, directors, employees, consultants, and agents of the requester;

vii. Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions, including permit denials, which, in the judgment of the requester, would be required to implement the purposes of the State Act; and

viii. Identification of the basis for any objection to the application of control or treatment technologies, if identified in the basis or fact sheets, and the alternative technologies or combination of technologies which, in the judgment of the requester are necessary to satisfy the requirements of the State Act.

(e) Whenever a person's request to be considered to be a party to an action is granted, the Commissioner or the administrative law judge, as appropriate, shall identify the permit conditions which have been contested by the requester for which an administrative hearing will be granted. Permit conditions which are not so contested shall not be affected by, or considered at the administrative hearing. All requests by persons seeking to be considered a party to an action for a particular permit shall be combined in a single administrative hearing.

(f) An applicant/permittee may contest the determination to grant, deny, modify, suspend, or revoke a permit in an administrative hearing pursuant to this section, only upon the placement, in escrow, of money in an amount equal to the permit fee.

[(d)]**(g)** The Department, in its discretion, may extend the time allowed for submission of a hearing request under this section for good cause shown.

[(e)]**(h)** If the **applicant/**permittee **or person requesting to be considered a party to an action** fails to include any of the information required by (b) **or (d)** above **as appropriate**, the Department may deny the request for a hearing.

[(f)]**(i)** The Department, in its discretion, shall decide the extent to which the request for an adjudicatory hearing shall be granted. The Department may grant a request for a hearing in whole or in part. The Department's decision shall be made following a determination that the **request filed by the applicant/**permittee['s request] **or person seeking to be considered a party to an action** conforms to the requirements of this section and sets forth material issues of fact or law relevant to the issuance of the permit.

[(g)]**(j)** The Department, if it grants a request for an adjudicatory hearing, shall identify those contested permit conditions for which an adjudicatory hearing has been granted. The Department shall specify these conditions in writing and shall serve notice pursuant to N.J.A.C. 7:14A-8.11. Permit conditions which are not contested, **which were not commented on during the public hearing (if one was held pursuant to N.J.A.C. 7:14A-8.3**, which were not commented on **in writing** by the permittee **or a party to an action (pursuant to this section)** during the public comment period, or for which the Department has denied the hearing request, shall not be affected by or considered at the adjudicatory hearing. The issues presented in the adjudicatory hearing shall be limited to those permit conditions specifically identified by the Department as required by this section.

[(h)]**(k)** (No change in text.)

7:14A-8.11 Notice of adjudicatory hearing

The Department shall provide public notice of an adjudicatory hearing by mailing a copy of the notice to **the applicant/permittee,** co-permittees, to all commenters on the draft permit, and to those parties that testified at the public hearing.

7:14A-9.6 Variances under the State and Federal Acts

(a) An applicant for a DAC or renewal of a DSW may apply for the following variances:

1. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in [(a)] **this subsection**:

i. (No change.)

ii. Non-conventional pollutants. A request for a variance from the BAT requirements for the Federal Act Section 301(b)(2)(f) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of the Federal Act because of the economic capability of the owner or operator, or pursuant to Section 301(g) of the Federal Act because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

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(1)-(2) (No change.)

(3) Requests for variance from effluent limitations not based on effluent limitation guidelines, need only comply with paragraph (a)[2ii]**1ii(2)** above and need not be preceded by an initial request under (a)[2i]**1ii(1)** above.

iii-iv. (No change).

(b) (No change.)

(c) Expedited variance procedures and time extensions.

1. (No change.)

2. A discharger who cannot file a complete request required under (a)[2ii]**1ii(2)** or (a)[2iii]**1ii(3)** above may request an extension. The extension may be granted or denied at the discretion of the Department. Extensions shall be no more than six months in duration.

(d) (No change.)

7:14A-9.8 Procedures for variances

(a) When a request for a variance is filed as required under N.J.A.C. 7:14A-9.6 the request shall be processed as follows:

1. If at the time that a request for a variance is submitted the Department has received an application under N.J.A.C. 7:14A-7.3 for issuance or renewal of that permit but has not yet prepared a draft permit under N.J.A.C. 7:14A-7.6 covering the discharge in question, the Department shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in N.J.A.C. 7:14A-8.1, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with [(c)] **(a)3** below, and the processing of the permit shall proceed without delay.

2. If at the time that a request for a variance is filed the Department has given notice under N.J.A.C. 7:14A-8.1 of a draft permit covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Department shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by N.J.A.C. 7:14A-7.8. However, if this will significantly delay the processing of the existing draft permit or the Department, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with [(c)] **(a)3** below, and the administrative disposition of the existing draft permit shall proceed without delay.

3. If the permit has become final and no application under N.J.A.C. 7:14A-7.3 concerning it is pending or if the variance request has been separated from a draft permit as described in (a)1 and [(b)]**2** above, the Department may prepare a new draft permit and give notice of it under N.J.A.C. 7:14A-8.1. This draft permit shall be accompanied by the fact sheet required by N.J.A.C. 7:14A-7.8 except that the only matters considered shall relate to the requested variance.

7:14A-10.3 Discharges to surface waters (DSW)

(a) Any person planning to discharge pollutants to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person who is currently discharging pollutants to the surface waters of the State, and who does not have a NJPDES or NPDES permit, shall apply for a NJPDES permit within 30 days of the effective date of this chapter. Any person with a valid NJPDES or NJPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit:

1.-8. (No change.)

9. Effluent characteristics. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant must comply with N.J.A.C. 7:14A-2.5(a)10iii. The requirements in (a)9iv and v below that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used unless otherwise specified by the Department. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or an any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.) Each applicant shall report as follows:

i. Every applicant [must] **shall** report quantitative data **representative of the regulated activity** for every outfall for the following pollutants:

(1)-(7) (No change.)

ii.-vi. (No change.)

10.-16. (No change.)

(b) (No change.)

(c) NJPDES Permit: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a treatment works approval is also required in accordance with N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit:

1. (No change.)

2. Request for [Endorsement] **a written statement of consent**, where applicable[,] (see N.J.A.C. 7:14A-2.1(k)).

3.-6. (No change.)

(d) (No change.)

7:14A-10.5 Discharges into a domestic treatment works (DTW)

(a) Discharges into a DTW are indirect discharges. An individual NJPDES significant indirect user (SIU) permit is required for an indirect discharger when:

[1. The indirect discharger is one of the following types of SIUs and does not meet the requirements of (g) below:

i. The user is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)(1);

ii. The user is determined to be an Industrial Waste Management Facility, (IWMF) under N.J.A.C. 7:14A-4;

iii. The user has been found by the Department to be in significant violation of State laws or regulations, or local ordinances concerning environmental issues;

iv. The discharge consists of landfill leachate, either pure, treated or diluted by ground water or surface runoff;

v. The discharge consists of ground water which on any one day exceeds 25,000 gallons per day and is pumped from the ground in order to decontaminate an aquifer;

vi. The volume of industrial process wastewater exceeds 500,000 gallons on any one day; or

vii. The Department determines it would be consistent with the intent of the Pretreatment Act or State Act to require a permit for the indirect discharger.]

1. The indirect discharger is an SIU and discharges to a local agency which does not have an approved industrial pretreatment program; or

2. (No change.)

[3. The indirect discharger is an SIU and discharges to a DTW that does not have a Pretreatment Program approved, or is not in the process of being approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13.1.]

3. The indirect discharger is required by the Department to obtain an individual NJPDES/SIU permit by an administrative consent order issued by the Department prior to the effective date of this rule amendment.

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

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(f) Except for those SIUs which are required by (a) above to obtain a NJPDES [Permit] **permit**, all other SIUs which discharge to a [DTW that has a Pretreatment Program, approved pursuant to 40 CFR Part 403 and N.J.A.C. 7:14A-13.1(a),] **delegated local agency** are exempt from applying for a NJPDES [Permit] **permit** and are deemed to possess a NJPDES permit-by-rule and must comply with N.J.A.C. 7:14A-13.5.

(g) The Department may [allow] **at its own discretion or at the request of the permittee, revoke or terminate** a NJPDES/SIU permit [for SIUs enumerated by (a)iii, vi or vii above to expire after the initial term of the permit is over without reissuing the individual permit. After expiration of the permit, the discharger shall comply with (f) above and the permit-by-rule provisions in N.J.A.C. 7:14A-13.5. The individual permit will be allowed to expire provided that:] **if the permittee ceases to meet criteria of (a) above. After revocation or termination of the permit, the discharger shall comply with any pretreatment requirements of the local agency and with the provisions in N.J.A.C. 7:14A-13.5. The terms and conditions of the individual NJPDES/SIU permit, including, but not limited to, the requirement to file a timely application for permit renewal, remain in full force and effect unless and until it is revoked or terminated consistent with the procedures in N.J.A.C. 7:14A-8. Such revocation or termination shall be as follows:**

[1. A timely application is made for the permit renewal; and

2. The Department determines that the percentages of flow and loading of the discharges have not and will not have any impact on the DTW, its sludge, or its receiving waters. The decision not to renew the permit will be publicly noticed as per the procedures in N.J.A.C. 7:14A-8.]

1. The permittee shall submit to the Department a notarized certification by an authorized representative that it meets no criterion of N.J.A.C. 7:14A-10.5(a), and giving the date and circumstances under which it ceased to do so. The request shall specifically indicate that the permittee has reviewed and understands each criterion listed therein.

2. The Department shall revoke or terminate the subject permit if the permittee's certification or other evidence establishes that the permittee has not met any criterion of N.J.A.C. 7:14A-10.5(a) at any time during the 365 days preceding its certification. If the permittee's certification or other evidence indicates that one or more of the foregoing criteria were or may have been met during that 365-day period, the Department shall revoke or terminate the subject permit only if it determines on the basis of the permittee's certification or other evidence that none of the criteria are likely to be met during the 365 days following the application for revocation or termination.

3. Permittees may submit only one request for revocation or termination during any 365-day period.

(h) All actions taken pursuant to this subsection will be consistent with the procedures in N.J.A.C. 7:14A-8.

7:14A-10.7 Surface Impoundments

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

(d) A request for [endorsement] **a written statement of consent** shall be submitted in accordance with N.J.A.C. 7:14A-2.1 (new source dischargers only).

(e) (No change.)

7:14A-10.9 Land application of effluents by spray irrigation

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

(f) A request for [endorsement] **a written statement of consent** shall be submitted in accordance with N.J.A.C. 7:14A-2.1(k).

(g) No change.)

7:14A-10.10 Land application of effluents by overland flow

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

(f) Request for [endorsement] **a written statement of consent** in accordance with N.J.A.C. 7:14A-2.1(k).

(g) (No change.)

7:14A-10.11 Land discharge by infiltration-percolation lagoons

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

(f) Request for [endorsement] **a written statement of consent** in accordance with N.J.A.C. 7:14A-2.1(k).

(g) (No change.)

7:14A-11.1 Public access to information and scope of authority

(a) **Except as otherwise provided in section 3 of P.L. 1963, c.73 (N.J.S.A. 47:1A-3), any information obtained by the Department pursuant to the State Act or section 5 of P.L. 1972, c.42 (N.J.S.A. 58:11-53), including** [All] **all** NJPDES permit applications, documented information concerning actual and proposed discharges, comments received from the public, [and] draft and issued NJPDES permits, **and related correspondence** shall be made available to the public for inspection and duplication in accordance with Section 9 of the State Act and pursuant to N.J.S.A. 13:1E-1 et seq.

(b) (No change.)

7:14A-11.2 Confidentiality

(a) The Department shall protect from disclosure any information, other than effluent data and the types of information listed in N.J.A.C. 7:14A-11.1, upon a showing by any person that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of such persons. The Department's decision on the claim of confidentiality shall be made in accordance with the substantive criteria listed in N.J.A.C. 7:14A-11.6. **The access to any information deemed to be confidential by the Department shall be limited to authorized officers or employees of the Department, the local agency, and the Federal government.**

1. For purposes of this subchapter the term "information" shall include records, reports, and any other documents, writings, photographs, sound or magnetic recordings, drawings, or other similar things by which information has been retrieved or copied.

(b) (No change.)

7:14A-11.3 Procedures for asserting or reasserting confidentiality

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

(d) The top of each page of the first set containing the information which the person alleges to be [enitled] **entitled** to confidential treatment shall display the heading "CONFIDENTIAL" in bold type or stamp.

(e)-(g) (No change.)

7:14A-12.1 Scope

(a) (No change.)

(b) The Department shall determine within 20 working days [of the submission of an application in accordance with N.J.A.C. 7:14A-2.1 or upon request for modification of a NJPDES permit] **of the issuance of a final permit or permit modification** whether the discharger shall be required to obtain approval in accordance with this subchapter.

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

(g) The Department may take enforcement action pursuant to the State Act and impose fines and penalties in accordance with the Civil Administrative Penalty Rules at N.J.A.C. 7:14-8 for failure to comply with the terms, conditions, and requirements of this subchapter.

(h) No person shall permit, approve, or otherwise allow the construction, installation, modification, or operation of any facility or activity that violates the terms, conditions, and requirements of this subchapter.

7:14A-12.2 General policy and purpose

(a) It is the purpose of this subchapter:

1. (No change.)

2. To require that all facilities subject to approval conform to any [facility plan, basin plan, or] areawide plan[,] **adopted pursuant to law, or sludge management plan,** where applicable.

(b) (No change.)

(c) It is the responsibility of participating municipalities and sewage authorities **to properly operate and maintain wastewater treatment facilities to insure complete NJPDES permit compliance at all times,** to carefully monitor the issuance of municipal approvals and sewage connection permits in order to prevent committed flow from exceeding design capacity, to provide for the future availability

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of adequate sewage treatment capacity, and to initiate appropriate action when maximum sewage treatment capacity is being approached. Whenever the participating municipalities and sewage authorities fail in this responsibility, the Department may take whatever action necessary to assure compliance, including the imposition of a sewer connection ban as outlined in this subchapter, **the initiation of enforcement action as authorized by the State Act and the imposition of fines and penalties pursuant to the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8.**

7:14A-12.5 Construction or operation inconsistent with terms of a treatment works approval

The construction, installation, modification, or operation of a treatment works in a manner inconsistent with the terms of the approval of the Department shall constitute a violation of the State Act and shall be subject to the penalties contained [therein] **in the civil administrative penalty rules, at N.J.A.C. 7:14-8.**

7:14A-12.7 Ninety day limitation on Department

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

(d) Projects subject to N.J.S.A. 13:1D-29 (90-day law) shall not be subject to the time period requirements of this section but shall be subject to **all of** the provisions of N.J.S.A. 13:1D-29 et seq. and N.J.A.C. 7:1C-[1.1 et seq.].

7:14A-12.8 Responsibility for successful construction and operation is on applicant

(a) (No change.)

(b) The issuance of **an** approval by the Department shall not relieve the applicant of the continuing responsibility for the successful collection, treatment, or discharge of pollutants, nor shall it relieve the applicant from the responsibility [for the continuing compliance] **of insuring that all discharges are consistent at all times with the terms and conditions of the applicable NJPDES permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the applicable NJPDES permit. The applicant is also responsible for complying** with [any] **all** applicable [effluent limitations,] permits, regulations, statutes, or other laws.

7:14A-12.9 Request for [endorsement] **written consent**

(a) When discharging into a New Jersey [Pollution] **Pollutant** Discharge Elimination System (NJPDES) permitted facility, the applicant shall submit a certification by the NJPDES permittee, for the facility into which the proposed project will discharge, that the domestic treatment works is currently complying with its NJPDES permit requirements and should continue to do so even with the additional flow from the proposed project.

(b) The applicant shall submit a request for [endorsement] **a written statement of consent** to the affected sewage authority and submit a copy of this request to the Department in accordance with N.J.A.C. 7:14A-2.1(k). **Such request for consent shall be made regardless of whether the discharge will be contributory to that authority's treatment works, if any. For applications submitted within the authority of P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.), this requirement may be omitted by the Department.**

7:14A-12.11 Preliminary review of applications for treatment works approval (Stage 1)

(a) Persons who propose to build, install, or modify treatment works, which discharge into the waters of the State, shall:

1. (No change.)

2. For DSW new sources, obtain a Discharge Allocation Certificate from the Department **(prior to submitting a TWA application) and submit a copy of the DAC with the TWA application** (the Department shall determine the waste load allocation were applicable);

3. (No change.)

4. Submit proof of a request for [endorsement] **a written statement of consent**, where applicable, of the treatment works from the municipality in which the proposed treatment works will be located and from the affected sewerage authority, as required by N.J.A.C. 7:14A-12.9.

(b) (No change.)

(c) The Department, at its discretion, may waive the requirements of this section at the request of the applicant. If [at the request of an applicant] such a waiver is given, the applicant bears the responsibility of designing its treatment works to meet all the Department requirements for a Stage 2 application pursuant to N.J.A.C. 7:14A-12.12.

(d) (No change.)

7:14A-12.12 Applications for construction, installation, or modification of treatment works (Stage 2)

(a) Persons who propose to build, install, or modify treatment works shall submit to the Department in the manner prescribed by this subchapter:

1. An application for the treatment works approval on forms available from the Department; [forms may be obtained from: Assistant Director for Water Quality Management, Division of Water Resources, CN-029, Trenton, New Jersey 08625;]

2. [An endorsement of] **A written statement of consent regarding** the treatment works from the affected sewage authority and or the municipality in which the proposed treatment works will be located, as required by N.J.A.C. 7:14A-12.9;

3. (No change.)

4. A certification by a licensed professional engineer approved by the N.J. Board of Professional Engineers and Land Surveyors to practice in New Jersey, stating that the proposed treatment works are adequate to meet all applicable Federal and State effluent limitations, and meet the requirements for the preparation and submission of plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9-1, where applicable. **When the Department provides a form for such certification, only that form, in an unaltered condition, shall be acceptable**; and

5. Preliminary review or waiver issued by the Department pursuant to N.J.A.C. 7:14A-12.11 (Stage 1)**, if applicable.**

(b) (No change.)

(c) Applications shall be signed by a responsible official of the applicant or by an authorized agent, provided that an application signed by such agent shall be accompanied by a certified copy of the authorization. **A responsible official is an individual meeting the requirements set forth in N.J.A.C. 7:14A-2.4(a)2i.**

(d) In order to ensure that sufficient capacity exists and that new projects will not cause environmental degradation, applications for treatment works approvals for sewer connections shall contain a statement by a licensed professional engineer that sufficient capacity exists in the downstream sewers or pumping stations. [The 201 sewerage agency shall certify that the project is in conformance with the applicable 201 Facilities Plan and the] **The** owner of the sewage treatment facility shall certify that with the addition of the project, the approved design capacity will not be exceeded. In addition, [water quality management planning agencies] **the Department** shall determine that projects are consistent with [208] Areawide **Water Quality Management** Plans.

(e) Upon receipt of [endorsement] **a written statement of consent** pursuant to N.J.A.C. 7:14A-12.9, the applicant shall send the application, [endorsements] **statement of consent,** and other documents and information to[:] **the address shown on the applicable form.**

[Bureau of Municipal Waste Management
Division of Water Resources
Department of Environmental Protection
CN-029
Trenton, New Jersey 08625]

7:14A-12.14 Criteria for approval of building, installing or modifying treatment works (Stage 2)

(a) The Department shall not issue a treatment works approval unless:

1. (No change.)

2. The **applicant has demonstrated to the satisfaction of the** Department [has determined] that the proposed treatment works has the potential for preventing, abating, and controlling water pollution;

3. Where applicable, the request for [endorsement] **a written statement of consent for** the treatment works **(in accordance with N.J.A.C. 7:14A-2.1(k))** has been submitted to the affected sewage

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authority and the municipality in which the project will be located except as provided otherwise by N.J.A.C. 7:14A-12.9;

4.-6. (No change.)

7:14A-12.21 Sewer connection bans

(a) (No change.)

(b) Where a sewer connection ban is required by this section, the affected sewage authority and participating municipalities shall issue sewer connection approvals and [endorse] **consent to** sewer connection applications **(in accordance with N.J.A.C. 7:14A-2.1(k))** in the affected area only after the following requirements have been met:

1.-4. (No change.)

(c) Whenever the participating municipalities and/or affected sewage authority have failed to comply with (a) or (b) above, the Department shall cease issuing treatment works approvals and may direct the implementation of a sewer connection ban. The Department may also impose a sewer connection ban, issue administrative orders, assess civil administrative penalties **(N.J.A.C. 7:14-8)**, seek judicial relief, or take any other enforcement action it deems appropriate **pursuant to the State Act**.

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

7:14A-12.23 Application for a sewer connection ban exemption

(a) The affected sewage authority shall provide the applicant with the following:

1.-2. (No change.)

3. A request for [endorsement] **consent** form.

(b)-(g) (No change.)

(h) An exemption granted for a specific property is not [transferrable] **transferable** to any other property and is only [transferrable] **transferable** to another person, upon written application to and approval by the Department, for the same property if the original circumstances which justified granting the exemption have not changed.

(i) (No change.)

7:14A-12.25 Construction only permits

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

(c) An applicant for a treatment works approval for construction only shall include with the application a certification in which the applicant shall certify that the applicant understands and agrees to the following:

1.-3. (No change.)

4. The applicant shall not use the treatment works and the sewage authority and participating municipalities shall not approve the operation of the treatment works until the Department [has determined] **determines** that adequate treatment and conveyance capacity exists at the receiving treatment works, **rescinds the sewer connection ban, if applicable,** and [has granted] **grants** approval to operate.

(d) (No change.)

7:14A-12.26 Requests for adjudicatory hearings

(a) Except as otherwise provided in N.J.A.C. 7:1C-1.9, an applicant who is denied a treatment works approval, a construction only approval or a connection ban exemption pursuant to N.J.A.C. 7:14A-12.22 and 12.23 by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial of the [approval] **Treatment Works Approval application** or **the sewer connection ban** exemption.

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

(d) Requests for hearing shall be sent to:

[Bureau of Municipal Waste Management
Division of Water Resources
CN 029
1474 Prospect Street
Trenton, New Jersey 08625]
Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
401 East State Street
Trenton, New Jersey 08625-0402

(e) (No change.)

SUBCHAPTER 13. ADDITIONAL REQUIREMENTS FOR [DOMESTIC TREATMENT WORKS (DTWs)] **DTWs, LOCAL AGENCIES AND THEIR** USERS

7:14A-13.1 Purpose and scope

(a) The Department herein provides notice that it adopts the "General Pretreatment Regulations for Existing and New Sources of Pollution," 40 CFR Part 403 **(including all subsequent supplements and amendments)**.

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

7:14A-13.2 Application for an SIU permit

(a) Duty to apply: Any person who discharges or is planning to discharge pollutants as an SIU and is subject to N.J.A.C. 7:14A-10.5(a) shall submit a complete application to the Department in accordance with N.J.A.C. 7:14A-2.1, 10.1(h) and 10.5[(a)]**(c)**.

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

7:14A-13.4 Conditions applicable to all users of a DTW

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

(d) Any person or user of a DTW shall be liable for the interim enforcement limits established for one or more pollutants, which are stipulated in an administrative order or an administrative consent order established by the Department or a local agency.

7:14A-13.5 Permit-by-rule

(a) (No change.)

(b) Termination of eligibility for a permit-by-rule shall be as follows:

1. Based upon non-compliance with (c) below, the Department may terminate the eligibility of any indirect discharger for a permit-by-rule **in those areas of the State where the Department is the Control Authority**. Where eligibility for a permit-by-rule has been terminated by the Department, the indirect discharger shall apply for and is required to obtain a NJPDES/SIU Permit in accordance with N.J.A.C. 7:14A-10.5(c).

2. (No change.)

(c) (No change.)

7:14A-13.6 [Water quality violations] **(Reserved)**

[(a) No indirect discharger shall discharge into a DTW any pollutant in such quantities or concentration such that the discharge alone causes the DTW to exceed the values assigned to the toxic substances listed in Appendix F.

(b) The following limitations shall apply in order to control gross pollution of surface waters by any of the pollutants listed in Appendix F. The amount of any substance listed in Appendix F which is discharged by any user shall not exceed the amount W determined by the equations listed below:

1. For discharges into DTWs which discharge into surface waters of the State with essentially one dimensional flow (stream discharge):

i. $$W = \frac{0.0864\ C \times Q}{1\text{-}R}$$

ii. W = The maximum total weight in kilograms per day (kg/d) of a pollutant which may be discharged by an indirect discharger of any pollutant listed in Appendix F, over any 24 hour period.

iii. C = The values for determination of NJPDES permit toxic effluent limitation, in micrograms per liter (ug/l) of any pollutant listed in Appendix F.

iv. Q = The seven day, 10 year low flow in cubic meters/second (M^3/sec) of the receiving stream immediately downstream of the DTW outfall.

v. R = Efficiency of a DTW to remove a toxic pollutant from the influent, computed according to the procedure in (c) below.

2. For discharges into DTWs which discharge into surface waters of the State with essentially multi-dimensional flow:

i. $$W = \frac{0.0864 \times C \times Q \times S}{1\text{-}R}$$

ii. W = The maximum total weight in kilograms per day (kg/d) which may be discharged by an indirect discharger of any pollutant listed in Appendix F, over any 24 hour period.

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iii. C = The values for determination of NJPDES permit toxic effluent limitations in micrograms per liter (ug/l) of any pollutant listed in Appendix F. This concentration cannot be exceeded at the water surface at the point indicated as S (see Figure 1 in Appendix F).

iv. Q = The effluent discharge flow rate of the DTW in cubic meters per second (m^3/sec.).

v. R = Efficiency of a DTW to remove a toxic pollutant from its influent, computed according to the procedure in (c) below.

vi. S = The dilution factor of the effluent at the surface (see N.J.A.C. 7:14A-3.14(l)3ii).

(c) Removal efficiency (R) may be calculated as follows:

1. The Department will utilize existing DTW data in order to calculate R.

2. An indirect discharger of a DTW may determine at its own expense the removal efficiency. The determination shall be made in accordance with this section. Computation of the removal efficiency of a DTW shall be based upon influent and effluent operational data and any other information which demonstrates consistent removal of the pollutants in Appendix F. This data shall meet the following requirements:

i. The data shall be representative of the quality and quantity of average influent and effluent flow of the system;

ii. The data shall be obtained through composite samples taken on three consecutive working days. Each composite sample shall contain a minimum of 12 discrete samples taken at equal intervals and proportional to the flow over a 24 hour period; and

iii. Where the Department determines that a composite sample is not an appropriate sampling technique, a grab sample shall be taken. Grab samples will be required where the parameters being evaluated, such as cyanide and phenol, may not be held for any extended period because of biological or chemical decomposition.]

7:14A-13.10 Requirements for delegated local agencies

(a) Starting January 1, 1992, and thereafter, each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. The Department may inspect a facility required to be inspected by a delegated local agency. Exemption of stormwater facilities from the provisions of this paragraph shall not apply to any permitted facility discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the Federal National Priorities List adopted by the EPA pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L. 96-510 (42 U.S.C.A. section 9601 et seq.), or any other hazardous discharge site included by the Department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L. 1982, c.202 (N.J.S.A. 58:10-23.16). An inspection required under this paragraph shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal or issuance of a permit for a new facility, except that if for any reason, a scheduled inspection cannot be made, the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Inspections shall include:

1. A representative sampling of the effluent for each permitted facility, except that in the case of facilities that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

2. An analysis of all collected samples by a certified laboratory other than one that has been used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

3. An evaluation of the maintenance record of the permittee's treatment equipment;

4. An evaluation of the permittee's sampling techniques;

5. A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

6. An inspection of the permittee's sample storage facilities and techniques if the sampling normally performed by the permittee.

(b) In addition, to the inspection requirements described under (a) above, all delegated local agencies shall inspect the facilities of all permittees identified as a significant noncomplier. This inspection under this paragraph shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance and shall only be performed once each calendar year. A delegated local agency is not required to make an inspection hereunder if an inspection has been made pursuant to (a) above, within six months of the period within which an inspection is required to be conducted under (a) above.

(c) All delegated local agencies shall perform a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency at least once each calendar year unless more frequent analyses are required under the permit.

(d) A delegated local agency shall comply with the permit processing requirements for relaxing any water quality standard or effluent limitation under N.J.A.C. 7:14A-7.3(a)4.

(e) A delegated local agency shall afford an opportunity to the public to comment on a proposed administrative consent order, in accordance with N.J.A.C. 7:14-8.3A, if it would establish interim enforcement limits that would relax effluent limitations established in a permit or prior administrative consent order.

(f) Of the amount of any penalty assessed and collected pursuant to an action brought by a DTW in accordance with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (N.J.S.A. 58:10A-10.1), 10 percent shall be deposited in the Wastewater Treatment Operators' Training Account, established in accordance with section 13 of P.L.1990, c.28 (N.J.S.A. 58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the DTW solely for enforcement purposes, and for upgrading municipal treatment works.

(g) Except as otherwise provided in section 3 of P.L.1963, c.73 (N.J.S.A. 47:1A-3), any records, reports, or other information obtained by a DTW pursuant to this paragraph or section 5 of P.L.1972, c.42 (N.J.S.A. 58:11-53), including any correspondence relating thereto, shall be available to the public, however, upon a showing satisfactory to the Commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the Commissioner or DTW shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the Department, DTW, and the Federal government.

(h) A delegated local agency shall submit an annual report to the Department by February 1 of each year. The annual report shall include the following information:

1. Total number of permitted users;

2. Total number of unpermitted discharges;

3. Total number of new permits issued;

4. Total number of renewed permits issued;

5. Total number of permit modifications;

6. Total number of permits contested by the permittee or other parties;

7. Total number of compliance schedules adopted through administrative order, administrative consent order or other methods involving interim limits that relax permit limitations;

8. Total number of facilities inspected and sampled at least once;

9. Total number of pass throughs of pollutants;

10. Total number of permit violations, categorized as:

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i. Reporting violations, including, but not limited to, late or nonsubmission of self-monitoring reports (SMRs), progress reports, spill reports, etc.;

ii. Effluent violations for hazardous pollutants;

iii. Effluent violations for non-hazardous pollutants;

11. Total number of effluent violations constituting serious violations, including violations that are being contested;

12. Total number of defenses for upsets, bypasses, testing or laboratory errors granted that involve serious violations;

13. Total number of users qualifying as significant noncompliers, including permittees contesting such designation;

14. Total number of violations of administrative orders or administrative consent orders, including violations of interim limits, or of compliance schedule milestones for starting or completing construction, or for failing to attain full compliance;

15. Total number of violations of compliance schedule milestones for starting or completing construction, or attaining full compliance, that are out of compliance by 90 days or more from the scheduled date;

16. Total number of enforcement actions resulting from local agency inspections and samplings;

17. Total number of violations for which civil penalties, including civil penalties from a summons, or civil administrative penalties, have been assessed;

18. Total dollar amount of all penalties assessed;

19. Total dollar amount of enforcement costs recovered in a civil action or civil administrative action from a violator;

20. Total dollar amount of civil administrative penalties and civil penalties collected, including penalties for which a penalty schedule has been agreed to by the violator;

21. Total number of criminal actions filed by the Attorney General or county prosecutors;

22. A list of permittees qualifying as significant noncompliers, including address, permit number, brief description and date of each violation, date that the violation was resolved, and total number of violations committed by the permittee during the year;

23. A list of permittees at least six months behind in the construction phase of a compliance schedule, including address, permit number, brief description of the conditions violated and the cause for delay;

24. A list of permittees or the permittee's officers or employees convicted of criminal conduct, including address, permit number and a brief description and date of the violation or violations for which convicted;

25. A list of the specific purposes for which penalty monies collected have been expended, displayed in line-item format by type of expenditure and including, but not limited to, position numbers and titles funded in whole or in part from these penalty monies; and

26. Submission of results of the priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works.

(i) All delegated local agencies shall limit concentrations of heavy metals, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the Department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or established pursuant to the Federal Act or any regulations adopted pursuant thereto.

7:14A-14.2 Definitions

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

...

"Oil and grease" includes the nonpetroleum-based pollutants of animal and vegetable origin, **and petroleum-based pollutants,** which are analyzed by [the analytical] method **413.1** for oil and grease referenced in 40 CFR Part 136 as of July 1, [1982] **1989**, including subsequent amendments. [, and the petroleum-based pollutants analyzed by method 418.1 for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes, USEPA, Environmental Monitoring and Support Laboratory, Office of Research and Development, Cincinnati, OH, March 1983, including amendments and revisions.]

...

"Petroleum-based oil and grease" see petroleum hydrocarbons, below.

"Petroleum hydrocarbons" or "petroleum-based oil and grease" includes the petroleum-based pollutants analyzed by method 418.1 for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes, USEPA, Environmental Monitoring and Support Laboratory, Office of Research and Development, Cincinnati, OH, March 1983, including amendments and revisions.

...

"Working hours" means including and not limited to 8:00 A.M. through 5:00 P.M. [Eastern Standard Time], Monday through Friday.

7:14A-14.3 [Implementation] **(Reserved)**

[(a) Existing dischargers shall meet the effluent limitations specified for new dischargers within two years of the effective date of this subchapter or when the Department issues a renewal NJPDES/DSW permit, whichever condition occurs later.

(b) Within 90 days of the effective date of this regulation, existing dischargers shall meet the requirements of N.J.A.C. 7:14A-14.5(c) Monitoring method, 7:14A-14.6 Sampling protocol, and 7:14A-14.7 Analytical methods.]

7:14A-14.4 Oil and grease effluent limitations

(a) Existing and new dischargers to surface waters shall [meet the following oil and grease limitations.] **discharge an effluent that does not:**

[1. Existing dischargers shall continue to meet all applicable standards and limitations, but in no case shall the discharge:

i. Exhibit a visible sheen;

ii. Exceed an average monthly discharge limitation of 15 mg/l; and

iii. Exceed a concentration of 30 mg/l in any single sample.

2. New dischargers shall discharge an effluent that does not:]

[i.]**1.** Exhibit a visible sheen; [and]

[ii.]**2.** Exceed an average monthly **oil and grease** discharge limitation of 10 mg/l; **and**

[iii.]**3.** Exceed a concentration of 15 mg/l **oil and grease** in any single sample.

(b) (No change.)

(c) Existing and new dischargers to surface waters, and petroleum-based oil and grease indirect dischargers with discharges resulting from precipitation events, shall operate a facility designed for the runoff characteristics of the site with adequate hydraulic capacity to meet the following effluent limitations for any single precipitation event, except when a rainfall intensity exceeds two (2.0) inches in an hour as recorded by the nearest National Weather Service station (United States Department of Commerce) or as recorded by the discharger's own calibrated rain gauge. Rainfall records shall be kept for review by the Department.

[1. Existing dischargers to surface waters shall continue to meet all applicable standards and limitations, but in no case shall the discharge exhibit a visible sheen and exceed a concentration of 30 mg/l in any single sample.]

[2. New]**1. Existing new** dischargers to surface water shall discharge an effluent that does not exhibit a visible sheen and exceed a concentration of 15 mg/l in any single sample.

[3.]**2.** Indirect dischargers shall meet a maximum concentration of 150 mg/l.

(d) (No change.)

7:14A-14.5 Minimum monitoring and reporting requirements

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

(c) Discharges as a result of precipitation events from dischargers to surface waters and from SIU's required to obtain an individual NJPDES/SIU permit who discharge petroleum-based oil and grease shall be monitored in the following way:

1. The discharger shall monitor for oil and grease during the first precipitation event of the month which causes a discharge during working hours and which is preceded by a minimum dry period of

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72 hours. **Monitoring is dependent on the timing of precipitation events and will not necessarily be conducted at 30-day intervals.**

2. During each precipitation event, the discharger shall take a sample[s] 15 [, 30 and 45] minutes after the onset of the discharge, **and shall continue to take samples at 15 minute intervals, as long as the discharge continues, up to and including 45 minutes after the onset of the discharge**.

3. (No change.)

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

7:14A-14.6 Sampling protocol

(a) All samples shall be grab samples collected and stored in wide-mouth glass bottles approximately one-liter in volume and fitted with TEFLON®-lined screw caps or ground-glass stoppers.

1.-4. (No change.)

5. Samples shall be preserved by the addition of a sufficient amount pf **HCl(1:1) for petroleum hydrocarbons, and either** HCl(1:1) or H_2SO_4 (1:1) **for oil and grease,** within four hours of collection to achieve a pH of less than 2, allowing time for any carbon dioxide to be released prior to capping the sample bottle.

i. (No change.)

ii. Holding time shall not exceed [three] **seven** days for petroleum [-based oil and grease] **hydrocarbons**, and [24 hours] **28 days** for [nonpetroleum-based] oil and grease.

(b) Representative grab samples taken from an open channel must be obtained at one of the following locations:

1. Where the Froude number equals or exceeds 1 at the time of sampling and at least 90 percent of the time when a discharge exists, computed according to the following formula:

$$Fr = V/(gy)^{1/2}$$

[____]
[√]
[gy]

Where Fr = Froude number (dimensionless)
V = mean velocity of the fluid in the channel (ft/sec).
g = the acceleration of gravity (32.2 ft/sec^2).
y = Vertical depth of flow (ft).

2.-3. (No change.)

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

APPENDIX F
(RESERVED)
[VALUES FOR DETERMINATION OF NJPDES PERMIT OF NJPDES PERMIT TOXIC EFFLUENT LIMITATIONS
(Concentrations are in micrograms per liter unless otherwise noted)

Chemical	Maximum Values for Protection of Aquatic Life		Maximum Values for Protection of Potable Water Supplies	
	Freshwater	Saltwater	10-6 Cancer Risk	Toxicity
Acenaphthene	1,700	710	—	—
Acrolein	21	55	—	320
Acrylonitrile	7,550	—	0.058	—
Aldrin—Dieldrin				
Aldrin	3.0	1.3	0.074 ng/1	—
Dieldrin	0.0019*	0.0019*	0.071 ng/1	—
Antimony	1,600	—	—	146
Arsenic (trivalent inorganic)	440	508	2.2 ng/1	—
Asbestos	—	—	30,000 fibers/1	—
Benzene	5,300	5,100	0.66	—
Benzidine	2,500	—	0.12 ng/1	—
Beryllium	5.3	—	3.7 ng/1	—
Cadmium**	0.012*	4.5*	—	10
Carbon Tetrachloride	35,200	50,000	0.40	—
Chlordane	0.0043*	0.0040*	0.46 ng/1	—
Chlorinated Benzenes	250	129	(See below)	
Monochlorobenzene			—	488
Trichlorobenzenes			—	—
Tetrachlorobenzene (1,2,4,5)			—	38
Pentachlorobenzene			—	74
Hexachlorobenzene			0.72 ng/1	—
Chlorinated Ethanes				
Chloroethane	—	—	—	—
1,1-Dichloroethane	—	—	—	—
1,2-Dichloroethane	20,000	113,000	0.94	—
1,1,1-Trichloroethane	18,000	31,200	—	18.4 mg
1,1,2-Trichloroethane	9,400	—	0.6	—
1,1,1,2-Tetrachloroethane	9,320	—	—	—
1,1,2,2-Tetrachloroethane	2,400	9,020	0.17	—
Pentachloroethane	1,100	281	—	—
Hexachloroethane	540	940	1.9	—
Chlorinated Naphthalenes	1,600	7.5	—	—
Chlorinated Phenols				
3-Chlorophenol	—	—	—	—
4-Chlorophenol	—	29,700	—	—
2,3-Dichlorophenol	—	—	—	—
2,5-Dichlorophenol	—	—	—	—
2,6-Dichlorophenol	—	—	—	—
3,4-Dichlorophenol	—	—	—	—
2,4,5-Trichlorophenol	—	—	—	2.6 mg/1
2,4,6-Trichlorophenol	970	—	1.2	—
2,3,4,6-Tetrachlorophenol	—	—	—	—
2,3,5,6-Tetrachlorophenol	—	440	—	—
2-Methyl-4-chlorophenol	—	—	—	—
3-Methyl-4-chlorophenol	30	—	—	—
3-Methyl-6-chlorophenol	—	—	—	—

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Chloroalkyl Ethers		238,000	—	—
Bis (chloromethyl) ether	—	—	0.0038 ng/1	—
Bis (2-chloroethyl) ether	—	—	0.03	—
Bis (2-chloroisopropyl) ether	—	—	—	34.7
Chloroform	28,900	—	0.19	—
2-Chlorophenol	4,380	—	—	—
Chromium				
Trivalent	44	10,300	—	170 mg/1
Hexavalent	0.29*	18*	—	50
Copper	5.6*	4.0*	—	—
Cyanide (free CN)	3.5*	30	—	200
DDT and Metabolites				
DDT	0.0010*	0.0010*	0.024 ng/1	—
TDE	0.6	3.6	—	—
DDE	1,050	14	—	—
Dichlorobenzenes	763	1,970	—	400
Dichlorobenzidines	—	—	0.0103	—
Dichloroethylenes	11,600	224,000	—	—
1,1-Dichloroethylene			0.033	—
1,2-Dichloroethylene			—	3.09 mg/1
2,4-Dichlorophenol	365	—	—	—
Dichloropropanes	5,700	3,040	—	—
Dichloropropenes	244	790	—	87
2,4-Dimethylphenol	2,120	—	—	—
2,4-Dinitrotoluone	230	590	0.11	—
1,2-Diphenylhydrazine	270	—	42 ng/1	—
Endosulfan	0.056*	0.0087*	—	74
Endrin	0.0023*	0.0023*	—	1
Ethylbenzene	32,000	430	—	1.4 mg/1
Fluoranthene	3,980	16	—	42
Haloethers	122	—	—	—
Halomethanes	11,000	6,400	0.19	—
Bromomethane			—	—
Chloromethane			—	—
Dichloromethane			—	—
Bromodichloromethane			—	—
Tribromomethane			—	—
Dichlorodifluoromethane			—	—
Trichlorofluoromethane			—	—
Tetrachloromethane (See Carbon Tetrachloride)			—	—
Mixtures of halomethanes			—	—
Hepatchlor	0.0038*	0.0036*	0.28 ng/1	—
Hexachlorobutadiene	9.3	32	0.45	—
Hexchlorocyclohexane (HCH, BHC)				
Lindane (gamma-HCH)	0.080*	0.16	18.6 ng/1	—
HCH (mixture of isomers)	100	0.34	—	
alpha-HCH			9.2 ng/1	—
beta-HCH			16.3 ng/1	—
tech-HCH			12.3 ng/1	—
delta-HCH			—	—
epsilon-HCH			—	—
Hexachlorocyclopentadiene	5.2	7.0	—	206
Isophorone	117,000	12,900	—	5.2 mg/1
Lead**	0.75*	25	—	50
Mercury	0.00057*	0.025*	—	144 ng/1
Naphthalene	620	2,350	—	—
Nickel**	56*	7.1*	—	13.4
Nitrobenzene	27,000	6,680	—	19.8 mg/1
Nitrophenols	230	4,850	(See below)	
Mononitrophenol			—	—
Dinitrophenol			—	70
Trinitrophenol			—	—
2,4-Dinitro-o-cresol			—	13.4
Nitrosamines	5,850	3,300,000	—	
N-Nitrosodimethylamine	—	—	1.4 ng/1	—
N-Nitrosodiethylamine	—	—	0.8 ng/1	—
N-Nitrosodi-n-butylamine	—	—	6.4 ng/1	—
N-Nitrosodiphenylamine	—	—	4.9	—
N-Nitrosopyrrolidine	—	—	16.0 ng/1	—
Pentachlorophenol	3.2	34	—	1.01 mg/1
Phenol	2,560	5,800	—	3.5 mg/1

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Phthalate Esters	3	2,944	—	
Dimethyl Phthalate	—	—	—	313 mg/1
Diethyl Phthalate	—	—	—	350 mg/1
Dibutyl Phthalate	—	—	—	34 mg/1
Di-2-ethylhexyl Phthalate	—	—	—	15 mg/1
Polychlorinated Biphenyls (PCBs)	.014*	0.030*	0.079 ng/1	—
Polynuclear Aromatic Hydrocarbons (PAHs)	—	300	2.8 ng/1	—
Selenium	—	—	—	10
Selenite (inorganic)	35*	54*	—	—
Selenate (inorganic)	760	—	—	—
Silver	0.12	2.3	—	50
Tetrachloroethylene	840	450	0.8	—
Thallium	40	2,130	—	13
Toluene	17,500	5,000	—	14.3 mg/1
Toxaphene	0.013*	0.070	0.71 ng/1	—
Trichloroethylene	45,000	2,000	2.7	—
Vinyl Chloride	—	—	2.0	—
Zinc	47*	58*	—	—

*24-hour average
**At hardness of 50 mg/1 as $CaCO_3$ for Freshwater Aquatic Life]

Delete figure 1.

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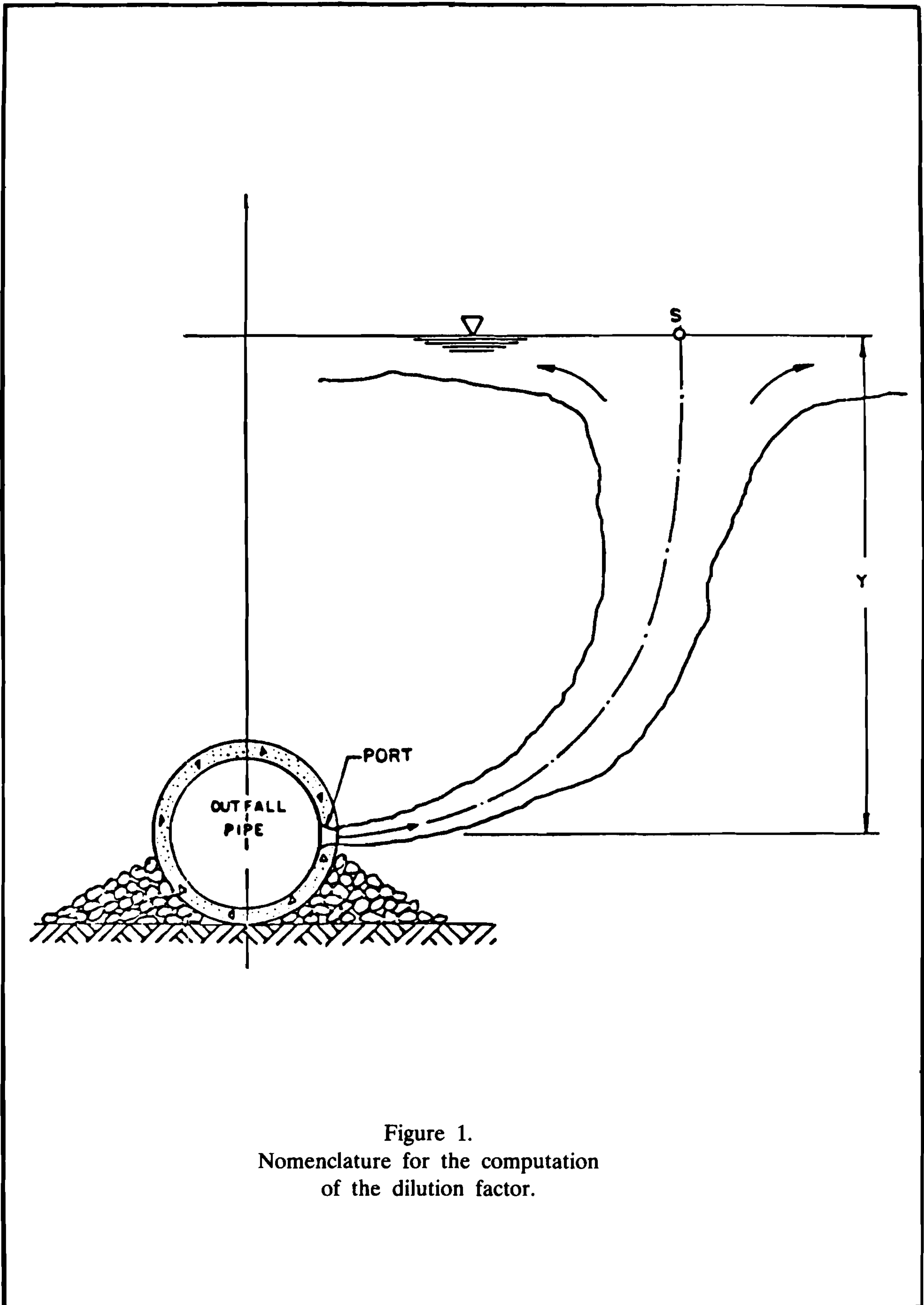

Figure 1.
Nomenclature for the computation
of the dilution factor.

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7:15-1.5 Definitions

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

. . .

"[BPU-regulated] **BRC-regulated** sewer or water utilities" means sewer utilities or water utilities regulated by the Board of [Public Utilities] **Regulatory Commissioners** under N.J.S.A. 48:1-1 et seq. and N.J.A.C. 14:9.

. . .

"ORP" means the Office of Regulatory Policy, or its successor, in the Department of Environmental Protection and Energy.

. . .

7:15-3.4 Water quality management plan amendment procedures

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

(d) Procedures for plan amendment developed by the designated planning agencies shall be consistent with this section and approved by the Department. Such procedures shall include, but need not be limited to, provisions that:

1.-2. (No change.)

3. Allow the Department to identify governmental entities, sewerage agencies, and [BPU-regulated] **BRC-regulated** sewer or water utilities that shall be requested to [endorse] **issue written statements of consent for** proposed amendments, such parties being in addition to any governmental entities, sewerage agencies, and [BPU-regulated] **BRC-regulated** sewer or water utilities identified by the designated planning agency.

4.-5. (No change.)

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

(g) Except as provided in (h) below, the Department procedure for amendment of areawide WQM plans is as follows:

1.-2. (No change.)

3. The Department shall notify the applicant and the applicable designated planning agency, if any, in writing of its decision under (g)2 above. If the Department's decision is to proceed further with the amendment request under (g)2iii above, then this notification shall include the public notice that shall be given for the proposed amendment. The applicant shall request [endorsements] **written statements of consent** under (g)4 below, and shall give public notice by publication in a newspaper of general circulation at the applicant's expense. The Department shall maintain a list identifying the newspaper that shall be used for this purpose in each planning area. The public notice shall also be published in the New Jersey Register. In cases where such Department decisions include a requirement for a non-adversarial public hearing, the public notice shall provide at least 30 days notice of the hearing.

4. Requirements concerning [endorsement of] **written statements of consent for** plan amendments are as follows:

i. As part of each notification of a decision under (g)2iii above, the Department may identify a list of governmental entities, sewerage agencies, and [BPU-regulated] **BRC-regulated** sewer [and] **or** water utilities that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, and that shall be asked to [endorse] **issue written statements of consent for** the proposed amendment. Within 15 days of receiving such notification, the applicant shall submit by certified mail (return receipt requested) a copy of the proposed amendment to these parties, with a request that they [endorse] **issue written statements of consent for** the proposed amendment within 60 days of their receipt of the request.

ii. [An endorsement] **A written statement of consent** shall include a statement that the party concurs with, or does not object to, the proposed amendment. Tentative, preliminary, or conditional statements shall not be considered to be [endorsements] **statements of consent.** [An endorsement] **A statement of consent** by a governmental unit shall be in the form of a resolution by that unit's governing body. **If the party objects in writing to the proposed amendment, the party shall state all reasons for objection in writing.**

iii. The applicant shall promptly forward to the [BWQP] **ORP** a copy of all [endorsements] **written statements of consent** and **other written** comments received, and a copy of all requests for [endorsement] **consent** (with return receipts) sent to parties that did not provide [endorsements] **written statements of consent** or **other written** comments within 60 days of their receipt of such requests.

iv. Where a party identified under (g)4i above [refuses to endorse] **denies a request for a written statement of consent** or does not [act on an endorsement] **issue a written statement of consent**, the reasons **therefor**, if known **on the basis of reasonably reliable information**, [for that refusal or inaction] shall be considered in making decisions under (g)8 and 9 below.

5. When the Department proposes to amend the areawide plan on its own initiative, the Department shall give public notice by publication in a newspaper of general circulation in the planning area, shall send copies of the public notice to the applicable designated planning agency, if any, and may hold a public hearing or request [endorsements] **written statements of consent** as if the Department were an applicant under (g)3 and 4 above. The public notice shall also be published in the New Jersey Register.

6. Interested persons, including, but not limited to, those from [which endorsements] **whom written statements of consent** are requested under (g)4i or 5 above, may submit written comments to the [BWQP] **ORP** within 30 days of the date of the public notice. Interested persons may request that the public comment period be extended up to 30 additional days, and such extensions may be granted to the extent they appear necessary. Requests for such extensions shall be submitted in writing to the [BWQP] **ORP** within 30 days of the date of the public notice.

7. Interested persons may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the [BWQP] **ORP** within 30 days of the date of the public notice. If there is significant interest, as determined by the Department, in holding a public hearing, then a public hearing will be held. A public notice providing at least 30 days notice of the hearing will be published in the New Jersey Register and in two newspapers of general circulation, and will be mailed to the applicable designated planning agency, if any, and to each party who was requested to [endorse] **issue a written statement of consent for** the amendment. The public comment period will be extended until 15 days after the hearing. Except when the Department proposes to amend areawide WQM plans on its own initiative, the applicant shall, at the applicant's expense, mail the public notice, provide for publication of the public notice in two newspapers, secure a court stenographer, and provide three copies of a verbatim transcript of the hearing to the [BWQP] **ORP**.

8. If any data, information or arguments submitted during the public comment period or in response to a request for [an endorsement] **written statement of consent** appear to raise substantial new questions concerning a proposed plan amendment, the Department may:

i.-iv. (No change.)

9.-11. (No change.)

(h) For amendments identified in (h)3 below, the Department shall modify the plan amendment procedure specified in (g) above in the manner set forth in (h)1 and 2 below. Except as provided in (h)1 and 2 below, the entire procedure specified in (g) above remains applicable to such amendments.

1. In lieu of the [endorsement] **consent** requirements in (g)3 and 4 above, the Department shall identify a list of potentially affected or interested parties that shall receive notice of the proposed amendment, but that need not be asked to [endorse] **consent to** the proposed amendment. Such parties shall include the applicable designated planning agency, if any. Within five days of receiving such a list, the applicant shall submit by certified mail (return receipt requested) to these parties a copy of the proposed amendment and a copy of the public notice that will be published pursuant to (g)3 above. The applicant shall promptly forward to the [BWQP] **ORP** a copy of all letters (with return receipts) sent to these parties under this paragraph. For sewers and pumping stations identified in (h)3ii below, [endorsements are] **written statements of consent are** still required from owners or operators of affected DTW.

2. (No change.)

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3. The modifications set forth in (h)1 and 2 above shall be used only for amendments whose sole purpose is to address the following projects:

i. (No change.)

ii. New sewers or pumping stations to serve a project or activity that is partially within a future sewer service area depicted in an areawide WQM plan, if such sewers or pumping stations would convey wastewater from such project or activity to the existing DTW whose sewer service area is depicted in that WQM plan, and if a resolution of [endorsement] **consent** is received from the owner or operator of that DTW. If a project or activity is partially or entirely within two or more depicted sewer service areas, the new sewers or pumping stations may convey wastewater to one or more such existing DTW, provided that resolutions of [endorsement] **consent** are received from the owners or operators of the affected DTW in each of the sewer service areas. This subparagraph shall apply only to wastewater service area modifications of less than 10 acres.

iii. (No change.)

(i)-(k) (No change.)

7:15-3.6 Coordination with Coastal Zone and Hackensack Meadowlands programs

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

(d) For WQM plan amendments relating to the Hackensack Meadowlands District, the consultation requirement in N.J.S.A. 13:17-9(c) shall be met as follows:

1. For amendments processed under N.J.A.C. 7:15-3.4(b)4 or (c), the Hackensack Meadowlands Development Commission shall be requested to [endorse] **issue written statements of consent for** such amendments under N.J.A.C. 7:15-3.4(g)3 and 4 or N.J.A.C. 7:15-3.4(d)3, as appropriate.

2. (No change.)

7:15-4.1 [Permittees for new or expanded domestic treatment works] **(Reserved)**

[(a) After December 5, 1985, the Department shall not, except as provided in (c) below, issue a permit under N.J.A.C. 7:14A for the following new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW:

1. DTW that, using subsurface sewage disposal systems or any other means, serve more than one property, dwelling unit, commercial unit, or other premises, whether or not such DTW require NJPDES discharge permits; and

2. Any other DTW that require NJPDES discharge permits.

(b) For purposes of this section, a "new or expanded DTW" means:

1. A DTW that was not in existence or under construction on or before December 5, 1985; or

2. A DTW whose actual or proposed capacity exceeds the capacity identified for that DTW in the areawide WQM Plan that was in effect on December 5, 1985.

(c) This section does not apply to the following new or expanded DTW:

1. Sewers or pumping stations;

2. New or expanded DTW whose only new or expanded components handle sludge only; except as required in Department rules on sludge management adopted pursuant to N.J.S.A. 13:1E-1 et seq..; or

3. New or expanded DTW owned by a BPU-regulated sewer utility, if that DTW replaces or expands a DTW that discharges at the same location, if:

i. A DTW that discharged at that same location was owned by that BPU-regulated sewer utility prior to October 2, 1989; and

ii. That sewer utility was a BPU-regulated sewer utility prior to October 2, 1989.

(d) A school district shall not be the sole permittee or co-permittee under N.J.A.C. 7:14A for any DTW that serves any property other than property of that school district.]

7:15-5.22 Consultation and [endorsements] **consent** for wastewater management plans

(a) (No change.)

(b) Under N.J.A.C. 7:15-3.4(d)3 and (g)4, [endorsements] **written statements of consent** for wastewater management plans shall generally be requested from, at a minimum, the governing bodies of each of the governmental entities and sewerage agencies that are required to be notified under (a) above.

(c) (No change.)

(a)

SITE REMEDIATION PROGRAM

Cleanup Standards for Contaminated Sites

Proposed New Rules: N.J.A.C. 7:26D

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., 26:2C-1 et seq., 58:10-23.11a et seq., 58:10-23.20 et seq., 58:10A-1 et seq., 58:10A-21 et seq., and 58:12A-1 et seq.

DEPE Docket Number: 01-92-01.

Proposal Number: PRN 1992-63.

Public hearings concerning this proposal will be held on Thursday, March 26, 1992 beginning at 9:00 A.M. at:

Ball Room
New Jersey War Memorial
West Lafayette and John Fitch Way
Trenton, New Jersey

and on Tuesday, March 31, 1992 beginning at 11:00 A.M. at:

Multipurpose Rooms B & C
Cook Campus Center
Rutgers, The State University
Biel Road
New Brunswick, New Jersey

Submit written comments on or before May 4, 1992 to:

Samuel A. Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The Department has prepared a detailed technical discussion of the proposed new cleanup standards in the "Technical Basis and Background for the Proposed Cleanup Standards for Contaminated Sites" (January 1992). Copies of this document are available from:

Karl Delaney
Site Remediation Program
Department of Environmental Protection and Energy
CN 028
401 East State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In cleaning up contaminated sites, one key question has persisted for many years. That question is "How clean is clean?" Although scientific knowledge about the risks to human health and the environment posed by uncontrolled contaminants continues to increase and evolve, the Department of Environmental Protection and Energy determined not to postpone action to answer this crucial question. The Department decided to proceed by using currently available information and data to establish a technical basis for cleanup standards. As scientific knowledge is refined, the Department will update its standards.

The Department's efforts to develop cleanup standards for contaminated sites underscore a critical State policy goal: eliminating unacceptable human and ecological exposure to contamination. The guiding principle of these standards, therefore, will be to restore contaminated sites to levels which ensure protection of human health and the environment. Furthermore, the Department will achieve this protection through a regulatory framework that places a clear priority on permanent remediation and treatment of sites rather than on relocating contaminants.

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Pollution prevention is another aspect of the Department's efforts to attain this public policy goal. Pollution prevention can prevent the creation of newly contaminated sites by encouraging the reduction and eventual elimination of hazardous materials used in production processes and to reduce the quantity and toxicity of waste products. Together, the cleanup standards and pollution prevention provide a comprehensive approach to protecting human health and the environment from both the historic and future use of hazardous materials.

Cleanup standards must be firm, fair and predictable and they must also improve the efficiency of the Department. The standards must be firm in requiring that adequate protection of human health and the environment occurs at all cleanups. They must be fair so that all contaminated sites in the State will be treated consistently. And the standards must be predictable so that the regulated community can factor the economic and time costs of remediation into its decision-making process.

Finally, the standards will help improve the Department's efficiency in remediating contaminated sites by assuring that it makes consistent decisions. The standards will help answer questions that have arisen historically as to whether cleanup requirements for one program area are sufficient or appropriate for another program area (for example, should cleanup standards for Superfund sites be the same as those for sites covered by New Jersey's Environmental Cleanup Responsibility Act—or ECRA law). In addition, once implemented, the standards should accelerate cleanups by eliminating lengthy negotiations over how extensive a cleanup should be. By providing responsible parties with a clear yardstick by which to measure the extent of a cleanup before they begin, the standards should also provide an incentive for these parties to remediate contaminated sites.

The Department has sought to answer the question "How clean is clean?" in a manner fostering maximum participation from all parties concerned with establishing cleanup standards. In May of 1991, the Department distributed more than 1,000 copies of a preliminary draft of the cleanup standards to members of the scientific, academic, legal, industrial, commercial, governmental and environmental communities. The Department then held several public workshops throughout New Jersey on the draft cleanup standards to discuss the major technical, policy and legal implications of the rules. During this participatory process, the Department identified several major policy issues warranting further discussion. On October 21, 1991, the Department held a public meeting at which 21 persons discussed six of these major policy issues. The Department considered all of the comments it received in devising the proposed cleanup standards.

Regulatory Background

Public Policy Goals

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 this 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. Synthetic chemicals and petrochemicals such as polychlorinated biphenyls (PCBs), DDT, benzene, toluene, xylene, and trichloroethene (TCE) and inorganic compounds including lead, cadmium, mercury, and chromium, are among the thousands of chemicals that have been produced, transported and used in New Jersey during this period.

The New Jersey Legislature has acknowledged that these chemicals and the wastes associated with them contribute to and indeed constitute a significant burden placed on the environment. The improper treatment, storage and disposal of hazardous substances results in substantial impairment of the environment and endangers and impairs human health (see N.J.S.A. 13:1E-50). It imposes an inherent danger of exposing citizens, property and natural resources to substantial risk of harm or degradation (see N.J.S.A. 13:1K-7). Pollution of the ground and surface waters of this State endangers human health; threatens fish and aquatic life; degrades scenic and ecological values; and limits the domestic, municipal, recreational, industrial, agricultural and other uses of these waters (see N.J.S.A. 58:10A-2).

There is great public concern over the potential adverse health effects of exposure to chemical contamination (see N.J.S.A. 58:10-23.12). Exposure to chemicals from contaminated sites may occur in many different ways. Routes of exposure include inhalation of contaminated air, direct contact with and ingestion of contaminated soils, and ingestion of contaminated drinking water. Potential adverse health effects of greatest public and scientific concern include increased risk of cancer, reproductive effects, birth defects, neurological toxicity and other types of acute and chronic diseases. Less understood, but also of great public concern, is the potential for additive and synergistic interactions among chemicals which may even more adversely affect human health and ecological systems.

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 people of the State have a paramount interest in the restoration, maintenance and preservation of the quality of its waters for the protection and preservation of human health and welfare, food supplies, public water supplies, propogation of fish and wildlife, agricultural and industrial uses, aesthetic satisfaction and other beneficial uses (see N.J.S.A. 58:11A-2, and N.J.S.A. 58:12A-2). It is the policy of this State to restore, enhance, and maintain the chemical, physical, and biological diversity of its waters; to protect human health; to safeguard fish and aquatic life and scenic and ecological values; to enhance the domestic, agricultural, municipal, recreational, industrial and other uses of water; and, wherever attainable, to restore and maintain the chemical, physical and biological integrity of the surface and ground waters of the State (see N.J.S.A. 58:10A-2 and N.J.S.A. 58:11A-2).

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 proposed cleanup standards consistent with these strong public policy goals. These goals can only be achieved by eliminating exposure to unacceptable risks from contamination to the greatest extent practicable. The overall objectives of the regulations are to achieve the cleanup of contaminants in the environment to levels which ensure protection of all human and ecological receptors and to maintain these protective levels into the future.

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:

- 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 release of contaminants into the environment;
- Identifying the parties responsible for conducting cleanups of contaminated sites; and
- Overseeing how and when cleanups are conducted.

The proposed cleanup standards are consistent with these four areas.

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 Depart-

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ment 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. 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.

In addition to the general authority to develop and implement rules which protect human health and the environment, the Legislature has given the Department specific statutory authority to address the cleanup of contaminated sites. The Environmental Cleanup Responsibility Act (ECRA) authorizes the Department to promulgate cleanup standards for buildings, soil, ground and surface water necessary "to ensure that the potential harm to human health and safety is minimized to the maximum extent practicable." N.J.S.A. 13:1K-10(a).

Magnitude of the Problem

The scope and magnitude of the problems presented by the thousands of contaminated sites in New Jersey set the context within which the Department has developed the proposed cleanup standards. In addition, the Department has incorporated the guidance provided by the Legislature in its response to the existence of these contaminated sites in the State.

There are several major Federal and State programs currently regulating contaminated sites in New Jersey. At the Federal level, the Environmental Protection Agency (EPA) has identified 113 contaminated sites in New Jersey as part of its Superfund program, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). 42 U.S.C. 9600 et seq. EPA is required by statute to implement remedial actions at these sites which are protective of human health and the environment and which comply with certain State cleanup requirements. The cleanup standards set by these proposed rules are intended to and will apply to remedial actions implemented, pursuant to CERCLA, as applicable or relevant and appropriate requirements (ARARs).

Under the Resource Conservation and Recovery Act of 1976 (RCRA), 40 U.S.C. 6900 et seq., EPA manages the generation, treatment, storage and disposal of hazardous wastes. The major component of the RCRA program which is relevant to this proposal is the corrective action directed at releases into the environment from solid waste management units. There are more than 600 facilities in New Jersey which are subject to these RCRA corrective action requirements. the Department is working with EPA to obtain delegation for the RCRA corrective action program in New Jersey. Currently, EPA accepts the Department's approved 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.

State government regulatory programs which involve the cleanup of contaminated sites include that pursuant to ECRA, N.J.S.A. 13:1K-6 et seq. ECRA 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.

Another State regulatory cleanup related program exists under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., pursuant to which the Department regulates the discharge of pollutants at over 500 landfills throughout New Jersey. These landfills range in size from single building demolition landfills to municipal landfills covering hundreds of acres and containing millions of cubic yards of solid waste. While both the location and engineering design of new landfills are directed at minimizing the discharge of pollutants into the environment, a vast majority of older landfills wre 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. 58:10-12.11 et seq. The Spill Act cleanup program applies to contaminated sites, which 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 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 uniform cleanup standards will greatly assist in this effort.

The proposed cleanup standards provide a critical piece in the Department's strategy for the remediation of contaminated sites. In the absence of promulgated cleanup standards, the Department had proceeded on a case-by-case basis to determine the level of remediation necessary at each individual site. No regulatory standards currently exist to establish acceptable risk levels for all contaminated sites throughout New Jersey. Site-specific risk assessments have been used to develop cleanup standards for each 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. These standards will significantly decrease the amount of Department involvement needed because they will define the end point that must be achieved by the remediation of all contaminated sites. The Department expects these standards to encourage the initiation of numerous cleanups, particularly at less complex contaminated sites. This will make the remediation not only more efficient for the Department and the other parties involved in cleanups, but also to ensure the public quicker cleanups that 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 substantive and procedural requirements for site remediation; and the specific cleanup standards applicable to the remediation. Each of these components are necessary for the effective remediation of contaminated sites. The Department has already begun the process of implementing some of these components.

Last summer, the Department consolidated its staff involved in the remediation of contaminated sites, forming a single organization under the Assistant Commissioner for Site Remediation. This new organization will allow the Department to meet its mission of ensuring more efficient and effective clean up 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. The Department, therefore, has begun to prioritize the sites identified to date in terms of the severity of the risk to human health or the environment posed by each site. Of particular concern are those sites, or portions of sites, which may pose an immediate or acute risk. The Department is developing a more comprehensive priority system which will be completed by the end of 1992.

Existing statutes and regulations, such as CERCLA, RCRA, ECRA, UST, NJPDES, and the Spill Act, address some of the substantive and technical requirements involved in the regulation of specific sites. However, none of these regulatory programs details how the investigation and cleanup of contaminated sites must be performed to ensure that there is adequate protection of human health and the environment. During the first quarter of 1992 the Department will propose standardized technical requirements for the remediation of contaminated sites as a separate regulatory proposal.

Regulatory Approach to Standards

The Department's overall goal in developing these rules is to establish standards which result in consistent remedial decision-making that is supported by scientifically developed human health and ecology-based

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toxicological factors and exposure assumptions. Although there is general agreement with this goal, in the past there has never been a consensus as to what levels should be established in order to achieve it. In preparing the proposed cleanup standards, the Department examined the efforts of EPA and of other state environmental agencies and conducted an extensive literature search on this subject.

The methods used to develop the proposed cleanup standards, which ensure protection of human health and the environment, were based upon the most critical potential exposure scenarios. Some of the factors that the Department considered include the length of time of a person's contact with the contaminants; whether the contaminants enter the body by ingestion, inhalation or skin contact; and the effect of this contact on the health of an individual.

The Department made a determination that in order for contaminants to effect human health or the environment, necessarily there had to be routes of exposure between individuals or the environment and the contaminants. For the purposes of these standards, the Department focused on three environmental components which constitute pathways of exposure. These components are (i) building interior surfaces, (ii) soils, and (iii) ground water.

The potential impact on human health due to the presence of contamination of a building's interior must be addressed. The contaminants in soil can affect human health through direct contact. Additionally, the soils may act as a source of contamination that migrates to ground or surface water, or otherwise enters into an ecosystem. Similarly, for ground water, the exposure pathways include use of the ground water as a potable water supply, migration and discharge to surface water bodies, and direct uptake in an ecosystem, such as found in wetlands.

The general approaches the Department used to develop the contaminant-specific numeric standards presented in subchapters 2 through 4 of this chapter, as well as cleanup standards for additional contaminants pursuant to subchapter 6, are described in the "Technical Basis and Background or the Proposed Cleanup Standards for Contaminated Sites" (January 1992). The primary basis for the numeric standards is the human health-based criteria. The general approach for development of human health-based criteria involves classification of the contaminants according to their weight of evidence for carcinogenicity. Human health-based criteria are then developed based on the carcinogenic potency factors for those contaminants treated as carcinogens and on reference doses for all other contaminants. Practical considerations, including analytical limitations, are also considered in developing the final numeric cleanup standard. If these factors result in a level greater than the health-based criterion, the numeric cleanup standard is based on the analytical limit. Ecological consideration (for example, phytotoxicity) is the basis for the surface soil standards for two contaminants, zinc and copper, due to the availability of data and that the ecology-based criteria are more stringent than the health-based criteria.

In accordance with the public policy to ensure minimum human health risks, the Department has used a "one-in-one-million additional lifetime cancer risk level" in humans as the definition of negligible incremental risk, unless chemical-specific factors indicate otherwise. This one-in-one-million risk level is not unprecedented. New Jersey has used this factor as the basis for standard risk development. For example, it is the risk level specified as the goal for chemical-specific drinking water standards in the A-280 amendments to the Safe Drinking Water Act. N.J.S.A. 58:12A-1 et seq. While most states have not developed cleanup standards, a few states also use this same risk factor (see, for example, Mich. Admin. Code 299-5709; and Wash. Admin. Code Section 173-340-720).

The human risk level used in these rules differs somewhat from that which the EPA employs in the Superfund program. The EPA employs a human risk range of one-in-ten-thousand to one-in-one-million, while these rules establish one-in-one-million as the goal. The models and assumptions contained in these rules are based in large part on current EPA policy, guidance and regulations. The proposed cleanup standards attempt to reduce the amount of variability and therefore site-specific decision-making, required in the EPA approach, by including as assumptions those factors which apply routinely to sites in New Jersey. The Department decided, in order for these rules to satisfy the statutory and public policy mandates for certainty and predictability in the identification of cleanup standards, that these rules must contain specific processes as well as numerical standards for cleanups.

The Department recognizes that considerations unique to particular contaminants may require that the approaches and/or assumptions for development of health-based criteria be modified. Therefore, the Department has retained the flexibility to modify the assumptions, approaches for evaluation of exposures, or exposure pathways considered, if warranted by scientific considerations to ensure adequate protection of human health and the environment (see subchapter 7).

In addition to these pathways, the Department recognizes the need to factor in, when appropriate, indirect pathways of exposure to humans via transport of contaminants through ecosystems to the human food chain. This is particularly the case for compounds which may accumulate in tissues of organisms which will be eaten by people, as for example fish with PCB or dioxin concentrations which represent substantial human health risk. As part of this proposal, the Department solicits comments on how to factor these considerations into the cleanup criteria.

Issue Analysis

The Department identified a number of major public policy issues during the development of the proposed cleanup standards. To solicit the broadest possible public perspectives on these policy issues and to foster a full and open discussion among all interested parties, the Department sponsored a number of open workshops and a public meeting. The results of these discussions are reflected in the changes in the proposed cleanup standards from the preliminary draft previously circulated and are summarized below.

Differential Surface Soil Cleanup Standards

The Department developed the surface soil cleanup standards based upon the human health threat that is present upon contact between an individual and the contaminated soil (with the exceptions of zinc and copper, which are based on general phytotoxicity). The development of the surface soil cleanup standards has raised two important policy issues: (1) whether or not the Department should develop differential surface soil cleanup standards based upon different exposure assumptions depending on land use; and (2) what role background soil quality should play, if any, in the development of surface soil cleanup standards for a particular site.

The goal of the surface soil cleanup standards is to protect people from unacceptable risks of exposure to contaminants in surface soil (defined as the top two feet of soil). Human exposure to contaminants in the surface soil differs depending on the land use (that is, residential and non-residential). Thus, different surface soil cleanup standards provide the same level of human health protection because different land uses result in different site activities and different populations may be expected to be present for different exposure periods.

The Department developed the surface soil cleanup standards based upon a two-tiered approach. The Department established one set of uniform surface soil cleanup standards which allow for maximum unrestricted future use of the property involved, including residential use. These standards provide finality with regard to cleanup of contaminated soil consistent with existing law regarding continuing cleanup liability. In addition, the Department has established another set of cleanup standards which are to apply in certain circumstances. Under this set of standards, residential surface soil cleanup standards may be deferred and the non-residential surface soil cleanup standards may be applied when the person responsible for conducting the cleanup and the owner of the property (if they are different) agree to limit future uses of the property to non-residential activities. Whenever the non-residential surface soil cleanup standards are to be applied, institutional controls must be applied to condition future site use consistent with the level of cleanup achieved.

Institutional controls are mechanisms the Department uses, as a supplement to the engineering controls of a remedial action, to limit human activities at or near a contaminated site or to ensure the effectiveness of the remedial action. Institutional controls are necessary for contaminated sites where contaminants will remain, after the implementation of the remedial action, in concentrations above the residential cleanup standards. Additional discussion of the use of institutional controls is presented below in the discussion of subchapter 8.

Role of Background in the Surface Soil Cleanup Standards

The Department's policy, consistent with the previously mentioned statutory policy, is to prevent degradation of the environment, and where possible, to return the environment to conditions reflective of natural (that is, non-anthropogenic) background levels. This means that "background" concentrations of contaminants resulting from discharges shall not be used as a screening mechanism for the health-based concentration. However, natural background concentrations of substances (for example, arsenic and beryllium) can be higher than the health-based cleanup

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standard. In these specific cases the cleanup standard is the natural background concentration of that contaminant.

All contamination resulting from a discharge is subject to remediation in order to reverse the decades-long trend of degradation of the State's natural resources. Some portion of the substances present at contaminated sites in New Jersey—for example lead, polycyclic aromatic hydrocarbons and heavy metals—may represent naturally occurring concentrations of materials. Only substances which result from a discharge are subject to these cleanup standards.

The Lead Surface Soil Cleanup Standard

Federal agencies, including the Centers for Disease Control (CDC), the Agency for Toxic Substances and Disease Registries (ATSDR), and the EPA, have recently stated that exposure to lead is the leading preventable public health problem involving children in the United States. New Jersey ranks very high among the states at risk for lead poisoning. A substantial number of children are identified each year in this State with elevated levels of lead in the blood. Soil, along with paint, are the two primary sources of lead exposure in children. Lead in soil arises primarily from the deposit of peeling exterior paint onto the soil and from the use of leaded gasoline. Some other sources may also contribute to a lesser degree. It is critical that all exposure sources for lead in a community be identified, and that a comprehensive program be implemented to remove or remediate such sources in priority order.

It is not possible to use the same quantitative risk assessment approaches used to develop the human-health based criteria for the other contaminants to develop the numerical basis for the residential lead criterion, because of considerations which are unique to lead. No threshold has been detected for some of the non-carcinogenic effects of lead, in particular, those relating to neurotoxicity in children. Therefore, no reference dose can be developed. Additionally, lead has been classified as a probable human carcinogen (Group B2) by EPA. The neurotoxic effects of lead are considered to be of greater concern than its carcinogenic effects. For these reasons, the goal of the residential soil cleanup standard for lead is to minimize exposure to the greatest extent possible.

Surface soil cleanup standards for lead are proposed at 600 parts per million (ppm) non-residential and 100 ppm residential. The non-industrial surface soil cleanup standard for lead was derived from a model developed by the Society for Environmental Geochemistry and Health (SEGH), and was designed to be protective for adults in the workplace. The assumptions used in the model are detailed in the "Technical Basis and Background for the Proposed Cleanup Standards for Contaminated Sites" (January 1992). The residential surface soil cleanup standard for lead was based on the goal that children should be exposed to the minimal amount of lead that is practicable and is reflective of natural background as altered by diffuse anthropogenic pollution. Specifically, the proposed residential surface soil cleanup standard for lead (100 ppm) corresponds to both a median value for uban land which has not been impacted by any local point source of lead and a 90 percentile value for similar suburban land. The Department recognizes that while minimization of exposure to lead is a very worthy societal goal, the statutory authority under which these standards are applicable is limited. Concentrations of lead many times in excess of these standards exist in many locations, which may not come under the authority of these rules. Specifically, the lead standards apply to soils impacted by discharges as defined in these rules.

The Department nonetheless recommends, in general, that elevated levels of lead in surface soils be addressed where appropriate and to the extent practicable. Efforts should be undertaken to reduce exposure to lead-containing soil, particularly in residential areas, for example, by applying a cover of clean soil, capping with asphalt or concrete or by maintaining a healthy vegetative cover to inhibit erosion and transport of contaminated soil and dust.

Ground Water Cleanup Standards: Natural Remediation

Another issue is whether ground water cleanup must always be achieved through active restoration or whether natural cleanup can be an option in whole or in part. The ground water cleanup options availble to achieve the ground water cleanup standards, via both active and natural cleanup standards, vary only as to the duration and the cost of the cleanup. A combination of these approaches will take full advantage of the benefits of both and minimize their disadvantages. The Department, therefore, has combined, where practicable, active remediation with natural cleanup in order to maximize the effective utilization of financial resources available for cleanups while ensuring the protection of human and ecological uses of ground water.

It is the Department's intention to allow natural remediation of contaminant plumes in whole or in part when no long-term unacceptable risk to any individual or ecosystem (receptor) is expected. The criteria applicable for approval of this approach are listed in N.J.A.C. 7:26D-4.3(a). The primary criterion is clear demonstration that the contaminants will chemically degrade or naturally attenuate, thereby eliminating any unacceptable risk prior to reaching a receptor at concentrations above the applicable cleanup standards. It is the responsibility of the person requesting a compliance program proposing on natural attenuation to demonstrate this criterion to the Department.

Ecology-based Cleanup Standards

This issue presents the question whether to use a human health-based approach alone or a combined approach—including human health and site-specific ecological impact assessments—in setting standards to protect ecological receptors. Ecological risk assessment as a discipline is much less developed than human health risk assessment.

Unlike human receptors, ecological receptors can be readily sampled to determine actual contaminant concentrations. Functional tests, such as bioassays, may be performed. The data obtained from these analyses are critical in the evaluation of ecological risks posed by contamination and will be relied upon by the Department in determining acceptable levels. In addition to numeric criteria, other site characteristics are of concern in the evaluation of ecological risks. These include the potential for contaminated soil to affect adjacent aquatic systems and the location of the site relative to critical habitats. The Department, therefore, will require an ecological asessment when there is a potential for ecological impairment from site contamination.

Site-specific Considerations

Perhaps the most frequent comment on the preliminary draft cleanup standards was the lack of sufficient opportunity to consider the site-specific factors. The Department has carefully evaluated these comments and the proposed rules allow for the consideration of site-specific conditions under certain circumstances. The Department's objective here is to strike a balance between establishing a clearly articulated standard for cleanup and incorporating certain site-specific considerations for a small number of sites which are unique. The Department has sought to strike this balance by employing a two-phased process to identify cleanup standards for a contaminated site.

The first phase of this process was the establishment of generic cleanup standards which are applicable to all contaminated sites throughout New Jersey. This should enhance the regulated community's willingness to initiate the remediation process by improving the predictability of cleanup costs. In addition, the time and expense necessary to identify and establish cleanup standards for a particular site will be reduced significantly, ensuring more expeditious and perhaps less costly cleanups.

The Department acknowledges, however, that certain unique, site-specific conditions may require a deviation from the application of generic cleanup standards. It is important to further acknowledge that such unique, site-specific conditions may result in either a higher or lower cleanup standard. The goal, however, is the same: protection of human health and the environment consistent with the overall objectives of the underlying public policies.

The second phase of the process to identify cleanup standards for a particular site was to incorporate site-specific conditions into the identification of cleanup standards, such as through the use of alternate cleanup standards and deferrals. Although a full summary of alternate cleanup standards and deferrals is provided in the discussion of subchapter 7 below, several examples will illustrate how these mechanisms work.

Differential surface soil standards are an example of how the Department has incorporated site-specific considerations into the identification of cleanup standards. The Department developed generic surface soil cleanup standards based upon the protection of toddlers (the most sensitive human group) present 24 hours a day. Compliance with these standards, therefore, will allow for unrestricted future use of the contaminated site. If, however, the person responsible for conducting the remediation establishes that the site will be limited to non-residential activities, where adults will be the focus of protection, then the non-residential surface soil cleanup standards may apply.

Similarly, the Department developed generic, subsurface soil cleanup standards based upon the protection of ground water quality and the intended uses of the ground water in a particular area. If the person

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responsible for conducting the remediation establishes, through the use of site-specific soil and ground water data, that subsurface soil contamination does not cause concentrations of contaminants in the ground water above the applicable ground water cleanup standards, an alternate subsurface soil cleanup standard may be available.

Ground water cleanup standards, on the other hand, are not a single set of standards which are applicable generically throughout the State. Instead, the Department developed the ground water cleanup standards based upon the existing quality and uses of ground water as established in the ground water quality standards. Therefore, site-specific considerations such as the ground water classification in the area of the contaminated site and the existence of potential human and ecological receptors, are critical factors in the identification of ground water cleanup standards.

Application to New Discharges

This issue concerns whether discharges which occur after the promulgation of the cleanup standards must be cleaned up to pre-discharge concentrations or whether they can be cleaned up to the regulatory standards.

Central to this discussion are the issues of pollution prevention and providing appropriate disincentive for new discharges. This is consistent with the Department's policy of antidegradation. All discharges which occur after the effective date of these rules, therefore, shall be remediated to the lowest level achievable through the application of the best available technology in order to remove as much of the discharged contaminant as possible. All discharges that occurred prior to the effective date of these rules are subject to the other numeric and narrative cleanup standards.

Finality of Cleanups

The final major policy issue is whether or not previously approved cleanups must continually meet upgraded regulatory cleanup standards.

The resolution of this issue 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.

This approach is a reasonable compromise between the need to provide finality to remedial decisions, and the policy of holding those responsible for the discharge liable for the costs of their actions. Property should be available for purchase and development by persons who are not responsible for the discharge. Such persons should have clarity on the issue of their liability. Banks and other lenders should be able to quantify the potential costs of remediating a contaminated site to the cleanup standards, unless the loan is to a person who is in any way responsible for the discharge. The proposed cleanup standards were designed to support these concerns.

Smmary of Rules

General Provisions

Subchapter 1 includes the scope of the proposed rules, certifications, definitions, construction, and severability provisions. In addition, subchapter 1 summarizes the Department's overall objectives in developing the cleanup standards. The Department's objectives are to:

- Ensure protection of human health and the environment based on sound technical and scientific principles;
- Ensure that protectiveness over time;
- Implement the Department's antidegradation policy by requiring all new discharges to be removed to the maximum extent possible;
- Ensure consistent procedures for the identification of cleanup standards;
- Provide notice of the procedures to identify cleanup standards to the regulated community and the public;
- Establish clear, objective cleanup standards to encourage voluntary and expeditious remediation of contaminated sites; and
- Minimize time and money necessary to identify cleanup standards applicable to a contaminated site.

The cleanup standards apply to all site remediations performed pursuant to any Department program area, including without limitation, ECRA cleanup plan approvals, Superfund removals and records of decision, remediation of contamination from underground storage tanks, RCRA corrective action decisions, publicly conducted remediation, and cleanup and removal actions pursuant to the Spill Act or other applicable statutes.

These cleanup standards, therefore, will supplement all State and Federal site remediation programs including those with rules already in place. In this manner the cleanup standards will apply to any site with contaminants in concentrations higher than the concentrations established in these cleanup standards.

As discussed above, many of the contaminated sites in this State result from decades of industrial activity and the Department has developed these cleanup standards to address this situation. For discharges after the effective date of these rules, however, the person responsible for conducting the remediation must apply the best, demonstrated commercially available, technology designed to completely remove the discharged contaminants. In this way, the Department hopes to ensure that future decades of continued developmental activity do not further degrade areas of the State which have concentrations of contaminants below the cleanup standards. This provision is specifically designed as an anti-degradation policy.

N.J.A.C. 7:26D-1.7 contains definitions relevant to this chapter. It is important to note that if the definitions of words or phrases in this chapter are different from the definitions in other rules in regulatory programs to which this chapter applies, the definitions in this chapter apply and control all of the words and phrases used in this chapter. An example of this is the difference between the definition of a "discharge" proposed in this chapter and the definitions of "discharge" and "leak" the Department adopted in N.J.A.C. 7:1E-6 (see 23 N.J.R. 2656(a)). In N.J.A.C. 7:1E-1.6, the Department defined a discharge to specifically exclude a leak for the purposes of N.J.A.C. 7:1E. The Department has defined a leak in N.J.A.C. 7:1E-1.6 as:

> any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use, into a secondary containment or diversion system or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State.

For the purpose of the cleanup standards being proposed here, the rationale in N.J.A.C. 7:1E for differentiating a leak from a discharge does not apply. The Department has not, therefore, included a definition of a leak separate from a discharge, but has included a leak within the definition of a discharge.

N.J.A.C. 7:26D-1.6 states the Department policy that these cleanup standards be considered as applicable or relevant and appropriate requirements (ARARs), as defined in the National Contingency Plan (NCP) at sites undergoing remediation pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. 42 U.S.C. 9600 et seq.

Building Interior Cleanup Standards

Subchapter 2 describes the Department's cleanup standards for building interiors which have been contaminated by a discharge. Building interiors include the surfaces of all floors, walls, windows, stairs, ceilings and room fixtures which may be contaminated. In addition to surfaces, porous building materials which have the potential to become contaminated through the absorption of contaminants are also subject to cleanup. Building interiors also include interior air if that air has the potential to become contaminated by contaminants on floors, walls, windows, stairs, ceilings, and room fixtures.

N.J.A.C. 7:26D-2.2 presents the building interior cleanup standards. Accessible interior surface areas or room fixtures are those surfaces, including the floor, which extend to six feet in height above the floor. These areas are considered accessible because they are within the direct contact range of standing people. The choice of six feet is based on the definition of a high contact area described in EPA's or PCB spill cleanup policy. 40 CFR Part 761. Inaccessible interior surface areas or room fixtures are those surfaces more than six feet in height above the floor. These areas are less likely to be in the range of direct contact for standing people.

The Department's cleanup standard for lead for building interiors is based upon the September 1990 U.S. Department of Housing and Urban Development (HUD) clearance criteria for lead abatement projects. This is the most recent published regulatory guidance concerning interior lead concentrations. The HUD clearance criteria describe those levels of lead in dust which must be attained before a building may be reoccupied after a cleanup of lead paint. There are different standards for window

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sills and window wells and remaining surfaces because, historically, window casements have received multiple coats of lead-based paint and have been subject to greater weathering. The less stringent standard for window areas reflect the practical difficulty of achieving greater cleanup reductions. Consistent with the HUD guidance, there is no distinction for lead in the Department's cleanup standards for areas above and below six feet. While most states have not developed cleanup standards for interior lead, the states of Maryland and Massachusetts use the HUD criteria for lead on interior surfaces.

When a contaminant, such as mercury, has the potential to enter the air from a contaminated surface, an air standard is appropriate. Mercury is volatile and known to present a human health risk by the inhalation route of exposure.

For a building interior contaminants which does not have a cleanup standard identified in this subchapter, the Department may develop a cleanup standard pursuant to subchapter 6. This approach will only be necessary in instances where the contaminants of concern is a significant factor in selecting a final remedial action for a site. Unique chemical, toxicological or physical properties of a contaminant may require the use of different procedures from those described in subchapter 6.

The Department has provided a mechanism in subchapter 7 for petitioning for an alternate cleanup standard or a deferral of a cleanup standard.

N.J.A.C. 7:26D-2.3 presents the mechanism to determine compliance with the building interior cleanup standards. Appropriate sampling to determine compliance with the cleanup is in part dependent on the medium of material to be sampled. For surface dust samples, a wipe sample is required. For measuring contamination which has been adsorbed into structural materials such as concrete or wood, a chip or bulk sample must be taken. Contaminants in air in most cases require that contaminants be filtered from the air and concentrated before an analysis can be performed. The Department's "Field Sampling Procedures Manual" presents acceptable sampling procedures. Compliance with building interior cleanup standards is achieved when no single post-remediation sample exceeds the applicable building interior cleanup standard.

Soil Cleanup Standards

Subchapter 3 presents the soil cleanup standards. Cleanup standards for individual contaminants are presented in Table 3-1 for surface soil and subsurface soil. Surface soil cleanup standards are based upon contact between a human receptor and the contaminated soil. There are two types of exceptions to this basis for the surface soil cleanup standards. The surface soil cleanup standards for zinc and copper are based on general phytotoxicity, and in those instances where an ecological assessment conducted pursuant to subchapter 5 results in a more stringent standard to protect an ecological receptor. The residential surface soil standards allow for unrestricted use of the property.

Contamination of surface water bodies may occur via erosion of soil particles containing absorbed contaminants or via transport of a contaminated solution in runoff water. Wind erosion is also a potential means of spreading contaminants offsite. These transport mechanisms to surface water may present a substantial risk for human exposure, especially if such contaminants can accumulate in tissues of aquatic organisms and/or biomagnify in the food chain. While the Department recognizes the need to incorporate such considerations into the derivation of standards for particular contaminants, site-specific factors are important to properly evaluate these pathways. Thus, satisfactory models need to be developed so that the Department can develop protective standards for this indirect exposure pathway. The Department welcomes comments on how best to incorporate these considerations into these cleanup standards and will be scheduling public workshops to discuss this issue. Until such incorporation, the Department has developed decision criteria (see subchapter 5) to determine which sites will require an ecological assessment.

The proposed human health-based criteria for contaminants in soil are based on protection from chronic toxicity resulting from ingestion of a relatively small amount of soil on a daily basis for a long time period. Children are known, on occasion, to ingest significantly higher quantities of soil than the daily amount of exposure which was used for the derivation of the surface soil cleanup standards. The dose of a chemical which produces an adverse health effect from acute exposure is usually considerably greater than the dose which causes health effects when exposure to the contaminant occurs on a daily basis over a period of months or years. Information on acute toxic effects for chemicals has been less adequately summarized in the regulatory and scientific literature than that for chronic effects, which is reflected in the EPA reference doses. The Department is currently evaluating whether consideration of this scenario will result in more stringent cleanup standards for some chemicals. As part of this proposal, the Department is soliciting any comments on how this concern could be evaluated. After reviewing these comments and evaluating all information on this issue, the Department will determine if any subsequent amendments are warranted.

The subsurface soil cleanup standards are intended for the protection of ground water, surface water and structures which may be affected by contaminants in subsurface soil. The subsurface soil cleanup standards are based on the potential mobility of contaminants to ground water and protection of ground water uses. The subsurface soil cleanup standards presented in the rules were developed to protect ground water quality in the areas where ground water is used as a potable drinking water source. Subsurface soil cleanup standards for volatile organic compounds were developed using a model to predict the percentage of total contamination that may leach to ground water over 70 years. Cleanup standards for the semivolatile organic contaminants and the pesticides were developed using a ranking system which considers solubility, biodegradation and toxicity.

The Department has determined that vapor hazards may result from soils containing volatile organic compound contamination. Field experience has shown that soil gas vapors can migrate through subsurface soils and impact subsurface spaces. Of particular concern are those situations occurring in developed areas where building and utility line excavations have disturbed natural soils which result in low resistance pathways for gas vapor migration. Therefore, the Department has determined that for those situations where volatile organic compounds are found in soil at concentrations of 100 ppm or above and they are also detected in the gas phase in this soil, the concentration in milligrams per cubic meter (mg/m^3) of the contaminant in a residential living space reasonably expected to be impacted must be determined and shall not exceed the chronic inhalation reference dose for habitable structures or 10 percent of the lower explosive limit for that compound.

N.J.A.C. 7:26A-3.3 presents the procedures to determine compliance with the soil cleanup standards. Surface soil standard compliance will be determined in the top two feet of the existing grade throughout an area of environmental concern.

Compliance with subsurface soil cleanup standards will be determined throughout the soil column down to the water table when the subsurface soil standards are more stringent than the surface soil standards. This ensures protection of ground water uses. If subsurface soil standards are greater than the surface soil standards, the subsurface soil standards will be applied from two feet below grade to the water table.

For a soil contaminant which does not have a cleanup standard identified in this subchapter, the Department will develop a cleanup standard pursuant to subchapter 6. This approach will only be necessary in instances where the contaminant of concern is a significant factor in selecting a final remedial action for a site.

The Department has provided a mechanism for petitioning for an alternate soil cleanup standard or a deferral of a soil cleanup standard pursuant to subchapter 7.

Ground Water Cleanup Standards

Subchapter 4 presents the ground water cleanup standards. There are three primary objectives embodied in the rules. The first is the preservation of New Jersey's ground and surface waters through the development of ground water cleanup standards that protect the designated uses of these waters. The second is acknowledgement of the limitations of active ground water remedial technologies. Third is the use of natural ground water remediation in achieving the ground water cleanup standards.

N.J.A.C. 7:26D-4.2 presents the cleanup standards for ground water which is currently affecting, or has the potential to affect, a receptor. Receptors include surface water, wells, well head protection areas, ground water of different classes, sensitive ecosystems and subsurface structures.

Ground water cleanup standards protective of ground water classifications are based on the primary receptors within that class as established pursuant to the New Jersey Ground Water Quality Standards at N.J.A.C. 7:9-6. (Note: The Department proposed amendments to N.J.A.C. 7:9-6 in the January 21, 1992 New Jersey Register.) Class I ground waters replenish sensitive ecosystems. As such, the Department has established natural ground water quality as the cleanup standard for all contaminants in Class IA and I-Pinelands (Preservation Area) ground

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water. The cleanup standard for Class I-Pinelands (Protection Area) ground water is the area's background ground water concentration. The numeric criterion for any organic contaminant discovered at a contaminated site that is not the result of natural processes is zero. Practical quantitation levels (PQLs) are used to measure compliance with any concentration which is below a method detection limit (MDL).

The cleanup standards for ground water which serves as a potable water supply (Class IIA ground water) are protective of human health. The health-based criteria consider ingestion of ground water which serves as a drinking supply. The health-based criteria for ground water have been developed consistent with the methodology the Department used to establish New Jersey's ground water quality standards, and are modified by PQLs when analytical constraints exist.

If a contaminant affecting a Class IIA ground water does not have a cleanup standard, the Department will develop a cleanup standard using the methodology contained in Subchapter 6. This approach will only be necessary in instances where the contaminant of concern is a significant factor in selecting a final remedial action for a site. In instances where required toxicological data do not exist or the contaminant of concern has little bearing on the selection of a remedial decision, the Department has proposed default values for individual organic carcinogens (five parts per billion), and individual non-carcinogenic organics (100 ppb), and background ground water quality for inorganics. The Department based the default values of five ppb and 100 ppb on an evaluation of the range of health-based criteria and PQLs developed pursuant to the above referenced methodologies contained in subchapter 6.

N.J.A.C. 7:26D-4.3 presents cleanup standards for ground water not currently used for potable purposes due to low yields, natural contamination, salt water intrusion and regional pollution problems. The ground water cleanup standard in such areas for any individual organic contaminant is one ppm and for the total of all organic contaminants a 10 ppm standard, or the background ground water concentration of the contaminant, whichever is higher.

The Department examined various alternatives to this approach which included developing individual contaminant cleanup standards based on a percent of a contaminant's solubility. The results of this evaluation produced widely varying numeric criteria (ppb to infinite concentrations) that would not adequately protect the environment. An evaluation of cleanup standards developed on the use of soil partition coefficients and chemical category (semivolatile, volatile) was also explored. The resulting values were inconsistent with actual field experience when applied to all contaminants. The Department, therefore, selected the simpler, more straightforward approach presented here and believes this approach will be protective of human health and the environment when applied in areas where receptors are not anticipated to be affected.

Lastly, based on extensive Department field investigations, the 10 ppm ground water cleanup standard for total organic contaminants is well below any concentration anticipated to result in vapor impacts to subsurface structures, and the one ppm ground water cleanup standard for an individual organic contaminant is representative of concentrations which degrade and/or naturally attenuate in relatively short distances from a source.

It is the Department's intention to allow natural remediation of plumes, in whole or in part, when no long-term adverse impact to a receptor is expected. The criteria applicable to approval of a natural remediation compliance program are listed in N.J.A.C. 7:26D-4.3(a). The primary criterion is proof that the contaminants on-site will chemically degrade or naturally attenuate, thereby eliminating any unacceptable risk prior to reaching a receptor. It is the responsibility of the person requesting a compliance program that relies on natural attenuation to prove this to the Department. N.J.A.C. 7:26D-4.4 presents the requirements for attaining compliance with applicable ground water cleanup standards under a compliance program that relies on natural attenuation.

Other criteria include installation of a sentinel well system, a ground water monitoring program, an assessment for future ground water uses over the next 25 years, notice to property owners who may be affected by the use of a passive remediation program and the ability to obtain necessary access agreements. Additionally, the Department may require institutional controls, specifically a well restriction area to protect future water users. A well restriction area may restrict the installation of any or all wells, or condition construction specifications and/or prohibit drilling. If at any time during the monitoring of compliance under such a program the Department determines additional remediation is necessary based on non-decreasing contaminant concentrations, the Department may require active remediation.

N.J.A.C. 7:26D-4.4 presents cleanup standards for contaminated sites which involve actively remediating contaminated ground water but reach steady state levels prior to achieving cleanup standards developed pursuant to N.J.A.C. 7:26D-4.2. The requirements include evaluating innovative technologies, alternate pumping scenarios (including relocation of recovery wells or pulse pumping), control of the contaminant plume, if there are potential impacts to a receptor, and installation of a sentinel well system and/or ground water monitoring program.

N.J.A.C. 7:26D-4.5 presents the requirements of a sentinel system. Compliance with any ground water remedial program that involves the use of natural attenuation in meeting cleanup standards will require the installation of a sentinel well system. Sentinel wells will be used to monitor ground water quality at some distance in between the contaminant plume and the nearest receptor. The sentinel well system provides an early warning in case contaminants are not naturally attenuating or degrading at the rate or to the degree predicted and, therefore, pose a threat to a receptor. The location of a sentinel well system shall be no less than one year time of travel from the nearest receptor back towards the contaminant plume, and no greater than five years travel time downgradient of the contaminated site.

Periodic monitoring of the sentinel wells will be required for at least five years or until compliance with the ground water cleanup standards is achieved. If during this monitoring period, contaminants are detected in the sentinel wells above the applicable ground water cleanup standards, additional remedial action may be necessary, such as increased sampling frequency, provision of an alternate water supply, or active pumping and active treatment of the plume. The Department may also require the use of institutional controls, such as a well restriction area, to further protect human health.

The Department has included provisions for determining compliance with the ground water cleanup standards through the use of statistical analyses. The methods used will be substantially the same as those accepted under the State's NJPDES and federal RCRA programs.

Ecology-based Cleanup Standards

Subchapter 5 presents a method for determining when it is necessary to develop ecology-based cleanup standards for non-human receptors. Ecological risk assessment as a discipline is less developed than human health risk assessment and the scientific community has not reached a consensus on the types of models which are most appropriate for developing ecology-based cleanup standards.

As a routine part of a site investigation, a baseline ecological evaluation of some degree must be performed to determine if there are any existing or potential impacts to ecological receptors resulting from site contamination. This evaluation will specify the significance, uniqueness or protected status of the ecosystems actually or potentially affected by the contaminated site as well as identify existing or potential stress to the ecosystem or any part thereof. This baseline ecological evaluation will be the basis for the decision as to whether or not an ecological risk assessment must be performed. An ecological risk assessment will be required when contaminants pose a particular concern from an ecological perspective (for example, bioaccumulation) and an exposure pathway to ecological receptors present at the site is known or suspected to exist.

The purpose of the ecological risk assessment is to obtain information to determine the risk posed by contamination at the site and to develop an ecology-based cleanup standard. The ecological risk assessment also describes the relationship between site contamination and ecological effects using site-specific data as well as literature information.

Derivation of Cleanup Standards For Additional Contaminants

Subchapter 6 presents the approaches the Department will use to derive the numeric cleanup standards for contaminants for which numeric cleanup standards are not otherwise included in subchapters 2 through 4. The Department will use the same approaches for the development of these numeric cleanup standards as it used in the development of the numeric cleanup standards proposed in subchapters 2 through 4. The approaches are more thoroughly discussed in "Technical Basis and Background for the Proposed Cleanup Standards for Contaminated Sites" (January 1992) cited above.

The primary basis for standard development is human health. Other factors, including analytical limits, are considered in developing the final chemical-specific standard. If these practical considerations result in a level greater than the health-based criteria, the numeric standard is based on analytical limitations.

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This subchapter first presents generic risk assessment approaches which the Department will use to develop contaminants-specific health-based criteria for all environmental media addressed, including interior building surfaces, surface soils, subsurface soils and ground water. Specific sections then describe the exposure assumptions and approaches used to develop health-based criteria for each of these media.

Alternate Cleanup Standards and Deferrals

Subchapter 7 contains the procedures the Department will use to determine alternate cleanup standards and deferrals from a cleanup standard for a specific site.

The process for an alternate cleanup standard or a deferral of a cleanup standard is presented in N.J.A.C. 7:26D-7.2(a). Any person may initiate this process and has the burden to present sufficient evidence to support a Department determination that one of the criteria in N.J.A.C. 7:26D-7.2(b) or (c), as applicable, applies. Upon making such a determination, the Department shall either establish an alternate concentration standard, which may be either higher or lower than the cleanup standard which would otherwise be applicable, depending on the circumstances, or grant a deferral of a cleanup standard appropriately conditioned to protect human health and the environment.

N.J.A.C. 7:26D-7.3 presents the procedures for petitioning the Department for an alternate cleanup standard or for a deferral of a cleanup standard.

N.J.A.C. 7:26D-7.4 presents the requirements for the Department to establish an alternate cleanup standard and to condition a deferral of a cleanup standard.

Institutional Controls

Subchapter 8 includes the requirements for institutional controls which are applicable as narrative cleanup standards at certain contaminated sites. Institutional controls include restrictions on the use of the contaminated site in the forms of restrictions of record, access controls, and the Department's designation of well restriction areas.

It is the Department's policy, consistent with EPA's National Contingency Plan, that remedial actions be permanent and render contamination harmless or non-toxic. For this reason, remedial actions which involve leaving contamination on site, untreated, and simply encapsulated or capped, are not considered to be final remedial actions and are therefore not favored by the Department when other technologically feasible alternatives exist.

Institutional controls are mechanisms the Department uses, as a supplement to the engineering controls of a remedial action, to limit human activities at or near a contaminated site or to ensure the effectiveness of the remedial action. Institutional controls are necessary for contaminated sites where contaminants will remain, after the implementation of the remedial action, in concentrations above the cleanup standards which would apply if the contaminated site were a residential property.

Institutional controls, such as those included in subchapter 8, are used throughout the United States as reasonable and appropriate ways to ensure the protection of human health and the environment from hazardous substances and other contaminants (see, for example, Cal. Health & Safety Code Section 25355.5 (land use restrictions prior to or as part of the development of a remedial action plan for the cleanup of a contaminated site), 25229 (land use restrictions on property designated as hazardous property through a formal process including a public hearing), and 25223 (land use restrictions on property designated as hazardous property through an agreement with the responsible party and the state as an alternative to the formal process pursuant to Cal. H&SC Section 25229); Mass. Gen. Laws Chapter 21C Section 7 (deed notice as a condition of closure of a hazardous waste facility), and Mass. Gen. Laws Chapter 111 Section 150A (deed notice for any real property used as a landfill); Mich. Comp. Laws Section 299.601 (land use restrictions if a remedial action involves on-site contamination); and Wash. Admin. Code Section 173-340-440 (land use controls, including fences, signs, and legal and administrative mechanisms when a cleanup action results in residual contamination above certain specific cleanup levels)). The EPA uses institutional controls as part of remedial actions at Superfund sites across the country (see 40 CFR 300.430(a)(i)(iii)(d) and 300.430(c)(3)(ii) (structure, land and natural resource use restrictions and deed restrictions, well restriction areas, deed notices and access controls as a supplement to engineering controls as part of a remedial action)). In New Jersey, institutional controls are required for certain solid and hazardous waste facilities (see, for example, N.J.A.C. 7:26-9.9(n)).

N.J.A.C. 7:26D-8.2 presents the requirements for use restrictions, through the filing of a restriction of record, for a part or all of a contaminated site. Restrictions of record must be drafted to reflect site-specific conditions without modifying the generic language of the model document provided in Appendix A.

The Department considered several options to provide adequate notice to all interested persons and to limit the use of certain properties where contaminants are to remain after completion of the remediation at levels above those that would allow for unrestricted future use. These options included the establishment of a deed registry within the Department where such filings would be kept and could be accessed by the public, the use of permits to condition future land use, and providing a general requirement that landowners provide such notice to subsequent landowners. The Department evaluated all of these options and reviewed them through meetings with individuals representing banking, real estate, government, industry, development, and environmental interests. The Department concluded from this process that the creation of an added bureaucracy within the Department was not in the public interest; there was also the issue of who would pay for this mechanism. The Department, instead, elected to use a preexisting mechanism, a use restriction, which is designed for the express purposes at issue here.

A use restriction is a critical narrative cleanup standard which is used, for example, when deferring the cleanup of a contaminated site from levels which allow for unrestricted use is deferred. Since it is only the owner of property who can file a restriction of record, it is the owner's decision whether to clean up a non-residential property to the applicable non-residential cleanup standards, including the narrative cleanup standard for a restriction of record, or to clean up to the residential standards, thus providing for unrestricted use of the site. In those circumstances where the person responsible for conducting the remediation is not the owner of the property in question, such as a tenant remediating a leasehold property or any person remediating contamination on another person's property, the owner of the property may not agree to restrictions of the property. Adequate human health protection is only obtained in these situations by having the remediation achieve compliance with the cleanup standards that would be applicable if the contaminated site was residential property. A use restriction is not required when the contaminated site is an industrial establishment which will remain subject to ECRA after the remediation is complete.

Copies of all records of restriction, in addition to being filed along with the deeds of the property with the county clerk, must also be given to certain local officials who may be involved in the remediation or otherwise have some jurisdiction over the site. These local officials include municipal clerks, local zoning officials, construction code officials and local health officials. This will help to ensure that local land use decisions consider the residual contamination at a site.

N.J.A.C. 7:26D-8.3 presents the factors which the Department will consider to determine if access controls are necessary to limit access to a contaminated site to either prevent unacceptable exposure to the contaminants present or to otherwise ensure the effectiveness of the remedial action.

N.J.A.C. 7:26D-8.4 presents the requirements for well restriction areas. The Department may prohibit or otherwise restrict the construction of wells, in areas of ground water impact areas that are being remediated at a downgradient location, through the designation of well restriction areas.

Social Impact

Significant short-term positive social impact is expected from these proposed rules. These rules are designed to result in consistent remedial decision-making that is supported by scientifically developed human health-based toxicological factors and exposure assumptions. As a result, both limited Department resources and private party funds available for remediation activities will be focused on defined regulatory priorities with clear goals. When the cleanup standards are properly applied to cleanup actions, more cost-effective human health benefits will be distilled.

One of the Department's overriding concerns in the proposed rules is the unambiguous establishment of cleanup standards. This will enable all of those individuals in both the public and private sectors who have to make decisions concerning contaminated sites to include in the decision-making process the expected level of environmental and human health protection. These proposed rules, along with rules the Department will be proposing over the next few months concerning Department oversight and technical requirements for the remediation of contaminated sites, will provide the framework for those individuals who want to properly remediate a contaminated site to do so with confidence

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that the Department will accept the results of the remediation. This will provide positive social benefits by improving the fact-based decisions which now can be made concerning these contaminated sites.

Longer term social benefits result from the application of standards developed based upon sound toxicological criteria focusing upon the reduction in human health disorders attributable to a lack of, or inadequate cleanup. While the present cleanup standards are based upon the protection of human health criteria, there is no doubt that the standards will also extend a significant degree of protection to the environment in general. Considerable work remains to be done in regard to the development of standards that are adequately protective of all the links in the chain that make up our environment. However, the body of evidence that can be used to protect human health exists for the most common exposure pathways. To wait for the same level of evidence for all the critical elements needed to be protective of the ecosystem before moving to promulgate the cleanup standards is unnecessary.

Finally, the adoption of these cleanup standards draws the first clear line beyond which further environmental damage will not be tolerated. It demonstrates to the regulated and environmental communities and the public a willingness on the part of the Department to resolve the question of "How clean is clean?" and reduce the delays in implementing cleanups inherent in trying to answer that question on a case-by-case basis.

Economic Impact

The economic impact of the proposed rules will fall primarily upon agencies, businesses and individuals responsible for the discharge of contaminants on the land or into the waters of the State. Additional responsibility, and therefore potential economic impact, will occur to property owners on whose properties a discharge has occurred and if the discharger fails to take appropriate remedial actions.

Depending upon the physical, chemical and toxicological properties of the substance, the duration of the discharge and the volume of the environmental media affected, the costs associated with remediation will vary significantly, particularly if cleanup was not initiated rapidly. The expense of remediation can be mitigated in several ways. A rapid response to a pre-existing discharge, with cleanup based upon the residential standards, will minimize remedial costs and eliminate future liabilities and legal expenses. Additionally the value of the affected property will be maintained and possibly increased because of the expanded use potential and clear documentable environmental conditions of the property. If remediation is to the residential standard, the property is completely clear for any development. Federally required due diligence searches are satisfied and property value enhancement becomes an important element and impetus in the decision to purchase clean properties that do not represent legal and economic liabilities in terms of potential future cleanup costs and as a basis for personal injury and property damage claims by tenants and neighbors of the site.

Where remediation of residual contamination has been deemed technically impracticable to achieve, or remains in excess of the residential standard, and there is no evidence that other environmental receptors are affected, a use restriction may be an appropriate mechanism within which contaminants will be allowed to remain on site. In the short term this requirement results in significantly reduced remedial costs. However, the notice and restriction may limit the use to which the property can be put, thus potentially reducing the number of available purchasers of the property and its value.

A major consideration in the development of soil cleanup standards is the need to protect limited and valuable ground water resources. The economic impacts of ground water contamination of potable aquifers is significant from several perspectives. If remediation of ground water must be undertaken, few responsible parties are technically able to address the requirements of such remediation and are forced to engage the services of expensive specialized consultants. A small company's or an individual's financial resources may be extended to and beyond their limit, thus jeopardizing their ability to stay solvent and in business. Added to the cost of remediation is the expense of providing alternate water supplies. If there is chronic direct or indirect human exposure to the ground water contamination, the responsible party can expect years of litigation and expenses associated with the settlement of damage claims.

The establishment of building interior, soil and ground water cleanup standards will provide predictable guidance regarding the degree and aerial extent to which remediation must be carried, within the context of scientifically developed and supportable criteria truly protective of human health. This creates a framework within which it becomes possible to accurately project remedial costs and the duration of responsibility. Axiomatic in these rules is the longer a discharge of a hazardous substance goes unresolved, the greater the remedial costs will become.

Environmental Impact

The proposed cleanup standards will have far-reaching, beneficial environmental impact. These rules will establish minimum standards clearly defining the goals for cleanup and requiring consistent application of minimum source removal requirements. Additional remedial decisions will be made based upon the sensitivity and presence of other receptors and local ground water usage. This approach is important because it will facilitate the process of directing the limited investigatory, enforcement and remediation resources of the Department toward tasks where they will have the most positive effect on the protection of human health and the environment.

The establishment of ground water, soil and building interior cleanup standards will provide predictable guidance regarding the degree to which the remediation must be carried, within the context of scientifically supportable criteria protective of human health and the environment.

Regulatory Flexibility Analysis

The proposed new rules impose requirements, as detailed in the Summary above, upon agencies, businesses and persons responsible for the discharge of contaminants on the land or into the waters of this State. An undeterminable number of such affected businesses are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As discussed in the Economic Impact above, the costs of site remediation will vary significantly based upon a number of factors. Whether outside professional services, such as engineers and attorneys, will need to be employed by small businesses in the required cleanup will also depend upon many variables, such as the nature of the site, the contaminants to be removed and the businesses' own personnel resources.

The cleanup standards specified in these rules will apply to all circumstances involving unregulated discharges or spills of hazardous substances, excursions from permitted discharges in excess of the permit conditions and all potentially responsible parties. Within the context of these rules, variance from the specified standards (that is, alternate cleanup standards) can be allowed by the Department for all environmental pathways. However, before an alternate cleanup standard will be granted, all contaminant sources must be remediated. In developing these rules, the Department has balanced the need to protect the environment against the economic impact of the regulation and has determined that to minimize the impact of the rules would seriously endanger the environment, human health and public safety.

Full text of the proposed new rules follows:

CHAPTER 26D
CLEANUP STANDARDS FOR CONTAMINATED SITES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26D-1.1 Scope

(a) This chapter constitutes the Department's cleanup standards for the remediation of contamination resulting from a discharge.

(b) Compliance with this chapter shall not relieve any person from complying with more stringent cleanup standards or provisions imposed by any other applicable statute or regulation.

7:26D-1.2 Objectives

(a) The objectives of this chapter are, without limitation:

1. Ensuring protection of human health and the environment using sound technical and scientific principles;
2. Ensuring that protectiveness over time;
3. Implementing the Department's antidegradation policy by requiring all new discharges to be removed to the maximum extent possible;
4. Ensuring consistent procedures for the identification of cleanup standards;
5. Providing notice, to the regulated community and the public, of the procedures to identify cleanup standards;
6. Establishing clear, objective cleanup standards to encourage voluntary and expeditious remediation of contaminated sites; and
7. Minimizing time and money necessary to identify cleanup standards applicable to a contaminated site.

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7:26D-1.3 Applicability

(a) This chapter applies to all interim and final remedial decisions the Department makes for any contamination resulting from a discharge pursuant to any regulatory or enforcement program on or after the effective date of this chapter.

(b) Remediation of any contaminated site that was begun prior to, on, or after the effective date of this chapter is subject to the cleanup standards in this chapter.

7:26D-1.4 New Discharges

Notwithstanding any other provision of this chapter, any person responsible for conducting the remediation of a discharge which occurs on or after the effective date of this chapter shall apply the best demonstrated commercially available technology to completely remove all of the discharged contaminants from the environment.

7:26D-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 remediation of a contaminated site:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of any statute, I am personally liable for the penalties."

(c) The second certification shall be as indicated in (c)1 below.

1. "I certify under penalty of law that I have personally examined and am familiar with the information submitted 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 principal executive officer of at least the level of vice president;

ii. For a partnership of sole proprietorship, by a general partner or the proprietor, respectively; or

iii. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

7:26D-1.6 Compatibility with Superfund requirements

It is the Department's intention that the numeric and narrative cleanup standards presented in this chapter be considered as applicable or relevant and appropriate requirements (ARARs), as defined in the National Contingency Plan (NCP) for National Priority List (NPL) sites pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA).

7:26D-1.7 Definitions

As used in this chapter, the following words and phrases shall have the following meanings:

"Accessible building interior surface area" means any building interior surface within six feet above the floor.

"Alternate cleanup standard" means a contaminant-specific numeric or narrative cleanup standard which the Department establishes pursuant to N.J.A.C. 7:26D-7 and applies to an area of concern at a contaminated site in lieu of a numeric and/or narrative cleanup standard which would otherwise apply. Upon the Department's written determination, the alternative cleanup standard becomes the applicable cleanup standard.

"ARARs" means the applicable or relevant and appropriate requirements as defined in the National Contingency Plan (NCP) (see 40 CFR Part 300).

"Area of concern" means all or any portion of a contaminated site to which the Department applies a cleanup standard.

"Background ground water concentration" means the concentration of a contaminant in ground water which is hydraulically upgradient of a contaminated site and not influenced by the contaminated site.

"Best demonstrated commercially available technology" means the commercially available engineering technology which produces the most stringent numerical values attainable for a contaminant at a contaminated site.

"Carcinogenicity" see definition of "weight of evidence for human carcinogenicity."

"CASRN" means the Chemical Abstract System Registry Number applied to a specific contaminant.

"Category I Surface Water" means any surface water designated as such pursuant to the Surface Water quality standards, N.J.A.C. 7:9-4.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

"Chronic reference concentration" see "reference concentration."

"Chronic reference dose" see "reference dose."

"Class I ground water" means any ground water designated as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9-6.

"Class I-A ground water" means any ground water designated as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9-6.

"Class II-A ground water" means any ground water designated as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9-6.

"Class I-Pinelands (Preservation Area) ground water" means any ground water designated as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9-6.

"Class I-Pinelands (Protection Area) ground water" means any ground water designated as such pursuant to the Ground Water Quality Standards, N.J.A.C. 7:9-6.

"Cleanup standard" means the combination of numeric and narrative standards established pursuant to this chapter for a contaminant or group of contaminants.

"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.

"Contractor required detection limit" or "CRDL" is a phrase that is used analogously with "practical quantitation level" as the analytical limit in EPA's contract laboratory current statement of work for inorganic analysis.

"Control" means actions to prevent the migration, or discharging of a contaminant to any environmental medium. Control includes, without limitation, pumping, venting, excavation, biological treatment, containment, fixation and other available remedial technologies.

"Deferral" means a Department decision which suspends the application of a cleanup standard.

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

"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.

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"Ecological receptor" means, without limitation, any non-human individual organism, population, community or ecosystem, and includes natural resources.

"Ecological standard" means a numeric criterion or narrative condition that the Department develops for a contaminant based on its effects on ecological receptors.

"Environmental medium" means any site component such as soil, air, sediments, buildings, structures, ground water or surface water.

"Estimated quantitation level" or "EQL" is used analogously with "practical quantitation level" as the analytical limit in EPA's "Test Methods for Estimating Solid Waste, Physical/Chemical Methods," Third Edition. SW-846.

"Free product" means the separate phase material present in concentrations greater than a contaminant's residual saturation point.

"FW1" means any surface fresh water designated as such pursuant to the Surface Water Quality Standards, N.J.A.C. 7:9-4.

"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 at N.J.A.C. 7:26-8.16.

"Hazardous substance" means any substance defined as such pursuant to the discharges of Petroleum and Other Hazardous Substances Regulations, N.J.A.C. 7:1E.

"Hazardous waste" means any solid waste as defined in the Solid Waste Regulations, N.J.A.C. 7:26-1.4, that is further defined as a hazardous waste pursuant to the Hazardous Waste Regulations, N.J.A.C. 7:26-8.

"Health-based criterion" means a numeric value the Department developed based on human health considerations in the development of a cleanup standard.

"Inaccessible building interior surface area" means any building interior surface higher than six feet above the floor.

"Institutional controls" means a mechanism used, as a supplement to engineering controls, to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a contaminated site in concentrations either above the cleanup standards that would be applicable if the site were residential property, or that may otherwise present an unacceptable risk to human health or the environment. Institutional controls may include, without limitation, structure, land and natural resource (for example, water) use and deed restrictions, well restriction areas, deed notices and access controls.

"Interim response action" or "IRA" means the temporary or partial remediation of contaminants, or temporary or partial remediation of a contaminated site or part of a contaminated site prior to final or complete remedial action for the remainder of the site, or remainder of the contaminants at a site, as may be necessary due to a discharge or threat of a discharge to prevent, minimize, or mitigate damage to human health or to the environment, which may otherwise result from a discharge or threat of discharge. The term also includes, but is not limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals.

"Method detection limit" means the minimum concentration of a contaminant that can be measured and reported with a 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"National Contingency Plan" or "NCP" means the plan published under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as revised pursuant to section 105 of CERCLA (see 40 CFR Part 300).

"Natural ground water concentration" means the concentration of a contaminant which occurs in ground water without the influence of human activity, other than the effects of regional precipitation of air pollutants.

"Non-residential property" means any real property, at which activities are being conducted (that is, inactive sites are not included), having the primary Standard Industrial Classification (SIC) major group number 01-48 inclusive, 49 except 4941, 50-67 inclusive, 72-79 inclusive, 80 except 8051, 8059, 8062, 8063, 8069, 81 and 82 except 8211, 8221, 8222, 83 except 8351, 8361, 84-86 except 8661, 87-91 inclusive, 92 except 9223, and 93-97 inclusive. Non-residential property includes all of the block(s) and lot(s) upon which the business is conducted and those contiguous block(s) and lot(s) controlled by the same owner or operator that are vacant land, or that are used in conjunction with such business. For leased properties, non-residential property includes the leasehold and any external tank, surface impoundment, septic system, or any other structure, vessel, contrivance, or unit that provides, or are utilized, for the management of contaminants to or from the leasehold.

"Numeric criterion" means a health-based or ecology-based value the Department developed for a contaminant, and which the Department may modify by analytical constraints and other factors to develop a numeric 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.

"Pollutant" means any substance defined as such pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Potency factor" means the factor which relates the daily dose of a contaminant to the additional lifetime cancer risk as follows:

$$\text{daily dose (mg/kg/day)} \times \text{potency factor (mg/kg/day)}^{-1} = \text{additional lifetime cancer risk.}$$

A potency factor is calculated for contaminants for which risk assessment is based on carcinogenic effects.

"ppb" means parts per billion, micrograms per liter (ug/L), or micrograms per kilogram (ug/kg).

"ppm" means parts per million, milligrams per liter (mg/L), or milligrams per kilogram (mg/kg).

"Practical quantitation level" or "PQL" means the lowest quantitation level of a given analyte that can be reliably achieved among laboratories within the specified limits of precision and accuracy of a given analytical method during routine laboratory operating conditions.

"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.

"Reference concentration" or "chronic reference concentration" means the concentration of a contaminant in air from which no adverse physiological effects are expected to result from a lifetime of exposure. A reference concentration is calculated for a contaminant for which a risk assessment is based on noncarcinogenic effects from inhalation of a contaminant.

"Reference dose" or "chronic reference dose" means the daily dose at which no adverse physiological effects are expected to result from a lifetime of exposure. A reference dose is calculated for a contaminant for which a risk assessment is based on noncarcinogenic effects.

"Residential property" means any property that does not exclusively meet the criteria established under the definition of "non-residental property." Residential property includes any otherwise non-residential property that is used in part for residential activities, such as a day care center at a non-residential property.

"Residual product" means the separate phase material present in a concentration at or below a contaminant's residual saturation point.

"Restrictions of record" means an instrument used to provide notice of contamination and to place use restrictions on specific real property.

"Separate phase" means a non-aqueous phase liquid that can exist as residual and/or free product.

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"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.

"Steady state" means the achievement of asymptotic contaminant concentrations in ground water demonstrated by a first order decay rate curve (that is, decrease in contaminant concentration over time), the lower limit of which is substantially linear.

"Subsurface soil" means the soil more than two feet below grade and extending downward to the top of the seasonally high water table.

"Surface soil" means the top two feet of soil below grade.

"Technically impracticable" means that, from an engineering perspective, no demonstrated commercially available technology can achieve a cleanup standard, or that it is physically impracticable to achieve a cleanup standard (for example, the contamination is under a building).

"Total petroleum hydrocarbons" means those materials which can be extracted from sample matrices with freon 113 having chemical characterization which allow passage of the extract through a silica gel column with detection at 2,970 cm^{-1} ± 150 wave number using either a fixed wave length or scanning wavelength infrared detector. Petroleum hydrocarbons may also be characterized by gas chromotography fingerprint analysis.

"Total organic contaminants" means those analytes determined from the summation, of all analytes and from their respective concentrations, as determined from all pertinent organic analytical methodologies employed.

"Total volatile organic contaminants" means analytes whose vapor pressure is >1mHg at normal temperature (20 degrees C) and pressure (one atm) and may be sampled by static and dynamic heated and ambient temperature headspace analysis, direct injection, and thermal desorption of the sample or sampling media, separated by either packed or capillary columns and analyzed by specific detectors (such as Hall, PID, FID, TCD, or FPD) or a universal detector (such as a mass spectrometry).

"Unit risk factor" means the factor which relates the concentration of a contaminant in air to the additional lifetime cancer risk as follows:

air concentration (ug/m3) × (unit risk factor $(ug/m^3))^{-1}$ = additional lifetime cancer risk.

A unit risk factor is calculated for a contaminant for which a risk assessment is based on carcinogenic effects from inhalation.

"Water table" means the seasonally high level in the saturated zone at which the hydraulic pressure is equal to atmospheric pressure.

"Weight of evidence for human carcinogenicity" means the classification of a contaminant, for the purpose of risk assessment, according to the criteria described in the EPA "Guidelines for Risk Assessment" (51 Fed. Reg. 33992, 1986), into one of the following categories:

Group A: Human carcinogen—sufficient evidence from human epidemiological studies;

Group B: Probable human carcinogen—

Group B1: limited evidence from human epidemiological studies;

Group B2: sufficient evidence from animal studies and inadequate or no data from human epidemiological studies;

Group C: Possible human carcinogen—limited evidence of carcinogenicity from animal studies in the absence of human data;

Group D: Not classifiable as to human carcinogenicity—Inadequate human and animal evidence for carcinogenicity or no data available; and

Group E: Evidence of noncarcinogenicity for humans—No evidence for carcinogenicity in at least two adequate human epidemiological and animal studies.

"Well head protection area" means the surface and subsurface area surrounding a public water supply well or wellfield, supplying one or more wells, through which contaminants are reasonably likely to move toward and reach such well or wellfield.

"Well restriction area" means the surface and subsurface area the Department delineates within which the Department either prohibits or restricts the construction and use of wells.

7:26D-1.8 Liberal construction

These rules, being necessary to promote the public health, safety and welfare, and the protection of the environment, shall be liberally construed in order to allow the Commissioner and the Department to effectuate the purposes of the law.

7:26D-1.9 Severability

If any section, subsection, provision, clause or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of the chapter shall not be affected.

SUBCHAPTER 2. BUILDING INTERIOR CLEANUP STANDARDS

7:26D-2.1 Scope

This subchapter presents the cleanup standards for building interiors.

7:26D-2.2 Identification of building interior cleanup standards

(a) Building interior cleanup standards are as follows:

1. The cleanup standard for a contaminant, other than lead, on building interior surfaces up to six feet above the floor (accessible areas) is presented in Table 2-1 below;

2. The cleanup standard for a contaminant, other than lead, on building interior surface areas more than six feet above the floor (inaccessible areas) is presented in Table 2-1;

3. For a contaminant, other than lead and mercury, without an applicable cleanup standard in Table 2-1, the Department may develop a cleanup standard pursuant to 7:26D-6;

4. The cleanup standard for lead on window wells, window sills, and all other surfaces is presented in Table 2-2 below;

5. The cleanup standard for mercury in building interior air is presented in Table 2-3 below; and

6. The Department may require the use of institutional controls pursuant to N.J.A.C. 7:26D-8 when necessary to protect human health and the environment.

(b) Any person may initiate the process, pursuant to N.J.A.C. 7:26D-7, for an alternate building interior cleanup standard, or for a deferral of a building interior cleanup standard.

7:26D-2.3 Compliance

(a) The person responsible for conducting the remediation shall conduct sampling to determine compliance with this subchapter in the areas of concern determined in accordance with generally accepted practices or as approved by the Department. Wipe samples, chip samples and air samples consistent with generally accepted sampling procedures, such as those detailed in the most recent revision of the Department's "Field Sampling Procedures Manual," should be used, as applicable.

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TABLE 2-1: BUILDING INTERIOR SURFACE CLEANUP STANDARDS

Contaminant	CASRN	Standard From Floor To 6 Feet	Standard Higher Than 6 Feet
Antimony	7440-36-0	30	60
Arsenic (Total)	7440-38-2	0.22	0.44
Cadmium	7440-43-9	28	56
Mercury (Total)	7439-97-6	24	48
PCBs (Polychlorinated biphenyls) (Total)	1336-36-3		
Porous Surfaces, chip sample, ug/g		0.055	0.11
Non-Porous Surfaces, wipe sample		0.27	0.54

All units are reported as mg/m² unless otherwise noted.

TABLE 2-2: BUILDING INTERIOR LEAD CLEANUP STANDARDS

Contaminant	CASRN	Standard
Lead (Total), mg/m²		
Window Wells	7439-92-1	8.6
Window Sills		5.4
All Other Surfaces		2.1

TABLE 2-3: BUILDING INTERIOR AIR CLEANUP STANDARD

Contaminant	CASRN	Standard
Mercury (Total) ug/m³	7439-97-6	0.3

(b) Compliance with applicable building interior cleanup standards is achieved when no single sample exceeds the applicable building interior cleanup standard.

SUBCHAPTER 3. SOIL STANDARDS

7:26D-3.1 Scope

This subchapter presents the cleanup standards for the soil, except when more stringent cleanup standards are developed pursuant to N.J.A.C. 7:26D-5.

7:26D-3.2 Identification of soil cleanup standards

(a) The surface soil cleanup standards are:

1. The surface soil cleanup standards in Table 3-1 below;

i. For a contaminant not included in Table 3-1, the Department may develop a surface soil cleanup standard pursuant to N.J.A.C. 7:26D-6;

ii. If the subsurface soil cleanup standard for a contaminant, identified pursuant to (b) below, is numerically less than the surface soil cleanup standard for that contaminant identified pursuant to (a)1 above, then that subsurface soil cleanup standard shall apply to both the surface and subsurface soil; and

2. The soil cleanup standards identified pursuant to (c) below.

(b) The subsurface soil cleanup standards are as follows:

1. For organic contaminants in any area where contaminated ground water has migrated to, or has the potential to migrate to, a Class I or Class IIA aquifer the subsurface soil cleanup standards are:

i. Presented in Table 3-1;

ii. For an organic contaminant in areas identified pursuant to (b)1 above, without a subsurface soil cleanup standard in Table 3-1, the Department may develop a subsurface soil cleanup standard pursuant to N.J.A.C. 7:26D-6;

2. For inorganic contaminants the Department will determine the subsurface soil cleanup standard on a site-specific basis through an assessment of contaminant toxicity and potential or demonstrated mobility, including, without limitation, the consideration of such soil chemical and physical characteristics as:

i. Cation exchange capacity (CEC);

ii. ph;

iii. Particle size distribution;

iv. Permeability; and

v. Chemical state of the contaminant; and

3. The soil cleanup standards identified pursuant to (c) below.

(c) The following soil standards apply to both surface and subsurface soil:

1. Total organic contaminants, which includes total petroleum hydrocarbons (TPHC), shall not exceed 10,000 mg/kg;

2. When total volatile organic contaminants are present at concentrations greater than or equal to 1,000 mg/kg, the cleanup standard for total volatile organic contaminants shall be 1,000 mg/kg, except as provided in (c)3 below;

3. When total volatile organic contaminants are present at concentrations greater than 100 mg/kg, but less than 1,000 mg/kg, the cleanup standard for total volatile organic contaminants shall be based on an evaluation of actual and potential impacts to any subsurface structures and shall include:

i. If total volatile organic contaminants are detected in the gas phase in this soil, the concentration in mg/m³ of the contaminant in a residential living space shall not exceed the lower of either:

(1) The chronic inhalation reference concentration impacted by the soil for habitable structures; or

(2) Ten percent of the lower explosive limit for an enclosure; and

ii. In all other circumstances, reduction to the maximum extent possible of any such actual or potential impact;

4. No soil shall exhibit the hazardous waste characteristics of ignitability, corrosivity and reactivity as defined in the hazardous waste regulations at N.J.A.C. 7:26-8 due to the presence of contaminants; and

5. The Department may require the use of institutional controls pursuant to N.J.A.C. 7:26D-8 when necessary to protect human health and the environment.

(d) Any person may initiate the process, pursuant to N.J.A.C. 7:26D-7, for an alternate soil cleanup standard, or a deferral of a soil cleanup standard.

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TABLE 3-1
SOIL CLEANUP STANDARDS (mg/kg)

Contaminant	CASRN	Residential Surface Soil Standards	Subsurface Soil Standards
Acenaphthene	83-32-9	3,400	100
Acetone	67-64-1	1,000	50
Acrylonitrile	107-13-1	1	100
Aldrin	309-00-2	0.040	50
Anthracene	120-12-7	10,000	500
Antimony	7440-36-0	14	
Arsenic (Total)	7440-38-2	20	
Barium	7440-39-3	600	
Benzene	71-43-2	3	1
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	0.66	500
Benzo(a)anthracene	56-55-3	0.66	500
Benzo(a)pyrene (BaP)	50-32-8	0.66	100
Benzo(k)fluoranthene	207-08-9	0.66	500
Benzo(ghi)perylene	191-24-2	0.66	500
Benzyl Alcohol	100-51-6	10,000	50
Beryllium	7440-41-7	2	
Bis(2-chloroethyl) ether	111-44-4	1	1
Bis(2-chloroisopropyl) ether	39638-32-9	2,300	10
Bis(2-ethylhexyl) phthalate	117-81-7	49	100
Bromodichloromethane (Dichlorobromomethane)	75-27-4	5	1
Bromoform	75-25-2	86	1
Bromomethane	74-83-9	790	1
2-Butanone (MEK)	78-93-3	1,000	50
Butylbenzyl phthalates	85-68-7	10,000	100
Cadmium	7440-43-9	1	
Carbon tetrachloride	56-23-5	2	1
Chlorobenzene	108-90-7	37	1
Chloroform	67-66-3	19	1
4-Chloro-3-methyl phenol (p-Chloro-m-cresol)	59-50-7	10,000	100
Chloromethane	74-87-3	520	10
2-Chlorophenol	95-57-8	280	50
Chrysene	218-01-9	0.66	500
Copper	7440-50-8	600	
Cyanide	57-12-5	280	
4,4′-DDD (p,p″-TDE)	72-54-8	3	100
4,4′-DDE	72-55-9	2	100
4,4′-DDT	50-29-3	2	100
Dibenz(a,h)anthracene	53-70-3	0.66	500
Dibromochloromethane (Chlorodibromomethane)	124-48-1	110	1
Di-n-butyl phthalate	84-74-2	5,700	100
Di-n-octyl phthalate	117-84-0	1,100	100
1,2-Dichlorobenzene	95-50-1	5,100	50
1,3-Dichlorobenzene	541-73-1	5,100	100
1,4-Dichlorobenzene	106-46-7	280	100
3,3′-Dichlorobenzidine	91-94-1	2	100
1,1-Dichloroethane	75-34-3	1,000	1
1,2-Dichloroethane	107-06-2	6	1
1,1-Dichloroethene	75-35-4	51	10
1,2-Dichloroethene (trans)	156-60-5	960	50
1,2-Dichloroethene (cis)	156-59-2	79	50
2,4-Dichlorophenol	120-83-2	170	10
1,3-Dichloropropene (cis and trans)	542-75-6	4	1
Dieldrin	60-57-1	0.042	50
Diethyl phthalate	84-66-2	10,000	50
2,4-Dimethyl phenol	105-67-9	1,100	50

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Dimethyl phthalate	131-11-3	10,000	50
2,4-Dinitrophenol	51-28-5	110	10
2,4-Dinitrotoluene	121-14-2	1	10
Endosulfan	115-29-7	3	50
Endrin	72-20-8	17	50
Ethylbenzene	100-41-4	1,000	100
Fluoranthene	206-44-0	2,300	500
Fluorene	86-73-7	2,300	100
Fluoride	16984-48-8	1,100	
Heptachlor	76-44-8	0.15	500
Hexachlorobenzene	118-74-1	0.42	50
Hexachlorobutadiene	87-68-3	11	50
Hexachlorocyclopentadiene	77-47-4	400	100
Hexachloroethane	67-72-1	1,700	100
Indeno(1,2,3-cd)pyrene	193-39-5	0.66	500
Isophorone	78-59-1	1,100	10
Lead (Total)	7439-92-1	100	
Lindane	58-89-9	0.52	1
Methoxychlor	72-43-5	280	500
Mercury (Total)	7439-97-6	14	
4-Methyl-2-pentanone (MIBK)	108-10-1	1,000	50
Methylene chloride	75-09-2	49	10
Napthalene	91-20-3	230	100
Nickel (Soluble salts)	7440-02-0	250	
Nitrobenzene	98-95-3	1	50
N-Nitrosodiphenylamine	86-30-6	140	100
N-Nitrosodi-n-propylamine	621-64-7	0.66	1
PCBs (Polychlorinated biphenyls)	1336-36-3	0.45	100
Pentachlorophenol	87-86-5	1,700	100
Phenol	103-95-2	10,000	50
Pyrene	129-00-0	1,700	500
Selenium (Total)	7782-49-2	1	
Silver	7440-22-4	40	
Styrene	100-42-5	23	100
1,1,1,2-Tetrachloroethane	630-20-6	260	1
1,1,2,2-Tetrachloroethane	79-34-5	34	1
Tetrachloroethylene	127-18-4	9	1
Thallium	7440-28-0	2	
Toluene	108-88-3	1,000	500
Toxaphene	8001-35-2	0.62	100
1,2,4-Trichlorobenzene	120-82-1	1,100	100
1,1,1-Trichloroethane	71-53-6	210	50
1,1,2-Trichloroethane	79-00-5	23	1
Trichloroethene (TCE)	79-01-6	23	1
2,4,5-Trichlorophenol	95-95-4	5,600	50
2,4,6-Trichlorophenol	88-06-2	62	50
Vanadium	7440-62-2	380	
Vinyl chloride	75-01-4	2	1
Xylenes (Total)	1330-29-7	360	10
Zinc	7440-66-6	1,500	

7:26D-3.3 Compliance

(a) Compliance with applicable soil cleanup standards shall be established throughout the appropriate soil zone at the contaminated site.

(b) Compliance with a soil cleanup standard is achieved when:

1. The arithmetic mean of the concentrations of the contaminant in all soil samples in an area of concern is less than or equal to the applicable soil cleanup standard for that contaminant;

2. No single soil sample exceeds the applicable soil cleanup standard by a factor of more than:

i. Ten for a soil standard of less than or equal to 10 ppm, but not more than 50 ppm;

ii. Five for a soil standard greater than 10 but less than or equal to 100 ppm, but not more than 200 ppm; and

iii. Two for a soil standard greater than 100 ppm; and

3. No more than 10 percent of the soil samples, or one sample if two to 10 samples, inclusively, are used, exceed the applicable soil cleanup standard.

(c) Sampling shall be conducted in the areas of concern consistent with the remedial investigation requirements approved by the Department.

(d) To determine compliance with this subchapter for a remedy which does not involve the physical, chemical or biological removal of contaminants, an alternate cleanup standard or a deferral of a cleanup standard is required pursuant to N.J.A.C. 7:26D-7. If an alternate cleanup standard or a deferral is not applicable pursuant to N.J.A.C. 7:26D-7 for such a situation, then compliance will not have been achieved with this subchapter.

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(e) In no event shall compliance be achieved with the surface soil cleanup standards in this subchapter by applying two feet of clean fill onto a contaminated site, without the express prior written approval of the Department.

SUBCHAPTER 4. GROUND WATER CLEANUP STANDARDS

7:26D-4.1 Scope

This subchapter constitutes the Department's ground water cleanup standards, except when more stringent cleanup standards are developed pursuant to N.J.A.C. 7:26D-5.

7:26D-4.2 Identification of ground water cleanup standards

(a) In addition to the ground water cleanup standards identified in (c) below, this section identifies the ground water cleanup standards for all areas where contaminated ground water has migrated, or has the potential to migrate, to a receptor.

1. When the contaminant in the ground water has the potential to affect more than one receptor, the ground water cleanup standard for a contaminant shall be the most stringent of all applicable ground water cleanup standards developed pursuant to this subchapter.

2. The ground water cleanup standard for a contaminant in ground water which is, or has the potential of, discharging to FW1, PL or Category 1 surface water shall be the natural background ground water concentration of that contaminant.

3. The ground water cleanup standard for a contaminant in ground water which has migrated, or has the potential to migrate, to an ecosystem, such as a wetlands or critical habitat, will be developed by the Department on a site-specific basis utilizing site-specific data which may include, without limitation, bioassays and biota studies.

4. The ground water cleanup standard for a contaminant in ground water which creates an explosive hazard or human health-based risk due to vapors reaching any structure will be developed by the Department on a site-specific basis utilizing site-specific data which may include, without limitation, air monitoring.

5. The ground water cleanup standard for a contaminant in ground water which has migrated, or has the potential to migrate, to a commercial, agricultural or industrial non-potable well will be developed by the Department on a site-specific basis considering the uses of the well.

6. The ground water cleanup standard for any contaminant either within Class I ground water or which is in any ground water which is, or has the potential of, migrating to Class I ground water, shall be as follows:

i. For Class IA and I-Pinelands (Preservation Area) ground water, the ground water cleanup standard for a contaminant shall be the natural ground water concentration of that contaminant; and

ii. For Class I-Pinelands (Protection Area) ground water, the ground water cleanup standard for a contaminant shall be the background ground water concentration of that contaminant.

7. The ground water cleanup standard for any contaminant in a Class IIA ground water is the cleanup standard in Table 4-1 below.

8. The cleanup standard, for each contaminant which has migrated, or has the potential to migrate, to a Class IIA ground water, but does not have a ground water cleanup standard in Table 4-1, shall be as follows:

i. The cleanup standard developed pursuant to N.J.A.C. 7:26D-6 for a contaminant for which the Department determines that appropriate toxicological data exist in the sources listed in N.J.A.C. 7:26D-6.5; or

ii. For a contaminant for which the Department determines that appropriate toxicological data do not exist in the sources listed in N.J.A.C. 7:26D-6.5:

(1) Five ppb for any organic contaminant for which the Department determines there is sufficient evidence of carcinogenicity, with a total of such potentially carcinogenic contaminants not to exceed 25 ppb;

(2) One hundred ppb for any organic contaminant for which the Department determines that no evidence of carcinogenicity exists, with a total of all such potentially non-carcinogenic contaminants not to exceed 500 ppb;

(3) Background ground water concentration for an inorganic contaminant; or

(4) For a contaminant which is the driving force behind a Department remedial decision, the Department may develop a cleanup standard pursuant to N.J.A.C. 7:26D-6.

(b) In addition to the ground water cleanup standards identified in (c) below, the ground water cleanup standard for contaminants in all areas that do not have a ground water cleanup standard developed pursuant to (a) above shall be as follows:

1. The ground water cleanup standard for an individual organic contaminant is one ppm;

2. The ground water cleanup standard for the total of all organic contaminants is 10 ppm; and

3. The ground water cleanup standard for an inorganic contaminant is the background groundwater concentration for that contaminant.

(c) The following narrative cleanup standards, in addition to the ground water cleanup standards in (a) and (b) above, apply to all contaminated sites:

1. Removal of free product and residual product that is capable of becoming free product;

2. Removal and/or control of all sources of ground water contamination; and

3. Implementation of one or more of the following source or receptor controls when imminent risks to human or an ecological receptor are identified:

i. Control of all or a portion of a contaminant plume to minimize, mitigate or eliminate the further movement of the contaminant plume toward human or ecological receptors;

ii. Provision of alternate water supplies or treatment of existing supplies within all areas where potable wells have been or have potential to become contaminated above the cleanup standards in Table 4-1; and

iii. Venting of vapors from subsurface or surface structures.

(d) Any person may initiate the process, pursuant to N.J.A.C. 7:26D-7, for an alternate ground water cleanup standard or for a deferral of a ground water cleanup standard.

TABLE 4-1
GROUND WATER CLEANUP STANDARDS (mg/L)
FOR CLASS II-A GROUNDWATERS

Contaminant	CASRN	Standard
Acenaphthene	83-32-9	0.4
Acetone	67-64-1	0.7
Acrylamide	79-06-1	0.000008
Acrylonitrile	107-13-1	0.02
Alachlor	15972-60-8	0.002
Aldrin	309-00-2	0.00004
Anthracene	120-12-7	2.0
Antimony	7440-36-0	0.02
Arsenic (Total)	7440-38-2	0.008
Asbestos	1332-21-4	30,000 (a)
Atrazine	1912-24-9	0.003
Barium	7440-39-3	2.0
Benzene	71-43-2	0.001
Benzidine	92-87-5	0.05
Benz (a) anthracene	56-55-3	0.01
Benzyl Alcohol	100-51-6	2.0
Benzo (a) pyrene (BaP)	50-32-8	0.02
Benzo (b) fluoranthene	205-99-2	0.01
Benzo (k) fluoranthene	207-08-9	0.02
Beryllium	7440-41-7	0.02
alpha-BHC (alpha-HCH)	319-84-6	0.00002
beta-BHC (beta-HCH)	319-85-7	0.0002
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.0002

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Bis(2-chloroethyl) ether	111-44-4	0.01
Bis(2-chloroisopropyl) ether	39638-32-9	0.3
Bis(2-ethylhexyl) phthalate	117-81-7	0.03
Bromoform	75-25-2	0.004
2-Butanone (MEK)	78-93-3	0.3
Butylbenzyl phthalates	85-68-7	0.1
Cadmium	7440-43-9	0.004
Carbofuran	1563-66-2	0.04
Carbon tetrachloride	56-23-5	0.002
Chlordane	57-74-9	0.0005
Chlorobenzene	108-90-7	0.005
Chloroform	67-66-3	0.006
Chloropyrifos	2921-88-2	0.02
2-Chlorophenol	95-57-2	0.04
Chromium (Total)	7440-47-3	0.1
Chrysene	218-01-9	0.02
Cyanide	57-12-5	0.2
2,4-D	94-75-7	0.07
4,4′-DDD (p,p″-TDE)	72-54-8	0.0001
4,4′-DDE	72-55-9	0.0001
4,4′-DDT	50-29-3	0.0001
Dibromochloromethane (Chlorodibromomethane)	124-48-1	0.01
Demeton	8065-48-3	0.0003
Di-n-butyl phthalate	84-74-2	0.9
Di-n-octyl phthalate	117-84-0	0.1
Di-n-propylnitrosamine	621-64-7	0.02
Dibenz (a,h) anthracene	53-70-3	0.02
1,2-Dichlorobenzene	95-50-1	0.6
1,3-Dichlorobenzene	541-73-1	0.6
1,4-Dichlorobenzene	106-46-7	0.07
3,3′-Dichlorobenzidine	91-94-1	0.06
Dichlorobromomethane	75-27-4	0.001
Dichloroethyl ether	111-44-4	0.01
1,1-Dichloroethane	75-34-3	0.07
1,2-Dichloroethane	107-06-2	0.002
1,1-Dichloroethylene	75-35-4	0.002
1,2-Dichloroethylene (cis)	156-59-2	0.01
1,2-Dichloroethylene (trans)	156-60-5	0.1
2,4-Dichlorophenol	120-83-2	0.02
1,2-Dichloropropane	78-87-5	0.001
2,2-Dichloropropionic acid (Dalapon)	75-99-0	0.2
Dieldrin	60-57-1	0.00003
Diethyl phthalate	84-66-2	5.0
2,4-Dimethyl phenol	105-67-9	0.1
Dimethyl phthalate	131-11-3	7.0
2,4-Dinitrophenol	51-28-5	0.04
2,4-Dinitrotoluene	121-14-2	0.01
2,6-Dinitrotoluene	606-20-2	0.01
Dinoseb	88-85-7	0.007
1,2-Diphenylhydrazine	122-66-7	0.00004
Diquat	85-00-7	0.02
Endosulfan	115-29-7	0.0004
alpha-Endosulfan (Endosulfan I)	959-98-8	0.0004
beta-Endosulfan (Endosulfan II)	33213-65-9	0.0004
Endosulfan sulfate	1031-07-8	0.0004
Endothall	145-73-3	0.1
Endrin	72-20-8	0.002
Epichlorohydrin	106-89-8	0.004
Ethylbenzene	100-41-4	0.7
Ethylene dibromide	106-93-4	0.00005
Fluoranthene	206-44-0	0.3
Fluorene	86-73-7	0.3
Heptachlor	76-44-8	0.0004
Heptachlor epoxide	1024-57-3	0.0002
Hexachloro-1,3-butadiene	87-68-3	0.001
Hexachlorobenzene	118-74-1	0.01
Hexachlorocyclopentadiene	77-47-4	0.05
Hexachloroethane	67-72-1	0.01
Hydrogen sulfide	7783-06-4	0.02
Indeno (1,2,3-cd) pyrene	193-39-5	0.02
Isophorone	78-59-1	0.1
Lead (Total)	7439-92-1	0.01
Lindane	58-89-9	0.0002
Malathion	121-75-5	0.2
Mercury (Total)	7439-97-6	0.002
Methoxychlor	72-43-5	0.04
Methyl bromide (bromomethane)	74-83-9	0.01
Methyl chloride (chloromethane)	74-87-3	0.03
4-Methyl-2-pentanone (MIBK)	108-10-1	0.4
Methylene chloride	75-09-2	0.003
Mirex	2385-85-5	0.00001
Naphtalene	91-20-3	0.03
Nickel (Soluble salts)	7440-02-0	0.1
Nitrobenzene	98-95-3	0.01
N-Nitrosodiphenylamine	86-30-6	0.02
N-Nitrosodimethylamine	62-75-9	0.02
N-Nitrosodi-n-propylamine	621-64-7	0.02
Oxamyl	23135-22-0	0.2
PCBs (Polychlorinated biphenyls)	1336-36-3	0.0005
Pentachlorophenol	87-86-5	0.001
Phenol	103-95-2	4.0
Pyrene	129-00-0	0.2
Selenium (Total)	7782-49-2	0.05
Silver	7440-22-4	0.02
Styrene	100-42-5	0.1
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.00001
1,1,2,2-Tetrachloroethane	79-34-5	0.002
1,1,1,2-Tetrachloroethane	630-20-6	0.01
Tetrachloroethylene	127-18-4	0.001
Thallium	7440-28-0	0.01
Toluene	108-88-3	1.0
Toxaphene	8001-35-2	0.003
2,4,5-TP (Silvex)	93-72-1	0.05
1,2,4-Trichlorobenzene	120-82-1	0.009
Trichloroethane	79-01-6	0.001
1,1,1-Trichloroethane	71-53-6	0.03
1,1,2-Trichloroethane	79-00-5	0.003
2,4,5-Trichlorophenol	95-95-4	0.7
2,4,6-Trichlorophenol	88-06-2	0.02
Vinyl chloride	75-01-4	0.002
Xylenes (Total)	1330-29-7	0.04
Zinc	7440-6606	5.0

(a) Asbestos units are fibers, greater than 10 microns in length, per liter.

7:26D-4.3 Natural remediation compliance program

(a) The person responsible for conducting a cleanup may request that the Department approve a compliance program which relies on the degradation and natural attenuation of contaminants by submitting to the Department the following:

1. Sufficient evidence to support a Department determination that:

i. All sources of contamination and free product have been controlled pursuant to N.J.A.C. 7:26D-4.2(c);

ii. The contaminants present exist in concentrations that do not currently and are not expected to migrate to any potential human or ecological receptor above applicable standards;

2. Written documentation regarding the contaminant's degradability and/or attenuation capacity;

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3. Identification and discussion of site-specific characteristics which indicate that conditions are favorable for degradation and/or natural attenuation;

4. A proposed ground water monitoring program which shall include:

i. The collection of ground water quality data from monitoring wells to evaluate the adequacy of source control and to track contaminant concentrations over time;

ii. The collection of ground water quality data from monitoring wells which track the degradation and attenuation of contaminants within and downgradient of the contaminant plume; and

iii. A sentinel well system, pursuant to N.J.A.C. 7:26D-4.5, designed to detect contamination in ground water prior to reaching any potential human or ecological receptor, and which is located between the contaminated plume and the human or ecological receptor at least one year's time of travel upgradient of the receptor;

5. Written documentation, utilizing municipal and water purveyor planning data, of current and potential ground water uses based on a 25-year planning horizon;

6. Copies of written notices provided to all property owners and occupants of property under which the contaminated ground water is expected to migrate stating that fact; and

7. Evidence that all necessary access agreements needed to monitor ground water quality pursuant to (a)4 above have been or can be obtained.

(b) If at any time the Department determines that a contaminant being monitored under a natural remediation compliance program has the potential to migrate to a human or ecological receptor above applicable ground water cleanup standards, or if contaminant concentrations are not decreasing, the person responsible for conducting the remediation shall implement an active ground water remediation program.

(c) The Department may approve the use of a natural remediation compliance program for an entire, or any portion of, a contaminant plume.

(d) The Department may require the use of institutional controls pursuant to N.J.A.C. 7:26D-8 as a condition to the approval of a natural remediation compliance program when necessary to protect current or future ground water uses.

7:26D-4.4 Achievement of steady state conditions under an active remediation program

(a) If the Department determines that steady state conditions have developed prior to reaching applicable site-specific cleanup standards identified pursuant to N.J.A.C. 7:26D-4.2, the person responsible for conducting the remediation shall meet one or more of the following narrative cleanup standards as the Department directs:

1. Implementation of additional remedial actions, if innovative technologies or alternate pumping scenarios are available, which would enhance ground water quality beyond the steady state;

2. Control of the contaminated ground water if the contaminated ground water has the potential to migrate to a human or ecological receptor above applicable ground water cleanup standards; or

3. Implementation of a natural remediation compliance program.

7:26D-4.5 Sentinel well system

(a) A sentinel well system shall:

1. Be designed to serve as an early warning system tracking the migration of contaminants toward a human or ecological receptor;

2. Be located at a distance no closer than one year time of travel to the nearest human or ecological receptor, and no greater than the distance the ground water at the contaminated site could travel in five years; and

3. Include periodic monitoring for at least five years.

(b) If contaminants are detected above the applicable ground water cleanup standard in the sentinel well system, the person responsible for conducting the remediation shall resample the wells, to confirm the results, within four weeks after receipt of verbal results from the laboratory, or within two weeks after receipt of written results from the laboratory, whichever is earlier.

(c) If during the monitoring period, contaminant concentrations above the applicable ground water cleanup standard associated with the contaminated site are confirmed in any sentinel well, additional remedial action may be required, as determined by the Department.

7:26D-4.6 Determining compliance with ground water cleanup standards

(a) Compliance with the applicable ground water cleanup standards shall be determined based on a statistical analysis which is consistent with statistical analysis requirements of N.J.A.C. 7:14A-6.15, 40 CFR 264.97, and associated EPA guidance documents.

(b) Compliance with the applicable ground water cleanup standard identified pursuant to N.J.A.C. 7:26D-4.2 shall be determined as follows:

1. For two consecutive sampling rounds, separated by at least 90 days, but no more than 120 days, the concentration in ground water of each contaminant shall be less than or equal to the applicable ground water cleanup standard for that contaminant in all monitoring wells in the monitoring program;

2. Upon submission of data that demonstrate the requirement in (b)1 above, and upon receipt of written approval of the Department, the person responsible for conducting the remediation may cease the active remediation and shall implement a Department-approved, post-remediation statistical analysis to demonstrate that applicable ground water cleanup standards are not exceeded by a statistically significant amount;

i. This analysis may consider individual wells or all monitoring wells as a group in the post-remediation program; and

ii. The monitoring program and statistical analysis shall be performed for 12 consecutive quarters (three years), unless the Department approves in writing a shorter timeframe; and

3. If concentrations of a contaminant in ground water are less than or equal to the applicable cleanup standard for all 12 consecutive quarters, statistical analysis of the data is not required and the site will be considered to be in compliance with this subchapter.

(c) Ground water samples used to determine compliance with the applicable ground water cleanup standards shall be collected consistent with accepted remedial investigation requirements or as approved by the Department.

(d) Compliance with a natural remediation compliance program approved pursuant to N.J.A.C. 7:26D-4.3 is determined as follows:

1. Upon submission of 20 consecutive quarters (five years) worth of ground water quality data and statistical analyses of that data, the person responsible for conducting the cleanup can demonstrate that:

i. Contaminant concentrations have not been increasing in statewide monitoring wells selected for the monitoring program; and

ii. Contaminant concentrations have been steadily decreasing in source control monitoring wells; and

2. Upon completion of the monitoring program established for a sentinel well system, if required, no contamination above the applicable ground water cleanup standards is discovered in the sentinel well system.

(e) If the Department determines, based on ground water data developed pursuant to (a), (b) and (c) above, that contamination is not detected in any sentinel well during the required monitoring period, the ground water at the contaminated site is in compliance with this subchapter.

SUBCHAPTER 5. ECOLOGY-BASED CLEANUP STANDARDS

7:26D-5.1 Scope

This subchapter constitutes the Department's ecology-based cleanup standards.

7:26D-5.2 Basis and objectives of ecology-based cleanup standards

(a) The objective of developing ecology-based cleanup standards is to prevent direct and indirect toxicity effects on ecological receptors.

(b) The Department will use site-specific baseline ecological evaluation to determine if an ecological risk assessment is necessary,

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and will use ecological risk assessments to both identify potential risks to ecological receptors and to develop appropriate cleanup standards based on those risks.

7:26D-5.3 Baseline ecological evaluation

(a) The person responsible for conducting the remediation of a contaminated site shall, as part of the site investigation, conduct a baseline ecological evaluation pursuant to (b) below.

(b) A baseline ecological evaluation shall:

1. Identify the contaminants at the site that are of particular concern from an ecological perspective;

2. Identify whether or not sensitive ecological receptors are present or may have been (or should have been) present in the vicinity of the contaminated site, which shall include without limitation those identified pursuant to (c) below;

3. Identify potential exposure pathways to sensitive ecological receptors which exist or may have existed; and

4. Determine whether or not sensitive ecological receptors are being adversely impacted or potentially adversely impacted by the contamination.

(c) Sensitive ecological receptors include, without limitations:

1. Pinelands and other sensitive ecosystems as defined in the Pinelands Comprehension Management Plan rules, N.J.A.C. 7:50;

2. Surface waters;

3. Wetlands and wetland transition areas, including without limitation the following:

i. Freshwater wetlands and wetland transition areas, as defined at N.J.A.C. 7:7A-1.4;

ii. Wetlands, as defined in N.J.A.C. 7:7E-3.27; and

iii. Cranberry bogs, as defined at N.J.A.C. 7:7E-3.29;

4. Breeding areas for forest area nesting species, colonial waterbirds, or aquatic furbearers;

5. Migratory stopover areas for migrant shorebirds, raptors or passerines;

6. Wintering areas, including coastal tidal marshes and water areas, waterfowl concentration areas, and Atlantic white Cedar stands;

7. Estuarine areas supporting various species of submerged vegetation, as defined in N.J.A.C. 7:7E-3.6;

8. Shellfish harvesting waters as defined in N.J.A.C. 7:7E-3.2 and 7:9-4.4;

9. Forest areas, including prime forestland and unique forestland;

10. Habitat for Federal and State endangered or threatened plant and animal species identified pursuant to:

i. The Federal Endangered Species Act of 1973, P.L. 93-205;

ii. The New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A; and

iii. The New Jersey Endangered Species List, N.J.A.C. 7:5C-5.1;

11. Federal and State wilderness areas, including:

i. Areas included within the Natural Areas System or the State Register of Natural Areas pursuant to the Natural Areas System Act, N.J.S.A. 13:1B-15.12a et seq. and 15.4 et seq., and N.J.A.C. 7:2-11; and

ii. Preserved land held by the New Jersey Natural Lands Trust pursuant to the New Jersey Natural Lands Trust Act, N.J.S.A. 13:1B-15.119 et seq.;

12. Areas designated as wild, scenic, recreational, or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C. 1271 et seq., or the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq. and N.J.A.C. 7:38; and

13. Federal and State endangered or threatened plant and animal species identified pursuant to:

i. The Federal Endangered Species Act of 1973, P.L. 93-205;

ii. The New Jersey Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A; and

iii. The New Jersey Endangered Species List, N.J.A.C. 7:5C-5.1.

7:26D-5.4 Ecological risk assessment

(a) The person responsible for conducting the remediation of a contaminated site shall conduct an ecological risk assessment pursuant to this section when the Department determines, based on a baseline ecological evaluation, that sensitive ecological receptors are or may be adversely effected by the contaminants at a contaminated site.

(b) An ecological risk assessment shall be conducted in accordance with generally accepted methodologies such as:

i. "Ecological Assessment of Hazardous Waste Sites: A Field and Laboratory Reference" EPA/60013-89/013, incorporated herein by reference;

ii. "Injury to Fish and Wildlife Species" Type B Technical Information Document. U.S. Department of the Interior. 1987 (CERCLA project 301 Washington, D.C.), incorporated herein by reference; or

iii. Other methods the Department approves in writing.

(c) The ecological risk assessment shall include:

1. The identification and description of the nature of the ecosystems impacted by the contamination (for example, urban greenway, suburban woodlot, estuary, endangered or threatened species habitat), and information concerning the significance, uniqueness, or protected status of the ecosystems and other natural resources involved;

2. A description of each contaminant, including without limitation, physical/chemical properties and bioaccumulation potential, in terms of its potential to cause adverse ecological impact;

3. The identification of potential sensitive ecological receptors representative of the habitat in the vicinity of the contaminated site;

4. The identification of potential pathways of migration of contaminants through an ecosystem, including without limitation:

i. Direct toxicity to plants (phytotoxicity);

ii. Direct toxicity to wildlife;

iii. Indirect toxicity to wildlife via ingestion of contaminated media and food sources; and

iv. Contaminant residue present in the biota;

5. Exposure assessment of the potential receptors via relevant pathways to contaminants of ecological concern, including ecological surveys to determine whether or not adverse ecological impacts have occurred;

i. This may be accomplished by comparing surveys of potentially impacted systems to those of an appropriate control system;

ii. These surveys may include, without limitation, various studies conducted at the following levels of biological organization:

(1) Organisms (for example, behavioral studies, growth rates, physiological ecology and morphology);

(2) Populations (for example, fecundity, cohort analysis, mortality, survivorship, growth, and symbioses);

(3) Communities (for example, species importance, richness, or diversity, trophic functional analysis, productivity, frequency analysis, and physiognomy); and

(4) Ecosystems (for example, primary and secondary production, gradient analysis, nutrient cycling and availability, energy relations, and decomposition rates);

6. Toxicity tests to:

i. Determine if there is a link between any adverse ecological effects and site contamination, including, for example, aquatic toxicity assays, sediment bioassays and population or community level studies; and

ii. Determine a contaminant concentration threshold at which ecological effects are expected;

7. Research literature values of toxicity to determine what contaminant concentrations may cause an adverse ecological impact; and

8. A characterization of the actual or potential ecological risk based on the above information, and analysis of data collected during the site investigation and a review of the literature on known or suspected causal relationships between contaminant concentrations and adverse ecological impacts.

7:26D-5.5 Ecology-based standards

(a) The Department will use information collected pursuant to an ecological risk assessment conducted pursuant to N.J.A.C. 7:26D-5.4 to determine:

1. The actual and potential risk the contaminants pose to sensitive ecological receptors; and

2. Appropriate cleanup standards for contaminants at the site, which may:

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i. Be more stringent than a cleanup standard presented elsewhere in this chapter for the same contaminant; and

ii. Include any institutional controls, pursuant to N.J.A.C. 7:26D-8, necessary to adequately protect sensitive ecological receptors.

(b) Any person may initiate the process, pursuant to N.J.A.C. 7:26D-7, for an alternate ecology-based cleanup standard or for a deferral of an ecology-based cleanup standard.

SUBCHAPTER 6. DERIVATION OF ADDITIONAL NUMERIC CLEANUP STANDARDS

7:26D-6.1 Scope

(a) This subchapter constitutes the Department's procedures to develop numeric cleanup standards for contaminants:

1. Which are the driving force for the remediation of a contaminated site; and

2. Not otherwise included in this chapter.

(b) For some contaminants with unique toxicological considerations which require that the assumptions and approaches for derivation of human health-based criteria differ from those provided in this subchapter, the Department may develop alternate approaches for development of human health-based criteria as necessary to protect human health.

7:26D-6.2 Derivation process

The numeric cleanup standard for a contaminant shall be the health-based criterion derived pursuant to N.J.A.C. 7:26D-6.3 through 6.9; unless the factors presented in N.J.A.C. 7:26D-6.10 result in a lower concentration, in which case the numeric cleanup standard is developed pursuant to the factors in N.J.A.C. 7:26D-6.10.

7:26D-6.3 Approach for human health-based criteria development

(a) The approach for derivation of the health-based criteria for each contaminant shall be determined by:

1. Its weight of evidence for human carcinogenicity;

2. Its chemical-specific toxicity factor (carcinogen potency factor, unit risk factor, reference dose, or reference concentration);

3. The exposure assumptions presented in this subchapter; and

4. The equations presented in this subchapter.

(b) The weight of evidence for human carcinogenicity as described in the EPA "Guidelines for Risk Assessment" (51 Fed. Reg. 33992, 1986) shall be applied as follows:

1. For a contaminant classified in Group A or Group B, the human health-based criterion is calculated from the potency factor or unit risk factor based on an additional lifetime cancer risk of 1×10^{-6};

2. For a contaminant classified in Group C, the health-based criterion shall be derived as follows:

i. If a chronic reference dose is available from the sources listed in N.J.A.C. 7:26D-6.5, the health-based criterion is derived based on the non-carcinogenic effects and is calculated by incorporating an additional uncertainty factor of 10; this is achieved by dividing the chronic reference dose or reference concentration by 10; or

ii. If no reference dose is available from the sources cited in N.J.A.C. 7:26D-6.5(a), the health-based criterion is derived from the carcinogenic effects and is calculated from the potency factor or unit risk factor based on an additional lifetime cancer risk of 1×10^{-5};

3. For a contaminant classified in Group D or Group E, the human health-based criterion shall be calculated from the chronic reference dose or chronic reference concentration; and

4. When the weight of evidence for human carcinogenicity, potency factor, or reference dose differs for oral and inhalation routes of exposure:

i. The oral information is used for developing contaminant-specific human health-based criterion for interior building surfaces, direct contact with surface soil, and ground water; and

ii. The inhalation information is used for developing a contaminant-specific human health based criterion for inhalation of a contaminant from surface soil or air in buildings.

7:26D-6.4 Assumptions

(a) The Department shall use the following assumptions to develop the human health-based criterion.

1. Body weight (BWA) of an adult male = 70 kilograms (kg);

2. Body weight of a child for risk assessments based on potency factor (BWC_C) = 16 kg;

3. Body weight of a child for risk assessments based on reference dose (BWC_{nc}) = 11.3 kg;

4. Length of a lifetime (LL) = 70 years;

5. Number of years spent at a non-residential property (NRP) = 25 years;

6. Number of years spent at a residential property (RP) = 30 years;

7. Non-residential time factor (NRTF), is the fraction of days each year spent at a non-residential property (NRP): (5/7 days) × (49/52 weeks) = 0.673;

8. Residential time factor (RTF), which is the fraction of each year spent at a residential property (RP) = 1.0;

9. Soil ingestion rate for a child (SIC) = 200 milligrams (mg)/day, assumed to occur between 0.5 years and six years of age;

10. Soil ingestion rate for an adult (SIA) = 100 mg/day;

11. Drinking water consumption rate (DWC) = 2 liters/day;

12. Source contribution factor (SCF) for drinking water is used for health-based criteria based on non-carcinogenic effects and is the fraction of the total daily dose of contaminant which comes from drinking water: 0.2;

13. Mean dietary intake (MDI), is the exposure to a contaminant via diet which is taken into account in the development of surface soil standards and interior building surface standards for non-carcinogens when information is available from the following sources:

i. Food and Drug Administration Total Diet Studies; and

ii. Agency for Toxic Substances and Disease Registry (ATSDR) Toxicity Profiles;

14. Fraction of interior building surface contamination which results in exposure to an individual = 0.5;

15. Accessible surface area of a room (AS), up to six feet above the floor, = 8.9 m^2; and

16. Inaccessible surface area of a room (IS), higher than six feet above floor, = 0.19 m^2.

7:26D-6.5 Data sources for human health toxicity factors

(a) In developing contaminant-specific health-based criteria, the Department shall use information from the sources listed below in order of priority, for toxicity information including, without limitation, the weight of evidence for human carcinogenicity, reference doses (RfD), reference concentrations (RfC), potency factors (PF), and unit risk factors (URF):

1. Information which forms the basis for drinking water standards adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., at N.J.A.C. 7:10;

2. The United States Environmental Protection Agency's (EPA) Integrated Risk Information System (IRIS) database; and

3. The EPA's Health Effects Assessment Summary Tables (HEAST) (September 1990).

(b) For a contaminant which is not addressed in the sources cited in (a) above, the Department shall develop toxicity factors based on a review of pertinent data.

7:26D-6.6 Human health-based criterion for building interiors

(a) The Department shall use the equations and approaches in this section to develop contaminant-specific human health-based criteria for building interior surfaces and for air in building interiors.

(b) A human health-based criterion for a contaminant on a building interior surface shall be developed as follows:

1. For a contaminant classified in Group A or Group B, the risk specific dose (RSD) from interior surfaces shall be calculated from the potency factor (PF) as follows:

$$\text{RSD (mg/kg/day)} = \frac{1 \times 10^{-6}}{\text{PF (mg/kg/day)}^{-1}}$$

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i. A criterion for a contaminant on accessible surfaces (AS) shall be calculated as follows:

Criterion for AS (mg/m^2) =

$$\frac{RSD \times BWA \times lifetime \times 365\ days/yr}{0.5\ [AS + (2 \times IS)]}$$

Where: 0.5 = fraction of contamination which results in exposure to individual

ii. A criterion for a contaminant on inaccessible surfaces (IS) shall be calculated as follows:

Criterion for IS (mg/m^2) = 2 × criterion for AS (mg/m^2)

2. For a contaminant classified in Group D or Group E, the human health-based criterion shall be calculated as follows:

i. For a contaminant on accessible surfaces (AS):

Criterion for AS (mg/m^2) =

$$\frac{[RFD - MDI] \times BW \times NRTF \times (NRP/LL)}{0.5\ [AS + (2 \times IS)]}$$

Where: 0.5 = fraction of contamination which results in exposure to individual

ii. For a contaminant on inaccessible surfaces (IS):

Criterion for IS = 2 × criterion for AS

3. The human health-based criterion for a contaminant classified as Group C shall be calculated as follows:

i. For a contaminant for which an oral reference dose is available from the data sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as in (b)2 above, with incorporation of an additional uncertainty factor of 10 into the reference dose;

ii. For a contaminant for which an oral reference dose is not available from the data sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as in (b)1 above, based on an additional lifetime cancer risk of 1×10^{-5}.

(c) A health-based criterion for air in building interiors (C_{air}) shall be developed as follows:

1. For a contaminant classified in Group A or Group B, C_{air} shall be calculated from the unit risk factor (URF) as follows:

$$C_{air} = \frac{1 \times 10^{-6} \times (RP/LL)}{URF^{-1}}$$

Where: 1×10^{-6} = additional lifetime cancer risk;

2. For a contaminant classified in Group D or Group E, the health-based criterion (C_{air} (ug/m^3)) shall be the reference concentration; and

3. For a contaminant classified as Group C, the health-based criterion shall be calculated as follows:

i. For a contaminant for which a reference concentration is available from the sources given in N.J.A.C. 7:26D-6.5(a), the target air concentration shall be derived as in (c)2 above, with the incorporation of an additional uncertainty factor of 10 into the reference concentration.

ii. For a contaminant for which a reference concentration is not available from the sources given in N.J.A.C. 7:26D-6.5(a), the target air concentration shall be derived as in (c)1 above, based on an additional lifetime cancer risk of 1×10^{-5}.

7:26D-6.7 Human health-based criterion for surface soil

(a) The Department shall use the risk assessment approaches and assumptions in this section in developing contaminant-specific human health-based criterion for a contaminant in surface soil for the direct contact with soil, including incidental soil ingestion, and inhalation exposure pathways. The more stringent of the health-based criterion for direct contact and inhalation shall be the basis for the numeric cleanup standard.

(b) The Department shall use the following models to develop a contaminant-specific human health-based criterio for the direct contact soil pathway:

1. For a contaminant classified in Group A or Group B, the risk specific dose (RSD) of the contaminant shall be calculated from the potency factor (PF) as follows:

$$RSD\ (mg/kg/day) = \frac{1 \times 10^{-6}}{PF\ (mg/kg/day)^{-1}}$$

Where: 1×10^{-6} = additional lifetime cancer risk.

i. The human health-based criterion for a contaminant at a non-residential property (non-residential criterion) shall be calculated as follows:

Non-residential Criterion (ppm) =

$$\frac{RSD \times BWA \times 1 \times 10^6}{SIA \times NRTF \times (NRP/LL)}$$

Where: 1×10^6 = factor to convert from mg to kg.

ii. The residential health-based criterion for a contaminant shall be calculated as follows:

Residential Criterion (ppm) =

$$\frac{RSD \times 1 \times 10^6}{\frac{(SIC}{(BWC_C} \times \frac{5.5\ years)}{LL)} + \frac{(SIA}{(BWA} \times \frac{24\ years)}{LL)}}$$

Where: 5.5 years = length of time for child soil ingestion rate;
24 years = length of time for adult soil ingestion rate, based on total of 30 years at residential site; and
1×10^6 = factor to convert from mg to kg.

2. For a contaminant classified in Group D or Group E, the health-based criterion based on direct contact with soil shall be calculated from the reference dose (RfD) as follows:

i. The criterion for non-residential property shall be calculated as follows:

Non-residential Criterion (ppm) =

$$\frac{(RFD - MDI) \times BWA \times 1 \times 10^6}{SIA \times NRTF}$$

Where: 1×10^6 = factor to convert from mg to kg.

ii. The human health-based criterion for a contaminant at a residential property shall be calculated as follows:

Residential Criterion (ppm) =

$$\frac{(RFD - MDI) \times BWC_{nc} \times 1 \times 10^6}{SIC}$$

Where: 1×10^6 = factor to convert from mg to kg.

3. Human health-based criterion for a contaminant classified as Group C shall be derived as follows:

i. For a contaminant for which a reference dose is available from one of the data sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as described in (b)2 above, with an additional uncertainty factor of 10 incorporated into the reference dose; and

ii. For a contaminant for which a reference dose is not available from one of the date sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as described in (b)1 above, based on an additional lifetime cancer risk of 1×10^{-5}.

(c) The Department shall use the models and assumptions given below to evaluate the risks from contaminants in the surface soil through the inhalation route of exposure. Inhalation of particulate matter (consisting of semivolatile organic compounds, pesticides and metals) through wind and vehicle erosion, and inhalation of volatile and semivolatile organic compounds through volatilization, are evaluated for this purpose.

1. A contaminant-specific target air concentrations (C_{air}) based on inhalation of volatile and semivolatile organic compounds through volatilization, shall be calculated as follows:

i. For a contaminant classified in Group A or Group B, a C_{air} shall be calculated from the unit risk factor (URF) as follows:

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(1) Non-residential C_{air} (ug/m³) =

$$\frac{1 \times 10^{-6} \times NRTF \times (NRP/LL)}{URF^{-1}}$$

Where: 1×10^{-6} = additional lifetime cancer risk.

(2) Residential C_{air} (ug/m³) = $\frac{1 \times 10^{-6} \times (RP/LL)}{URF^{-1}}$

Where: 1×10^{-6} = additional lifetime cancer risk.

ii. For a contaminant classified in Group D or Group E, the target air concentration (C_{air}) shall be calculated from the reference concentration (RFC) as follows:

(1) Non-residential C_{air} = RFC × NRTF

(2) Residential C_{air} = RFC

iii. For a contaminant classified as Group C, the target air concentration shall be calculated as follows:

(1) For a contaminant for which a reference concentration is available from the sources given in N.J.A.C. 7:26D-6.5(a), the target air concentration shall be derived as in (c)1ii above, with the incorporation of an additional uncertainty factor of 10 into the reference concentration.

(2) For a contaminant for which a reference concentration is not available from the sources given in N.J.A.C. 7:26D-6.5(a), the target air concentration shall be derived as in (c)1i above, based on an additional lifetime cancer risk of 1×10^{-5}.

2. The target annual ambient air concentration, C_{air} calculated pursuant to (c)1 above, shall be used with the results of an air dispersion factor (ISCLT) to calculate the target annual average emission rate as follows:

1. For a particulate contaminant:

$$\frac{R_{10}\ (g/sec) = C_{air} \times (1g/sec)}{D_{ISC}}$$

Where: R_{10} = the emission rate from the site;
D_{ISC} = 260 ug/m³ (ISCLT – predicted average concentration); and
1 g/sec = unit conversion factor.

ii. For a gaseous contaminant:

$$J_V\ (g/(m^2\ day)) = \frac{C_{air} \times (1 \times 10^{-4} g/sec \times m^2) \times (86{,}400\ sec/day)}{D_{ISC}\ (ug/m^3)}$$

Where: J_V = the flux per square meter from the site (g/m²/day); and
D_{ISC} = 260 ug/m³ (ISCLT – predicted average concentration).

3. The following equation shall be used to determine a target soil level for both wind and vehicle dust particulate emissions, using PM_{10} emission factors given below. The source extent for wind erosion shall be the source area; for vehicle dust, it shall be the vehicle-kilometers traveled (VKT).

$$C_{soil} = \frac{R_{10}}{E_{10}A}$$

Where: C_{soil} = mass fraction of specific contaminant in PM_{10} emissions;
E_{10} = PM_{10} emission factor (g/m²-sec) estimated from wind and vehicle dust models;
E_{10} = 2.93×10^{-5} g/m²-sec for wind erosion;
E_{10} = 1.71 kg/VKT for vehicle dust;
A = source extent;
A = 10,000 m² for wind erosion;
A = 261 VKT/year for vehicle dust; and
R_{10} = chemical specific target emission rate of contaminant as PM_{10}, (g/sec) from (c)2i above.

4. The target soil concentration for volatilization of volatile and semivolatile organic compounds shall be calculated as follows:

$$C_{soil} = \frac{J_V}{(D_E/pi \times t)^{0.5} \times e^{-Kt}}$$

Where: C_{soil} = concentration of contaminant in the soil, (g/m³);
J_V = chemical-specific maximum flux rate through the soil surface to the atmosphere (g/m²/day) from (c)2ii above;
t = time, in days (dependent on chemical specific degradation rate) as follows:

Degradation rate, day^{-1}	0	0.001	0.01
t for industrial sites	3066	2008	719
t for non-industrial sites	3577	2154	726

K_t = chemical specific degradation rate (day^{-1}); and
D_E = effective soil diffusion coefficient; (m²/day) as follows:

For volatiles:

$$D_E = \frac{[K_H(8.4878 \times 10^{-2}\ m^2/day)] + 1.83 \times 10^{-6}\ m^2/day}{[(1.32\ g/m^2)(0.003)(K_{OC})] + 0.2m^3/m^3 + [(0.21m^3/m^3)(K_H)]}$$

For semivolatiles:

$$D_E = \frac{[K_H(8.4878 \times 10^{-2}\ m^2/day)] + 2.38 \times 10^{-6}\ m^2/day}{[(1.32\ g/m^2)(0.003)(K_{OC})] + 0.2m^3/m^3 + [(0.21m^3/m^3)(K_H)]}$$

Where: K_H = Henry's law constant, chemical specific, dimensionless
K_{OC} = organic carbon partion coefficient (ml/g), chemical specific.

7:26D-6.8 Human health-based criteria for ground water

(a) The Department shall use the models in this section to develop a contaminant-specific human health-based criterion for a contaminant in ground water.

1. For a contaminant classified as Group A or Group B, the criterion shall be calculated from the potency factor (PF) as follows:

$$Criterion\ (mg/L) = \frac{1 \times 10^{-6} \times BWA}{DWC \times PF}$$

Where: 1×10^{-6} = additional lifetime cancer risk.

2. For a contaminant classified in Group D or Group E, the criterion shall be calculated from the reference dose (RfD) as follows:

$$Criterion\ (mg/L) = \frac{RFD \times BWA \times SCF}{DWC}$$

3. For a contaminant classified as Group C, the criterion shall be calculated as follows:

i. For a contaminant for which an oral reference dose is available from the data sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as in (a)2 above, with incorporation of an additional uncertainty factor of 10 into the reference dose; and

ii. For a contaminant for which an oral reference dose is not available from the data sources cited in N.J.A.C. 7:26D-6.5(a), the criterion shall be derived as in (a)1 above, based on an additional lifetime cancer risk of 1×10^{-5}.

7:26D-6.9 Method for developing numeric criteria for subsurface soils

(a) The human health-based criterion for volatile organic contaminants in the subsurface soil shall be calculated as follows:

1. To calculate the subsurface soil standard for volatile organic compounds as controlled by the soil-to-ground water pathway, the applicable ground water standard shall be interpreted as the maximum 70-year averaged ground water concentration of the contaminant. The amount of ground water flowing underneath the waste site over 70 years shall be estimated as follows:

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$$L_{70} = V_{gw} \times D_{gw} \times W \times 365 \times 70 \times 28$$

Where: V_{gw} = the velocity of ground water (feet/day);
D_{gw} = the dilution depth of contaminant entering ground water (ft);
W = width of the site perpendicular to ground water flow (ft);
365 = 365 days/year;
70 = 70 years of flow (as based on risk assessment);
28 = 28 liters/cubic ft; and
L_{70} = the liters of ground water that the contaminant dilutes into over 70 years.

2. The allowed amount of any contaminant leaching into the ground water shall be calculated as follows:

$$Q = L_{70} \times GW_{std}$$

Where: GW_{std} = the ground water standards (ug/L or ppb); and
Q = the allowed amount of leached contaminant (ug).

3. The weight of contaminated soil shall be calculated as follows:

$$G = D_L \times L \times W \times 28 \times 10^3 \times 1.3$$

Where: D_L = the depth of contamination (feet);
L = the length of the site parallel to ground water flow (feet);
W = width of the site perpendicular to ground water flow (feet);
28 = 28 L/cubic foot;
10^3 = 10^3 cc/L; and
1.3 = the dry soil bulk density (g/cc).

4. The soil concentrations of contaminant (C, ppm) without adjusting for volatilization shall be calculated as follows:

$$C = \frac{GW_{std} \times V_{gw} \times D^{gw} \times W \times 365 \times 70 \times 28}{D_L \times L \times W \times 28 \times 10^3 \times 1.3}$$

i. To account for the amount of chemical lost to volatilization, a soil transport model by Jury et al. (Jury, W. A., Spencer, W. F. and Farmer, W. J. (1983) J. Environ. Qual. 12(4), 558-564), incorporated herein by reference, shall be used. Moisture movement rate through the soil shall be assumed to be 0.3 cm/day downward.

ii. The soil concentration shall be then adjusted to account for loss of contaminant to the atmosphere:

$$S = C/F,$$

where F is the fraction of applied chemical leached to ground water, and S is the subsurface soil cleanup standard (ppm).

(b) For semivolatile organic compounds, the Department shall employ a ranking system to score chemicals based on solubility, degradation and toxicity. The degradation and toxicity criteria shall be assigned a value of 1, 2, or 3. Solubility shall be weighed by a factor of 4 relative to other criteria. Larger numbers indicate a greater environmental hazard. The total scores are categorized into classes of environmental concern and assigned appropriate benchmark concentrations. The categories of the criteria, the values assigned and the resulting soil cleanup standard are presented in Table 6-1 below.

TABLE 6-1.
CATEGORIES OF PARAMETERS USED IN SUBSURFACE SOIL RANKING SYSTEM

Criteria	Ranking Category
Solubility (mg/1)	
$<1 \times 10^{-2}$	4
1×10^{-2} to 1×10^2	8
$>1 \times 10^2$	12
Biodegradation	
Relatively undegradable	3
Moderately degradable	2
Significantly degradable	1
Toxicity	
Carcinogens (Cancer Slope Factor $(mg/kg/day)^{-1}$)	
$<1 \times 10^{-1}$	1
1×10^{-1} to 9.9×10^{-1}	2
$>1 \times 10^0$	3
Noncarcinogens (Oral RfD (mg/kg/day))	
$<1 \times 10^{-4}$	3
$(1 \times 10^{-4}) \times (1 \times 10^{-1})$	2
$>1 \times 10^1$	1

Total Ranking Sum	Soil Standard (ppm)
6–9	500
10–12	100
13–14	50
15–16	10
18	1

7:26D-6.10 Factors in addition to human health-based criterion considered in standard development

(a) The Department shall consider Statewide background levels and analytical limitations, as provided in (b) and (c) below, in addition to human health-based criterion, in development of contaminant specific cleanup standards, as follows:

1. If the human health-based criterion is below the analytical level given in (b) below, the standard shall be the analytical level;

2. If the human health-based criterion is below the background concentration, the standard shall be the background concentration; and

3. If the human health-based criterion is below both the background concentration given in (c) below and the analytical limit given in (b) below, the standard shall be the higher of these two factors.

(b) Analytical limits for ground water and soil shall be as follows:

1. The analytical limits for ground water shall be the practical quantitation levels, as follows:

i. PQLs shall be rounded to one significant figure.

ii. PQLs shall be derived or selected for each contaminant using the most sensitive analytical method from one of the following sources of information, in order of preference:

(1) Interlaboratory PQLs derived through studies conducted by the Department in support of the Safe Drinking Water Program for a specific analyte and analytical method for the 500 series methods;

(2) PQLs adopted by the United States Environmental Protection Agency (EPA) for the Safe Drinking Water Program for a specific analyte and analytical method for the 500 series or 600 series methods (in order of preference), where such methods are in use by the certified laboratory community;

(3) Department determination of PQLs based upon median, Interlaboratory Method Detection Limits (MDL), using verified MDL data from New Jersey certified laboratories for the 500 series of 600 series methods (in order of preference), multiplied times a factor of five;

(4) Department estimation of a PQL based upon 10 times the MDL published by EPA for a specific analyte and analytical method for the 500 series or 600 series methods (in order of preference); or

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(5) PQLs for aqueous matrices published by EPA in "Test Method for Evaluating Solid Waste," Publication SW846, Third Edition, November 1986, and successor publications, incorporated herein by reference.

iii. The person responsible for conducting the remediation may propose for Department approval an alternative PQL by submitting to the Department sufficient information to support a Department finding that:

(1) Based upon site-specific, ground water matrix considerations, the PQL listed in Table 6-2 below for a constituent is not valid;

(2) An alternative PQL is more appropriate for that constituent with regard to compliance with this chapter;

(3) The alternative PQL has been determined through rigorous laboratory analysis using methods appropriate to the site-specific ground water matrix and contaminant(s); and

(4) The alternative PQL does not preclude detection of any contaminant due to masking effects of other contaminants or naturally occurring substances.

2. The analytical limits for contaminants in soil shall be as follows:

i. For an organic contaminant, the analytical limits shall be the experimental quantification levels (EQLs) pursuant to "Test Methods for Evaluating Solid Waste—Physical/contaminant Methods" (EPA-SW-846, 3rd Edition, Revision A), incorporated herein by reference; and

ii. For an inorganic contaminant, the analytical limits shall be the Contractor Required Detection Limits (CRDL) pursuant to "EPA Contract Laboratory Program Statement of Work for Inorganic Analysis Multi-media Multi-concentration" Document Number ILM01.0. November 1990, incorporated herein by reference.

TABLE 6-2
PRACTICAL QUANTITATION LIMITS (PQLs)
(ppb)

Compound	CASRN	PQLs
Acenaphthylene	208-96-8	12.15
Acrolein	107-02-8	3.5
Adipates (Di(ethylhexyl)adipate)	103-23-1	3
Aldicarb sulfone	1646-88-4	2.5
Benzo(ghi)perylene	191-24-2	17.65
Benzoic Acid	65-85-0	NA
Bromodichloromethane (Dichlorobromomethane)	75-27-4	4.99
Bromomethane	74-83-9	NA
Carbon disulfide	75-15-0	NA
Chloroethane	75-00-3	NA
4-Chloro-3-methyl phenol (p-Chloro-m-cresol)	59-50-7	17.5
Chloromethane	74-87-3	NA
Dalapon	75-99-0	65
2,6-Dichlorophenol	87-65-0	NA
1,3-Dichloropropene (cis and trans)	542-75-6	No Meth
4,6-Dinitro-o-cresol	534-52-1	80
Glyphosate	1071-83-6	0
Halomethanes	NJHC-28-5	NA
Nitrite (as N)	14797-65-0	10
PAHs (Polynuclear aromatic hydrocarbons)	NJH-PA-H	NA
Phosphorous	7723-14-0	80.75
Picloram	1918-02-1	.7
Simazine	122-34-9	10

NA—PQL not available at this time
No Meth—no analytical method available at this time

SUBCHAPTER 7. ALTERNATE CLEANUP STANDARDS AND DEFERRALS OF A CLEANUP STANDARD

7:26D-7.1 Scope

(a) This subchapter provides the substantive and procedural requirements for any person petitioning the Department for:

1. An alternate cleanup standard from a cleanup standard applicable to a contaminated site pursuant to N.J.A.C. 7:26D-2 through 6; or

2. A deferral of the application of a cleanup standard applicable to a contaminated site pursuant to N.J.A.C. 7:26D-2 through 6.

7:26D-7.2 Basis for an alternate cleanup standard or deferral of a cleanup standard

(a) The Department will establish an alternate cleanup standard or defer a cleanup standard if the petitioner:

1. Prior to the implementation of the remedial action in question presents sufficient evidence to support a Department determination that:

i. One of the criteria in (c) below exists for an alternate cleanup standard or a deferral of a cleanup standard; or

ii. One of the additional criteria in (d) below exists for a deferral of a cleanup standard; and

2. Does not attempt to support any petition by changing, in any way, the assumptions or approaches for evaluating human exposure contained in N.J.A.C. 7:26D-6 to establish a greater concentration of a contaminant as a cleanup standard.

(b) Pursuant to the criteria in (c) below, the Department may develop an alternate cleanup standard which is either more or less stringent than the otherwise applicable cleanup standard.

(c) The criteria for establishing an alternate cleanup standard or granting a deferral of a cleanup standard for shall be as follows:

1. Compliance with the otherwise applicable cleanup standard would result in greater risk, to human health or the environment, than an alternate cleanup standard; for example, when the short term adverse affects of the implementation of a remedy are greater than the risks posed by the contamination;

2. An alternate cleanup standard or deferral of a cleanup standard will accomplish the same degree of human health and environmental protection based upon evidence that the contaminant will not travel via the expected exposure pathway either due to site-specific conditions or a pre-approved remedial action which involves an engineering control of the contaminants; these situations could include, for example, without limitation:

i. A cap, cover, sealant, or in situ fixation;

ii. Site-specific soil and ground water data which support a Department determination that:

(1) A contaminant in the soil at a contaminated site is present in a concentration above applicable cleanup standards in Table 3-1 in N.J.A.C. 7:26D-3.2; and

(2) Has not and will not result in a ground water concentration of that contaminant above the applicable ground water cleanup standard identified pursuant to N.J.A.C. 7:26D-4; or

iii. A physical barrier to ground water migration;

3. New toxicological information has been included in the applicable primary data sources referenced in N.J.A.C. 7:26D-6.5(a), after the effective date of this chapter, which would result in a different cleanup standard pursuant to the applicable procedures in N.J.A.C. 7:26D-6;

4. A hazard index, based on EPA's "Hazard Index Protocol," 51 Fed. Reg. 34014 (1986), exceeds an index of 1.0, based on the types of concentrations of contaminants present;

5. The identification of site-specific exposure pathways which were not incorporated into the development of the otherwise applicable cleanup standard, including without limitation, food chain toxicity or bioaccumulation of contaminants; or

6. Unique toxicological considerations exist for a specific contaminant which require that the assumptions and approaches for derivation of human health-based criteria differ from the assumptions and approaches pursuant to N.J.A.C. 7:26D-6.

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(d) Additional criteria for granting an alternate surface soil cleanup standard are as follows:

1. The person responsible for conducting the cleanup presents sufficient evidence to support a Department determination that the area of concern at a contaminated site meets the definition of non-residential property; and

2. All owners of the property in question agree to and obtain institutional controls pursuant to N.J.A.C. 7:26D-8.2 except that no use restrictions shall be required for any property which is an industrial establishment which remains subject to the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq.

(e) Additional criteria for granting a deferral of a cleanup standard for a specific area of the contaminated site are as follows:

1. The applicable cleanup standard for which a deferral is sought is a part of an interim response action and all of the following conditions are met:

i. The final remedial action will attain all applicable cleanup standards pursuant to this chapter;

ii. The final remedy will follow in a reasonable time;

iii. Delay of the final remedial action will not result in an increased threat to human health or the environment; and

iv. The deferral will not interfere with the implementation of the final remedy; or

2. Achieving the cleanup standard is technically impracticable from an engineering perspective.

7:26D-7.3 Petitioning procedures

(a) Any person may initiate the petition process for an alternate cleanup standard or a deferral of a cleanup standard at any contaminated site pursuant to this section.

(b) To petition for either an alternate cleanup standard or a deferral of a cleanup standard, the petitioner shall submit to the Department at the address in (c) below prior to the implementation of the remedial action:

1. The name and address of the person responsible for submitting the petition;

2. The name and address of the person responsible for conducting the cleanup;

3. The names and addresses of all owners and occupants of the contaminated site;

4. The location, street address and all tax block and lot numbers of the contaminated site, based on the most recent local tax map;

5. Identification of the environmental medium and the specific contaminant(s) for which the petition applies;

6. A description of site-specific conditions;

7. The technical basis for the petition pursuant to N.J.A.C. 7:26D-7.2;

8. A discussion of and rationale for the petition;

9. Any language, conditions, or numerical criteria, which the petitioner may propose as part of the petition, and the rationale therefore;

10. Sufficient evidence to support a Department determination that an alternate cleanup standard or a deferral of a cleanup standard would be consistent with all other applicable environmental laws;

11. Evidence of compliance with (d) below;

12. Submission of a completed administrative checklist provided by the Department; and

13. Any other information or data the Department requests to thoroughly evaluate the petition.

(c) All petitions submitted to the Department pursuant to this subchapter shall be submitted to:

Assistant Commissioner, Site Remediation Program
New Jersey Department of Environmental Protection and Energy
401 East State Street
CN 028
Trenton, New Jersey 08625

(d) The petitioner shall provide public notice of any petition submitted pursuant to this subchapter as follows:

1. Mail a copy of the petition, including all subsequent amendments to:

i. All owners and occupants of any part of the contaminated site;

ii. All owners and occupants of all immediately adjacent properties;

iii. The mayor or governing body, and environmental commission of all municipalities in which the contaminated site is located;

iv. All local or county health officers/departments with jurisdiction over any part of the contaminated site; and

v. Any other interested party who requests a copy of the petition in writing to either the Department or the person responsible for conducting the cleanup;

2. A newspaper notice, in two daily and one weekly newspaper distributed in the municipality of the contaminated site, which includes a summary of each of the items in (a)1 through 11 above.

(e) The Department shall hold a public meeting following its determination that there is or may be a significant degree of public interest in, or that a hearing can clarify one or more legal and/or factual issues on a petition for an alternate cleanup standard or a deferral of a cleanup standard.

(f) The person responsible for conducting the remediation shall be responsible for all scheduling and costs associated with any public meeting concerning the petition.

7:26D-7.4 Requirements of alternate cleanup standards and deferrals of cleanup standards

(a) The Department shall include in an alternate cleanup standard or require as part of a deferral of a cleanup standard, numeric and narrative standards necessary to ensure adequate protection of human health and the environment.

(b) An alternate cleanup standard or a deferral of a cleanup standard shall in no case exceed the concentration of a contaminant at the contaminated site for which an alternate cleanup standard or a deferral of a cleanup standard is being requested.

(c) An alternate cleanup standard may include one or more of the following which the Department determines are appropriate for the contaminated site:

1. Institutional controls pursuant to N.J.A.C. 7:26D-8;

2. Evaluation of the effectiveness of the remedy;

3. Analysis of site-specific data to determine the effectiveness of an innovative remedial technology;

4. Soil sampling;

5. Ground water monitoring;

6. Air monitoring;

7. Ecological studies;

8. Maintenance of potable water supplies through:

i. Provision of an alternate water supply; and

ii. Treatment and long term operation, maintenance, and monitoring for public community supply well;

9. Obtain an oversight document from the Department; and

10. Any other condition necessary to protect human health and the environment.

(d) As part of establishing an alternate cleanup standard or deferring a cleanup standard, the Department shall determine the appropriate procedures for determining compliance with the alternate cleanup standard or the conditions if a deferral is granted.

(e) The department shall not establish a less stringent alternate cleanup standard or deferral of a cleanup standard unless the person responsible for conducting the cleanup complies with the following conditions:

1. Completion of all necessary and appropriate investigations to establish the vertical and horizontal extent of the contamination and to determine if remedial alternatives exist for the contamination subject to the petition; and

2. Control of all sources of contamination at the contaminated site that is subject to the petition.

(f) The alternate soil cleanup standard pursuant to the criteria in N.J.A.C. 7:26D-7.2(d) shall be those contained in Table 7-1 below.

(g) The Department may rescind a deferral of a cleanup standard when:

1. The basis for the finding of technical impracticability is no longer valid;

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2. Conditions associated with the contamination change in such a manner as to cause an unacceptable threat to human health or environment; or

3. New toxicological data establishes that the contamination presents an unacceptable threat to human health or environment.

(h) When the Department rescinds a deferral of a cleanup standard, the person responsible for conducting the cleanup shall:

1. Comply with all applicable requirements of this chapter; and

2. Take all other actions the Department determines necessary to protect human health and the environment.

TABLE 7-1
NON-RESIDENTIAL SURFACE SOIL CLEANUP STANDARDS
(mg/kg)

Contaminants	CASRN	Non Residential Surface Soil Standards
Acenaphthene	83-32-9	10,000
Acetone	67-64-1	1,000
Acrylonitrile	107-13-1	5
Aldrin	309-00-2	0.17
Anthracene	120-12-7	10,000
Antimony	7440-36-0	340
Arsenic (Total)	7440-38-2	20
Barium	7440-39-3	26,000
Benzene	71-43-2	13
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	2.5
Benzo(a)anthracene	56-55-3	2.5
Benzo(a)pyrene (BaP)	50-32-8	0.66
Benzo(k)fluoranthene	207-08-9	2.5
Benzo(ghi)perylene	191-24-2	2.5
Benzyl Alcohol	100-51-6	10,000
Beryllium	7440-41-7	2
Bis(2-chloroethyl) ether	111-44-4	3
Bis(2-chloroisopropyl) ether	39638-32-9	10,000
Bis(2-ethylhexyl) phthalate	117-81-7	210
Bromodichloromethane (Dichlorobromomethane)	75-27-4	22
Bromoform	75-25-2	370
Bromomethane	74-83-9	1,000
2-Butanone (MEK)	78-93-3	1,000
Butylbenzyl phthalates	85-68-7	10,000
Cadmium	7440-43-9	100
Carbon tetrachloride	56-23-5	4
Chlorobenzene	108-90-7	690
Chloroform	67-66-3	28
4-Chloro-3-methyl phenol (p-Chloro-m-cresol)	59-50-7	10,000
Chloromethane	74-87-3	1,000
2-Chlorophenol	95-57-8	5,200
Chrysene	218-01-9	2.5
Copper	7440-50-8	600
Cyanide	57-12-5	5,200
4,4′-DDD (p,p″-TDE)	72-54-8	12
4,4′-DDE	72-55-9	9
4,4′-DDT	50-29-3	9
Dibenz(a,h)anthracene	53-70-3	0.66
Dibromochloromethane (Chlorodibromomethane)	124-48-1	1,000
Di-n-butyl phthalate	84-74-2	10,000
Di-n-octyl phthalate	117-84-0	10,000
1,2-Dichlorobenzene	95-50-1	10,000
1,3-Dichlorobenzene	541-73-1	10,000
1,4-Dichlorobenzene	106-46-7	1,200
3,3′-Dichlorobenzidine	91-94-1	7
1,1-Dichloroethane	75-34-3	1,000
1,2-Dichloroethane	107-06-2	24
1,1-Dichloroethane	75-35-4	940
1,2-Dichloroethene (trans)	156-60-5	10,000
1,2-Dichloroethene (cis)	156-59-2	1,500
2,4-Dichlorophenol	120-83-2	5,200
1,3-Dichloropropene (cis and trans)	542-75-6	5
Dieldrin	60-57-1	0.18
Diethyl phthalate	84-66-2	10,000
2,4-Dimethyl phenol	105-67-9	10,000
Dimethyl phthalate	131-11-3	10,000
2,4-Dinitrophenol	51-28-5	2,100
2,4-Dinitrotoluene	121-14-2	4
Endosulfan	115-29-7	52
Endrin	72-20-8	310
Ethylbenzene	100-41-4	1,000
Fluoranthene	206-44-0	10,000
Fluorene	86-73-7	10,000
Fluoride	16984-48-8	10,000
Heptachlor	76-44-8	0.65
Hexachlorobenzene	118-74-1	2
Hexachlorobutadiene	87-68-3	210
Hexachlorocyclopentadiene	77-47-4	7,300
Hexachloroethane	67-72-1	10,000
Indeno (1,2,3-cd) pyrene	193-39-5	2.5
Isophorone	78-59-1	10,000
Lead (Total)	7439-92-1	600
Lindane	58-89-9	2.2
Methoxychlor	72-43-5	5,200
Mercury (Total)	7439-97-6	260
4-Methyl-2-pentanone (MIBK)	108-10-1	1,000
Methylene chloride	75-09-2	170
Napthalene	91-20-3	4,200
Nickel (Soluble salts)	7440-02-0	2,400
Nitrobenzene	98-95-3	520
N-Nitrosodiphenylamine	86-30-6	590
N-Nitrosodi-n-propylamine	621-64-7	0.66
PCBs (Polychlorinated biphenyls)	1336-36-3	2
Pentachlorophenol	87-86-5	10,000
Phenol	103-95-2	10,000
Pyrene	129-00-0	10,000
Selenium (Total)	7782-49-2	1,000
Silver	7440-22-4	2,000
Styrene	100-42-5	97
1,1,1,2-Tetrachloroethane	630-20-6	440
1,1,2,2-Tetrachloroethane	79-34-5	70
Tetrachloroethylene	127-18-4	37
Thallium	7440-28-0	2
Toluene	108-88-3	1,000
Toxaphene	8001-35-2	2.7
1,2,4-Trichlorobenzene	120-82-1	10,000
1,1,1-Trichloroethane	71-53-6	3,800
1,1,2-Trichloroethane	79-00-5	420
Trichloroethene (TCE)	79-01-6	100
2,4,5-Trichlorophenol	95-95-4	10,000
2,4,6-Trichlorophenol	88-06-2	260
Vanadium	7440-62-2	7,000
Vinyl chloride	75-01-4	7
Xylenes (Total)	1330-29-7	6,300
Zinc	7440-660-6	1,500

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SUBCHAPTER 8. INSTITUTIONAL CONTROLS

7:26D-8.1 Scope

(a) This subchapter contains the requirements for institutional controls applicable as narrative cleanup standards at certain contaminated sites, including, without limitation, those as required pursuant to:

1. N.J.A.C. 7:26D-2.2(a)6;
2. N.J.A.C. 7:26D-3.2(c)5;
3. N.J.A.C. 7:26D-4.3(d);
4. N.J.A.C. 7:26D-5.5(a)2ii; and
5. N.J.A.C. 7:26D-7.2(d).

7:26D-8.2 Use restrictions

(a) Use restrictions required pursuant to this chapter may be imposed on part or all of a contaminated site through the filing of a restriction of record and shall conform to the requirements of this section.

(b) The purposes of a restriction of record are to:

1. Provide notice of the existence and specific location of contamination at a site and the presence of restrictions placed upon the access, use and development of part or all of the contaminated site; and

2. Preserve the integrity of the remedial action by prohibiting any person from making any use of the site in any manner which will or may create an unacceptable risk of human or environmental exposure to the residual contamination.

(c) Any person required to prepare and file a restriction of record, but who is unable to do so, shall clean up the environmental medium of concern to the cleanup standard that would be applicable if the site were a residential property.

(d) Depending on site-specific conditions, restrictions of record may include, without limitation, any one or more of the following:

1. Restricting property use;

2. Conditioning change of use from a non-residential property to a residential property on compliance with all applicable cleanup standards for a residential property;

3. Restricting access; or

4. Restricting disturbance of Department-approved sealant, cap or cover, designed to contain or reduce exposure to the residual contamination, or any other aspect of the remediation.

(e) The restriction of record shall:

1. Run with the land;

2. Be enforceable by the Department;

3. Be accompanied by one or more survey plats, prepared by a New Jersey licensed professional engineer or surveyor, showing the type, location, depth and concentration of all residual contamination;

4. Clearly reference the Department case name and/or case number and reference the availability of the Department's files for review;

5. Include all restrictions on land use the Department requires in its remedy selection or cleanup plan approval; and

6. Be identical to the wording in Appendix A, incorporated herein by reference, but include alternate language based on site-specific conditions.

(f) Any person required to prepare and file a restriction of record shall:

1. Prepare a restriction of record pursuant to (e) above;

2. Obtain the prior written approval of the Department concerning the form and substance of the restriction of record;

3. File the restriction of record with the following individuals:

i. The county clerk of all counties in which the property in question is located;

ii. The county health officer/department of all counties in which the property in question is located;

iii. The mayor or governing body of all municipalities in which the property in question is located;

iv. The local zoning officials of all municipalities in which the property in question is located;

v. The local construction code officials of all municipalities in which the property in question is located; and

vi. The local health officer(s) or local board of health of all municipalities in which the property in question is located; and

4. Provide proof of all of the above filings to the Department within 60 days after receipt by the person responsible for conducting the remediation of the department's approval of the restriction language, at the following address:

Director, Division of Responsible Party Remediation
Site Remediation Program
Department of Environmental Protection and Energy
401 East State Street
CN 028
Trenton, New Jersey 08625

(g) No person shall modify, remove or terminate any restriction of record herein without the prior written approval of the Department pursuant to (h) below.

(h) Any owner of property as defined in a restriction of record filed pursuant to this subchapter or, with the owner's written consent, an occupant thereof, may apply to the Department for a termination of the use restrictions, as they apply to all or any portion of the property on the grounds that the contamination no longer presents an unacceptable risk to human health or the environment. Any such application shall contain sufficient evidence for the Department to make a finding upon one or more of the following:

1. The contaminant which caused the property to be contaminated has since been removed or altered in a manner which conforms to the cleanup standards established pursuant to this chapter; or

2. The Department adopts amendments to this chapter such that the concentration of a contaminant complies with the cleanup standard which would be applicable if the site were a residential property.

7:26D-8.3 Access controls

(a) To determine what, if any, access controls are necessary for a particular contaminated site, the Department will consider whether or not the contaminated site is:

1. Located within a residential or mixed use neighborhood;

2. Near sensitive land use areas, including, without limitation, day care centers, playgrounds, nursery schools, grammar schools and high schools; or

3. Frequently traversed by area residents.

(b) Access controls may include, without limitation:

1. Fencing and gates;

2. Security; and

3. Posting of warnings.

7:26D-8.4 Well restriction areas

(a) A well restriction area required pursuant to this chapter shall conform to the requirements of this section.

(b) The purposes of a well restriction area are to:

1. Provide notice of the existence of contaminants in ground water;

2. Prohibit or condition the construction of any or all types of wells in an area of ground water contamination; and

3. Preserve the integrity of a ground water remedial action by prohibiting or conditioning the placement and use of any or all types of wells.

(c) Any well restriction area developed by the Department shall be subject to a public notice requirement and, if substantial comments are received, a public meeting.

(d) Depending on site-specific conditions, a well restriction area may include, without limitation, the prohibiting or conditioning of the construction of any well, including its location, depth, pumping rate, screen placement and casing.

(e) The well restriction area shall be limited in size to the extent of the area of the contaminated ground water, the area to which the contaminated ground water may flow prior to completion of a remedial action, and the area that if pumped may impact an approved ground water remedial action.

(f) The Department shall file the well restriction area the following individuals:

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1. The county clerk of all counties in which the area of concern is located;
2. The county health officer/department of all counties in which the area of concern is located;
3. The mayor or governing body of all municipalities in which the area of concern is located;
4. The local zoning officials of all municipalities in which the area of concern is located;
5. The local construction code officials of all municipalities in which the area of concern is located; and
6. The local health officer(s) or local board of health of all municipalities in which the area of concern is located.

(g) The Department will modify, remove or rescind a well restriction area if remedial action taken at the contaminated site results in compliance with the cleanup standards established pursuant to this chapter.

N.J.A.C. 7:26D APPENDIX A

MODEL DOCUMENT
DECLARATION OF ENVIRONMENTAL RESTRICTIONS AND GRANT OF EASEMENT

Prepared by: ____________

[Signature] ____________

[Print name below signature]

DECLARATION OF ENVIRONMENTAL RESTRICTIONS AND GRANT OF EASEMENT

This Declaration of Environmental Restrictions and Grant of Easement, made as of the ____ day of ____________, 19____, by [Name and address of current property owner or owners] (together with his/her/its/their successors and assigns, collectively "Owner").

WITNESSETH:

WHEREAS, Owner is the owner in fee simple of certain real property (the "Property") designated as Lot ________, Block ________ on the tax map of the [City/Borough/Township/Town] of [Name of municipality], ____________ County, more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the New Jersey Department of Environmental Protection and Energy ("Department") has [issued the decision document (the "Decision Document") or cleanup plan approval] attached hereto as Exhibit B and made a part hereof, concerning the Property; and

WHEREAS, the areas described on Exhibit C attached hereto and made a part hereof (the "Affected Areas") contain contaminants as defined in N.J.A.C. 7:26D-1.7; and

WHEREAS, the type, concentration and specific location of the contaminants are described on one or more survey plats on Exhibit ____ [may be included on Exhibit C or on a New Exhibit D] attached hereto and made a part hereof; and

[Other WHEREAS clauses may be added to provide notice of additional site-specific concerns, such as:

> WHEREAS, to prevent the potential for migration of the contaminants and any potential hazard to human health or the environment, an [impermeable/permeable] surface cover is in place at the Property, at the location shown on Exhibit ____; and]

WHEREAS, in accordance with the [Decision Document or cleanup plan approval], and in consideration for the terms and conditions of the [Decision Document or cleanup plan approval] and other good and valuable consideration Owner desires to impose certain restrictions upon the use and occupancy of the Property, to restrict certain activities at the Property, and to grant an easement to the Department, on the terms and conditions set forth below; and

WHEREAS, Owner intends that such restrictions and easement shall run with the Property, and be binding upon and enforceable against Owner and Owner's successors and assigns.

NOW, THEREFORE, Owner agrees as follows:

1. **Restricted Uses.** Owner shall not suffer or allow any of the following uses of the following portions of the Property:

Portion of the Property	Restricted Use
The Affected Areas identified in Exhibits C and	The use shall be restricted pursuant to Paragraphs 2 and 3.
[Describe other portions of the Property by reference to Exhibits referenced in the WHEREAS clauses above]	[Describe nature of restricted use]

2. **Disturbance.** Except as provided in Paragraph 3 below, Owner shall refrain from taking any action, suffering or allowing any other person or entity to take any action, or omitting to take any action, if such action or omission is reasonably likely to:

i. Create a significant risk of migration of the contaminants, or a potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any surface cover, cap or sealant which was designed to contain or reduce exposure to the contaminants, without first obtaining the express written consent of the Department.

3. **Emergencies.** In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraph 2 above may be suspended provided the Owner:

i. Immediately notify the Department of the emergency;

ii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iii. Implements all measures necessary to limit actual or potential, present or future risk to human health or the environment; and

iv. Implements a Department approved plan to restore the Affected Areas to the pre-emergency conditions.

4. **Alterations and Improvements.** Owner shall not make, nor allow to be made, any alteration or improvement in, to or about the Affected Areas which may create an unacceptable risk to human health or the environment without first obtaining the express written consent of the Department, which consent shall be given or withheld at the sole reasonable discretion of the Department. Nothing herein shall constitute a waiver of the Owners obligation to comply with all applicable laws and regulations.

5. **Grant of Easement to Department.** Owner hereby grants and conveys to Department, its agents, contractors, and employees, and to any other person performing remediation activities under the direction of the Department, a non-exclusive easement (the "Easement") over the Affected Areas and such other parts of the Property as necessary for access to the Affected Areas and to respond to any threat to human health or the environment. Pursuant to the Easement, Department, its agents, contractors, and employees, and any other person identified pursuant to the preceding sentence, may enter upon and inspect such property and perform the environmental investigations and remedial work as the Department finds necessary for any one or more of the following purposes:

i. Ensuring that the uses of the Property are consistent with this Restriction of Record and otherwise that there is compliance with this Restriction of Record;

ii. Preventing or eliminating any restricted use of any portion of the Affected Areas as described above;

iii. Ensuring that the remedial alternative the Department selected or approved remains in compliance with the cleanup standards established pursuant to N.J.A.C. 7:26D; or

iv. To perform any additional investigations or implement additional remedial actions necessary to protect human health and the environment.

[v. Ensuring the integrity of the surface cover, cap or sealant described above, and its continued ability to prevent migration of the contaminants.]

6. **Notice and Time of Entry onto Property.** Entry onto the Property by the Department pursuant to the Easement shall be upon reasonable notice and at reasonable times or as otherwise authorized by *N.J.S.A.* 13:1D-1 et seq., **provided however,** that entry shall not be subject to these limitations if the Department determines that immediate entry is necessary to protect human health or the environment.

7. **Notice to Lessees and Other Holders of Property Interests.**

(a) Owner shall cause all leases, grants, and other transfers of interest in the Property to contain a provision expressly requiring all holders thereof to comply with this Declaration of Environmental Restrictions and Grant of Easement.

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(b) Within thirty (30) calendar days after the execution of a lease of any portion of the Property, Owner shall submit to the Department an affidavit or certified letter that the Owner has given the lessee a copy of this Declaration of Environmental Restrictions and Grant of Easement.

(c) Owner shall submit the notices required under this paragraph 7 to the Department at the following address:

[Include general Department Program address, not individual's name]

(d) Nothing contained in this paragraph 7 shall be construed as limiting any obligation of Owner to provide any notice required by any law, regulation, or order of any governmental authority.

8. **Persons Entitled to Enforce Restrictions.** The restrictions provided herein are for the benefit of, and shall be enforceable by the Department.

9. **Injunctive Relief.** Owner expressly recognizes and agrees that these restrictions are necessary to protect human health, safety and the environment, and that therefore the violation of any of these restrictions will constitute an irreparable injury to the Department for which damages, although available, will not be an adequate remedy at law. Accordingly, Owner expressly consents upon a determination by a court to the issuance of injunctive relief where appropriate to enforce these restrictions.

10. **Severability.** If any court or other tribunal determines that any provision of the restrictions or easement contained herein is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event that the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

11. **Successors and Assigns.** This Declaration of Environmental Restrictions and Grant of Easement shall be binding upon Owner and upon Owner's successors and assigns, and shall run with the Property.

12. **Termination.** This Declaration of Environmental Restrictions and Grant of Easement shall terminate only upon filing of an instrument, executed by the Department, in the office of the [Clerk/Register of Deeds and Mortgages] of [Name of county] County, New Jersey, expressly terminating this Declaration of Environmental Restrictions and Grant of Easement.

IN WITNESS WHEREOF, Owner has executed this instrument as of the date first written above.

[If Owner is an individual]

WITNESS:

______________________ ______________________

[Print name below signature] [Print name below signature]

[If Owner is a corporation]

ATTEST: [Name of corporation]

______________________ By: ______________________

[Print name and title] [Print name and title]

[If Owner is a general or limited partnership]

WITNESS: [Name of partnership]

______________________ By: ______________________

______________________ ______________, General Partner

[Print name and title] [Print name and title]

[If Owner is an individual]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on ____________, 19___, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

____

______________, Notary Public

[Print name and title]

[If Owner is a corporation]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on ____________, 19___, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

____

____

[Print name and title of attesting witness]

Signed and sworn before me on

____________, 19___.

____

______________, Notary Public

[Print name and title]

[If Owner is a partnership]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on ____________, 19___, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [Owner], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [Owner]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

____

______________, Notary Public

[Print name and title]

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EXHIBIT A

Metes and Bounds Description of Property

EXHIBIT B

Decision Document

EXHIBIT C

Metes and Bounds Description of Affected Areas

EXHIBIT D

Type, Concentration and Location of contaminants

Contaminant	Concentration	Location
[List contaminants]	[List concentrations]	[Describe location of contaminants by reference to survey plat attached as Exhibit D]

EXHIBIT E

Survey Plat of the Property

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Initial Decision in Contested Cases

Adopted Amendment: N.J.A.C. 1:1-18.1

Proposed: November 18, 1991 at 23 N.J.R. 3406(a).
Adopted: January 6, 1992 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: January 6, 1992 as R.1992 d.46, **without change.**
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Effective Date: February 3, 1992.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

The OAL received comments from Local 195 of the International Federation Professional and Technical Engineers, from the Department of Personnel (DOP), and from the Department of Environmental Protection and Energy's Division of Personnel (DEPE).

COMMENT: Local 195 was concerned that the elimination of the 21-day deadline for initial decisions in conference hearings would further delay the hearing process and would require appellants to wait a longer period of time before a hearing is conducted.

RESPONSE: This change in the conference hearing process will not affect the scheduling of the hearing. While the deadline for decision is changed, all other aspects of the conference hearing process will remain the same. It continues to be the policy of this office that many Personnel cases, particularly those where the employee is without income, are deserving of expedition. It is the responsibility of the administrative law judge to prioritize those cases most needing rapid disposition. However, the change may, in fact, result in some personnel matters requiring additional time for determination.

COMMENT: The Department of Personnel objected to the elimination of the 21-day time requirement and suggested that a modified time limit, such as 30 days, be substituted. The Department also questioned the statement that the amendment may result in some overall delay, provided the Merit System Board issues its final decisions without increasing its current time frames. The Board noted that it is not free to increase its time frames beyond the statutory 45 days.

RESPONSE: While mindful of the DOP's concerns, administrative law judges are subject to a number of expedited time frames which are imposed by statute. OAL remains committed to expediting Personnel cases and has retained all other aspects of the conference hearing process. However, the increased number of deadlines and increased work loads imposed upon the judge corps mandates this change. Additionally, the Social Impact statement simply points out that changing the time frame for filing an initial decision may result in some delay depending on the action of the agency in issuing a final decision. OAL agrees that the Merit System Board cannot increase its time frames beyond the 45-day statutory limit already in place.

COMMENT: DEPE's Division of Personnel supported the proposal except in cases involving potential back pay awards. In those cases, the Division felt that the 21-day limitation should be retained.

RESPONSE: OAL agrees that Personnel cases which may result in back pay awards, particularly removal cases, most warrant expedition. This is a factor which will be considered by administrative law judges when prioritizing this work load. OAL believes it is necessary to leave this determination to the discretion of the judge who is also aware of the details of the competing demands on his or her schedule.

Full text of the adoption follows.

1:1-18.1 Initial decision in contested cases

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

(d) All initial decisions shall be issued and received by the agency head no later than 45 days after the hearing is concluded unless an earlier time frame is mandated by Federal or State law. In conference hearings, the initial decision shall be issued as soon as practicable after the last day of evidentiary hearing, but not later than 45 days after the hearing is concluded.

Recodify (f) through (h) as (e) through (g) (No change in text.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Low Volume Water Closets
Products Violating the Code

Adopted Amendments: N.J.A.C. 5:23-3.8A and 3.15

Proposed: December 2, 1991 at 23 N.J.R. 3602(a).
Adopted: January 7, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 13, 1992 as R.1992 d.67, **without change.**
Authority: N.J.S.A. 52:27D-124.
Effective Date: February 3, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from R.P. Gaughan, Vice President and Group Executive of American Standard Plumbing Products, and from Lawrence Kantor, Jr., President of Lawrence Kantor, Inc., Wholesale Distributors of Plumbing, Heating and Industrial Supplies.

COMMENT: There will be a financial hardship to distributors who are unable to sell their inventories in a depressed economy. Depressed sales will force manufacturers to cut back production.

RESPONSE: The Department reiterates that it has taken account of the plight of distributors with unsold inventory of nonconforming fixtures by allowing inventory that was in distributor's inventory as of July 1, 1991, the date on which the restrictions became effective, to continue to be sold indefinitely. The Department does not see itself as obligated to protect distributors who, knowing that the rule had gone into effect—the large number of identical comments that the Department received being clear evidence that the industry was well-informed as to what was happening—and that the building industry was depressed, nonetheless made a business decision to acquire more nonconforming fixtures.

COMMENT: There is only a limited selection of low volume commercial, special application and one piece residential fixtures. Maryland is allowing sale of noncomplying products in wholesaler inventories through 1992, Connecticut is exempting one piece and commercial fixtures until 1993, and Massachusetts has deferred implementation of one piece and commercial fixture restrictions indefinitely. The Department should continue to allow the sale of products already in wholesaler inventory and should grant extensions for one piece and commercial fixtures.

RESPONSE: The Delaware River Basin Commission did not adopt one standard for the general residential market and a less restrictive standard for commercial users and the more affluent and neither should the Department. The Department is sure that manufacturers will be able, within a reasonable period of time, to respond effectively to the challenge of designing a wide variety of conforming fixtures for all segments of the market.

COMMENT: Distributors should be allowed to sell inventory acquired prior to the January 1, 1992 operative date of the amendment requiring the use of low volume water closets, even if it was acquired after the July 1, 1991 effective date. The present proposal has an *ex post facto* effect upon distributors. Distributors located outside the Delaware River Basin Commission area believed that they would possibly have until July 1, 1992 to dispose of their inventory.

RESPONSE: The purpose of the January 1, 1992 operative date was to make the amendment consistent with N.J.A.C. 5:23-1.6(b), which allows, for good reason, a six-month grace period after the effective date of a change in the code in which a person may submit plans conforming to the code provisions previously in effect. The purpose was not to allow

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distributors to acquire more inventory that they knew to be nonconforming. Any person who acquired additional nonconforming inventory in the expectation of being allowed until July 1, 1992 to dispose of it did so at his own risk. The rule is not *ex post facto* in its application because inventory existing as of the effective date of the rule is exempted.

Full text of the adoption follows.

5:23-3.8A Products violating the Code

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

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1.-3. (No change.)

4. Miscellaneous materials and supplies:

i. (No change.)

ii. Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings; and

iii. Water closets requiring in excess of an average of 1.6 gallons per flush, that either have a manufacturer's date stamp of July 1, 1991 or later or were not purchased by the distributor prior to July 1, 1991.

5:23-3.15 Plumbing subcode

(a) (No change.)

(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:

1.-17. (No change.)

18. Appendix D, entitled "Water Conservation," is amended as follows:

i. Item D.2 is amended to read: Water closets, either flush tank, flushometer tank or flushometer valve operated, shall be designed, manufactured and installed to be operable and adequately flushed with an average of 1.6 gallons or less of water per flushing cycle, when tested at any one test pressure in accordance with listed standards. Only pressurized (not gravity flow) water closets are acceptable for commercial uses. Commercial uses are A, E, B, and M uses with an occupancy requiring more than one fixture for persons of either sex.

(1) Exception: Installation of water closets bearing a manufacturer's date stamp indicating a date of manufacture prior to July 1, 1991 and requiring an amount in excess of 1.6 gallons per flush shall be permitted.

ii.-iv. (No change.)

19. (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Municipal Enforcing Agencies
Uniform Construction Code Administrative Reports (UCCARS)

Adopted Amendments: N.J.A.C. 5:23-4.5 and 4.19

Proposed: November 18, 1991 at 23 N.J.R. 3440(a).
Adopted: January 3, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 7, 1992 as R.1992 d.47, **with a technical change** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 3, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Robert F. Casey, Business Administrator of the Borough of Freehold, and from William G. Dressel, Jr., Assistant Executive Director of the New Jersey State League of Municipalities.

COMMENT: The proposal imposes a financial burden on those municipalities that do not yet have the equipment needed in order to implement the program and the Department has not taken this cost into account.

RESPONSE: The Department estimates that the necessary cost to a municipality for the purchase of the equipment for the UCCARS system should not exceed $4,000. A municipality with 200 permits per year, the minimum level of activity at which participation is required, will have two years to set aside this money, so the maximum cost will be an additional $10.00 per permit. The economic impact on municipalities, however, must also take into account the fact that use of the equipment will reduce clerical costs and that the equipment will be usable for other purposes. Thus, the economic impact may well be neutral, or even positive.

COMMENT: Many small municipalities may have difficulty in finding funds for purchase of the equipment in the 1992 and 1993 budgets because of the downturn in construction activities.

RESPONSE: Most truly small municipalities will be exempt from the requirement to participate in the system because they issue fewer than 200 permits per year. If other municipalities find that the deadlines for compliance present a hardship for them, they can, as the Department indicated in the rule summary, apply for relief under N.J.A.C. 5:23-4.5(g). N.J.A.C. 5:23-4.5(d) is being revised upon adoption to make it clear that this relief would be available in such a case.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***).

5:23-4.5 Municipal enforcing agencies; administration and enforcement

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

(d) Monthly reports:

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department by the tenth business day following the end of each calendar month:

Report No.	Name
R-811A	Municipal Monthly Activity Report Certificates
R-812A	Municipal Monthly Activity Report Permits

2. Municipalities currently submitting monthly reports electronically shall continue to do so. Municipalities that do not already submit monthly reports electronically using UCCARS I shall begin to do so according to the following schedule:

i. By December 31, 1992, all municipalities issuing 600 or more permits per year as determined by the Department shall submit monthly reports electronically.

ii. By December 31, 1993, all municipalities issuing fewer than 600, but more than 200, permits per year as determined by the Department shall submit monthly reports electronically.

iii. All other municipalities shall have the option of submitting monthly reports electronically or by mail. Any municipality which issues more than 200 permits per year as determined by the Department for any future year shall submit monthly reports electronically beginning during the following year.

iv. A municipality that determines that compliance with this schedule would impose an undue hardship may apply to the Department for an extension of time. A request for an extension shall be in writing and shall set forth the reason(s) for such extension and the period of time for which the extension is sought. The Department shall give the municipality written notice of its determination in response to the extension request.

3. As long as funding permits, the Department shall provide the UCCARS I software, training and technical support for the system free of charge to municipalities. Municipalities may submit monthly reports electronically using an alternative system compatible with UCCARS as determined by the Department and capable of transmitting a monthly report based on UCCARS specifications.

4. Municipalities, at their option, may choose to add UCCARS II and III systems to their UCCARS I System and may obtain them, at no cost, from the Department, when available.

(e) Quarterly reports: The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees

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and must be submitted quarterly, with the accompanying fees, pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840A	State Training Fee Report

Recodify existing 3. as (f) (No change in text.)
Recodify existing (e)-(h) as (g)-(j) (No change in text.)

5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the Act, an enforcing agency, including the Department, when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fee shall be accounted for and forwarded to the Bureau of Regulatory Affairs in the manner herein provided.

(b) Amount: This fee shall be in the amount of $0.0016 per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840A State Training Fee Report in accordance with N.J.A.C. 5:23-4.5(e). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey."

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Revocation of Licenses and Alternative Sanctions
Adopted Amendment: N.J.A.C. 5:23-5.25

Proposed: November 18, 1991 at 23 N.J.R. 3441(a).
Adopted: January 7, 1992 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 13, 1992 as R.1992 d.68, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: February 3, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Pat J. Intindola, Chief Administrator of the Code Enforcement Department of the Township of Nutley and Chairman of the Grievance and Legal Fund of the Building Officials Association of New Jersey (BOANJ), and from Gary C. Lewis, Chief Fire Inspector of the Fairfield Township Fire Department and Second Vice President of the New Jersey Fire Prevention and Protection Association (NJFPPA).

COMMENT: The BOANJ supports the proposal and believes that it will save time and money for code enforcement officials, their employers and the Department of Community Affairs.

COMMENT: NJFPPA wants at least one member of each review committee to be required to be a member in good standing of the professional organization of officials in the particular code discipline and views the opportunity given to the organizations to comment as inadequate.

RESPONSE: The comment provision was included in order to be sure that the organizations would have a voice in the appointment of all members of the review committees. However, the Department does not think it would be appropriate to give any private organization formal veto power over public appointments or to compel officials to maintain membership in a private organization in order to be eligible for appointment under this rule.

COMMENT: NJFPPA wants the rule to provide that a review committee may not issue its recommendations unless three members participated in the proceeding.

RESPONSE: By making provision for alternates, the Department indicated its intention that all proceedings take place before three committee members. However, this will be made explicit.

COMMENT: NJFPPA is concerned about the prohibition of cross-examination, stating that "any further enlightenment provided as a result of willful answering of questions cannot be of harm," and asking what the difference is between informational questions and cross-examination.

RESPONSE: The difference between cross-examination and informational questions is, in the Department's view, the difference between questions based on prior statements that a person is required to answer and inquiries consistent with the non-adversarial nature of the proceeding that a person cannot be compelled to answer. The prohibition of cross-examination will not prevent "willful answering" of questions presented by the members of the committee.

COMMENT: NJFPPA believes that the 10-day period for the review committee to file its recommendations is too short and that 20 business days would be more appropriate, particularly in light of the provision that failure to file a report within the allowed time is deemed to be concurrence with the Department's proposed action.

RESPONSE: The Department accepts the recommendation that 20 business days be allowed.

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

5:23-5.25 Revocation of licenses and alternative sanctions

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

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons licensed and currently employed by municipalities as subcode officials in the subcode, at least two of whom shall also be licensed as construction officials and at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members of each review committee prior to their appointment.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person shall be a member of a review committee for more than two consecutive terms. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed and currently employed by municipalities as subcode officials in the subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

3. No review committee shall hear any case or issue any recommendation without three members, who may be either regular or alternate members, being present.

[3.] ***4.*** In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

[4.] ***5.*** The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

[5.] ***6.*** The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within *[10]*

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20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

*[6.]**7.* A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

*[7.]**8.* A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Investment of Surplus Funds

Adopted New Rules: N.J.A.C. 5:80-29

Proposed: September 3, 1991 at 23 N.J.R. 2621(a).

Adopted: January 6, 1992 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director/Secretary.

Filed: January 8, 1992 as R.1992 d.50, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: February 3, 1992.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

One comment was received from the owner of the Knoll Heights Village Project, which was financed by the Agency. They indicated that they approved of the rules but inquired as to when the Agency would adopt rules permitting sponsors to use surplus income for the purpose of developing additional housing. This inquiry has been addressed in a recent rule proposal published in the New Jersey Register on December 16, 1991 at 23 N.J.R. 3733(a). That proposal addresses the circumstances under which surplus funds may be used for developing additional housing. As the comments do not address the substance of the Investment of Surplus Income proposal, the Agency does not recommend any changes to the rules.

Full text of the adoption follows.

SUBCHAPTER 29. INVESTMENT OF SURPLUS FUNDS:

5:80-29.1 Definition of surplus funds

"Surplus funds" means funds available after payment of: debt service and other project expenses, including operating deficits and the full funding of all required reserve accounts; permitted return on equity distributions; any anticipated or proposed capital improvements; a six month reserve for operating expenses for family projects or a three month reserve for senior citizen projects; and any other current obligations of the project.

5:80-29.2 Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), or whose housing projects have executed an Annual Contributions Contract to receive Section 8 subsidies subsequent to February, 1980 may, with prior Agency approval, invest surplus funds in taxable or tax free investments permitted by HUD.

(b) All other projects, with prior Agency approval, may invest surplus funds in the following:

1. State of New Jersey general obligation bonds;
2. New Jersey Housing and Mortgage Finance Agency bonds, which shall be rated A or higher;
3. Bonds of municipalities, instrumentalities or agencies of the State of New Jersey, which shall be rated A or higher and whose rating of A or higher has been confirmed within the past 12 months;
4. New Jersey bond funds (consisting of bonds of any of the entities in (b)1 through 3 above) of which at least 90 percent of the bonds within the fund are rated A or higher and whose ratings have been confirmed within the past 12 months;
5. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A rated instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, U.S. Treasury Bonds, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations;
6. Certificates of deposit, money market accounts and other bank accounts, provided such accounts are insured in full by the Federal Deposit Insurance Corporation; and
7. Any other investment as permitted under (a) above.

(c) The rating designation in (b) above shall be from either Standard and Poor's or Moody's Investor Services.

(d) Agency staff, at the sponsors' written request, shall determine the extent and the availability of surplus funds and shall respond to a request to invest surplus funds within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

5:80-29.3 General applicability

The rules within this subchapter shall apply to all Agency financed housing projects. In the event the housing project receives HUD Section 8 or Section 236 subsidies or whose mortgage is insured, directly or indirectly, by HUD, any appropriate HUD rules, regulations or requirements (hereafter HUD directives) shall also apply. In the event that there are any inconsistencies between the rules in this subchapter and applicable HUD directives, the HUD directives shall prevail.

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Attorney Services

Adopted New Rules: N.J.A.C. 5:80-31

Proposed: September 3, 1991 at 23 N.J.R. 2622(a).

Adopted: January 6, 1992 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director/Secretary.

Filed: January 8, 1992 as R.1992 d.51, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: February 3, 1992.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

One comment was received from the owner of the First Montclair Project, which was financed by the Agency. They recommended the following changes:

1. General legal matters should not exceed $100.00/hour (as opposed to the regulation cap of $125.00).
2. General litigation should not exceed $100.00/hour (non-trial) or $125.00/hour (trial hours) as opposed to the regulation's cap of $175.00 and $200.00 respectively.
3. They suggest a maximum annual fee of $6,000.

RESPONSE: Agency staff does not agree that the maximum fees set forth in the rules are excessive. This is based on their experience in reviewing and approving attorney fees for Agency projects. In addition, these fees were arrived at through the work of a Management Division Subcommittee comprised of housing sponsors interested in such issues. It should also be noted that the caps set forth in the rules do not mean that a sponsor must retain an attorney at those rates. Each housing sponsor is free to negotiate whatever rates they can within the caps that are set. N.J.A.C. 5:80-31.3(e) specifically addresses this point by restricting fees from exceeding those which are charged to other clients for comparable work. Lastly, an annual cap has proved unworkable as it is impossible to know the extent to which an attorney's services will be needed in one year. It would be impractical to leave a project without

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the availability of attorney services upon reaching the annual cap. It would also be impractical to expect an attorney to work on an unlimited basis without further compensation upon reaching the cap. For these reasons, the Agency does not recommend any changes to the rules.

Full text of the adoption follows.

SUBCHAPTER 31. ATTORNEY SERVICES

5:80-31.1 Applicability

The rules within this subchapter apply to the engagement of the services of an attorney by housing sponsors during the operation of their housing project and which services will be paid out of project funds. These rules shall not apply to attorney services paid for out of return on equity funds approved by the Agency for distribution or out of non-project funds.

5:80-31.2 Scope of services

(a) Sponsors may engage the services of an attorney to perform necessary general legal services in connection with and respecting the operation of their project. Such general legal services include, but are not limited to:

1. Advising the sponsor with regard to the rules of the project, the Agency and, if applicable, the Department of Housing and Urban Development;

2. Advising the officers and directors on elections as provided by the by-laws or partnership agreement of the sponsors and supervision of elections of all officers and directors;

3. Preparation and filing of any necessary reports, forms and other documents required by law;

4. Advising the sponsor with regard to legal matters related to project bank accounts, resolutions, duties of officers, directors and employed personnel;

5. Preparation and review of contracts and purchase orders concerning the housing project;

6. Advising the sponsor and managing agent with regard to tenant and lease matters, but not including summary dispossess actions; and

7. Such other services as the sponsor may direct to be performed in connection with and respecting the operations of the project.

(b) Sponsors may engage the services of an attorney to perform tenancy related court actions including the enforcement of leases, collection of rent and dispossession of tenants. For cooperative or condominium projects, sponsors may engage the services of an attorney to perform court actions related to the collection of association dues or carrying charges and the enforcement of subscription agreements, stock certificates or other forms of agreements related to the cooperative or condominium project.

(c) Sponsors may engage the services of an attorney to perform services outside the scope of services in (a) and (b) above, as the need arises for the project. Such services include, but are not limited to, litigation, mortgage loan close-outs, conversion closings and issues requiring special expertise.

5:80-31.3 Maximum fees

(a) The maximum fees which can be paid from project funds for Agency approved attorney services are as follows:

1. General legal matters ... up to $125.00/hour.

2. Tenancy actions, as follows:

i. For each of the first two cases (requiring court appearance) on the same day ... up to $100.00;

ii. For each additional case presented on the same day ... up to $75.00;

iii. For each case prepared for trial but resolved prior to actual court appearance ... up to $50.00;

3. General litigation, as follows:

i. Non-trial hours ... up to $175.00/hour;

ii. Trial hours ... up to $200.00/hour.

(b) For conversion closing, mortgage close-outs, special expertise and all other matters not covered by (a) above, housing sponsors shall submit a fee structure to the Agency for approval.

(c) Paralegal and secretarial services in connection with (a) and (b) above shall be included within the fees outlined above. No additional fees will be paid for paralegal or secretarial services.

(d) Additional compensation may be paid for reasonable out-of-pocket expenses, approved by the Agency, including copying, travel, postage, filing fees, transcripts, and expert witnesses, etc.

(e) The above fees may not exceed fees charged to other clients for comparable work.

5:80-31.4 Agency approval

(a) Housing sponsors desiring to engage the services of an attorney pursuant to the rules within this subchapter shall obtain the written approval of the Agency. Sponsors shall submit a proposal outlining the scope of services to be performed by the attorney.

(b) The Agency shall approve the engagement of attorney services provided the services and fees to be charged fall within those permitted by N.J.A.C. 5:80-31.2(a) or (b) and 31.3, respectively. For services outlined in N.J.A.C. 5:80-31.2(c), the Agency shall approve the engagement of an attorney provided the services are necessary or beneficial to the project, as determined by the Agency, and there are sufficient project funds to pay for such services. The Agency does not guarantee the availability of funds.

(c) All sponsors shall enter into a written attorney engagement agreement using forms approved by the Agency.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Interim Substantive Certification

Adopted New Rule: N.J.A.C. 5:92-1.6

Proposed: November 4, 1991 at 23 N.J.R. 3253(a).

Adopted: January 8, 1992 by the New Jersey Council on Affordable Housing, Kevin Quince, Acting Chairman.

Filed: January 9, 1992 as R.1992 d.53, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: February 3, 1992.

Expiration Date: February 7, 1996.

Summary of Public Comments and Agency Responses:

The following individuals submitted written comments, which are on file at the offices of the Council on Affordable Housing.

William G. Dressel, Jr.
Assistant Executive Director
NJ State League of Municipalities

Jeffrey Kantowitz, Esq.
Greenbaum, Rowe, Smith, Ravin & Davis

Kristina P. Hadinger, Esq.
Mason, Griffin & Pierson

COMMENT: The Council should broaden its notice requirements for municipalities that seek interim certification. The rule proposal requires notice be given to all parties that were involved in the original certification. Municipalities should also publish notice in a newspaper of general circulation so that the general public can participate in the process leading to interim substantive certification.

RESPONSE: Prior to receiving substantive certification or repose, municipalities provided general notice of their housing elements and fair share plans. The Council's rules also require a municipality to provide general notice wherever it petitions for a plan amendment. Therefore, the general public always has an opportunity to comment on or object to a major change. To obtain an interim certification, a municipality needs only to demonstrate that it is implementing the plan that has received certification or repose after proceeding through a very public process. There is no change in the municipal plan. Therefore, it is not necessary to provide general notice.

COMMENT: Is N.J.A.C. 5:92-1.6(c) intended to apply to a municipality that had their judgment of repose expire prior to the effective date of this rule?

RESPONSE: This subsection of the rule advises a municipality that has a judgment of repose that is about to expire to seek an interim certification from the court with jurisdiction. The court can then choose

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to act on the request or refer the matter to the Council. The intent of this rule is to provide a forum for interim certification prior to the expiration of the judgment of repose. The rule does not preclude, nor in any way is it meant to nullify, an action by a municipality that has already petitioned the court for interim substantive certification. The intent of N.J.A.C. 5:92-1.6(c) and (d) is to advise a municipality to seek interim certification; from the court, if the court has jurisdiction; or from the Council, if the Court does not have jurisdiction.

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

5:92-1.6 Interim substantive certification

(a) Any municipality that received substantive certification that expires prior to July 1, 1993 may file a motion, in accordance with N.J.A.C. 5:91-13, with the Council for interim substantive certification to be effective through July 1, 1993. In addition to the requirements set forth in N.J.A.C. 5:91-13, any motion shall include the municipality's housing element and fair share plan and a discussion of how the municipality has complied with the terms of its substantive certification, as well as any other additional information the Council may require. In filing the motion, the municipality shall provide notice to any objector or litigant that participated in the substantive certification process or court settlement.

(b) Upon motion from any such municipality, the Council will issue an interim substantive certification if the Council finds that the municipality has complied with the terms of its original substantive certification. In issuing interim substantive certification, the Council may impose any conditions it deems appropriate or necessary in order to insure continued compliance with the substantive certification and satisfaction of the fair share obligation, including, but not limited to, requiring the municipality to leave all ordinances implementing its original substantive certification in effect for the interim substantive certification period.

1. Any objector that participated in the initial Council administrative process resulting in the original grant of substantive certification, or party to exclusionary zoning litigation resulting in a judgment of repose in those cases where (c) or (d) below apply, may oppose the municipality's motion for interim substantive certification if that party contends that the municipality has not complied with the terms of its substantive certification.

(c) If a municipality received a judgment of repose that expires prior to July 1, 1993, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth in (a) and (b) above shall apply.

(d) If a municipality's judgment of repose has expired prior to *[the effective date of this rule]* ***February 3, 1992*** or thereafter expires before the Council issues new fair share obligations, a municipality may file a motion for interim substantive certification with the Council provided that no exclusionary zoning lawsuit has been filed against the municipality. The procedures and criteria set forth in (a) and (b) above, shall apply to applications made under this subsection.

MILITARY AND VETERANS' AFFAIRS

(a)

THE ADJUTANT GENERAL

Military Service Medals

Adopted New Rules: N.J.A.C. 5A:3-1 and 2

Proposed: May 20, 1991 at 23 N.J.R. 1490(a).

Adopted: January 8, 1992 by Brigadier General Preston M. Taylor, Jr., Deputy Adjutant General.

Filed: January 9, 1992 as R.1992 d.56, **without change as to N.J.A.C. 5A:3-1 and 2, but with N.J.A.C. 5A:3-3 not adopted.**

Authority: N.J.S.A. 38A:15-2 and 15-3; Executive Order No. 29 dated March 20, 1991.

Effective Date: February 3, 1992.

Expiration Date: February 3, 1997.

Summary of Public Comments and Agency Responses:

No comments received. Upon further review, the Department has decided not to adopt N.J.A.C. 5A:3-3, New Jersey Desert Storm Service Medal, but will be proposing a revised version of the rules in the near future.

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 3
MILITARY SERVICE MEDALS

SUBCHAPTER 1. GENERAL PROVISIONS

5A:3-1.1 Scope

This chapter is applicable to all residents of the State who served in any capacity on active duty with the Armed Forces of the United States of America in time of war or emergency and were honorably discharged from such service.

5A:3-1.2 Purpose

The purpose of the service medals outlined in this chapter is to recognize military service in defense of both State and Nation of individual residents of the State of New Jersey and to commemorate such service.

SUBCHAPTER 2. NEW JERSEY DISTINGUISHED SERVICE MEDAL

5A:3-2.1 Policy

The purpose of the New Jersey Distinguished Service Medal is to recognize any resident of the State of New Jersey, who, while serving in Federal military service on active duty in time of war or emergency, shall distinguish himself or herself by especially meritorious service and who has been cited in orders for distinguished service by appropriate Federal authority.

5A:3-2.2 Criteria for award

(a) In order to be eligible for the New Jersey Distinguished Service Medal, a resident of New Jersey shall have:

1. Seen active military service in the Armed Forces of the United States of America during time of war or emergency as attested to by the awarding of an Honorable Discharge (DD 214) by the respective Armed Force;

i. The quality of such service must have been especially meritorious as attested to through the awarding of no less than the Meritorious Service Medal or the Bronze Star Medal by appropriate Federal Authority; and

2. Been a resident of the State of New Jersey at the time of entry onto active military service.

5A:3-2.3 Procedures for requesting award

(a) To request the awarding of the Medal, a person shall submit a certified copy of DD Form 214 (Armed Forces Discharge Certificate) indicating dates of service, character of service and awards presented which conform to N.J.A.C. 5A:3-2.2 with a proof of New Jersey residency at time of entry on to active duty, in a written request for awarding of the New Jersey Distinguished Service Medal to:

The Adjutant General
New Jersey Department of Military and Veterans' Affairs
Attn: Director of Administration
CN 340
Trenton, New Jersey 08625-0340

(b) In lieu of evidence of awards of the caliber designated in N.J.A.C. 5A:3-2.2(a)1i being reflected on a DD Form 214, an applicant may submit other certified documents reflecting the awarding in the name of the President of the United States of America a medal of at least the rank of the Meritorious Service Medal or the Bronze Star Medal.

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(c) Upon verification of New Jersey residency, as well as the quality and character of service as described in N.J.A.C. 5A:3-2.2, the Department of Military and Veterans' Affairs will issue to the requestor the New Jersey Distinguished Service Medal with appropriate certificate in the name of the Governor of the State of New Jersey at no cost.

(d) One medal will be issued to each requestor with appropriate lapel ribbon. In the event of service in more than one war or emergency, additional certificates will be prepared and awarded upon receipt of appropriate documentation.

*[SUBCHAPTER 3. NEW JERSEY DESERT STORM SERVICE MEDAL

5A:3-3.1 Policy

The purpose of the New Jersey Desert Storm Service Medal is to recognize and commemorate the honorable service of the citizens of the State of New Jersey who participated on active duty with the Armed Forces of the United States during Operation Desert Shield/Storm.

5A:3-3.2 Criteria for award

The New Jersey Desert Storm Service Medal shall be awarded to those State residents who were in the regular United States Armed Forces, volunteered for the armed services, were part of the New Jersey National Guard or the Reserve Forces of the Armed Forces of the United States called to active duty for Operation Desert Shield/Storm from the period August 1, 1990 thru the period of re-deployment and de-mobilization of the last United States military unit and whose character of service was honorable.

5A:3-3.3 Procedures for requesting award

(a) Except as specified in (c) below, a person shall apply for issuance of the New Jersey Desert Storm Service Medal by submitting proof of service and New Jersey residency in a written request to:

The Adjutant General
New Jersey Department of Military and Veterans' Affairs
Attn: Director of Administration
CN 340
Trenton, New Jersey 08625-0340

(b) Upon verification of honorable service in accordance with N.J.A.C. 5A:3-3.2 and residency at the time of service, the Department will issue one Medal with lapel ribbon and certificate in the name of the Governor of the State of New Jersey to the service member.

(c) Procedures for requesting an award for the members of the New Jersey Army or Air National Guard are outlined in appropriate New Jersey Army and Air National Guard regulations as issued by the Adjutant General, New Jersey Department of Military and Veterans' Affairs.]*

(a)

THE ADJUTANT GENERAL

Brigadier General William C. Doyle Veterans' Memorial Cemetery Interment Eligibility; Operating Rules; Funeral Directors' Responsibilities

Adopted New Rules: N.J.A.C. 5A:4

Proposed: May 20, 1991 at 23 N.J.R. 1491(a).
Adopted: January 7, 1992 by Brigadier General Preston M. Taylor, Jr., Deputy Adjutant General.
Filed: January 9, 1992 as R.1992 d.57, **without change.**
Authority: P.L. 1985, c.149; N.J.S.A. 38A:3-2.2, 38A:3-6(o) and (u).

Effective Date: February 3, 1992.
Expiration Date: February 3, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

CHAPTER 4
BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

SUBCHAPTER 1. GENERAL PROVISIONS

5A:4-1.1 Scope

(a) This chapter is applicable to all residents of the State who served in any capacity on active duty with the Armed Forces of the United States of America and who have been separated or discharged from such active duty under conditions other than undesirable or dishonorable.

(b) In addition to eligible New Jersey veterans, this chapter applies to all private funeral directors who provide assistance in the interment of a veteran or a veteran's immediate family in the Veterans' Memorial Cemetery.

5A:4-1.2 Purpose

The purpose of this chapter is to identify and establish the eligibility rules for interment in the Brigadier General William C. Doyle Veterans' Memorial Cemetery located in Arneytown, New Jersey.

SUBCHAPTER 2. ELIGIBILITY CRITERIA

5A:4-2.1 Veterans' interment eligibility

(a) Eligibility for interment in the Brigadier General William C. Doyle Veterans' Memorial Cemetery is based on 38 U.S.C. 901 through 908; 38 C.F.R. 3.1600 through 3.1612; P.L. 1985, c.149 and N.J.S.A. 38A:3-2.2, 3-6(o) and (u).

(b) The following eligibility criteria are outlined in order to delineate and clarify the provisions of (a) above:

1. The veteran to be interred must be a legal resident of the State of New Jersey prior to death or have lived at least 50 percent of his or her life within the State.

2. Proof of eligibility for interment is a valid discharge from the Armed Forces of the United States of America indicating that the character of service was other than dishonorable or undesirable.

3. Proof of New Jersey residency is considered to be one of the following:

i. A New Jersey Driver's License;

ii. A New Jersey Voter's Registration Card;

iii. A paid New Jersey real estate tax bill;

iv. A deed to New Jersey property;

v. Utility bills with the veteran's name and New Jersey address appearing thereon; or

vi. Other similar documentation indicating New Jersey residency.

4. In the absence of an acceptable discharge document or proof of residency, a tentative date for interment may be established; however, the scheduled interment may be subject to delay in order to permit a determination of eligibility.

5. In cases where the character of a discharge requires adjudication by the United States Department of Veterans' Affairs Regional Office, the chief executive office of the Cemetery (CEO) will not permit interment pending final decision. The CEO will advise the funeral director that interment cannot proceed until the character of discharge is determined.

6. If a funeral cortege arrives at the Veterans' Memorial Cemetery and eligibility has not been established, a committal service may be permitted. However, interment will not take place and the remains will be removed by the funeral director from the cemetery until eligibility has been verified.

5A:4-2.2 Veteran family interment eligibility

In order for a spouse or dependent child to be eligible for interment, the veteran sponsor must be interred or agree to be interred in the Veterans' Memorial Cemetery.

5A:4-2.3 New Jersey National Guard interment eligibility

A member of the New Jersey National Guard, who while on State Active Duty by the Order of the Governor of the State of New Jersey and who dies or is killed in the line of duty, is eligible for interment

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in the Veterans' Memorial Cemetery. The family of such a National Guard member is eligible for interment in accordance with the provisions of these rules as they apply to the family of a deceased veteran.

5A:4-2.4 Right of appeal

A veteran, a veteran's legal representative, or next of kin may appeal a decision regarding eligibility for interment within 30 days of notification of the decision. The appeal will be in writing and be filed with the CEO who will forward the request for reconsideration with all documentation to the Department of Military and Veterans' Affairs for final determination. The Department will respond to the appeal with a final decision within 48 hours.

5A:4-2.5 Pre-registration

(a) A veteran resident of New Jersey may apply in advance for interment in the Veterans' Memorial Cemetery.

(b) Applications are made at any New Jersey Department of Military and Veterans' Affairs Veterans' Services Office. At the time of filing, the application will be processed and determination of eligibility made. When eligibility is verified the veteran will be notified of the fact.

(c) Pre-registration constitutes verification of eligibility and not the reservation of a specific space or plot in the Veterans' Memorial Cemetery.

SUBCHAPTER 3. GENERAL OPERATING RULES FOR BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

5A:4-3.1 Policy

The Brigadier General William C. Doyle Veterans' Memorial Cemetery is New Jersey's public owned and operated veterans' cemetery. As such, it is a memorial to the sacrifices and contributions made by New Jersey's veteran population to the freedoms shared by all of New Jersey's residents.

5A:4-3.2 General operations

(a) Flat, bronze grave markers, as prescribed and provided by the Department of Memorial Affairs, United States Department of Veterans' Affairs, are the only markers permitted at the Veterans' Memorial Cemetery.

(b) No graveside services are permitted. The funeral director and the immediate family of the deceased may witness the actual burial upon request, in which case accommodations will be made for a curbside view of the interment.

(c) Depending upon the availability of resources, the Veterans' Memorial Cemetery will normally be open for visitation seven days a week during the hours of 8:30 A.M. to dusk. The Administrative Office will be open Monday through Friday, during the hours of 8:30 A.M. to 4:30 P.M., except for State holidays.

(d) The use of Cemetery grounds for public gatherings of a partisan nature is not permitted.

(e) Boisterous demeaning activity or conduct on any Cemetery grounds is not permitted.

(f) Littering is not permitted.

(g) Only fresh cut flowers, artificial flowers and plants which can be inserted into cones will be allowed. Only two floral cones will be permitted at the top edge of the grave marker. Cones approved are those provided without charge by the Cemetery. Those obtained by the family or obtained privately will conform to those supplied by the Cemetery.

(h) No plantings of any type are permitted on Cemetery grounds or on grave sites. No potted plants, wreaths, flags, emblems, or other forms of decorative articles are permitted on grave sites.

(i) Flowers of any kind which become unsightly, faded or wilted will be removed by Cemetery personnel.

(j) Evergreen blankets and wreaths will be permitted on graves beginning December 15 and will be removed by cemetery personnel no earlier than January 15.

(k) Wreaths are permitted during holidays and will be removed by cemetery personnel one week after the holiday. Holidays include: Easter, Mother's Day, Father's Day and Veterans' Day.

(l) Flags will be placed on each grave by cemetery personnel only during "Memorial Day" observance.

(m) The cutting, breaking or injury to the trees, shrubs, grass or other plantings is not permitted.

(n) Recreational activity such as picnicking, ball playing, bicycling, skate boarding, and jogging will not be permitted anywhere on Cemetery grounds. Consumption of any alcoholic beverages is strictly forbidden on Cemetery grounds.

(o) Pets are not permitted on or near any grave site area.

(p) Permission for any type of commercial photography must be received from the CEO prior to the planned event.

SUBCHAPTER 4. GENERAL OPERATING RULES FOR FUNERAL DIRECTORS WHEN DEALING WITH THE BRIGADIER GENERAL WILLIAM C. DOYLE VETERANS' MEMORIAL CEMETERY

5A:4-4.1 General requirements

(a) In an effort to avoid unnecessary stress to the bereaved family and to ensure that the scheduling of interments proceed without delay, funeral directors shall:

1. Confirm appointments for interments with the Interment Scheduling Office of the Cemetery before making any commitments to the family regarding date and time of burial; and

2. Present the following documentation to the CEO at the time of arrival of the cortege at the Cemetery:

i. The Burial Permit (required for all interments);

ii. The Military Discharge (DD Form 214) (If the Veteran has pre-registered with the Cemetery this form will not be required);

iii. The Certified Death Certificate; and

iv. The proof of New Jersey residency.

(b) The bronze memorial marker each Veteran is entitled to will not be ordered until all of (a) above is complied with.

5A:4-4.2 Funeral directors' responsibilities

(a) For interments in the Veterans' Memorial Cemetery, funeral directors are responsible for the following:

1. All funeral arrangements in compliance with applicable State Laws and Regulations;

2. Supervision of the cortege;

3. Directions to the Cemetery;

4. Appropriate Honor Guards to render proper Honors and present The Flag of the United States if called for;

5. Clergy if requested for the committal service;

6. Notifying the Cemetery of any qualified children in accordance with U.S.C. Title 38; and

7. Notifying the Cemetery when an oversized or private vault is required.

5A:4-4.3 Chapel

A chapel is available for committal services; additionally, the chapel has a patio for outside services.

5A:4-4.4 Special section

Provisions have been made within a special section of the Veterans' Memorial Cemetery to accommodate veterans of the Jewish faith who individually elect such consideration.

5A:4-4.5 Floral arrangements

(a) Due to the restrictive size of the Veterans' Memorial Cemetery Chapel, only six floral pieces will be brought to the chapel for committal services.

(b) Only six floral pieces will be placed at the grave site. Excess floral pieces may be utilized as the family wishes or disposed of by Cemetery personnel as compost.

(c) The next of kin or representative will sign a flower release form prior to the time of the committal service.

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ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION ELEMENTS

Hazardous Waste Fees

Adopted New Rule: N.J.A.C. 7:26-4A.5
Adopted Amendment: N.J.A.C. 7:26-4A.3

Proposed: March 18, 1991 at 23 N.J.R. 814(a).

Adopted: January 10, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 10, 1992 as R.1992 d.65, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-2 and 13:1E-1 et seq., particularly 13:1E-6, 13:1E-18, 13:1E-42.2, 13:1E-60d, and 13:1E-87.

DEPE Docket Number: 010-91-02.

Effective Date: February 3, 1992.

Operative Date: The operative date of the amendments to N.J.A.C. 7:26-4A.3(a) and (b) is July 1, 1992; the new rule and the remaining amendments are effective and operative February 3, 1992.

Expiration Date: October 25, 1995.

Summary of Agency-Initiated Changes:

The Department notes that among the increases and decreases of fees set forth in the hazardous waste fee schedule, these amendments include a reduction of the annual reporting fee for hazardous waste generators from the current $500.00 to a range of $125.00 to $400.00, depending on the amount of hazardous waste the generator annually manifests. The amendments also establish a new manifest processing fee for generators of $11.10 per manifest. In the interest of avoiding overpayment of fees, ensuring an equitable fee assessment, and avoiding confusion, the Department has determined that the amendments at N.J.A.C. 7:26-4A.3(a) and (b) will become operative at the beginning of the next State fiscal year on July 1, 1992.

Without the postponement of the operative date, revenues generated as a result of the amendments to N.J.A.C. 7:26-4A.3(a) and (b) are likely to be greater than the projected cost to the Department for this portion of the program, because many generators are likely to have paid the existing $500.00 annual reporting fee prior to the promulgation of these amendments, and will now be paying the new manifest processing fee as well. Inequitable fee payments will result if the operative date is not postponed, since generators paying the annual fee prior to the promulgation of these amendments would lose the benefit from the reduction in the generator annual fees. Finally, the Department believes that delaying the operative date to July 1, 1992 for these particular amendments is necessary to avoid confusion and conflict with the printed instructions the Department issues to generators concerning the filing of annual reports and the associated fees.

Summary of Public Comments and Agency Responses:

The new rule and amendment were proposed on March 18, 1991. Six commenters submitted written comments during the comment period which closed on May 17, 1991. A summary of the comments and agency responses is provided in accordance with N.J.S.A. 52:14B-4 and N.J.A.C. 1:30-4.1(c). The following is a list of persons and/or organizations submitting comments on this proposal:

Andrew Kruzek, Huls America, Inc.;
Alfred Pagano, DuPont—Chambers Works;
Paul Wyszkowski, AT&T Bell Laboratories;
Edwin Crowell, Research and Development Council of NJ;
Sandra Smith, AETC;
Kevin Connors, Chemical Waste Transportation Institute.

COMMENT 1: AT&T Research and Development Council of New Jersey (RDC) commented that the permit fee for storage facilities was too high for those generators and research laboratories which must become permitted storage facilities due to the difficulty in arranging for proper handling of hazardous wastes within the 90-day holding period. Both claim that the fee will discourage environmentally responsible persons from seeking out responsible and timely disposal of hazardous waste. AT&T asserts that the fees assessed to small storage facilities will subsidize the State's review of large commercial storage operations. AT&T recommended lowering the fee since smaller operations require less time for the Department to review. RDC recommended the fee be based on a sliding scale according to the quantity of waste stored and complexity of operations.

RESPONSE 1: The Department understands the commenters' concerns for containing permitting costs at smaller facilities. The increase from $500.00 to $38,000 is truly dramatic. This fee schedule, however, represents the Department's aggregate actual costs for each type of activity for which fees are charged in implementing the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. The Department has determined that, on average, the activities which are the subject of this comment require the expenditure of $38,000 of State funds; the Department recognizes that since the fee reflects an average, the Department's actual cost of performing the activities in connection with a particular application may be higher or lower than the average. The $500.00 fee did not accurately reflect the Department's cost in reviewing storage facility permits, but the Department was statutorily constrained from assessing the true cost to process these applications. The Legislature amended N.J.S.A. 13:1E-18 to rectify this situation. The Department believes that the Legislature intended the regulated community rather than the State's taxpayers to shoulder the costs of the activities performed by the Department for the regulated community.

The Department reviews permit applications based on a number of criteria. There is no direct relationship between the size of the facility or quantity of waste stored and the length and depth of the Department's review, although they are factors reviewed and assessed. Other factors considered as part of the review include the type of waste being stored, the number of units at a facility, and the waste management practices to be utilized. Furthermore, the public participation portion of the permitting process often adds significant work time. Since public participation varies on a case by case basis, the Department can not accurately establish categories of facilities that would not require significant Departmental input due to public participation. The Department believes that the fee reasonably reflects the Department's cost of performing this activity.

While the Department does not possess any data, and none has been submitted by the commenters, supporting a theory that permit application fees should be based on the quantity of waste to be stored or the size of the facility, the large disparity in the size of noncommercial versus commercial storage facilities in New Jersey may result in a less time-intensive permit review for small non-commercial storage facilities. Thus, the Department recognizes the commenter's concern that the storage facility permit fees may result in small non-commercial facilities, in effect, subsidizing the Department's review of large commercial facilities. Although, for the reasons discussed above, the Department has no reason to believe that such a subsidy would occur, the Department acknowledges that it is possible. Accordingly, the Department has revised the rule upon adoption to allow non-commercial storage facilities an opportunity to apply for a rebate of a portion of the permit fee. If the Department's records show that its actual cost to issue the permit is more than 10 percent less than the fee under N.J.A.C. 7:26-4A.3(e)1ii or 3ii, the Department will rebate the difference between the fee paid and the actual cost.

The Department does not believe that the increase of the permit fee will lead to irresponsible handling of hazardous waste, since the liability resulting from mismanagement of hazardous waste will far exceed the cost of proper handling. In addition, there are other more significant costs associated with these activities, such as the engineering cost associated with the application, and the cost for the ultimate disposal of material, that will impact decisonmaking in this area more than the permit fee.

COMMENT 2: AETC and RDC commented that the storage facility permit renewal fee was too high. RDC recommended the fee be based on a sliding scale according to the quantity stored and complexity of operations. RDC also recommended that the permit renewal fee for facilities storing the equivalent of 25,000 gallons or less should be no greater than $2,500.

RESPONSE 2: The Department has revisited this matter and has determined that the comment has merit. However, as discussed in the previous comment, the fee cannot be based solely on the amount of

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waste stored as suggested by RDC. The permit renewal fee for storage facilities has, however, been adjusted from $30,000 to $11,650 based on the Department's re-evaluation. The Department has recently completed a series of permit renewals. The data associated with the Department's costs related to these renewals was not available during the drafting of the proposal. This recent data provides the basis for amending the fee on adoption. The Department has retained its overall goal of implementing a fee schedule based on actual costs in setting fees by amending the storage facility permit renewal fee. It should be noted that for every permit renewal the application does require a review, the issuance of a draft permit and the accompanying public participation process.

COMMENT 3: AETC asked for clarification of the fee for permit renewal of a storage facility that does not include treatment. The proposal stated "storage (including treatment) $30,000."

RESPONSE 3: The fee schedule does not distinguish a storage facility from a storage facility that includes treatment. The Department's experience has shown that treatment capability at a storage facility has not been a critical factor in determining the complexity and duration of the application review; therefore, it is not possible to differentiate between these facility types in the fee schedule. The rule is intended to clarify that there is no distinction.

COMMENT 4: Huls inquired as to the Department's use of General Fund monies which had been used to fund 22 full time equivalents in this program now that the Department anticipates 130 full time equivalents to be supported by the fee schedule. Huls suggested that General Fund monies should be used to help fund the 130 full time equivalents to be supported by the fee schedule. The fees should then be reduced. AT&T expressed concern regarding funding of the entire program based on the fee schedule and stated their belief that the costs of this program, like many other regulatory programs, should be shared by the general public.

RESPONSE 4: The Department disagrees with the commenters' suggestion, and is adopting these amendments based upon the premise that its work should be funded from fees paid by persons whose activities make that work necessary, and not from General Fund monies. This premise reflects the intent of the Legislature. By amending N.J.S.A. 13:1E-18, the Legislature has directed the Department to establish fees based upon the duration and complexity of the services it performs. The Department also now receives appropriations which are less than the total cost of operating the hazardous waste management program. Through these actions, the Legislature and the Office of Management and Budget have established a policy that the costs of the Department's activities should be paid for by those persons whose activities make it necessary for the Department to incur the costs, rather than the taxpayers generally. The Department recognizes that the shortage of revenues available from the general funds make this policy choice necessary.

COMMENT 5: Huls inquired as to the Department's anticipated response in the event fee revenues and program costs do not balance.

RESPONSE 5: If fee revenues exceed program costs in a given year, the Department will carry the surplus forward into the next year to help defray the costs of the particular programs funded by the fee revenues. The Department will not use fee revenues to pay costs of other programs. If program costs exceed fee revenues in a given year, the Department will make up the shortfall from whatever funding source is available at the time, and adjust the number of personnel supported by the fee program as necessary.

The Department notes that its goal is to sustain this program on fees based on the Department's costs to perform various activities. The Department believes this concept implements the legislative intent of N.J.S.A. 13:1E-18. The Department does not anticipate collecting fee revenues in excess of program costs. The development of this fee schedule has been based on the Department's experience in administering the hazardous waste management program. The Department expects to evaluate annually the program costs and revenues generated under the fee schedule. A shortfall or overage in revenues would be part of such an evaluation.

Additionally, the Department has stated that these fees reflect the actual cost to the Department for conducting various activities. The Department recognizes that a number of factors may increase or decrease costs, including, but not limited to, improvements in departmental efficiency in performing various activities, changes in the average compensation of Department employees, and amendments to a fee based rule. The Department intends to propose an amendment to these rules within the next month, providing the Commissioner with the ability to implement annual changes in the fee schedule through publication of a report in the New Jersey Register, setting forth any revised fees and describing the changes in the Department's costs upon which the revisions will be based.

COMMENT 6: AETC requested an exemption from the manifest processing fee for storage facilities which generate consolidated waste streams that have been previously manifested and charged the processing fee.

RESPONSE 6: The Department understands the commenter's position. However, the manifest processing fee is based on the Department's cost to process a manifest. The Department must process a manifest regardless of the fact that all or portion of a waste shipment was the subject of a previous manifest. Therefore, the Department will collect a fee for each manifest processed to recover this cost.

COMMENT 7: AETC suggested that the Department consider establishing a system of electronic data entry to eliminate the manifest processing fee.

RESPONSE 7: The Department is attempting to move in this direction by instituting a test program this year for the electronic transfer of annual report data. If successful the Department intends to extend the program to include the electronic data transfer for manifest data. However, the electronic data transfer would not eliminate the manifest processing fee since staff would still be required for such functions as quality control and systems support, although the fee might be affected. If the electronic data transfer becomes operational for manifest data, the Department intends to accordingly modify the manifest processing fee.

COMMENT 8: AETC suggested that if the Department implements an electronic data transfer system as suggested in Comment 7, then the generator annual report should be eliminated.

RESPONSE 8: Although the Department understands the commenter's intention to eliminate duplication of effort, the comment is premised on the Department implementing an electronic data transfer system for manifest processing. As noted in Response 7, the Department is endeavoring to move in this direction; however, any response by the Department at this time would be premature and speculative. The Department appreciates the comment, and will take it into account at the appropriate time. Moreover, the Federal hazardous waste management program implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., currently requires the submission of generator reports on a biennial basis. Therefore, the reporting requirement could not be completely eliminated. The Department believes that annual reporting is necessary to insure the quality of the data. Comparing the annual report data to the manifest data enables the Department to identify and correct discrepancies, producing more accurate data.

COMMENT 9: AETC pointed out that generators of non-hazardous solid waste desiring to ship such waste to a hazardous waste facility in New Jersey must initiate and comply with the hazardous waste manifest requirements, because New Jersey hazardous waste facility permits require that all waste received at the facility must be accompanied by a hazardous waste manifest. AETC believes that the manifest processing fee will discourage generators of non-hazardous solid waste from sending waste to hazardous waste facilities where the waste might be exposed to technology superior to that available at solid waste facilities. AETC requested that hazardous waste facilities be permitted to accept non-hazardous waste manifests, thereby eliminating the hazardous waste manifest processing fee.

RESPONSE 9: The Department generally agrees with this comment. However, the Department believes establishing a non-hazardous solid waste manifest is inappropriate at this time since the Department intends to propose regulatory amendments in the New Jersey Register dealing directly with the issue of solid waste shipments to hazardous waste facilities. The Department anticipates publication of the proposal in the first quarter of 1992. The Department is examining the mangement of industrial solid wastes and will address this matter in the Department's proposal. The Department notes that the commenter's suggestion of replacing a hazardous waste manifest with a solid waste manifest would still require departmental processing and necessitate the imposition of a fee for such activity.

COMMENT 10: AETC asked for clarification concerning the practice of attaching "continuation sheets" to the hazardous waste manifest and the applicability of the manifest processing fee.

RESPONSE 10: The Department considers continuation sheets to be part of the manifest. The manifest processing fee includes the processing of continuation sheets attached to the manifest. If the processing of continuation sheets eventually becomes an activity in itself due to the

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number of continuation sheets attached to a manifest, the Department will modify the fee. For the present time, however, the manifest processing fee includes the processing of continuation sheets.

COMMENT 11: AETC requested that the Department allow generators to print their own manifests which utilize a distinct identification number for each generator. This would reduce departmental paperwork and generators' costs.

RESPONSE 11: The Department appreciates suggestions intended to reduce departmental paperwork and costs of compliance to the regulated community. However, to implement the commenter's request would be unwise. It is necessary for the Department to maintain control over the printing of the manifest forms. The uniqueness of the identification number is the basis of the manifest tracking system. Any mistake in the generator identification number, intentional or unintentional, would essentially cause the cradle-to-grave tracking system to fail. The Department believes that it is prudent for only one source to be responsible for the production of the manifest forms.

COMMENT 12: DuPont questioned the use of the total quantity of hazardous waste shipped into a facility and shipped out of the facility as a factor in the formula for determining the inspection fee for major hazardous waste facilities. Dupont believes this is a "waste end or waste disposal tax." Dupont maintains such a factor penalizes its Chambers Works facility since most of the manifested waste processed is greater than 95 percent water.

Dupont suggested two alternatives to the present use of the total quantity of manifested waste coming into the facility and leaving the facility as a factor in calculating the major hazardous waste facility inspection fee. First, the factor in question ("W") should be limited only to the quantity of waste generated at the facility and manifested off-site. Second, if the factor continues to use the total quantity concept, the incoming waste stream portion of the factor should be limited to the "active ingredient" portion of the waste stream, subtracting out the inert water portion.

RESPONSE 12: Unlike the situation addressed in Comment/Response 1 regarding storage facility permit application reviews, the Department's experience has shown that the overall waste volume is generally a good indication of site complexity at major facilities. Therefore, waste volume has a direct relationship to the resources needed, including the time necessary to review incoming manifest shipments, in order to evaluate a facility.

The suggestion to use the percentage of active ingredient in the waste stream as a factor in the formula is unworkable. Since the manifest data does not reflect the relative concentrations of active ingredients comprising a waste shipment, there is no basis upon which to calculate the fee. Moreover, the concentrations of the wastes received at the facility has no direct or indirect relationship to the time or duties necessary to complete an inspection.

The formula for major hazardous waste facility inspections was not proposed for amendment. The fee revenues generated by the formula currently represent the Department's actual costs for inspections. Though current revenues reflect the Department's costs at this time, the Department intends to re-examine the formula and the manner in which a major facility inspection fee is calculated, and to propose a rule on that subject within the next six months. The Department will consider the commenter's concerns in connection with that proposal.

COMMENT 13: DuPont believes that the manifest processing fee will encourage generators to classify waste as nonhazardous to avoid the increasing cost of hazardous waste management, use inappropriate or illegal disposal methods, and reduce the competitiveness of New Jersey facilities. The consequences could be loss of jobs and a reduction of tax revenues. The loss of viable facilities would also jeopardize the State's ability to meet its hazardous waste capacity assurance requirements under Federal law.

Moreover, in the case of out-of-State generators, New Jersey facilities would have to pass this cost on to generators, thereby making New Jersey facilities less competitive, and add employees and management systems in order to track the out-of-State shipments and remit payments to the State. This will discourage the shipment of out-of-State wastes to New Jersey facilities. The result will affect the competitiveness of New Jersey facilities, eliminate jobs, reduce the State's tax base, and negatively impact the State's hazardous waste capacity assurance requirements under Federal law.

RESPONSE 13: Although the Department understands the commenter's concerns, the Department believes that an increase in illegal dumping or other subversive practices will not result due to the imposition of the manifest processing fee. Based on current available data, the average New Jersey generator annually uses 10 manifests which represents an annual cost of $110.00. Furthermore, the Department believes the increase in disposal cost as a result of the manifest processing fee will amount to approximately $1.45 per ton. While these figures represent averages, and certain generators may be impacted more severely (as discussed in the proposal of these amendments at 23 N.J.R. 815, the annual impact should range from approximately $50.00 for generators of relatively small quantities of hazardous waste to approximately $1,000 for large generators, and from $10,000 to $100,000 annually for hazardous waste facilities accepting waste from out-of-State Generators, with most facilities in the range of $20,000 to $45,000), the Department does not believe that the manifest processing fee is of sufficient magnitude either to lead to an increase of illegal disposal practices or to affect the competitiveness of New Jersey businesses and hazardous waste facilities.

COMMENT 14: CWTI suggested the Department over-estimated its costs to perform a transporter inspection and failed to distinguish a transporter inspection from other types of inspections in duration and complexity. CWTI believes the transporter inspection fee should be approximately $1,046 on the basis of the Department's anticipated costs of $2,928,054 to implement this portion of the program divided by 2801 anticipated inspections, including 50 transporter inspections.

RESPONSE 14: The fee is based on the Department's experience in performing transporter inspections. The Department has been able to calculate the average time and the level of personnel expertise required to perform various inspections. Since the tasks performed during an inspection vary according to the category of the inspected as a generator, transporter, or facility, it is logical that the complexity and duration for each of the types of inspections will differ. The basis for the fee is the Department's cost associated with performing the transporter inspection. Calculating the average cost for all inspections does not accurately represent the Department's average cost of performing the various categories of inspections.

COMMENT 15: CWTI inquired whether only those inspected must pay the fee or all transporters must pay the fee, whether or not inspected, and when the fee is due.

RESPONSE 15: Only those transporters who are actually inspected must pay the inspection fee. The fee is collected upon completion of the inspection.

COMMENT 16: CWTI requested clarification of whether the Department intends to continue random selection of inspection sites or a scheduled inspection of all motor carrier sites in New Jersey every two years.

RESPONSE 16: The Department's goal is to annually inspect 30 percent of the known motor carrier universe. Selection criteria include whether the transporter has been inspected within the previous two years, evidence of manifest violations, and evidence of discharges.

COMMENT 17: CWTI questioned the basis for inspecting only motor carrier transportation facilities.

RESPONSE 17: Currently the Department is aware of only motor carrier transportation facilities in New Jersey. When rail or water carrier transportation facilities are known to exist, the Department will include them in the universe of transporter facilities to be inspected.

COMMENT 18: CWTI expressed concern about the apparent lack of communication and the potential duplication of effort between the Department and the United States Department of Transportation (USDOT) with regard to inspections performed through the auspices of the Federal Highway Administration, the Federal Railroad Administration and the Research and Special Programs Administration. The comment also stated that, moreover, all motor carriers are to have a safety fitness rating based on such USDOT reviews.

RESPONSE 18: The Department is aware of the USDOT requirements, and there is not a duplication of effort. In fact, the Department enforces many of the USDOT hazardous waste shipping standards. The fact that the Department enforces many of the same federal standards does not equate to duplication of effort. The Department's inspections look at a number of additional requirements that include, but are not limited to, the following: review of Department registration data, inspection of vehicles for proper display of registration and Department decals, verification that registration data corresponds to Vehicle Identification Number on each vehicle, verification that submitted disclosure updates correspond to transporter business records, inspection of hazardous waste handling areas for possible discharges, and review of employee training records.

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COMMENT 19: CWTI questioned why the Department inspects hazardous waste transporters but not hazardous materials transporters.

RESPONSE 19: The Department's authority to perform hazardous waste transporter inspections is derived from the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. A material must first be considered a waste before the Department can exercise jurisdiction under this Act. Moreover, the State Police have been charged with the enforcement and oversight of regulations pertaining to hazardous materials transporters under N.J.S.A. 39:5B-25 to 32.

COMMENT 20: CWTI noted that even though the proposal did not affect transporter registration fees, these fees are collected and included in the Department's anticipated revenues. CWTI believes transporter registration fees and fees collected as part of the A-901 licensing program should be apportioned.

RESPONSE 20: The hazardous waste transporter registration fee and the fees required under the A-901 licensing program at N.J.A.C. 7:26-16.13 were not the subject of rulemaking in this proposal; therefore, the comment is beyond the scope of the proposal. However, the Department notes that the hazardous waste transporter registration fee was the subject of rulemaking and adopted on January 17, 1989 (21 N.J.R. 190(a)). Shortly thereafter the unapportioned transporter registration fee was challenged under the Commerce Clause of the United States Constitution. The unreported Superior Court, Appellate Division opinion in *In Re New Jersey Department of Environmental Protection. Final Decision Adopting Amendments to Rules N.J.A.C. 7:26-1.1, 1.4, 4, 7.3, 7.5, 12.2, 13A.6, 16.2 and 16.3 and Adopting New Rule N.J.A.C. 7:26-4A.* (Case No. A-3139-88T5), *cert. denied* 122 *N.J.* 315 (1990), rejected this challenge and upheld the fee.

COMMENT 21: AETC requested that the Department provide more detail in the Economic Impact statement.

RESPONSE 21: The Department believes it supplied accurate and informative detail in the proposal. The Department's goal was, and will continue to be, to effect a "cost for activities approach in the calculation of this fee schedule. The Department offered a categorical breakdown of its costs associated with the different elements implementing the hazardous waste management program for the State. The fee schedule is based on the Department's reasonable costs to perform its work made necessary by the activities of the regulated community; this is in keeping with the legislative intent expressed at N.J.S.A. 13:1E-18. Furthermore, the comment asks only for "more detail" without specifying what type of detail is desired. Although the comment lacks in specificity, the Department in an effort to provide further detail offers an additional breakdown of the costs incurred by the various sections that implement the hazardous waste management program.

The proposed operational budget for the Hazardous Waste Management Program is as follows:

Enforcement Element	$4,128,000
Regulation and Classification	506,000
Hazardous Waste Engineering	2,140,000
Manifest and Information Systems	2,272,000
Total	$9,046,000

A breakdown for each of these sections is as follows:

Enforcement Element

Salary/Fringe/Indirect	$3,444,000
Material Supplies	191,000
Services Other than Personal	200,000
Maint. & Fixed Changes	153,000
Equipment	140,000
Total	$4,128,000

Regulation and Classification

Salary/Fringe/Indirect	$ 422,000
Material Supplies	25,000
Services Other than Personal	35,000
Maint. & Fixed Changes	11,000
Equipment	13,000
Total	$ 506,000

Hazardous Waste Engineering

Salary/Fringe/Indirect	$1,892,000
Material Supplies	76,000
Services Other than Personal	102,000
Maint. & Fixed Changes	21,000
Equipment	49,000
Total	$2,140,000

Manifest and Information Systems

Salary/Fringe/Indirect	$1,852,00
Material Supplies	94,000
Services Other than Personal	228,000
Maint. & Fixed Changes	29,000
Equipment	69,000
Total	$2,272,000

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus*** deletions from proposal indicated in brackets with asterisks *[thus]*):

7:26-4A.3 Fee schedule for hazardous waste facilities, generators, and transporters

(a) Hazardous waste generator annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

1. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: $125.00
2. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: $180.00
3. Hazardous waste generators manifesting 100 or more tons but less than 150 tons of hazardous waste annually: $300.00
4. Hazardous waste generators manifesting 150 or more tons of hazardous waste annually: $400.00

(b) The manifest processing fee for generators and hazardous waste facilities is as follows:

1. Generators located in the State of New Jersey: $11.10 per manifest.
2. Hazardous waste facilities: $11.10 per manifest for waste received from generators located outside of the State of New Jersey. A hazardous waste facility will not be assessed a manifest processing fee for waste received from New Jersey generators.

(c) Fees for conducting inspections and compliance reviews for transporters, generators and facilities are as follows:

1. Inspection fee for a major hazardous waste facility, as defined at N.J.S.A. 13:1E-42.1, will be determined on an annual basis by the following formula:

F = Fee

T = Inspection time (expressed as a percentage of the Department's total annual time for all major facilities)

W = Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)

I = Total annual cost for major inspections

$F = (T + W)/2 \times I$

2. Inspection fee for a commercial hazardous waste facility, other than a major hazardous waste facility as defined at N.J.S.A. 13:1E-42.1, per inspection: $960.00.
3. Inspection fee for a non-commercial hazardous waste facility: $2,040.
4. Inspection fee for a generator: $1,370.
5. Inspection fee for a transporter: $1,370.
6. Inspection fee for closure inspection: $1,100.
7. Inspection fee for delisting inspection: $660.
8. Inspection fee for compliance inspection: $700.
9. Fee for compliance reviews: $660.

(d) Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee will be assessed for each separate waste classification requested. Fees for each step in the delisting process

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shall be submitted prior to the commencement of review/action by the Department:

1. The fee for the classification of the following wastes is $1,500 per classification:

i. Manufacturing process waste streams;

ii. Wastes for which the source of contamination is unknown;

iii. Wastes for which an anlytical assessment for the presence of substances listed at N.J.A.C. 7:26-8.13 through 8.16 is required;

2. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: $1,000;

3. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: $500.00;

4. Fee for the review of sampling plans submitted in support of waste classification requests, for each plan submitted: $1,000;

5. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26-8.17 shall be paid upon submission of the document, or in the case of the New Jersey Register notices, prior to the preparation of the notice, and are as follows:

i. Review of delisting petition: $6,500;

ii. Development, monitoring, and review of sampling plan: $1,000;

iii. Development and publication of public notice in the New Jersey Register: $6,400;

(e) Fees for permitting/review activities are as follows:

1. Fees for review of a permit application for a new hazardous waste facility, expansion of 50 per cent or more at a major hazardous waste facility, as defined at N.J.S.A. 13:1E-51, and expansion of any facility that includes a new type of facility among those listed below shall be paid at time of application submission and are as follows:

i. Land disposal (without storage) $77,000

ii. Storage (including treatment) $38,000***, subject to any rebate available under (e)13 below***

iii. Incineration with trial burn $83,000

iv. Incineration without trial burn $54,000

2. Fees for review of permit renewal application shall be paid at time of renewal application submission and are as follows:

i. Land disposal (without storage) $58,000

ii. Storage (including treatment) *[$30,000]* ***$11,600***

iii. Incineration with trial burn $73,000

iv. Incineration without trial burn $44,000

3. Fees for permit issuance/denial for a facility with "existing facility status" prior to *[(effective date of rule to be inserted)]* ***February 3, 1992*** shall be paid by *[(120 days after the effective date of the rule to be inserted)]* ***June 2, 1992*** or at the time of public notice of the draft permit/denial, whichever is earliest, and are as follows:

i. Land disposal (without storage) $58,000

ii. Storage (including treatment) $30,000***, subject to any rebate available under (e)13 below***

iii. Incineration with trial burn $73,000

iv. Incineration without trial burn $44,000

4. Fees for the issuance of a closure plan approval shall be paid at time of submission of the application for closure and are as follows:

i. Closure with soil sampling plan $10,000

ii. Closure without soil sampling plan $6,000

5. The fee for the approval/denial of existing facility changes pursuant to N.J.A.C. 7:26-12.3(c) shall be paid at time of submission of request for change and is $3,000.

6. The fee for the approval/denial of ownership or operational control changes shall be paid at the time of submission of the request and is $3,000.

7. The fee for permit modifications shall be paid at time of modification request and are as follows:

i. Minor modification: $1,750;

ii. Major modification: $3,500.

8. The fee for facility annual report shall be paid at time of submission of report and is $800.00.

9. The fee for a RD&D permit shall be paid at time of application for permit and is $38,000.

10. The fee for generator accumulation of waste in tank review shall be paid at time of submission of request and is $1,200.

11. The fee for treatability study approval/denial shall be paid at time of submission of application and is $600.00.

12. The fee for permit exemption qualification determinations shall be paid at time of submission of request and is $600.00.

13. A noncommercial hazardous waste facility which has paid a fee under (e)1ii or (e)3ii above may request a rebate of part of the fee. The request shall be in writing and delivered to the Department after the final permit for the facility is issued, but no later than 20 days after the final permit is issued. If the Department's timekeeping records show that the actual cost to the Department to issue the final permit is more than 10 percent less than the fee provided in (e)1ii or (e)3ii above, the Department shall rebate the difference between the fee provided in (e)1ii or (e)3ii above and the actual cost.

(f) The fee for Hazardous Waste Manifest forms is $10.00 for a package of 10 forms and shall accompany the request for forms.

(g) The fee schedule for hazardous waste transporters is as follows:

1. (No change.)

i.-iv. (No change.)

7:26-4A.5 Severability

If any court or other tribunal determines that any provision of this subchapter is invalid, unconstitutional or unenforceable, such determination shall be confined in its operation to the provision directly involved in the controversy in which such determination shall have been rendered, and shall not affect or impair the remainder of this subchapter or the application thereof, and the remainder of this subchapter shall remain in full force and effect.

(a)

COMMISSION ON RADIATION PROTECTION

Particle Accelerators for Industrial and Research Use

Adopted New Rules: N.J.A.C. 7:28-20
Adopted Amendment: N.J.A.C. 7:28-1.4

Proposed: May 6, 1991 at 23 N.J.R. 1401(c).

Adopted: December 18, 1991 by the Commission on Radiation Protection, Henry J. Powsner, Chairman.

Filed: January 8, 1992, as R.1992 d.52, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEPE Docket Number: 018-91-04.

Effective Date: February 3, 1992.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

Secondary notice was accomplished by publication in the Trenton Times, the Newark Star Ledger, and the Camden Courier Post, and by direct mail to 103 registrants of particle accelerator installations.

The Commission on Radiation Protection and the Department reviewed written comments from eight individuals received within the comment period, which ended on June 21, 1991.

The following individuals submitted comments:

1. F.B. Sprow, Vice President, Corporate Research, and S.M. Hinton, Radioisotopes Chairman, Exxon Research and Engineering Company.

2. V.G. Morando, Jr., Environmental Health and Safety Manager, Engelhard Corporation, Engineered Materials Division.

3. Wayne London, Radiation Safety Officer, Medi+Physics, Inc.

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4. Paul C. Krueger, Manager, Environmental Affairs, The BOC Group.
5. Paul E. Stidham, Supervisor, Occupational Health and Hazardous Waste, Allied Signal, Inc., Research and Development Council of New Jersey.
6. Andrew W. Blackwood, Director, Analytical Services, Structure Probe.
7. Ira M. Garelick, Health Physicist, Saint Barnabas Medical Center.
8. Jack W. Rodgers, AT&T Bell Laboratories.

GENERAL COMMENTS

COMMENT: Medi + Physics, Incorporated: There is no mention in the proposed rules of the time within which existing accelerator facilities would have to comply with the new rules. Will there be any "grandfathering" of existing facilities and, if not, in what time frame after adoption of the rules would existing facilities have to be in full compliance?

RESPONSE: The rules will take effect on the date the Notice of Adoption is published in the New Jersey Register (that is, February 3, 1992). At that time, compliance becomes mandatory for all affected facilities.

COMMENT: Medi + Physics, Incorporated: When one considers the variety of particle accelerators in use for industry and research and the vast differences in target systems utilized, it is difficult to establish one blanket set of regulations which would adequately govern all of them. The differences in types of accelerator facilities should be addressed either by licensing accelerator facilities and assessing radiation safety programs individually or by giving the Particle Accelerator Safety Officer (PASO) and Radiation Protection Committee (RPC) the authority and responsibility to satisfy the intent of the regulations.

RESPONSE: In N.J.A.C. 7:28-20.4(d), the PASO is given the authority to develop the particle accelerator safety program and, pursuant to N.J.A.C. 7:28-20.7, he or she is also required to have input into the design of the facility itself. This subchapter codifies the minimum safety standards for carrying out those responsibilities and dealing with the dangers inherent in all particle accelerators.

N.J.A.C. 7:28-1.4 Definitions

COMMENT: AT&T Bell Laboratories: Under the definition of primary and secondary barriers the millirem unit of measurement, not milliroentgen unit, per hour is the appropriate unit to be used, since neutrons and particulate radiation, as well as X-rays, can be produced. The millirem applies collectively to all radiation types.

RESPONSE: The intent of the definition of primary and secondary radiation is to apply it to all types of radiation. The Commission agrees with the commenter that the millirem is the correct term to use, as the milliroentgen is a measure of exposure while the millirem is a measure of dose equivalent for all radiation types.

COMMENT: AT&T Bell Laboratories: The existing terms "controlled area," "radiation area" and "high radiation area" are defined with respect to radiation levels to ensure protection of radiation workers and members of the public. A "target area" may or may not be a high radiation area, a radiation area or even a controlled area. An exclusion area may be defined for safety reasons other than radiation. The use of the terms "target area" and "exclusion area" in these rules should be eliminated and replaced with "controlled area," "radiation area" or "high radiation area" where applicable.

RESPONSE: The Commission agrees with the commenter that eliminating the terms "target area" and "exclusion area" in most instances and replacing them with "controlled area," "radiation area" or "high radiation area" where applicable will provide a clearer rule without weakening its effect. However, in N.J.A.C. 7:28-20.11(e), the term "target area" as it is generally understood remains appropriate.

N.J.A.C. 7:28-20.2 Definitions

COMMENT: Medi + Physics, Incorporated: The definition of PASO should provide for a facility Radiation Safety Officer to act in this capacity, provided the training and experience requirements are met.

RESPONSE: If the Radiation Safety Officer (RSO) meets at least one of the requirements set forth in N.J.A.C. 7:28-20.4 for qualification as a PASO, then the RSO can be appointed as the PASO.

COMMENT: Research and Development Council of New Jersey: We are pleased to see that the new definitions have attempted to differentiate between "electron microscope" and "particle accelerator." The sections which follow, N.J.A.C. 7:28-20.4 through 7:28-20.12, are specific for particle accelerators while N.J.A.C. 7:28-20.13 is specific for electron microscopes. N.J.A.C. 7:28-20.13 further implies the difference between particle accelerators and electron microscopes by exempting electron microscopes from the requirements of N.J.A.C. 7:28-20.4 through 7:28-20.12 except as specifically stated. "Electron microscope" should be removed as an example under the definition of particle accelerator to eliminate any confusion as to which specific sections of the rules must be followed.

RESPONSE: Although these rules do not imply that electron microscopes are different from particle accelerators, the Commission acknowledges that an electron microscope represents radiation hazards and safety needs that are substantially different from those of other types of particle accelerators. However, it is important for all registrants to understand that electron microscopes are particle accelerators included within N.J.A.C. 7:28-20 and subject to all the rules therein except as provided in N.J.A.C.7:28-20.13(a), where the specific requirements applicable to electron microscopes are clearly set forth. Therefore, particularly in view of what may be perceived as differentiation in these rules between electron microscopes and other particle accelerators, electron microscopes are being retained as examples of particle accelerators.

N.J.A.C. 7:28-20.3 Registration requirements

COMMENT: AT&T Bell Laboratories: The words "or electron microscope" are not necessary, since "particle accelerator" is already defined to include electron microscope.

RESPONSE: The commenter is technically correct. However, electron microscopes are treated differently in many respects from other particle accelerators, and it is important to emphasize that electron microscopes are nonetheless contained within the subchapter addressing particle accelerators.

N.J.A.C. 7:28-20.4 General requirements for a particle accelerator facility

N.J.A.C. 7:28-20.4(a)

COMMENT: Englehard Corporation: Well-designed equipment—for example, our Electron Beam Welder—has the capability of operation at 10 to 15 per cent greater operating power than the 30 kVp specification. Although it will normally be operated at the 30 kV level, the additional capacity will not allow it to be exempted from the regulations pursuant to N.J.A.C. 7:28-20.4(a). This subsection should allow an exemption for industrial applications designed at the 30 kVp level.

RESPONSE: As voltage increases, the penetrating power of the x-ray radiation also increases. Even an occasional or marginal application above the 30 kV level can be sufficiently dangerous to the health and safety of workers and members of the community to merit an increased level of Departmental scrutiny. Thus, unless the accelerator is physically incapable of operating above 30 kVp, granting an exemption would not be appropriate.

N.J.A.C. 7:28-20.4(e)

COMMENT: Englehard Corporation: The requirements for qualification of a PASO pursuant to N.J.A.C. 7:28-20.4(e)1 through 5 are overly restrictive, as compliance with the rest of N.J.A.C. 7:28, Radiation Protection, and the high quality of equipment virtually eliminate the possibility of leaking radiation in excess of 0.5 millirems per hour. The PASO should be required only to undergo eight hours of training by qualified individuals or institutions and the user should be required to perform quarterly radiation leak monitoring.

RESPONSE: If the PASO is qualified pursuant to N.J.A.C. 7:28-20.4(e)5, he or she does not require extensive education, but rather needs experience with the machines with which he will be working. The qualified PASO is necessary to ensure that the facility complies with the totality of N.J.A.C. 7-28 and that the high quality of the equipment is maintained. Deciding whether or not the user should perform quarterly radiation leak monitoring in addition to the survey requirements and other personnel safety measures set forth in this subchapter is the responsibility of the PASO.

N.J.A.C. 7:28-20.4(f)

COMMENT: AT&T Bell Laboratories: The degree requirement for qualification of the PASO should be changed to include any science or mathematics major. Also, subsection (f) should be renumbered as paragraph (e)6 and the wording changed from "shall" to "may." As currently worded, the requirements for a PASO in a facility where there are only electron microscopes may be more stringent than those for a PASO in a facility where there are other types of accelerators.

RESPONSE: As explained in the response to comments on N.J.A.C. 7:28-20.13(d) below, this section is being reworded to include degrees

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in physical or biological sciences as degrees which will qualify an individual to be named as a PASO. This will also clarify the fact that qualification as a PASO pursuant to this subsection is an option open to a prospective PASO who would not be able to qualify pursuant to N.J.A.C. 7:28-20.4(e). It was not intended to be the sole means of qualifying as a PASO in a facility where electron microscopes are the only particle accelerators.

N.J.A.C. 7:28-20.6 Training program on the safe use of each particle accelerator

N.J.A.C. 7:28-20.6(a)

COMMENT: AT&T Bell Laboratories: Does the wording "in conjunction with the qualified machine operator" apply to the PASO as well as to an individual with equivalent qualifications? Also, on-the-job training, of which 100 hours is required, should not be limited to just beam-ON time, but should refer to all time spent under the direct supervision of the qualified operator and the PASO.

RESPONSE: Although the final responsibility for design of the training program rests with the PASO, the requirement that the program be conducted in conjunction with the qualified machine operator applies to the PASO as well as to an individual with equivalent qualifications. Commas are being inserted to emphasize this point. While on-the-job training does not refer only to beam-ON time, it is used here, as it is generally understood, to refer to "hands-on" experience and not to classroom instruction.

N.J.A.C. 7:28-20.6(e)

COMMENT: AT&T Bell Laboratories: May only one operator be named the "first qualified operator" for each machine? To whom does the last line in this paragraph apply? Is the "first qualified operator" one of the "individuals" who must complete all items in subsection (a)?

RESPONSE: It was not the Commission's intent to limit the number of individuals to be certified as first qualified operators, and the rule is being amended to make that clear, as well as to clarify the intent of the rule that each first qualified machine operator be considered a qualified machine operator without satisfying the requirements of subsection (a).

N.J.A.C. 7:28-20.7 Shielding design and radiation area survey requirements for a particle accelerator

N.J.A.C. 7:28-20.7(g)

COMMENT: Medi+Physics, Incorporated: Yearly surveys should not be required if there are no changes in shielding, operation, equipment or occupancy. Necessity of re-surveys should be determined by the PASO and RPC.

RESPONSE: The Commission maintains that in an adequate radiation protection program surveys should be performed at routine intervals. The interval of one year is reasonable and not unduly burdensome.

N.J.A.C. 7:28-20.7(h)

COMMENT: Medi+Physics, Incorporated: Does this subsection require two instruments of each type? Does it include neutron detectors? Could back-up instruments be available from other facilities within the same company provided that they could be delivered within a reasonable amount of time (a few hours)? Must radiation levels be measured inside or outside of the cell?

RESPONSE: Two survey instruments of each type are needed to comply with this subsection. Neutron detectors are included. A few hours is not a reasonable time in the event of an emergency, when a second meter might be required as an immediate back-up. These instruments must be able to measure all levels of radiation, whenever and wherever produced, both inside and outside the cell.

N.J.A.C. 7:28-20.7(i)1

COMMENT: AT&T Bell Laboratories: Must a "performance test" utilize a source of radiation (check source) to ensure the operation of a survey instrument or can other methods approved by the PASO be used? For example, to check neutron meters each registrant would be required to obtain an NRC license to possess a source of neutrons. Another means of insurance of performance, such as an electronic pulser check, might be used.

COMMENT: Medi+Physics, Incorporated: A daily performance test would not be practical for neutron meters.

RESPONSE: The Commission agrees that a performance test of a neutron survey meter using a neutron source, possession of which requires an NRC license, is not practical if a machine will be in daily or other frequent use. In this case, an alternate method determined by the PASO to check performance may be used.

N.J.A.C. 7:28-20.7(i)4

COMMENT: Saint Barnabas Medical Center: It is not practical to have survey instruments calibrated "by or under the supervision of the PASO." Many facilities, for example, have these instruments calibrated by a commercial facility. It is unreasonable to expect the PASO to be present, as long as the facility is properly licensed to perform calibrations.

COMMENT: Medi+Physics, Incorporated: Instruments should be able to be sent to a qualified calibration laboratory, or procedures recommended by the American National Standards Institute (ANSI), the National Council on Radiation Protection and Measurements (NCRP) or Regulatory Guides should be able to be utilized.

COMMENT: AT&T Bell Laboratories: Are calibrations performed by someone other than the PASO covered by "under the supervision of the PASO?" What measures is the PASO required to take to ensure that the vendor is performing the calibrations so as to conform to the prescribed procedures?

RESPONSE: The intent of the proposed rule was to allow the PASO either to perform the calibration of the survey instrument or to send it out to a calibration laboratory, while he or she would retain the ultimate responsibility for ensuring that the procedures to be used in calibration conform to the requirements of this subsection. Calibrations performed by an outside vendor company are acceptable provided the PASO has included this information, along with all other compliance information, in the accelerator facility's radiation safety program procedures manual and that he or she can ensure that the outside vendor's calibration procedures comply with N.J.A.C. 7:28-20.7(i)4. Deleting the first sentence will clarify the rule.

N.J.A.C. 7:28-20.8 Particle accelerator controls and interlock systems

N.J.A.C. 7:28-20.8(a)3 and 4

COMMENT: AT&T Bell Laboratories: The terms "exclusion area" and "target area" should be replaced with the terms "controlled area," "radiation area" and "high radiation area" as discussed in the comment on N.J.A.C. 7:28-1.4.

RESPONSE: As discussed above, the Commission agrees with the commenter that replacing these terms here will contribute to the clarity of the rule. This section is being reworded to replace these terms.

N.J.A.C. 7:28-20.8(a)6

COMMENT: Medi+Physics, Incorporated: Requiring separate circuits is unnecessary for radiation safety as long as when an interlock is tripped the production of radiation ceases, regardless of other interlocks that may be on the circuit.

RESPONSE: The Commission agrees with the commenter that, from a radiation safety standpoint, a separate circuit is not necessary for the proper functioning of interlocks and is deleting unnecessary language from this paragraph.

N.J.A.C. 7:28-20.8(a)7

COMMENT: Medi+Physics, Incorporated: A better definition of fail-safe characteristics is needed. Do you mean supervised circuits? If so, this could be very costly, and not practical in all cases.

RESPONSE: The definition of fail-safe characteristics requires that every component of a particular installation must be functioning properly or the machine will shut itself down. Thus, an interlock has fail-safe characteristics if any defect or component failure in the interlock system triggers the safety mechanism—that is to say, prevents the production of radiation, as stated in the rule. The deletion of the language in N.J.A.C. 7:28-20.8(a)6 which required separate circuits should serve to clarify this paragraph. Whether or not supervised circuits are necessary is to be determined by the PASO.

N.J.A.C. 7:28-20.9 Warning devices

COMMENT: Medi+Physics, Incorporated: Operation of warning lights should be verified during routine maintenance procedures. It is unnecessary to include warning lights in the electrical circuitry "such that when a warning light is not lit radiation cannot be produced," as required by subsection (a).

RESPONSE: Warning lights are not reliable unless they are part of the safety interlock system.

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N.J.A.C. 7:28-20.10 Operating procedures

COMMENT: AT&T Bell Laboratories: The interlock system should be permitted to be used for turning the machine on and off in order to test the interlock system as well as in emergencies pursuant to N.J.A.C. 7:28-20.10(a)2.

RESPONSE: The Commission agrees with the commenter that it is necessary to use the safety interlock to turn the accelerator off during the test procedure to check to see if the interlock works properly, and is amending this section to that effect.

N.J.A.C. 7:28-20.11 Radiation area and personnel monitoring requirements

N.J.A.C. 7:28-20.11(b)

COMMENT: AT&T Bell Laboratories: Are the fail-safe characteristics of area monitors in high radiation areas required to stop the production of radiation immediately? Are reliable fail-safe monitors available?

RESPONSE: Monitors with fail-safe characteristics are required to stop the production of the radiation immediately. Reliable fail-safe monitors are available.

COMMENT: Medi + Physics, Incorporated: It would not be practical to monitor all high radiation areas, as monitors placed inside the accelerator and target cell areas will quickly become activated and rendered useless. Radiation monitors should be used where access to high radiation areas is possible to alert a person entering the area of the hazard. Remote readouts at the control panel are unnecessary.

RESPONSE: It is important for radiation safety that a remote readout be present at the control panel area to alert individuals who have access to that panel of the radiation in high radiation areas. In addition, a radiation area monitor is placed at the entrance of the high radiation area to alert a person entering the area of the hazard. A readout warning at the monitor and at the control panel gives a double measure of safety to prevent unnecessary exposure to radiation. The PASO must determine the most appropriate location to install an area monitor at the entrance to a high radiation area to advise of any hazard and provide for the eventuality that the monitor placed inside the high radiation area will quickly become activated and rendered useless. This section has been reworded for a clearer, more technically correct rule.

N.J.A.C. 7:28-20.11(d) and (e)

COMMENT: AT&T Bell Laboratories: Not every accelerator will produce radiation-induced activation of air or particulates. Will the provisions of N.J.A.C. 7:28-7.3 allow the PASO to verify that fact, document it and therefore exempt an accelerator from the requirements of quarterly airborne monitoring and wipe tests?

RESPONSE: Because the provisions of N.J.A.C. 7:28-7.3 do not automatically exempt any installation from the requirements set forth in N.J.A.C. 7:28-7.1 for performance of surveys in controlled areas, the mandatory provisions of this subchapter would prevail. However, because the Commission agrees that with regard to certain types of accelerators the possibility of contamination of these types does not exist, N.J.A.C. 7:28-20.11(d) and (e) are being amended to allow the PASO to determine whether or not any particular accelerator is capable of producing airborne or particulate contamination in any event. If the possibility does not exist, he or she may document that fact and dispense with surveys for airborne contamination and wipe tests.

N.J.A.C. 7:28-20.11(d), (e) and (f)

COMMENT: Medi + Physics, Incorporated: It is unnecessarily restrictive to require that the use of the particle accelerator be discontinued if surveys indicate noncompliance with N.J.A.C. 7:28-6 and 9 if the surveys are in areas that can be closed off. The appropriate action to be taken would best be determined by the PASO.

RESPONSE: These rules reflect the Commission's position that, as a matter of safety, a facility must be in total compliance in order to operate. Because a facility is designed as a whole, adequate measures for closing off portions of an accelerator tend not to be contemplated. Thus, N.J.A.C. 7:28-20.1(b) states that a person shall not operate or permit the operation of a particle accelerator unless the equipment and installation meet the requirements of this subchapter. N.J.A.C. 7:28-20.1(c) states that in addition to the requirements of this subchapter, all registrants of particle accelerators are subject to all other applicable requirements of N.J.A.C. 7:28-1 through 11 and 13. Thus, the requirements of these subsections serve only to reiterate that if one portion of the accelerator is contaminated the entire unit is in noncompliance and therefore must be shut down until the contamination has been removed.

N.J.A.C. 7:28-20.11(h)2

COMMENT: Medi + Physics, Incorporated: Most high dose rate radiation survey instruments do not have audible indicators, and they should not be required. The use of area monitors equipped with alarms would provide a higher level of radiological protection.

RESPONSE: The requirements of this subsection address personnel monitoring equipment of which a portable radiation survey instrument is one type. The audible indicator is necessary so that the person using it can watch where he is going and what he is doing without having to look constantly at the survey meter. This function is not the same as an alarm on an area monitor, which is addressed in N.J.A.C. 7:28-20.11(b).

N.J.A.C. 7:28-20.11(j)

COMMENT: Medi + Physics, Incorporated: The PASO and radiation protection committee should determine the levels at which immediate processing of personnel dosimetry would be required.

RESPONSE: When the readings on a direct reading dosimeter exceed 200 mR, there is serious cause for concern. Most direct reading dosimeters have a full scale reading of 200 mR. If this is exceeded, the potential exposure is unknown. To confirm that this reading was the result of radiation exposure, a follow-up must be performed. The level of 200 mR is a minimum standard that was selected because it is the guideline commonly used in the field of radiation protection as an indicator of concern. Because it represents a reading of approximately 10,000 times the amount of background radiation, it is eminently reasonable. The radiation safety program at a facility may require that that exposure be confirmed if a dosimeter indicates a lower exposure.

N.J.A.C. 7:28-20.12 Ventilation systems

COMMENT: Medi + Physics, Incorporated: The radionuclides produced by cyclotron operation (aside from those in the target material itself) are not listed in N.J.A.C. 7:28-6 and should be specifically exempted. The Environmental Protection Agency has a similar exemption in its radionuclide National Environmental Standards for Hazardous Air Pollutants (NESHAPS), subpart I.

RESPONSE: The radionuclides listed in N.J.A.C. 7:28-6 are those that are specifically regulated by the State of New Jersey. If a radionuclide is not listed, it does not have to comply with the requirements of that subchapter, as the use of this nuclide is regulated by an agency other than the State of New Jersey. It would be unnecessary and duplicative to set forth any further exemptions for such radionuclides.

N.J.A.C. 7:28-20.13 Electron microscopes

N.J.A.C. 7:28-20.13(a)1

COMMENT: The BOC Group: We suggest that a radiation protection survey should be allowed to be performed by or under the direct supervision of a qualified individual as set forth in N.J.A.C. 7:28-20.7 rather than limited to only the PASO. Persons who have not received a bachelor's degree may well be experienced and trained to perform a radiation survey. Experience may well count more than passing a college radiation safety course with a "D" grade, especially when the contents of a course on radiation safety have not been specified.

RESPONSE: While the PASO should remain responsible for the proper performance of the survey, this paragraph is being clarified to reflect the intent of the Commission that the PASO need not physically perform it himself or herself, but may supervise another qualified individual's performance of the survey, as set forth in N.J.A.C. 7:28-20.7.

N.J.A.C. 7:28-20.13(a)2

COMMENT: Research and Development Council of New Jersey: While prudent safety and health practices dictate that electron microscopes should be resurveyed after each repair, modification or relocation, the requirement for submitting copies of these surveys to the Department will prove to be burdensome to both the registrant and the State while serving no practical purpose. N.J.A.C. 7:28-20.13(a)2 should indicate that a resurvey shall be conducted after each repair, modification or relocation and that the results of the resurvey shall remain on file at the facility and be available for review by the Department during an inspection and shall be submitted to the Department upon request.

RESPONSE: Both the facility and the Department need an up-to-date file on each source of radiation used in New Jersey. For the

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Department to be compelled to request copies of the resurveys would be far more onerous than the requirement as currently set forth; thus, the requirement is being retained.

N.J.A.C. 7:28-20.13(a)3

COMMENT: AT&T Bell Laboratories: The words "affixed on the column" should be removed. Affixing a label to the column may or may not always be visible and placing the label there affords no measure of additional safety.

RESPONSE: Affixing the label on the column provides an extra measure of safety to anyone who does not know the accelerator is connected to the control panel by identifying the location where there is a radiation hazard.

N.J.A.C. 7:28-20.13(b)

COMMENT: Research and Development Council of New Jersey: It appears the Bureau of Radiation Protection agrees there is some safe level (30 kVp) below which exemption from the requirements should be granted. The new rules should reflect that electron microscopes incapable of operating at energies greater than 40 kVp shall be exempt from the rules so as to exempt most commercial scanning electron microscopes. This would reduce the burden of record keeping, reporting, personnel monitoring and inspection for both the research community and the State. This slight increase in energy level will in no way endanger the health or well being of the user but will be of great benefit to the research community.

RESPONSE: Units operating above 30 kV have a greater potential of producing a radiation hazard than those operating below 30 kV because of the increase in penentrating power with the increase in voltage. An exemption therefore was established for units that cannot operate above 30 kV, which conforms to the exemption granted for other particle accelerators in N.J.A.C. 7:28-20.4(a). The Commission maintains this level is reasonable and rejects the commenter's request for a change.

N.J.A.C. 7:28-20.13(d)

COMMENT: Structure Probe: Will the implementation of N.J.A.C. 7:28-20.13(d) be interpreted with sufficient liberality that possession of a Ph.D. in materials engineering would satisfy the educational requirements? It seems somewhat incongruous that the rule as written does not recognize physics or any engineering discipline.

COMMENT: Research and Development Council of New Jersey: The title or designation PASO may more accurately be stated as RSO since, paralleling the differentiation in these rules between particle accelerators and electron microscopes, the appointment of a PASO for a facility which only has electron microscopes may be misleading. Also, requiring that the "safety officer" possess a bachelor's degree in biology, chemistry, radiation science or mathematics and requiring a specific course in radiation safety from an accredited college would render many qualified individuals ineligible. Persons who have received degrees in engineering, industrial hygiene or physics would also be qualified to perform the required tasks. This section should indicate that facilities possessing only electron microscopes must designate an individual to serve as RSO, who would be required to possess a bachelor's degree from an accredited college in a scientific, engineering or related discipline and demonstrate knowledge of radiation safety through previous work experience or a specific training course.

Also, N.J.A.C. 7:28-20.13(d) is a restatement of N.J.A.C. 7:28-20.4(f) and is redundant. N.J.A.C. 7:28-20.4(f) should be deleted.

COMMENT: AT&T Bell Laboratories: This subsection is a duplication of N.J.A.C. 7:28-20.4(f) and should be removed here.

COMMENT: Saint Barnabas Medical Center: The qualifications for an electron microscope PASO should allow for an undergraduate degree in physics.

COMMENT: Exxon Research and Engineering Company: We would like to urge the inclusion of physicists, geologists and materials scientists, and, in fact, any physical science major with a bachelor's degree and appropriate experience or training in the operation of commercial electron microscopes as qualified to act as the PASO for an electron microscope facility. In the event that no one with at least two years experience in the operation of electron microscopes or any other radiation-producing equipment is available, a radiation safety course at an accredited college should be seen as an alternative means of qualification.

COMMENT: The BOC Group: We suggest that the educational requirements for the "PASO" be expanded to include persons who have received more than the bachelors' degrees currently proposed by the Commission. These degrees should include new fields of scientific education which include aspects of radiation safety. Furthermore, we suggest that accredited college course work in radiation biology be added to radiation safety as an approved course offered by an accredited college. A person who has taken and passed a college course in which radiation biology or radiation safety is included in a course syllabus should be allowed to be a "PASO" if that person has received a bachelor's degree in a science. Also, a person who has received a bachelor's degree in science and who has received "on-the-job" training in radiation biology or radiation safety should also be allowed to serve as a "PASO." Finally, we suggest that a person who has received a bachelor's degree as well as a person who has not received a bachelor's degree but possesses a specific certificate of training in a short term but intensive course in radiation biology or radiation safety should be qualified to be a facility "PASO."

RESPONSE: Because of its redundancy with N.J.A.C. 7:28-20.4(f), N.J.A.C. 7:28-20.13(d) is being deleted. All educational requirements are those stated in N.J.A.C. 7:28-20.4. As discussed in the response to comments on that section, subsection (f) of that section is being reworded to clarify that those fields which will qualify a PASO in a facility which contains particle accelerators other than electron microscopes will also qualify the PASO in a facility in which electron microscopes are the only particle accelerators and that the prospective PASO who does not satisfy those educational requirements may also be qualified pursuant to subsection (e)1 through 5. However, the person identified as a PASO pursuant to subsection (f) must have a bachelor's degree and must be able to document that he or she has taken a course, which may be a short course, in radiation safety as offered by an accredited college in order to ensure a minimum standard of safety training. Experience with other radiation producing devices, which may bear little resemblance to an electron microscope, can not be substituted for training.

COMMENT: Structure Probe: Where can one take a course which will satisfy the requirements specified in this subsection?

RESPONSE: An accredited radiation safety course generally lasts 30 to 40 hours and covers production, sources and measurements of radiation, radiation biology and standards and technical applications. Such a course is offered by many accredited colleges, including the State University.

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

7:28-1.4 Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. Additional words and terms, applicable to a specific subchapter only, will be found in that subchapter.

(a) General Terms:

...

"Registrant" means a person who is required to register a source of radiation with the Department pursuant to this chapter.

(b) Ionizing radiation terms:

...

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

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

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

...

(c) (No change.)

SUBCHAPTER 20. PARTICLE ACCELERATORS FOR INDUSTRIAL AND RESEARCH USE

7:28-20.1 Scope

(a) This subchapter establishes requirements and procedures for the registration and use of all particle accelerators, with the exception of those regulated by N.J.A.C. 7:28-14 and 15.

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(b) A person shall not operate or permit the operation of a particle accelerator unless the equipment and installation meet the applicable requirements of this subchapter.

(c) In addition to the requirements of this subchapter, all registrants of particle accelerators are subject to all other applicable requirements of N.J.A.C. 7:28-1 through 11 and 13.

7:28-20.2 Definitions

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

"Direct supervision" means guidance and instruction by the qualified machine operator who is physically present, is watching the operation of the particle accelerator, and is available for immediate assistance. "Electron microscope" means a machine that accelerates electrons for the purpose of producing highly magnified images of materials and material surfaces.

"kVp" means kilovolt peak.

"Particle accelerator" means any machine that accelerates charged particles (electrons, protons, deuterons, or other charged particles, etc.) in a vacuum and discharges the resulting particulate or other radiation but which does not meet the specifications of machines currently regulated under N.J.A.C. 7:28-14 through 16; particle accelerators include, but are not limited to, machines used for research, irradiation, or other purposes; such machines include, but are not limited to, potential-drop accelerators, electron linear accelerators, cyclotrons, betatrons, microtrons, ion implant accelerators, and electron microscopes; particle accelerators do not include high voltage generators, televisions, video display terminals, cathode ray tubes or other similar devices whose primary purpose is not the production of a useful charged particle beam.

"Particle accelerator facility" means the location at which one or more particle accelerators are installed and are operated under the same administrative control.

"Particle accelerator safety officer" or "PASO" means the person who is appointed and authorized by the registrant to act on the registrant's behalf to implement and maintain the particle accelerator radiation protection program for the registrant's facility.

"Performance test" means a procedure which is performed to assure that an instrument continues to perform its intended function.

"Qualified machine operator" means a person who meets the requirements of N.J.A.C. 7:28-20.6(a).

"Radiation protection committee" means a group consisting of at least three individuals appointed by the registrant who identify radiation safety problems, initiate, recommend, or provide corrective action plans, and verify the implementation of corrective actions. One member of this committee shall be the particle accelerator safety officer and one member shall be a representative of management. The remaining members shall be appointed at the discretion of the registrant.

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

"Stray radiation" means the sum of leakage and scattered radiation.

7:28-20.3 Registration requirements

A person shall not possess, control, use or cause a particle accelerator or an electron microscope to be used unless it has been registered with the Department pursuant to N.J.A.C. 7:28-3, unless the particle accelerator or electron microscope is incapable of operating at more than five kVp and does not produce radiation greater than 0.5 millirem per hour at any readily accessible point five centimeters from its surface.

7:28-20.4 General requirements for a particle accelerator facility

(a) Particle accelerators not capable of operating at more than 30 kVp shall be exempt from the requirements of (b) through (f) below and N.J.A.C. 7:28-20.5 through 20.12 provided that the initial or repeat radiation protection survey does not yield radiation levels greater than 0.5 millirem per hour using maximum operating conditions of operation as measured five centimeters from any accessible surface.

(b) A registrant shall not permit a particle accelerator to be operated unless the person operating the particle accelerator has met the requirements of N.J.A.C. 7:28-20.6(a).

(c) A registrant shall not use a particle accelerator or cause it to be used unless the equipment, facilities, operating procedures and emergency procedures are adequate to minimize danger to property and to public health and safety.

(d) The registrant of a particle accelerator facility shall appoint a Particle Accelerator Safety Officer (PASO) who is authorized to act on behalf of the registrant to implement and maintain a radiation safety program for the particle accelerator facility. The PASO may be either a full-time employee of the registrant or a consultant hired by the registrant. The registrant shall hold the final responsibility for the safe operation of the facility in accordance with all pertinent provisions of this chapter.

(e) A particle accelerator safety officer shall meet at least one of the following five criteria:

1. Certification in health physics by the American Board of Health Physics or certification in therapy physics and/or radiological physics by the American Board of Radiology;

2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering or mathematics and six years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working;

3. A master's degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least five years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working;

4. A doctorate degree in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field plus four years of professional technical experience in the field of radiological health or in a radiation protection activity. At least one year of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working; or

5. Ten years of professional technical experience in the field of radiological health or in a radiation protection activity. At least five years of the required health physics experience shall have been with a particle accelerator of a type similar to that with which the PASO will be working.

(f) A particle accelerator safety officer in a facility where the particle accelerators are only electron microscopes shall ***comply with the requirements set forth in (e) above or shall*** have received a bachelor's degree from an accredited college in *[biology, chemistry, radiation sciences or mathematics]* ***a biological or physical science*** and shall have passed at least one course in radiation safety offered by an accredited college.

(g) The registrant of a particle accelerator shall appoint a radiation protection committee whose approval shall be required for implementation of procedures for the use of each particle accelerator. The PASO shall be a member of this committee.

7:28-20.5 Use of particle accelerators on humans

(a) A registrant shall not use a particle accelerator or cause it to be used for the intentional irradiation of humans without first sending to the Department a written request stating the registrant's reasons for this use of the particle accelerator and the manner in which it will be used, and obtaining written approval from the Department.

(b) A registrant shall not use a particle accelerator or cause it to be used for the intentional irradiation of humans unless the equipment meets the requirements of this subchapter and N.J.A.C. 7:28-14.

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7:28-20.6 Training program on the safe use of each particle accelerator

(a) The registrant shall establish and maintain a training program on the safe use of each particle accelerator. The registrant shall not permit any person to operate the particle accelerator until that person has successfully completed the training program consisting of the 10 items set out below. The registrant shall ensure that the training program is conducted under the direction of the PASO or an individual with equivalent qualifications in conjunction with the qualified machine operator and that the program shall include all of the following:

1. Instruction in the types, characteristics, location, and levels of radiation produced by the particle accelerator;

2. Instruction in the units of radiation exposure, dose, dose equivalent, and quantity of radioactivity associated with the particle accelerator;

3. Instruction in the biological effects of ionizing radiation;

4. Instruction in the methods used to prevent radiation exposure at the particle accelerator facility, including, but not limited to, time, distance, shielding, interlock system, safety procedures and radiation monitoring equipment;

5. Instruction in the use and care of personnel monitoring equipment employed at the particle accelerator facility;

6. Instruction on the location and use of all operating controls for the particle accelerator;

7. Instruction on the requirements of this subchapter and N.J.A.C. 7:28-1 through 11 and 13;

8. Instruction in the facility's written operating and emergency procedures;

9. An examination testing the operator's knowledge of the requirements of (a)1 through 8 above. The examination shall be of sufficient depth to demonstrate that the operator has received instruction in each of the items listed above and has an understanding of the items at a level which permits the operator to use the particle accelerator in a manner consistent with the overriding goal of minimizing danger to public health and safety; and

10. At least 100 documented hours of on-the-job training under the direct supervision of a qualified machine operator and certified in writing by the PASO. The registrant shall maintain this documentation and certification for five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request. If, in the opinion of the PASO, the requirement of 100 hours of on-the-job training is too stringent for a particular particle accelerator, then the PASO shall submit a report documenting the number of hours of on-the-job training needed to become a qualified operator to the Department for approval.

(b) The registrant shall require each operator to become requalified not less than once every three years by completing a refresher training course covering the requirements of (a)1 through 9 above. The registrant shall maintain a record of each individual's completion of the refresher training course for five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(c) A registrant may permit a person to function as an operator's assistant under the direct supervision of a qualified machine operator until that person has completed a training course covering the requirements of (a)1 through 10 above.

(d) The registrant shall maintain records of the operator's training program, including a copy of the examination, for at least five years at the particle accelerator facility. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(e) Prior to operation of any particle accelerator after *[the effective date of this rule]* ***February 3, 1992***, the registrant shall document in writing the name of each individual who operated a particle accelerator prior to *[the effective date of this rule]* ***February 3, 1992*** and whom the PASO and the Radiation Protection Committee have certified as the first qualified machine operator for each particle accelerator. The registrant shall maintain this documentation for five years at the particle accelerator facility and shall produce it for review by the Department during an inspection. After *[the effective date of this rule]* ***February 3, 1992***, an individual is required to complete all items in (a) above*[,]* in order to become a qualified machine operator.

(f) When a new particle accelerator facility commences operation or places into operation a newly invented particle accelerator, the PASO and the Radiation Protection Committee shall document in writing the name and qualifications of the individual whom they have certified as the first qualified machine operator. Any subsequent machine operator shall be subject to the provisions of (a) above.

7:28-20.7 Shielding design and radiation area survey requirements for a particle accelerator

(a) A person shall consult with an individual with qualifications equivalent to those specified in N.J.A.C. 7:28-20.4(e) with respect to the health physics considerations in the design of a particle accelerator installation. The original record of this consultation, including the shielding design, shall be maintained at the particle accelerator facility for the life of the unit and shall be produced for review by the Department during an inspection and a copy submitted to the Department along with the registration form. This section shall apply to those particle accelerators planned for installation after *[the effective date of this subchapter]* ***February 3, 1992***.

(b) A registrant shall not install a particle accelerator unless such unit is designed and constructed with primary and/or secondary protective barriers as are necessary to comply with the permissible dose rates, radiation levels and concentrations specified in N.J.A.C. 7:28-6.

(c) A registrant shall ensure that a radiation survey of controlled areas and of adjacent areas is performed by the PASO or by a qualified individual under the supervision of the PASO to ensure that radiation exposure of individuals conforms to the requirements of N.J.A.C. 7:28-6, and an inspection is performed of the health physics aspects of the facility when the particle accelerator is first capable of producing radiation, but before the particle accelerator is used for any purpose other than installation or assembly of the particle accelerator, or the conducting of radiation surveys and health physics inspections.

(d) The registrant shall ensure that a written report of the radiation survey and health physics inspection is prepared by the PASO or by a qualified individual under the supervision of the PASO for review by the registrant. The registrant shall maintain these reports for the duration of the life of the machine at the particle accelerator facility.

(e) Prior to operation of the particle accelerator, the registrant shall implement or cause to be implemented the recommendations listed in the radiation survey and health physics report, including any special limitations which are necessary to comply with the requirements of this chapter. The registrant shall ensure that a follow-up radiation area survey of controlled areas and of adjacent areas is performed by the PASO or by a qualified individual under the supervision of the PASO and a follow-up health physics inspection is conducted to ensure that the recommendations as implemented meet the requirements of this chapter. The registrant shall ensure that a written report of the follow-up radiation survey and the follow-up health physics inspection is prepared by the PASO or under the supervision of the PASO for review by the registrant.

(f) The registrant shall submit a copy of the radiation survey and health physics inspection report required by (d) and (e) above to the Department within 30 days of the date of the survey and health physics inspection report, and shall maintain the original radiation survey and health physics inspection report for the duration of the life of the machine at the particle accelerator facility. The radiation survey and health physics inspection reports shall be produced for review by the Department upon request.

(g) The requirements of (c) above shall be followed when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas which could affect radiation exposure of any individual and at intervals not to exceed one year.

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(h) The registrant shall maintain at least two radiation survey instruments suitable for measuring all levels and energies of radiation capable of being produced by the particle accelerator. At last one of these radiation survey instruments shall be calibrated, operable, and easily accessible at the facility for use at all times.

(i) A registrant shall not use or cause a radiation survey instrument to be used unless:

1. A performance test is conducted on the survey instrument prior to each day's use;

2. The survey instrument is calibrated at intervals not exceeding one year using a nationally recognized calibration criteria;

3. The survey instrument is recalibrated each time it is serviced or repaired. If the service involved only a battery replacement, the survey instrument does not have to be recalibrated; and

4. *[The calibration of the survey instrument has been performed by or under the supervision of the PASO.]* The calibration procedure *[shall be]* ***has been*** performed by a qualified individual using nationally recognized calibration procedures which conform to those of the National Institute of Standards and Technology. These procedures shall identify the calibration source used. Results of each calibration of the survey instrument shall be maintained at the particle accelerator facility for five years. The record of these results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

7:28-20.8 Particle accelerator controls and interlock systems

(a) A registrant shall not operate or cause a particle accelerator to be operated unless each personnel entrance into a particle accelerator's high radiation area or exclusion area has been provided with the safety features listed below:

1. Clearly identified and easily discernible instrumentation, readouts and controls pertinent to the production of radiation;

2. A clearly identifiable switch on the accelerator control console which requires a positive, intentional action on the part of the operator for routine use in turning the particle accelerator beam on and off;

3. A personnel safety interlock system designed with a personnel safety interlock circuit. The personnel safety interlock system shall include a visual search procedure to clear personnel from the *[target room]* ***controlled area*** and high radiation areas prior to the production of radiation;

4. Personnel safety interlocks on all entrances into a *[target room]* ***controlled area*** and other high radiation areas that automatically terminate the production of radiation upon entry;

5. Circuitry such that when a safety interlock has been tripped, it shall only be possible to resume operation of the particle accelerator by manually resetting the controls, first at the position where the interlock has been tripped, and thereafter at the main control console;

6. Circuitry such that each personnel safety interlock *[is on a separate circuit which]* shall allow its individual operation independent of all other interlocks;

7. Safety interlocks designed with fail-safe characteristics so that any defect or component failure in the interlock system prevents the production of radiation; and

8. A clearly identifiable emergency radiation cut-off switch shall be located in all high radiation areas and at the control console. Each cut-off switch shall include a manual reset switch so that the particle accelerator cannot be restarted from the accelerator control console without resetting the cut-off switch.

(b) A registrant shall not cause or allow a person to bypass intentionally an interlock which permits the production of radiation, unless such bypass fulfills all of the following conditions:

1. It is authorized for and limited to a specified time period by the radiation protection committee or PASO in writing prior to the by-pass;

2. It is recorded in a permanent log;

3. It is accompanied by the posting of a prominent notice at the particle accelerator control console and at each personnel entrance being bypassed; and

4. It is terminated as soon as the need for the by-pass no longer exists as determined by the PASO.

7:28-20.9 Warning devices

(a) A particle accelerator shall not be operated unless the registrant has equipped all locations designated as high radiation areas and all entrances to such locations with clearly observable warning lights that operate when, and only when, radiation is being produced, and which shall be labeled to indicate that, when lit, radiation is being produced. The warning lights shall be included in the electrical circuitry of the particle accelerator such that when a warning light is not lit radiation cannot be produced in any area where personnel may be present.

(b) A particle accelerator shall not be operated unless the registrant has provided in each high radiation area audible and visual warning devices which shall be interlocked and activated for at least 30 seconds prior to production of radiation by the particle accelerator. Such warning devices shall be clearly discernible and labeled as to their function. The audible warning device alarm may be terminated once the high radiation area has been secured. Particle accelerator facilities designed and approved for human exposure are excluded from this requirement.

(c) A particle accelerator shall not be operated unless the registrant has identified barriers, temporary or otherwise, and pathways leading to high radiation areas in accordance with the labeling, posting and control requirements of N.J.A.C. 7:28-10.

7:28-20.10 Operating procedures

(a) A registrant shall not operate or permit the operation of a particle accelerator unless all of the following requirements have been met:

1. The particle accelerator is equipped with a means (such as, but not limited to, a locked console or a locked room) to prevent its unauthorized use;

2. The safety interlock system is not used to turn off the particle accelerator beam except in an emergency ***or for testing the operation of the interlock***;

3. The operation of all safety and warning devices, including interlocks, is tested by the qualified machine operator and the test results recorded at intervals not to exceed 30 days and such testing is verified in writing by the PASO at intervals not to exceed 90 days; each safety and warning device shall be listed separately in a log in which the test results are recorded, and the log shall be maintained for five years at the particle accelerator facility and shall be produced for review by the Department during an inspection;

4. Electrical circuit diagrams accurately reflecting the current status of the particle accelerator and the associated interlock systems are available to the operator and for inspection by the Department. The electrical circuit diagrams shall be reviewed and/or revised at intervals not to exceed one year by the qualified machine operator and the PASO shall verify in writing at intervals not to exceed one year that the review and/or revision was performed; the registrant shall maintain a record of such review for five years at the particle accelerator facility, and the record shall be produced for review by the Department during an inspection;

5. A copy of the current operating and emergency procedures is prepared under the direction of the PASO and maintained at the particle accelerator control panel. These operating and emergency procedures shall be reviewed and/or revised under the direction of the PASO at intervals not to exceed one year. The registrant shall maintain a record of such review with the current operating and emergency procedures at the accelerator facility for the life of the particle accelerator. This record shall be produced for review by the Department during an inspection; and

6. The written operating and emergency procedures address the methods used to prevent radiation exposure at the particle accelerator facility. The procedures shall include, but not be limited to, the following topics:

i. The location and operation of the interlock systems;

ii. The safety procedures that apply to each particle accelerator;

iii. The types and use of personnel monitoring equipment;

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iv. The procedures and personnel requirements for changing the target;

v. The handling and disposal procedures for disposing of a target;

vi. The procedures for surveys and wipe tests; and

vii. The emergency procedures regarding personnel and machine operations applicable to each particle accelerator.

7:28-20.11 Radiation area and personnel monitoring requirements

(a) The registrant shall identify in writing all types of radiation that will be produced, both primary and secondary, by the particle accelerator and the monitoring equipment selected to measure all the corresponding types and energies of radiation levels. The registrant shall maintain these records at the particle accelerator facility for five years. These records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(b) The registrant shall continuously monitor the radiation levels in ***or at the entrance to*** all high radiation areas. The area monitoring devices shall have fail-safe characteristics and shall be capable of providing a remote and local readout with visual and/or audible alarms at the accelerator control panel, any entrance to high radiation areas, as well as at other appropriate locations determined by the PASO so that a person entering the high radiation area or present therein becomes aware of the existence of the hazard.

(c) The registrant shall have all area monitors calibrated at intervals not to exceed 12 months and after each servicing and repair according to written procedures established by the PASO. The calibration procedures and records shall be maintained for five years at the particle accelerator facility. These procedures and records shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(d) *[Surveys]* ***If the PASO has identified airborne particulate radiation as a primary or secondary product of a particle accelerator as required pursuant to (a) above, then surveys*** shall be performed by the PASO or other qualified individual under the supervision of the PASO at least once in each quarter of the calendar year to determine that the amount of airborne particulate radioactivity present in controlled areas is in compliance with N.J.A.C. 7:28-6. Where survey results indicate noncompliance with N.J.A.C. 7:28-6, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-6 shall be taken. Use of the particle accelerator is prohibited until such time as new surveys show that compliance with N.J.A.C. 7:28-6 has been achieved. The results of the surveys shall be maintained for five years at the particle accelerator facility. Survey results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(e) *[Wipe]* ***If the PASO has identified removable contamination as a primary or secondary product of a particular accelerator as required pursuant to (a) above, then wipe*** tests shall be performed by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, at least every six months to determine the degree of removable contamination in the target area and other pertinent areas to ensure compliance with N.J.A.C. 7:28-9. Where wipe test results indicate noncompliance with N.J.A.C. 7:28-9, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-9 shall be taken. Use of the particle accelerator is prohibited until such time as new wipe tests show that compliance with N.J.A.C. 7:28-9 has been achieved. The results of the wipe tests shall be maintained for five years at the particle accelerator facility. Wipe test results shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(f) Surveys shall be made by the PASO or other qualified individual under the supervision of the PASO upon initial use of the particle accelerator and, thereafter, not less than once annually, to determine the levels of radiation resulting from activation of the target and other pertinent areas to determine compliance with N.J.A.C. 7:28-6 and 9. Where test results indicate noncompliance with N.J.A.C. 7:28-6 and 9, use of the particle accelerator shall be immediately discontinued and remedial measures to bring the particle accelerator into compliance with N.J.A.C. 7:28-6 and 9 shall be taken. Use of the particle accelerator is prohibited until such time as test results show that compliance with N.J.A.C. 7:28-6 and 9 has been achieved. The results of the surveys shall be maintained for five years at the particle accelerator facility. Surveys shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

(g) The PASO shall develop procedures for performing surveys and wipe tests required by (d), (e) and (f) above. These procedures shall be in writing and shall be kept at the particle accelerator facility. These procedures shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request. The survey and wipe test procedures shall contain, but shall not be limited to, the instrumentation to be used in conducting surveys and wipe tests, the method of performing the survey and wipe test (for example, points on the equipment from where wipe samples will be taken and method of obtaining the wipe sample), and method of calculation of survey and wipe test results.

(h) The registrant shall supply all individuals with and shall require these individuals to use and wear appropriate personnel monitoring equipment as listed below when entering the area which has been defined as a high radiation area while the particle accelerator is in operation:

1. Direct reading dosimeters capable of measuring doses from zero to one roentgen measured in milliroentgen increments and provided with an audible indicator discernible above the ambient noise level; the direct reading dosimeter shall be read daily and doses shall be recorded in a log book; and

2. Portable radiation survey instruments capable of measuring the maximum radiation levels anticipated to be present at the facility and provided with an audible indicator discernible above the ambient noise level.

(i) The registrant shall ensure that the PASO assigns appropriate personnel monitoring equipment to each individual who works with the particle accelerator and that the use of such personnel monitoring equipment meets the requirements of N.J.A.C. 7:28-7.

(j) The registrant shall immediately confirm the radiation level measured by a personnel monitoring device if a direct reading dosimeter indicates exposure greater than 200 milliroentgens.

(k) The registrant shall maintain the personnel monitoring reports and the daily log records of the direct reading dosimeter values at the particle accelerator facility to insure compliance with N.J.A.C. 7:28-8. These records and logs shall be produced for review by the Department during an inspection and shall be submitted to the Department upon request.

7:28-20.12 Ventilation systems

The registrant of a particle accelerator shall ensure that the maximum permissible average concentration of radioactive materials in air and water shall be as specified in N.J.A.C. 7:28-6 and the concentration of radioactive materials in effluents from the controlled areas shall meet the requirements of N.J.A.C. 7:28-11.

7:28-20.13 Electron microscopes

(a) Electron microscopes shall be exempt from the requirements of N.J.A.C. 7:28-20.4 through 7:28-20.12 except for the following requirements:

1. The registrant shall not use or cause an electron microscope to be used unless a radiation protection survey has been performed by *[a qualified individual as defined in (d) below]* ***an individual under the supervision of the PASO as defined in N.J.A.C. 7:28-20.4*** to ensure compliance with N.J.A.C. 7:28-5 and 7 before the electron microscope is put into operation; the registrant shall submit a copy of the survey report to the Department within 30 days of the date of the survey and shall maintain the original survey report at the electron microscope facility; the survey report shall be produced for review by the Department during an inspection;

2. The electron microscope shall be be resurveyed after every repair, modification, or relocation that would affect radiation exposure; the registrant shall submit a copy of the survey report to

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the Department within 30 days of the date of the resurvey and shall maintain the resurvey report at the electron microscope facility; the resurvey shall be produced for review by the Department during an inspection;

3. The registrant shall ensure that the electron microscope operating parameter indicators and controls pertinent to the production of radiation are clearly identified and easily discernible; the electron microscope shall be provided with a clearly visible label bearing the conventional radiation symbol and the words CAUTION: THIS EQUIPMENT PRODUCES X-RAYS WHEN ENERGIZED or other words having equivalent meaning affixed on the column;

4. The registrant shall provide each electron microscope operator with appropriate personnel monitoring equipment as required by N.J.A.C. 7:28-7 and require that the device be worn by each individual during operation of the electron microscope.

i. The registrant shall ensure that the personnel monitoring reports received from the personnel monitoring device processor contain the information required in N.J.A.C. 7:28-8; and

ii. The personnel monitoring reports received from the personnel monitoring device processor shall be maintained for inspection by the employee and the Department pursuant to the requirements of N.J.A.C. 7:28-8.

(b) Electron microscopes incapable of operating at 30 kVp or above shall be exempt from the requirements of (a)4 above provided the initial or repeat radiation protection survey does not yield radiation levels using maximum conditions of operation as measured at five centimeters from any accessible surface greater than 0.5 millirem per hour.

(c) The registrant shall provide a means to secure the electron microscope to prevent unauthorized use when not in operation. Such means may include, but are not limited to, a locked console or locked room.

[(d) The PASO in a facility where electron microscopes are the only particle accelerators shall have received a bachelor's degree from an accredited college in biology, chemistry, radiation sciences or mathematics and shall have passed at least one course in radiation safety offered by an accredited college.]

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient)

Procedural and Methodological Regulations

Financial Elements and Reporting

Adopted Amendments: N.J.A.C. 8:31B

Proposed: October 21, 1991 at 23 N.J.R. 3097(a), with an administrative correction to the proposal on November 18, 1991 at 23 N.J.R. 3442(a).

Adopted: January 9, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1992 as R.1992 d.62, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: February 3, 1992.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 8:31B-2.2 Implementation

COMMENTERS: Axiom Review, Barnert Hospital, Bayshore Community Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Cathedral Healthcare System, Community Medical Center, Deborah Heart and Lung Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, JFK Medical Center (Edison), Kaden Arnone, Inc., Kimball Medical Center, KPMG Peat Marwick Management Consultants, Monmouth Medical Center, Morristown Memorial Hospital, Newark Beth Israel Medical Center, NJPR, Overlook Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Elizabeth Hospital, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, South Amboy Memorial Hospital, The Concord Group, The Medical Center of Ocean County, The Medical Center at Princeton, The Valley Hospital, United Hospitals Medical Center, Wayne General Hospital

COMMENTS: Regarding the proposed requirement to collect sample outpatient data, most of the commenters responding to this section were concerned about two issues:

1. The time needed to prepare for sample data collection; several suggested at least four to six months; and

2. Costs incurred as a result of this effort; many suggested that the rule include reimbursement for reasonable costs of implementing and reporting additional data elements.

Some commenters requested clarification of the type of outpatient data to be collected; the method and format for submitting the data; the need for collection of additional data elements for certain types of patients; the treatment of same day medical and same day surgical patients, and the uses for these data. One asked for assurance that payment for outpatient services would be consistent with the methodology used for inpatients, regarding base year, revenue, and costs.

One commenter urged the Department to develop a new methodology for allocating costs to outpatient areas, suitable for implementation in 1993. Others raised the opposite concern about the effects of a fixed payment mechanism for outpatient services, asserting that New Jersey hospitals will be underreimbursed because: 1) they would be unable to cross-subsidize to offset such costs as general diagnostic and therapeutic services or expensive new technologies; and 2) since hospitals have fixed costs, they cannot provide outpatient services at costs comparable to those provided at non-hospital sites.

Another stated that three weeks is not sufficient to collect a representative sample that can be used in setting rates.

RESPONSES: Although much is known about the costs of inpatient admissions by diagnosis, little is known about the range and costs of individual outpatient procedures. Lack of comprehensive outpatient data inhibits a number of efforts, including (1) analysis of hospital concerns regarding price competition with freestanding providers; (2) modeling the financial impact of seeking alternative locations for primary care delivered to the uninsured; and (3) establishing appropriate allocations of overhead to outpatient services. As pressure to reduce costly inpatient care grows, care delivered in the outpatient area is projected to increase dramatically. This rule represents an important first step to collection of data which is vital to the better understanding of the types and costs of outpatient services delivered in New Jersey.

After several meetings with the industry, the Department has revised its plans regarding the data to be collected for analysis. Initial analysis will use data elements already submitted to the Department, such as same day medical and same day surgical information, with earlier submission being the only change. Other outpatient service data will be collected later in the year, and the Department will continue to meet with industry representatives to plan the timing and format for these additional collections.

The Department is also meeting with representatives of vendors and data processors to determine the costs that will be incurred by hospitals. An appropriate payment for these costs will be added to hospital rates through the mark-up factor on January 1, 1992. Further, the Department is eliminating the requirement for submission of Medical Discharge Abstracts which will result in $500,000 in cost savings to hospitals per year.

For 1992, the Department is not proposing to initiate an outpatient rate-setting system. The data collection referred to in this rule will be for purposes of analysis of outpatient costs and charges and services in the State. This systematic collection of data is intended to be used to develop an outpatient rate-setting proposal for 1993.

Based on the results of its analysis, the Department anticipates proposal of an outpatient payment methodology. The methodology developed may or may not be parallel to the methodology for calculating inpatient payment. The analysis will consider the allocation of costs to outpatients.

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The Department is aware of differences in the billing of same day medical and same day surgical patients. This issue is not addressed in the proposed rules but is considered a top priority for the Department's 1992 rate development agenda. The data already submitted and that to be collected in 1992 will assist the Department in determining rates for these patients.

With regard to sample size, the proposed rule states that "the data collection period will not exceed eight weeks in 1992." Further, a statistical analysis has been done using power calculations that indicate that three weeks data will yield a sufficient sample.

N.J.A.C. 8:31B-2.4 Guidelines for completion of the patient billing and abstract form

COMMENTERS: Barnert Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Blue Cross and Blue Shield of New Jersey, Cathedral Healthcare System, Deborah Heart and Lung Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, JFK Medical Center (Edison), Kaden Arnone, Inc., Kimball Medical Center, KPMG Peat Marwick Management Consultants, Monmouth Medical Center, Newark Beth Israel Medical Center, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Joseph's Hospital and Medical Center, St. Francis Medical Center, South Amboy Memorial Hospital, The Concord Group, The Medical Center of Ocean County, Wayne General Hospital

COMMENTS: Blue Cross and Blue Shield of New Jersey support the new language which clarifies that data used to bill the patient should not differ from data submitted to the Department for potential use in future rate setting and final reconciliation.

Many commenters note instances in which data submitted to the Department differ from data upon which payment is based: retroactive adjustments based on PRO reviews; patient appeals; internal reviews; or new, revised, or late documentation from physicians or auditors. One notes that the Medicare rebilling cut-off of 60 days could exacerbate some of these problems. Another commenter mentions that since payers require hard copy rebilling of claims to correct errors, the Department should consider the rebilled amount as the amount on which payment was based.

A concern was raised that payers pressure hospitals to bill charges rather than the DRG rates for same day medical patients, which is inconsistent with the rule. Therefore, the Department is advised to encourage payers to establish payment policies that are consistent with the rules.

A question is raised about the reference to "bills to which the hospitals are reconciled" when N.J.A.C. 8:31B-3.75 states that the hospital's volume-variable, all-inclusive rate will not be reconciled to collected revenue.

The question of comparative data elements was raised by another commenter, who stated that some payers require more data elements than does the Chapter 83 system, for example, Medicare's different GROUPER, and asks how these items are to be treated.

One commenter asked how the rule will be enforced, how Medicare limits on rebilling will affect this rule, and whether the rule will apply to quarterly or year-end transmission of data.

RESPONSES: The increased prospectivity of the system strengthens the importance of accurate initial billing. The intent of this rule is to avoid problems which have resulted from long-delayed retrospective changes to DRG assignment (and corresponding approved rates). Although some of these changes result from unavoidable forces such as URO reviews, these cases represent a relatively small percentage of total cases reported to the Department, and are not sufficiently material to prevent implementation of this rule which will enhance the timeliness of the entire reimbursement system.

The Department will ask that hospitals continue to submit a listing of URO-revised bills so that it can continue to monitor the number of cases receiving retroactive adjustments. If this proportion should increase significantly, the Department would reconsider its position on this issue.

Adjustments for patient bill appeals will be reconciled so that hospitals will be fully compensated in future years for these cases.

The commenter is correct in understanding that there will be no final reconciliation of hospital bills and that the reference to "the bill to which the hospital is reconciled" is inconsistent with N.J.A.C. 8:31B-3.75. The reference in the Summary should have been to the bill transmitted by the intermediary to the Department of Health.

This rule does not address any changes in data elements to be submitted to the Department, but rather provides that hospitals will not be able to change billing data once the DRG-assignment has been made. Implementation of this policy will mean that the Department will not accept any revised bills.

The comments regarding the effect of Medicare limits on rebilling addressed in the responses to N.J.A.C. 8:31B-3.34.

N.J.A.C. 8:31B-3.2 Derivation of Schedule of Rates

COMMENTER: The Concord Group

COMMENT: The commenter suggests the use of "preliminary cost base" where the Department uses "schedule of rates" and vice versa.

RESPONSE: This commenter seems to have misread the definition of Preliminary Cost Base as stated in N.J.A.C. 8:31B-1.2. The Preliminary Cost Base is the "estimated revenue a hospital may collect based on an approved schedule of rates". The Department has substituted the term "schedule of rates" in several sections of the chapter, to refer to rates that are proposed by the Commissioner and approved by the Commission for implementation by hospitals.

N.J.A.C. 8:31B-3.3 Uniform Reporting: Current costs

COMMENTERS: Cathedral Healthcare System, KPMG Peat Marwick Management Consultants, Monmouth Medical Center, The Concord Group

COMMENTS: Several commenters believe that the proposal limits the discretion of the Hospital Rate Setting Commission in levying penalties for late submission of data. They are opposed to this limitation, believing that hospitals should be permitted to show just cause for the late submission. A number of commenters also assert that the Department should not limit the discretion of the HRSC.

RESPONSES: As the rule is now written, it has not served as a deterrent to late data submission. Late data submission presents problems for the rate setting system since it prevents the availability of a comprehensive data base used to set rates or produce any number of statistical analyses.

The intent of this proposed change is to improve the timeliness and efficiency of the Chapter 83 system by making the penalty for late data submission automatic, rather than subject to a review that could delay by months the process of determining a data base for rate-setting.

It is not the intent of the proposed change to limit the discretion of the Hospital Rate Setting Commission. Since this body retains the authority to approve all rates, its discretion is in no way limited by this rule.

Hospitals have five full months after the close of the rate year in which to submit their cost and audited financial statements. Only after that time would the penalty be implemented.

N.J.A.C. 8:31B-3.4 Costs per case

COMMENTER: Axiom Review, The Concord Group

COMMENT: One commenter questions whether the self-pay, prompt-payer discount applies to patients whose liability is a percentage of the DRG (for example, 80/20 policy holders). This commenter believes that if consumers are being charged interest and their insurers receive prompt pay discounts then consumers should be eligible for the prompt-pay discount as well.

One commenter believes that this section suggests a cost for each outpatient visit, rather than an average cost per visit, as is actually calculated; a clarifying change in language is recommended.

RESPONSE: Consumers are eligible for the prompt-pay discount if their insurers receive the discount. See also the Department's response to N.J.A.C. 8:31B-3.40.

No change is being proposed in the calculation of the cost per case of the outpatient cost per visit and the citations noted by the commenter correctly describe the cost determination process as it is now calculated.

N.J.A.C. 8:31B-3.11 Same Day Surgery

COMMENTER: The Concord Group

COMMENT: In this rule, the date of submission was changed from November 15 to April 30 of the year prior to the issuance of the proposed schedule of rates, to allow the Department flexibility to issue rates earlier than in the past. One commenter stated that hospitals are burdened with numerous reports between March 31 and May 31, and suggests that the proposed change be withdrawn.

RESPONSE: Hospitals will still have four months after the end of the prior year to submit these data, enabling the Department to issue rates at an earlier date. The Department is encouraged that no critical

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comments were received from hospitals on this proposed change, suggesting that the commenter may be overstating its potential burden.

N.J.A.C. 8:31B-3.18 Identification of direct and indirect costs related to patient care

COMMENTERS: Barnert Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Cathedral Healthcare System, CentraState Medical Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, Jersey Shore Medical Center, JFK Medical Center (Edison), Kaden Arnone, Inc., Kimball Medical Center, KPMG Peat Marwick Management Consultants, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Inc., Newark Beth Israel Medical Center, Overlook Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Elizabeth Hospital, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, South Amboy Memorial Hospital, The Concord Group, The Hospital Center at Orange, The Medical Center at Princeton, The Valley Hospital, University of Medicine and Dentistry of New Jersey, Wayne General Hospital, West Jersey Health System

COMMENTS: **Malpractice Insurance Costs:** Some commenters are concerned that this proposal does not recognize the volatility of malpractice insurance costs, or the variation in costs between various institutions. Examples cited were malpractice costs fluctuating between hospitals due to differences in physician compensation arrangements, services, teaching activity, and types of funding such as self-insurance vs. purchased insurance.

For these reasons, many commenters believe that medical malpractice should be reconciled to actual.

One commenter requests that malpractice costs related to house staff be reclassified to the house staff and reimbursed at 110 percent of the median.

Another commenter requests that the proposed treatment of malpractice costs be included in the Department's modeling and in the application of the corridors.

Allocation Basis: Some commenters believe that accumulated cost is an inappropriate allocation statistic to use for indirect costs. They suggest that some costs vary more with admissions, some with length of stay or percent of time spent. One requested a definition of "accumulated costs." Others question the use of patient days as an allocation basis for Physicians Coverage services.

One suggests that the H-2 form allocates the residency costs to a more appropriate cost center for individual residency programs.

Many commenters disagree with the allocation of cost to outlier patients.

One commenter has interpreted the allocation of physician coverage to patient days as applying to house physicians, thus incorrectly skewing costs toward the long term care segment.

Many contend that this allocation promotes perverse incentives by allocating more indirect costs to high cost cases, which promotes longer lengths of stay in hospitals, understates the inlier standards due to exclusion of low outlier costs, penalizes hospitals with less costly cases, and provides disproportionate payment for cases that are in different DRGs but require similar indirect resources. This would result in hospitals receiving more of their own costs. They believe that these incentives are inconsistent with the Department's intent to promote efficiency. One commenter stated that neither the proposed nor the current methodology was as reasonable a basis for payment as was the methodology used in 1990.

A number of commenters have stated that the proposed allocation of indirect costs does not address differences between institutions which may affect cost such as age of physical plant, physical plant layout, support services offered to patients, and urban versus rural setting. One suggests that the Department work with the New Jersey Hospital Association to develop a more sensitive allocation statistic.

RESPONSES: Since the initiation of Chapter 83, the rate-setting methodology has separated the various cost elements into many different reimbursement treatments. The result is a patchwork which is complex, impedes efforts to project total revenues, and requires retrospective reconciliation. The proposal resolves the complexities by allocating indirect costs into an all-inclusive DRG rate. Rate reform efforts over the past five years have consistently included discussions on how to equitably allocate and reimburse indirect costs. While the Department is open to continued discussions on improvements to the allocation basis, no superior method has been presented to date.

It should be noted that a few cost centers are not recommended for inclusion in the DRG at this time. However, the Department's bias was to include as many cost centers as possible so as to reduce the need for final reconciliation, and eliminate the present incentives which hospitals have to report costs in whichever cost centers are most advantageous to their own reimbursement. The Department carefully reviewed each cost center and believes that the cost centers now recommended for inclusion represent those that can be fairly reimbursed at the current blend of standard and hospital-specific cost.

Malpractice Insurance Costs Allocation Basis: For residents, costs for malpractice insurance are included in the teaching factor. With regard to general malpractice costs, the Department believes that hospitals can affect expense levels through prudent purchase decisions and vigorous physician/quality control measures. Therefore the malpractice cost center is suitable for inclusion in the all-inclusive rate.

Allocation Basis: House physician costs are not allocated but are screened in accordance with N.J.A.C. 8:31B-3.23(i).

A number of commenters have alternative suggestions for allocating indirect costs to direct patient care centers. The Department has met numerous times with industry representatives to discuss the allocation basis. Accumulated cost was suggested by many as an appropriate statistic for a number of cost centers as it is a standard accounting practice. Accordingly, the Department used accumulated cost for the following cost centers: Administration & General, Fiscal, Malpractice Insurance, and Other General Services. The allocation statistic for residents is total number of residents as reported to the Department on the H-2 form, and verified.

A commenter erroneously assumes that costs are allocated to long term care patients. The Department has only allocated acute care costs to acute care patients.

N.J.A.C. 8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

COMMENTERS: Barnert Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Community Medical Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Holy Name Hospital, JFK Medical Center (Edison), Kaden Arnone, Inc., KPMG Peat Marwick Management Consultants, Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, St. Elizabeth Hospital, St. Francis Medical Center, St. Peter's Medical Center, The Concord Group, The Medical Center of Ocean County, The Medical Center at Princeton, Wayne General Hospital

COMMENTS: Many commenters suggest the elimination of the SNF adjustment through the mark-up factor, and inclusion of SNF costs at 100 percent of actual. Some of the commenters note that this elimination is particularly important with the new proposal, because allocation of indirect costs to the direct cost areas will result in significantly higher SNF carve-outs.

Several commenters state that the rules fail to provide a consistent methodology for calculating the SNF exclusion, both for rates and final reconciliation.

RESPONSE: The Department agrees with these comments, and has eliminated N.J.A.C. 8:31B-3.19(c)3 on adoption, thus restoring SNF dollars into the hospital's cost per case.

N.J.A.C. 8:31B-3.20 Preliminary Cost Base

COMMENTER: The Concord Group

COMMENT: The definition of preliminary cost base is not consistent with that used in N.J.A.C. 8:31B-1.2.

RESPONSE: The only change in this rule is the citation of N.J.A.C. 8:31B-1.2, Definitions. This citation is appropriate here because both rules note that the Preliminary Cost Base is the reasonable cost of the financial elements in the current cost base, as adjusted for update factors and the capital facilities allowance.

N.J.A.C. 8:31B-3.22 Standard costs per case

COMMENTERS: Besler & Company, Inc., Cathedral Healthcare System, Hackettstown Community Hospital, Holy Name Hospital, Hospital Center at Orange, John F. Kennedy Medical Center (Edison), Kaden Arnone, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Muhlenberg Regional Medical Center, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, Peat Marwick, Princeton Medical Center, St. Barnabas Medical Center, St. Elizabeth Hospital, St. Francis Community Health Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, The Association of Family

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Practice Residency Directors of New Jersey, University Health Systems, West Jersey Health System

COMMENTS: **GME Methodology:** University Health Systems states that, although there are technical aspects of the rate structure that need to be resolved, they are not cause for postponing the 1992 proposals. Another commenter states that the revised methodology for calculating the GME factors is "clearly more equitable than the former methodology," and also supports the Department's efforts in this regard.

Other commenters strongly support the number of residents rather than programs to determine the adjustment factor.

The Department should make available to the industry and other interested parties all the inpatient and outpatient data used in the GME regression analysis. This would help hospitals to verify and duplicate the Department's calculations.

Allocation of teaching costs to all DRGs provide for the standards to be adjusted for teaching in selected DRGs prior to the cost screening process. This imbalance between costs and standard adjustments results in incentive/disincentive by DRG that are meaningless.

The Department's analysis of teaching costs indicates that a minimum number of residents are required before a teaching hospital's costs exceed that of non-teaching. Therefore the methodology assigns no teaching factor until the minimum threshold is reached. A hospital not meeting the threshold does not receive reimbursement for its fixed costs. The methodology ignores the fact that there are "hard" costs associated with having residents, for example, salary and fringes. Non-teaching hospitals are not affected since they use house physicians whose costs are excluded from the standards.

The proposed methodology shifts millions of dollars (over $22 million) from teaching hospitals to non-teaching hospitals. This is due to a flaw in the methodology which arbitrarily shifts reimbursement away from teaching institutions.

The proposed GME reimbursement methodology is more complicated than that of Medicare. The Department should simplify its methodology or adopt Medicare's Prospective Payment System of reimbursement.

The weighting of subspecialties may present inequities that need to be addressed.

Exclude residents salaries from analysis and handle them separately. An overall factor applied to costs excluding resident salaries would simplify the system and may correct many of the flaws of this methodology. This is the model used by the Medicare reimbursement system.

Eliminate minimum number of one resident/5000 cases requirement because it impacts unfairly on large hospitals.

Eliminate the fixed rate for general surgery. Reimbursement should be based on the number of residents as is the case for other programs such as obstetrics, pediatrics, and medicine. Hospitals with more than five surgical specialty residents are reimbursed an additional amount for each resident/5000 case-mix adjustment discharges. A similar adjustment factor should be used for all surgery residents in excess of the number five so as to permit hospitals to receive the necessary fixed reimbursement required to pay the resident salaries.

Application of the Resident Adjustment Factor to both the standard and the hospital specific portion of the rates is wrong and inconsistent with rules. "The factors will only be applied to the standard portion of the rates." The center has replaced transferred residents with house physicians and no rate adjustment vehicle is available to obtain the necessary additional reimbursement.

An imbalance exists in the cost screening on a DRG basis. Since the DRGs to which fixed amount costs were allocated and the DRGs which were neutralized in the standard calculation are different, any DRG specific comparison of costs and standard is incorrect.

The use of regression analysis to adjust for resident salaries is illogical since this amount is clearly identifiable. The methodology is complicated employing principles of regression analysis only understood by those with advanced degrees in mathematics and economics.

The regression results indicate that in several specialties, the fixed costs of a GME program are not sufficient to require any adjustment to the neutralized standards used to determine non-teaching hospital reimbursement. This is due to the imbalance of inputs used in the regression equation. Due to the allocation bases used for RSD (accumulated costs) and PHY (patient days), the GME costs were allocated to all DRGs proportionately.

Given the budget-neutral nature of the teaching factors and the absolute existence of GME costs, the adjustments for residents above the threshold is higher than the actual incremental costs, or that the excess dollars are flowing to the non-teaching hospitals.

The resident/5000 impacts negatively on large hospitals. Hospitals with family practice programs not meeting the threshold are receiving a nominal teaching adjustment of 1.0025, but this is being offset by Resident Adjustment Factor. The Department should revise the methodology so that the equation yields factors above one for all teaching hospitals.

The teaching hospitals which are helped by the proposed methodology are generally those with extremely high levels of teaching and/or outlier costs. These results indicate that the methodology requires further refinement.

Refine the GME methodology by first developing teaching and non-teaching standards by DRG, and then adjusting for the level of teaching intensity. This methodology would be more understandable and result in less formalistic inequities.

Negative GME cap adjustments have been applied to both DRG standard and hospital component costs. This is inconsistent with the treatment of physician costs for non-teaching hospitals. Some teaching hospitals have negative cap adjustments for House Staff while several non-teaching hospitals have approved House Staff coverage costs of over $1 million. Total exclusion of these costs unfairly penalizes hospitals merely due to the determination of cost classifications.

A large number of same day surgery cases have been included in the database under the same day classification. This results in reduced medical teaching factors for several hospitals and may have been the determining factor in select cases where hospitals did not qualify for teaching consideration.

If resultant medical teaching factors adversely affected some hospitals or the qualification status of other hospital's, it is perceived that there may have been some classification oversights on behalf of the hospitals, in terms appropriately and properly categorizing the aforementioned cares.

Six non-teaching hospitals, which did not previously meet the peer group criteria, have been included in the development of teaching costs.

It is assumed that there is a higher level of costs associated with major and minor teaching hospitals with a full complement of teaching programs as compared to single, stand-alone programs. Therefore, inclusion of these six teaching hospitals in the calculation has improperly reduced the costs associated with teaching.

The application of the Resident Adjustment Factor shifts large amounts of money out of hospitals who reduce their number of residents. These hospitals will need to incur additional physician costs to perform services previously provided by residents. The Department should develop a mechanism for hospitals to be able to seek reimbursement for these additional costs without rejecting rates.

According to the Department's proposal, Family Practice programs have been lumped with internal medicine for funding purposes. As a result, the reimbursement is being calculated on the basis of only their inpatient internal medicine activity. This grossly underestimates the activity of family practice residents and results in a major negative financial impact on the State's family practice residency programs. Based upon the requirements for family practice residency programs, no more than one-third of their entire training can be for internal medicine inpatient service. Family practice residents are also required to take care of patients in surgery, pediatrics and OB/GYN. A large proportion of their time is also spent on ambulatory care.

Family practice education should be funded according to a formula that takes into account a broad base of inpatient clinical activities performed by family practice residents.

Abt Associates was contracted by the New Jersey Hospital Association to review the Department's GME methodology. In its conclusions and recommendations, the consultant requested that the following questions be addressed by the Department:

1. What proportion of total variation did each model explain? Did the four models (describing the four types of teaching programs) perform equally well or did they vary in their explanatory abilities?

2. How significant were the coefficients on the resident/case variables and on the intercept terms?

3. What are the means of the four dependent variables (relative cost per case measures)? What is their variance? Is the variation systematically related to other hospital characteristics?

4. What happens if different observations entering into the regression are weighted (by some size measure)? The current model treats a hospital cost ratio based on 100 observations with the same importance as one based on 10,000 observations.

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5. Are there data outliers that affect the results? If select "unusual" hospitals were removed for the analysis, would the resulting regression equations change significantly?

6. How different is the model if it is estimated only on relative direct patient care cost, that is, if resident salaries are removed from the cost measure? Total resident salaries are allocated to each DRG on the basis of that DRG's contribution to total costs rather than on the number of residents in the relevant training program. For example, assuming all residents receive approximately equivalent salaries, if 80 percent of residents are in internal medicine, but only 40 percent of a hospital's total costs are attributable to medical DRG's only half of the internal medicine resident salaries are assigned to the medical DRGs. This allocation mechanism distorts the measure of total costs attributable to particular teaching programs.

7. What happens if the four residency program models are collapsed into a single model? Differential effects of different types of programs could still be estimated separately through the use of multiple resident/case measures and dummy variables to create separate intercepts. However, in this specification, the marginal effects of each type of program are better isolated.

8. Do the results change if residents are deflated by a simple case count rather than a case count inflated by the hospital-wide CMI?

9. How do the results change if the model measures the effect of residents per case on absolute cost per case rather than on relative cost per case?

10. What happens if all hospitals (both teaching and non-teaching) are included in the model?

11. What pricing structure is implied from a log model rather than the linear model employed by the State?

12. What is the estimated intercept if alternative specifications of the residents per 5000 case variable are employed? There are several reasons why it may be incorrect to conclude that a minimum number of residents per 5000 cases is required before incurring any teaching program costs. One econometric reason concerns the linear specification of the model. It can be shown that if the true relationship is quadratic and a linear specification is estimated, the estimate of the intercept is biased downward.

13. In general, how sensitive are the results to the particular specification of the model?

14. As noted above, the Federal model includes several other explanatory variables, including hospital and city size. Various studies have shown these variables to be correlated with teaching intensity. Omitting these variables is therefore likely to lead to an overestimate of the isolated effect of teaching status on hospital costs (which might lead to overpayment of those hospitals with the highest residents per case ratios). On the other hand, if the objective of the system is to match revenues to costs incurred, then New Jersey's simpler specification will correctly account for those costs since neither New Jersey nor the Federal government accounts for hospitals or city size in their payment formulas.

Labor Market Areas: Several commenters state that four hospitals in a labor market area (LMA) are too few to provide a statistically sound representation of the relative hourly wage index for an IMA, and suggests a minimum of six hospitals.

One commenter, The Concord Group, recommends moving individual hospitals, rather than the entire labor market area, if the number of hospitals decreases and reclassification is necessary, and if the hospitals are far apart.

RESPONSES: The Department has made available to interested parties the documentation involving the GME regression analysis. Indeed, diskettes with the regression data and results have been furnished to Abt researchers hired by the New Jersey Hospital Association to replicate the Department's findings. Additionally the Department has supplied diskettes to other consultants and hospitals who have requested the data. The Department plans to distribute hospital-specific data to each hospital for verification.

The Department recognizes imperfections in the cost allocation statistics employed for related faculty and other teaching costs. The Department hopes to investigate further this issue for 1993 rate setting. Any imperfections are due to unavailable statistics.

The Department has modified the proposed method by including resident salaries and fringes in the calculation of neutralization and deneutralization factors thereby recognizing such "hard" costs. Each hospital will receive an add-on for these costs regardless of the size of its teaching program.

Due to the modifications made to the proposal, dollars are not shifted away from teaching hospitals.

Beginning in 1989 hospital-specific teaching factors were identified, intended to estimate impact of teaching in order to establish standards of patient care costs by DRG. This continuous adjustment approach was modeled after the Medicare prospective Payment System (PPS). However, the Department's methodology differs from PPS for good reason. Payment for GME is based on the number of residents per case-mix adjusted discharges and type of program. This methodology better predicts and explains costs associated with teaching than does the Medicare method.

The Department would like to continue enhancing the methodology in the future subject to its availability of resources.

The proposed methodological modifications directly address this issue by using resident salary and compensation to develop neutralization and deneutralization factors.

The threshold has been eliminated by the inclusion of resident compensation in the calculation of teaching factors.

The model fails to show a relationship between general surgery resident density and costs, despite repeated attempts at modeling. However, the proposed modifications directly account for the compensation to each hospital's number of general surgery residents.

The rule does not state that the Resident Adjustment Factor will be applied to the standard. The factor referred to is the deneutralization factor and not the Resident Adjustment Factor.

The Department intends to further study the issue of House Staff for next year.

The Department recognizes imperfections in the cost allocation statistics employed for resident salary. The change to the methodology eliminates this salary for resident salaries and related faculty and other teaching costs. The Department hopes to investigate further this issue for 1993 rate setting. The imperfections are due to the current unavailability of necessary statistics. The faculty salaries are allocated to cost centers.

Regression is a general statistical technique used to determine relationship between a dependent variable and a set of other independent or predictable variables. It is viewed as a descriptive tool by which relationships are evaluated for decision-making.

The use of regression analysis as a method for estimation, as well as hypothesis testing, is widely accepted. It is therefore not illogical to employ such statistical techniques when estimation and predictability are involved. It is a gross misstatement to suggest otherwise. Due to variations in cost reporting by hospitals, this technique may be necessary to avoid wide swings in data reporting. It should also be noted that one of these commenters suggests using the Medicare method to adjust hospital rates for teaching costs. The Medicare methodology uses regression to determine the adjustment factor. While the Department's methodology no longer uses regression analysis for resident salaries, it is a valuable tool for examining other components of teaching costs.

The Department plans to look further into the issue of the allocation statistics for residents and physicians for next year's rate setting. For 1992, physician salaries are all paid at a standard rate.

The commenter's concerns should be resolved upon learning that the entire inpatient cost base is included in either standard patient care DRG rate and/or the teaching neutralization factors.

The modifications are intended to directly address these concerns.

The proposed methodological changes subsequent to initial publication, with respect to trim points, represent such a refinement to better account for the interrelationship of teachingness and outliers. It is, however, logical to expect that the largest rate adjustments will go to hospitals with extremely high levels of teaching. This continues to be the case with the revised methodology.

The logical extension of this comment would be reversion to the previous peer group methodology which has been generally rejected by all parties as being inequitable.

The Department hopes to further research the issue of House Staff compensation in relationship to residency programs for 1993; however, it believes the proposal is superior to the current system.

Prior to 1992, a large number of same day surgery cases were included in the database under the same day classification. However, for 1992 rate-setting purposes, an edit was implemented which will only allow the classification of surgical DRGs into same day surgery. This edit therefore, prevents the classification of a same day (medical) case into a same day (surgical) DRG. Given the opportunity to correct database submissions, the affected hospitals should be ultimately responsible for any adverse

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impacts resulting from failure to appropriately and properly categorize these cases.

These hospitals are included as teaching hospitals only for the particular areas where programs are present. All other areas remain classified as non-teaching. This represents a much more accurate approach to recognition of teaching than the previous peer group approach.

The Department intends to further study the issue of House Staff for next year's rate setting. It is not inappropriate for hospitals' rates to be decreased when they have fewer residents.

In the Department's analysis of costs related to programs, no significant inpatient costs were identified for family practice. However, the Department, in order to encourage family practice as a source of primary care, provides for a family practice add-on factor using internal medicine statistics.

The teaching factors are based on inpatient costs only. The outpatient costs of resident activity should be reflected in hospitals' outpatient charge structures.

The information requested by the Abt researchers is as follows:

1. The proportion of total cost variation explained, that is r2, was as follows:

Internal Medicine = .775; Surgery = .6901; Pediatrics = .4704 and OB/GYN = .2799. These results are far better than any other models attempted or used in the past by New Jersey or presently used by Medicare.

2. All the regression coefficients were significant at .01 level.

3. The means for the four dependent variables and their coefficient of variation are as follows:

Medicine: mean = 1.1659	CV = 9.23 percent
Surgery: mean = 1.1850	CV = 9.51 percent
Pediatrics: mean = 1.2631	CV = 12.74 percent
OB/GYN: mean = 1.1214	CV = 9.09 percent

As of this date, no systematic relationship has been found. The Department plans further analysis in 1993.

4. The Department did not test this hypothesis due to time constraints.

5. Data outliers which will significantly impact on Pediatrics were eliminated (Newark Beth Israel and Robert Wood Johnson). Similarly, University Hospital was also removed from OB/GYN so as not to dramatically impact on the results. Inclusion of these outliers worsened the coefficient of determination, that is, r2.

6. The coefficients of determination as represented by the r2 improve. On the issue of allocation based on the number of residents in the relevant training program, the Department did not adopt the model suggested.

7. This was not modeled and would not appear to improve the results since the theory underlying the regression is that different types of teaching programs result in different cost behaviors. The Department's results clearly support this notion.

8. It is plausible that the results will change. However, it does not appear that unweighted cases would adequately measure different teaching hospitals' levels of volume. For example, a simple hernia procedure versus a complex coronary bypass will result in different levels of stay and resource consumption.

9. The Department did not model the absolute costs per case for each resident because use of the relative cost is more consistent with the goals of the teaching methodology, and it is appropriate that the payment for residents reflect the proportional costs of the cases treated by these residents.

10. Inclusion of non-teaching hospitals would materially distort the relationship between cost and teachingness. Specifically, a non-linear form artificially appears when a majority of non-teaching observations are included.

11. The analysis and data do not show a non-linear relationship of best fit. For example, the coefficient of determination is reduced by a non-linear model.

12. Data and analysis have been provided for alternative modeling not considered by the current study. The Department would review any superior alternative model presented.

13. In general the models performed well under various sensitivity tests. Again, the Department will gladly review other alternative sensitivity models.

14. As noted in the comment, independent variables not considered in the payment methodology have not been included regardless of their covariance with teaching and costs. The Department believes that its model is superior to that used by the Federal government which measures the cost impact of such factors but does not include them in payment. Hospital size was related to both teaching and costs but was not statistically significant.

Labor Market Area: No changes are being proposed for 1992 in the minimum number of hospitals to comprise a labor market area. The proposal addresses what will happen if the number of hospitals in a LMA drops below the current level.

The DOH disagrees with the Concord Group's suggestion that individual hospitals be moved as opposed to merger of the entire labor market area. Their suggestion could result in strange splits of counties or even cities. In response to a Petition for Rulemaking earlier this year, (See 23 N.J.R. 2545(e)) the Commissioner agreed to review the entire labor market area designation in 1992.

N.J.A.C. 8:31B-3.23 Reasonable cost per case

COMMENTERS: Alliance Collection Agency, Inc., Barnert Hospital, Bayhsore Community Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Beth Israel Hospital (Passaic), Blue Cross and Blue Shield of New Jersey, Cathedral Healthcare System, Cohen, Shapiro, Polisher, Shiekman, and Cohen (representing Bayshore Community Hospital, Chilton Memorial Hospital, Hackettstown Community Hospital, Helene Fuld Medical Center, Kimball Medical Center, Medical Center of Ocean County, Monmouth Medical Center, Newark Beth Israel Medical Center, Riverview Medical Center, United Hospitals Medical Center, and West Jersey Health System), CentraState Medical Center, Community Medical Center, Dover General Hospital & Medical Center, Elizabeth General Medical Center, Franciscan Health System of New Jersey, Inc., Hackettstown Community Hospital, Hayt, Hayt and Landau, Healthcare Financial Management Association, Helene Fuld Medical Center, Holy Name Hospital, University Health Systems (representing Hackensack Medical Center, Helene Fuld Medical Center, Jersey Shore Medical Center, Kennedy Memorial Hospitals-University Medical Center, Robert Wood Johnson University Hospital and UMDNJ-University Hospital), JFK Medical Center (Edison), Kaden Arnone, Inc., Kimball Medical Center, KPMG Peat Marwick Management Consultants, Mercer Medical Center, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Inc., Muhlenberg Regional Medical Center, Inc., Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, Pascack Valley Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Elizabeth Hospital, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, South Amboy Memorial Hospital, The Concord Group, The Hospital Center at Orange, The Medical Center at Princeton, The Valley Hospital, Theodosia A. Tamborlane, P.C., Counselors at Law, United Hospitals Medical Center, University Health Systems, Wallkill Valley Hospital and Health Centers, Wayne General Hospital, West Jersey Health System

The proposed changes in this rule cover a variety of issues addressed by many commenters. To assist the reader, both comments and responses have been categorized under the following headings: personnel health allowance, outpatient payment, physician costs not associated with education, outside collection costs, medical insurance, inlier/outlier status (trim points), and amount of standard in rates.

COMMENTS **Personnel Health Allowance:** Commenters believe the proposal to utilize the base-year allowance inflated will result in underpayment for personnel health allowances. They cite several reasons:

1. Many changes have occurred since the base year over which hospitals have little control and will not be captured using base year data. These include increases in the number of full-time equivalents between 1988 and 1992; additional services; volume increases; Medicare, Blue Cross, CHAMPUS, and Medicaid cost shifts; payer factor adjustments; increased levels of sickness and injury of employees and their dependents; and the 1990 voluntary rate settlements.

2. One commenter argues that even though the personnel health allowance has remained relatively constant since 1988, regulatory changes may have forced down approved revenues. Therefore the 1988 relationship of cost versus approved revenue may no longer be appropriate.

3. Several commenters emphasize the distance from the base year, stating that personnel health allowances incurred in 1988 were based on a 1982 cost base that does not reflect 1992 costs.

4. Some commenters add that many hospitals did not properly classify their personnel health allowances in the base year, but reported them instead under various other allowance classifications.

5. The increase in outpatient charges since the base year 1988, as a result of recent regulatory requirements, has caused hospitals to ex-

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perience large increases in outpatient employee write-offs to the personnel health allowance in 1992 compared to 1988. Similar increases have occurred on the inpatient side, as a result of large adjustments to the mark-up factor.

6. Several commenters believe that the medical insurance proxy has historically been low and remains understated for 1992. This perceived understatement, combined with the proposed changes in the personnel health allowance, causes the commenters to fear significant reimbursement shortfalls in 1992.

Several hospitals asserted that they have made management decisions based on existing personnel health allowance rules, and have had insufficient notice to alter these practices. In addition, commenters contend that the personnel health allowance provision has provided significant cost savings to both the hospital and the health care system. Estimates of the negative impact of the proposed change were cited by several hospitals, with losses ranging from $350 thousand to $4.0 million.

Because of the cost savings, one commenter suggests that hospitals be permitted to self-insure not only their own employees but also those of other hospitals, thereby reducing administrative add-on and profit margin. Others have suggested several adjustments to the allowance as proposed to resolve the perceived problems. They include:

1. Continuation of the allowance as a pass-through;

2. Use of 1991 data for the calculations, or, at a minimum, a 1990 base year; one other recommendation was that the impact of this element be included in the Department's modeling for the 1992 rates.

3. Elimination of uncompensated care and Medicaid dollars; one commenter recommends that uncompensated care and Medicaid dollars should be eliminated from the personnel health allowance calculation to avoid undercollections.

4. Monitoring of changes in medical insurance coverage; one commenter suggests that the Department proposed the change because of a concern that hospitals have sought to maximize reimbursement by increasing the self-insured portion while maintaining base year medical insurance costs. To address this concern, this commenter recommends that the Department monitor changes in individual hospitals' medical insurance coverage between the base and rate years, and later adjust to offset any changes at final reconciliation.

5. Change in calculation basis; one commenter requests clarification of "non-acute care patient revenue," and suggests using statutory revenue rather than charges as the basis for calculating the allowance.

RESPONSES **Personnel Health Allowance:** The concerns expressed all center around the problems of using 1988 data and indicate the changes in management decisions made as a result of then existing rules. The Department will recommend use of 1990 data, the most recent available data, in calculating the personnel health allowance percentage and medical insurance components. Those who mentioned that the 1988 rates were based on 1982 data should note that in 1988 this was true. However, in 1991 when the Department used 1988 data, it used actual 1988 data. The point becomes moot now that 1990 data are to be used.

The use of 1990 data is the only change being made in the calculation of the personnel health allowance. The Department is not recommending any changes to the components used in the calculation.

It is also important to note that payment for increases in the amount of self-insurance have not been offset by decreases in payment for medical insurance. Some hospitals have been receiving more than their full financial elements because personnel health has been reconciled to actual cost while medical insurance continued to be paid at base year costs inflated. The use of more recent data for both of these elements will address this problem.

COMMENTS **Outpatient Payment:** Another commenter recommends deletion of the cross-subsidization penalty provisions, and a change in the current method of allocating indirect costs to outpatient servicing areas that will result in a reduction of the allocated overhead costs. Some suggest waiving the penalty for cross-subsidization for both the clinic and emergency room. One suggests a waiver for the clinic area only. A technical advisory group should be formed to develop this methodology.

Another commenter states that step-downs of the indirects to the direct cost centers makes it more difficult to calculate the cost center incentives/disincentives and potential cross-subsidization penalties.

One commenter has questioned how to calculate rates for outpatients without rates for 1992, since without a final reconciliation there will not be a cost to charge ratio calculated.

RESPONSES **Outpatient Payment:**

(1) No change is being proposed to the cross-subsidization section.

(2) Charges for outpatients without rates should be set such that the hospital receives the appropriate amount of revenue from the service, without either subsidizing or being subsidized by other sections of the hospital. See also responses related to this issue in N.J.A.C. 8:31B-3.71.

COMMENTS **Physician Costs Not Associated with Education:** One commenter recommends that all costs—physician, non-physician, salary and others should be screened based upon physician FTE's in order to be consistent.

Another commenter suggests that the proposed wide ranges in cost makes the unit costs screened questionable. To ameliorate this problem, one method would be to base these costs on patient days.

A commenter asked why the proposed elimination of peer groups for house staff was not reflected in the 1992 rate packages issued to hospitals.

RESPONSE **Physician Costs Not Associated with Education:** Physician costs not associated with education are not being allocated in order to equalize inner city hospitals with other hospitals in which most patients have their own attending physician. This treatment is not recommended for other cost centers because few vary so dramatically between urban and other hospitals as the house staff cost center. Additionally, use of hospital-specific reimbursement methodologies detracts for the benefits to be gained from use of statewide standards.

Rates were calculated with using peer groups. This reference was inadvertently left out of the Regulatory proposal and has been included for final adoption.

As mentioned in other responses, specific suggestions regarding alternative allocations will be fully examined in 1992 for 1993 implementation.

COMMENTS **Outside Collection Costs:** A number of attorneys and collection agencies request clarification of several points related to outside collection costs: 1) the way in which the Department will judge reasonableness in determining outside collection costs that will be covered under Chapter 83; 2) whether the Department will be scrutinizing costs of all attorneys or simply "affiliated attorneys;" and 3) the types of payment the Department is seeking to prohibit. One attorney asserts that the Department is attempting to regulate attorneys' fees through this rule. One commenter called this rule vague because it does not include a definition of affiliated collection agency. The comment suggests alternative language which would remove from the review process collection agencies which are jointly owned by a number of hospitals or which defines costs as reasonable if they do not exceed the fair market value of the services provided.

RESPONSES **Outside Collection Costs:** The reasonableness of costs is a question to be determined by the Hospital Rate Setting Commission. The Department will be monitoring all outside collection costs for reasonableness in accordance with N.J.A.C. 8:31B-4.25. It will recommend to the Commission payment for only those costs deemed reasonable, including payments to collection agencies, attorneys, and other outside vendors. Payment will also be restricted to collections of bad debts incurred by hospitals that comply with collection steps in existing rules.

Due to the potential for appearance of impropriety, particular attention will be paid to affiliated entities. Affiliated entities include those in which hospitals have a financial or organizational interest, or those which have overlapping employees or boards. An example of the types of payments that the proposal seeks to prohibit are management fees or management payments.

Regulating the reasonableness of a hospital's costs for a financial element is not equivalent to regulating the hospital's relationship with its vendor. The Department is legislatively charged with regulating the reasonableness of hospital charges. Hospitals are free to contract with any vendor including attorneys whose fees are in excess of reasonable hospital costs as determined by the Commission.

COMMENTS **Medical Insurance:** Blue Cross and Blue Shield of New Jersey recommend that medical insurance be reimbursed on a volume-variable basis since it is part of the hospital's mark-up factor and not reconciled.

RESPONSES **Medical Insurance:** In answer to the question that was raised about volume variability of medical insurance, the Department wishes to clarify that this component is volume variable.

COMMENTS **Inlier/Outlier Status (Trim Points):** Commenters representing hospitals and payers suggest that the proposed reimbursement structure discourages efficiency and length of stay reductions because payment for high outliers is significantly higher than in the current system. Citing N.J.H.A. analysis, one commenter states that the high outlier average costs per case will increase by 14 percent.

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One commenter mentions the statement in the Economic Impact section, that the proposed changes will provide more dollars to efficient hospitals, and contends that efficient hospitals will potentially be harmed if the proposal is implemented.

Two suggestions offered to reduce the disproportionate cost to high outliers include 1) widen the trim points (see below); and 2) allocate indirect costs to outliers based on incremental costs as opposed to accumulated costs.

Based on a consultant study, one commenter suggested that the problem with the indirect allocation methodology occurs when it is combined with the existing outlier policy which, because of discontinuities in the payment schedule, rewards hospitals at certain key days in their stays. This disincentive does not occur in the Medicare system. Similarly, other commenters agree that, because inclusion of indirects in the DRG rates removes incentives to lower the length of stay, trim points should be widened, for example, set at three rather than two standard deviations from the mean to encourage length of stay reduction without penalizing hospitals whose length of stay drops below the current trim points. Additional alternatives offered were to continue basing outlier per diems only on direct patient care costs or to increase the level of costs subject to screening.

RESPONSES **Inlier/Outlier Status (Trim Points):** With the widening of the trim points (see adoption of amendment to N.J.A.C. 8:31B-5.3 published elsewhere in this issue of the New Jersey Register), there will be significantly fewer outlier cases and more of the cost will be associated with the inlier cases and screened by the standard.

In response to comments from numerous hospital and payer representatives that the new rate structure encourages long lengths of stay and discourages attempts to decrease the length of stay, and to the recommendations of the Governor's Commission on Health Care Costs for increased use of standards in the calculations of hospital payment rates, the Department has changed the high length of stay trim point from two standard deviations to three standard deviations above the average length of stay, affecting almost every DRG. This change will reclassify approximately one percent of the patient population from high outliers to inliers. The effect of this change will be to increase the length of time a patient must be hospitalized before the hospital will receive payments based on costs, as is the case with patients above the high trim point (high outliers). For patients below the high trim point (inliers), the hospital will receive payment based on a blend of costs and standard. This change will serve to increase the number of inliers and decrease the number of high outliers in each DRG. Since the additional inlier patients are all longer length of stay patients than the present inlier patients, the average cost, and, therefore the DRG rates, for inliers will increase as a result of this change. Conversely, since the number of patients who are high outliers will decrease, the aggregate costs going to high outliers will decrease. The change will have no effect on the individual patients. Hospital reimbursement for inlier patients will increase. This increase will be offset by decreasing reimbursement for outlier patients. Total Statewide hospital reimbursement should remain unchanged.

No change is proposed to the low trim point due to concerns that if the full amounts borne by inliers were also borne by low resource outliers it would result in an unfair bill to these patients. It should also be noted that, except at the high and low trim points where payers benefit through a lower payment as a result of decreasing length of stay, hospitals realize the savings through decreased length of stay for all other patients.

COMMENTS **Amount of Standard in Rates:** Commenters have indicated that the current system needs further refinements if payments for all hospitals are to be based increasingly on standards. Refinements recommended include using better measures of case mix and costs so that better standards and coefficients of variation can be created. One suggests that the Yale Refined Grouper will more appropriately achieve the Department's goal of a higher percent standard without artificially adjusting the system. Another specifically recommends the 1988 standard length of stay for each DRG and maintaining the standard at 100 percent for the four cost centers now paid at 100 percent standard.

To avoid what is termed as "the roller coaster effect," that is, significant shifts in payment as the percent of standard increases between 1992 and 1994, several commenters support a rate calculation based on 100 percent standard for 1992. One also recommends that this be done in combination with "a –1 percent loss of revenue corridors". To promote stability for hospitals who would lose in 1992 but gain in 1993 and 1994, one commenter suggests that these projected losses for 1992 be eliminated.

One commenter believes that the proposal to increase the percent standard by 30 percent is greater than that recommended by the Governor's Commission on Health Care Costs. Another questions the considerations used to determine the 30 percent adjustment to standard.

Several commenters believe that the previous system of payment of four indirect cost centers at 100 percent standard provided a higher incentive than the proposed system. One suggests that indirect costs for 1992 be calculated as follows:

1. Screen indirects apart from directs, and do not allocate them up front;
2. Reimburse indirects at 100 percent standard;
3. Use a measurement such as patient days or severity-adjusted admissions as the allocation statistic;
4. Add the unit cost back to the direct patient care rate to produce the all-inclusive rate.

Another suggests adding the indirect reimbursement amount, as calculated for the 1991 rates, to the DRG rate, thus continuing the indirect reimbursement at 100 percent standard. A variation of this suggestion was that the blended rate also include a case-mix adustment.

The commenter provided two differing interpretations of the Summary statement that "the percent of standard in each DRG should be increased by 30 percent in 1992."

(assume the Coefficient of Variation is .4)

Per Summary statement: Degree of Confidence =
$(1 - .4) + (.4 + 30 \text{ percent}) = .72$

Per Proposed rule: Degree of Confidence =
$(1 - .4) + .3 = .90$

RESPONSES **Amount of Standard in Rates:** While it is true that in 1991, four indirect cost centers were reimbursed at 100 percent standard, these accounted for approximately 36 percent of total costs. Direct patient care costs which make up approximately 60 percent of total costs were reimbursed at approximately 40 percent standard. In the adopted rule almost all (direct and indirect) costs will be paid at 65 percent standard, thus providing an overall increase. This approach is consistent with recommendations of the Governor's Commission on Health Care Costs in Section #CR44, "The use of 'standards' (statewide averages) in calculating rates should be increased". An effective increase of approximately five percent of total is consistent with this recommendation, and the phase-in of a 10 percent increase each year will provide a period during which hospitals can adjust their management practices to prepare for additional standard payment.

The Department agrees that a more acuity/severity sensitive grouping of DRGs should be considered. The evaluation of Yale as well as other similar Groupers will occur in 1992. The Department is not proposing greater movement to standard in order to eliminate the "roller coaster." As new GROUPERs are considered for future rate years, the implementation of these GROUPERs may mute the impact of increasing the amount of standard. For example, hospitals with costs below the standard using GROUPER 8.0 may not continue to be so if a more acuity-sensitive GROUPER is used in future years.

N.J.A.C. 8:31B-3.24 Off-site primary care

COMMENTERS: Besler & Company, Inc., Elizabeth General Medical Center, Hackettstown Community Hospital

COMMENTS: Clarification is requested concerning whether demonstration projects apply to hospitals who already have off-site outpatient agreements.

RESPONSES: All free-standing hospital outpatient facilities are within the scope of this rule. However, only those demonstration projects which conform to guidelines set forth by the Commissioner will receive consideration. The guidelines relate to new rather than preexisting services, the need for those services, and their accessibility, affordability, and availability to clients.

N.J.A.C. 8:31B-3.26 Update factors

COMMENTERS: Barnert Hospital, Bayshore Community Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Beth Israel Hospital (Passaic), Blue Cross and Blue Shield of New Jersey, Cathedral Healthcare System, CentraState Medical Center, Community Medical Center, Deborah Heart and Lung Center, Department of the Public Advocate, Division of Rate Counsel, Dover General Hospital & Medical Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, Jersey Shore Medical Center, JFK Medical Center (Edison), Kennedy Memorial Hospitals University Medical Center, Kimball

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Medical Center, Kaden Arnone, Inc., KPMG Peat Marwick Management Consultants, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Inc., Muhlenberg Regional Medical Center, Inc., Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, Pascack Valley Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Elizabeth Hospital, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, South Amboy Memorial Hospital, The Concord Group, The Hospital Center at Orange, The Medical Center of Ocean County, The Valley Hospital, United Hospitals Medical Center, University of Medicine and Dentistry of New Jersey, Wallkill Valley Hospital and Health Centers, Wayne General Hospital, West Jersey Health System

COMMENTS: The array of comments related to this rule have been organized under the following headings: general issues, non-labor, economic factor panel, panel determinations, and specific update factors. Responses are similarly grouped.

COMMENTS: **General Issues:** Commenters stated that the language in this section is generally vague, noting, for example, that it does not differentiate between labor and non-labor portions of the economic factor, while N.J.A.C. 8:31B-3.71 states that non-labor will be adjusted to actual. Answers to many of the questions requiring clarification should be put into rule, according to several commenters.

Most commenters seem to agree that the current method has been a problem, largely because of the significant misstatements of the projected factor. The NJHA and others state that they would support the proposal for setting the economic factor if the economic factor to be used were added to the three-year compounded economic factor currently in 1991 rates, and not reduced by the Department's restatement of prior years' adjustments.

Another suggestion given is that the Department implement thresholds limiting the variance between the prospective economic factor and the actual economic factor before a retroactive adjustment is made.

Commenters assert that there is a conflict between how the Department has proposed the methodology and how the Department has applied the methodology in 1992 conditional rates. The Department's calculations of the economic factor for 1992 restate the prior years' proxies using the most recent data available. One commenter requests that hospitals be held harmless should the panel determine a factor less than the one issued with the 1992 rate package.

One commenter specifies that the economic rate should be set three months before the beginning of the rate year.

One commenter suggests that the Department consider not rebasing at all, noting that the Medicare Prospective Payment System historically has been the only payment system to truly contain hospital costs, principally because the base year has been consistent.

Several commenters ask why the reconciliation provisions (N.J.A.C. 8:31B-3.71(c)) mention the economic factor in the section of the elements requiring rate year experience.

Several commenters believe that one section of the existing rules is not included in the proposal, yet its deletion is not indicated either. The section in question is that pertaining to adjustments for hospitals experiencing extraordinary changes in financial environments (N.J.A.C. 8:31B-3.26(h)).

RESPONSES: **General Issues:** The economic factor is a complex calculation used to measure the increase in the cost of goods and services between the base year and the rate year. Many of the comments suggest numerous technical ways of calculating the factor. As currently written, the rules call for a post rate year reconciliation of the projected factor with actual inflation measurements. Problems have arisen with the economic factor due to differences in the amount of increase between the projected amounts used to set rates and the actual increase in costs of goods and services used by hospitals. Because of these differences, either hospitals or insurers have had to pay back money in later years. To address this problem, the Department is proposing that for rate year 1992 forward, an inflation factor be established prior to the beginning of the rate year, and that this factor not be changed regardless of actual increases or decreases.

There are two components, labor and non-labor, for which projections have been made. The labor component has increased less than was projected while the non-labor component actually increased more than was projected. To address the under and overpayments for these components in the rate years 1988-1991, the Department has made the following decisions which will increase the original projections for hospitals by approximately $175 million in rate year 1992:

1) Labor Component: Hospitals will not be required to repay any additional overprojected dollars from previous years. The amount of this overprojection which hospitals will retain is approximately $125 million. In addition to the 1991-1992 increase (to be recommended by the economic factor panel), reflecting the latest available inflation factors between the base year and the rate year will be used to calculate the 1992 rates. In addition, paybacks from earlier rate years that initially were to be included in the calculation of the 1992 factor have now been eliminated. In addition, hospitals will gain approximately $30 million through this mechanism.

2) Non-labor Component: Hospitals will receive a total of approximately $20 million in payment for the underprojected dollars from previous years. This payment will occur at final reconciliation.

The rule does not differentiate between labor and non-labor components because the panel will recommend a single factor. The rules specify a minimum set of data which will serve as guidelines for the panel in making their determinations. The rule is written so as not to limit the panel's discretion or expertise during the deliberation process. In addition, this flexibility enables the panel to consider any written materials submitted by interested parties, as requested by a number of commenters. Further, to list all potential sources of data in rule becomes a very cumbersome process requiring frequent updating for maintaining currency.

Because the proposal is for one final factor that is to be issued prospectively with no adjustment to actual, the suggestion of thresholds limiting the variance between prospective and actual factors does not apply.

The rates issued to hospitals were based on an interim economic factor for 1992. Once the final 1992 factor is determined, the final rates will be adjusted to reflect the difference between the interim and final factors. While the Department does not anticipate that the final factor will be lower than the interim factor, it can not prejudge the panel's recommendation.

The commenter is correct that the economic factor is not an element requiring rate year experience and should not be included in this section. The reference to the economic factor in N.J.A.C. 8:31B-3.71(c) has been deleted in the rule as proposed for final adoption.

The Department appreciates the comment that the Department should consider not rebasing at all as is the case with Medicare prospective payment system.

The Department is concerned about the timeliness of issuance of the economic factor. However the Department is also concerned that the panel's recommendation be based on the most recent data available, and it is possible that these data may not be available until some time during the fourth quarter of the year. Early in 1992, the Department, in consultation with the industry, will determine a date by which the 1992-1993 factor will be finalized. For 1992, the factor will be available by December 20, 1991.

The section concerning extraordinary adjustments for hospitals, N.J.A.C. 8:31B-3.26, has not been eliminated from the proposal. In the proposal, the statement "Recodify existing (h)-(i) as (m)-(n) No change in text," means that section (h) will now appear as section (m), with no changes.

COMMENTS: **Non-labor:** Some commenters recommend continuing the current methodology for non-labor, with one commenter requesting an exception for drug and medical insurance proxies. Another noted that by adjusting the non-labor component for misprojections in future years, it could be made prospective just as the labor component was made prospective. Others contend that the reconciliation to actual amounts for non-labor components should continue at least through the 1991 rate year.

Others believe that reconciling the non-labor components defeats the purpose of prospectivity and question why the Department proposes to do so.

RESPONSES: **Non-Labor:** In general, hospitals support continuation of the projected non-labor portion of the economic factor for 1992, without subsequent adjustment. The primary reason cited is that hospitals base their budgets on projected rather than actual factors and do not have the flexibility to reduce budgets when actual factors are less than projected factors, as has been the case for the last few years. In contrast, payers support adjustment to actual believing that hospitals are not entitled to overpayments in years with overprojections.

The comment concerning reconciliation of non-labor costs has been addressed by the Department in the adopted rules. In N.J.A.C. 8:31B-3.71, the reference to the economic factor as an element requiring

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rate year experience has been deleted, thus there will be no reconciliation of the economic factor, including the non-labor portion, for rate year 1992 and forward.

COMMENTS: **Labor:** The Public Advocate, Blue Cross and Blue Shield of New Jersey, and several other commenters believe that the overprojections of the labor proxy for 1990 and 1991 should be corrected. BC/BS estimates the 1990 overprojection to be $130 million in 1992 and an additional $85 million in 1993.

However, some hospitals offer opposite opinions, stating that the Department should recommend that the labor proxy for 1989-1991 should not be restated from projected to actual levels, continuing the same policy as the commenter recommends for the labor component of the proxy.

RESPONSES: **Labor:** The Department is aware of both the pros and cons of adjusting the labor proxy to actual. Because it will cause a hardship to many hospitals to repay overprojected revenues, the Department is not proposing to reconcile to actual. Furthermore, movement to a single, unreconciled economic factor is consistent with the Department's proposal for 1992.

COMMENTS: **Economic Factor Panel:** One commenter asked how the Department of Health determined that an "expert" panel would best serve in the resolution of this issue.

One commenter stated that neither the number nor names of panel members is known at this time.

Most commenters supported an economic factor panel as long as it remains independent. In this regard, they questioned the panel's selection, staffing, and reporting responsibilities. Suggestions included:

1) Appointments to the panel should be made by the H.R.S.C. or representatives from health care providers, hospitals, payers, and/or the New Jersey Hospital Association;

2) Staff to the panel should include representatives of payers, the N.J. Hospital Association, and the hospital industry;

3) The panel should report directly to the Hospital Rate Setting Commission.

RESPONSES: **Economic Factor Panel:** The economic factor proxies in the past have been developed from sources published on a quarterly basis. These have not resulted in accurate predictions. The experts will have access to the most recent data and will be able to incorporate additional factors, trends, and developments not previously used. The Department's intent is that the economic factor will be an accurate predictor of economic trends in the rate year.

As stated in the rule, there will be three panel members. The members of the 1992 panel are Paul B. Ginsberg, Ph.D., Executive Director, Physician Payment Review Commission, Washington, D.C.; Jeffrey I. Rubin, Ph.D., Associate Professor of Economics, Rutgers University; and Sherry A. Glied, Ph.D., Assistant Professor of Public Health and Economics, Columbia University; and Faculty Research Fellow, National Bureau of Economic Research.

The Department has made every effort to secure an independent panel. To this end, the Department sought recommendations for members of the panel from the industry and other interested parties. Two of the members chosen were recommended by the New Jersey Hospital Association. The panel is scheduled to meet at least three times in the process of developing the factor. In order for the panel to submit their recommendation by the middle of December so that rates are effective on January 1, 1992, it was necessary to convene the first meeting of the panel on November 27, 1991.

The Department of Health staff will utilize their experience with the various data sources and types of analyses to assist panel. Other parties may submit written comments.

The factor recommended by the panel will be submitted to the Commissioner of Health for final approval. Once approved, the factor will be applied to the 1992 rates. For those commenters who are concerned about the authority of the Hospital Rate Setting Commission in this process, it should be noted that all rates are preliminary until they are approved by the Hospital Rate Setting Commission.

COMMENTS: **Panel Determinations:** Other commenters asked about the work of the panel in determining the economic factor. Questions frequently asked included:

1. Will the panel address other components of the economic factor in addition to labor proxy?

2. How will the panel use sources other than those driven significantly by policy decisions of the New Jersey hospital industry, yet still reflect the measure of change in the price of goods and services used by New Jersey hospitals? Will the factors be based on New Jersey experience only, or will they be based on national or regional trends?

3. Will a single (overall) economic factor or a specific economic factor be used to bring costs up to rate year at reconciliation? (for example, medical insurance costs)

4. Will the rules specify which components and which years of the economic factor will be determined by the panel? One commenter suggested that the panel should consider specific measures of inflation/deflation, similar to the current rules.

For several other items commenters requested further clarification, or suggested inclusion in rule, and/or consideration by the panel. Among these were:

- Pharmaceutical proxy: One commenter stated that the economic factor calculation should take into account the impact that newly approved pharmaceuticals have on hospital costs. The proxy being measured under the current rules substantially underestimates the increase in drug costs. This discrepancy has severely under-reimbursed hospitals for drug costs in the past.
- Resident: One commenter found inconsistency between the resident adjustment factor described in the rate package, and its application to both the hospital's costs and the standard portion of the payments. The latter application, a significant shift from the past when only salary costs and the DPC standard payments were adjusted, will represent large losses to hospitals reducing the number of residents. As a result, hospitals will need time to find a way of providing the physician services lost as a result of reductions in the number of residents.
- Medical Insurance: The comment was also made that the medical insurance proxy is too low, and should be reexamined for adequacy.

RESPONSES: **Panel Determinations:** As stated in the proposed rules, the panel of experts will recommend the economic factor based on a variety of considerations among which will be the most current measure of inflation/deflation. Specifically to avoid a self-generating economic factor, the panel will use sources other than those driven significantly by policy decisions of the New Jersey hospital industry. The panel will also receive and review written comments submitted by interested parties. Within these general guidelines the panel will be free to consider any proxies needed to develop an equitable factor. The factor that is developed will apply to all components.

Regarding the adequacy of the medical insurance and pharmaceutical proxies, these are two of the components that will be considered in determining the final economic factor to be recommended. Interested commenters are encouraged to submit documentation supporting this position, to assist the panel in its decision-making process. However, as noted above, there will be no reconciliation of any element of the single comprehensive economic factor at the close of any rate year.

For the Department's response to the comment concerning the resident adjustment factor, please refer to the discussion under N.J.A.C. 8:31B-3.22.

COMMENTS: **Specific Update Factors:** Several commenters recommend that the technology factor used for 1991-1992 be reviewed for accuracy prior to the implementation of the 1992 rates.

Several hospitals questioned how reimbursement will be structured for regional perinatal services and the Poison Information and Emergency System.

Others have requested the specific sources and calculations used to determine the proposed 1992 payment rates for liver transplants, heart transplants, cochlear implants, and bone marrow transplants.

One commenter requested that the methodologies be included in rule.

Referring specifically to the liver transplant adjustment, UMDNJ, the only hospital in New Jersey performing liver transplants, disagrees with the Department's intent to apply this rate to both inlier and outlier cases. They recommend that the proposed rate be approved as an interim rate until approved inlier and outlier rates can be determined.

One commenter requests that the special psychiatric rates be revised to include indirect as well as direct costs.

RESPONSES: **Specific Update Factors:** For 1992 rate-setting, the Department will treat the 1990-1991 technology factor as follows: 1) the 1990-1991 calculations will reflect the actual cost-decreasing technologies; 2) for any overpayments resulting from discrepancies between the ProPAC factor, and the Department's trended estimate for cost-decreasing technologies in this period, there will be no paybacks for either hospitals or payers; 3) in 1992 the cost-decreasing portion of the factor will be based on averaged ProPAC data because these data will not be available after 1991.

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As requested, the sources and calculation methodologies for 1992 payment rates for the various referenced transplants are listed below:

Liver Transplant: The rate was based upon an analysis of direct patient care costs for liver transplant cases reported in New Jersey, which were considered typical according to national guidelines for the resources consumed and discharge status. Trim points and therefore inlier and outlier payment rates could not be established in accordance with the approved New Jersey rate setting methodologies, since there was no activity in the base year for New Jersey hospitals.

The payment rates which will be applied to all New Jersey liver transplant cases for 1992, compared favorably with national averages from Medicare, adjusted for overhead costs. It should be noted that these national averages, which were representative of all cases, did not differentiate between inlier and outlier status.

Heart Transplant: The rate was based upon the cost data submitted as part of Certificate of Need #851026-07-01 and AR8510-26-07-01. The Certificate was originally approved on June 14, 1985. The New Jersey Rate Setting Commission approved a rate for heart transplants on November 9, 1990.

The 1992 rate includes the following elements:

1. Inflation since the date of C/N approval
2. Increased organ procurement costs
3. The reasonable cost of a Medical Director
4. An allocation for indirect costs

Cochlear Implant: The proposed rate includes the Statewide average DRG rate for a mastoidectomy operation, the cost of one additional hour of operating room time and the cost of the cochlear implant device.

Bone Marrow Transplant: The proposed rate is based on a national survey from the National Health Services and Practice Patterns Survey and the Office of Health Technology Assessment of the Department of Health and Human Services and is adjusted for elements excluded from the direct patient care rate.

Regardless of the length of stay, only the inlier rate will be reimbursed. For these pre-scheduled patients, the post-operative period begins on day one, therefore, there are no low outliers. Based on strict compliance with hospital approved patient selection criteria and available national length of stay data, the average length of stay for these patients is six to eight weeks. Therefore, the Department concludes that the outlier methodology which is used to recognize unusually high length of stay patients, would not be logically used for this DRG.

Payment for perinatal services will be provided under Chapter 83 for hospitals with a demonstrated need to improve the outcomes of pregnancy for mothers and infants. Payment will also be provided to facilitate early identification of infants with disabilities through high risk infant screening and tracking services. For these hospitals, payment will be included in the hospital's mark-up factor as a lump-sum adjustment.

In terms of the payment structure for the New Jersey Poison Information and Education Center, the cost of operating the center, if approved by the Commission, will be supported by dues payments in equal amounts from each of the Chapter 83 hospitals, net of grants received. A mark-up factor adjustment will reimburse the hospitals for this required expense.

Regarding the adjustment for adolescent psychiatric unit costs, the methodology was modified so as to reflect an increased amount of standard in the rates. The methodology assumes that the principal impact of these special services is in direct patient care, thus no adjustment to indirects is indicated. The adjustment for Short Term Care Facility (STCF) psychiatric beds was approved by the Hospital Rate Setting Commission (HRSC). As with adolescent psychiatric unit costs, the adjustment for STCF is based on the need for additional staff for the delivery of direct patient care services.

N.J.A.C. 8:31B-3.31 Commission adjustments and approvals

COMMENTERS: Elizabeth General Medical Center, Overlook Hospital, The Concord Group

COMMENTS: One commenter requests deletion of the proposed language that precludes adjustments in the following rate year under any circumstance. Several have requested at least one interim rate adjustment per year.

Another believes that the language is ambiguous and the terminology needs clarification.

RESPONSES: As in other rules, the intent of this section is to increase the predictability of the Chapter 83 system by issuing rates that do not fluctuate during the rate year, thus allowing hospitals and payers to plan and budget accordingly. There is no intent to penalize the hospital industry. In fact, this rule provides the Department and the Commission flexibility to make exceptions to the annual issuance of rates. In circumstances where provision of needed patient services is compromised the Commission retains the ability to grant interim rate adjustments.

N.J.A.C. 8:31B-3.34 Medicare cost shift

COMMENTERS: Barnert Memorial Hospital, Bayshore Community Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Blue Cross, Cathedral Healthcare System, Inc., CentraState Medical Center, Cohen, Shapiro, Polisher, Shiekman and Cohen (representing Atlanitc City Medical Center, Barnert Memorial Hospital Center, Bayshore Hospital, Beth Israel Hospital, Cathedral Healthcare System, Chilton Memorial Hospital, Clara Maass Memorial Hospital, Community Medical Center, Elizabeth General Medical Center, Elmer Community Hospital, Hackettstown Community Hospital, Helene Fuld Medical Center, Hospital Center at Orange, Irvington General Hospital, Jersey Shore Medical Center, Medical Center of Ocean County, Memorial Hospital of Burlington County, Memorial Hospital of Salem County, Monmouth Medical Center, Mountainside Hospital, Muhlenberg Regional Medical Center, Newark Beth Israel Medical Center, Newcomb Medical Center, Palisades General Hospital, Rahway Hospital, Riverview Medical Center, St. Mary's Hospital/Hoboken, St. Mary's Hospital/Passaic, United Hospitals Medical Center, Wallkill Valley Hospital, West Jersey Health System, Warren Hospital, and West Hudson Hospital), Community Medical Center, Deborah Heart & Lung Center, Dover General Hospital & Medical Center, Elizabeth General Medical Center, Franciscan Health System of New Jersey, Inc., Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, The Hospital Center at Orange, JFK Medical Center (Edison), Jersey Shore Medical Center, Kaden & Arnone, Kimball Medical Center, Mercer Medical Center, Monmouth Medical Center, Morristown Memorial Hospital, Muhlenberg Regional Medical Center, Inc., Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, Pascack Valley Hospital, Peat Marwick Management Consultants, Princeton Medical Center, Robert Wood Johnson/University Hospital, St. Barnabas Medical Center, St. Clare's Hospital, St. Elizabeth Hospital, St. Francis Medical Center, St. Joseph's Hospital, St. Peter's Medical Center, South Amboy Memorial Hospital, The Concord Group, United Hospitals Medical Center, University Health System, University Medicine & Dentistry of New Jersey, Valley Hospital, Wallkill Valley Hospital, Wayne General Hospital

COMMENTS: Many commenters oppose the Department's proposal for a prospectively determined Medicare cost shift because it is difficult to compare Medicare's and New Jersey's payment systems. The commenters express concern about significant variations in calculations of the cost shift in the past. The current calculation is performed on an interim basis only for the purpose of estimating hospital payment rates, with hospitals guaranteed the full difference between New Jersey and Medicare payment rates for Medicare patients at final reconciliation. The current calculation has caused many hospitals to undercollect during the rate year. The proposal to eliminate final reconciliation for the Medicare cost shift puts hospitals at risk for mistakes in the calculation and other changes outside their control. One commenter asked that a corridor be established until the method for determining the cost shift is refined.

Commenters maintained that a prospective calculation of the Medicare cost shift cannot adequately reflect the actual difference between Chapter 83 and Medicare payment rates during the rate year for specific factors such as: increases in case mix between the year used for the calculation and the rate year; increases in volume between the two years of less than 10 percent; new services added between the two years; changes in outpatient volume; changes in Medicare's payment rules shortly before or during the rate year including the impending move to a prospective, per-case payment for capital; other misprojections of the cost shift; application of audit and outpatient settlement adjustments; and potential recoupment of alleged overpayments during the Federal waiver demonstration. The cost shift is also affected by: differences in GROUPERS; teaching reimbursement; treatment of major moveable depreciation; labor market adjustments; outlier status; disproportionate share adjustments; costing differences; and payer mix in specific DRGs. Any prospective estimate of the Medicare cost shift will necessarily be based on prior years' data and could result in unpredictable windfalls or losses to individual hospitals.

Commenters suggested that the Department's proposal would not guarantee hospitals their full financial elements as required by law; some hospitals would receive cost shifts well in excess of or well below their reasonable costs. Another commenter believes the Department's proposal is contrary to the statutory goal of promoting hospital solvency.

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Several noted that the Health Care Cost Reduction Act requires that Medicare overpayments be applied as an offset to approved uncompensated care; the Department's proposal to allow hospitals to retain Medicare payments in excess of the projected cost shift conflicts with this requirement.

One commenter suggested that the Department's proposal would result in a more complex and difficult calculation than that performed currently because specific analyses would have to be conducted of individual financial elements such as uncompensated care or capital facilities.

Several commenters took issue with allegations (made elsewhere) that hospitals do not take all possible steps to maximize Medicare revenues. They argue that audits and PRO review suggest this is not the case. Statewide guidelines for maximizing Medicare reimbursement, a monitoring system like that used for uncompensated care, more aggressive enforcement of the rule authorizing rate adjustments for hospitals not maximizing Medicare payments, or formation of a committee would be more appropriate ways to address this issue. Commenters suggested that the Department's proposal would give hospitals less incentive to enhance Medicare reimbursement than under the current system and penalizes hospitals who have maximized Medicare revenue in the past. Blue Cross objected to deletion of the paragraph which allows for limits on rate adjustments if good faith efforts are not made to maximize Medicare reimbursement.

Commenters asked for more information about the methodology that will be used to calculate the cost shift and several provided simulations of the calculation they believe is being proposed. Several commenters indicated their concern about the way in which the calculation will be updated in the future, because Medicare payment increases are generally below the Chapter 83 economic factor. Commenters asked about calculations related to prompt payment discounts, excluded units and personnel health allowance. One commenter suggested that it is inappropriate to attribute the shortfall to outpatients since this forces hospitals to raise outpatient rates. Another commenter asked if outpatient shortfalls will be included in the calculation.

Questions were asked about how the Department will treat shortfalls created by other payers who do not or may not in the future participate in Chapter 83, such as CHAMPUS, Violent Crimes program or Medicaid. One commenter asked that a prospective calculation be developed for these items.

RESPONSE: Using final reconciliation to reconcile the Medicare cost shift is perhaps the most significant obstacle to making Chapter 83 truly prospective. Establishment of the cost shift as a prospective adjustment provides both hospitals and payors with necessary information to facilitate budgeting. The hospital will know upfront its "allowance" for making up shortfalls in Medicare payment and can budget accordingly. In this regard, New Jersey hospitals are similar to hospitals across the nation who are also faced with trying to anticipate the impact of Medicare payments on their budgets. Indeed, New Jersey hospitals are fortunate in being part of a system which increases other payers' rates to make up for Medicare shortfalls.

The development of an estimate of the Medicare cost shift has, indeed, been a difficult process. Beginning in 1989, when Medicare's participation in the Chapter 83 system ended, the Department, the Hospital Rate Setting Commission, and numerous task forces and individual hospitals struggled to refine the methodology and data sources used to develop the calculation. Differences in the calculations during past years are more a reflection of these refinements than of uncertainty about the actual level of the cost shift. By 1991, the Department's calculations of the cost shift were approved by the Hospital Rate Setting Commission with relatively little comment on the methods or data sources employed, after individual hospitals had an opportunity to review and revise their data. While the Department acknowledges the complexity of any comparison between Chapter 83 and Medicare payment rates, this recent history suggests that, indeed, the method of calculating the cost shift has become relatively stable. Commenters expessing concern that the method for calculating the cost shift is unknown should be assured that the method and data sources are substantially the same as in prior years. Several refinements, however, have been adopted which are described briefly below and have been described in more detail in the issuance of the actual calculation.

The existence of large undercollections attributed to Medicare shortfalls is not sufficient evidence that the calculation is incorrect, because it appears that the causes of undercollections are usually attributed to easily calculated amounts first (that is, underpayment of capital facilities allowance, which is a pass-through) with the residual attributed to the Medicare shortfall. Auditor certification, which is the basis on which undercollections are verified by the Department, is not applied to the specific cause of an undercollection, and the Department does not know if auditors would certify the precise amount of an undercollection due to the Medicare cost shift.

The Department has worked with an advisory group to address many of the issues raised by the commenters, and several changes have been made as a result. Most significantly, the difference between Medicare and New Jersey rates for inpatients will now be calculated by processing actual 1990 bills through the software used for both payment systems, which should capture virtually all differences between the two systems. It is attempting to capture changes between the 1990 and 1992 payment systems through application of an innovative "forward coding" mechanism as well. These changes will address the concerns raised by many commenters about differences between the two systems since both Medicare's and New Jersey's most recent payment rules (including differential payment increases) will be assumed. Especially with adoption of last year's Federal budget agreement and amendments to the Federal budget process, most significant changes in Medicare payment rules are adopted for October 1st implementation; other changes made on a hospital-specific basis throughout the year may be upward or downward. The Department has calculated an outpatient cost shift; we believe it appropriate to attribute part of the cost shift to outpatients and to require collection of the shortfall through outpatient charges. Concerns over the accurate setting of outpatient charges should be addressed separately and are not a good reason to retain a retrospective Medicare cost shift calculation. Many of the other specific questions about the calculation raised by commenters have been answered in the issuance of the calculation, which has separately been made available to the public.

While it is true that the proposal would not protect hospitals against volume reductions below the thresholds, the Department's proposal also allows hospitals to gain from positive volume changes below these thresholds. There may be Medicare adjustments appropriately offset in the subsequent year's cost shift, and the Department will address this issue in calculating the 1993 cost shift amount.

The Department acknowledges commenters' concerns about the potential recoupment of Medicare payments from the waiver period. If necessary, this issue will be addressed in separate deliberations before the Hospital Rate Setting Commission. The Department continues to believe that current estimates of an overpayment may be overstated significantly and are working with the industry to make this case to the Federal government. It would be inappropriate to take formal regulatory action to recognize a liability the Department does not believe exists.

The Department's proposal is consistent with statutory requirements that Medicare overpayments be offset against uncompensated care. The Department will offset prospective overpayments against uncompensated care for individual hospitals, as required by law. The Department expects that hospitals will then move aggressively to maximize collections from Medicare as they would from any other payer. The Department's proposals fulfill the guarantee of full financial elements as do all other elements of the Chapter 83 system, many of which are calculated on a prospective basis. Indeed, this calculation is more closely related to hospitals' actual costs because it takes into account the collection experience of individual hospitals.

The Department appreciates the suggestions of commenters about alternative ways to assure maximization of Medicare revenue and will explore these ideas in the future. However, the Department believes that the adjustments for hospitals found not to be maximizing Medicare revenue in such processes would be retrospective, contentious and highly subjective, and that our current proposal is fairer and more efficient. The Department notes that maximization of Medicare revenue was and is a precondition of the guarantee that hospitals be made whole for any Medicare shortfall; and do not think it appropriate that only hospitals gain from any future efforts to increase Medicare revenue.

The Department believes that the benefits of any proposal to retain final reconciliation for the Medicare cost shift must be assessed against the burden of such a proposal. The Department is aware of no way to process such a final reconciliation without continuing to require the submission of final billing data for all patients (a process which currently can take up to a year), the subsequent programming of all payment features of Chapter 83, and the processing of a complete final reconciliation. While the Department's current regulatory proposals would simplify this process somewhat, the current gap of many months before final settlement would continue. It is far preferable to develop an accurate

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and fair prospective calculation. The Department notes that the method for calculating the cost shift under the proposal set forward by one commenter is not the method approved by the Hospital Rate Setting Commission in the past and not the method proposed for use in the future, so any comparison between the complexity of the current final reconciliation and this calculation is not accurate.

While the Department is proposing transitional payment adjustments to address the overall impact of our 1992 regulatory proposals, it does not believe it appropriate to set corridors around specific reimbursement elements.

The Department notes that, in the past, cost shifts have been approved by the Hospital Rate Setting Commission to allow Medicaid to comply with Federal requirements that Medicaid rates not exceed Medicare (the "upper payment limit"). The Department will continue to propose and implement these shifts as necessary. Because the dollar amounts are generally fixed and known prospectively, it has been possible to handle these shifts through a revision to payer factors, and will continue to be so. There is no effect on the Medicare cost shift calculation. The number of cases for whom payment is made by a non-participating payer is small, and the Department will continue to work with these payers—as has been successfully done in the past—to encourage their participation in Chapter 83.

N.J.A.C. 8:31B-3.38 Derivation from Preliminary Cost Base

COMMENTERS: Barnert Hospital, Bayshore Community Hospital, Besler & Company, Inc., Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Helene Fuld Medical Center, JFK Medical Center (Edison), Kimball Medical Center, KPMG Peat Marwick Management Consultants, Newark Beth Israel Medical Center, Monmouth Medical Center, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, Pascack Valley Hospital, St. Barnabas Medical Center, St. Francis Medical Center, St. Joseph's Hospital and Medical Center, South Amboy Memorial Hospital, The Concord Group, The Hospital Center at Orange, The Medical Center of Ocean County, University Health Systems including: Atlantic City Medical Center, Cooper Hospital/University Medical Center, Hackensack Medical Center, Helene Fuld Medical Center, Jersey Shore Medical Center, Kennedy Memorial Hospitals-University Medical Center, Robert Wood Johnson University Hospital and UMDNJ-University Hospital, Wallkill Valley Hospital and Health Centers, Wayne General Hospital

COMMENTS: Several commenters have requested their comments regarding N.J.A.C. 8:31B-3.23, personnel health allowances, be applied to this rule as well.

One commenter suggests that transitional adjustments should be provided for hospitals experiencing loss of revenue which is greater than one percent of 1991 approved revenue, rather than two percent of 1991 revenue in the proposed rules.

Many hospitals argue for unequal corridors, for example, one percent downside loss protection and three percent gain, before any limitation rather than two percent as stated in the proposed rules. One recommends a corridor limitation of adjusted revenue equal to .5 percent for each year between the base year and the rate year.

Two transitional options recommended by one commenter for hospitals that qualify due to loss of revenue which is greater than one percent of 1991 approved revenue are:

1. Acceleration of 100 percent standard payment rate for 1991; or
2. Restoration of revenue losses resulting from 1992 rates, if greater than one percent, through a separate mark-up factor adjustment.

Two commenters raise the concern that corridors are a temporary measure that do not address the real problem. One proposes a three to five year phase-in instead. Another supports corridors and recommends their continuation beyond 1992.

The commenter questions the elimination of rate per visit for purposes of reconciliation for certain outpatient services.

If outpatient services are excluded from the final reconciliation process, then the following issues should be examined:

1) Medicaid cost shift: Because the Medicaid program will pay cost for outpatient services in 1992, this will require a prospective cost shift for these services in 1992.

2) Failure to implement a payroll tax: Because the payroll tax recommended by the Governor's Commission has not been implemented, this source of revenue will not be generated to cover the costs of uncompensated care for outpatient services. Therefore, the costs of uncompensated care will be higher than revenues determined prospectively, nor can charges be increased to cover the shortfall.

3) Cross-subsidization: It is possible for a hospital to be successful in eliminating a cross-subsidization penalty while still being subjected to a significant loss of revenue under the proposed rules. This hospital has provided an example.

Another commenter believes that hospitals could be penalized twice if final reconciliation is eliminated as proposed, first in undercharging in outpatient departments; and second in payment of the penalty.

Several commenters state that the industry has not had an opportunity to study the financial impact of the changes on the system, especially given early estimates from the Department that indicate $30 million would be removed from the system if the proposal is implemented.

Several commenters have requested that the Department specify the components of the corridors, how the corridors are to be calculated, and include the methodology in rule.

One commenter questions whether the calculation of the two percent change applies to both positive and negative fluctuations.

One commenter requests that corridors be kept in place beyond 1992, until rebasing occurs.

Several commenters suggest that the corridor should incorporate changes in revenue that result from elimination of both final reconciliation and adjustments for rate year changes in case-mix and volume. These issues would include the Medicare cost shift, personnel health allowance, malpractice, and the prompt pay discount.

To maintain budget neutrality, this commenter suggests that there be a reduction of revenues for those hospitals exceeding a percentage to be determined, which would be based on the revenues to be restored due to the losses in excess of one percent.

RESPONSES: The Department believes that the proposed restructuring of payment rates presents a significant improvement in setting a prospective, all-inclusive rate which utilizes rational and comprehensive cost allocations to create DRG rates which represent an equitable distribution of costs. The rate structuring creates changes in projected revenues which in some cases are significant. Despite its belief that the new revenue levels are more appropriate, the Department acknowledges that adjusting to these changes may be difficult in the short run. Thus, the Department is recommending transitional adjustments that will limit the loss in the first year. Since such adjustments should not increase aggregate hospital costs, the Department also recommends upside corridors to limit gains so that the effect of transitional adjustments is budget neutral.

The adopted rule includes language stating that the lower corridor will protect hospitals from losses greater than one percent, and that the upper corridor will reduce payment beginning with hospitals gaining the largest amounts.

Change in revenue related to Personnel Health are not included in the corridor because this issue has been handled by using more recent data. (See response to N.J.A.C. 8:31B-3.23.)

References to use of rates per visit were eliminated because the proposal does not provide for final reconciliation of outpatient services.

N.J.A.C. 8:31B-3.40 Changes in working capital

COMMENTERS: Axiom Review, Cathedral Healthcare System

COMMENTS: One commenter asks if the self-pay, prompt-payer discount applies to the patient co-payment portion of a bill, and/or to patients who pay their entire bill? They contend that if consumers are being charged interest, they should have access to the prompt pay discount.

Another commenter states that this rule does not specify that payers of delinquent accounts must pay finance charges on the outstanding balances.

RESPONSES: The prompt payment discount also applies to patient balances and partial payments. Therefore, a timely payment of a copayment or deductible is eligible even if the insurer has taken a discount on its portion. Finally, Chapter 187 only authorized hospitals to charge interest to third party payers, not health care consumers.

The determination of interest payments is made by hospitals. See also the response in N.J.A.C. 8:31B-4.67 that addresses hospitals' treatment of interest.

N.J.A.C. 8:31B-3.45 Uniform bill—case mix determination—financial reports

COMMENTERS: Besler & Company, Inc., Deborah Heart and Lung Center, Elizabeth General Medical Center, Hackettstown Community

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Hospital, Holy Name Hospital, KPMG Peat Marwick Management Consultants

COMMENTS: One commenter questions a deadline for submission of UBPS records given the limits the Department has proposed for the final reconciliation process.

This commenter believes that the HRSC should have the discretion to allow a hospital to show just cause for late data submissions.

One commenter states that outpatient dialysis is a non-Chapter 83 covered service and questions why data for this service would be included. Another commenter states that hemodialysis has been carved out of the Chapter 83 system since September 1, 1987 and believes that hospitals that provide this service should be reimbursed.

RESPONSES: The intent of this rule is to improve the timeliness and efficiency of the Chapter 83 system by setting deadlines for submission of UB-PS data to the Department. The proposed changes add additional references to outpatient data.

A further aspect of improving the timeliness is the elimination of deadline extensions in return for penalty payments. The proposal eliminates the payment of fines and states that the UB-PS records not received by the Department within the timeframes specified shall not be included in data used to determine the hospital's aggregate charges and approved revenue, or other analyses used by the Department in setting rates. This will allow the Department to adhere to its timeframes for data processing and rate setting. It should be understood that this section in no way limits the discretion of the Hospital Rate Setting Commission, as it is responsible for approving all rates.

There are no changes proposed in the rule pertaining to submission of data for outpatient dialysis. The only change is the additional requirement for submission of outpatient information specified in N.J.A.C. 8:31B-2.2 Data concerning outpatient dialysis has always been submitted to the Department, and is not affected by this addition.

N.J.A.C. 8:31B-3.51 Rate notification, approval, and implementation

COMMENTER: Community Medical Center

COMMENT: One commenter requests an explanation for the omission in N.J.A.C. 8:31B-3.26, Update factors, of the technology factor, the prospective operating adjustment, and the 0.5 percent in lieu of clinical and legal adjustments.

RESPONSE: N.J.A.C. 8:31B-3.26(b) through (d) address these factors. These sections of the rule are unchanged, and therefore were not printed in the proposal as it appeared in the New Jersey Register.

N.J.A.C. 8:31B-3.52 Full rate review

COMMENTERS: Barnert Hospital, Bergen Pines County Hospital, Cathedral Healthcare System, Deborah Heart and Lung Center, Department of the Public Advocate, Division of Rate Counsel, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, JFK Medical Center (Edison), KPMG Peat Marwick Management Consultants, Morristown Memorial Hospital, Morrisy & Company, Inc., Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Joseph's Hospital and Medical Center, St. Peter's Hospital and Medical Center, South Amboy Memorial Hospital, The Concord Group, The Medical Center at Princeton, The Medical Center of Ocean County, United Hospitals Medical Center, Wayne General Hospital

COMMENTS: Many commenters have requested that the Department, as recommended by the Governor's Commission on Health Care Costs, establish benchmarks to be used in monitoring hospital performance and in determining the conditions under which full rate reviews would be initiated. One commenter has suggested that the Department form an industry task force to address the Governor's Commission Recommendations and develop benchmarks for the 1993 rate year as recommended.

The Public Advocate cites statutes authorizing both the HRSC and the Public Advocate to initiate full rate reviews, and recommends that the rule be amended to include both parties. Another recommends that all full rate reviews be approved by the Hospital Rate Setting Commission.

Several commenters have stated that the proposed language remains vague and ask for further definition of this rule.

One commenter interprets the Governor's Commission recommendations as supporting full rate review only where hospitals are requesting payment amounts in excess of normal or automatic rate adjustments.

One commenter requests that hospitals be given 60 days to submit the required documentation.

Many commenters requested that timeframes be established for the Department's decisions to initiate full rate review and for the Department and Commission to complete the process of full rate review.

One commenter asked about hospital billing in the event a full rate review is initiated.

RESPONSES: This regulatory section supports the goal that all-inclusive rates will be set so as to enable most hospitals to operate without the need to seek additional rate adjustments. The inclusion of a full rate review process anticipates that some hospitals may need the opportunity for a hearing to review whether rates are adequate in their particular circumstances. For these reviews, which the Department hopes will be infrequent, universal financial benchmarks will be used to compare the hospital's performance to its peers.

The Department appreciates the requests made by commenters that benchmarks be established to monitor hospital performance and determine the conditions for full rate review, and intends to make this a high priority in the 1992 rate-setting agenda. Adoption of the State Health Plan by the State Health Planning Board and ultimately the HCAB should set the stage for development of hospital benchmarks. The Department agrees that these benchmarks will be useful in determining the conditions under which full rate reviews would be initiated.

These rules govern the Hospital Rate Setting Commission and the Department of Health. Rules addressing Public Advocate procedures should be promulgated by that office in accordance with the relevant statutes.

The development of The State Health Plan and benchmarks will allow for a more specific 1993 proposal. Since the Department does not anticipate initiating a full rate review for any hospital implementing its 1992 rates as issued, it is not, at this time, incorporating more specific definitions into the rule.

The Governor's Commission Report states that any changes in hospital rates other than periodic adjustments, will require a full rate review. The Commission also suggests further examination of hospitals with very high costs or those in financial distress. In addition to a financial analysis, planning issues such as need for the institution and number of beds should also be considered. The rules are consistent with those broad guidelines.

The Department anticipates that the Hospital Rate Setting Commission will review and act on any full rate review prior to the beginning of the rate year. Therefore, any change in the rates will be reflected in the hospital's billing.

The rules specify timelines for the Department's initiation of full rate review. Since the information required for a full rate review is relatively specific, 30 days is adequate to allow for preparation.

N.J.A.C. 8:31B-3.71 Reconciliation and adjustments

N.J.A.C. 8:31B-3.73 Reconciliation: Hospitals

Please note that this portion addressing N.J.A.C. 8:31B-3.71 and 3.73 is combined, as both address issues which pertain to final reconciliation.

COMMENTERS: Barnert Memorial Hospital, Bayshore Community Hospital, Bergen Pines County Hospital, Besler & Company, Blue Cross, Cathedral Healthcare System, Inc., CentraState Medical Center, Community Medical Center, Deborah Heart & Lung Center, Department of the Public Advocate, Division of Rate Counsel, Dover General Hospital, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financing Management Association, Helene Fuld Medical Center, Hospital Center at Orange, JFK Medical Center, Kaden & Arnone, Kimball Medical Center, Medical Center of Ocean County, Mercer Medical Center, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Inc., Muhlenberg Regional Medical Center, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, Pascack Valley Hospital, Peat Marwick Consulting Management, Princeton Medical Center, Robert Wood Johnson/University Hospital, St. Barnabas Medical Center, St. Clare's Hospital, St. Francis Medical Center, St. Joseph's Hospital & Medical Center, South Amboy Memorial Hospital, The Concord Group, University Medicine & Dentistry of New Jersey, Valley Hospital, Wallkill Valley Hospital, Wayne General Hospital, West Jersey Health System

COMMENT: While some commenters supported the general intent of the Department's proposal to eliminate rules requiring final reconciliation, many opposed implementation at this time, citing the potential impact of the changes to the system being proposed, a lack of modeling, and an absence of specifics. Commenters indicated general concerns over

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the financial impact of this proposal. One commenter supports the continuation of final reconciliation, arguing that only a one year backlog will be created if rules governing the submission of data and other items are enforced, and a cash flow appeal process is kept in place. Another commenter believes that eliminating most portions of final reconciliation will not have the impact predicted by the Department because many components of final reconciliation, especially net revenue collected and approved revenue, will still require calculation. This commenter is concerned that hospitals will be prevented from receiving over or under-collections and their solvency will be threatened. Another commenter is concerned that HCAB and HRSC decisions will not be reflected in hospital payments in the absence of final reconciliation because many elements of these payments, as implemented through the mark-up factors, are based on earlier years' experience. One commenter suggested that it is not final reconciliation, but the processing of final reconciliation that causes backlogs; final reconciliation should always be performed.

One commenter asked about the billing of neonatal transfer cases used for final reconciliation. Since these cases were previously billed the lower of the low per diem or inlier rate, but in the subsequent 1989 Commission-approved reconciliation methodology are reimbursed as normal discharges, should hospitals now begin billing these cases as normal discharges?

Many commenters asked about the treatment of other specific reimbursement elements under the Department's proposal. One commenter seeks clarification on how the Department will reconcile only specific elements of statutory earned revenue. Several others asked that a final reconciliation methodology be provided prior to adoption of the rules. Some commenters requested a comprehensive model of or disclosure of those elements of final reconciliation that would remain.

Many commenters asked about the Department's intentions with regard to outpatient final reconciliation, including the outpatient portion of indirect costs. Several commenters supported the elimination of outpatient final reconciliation. Another commenter asked that if no outpatient final reconciliation is performed, adjustments like the two percent prospective operating adjustment and the technology factor be made entirely through the mark-up factor to assure they are fully collected.

Several commenters asked that if outpatient final reconciliation is eliminated cross-subsidization penalties not be calculated or be assessed only outside a 10 percent corridor because hospitals setting outpatient charges below costs will be penalized with undercollections. One commenter asked that caps on ratios of cost-to-charges be eliminated and pointed out that as long as these caps remain, it is not possible to eliminate final reconciliation.

Other specific reimbursement items raised by commenters included the treatment of: capital facilities allowance, uncompensated care, the outpatient portion of uncompensated care, outside collection costs, prompt payment discount, income from other sources, shortfalls due to volume, case-mix and intensity, continuing adjustments arising from the voluntary rate settlement for 1992 and beyond, fixed variable costs, neonatal transfers, Children's Crisis Intervention Services (CCIS), utilization review costs, DRG (patient) appeals, adjustments, including prior year adjustments, approved by the Hospital Rate Setting Commission, cash flow adjustments, and increases in costs due to new rules.

Several commenters asked how undercollections due to differences in payer factors will be handled. Several commenters believe that the Department's proposal will increase administrative burdens since payer reconciliations will now be required.

Several commenters asked how differences in outlier billing will be handled in the absence of final reconciliation because hospitals bill outliers on the acute length of stay.

Several commenters requested clarification of the statement that collected revenue will be retained pending audit.

One commenter asked that the Department enter into a second phase of voluntary settlements covering all outstanding final reconciliations (1989 to 1991 for hospitals participating in the 1990 settlement) including interest.

One commenter asked about the Department's proposal to allow hospitals to offset half of the interest earned on late payments against outside collection costs, while treating the other as case C. The commenter asked if the counting of the interest should be on accrual or cash basis, if interest not collected would become a bad debt and how interest should be quantified. This commenter supports the Department's proposal to increase discounts available for prompt payments.

Two commenters asked that earlier consideration be given to items which will continue to be reconciled to actual cost rather than adjusting these items two years after the rate year in question, that is, 1994 for 1992 items.

It is one commenter's view that the rule, as stated, is contradictory. This commenter seeks clarification and further guidance to hospitals on which way charges are to be based, that is, either to meet cross subsidization requirements (based on actual costs), or on approved costs.

It is the understanding of another commeter that collection costs and capital facility allowance will be reconciled to actual cost levels without consideration of what was actually collected in the hospital rates. This commenter also states that the amount placed in the hospital's rates is not what is actually collected and believes that this makes these elements 100 percent volume variable and their collection contingent on volume and payer mix.

The Public Advocate and Blue Cross and Blue Shield of New Jersey both recommend that the provision which states that the Hospital Rate Setting Commission may limit rate adjustments if a hospital has not demonstrated good faith efforts to obtain appropriate reimbursement from Medicare, should not be deleted.

RESPONSES: The final reconciliation process has hindered the original intention of Chapter 83 to create a prospective rate-setting system. Its existence has been the single factor most responsible for the delays and backlogs in making Chapter 83 a timely system. It has fostered overreliance on this "safety net" to make good perceived shortfalls from any number of sources. This has led to significant burdens annually on payers as rate increases are granted to cover "prior year undercollections" which bear no relationship to the hospital's current year operating costs. This burden amounted to $500 million in 1991. Reversal of this trend is necessary to continue the timeliness created by the settlement process. Both hospitals and payers will benefit from full prospective knowledge of annual revenues. Payers will fully understand their liabilities and hospitals will be able to project revenues with finality so that expenses can be planned accordingly.

The Department's proposal to eliminate most components of final reconciliation builds on the other regulatory reforms we are proposing, which incorporate most aspects of hospital reimbursement into a single all-inclusive rate for each admission. With the adoption of these rules and with the exception of the specific items discussed below, hospitals will be fully compensated for their reasonable cost as determined by rule when the bill for an inpatient admission or outpatient admission or outpatient service is paid. The Department does not believe that this proposal, per se, has a significant financial impact apart from the proposals discussed elsewhere. While some individual rate items will continue to require adjustment at the close of the rate year, the Department believes that the proposal, by allowing hospitals to collect virtually all of the revenue to which they are entitled during the rate year, has significant advantages of certainty and stability for all participants in the Chapter 83 system.

On July 25, 1991, the Department issued guidelines illustrating the settlement or reconciliation of those items still remaining with elimination of most of the final reconciliation process. While the Department will review the proposed guidelines fully with the industry, it should be noted that the Hospital Rate Setting Commission will have final approval over this methodology.

First, there are items which will continue to be settled based on hospitals' actual costs or other retrospective calculations. Undercollections due to these items will be included in the next year's payment rates as a percentage add-on and include capital facilities allowance, uncompensated care, outside collection costs, income from other sources. DRG (patient) appeals and revisions to the prospective Medicare cost shift are discussed elsewhere in this document. These items will be settled by comparing the amount included in the rates initially with the final amount. No comparison to collected amounts will be made.

A second group of items will require no reconciliation because they will be fully collected through the all-inclusive rate. These items should, in fact, vary with volume and case-mix so that hospitals continue to have incentives to operate at appropriate levels. These items include Commission-approved and prior year adjustments, utilization review costs, shortfalls due to volume, case-mix and intensity, CCIS, cash flow adjustments, malpractice insurance costs, prompt payment discounts, 1990 voluntary rate settlement.

With regard to other specific items raised by the commenters, beginning in 1991, the Chapter 83 rules no longer recognized rate adjustments for costs due to new rules; such costs are one reason for which the prospective operating adjustment and statewide legal issues was created and hospitals who find their schedule of rates insufficient to meet these

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costs may request a full rate review. The Department is not familiar with the cost category known as fixed variable costs, but believe this commenter refers to indirect costs which may not be within the hospital's control in the very short run.

Reimbursement of neonatal transfer cases as normal discharges in the 1989 final reconciliation methodology was an interim solution to the transfer issue. The procedure for the reimbursement of transfer patients, in accordance with the Procedural and Methodological rules, N.J.A.C. 8:31B-3.38(c)2iv, remains in effect for all patients with one neonatal exception. Upon the implementation of New York GROUPER Version 7.0 on January 1, 1990, one new infant DRG was created to capture patients born in a community hospital and transferred to a tertiary care center in less than five days and, subsequently transferred to a community hospital after the neonatal period has ended (over 28 days), when the condition had stabilized. Each is a separate DRG for billing purposes. The new DRG is DRG 636, Infant aftercare for weight gain, age over 28 days, and under 1 year.

A final reconciliation methodology document will be formally submitted to the Hospital Rate Setting Commission for its approval early in 1992. The outpatient final reconciliation will be finalized. The Commission has requested that a formal recommendation be made and decided upon very early next year with regard to cross-subsidization penalties and we anticipate addressing that issue in the context of our final reconciliation proposal. It is correct that caps on ratios of cost-to-charges would be eliminated in the absence of final reconciliation.

Differences in revenues affected by payer shifts are reduced by accurate calculations of hospital mark-up factors and payer factors as long as a statewide uncompensated care factor is continued. (Hospitals are notified of these items in advance of each rate year). The Department does not plan to conduct a payer reconciliation during 1992.

The Department does not believe that it is appropriate to include the prospective operating adjustment or the technology factor in inpatient rates only. Hospital charges should be set sufficiently to allow for the collection of these costs through outpatient bills similarly.

Payer factors can generate revenue shortfalls or revenue increases if there is a significant shift in payer mix for the mix on which factors are generated. There are not dramatic shifts in payer mix from year to year and changes will be reflected by the following year. This issue is not sufficiently large to warrant a payer reconciliation at this time.

The Department believes that the advantages of eliminating most components of final reconciliation for hospitals as well as other parties are compelling. Experience shows that it has been difficult for all parties to adhere to a timely final reconciliation process for several reasons. Individual institutions ask for extensions for later submission or collection of required data. Many parties ask for the development of new features of the Chapter 83 system which diverts resources away from processing final reconciliations for past years. Under the Department's proposal, it will be easier to respond to priority requests to reform the rate setting system. At the same time, hospitals will not be put at financial risk since most aspects of approved revenue can be collected during the rate year.

Each year's debate over the methodology used to process the final reconciliation has rounds of proposals, comments, responses, and further discussions of reimbursement issues that should properly be addressed in advance of the rate year being discussed and not several years thereafter. The Department believes it is a much more appropriate use of the resources of the Department, hospitals and payers to develop prospective rates that are adequate, fair and consistent with the statutory and regulatory requirements of Chapter 83.

The Department notes that several specific calculations alluded to by the commenters such as cross-subsidization penalties may, indeed, continue to require calculation. The calculation of these items, however, does not involve the same time or burden of processing as does a complete final reconciliation.

The Department appreciates the comment suggesting a second phase of voluntary settlements and will explore this issue further next year.

As always, certain elements of hospital revenues are subject to audit such as capital facilities or uncompensated care.

Hospitals who bill outliers on their acute stays must subsequently submit an additional bill for the subacute days.

Since those items which will continue to be subject to a form of reconciliation cannot be determined until data are available during the following rate year and since the Department continues to oppose mid-year rate adjustments, it is correct that there will be a lag between the rate year and the year in which settlements are made. This strengthens the argument for a system which allows hospitals to collect as much of approved revenue as possible during the rate year.

The Department agrees with the comments of the Public Advocate and Blue Cross and Blue Shield in regard to retention of the Commission's authority to limit rate adjustments if a hospital has not demonstrated good faith efforts to collect payment from Medicare. Although the Medicare cost shift methodology contains incentives that encourage hospitals to collect all payments from Medicare, a review of these collections has been reinstated to ensure that payers in New Jersey would not have to reimburse hospitals for any money that could have been collected from Medicare. Therefore, this section, deleted in the proposal, has been reinstated on adoption, and the Commission will continue to have the authority to review the reasonableness of hospitals' collections from Medicare, which are included in the Medicare cost shift.

N.J.A.C. 8:31B-3.75 Schedule of Rates reconciliation

COMMENTER: St. Clares Riverside Medical Center

COMMENT: This commenter considers the proposed methodology to be unreasonable because it does not allow hospitals to collect all of their financial elements or prior year undercollections if they experience volume changes.

RESPONSE: As a result of changes made elsewhere in these rules, the majority of financial elements under Chapter 83 are not directly related to volume. For example, most reimbursement for indirect costs now varies directly with volume, so that hospitals will automatically collect the revenue to which they are entitled as a consequence of billing the all-inclusive DRG rate for each patient. For those elements which continue to be reimbursed without regard to volume (for example, uncompensated care, capital facilities allowance), the Department has agreed to conduct a volume reconciliation which will assure that hospitals experiencing an increase or decrease in the number of cases will not collect more or less than their reasonable costs as determined by Chapter 83.

N.J.A.C. 8:31B-4.67 Non-operating revenues (net of expenses)

COMMENTERS: Cathedral Healthcare System, Department of the Public Advocate, Division of Rate Counsel, Medifax Consultants Inc.

COMMENTS: The Public Advocate and one additional commenter believe that all of the interest income from financial charges on deliquent charges on accounts receivable should be applied to offset costs related to patient care.

Commenters questioned various points about N.J.A.C. 8:31B-3.40, which implements sections of Chapter 187 which authorized hospitals to charge interest after 60 days.

These questions included: 1) whether interest may be charged on admissions for which an appeal has been filed; 2) what interest rates are proposed; and 3) if the DRG assignment is changed after the bill is paid can the insurer collect interest on the refund?

RESPONSES: The Department wishes to enhance incentives for hospitals to collect patient revenues. It should be acknowledged that the interest income recognizes the time value of money. Therefore it is fair to allow hospitals to keep half of the interest income and for the other half to reduce payer's liabilities.

Hospitals will be instructed to "stop the clock" on interest charges when an appeal has been filed. It restarts when the appeal is resolved. The Department will monitor the appeals process to ensure that it is not being used to simply delay payment and avoid interest charges. The interest clock does not stop unless a formal appeal is filed.

The Department has not proposed interest rates. The hospitals may set interest rates not to exceed 10 percent a year, as specified in Chapter 127. There is no authorization in Chapter 187 for hospitals to pay interest to insurers and would be contrary to the goal of ensuring timely hospital payments. See also the proposed change in N.J.A.C. 8:31B-4.67 with regard to this issue.

N.J.A.C. 8:31B-5.3

COMMENTERS: Morrisy and Company, Inc., North Jersey Physicians Review, Thomas Marx

COMMENTS: One commenter asks when the proposed changes to the DRG-GROUPER will be implemented since it will not be available until January, 1992. Related to changes in GROUPERS, this commenter also noted that the Department has updated GROUPERS approximately every two years, yet the contract period for the implementation of new GROUPERS is for three years which, according to the commenter, has resulted in management problems between hospitals and their vendors.

One commenter believes that the Yale Refined Grouper improves the coefficient of variation and eliminates the need for outlier categories, and recommends its use rather than GROUPER Version 8.0.

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Another commenter suggests that if the Department uses GROUPER 8.0 it should be updated to reflect the use of the new ICD9.CM codes. The commenter is also concerned about the proprietary nature of the GROUPER.

One commenter asks that, given the variability in the length of stay and the new technology available, the trim point for DRG-198 (cholecystectomy without complication or comorbid condition) be lowered to one day.

RESPONSES: The New York State GROUPER Version 8.0 is available to hospitals and hospital vendors from 3M Health Information Systems under five different arrangements. Software, license fees, and costs vary depending upon the users' needs. As in prior years, the Department of Health is available to assist any potential users of the GROUPER in obtaining copies of the AP-DRG GROUPER Version 8.0.

The Department is recommending using the New York State GROUPER Version 8.0 for 1992. As mentioned in response to comments on section 8:31B-3.23, during 1992 the Department will study the cost-predictability of Yale and other more acuity-sensitive GROUPERS for 1993.

It should be noted that the New York State GROUPER Version 8.0 includes the following modifications and improvements which are not present in the GROUPER currently in use in New Jersey:

1. Expansion of Pediatric DRGs based on research performed by the National Association of Children's Hospitals and Related Institutions
2. New DRGs for Cochlear Impants, Hemophilia
3. Major modifications were made to the complication and comorbidities list
4. Modification of the surgical portion of MDC 5 (Diseases and Disorders of the Circulatory System)
5. Change in DRG hierarchy assignment

The new codes can be readily mapped to the codes used and accepted by the New York State GROUPER Version 8.0.

Although the New York State GROUPER Version 8.0 is proprietary, the Department does not anticipate a significant increase in the cost to the industry of obtaining this software. Many organizations have existing contracts with the vendor which owns the software.

The Department recognizes the variability of length of stay and the new technology available for cholecystectomies. However, the Department will not support a change of the low trim to one (1) day until further supporting clinical documentation is received regarding the outcomes of performing this procedure on a one day basis. Such data will be taken into account in determining 1993 trim points.

GENERAL COMMENTS:

Many commenters provide general assessments of the proposed regulatory changes as a whole. Because these comments could not be assigned to specific sections of the rules, they are summarized below.

COMMENTERS: Barnert Hospital, Bayshore Community Hospital, Helene Fuld Medical Center, JFK Medical Center (Edison), Morristown Memorial Hospital, Newark Beth Israel Medical Center, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, Overlook Hospital, St. Barnabas Medical Center, St. Peter's Medical Center, The Concord Group, The Hospital Center at Orange, The Medical Center of Ocean County, University of Medicine and Dentistry of New Jersey, University Health Systems (representing Atlantic City Medical Center, Cooper Hospital/University Medical Center, Hackensack Medical Center, Helene Fuld Medical Center, Jersey Shore Medical Center, Kennedy Memorial Hospitals-University Medical Center, Robert Wood Johnson University Hospital and UMDNJ—University Hospital), Wallkill Valley Hospital and Health Centers, West Jersey Health System

COMMENTS: Many hospitals support the Department's 1992 proposed changes with clarification and/or modification of several issues. The Hospital Association expresses this position in commenting that it "finds the proposed changes conceptually consistent with the stated objective for system reform," but that "certain financial outcomes are in contradiction to the Department's stated and intended objectives." A particular concern is quantification of the financial impact to substantiate budget-neutrality. Some have been unwilling to support the proposed rules until the true financial impact is known.

University Health Systems states that it would be unable to support final adoption of the proposed 1992 regulatory amendments without appropriate resolution of the following issues:

1. The prospective economic factor for 1992;
2. Hospital specific itemization of continuing adjustments;
3. The final form of the computation intended to prospectively determine the Medicare cost shift;
4. The Department's policy regarding Federal recoupment of any overpayments by Medicare;
5. The final form of the corridor computation.

Several commenters note that the purpose of Chapter 83 is to provide the full financial requirement of efficient and effective hospitals, yet the proposed changes, as projected, do penalize such hospitals.

Further, these commenters suggest that the proposed changes may serve as a disincentive to reduced length of stay, offering lower cost services, and continuing residency programs in highly utilized services.

Budget-neutrality should be maintained, and any dollars removed from the system by these proposals should be restored to hospitals.

Commenters also noted that they found it difficult to assess the adequacy of the proposed changes because of the lack of specificity in some sections of the proposal, and the errors contained in some of the Department's modeling of financial impact. A number have stated specifically that the Department should release comprehensive modeling that addresses the financial impact of the hospitals concerns. One suggested a new 30-day rate implementation notice period after all final adjustments have been made.

RESPONSES: Many of the issues raised in this section were also raised by other commenters in relation to specific sections of the rules and have been addressed accordingly. For more detail, please refer to the respective sections.

In response to questions about the overall impact of all of these changes, the Department's analysis shows reimbursement swings which are less than in previous year. Further, the Department has changed its calculations of the impacts of the proposed changes in response to industry recommendations, and in some cases, to correct errors. The cooperation of the industry in making suggestions and pointing out calculation errors has been valuable, and the calculations now reflect greater consensus than before. The Department has, as indicated, revised methodologies; therefore comments on previous impacts are no longer applicable. The Department has worked together with the industry in developing the best methods to compare 1991 rates to 1992 rates.

Summary of Issues Raised by Commenters Not Specific to the Proposed Amendments:

Comments received from the following hospitals addressed many issues of importance to the reimbursement system. Since they do not relate to any of the proposed rules, no formal response is provided. However, the Department is aware of these issues and will continue to work with the industry to develop reasonable solutions.

COMMENTERS: Barnert Hospital, Bergen Pines County Hospital, Besler & Company, Inc., Cathedral Healthcare System, Deborah Heart and Lung Center, Dover General Hospital & Medical Center, Elizabeth General Medical Center, Hackettstown Community Hospital, Healthcare Financial Management Association, Holy Name Hospital, Jersey Shore Medical Center, JFK Medical Center (Edison), Kaden Arnone, Inc., Kennedy Memorial Hospitals-University Medical Center, Kimball Medical Center, KPMG Peat Marwick Management Consultants, Monmouth Medical Center, Morristown Memorial Hospital, Morrisy & Company, Inc., Newark Beth Israel Medical Center, New Jersey Hospital Association, Overlook Hospital, Robert Wood Johnson University Hospital, St. Barnabas Medical Center, St. Clares Riverside Medical Center, St. Joseph's Hospital and Medical Center, St. Francis Medical Center, South Amboy Memorial Hospital, The Concord Group, The Medical Center at Princeton, The Valley Hospital, University Health Systems (including Atlantic City Medical Center, Cooper Hospital/University Medical Center, Hackensack Medical Center, Helene Fuld Medical Center, Jersey Shore Medical Center, Kennedy Memorial Hospitals-University Medical Center, Robert Wood Johnson University Hospital and UMDNJ—University Hospital), Wallkill Valley Hospital and Health Centers, Wayne General Hospital

ISSUES: Benchmarks, continuing adjustments, elimination of HMO and third party discounting, rebasing, billing charges, restructuring of capital and technology factor, same day medical/same day surgical payment.

Summary of Agency-Initiated Changes:

N.J.A.C. 8:31B-2.2: The Department has amended the rule to require the submission of charge data that is needed to set rates for outpatient services.

N.J.A.C. 8:31B-3.23(g): The Department has added a reference to N.J.A.C. 8:31B-4.131 for purposes of consistency.

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N.J.A.C. 3:31B-3.26(a)1: The Department has clarified the Commissioner's responsibility in determination of the economic factor.

N.J.A.C. 8:31B-3.26(a)5: The Department has added a specification regarding the way in which adjustments for labor in prior years will be reflected in 1992 rates.

N.J.A.C. 8:31B-3.26(j)1i: The Department has deleted and added certain DRGs to be consistent with use of GROUPER 8.0.

N.J.A.C. 8:31B-3.31: The Department has added a specific time in which hospitals are to report changes in physician compensation arrangements, in order that the rate-setting can continue to be timely.

N.J.A.C. 8:31B-3.40(j): This subsection has been deleted because it is outdated and obsolete.

N.J.A.C. 8:31B-3.73(a): This subsection has been changed on adoption to correct a printer's error in the order of the rule paragraphs.

Summary of Changes upon Adoption:

Calculation of payment for medical insurance and personnel health allowance will be based on 1990 data rather than 1988, in order to account for the many changes occuring in this area.

Specialty designation was reinstated for hospitals whose rates were set prior to December 30, 1991, based on such designation.

A factor was added to the labor portion of the economic factor to reflect prior years' overcollections that hospitals will be allowed to keep. For purposes of final reconciliation, hospitals will be reconciled to the labor portion of the economic factor used in setting that year's rates; for the non-labor portion, hospitals will be reconciled to actual proxy increases as opposed to projected proxy increases.

The corridor adjustment was changed from two percent for both gains and losses, to one percent for losses, and three percent for gains; the effect will be to narrow hospitals' losses, and allow efficient hospitals to keep more of their gains.

The phrase was reinstated that allows the Hospital Rate Setting Commission to limit rate adjustments if a hospital has not demonstrated good faith effort to obtain from Medicare the appropriate level of reimbursement.

One-half of interest income from financial charges on delinquent accounts, net of transaction costs, is to be treated as a Case C, and one-half is to be offset against outside collection costs. Transaction costs in excess of interest income are not to be added to outside collection costs.

Other changes, elsewhere explained, include clarifying language related to outpatient data collection, outside collection costs, personnel health allowance calculations, reporting of physician compensation arrangements, and calculation of changes in number of Medicare patients for the Medicare cost shift.

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

8:31B-1.2 Definitions

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

...

"Preliminary Cost Base" means the estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate (see N.J.A.C. 8:31B-3.23 and 3.27).

...

8:31B-2.2 Implementation

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

(c) The revisions to N.J.A.C. 8:31B-2 provide for the submission of sufficient patient information for reconcilitation of payments consistent with N.J.A.C. 8:31B-3.71 through 3.86.

1. (No change.)

2. Outpatient Data shall consist of two data sets:

i. Patient *[classification]* ***-specific*** data, which will include, but not be limited to, the following: hospital provider number, patient control number, medical record number, date of treatment, patient's date of birth, patient's gender, Current Procedural Terminology (CPT) codes, *[and]* current International Classification of Disease (ICD) codes ***and charge data***. The Department will require submission of patient classification data as needed to obtain a representative sample of patients, including same day medical patients. The data collection period will not exceed eight weeks in 1992.

ii. Institution-level data, which will include cost, revenue, and service statistics, sufficient to permit assignment of costs of patient records and determine payment for outpatient services.

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

8:31B-2.4 Guidelines for completion of the patient billing and abstract form

(a) (No change.)

(b) Billing timelines requirements are as follows:

1. (No change.)

2. Where claims administration and cash flow considerations would dictate a more current billing than the 30 day requirement, a preliminary version of the UB-82 containing only those items required in (a) above for the particular payer need be utilized at the time of billing and such information is sufficient to adjudicate a claim for prompt payment discount. In interim billing cases, it is necessary that the completed patient billing and abstract information noted in N.J.A.C. 8:31B-2.2(c) must be submitted to the appropriate Date Intermediary in compliance with the Data Intermediary time limits and the Department of Health Data Requirements (see N.J.A.C. 8:31B-2.5(g). Data items affecting DRG assignment, and reported to the data intermediary for transmission to the Department of Health, shall not differ from data upon which payment was based.

8:31B-3.2 Derivation of Schedule of Rates

(a) For a group of hospitals, the Commissioner, on or before January 31 of the rate year, shall propose to the Commission a Schedule of Rates for the initial rate period. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year shall be the year the fiscal year begins; for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year shall be the year the fiscal year ends. A Schedule of Rates for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year. The proposed Schedule of Rates shall include:

1. DRG rates and other percentage adjustments as defined in N.J.A.C. 8:31B-3.23;

Recodify 3.-7. as 2.-6. (No change in text.)

8:31B-3.3 Uniform Reporting: Current costs

(a) (No change.)

(b) Late submission of current cost data, as defined in N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements, will result in a penalty of $200.00 per working day past the appropriate submission date. The penalty shall be reflected in the following year's rates.

8:31B-3.4 Costs per case

The current cost base shall include both direct and indirect patient care costs allocated to the Diagnosis Related Groups and to ambulatory services to determine cost per visit for each hospital, and for each patient within the hospital. This cost finding process is described in N.J.A.C. 8:31B-3.16 through 3.19. The Diagnosis Related Groups are listed in the DRG List Regulations (N.J.A.C. 8:31B-5).

8:31B-3.11 Same Day Surgery

(a) (No change.)

(b) Hospitals shall report to the Commissioner in writing the existence, removal or other change in status of same day surgery programs and a description of the type of procedures performed and a list of the affected DRGs no later than April 30 prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order.

8:31B-3.18 Identification of direct and indirect costs related to patient care

(a) Costs related to patient care as adjusted for price level depreciation as reported to the New Jersey State Department of Health are classified as follows:

1. (No change.)

2. Patient care general service costs.

3. (No change.)

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(b) Patient care general service and indirect costs (except as noted below) are then distributed to direct cost centers based on allocation statistics reported to the New Jersey State Department of Health on the following basis:

Patient Care General Services		Allocation Basis
CSS:	Central Supply Services	Costed Requisitions
DTY:	Dietary	Patient Meals
HKP:	Housekeeping	Hours of Services
L&L:	Laundry and Linen	Pounds of Laundry
MRD:	Medical Records	Percentage of Time Spent
PHM:	Pharmacy	Cost of Drugs
EDR:	Education and Research (not including Schools of Nursing and Allied Health)	Percentage of Time Spent
RSD:	Residents	Accumulated Costs in Patient Care Cost Centers
PHY:	Physicians Coverage (related to research and medical education)	Patient Days
A&G:	Administration and General	Accumulated Cost
FIS:	Fiscal	Accumulated Cost
PCC:	Patient Care Coordination	Percentage of Time Spent
PLT:	Plant (less capitalized interest and depreciation)	Square Feet
UTC:	Utilities Cost	Square Feet
MAL:	Malpractice Insurance	Accumulated Cost
OGS:	Other General Services	Accumulated Cost

(c) A Report of Costs shall be produced, identifying for each cost center: patient care, physician compensation, cost center costs, and costs allocated from each cost center as shown on Appendix I.

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

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

(c) Cost per case allocation:

1. The Direct Patient Care Costs of each center (after the allocation of patient care general services and indirect costs as noted in N.J.A.C. 8:31B-3.18) are separated between inpatient, outpatient, and SNF costs which are then excluded from the Schedule of Rates based on gross revenue reported to the New Jersey State Department of Health. The costs are then divided by the hospital's corresponding total measures of resource use to compute a cost to measure ratio, cost-to-change, or cost-per-patient day ratio for each center. Each ratio is then multiplied by the corresponding cost center's measures of resource use of each DRG and outpatient case type to calculate costs per cost center for the hospital's case-mix. Dividing by number of cases (including outpatient visits), cost per case and outpatient cost per visit are calculated, by cost center and in total.

2. (No change.)

[3. The calculation of hospitals' non-acute care exclusion (SNF) days will be based on the difference between the acute-care rate for those days, less 10 percent, and the current average Medicare SNF rate.]

8:31B-3.20 Preliminary Cost Base

The proposed Preliminary Cost Base as defined in N.J.A.C. 8:31B-1.2 is the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for update factors and the Capital Facilities Allowance and as modified or approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

8:31B-3.22 Standard costs per case

(a) The standard to be used in the calculation of the proposed PCB for each inpatient DRG is determined as the mean non-physician cost per case in all hospitals whose costs are included in the data base, adjusted for labor market differentials and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

(b) For determination of teaching costs, the following criteria will be followed:

1. All residents initially employed as first year residents (PGY1) by hospitals on July 1, 1987 or later must meet either criteria in (b)1i and ii, or (b)1i and iii listed below, in order to be included among those residents on which payment is based. To be similarly included, second-year residents (PGY2) must meet these same minimum requirements by July 1, 1988; third-year residents (PGY3), by July 1, 1989; fourth-year residents (PGY4), by July 1, 1990; fifth year residents (PGY5), by July 1, 1991; and all residents by July 1, 1992.

i.-iii. (No change.)

2. For all graduate medical education programs which are subject to accreditation by the Accreditation Council for Graduate Medical Education (ACGME), The American Osteopathic Association (AOA), or, in the case of dental residents, the American Dental Association (ADA), or, in the case of podiatric residents, the Council on Podiatric Medical Education (CPME), accreditation must be maintained for residents in these programs to be used in determining the hospital's payment. Residents in unaccredited programs will not be recognized in the teaching methodology for determining direct and indirect patient care costs (see Appendix XI).

3. (No change in text.)

4. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

5. Beginning in rate year 1992, the changes in number of residents and associated costs due to transfers shall be reflected in each hospital's rates for the following rate year if the Department is so advised on or before April 15.

(c) Methodology for determining hospital-specific patient care rate adjustments for graduate medical education (GME) shall be as follows:

1. (No change.)

2. For all programs which have maintained the appropriate accreditation, and have a minimum number of residents equal to the years in that program necessary for it to receive accreditation, direct and indirect patient care costs associated with Graduate Medical Education will be calculated for each inpatient DRG as follows:

i. All DRGs will be assigned to one of four mutually-exclusive residency categories: Medicine, Surgery, Pediatrics and OB/GYN. Assignment will be determined by the specialty of the resident who would, in most New Jersey teaching hospitals, have principal responsibility for care of a patient in a given DRG. Appendix XI, which is hereby incorporated by reference, lists these DRG assignments, and details the methodology for calculating GME factors.

ii. Regarding medicine, the following shall apply:

(1) For teaching reimbursement purposes, a medical teaching hospital is defined as having an accredited program, with at least one F.T.E. resident per year of the program, in Internal Medicine; Transitional/Flexible First Year; a medical specialty/subspecialty; and/or Radiology.

(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.I.

iii. Regarding Surgery, the following shall apply:

(1) For teaching reimbursement, a surgical teaching hospital is defined as having an accredited program, with at least one F.T.E. resident per year of the program, in General Surgery; surgical specialty or subspecialty; Anesthesiology; and/or Pathology.

(2) Reimbursement will be based on an increase in rates using the methodology described in Appendix XI B.II.

iv. Regarding Obstetrics/Gynecology, the following shall apply:

(1) For teaching reimbursement, an Obstetrics/Gynecology teaching hospital is defined as having an Obstetrics/Gynecology program with at least one F.T.E. resident per year of the program.

(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.III.

v. Regarding Pediatrics, the following shall apply:

(1) For teaching reimbursement, a pediatric teaching hospital is defined as having an accredited pediatric program, with at least one F.T.E. resident per year of the program.

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(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.IV.

vi. Regarding Family Practice, the following shall apply:

(1) For teaching reimbursement, a Family Practice hospital is defined as having an accredited Family Practice program, with at least one resident per year of the program. Family Practice teaching will not be considered in neutralizing costs for standard setting.

(2) For payment purposes, a Family Practice supplement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.V.

vii. A teaching adjustment factor will be applied in calculating the rates for hospitals experiencing changes in accreditation status or changes in number of residents since the base year, and to reflect any differences between actual and cap resident counts.

3. Direct and indirect costs, including resident salaries and other educationally related costs, will be recognized in rates in accordance with the GME reimbursement methodology which neutralizes the costs of teaching within medical, surgical, OB/GYN and pediatric DRG categories and deneutralizes these costs for setting payment rates.

4. For purposes of payment, all deneutralization factors will be considered to be equal to 1 or greater.

(d) Determination of labor equalization factor to calculate Statewide standard costs per case shall be as follows:

1.-4. (No change.)

5. Labor costs shall be adjusted to Statewide averages by first grouping all non-physician direct patient care labor costs (after fringe benefit costs have been distributed) into eight labor categories as follows:

i.-vii. (No change.)

viii. Administrative and Clerical: Includes non-physician salaries reported in the MRD, A&G/FIS, PLT, and PCC cost centers.

6.-7. (No change.)

8. Whenever the number of hospitals in a given labor market area decreases to a number less than four, the Department will calculate and compare the mean equalization factors of the labor market area, both before and after the decrease. If they differ by plus or minus one percent or more, that labor market area will be merged with the geographically contiguous labor market area having the most similar hourly wage rate, averaged for all salaried employees and based on the most recent data available; the factors of all labor market areas will be recalculated, and effective in the following rate year.

(e) (No change.)

8:31B-3.23 Reasonable cost per case

(a) Inpatient cost per case is determined as follows:

1. The reasonable Cost Per Case (DRG) for all hospitals, for every DRG with greater than five merged patients and shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

(degree of confidence × labor market standard, calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases) × the amount and type of Graduate Medical Education

plus

(1—degree of confidence) × hospital current non-physician direct cost per case

plus

hospital current physician patient service cost per case

i. Where the degree of confidence of a DRG is ((1 minus the DRG's coefficient of variation) + 0.3). In 1993 the 0.3 will be increased to 0.4, and in 1994 and forward, it will be increased to 0.5. If the resulting amount is greater than one, then the degree of confidence will be one.

ii.-iv. (No change.)

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

(f) Payment for Personnel Health Allowances will be calculated and implemented as follows:

1. Total allowances in *[the base year]* ***1990*** shall be divided by the net acute care patient revenue. The result shall be subtracted from one, and this result then divided into one to produce the personnel health allowance factor. *[All rates will be increased by this factor.]* ***The amount will be included in the hospital's gross revenue requirement factor.***

2. This factor will not change, except as a result of full rate review, calculation errors, rebasing, or recalibration of rates, and no final reconciliation will occur.

(g) Payment for medical insurance will be calculated using 1990 actual cost data, and no final reconciliation will occur.

*[(g)]****(h)*** Payment for Outside Collection Costs will be calculated and implemented as follows:

1. Outside collection costs are the reasonable costs of collecting Chapter 83 bad debts after the hospital has completed all the credit and collection steps required pursuant to N.J.A.C. 8:31B-4.40. These costs include payments to collection agencies, attorneys and other outside vendors. These costs may not include any management fees or payments to the hospital or its affiliate from collection agencies, attorneys and other outside vendors. Collection costs *[paid to affiliated collection agencies, attorneys and other vendors]* will be reviewed for propriety and reasonableness pursuant to N.J.A.C. 8:31B-4.25 ***and 4.131***.

2. These costs will be reconciled to actual expenditures at final reconciliation.

*[(h)]****(i)*** Payment for costs associated with Schools of Nursing and Allied Health will be calculated and implemented as follows:

1. Base year costs related to certified Schools of Nursing and Allied Health, net of tuition costs, will be added to the rates of hospitals incurring these costs.

2. These costs will not be adjusted at final reconciliation.

*[(i)]****(j)*** Physician costs not associated with education, that is, house physicians, will be screened at 110 percent of the ***peer group*** median and added to the rates. ***Peer groups will be those used in setting 1991 rates.***

1. Screens for the physician salary portion will be based on physician FTEs;

2. Screens for non-physician salaries and other costs will be based on non-physician FTEs;

3. Screens for those hospitals with no non-physician salary costs will be based on physician FTEs.

(k) For 1992, hospitals whose rates were based on their designation as specialty hospitals and approved by the Hospital Rate Setting Commission prior to December 31, 1991, will continue to receive DRG payment based on their base year costs. If the hospital had no base year experience in a given DRG the standard rate will be utilized.

Recodify existing (a)-(b) as *[(j)-(k)]* ***(l)-(m)*** (No change in text.)

8:31B-3.24 Off-site primary care

The Commissioner may establish, and the Commission approve, rates for demonstration projects involving hospital-affiliated off-site outpatient facilities providing primary care under an agreement with the Department of Health. For hospitals selected to participate in such programs, rates may include start-up and other costs that are deemed necessary in order to provide comprehensive primary care services.

8:31B-3.25 Net income from other sources

(a) The net gain (loss) from Other Operating and Non-Operating Revenues (as defined in N.J.A.C. 8:31B-4.61 through 4.67), and expenses of the reporting period which are items considered as recoveries of or increases to the Costs Related to Patient Care (see N.J.A.C. 8:31B-4.61 through 4.67) as reported to the New Jersey State Department of Health are subtracted from (added to) costs of the Preliminary Cost Base/Certified Revenue Base.

(b) Such revenue for PCBs/CRBs established using data from the Uniform Cost Reporting Regulation shall include all Other Operating and Non-Operating Revenues and Expenses reported per SHARE cost center costs and "expense recoveries" as Case B (see N.J.A.C. 8:31B-4.61 through 4.67), and all other items reported per the Uniform Cost Reporting Regulation as to their Case specified in N.J.A.C. 8:31B-4.61 through 4.67.

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8:31B-3.26 Update factors

(a) Economic Factor: An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals.

1. The economic factor shall be determined ***by the Commissioner of Health*** prior to the beginning of each rate year***. The Commissioner's determination shall be based on the recommendations submitted*** by a panel of three health economic experts appointed by the Commissioner of Health.

2. The economic factor determined by this panel shall be used to adjust hospital rates prospectively, and it shall not be be changed.

3. Among the factors the panel will consider must be the most current measure of inflation/deflation. In order to avoid a self-generating economic factor, the panel will use sources other than those driven significantly by policy decisions of the New Jersey hospital industry, such as actual increases in negotiated salary or contract costs. The economic factor will reflect changes in fixed market basket of goods. The panel should not take into account changes in technology or disease entities as these are adjusted through the technology factor. The panel will review written materials from all interested parties submitted in concert with panel-determined guidelines.

4. The Department shall provide appropriate staff to this panel.

5. An add-on of 0.01055 will be factored into the 1988-1992 labor portion of the economic factor.

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

(e) Resident Adjustment Factor: This factor will account for three graduate medical education adjustments in addition to a hospital's teaching factor:

i. Costs associated with residents in excess of the hospital cap, as defined in N.J.A.C. 8:31B-3.31(b);

ii. Changes in the number of residents occurring after the base year; and

iii. Loss of program accreditation.

(f) For 1991 and 1992 only, payment for CN-approved psychiatric short-term care facility beds shall be in accordance with the Hospital Rate Setting Commission approved methodology for 1990 based on FTE cost per closed bed. The amounts shall be adjusted by the appropriate economic factor as described in (a) above.

(g) For 1991 and 1992 only, payment for patients in CN-approved child/adolescent psychiatric units shall be based on average costs for the hospitals reporting rates in base year 1988, adjusted by the appropriate economic factor as described in (a) above, and resulting in an appropriate DRG adjustment.

(h) For 1991 and 1992 only, educational costs related to sickle cell disease shall be based on 1990 annualized Commission-approved amounts, adjusted by the economic factor as described in (a) above.

(i) For 1992 only, payment for regional perinatal services shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

(j) For 1992 only, payment for start-up costs associated with trauma centers shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

1. For 1992 only, the Department shall apply a trauma adjustment factor. The trauma adjustment factor will be developed as follows:

i. For trauma hospitals, the adjustment factor to be multiplied by the Statewide standard is the ratio of costs in trauma-related DRGs, in CN-approved ***Level I*** trauma-designated hospitals, compared to the costs in these DRGs for non-trauma hospitals. The following trauma-related DRGs are included: 2, *[27, 28,]* 210, 217, 533, 730, 731, 732, *[and]* 733***, 761 and 766***.

ii. For non-trauma hospitals, the adjustment factor to be multiplied by the Statewide standard will be based on the ratio of the average cost by trauma-related DRG for non-trauma hospitals to the average cost by trauma-related DRG for all hospitals.

(k) The Department shall establish payment rates or methodologies for those DRGs for which experience in the base year was insufficient to set rates. Sources to be used in determining these rates will include, but not be limited to, cost, charge, and statistical data from New Jersey and/or other states. Rates so determined, with the exception of neonate rates, will apply to all patients in these DRGs, regardless of inlier/outlier status. Payment in 1992 will be as follows:

1. Liver Transplants: payment for DRG 480 will be $72,139 in 1988 dollars.

2. Heart Transplants: payment for DRG 103 will be $72,438 in 1988 dollars.

3. Cochlear Implants: payment for DRG 759 will be $21,608 in 1988 dollars.

4. Bone Marrow Transplants: payment for DRG 481 will be $46,599 in 1988 dollars.

5. Neonate rates, DRGs 600 through 630, will be based on 1989 actual New Jersey cost data.

(l) For 1992 only, payment for the Poison Information and Education System shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor described in (a) above.

Recodify (h)-(i) as (m)-(n) (No change in text.)

8:31B-3.31 Commission adjustments and approvals

(a) Any modifications including statutory or regulatory changes or changes in patient care physician compensation arrangements, made to the Preliminary Cost Base by the Commission shall be added to hospitals' rates in the following rate year unless such a delay would result in a threat to provision of needed patient care service provision by an efficient institution providing effective and high quality services, or the Commission approves a later payment schedule. ***Hospitals shall report all changes in physician compensation arrangements to the Department within 30 days of their effective date.***

(b) Prior to the issuance of rates each year, the Department shall also determine prospective adjustments to hospitals' Schedule of Rates for 1988 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6 or participating in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7. Similar adjustments shall be made for any costs associated with residents in excess of the total number of FTE residents approved by the Commission for payment for the period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission; and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. These costs shall be removed in accordance with the methodology described in N.J.A.C. 8:31B-3.22(c)3. In the case of a transfer of residents between hospitals, the procedures described in N.J.A.C. 8:31B-3.22 shall apply.

8:31B-3.34 Medicare cost shift

(a) A hospital-specific cost shift per Medicare case shall be calculated prior to the beginning of the rate year, based on the average payment difference between Chapter 83 rates and Medicare rates. Expected Medicare payments shall be obtained from the fiscal intermediary, and shall include deductibles, coinsurance, and all other PPS rate elements.

(b) Payment shall be based on each hospital's cost shift per case and each hospital shall collect its Medicare cost shift amount through a percentage add-on to its schedule of rates.

1. The amount collected shall not be subject to reconciliation. However, changes in a hospital's number of Medicare patients shall be recognized ***in subsequent years*** if either of the following conditions is met:

i. *[The percent of Medicare patients changes by 10 percent or more relative to the percentage at the time the rate adjustment was calculated.]* ***The percentage of total admissions that are Medicare patients changes by 10 percent or more compared to the percentage of Medicare patients used to calculate the cost shift for the rate year; or***

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ii. The difference between the number of non-Medicare patients and number of Medicare patients changes by 250 or more discharges compared to the *[year]* ***difference*** at the time the adjustment was calculated.

2. Payment for changes in Medicare population will occur in the year following receipt of hospitals' actual cost data.

3. Any generic mid-year or fourth quarter changes made by Medicare will be recognized in calculating the cost shift for the following rate year.

4. An initial calculation will be issued to hospitals for their review before the rate year calculation is finalized.

8:31B-3.35*[-]****through*** 8:31B-3.36 (Reserved)

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

(b) Revenue requirements: Definition and calculation:

1. (No change.)

2. Appendix IV shall be produced for each hospital at the time the Schedule of Rates is issued by the Commissioner, detailing the relationship of Commission approved gross to net revenue requirements. All approved deductions from revenue shall be shown on Appendix IV at Current Cost Base levels. Hospitals may project increases or decreases in these levels (except for increases in prompt payment discounts) subject to the Commissioner's review.

3. (No change.)

4. In the event that a hospital is self-insured for employee health benefits, the PBC/CRB will be increased by the percentage of personnel health allowance as calculated using base year data. This percentage will not change except as the result of audit adjustments, full rate review, rebasing, or recalibration of rates. Financial elements shall be increased by the amount of uncompensated care percentages calculated pursuant to N.J.A.C. 8:31B-3.41. Pursuant to N.J.A.C. 8:31B-3.39 any payer differential determined by the Commission will be applied as a factor which was calculated based on the percentage of gross charges by payer class subject to payer differentials. A working capital factor will be applied to all gross charges related to Patient Care and hospitals will report in the actual cost filing for the rate year gross charges and a deduction from revenue for prompt payment discounts pursuant to N.J.A.C. 8:31B-4.15.

(c) Each hospital shall receive from the Commissioner a Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE	
COSTS RELATED TO PATIENT CARE		
DRG 1	$	
DRG 2	$	
DRG 3	$	
CLINIC PATIENTS	$	*
HOME HEALTH PATIENTS	$	*
EMERGENCY SERVICE OUTPATIENTS	$	*
AMBULATORY SURGERY	$	*
SAME-DAY-PSYCHIATRY	$	*
INDIRECT FINANCIAL ELEMENTS	AMOUNT	
NET INCOME FROM OTHER SOURCES	$	
CAPITAL FACILITIES ALLOWANCE	$	
NET UNCOMPENSATED CARE		%
PERSONNEL HEALTH PROGRAM		%

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and specific payer differentials as specified by the Commission. Payers in each designated Payer Class shall pay the Commission-approved percentages of the Schedule of Rates; all other classes shall pay 100 percent.

*Patients receiving these services will be billed at controlled charges.

Recodify existing 2. and 3. as 1. and 2. (No change in text.)

(d) (No change.)

(e) A hospital's schedule of rates in 1992 will be adjusted to eliminate significant fluctuations from its 1991 schedule of rates. *[Changes in excess of two percent will be treated as significant.]* ***Hospitals whose revenues under the proposals will decrease by more than one percent, compared to the current methodology, assuming base year case-mix and volume, will have revenue restored to limit such loss to one percent. This restoration may be funded through decreases in revenue to those hospitals who experience the greatest gains, comparing the proposal to the current methodology. Changes resulting from the economic factor, personnel health allowance, and medical insurance will not be included in corridor protection.***

8:31B-3.40 Changes in working capital

(a) The Schedule of Rates and all charges set in accordance with N.J.A.C. 8:31B-3.38 and 3.39 are increased by dividing by 95 percent to allow for payer discounts for prompt payment as set forth in N.J.A.C. 8:31B-4.46.

(b) Payers making periodic intermittent payments to hospitals at volumes projected by the hospital, reconciled periodically by the payer to the actual payment rates of the Schedule of Rates of the payer(s) or paying by other means such as teleprocessing which will approximate payment for services to the payer's(s') patients at the time the hospital must pay employees and vendors for such services (that is, no increase in working capital needs) or the patient or other responsible party making payment on or before the date of discharge will receive a five percent discount from the amount due for both inpatient and ambulatory services related to patient care.

(c) The exact prompt payment discount to which the payer is entitled will be calculated on an individual claim basis. Any payer making partial payment will be entitled to a discount for that portion and only that portion of the amount due. The discount will apply to all patient care related charges (with the exception of blood replacement charges) including deductible and coinsurance amounts. The time period for the calculation of the discount will begin on the date that the appropriate payer receives the bill.

(d) Payers (including self-paying patients) making payment to hospitals from one to 15 days of receipt of bill for inpatient services related to patient care shall pay 96 percent of payment due.

(e) Payers (including self-paying patients) making payment to hospitals within 30 days of receipt of bill for inpatient services related to patient care shall pay 97 percent of payment due.

(f) Payers (including self-paying patients) making payment to hospitals within 60 days of receipt of bill for inpatient services related to patient care shall pay 98 percent of payment due.

(g) Payers (including self-paying patients) making payment to hospitals after 60 days of receipt of bill for inpatient services related to patient care shall pay 100 percent of payment due.

(h) Payers (including self-paying patients) making payment to hospitals within 30 days of receipt of bill for ambulatory services related to patient care shall pay 97 percent of payment due.

(i) Any patient who willfully withholds insurance information from the hospital will be liable for the amount due and will remain so even following disclosure of available coverage. In such cases, the discount will be calculated based on the date of receipt of the bill by the patient.

[(j) Until such time as the Rules on Hospital Reporting of Uniform Bill-Patient Summaries (UB-PS) become effective, payers will be deemed to be in receipt of a bill only after the hospital has provided the payer with all information required by the current reimbursement practices of each payer. Payers will be deemed in receipt of the bill only after all items specified in the UB-PS regulation as being related to claims for the payer are completed by a hospital.]

8:31B-3.45 Uniform bill—case mix determination—financial reports

(a) Hospitals shall submit to the Department through the UB-PS Intermediary(ies) and within 90 days of the end of the calendar quarter, information on all inpatients discharged for the quarter containing final diagnoses and such other patient specific information as set forth in the Rule on Hospital Reporting of Uniform Bill-

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Patient Summaries. The net cost to the hospital of any information provided to the Department by a UB-PS intermediary for a hospital under a memorandum of understanding developed under N.J.A.C. 8:31B-2.1 of the rule on Hospital reporting of Uniform Bill-Patient Summaries shall be considered by the Commission in the Preliminary Cost Base established for the hospital. Beginning on or before the first quarter of 1990 hospitals shall also submit Uniform Bill-Patient Summaries containing the information specified in N.J.A.C. 8:31B-2.2 for outpatients. Included with such reporting shall be a statement of gross revenue by revenue center for patients discharged in the quarter (including in-house accounts of the previous period but excluding in-house accounts of the current quarter) for inpatient and outpatients, including, but not limited to, emergency service, clinic, home health, outpatient dialysis, ambulatory surgery, same day psychiatry, and private referred patients. UB-PS records not received by the Department within the time frames specified shall not be included in the hospital's Final Reconciliation.

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

8:31B-3.51 Rate notification, approval, and implementation

(a) Within 30 days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify in writing both the Commissioner and the Commission, of their decision to:

1. Implement rates as issued;

i. (No change.)

ii. Hospitals electing implementation of rates as issued shall have added to their rates a rate year technology factor and a prospective operating adjustment of two percent, calculated and implemented as described in N.J.A.C. 8:31B-3.26. Also added shall be 0.5 percent in lieu of clinical and legal adjustments.

iii. Implementation of rates precludes a full rate review (as defined in N.J.A.C. 8:31B-3.52), unless initiated by the Department.

iv. Within 30 days of hospitals' notification of intent to implement rates, the Commission shall take action on the rates.

2. Undergo a full rate review and not implement rates as issued;

i. If a hospital elects not to implement its rates, it shall not receive the technology factor, the prospective operating adjustment, the 0.5 percent adjustment in lieu of clinical and legal adjustments as described in N.J.A.C. 8:31B-3.26(b) through (d), the economic factor, or the economic factor portion of Commission-approved adjustments listed in N.J.A.C. 8:31B-3.26(e) through (k).

ii.-iv. (No change.)

(b) (No change.)

(c) If the Department initiates a full rate review as described in N.J.A.C. 8:31B-3.52, implementation of the rates will be subject to (a)2 above.

8:31B-3.52 Full rate review

(a) A full rate review may be initiated by a hospital, within 30 days of receipt of its proposed schedule of rates, or by the Department of Health, prior to 10 working days after the hospitals' required notification date concerning implementation of its rates. The Department may also institute a full rate review in response to a request for rate adjustments under N.J.A.C. 8:31B-3.64.

(b) The Department of Health shall initiate a full rate review when such action may be necessary to support the legislative mandate for hospital services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. The hospital must provide the required documentation within 30 days of notification that the Department has initiated a full rate review.

(c) A hospital which believes that the proposed rates are inadequate to support operation of an efficient and needed institution may request a full rate review as defined in N.J.A.C. 8:31B-3.51. A hospital must submit a request for a full rate review, together with all information required in (e) below, within 30 days of receipt of the proposed Schedule of Rates. The hospital shall submit two copies to the Department of Health, and one to the Hospital Rate Setting Commission.

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

8:31B-3.65 Schedule of Rates Adjustments

(a) Rates issued pursuant to these rules, except as modified, shall be effective as of January 1 of the rate year, except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. Unless a substantial danger to the ability of a needed hospital to provide adequate care shall result, adjustments or modifications which may be approved during the rate period shall be implemented through an appropriate adjustment to the Schedule of Rates for a given hospital, group of hospitals, DRG or group of DRGs, and shall take effect at the beginning of the following rate year. At the direction of the Commission, the Commissioner shall make an appropriate adjustment to the Schedule of Rates for affected Diagnosis Related Group(s), indirect costs, revenue, or payer adjustments. The hospital(s) shall make an appropriate adjustment to its charge master(s), and third party payers shall make appropriate adjustments to their case-mix adjusted periodic intermittent payment. However, where appropriate, the Commission may order lump sum, pro rata, automatic, periodic or deferred adjustments. All adjustments shall be made prospectively. (See also N.J.A.C. 8:31B-3.42).

(b) (No change.)

8:31B-3.71 Reconciliation and adjustments

(a) Certain reconciliations and adjustments will be calculated to insure that each hospital's net revenue collections align with the Commission approved Schedule of Rates, and that charges are in a consistent ratio with cost by revenue center.

[(c)] ***(b)*** Revenue resulting from the all-inclusive rate will not be subject to final reconciliation and will be retained by the hospital pending audit. Payment for Personnel Health shall be based on *[base year]* ***1990*** data, added to rates as a percentage add-on, and not reconciled. Add-ons to the rate for Capital Facilities, described in N.J.A.C. 8:31B-3.27, and other elements requiring rate year experience shall be reconciled, pending audit. The elements requiring rate year experience are outside collection costs; *[economic factor exclusive of the labor proxy;]* lower of aggregate charges or approved revenue; excess cross-subsidized revenue; medical denials; patient bill appeals; uncompensated care; ***changes in physician compensation arrangements;*** and taxes. Hospitals shall submit any information necessary to substantiate rate-year experience for elements listed above, in time frames specified by the Department. Any rate year adjustment approved by the Commission on or after January 1, 1992, will be paid through the Schedule of Rates as a percentage add-on with no further reconciliation. Payment for such adjustments shall occur in the year following approval by the Commission. ***All reconciliation adjustments to/from hospitals will include adjustments pursuant to N.J.A.C. 8:31B-3.65(b), Schedule of Rates Adjustments.***

(c) For any cost centers requiring final reconciliation from 1992 forward, the economic factor as originally used to set rates will be final. For 1989-1991 final reconciliation, hospitals will be reconciled to the labor portion of the economic factor used in setting that year's rates. For the non-labor portion, hospitals will be reconciled to actual proxy increases as opposed to projected proxy increases.

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but shall affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments shall be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, and shall become effective in the subsequent rate year, unless a substantial inequity shall result.

1. Economic factor: The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26 shall be the responsibility of the appointed panel.

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2. (No change.)

3. Periodic adjustments to Schedule of Rates: Pursuant to N.J.A.C. 8:31B-3.42 through 3.45, on January 1 of each year (staggered as appropriate for hospitals with other than a calendar year reporting period), direct and indirect patient care costs (as offset by the previous year's net income from other sources) shall be adjusted as appropriate, for the new projection of the update factors and other adjustments. The Capital Facilities Allowance portion of the Schedule of Rates is also adjusted accordingly, and a compliance adjustment to the Rate Order determined by the Commissioner and implemented by the hospitals and payers.

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient), as described in N.J.A.C. 8:31B-2, or N.J.A.C. 8:31A-8.1, whichever is appropriate: determination of actual case-mix as determined by the same GROUPER used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. Financial elements:

i. Except as specified above, reconciliation for patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. Effective with the 1992 rate year, the Department shall not reconcile each hospital's all-inclusive rate per N.J.A.C. 8:31B-3.23 and 3.26. A hospital shall retain its rate year collected revenues, subject to audit procedures described in N.J.A.C. 8:31B-3.17. There will not be a Schedule of Rates Variance on the volume variable financial elements, but there will be a comparison of aggregate charges to appproved revenue. Hospitals shall be reconciled to the lower of aggregate charges or approved revenue for the rate year, utilizing cost and billing data submitted pursuant to N.J.A.C. 8:31B-2.5. The Department shall provide 30 days' notice of its intent to close the data base. This notice shall be given no earlier than 60 days following the end of the first quarter following the rate year. No additional cases shall be added after the closing of the data base. The Schedule of Rates so developed and approved, adjusted to actual measure economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation. The Department will adjust a hospital's schedule of rates in the year following Commission action, to include any variances associated with excess cross-subsidized revenue (a comparison of rate year revenue versus rate year costs); medical denials; outside collection costs; patient bill appeals; and taxes. The Department will also adjust rates for any decreases in approved revenue that are due to the hospital's failure to set charges in correspondence with approved revenue. Adjustments to rates resulting from this regulation will be implemented as a percent of the PCB added to the Schedule of Rates. This adjustment will be made to the Schedule of Rates for the rate year following Commission action. No further reconciliation of this amount will occur.

ii. (No change in text.)

iii. Effective with the 1992 rate year, the Capital Facilities Allowance will be reconciled in accordance with N.J.A.C. 8:31B-3.27. For rate year collection, a percent add-on of the rate year PCB/CRB will be computed to facilitate a per discharge/visit collection. This amount will be reconciled to rate year approved costs, as defined in N.J.A.C. 8:31B-3.27, to compute a variance, which will be implemented as a percent adjustment to the PCB/CRB. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health, unless a different period is specified by the Commission.

Renumber 3.-4. as 2.-3. (No change in text.)

4. The Hospital Rate Setting Commission may limit rate adjustments if a hospital has not demonstrated good faith effort to obtain from Medicare the appropriate level of reimbursement.

(b) Any adjustment due to the reconciliation described in (a) above will be implemented as a percentage add-on to the hospital's rates, and no further reconciliation will occur. Payments shall occur in the year following hospitals' submission of actual cost data to the Department of Health, unless a different collection period is specified by the Commission.

8:31B-3.75 Schedule of Rates reconciliation

(a) Effective with the 1992 rate year, the Department will not reconcile the hospital's volume variable, all inclusive rate to collected revenue. Hospitals shall retain the portion of rate year revenue that is included in the DRG rate, subject to audit procedures described in N.J.A.C. 8:31B-3.17. Any adjustments made as a result of N.J.A.C. 8:31B-3.71 and 3.73 shall include interest, shall be collected as a percentage add-on to rates, and shall not be subject to further reconciliation. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health.

(b) (No change in text.)

8:31B-4.15 Revenues and deductions from revenue

(a) If a hospital receives less than its full charges for the services it renders, it shall report to the Department both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32 are defined in (a)1 through 11 below. Any individual allowance must be reported in only one of the 10 deduction categories and three contra categories (although individual transactions may be distributed among several if appropriate):

1.-7. (No change.)

8. Charity care: These deductions represent charges for patients determined to be eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.

9. (No change.)

10. Bad debt provision:

i. (No change.)

ii. The bad debt provision explicitly excludes deductions for contractual allowances, indigent patients, courtesy care, medical denials, finance charges or other non-medical service costs such as late fees and patient convenience items, and nursing home placement medical denial cases. Estimates of the bad debts incurred for the reporting period are to be reconciled to actual bad debts incurred for the reporting period and reconciled in the next reporting period's bad debt provision.

11. (No change.)

(b) (No change.)

8:31B-4.46 Reasonable working capital

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

(d) Subject to change with significant changes in interest rates (that is, so long as interest rates are between six percent and 20 percent per annum), the cost of working capital required is defined as one percentage of patient services billings per month for the approximate period of time between the final billing services and the payment therefore. To encourage prompt timely payments and to minimize potential late payment "penalties," Hospitals' Schedule of Rates shall include a provision for working capitial requirements of five percent of Gross Revenue Related to Patient Care in addition to all other approved financial elements subject to the determination by the Commission of quantifiable economic benefits for prompt payment by payers.

8:31B-4.67 Non-operating revenues (net of expenses)

(a) (No change.)

(b) Income or Investment, net of transaction expense, of Operating Fund are to be applied as offsets against Costs Related to Patient Care and treated as Case B.

(c)-(i) (No change.)

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(j) Interest income from financial charges on delinquent accounts receivable shall not be included in Costs Related to Patient Care. One-half***, net of one-half of transaction costs,*** shall be treated as a Case C item, and one-half***, net of one-half of transaction costs,*** shall be offset against Outside Collection Costs. ***Transaction costs in excess of interest income shall not be added to Outside Collection Costs.***

APPENDIX II (RESERVED)

APPENDIX III

PRELIMINARY COST BASE REPORT

	I	II	III	IV	V
ITEM	CURRENT COSTS	INCENTIVE/ DISINCENTIVE/ CHALLENGE	ECONOMIC FACTOR AND DEBT SVCE ADJUSTMENT	COMMISSION ADJUSTMENTS	REASONABLE FINANCIAL ELEMENTS (at current cost year volume)
A.-C. (No change.)					
D. CAPITAL FACILITIES ALLOWANCE					
E. TOTAL PRELIMINARY COST BASE PERCENTAGES OF PCB WHICH ARE ATTRIBUTABLE TO: 1.-2. (No change.)					

APPENDIX V

REVENUE BUDGET WORKSHEET/SUBMITTED BUDGET
SUPPLIED BY NJDOH—COMPLETED BY HOSPITAL

	(1)	(2)	(3)	(4)
	REASONABLE DIRECT COSTS (at base year volumes)	HOSPITAL PROJECTED CHANGES IN PATIENT VOLUMES*	REASONABLE DIRECT COSTS AT HOSPITAL PROJECTED VOLUME (Col. 2 × Col. 1)	PROJECTED GROSS REVENUE AT REVENUE CENTER AT HOSPITALS' PROJECTED VOLUME (Col. 3 × E.5. of Col. 3)
A.-D. (No change.)				
E. Rate Year Revenue Requirements	Exhibit 4, Line J1	///////	(Line D., above)	
1. Direct	Exhibit 4, Line J2	///////	Exhibit 4, Line J2	
Reasonable Cost per Case				
2. Total PCB				
3. Gross Revenue Requirements		///////		
(E.3 × Exhibit 4, Line G)		///////		
4. Charge to direct cost mark-up (E.4 − E.1.)				

[1](No change.)

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APPENDIX VII

PRELIMINARY COST BASE

RECONCILIATION TO NET REVENUE RELATED TO PATIENT CARE

	Source	Amount
A. Financial Elements		
1. Reasonable Exhibit 7 Costs per case		______
2. Outside Collection Costs	Schedule of Rates	(______)
3. Capital Facilities Allowance	Financial Elements Report	______
4. Subtotal	(Lines A.1. through A.3.)	______
B. Working Capital Increases		
1. Gross Revenue Related to Patient Care	Financial Elements Report	______
2. Discountable Gross Revenue	Line B.1. × .05	______
3. Prompt Payment Discounts	Financial Elements Report	______
4. Discounts Foregone by Payors	Line B.2.-Line B.3	______
5. Reasonable Working Capital Increase	(Line A.4.-Line B.1) × Line B.4	______
C. Schedule of Rates Variance		
1. Commission Approved Net Revenue	Line A.4. + Line B.5	______
2.-4. (No change.)		

APPENDIX VIII

SCHEDULE OF RATES AS ADJUSTED FOR COMPLIANCE

ITEM	RATE PER CASE	AMOUNT
COSTS RELATED TO PATIENT CARE		
DRG 1	$ ______	
DRG 2	$ ______	
DRG 3	$ ______	
CLINIC PATIENTS		
HOME HEALTH PATIENTS	$ ______	
EMERGENCY SERVICE OUTPATIENTS	$ ______	
OUTPATIENTS		
AMBULATORY SURGERY	$ ______	
SAME DAY PSYCHIATRY	$ ______	
OTHER FINANCIAL ELEMENTS		
INCOME FROM OTHER SOURCES		$(______)
CAPITAL FACILITIES ALLOWANCE		
19 SCHEDULE OF RATES VARIANCE		$ ______
NET UNCOMPENSATED CARE	%	
PERSONNEL HEALTH PROGRAM	%	

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and specific payer differentials as specified by the Commission. Payers in each designated Payer Class shall pay the Commission-approved percentage of the Schedule of Rates; all other classes shall pay 100 percent.

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APPENDIX XI

Reimbursement Methodology for Graduate Medical Education

A. All DRGs will be assigned to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. The assignments are as follows:

I. Medicine

(a) Included programs:

1. (No change.)

2. Transitional/Flexible First Year

3. Medical Specialties:

i. (No change in text.)

ii. (No change in text.)

iii. Critical Care Medicine

iv. (No change in text.)

v. (No change in text.)

vi. (No change in text.)

vii. Geriatric Medicine

viii. Hematology/Oncology

Recodify existing 9-19 as ix-xix (No change in text.)

4. Radiology:

i. Nuclear Medicine

ii. Nuclear Radiology

iii. Radiation Oncology

iv. Radiology, Diagnostic

v. Radiation, Therapeutic

(b) (No change.)

II. Surgery

(a) Included programs:

1. General Surgery

2. Surgical Specialties:

i. (No change in text.)

ii. (No change in text.)

iii. (No change in text.)

iv. (No change in text.)

v. Neurological Surgery

vi. (No change in text.)

Recodify existing 11-20 as vii-xvi (No change in text.)

xvii. Surgical Critical Care

3. Anesthesiology:

i.. Anesthesiology

ii. Anesthesiology Critical Care Medicine

4. Pathology:

i. Anatomic and Clinical Pathology

ii. Blood Banking

iii. Chemical Pathology

iv. Dermatopathology

v. Forensic Pathology

vi. Hematepathology

vii. Neuropathology

viii. Radioisotopic Pathology

5. Dentistry:

i. General Dentistry

ii. Oral/Maxillofacial Surgery

6. Podiatric Medicine

i. Rotating Podiatric Medicine

ii. Podiatric Orthopedic Medicine

iii. Podiatric Surgery

(b) (No change.)

III. (No change.)

IV. (No change.)

V. Family Practice

(a) Included Programs:

1. Family Practice

2. Family Practice Geriatric Medicine

(b) Included DRGs: same as in Internal Medicine

B. Methodology

I. Medical programs:

(a) A medical residency regression equation is defined to consist of:

1. The dependent variable, defined as the ratio of actual cost per ***case-mix adjusted inlier*** discharge, by DRG, for each Medical teaching hospital ***excluding the inlier proportion of the standard cost of resident compensation for medical and family practice residents*** and the Statewide average non-teaching cost per ***case-mix*** discharge, by DRG, ***also excluding the standard cost of resident compensation for medicine and family practice*** *[for all medical non-teaching hospitals]*;

2. The first independent variable defined as the number of residents in internal medicine per 5,000 †case-mix adjusted discharges; the second independent variable defined as the number of residents in medical specialty programs per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates will equal:

1. For hospitals with an Internal Medicine and/or Transitional residency program: the slope of the first independent variable times the ratio of Internal Medicine and/or Transitional residents per 5,000 †case-mix adjusted discharges in excess of the number of Internal Medicine and/or Transitional residents per 5,000 †case-mix adjusted discharges equaling the value of the Y-intercept, plus the slope of the second independent variable times the ratio of medical specialty residents per 5,000 †case-mix adjusted discharges***; times the ratio of the Statewide average non-teaching cost per case-mix adjusted discharge for each of the hospitals' inlier discharges plus the standard cost of resident compensation for medical and family practice residents to the Statewide non-teaching cost per case-mix adjusted discharge for each of the hospitals' inlier discharges excluding the standard cost of resident compensation for medical and family practice residents***.

2. For hospitals without an Internal Medicine and/or Transitional residency program: the slope of the second independent variable times the ratio of medical specialty residents per 5,000 †case-mix adjusted discharges in excess of the number of medical specialty residents per 5,000 †case-mix adjusted discharges equaling the value of the Y-intercept.

3. Hospitals with Family Practice programs that would receive no adjustment due to their small number of residents per 5,000 †case-mix adjusted discharges, will receive an adjustment equal to the lowest adjustment given to any hospital in this group.

II. Surgical programs:

(a) A surgical residency regression equation is defined to consist of:

1. The dependent variable, defined as the ratio of actual cost per ***case-mix adjusted inlier*** discharge, by DRG, for each surgical teaching hospital and the Statewide average non-teaching cost per ***case-mix adjusted*** discharge, by DRG, ***excluding the inlier proportion of the standard cost of resident compensation for surgery*** *[for all surgical non-teaching hospitals]*; ***also excluding the standard cost of resident compensation for surgery.***

2. The independent variable, defined as the number of residents in surgical specialty, Anesthesia, and Pathology programs per 5,000 †case-mix adjusted discharges, excluding, for hospitals with fewer than the minimum number of General Surgery residents to qualify for a General Surgery program, that number of surgical specialty residents (exceeding to meet) the General Surgery minimum.

(b) The adjustment to the standard portion of the DRG rates will equal the Y-intercept plus the slope of the independent variable times the ratio of surgical specialty, anesthesiology, and pathology residents per 5,000 †case-mix adjusted discharges (representing the cost impact of being a surgical teaching hospital, including the presence of general surgery residents); however, for hospitals with fewer than the minimum number of general surgery residents to qualify for a general surgery program, the number of residents in surgical specialty programs will exclude that number needed to meet the general surgery minimum.

III. Obstetrics/Gynecology programs:

(a) An OB/GYN residency regression equation is defined to consist of:

i. The dependent variable, defined as the ratio of actual cost per ***case-mix adjusted inlier*** discharge, by DRG, for each OB/GYN teaching hospital and the Statewide average non-teaching cost per ***case-mix*** discharge, by DRG, *[for all OB/GYN non-teaching hospitals]* ***excluding the inlier proportion of the standard cost of resident compensation for OB/GYN, also excluding the standard costs of resident compensation for OB/GYN.***

ii. The independent variable, defined as the number of residents in OB/GYN programs per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates for OB/GYN will be based on the slope of the independent variable times the ratio of OB/GYN residents per 5,000 †case-mix adjusted discharges in excess of the number of residents equaling the value of the Y-intercept ***; times the ratio of the Statewide average non-teaching cost per case-mix adjusted discharge for each of the hospitals' inlier discharges plus the standard cost of resident compensation for OB/GYN residents to**

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the Statewide non-teaching cost per case-mix adjusted discharge for each of the hospitals' inlier discharges excluding the standard cost of resident compensation for OB/GYN residents*.

(c) Calculation of OB/GYN adjustments will exclude statistical outliers if their inclusion would result in loss of payment for primary care programs.

IV. Pediatrics

(a) A Pediatrics residency regression equation is defined to consist of:

i. The dependent variable, defined as the ratio of actual ***case-mix adjusted inlier discharge*** cost per case by DRG, for each pediatric teaching hospital and the Statewide average non-teaching cost per case, by DRG, ***excluding the inlier proportion of the standard of resident compensation*** for all pediatric non-teaching hospitals.

ii. The independent variable is defined as the number of residents in pediatric programs per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates for Pediatrics will be based on the slope of the independent variable times the ratio of Pediatric residents per 5,000 †case-mix adjusted discharges in excess of the number of residents equaling the value of the Y-intercept ***times the ratio of the Statewide average non-teaching cost per case-mix adjusted discharge for each of the hospitals' inlier discharges plus the standard cost of resident compensation for Pediatric residents to the Statewide non-teaching cost per case for Pediatric residents***.

(c) Calculation of Pediatrics adjustments will exclude statistical outliers if their inclusion would result in loss of payment for primary care programs.

V. Family Practice

(a) Hospitals with accredited Family Practice residency programs will have their rates in the medical DRGs increased by a Family Practice supplement equal to the standard adjustment for residents in Internal Medicine programs per 5,000 medical †case-mix adjusted discharges.

†Case-mix adjusted discharges = the hospital's number of inlier cases by DRG times the Statewide average cost per case for discharges within the appropriate groupings divided by the Statewide cost per case for inlier discharges in all DRGs times the hospital's actual number of total discharges, including both inliers and outliers.

(a)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups

Adopted Amendment: N.J.A.C. 8:31B-5.3

Proposed: October 21, 1991 at 23 N.J.R. 3114(a).
Adopted: December 24, 1991 by Frances J. Dunston, M.D., M.P.H. (with the approval of the Health Care Administration Board).
Filed: December 27, 1991 as R.1992 d.43, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.
Effective Date: February 3, 1992.
Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

In response to comments from numerous hospital and payer representatives, that the new rate structure encourages long lengths of stay and discourages attempts to decrease the length of stay, the Department has changed the high length of stay trim point from two to three standard deviations above the average length of stay for almost every Diagnosis Related Group (DRG). The effect of this change will be to increase the length of time a patient must be hospitalized before the hospital will receive payments based on costs, as is the case with patients above the high trim point (high outliers). For patients below the high trim point (inliers), the hospital will receive payment based on a blend of costs and standard. This change will serve to increase the number of inliers and decrease the number of high outliers in each DRG. Since the additional inlier patients are all longer length of stay patients than the present inlier patients, the average cost and therefore the DRG rates for inliers will increase as a result of this change. Conversely since the number of patients who are high outliers will decrease, the aggregate costs of going to high outliers will decrease.

The comments which led the Department to change the trim points were addressed in N.J.A.C. 8:31B-3.23, which is the theoretical underpinning of the List of Diagnosis Related Groups. The detail of comments, as well as the Department's analysis and response, can be found under that section contained in the adopted amendments to N.J.A.C. 8:31B published elsewhere in this issue of the New Jersey Register. The list of trim points accompanying diagnostic categories is a delineation of the software used to implement rules specified in other parts of N.J.A.C. 8:31. There were no comments received on this proposal.

This change to the amendment will allow the total dollars in the system to remain budget neutral with only a distribution change. Hospital reimbursement for inlier patients will increase. This increase will be offset by decreasing reimbursement for outlier patients. Total Statewide hospital reimbursement should not change.

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

8:31B-5.3 List of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Group follows:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(001)	CRANIOTOMY AGE > 17 EXCEPT FOR TRAUMA	4	*[57]***75***
(002)	CRANIOTOMY FOR TRAUMA AGE >17	3	*[53]***73***
(004)	SPINAL PROCEDURES	3	*[45]***61***
(005)	EXTRACRANIAL VASCULAR PROCEDURES	2	*[25]***34***
(006)	CARPAL TUNNEL RELEASE	1	*[14]***20***
(007)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	3	*[54]***76***
(008)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	1	*[12]***17***
(009)	SPINAL DISORDERS & INJURIES	2	*[26]***36***
(010)	NERVOUS SYSTEM NEOPLASMS W CC	3	*[38]***52***
(011)	NERVOUS SYSTEM NEOPLASMS W/O CC	2	*[21]***29***
(012)	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2	*[36]***51***
(013)	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2	*[22]***29***
(014)	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3	*[39]***53***
(015)	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2	*[20]***28***
(016)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	2	*[29]***38***
(017)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2	*[20]***27***
(018)	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2	*[26]***34***
(019)	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2	*[15]***21***

(020)	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2	*[29]**40*
(021)	VIRAL MENINGITIS	2	*[15]**20*
(022)	HYPERTENSIVE ENCEPHALOPATHY	2	*[19]**25*
(023)	NON-TRAUMATIC STUPOR & COMA	2	*[22]**31*
(024)	SEIZURE & HEADACHE AGE >17 W CC	2	*[24]**33*
(025)	SEIZURE & HEADACHE AGE >17 W/O CC	2	*[13]**18*
(034)	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2	*[30]**42*
(035)	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2	*[17]**24*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(530)	CRANIOTOMY W MAJOR CC	7	*[101]**133*
(531)	NERVOUS SYSTEM PROCEDURES EXCEPT CRANIOTOMY W MAJOR CC	6	*[99]**136*
(532)	TIA, PRECEREBRAL OCCLUSION, SEIZURE & HEADACHE W MAJOR CC	3	*[40]**55*
(533)	OTHER NERVOUS SYSTEM DISORD EXCEPT TIA, SEIZURE & HEADACHIE W MAJOR CC	4	*[61]**83*
(737)	VENTRICULAR SHUNT REVISION AGE < 18	2	*[21]**29*
(738)	CRANIOTOMY AGE < 18 W CC	4	*[64]**89*
(739)	CRANIOTOMY AGE < 18 W/O CC	2	*[37]**52*
(761)	TRAUMATIC STUPOR & COMA, COMA > 1 HR.	2	*[23]**32*
(762)	CONCUSSION, INTRACRANIAL INJURY W COMA < 1 HR. OR NO COMMON AGE < 18	1	*[5]**7*
(763)	TRAUMATIC STUPOR & COMA, COMA < 1 HR. AGE < 18	1	*[13]**18*
(764)	CONCUSSION, INTRACRANIAL INJURY W COMA < 1 HR. OR NO COMA AGE >17 W CC	2	*[22]**31*
(765)	CONCUSSION, INTRACRANIAL INJURY W COMA < 1 HR. OR NO COMA AGE >17 W/O CC	1	*[9]**12*
(766)	TRAUMATIC STUPOR & COMA, COMA < 1 HR. AGE >17 W CC	3	*[35]**46*
(767)	TRAUMATIC STUPOR & COMA, COMA < 1 HR. AGE >17 W/O CC	2	*[20]**27*
(768)	SEIZURE & HEADACHE AGE < 18 W CC	2	*[21]**30*
(769)	SEIZURE & HEADACHE AGE < 18 W/O CC	1	*[8]**10*

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

		OUTLIER TRIM POINT	
		LOW	HIGH
(036)	RETINAL PROCEDURES	1	*[7]**9*
(037)	ORBITAL PROCEDURES	2	*[17]**24*
(038)	PRIMARY IRIS PROCEDURES	1	*[10]**14*
(039)	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1	*[7]**10*
(040)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE > 17	1	*[6]**8*
(041)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE < 18	1	*[5]**7*
(042)	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1	*[8]**11*
(043)	HYPHEMA	2	*[9]**11*
(044)	ACUTE MAJOR EYE INFECTIONS	2	*[14]**18*
(045)	NEUROLOGICAL EYE DISORDERS	2	*[14]**19*
(046)	OTHER DISORDERS OF THE EYE AGE > 17 W CC	2	*[27]**39*
(047)	OTHER DISORDERS OF THE EYE AGE > 17 W/O CC	1	*[17]**25*
(048)	OTHER DISORDERS OF THE EYE AGE < 18	1	*[7]**10*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(534)	EYE PROCEDURES W MAJOR CC	2	*[48]**68*
(535)	EYE DISORDERS W MAJOR CC	2	*[31]**41*

MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

		OUTLIER TRIM POINT	
		LOW	HIGH
(049)	MAJOR HEAD & NECK PROCEDURES	3	*[52]**72*
(050)	SIALOADENECTOMY	1	*[9]**12*
(051)	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1	*[7]**9*
(052)	CLEFT LIP & PALATE REPAIR	1	*[7]**9*
(053)	SINUS & MASTOID PROCEDURES AGE > 17	1	*[8]**11*

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(054)	SINUS & MASTOID PROCEDURES AGE < 18	1	*[10]**14*
(055)	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1	*[6]**8*
(056)	RHINOPLASTY	1	*[4]**5*
(057)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE > 17	1	*[8]**11*
(058)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE < 18	1	*[5]**7*
(059)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE > 17	1	*[2]**3*
(060)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE < 18	1	*[5]**7*
(061)	MYRINGOTOMY W TUBE INSERTION AGE > 17	1	*[11]**16*
(062)	MYRINGOTOMY W TUBE INSERTION AGE < 18	1	*[11]**16*
(063)	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2	*[16]**22*
(064)	EAR, NOSE, MOUTH & THROAT MALIGNANCY	2	*[26]**38*
(065)	DYSEQUILIBRIUM	2	*[13]**17*
(066)	EPISTAXIS	2	*[14]**19*
(067)	EPIGLOTTITIS	2	*[11]**14*
(068)	OTITIS MEDIA & URI AGE > 17 W CC	2	*[19]**25*
(069)	OTITIS MEDIA & URI AGE > 17 W/O CC	2	*[10]**13*
(070)	OTITIS MEDIA & URI AGE < 18	2	*[9]**12*
(071)	LARYNGOTRACHEITIS	1	*[7]**9*
(072)	NASAL TRAUMA & DEFORMITY	1	*[7]**11*
(073)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE > 17	1	*[10]**14*
(074)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE < 18	1	*[10]**15*
(168)	MOUTH PROCEDURES W CC	2	*[35]**50*
(169)	MOUTH PROCEDURES W/O CC	1	*[8]**11*
(185)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE > 17	1	*[9]**12*
(186)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE < 18	1	*[8]**11*
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1	*[2]**3*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(536)	ENT & MOUTH PROCEDURES EXCEPT MAJOR HEAD & NECK W MAJOR CC	2	*[30]**42*
(537)	ENT & MOUTH DISORDERS W MAJOR CC	2	*[40]**56*
(759)	MULTIPLE CHANNEL COCHLEAR IMPLANTS	1	6

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(075)	MAJOR CHEST PROCEDURES	3	*[38]**50*
(076)	OTHER RESP SYSTEM O.R. PROCEDURES W CC	3	*[41]**54*
(077)	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2	*[24]**32*
(078)	PULMONARY EMBOLISM	3	*[26]**33*
(079)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE > 17 W CC	3	*[40]**53*
(080)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE > 17 W/O CC	2	*[30]**39*
(082)	RESPIRATORY NEOPLASMS	2	*[29]**40*
(083)	MAJOR CHEST TRAUMA W CC	2	*[24]**32*
(084)	MAJOR CHEST TRAUMA W/O CC	2	*[12]**16*
(085)	PLEURAL EFFUSION W CC	2	*[27]**36*
(086)	PLEURAL EFFUSION W/O CC	2	*[16]**22*
(087)	PULMONARY EDEMA & RESPIRATORY FAILURE	2	*[22]**29*
(088)	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2	*[27]**36*
(089)	SIMPLE PNEUMONIA & PLEURISY AGE > 17 W CC	2	*[29]**38*
(090)	SIMPLE PNEUMONIA & PLEURISY AGE > 17 W/O CC	2	*[16]**21*
(092)	INTERSTITIAL LUNG DISEASE W CC	2	*[28]**38*
(093)	INTERSTITIAL LUNG DISEASE W/O CC	2	*[17]**24*
(094)	PNEUMOTHORAX W CC	2	*[26]**34*
(095)	PNEUMOTHORAX W/O CC	2	*[13]**17*
(096)	BRONCHITIS & ASTHMA AGE > 17 W CC	2	*[22]**29*
(097)	BRONCHITIS & ASTHMA AGE > 17 W/O CC	2	*[13]**17*
(099)	RESPIRATORY SIGNS & SYMPTOMS W CC	2	*[17]**23*
(100)	RESPIRATORY SIGNS & SYMPTOMS W/O CC	2	*[10]**13*
(101)	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2	*[22]**29*
(102)	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2	*[12]**16*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(475)	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3	*[44]**60*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52

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(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(538)	MAJOR CHEST PROCEDURES W MAJOR CC	5	*[54]**70*
(539)	RESPIRATORY PROCEDURES EXCEPT MAJOR CHEST W MAJOR CC	5	*[75]**99*
(540)	RESPIRATORY INFECTIONS INFLAMMATIONS W MAJOR CC	4	*[59]**78*
(541)	RESPIRATORY DISORDERS EXCEPT INFECTIONS, BRONCHITIS & ASTHMA W MAJOR CC	3	*[43]**57*
(542)	BRONCHITIS & ASTHMA W MAJOR CC	2	*[30]**42*
(631)	BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2	*[19]**24*
(740)	CYSTIC FIBROSIS	3	*[23]**29*
(770)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE < 18 W CC	2	*[30]**40*
(771)	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE < 18 W/O CC	2	*[15]**20*
(772)	SIMPLE PNEUMONIA & PLEURISY AGE < 18 W CC	2	*[18]**24*
(773)	SIMPLE PNEUMONIA & PLEURISY AGE < 18 W/O CC	2	*[9]**11*
(774)	BRONCHITIS & ASTHMA AGE < 18 W CC	2	*[11]**14*
(775)	BRONCHITIS & ASTHMA AGE < 18 W/O CC	2	*[8]**10*

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(103)	HEART TRANSPLANT	6	69
(104)	CARDIAC VALVE PROCEDURES W CARDIAC CATH	5	*[57]**74*
(105)	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	3	*[36]**46*
(106)	CORONARY BYPASS W CARDIAC CATH	4	*[37]**46*
(107)	CORONARY BYPASS W/O CARDIAC CATH	3	*[28]**36*
(108)	OTHER CARDIOTHORACIC PROCEDURES	3	*[39]**52*
(110)	MAJOR CARDIOVASCULAR PROCEDURES W CC	3	*[38]**50*
(111)	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2	*[20]**25*
(112)	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2	*[16]**21*
(113)	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	6	*[84]**110*
(114)	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4	*[54]**71*
(115)	PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4	*[45]**58*
(116)	PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2	*[30]**40*
(117)	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	2	*[25]**35*
(118)	CARDIAC PACEMAKER DEVICE REPLACEMENT	2	*[22]**30*
(119)	VEIN LIGATION & STRIPPING	1	*[13]**18*
(120)	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	4	*[50]**66*
(121)	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3	*[30]**39*
(122)	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2	*[19]**24*
(123)	CIRCULATORY DISORDERS W AMI EXPIRED	2	*[22]**31*
(124)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	2	*[16]**22*
(125)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1	*[7]**10*
(126)	ACUTE & SUBACUTE ENDOCARDITIS	5	*[56]**71*
(127)	HEART FAILURE & SHOCK	2	*[27]**35*
(128)	DEEP VEIN THROMBOPHLEBITIS	2	*[22]**28*
(129)	CARDIAC ARREST, UNEXPLAINED	2	*[13]**18*
(130)	PERIPHERAL VASCULAR DISORDERS W CC	2	*[27]**36*
(131)	PERIPHERAL VASCULAR DISORDERS W/O CC	2	*[16]**22*
(132)	ATHEROSCLEROSIS W CC	2	*[19]**25*
(133)	ATHEROSCLEROSIS W/O CC	2	*[14]**19*
(134)	HYPERTENSION	2	*[18]**24*
(135)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W CC	2	*[23]**31*
(136)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	2	*[12]**17*
(137)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE < 18	2	*[23]**34*
(138)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2	*[23]**30*
(139)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2	*[13]**17*
(140)	ANGINA PECTORIS	2	*[16]**21*
(141)	SYNCOPE & COLLAPSE W CC	2	*[21]**29*
(142)	SYNCOPE & COLLAPSE W/O CC	2	*[12]**16*
(143)	CHEST PAIN	2	*[10]**13*
(144)	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	2	*[25]**33*
(145)	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	2	*[12]**16*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(478)	OTHER VASCULAR PROCEDURES W CC	3	*[48]**64*
(479)	OTHER VASCULAR PROCEDURES W/O CC	2	*[18]**24*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*

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(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(543)	CIRC DISORDERS EXCEPT AMI ENDOCARDITIS, CHF & ARRHYTHMIA W MAJOR CC	3	*[40]**55*
(544)	CHF & CARDIAC ARRHYTHMIA W MAJOR CC	3	*[44]**58*
(545)	CARDIAC VALVE PROCEDURE W MAJOR CC	5	*[73]**96*
(546)	CORONARY BYPASS W MAJOR CC	4	*[53]**70*
(547)	OTHER CARDIOTHORACIC PROCEDURES W MAJOR CC	4	*[60]**80*
(548)	CARDIAC PACEMAKER IMPLANT OR REVISION W MAJOR CC	4	*[52]**68*
(549)	MAJOR CARDIOVASCULAR PROCEDURES W MAJOR CC	5	*[80]**106*
(550)	OTHER VASCULAR PROCEDURES W MAJOR CC	3	*[54]**75*

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

		OUTLIER TRIM POINT LOW	HIGH
(146)	RECTAL RESECTION W CC	4	*[43]**56*
(147)	RECTAL RESECTION W/O CC	2	*[18]**22*
(148)	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4	*[44]**57*
(149)	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	*[23]**29*
(150)	PERITONEAL ADHESIOLYSIS W CC	3	*[35]**45*
(151)	PERITONEAL ADHESIOLYSIS W/O CC	2	*[17]**22*
(152)	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2	*[28]**37*
(153)	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	*[15]**19*
(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W CC	4	*[47]**62*
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	2	*[22]**28*
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE < 18	2	*[21]**30*
(157)	ANAL & STOMAL PROCEDURES W CC	2	*[21]**29*
(158)	ANAL & STOMAL PROCEDURES W/O CC	1	*[9]**12*
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE > 17 W CC	2	*[22]**29*
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE > 17 W/O CC	1	*[9]**12*
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE > 17 W CC	2	*[17]**24*
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE > 17 W/O CC	1	*[5]**7*
(163)	HERNIA PROCEDURES AGE < 18	1	*[5]**7*
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3	*[27]**35*
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2	*[14]**17*
(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2	*[16]**20*
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2	*[7]**9*
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3	*[50]**69*
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2	*[20]**26*
(172)	DIGESTIVE MALIGNANCY W CC	2	*[30]**41*
(173)	DIGESTIVE MALIGNANCY W/O CC	1	*[13]**19*
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2	*[23]**30*
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2	*[14]**18*
(176)	COMPLICATED PEPTIC ULCER	2	*[17]**23*
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2	*[21]**29*
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	1	*[8]**11*
(179)	INFLAMMATORY BOWEL DISEASE	2	*[20]**28*
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2	*[27]**37*
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2	*[13]**17*
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDER AGE > 17 W CC	2	*[20]**27*
(183)	ESOPHAGITIS, CASTROENT & MISC DIGESTIVE DISORDER AGE > 17 W/O CC	1	*[10]**14*
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W CC	2	*[21]**29*
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE > 17 W/O CC	1	*[8]**12*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(551)	ESOPHAGITIS, GASTROENTERITIS & UNCOMPLICATED ULCERS W MAJOR CC	2	*[36]**50*
(552)	DIGESTIVE SYSTEM DISORDER EXCEPT ESOPHAGITIS, GASTROENT & UNCOMPLICATED ULCER W MAJOR CC	3	*[43]**59*
(553)	DIGESTIVE SYSTEM PROCEDURE EXCEPT HERNIA & MAJOR STOMACH OR BOWEL PROCEDURE W MAJOR CC	4	*[53]**72*
(554)	HERNIA PROCEDURES W MAJOR CC	3	*[47]**66*
(585)	MAJOR STOMACH, ESOPHAGEAL, DUODENAL, SMALL & LARGE BOWEL PROCEDURE W MAJOR CC	5	*[67]**88*
(776)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE < 18 W CC	2	*[12]**16*
(777)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE < 18 W/O CC	1	*[7]**9*

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(778)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE < 18 W CC	2	*[22]**31*
(779)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE < 18 W/O CC	1	*[6]**8*

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

		OUTLIER TRIM POINT	
		LOW	HIGH
(191)	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5	*[68]**89*
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	3	*[35]**47*
(193)	BILIARY TRACT PROCEDURE EXCEPT ONLY TOTAL CHOLECYST W OR W/O COMMON DUCT EXPLORATION W CC	3	*[39]**50*
(194)	BILIARY TRACT PROCEDURE EXCEPT ONLY TOTAL CHOLECYST W OR W/O COMMON DUCT EXPLORATION W/O CC	2	*[23]**30*
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3	*[31]**40*
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2	*[19]**24*
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2	*[26]**34*
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2	*[12]**15*
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	4	*[43]**56*
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2	*[30]**39*
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3	*[48]**67*
(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	2	*[29]**38*
(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2	*[30]**41*
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2	*[21]**28*
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2	*[27]**37*
(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2	*[13]**18*
(207)	DISORDERS OF THE BILIARY TRACT W CC	2	*[20]**26*
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2	*[12]**17*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(555)	PANCREAS, LIVER & OTHER BILIARY TRACT PROCEDURES EXC LIVE TRANSPLANT W MAJOR CC	5	*[66]**86*
(556)	CHOLECYSTECTOMY AND OTHER HEPATOBILIARY PROCEDURES W MAJOR CC	3	*[45]**60*
(557)	HEPATOBILIARY AND PANCREAS DISORDERS W MAJOR CC	3	*[41]**54*

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES AND DISORDERS OF THE MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

		OUTLIER TRIM POINT	
		LOW	HIGH
(209)	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	3	*[35]**44*
(210)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE > 17 W CC	4	*[49]**64*
(211)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE > 17 W/O CC	3	*[33]**43*
(212)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE < 18	2	*[30]**41*
(213)	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	4	*[54]**71*
(216)	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	3	*[42]**58*
(217)	WOUND DEBRID & SKIN GRAFT EXC. HAND, FOR MUSCULOSKELETAL & CONN TISSUE DISORDERS	3	*[45]**63*
(218)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE > 17 W CC	3	*[39]**52*
(219)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE > 17 W/O CC	2	*[19]**26*
(220)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE < 18	2	*[14]**19*
(221)	KNEE PROCEDURES W CC	2	*[30]**42*
(222)	KNEE PROCEDURES W/O CC	1	*[10]**14*
(223)	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2	*[18]**26*
(224)	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1	*[8]**11*
(225)	FOOT PROCEDURES	1	*[14]**20*
(226)	SOFT TISSUE PROCEDURES W CC	2	*[36]**50*
(227)	SOFT TISSUE PROCEDURES W/O CC	1	*[9]**12*
(228)	MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	1	*[13]**18*
(229)	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1	*[8]**11*
(230)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	2	*[16]**23*
(231)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT HIP & FEMUR	1	*[17]**25*
(232)	ARTHROSCOPY	1	*[13]**18*
(233)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3	*[42]**58*
(234)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	2	*[16]**22*
(235)	FRACTURES OF FEMUR	3	*[49]**67*
(236)	FRACTURES OF HIP & PELVIS	3	*[34]**45*
(237)	SPRAINS, STRAINS & DISLOCATION OF HIP, PELVIS & THIGH	2	*[23]**31*

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(238)	OSTEOMYELITIS	3	*[39]**51*
(239)	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3	*[37]**49*
(240)	CONNECTIVE TISSUE DISORDERS W CC	2	*[28]**37*
(241)	CONNECTIVE TISSUE DISORDERS W/O CC	2	*[17]**23*
(242)	SEPTIC ARTHRITIS	2	*[24]**31*
(243)	MEDICAL BACK PROBLEMS	2	*[17]**23*
(244)	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2	*[26]**34*
(245)	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2	*[17]**23*
(246)	NON-SPECIFIC ARTHROPATHIES	2	*[16]**21*
(247)	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2	*[13]**18*
(248)	TENDONITIS, MYOSITIS & BURSITIS	2	*[13]**18*
(249)	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1	*[12]**17*
(250)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE > 17 W CC	2	*[22]**30*
(251)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE > 17 W/O CC	1	*[9]**12*
(252)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE < 18	1	*[4]**6*
(253)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE > 17 W CC	2	*[29]**40*
(254)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE > 17 W/O CC	2	*[14]**19*
(255)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE < 18	1	*[10]**14*
(256)	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2	*[16]**23*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(471)	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5	*[68]**88*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(558)	MAJOR MUSCULOSKELETAL PROCEDURES EXC BILATERAL OR MULTIPLE MAJOR JOINT W MAJOR CC	6	*[77]**101*
(559)	NON-MAJOR MUSCULOSKELETAL PROCEDURES W MAJOR CC	4	*[63]**84*
(560)	MUSCULOSKELETAL DISORD EXC OSTEO, SEPTIC ARTH AND CONNECTIVE TISSUE DISORD W MAJOR CC	3	*[47]**64*
(561)	OSTEOMYELITIS, SEPTIC ARTHRITIS & CONN TISSUE DISORDER W MAJOR CC	4	*[59]**79*
(755)	SPINAL FUSION W CC	3	*[43]**57*
(756)	SPINAL FUSION W/O CC	2	*[19]**24*
(757)	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	3	*[41]**54*
(758)	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	2	*[20]**26*

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

		OUTLIER TRIM POINT	
		LOW	HIGH
(257)	TOTAL MASTECTOMY FOR MALIGNANCY W CC	2	*[18]**23*
(258)	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2	*[10]**12*
(259)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2	*[24]**33*
(260)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1	*[10]**13*
(261)	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1	*[6]**8*
(262)	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1	*[8]**11*
(263)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5	*[74]**98*
(264)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	3	*[42]**58*
(265)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2	*[32]**45*
(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	2	*[12]**16*
(267)	PERIANAL & PILONIDAL PROCEDURES	1	*[6]**8*
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1	*[20]**30*
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2	*[39]**55*
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	1	*[11]**15*
(271)	SKIN ULCERS	3	*[40]**55*
(272)	MAJOR SKIN DISORDERS W CC	2	*[26]**34*
(273)	MAJOR SKIN DISORDERS W/O CC	2	*[24]**34*
(274)	MALIGNANT BREAST DISORDERS W CC	2	*[29]**40*
(275)	MALIGNANT BREAST DISORDERS W/O CC	1	*[8]**12*
(276)	NON-MALIGNANT BREAST DISORDERS	1	*[8]**11*
(277)	CELLULITIS AGE > 17 W CC	2	*[28]**37*
(278)	CELLULITIS AGE > 17 W/O CC	2	*[18]**24*
(279)	CELLULITIS AGE < 18	2	*[11]**14*
(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE > 17 W CC	2	*[19]**26*
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE > 17 W/O CC	1	*[9]**13*
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE < 18	1	*[7]**10*

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(283)	MINOR SKIN DISORDERS W CC	2	*[26]**37*
(284)	MINOR SKIN DISORDERS W/O CC	1	*[7]**10*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(562)	MAJOR SKIN & BREAST DISORDERS W MAJOR CC	3	*[54]**75*
(563)	OTHER SKIN DISORDERS W MAJOR CC	3	*[38]**52*
(564)	SKIN & BREAST PROCEDURES W MAJOR CC	5	*[78]**106*

MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL, AND METABOLIC DISEASES AND DISORDERS

		OUTLIER TRIM POINT	
		LOW	HIGH
(285)	AMPUTATION OF LOW LIMB FOR ENDOCRINE, NUTRIT, & METABOLIC DISORDERS	6	*[77]**100*
(286)	ADRENAL & PITUITARY PROCEDURES	3	*[30]**39*
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	4	*[58]**76*
(288)	O.R. PROCEDURES FOR OBESITY	2	*[18]**25*
(289)	PARATHYROID PROCEDURES	2	*[21]**29*
(290)	THYROID PROCEDURES	2	*[11]**15*
(291)	THYROGLOSSAL PROCEDURES	1	*[4]**5*
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4	*[66]**90*
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2	*[36]**50*
(294)	DIABETES AGE > 35	2	*[25]**33*
(295)	DIABETES AGE < 36	2	*[17]**23*
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE > 17 W CC	2	*[33]**46*
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE > 17 W/O CC	2	*[22]**31*
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE < 18	2	*[15]**21*
(299)	INBORN ERRORS OF METABOLISM	1	*[15]**22*
(300)	ENDOCRINE DISORDERS W CC	2	*[27]**35*
(301)	ENDOCRINE DISORDERS W/O CC	2	*[18]**25*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(565)	ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT EATING DISORDER OR CYSTIC FIBROSIS W/O MAJOR CC	6	*[99]**131*
(566)	ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT EATING DISORDER OR CYSTIC FIBROSIS W MAJOR CC	3	*[46]**63*
(740)	CYSTIC FIBROSIS	3	*[23]**29*
(753)	COMPULSIVE NUTRITION DISORDER REHABILITATION	6	*[85]**112*

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT	
		LOW	HIGH
(302)	KIDNEY TRANSPLANT	4	*[50]**64*
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	*[36]**47*
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	*[35]**48*
(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2	*[20]**26*
(306)	PROSTATECTOMY W CC	3	*[30]**39*
(307)	PROSTATECTOMY W/O CC	2	*[19]**25*
(308)	MINOR BLADDER PROCEDURES W CC	3	*[38]**52*
(309)	MINOR BLADDER PROCEDURES W/O CC	2	*[17]**23*
(310)	TRANSURETHRAL PROCEDURES W CC	2	*[22]**30*
(311)	TRANSURETHRAL PROCEDURES W/O CC	2	*[10]**13*
(312)	URETHRAL PROCEDURES AGE > 17 W CC	2	*[18]**24*
(313)	URETHRAL PROCEDURES AGE > 17 W/O CC	1	*[8]**10*
(314)	URETHRAL PROCEDURES AGE < 18	2	*[22]**31*
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	3	*[44]**61*
(316)	RENAL FAILURE	2	*[30]**42*
(317)	ADMIT FOR RENAL DIALYSIS	1	*[13]**19*
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2	*[32]**44*
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	*[10]**14*
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE > 17 W CC	2	*[28]**38*

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(321)	KIDNEY & URINARY TRACT INFECTIONS AGE > 17 W/O CC	2	*[17]**23*
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE < 18	2	*[11]**15*
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2	*[12]**17*
(324)	URINARY STONES W/O CC	1	*[6]**8*
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE > 17 W CC	2	*[19]**26*
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE > 17 W/O CC	1	*[8]**12*
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE < 18	1	*[11]**16*
(328)	URETHRAL STRICTURE AGE > 17 W CC	1	*[12]**17*
(329)	URETHRAL STRICTURE AGE > 17 W/O CC	1	*[4]**6*
(330)	URETHRAL STRICTURE AGE < 18	1	*[2]**3*
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE > 17 W CC	2	*[22]**30*
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE > 17 W/O CC	1	*[11]**16*
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE < 18	1	*[11]**15*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(567)	KIDNEY & URINARY TRACT PROCEDURES EXCEPT KIDNEY TRANSPLANT W MAJOR CC	5	*[76]**101*
(568)	RENAL FAILURE W MAJOR CC	3	*[47]**65*
(569)	KIDNEY & URINARY TRACT DISORDER EXCEPT RENAL FAILURE W MAJOR CC	3	*[42]**56*

MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(334)	MAJOR MALE PELVIC PROCEDURES W CC	3	*[24]**30*
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3	*[20]**24*
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2	*[25]**33*
(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2	*[12]**15*
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2	*[22]**31*
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1	*[11]**16*
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1	*[4]**5*
(341)	PENIS PROCEDURES	2	*[15]**19*
(342)	CIRCUMCISION AGE >17	1	*[11]**16*
(343)	CIRCUMCISION AGE <18	1	*[3]**4*
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2	*[16]**21*
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	2	*[16]**21*
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2	*[26]**36*
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1	*[10]**15*
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	2	*[14]**20*
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1	*[5]**7*
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2	*[10]**14*
(351)	STERILIZATION, MALE	1	1
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1	*[7]**10*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(570)	MALE REPRODUCTIVE DISORDERS W MAJOR CC	3	*[36]**48*
(571)	MALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	*[50]**69*

MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(353)	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	3	*[31]**40*
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2	*[24]**31*
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2	*[14]**18*
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2	*[11]**14*
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3	*[32]**42*
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2	*[15]**19*
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2	*[9]**11*
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1	*[14]**20*
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1	*[8]**11*
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1	*[4]**5*
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	2	*[16]**23*

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(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1	*[9]**13*
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2	*[36]**50*
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	3	*[39]**54*
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	1	*[12]**17*
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2	*[12]**15*
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1	*[8]**11*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(572)	FEMALE REPRODUCTIVE DISORDERS W MAJOR CC	2	*[38]**52*
(573)	NON-RADICAL FEMALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	*[38]**52*

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

		OUTLIER TRIM POINT	
		LOW	HIGH
(370)	CESAREAN SECTION W CC	2	*[12]**15*
(371)	CESAREAN SECTION W/O CC	2	*[8]**9*
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2	*[9]**12*
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1	*[5]**6*
(374)	VAGINAL DELIVERY W STERILIZATION AND/OR D&C	2	*[7]**9*
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION AND/OR D&C	1	*[7]**9*
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2	*[10]**13*
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1	*[9]**12*
(378)	ECTOPIC PREGNANCY	2	*[8]**10*
(379)	THREATENED ABORTION	1	*[10]**14*
(380)	ABORTION W/O D&C	1	*[4]**5*
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1	*[5]**7*
(382)	FALSE LABOR	1	*[3]**4*
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2	*[11]**14*
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1	*[7]**10*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(650)	HIGH RISK CESAREAN SECTION W CC	2	*[24]**33*
(651)	HIGH RISK CESAREAN SECTION W/O CC	2	*[16]**21*
(652)	HIGH RISK VAGINAL DELIVERY W STERILIZATION AND/OR D&C	2	*[10]**13*

MAJOR DIAGNOSTIC CATEGORY 15: NEWBORN AND OTHER NEONATES WITH CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

		OUTLIER TRIM POINT	
		LOW	HIGH
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	14	*[168]**218*
(603)	NEONATE, BIRTH WT <750G, DIED	2	*[59]**85*
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	14	*[137]**170*
(605)	NEONATE, BIRTH WT 750-999G, DIED	4	*[104]**147*
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	13	*[129]**161*
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	8	*[88]**112*
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	*[60]**83*
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	8	*[118]**155*
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	6	*[97]**127*
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	*[75]**97*
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	*[51]**65*
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	4	*[40]**50*
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	3	*[30]**38*
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	8	*[133]**177*
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	4	*[70]**98*
(617)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	4	*[56]**74*
(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	*[28]**36*
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	*[21]**26*
(620)	NEONATE, BWT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	*[14]**18*
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	*[18]**23*
(622)	NEONATE, BIRTH WT >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	*[116]**154*
(623)	NEONATE, BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	*[36]**51*

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(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	*[52]**76*
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	*[53]**74*
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	*[24]**33*
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	*[16]**21*
(629)	NEONATE, BWT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	2	*[6]**8*
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	*[18]**24*
(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3	*[31]**41*
(637)	NEONATE, DIED W/IN ONE DAY OF BIRTH, BORN HERE	1	1
(638)	NEONATE, DIED W/IN ONE DAY OF BIRTH, NOT BORN HERE	1	*[1]**2*
(639)	NEONATE, TRANSFERRED <5 DAYS OLD, BORN HERE	1	*[4]**5*
(640)	NEONATE, TRANSFERRED <5 DAYS OLD, NOT BORN HERE	1	*[4]**5*

MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND BLOOD FORMING ORGANS AND IMMUNOLOGICAL DISORDERS

		OUTLIER TRIM POINT	
		LOW	HIGH
(392)	SPLENECTOMY AGE >17	3	*[38]**52*
(393)	SPLENECTOMY AGE <18	2	*[16]**20*
(394)	OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	2	*[18]**25*
(395)	RED BLOOD CELL DISORDERS AGE >17	2	*[18]**25*
(397)	COAGULATION DISORDERS	2	*[16]**22*
(398)	RETICULEONDOTHELTIAL & IMMUNITY DISORDERS W CC	2	*[19]**25*
(399)	RETICULEONDOTHELTIAL & IMMUNITY DISORDERS W/O CC	1	*[12]**17*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(574)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL DISORDERS W MAJOR CC	2	*[33]**45*
(575)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL PROCEDURES W MAJOR CC	5	*[69]**91*
(760)	HEMOPHILIA FACTORS VIII AND IX	1	*[9]**13*
(784)	ACQUIRED HEMOLYTIC ANEMIA OR SICKLE CELL CRISIS AGE <18	2	*[16]**22*
(785)	OTHER RED BLOOD CELL DISORDERS AGE <18	1	*[9]**13*

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISEASES AND DISORDERS AND POORLY DIFFERENTIATED NEOPLASMS

		OUTLIER TRIM POINT	
		LOW	HIGH
(400)	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3	*[39]**52*
(401)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3	*[46]**61*
(402)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	2	*[17]**23*
(403)	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2	*[36]**50*
(404)	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1	*[16]**23*
(406)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC W CC	3	*[40]**52*
(407)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC W/O CC	2	*[21]**27*
(408)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC	2	*[28]**40*
(409)	RADIOTHERAPY	2	*[35]**48*
(410)	CHEMOTHERAPY	1	*[7]**10*
(411)	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1	*[6]**9*
(412)	HISTORY OF MALIGNANCY W ENDOSCOPY	1	*[2]**3*
(413)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3	*[37]**51*
(414)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	1	*[17]**25*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(576)	ACUTE LEUKEMIA W MAJOR CC	5	*[71]**94*
(577)	MYELOPROLIF DISORDERS OF POORLY DIFF NEOPLASMS W MAJOR CC	3	*[51]**71*
(578)	LYMPHOMA & NON-ACUTE LEUKEMIA, W MAJOR CC	4	*[60]**79*
(579)	PROCEDURES FOR LYMPHOMA, LEUKEMIA, MYELOPROLIF DISORDERS W MAJOR CC	6	*[82]**107*
(780)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18 W CC	2	*[28]**37*
(781)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18 W/O CC	2	*[12]**17*
(782)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17W CC	3	*[44]**60*
(783)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17 W/O CC	2	*[17]**24*

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MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC OR UNSPECIFIED SITES)

		OUTLIER TRIM POINT LOW	HIGH
(415)	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	4	*[53]**73*
(416)	SEPTICEMIA AGE >17	3	*[36]**48*
(417)	SEPTICEMIA AGE <18	2	*[17]**22*
(418)	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2	*[21]**28*
(419)	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2	*[22]**29*
(420)	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2	*[16]**21*
(421)	VIRAL ILLNESS AGE >17	2	*[14]**18*
(422)	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2	*[7]**9*
(423)	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2	*[22]**29*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(580)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS EXCEPT SEPTICEMIA W MAJOR CC	2	*[40]**56*
(581)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS/PROCEDURES W MAJOR CC	6	*[96]**127*
(584)	SEPTICEMIA W MAJOR CC	3	*[47]**65*

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL DISEASES AND DISORDERS

		OUTLIER TRIM POINT LOW	HIGH
(424)	O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5	*[80]**106*
(425)	ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2	*[23]**32*
(426)	DEPRESSIVE NEUROSES	2	*[25]**35*
(427)	NEUROSES EXCEPT DEPRESSIVE	2	*[30]**42*
(428)	DISORDERS OF PERSONALITY & IMPULSE CONTROL	2	*[30]**41*
(429)	ORGANIC DISTURBANCES & MENTAL RETARDATION	3	*[56]**78*
(430)	PSYCHOSES	3	*[40]**53*
(431)	CHILDHOOD MENTAL DISORDERS	3	*[55]**77*
(432)	OTHER MENTAL DISORDER DIAGNOSES	2	*[17]**24*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*

MAJOR DIAGNOSTIC CATEGORY 20: ALCOHOL/DRUG USE AND ALCOHOL/DRUG INDUCED ORGANIC MENTAL DISORDERS

		OUTLIER TRIM POINT LOW	HIGH
(743)	OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	*[9]**12*
(744)	OPIOID ABUSE OR DEPENDENCE W CC	2	*[22]**29*
(745)	OPIOID ABUSE OR DEPENDENCE W/O CC	2	*[19]**26*
(746)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	*[11]**15*
(747)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	*[23]**31*
(748)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	*[20]**26*
(749)	ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	*[9]**13*
(750)	ALCOHOL ABUSE OR DEPENDENCE W CC	2	*[23]**32*
(751)	ALCOHOL ABUSE OR DEPENDENCE W/O CC	2	*[18]**25*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*

MAJOR DIAGNOSTIC CATEGORY 21: INJURIES, POISONINGS, AND TOXIC EFFECT OF DRUGS

		OUTLIER TRIM POINT LOW	HIGH
(439)	SKIN GRAFTS FOR INJURIES	2	*[51]**74*
(440)	WOUND DEBRIDEMENTS FOR INJURIES	2	*[37]**52*
(441)	HAND PROCEDURES FOR INJURIES	2	*[19]**27*
(442)	OTHER O.R. PROCEDURES FOR INJURIES W CC	2	*[36]**50*
(443)	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2	*[19]**26*
(444)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2	*[19]**26*
(445)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	1	*[9]**12*
(446)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1	*[7]**10*

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(447)	ALLERGIC REACTIONS AGE >17	1	*[9]**12*
(448)	ALLERGIC REACTIONS AGE <18	1	*[7]**9*
(449)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2	*[23]**32*
(450)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1	*[13]**18*
(451)	POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1	*[10]**14*
(452)	COMPLICATION OF TREATMENT W CC	2	*[20]**27*
(453)	COMPLICATION OF TREATMENT W/O CC	1	*[12]**17*
(454)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2	*[27]**38*
(455)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1	*[9]**13*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(582)	INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	2	*[34]**47*
(583)	PROCEDURES FOR INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	5	*[74]**99*
(752)	LEAD POISONING	2	*[10]**12*

MAJOR DIAGNOSTIC CATEGORY 22: BURNS

		OUTLIER TRIM POINT	
		LOW	HIGH
(456)	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	3	*[51]**72*
(457)	EXTENSIVE BURNS W/O O.R. PROCEDURE	2	*[19]**26*
(458)	NON-EXTENSIVE BURNS W SKIN GRAFT	4	*[51]**66*
(459)	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROCEDURE	2	*[30]**42*
(460)	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2	*[20]**28*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(472)	EXTENSIVE BURNS W O.R. PROCEDURE	9	*[110]**141*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*

MAJOR DIAGNOSTIC CATEGORY 23: FACTORS INFLUENCING HEALTH STATUS AND OTHER CONTACTS WITH HEALTH SERVICES

		OUTLIER TRIM POINT	
		LOW	HIGH
(461)	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	2	*[33]**47*
(462)	REHABILITATION	5	*[61]**80*
(463)	SIGNS & SYMPTOMS W CC	2	*[29]**40*
(464)	SIGNS & SYMPTOMS W/O CC	1	*[13]**18*
(465)	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	*[4]**6*
(466)	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	*[6]**9*
(467)	OTHER FACTORS INFLUENCING HEALTH STATUS	1	*[22]**33*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*
(633)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES W CC	2	*[29]**41*
(634)	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES W/O CC	2	*[8]**9*
(636)	INFANT AFTERCARE FOR WEIGHT GAIN, AGE >28 DAYS <1 YEAR	3	*[51]**52*
(754)	TERTIARY AFTERCARE, AGE >1 YEAR	3	47

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY (HIV) INFECTIONS

		OUTLIER TRIM POINT	
		LOW	HIGH
(700)	HIV WITH SPECIFIED RELATED CONDITION, AGE <13	2	*[32]**44*
(701)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	5	57
(702)	HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	4	*[66]**91*
(704)	HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	4	*[38]**48*
(705)	HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4	*[55]**73*
(707)	HIV RELATED INFECTION, W OPIOID USE, AGE >12	3	*[44]**58*
(708)	HIV RELATED INFECTION, W/O OPIOID USE, AGE >12	4	*[55]**75*
(710)	HIV WITH OTHER RELATED CONDITION, W OPIOID USE, AGE >12	2	*[25]**33*

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(711)	HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2	*[34]**48*
(712)	HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1	*[21]**32*
(713)	HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	3	43
(714)	HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	2	*[36]**50*

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

		OUTLIER TRIM POINT	
		LOW	HIGH
(730)	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5	*[94]**125*
(731)	HIP, FEMUR OR LIMB PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	6	*[76]**99*
(732)	OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	*[58]**80*
(733)	HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	*[42]**58*
(734)	OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	*[33]**45*
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	*[57]**78*
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	*[56]**72*
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	*[38]**53*
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	*[99]**131*
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	*[65]**86*
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	*[127]**164*

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Beds
Adult Closed Acute Psychiatric Beds

Adopted Amendments: N.J.A.C. 8:43E-3.10 and 3.15

Proposed: October 21, 1991 at 23 N.J.R. 3128(a).

Adopted: January 9, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 10, 1992 as R.1992 d.64, **without change.**

Authority: N.J.S.A. 26:2K-35 et seq., 26:2H-1 et seq., and 27:27-1 et seq.

Effective Date: February 3, 1992.

Expiration Date: December 11, 1992.

Summary of Public Comment and Agency Response:

One comment was submitted by Hollis A. Evans, Psychiatric Services Manager, Underwood-Memorial Hospital.

COMMENT: Mr. Evans reviewed the proposed amendments limiting liaison participation to discharge planning purposes. The comment stated the change was somewhat nebulous, since the entire treatment process focuses on preparing the patient for discharge. The respondent does not find the amendments overly restrictive or in any way a barrier to appropriate liaison participation.

RESPONSE: The Health Department concurs with Mr. Evans' comment.

Full text of the adoption follows.

8:43E-3.10 Liaison services

(a) The proposed affiliation agreement between the STCF and the local mental health liaison agency required as part of a certificate of need application shall provide for the following:

1.-3. (No change.)

4. Guidelines limiting liaison participation in the STCF treatment team meetings to discharge planning. Liaison participation shall be focused toward discharge to the appropriate combination of private and public community services; and

5. (No change.)

(b) (No change.)

8:43E-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

1. (No change.)

2. Representatives from the various disciplines in the treatment team (listed in N.J.A.C. 8:43E-3.14(b)), the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate discharge plan. Liaison participation shall be limited to the development of the discharge plan;

3.-4. (No change.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Clinic Services Manual
Ambulatory Surgical Center Reimbursement Group System; HCPCS Procedure Codes for Independent Clinic Services

Adopted Amendments: N.J.A.C. 10:66-1.6, 1.7 and 3.2

Proposed: November 4, 1991 at 23 N.J.R. 3265(a).

Adopted: January 10, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 14, 1992 as R.1992 d.69, **without change.**

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-6c; 30:4D-7; 30:4D-7a, b and c; 30:4D-12; 42 CFR 416.1 et seq.

Effective Date: February 3, 1992.

Expiration Date: December 15, 1993.

Summary of Public Comment and Agency Response:

No comments received.

Full text of the adoption follows.

10:66-1.6 Scope of service

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

(j) Surgical services rules for both minor surgery in an ambulatory care facility and for surgery in an ambulatory surgical center follow:

1.-4. (No change.)

5. For facility reimbursement, surgical procedures performed in an ASC are separated into an eight group classification system as

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designed under Medicare by the Health Care Financing Administration (HCFA). (See N.J.A.C. 10:66-1.7(c) for facility reimbursement.)

i. A request by an ambulatory surgical center facility to add additional surgical procedures not specifically included in one of the eight Medicare payment groups must be reviewed and evaluated by the Division of Medical Assistance and Health Services (New Jersey Medicaid Program).

ii. If additional surgical procedures are approved, each procedure will be assigned to one of the existing eight Medicare payment groups.

6.-7. (No change in text.)

(k)-(p) (No change in text.)

10:66-1.7 Basis for reimbursement

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

(c) New Jersey Medicaid reimbursement for covered surgical procedures performed in an approved ambulatory surgical center shall be made for services rendered by both the physician and the ambulatory surgical center facility.

1. (No change.)

2. For ambulatory surgical center reimbursement, covered procedures are separated according to an eight group classification system as designated in the appendix to 42 CFR 416.65, the Federal regulations governing ASC services.

i. A facility is reimbursed for any procedure within the same group at a single rate.

ii. A single payment is made to an ambulatory surgical center which encompasses all facility services furnished by the ASC in connection with a covered procedure performed on a patient in a single operative session.

(1) If more than one covered surgical procedure is performed on a patient in a single operative session, payment is limited to two procedures, provided that the second procedure is at a separate operative site. Full payment will be made for the procedure with the highest reimbursement rate. Payment for the other procedure will be at 50 percent of the applicable reimbursement rate for that procedure.

iii. The New Jersey Medicaid Program's reimbursement rates for ambulatory surgical centers are as follows:

Classification (Group)	Maximum Fee Allowance
1	$195.00
2	$261.00
3	$300.00
4	$369.00
5	$421.00
6	$541.00
7	$585.00
8	$627.00

10:66-3.2 HCPCS Procedure code numbers and maximum fee allowance schedule for independent clinic services

AGENCY NOTE: The HCPCS coding system is not published in the New Jersey Administrative Code.

(a)-(l) (No change.)

(m) Other services

...

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Application Date for Lifeline Programs

Lifeline Credit Program/Tenants' Lifeline Assistance Program

Adopted Amendment: N.J.A.C. 10:69B-4.8

Proposed: November 4, 1991 at 23 N.J.R. 3267(a).

Adopted: January 6, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 7, 1992 as R.1992 d.48, **without change.**

Authority: N.J.S.A. 48:2-29.15 et seq.

Effective Date: February 3, 1992.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:69B-4.8 Lifeline eligibility applications

(a) The Bureau of Lifeline Programs shall mail a Lifeline Application (LL-1) to all PAAD, Medical Assistance to the Aged, Medicaid Only beneficiaries and New Jersey Care ... Special Medicaid Programs, except for those residing in nursing facilities, that are eligible at any time between July 1 and December 31, of the current year.

(b) When an individual meets the residency, income, age or disability requirements of the PAAD Program and is not an SSI beneficiary and wishes to apply for Lifeline only, the individual shall complete the Lifeline Eligibility Application form LL-3. The LL-3 must be submitted to the Bureau of Lifeline Programs on or before March 15 of the year following the year of the current eligibility period. For example, March 15, 1992, would be the deadline for submission for the eligibility period of July 1, 1991 through December 31, 1991. The submission date shall be determined by the postmark on the Lifeline Eligibility Application envelope.

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

(b)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction

Public Assistance Manual

Other Governmental Programs

Procedures for Securing Information from the Social Security Administration

N.J.A.C. 10:81-8.2

Take notice that the Division of Economic Assistance has discovered a cross-reference error in the text of N.J.A.C. 10:81-8.2(c)3. The reference in that paragraph to "the categories described in (d)1 or 2 above" must be changed to refer to "(c)1 or 2 above," since the rule contains no subsection (d) and the only categories mentioned in the rule are in the preceding two paragraphs. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

10:81-8.2 Procedures for securing information from the Social Security Administration

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

(c) The TPQY may be supplemented through use of Form SSA-1610-U2 (Social Security—Public Assistance Agency Request for Information) for the following reasons:

1.-2. (No change.)

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3. Additional written or telephone requests for previously submitted SSA 1610-U2 information will not be accepted by SSA unless they fall within the categories described in [(d)] (c)1 or 2 above or involve emergency situations.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Access to Courts
Definitions; Legal Photocopying Services
Adopted Amendments: N.J.A.C. 10A:6-1.3 and 2.5

Proposed: November 4, 1991 at 23 N.J.R. 3268(a).
Adopted: January 9, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: January 10, 1992 as R.1992 d.60, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

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

Effective Date: February 3, 1992.
Expiration Date: November 2, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment from John V. Jacobi, Esq., of the law firm, Crummy, Del Deo, Dolan, Griffinger and Vecchione. The comment and the Department of Corrections' response is as follows:

COMMENT: The commenter complained that the rule regulating copying of documents related to discovery procedures is unclear. He believes this will leave inmates without clear authority for copying services; for example, responses to interrogatories or demands for production of documents.

RESPONSE: In an effort to clarify its policy on copying of discovery materials, the Department of Corrections will make two modifications to N.J.A.C. 10A:6-1.3 in the definition of "legal material".

The second sentence in the definition is being changed to make clear that legal material does not include papers or documents sought in the discovery process "by the inmate." Also, at paragraph 5, language is being inserted to clarify documents needed as answers to demands which an inmate is required to serve are considered legal material. It is hoped that these changes will assist correctional facility staff in the implementation of these rules.

Summary of Agency-Initiated Changes upon Adoption:

Upon adoption, the Department of Corrections is correcting N.J.A.C. 10A:6-2.5(a) to make it consistent with 2.5(j) in regard to not charging indigent inmates for copying. Also, a cross-reference has been added for ease in locating information pertaining to photocopying charges.

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

10A:6-1.3 Definitions

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

...

"Legal material" means papers or documents that are required to be filed with the court and served upon opposing parties. Legal material does not include papers or documents sought in the discovery process ***by the inmate***. Legal material includes:

1. Orders required by their terms to be served;
2. Pleadings;
3. Written notices;
4. Written motions;
5. Demands, ***or answers to demands which the inmate is required to serve,*** such as, for production of documents, for interrogatories;
6. Offers of judgment;
7. Designations of records on appeal;

Recodify 9.-12. as 8.-11. (No change in text.)

...

"Notary service" means service provided by a notary public authorized by law to certify or attest documents, take affadavits, administer oaths, and perform other services ordinarily performed by a notary public.

10A:6-2.5 Legal photocopying services

(a) The Department of Corrections shall provide photocopies of legal material, as that term is defined in N.J.A.C. 10A:6-1.3, at no charge to the ***indigent*** inmate, in accordance with the following guidelines and limitations. ***Inmates who are not indigent shall be charged in accordance with N.J.A.C. 10A:1-1.3.***

(b) Each correctional facility shall establish written procedures by which inmates are permitted to have legal material photocopied.

(c) At a minimum, inmates may submit legal material to be photocopied to a staff member designated by the Supervisor of Education, or an inmate paralegal under the supervision of a designated staff member, during the hours prescribed by the correctional facility. The original and photocopies of the legal material shall be returned to the inmate within four days of submission unless return of the legal material is prevented by exceptional circumstances. If the fourth day falls on a weekend or holiday, the legal material shall be returned on the weekday following the weekend or holiday.

(d) Only legal material which must be photocopied for a legitimate purpose, related to pending litigation, will be photocopied at the Department of Correction's expense. Such legal materials may include supporting documents, such as relevant prior correspondence and copies of receipts, which are to be attached to court documents. All other photocopying of legal material will be done at the inmate's expense, except as provided in (i) below. The legal material submitted for photocopying may be reviewed by the Supervisor of Education, or his or her designee, in order to determine whether the legal material:

1. Falls within the definition of legal material provided in N.J.A.C. 10A:6-1.3; and
2. Must be photocopied for a legitimate purpose related to pending litigation; or
3. Should be duplicated by typing instead of photocopying, as provided by (h) below.

(e) The Supervisor of Education, or his or her designee, has complete discretion in determining whether the criteria enumerated in (d) above are fulfilled. Photocopies will be limited in quantity to the number required by the court plus one photocopy for the inmate.

(f) Cases from judicial case law reporters found in the inmate law library are not contained within the definition of legal material provided in N.J.A.C. 10A:6-1.3. However, cases may be photocopied at the Department of Corrections' expense, but only in the following exceptional circumstances:

1. (No change.)
2. If the inmate's work schedule precludes him or her from engaging in legal research in the inmate law library.

(g) In the instances cited in (f)1 and 2 above, the photocopied case will be signed out on a temporary basis and returned to the inmate law library within 14 days.

(h) If, in the discretion of the Supervisor of Education or his or her designee, the legal material which the inmate seeks to have photocopied should instead be duplicated by typing, the inmate himself or herself shall be required to type the duplicates and the correctional facility shall not provide photocopies.

(i) Exceptional circumstances may dictate that material other than those defined as "legal material" (see N.J.A.C. 10A:6-1.3) would need to be photocopied. The photocopying of such material is left to the discretion of the Supervisor of Education or his or her designee.

(j) The material referenced in (a) through (i) above will be copied at the inmate's expense unless the inmate is indigent.

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(a)

THE COMMISSIONER

Social Services

Adopted New Rules: N.J.A.C. 10A:17

Proposed: October 21, 1991 at 23 N.J.R. 3065(a).

Adopted: January 3, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 8, 1992 as R.1992 d.49, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

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

Effective Date: February 3, 1992.

Expiration Date: February 3, 1997.

Summary of Agency-Initiated Change:

Upon adoption, the Department of Corrections is adding subsection N.J.A.C. 10A:17-5.22, Forms, in order to facilitate the process of obtaining Form 370-I RELIGIOUS VEGETARIAN DIET.

N.J.A.C. 10A:17, Social Services, expired on December 15, 1991. This chapter is therefore being readopted as new rules at this time, pursuant to N.J.A.C. 1:30-4.4(f).

Summary of Public Comments and Agency Responses:

The Department of Corrections received comments from Alice K. Dueker, Assistant Deputy Public Defender, Department of the Public Advocate. A summary of the comments and the New Jersey Department of Corrections' responses follows:

COMMENT: The Public Advocate stated that the proposed amendments to N.J.A.C. 10A:17-5.10 failed to meet requirements set forth in a consent order entered by Judge John C. Lifland in *Khalig* v. *Kean*, Dkt. No. 85-4421 (D.N.J. 5/16/90), as follows:

1. N.J.A.C. 10A:17-5.10(f) states that the chaplain's decision is final. There is no provision for administrative appeal as required by the consent order; and

2. The amendment should include a provision for advising an inmate whose application has been disapproved, that he or she may reapply, and a provision requiring a Chaplaincy Department representative to interview any applicant whose application has been denied.

RESPONSE: The Department of Corrections agrees that N.J.A.C. 10A:17-5.10 should include a provision for appeal to the Superintendent when an inmate's application is denied. A new subsection (g) has been added to provide for this appeal. A form has been developed for use in applications for vegetarian diet (370-I). A statement contained on Form 370-I advises the inmate of the opportunity to reapply if the inmate is denied a vegetarian diet. Moreover, the consent order does not require that a conference be held with the Chaplain's representative. The interview is not needed because the Superintendent's notice of decision will advise the inmate of the reason for denying the vegetarian diet.

Full text of the adopted new rules can be found in the New Jersey Administrative Code at N.J.A.C. 10A:17.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10A:17-2.1 Definitions

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

...

10A:17-2.2 (Reserved)

10A:17-2.4 Selecting the Supervisor of Volunteer Services

When a vacancy in the position of full time Supervisor of Volunteer Services occurs or when a new position becomes available, the Superintendent shall select the applicant to fill the position in accordance with procedures established by the New Jersey Department of Personnel and notify the Office of the Deputy Commissioner when the position has been filled.

10A:17-2.5 Recruiting volunteers

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

10A:17-2.6 Eligibility for Volunteer Service Program

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

(d) A person with an arrest history may participate in the Volunteer Service Program if his or her volunteer application is approved by the Supervisor of Volunteer Services, the Superintendent and the Office of the Deputy Commissioner.

10A:17-2.9 Volunteer Handbook

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

(d) Prior to publishing or republishing the Volunteer Handbook, the final draft shall be submitted to the Office of the Deputy Commissioner for review and written approval.

(e) When the approved Volunteer Handbook has been printed, the correctional facility shall submit a copy to the Office of the Deputy Commissioner and to the appropriate Assistant Commissioner's office to be maintained on file.

(f) (No change.)

10A:17-2.20 Volunteer Service Program in community residential facilities

(a) (No change.)

(b) The policies and procedures outlined in (a) above shall be revised when necessary, and submitted to the Office of the Deputy Commissioner and the appropriate Assistant Commissioner's office for review and written approval on or before September 30 of each year.

10A:17-2.23 Reporting responsibilities

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

(c) The supervisor of Volunteer Services shall submit copies of his or her monthly and annual reports to the Superintenent and the Office of the Deputy Commissioner.

10A:17-2.24 Procedures and post orders

(a) (No change.)

(b) Each correctional facility shall submit a copy of the written procedures governing the Volunteer Service Program to the Office of the Deputy Commissioner for review and approval on or before September 30 of each year.

10A:17-5.9 Religious diets

(a) Inmates may abstain from eating food items, served to the general population, which are prohibited by the inmate's religion. In such instances, upon approval by the Chaplaincy Department (see N.J.A.C. 10A:17-5.10, nutritionally balanced vegetarian meals shall be provided to all inmates who, due to religious beliefs, do not wish to eat meat. Such vegetarian meals shall be made available to imates as an alternative to the "principal meal" which is provided to the rest of the inmate population.

(b) The vegetarian entree shall be provided at each of the three meals of the day (breakfast, lunch and dinner), seven days per week, except on those occasions when the principal meal being served does not contain any meat (for example, a breakfast of juice and cereal, etc.). In such instances, all inmates will receive the same meal.

(c) All vegetarian diets, unless otherwise indicated, will be served as a complete meal and not in supplement to, or as a choice between, dietary meals and regular meals.

(d) Vegetarian diets shall be provided to inmates only when requests for such diets have been reviewed and approved by the Chaplaincy Department.

10A:17-5.10 Placement on the religious vegetarian diet

(a) In order to be considered for placement on the list of inmates approved for vegetarian diets, the inmate must complete Sections I and II of Form 370-I Religious Vegetarian Diet, which may be obtained on request from the housing unit Social Worker.

(b) The inmate shall forward Form 370-I Religious Vegetarian Diet, with sections I and II completed, to the Chaplaincy Department for review.

(c) The Chaplaincy Department may interview an inmate who has requested placement on the list of inmates approved for vegetarian diets if it is deemed necessary. In no case shall the interview be used to proselytize the inmate.

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(d) If the inmate's request for placement on the list of inmates approved for vegetarian diets is approved, the Chaplain shall forward the completed Form 370-I Religious Vegetarian Diet to the Institutional Classification Committee (I.C.C.).

(e) The Institutional Classification Committee shall submit the name of an inmate who has been approved for placement on a vegetarian diet to the Food Service Department.

(f) If the inmate's request for placement on a vegetarian diet is disapproved, the Chaplain shall notify the inmate and file Form 370-I Religious Vegetarian Diet in the inmate's Classification folder. The Chaplain's decision is final and is not subject to being overruled by the Institutional Classification Committee (I.C.C.).

(g) When the inmate is notified by the Chaplain that the request for placement on a vegetarian diet is disapproved, the inmate may appeal in writing to the Superintendent or his or her designee. The Superintendent shall respond within five days giving statement of reasons for his or her decision.

*[(g)]****(h)*** Any inmate who wishes to be added or deleted from the list of inmates approved for vegetarian diets shall provide 30 days written notice to the Chaplaincy Department using Form 370-I Religious Vegetarian Diet.

Recodify existing 10A:17-5.10 through 5.20 as 10A:17-5.11 through 5.21 (No change in text.)

***10A:17-5.22 Forms**

Form 370-I RELIGIOUS VEGETARIAN DIET shall be reproduced by each correctional facility from an original that is available by contacting the Standards Development Unit.*

(a)

THE COMMISSIONER

Social Services
Inmate Marriage

Adopted New Rules: N.J.A.C. 10A:17-7

Proposed: November 18, 1991 at 23 N.J.R. 3422(a).
Adopted: January 6, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: January 9, 1992 as R.1992 d.55, **without change.**
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: February 3, 1992.
Expiration Date: February 3, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 7. INMATE MARRIAGE

10A:17-7.1 Procedure for submitting a request to marry

(a) An inmate, who is 18 years of age or older and wishes to marry while serving sentence at a State correctional facility, shall submit a written request to marry to the Superintendent of the correctional facility at which the inmate is currently assigned at least 90 days in advance of the proposed date of the wedding.

(b) An inmate may submit a request to marry outside of the correctional facility if the inmate is eligible for escorted or unescorted furlough, or the inmate may submit a request to marry within the correctional facility if the inmate is ineligible for furlough or prefers that the marriage ceremony be performed at the correctional facility.

(c) A request to marry shall not qualify an inmate for furlough who is otherwise ineligible for furlough.

(d) The request to marry, of an inmate whose marriage ceremony will be conducted in the community while on escorted or unescorted furlough, shall include:

1. The name of inmate;
2. The number of inmate;
3. The name of intended spouse;
4. The address of intended spouse;
5. The age of intended spouse and the inmate;
6. The present marital status of intended spouse;
7. The proposed date of ceremony;
8. The address of the place where the marriage ceremony will be performed;
9. A request for a furlough to coincide with the proposed date of marriage;
10. A summary of the action, if any, the inmate has taken regarding compliance with the requirements for:
    i. A marriage license;
    ii. Blood tests; and
    iii. Other provisions of State law;
11. A signed statement that indicates that the inmate and/or his or her intended spouse will pay all expenses incurred, and that there are no legal restrictions which would prohibit the marriage under the law; and
12. A statement authorizing the release of information to the intended spouse which includes the inmate's custody status, the length and type of sentence and any active detainers.

(e) The request to marry of an inmate whose marriage ceremony will be conducted within the correctional facility shall include:

1. The name of inmate;
2. The number of inmate;
3. The name of intended spouse;
4. The address of intended spouse;
5. The age of intended spouse and the inmate;
6. The present marital status of intended spouse;
7. The request for approval to use the correctional facility chapel, on a proposed date, for the marriage ceremony;
8. The type of ceremony preferred (civil or religious);
9. A summary of the action, if any, the inmate has taken regarding compliance with the requirements for:
    i. A marriage license;
    ii. Blood tests; and
    iii. Other provisions of State law,
10. A signed statement that indicates that the inmate and/or his or her intended spouse will pay all expenses incurred, including the costs for:
    i. The blood tests;
    ii The marriage license;
    iii. The provision of correction officers;
    iv. The use of a State vehicle;
    v. The meals of inmates and escorts; and
    vi. The tolls and parking expenses;
11. A signed statement that indicates that there are no legal restrictions which would prohibit the marriage under the law; and
12. A statement authorizing the release of information to the intended spouse, which includes the inmate's custody status, the length and type of sentence and any active detainers.

10A:17-7.2 Decision on requests to marry

(a) The decision of approval or disapproval of an inmate's request to marry shall be made by the Superintendent who shall make use of a committee, designated by him or her, to assist in the decision making. The committee shall consist of:

1. The Social Work Supervisor;
2. A chaplain;
3. A custody staff person with the rank of Lieutenant or above; and
4. Any other staff member(s) designated by the Superintendent.

(b) Upon receipt of the inmate's request to marry, the Superintendent shall refer the request to the committee for an in-depth review.

10A:17-7.3 Committee considerations

(a) The committee shall consider all of the relevant factors pertaining to an inmate's request to marry and submit written recommendations for approval or disapproval to the Superintendent within 30 days of the request.

(b) Consideration by the committee shall not be construed as an assurance that an inmate's request to marry will be approved.

(c) An inmate's request to marry may be considered for approval if:

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1. The inmate has made a satisfactory correctional facility adjustment;
2. The inmate's marriage would not present a risk to security or the orderly operation of the correctional facility;
3. The inmate's intended spouse is not presently incarcerated; and
4. The inmate is able to comply with all of the requirements of the State laws governing marriage.

(d) The committee may consider other factors such as:
1. The inmate's maturity;
2. The inmate's emotional stability;
3. The length and type of sentence;
4. The inmate's ability to make a rational, informed decision concerning entering the marriage relationship; and/or
5. Other factors deemed appropriate by the committee for consideration.

(e) The committee may request an updated psychological and/or psychiatric evaluation when such is deemed necessary to properly deliberate upon the inmate's maturity, emotional stability or ability to make a rational and informed decision concerning marriage.

(f) An inmate's request to marry may be considered and recommended for approval when the inmate can meet all the above stated criteria.

(g) The final decision on an inmate's request to marry shall be made at the discretion of the Superintendent.

10A:17-7.4 Notification of decision

(a) The Superintendent shall give to the inmate written notification of approval or disapproval of the request to marry as soon as possible after receiving it.

(b) The notification shall indicate:
1. Whether the inmate's request for a furlough to coincide with the proposed date of marriage has been approved; or
2. Whether the inmate's request for use of the correctional facility for the marriage ceremony on the proposed date is approved.

(c) If the correctional facility is to be used for the ceremony and the date requested by the inmate is in conflict with previously scheduled activities, the Superintendent may select an alternate date which is mutually convenient for the correctional facility and the inmate.

(d) The Superintendent shall also provide the following information to the intended spouse which shall specify:
1. The time, date and place of the impending marriage;
2. The custody status of the inmate, the length and type of sentence, any active detainers; and
3. The requirement of a premarital conference to clarify any issues regarding the marriage.

10A:17-7.5 Social Service Department

(a) Upon approval of the inmate's request to marry, the Superintendent shall notify the Social Service Department.

(b) A staff member from the Social Services Department shall be assigned to act as an advisor to assist the inmate and the intended spouse.

(c) A premarital conference meeting with the inmate and the intended spouse shall be held at the correctional facility to clarify any social, legal or financial issues regarding the impending marriage.

(d) If there is to be a civil ceremony, the staff member of the Social Service Department shall review, arrange and coordinate plans for the ceremony, including the request to a civil official who will perform the ceremony (see N.J.S.A. 37:1-13 for persons authorized to solemnize marriages).

10A:17-7.6 Correctional facility chaplain

(a) If the inmate requests a religious service, the Superintendent shall notify the chaplain upon approval of the inmate's request to marry.

(b) The chaplain shall interview the inmate to determine the specific faith-group requirements which need to be met.

(c) The decision as to whether the chaplain shall perform a marriage is within the chaplain's sole discretion.

(d) The chaplain, clergy person, or other authorized religious leader who will perform the ceremony shall be granted the opportunity to conduct pre-marital sessions, such as counseling, in preparation for the solemnization of the marriage. Such sessions shall be arranged with the least disruption to the security and good order of the correctional facility. Where appropriate, the attorney visit room will be made available for this purpose.

(e) The chaplain shall review, arrange or coordinate plans for the ceremony, including the notification of the officiating clergy person or authorized religious leader, if the ceremony is not to be performed by the chaplain.

10A:17-7.7 Marriage ceremony

(a) A marriage ceremony conducted within the correctional facility shall be private with no attendant publicity.

(b) The marriage ceremony may be performed by:
1. The correctional facility chaplain;
2. A religious leader from the community who visits the correctional facility; or
3. A person from the community who is authorized by law to perform marriages in the State of New Jersey.

(c) Witnesses shall not exceed six in number, excluding the officiating clergy person, except in instances in which the inmate and the intended spouse have a large number of verified close relatives who wish to attend, for example, mother, father, son, daughter, sister, brother, grandfather and grandmother.

(d) The Superintendent may permit relatives in excess of six people to attend the marriage ceremony if the relatives' attendance does not violate the security or the orderly operation of the correctional facility.

(e) The witnesses from the community must be on the inmate's approved visiting list or receive special permission from the Superintendent to attend the marriage ceremony. Normal security measures concerning visits shall be employed.

(f) Inmates from the same correctional facility may attend the marriage ceremony but their attendance shall not increase the maximum number of six witnesses. The correctional facility may also limit the number of inmates permitted to attend the marriage ceremony in order to maintain security and good order.

(g) The correctional facility may refuse to permit an inmate to attend a marriage ceremony in the interests of security and good order.

(h) Flowers may be used, pictures may be taken, and a record player or tape recorder may be used to provide music at the marriage ceremony if these activities do not present a risk to the maintenance of security or the orderly operation of the correctional facility.

(i) Outside photographers and/or musical groups shall not be permitted to attend the marriage ceremony under any circumstances.

10A:17-7.8 Reception activities and consummation of the marriage

There will be no reception activities after a marriage ceremony has been performed within a correctional facility, and the correctional facility will not provide accommodations for the consummation of the marriage following the marriage ceremony.

10A:17-7.9 Fees and costs

(a) The correctional facility shall not be responsible for any costs incurred by inmates who marry.

(b) Financial obligations for such items as marriage licenses, serological (blood) tests and fees for the person officiating, other than a full or part-time staff member of the correctional facility, shall be assumed by the marriage partners.

(c) Blood tests for the inmate shall be performed at the correctional facility and the appropriate deduction shall be made from the inmate's business account.

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(a)

THE COMMISSIONER
Records
Availability of Medical Information to Inmates
Adopted New Rule: N.J.A.C. 10A:22-2.6

Proposed: November 18, 1991 at 23 N.J.R. 3424(a).
Adopted: January 6, 1992 by William H. Fauver, Commissioner, Department of Corrections.
Filed: January 9, 1992 as R.1992 d.54, **without change.**
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: February 3, 1992.
Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment to this proposed new rule from Mary C. Williams, an inmate at the Edna Mahan Correctional Facility.

COMMENT: Commenter is in favor of the rule which provides for copies of medical records to be made available to inmates; however, she felt that the cost for such copies was too high in view of the limited income of most inmates. She suggested a fee of 10 cents or 15 cents per page instead of 50 cents.

RESPONSE: The Department of Corrections believes that the present fee schedule will not be a hardship for those inmates who have some income or funds, because most of the medical information will be contained on a one or two page summary print-out; thus obviating any need for multiple page copying. Those inmates who have been granted status as indigents by a court may be permitted to obtain their records free of charge.

Full text of the adoption follows.

10A:22-2.6 Availability of medical information to inmates

(a) An inmate may obtain a copy of his or her medical records or a summary thereof by submitting a written request, on Form 301-XII, to the correctional facility's Director of Professional Services or Supervisor of the Medical Department, or to the Superintendent in those correctional facilities which do not have a Director of Professional Services or Supervisor of the Medical Department.

(b) The correctional facility shall provide a copy of the medical records, or a summary thereof, to the inmate within 30 calendar days.

(c) Where available, a summary of the medical record shall be provided to the inmate and shall contain a computer print-out of the following:

1. A health care summary;
2. A medical test(s) summary;
3. An x-ray(s) summary; and/or
4. A pharmacy history.

(d) In those cases in which record summaries are not available by computer or a document cannot be duplicated, arrangements may be made for the inmate to review his or her medical records under supervision of a correctional facility medical staff person.

(e) Copies of psychological/psychiatric records shall not be provided to inmates (see N.J.A.C. 10A:22-2.8(a)1, Records authorized by the inmate or parolee for inspection or release).

(f) Only objective data shall be supplied. Information may be withheld if, in the opinion of the Medical Director or Superintendent, release of the information would:

1. Be harmful to the inmate;
2. Jeopardize the safety or well-being of other individuals;
3. Compromise the privacy rights of other individuals; and/or
4. Have a substantial adverse impact on the orderly operation of the correctional facility.

(g) The fee schedule set forth in N.J.A.C. 10A:22-2.11 shall apply to this section.

Recodify existing 10A:22-2.6 through 2.10 as 10A:22-2.7 through 2.11 (No change in text.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS
Exempt Work
Adopted Amendment: N.J.A.C. 13:31-1.4

Proposed: April 1, 1991 at 23 N.J.R. 979(a).
Adopted: November 6, 1991 by the Board of Examiners of Electrical Contractors, Edward H. O'Hara, Acting Chairman.
Filed: January 10, 1992 as R.1992 d.66, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:5A-6.
Effective Date: February 3, 1992.
Expiration Date: November 20, 1996.

The Board of Examiners of Electrical Contractors afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:31-1.4, which defines the term "qualified journeyman electrician." The official comment period ended on May 1, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 1, 1991, at 23 N.J.R. 979(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Northern and Southern New Jersey Chapters of the National Electrical Contractors Association and other interested parties and professional associations.

A full record of this opportunity to be heard can be inspected by contacting the Board of Examiners of Electrical Contractors, Post Office Box 45006, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

One comment was received during the 30-day comment period from Chrystene Wyluda, Esq. of the Department of Community Affairs. Ms. Wyluda stated that the Department of Community Affairs is relieved to see the issue of the definition of "journeyman" addressed by the Board and that the amendment will enable the Department's code officials to refer possibly unqualified individuals to the Board for investigation. The commenter expressed concern, however, that the regulation does not provide for the issuance of any tangible evidence that the individual meets the criteria to qualify as a journeyman electrician (for example, a card), and that the Department will be unable to ascertain the nature and extent of the permit applicant's experience.

The Board states in response that while it understands that lack of identification is a continuing concern, it presently does not have a mechanism by which it can determine whether permit applicants meet the educational and training requirements set forth in the rule. However, the Board intends to pursue additional discussion with the Department in an effort to resolve this matter. Among the remedies which may be explored are a requirement that the applicant supply additional information in the permitting and inspection process and/or the imposition of recordkeeping requirements on employers. Any solution can only be accomplished, however, after careful consideration of all the alternatives by both the Department of Community Affairs and the Board. The Board trusts that, until such time as the problem of lack of identification is resolved, the adoption of the definition of "qualified journeyman electrician" will be helpful to the Department in its inspection process.

Summary of Change Between Proposal and Adoption

The Board has determined that the title of N.J.A.C. 13:31-1.4, "Exempt work," should be changed for clarification purposes. Neither subsection of the rule uses the word "exempt" or concerns exempt work in general; rather, these subsections merely provide definitions of work which is statutorily exempt. Accordingly, the Board believes that the title "Definitions" is more appropriate.

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

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13:31-1.4 *[Exempt work]* ***Definitions***

(a) Minor repair work within the meaning of N.J.S.A. 45:5A-18(a) shall include, without limitation, the replacement of lamps and fuses operating at less than 150 volts to ground with a like or similar item.

(b) The term "qualified journeyman electrician" as used in N.J.S.A. 45:5A-18(k) shall mean and include any person who is either:

1. The holder of a current valid license to practice electrical contracting issued by the Board; or

2. A person who has acquired 8,000 hours of practical experience working with tools in the installation, alteration or repair of wiring for electric light, heat or power and who has had a minimum of 576 classroom hours of related instruction. The requirement of practical experience shall not include time spent in supervising, engineering, estimating and other managerial tasks.

TREASURY-GENERAL

(a)

OFFICE OF THE STATE TREASURER

Debts Owed to New Jersey Higher Education Assistance Authority by State, County or Municipal Employees, and Any Officer or Employee of a Local Board of Education, a County or Municipal Board of Health or an Autonomous Authority Created by a County or Municipality Pursuant to Statute and Any Officer or Employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology, or Any Public Authority Established Pursuant to State Law

Adopted Amendments: N.J.A.C. 17:25-1.1, 1.2, 1.3, 1.5, 1.11 and 1.12

Proposed: August 5, 1991 at 23 N.J.R. 2226(a).

Adopted: October 8, 1991 by Douglas C. Berman, State Treasurer; October 31, 1991 by Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs; January 9, 1992 by Dr. Edward D. Goldberg, Chancellor, Department of Higher Education; and September 16, 1991 by John Ellis, Commissioner, Department of Education.

Filed: January 10, 1992 as R.1992 d.61, **without change.**

Authority: N.J.S.A. 18A:72-25.5; 52:18A-30; and 18A:72-24.

Effective Date: February 3, 1992.

Expiration Date: May 26, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 25
COLLECTION OF DEBTS

SUBCHAPTER 1. DEBTS OWED TO THE NJHEAA BY STATE, COUNTY, OR MUNICIPAL EMPLOYEES, AND ANY OFFICER OR EMPLOYEE OF A LOCAL BOARD OF EDUCATION, A COUNTY OR MUNICIPAL BOARD OF HEALTH OR AN AUTONOMOUS AUTHORITY CREATED BY A COUNTY OR MUNICIPALITY PURSUANT TO STATUTE AND ANY OFFICER OR EMPLOYEE OF RUTGERS THE STATE UNIVERSITY, THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY, THE NEW JERSEY INSTITUTE OF TECHNOLOGY OR ANY PUBLIC AUTHORITY ESTABLISHED PURSUANT TO STATE LAW

17:25-1.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby the New Jersey Higher Education Assistance Authority (NJHEAA) in conjunction with the Department of Treasury shall cooperate in identifying State, county, or municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and, any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law who are delinquent in payments to the NJHEAA on any note held pursuant to N.J.S.A. 18A:72-16, 18A:72-23, 18A:72-25.2 and 18A:72-25.4. It is also the intent of this subchapter to establish procedures for deducting from the wages of such State, county, or municipal employees, and any officer or employee of a local board of education, a county of municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law the sum of any such debt owed to the NJHEAA. The procedures contained in this subchapter afford the State, county, or municipal employee and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county of municipality pursuant to statute and any officer or employee or Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law the opportunity to assert any legal rights he or she may have prior to the deduction from the wages.

17:25-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

...

"Debtor" means any New Jersey State, county, or municipal employee or any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law on the State, county, municipal, or school district payroll(s) owing money to or having a note or obligation to the Authority in which payments are more than 60 days delinquent, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

...

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"Financial officer" means the Chief Financial Officer (or equivalent) of the appropriate county, municipal local unit or school district having authority over the county, municipal or school district payroll system(s).

...

"Net proceeds collected" means gross proceeds collected through total deductions from a debtor's State, county, municipal or school district payroll checks minus any collection fee charged by the Department or local unit to provide for any expenses of the collection effort.

"Payroll check" means the wages received by New Jersey State, county or municipal employees, any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law paid by the State, county, municipal or school district payroll in return for services provided to the employee's or officer's respective State, county, municipal or school district agency, department, office or other entity using the State, county, municipal or school district payroll system by which the employee or officer is employed.

17:25-1.3 Procedure for deduction from wages

(a) (No change.)

(b) For county and municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law, the Authority shall notify the financial officer in writing and supply the financial officer with a list of persons currently in default on notes held by the Authority. The financial officer shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as county or municipal employees or officers, or as officers or employees of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute, or as officers or employees of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law. Upon notification by the financial officer, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the financial officer as to those debtors for which the Authority requests deductions to be made.

17:25-1.5 Notice to debtor

(a) Within 10 days after the notification to the Authority that the employee or officer is receiving wages from the State, county, municipal or school district payroll system, the Authority shall notify the alleged debtor by regular mail of the proposed deduction.

(b) The Authority shall also advise debtors of the right to request a hearing if they are contesting the accuracy or existence of the alleged debt, or any other material issue of fact. Requests for hearing shall be made to the Authority, in writing, within 30 days after the date of notice and shall include a full explanation of the facts justifying the request for the hearing.

(c) Debtors having extraordinary circumstances which would make it an extreme financial hardship to be subject to the proposed deduction may provide written materials in support of their hardship claim to the Authority. The Authority shall promptly review these materials and report its decision to the debtor.

17:25-1.11 Disposition of proceeds collected; collection assistance fees

(a) (No change.)

(b) From the gross proceeds collected by the Department or financial officer through deductions, the Department, local unit or school district shall retain one percent, which amount shall be charged to the Authority as a collection assistance fee.

17:25-1.12 Accounting to the Authority; credit to debtor's obligation

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

(e) For county and municipal employees, and any officer or employee of a local board of education, a county or municipal board of health or an autonomous authority created by a county or municipality pursuant to statute and any officer or employee of Rutgers the State University, the University of Medicine and Dentistry of New Jersey, the New Jersey Institute of Technology or any public authority established pursuant to State law under circumstances and subject to the approval of the appropriate local government, board, Authority or school district official, the financial officer may employ such alternative method of payment as may be agreed upon with the Authority.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Petroleum Gross Receipts Tax

Adopted New Rules: N.J.A.C. 18:18A

Proposed: December 17, 1990 at 22 N.J.R. 3715(a).

Adopted: December 16, 1991 by Leslie A. Thompson, Director, Division of Taxation.

Filed: December 16, 1991 as R.1992 d.30, **with substantive changes** not requiring additional public notice (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:50-1.

Effective Date: February 3, 1992.

Expiration Date: February 3, 1997.

Summary of Public Comments and Agency Responses:

David A. Arledge, Executive Vice President, the Coastal Corporation submitted the following comments, the responses to which are set forth below:

COMMENT: First, the commenter suggests that the rules as adopted contain some relief for both bunker fuel and "motor carrier petroleum products."

RESPONSE: P.L. 1991, c.181, sec. 7 (N.J.S.A. 54:15B-2.1) provides that as of July 1, 1991 gross receipts shall not include receipts from sales of petroleum products used by marine vessels engaged in interstate or foreign commerce. The statute does not contain relief for motor carrier petroleum products however.

COMMENT: Secondly, the commenter refers to the treatment of export transactions and specifically focuses upon proposed N.J.A.C. 18:18A-2.3(b), which provides that, "Receipts for first sales of petroleum products within this State are subject to tax although the purchaser will use or consume the product outside the state."

RESPONSE: P.L. 1991, c.181 sec. 3 (N.J.S.A. 54:15B-5c) amends that section to make clear that a sale outside the State is no longer needed to ensure that the exempt nature of the transaction is recognized. This clarifies the statutory ambiguity. The Division of Taxation has revised the rule accordingly, to make this aspect clear.

COMMENT: Third, the commenter suggests that, in addition to propane and No. 2 heating oil, any petroleum product used for residential heating purposes not carry the gross receipts tax burden to the ultimate user.

RESPONSE: P.L. 1991, c.181 section 1 amends N.J.S.A. 54:15B-2 so that sales of No. 4 and No. 6 heating oil and kerosene for residential use are also not subject to tax.

Joseph Ecret, Jr. of Salem, New Jersey, submitted the following comments, the responses to which are set forth below:

COMMENT: The commenter suggested that the Division collect the tax on a "cents per gallon" basis, equalizing the tax burden.

RESPONSE: P.L. 1991, c.181, sec. 2, amends N.J.S.A. 54:15B-3 and allows a conversion to a per gallon basis for heating oil. This will "level the playing field" as the commenter suggests. Calculations pursuant to the statute require that a rate of four cents per gallon be applied to all sales through December 31, 1991. A new rate for January 1, 1992

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through June 30, 1992 will be struck in December, based upon the November Board of Public Utilities survey.

Stephen Ianello, Senior Tax Attorney and James F. McMahon, Assistant General Tax Counsel of Consolidated Edison Company of New York, New York submitted comments eliciting the following responses:

COMMENT: The commenters focused on the need for bringing further clarity to the interaction of the definitions of "exportation," "export," "commodity," "use," and the application of these terms in a consistent manner to storage and temporary storage. They pointed out that the proposed rules impose no time restriction as to when exportation must take place.

RESPONSE: The Division has amended upon adoption a number of the definitions, including the term "use." It may be noted that P.L. 1991, c.181, sec. 3, which is effective on and after July 1, 1990, provides that the additional word "use" is added at N.J.S.A. 54:15B-5(c)1. The Division intends to move toward a "destination" approach to the issue of export and away from an approach analogous to sales and use tax principles.

COMMENT: The proposed new rules raise questions under the commerce clause of the U.S. Constitution by imposing undue restrictions upon interstate commerce. The commenters recommend that the rules be amended to provide that petroleum products which are temporarily stored in New Jersey and which are clearly not intended to be sold, consumed, blended, etc. in New Jersey will not be subject to tax provided the product being stored is exported within 30 days of the date of purchase.

RESPONSE: The Division notes that the rules were reviewed prior to proposal by the Attorney General's Office with commerce clause issues in mind. However, in light of subsequent statutory amendments discussed below and the revision to the rules upon adoption, the Division will consider implementing a rule similar to the one the commenters propose, based upon experience in administering the tax.

COMMENT: N.J.A.C. 18:18A-2.3(b) is inconsistent with the rest of the rules.

RESPONSE: P.L. 1991, c.181, sec. 3, which is effective on and after July 1, 1990, provides that the additional word "use" is added at N.J.S.A. 54:15B-5c(1). This clarifies a statutory ambiguity. The rule has been clarified to make clear that a sale outside the State is not a prerequisite for the export exemption to be applicable in a particular case. Any inconsistency between N.J.A.C. 18:18A-2.3(b) and 18:18A-4.1 has been resolved upon adoption.

COMMENT: What will be the impact of letter opinions from the Division of Taxation.

RESPONSE: The Division will handle audit difficulties of a particular taxpayer on a case by case basis. On January 16, 1990, at 22 N.J.R. 159(a), the Division proposed a rule dealing with the effect of advisory opinions, namely N.J.A.C. 18:1-1.3. Later on June 4, 1990, at the time of adoption of other organizational rules, the Division declined to adopt the proposed rule on advisory opinions. See: 22 N.J.R. 1740(c). At the present time, the Division does not expect to revive this project.

COMMENT: The rules impose undue restriction on interstate commerce.

RESPONSE: The Division is sensitive to potential commerce clause questions. It should be noted that the proposal contains a credit provision at N.J.A.C. 18:18A-7.4, and that the Division was following the advice of the New Jersey Attorney General's Office in the proposal.

COMMENT: The term "commodity" should be defined.

RESPONSE: The Division has deleted the provision dealing with the term "commodity" and revised its approach to exports in light of new statutes. Thus, a definition of the term will be unnecessary.

COMMENT: Temporary storage should be specified and exempted from the tax.

RESPONSE: The Division has included in the adoption clear guidance to the temporary storage problem with particular reference to the utility companies.

COMMENT: N.J.A.C. 18:18A-2.3(b) is in conflict with other proposed rules.

RESPONSE: The Division agrees that section N.J.A.C. 18:18A-2.3(b) should be deleted, for the reasons stated above.

COMMENT: The rules should apply prospectively, and should not penalize any taxpayer who relies on Division rulings.

RESPONSE: The Division will study the effect of particular letter rulings to specific taxpayers in the context of the new legislation. The Division does not agree that this is the time or location for generalized statements on the legal characteristics of letter opinions.

Stanley C. Kelly, Vice President-Taxes, United Airlines, submitted the following comments, the responses to which are set forth below:

COMMENT: The rules, as applied to jet fuel, result in an inequitable and onerous burden on the airlines.

RESPONSE: The commenter's major specific concern appears to have been addressed to a large extent by P.L. 1991, c.181, Section 7 (N.J.S.A. 54:15B-2.1). That section excludes from gross receipts tax sales of aviation fuels used by common carriers in interstate or foreign commerce other than the burnout portion, which shall be taxable pursuant to rules promulgated by the Director.

COMMENT: The commenter was concerned about the applicability of the definitions in the proposal of "book transfer," "direct payment permit holder" and "distributor" and their interaction with regard to the ability of an intermediate aviation fuel trader to become recognized as a distributor or direct payment permit holder.

RESPONSE: P.L. 1991, c.181, Section 6 (N.J.S.A. 54:15B-12) adds a definition of "commercial consumers" which includes companies that purchase, consume, blend, or distribute substantial quantities of petroleum products in the state. The Division would consider the application of this provision to an intermediate aviation fuel trader upon receipt of an application. N.J.S.A. 54:15B-12, as amended by P.L. c.181, is retroactive to July 1, 1990.

COMMENT: The commenter raised questions concerning the definition of the term "exportation" or "export."

RESPONSE: Due to the amendments contained in P.L. 1991, c.181, sec. 3, (N.J.S.A. 54:15B-5) effective July 1, 1990, the Division has clarified on adoption ambiguities on the subject of export, dropping the concept of commodity. The commenter's concerns regarding exportation of fuel in the tanks of an aircraft is addressed through N.J.S.A. 54:15B-2.1, concerning the burnout rule, and will be addressed by rules to be promulgated.

COMMENT: Concerning N.J.A.C. 18:18A-2.4(b), the commenter asserts that it violates the clear statutory language providing a credit for exports.

RESPONSE: The Division has deleted this provision upon adoption for the reasons addressed above on the subject of exports.

COMMENT: A comment was made concerning Subchapter 3, Direct Payment Authority, (N.J.A.C. 18:18A-3.1) in light of possible nonapplication to dealers in aviation fuel.

RESPONSE: As noted above, the Division has taken N.J.S.A. 54:15B-12 into account upon adoption of rules relating to direct payment permits, and has revised N.J.A.C. 18:18A-3.1.

Curt Macysyn, Associate Director, Fuel Merchants Association of New Jersey submitted the following comments, the responses to which are set forth below:

COMMENT: The commenter suggests that the tax could be handled with less confusion if there were a flat cents per gallon levy at a specific point in the distribution chain instead of the current format.

RESPONSE: P.L. 1991, c.181, section 2 provides for a per gallon conversion to be made semi-annually by the Director for fuel oils, motor fuels and aviation fuels. Pursuant to a conversion adjustment a rate of four cents per gallon will be applied to all sales through December 31, 1991. A new rate for January 1, 1992 through June 30, 1992 will be struck in December, based upon the November Board of Public Utilities survey.

COMMENT: The commenter suggests that the final rules should provide an exemption for sales of kerosene for residential heating purposes.

RESPONSE: P.L. 1991, c.181, sec. 1 amended N.J.S.A. 54:15B-2 so that sales of kerosene are not considered petroleum products where they are used exclusively for residential use. This statutory provision is effective July 1, 1991.

COMMENT: The commenter requests clarification on the breadth of the definition of the phrase "residential heating."

RESPONSE: P.L. 1991, c.181, sec. 1 amended N.J.S.A. 54:15B-2 so that the phrase "residential heating" has been statutorily redefined as "residential use." Thus, a propane dealer would not charge tax to a customer who comes to the dealer's place of business with a five gallon container to be used as fuel for a barbecue or a similar household use.

COMMENT: The commenter questioned whether a direct payment holder may elect to pay gross receipts tax to its seller.

RESPONSE: If a particular taxpayer elects to apply for a direct payment certificate, it becomes a taxpayer in its own right if and when the application is granted. Once granted, the taxpayer may not selectively opt to use the privilege in certain circumstances and not in others. This

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would not be in accordance with uniform tax administration procedures under the Act.

COMMENT: The commenter inquired about changing the $100,000 import threshold to a $100,000 import exclusion so that only amounts in excess of $100,000 would be subject to tax.

RESPONSE: The Division believes that the Legislature intended the $100,000 figure to be a threshold and not an exclusion. Accordingly, this suggestion cannot be adopted.

Moreover, it should be noted that under P.L. 1991, c.181, sec. 2 N.J.S.A. 54:15B-3 is amended to reduce the quarterly threshold to $5,000 from $100,000. This section is effective July 1, 1991. The typographical error has been corrected upon adoption. The Department did not intend, in the example furnished in N.J.A.C. 18:18A-2.2(a), to use 2.65 percent, but 2.75 percent.

COMMENT: The commenter suggested that the Division study the scenario and offer its interpretation in the final rules in which kerosene and No. 2 fuel oil are blended as No. 2 fuel oil and not subject to gross receipts tax.

RESPONSE: The Division has done this and the Division notes that under P.L. 1991, c.181, sec. 6 (N.J.S.A. 54:15B-12), qualified blenders may purchase product tax free.

COMMENT: The commenter commented upon the exemption for nonprofit and governmental units.

RESPONSE: It should be noted that P.L. 1991, c.19 provides exemption for the Federal government, effective July 1, 1990 and P.L. 1991, c.181, sec. 1 provides exemption for receipts from products sold to nonprofit entities and governmental units defined under section 9 of the Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq. This latter exclusion is effective July 1, 1991. The Division has revised the rules to take this into account.

Robert L. Mandel, Director-Taxation, Air Transport Association of America submitted the following comments, the responses to which are set forth below:

COMMENT: The proposed rules are contradictory and lead to a misapplication of the tax to aviation fuel.

RESPONSE: A major concern raised by the commenter appears to have been addressed to a large extent by P.L. 1991, c.181, Section 7, (N.J.S.A. 54:15B-2.1). That section excludes from gross receipts tax sales of aviation fuels used by common carriers in interstate or foreign commerce other than the burnout portion, which shall be taxable pursuant to rules promulgated by the Director.

To the extent that the definition of gross receipts requires coordination with N.J.A.C. 18:18A-2.3(b) and 18:18A-2.4(b), as indicated above, the Division has clarified the rules upon adoption as it will clarify the related issue of "sale for exportation."

COMMENT: The definition of "use" is overly narrow and does not allow for even a momentary break in the movement of fuel through the State.

RESPONSE: The Division intends to review the definition of use as necessary in connection with the legislative clarification at P.L. 1991, c.181, sec. 3 (N.J.S.A. 54:15B-5) as this matter is also related to the export issue.

COMMENT: N.J.A.C. 18:18A-2.3(b) is inconsistent with other rules proposed.

RESPONSE: In the context of revising its treatment of exported product, the Division has revised this provision to make clear that a sale outside the state is not a prerequisite for the export exemption to be applicable in a particular case.

COMMENT: Concerning "imports" at N.J.A.C. 18:18A-2.4, the commenter suggests that the figure of $100,000 be treated as an exclusion rather than a threshold.

RESPONSE: Prior to proposing the rule, the Division considered these alternatives and concluded that there was a legislative intent to benefit small consumers. Accordingly, the Division declines to follow the commenter's suggestion. It may be noted that as of July 1, 1991, P.L. 1991, c.181, sec. 2 decreases the threshold to $5,000. The Division has made this change on adoption at N.J.A.C. 18:18A-2.4(a).

COMMENT: The commenter raises concerns about the applicability of the definitions in the proposal of "book transfer," "direct payment permit holder" and "distributor" and their interaction with regard to the ability of an intermediate aviation fuel trader to become recognized as a distributor or direct payment permit holder.

RESPONSE: P.L. 1991, c.181, section 6 (N.J.S.A. 54:15B-12) adds a definition of "commercial consumers" which includes companies that purchase, consume, blend, or distribute substantial quantities of petroleum products in the State. The Division would consider the application of this provision to an intermediate aviation fuel trader upon receipt of an application. This section, pursuant to statute, is retroactive to July 1, 1990.

COMMENT: The commenter raised questions concerning the definition of the term "exportation" or "export."

RESPONSE: Due to the amendments contained in P.L. 1991, c.181, sec. 3, (N.J.S.A. 54:15B-5), effective July 1, 1990, the Division has clarified ambiguities in the rules on the subject of export, dropping the concept of "commodity" from the rules.

To the extent that the definition of gross receipts requires coordination with Sections N.J.A.C. 18:18A-2.3(b) and 18:18A-2.4(b), as indicated above, the Division has clarified the rules upon adoption, as well as the related issue of "sale for exportation."

COMMENT: The commenter stated that the definition of "use" is overly narrow and does not allow for even a momentary break in the movement of fuel through the State.

RESPONSE: The Division has revised the definition of use in connection with the legislative clarification at P.L. 1991, c.181, sec. 3 (N.J.S.A. 54:15B-5) as this matter is also related to the export issue.

COMMENT: Concerning "imports" at N.J.A.C. 18:18A-2.4, the commenter suggests that the figure of $100,000 be treated as an exclusion rather than a threshold.

RESPONSE: Prior to proposing the rule, the Division considered these alternatives and concluded that there was a legislative intent to benefit small consumers. Accordingly, the Division declines to follow the commenter's suggestion. It may be noted that, as of July 1, 1991, P.L. 1991, c.181, sec. 2 decreases the threshold to $5,000. The Division has made this change an adoption at N.J.A.C. 18:18A-2.4(a).

COMMENT: Concerning N.J.A.C. 18:18A-2.4(b) the commenter asserts that it violates the clear statutory language providing a credit for exports.

RESPONSE: The Division has deleted this provision upon adoption for the reasons addressed above on the subject of the definition of "exports."

COMMENT: A comment was made concerning Subchapter 3, Direct Payment Authority (N.J.A.C. 18:18A-3.1) in light of possible nonapplication to dealers in aviation fuel.

RESPONSE: As noted above, the Division has taken N.J.S.A. 54:15B-12 into account upon adoption of rules relating to direct payment permits.

COMMENT: The commenter raised the subject of the burn formula.

RESPONSE: At the time the Division made the rule proposal, there was doubt whether sufficient statutory authority existed to support a rule proposal containing the burnout rule. P.L. 1991, c.181, sec. 7, (N.J.S.A. 54:15B-2.1), which is effective retroactively to July 1, 1990, now provides that statutory underpinning. The Division will put in place administrative rules pursuant to this section which will implement the burnout rule.

Michael E. McKay, P.E., Director of Engineering, Department of Engineering, Princeton University submitted the following comments, responses to which are set forth below:

COMMENT: The commenter noted that Princeton University operates a central heating plant which generates steam by burning either natural gas or No. 6 fuel oil. The steam is then distributed throughout the campus to heat the vast majority of the University's buildings, including dormitories. The commenter believes that, in accordance with the spirit of the law, all or a portion of the number 6 fuel used for such purposes should be exempt.

RESPONSE: P.L. 1991, c.181, sec. 1 amends N.J.S.A. 54:15B-2 so that receipts from sales of petroleum products pursuant to a written contract extending one year or longer to a nonprofit entity qualified under N.J.S.A. 54:32B-9(b) of the Sales Tax Act are not subject to tax. In addition, No. 6 heating oil is no longer a taxable petroleum product, when sold for residential use. These provisions are effective on and after July 1, 1991. The Division has taken these changes into account in the adoption which follows.

David R. Nordlie, Supervisor, Excise Tax, BP Oil Company, submitted comments which elicited the following responses:

COMMENT: The commenter focused upon the issue of the proper use of an export certificate.

RESPONSE: It may be noted that P.L. 1991, c.181, sec. 3, which is effective on and after July 1, 1990 provides that the additional word "use" is added at N.J.S.A. 54:15B-5c(1). This clarifies a statutory ambiguity. The rules need to be clarified to make clear that a sale outside the State is not a prerequisite for the export exemption to be applicable

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in a particular case. Inconsistency between N.J.A.C 18:18A-2.3(b) and 18:18A-4.1 has been resolved on adoption.

G. Oliver Papps, Associate Director, New Jersey Petroleum Council, submitted the following comments, the responses to which are set forth below:

COMMENT: The commenter suggests that the Division add to the adopted rule a provision under the definition of petroleum products making clear that nonpetroleum end products such as anti-freeze will not be subject to tax.

RESPONSE: The Division agrees with this suggestion and has made appropriate amendments to the rules on adoption.

COMMENT: Concerning "direct pay permit holders," the commenter suggested that consumers of bunker fuel, marine lubricants and aviation fuel in interstate and foreign commerce be exempted under the export provision, rather than under the direct payment system.

RESPONSE: P.L. 1991, c.181, sec. 7 (N.J.S.A. 54:15B-2.1) provides an exemption for bunker and aviation fuel. At this time, no specific action on marine lubricants is contemplated.

COMMENT: The commenter suggested that the direct payment permit holder encompass a company that engages in warehousing.

RESPONSE: The Division addresses the Direct Pay Permit Application on a case by case basis as applications are received. It should be noted, however, that P.L. 1991, c.181, sec. 6 (N.J.S.A. 54:15B-12) gives the Division broad authority to consider these applications.

COMMENT: The commenter suggested that the Division address the timing of the effective date of the direct pay certificate.

RESPONSE: N.J.S.A. 54:15B-12 is effective as of July 1, 1990. The letter program asserting the direct pay ability was a temporary measure to be used on a short term basis prior to the use of direct pay certificates. The direct pay certificate itself is dated. The direct pay process has superseded the letter statement process.

COMMENT: The commenter suggested that N.J.A.C. 18:18A-2.3(b) should be deleted.

RESPONSE: It may be noted that P.L. 1991, c.181, sec. 3, which is effective on and after July 1, 1990, provides the additional word "use" is added at N.J.S.A. 54:15B-5c(1). This clarifies the statutory ambiguity and makes clear that a sale outside the State is not a prerequisite for the export exemption to be applicable in a particular case. Inconsistency between N.J.A.C. 18:18A-2.3(b) and 18:18A-4.1 has been resolved upon adoption.

COMMENT: The commenter stated that sales of bunker fuel and aviation fuel for use in interstate and/or foreign commerce should be exempt under the export provision.

RESPONSE: P.L. 1991, c.181, sec. 7 (N.J.S.A. 54:15B-2.1) does provide such an exemption, effective July 1, 1990. This provision has been taken into account upon adoption.

COMMENT: The commenter suggested that, in the first sentence of subchapter 3 (N.J.A.C. 18:18A-3.1), the phrase "may upon request" be deleted and the word "must" substituted.

RESPONSE: The Division believes that the ability of a distributor to make this election assists in making an "even playing field" among taxpayers. Thus, once the election is made, it is binding upon the taxpayer. However, the election may not be used selectively for various purposes by the same taxpayer. The Division is thus not able to follow this suggestion.

COMMENT: Tax credit should be given for product purchased for use within the State, and taxed accordingly, but later exported.

RESPONSE: As noted above, regarding exportation, the example in 18:18A-4.1 has been revised in accordance with the new statute.

COMMENT: The commenter suggested that the credit under section 5b of the statute be taken directly by the exporter, if he can prove that the tax was billed to him directly.

RESPONSE: P.L. 1991, c.181, sec. 2 amends N.J.S.A. 54:15B-3, allowing the tax to be computed on a per unit basis. However, the Division believes that the refund/credit administration under the statute may be effected with greater speed and efficiency if the credit claim is primarily the responsibility of the prior seller through an adjustment, rather than the Division, regardless of whether the product was taxed at 2.75 percent or a per unit price. The Division has broadened the refund provision in the rule for clarity in this regard.

COMMENT: The commenter raised a question concerning the first in first out accounting method described in proposed N.J.A.C. 18:18A-4.3, and whether a credit should be permitted in that situation.

RESPONSE: It should be noted that P.L. 1991, c.181, sec. 3 amends N.J.S.A. 54:15B-5 by adding a subsection d, allowing a credit against the use tax imposed by subsection b. of section 3 (N.J.S.A. 54:15B-3). This amendment is retroactive to July 1, 1990. The Division has reviewed that provision and believes that this section of the rule has the required clarity.

COMMENT: The commenter suggested that the statute of limitations periods in N.J.A.C. 18:18A-7.1 for record retention and N.J.A.C 18:18A-7.2 for assessment be reduced from five years to three years.

RESPONSE: The petroleum products gross receipts tax is silent on these periods. The Division believes that by administratively establishing limitation periods of reasonable length, it is contributing to certainty among the taxpaying public and decreasing the likelihood of costly litigation. The Division elected to use the five year limitation period under the corporation tax as a model (N.J.S.A. 54:10A-19.1b) and did not feel free to adopt the shorter period suggested.

Laurence Reich, Esquire, of Carpenter, Bennett and Morrissey, submitted the following comments, responses to which are set forth below:

COMMENT: The commenter believes that the legislature did not intend to tax manufactured products merely because they contain ingredients derived from petroleum products.

RESPONSE: The Division agrees and has added the following to the definition of petroleum products in N.J.A.C. 18:18A-1.2: "Petroleum products do not include any finished manufactured products that may include petroleum as an ingredient but are not themselves petroleum products such as, for example, plastics, animal feed, anti-freeze, ink, roofing shingles, synthetic fibers."

COMMENT: The commenter raised a question relative to the definition of sale for exportation and whether or not a sale for exportation relates to a first sale of petroleum products within the State.

RESPONSE: In connection with the commenter's analysis of Section 5 of the Act, it should be noted that P.L. 1991, c.181, sec. 3 revises subsection b as it relates to sale or use outside the State. The Division will give further consideration to the commenter's position that a sale for exportation is not limited to a first sale and that a first purchaser could sell petroleum products to a third party for exportation. It should be noted, however, that the distributor and direct pay program should alleviate the problem substantially by allowing resales prior to the exportation fuels.

COMMENT: Due to the changes in legislation at P.L. 1991, c.181, example 3 of N.J.A.C. 18:18A-4.1 requires change.

RESPONSE: The Division agrees, and changes to that example have been made upon adoption of the rule.

Steve Reynolds, Tax Manager, Coastal Oil New York, Inc. submitted the following comments, the responses to which are set forth below:

COMMENT: The commenter requested that the Division redefine export sales to include language exempting bunker fuel sales from tax.

RESPONSE: P.L. 1991, c.181, sec. 7, (N.J.S.A. 54:15B-2.1) provides that "gross receipts" as defined by the Act shall not include receipts from sales of petroleum products used by marine vessels engaged in interstate or foreign commerce. This provision is effective as of July 1, 1990. Thus, the commenter's concern has been directly addressed through legislation. The rule adoption has taken this statutory amendment into account.

Summary of Changes Between Proposal and Adoption:

The changes made to the proposed new rules between the proposal and the adoption resulted from two primary causes. First, two statutes were enacted into law during that interval which amended the basic taxing statute, namely P.L. 1991, c.19 and P.L. 1991, c.181. A number of these amendments were retroactive to July 1, 1990, the date the taxing statute originally became effective. Second, the public comments pointed out areas in the proposed rules where amendments and clarification were believed to be necessary, for example, the need for explication of the tax refund claim process. The adoption notice attempts to accommodate these suggestions and amendments in a fashion designed to minimize dislocations and disruptions of consistent tax administrative policy. If additional minor technical problems come to light based upon further experience after the adoption, the Division will undertake to clarify the rules further through the administrative or regulatory process. Changes between the proposal and adoption include primarily a number of exemptions or exclusions including those for certain fuel oils, governmental and nonprofit purchases, airline burnout provisions, and bunkered fuel provisions, as well as a per gallon conversion for aviation fuels, motor fuels and fuel oil. For these reasons, the changes are deemed not so substantive as to require reproposal of the rules.

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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 18A
PETROLEUM GROSS RECEIPTS TAX

SUBCHAPTER 1. SCOPE AND DEFINITIONS

18:18A-1.1 Purpose and scope

The rules contained in this chapter are for the purpose of describing and explaining the application and implementation of the Petroleum Products Gross Receipts Tax Act, N.J.S.A. 54:15B-1 et seq. (P.L. 1990, c.42) ***and as subsequently amended***. The scope of the rules is derived from the statute and the chapter is proposed and adopted pursuant to it.

18:18A-1.2 Definitions

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

The "Act" means the "Petroleum Products Gross Receipts Tax Act," P.L. 1990, c.42 (N.J.S.A. 54:15B-1 et seq.) and any amendments thereto.

"Blending" means combining, compounding, or mixing one or more petroleum products with additives or other substances resulting in a new or enhanced petroleum product.

"Book transfer" means:

1. An accounting procedure for simultaneously settling multiple petroleum delivery obligations in which the following occurs:

i. Three or more petroleum companies have sequential product supply obligations to each other for the same volume of product;

ii. Each customer of its supplier in the sequence agrees to release its supplier from its delivery obligation in consideration for that customer's supplier causing (directly or indirectly) its customer to be released from its delivery obligation to the next party in the sequence;

iii. The sequential releases continue down the chain until the first party in the delivery chain, which has been released from its delivery obligation, becomes the last party in the chain by releasing the penultimate party from its delivery obligation;

iv. No physical volume of product is ever transferred; and

v. All parties book identical volumes from beginning to end.

2. In addition, and for purposes of this chapter only, a book transfer may also mean and include a sale from a qualified distributor or direct payment permit holder to another qualified distributor or direct payment permit holder.

"Commercial consumers" means those companies that produce, consume, blend or distribute substantial quantities of petroleum products in the state, companies making sales pursuant to a written contract extending one year or longer to nonprofit entities qualifying under N.J.S.A. 54:32b-9(b) as evidenced by an invoice prescribed by N.J.A.C. 18:18A-1.2, and companies making sales to governmental entities qualifying under N.J.S.A. 54:32B-9(a), or such other company as may be licensed by the Director.

"Company" means a corporation, partnership, limited partnership association, individual, or any fiduciary or other person or entity engaged in activities subject to the Petroleum Products Gross Receipts Tax Act.

"Direct payment permit holder" means a *[company]* ***commercial consumer*** which has registered with the Director pursuant to these rules and engages in blending, manufacturing, in the sale of No. 2***, No. 4 or No. 6*** *[heating]* ***fuel*** oil ***or kerosene*** used for residential heating purposes or propane used for residential heating purposes, or consumes *[bunker]* ***bunkered*** fuels in interstate or foreign commerce, *[or]* is a common carrier consuming aviation fuel in interstate or foreign commerce***, or such other company as may be licensed by the Director pursuant to N.J.S.A. 54:15B-12***. Direct payment permit holders are authorized to file reports and remit applicable tax directly to the Director.

"Director" means the Director of the Division of Taxation in the Department of Treasury.

"Distributor" means and includes every company, wherever resident or located, which imports into this State petroleum products for use, distribution, storage or sale in this State after the same shall reach this State; and also every company who produces, refines, manufactures, blends or compounds petroleum products and sells, uses, stores or distributes the same within this State, and which holds a distributors license under the New Jersey Motor Fuels Tax Act (see N.J.S.A. 54:39-3 and N.J.A.C. 18:18-1.1).

"Exchange agreement" means the loaning of a petroleum product by one company to another company to facilitate supply needs at a particular location. An exchange balance settlement is a common method used to balance out the product receivable at a specified time. An exchange balance settlement is an economic value established for the volumes involved and booked accordingly by each party to the exchange.

"Exempt organization" means an organization authorized as an exempt organization with the Division of Taxation for sales and use tax purposes.

"Exportation" or "export" means the conveyance of petroleum products *[as a commodity]* from New Jersey to a location outside New Jersey for the purpose of sale or use outside the State.

"First sale of petroleum products within this State" means the initial sale of petroleum products delivered to a location in New Jersey and sold to a purchaser which is not a distributor or the holder of a direct payment permit. A "first sale of petroleum products within this State" does not include a book or exchange transfer of petroleum products if such products are intended to be sold in the ordinary course of business.

"Gross receipts" means all consideration derived from first sales of petroleum products within this State as herein defined. Gross receipts shall not include:

1. Consideration derived from sales of petroleum products within this State sold for exportation from this State;

2. Consideration derived from sales of No. 2 *[heating]* ***fuel*** oil to be used exclusively for residential heating or sales of propane gas used for residential heating. ***In addition, on and after July 1, 1991 petroleum products do not include No. 4 fuel oil, No. 6 fuel oil, and kerosene to be used exclusively for residential use.*** Residential heating includes all forms of heating including, for example, the heating of air, water, or food; ***or***

3. The tax imposed under N.J.A.C. 18:18A-2.1 (see N.J.A.C. 18:18A-2.1 for an example)*[.]****;***

4. Consideration derived from receipts from sales on and after July 1, 1990 of petroleum products used by marine vessels engaged in interstate or foreign commerce;

5. Consideration derived from sales on and after July 1, 1990 of aviation fuels used by common carriers in interstate or foreign commerce other than the "burnout" portion taxable pursuant to calculations at N.J.A.C. 18:18A-6.3;

6. Consideration derived from sales of asphaltic materials on and after July 1, 1991;

7. Consideration derived from sales of petroleum products sold to a nonprofit entity on and after July 1, 1991 which:

i. Has been issued an ST-5 exemption certificate by the Division of Taxation pursuant to the Sales and Use Tax Act;

ii. Has a written contract with its vendor extending one year or longer; and

iii. Has a written invoice to evidence the transaction;

8. Consideration derived from sales of petroleum products sold on and after July 1, 1991 to:

i. The State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations or political subdivisions, and school boards; or

ii. The United Nations or any international organization of which the United States of America is a member;

9. Consideration derived from sales of polymer grade propylene used in the manufacture of polypropylene sold on and after July 1, 1991; or

10. Consideration derived from the first sale of petroleum products on and after July 1, 1990 to the United States Government,

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or to any of its departments, agencies, or instrumentalities for use in a federal government function or operation.

"Invoice" means a document related to a sale showing:

1. The name and address of the person from whom the petroleum products were purchased;

2. The name and address of the purchaser;

3. The date of purchase;

4. The type and quantity of the product purchased;

5. The price paid for the purchase of the product; and

6. An acknowledgment by the seller that payment of the cost of the product to the seller has been made.

Such invoice shall be legibly written and shall be void if any correction or erasures shall appear on it.*

"Petroleum products" means:

1. Refined products made from crude petroleum and its fractionation products through straight distillation of crude oil or through redistillation of unfinished derivatives but does not mean the products commonly known as No. 2 *[heating]* ***fuel*** oil and propane gas to be used exclusively for residential *[heating]* ***use. In addition, on and after July 1, 1991, petroleum products do not include No. 4 fuel oil, No. 6 fuel oil and kerosene to be used exclusively for residential use.***.

2. ***From July 1, 1990 through June 30, 1991,*** *[Petroleum]* ***petroleum*** products ***are considered to*** include, for example, and without limitation: acid oil, alkylates, aromatic chemicals, asphalt and asphaltic materials (liquid and solid), benzene, butadene, butylene, coke (petroleum), ethylene, fractionation products of crude petroleum, gas (refinery or still oil), gases (liquefied petroleum), gasoline, greases (lubricating), hydro-carbon fluid, jet fuels, kerosene, mineral jelly, mineral oils (natural), mineral waxes (natural), naphtha, napthenic acids, oils, partly refined sold for rerunning, oils and fuel (lubricating and illuminating), paraffin wax, petrolatums *[(non-medicinal)]*, propylene, road materials (bituminous), road oils, solvents, and tar of residuum.

***3. On and after July 1, 1991 receipts from sales of certain of the foregoing list of petroleum products in this definition shall not result in taxable gross receipts (see definition of gross receipts).**

4. Petroleum products do not include any finished manufactured products that may include petroleum as an ingredient but are not themselves petroleum products such as plastics, animal feed, antifreeze, ink, roofing shingles, synthetic fibers.*

"Residential building" means a single or multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house or other structure designed primarily for use as a dwelling including a hospital, barracks, dormitory, or prison but not including a hotel, motel or like establishment offering shelter on a transient basis of less than 90 days.

"Sale for exportation" means a sale of petroleum products to a purchaser who itself exports the product as defined in this section.

"Use" means the exercise of any rights or power over a petroleum product by a purchaser or importer thereof including*,* but not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation or affixation to real or personal property, combustion or incorporation into a product for sale which product is not an identifiable petroleum product. The term "use" does not include blending, compounding, or packaging where the resulting product is also a petroleum product. ***The term "use" does not include storage or keeping of petroleum products held in inventory by a merchant that are exported from the State for sale or use outside the State.***

SUBCHAPTER 2. TAX RATE; RECEIPTS AND IMPORTS

18:18A-2.1 Rate of *[Tax]* ***tax***

(a) For the period July 1, 1990 through June 30, 1991, *[The]* ***the*** tax is imposed ***on receipts from sales of all products*** at a rate of two and three quarters percent *[(2¾%)]* ***(2.75 percent)*** multiplied by a company's gross receipts derived from first sales of petroleum products within this State as herein defined.

Example: Taxpayer has gross receipts of $100.00. Gross receipts plus tax is $102.75 ($100.00 + .0275 × 100). This is the selling price. The tax due from the taxpayer, which is based on gross receipts net of the tax, is computed thus:

102.75 (selling price) ÷ 1.0275 = 100.00 (gross receipts net of tax)

100.00 × .0275 (Tax rate) = 2.75 Tax Due

***(b) On and after July 1, 1991, the applicable tax rate for fuel oils, aviation fuels and motor fuels including propane sold as a motor fuel shall be converted by an adjustment to a cents per gallon rate. (The applicable rate for receipts from the sale of other products remains at 2.75 percent.) Calculations made pursuant to N.J.S.A. 54:15B-3 require that the rate be recalculated semiannually, but in any event a minimum cents per gallon rate is set forth in N.J.S.A. 54:15B-3. This minimum cents per gallon rate is determined by the average retail price of regular unleaded gasoline in the State in December 1990 as determined by the Board of Public Utilities, Office of the Economist. This price was $1.442. At 2.75 percent, this yields a minimum rate of 3.9655 cents per gallon, which is rounded to four cents. The May 1991 survey by the Board of Public Utilities yields a price of $1.149 per gallon or a tax rate of 3.16 cents, less than the minimum. Thus, for the period on and after July 1, 1991 through December 31, 1991 the minimum rate of four cents per gallon shall be applied to all sales of subject products. A new rate will be struck in December 1991 in accordance with the above procedures for the subsequent six months period through June 30, 1992 based on the November Board of Public Utilities survey. Thereafter, the Division will revise the rate semiannually and the public will be notified.**

Example: Products such as, but not necessarily limited to, gasoline, diesel fuel, and jet fuel sold in August 1991 are taxed at four cents per gallon. Propane sold as a motor fuel to propel a vehicle is also taxed at four cents per gallon. Receipts from sales of products such as lubricating oil, and mineral jelly would be taxed at a rate of 2.75 percent.*

18:18A-2.2 Tax on imports

(a) A company which imports or causes to be imported petroleum products for use or consumption by it within this State shall be liable for a tax imposed at the rate of two and three quarters percent *[(2¾%)]* ***(2.75 percent)*** multipled by the consideration given or contracted to be given ***or at the per gallon rate if applicable*** for such petroleum products provided that the consideration given or contracted to be given for all such deliveries made during a quarterly period exceeds a threshold amount of $100,000 ***or $5,000, on and after July 1, 1991***. This tax is not imposed upon a company subject to and paying a tax under N.J.A.C. 18:18A-2.1 upon such company's gross receipts from first sales of petroleum products within this State which receipts include gross receipts attributable to such imported or caused to be imported petroleum products. Importation does not include the consumption of fuel as part of an interstate journey where the interstate vehicle consuming the fuel is simply passing through the State.

Example: Farmer A purchases $95,000 *[dollars]* worth of diesel fuel in Pennsylvania, which is delivered to a tank on his farm in Salem County during *[July, August and September]* ***October, November and December, 1990***. The farmer owes no tax on the purchase price of the fuel. Farmer B purchases $105,000 *[dollars]* worth of diesel fuel in Pennsylvania which is delivered during the same period to his farm in Salem County. Farmer B owes a tax of $2,887.50 ($105,000 × *[2.65%]* ***2.75 percent***).

***(b) Effective on and after July 1, 1991, the threshold for imported petroleum products has been reduced to $5,000 per quarter.**

Example: In July 1991 Farmer A purchases 5,000 gallons of diesel fuel in Pennsylvania at 90 cents per gallon, for a total of $4,500, which is delivered to a tank on his farm in Salem County during August and September 1991. The farmer owes no tax on the purchase price of the fuel since the price paid was less than $5,000. Farmer B purchases 6,000 gallons worth of diesel fuel in Pennsylvania at 90 cents per gallon for a total of $5,400, which is delivered during the same period to his farm in Salem County. Farmer B owes tax of $240 (6,000 gallons × $0.04). Receipts from sales of fuel oil (such as diesel fuel) are taxed at four cents per gallon on and after July 1, 1991.*

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18:18A-2.3 Receipts from sales subject to tax

(a) Receipts from first sales of petroleum products within this State as herein defined are subject to tax. Certain receipts***, for example,*** from sales for exportation, sales of No. 2 *[heating]* ***fuel*** oil, propane for residential use, and the tax imposed by the Act are not included in arriving at gross receipts subject to tax. ***On and after July 1, 1991*** *[The]* ***the*** Act contains *[no exemption or exclusion]* ***exemptions or exclusions*** for receipts from sales to the *[federal,]* State, or municipal governments, their agencies or instrumentalities***, and to qualified exempt organizations employing authorized purchase procedures. In addition, exemption from tax for receipts from sales to the Federal government is effective on and after July 1, 1990***.

Example 1: Company R collects used oil from various generators and produces a recycled fuel. Subsequent sales of its petroleum product by company R are considered to produce gross receipts subject to tax under the Act. The statute contains no exemption for sales of recycled oil.

Example 2: ***In July of 1991*** Company S sells petroleum products to Hudson County, Jersey City, the U.S. Government, and the New Jersey Transit Authority. The gross receipts of Company S attributable to such sales are ***not*** subject to tax. The taxing statute *[does not contain]* ***contains*** an exemption for a company's gross receipts derived from sales to ***all*** governmental agencies or authorities ***on and after July 1, 1991. Receipts from sales to the United States Government are not subject to tax on and after July 1, 1990 pursuant to P.L. 1991, c.19***.

Example 3: ***In August of 1990*** Company Q sells asphalt to Company M to make shingles, such sales result in taxable receipts whether or not the shingles are exported from New Jersey. The shingles are considered a manufactured product, not a petroleum product, under the statute ***and Company M is the user of the asphalt. On and after July 1, 1991 receipts from any sales of asphalt are no longer subject to tax***.

(b) Receipts from first sales of petroleum products within this State are ***not*** subject to tax *[although]* ***if*** the purchaser will ***sell,*** use or consume the product outside the State ***and if it properly documents the transaction with the seller***.

18:18A-2.4 Imports

[(a)] Purchases of petroleum products outside New Jersey for use in New Jersey are subject to tax. ***During the period July 1, 1990 through June 30, 1991*** *[Purchases]* ***purchases*** of petroleum products ***imported*** from outside New Jersey are subject to a $100,000 threshold per quarterly period in arriving at consideration subject to tax. ***On and after July 1, 1991 purchases of petroleum products imported from outside New Jersey are subject to a $5,000 threshold per quarterly period in arriving at consideration subject to tax.*** Imports by the United States Government are not subject to tax. The term "use" does not include blending or compounding (see N.J.A.C. 18:18A-6.1).

[Example 1: A construction company purchases asphalt in Philadelphia for use in paving several roads and a parking lot for a Burlington County municipality. The construction company must pay a tax on the price of its purchase of asphalt if purchases exceed $100,000 per quarter since, in this case, it is considered the user of the petroleum product.]

Example *[2]****1***: The United States Government purchases gasoline in Pennsylvania which it imports into New Jersey for use in a motor pool in Camden County. *[Since the State of New Jersey has no authority to impose tax reporting requirements upon the federal government, and no jurisdiction to require collection and remittance of the tax from the seller outside New Jersey, no]* ***No*** tax is due on the transaction ***since gross receipts subject to tax do not include sales to the Federal government***.

Example *[3]****2***: ***On June 5, 1991*** *[A]* ***a*** New Jersey municipality *[purchases]* ***purchased*** fuel oil from a Pennsylvania dealer not licensed in New Jersey. The municipality *[is]* ***was*** required to pay the tax directly to the State of New Jersey if purchases *[exceed]* ***exceeded*** $100,000 per quarter since ***at that time*** the Act *[contains]* ***contained*** no provision which would exempt the purchase price from sales to municipalities from the tax. ***On and after July 1, 1991 municipalities which purchased fuel would pay no tax regardless of the amount of fuel oil purchased, since purchases by municipalities are no longer subject to tax.***

Example *[4]****3***: ***On January 5, 1991*** Company G purchases motor oil and paint in Pennsylvania. It has the motor oil and paint delivered to its warehouse in Union, New Jersey. From the warehouse it distributes paint and motor oil to its 15 retail outlets in New Jersey and exports the remainder as a commodity for sale in its New York stores. The paint is not considered a petroleum product. Therefore, consideration from sales of paint are not taken into account in a tax calculation. *[Since the]* ***The total*** purchase price of ***the*** lubricating oil purchased by Company G and stored within New Jersey exceeded ***the threshold amount of*** $100,000 *[,]****. However, the threshold is inapplicable to merchandise inventory.*** Company G pays tax on the consideration for lubricating oil sold in its New Jersey stores *[even if such amount may be less than $100,000 for the quarterly period after deducting from the total consideration for petroleum products imported the consideration for petroleum products exported for sale in New York State]*.

[(b) Petroleum products imported and used in New Jersey as defined in this chapter are subject to tax on the full consideration even though the importer/user will consume the product outside the State.]

SUBCHAPTER 3. DIRECT PAYMENT ***BY DISTRIBUTORS AND DIRECT PAYMENT PERMIT HOLDERS; CERTAIN EXEMPT SALES***

18:18A-3.1 Direct Payment Authority

(a) Commercial consumers may, upon application to and approval by the Director, elect to be recognized as direct pay permit holders and pay directly to the Division the taxes imposed by the Act. Commercial consumers are deemed to include those companies that produce, consume, blend or distribute substantial quantities of petroleum products in the State, companies making sales pursuant to a written contract extending one year or longer to nonprofit entities qualifying under N.J.S.A. 54:32B-9(b) as evidenced by an invoice prescribed by N.J.A.C. 18:18A-1.2, and companies making sales to governmental entities qualifying under N.J.S.A. 54:32B-9(a) and such other companies as may be licensed by the Director.

*[(a)]****(b)*** A distributor as herein defined or holder of a direct payment permit issued under these rules may, upon request, refer its seller to either a copy of its listing contained in the official listing of New Jersey Licensed Motor Fuel Distributors or issue a direct payment certificate, respectively. ***A distributor may elect not to avail itself of its direct pay privilege. However, if it elects not to pay such tax directly to the Director such election is binding on all its transactions. It may not choose to be a direct payer for certain vendors.*** A seller shall retain such listing reference or direct payment certificate on file for the inspection of the Director or his agents. A direct payment certificate, properly executed by the buyer, once issued, shall remain valid unless voided by the Director. A company which is a distributor or the holder of a direct payment certificate which receives a direct payment certificate properly executed by the buyer shall maintain records in computerized format, or such other format as the Director shall authorize, identifying all sales to the customer issuing the certificate and attributable to the certificate. Such records shall include date of sale, price, location of the transfer of the product, quantity of product, and type of product sold. Such supporting documentation shall be made available to the Director or his or her agents upon request. A properly documented sale to the issuer of a valid direct payment certificate or to a distributor is not a first sale of petroleum products within this State as defined in this chapter. When the purchaser who has issued such certificate in turn makes a sale of petroleum products delivered to a location in New Jersey and sells to a buyer which is not a distributor or the holder of a direct payment permit, the consideration from such sale results in gross receipts subject to tax, unless the sale otherwise qualifies for exemption, exclusion or deduction (as a sale for exportation, for example). Such seller must report and remit the tax to the Director in accordance with these rules.

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The Director may issue direct payment permits which are restricted to the purchases of specified products.

*[(b)]**(c)* The application for direct payment permit and the direct payment certificate shall be in the form found in Appendix I, incorporated herein by reference.

Example 1: Company T, a refiner and registered New Jersey distributor, sells 750,000 gallons of unleaded gasoline to Company J. While the gasoline is in the storage facility, Company J sells it to Company K, which in turn sells it to Company L, which in turn sells it to Company M. Companies J, K, and L are New Jersey registered distributors. Company M removes the gasoline from the terminal for use at its motor pool. Company L pays a tax on its gross receipts from its sale to Company M. Sales to J, K, and L are not subject to tax since they are sales to registered distributors, whose names are listed on the current Division official listing of licensed motor fuels distributors.

Example 2: Company A supplies a blender with blending naphthas. Company A may apply to the Division for a direct payment permit. In situations of this nature the Division generally will issue a direct payment permit.

***18:18A-3.2 Direct payment—nonprofit customer**

A merchant selling petroleum products to a qualified nonprofit entity may establish the exempt character of the sale if it uses invoices as provided by these rules and a contract which is in substantially the following form:

AGREEMENT OF SALE

This Agreement dated ____________________, 19____ between (Name of distributor or direct pay permit holder) ("Seller") and ________________ (Name of nonprofit) ________ ("Buyer"),

WHEREAS the Seller is a distributor of petroleum products pursuant to N.J.S.A. 54:39-1 et seq., or a direct pay permit holder; and

WHEREAS the Buyer is currently a qualified nonprofit entity as defined in N.J.S.A. 54:32B-9(b) and as evidenced by the ST-5 which is attached hereto and made a part hereof; and

WHEREAS N.J.S.A. 54:15B-1 et seq. provides an exemption for qualified nonprofit entities from the payment of a gross receipts tax on its purchases of petroleum products pursuant to a contract not less than 12 months in duration; and

WHEREAS the Buyer represents and warrants that it shall maintain its status as a qualified nonprofit entity for the duration of the term of this Agreement; and

WHEREAS the Buyer acknowledges that it will notify Seller within five days of any change in the Buyer's nonprofit status and that any breach by Buyer of the above warranty or notice provision shall result in immediate termination by Seller of this Agreement.

WITNESSETH:

1. The Buyer agrees to purchase petroleum products from the Seller for a period of not less than 12 months beginning on ____________________ and ending on ____________, subject to the right of either party to terminate this Agreement by giving written notice to the other party not less than 30 days prior to such termination. Buyer agrees to reimburse seller for the amount of any petroleum products gross receipts taxes which Seller is required to pay as the result of contract termination prior to one year having elapsed.

2. The Buyer acknowledges that, in consideration for this Agreement with Seller to provide petroleum products to Buyer for a period of not less than 12 months, Seller's price to Buyer shall reflect the exemption of nonprofit entities from the gross receipts tax.

3. This Agreement shall not be binding upon the Seller until it is signed by an authorized representative of the Seller, and commencement of performance hereunder shall not constitute a waiver of this requirement.

(Seller) Name of Distributor	**(Buyer) Name of Nonprofit**
Registration #__________	**Registration #__________**
BY: __________	**BY: __________**
DATE: __________	**DATE:* __________**

18:18A-*[3.2]***3.3* Good faith; direct payment certificate

If the seller of petroleum products makes a sale to a customer in reliance upon the direct payment certificate, the seller must believe in good faith that the transaction is properly referenced to the exemption certificate and must have no reason to doubt the authenticity or propriety of the referenced transaction, otherwise such transaction results in taxable gross receipts to the seller.

18:18A-*[3.3]***3.4* Permit application

A company seeking recognition as a direct payment permit holder shall file a completed application (see Appendix I) at the following address: New Jersey Division of Taxation, *[Miscellaneous Tax Branch,]* 50 Barrack Street, CN 243, Trenton, New Jersey 08646. Following review by the Division, the applicant shall be issued a Direct Payment Permit or, if such permit is not issued, shall be advised of the reason(s) why not. A holder of a direct payment permit may issue a direct payment certificate to its suppliers as provided for in the rules.

SUBCHAPTER 4. EXPORT TRANSACTIONS; ACCOUNTING METHODS

18:18A-4.1 Export certificates

(a) A company making a purchase of petroleum products from a distributor or other direct payment permit holder for exportation from this State may issue a properly executed export certificate to a selling company evidencing a sale for exportation to a destination outside this State.

(b) An export certificate may take the form of a blanket certificate. The gross receipts of the selling company resulting from sales to a customer properly issuing an export certificate shall be referenced to that certificate. The seller shall maintain records in computerized format, or such other format as the Director shall authorize, identifying all sales for export for a given customer's account and attributable to the certificate. Such records shall include date of sale, price, quantity, type of product, and destination of the product. Such supporting documentation shall be made available to the Director or his or her agents upon request.

Example 1: Distributor X makes sales of gasoline to Whiz Bang Oil Company (WBOC). WBOC delivers gasoline within and outside New Jersey. X may set up two accounts for WBOC. Purchases charged to one account for fuel delivered to customers in New Jersey result in taxable gross receipts for X. Sales to the second account (export account) for fuel delivered entirely outside New Jersey by WBOC, do not result in taxable gross receipts for X provided a proper export certificate has been issued to it.

Example 2: A Pennsylvania company makes purchases by truck at a New Jersey terminal. If the purchaser certifies that the product purchased will be exported outside the state as defined in these rules for sale outside the state, the seller is not required to pay any tax upon the transaction. A blanket transaction certificate may be issued from the buyer to the seller, provided that the seller's records document each transaction for export to the buyer.

Example 3: *[A West Virginia company purchases 500,000 gallons of gasoline at Linden for use in New Jersey. Fifteen days later due to market conditions, the company decides to export the gasoline to its facility in North Carolina. Since the original sale was not the purchase of a commodity for exportation, the seller must record the gross receipts as subject to tax. The West Virginia company may not issue an export certificate to its seller.]* ***Purchaser purchases motor oil from a New Jersey supplier which is delivered to its warehouse in New Jersey. From the warehouse the motor oil is distributed to purchaser's stores in five other states (the East Region). In computing the portion of each delivery to the New Jersey warehouse on which the gross receipts tax should not be charged by the manufacturer, a purchaser may supply the manufacturer with an export certificate indicating the percentage of the prior month's warehouse shipments which were shipped out of state. Purchaser would maintain shipping reports to substantiate the exempt**

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purchase. This method would enable suppliers to have and use actual rather than estimated figures for export compliance purposes, although figures submitted would be one month subsequent. The method would enable the Division auditors to audit based upon actual figures. The method may also be used quarterly where the customer's quarterly period ends in the months prior to the month when the reconciliation report is due.

Example 4: A utility company purchases fuel oil in New Jersey where it is temporarily stored. A pipeline connects the storage facility with the buyer's location outside the state where the utility burns the fuel. No tax is imposed upon receipts derived from the sale of fuel to the utility since the fuel is being used outside the State by the buyer. (See N.J.S.A. 54:15B-5)*

18:18A-4.2 Good faith; export certificate

If the seller of petroleum products makes a sale to a customer in reliance upon the export certificate, the seller must believe in good faith that the transaction is properly referenced to the certificate and must have no reason to doubt the authenticity or propriety of the referenced transaction, otherwise such transaction results in taxable gross receipts to the seller.

18:18A-4.3 Accounting methods

Where a company using petroleum products in New Jersey makes purchases in New Jersey and also imports petroleum products into the State, and if, subsequently, it exports petroleum products outside the State by pipeline, barge or tank wagon, for example, such company shall use a "first in, first out" (FIFO) accounting method for petroleum products commingled in storage in New Jersey and subsequently exported from the State.

SUBCHAPTER 5. *[HEATING]* ***FUEL*** OIL AND PROPANE DEALERS

18:18A-5.1 *[No. 2 heating]* ***Fuel*** oil dealers

(a) Companies in the business of selling No. 2***, No. 4 or No. 6*** *[heating]* ***fuel*** oil ***or kerosene*** for ***exempt use (such as*** residential use***, nonprofit, or governmental use)*** *[and/or]* ***and for*** commercial use shall apply to the Director for a direct payment permit, in accordance with N.J.A.C. *[18:18A-3.3]* ***18:18A-3.4***. Upon registration with and authorization from the Director, *[heating oil]* ***such*** dealers shall *[be registered]* report and pay directly to the Director the tax applicable on their gross receipts from taxable sales of *[No. 2 heating]* ***such fuel*** oil ***or kerosene***. Such companies, when registered, would qualify to purchase *[No. 2 heating]* ***such fuel*** oil ***or kerosene*** in nontaxable transactions from registered sellers.

(b) Gross receipts from sales of No. 2***, No. 4 or No. 6*** *[heating]* ***fuel*** oil ***and kerosene*** for residential use are not subject to tax. If a company sells and dispenses fuel into a single *[fuel]* tank which operates a heating system of a building containing residential and commercial units, the entire sale shall result in gross receipts subject to tax unless the purchaser furnishes a certification, under oath, that a portion of the fuels purchased shall be used for nontaxable purposes.

1. The taxable portion of the sale shall be computed by multiplying the total selling price of the petroluem product by a fraction, the numerator of which shall be the number of square feet in the building which are devoted to office, retail or other nonresidential use including stairwells and halls and denominator of which shall be the total number of square feet in the building.

Example: A *[heating]* ***fuel*** oil dealer obtains a direct payment *[registration certificate]* ***permit*** from the Director. ***In the past,*** *[Ninety]* ***90*** percent of his sales of No. 2 *[heating]* ***fuel*** oil *[are]* ***were*** for residential use. *[The following]* ***This*** year the taxpayer obtains a new commercial account which produces additional gross sales receipts. Taxpayer ***now*** remits the gross receipt tax on 30 percent of his total receipts***, which now include the receipts from his new account***.

Example: Company T in New Jersey deals in gasoline and No. 2 *[heating]* ***fuel*** oil but is not a licensed distributor. Company T *[obtains]* ***may obtain*** a direct payment ***permit*** for its sales of No. 2 *[heating]* ***fuel*** oil. Its purchases of gasoline, however, result in the taxable gross receipts to its seller.

18:18A-5.2 Propane dealers

(a) Companies in the business of selling propane for *[residential use]* ***exempt use (such as residential use, nonprofit or governmental use)*** and*[/or]* commercial use shall apply to the Director for a direct payment permit. Upon registration with and authorization from the Director, propane dealers shall be qualified to report and pay to the Director the tax applicable on their taxable receipts. Such companies, once registered would qualify to purchase propane in nontaxable transactions from registered sellers.

(b) Gross receipts from sales of propane for residential use are not subject to tax.

Example: A fill station may register to pay the tax directly to the Division of Taxation. Its sales of propane for residential use are not subject to tax.

SUBCHAPTER 6. BLENDING ***AND SPECIAL INDUSTRIES***

18:18A-6.1 Blending

If a company acquires petroleum products, blends them and later sells the blended petroleum product, the sales of the blended product result in gross receipts subject to tax. A blender may apply to the Director for a direct payment permit. When the blender issues a Direct Payment Permit to its seller, the seller will not pay gross receipts tax upon petroleum products sold to the blender and which become an ingredient of a second petroleum product which is later sold. Tax would be calculated upon receipts from sales of the final product to New Jersey destinations.

***18:18A-6.2 Fuels used by marine vessels**

On and after July 1, 1990 sales of petroleum products bunkered into marine vessels engaged in interstate or foreign commerce do not result in taxable gross receipts. Commercial fishing or shell fishing vessels are deemed to be vessels engaged in interstate commerce. Other vessels engaged in charter, sport fishing or commercial party boat (head boat) fishing do not qualify for exempt purchases of fuel.

18:18A-6.3 Aviation fuels

(a) On and after July 1, 1990 aviation fuels used by common carriers in interstate or foreign commerce are not subject to tax except for the portion of the fuel used and consumed in New Jersey.

1. Use and consumption of aviation fuels subject to tax under this subchapter shall mean the fuel consumed as follows:

i. For flights taking off from New Jersey and landing outside the state:

(1) Fuel consumed in taxiing from the loading gate to the take-off area; and

(2) Fuel consumed in take-off. "Take-off" means the point the brake is released until such time as control of the flight transfers to New Jersey Air Route Traffic Control Center or other Regional Air Traffic Control Centers. The following chart indicates standard aircraft fuel consumption to be used in calculating fuel consumed under this subsection:

Aircraft Type	Taxi Fuel	Take-Off Fuel	Total Fuel
BAC-11	69	100	169
F-28	77	105	182
L-1011	252	475	727
SST	720	1360	2080
A-300	156	380	536
A-320	56	146	202
B707	234	390	624
B727	120	220	340
B737	89	140	229
B747	355	629	984
B757	136	230	366
B767	156	315	471
DC-8	216	260	476
DC-9	77	170	247
DC-10	198	500	698

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ii. All fuel consumed in a flight that originates and terminates in New Jersey.

(b) Fuel used in aircraft descent and landing is not taxed except as it may be taxed under (a)1i(2) above.*

SUBCHAPTER 7. RECORDS, ASSESSMENTS AND CLAIMS

18:18A-7.1 Record retention

Taxpayers under the Act shall retain records for a period of five years. Such records shall be made available to the Director or his or her agents for inspection upon request.

18:18A-7.2 Assessment

(a) The Director may assess a tax under the Act at any time until five years have elapsed after the date of the receipt by him or her of a report or return filed pursuant to the Act. A taxpayer may consent to a longer period of time in a particular instance.

(b) In the event of fraud, no limitation period is applicable for an assessment by the Director.

18:18A-7.3 Refund claim

*(a)*A taxpayer may claim a refund of an overpayment of tax as provided in the State Tax Uniform Procedure Law, N.J.S.A. 54:49-14.

***(b) In a case where a company has erroneously paid a tax, before that company applies for a refund from the Division of Taxation, such company must seek a credit from its supplier. A refund claim should be filed only if a credit is not available from the supplier. If a refund claim by a company is made, it must contain the statement that the company has applied for and not been able to receive a credit from its supplier. Any credit or refund claimed by a supplier/taxpayer from the Division of Taxation must contain the statement that an appropriate credit or refund has been given to its customer. The goal and purpose of this procedure is ease and efficiency of administration. A form (PPG-5) has been created by the Division for use in connection with certain claims for credit under the Act.**

Example: Township P buys 1,000 gallons of gasoline from Dealer Y who does not have a direct pay permit and charges the township the tax equivalent amount and remits the tax to the State. When the invoice is processed by the township six weeks later, Dealer Y is no longer the township's supplier since Dealer M agreed to supply the township at a better price. Dealer Y refuses to give the township the tax refund and take a credit on its return. The township makes a claim for refund with the Division for a refund of tax paid since it was unable to recover the amount from Dealer Y.*

18:18A-7.4 Credit

A credit will be permitted against a taxpayer's New Jersey liability for a similar tax on gross receipts paid previously to another state on the same petroleum products. Such credit shall not exceed the tax that the taxpayer would have been required to pay to New Jersey. Credit shall not be taken against a New Jersey liability more than two years after the transaction for which credit is being claimed.

SUBCHAPTER 8. FILING DATES

18:18A-8.1 Filing

(a) For the fiscal year July 1, 1990 to June 30, 1991, unless the filing date has been extended by the Director, *[A]* ***a*** tax return on the form and in the manner *[required]* ***prescribed*** by the director together with payment of applicable tax due shall be filed at the Division of Taxation on or before January 20, April 20, July 20, and October 20 reflecting gross receipts for the quarterly periods ending on the last day of December, March, June, September respectively.

***(b) Pursuant to N.J.S.A. 54:15B-7 as amended by P.L. 1991, c.181, §4, on and after July 1, 1991 filing and tax payment dates are as follows:**

1. On or before July 20, 1991, a return and tax payment is due for the quarterly period April 1, 1991 to June 30, 1991.

2. On August 25, 1991, taxpayers file a monthly remittance and pay the full amount of the tax due on gross receipts subject to tax during July.

3. On September 25, 1991, taxpayers file a monthly remittance and pay the full amount of the tax due on gross receipts subject to tax during August.

4. On October 25, 1991, taxpayers file and remit a quarterly reconciliation return and pay tax due for the quarterly period July 1 through September 30, 1991.

5. The monthly and quarterly remittance system will then continue in effect for monthly and quarterly periods with filings made on or before the 25th day of the month with respect to the preceding monthly or quarterly periods.*

18:18A-8.2 Applicability of State Tax Uniform Procedure Law

The tax imposed under the Act is governed in all respects by the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., except to the extent that a specific provision of the Act is in conflict therewith and in such event the provisions of the Act shall govern.

18:18A-8.3 Effective date

These rules shall be effective on and after July 1, 1990.

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PPT-6-B (11-90)

STATE OF NEW JERSEY
DIVISION OF TAXATION

PETROLEUM PRODUCTS GROSS RECEIPTS TAX
CN 269
Trenton, NJ 08646-0269

APPLICATION FOR DIRECT PAYMENT PERMIT

GENERAL INFORMATION

A Direct Payment Permit, Form PPT-6, is evidence that the buyer designated thereon is authorized to issue a Direct Payment Certificate, Form PPT-6A, in certain cases, in lieu of payment of the Petroleum Products Gross Receipts Tax at the time of purchase, and subsequently to file reports and remit the tax directly to the Director.

When the purchaser who has issued the Direct Payment Certificate in turn makes a sale of petroleum products delivered to a location in New Jersey and sells to a buyer which is not a distributor or the holder of a Direct Payment Permit, the consideration from such sale results in gross receipts subject to tax unless the sale otherwise qualifies for exemption, exclusion, or deduction. Such seller must report and remit the tax to the Director.

Taxpayers who could qualify for the Direct Payment Authority include (a) those selling number 2 fuel for residential heating purposes, (b) those selling propane for residential heating purposes, and (c) blenders of petroleum products where the final product is a petroleum product.

1. FID # ☐☐ - ☐☐☐☐☐☐☐ OR Soc. Sec. # of Owner ☐☐☐ - ☐☐ - ☐☐☐☐

2. Name ____________________
(IF INCORPORATED - give Corp. Name; IF NOT - give Last Name, First Name, MI of Owner(s))

3. Trade Name ____________________

4. Business Location:
Street ____________________
City ____________________ State ☐☐
Zip Code ☐☐☐☐☐ - ☐☐☐☐
(Give 9-digit Zip)

5. Mailing Name and Address - (if different from business address)
Name ____________________
Street ____________________
City ____________________ State ☐☐
Zip Code ☐☐☐☐☐ - ☐☐☐☐
(Give 9-digit Zip)

6. Beginning Date For This Business In New Jersey ______/______/______
month day year

7. Type of Ownership (check one):
☐ NJ Corporation ☐ Sole Proprietor ☐ Partnership ☐ Out-of-State Corporation ☐ Limited Partnership
☐ Other - explain ____________________

8. Telephone Numbers: Contact Person ____________________ Title ____________________
Daytime: ( ) ______ - __________ Ext ______ Evening: ( ) ______ - __________ Ext ______

9. IF A CORPORATION, complete the following:
Date of Incorp. ______/______/______ State of Incorp. ☐☐
month day year

10. Provide the following information for the owner, partners or responsible corporate officers. (If more space is needed, attach rider).

NAME (Last Name, First, M.I.)	SOCIAL SECURITY NUMBER / TITLE	HOME ADDRESS (Street, City, Zip)	% OWNED

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NOTE: On a separate sheet of paper provide the name of stockholders owning 10% or more of the outstanding shares of stock in the corporation.

11. List parent company, wholly owned subsidiaries, and/or any affiliates ____________________

____

12. Give name, title and address of agent in New Jersey or registered New Jersey agent on whom service may be made.

____

____

13. List all suppliers of petroleum products.

____

____

14. Is applicant registered with the Division of Taxation for any other New Jersey State taxes? . . . . ☐ YES ☐ NO
If yes, list the taxes ____________________

15. Type of business activity (check one):
☐ Number 2 heating oil dealer (companies in the business of selling No. 2 heating oil for residential use)
☐ Propane dealer (companies in the business of selling propane for residential use)
☐ Blenders (companies in the business of acquiring petroleum products, blending them, and later selling the blended petroleum product)
☐ Other (please explain) ____________________

____

16. Describe in detail your business operation and reason why you would qualify for a Direct Payment Permit. ____________________

____

17. If a blender, describe types of petroleum products to be blended and the percentage of the final product which is a petroleum product. ____________________

____

18. The undersigned applicant states, (under penalty of perjury), that all the information contained in this application is true and accurate in every particular.

____________________ Name of Applicant

____________________ Signature of Owner, Partner or Officer

____________________ Title Date

The information submitted will assist this office in the processing of your permit request.
The Division of Taxation reserves the right to conduct a thorough investigation prior to issuing this permit.

FOR DIVISION USE ONLY

Permit No. ____________________ Investigation initiated ____________________

Effective Date ____________________ Investigation completed ____________________

Approved ____________________

Recommendations: ____________________

PPT-6-B (11-90)

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PPT-6-A (11-90)

STATE OF NEW JERSEY
DIVISION OF TAXATION

PETROLEUM PRODUCTS GROSS RECEIPTS TAX
CN 269
Trenton, NJ 08646-0269

DIRECT PAYMENT CERTIFICATE

BUYER INFORMATION	Name of Buyer	Employer Identification Number
DP - ____________	Address (Number and street or rural route)	
	City Sate Zip Code	

This certificate covers transactions beginning ________________, 19____

CERTIFICATION OF BUYER

The undersigned certifies that:

1. The issuer of this certificate is registered with the New Jersey Division of Taxation, holds a valid Direct Payment Permit, and is authorized to file reports and remit the applicable Petroleum Products Gross Receipts Tax directly to the New Jersey Division of Taxation.

2. The issuer of this certificate is principally engaged in the following (indicate nature of business)

   ____

3. The petroleum products being purchased are described as follows: ________________

   ____

4. I agree to make my books and records available to the New Jersey Division of Taxation for audit so that it may verify that the sales, use, and/or consumption of the petroleum products purchased are properly reported.

5. I, the undersigned purchaser, have read and complied with the instructions and rules promulgated pursuant to the New Jersey Petroleum Products Gross Receipts Tax Act with respect to the use of the Direct Payment Certificate, and it is my belief that the seller named herein is not required to pay or remit the Petroleum Products Gross Receipts Tax on receipts from the transaction or transactions covered by this Certificate. The undersigned purchaser hereby swears (under penalties for perjury and false swearing) that all of the information shown on this Certificate is true.

____
Signature of buyer Title Date

A COPY OF THE BUYER'S DIRECT PAYMENT PERMIT MUST BE ATTACHED

SELLER INFORMATION	Name of Seller
	Address (Number and street or rural route)
	City Sate Zip Code

FORM MAY BE REPRODUCED

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INSTRUCTIONS FOR USE OF DIRECT PAYMENT CERTIFICATE

GENERAL INFORMATION

A Direct Payment Permit, Form PPT-6, is evidence that the buyer designated thereon is authorized to issue a Direct Payment Certificate, Form PPT-6A, in certain cases, in lieu of payment of the Petroleum Products Gross Receipts Tax at the time of purchase, and subsequently to file reports and remit the tax directly to the Director.

When the purchaser who has issued the Direct Payment Certificate in turn makes a sale of petroleum products delivered to a location in New Jersey and sells to a buyer which is not a distributor or the holder of a Direct Payment Permit, the consideration from such sale results in gross receipts subject to tax unless the sale otherwise qualifies for exemption, exclusion, or deduction. Such seller must report and remit the tax to the Director.

1. **Good Faith** - In general, a seller who accepts an exemption certificate in "good faith" is relieved of liability for payment of tax upon transactions covered by the certificate. The question of "good faith" is one of fact and depends upon a consideration of all the conditions surrounding the transaction. A vendor is presumed to be familiar with the law and the regulations pertinent to the business in which he deals.

   In order for "good faith" to be established, the following conditions must be met:

   (a) The certificate must contain no statement or entry which the seller knows, or has reason to know, is false or misleading.

   (b) The certificate must be an officially promulgated certificate form or a substantial and proper reproduction thereof.

   (c) The certificate must be dated and executed in accordance with the published instructions, and must be complete and regular in every respect.

   The seller may, therefore, accept this "good faith" Direct Payment Certificate as a basis for exempting sales to the signatory purchaser provided that:

   (d) The purchaser's Employer Identification Number, indicating that the purchaser is registered with the New Jersey Division of Taxation, is entered on the face of the Certificate as reflected on the Petroleum Products Gross Receipts Tax Certificate of Authority.

   (e) The purchaser has entered all other information required on the form.

   (f) A copy of the purchaser's Direct Payment Permit is attached to the form.

   (g) The seller has no reason to believe that the petroleum product to be purchased is of a type not ordinarily used in the purchaser's business for the purpose described in this certificate.

2. **Improper Certificate** - Transactions which are not supported by properly executed direct payment certificates shall be deemed to result in taxable gross receipts to the seller. The burden of proof that the consideration received may be deducted from gross receipts and that the tax was not required to be paid is upon the seller.

3. **Correction of Certificate** - In general, sellers have 60 days after date of sale to obtain a corrected certificate where the original certificate lacked material information to be set forth in said certificate or where such information is incorrectly stated.

4. **Documentation of Sale** - Records shall be maintained identifying all sales to the customer issuing the certificate and attributable to the certificate. Such records shall include date of sale, price, location of the transfer of the product, quantity of product, and type of product sold.

5. **Additional Purchases by Same Purchaser** - This Certificate will serve to cover additional purchases by the same purchaser of the same product. However, each subsequent sales slip or purchase invoice based on this Certificate must show the purchaser's name, address, and Direct Payment Permit number for the purposes of verification.

6. **Retention of Certificates** - Certificates must be retained by the seller for a period of not less than five years from the date of the last sale covered by the certificate. Certificates must be in the physical possession of the seller and available for inspection on or before the 60th day following the date of the transaction to which the certificate relates.

7. **Restrictions** - A Direct Payment Certificate may be issued, (and subsequently accepted by a seller), only by the holder of a valid Direct Payment Permit.

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OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls; Gaming Equipment

Progressive Jackpots; Jackpots of Merchandise or Other Things of Value; Slot Machines

Adopted Amendments: N.J.A.C. 19:45-1.37, 1.39, 1.40A, and 19:46-1.26.

Proposed: May 6, 1991 at 23 N.J.R. 1306(a).

Adopted: January 8, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 10, 1992 as R.1992 d.58, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-70(f) and (i), and 5:12-100(e) and (h).

Effective Date: February 3, 1992.

Expiration Dates: March 24, 1993, N.J.A.C. 19:45;
April 28, 1993, N.J.A.C. 19:46.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendments with alternatives were submitted by the Division of Gaming Enforcement (Division); Caesar's Atlantic City (Caesar's); Marina Associates (Harrah's); International Gaming Technologies (IGT); Sands Hotel & Casino (Sands); Tropworld Casino and Entertainment Resort (Tropworld); and Trump Castle Casino, Resort (Castle).

COMMENT: The Division agreed with those alternatives published for comment which afford casinos the greatest latitude with respect to management of merchandise and progressive slot machines. Specifically, with respect to N.J.A.C. 19:45-1.40A, relating to merchandise jackpots, the Division recommended Alternative B which allows the casino to set time limits on availability or performance features of the merchandise slot machine after a minimum of 30 days operation. With respect to N.J.A.C. 19:45-1.39 (Progressive jackpots), the Division agreed with Alternative C which would afford casinos the opportunity to establish a time limit for offering a progressive slot machine at any time upon a minimum 30 days notice.

RESPONSE: The Commission agrees with the Division with regard to regulatory alternatives concerning merchandise slot machines. The Commission also agrees with the Division's conclusion that casinos might be permitted to make changes or discontinue a progressive slot machine upon 30 days notice given at any time as provided under Alternative C. The Commission is of the opinion that such an advance notice requirement is in keeping with standards of fairness of notice to those who play progressive slot machines.

COMMENT: The Division further commented that casinos should be required to complete a special report at any time the rate of progression or probability of hitting is changed on a progressive slot machine in order that the changes may be understood for audit purposes.

RESPONSE: Casinos have long followed the requirement set forth in N.J.A.C. 19:45-1.39(e) of submitting the proposed operating parameters of progressive slot machines to the Commission for approval in advance of any progressive slot machine being placed in operation. The form used is known as "Appendix e," and will be continued in use thus providing requisite foundation documentation for audits.

COMMENT: Caesar's supports the proposal to the extent that it would permit changing or discontinuing a progressive slot machine after 30 days notice, and other flexibilities but comments that unless Alternative C is approved, that Caesar's does not approve the language in subsection (l) which requires that any progressive slot machine removed from the casino floor be returned or replaced within five days in such a manner that the jackpot, rate of progression and probability of hitting the jackpot are not altered even if the jackpot is transferred to a different machine.

RESPONSE: Subsection (l) refers to the removal of a progressive slot machine from the casino floor under circumstances other than those provided for in subsection (i), for example, for repair. It is of equal significance under alternatives B or C.

COMMENT: Harrah's comments that it is in accordance with the flexibilities inherent in the proposed regulations. In particular, Harrah's comments that the inflexibility of the current regulations has worked a hardship upon them in prohibiting their discontinuance of a substantial number of merchandise slot machines in which there is no longer sufficient player interest to justify the space taken by these machines. Alternative B proposed for N.J.A.C. 19:45-1.40A would resolve Harrah's problem and accordingly they desire its approval.

RESPONSE: The Commission is in agreement that the regulations should provide appropriate retroactive coverage to permit casino licensees to bring currently offered merchandise slot machines as well as progressive slot machines up to date with the newly adopted regulations.

COMMENT: The Sands, TropWorld, and Trump Castle, endorsed the proposed amendments in general and stated a preference for Alternative C with regard to Progressive slot jackpots, and Alternative B regarding Merchandise slot jackpots.

RESPONSE: The Commission makes the same response to the Sands, TropWorld, and Trump Castle comments as to comments from Caesar's, above.

COMMENT: IGT comments that it supports the increased flexibility contained in the proposed regulations. In particular, IGT would prefer the greater flexibility of Alternative C proposed for N.J.A.C. 19:45-1.39 because it provides that time limits can be established at any time.

RESPONSE: The Commission agrees that the notice provision required by Alternative C does not create an inflexible management condition yet protects the public interest by requiring 30 days notice.

Summary of Agency-Initiated Changes Upon Adoption:

1. As announced in the proposed amendments, the Commission intended to adopt, and did adopt, alternative subsections which are believed to reflect both reasonable flexibility in casino industry rules and the public right to receive fair notice of changes in the operation of progressive or merchandise slot jackpots, as follows:

In proposed N.J.A.C. 19:43-1.39(i), Alternative C was adopted.

In proposed N.J.A.C. 19:45-1.40A(l), Alternative B was adopted.

2. Proposed N.J.A.C. 19:45-1.37(a)4iii was adopted with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) on the basis that the change was anticipated by one or more of the proposed alternatives to N.J.A.C. 19:43-1.39(i). The change provides, "If no time limit or payout limit is established, the display shall state that the casino licensee reserves the right to change or discontinue the progressive slot machine upon 30 days notice."

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

19:45-1.37 Slot machines and bill changers; identification; signs; meters

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-3. (No change.)

4. A dislay on the front of the slot machine that provides fair notice of the following:

i. The rules of play, character combinations which will award payouts, and the related payouts; and

ii. If the slot machine offers a payout of merchandise or some other thing of value, a clear description of the merchandise or thing of value, including its cash equivalent value (unless the payout is an annuity jackpot), the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit for offering the merchandise or thing of value as provided in N.J.A.C. 19:45-1.40A, and the availability or unavailability to the patron of the optional cash equivalent value authorized by N.J.A.C. 19:45-1.40A(m). The display need only contain the name or a brief description of the merchandise or thing of value offered, provided that a sign containing all of the information specified in (a)4ii above shall be displayed in a location near the slot machine as approved by the Commission; and

iii. If the slot machine offers a progressive jackpot, the dates the progressive jackpot will be offered and the payout limit, if the casino licensee establishes a time limit or payout limit as provided in N.J.A.C. 19:45-1.39. ***If no time limit or payout limit is established, the display shall state that the casino licensee reserves the right**

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to change or discontinue the progressive slot machine upon 30 days notice.* The display need not contain this information provided that a sign which does contain this information shall be displayed in a location near the slot machine as approved by the Commission.

5.-6. (No change.)

(b)-(i) (No change.)

19:45-1.39 Progressive slot machines

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

(f) No progressive meter(s) shall be turned back to a lesser amount unless:

1. The amount indicated has been actually paid to a winning patron;
2. The progressive jackpot amount won by the patron has been recorded in accordance with an approved system of internal controls;
3. The time limit for the progressive jackpot established pursuant to (i) below has expired; or
4. The change is necessitated by a slot machine or meter(s) malfunction, in which case an explanation must be entered on the Progressive Slot Summary required in (j) below and the Commission inspector must preapprove the resetting in writing.

(g) Once an amount appears on a progressive meter(s), the probability of hitting the combination that will award the progressive jackpot may not be decreased unless the progressive jackpot has been won by a patron or the time limit for offering the progressive jackpot established pursuant to (i) below has expired.

(h) (No change.)

*[Alternative A

(i) A casino licensee may establish a time limit of not less than 30 days for the offering of a progressive jackpot by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4 at the time the progressive jackpot is initially offered. Upon the expiration of such time limit, the casino licensee may reduce the amount on the progressive jackpot meter, remove the progressive slot machine from the gaming floor, or decrease the probability of hitting the combination that will award the progressive jackpot. A casino licensee may also establish a payout limit for a progressive jackpot by providing notice of the payout limit in accordance with N.J.A.C. 19:45-1.37(a)4 prior to the time the payout limit is registered on the progressive meter.

Alternative B

(i) A casino licensee may establish a time limit of not less than 30 days for the offering of a progressive jackpot by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4 at the time the progressive jackpot is initially offered. A casino licensee may also establish a time limit of not less than 30 days for the offering of a progressive jackpot which was initially offered prior to (the effective date of this amendment) by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4. Upon the expiration of such time limit, the casino licensee may reduce the amount on the progressive jackpot meter, remove the progressive slot machine from the gaming floor, or decrease the probability of hitting the combination that will award the progressive jackpot. A casino licensee may also establish a payout limit for a progressive jackpot by providing notice of the payout limit in accordance with N.J.A.C. 19:45-1.37(a)4 prior to the time the payout limit is registered on the progressive meter.

Alternative C]*

(i) A casino licensee may, at any time, establish a time limit of not less than 30 days for the offering of a progressive jackpot by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4. Upon the expiration of such time limit, the casino licensee may reduce the amount on the progressive jackpot meter, remove the progressive slot machine from the gaming floor, or decrease the probability of hitting the combination that will award the progressive jackpot. A casino licensee may also establish a payout limit for a progressive jackpot by providing notice of the payout limit in accordance with N.J.A.C. 19:45-1.37(a)4 prior to the time the payout limit is registered on the progressive meter.

(j) Slot machines which are linked to offer the same progressive jackpot shall have the same probability of hitting the combination that will award that jackpot, provided, however, that the probability may vary among such machines when necessary to enable a casino licensee to institute a change in the probability which is otherwise permitted by this section, if the change is completed expeditiously in accordance with procedures that have been filed with and approved by the Commission.

Recodified existing (j) as (k) (No change in text.)

(l) Except as otherwise authorized by this section, a progressive slot machine removed from the gaming floor shall be returned to or replaced on the gaming floor within five days. The amount on the progressive meter(s) on the returned or replacement machine shall not be less than the amount of the progressive meter(s) at the time of removal. If the machine is not returned or replaced, then the progressive meter(s) amount at the time of removal shall, within five days of the slot machine's removal, be added to a slot machine approved by the Commission which machine offers the same or a greater probability of winning the progressive jackpot, and accepts a denomination of coin or token not greater than the denomination accepted by the slot machine which was removed. Any time limit for the offering of a progressive jackpot shall be extended by the number of days during which the progressive jackpot was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a)-(k) (No change.)

*[Alternative A

(l) A casino licensee may establish a time limit of not less than 30 days for the offering of a jackpot of merchandise or other thing of value by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4 at the time the jackpot is initially offered.

Alternative B]*

(l) A casino licensee may, at any time, establish a time limit of not less than 30 days for the offering of a jackpot of merchandise or other thing of value by providing notice of the time limit in accordance with N.J.A.C. 19:45-1.37(a)4.

(m) (No change.)

(n) Any advertising involving slot machine payouts of any merchandise or thing of value by the casino licensee shall include an accurate description of the merchandise or thing of value, the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit for offering the merchandise or thing of value pursuant to (l) above, and, except for annuity jackpots, the cash equivalent value of the merchandise or thing of value. Any advertising concerning annuity jackpots shall also provide clear notice of the following:

1.-2. (No change.)

(o) Until the expiration of any time limit established in accordance with (l) above or, if no such time limit is established by the casino licensee, until the merchandise or thing of value offered as a slot machine payout is won by a patron, a casino licensee shall not decrease the probability of hitting the combination that will award the merchandise or thing of value, increase the denomination of the machine, nor in any other way vary the terms upon which the merchandise or thing of value is offered to the public.

(p) Slot machines which are linked to offer the same merchandise jackpot shall have the same probability of hitting the combination that will award that jackpot, provided, however, that the probability may vary among such machines when necessary to enable a casino licensee to institute a change in the probability which is otherwise permitted by this section, if the change is completed expeditiously in accordance with procedures that have been filed with and approved by the Commission.

(q) Except as otherwise authorized by this section, a slot machine which offers merchandise or some other thing of value as a payout which is removed from the gaming floor shall be returned to or replaced on the gaming floor within five days. If the machine is not

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returned or replaced, the merchandise or thing of value shall, within five days of the slot machine's removal, be offered as a payout on a slot machine approved by the Commission which offers the same or a greater probability of winning the merchandise or thing of value, and accepts a denomination of coin or token not greater than the denomination accepted by the slot machine which was removed. Any time limit for offering a jackpot of merchandise or other thing of value shall be extended by the number of days during which the merchandise or thing of value was not offered as the result of any action taken by a casino licensee pursuant to this subsection.

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

(a) Unless otherwise authorized by the Commission, each slot machine in a casino shall have the following identifying features:

1.-4. (No change.)

5. A display on the front of the slot machine that includes the information required by N.J.A.C. 19:45-1.37(a)4;

6.-8. (No change.)

(b)-(i) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Hands of Player and Banker; Procedure for Dealing Initial Two Cards to Each Hand

Procedure for Dealing of Additional Cards

Adopted Amendments: N.J.A.C. 19:47-7.7 and 7.8

Proposed: October 7, 1991 at 23 N.J.R. 2927(a).

Adopted: January 8, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 10, 1992 as R.1992 d.59, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 70(f).

Effective Date: February 3, 1992.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Response:

COMMENT: The Division of Gaming Enforcement, the Sands Hotel and Casino and TropWorld Casino and Entertainment Resort support the amendments as published.

RESPONSE: Accepted.

Full text of the adoption follows.

19:47-7.7 Hands of player and banker; procedure for dealing initial two cards to each hand

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

(c) The dealer shall deal an initial four cards from the shoe. The first and third cards dealt shall constitute the first and second cards of the "Player's Hand." The second and fourth cards dealt shall constitute the first and second cards of the "Banker's Hand." The casino licensee may deal the initial four cards in accordance with one of the following options:

1. Each dealer shall remove cards from the shoe with his or her left hand, turn them face up and then place them on the appropriate area of the layout with his or her right hand. The first and third cards dealt shall be placed on the area designated for the "Player's Hand" and the second and fourth cards dealt shall be placed on the area designated for the "Banker's Hand;" or

2. The first and third cards dealt shall be placed face down in the area designated for the "Player's Hand" and the second and fourth cards dealt shall be placed face down underneath the right corner of the dealing shoe until the "Player's Hand" is called as provided for in N.J.A.C. 19:47-7.8(a), at which time the second and fourth cards shall be turned face up and placed on the area designated for the "Banker's Hand."

19:47-7.8 Procedure for dealing of additional cards

(a) After the dealer positions the cards in accordance with either N.J.A.C. 19:47-7.7(c)1 or 2, the dealer shall announce the point count of the "Player's Hand" and then the "Banker's Hand."

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

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Action on Petition for Rulemaking
N.J.A.C. 7:1E Appendix A, Discharges of Petroleum and Other Hazardous Substances.

Petitioner: National Refrigerants, Inc., Joseph R. Davison, Esq., Attorney

Take notice that on October 23, 1990, National Refrigerants, Inc. through Attorney Joseph R. Davison, filed a petition for rulemaking with the Department of Environmental Protection and Energy (Department) requesting the deletion of certain compounds from the list of hazardous substances in N.J.A.C. 7:1E Appendix A. Notice of receipt of this petition was published in the New Jersey Register on December 17, 1990, at 22 N.J.R. 1881(a). Specifically, the petitioner requested that the following chlorofluorocarbons (CFCs) be deleted from Appendix A: dichlorodifluoromethane (CFC-12), trichlorofluoromethane (CFC-11), trichlorotrifluoroethane (CFC-113), trichlorotetrafluorethane (CFC-114) and monochloropentafluoroethane (CFC-115).

The Department has duly considered the petition pursuant to law and has granted it in part and denied it in part. The Department's action on the petition has been codified in the recently adopted new rules at N.J.A.C. 7:1E (see 23 N.J.R. 2656(a)).

The hazardous substance list in Appendix A is a compilation of the hazardous substances that comprise the lists referenced in the Spill Compensation and Control Act at N.J.S.A. 58:10-23.11bk plus the extremely hazardous substance list and the toxic chemical lists promulgated by USEPA pursuant to the Superfund Amendment and Reauthorization Act (SARA) section 302 and 313.

Appendix A is comprised of hazardous substances from the following lists:

a. Pesticides designated as prohibited or restricted use, pursuant to N.J.A.C. 7:30, which includes by reference the restricted use pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 40 CFR 162.31.

b. Environmental hazardous substances, pursuant to N.J.A.C. 7:1G-2.1

c. Hazardous substances, pursuant to 40 CFR 116.4.

d. Toxic pollutants, pursuant to 40 CFR 401.15.

e. Hazardous substances, pursuant to 40 CFR 302.4.

f. Extremely hazardous substances, pursuant to 40 CFR 355, Appendices A and B.

g. Toxic chemicals, pursuant to 40 CFR 372.

All of the substances on these lists have been found to be either hazardous or toxic by the agency promulgating the list.

The compounds CFC-114 and CFC-115 do not appear on any of the lists consolidated into Appendix A, and therefore have been deleted from Appendix A. CFC-113 is listed in 40 CFR 372, SARA 313 list, with no qualifiers. Therefore, it is subject to the requirements of N.J.A.C. 7:1E in all forms. The two others, CFC-11 and CFC-12 are listed in CERCLA, 40 CFR 302.4, pursuant to the RCRA list at 40 CFR 261.33, which includes qualifiers. These two CFCs are covered in any form only when they are to be disposed. That same qualifier is applicable to inclusion of the compounds in Appendix A.

Therefore, the final disposition of the rule petition is as follows: CFC-114 and CFC-115 have been deleted as requested; CFC-11 and CFC-12 remain in Appendix A, but are restricted to wastes only; and CFC-113 remains in Appendix A. This is consistent with the intent of the Legislature as evidenced by the definition of "hazardous substance" in the Spill Act (N.J.S.A. 58:10-23.11bk).

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(a)

NEW JERSEY NOISE CONTROL COUNCIL

Notice of 1992 Public Hearing
Shaping Noise Control for the 90s
How Shall Services Be Delivered?
What Should the Roles of State, County and Local Governments Be?

Take notice that the New Jersey Noise Control Council will hold a **public hearing** on Thursday, February 13, 1992 from 9:00 A.M. to 2:00 P.M. at:

Cook Campus Center
Biel Road, Room C
Rutgers University
New Brunswick, New Jersey

The Noise Control Council requests your written or oral comments in order to fashion a continuing program which will address the noise control needs for the next decade. This can be done in two ways.

First, explain the noise problems or need which you wish to see addressed by answering the following:

1. What persistent noise problems affect your neighborhood:

- construction
- highways/motor vehicles
- industrial plants
- government facilities
- recreational facility noise
- auto racetracks
- other

2. What emerging new noise problem have you observed which you feel requires the attention of the council, and what noise control criteria should DEPE and other responsible agencies adopt and enforce with regard to these sources?

Second, to insure that noise problems beyond the specific neighborhood problem can be meaningfully addressed,

1. How do you perceive that noise control roles and activities can be continued, or possibly even expanded?

2. What level of government shall perform what role or function?

3. By what funding mechanism will changes or expansion of the program be accomplished?

It is the intention of the Noise Control Council to make recommendations to improve noise control programs based upon your critical evaluation and comments. **For additional information** contact Mr. Edward J. DiPolvere; Chief, Office of Noise Control at (609) 984-4161.

SPECIAL NOTE: Aircraft noise has been the subject of two of the council's recent public hearings. In light of the 1991 Federal Aviation administration hearings and because of the continued activities of the Newark International Airport Aviation Advisory Committee with regard to noise, aircraft noise will not be among the topics of this year's public hearing.

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(a)

WASTEWATER FACILITIES REGULATION

Notice of Revocation of NJPDES/SIU permits

Take notice that the New Jersey Department of Environmental Protection and Energy (Department) proposes to terminate individual New Jersey Pollutant Discharge Elimination System (NJPDES)/Significant Indirect User (SIU) permits issued to following facilities:

Permit Name	Permit Number NJ00	City	Delegated Local Agency	Discharge or SIC Code(s)	Flow MGD
Charles of the Ritz	98710	Holmdel	Bayshore Reg. SA	2844	0.065
Fragrance Resources	30872	Keyport		2844,2869	0.000
IFF Compounding	01091	Hazlet		2844	0.130
IFF Research & Dev.	01104	Union Beach		2844	0.030
IFF Manufacturing	01082	Union Beach		2869	0.212
Allied Bendix	02097	Teterboro	Bergen County UA	3662,3728	0.100
Arsynco	30970	Carlstadt		2865	0.160
Becton Dickenson	77356	E. Rutherford		3471	0.007
Chemed (DuBois Div)	35769	E. Rutherford		2841	0.025
Cosan Chemical Co.	32522	Carlstadt		2869,2874	0.009
Ganes Chemicals	52728	Carlstadt		2833	0.027
Hackensack Water Co.	51373	Haworth		4941	1.340
Henkel Corporation	02798	Carlstadt		2869	0.030
Kingsland Park LF	55778	N. Arlington		4953	0.006
Stanbee Company	52370	Carlstadt		2390	0.004
Sterling Regal	53121	Carlstadt		2752	0.024
UNISYS Corporation	61999	Park Ridge		CGW*	0.015
Aluminum Shapes	34576	Pennsauken	Camden County MUA	3355	0.262
Artex Service	53791	Cherry Hill		7213,7218	0.060
Bevmar Industries	53988	Pennsauken		3679	0.070
C.J. Osborn	53970	Pennsauken		2821	0.079
Cadillac Pet Foods	82031	Pennsauken		2047	0.100
Campbell Soup Co.	50105	Camden		2032	2.030
Compton & Knowles	64955	Pennsauken		2065,2834	0.048
Etched Circuit	62723	Cherry Hill		3679	0.000
Hordis Brothers Inc	54003	Pennsauken		3231	0.027
J. Reisman & Sons	54071	Pennsauken		2052	0.005
Lehigh Press	54011	Pennsauken		2752	0.005
Nabisco Brands	54020	Pennsauken		2079	0.029
Penler Anodizing	62766	Pennsauken		3471	0.005
Pepsi-Cola	66869	Pennsauken		2086	0.047
Sandy Mac Food Co.	66923	Pennsauken		2013	0.103
Reichold Chemicals	61166	Elizabeth	Essex/Union JtMtg	2821	0.150
Schering Corp	02291	Union		2834	0.440
GM-Fisher Guide	53295	Trenton	Ewing-Lawrence SA	3714,3079	0.760
Gloucester Co. LF	57495	S. Harrison	Gloucester Co. UA	4953	0.010
Helen Kramer LF	81311	Mantua Twp.		CGW*	0.173
Lipari Landfill	85863	Mantua Twp.		CGW*	0.288
Huntsman Polyprop.	35831	W. Deptford		2821	1.465
Kinsley Landfill	77500	Deptford		4953	0.007
Buick-Oldsmobile	35947	Linden		3711	0.600
Merck & Company	02348	Rahway	Linden-Roselle SA	2833,2879	2.500
Safety Kleen Corp.	02224	Linden		7399	0.050
Akzo Chemicals	50326	Edison	Middlesex Co. UA	2865	0.296
Ashbrook Farm	74934	Edison		4953	0.057
Browning Ferris	99988	Monroe Twp.		4953	0.016
Celotex Corporation	50750	Perth Amboy		2661,2952	0.240
CPS Chemical Co.	98931	Old Bridge		2821,CGW*	0.530
Edgeboro Landfill	31071	E. Brunswick		4953	0.163
Englert, Inc.	67741	Perth Amboy		3444,3479	0.023
Essex Chemical	63924	Monmouth Jnc.		CGW*	0.017
GATX Terminals	26280	Carteret		5171,2844	0.110
Gist-Brocades	02470	E. Brunswick		2099	0.736
Hercules, Inc.	01023	Parlin		2823,2821	5.800
Kimberly-Clark	99121	Spotswood		2621	5.000
Kin-Buc Landfill	34355	Edison		4953	0.005
Madison Industries	63410	Old Bridge		2819,CGW*	0.360
Madison, Inc.	32310	Middlesex		7399	0.066
Union Carbide	00256	Piscataway		2821	0.900
Fed. Storage WH	71463	Woodbridge		4953	0.012
Eagle Dyeing	34029	Mount Holly	Mount Holly SA	2869	0.350
Landfill & Dev. Co.	33502	Mount Holly		4953	0.012
Pennsauken SLF	54470	Pennsauken		4953	0.005
Ocean County LF	51128	Manchester	Ocean City UA—C	4953	0.060

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Ciba Geigy	81302	Toms River		2821,2865	0.062
Southern Ocean LF	50482	Waretown	Ocean City UA—S	4953	0.010
Waste Disposal Inc.	98515	Howell Twp.	Ocean City UA—N	4953	0.500
Anheuser-Busch, Inc	02071	Newark	Passaic Valley SC	2082	4.000
AT&T Technologies	20443	Keaton		CGW*	0.028
Capital City Products	98906	Kearny		2841,2869	1.420
Chemical Waste Mgt.	50032	Newark		4953	0.090
Garden State Paper	00370	Garfield		2621	7.240
Givauden Corp.	99414	Clifton		2869,2879	1.200
HMDC Site 1-A	53074	Kearny		4953	0.075
Henkel-LaRoche	02801	Harrison		2869	0.030
Hoffman-LaRoche	34185	Nutley		2834	27.00
John L. Armitage	61956	Newark		7391	0.005
Kalama Chemical	00124	Garfield		2869	0.315
Marcel Paper Mills	02674	Elmwood Park		2621	3.000
Mobay Chemicals	03174	Haledon		2865	1.300
Seton Leather Corp.	98582	Newark		3111	1.130
Universal Food Corp.	01201	Belleville		2013	0.000
Schering Corp.	02305	Kenilworth	Rahway Valley SA	2834	0.170
Ethicon	76724	Somerville	Somerset-Raritan SA	CGW*	0.007
High Point Landfill	53201	Franklin Twp.		4953	0.015
Lederle Labs	02313	Bound Brook		2869	4.070
Browning Ferris	99147	S. Brunswick	Stony Bk. RSA-Main	4953	0.022

*CGW means contaminated ground water.

The aforementioned NJPDES/SIU permits were issued for the above facilities' wastewater discharge to the above listed delegated local agencies. The Department has approved industrial pretreatment programs for these delegated local agencies in accordance with 40 CFR 403 and N.J.A.C. 7:14A-13.1(a), into which the aforementioned facilities discharge. The above facilities may continue discharging after the permits are terminated in accordance with the delegated local agencies approved industrial pretreatment program requirements. In addition, the permittee shall be deemed to possess a NJPDES/SIU Permit-by-Rule consistent with requirements as specified in N.J.A.C. 7:14A-13.5.

It was the Department's original intent not to issue individual permits to the industries discharging to those local agencies with approved pretreatment programs. However, due to the delegated local agencies' limited enforcement authority to enforce the local agency issued permits, the Department issued individual NJPDES/SIU permits to selected SIUs, which the local agency felt had the potential for the greatest impact on the local agency.

The Clean Water Enforcement Act, P.L.1990, c.28, as revised by P.L.1991, c.8, provides the local agencies with approved pretreatment programs enforcement authorities essentially equivalent to the Department's. Hence, the Department, in order to eliminate duplicate permitting and enforcement of permit violations, proposes termination of the aforementioned permits. Therefore, pursuant to N.J.A.C. 7:14A-2.13(a)7 the Department has decided to terminate the aforementioned permits.

This notice is being given to inform the public that the Department intends to terminate the aforementioned individual NJPDES/SIU permits in accordance with the "Regulations Concerning the New Jersey Pollutant Discharge Elimination System" (N.J.A.C. 7:14A), which were promulgated pursuant to the authority of the New Jersey "Water Pollution Control Act" (N.J.S.A. 58:10A-1 et seq.).

Copies of the administrative records related to these permits are on file at the offices of the NJDEPE, located at the address below. They are available for inspection, by appointment, between 8:30 A.M. and 4:00 P.M., Monday through Friday. Appointments for inspection of the files may be scheduled by calling (609)-292-0400. Copies of these records may be obtained for a nominal charge by contacting the Department.

Interested persons may submit written comments on the proposed revocation to the Administrator, Wastewater Facilities Regulation Element, at the address cited below. All comments must be submitted by March 4, 1992. All persons, including the permittees, who believe that any condition of this proposed revocation is inappropriate or that the Department's decision to issue this proposed revocation is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons in response to this notice, within the time limit, will be considered by the NJDEPE with respect to the proposal. At the close of the public comment period, the Department will either revoke these permits, or leave them in place, or take other appropriate action. The Department will respond to all significant and timely comments when a final decision is issued. The applicant and each person who has submitted written comments will receive notice of the NJDEPE's final decision.

Any interested person may request in writing that the NJDEPE hold a non-adversarial public hearing regarding this proposed revocation. This request shall state the nature of the issues to be raised in the proposed hearing as detailed above, and shall be submitted by March 4, 1992 to the Administrator at the address below. A public hearing will be conducted whenever the NJDEPE determines that there is a significant degree of public interest. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

Additional information concerning the proposed revocation may be obtained between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday from: Nilesh Naik at (609) 292-4860.

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of Grant Funds

Special Home Service Provider Respite Care Project, Essex and Union Counties

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: Special Home Service Provider Respite Care Project, Essex and Union Counties.

B. Purpose for which the grant program funds shall be used: This program is intended to provide quality respite care to Special Home Service Providers (SHSPs) in Essex and Union Counties who provide highly specialized family care for medically fragile, drug-exposed and/or HIV positive infants and children who might otherwise require placement in a more restrictive or hospital-like setting.

C. Amount of money in the grant program: Funding in the amount of $200,000 in Federal funds is available for this program. This funding will be for a three-year period. There are no matching funds required.

D. Organizations which may apply for funding under this program: Public or private not-for-profit social service agencies serving Essex and Union Counties that can provide trained respite care workers for the medically fragile.

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E. Qualifications needed by an applicant to be considered for funding: An applicant must be able to establish respite caregiving alternatives to assure that each Special Home Service Provider has access to respite services, must be able to establish "short notice" respite care, and must be able to provide trained, competent and reliable respite care 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 Alisha Griffin, Statewide SHSP Coordinator, New Jersey Division of Youth and Family Services, Capital Center, 50 East State Street, CN 717, Trenton, New Jersey 08625-0717. Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending a bidders conference scheduled for February 7, 1992, at Capital Center, 50 East State Street, Trenton, New Jersey, at 10:00 A.M.

G. Address to which the applications must be submitted: The completed Request for Proposal is to be returned to Alisha Griffin, Statewide SHSP Coordinator, New Jersey Division of Youth and Family Services, Capital Center, 50 East State Street, CN 717, Trenton, New Jersey 08625-0717.

H. Deadline by which applications must be submitted: Agencies interested in applying for these funds must submit three copies of the completed Request for Proposal and all required supporting materials and copies to the New Jersey Division of Youth and Family Services, Capital Center, 50 East State Street, CN 717, Trenton, New Jersey 08625-0717, by 5:00 P.M. on February 28, 1992.

I. Date by which applicants shall be notified of acceptance or rejection: March 13, 1992.

INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Public Notice Regarding Rate Proposal Procedures for the MTF

Take notice that the Commissioner of Insurance ("Commissioner") has certified the accompanying amendment to the Plan of Operation of the Market Transition Facility of New Jersey ("MTF") to set forth Rate Proposal Procedures for the MTF. This amendment was effective on January 8, 1992 and is being published as a matter of public record at the end of this Notice.

The MTF was created in accordance with N.J.S.A. 17:33B-11 which mandated the adoption of a Plan of Operation. N.J.S.A. 17:33B-11 and the MTF Plan of Operation, Article III, Section 6, authorize the MTF to establish procedures for the filing and approval of changes in rates applicable to policies issued or renewed by the MTF. The MTF Plan of Operation further provides at Article IX, Section 2 that the Commissioner may propose an amendment to the Plan of Operation by sending a copy of the proposed amendment to the members of the MTF Advisory Committee which shall have 21 days to make its recommendation, after which the Commissioner may certify the amendment as proposed or with non-substantive changes.

Notice of the amendment to the MTF Plan of Operation concerning Rate Proposal Procedures for the MTF was provided to members of the MTF Advisory Committee, all private passenger automobile insurers and other interested parties in Bulletin No. A91-21 on November 26, 1991. The Department of Insurance ("Department") received comments from the MTF Advisory Committee and others at a public meeting on December 4, 1991. Comments continued to be received through December 18, 1991.

The Department received various public comments from insurance companies (Allstate Insurance Company, State Farm Insurance Company, New Jersey Manufacturers Insurance Company and Chubb Group of Insurance Companies), the Office of the Public Advocate and other interested parties. These comments and the Department's responses are summarized below:

COMMENT: One commenter stated that section 1 of the Proposed MTF Rate Procedures should contain a requirement that Special Deputy Commissioner Haskins submit a proposal for fully adequate prospective MTF rates on or before January 6, 1992. Another commenter indicated that the Proposed Rate Procedures for the MTF must require that a filing be made within 15 to 20 days.

RESPONSE: An interim rate proposal has been submitted. The Commissioner reviewed that proposal and decided that a 14.9 percent increase was appropriate as set forth in Order A91-344 which was issued on December 20, 1991. The MTF and its independent actuarial consultant are currently working on a permanent rate filing to be submitted as soon as practicable. It would be inappropriate to place a 15 to 20 day limitation in these procedures in the event subsequent filings are needed.

COMMENT: One commenter stated that section 4(e) of the Rate Proposal Procedures should be amended to require a decision by the Commissioner within 10 days of the close of the record rather than 30 days. Another commenter stated that section 4(e) should be amended to require the Commissioner to issue a final decision and order on the rate proposal within 10 business days, in order to expedite the approval process.

RESPONSE: The Rate Proposal Procedures for the MTF have been amended at 4(e) in that the Department shall "issue a Final Decision and Order on the rate proposal *no later than* 30 days from the date the record closes." This non-substantive change addresses these commenters' concerns for a decision as promptly as possible, but provides for a proper review of the filing and public comments.

COMMENT: Two commenters stated that the MTF should be required to submit the same data as required of other insurers pursuant to N.J.A.C. 11:3-16. Another commenter asked why the detailed procedures required of voluntary market insurers (N.J.A.C. 11:3-16 and N.J.A.C. 11:3-18) could not be followed by the State's largest insurer, the MTF.

RESPONSE: N.J.A.C. 11:3-16 has specific requirements which are not applicable to the MTF. Certain historical data required by N.J.A.C. 11:3-16.10(a)(5)(ii) cannot be supplied by the MTF as it does not have the necessary historical experience required to comply with that rule. N.J.A.C. 11:3-16.9 requires all insurers which make rate filings to provide data regarding expenses on a New Jersey basis and on a countrywide basis. The limited nature of the MTF's experience makes the application of N.J.A.C. 11:3-16 to the MTF an impossibility.

COMMENT: Some commenters stated that they have had a limited ability to comment on rate proposals submitted by Special Deputy Commissioner Haskins because they do not know what data is available or how they can gain access to it. It was suggested that the Department immediately identify what data is available and how interested parties can gain access to it. One commenter noted that in *In the Matter of the Commissioner of Insurance's May 10, 1991 Orders Regarding the January 17, 1991 Rate Filing by the Market Transition Facility of New Jersey,* (Docket No. A-4634-90T5, decided November 19, 1991), (hereinafter cited as *In re: Rate Filing by MTF),* the Appellate Division ordered that the proceeding to consider and determine MTF rates "must afford interested parties a voice and reasonable advance access to the relevant information in the hands of the Department of Insurance." It was suggested that the Rate Proposal Procedures for the MTF must be modified so that the Division of Rate Counsel might properly represent policyholders.

RESPONSE: The procedures provide for MTF rate filings to be available for inspection and to be copied by any interested party. A party requesting additional MTF data may make a written request directly to the Administrative Manager of the MTF at its offices in Livingston, New Jersey. Anyone making such a request should specify the desired data. The MTF anticipates that it will fulfill all reasonable requests. Copies of records shall be made available upon payment to the MTF of the reasonable costs of copying and mailing. The Department believes this procedure is appropriate and sufficient for all of the parties.

COMMENT: One commenter stated that section 1(b)iii of the Rate Proposal Procedures is unclear as to whether it requires loss development data. Loss development data must be provided in order to determine if losses are developed to ultimate losses by reasonable factors.

RESPONSE: Section 1(b)iii of the Rate Proposal Procedures requires that certain loss data be included in any rate filing submitted by the MTF in which data loss development is included.

COMMENT: One commenter noted that the data request does not specifically require submission of any documentation on investment income which data is needed to determine overall rate level.

RESPONSE: The Rate Proposal Procedures have been amended to specifically include information regarding investment income. This clarification is a non-substantive change since a consideration of investment income is a necessary element of any ratemaking methodology.

COMMENT: One commenter stated that it is unclear whether the MTF filing must include documentation on its expense provisions category and how expense provisions were derived.

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RESPONSE: The proposal has been amended to specifically include information regarding expense provisions and how they are derived. This clarification is a non-substantive change since a consideration of expenses is a necessary element of any ratemaking methodology.

COMMENT: One commenter stated that the Rate Proposal Procedures for the MTF should require Special Deputy Haskins to consult with the MTF Actuarial Committee for technical assistance. Allegedly this is directly in line with the MTF Plan of Operation, Articles of Association, Article II, which provides that the MTF has a duty to "Appoint appropriate actuarial, claims, and other committees as necessary to provide technical assistance in the operation of the MTF . . ."

RESPONSE: The MTF Actuarial Committee may consult with Special Deputy Haskins and it has been encouraged to do so. The certified rate procedure does not foreclose comments by anyone, including the Actuarial Committee. The decision by the Appellate Division in *In re: Rate Filing by MTF* indicates, however, that there is a need for the MTF to act speedily.

COMMENT: The proposed procedures fail to identify and to describe the actuarial standards under which the filings will be developed or reviewed. The Rate Proposal Procedures for the MTF should be amended to expressly adopt the Statement of Principles Regarding Property and Casualty Insurance Ratemaking.

RESPONSE: The amendments to the MTF Plan of Operation which employ the Rate Proposal Procedures for the MTF do not set forth a ratemaking methodology. MTF rates set in accordance with these procedures will meet all pertinent statutory standards.

COMMENT: One commenter stated that the proposed procedures should be amended to address the fact that the rate base may shrink after April 1, 1992. This fact must be expressly addressed in the proposal to ensure that the MTF is a break even operation when it closes its books.

RESPONSE: This issue is addressed at Section 1(b)iv of the Rate Proposal Procedures for the MTF. Social, economic, legislative and regulatory factors which impact on loss frequency and severity certainly encompass the reduction of the rate base which may occur after April 1, 1992.

COMMENT: One commenter stated that any filing by the MTF for a rate adjustment should contain a certification by the MTF's Chief Operating Officer that the rate adjustment will, in the good faith opinion of the MTF, cause it to operate on a no profit, no loss basis.

RESPONSE: The Commissioner has stated his intent that the MTF operate on a no profit, no loss basis, which intent it already included in the MTF Plan of Operation.

COMMENT: One commenter objected to the Commissioner's stated intention to wait until April 1, 1992 to grant further MTF rate filings beyond that granted as a result of the interim filing of December 4, 1991. It is asserted that such a delay is unwarranted and will be certain to increase the already massive MTF deficit.

RESPONSE: The understanding of this commenter is incorrect. The Commissioner has stated he will act expeditiously and a permanent rate filing is expected to be made shortly. The Commissioner will act on that filing within the time frame established by these procedures. As stated in Order A91-212, dated May 10, 1991, (which previously raised MTF rates), the Commissioner will continue to monitor MTF operations to determine whether its rates should be adjusted.

COMMENT: One commenter indicated that section 1(b)vii which allows Department staff to request any other additional data it may need to review a rate proposal should be amended to allow the Public Advocate's Division of Rate Counsel the opportunity to request discovery. Another commenter proposes that 1(b)vii be omitted as data contained in 1(b)i through vi should be sufficient and no additional data should be required.

RESPONSE: When a filing is made the Public Advocate, and other members of the public, will have the opportunity to review the filing. While 1(b)i through vi should contain sufficient information for a decision to be rendered, additional information required by the Department may be necessary to determine the adequacy or excessiveness of any proposed rate. Discovery as provided in N.J.A.C. 11:1-10 is not provided as the determination of MTF rates is not a contested case proceeding under the procedures being adopted.

COMMENT: One commenter maintained that the time frames mandated in Rate Proposal Procedures For The MTF Section 4(b)(c) and (d) should be expanded to 45, 45 and 10 days respectively.

Another commenter indicated that section 4(b) of the Rate Proposal Procedures For The MTF should be amended to "provide for a period of *ten business* days from submission . . ." for public comments. This should provide a sufficient time for comment while minimizing delays.

Another commenter suggested that section 4(c) should be amended to provide for a hearing to be ". . . scheduled for the *tenth business* day of the comment period. *The hearing will continue on consecutive days if required.*" It seems possible such a hearing may not be completed in one day. Consecutive day scheduling will serve to minimize delay.

Another commenter stated that Section 4(d) should be amended to ". . . three *business* days . . ." This may be necessary to prepare comments in the event one or more of the three days following the hearing are weekends or holidays.

RESPONSE: The Appellate Division directed the Department to act promptly in order to implement a rate filing intended to operate the MTF on a no profit, no loss basis. To lengthen the time frames contained within the Rate Proposal Procedures for the MTF would contravert this direction. To shorten them would in the Department's view not provide an adequate time for public comment and a considered determination. However, section 4(d) has been amended to three business days, consistent with both the court and administrative rules regarding computation of time.

COMMENT: One commenter states section 3 of the Rate Proposal Procedures For The MTF should be amended to require that the filing ". . . shall be submitted *simultaneously* to the MTF Advisory Board . . ." This will clarify this section.

RESPONSE: It is intended that the Advisory Board receive the filing as soon as possible. However, due to practical limitations a simultaneous submission may not be possible. This is not meant to suggest that any unreasonable delay in submitting the filing to MTF Advisory Board is anticipated nor will it be condoned.

Consistent with the procedures set forth in the MTF Plan of Operation, the full text of the amendment to the MTF Plan of Operation as certified by the Commissioner, including non-substantive changes made in response to public comments, follows:

RATE PROPOSAL PROCEDURES FOR THE MTF

The following procedures are certified as an amendment to the Market Transition Facility ("MTF") Plan of Operation. The Department of Insurance has provided for a 21 day comment period by the MTF Advisory Committee, and a 14 day period from the December 4, 1991 public meeting to receive written public comments on the rate proposal procedures set forth below.

The following procedures shall be followed in any and all future rate filings submitted by the MTF.

1. A proposal for any rate adjustment for the MTF shall be made by the Special Deputy Commissioner responsible for the MTF, after consultation with the MTF Advisory Committee.

(a) Throughout the rate proposal process, the Special Deputy shall also be free to consult with the Commissioner, the MTF Actuarial Committee and the Department.

(b) The rate proposal shall include the following information:

i. The requested percentage change and total dollar amount of any change in rates with subtotals by groups of coverage and a grand total by overall coverage.

ii. A calculation of earned premiums at current rates using either the extension of exposures or on level factor methodologies and a rate level history.

iii. A set of historical data by coverage and experience year to include information on investment income, earned exposures, incurred losses, allocated loss adjustment expenses, unallocated loss adjustment expenses, ultimate losses and expenses, trend factors, trended ultimate incurred losses and loss adjustment expenses and other underwriting expenses.

iv. If incorporated into the proposal, a description of the effects of various social, economic, legislative and regulatory factors having an impact on loss frequency and severity. (For example: changes in seatbelt use, use of passive restraint systems, changes in the drinking age, changes in the average number of miles driven, and the provisions of the Fair Automobile Insurance Reform Act.)

v. Information regarding calculations of the trend in the average model year and symbol relativities for collision and comprehensive coverages.

vi. The extent to which the mandatory depopulation goals established pursuant to statute have or have not been met.

vii. Any other data that may be requested by the Department of Insurance pursuant to its review of the rate proposal.

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2. A copy of the rate proposal shall be submitted simultaneously to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
31 Clinton Street
P.O. Box 46005
Newark, New Jersey 07101

3. A copy of the rate proposal shall be submitted to the MTF Advisory Committee and the Citizen's Advisory Council established by the Department.

4. Once the rate proposal has been made, the Department shall:

a. Give public notice of the rate proposal and public hearing by issuance of a press release in newspapers in this State. The Department shall provide notice to insurer and producer trade associations and MTF member insurers. Copies of the rate proposal will be available for inspection and copying at the Department of Insurance;

b. Provide for a period of 20 days from submission of the rate proposal for the Department to receive written public comments on the rate proposal;

c. Provide for a public hearing scheduled for the 20th day of the comment period;

d. Close the record after permitting additional written comments for a period of three business days after the public hearing. Comments shall be limited to issues raised at the hearing;

e. Issue a Final Decision and Order on the rate proposal no later than 30 days from the date the record closes; and

f. The MTF will implement the rate adjustment in accordance with the Decision and Order as soon as practicable.

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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 December 2, 1991 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 NOVEMBER 18, 1991

NEXT UPDATE: SUPPLEMENT DECEMBER 16, 1991

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. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-18.1	Initial decision in contested cases	23 N.J.R. 3406(a)	R.1992 d.46	24 N.J.R. 404(a)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 3682(a)		
1:14	Board of Public Utility hearings: administrative change	________	________	23 N.J.R. 3647(a)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)	R.1992 d.17	24 N.J.R. 87(a)
1:31-3	Discipline of administrative law judges: extension of comment period	23 N.J.R. 3179(a)		
	Most recent update to Title 1: TRANSMITTAL 1991-5 (supplement October 21, 1991)			
AGRICULTURE—TITLE 2				
	Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)			
BANKING—TITLE 3				
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:6-4.5, 4.6	Banks and savings banks: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)	R.1992 d.40	24 N.J.R. 229(a)
3:13	Bank holding companies and interstate acquisitions: extension of comment period	23 N.J.R. 3686(a)		
3:21	Credit unions	23 N.J.R. 3686(b)		
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:21-1	Low-income credit unions: extension of comment period	24 N.J.R. 3(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:26-3.1, 3.2	Savings and loan associations: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)	R.1991 d.588	23 N.J.R. 3743(a)
	Most recent update to Title 3: TRANSMITTAL 1991-8 (supplement October 21, 1991)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)	R.1992 d.41	24 N.J.R. 229(b)
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		

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5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
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)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)	R.1992 d.11	24 N.J.R. 88(a)
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)	R.1992 d.5	24 N.J.R. 89(a)
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)		
5:18A-2.6	Fire Code Enforcement: collection of fees	23 N.J.R. 3552(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(b)		
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)		
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)	R.1992 d.67	24 N.J.R. 404(b)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)	R.1992 d.47	24 N.J.R. 405(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)	R.1992 d.68	24 N.J.R. 406(a)
5:23-10, App. 10-A	Radon Hazard Subcode: tier I municipalities	________	________	23 N.J.R. 3745(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)	R.1992 d.33	24 N.J.R. 229(c)
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)	R.1992 d.50	24 N.J.R. 407(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)	R.1992 d.51	24 N.J.R. 407(b)
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
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5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)	R.1992 d.53	24 N.J.R. 408(a)

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5A:3	Military service medals	23 N.J.R. 1490(a)	R.1992 d.56	24 N.J.R. 409(a)
5A:3-1, 2	Military service medals: reopening of comment period	23 N.J.R. 3409(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)	R.1992 d.57	24 N.J.R. 410(a)
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		

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6:5-2	Organization of Department	Exempt	R.1992 d.21	24 N.J.R. 90(a)
6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)	R.1992 d.22	24 N.J.R. 90(b)
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)	R.1991 d.590	23 N.J.R. 3746(a)
6:20-4.1	Tuition for private schools for handicapped: administrative correction	________	________	24 N.J.R. 245(a)

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7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)	R.1991 d.582	23 N.J.R. 3647(b)
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)	R.1991 d.592	23 N.J.R. 3751(a)
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.4	Water Pollution Control Act penalties: administrative correction	________	________	23 N.J.R. 3754(a)
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)	R.1992 d.42	24 N.J.R. 246(a)
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		

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7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)	R.1992 d.65	24 N.J.R. 412(a)
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)	R.1992 d.52	24 N.J.R. 416(a)
7:50-2.11, 4.61–4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)		

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8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13–1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)	R.1991 d.595	23 N.J.R. 3754(b)
8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)	R.1991 d.580	23 N.J.R. 3648(a)
8:31B	Hospital rate setting	23 N.J.R. 3097(a)	R.1992 d.62	24 N.J.R. 425(a)
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	23 N.J.R. 3042(a)	R.1991 d.589	23 N.J.R. 3755(a)
8:31B-3.73	Hospital rate setting: correction to proposed amendment and extension of comment period	23 N.J.R. 3442(a)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)	R.1992 d.43	24 N.J.R. 452(a)
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)		
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)	R.1991 d.579	23 N.J.R. 3650(a)
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(a)		
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8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)		
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)		

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8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)	R.1992 d.16	24 N.J.R. 119(a)
8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		
8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)	R.1992 d.64	24 N.J.R. 465(a)
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4–18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2	Hospital licensing standards	23 N.J.R. 2590(a)		
8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
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)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)	R.1992 d.24	24 N.J.R. 144(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
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8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1992 d.25	24 N.J.R. 144(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)	R.1992 d.27	24 N.J.R. 145(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)		
8:71	Interchangeable drug products	24 N.J.R. 61(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)		

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9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)	R.1991 d.599	23 N.J.R. 3756(a)

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9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:7	Role of county adjuster	23 N.J.R. 2953(a)	R.1992 d.31	24 N.J.R. 278(a)
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)	R.1992 d.37	24 N.J.R. 287(a)
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)	R.1991 d.600	23 N.J.R. 3771(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)		
10:50	Transportation Services Manual	23 N.J.R. 3619(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
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10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)	R.1991 d.578	23 N.J.R. 3651(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)	R.1992 d.69	24 N.J.R. 465(b)
10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)	R.1992 d.48	24 N.J.R. 466(a)
10:72-6.1–6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)	R.1992 d.10	24 N.J.R. 100(a)
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)	R.1992 d.36	24 N.J.R. 287(b)
10:81-8.2	Securing information from Social Security Administration: administrative correction	————	————	24 N.J.R. 466(b)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)	R.1991 d.601	23 N.J.R. 3791(a)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)	R.1992 d.1	24 N.J.R. 101(a)
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)	R.1991 d.603	23 N.J.R. 3796(a)
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)		
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-24-92)	R.1992 d.39	24 N.J.R. 300(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)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)	R.1992 d.2	24 N.J.R. 103(a)
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	Emergency (expires 2-24-92)	R.1992 d.38	24 N.J.R. 300(b)
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)		
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)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)	R.1991 d.576	23 N.J.R. 3651(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)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		

Most recent update to Title 10: TRANSMITTAL 1991-11 (supplement November 18, 1991)

CORRECTIONS—TITLE 10A

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:6-1.3, 2.5	Inmate access to courts: legal material and documents	23 N.J.R. 3268(a)	R.1992 d.60	24 N.J.R. 467(a)
10A:9	Inmate classification process	23 N.J.R. 3721(a)		
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)	R.1991 d.586	23 N.J.R. 3756(b)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)	R.1992 d.23	24 N.J.R. 104(a)
10A:17	Inmate social services	23 N.J.R. 3065(a)	R.1992 d.49	24 N.J.R. 468(a)
10A:17-7	Inmate marriage	23 N.J.R. 3422(a)	R.1992 d.55	24 N.J.R. 469(a)
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)	R.1992 d.3	24 N.J.R. 107(a)
10A:20-4	Residential Community Release Agreement Programs for adult inmates	23 N.J.R. 3624(a)		
10A:22-2.6	Availability of medical information to inmates	23 N.J.R. 3424(a)	R.1992 d.54	24 N.J.R. 471(a)

Most recent update to Title 10A: TRANSMITTAL 1991-8 (supplement October 21, 1991)

INSURANCE—TITLE 11

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:1-31	Surplus lines insurer eligibility	24 N.J.R. 9(a)		
11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)		
11:2-17.7	Payment of health insurance claims	23 N.J.R. 3196(c)		
11:2-27	Determination of insurers in hazardous financial condition	23 N.J.R. 3197(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)		
11:3-29.2, 29.4, 29.6	Automobile PIP coverage: medical fee schedules	23 N.J.R. 3203(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)		
11:3-40	Insurers required to provide automobile coverage to eligible persons	23 N.J.R. 3736(a)		
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	23 N.J.R. 3066(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)		
11:5-1.13	Real Estate Commission: extension of comment period regarding preservation of brokers' files	23 N.J.R. 3739(a)		
11:5-1.38–1.42	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)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)	R.1992 d.44	24 N.J.R. 287(c)

Most recent update to Title 11: TRANSMITTAL 1991-11 (supplement November 18, 1991)

LABOR—TITLE 12

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)	R.1991 d.604	23 N.J.R. 3797(a)
12:55	Wage payments	23 N.J.R. 2939(a)	R.1991 d.605	23 N.J.R. 3807(a)
12:56-1.2–1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)	R.1991 d.606	23 N.J.R. 3810(a)
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)	R.1991 d.612	23 N.J.R. 3811(a)
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)	R.1991 d.611	23 N.J.R. 3812(a)
12:61-1	Wage collection	23 N.J.R. 2947(a)	R.1991 d.608	23 N.J.R. 3814(a)
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)	R.1991 d.609	23 N.J.R. 3815(a)
12:100-4.2, 10, 17.1, 17.3	Safety standards for firefighters	24 N.J.R. 73(a)		
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)	R.1991 d.613	23 N.J.R. 3815(b)
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)	R.1991 d.610	23 N.J.R. 3816(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)	R.1991 d.607	23 N.J.R. 3816(b)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)	R.1991 d.574	23 N.J.R. 3818(a)
	Most recent update to Title 12: TRANSMITTAL 1991-7 (supplement November 18, 1991)			
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)	R.1991 d.591	23 N.J.R. 3761(a)
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		
	Most recent update to Title 12A: TRANSMITTAL 1991-3 (supplement August 19, 1991)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:1A	Repeal Legislative Activities Disclosure Act rules (see 19:25-20)	23 N.J.R. 3077(a)		
13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)	R.1992 d.20	24 N.J.R. 108(a)
13:20-42	Purple Heart emblems on license plates	24 N.J.R. 219(a)		
13:21-23	Commercial driver licensing	24 N.J.R. 219(b)		
13:30-8.4	Announcement of practice in special area of dentistry	23 N.J.R. 3429(a)		
13:31-1	Board of Examiners of Electrical Contractors: administration and procedure	23 N.J.R. 2917(a)	R.1991 d.596	23 N.J.R. 3762(a)
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)	R.1992 d.66	24 N.J.R. 471(b)
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
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)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-2.6–2.12, 2.14, 2A	Certified nurse midwife practice	23 N.J.R. 3632(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.5	Medical practice: preparation of patient records	24 N.J.R. 50(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)	R.1991 d.597	23 N.J.R. 3763(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)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-5.1	Land surveys: setting of corner markers	24 N.J.R. 51(a)		
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)	R.1991 d.598	23 N.J.R. 3763(b)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late license renewal fee	23 N.J.R. 3638(a)		
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(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)		
13:44F-8.1	Board of Respiratory Care: fee schedule	24 N.J.R. 52(a)		
13:45A-25.2, 25.4	Sellers of health club services: registration fees	23 N.J.R. 3637(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)		
13:47K-5.2	Commodities in package form: request for public input regarding Magnitude of Allowable Variations (MAVs)	23 N.J.R. 3645(a)		
13:60	Motor carrier safety	23 N.J.R. 3725(a)		
13:70-1.3	Thoroughbred racing: authority of executive director of Racing Commission	23 N.J.R. 3431(a)		
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)	R.1992 d.19	24 N.J.R. 108(b)
13:70-29.48	Thoroughbred racing: field horses in daily double races	23 N.J.R. 3431(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-1.1	Harness racing: authority of executive director of Racing Commission	23 N.J.R. 3432(a)		
13:71-23.8	Harness racing: first-time respiratory bleeders	23 N.J.R. 2919(d)	R.1992 d.18	24 N.J.R. 109(a)
13:71-27.47	Harness racing: field horses in daily double races	23 N.J.R. 3432(b)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.6	Violent Crimes Compensation Board: eligibility of claims	24 N.J.R. 54(a)		
13:75-1.7	Violent Crimes Compensation Board: reimbursement for loss of earnings	24 N.J.R. 54(b)		
13:75-1.29	Violent Crimes Compensation Board: petitions for rulemaking	24 N.J.R. 55(a)		
13:75-1.30	Violent Crimes Compensation Board: burden of proof	24 N.J.R. 55(b)		

Most recent update to Title 13: TRANSMITTAL 1991-11 (supplement November 18, 1991)

PUBLIC UTILITIES—TITLE 14

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: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:5	Electric service	23 N.J.R. 1519(a)	R.1991 d.583	23 N.J.R. 3652(a)
14:5A	Nuclear generating plant decommissioning: periodic cost review and trust funding reporting	23 N.J.R. 3239(b)		
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-7.7	Cable television: telephone system performance	23 N.J.R. 2273(a)	R.1991 d.594	23 N.J.R. 3768(a)
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

Most recent update to Title 14: TRANSMITTAL 1991-10 (supplement November 18, 1991)

ENERGY—TITLE 14A

14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		

Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)

STATE—TITLE 15

15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		

Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:25-1.1, 1.7, 2.1, 7A.1, 7A.3, 7A.4, 11.3	Utility accommodation	23 N.J.R. 3739(c)		
16:28-1.38	Speed limit zone along Route 57 in Hackettstown	23 N.J.R. 3128(b)	R.1992 d.7	24 N.J.R. 113(a)
16:28-1.41	Middle Township Elementary School zone along U.S. 9, Cape May County	23 N.J.R. 2831(a)	R.1991 d.585	23 N.J.R. 3770(a)
16:28A-1.6, 1.50, 1.57	Bus stop zones along Route 7 in Nutley, Route 166 in Dover Township, and U.S. 206 in Bordentown	23 N.J.R. 3129(a)	R.1992 d.6	24 N.J.R. 114(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)		
16:28A-1.7, 1.20	Restricted stopping and standing along U.S. 9 in Port Republic and Route 29 in Hopewell Township	23 N.J.R. 3269(a)	R.1992 d.34	24 N.J.R. 289(a)
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	23 N.J.R. 3742(a)		
16:28A-1.106	No stopping or standing zones along Truck U.S. 1 and 9 in Hudson County	23 N.J.R. 3645(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:29-1.70, 1.71, 1.72	No passing zones along Route 50 in Atlantic County, Route 41 in Gloucester County, and Route 143 in Camden County	23 N.J.R. 3130(a)	R.1992 d.8	24 N.J.R. 115(a)
16:30-9.10	Prohibited pedestrian use of Barnegat Bay bridges in Dover Township	23 N.J.R. 3131(a)	R.1992 d.9	24 N.J.R. 115(b)
16:31-1.1	Left turn prohibition along U.S. 206 in Lawrence Township	24 N.J.R. 78(a)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:44-1	Classification of contractors and prospective bidders	23 N.J.R. 3270(a)	R.1992 d.29	24 N.J.R. 115(c)
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
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)		
16:51	Practices and procedures before the Office of Regulatory Affairs	24 N.J.R. 78(b)		
16:54	Licensing of aeronautical and aerospace facilities: preproposed new rules	24 N.J.R. 80(a)		
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)	R.1991 d.593	23 N.J.R. 3770(b)

Most recent update to Title 16: TRANSMITTAL 1991-11 (supplement November 18, 1991)

TREASURY-GENERAL—TITLE 17

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:1-12.9	County and municipality early retirement incentive program: deadline for filing participation resolutions	23 N.J.R. 2847(a)	R.1991 d.581	23 N.J.R. 3654(a)
17:3-4.1	Teachers' Pension and Annuity Fund: creditable salary	23 N.J.R. 3274(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)	R.1992 d.4	24 N.J.R. 109(b)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:25-1.1, 1.2, 1.3, 1.5, 1.11, 1.12	Collection of debts owed NJHEAA by employees in certain State, county, and municipal jurisdictions	23 N.J.R. 2226(a)	R.1992 d.61	24 N.J.R. 472(a)

Most recent update to Title 17: TRANSMITTAL 1991-9 (supplement October 21, 1991)

TREASURY-TAXATION—TITLE 18

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
18:3-2.1	Tax rates on alcoholic beverages	23 N.J.R. 3433(a)		
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)		
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)	R.1992 d.30	24 N.J.R. 473(a)
18:24-1.4	Sales tax: manufacturers' coupons	23 N.J.R. 3433(b)		
18:24-2.16	Sales and Use Tax: registration of amusement event promoters	23 N.J.R. 3275(b)		
18:24-9.11	Sales and Use Tax: exempt organizations carrying on trade or business	23 N.J.R. 2005(a)	R.1991 d.577	23 N.J.R. 3654(b)
18:35-1.9	Gross Income Tax: exempt interest income	24 N.J.R. 177(a)		
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)		

Most recent update to Title 18: TRANSMITTAL 1991-8 (supplement November 18, 1991)

TITLE 19—OTHER AGENCIES

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:16	Labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:25-20	ELEC: lobbyists and legislative agents	23 N.J.R. 3077(a)	R.1992 d.32	24 N.J.R. 289(b)
19:31-3.1	Direct Loan Program: minimum interest rate	24 N.J.R. 177(b)		
19:61	Rules of Executive Commission on Ethical Standards	23 N.J.R. 3436(b)		

Most recent update to Title 19: TRANSMITTAL 1991-5 (supplement November 18, 1991)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:40-1.2	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:40-3.1, 3.4, 3.5	Information and filings: administrative filings	————	————	23 N.J.R. 3655(a)
19:41-9.3	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)	R.1992 d.35	24 N.J.R. 298(a)
19:41-9.6	Slot machine demonstration permit; possession and transportation of slot machines	23 N.J.R. 3729(a)		
19:42-5.9, 5.10	Underage gaming violations; affirmative defenses	23 N.J.R. 3084(a)	R.1992 d.12	24 N.J.R. 109(c)

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19:42-10	Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties	23 N.J.R. 3249(a)		
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:44-8.3	Gaming schools: red dog instruction	23 N.J.R. 3731(a)		
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)		
19:45-1.1, 1.14, 1.15, 1.34	Master coin bank and coin vaults	23 N.J.R. 3085(a)		
19:45-1.1A, 1.15, 1.20, 1.25, 1.27, 1.31, 1.33, 1.34, 1.35, 1.39, 1.40, 1.40A, 1.41, 1.42, 1.43, 1.46A	Twenty-four hour gaming	23 N.J.R. 3243(a)		
19:45-1.11	Casino management information systems department	23 N.J.R. 3434(a)		
19:45-1.11, 1.12	Implementation of sic bo	23 N.J.R. 2922(a)	R.1991 d.615	23 N.J.R. 3820(b)
19:45-1.12	Staffing of table games	24 N.J.R. 56(a)		
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19:45-1.25	Casino checks issued to patrons	23 N.J.R. 3087(a)	R.1992 d.13	24 N.J.R. 110(a)
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19:45-1.27, 1.27A	Voluntary suspension of patron's credit privileges	23 N.J.R. 3434(b)		
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)	R.1992 d.58	24 N.J.R. 487(a)
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19:45-1.38	Movement of slot machines and bill changers	23 N.J.R. 2920(a)		
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19:45B-1.40B	Annuity jackpots: administrative correction	————	————	23 N.J.R. 3819(a)
19:45-1.40B	Annuity jackpot payouts	23 N.J.R. 2920(b)	R.1991 d.614	23 N.J.R. 3820(a)
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
19:45-1.42	Slot drop team requirements	24 N.J.R. 57(a)		
19:46-1.1, 1.6, 1.9, 1.16, 1.18, 1.19, 1.20	Twenty-four hour gaming	23 N.J.R. 3243(a)		
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19:46-1.22, 1.23	Slot machine demonstration permit; possession and transportation of slot machines	23 N.J.R. 3729(a)		
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19:47-8.2, 9.1–9.6	Implementation of sic bo	23 N.J.R. 2922(a)	R.1991 d.615	23 N.J.R. 3820(b)
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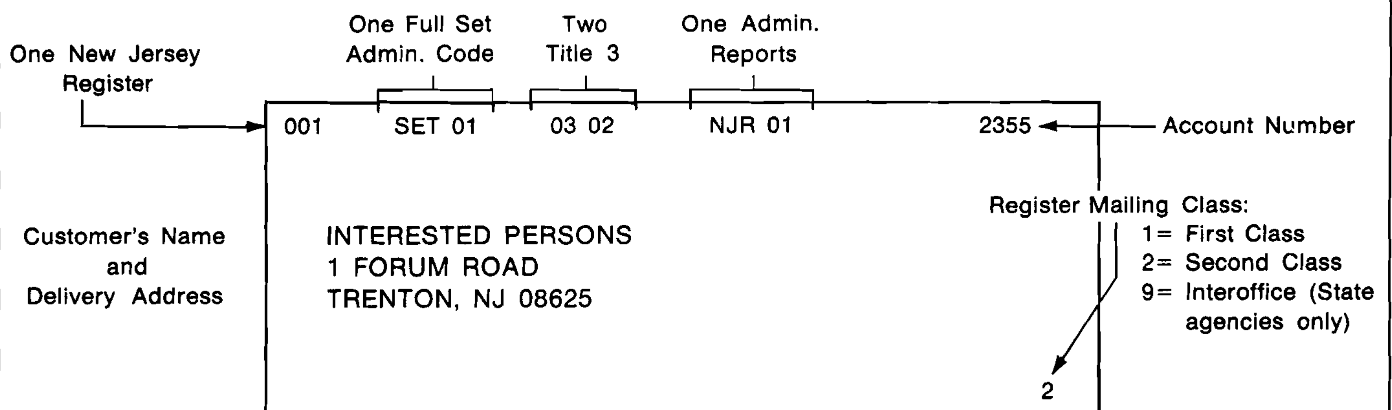

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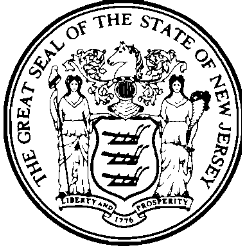

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