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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 15, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT NOVEMBER 19, 1990

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

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

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NEW JERSEY REGISTER

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Condominium, Fee Simple and Cooperative Conversion and Mobile Home Park Retirement Full Plan of Conversion

Proposed Amendment: N.J.A.C. 5:24-1.5

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 2A:18-61.2.
Proposal Number: PRN 1990-621.

Submit comments by January 16, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment sets forth a required format for full plans of conversion that are filed with the Department and provided to tenants. This format includes: no type of a size less than six point, a front cover identifying the developer and the development, a reasonably detailed table of contents, paper no greater than standard legal size and no less than standard letter size that is of good quality and unglazed, and binding with heavy staples.

The section is also amended to include references to fee simple conversions, thereby making the rules consistent with the statute (P.L. 1975, c.311).

Social Impact

The Department has received complaints from judges hearing conversion eviction cases who have found some full plan of conversion documents filed with them to be difficult to read or to keep together. Legibility is also quite important, both for Department personnel who are required to review the documents, and for tenants who must be able to read and understand the information that they contain. The proposed amendment addresses these concerns.

Economic Impact

Most full plans of conversion filed with the Department already meet these requirements. Those sponsors who do not should not be unreasonably burdened, as the requirements relate to document format.

Regulatory Flexibility Analysis

The full plan of conversion requirement is intended to protect tenants by informing them of their rights and options. The plan must also be reviewed by judges and by the Department. Some of those regulated may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is therefore necessary that the plan be presented in a legible, sturdy form, regardless of the form of organization of the building owner or converter. The proposed amendments provide design standards which allow flexibility in areas which may be cost-sensitive, such as the kind of paper used. The Department has provided no differentiation based upon business size in the rule, since the requirements may be fulfilled within a wide range of cost, and can be done in-house, without specialized services.

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

5:24-1.5 Full plan of conversion

(a) The "full plan of conversion [contains] **shall contain** the documents and information required in (d) below and in either (b) or (c) below, as may be appropriate**, and shall be in compliance with the requirements of (e) and (f) below**.

(b) The full plan of condominium **or fee simple** conversion shall contain the following documents and information:

1.-14. (No change.)

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

(e) In order to meet the procedural requirements to evict tenants who choose not to purchase ownership in the condominium, **fee simple development** or cooperative, a three-year notice of intention to initiate a court action for eviction must be given.

1.-4. (No change.)

(f) Copies of the full plan of conversion provided to the Department and to tenants shall conform to the following standards:

1. No printing shall be in a type smaller than six point;

2. There shall be a front cover that shall contain the name and address both of the developer and of the development;

3. There shall be a reasonably detailed table of contents setting forth the subject matter of the various sections, subsections and documents contained in the full plan of conversion and the page on which each begins;

4. The text shall be printed on good quality unglazed white paper that is no smaller than 8½ inches by 11 inches and no larger than 8½ inches by 14 inches. The cover may be of a different color, but all printing on the cover shall be legible; and

5. Each copy shall be bound, at a minimum, with heavy-duty staples.

(b)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Actions Regarding Housing Sponsors

Proposed Amendment: N.J.A.C. 5:80-2.2

Authorized By: The New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Authority: N.J.S.A. 55:14K-5(g).
Proposal Number: PRN 1990-629.

Submit comments by January 16, 1991 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low- and moderate-income families. In connection with this objective, the Agency has adopted a comprehensive set of rules governing the operation of housing projects financed by the Agency. One of these rules, N.J.A.C. 5:80-2.2, under Actions Regarding Housing Sponsors, establishes a procedure for consulting with housing sponsors regarding the formation of Agency rules governing the operation of housing projects. The Agency is now proposing to amend N.J.A.C. 5:80-2.2, as explained below.

When the Agency begins the process of adopting a rule, a proposal is submitted to the Agency's Board of Directors for approval. Upon Board approval, the rule is transferred to the Office of Administrative Law for publication in the New Jersey Register for a 30-day public comment period, pursuant to the Administrative Procedures Act (APA). Upon expiration of the comment period, the rule is presented to the Agency Board for final adoption.

Under current version of N.J.A.C. 5:80-2.2, the Agency is required to provide housing sponsors with a 30-day comment period, on rules governing the operation of housing projects. It is unclear, however, whether or not the rule, as presently written, requires the 30-day notice to run prior to the initial Board meeting. The Agency is proposing to amend the rule to make it clear that the 30-day notice is not required prior to the initial Board meeting. Housing sponsors will be given notice of proposed rules after the initial Board meeting such that the 30-day public comment

period required by the APA and the housing sponsor's comment period will run concurrently.

Social Impact

The proposed amendment only affects housing sponsors. However, the Agency believes that the proposed amendment does not materially or adversely affect sponsors. Housing sponsors are still given individual notice and afforded adequate opportunity to comment prior to any rule becoming effective.

Economic Impact

The only economic impact anticipated would be the time saved by the Agency in adopting rules by having the housing sponsors' comment period running concurrently with the public comment period.

Regulatory Flexibility Analysis

The proposed amendment applies to housing sponsors, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the amendment does not impose any reporting or record keeping requirements upon housing sponsors. As to compliance requirements, there are none, as it is not mandatory for sponsors to comment on proposed rules. The Agency foresees no increase in capital costs or the need for professional services resulting from the adoption of the proposed amendments. Due to the absence of any reporting, recordkeeping or compliance requirements, no differentiation based upon business size is proposed.

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

5:80-2.2 Consultation with housing sponsors

(a) Prior to the adoption, amendment, or repeal of any [regulation] **rule** governing the operation of Agency-financed housing projects, the Agency shall:

1. Submit a proposed form of the rule to be adopted, amended or repealed to the Office of Administrative Law for publication in the New Jersey Register for a 30 day public comment period, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq.; and

[1.] **2.** Give housing sponsors **or their agent(s)** [30 days] written notice [regarding any intended action to either adopt, amend, or repeal a rule or regulation governing the operation of Agency-financed housing projects;] **of the proposed rule to be adopted, amended or repealed. The notice shall be given prior to or simultaneously with the date the proposed rule will be published in the New Jersey Register for public comment.**

[2.] (**b**) The [30 days] notice **to housing sponsors** shall consist of a [clear and concise explanation of the purpose and effect of the intended action;] **copy of the proposed rule to be adopted, amended or repealed and shall indicate the date the 30-day public comment period expires, as published in the New Jersey Register.**

[3.] (**c**) Any housing sponsor wishing to submit data, views, or arguments concerning the [intended action] **proposed rule** may do so in writing [not more than 30 days from the date of the notice of intended action;] **prior to the expiration of the public comment period as established in the New Jersey Register.**

[4.] (**d**) The Agency will consider all **timely** submitted data, views or arguments from housing sponsors before [acting;] **taking final action on the rule to be adopted, amended or repealed.**

[5.] (**e**) The Agency shall respond in writing to each housing sponsor, submitting data, views, or arguments concerning the [intended action] **proposed rule.** [To satisfy this requirement, the Agency may send the housing sponsors the presentation that will be submitted to the Agency Board;]

[6.] (**f**) No [regulation] **rule** governing the operation of a housing project shall be effective unless adopted in substantial compliance with [this policy;] **N.J.A.C. 5:80-2.**

[7.] (**g**) Upon substantial compliance with [this policy] **N.J.A.C. 5:80-2, the Agency may approve** the proposed [regulation shall be submitted to the Agency Board for approval] **rule for final adoption.** Once the [Board] **Agency** approves the **final version of the** [regulation or] rule, it will be submitted to the Office of Administrative Law for publication **and adoption** in the New Jersey Register.

[(b)] (**h**) The Agency also shall give direct notice concerning the adoption, **amendment or repeal** of any rules [and regulations] to any interested party who annually files a request for such information with the Executive Director.

[(c)] (**i**) Whenever feasible, the Agency will circulate to housing sponsors notices of proposed changes in Federal Regulations that would affect the operation of [HMFA] **Agency** financed [developments] **housing projects** on which the Agency intends to rely. The sponsor may submit comments or opinions on any proposed changes to the Executive Director of the [NJHMFA] **Agency** for possible inclusion in the Agency comments. All comments will be forwarded to the office or the individual that the Federal Government designates in the notice.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Investment of Surplus Funds

Reproposed New Rules: N.J.A.C. 5:80-29

Authorized By: New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

Authority: N.J.S.A. 55:14K-5(g).

Proposal Number: PRN 1990-628.

Submit comments by January 16, 1991 to:

Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

Housing sponsors which own Agency-financed housing projects are restricted to a specified return on equity. When a project generates more surplus income than the sponsor, by law, may earn, the money remains in the project's operating accounts and is invested. The so-called "phantom income" which is generated from such investments cannot be distributed to the sponsors and yet, is taxable to them, as present Agency policy does not permit housing sponsors to invest surplus funds in tax free investments.

In response to this problem, the Agency drafted new rules, N.J.A.C. 5:80-29, which grant housing sponsors the flexibility to invest surplus funds in allowable tax free or taxable investments. These rules were published in the New Jersey Register for public comment on July 2, 1990 at 22 N.J.R. 1974(a). Two comments were received. One housing sponsor noted that the tax free investments in the proposed rules listed only State of New Jersey general obligations and/or New Jersey Housing and Mortgage Finance Agency bonds. The sponsor indicated that the major problem with such investments was the availability of the bonds, as well as the fact that they often are available only in $5,000 to $10,000 denominations. Agency staff believes that there are ample amounts of bonds in both small and large denominations, which will enable sponsors to invest in tax free investments. The Agency has also now provided for investment in instrumentalities or agencies of the State of New Jersey, under certain circumstances.

Another housing sponsor raised a question regarding a possible conflict between the type of investments permitted under the proposed new rules and those tax exempt investments permitted by the U.S. Department of Housing and Urban Development ("HUD"). In order to avoid the possibility of conflict in the specific situation raised, as well as any other instance where a HUD program is involved with an Agency financed project, a new section, N.J.A.C. 5:80-29.3, entitled General Applicability, has been added, and differentiation has been provided at N.J.A.C. 5:80-29.2.

In addition, the Agency is proposing revisions which will clarify the permitted investment section. As a result of the revisions made, the Agency is reproposing the new rules for comment.

Social Impact

The proposed new rules will increase the flexibility of housing sponsors to determine the best investment strategy for surplus funds.

Economic Impact

The proposed new rules will enable housing sponsors to choose the form of investment that will benefit the project and minimize the sponsor's tax obligations for that income which exceeds the sponsor's return on equity.

Regulatory Flexibility Analysis

The proposed new rules allow housing sponsors, most of which are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., greater flexibility in determining the form of investment for surplus funds. The only reporting or recordkeeping requirement imposed by the proposed rules is that a housing sponsor obtain Agency approval prior to the investment of surplus funds. It shall be the Agency's responsibility, however, at the housing sponsor's written request, to determine the extent and availability of surplus funds. As to compliance requirements, the proposed rules provide greater flexibility for housing sponsors to determine investment strategies for surplus income. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed rules. As housing sponsors are predominantly small businesses and because of the minimal nature of the compliance requirements in light of the potential benefits to be derived from the proposed rules, no differentiation in the compliance requirement based upon business size is proposed.

Full text of the reproposed new rules 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; 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), with prior Agency approval, may invest surplus funds in the following:

1. Taxable or tax-free, interest-bearing instruments which are Triple A rated. The Triple A instruments are limited to U.S. Treasury Notes, U.S. Treasury Bills, Federal National Mortgage Association obligations, and Government National Mortgage Association obligations; and/or

2. Bank accounts insured by the Federal Deposit Insurance Corporation.

(b) For housing projects whose mortgages are not insured by HUD, housing sponsors, with prior Agency approval, may invest Surplus Funds in the following:

1. Those investments listed in (a) above;

2. State of New Jersey general obligation bonds;

3. New Jersey Housing and Mortgage Finance Agency bonds which shall be rated A or higher; or

4. 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.

(c) The rating designation shall be from either Standard and Poor's or Moody's Investor Services.

(d) The Agency, at the sponsors' written request, shall determine the extent and the availability of Surplus Funds.

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 mortgage is insured, directly or indirectly, by the U.S. Department of Housing and Urban Development (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.

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Proposed Readoption: N.J.A.C. 5:92

Authorized By: The New Jersey Council on Affordable Housing, Charles Griffiths, Chairman.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Proposal Number: PRN 1990-594.

Submit comments by January 16, 1991 to:

Douglas V. Opalski, Executive Director
N.J. Council on Affordable Housing
CN 813
Trenton, NJ 08625-0813

The agency proposal follows:

Summary

The New Jersey Council on Affordable Housing was established pursuant to the Fair Housing Act of 1985. The Council's primary responsibilities include: establishing housing regions within the State; estimating housing need within each region; developing criteria for determining fair share of the regional need; reviewing municipal housing elements and regional contribution agreements; conducting mediation sessions when a party objects to a municipal housing element; and rendering a decision on a municipal petition for substantive certification. As of this writing, the substantive rules, N.J.A.C. 5:92, have been utilized in the review and certification of 107 communities that have created a realistic opportunity for 14,998 low and moderate income units. The rules are also used as the basis for the review of exclusionary zoning cases in Superior Court.

The contents of the chapter proposed for readoption are as follows:

Subchapter 1 contains general provisions, including definitions, housing element, and substantive certification.

Subchapter 2 contains a delineation of the housing regions.

Subchapter 3 contains population and household projections.

Subchapter 4 contains a projection of estimated present and prospective need.

Subchapter 5 contains requirements for the municipal determination of present and prospective need.

Subchapter 6 contains provisions for housing credits.

Subchapter 7 contains standards that alter municipal fair share based on drastic alteration of the established pattern of development.

Subchapter 8 contains municipal adjustment standards.

Subchapter 9 contains requirements for prioritizing sites for affordable housing.

Subchapter 10 contains requirements for the phasing of present and prospective need.

Subchapter 11 contains regional contribution agreement (RCA) requirements.

Subchapter 12 contains controls on affordability, covering new, rental, rehabilitated or converted units for low and moderate income residents.

Subchapter 13 contains the procedure for the granting of a waiver by the Council.

Subchapter 14 contains inclusionary development requirements.

Subchapter 15 contains the requirements for affirmative marketing within inclusionary developments.

Subchapter 16 contains the requirements for accessory apartments.

Subchapter 17 contains the requirements for the rehabilitation of existing units to meet the current need in a municipality.

The appendices include an approach to the development of low and moderate income housing need estimates; base data for the municipal determination of pre-credited need; growth area allocation index totals; Section 8 income limits by county; average costs of replacing major systems in housing rehabilitation; a county review checklist; and an affordable housing agreement placing restrictions on low and moderate income sales units.

The substantive rules of the Council were adopted in 1986 to regulate housing need from 1987 through 1993. In accordance with Executive Order No. 66(1978), the rules will expire on June 16, 1991. The Council is now proposing these rules for readoption, after finding them reasonable, necessary and suitable for the purpose for which they were originally promulgated. However, the Council is currently in the process of a

revision of all of its rules, which will result in further rulemaking during mid-1992 to early 1993. Any comments offered by the public regarding the proposed readoption will be considered in the preparation of this future rulemaking.

Social Impact

The Council's substantive rules form the basis for a planning process designed to accommodate the needs of low and moderate income households. The rules were designed to address the impacts of exclusionary zoning. In 1987, the Council estimated the low and moderate income housing need to be 145,707 units. Plans have been approved by the Council and the court system for approximately one-third of this obligation. The low and moderate income housing obligation is an ongoing obligation imposed by the New Jersey Supreme Court's interpretation of the State constitution. Therefore, there is still a need for the rules.

The provisions of N.J.A.C. 5:92 affect communities interested in developing housing elements. They also affect low and moderate income people, housing advocates, developers, State funding programs, the court system and the public at large. The public's reaction to the rules has varied greatly. Some community leaders believe the rules are too detailed. Some housing advocates have indicated that the rules do not adequately protect the interests of low and moderate income people. The Council, in republishing its rules, hopes to elicit more detailed comments on the effectiveness of this chapter.

Economic Impact

The rules have fostered the development of multi-family housing throughout the State. This development has increased the supply of sales and rental housing for low and moderate income households and households who otherwise could not afford to live in various areas of the State. This development has had a positive impact on these households and the building industry. It has also had a positive impact for employers in that the production of housing has made it possible for potential employees to locate closer to places of work.

Most of the housing produced has resulted from changes in municipal land development ordinances. Recent negative developments in the New Jersey economy have retarded the development of affordable housing. However, as long as the land development ordinances permit the construction of low and moderate income housing, the opportunity to build the housing remains present awaiting more positive economic conditions.

Municipalities are required to develop and file a plan with the Council. While the rules do not require that a professional planner develop the plan, most municipalities either have a planner on staff or as a consultant. Fees for such services vary.

Municipalities may elect to have a developer build the affordable housing, may build it themselves, may transfer up to one-half of their obligation to another municipality (typically, an urban center in need of revitalization), and/or may rehabilitate housing. Local contractors gain economically from the new construction and rehabilitation that results from implementation of certified plans. Developers can build housing and make a profit. Housing is generally built in multifamily zones, and the density bonus offered developers can result in more "market rate" housing offered at a lower price than is generally available. Rental housing in the area is increased, helping those who cannot qualify for a mortgage. The provision of affordable housing increases the labor pool and provides a benefit to employers.

Regulatory Flexibility Analysis

The Substantive Rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:92, for the most part, apply to municipalities directly, although others are affected. Specific provisions apply to developers, some of whom may be considered small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The inclusionary development requirements found in subchapter 14 directly affect developers, as does N.J.A.C. 5:92-8.4, which contains provisions relating to the density bonus. There are no reporting requirements on developers; however, they must build in accordance with the requirements of this chapter. The Council has determined that there should be no differentiation based upon business size in these rules, since to do so may diminish the intended effect of the legislation upon which the rules are based. There are provisions in N.J.A.C. 5:91, the Procedural Rules of the Council, which allow the opportunity for flexibility in the application of the rules to a particular builder's situation in the development of a particular site.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 5:92.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Governor's Teaching Scholars Program

Proposed Readoption with Amendments: N.J.A.C. 6:12

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:4-15 and 18A:71-86.
Proposal Number: PRN 1990-625.

Submit comments by January 16, 1991 to:
Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 6:12, Governor's Teaching Scholars Program, expires on April 2, 1991. These rules were promulgated and are being readopted with amendments to reflect the requirements necessary to administer the Governor's Teaching Scholars Program (GTSP). The GTSP is designed to attract highly qualified students to the field of teaching by providing a financial incentive to high school seniors to pursue teaching careers. The program offers scholarship loans of up to $7,500 per year for four years of college study. High school seniors in New Jersey's public and nonpublic high schools who are interested in becoming teachers are eligible to apply for the loans provided they meet rigorous academic and personal criteria. The entire amount borrowed, including accrued interest, may be redeemed upon successful teaching service in New Jersey public schools. A three member committee, two members from the Department of Education and one member from the Department of Higher Education, reviewed the rules governing the GTSP. Readoption of the rules with some changes in language is proposed. Additional explanation of the proposal follows. In general, the proposed language changes reflect more accurately the role of the Department of Higher Education in the process of loan repayment and clarify the responsibility of the scholar who cannot or who chooses not to redeem his or her loan through teaching. Other language changes reflect an attempt to clarify some ambiguous wording in the rules.

Since its inception the GTSP has provided loans to 100 high school seniors in 1986, 160 students in 1987, 160 students in 1988, 160 students in 1989 and 100 scholars students in 1990. In 1990 the first Governor's Teaching Scholar (GTS) will graduate from college and enter the teaching field in New Jersey. Ninety-three scholars remain in that first group selected. Employment statistics for these scholars will not be available until the fall of 1990.

A detailed summary of the proposed readoption with amendments is presented below.

N.J.A.C. 6:12-1.1 Scope and purpose

No changes are proposed

N.J.A.C. 6:12-1.2 Definitions

For the purposes of these rules "academic progress" in college or university means a minimum grade point average of "B" or 3.0. For the purposes of selection for the program, "academically superior" means in the top fifth of the high school graduating class, with minimum combined SAT scores of 1100.

The definition for "academic year" was changed for purposes of clarification. The word "selected" was changed to "attended" for clarity.

Under "loan redemption schedule" the words "the borrower has taught" were added for clarity.

"College budget" had not previously been defined but is proposed herein.

Under "full-time high school student", the words "at the end" and "current" were added to more accurately describe when the applicant may complete high school.

N.J.A.C. 6:12-1.3 spells out the joint responsibilities of the Department of Education and the Department of Higher Education in administering the GTSP. Stylistic and grammatical changes are proposed to this section.

At N.J.A.C. 6:12-1.3(a)1iv, the proposed wording clarifies the Department of Higher Education's role in maintaining fiscal records for the program.

N.J.A.C. 6:12-1.4 describes the citizenship requirements, the requirement of a strong interest in teaching and the goal of selecting minority students. Clarifying language is being proposed.

N.J.A.C. 6:12-1.5 provides for the selection criteria for the scholars, including class rank and scholastic aptitude scores. The use of American College Test scores was added.

N.J.A.C. 6:12-1.6 provides the instructions for submitting an application to the GTSP. Information has been written to be more specific concerning the submission of SAT scores and the inclusion of American College Test scores.

N.J.A.C. 6:12-1.7 provides the responsibilities for all participants in the program including providing the Commissioner with information concerning planned or actual academic and career change. Providing this information is mandated for all participants.

N.J.A.C. 6:12-1.8(d) and (e) provide information concerning the loan funds. Proposed new language clarifies that the loan accrues interest at the highest rate established by the U.S. Department of Education at the time of disbursement. This text originally appeared in N.J.A.C. 6:12-1.9 without new language and is recodified here for clarity.

N.J.A.C. 6:12-1.9 provides for the terms of service for the redemption of program loans. Proposed new language provides for a request for deferment of loan redemption if a scholar can document that he or she has been unable to obtain a teaching position. This section also provides criteria for deferment of loan redemption which has been Department practice.

N.J.A.C. 6:12-1.10 provides the terms of repayment for the GTS loan. Proposed new language at N.J.A.C. 6:12-1.10(a)3 clarifies the number of years permitted for repayment. This paragraph was recodified. It previously appeared at N.J.A.C. 6:12-1.9, and was moved for purposes of clarity.

N.J.A.C. 6:12-1.11 provides for requests to the Commissioner for deferment or forgiveness of loans. Technical changes are being proposed to this section.

N.J.A.C. 6:12-1.12 provides the terms for people who leave the program. A technical change is proposed to this section.

N.J.A.C. 6:12-1.13 permits the State Board of Education to adjust the loan amounts for new students entering the program. Clarifying language is added.

N.J.A.C. 6:12-1.14 provides a method of appeal for students who believe the eligibility or selection process has been unfairly administered. No change is proposed to this section.

Social Impact

The program was designed to assure a supply of qualified public school teachers for New Jersey. The GTSP offers loans to cover tuition, room, board and fees to well qualified high school seniors. The first group of scholars is graduating in 1990; hence, it is still too early to assess the impact of these teachers on New Jersey's classrooms. However, the quality of scholarship as judged by grades earned, and the diversity of college majors being pursued as well as the quality of institutions being attended, all indicate that within the next few months there will be many well qualified individuals seeking teaching positions in New Jersey. Because the redemption provision of the program encourages employment in urban areas, many of the scholars will seek positions in urban schools. This will have a positive impact on the urban schools because the graduates of the program have good academic records, have studied at a wide variety of institutions of higher education and are highly motivated to teach.

Economic Impact

The rules proposed for readoption with amendments are designed to clarify the basis upon which interest on the loans is determined, thereby assisting students and their parents to understand that the rate of interest on the scholar's loan is determined by the U.S. Department of Education at the time of disbursement of the loan and again at the start of repayment of the loan if the loan is not redeemed through teaching. The rate of interest will be the same as that charged by the federal government for PLUS and other student loans. The loan plus interest, which begins to accrue at the disbursement of the loans, must be paid within 10 years of college graduation.

The proposed readoption of the program does not change the original provision of loans to academically talented high school seniors who wish to pursue a career in teaching in the amount up to $7,500 per year to a maximum of $30,000. The State of New Jersey has appropriated the sum of $3.6 million in fiscal year (FY) 1990 for the 160 members each in the classes of 1991, 1992, and 1993 and appropriated $850,000 in FY 91 to provide loans for 100 students in the class of 1994 as well as program administration money.

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 as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact solely upon New Jersey school districts, on schools operated by the New Jersey Department of Education and individuals participating in the GTSP Program.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:12.

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

6:12-1.2 Definitions

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

"Academic progress" means attaining a minimum academic average of "B" **or 3.0 grade point average** in a full-time college or university program leading to graduation in a four year time period.

"Academic year" means the period between the time school opens [in any school or under any district board of education] after the general summer vacation until the next succeeding summer vacation.

"Academically superior" means that the student has reached a high school class rank in the upper one fifth of the student's graduating class at the end of the junior year**, and has a minimum combined SAT score of 1100.**

. . .

"Approved program" means a course of study either in teacher training or in a specialized field of study, indicated as an accepted curriculum program by the college or university [selected] **attended.**

"College budget" means the costs of tuition, room and board, fees, books, travel and personal expenses as provided by the college.

. . .

"Full-time high school student" means one who will graduate with the senior class [in June] **at the end** of the **current** academic year.

. . .

"Loan redemption schedule" means the plan whereby redemption (forgiveness) of the loan is based upon number of years **the borrower has** taught in a public school in New Jersey and the schedule shall take into account the location of teaching assignment.

"Minority" means any United States citizen [or permanent resident] who is a member of a racial-ethnic group that has been historically disadvantaged in obtaining access to equal educational opportunities as designated by the United States Department of Education, Office of Civil Rights, including Blacks, Hispanics, Native Americans, Asians and Pacific Islanders.

. . .

6:12-1.3 Administration of the program

(a) The Governor's Teaching Scholars Program (GTSP) shall be jointly administered by the Department of Education and the Higher Education Assistance Authority under the auspices of the Department of Higher Education. Their respective responsibilities shall be as follows:

1. The New Jersey Department of Education shall serve as the lender, guarantor and selector of the participants of this loan program and is required to:

i.-ii. (No change.)

iii. Convene a committee of at least 12 members appointed by the Commissioner of Education to review and recommend nominations to the GTSP. The [commissioner] **Commissioner** shall fill any vacancy on the committee in a timely manner. The committee shall be composed of public and private school educators, school administrators, a representative of the Department of Higher Education and a representative from the Department of Education;

iv.-vi. (No change.)

vii. [Provide for rendering] **Render** assistance to college graduates in the GTSP in order that they may secure a teaching position in the State of New Jersey.

2. The New Jersey Department of Higher Education shall serve as the servicer of the loan program and is required to:

i.-iii. (No change.)

iv. Assume responsibility [if the loan does not enter redemption by collection and/or pursuit of repayment of the loan] **for fiscal tracking and pursuit of repayment in the event that the loan recipient does not enter redemption or ceases to be eligible for redemption.**

6:12-1.4 Program eligibility

(a) The GTSP will be open to all high school senior students from public and non-public high schools who are citizens of the United States **or its territories** and legal residents of the State of New Jersey who plan to attend an accredited college or university in the United States.

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

6:12-1.5 Academic requirements

(a) To qualify for academic eligibility under the GTSP, an applicant must:

1. (No change.)

2. Attain a combined Scholastic Aptitude Test test score of at least 1100 **or an American College Test score of 27**;

3. (No change.)

(b) (No change.)

6:12-1.6 Loan application and selection process

(a) All high school senior students who are New Jersey residents and citizens of the United States **or its territories** having attained the level of academic achievement as previously set forth in N.J.A.C. 6:12-1.5 are considered eligible for the loan program. The applicant must submit in packet form:

1. An official transcript complete with grades from the first marking period of the applicant's senior academic year [and], class rank at the end of the junior [academic] year **and Scholastic Aptitude Test scores or American College Test scores. Preliminary Scholastic Aptitude Test Scores are not acceptable.** If **the** applicant's high school regulations require that this information be submitted directly by high school personnel, **the** applicant must include a copy of a letter to the high school principal as evidence that the request has been made;

[2. S.A.T. scores (P.S.A.T. and A.C.T. scores are not acceptable);]

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

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

(d) The [commissioner] **Commissioner** shall select a minimum of 100 high school graduates eligible to receive the GTSP loans from the pool of students nominated by the selection committee as meeting the criteria for the GTSP. However, if the appropriation for a fiscal year changes, the number of nominees selected will reflect that change.

(e) The [commissioner] **Commissioner** shall notify nominees of the selections on or before April 15 each year that the program continues.

6:12-1.7 Program participant responsibilities

(a) Students selected for GTSP participation shall:

1. (No change.)

2. Maintain [satisfactory] academic progress in the college or university selected;

3.-4. (No change.)

5. Provide a letter to the [commissioner] **Commissioner** from the college or university indicating the cost of the schooling, known as the "college budget," each year that the student participates in the program;

6. Submit an official college or university transcript to the [commissioner] **Commissioner** for review at the conclusion of each school year that the loan is in effect;

7. Submit an annual letter of intent to the [commissioner] **Commissioner** to continue as a participant in the program;

8. (No change.)

9. Report immediately in writing to the [commissioner] **Commissioner** any **planned or actual** changes in college attendance or career intentions;

10. Provide the Department of Education verification of registration for an academic term in an undergraduate degree program and appropriate transcripts when required[.]; **and**

11. Provide updated information to the Commissioner on the progress of their individual careers.

(b) Program participants will be encouraged to[: 1. Attend] **attend** the yearly conference with recent nominees[;].

[2. Provide updated information to the commissioner on the progress of their individual careers.]

6:12-1.8 Source of loan funds

(a) The eligible student will be considered a Governor's Teaching Scholar if selected by the [commissioner] **Commissioner** from the pool of nominees. The amount of the loan will depend on the tuition, room and board and necessary fees and expenses, known as the "college budget." Verification of this [expense] **budget** is provided in N.J.A.C. 6:12-1.7(a)5.

(b) (No change.)

(c) The loan may not exceed the student's costs as determined by the educational institution which the student has selected, less the total value of other scholarships and grants received by the participant for any given academic year.

[(d) Interest will accrue on the loan from the time the first payment is made until the program is complete; however, all interest is redeemable as set forth in N.J.A.C. 6:12-1.9.]

(d) Loans shall accrue interest at the highest established rate by the U.S. Department of Education at the time of disbursement, and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. Substitute teaching is not permitted as approved redemption service.

(e) (No change.)

[(f) Interest will accrue during the summer months while the borrower is technically a full-time student.]

(f) Total cancellation of loan indebtedness will not exceed the maximum of $30,000 plus accrued interest per student. Any other loans obtained by the borrower will not be eligible for loan redemption.

6:12-1.9 Redemption

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

[(d) Loans shall accrue interest at the time of disbursement and during the time a participant is enrolled as a full-time student in the program; however, the combination of principal and interest can be redeemed after graduation for full-time teaching service in the State of New Jersey. Interest will not accrue while the loan recipient is engaged in the approved redemption service. (Substitute teaching is not permitted as approved redemption service.)]

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

[(g) If the participant is deemed ineligible for loan redemption or chooses not to have the loans redeemed, the unpaid principal balance plus accruing interest will be assigned a rate determined by the State Board of Education consistent with rates assigned by the Assistance Authority of the Department of Higher Education, as with the PLUS Program, or three and one-half percent above the rate of 91 day Treasury bills, at the time the loan enters repayment.

(h) If the participant is unable to secure a position as teacher, requests for deferment may be made as provided in N.J.A.C. 6:12-1.11(b).]

(f) If a participant is unable to secure a position in New Jersey's public schools after demonstrably showing that he or she has applied for and been interviewed for positions, the participant may request a one year deferment from loan redemption. This request will be referred to a three member panel appointed by the Commissioner. The panel will make its recommendation for deferment to the Commissioner who shall issue a final determination to the participant and inform the Department of Higher Education of the decision.

(g) Temporary deferments of loan repayment/redemption may be granted by the Commissioner of Education upon receipt of written requests from GTSP candidates for the following reasons. The candidate is:

1. Engaging in a full-time graduate study program in the field of education, or the recipient's teaching field, at an accredited institution of higher education;

2. Serving, not in excess of three years, as a member of the armed services of the United States;

3. Temporarily disabled, as established by sworn affidavit of a qualified physician. The Department of Education reserves the right to require the requesting candidate to submit to a medical examination by a physician(s) selected by the Department of Education;

4. Unable to secure employment for a period not to exceed 12 months by reasons of the care required by a spouse who is disabled;

5. Seeking and unable to secure fulltime employment in a public elementary or secondary school not to exceed 12 months as per (f) above; or

6. On maternity leave for a period not to exceed 12 months for each leave.

6:12-1.10 Terms of repayment

(a) Repayment of loans under the GTSP shall be governed under the following conditions:

1. (No change.)

2. Interest will be waived [for a three-month period] from the month of graduation until employment [in September of the same year. The grace period will extend to those who present a bona fide contract of employment] **begins the following September**. Interest will **begin to** accrue again on or as close to September 16 as possible if a copy of the **teaching** contract has not been presented to the [commissioner] **Commissioner**. The interest period will be deferred while the borrower is employed as a full-time teacher in the New Jersey public school system and is therefore participating in the redemption plan. [(]Substitute teaching is not permitted as approved redemption service[.)];

3. If the participant is deemed ineligible for loan redemption or chooses not to have the loans redeemed, he or she will pay back the entire capitalized principal balance, plus accruing interest at the rate determined by the U.S. Department of Education in equal monthly installments over a repayment period that lasts no more than 10 years.

6:12-1.11 Special loan forgiveness

(a) (No change.)

(b) Requests for deferment or forgiveness of loans must be made by the borrower to the [commissioner] **Commissioner**. Such requests shall be referred for an initial recommendation to a three member panel appointed by the [commissioner] **Commissioner**. Following receipt of such recommendation, the [commissioner] **Commissioner** shall issue a final determination and inform the Department of Higher Education of the decision.

6:12-1.12 Termination and forgiveness of service

(a) Borrowers who terminate their participation in the program or who are not reemployed as teachers while in the redemption phase will notify the [commissioner] **Commissioner** by certified mail within 15 days of the termination.

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

6:12-1.13 Review and adjustments

The State Board of Education upon the recommendation of the [commissioner] **Commissioner** may make periodic adjustments to the [tuition] **loan** amount **for students entering the program**.

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL CLAIMS ADMINISTRATION

Continued Suspension of Claims Against Sanitary Landfill Facility Contingency Fund

Proposed Amendment: N.J.A.C. 7:1I-3.3

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E-100 et seq., particularly N.J.S.A. 13:1E-106 and 13:1E-114.

DEP Docket Number: 040-90-11.

Proposal Number: PRN 1990-623.

Submit comments by January 16, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

In 1988, the Department of Environmental Protection (Department) adopted new rules governing the Sanitary Landfill Facility Contingency Fund, N.J.A.C. 7:1I (see 20 N.J.R. 443(a), 20 N.J.R. 1732(b)). These rules established new procedures for the preparation, submission and review of claims for damages proximately resulting from the operations or closure of a sanitary landfill.

N.J.A.C. 7:1I-3.3 provides criteria for claims based on diminution in the value of real property. As promulgated in 1988, subsection (c) provided for claimants who filed claims before March 7, 1988 to inform the Department of their intent to pursue, withdraw or suspend the claims. Suspension of claims under subsection (c) was to expire on December 1, 1990. Upon expiration, suspended claims were to be reactivated automatically, unless a claimant had previously withdrawn his claim.

The Department has examined the circumstances affecting the suspended claims, and found that it is appropriate under these circumstances to continue the suspension, and to apply the continuation of the suspension to claims which would have been reinstated automatically on December 1, 1990. The Department originally had found that the suspension was necessary to allow time for completion of remediation and of pending legal actions against allegedly responsible parties; orderly processing of claims is difficult while such activities are in progress. This reasoning still applies to many suspended claims. Accordingly, the proposed amendment extends the suspension of a claim until the Department notifies the claimant that the construction phase of the remediation of the landfill which is the cause of the claim has been completed to the Department's satisfaction. In addition, the proposed amendment authorizes the Department to reactivate a claim upon the conclusion of litigation undertaken by the claimant against a party allegedly responsible for the claimed damages. The Department intends that this amendment will preserve the suspension of claims which were suspended as of December 1, 1990, and that those claims will be deemed not to have been reactivated in the interim period beginning December 1, 1990 and ending as of the effective date of the proposed amendment.

Social Impact

The Department expects the proposed amendment to have a positive social impact. Since claims for real property value diminution as a result of the operation or closure of a sanitary landfill are compensable upon sale of the property, claimants with suspended claims have expressed their concern that the imminent reactivation of their claims could force them to sell their homes promptly in order to preserve their claims. Accordingly, the proposed amendments are intended to forestall such disruptions, and allow claimants flexibility in determining when it is appropriate to reactivate their claims. Therefore, the Department believes that it is necessary, reasonable and proper to continue the suspension, to continue to serve the purposes for which the claims were originally suspended.

The proposed amendment will link the expiration of the suspension to completion of the construction phase of landfill remediation. At that time, the Department expects that claims can be processed with less

disruption of the lives of claimants. The same reasoning applies to claims reactivated by the Department upon the conclusion of litigation between claimants and allegedly responsible parties.

Economic Impact

The proposed amendment will have a positive economic effect upon claimants and their communities. The claimants will be given additional time to consider all relevant factors, including potential economic benefits and detriments of reactivation, before deciding to reactivate or withdraw claims.

Environmental Impact

Since the proposed amendment has no effect other than to continue the existing suspension of certain pending property value diminution claims, the Department believes that the proposed amendment will have no environmental impact.

Regulatory Flexibility Statement

The proposed amendment preserves the suspended status of claims which were previously suspended, without the need for any action by a claimant. Accordingly, the proposed amendment does not impose any reporting, recordkeeping or other requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and a regulatory flexibility analysis is not required.

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

7:11-3.3 Criteria for claims based on real property value diminution damage

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

(c) The Department shall notify each claimant who filed a claim before March 7, 1988 of the requirements of this chapter. Such claimants shall then have 60 days from receipt of such notice to inform the Department, by certified mail return receipt requested, of their intent to pursue their claim for property value diminution pursuant to this chapter, immediately[,] request that the claim be suspended [for a period of up to two years], or to withdraw that claim for those damages. If a claimant requests suspension of their claim, the claimant may at any time during the period of suspension, request reactivation of the claim. At the end of the [two year] suspension period **provided in (d) below**, the claim will be automatically reactivated, unless the claimant has previously withdrawn the claim. Priority status of reactivated claims will be established based on the date of receipt of the reactivation request.

(d) All claims suspended pursuant to (c) above will remain in suspension until one of the following occurs:

i. The Department receives written notice from the claimant, stating that the claimant desires to reinstate the claim; or

ii. The claimant receives written notice from the Department, stating that the construction phase of the landfill remediation has been completed to the satisfaction of the Department.

(e) Notices provided in (d)i and ii above shall be sent by certified mail, return receipt requested, or by other means which provide a receipt for delivery.

(f) The Department may, in its discretion, reactivate a claim upon the conclusion of litigation between the claimant and parties allegedly responsible for the damages which are the subject of the claim, which litigation concerns such damages. For the purpose of this subsection (f), litigation shall be deemed to have concluded upon the occurrence of any of the following: a complete settlement of the litigation; or the entry of a judgment or order completely resolving the litigation, followed by the expiration of time allotted to appeal or otherwise challenge such judgment or order.

(g) The Department may, in its discretion, extend the suspension period set forth in (d) above, or again suspend claims reactivated automatically under (d) above or by the Department's action under (f) above. The Department shall notify all affected claimants of such an extension or re-suspension, either by certified mail, return receipt requested, or by notice published in the New Jersey Register.

Recodify existing (d)-(f) as **(h)-(j)** (No change in text.)

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Schedule of Rates, Charges and Debt Service Assessments For the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System

Proposed Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9

Authorized By: Judith A. Yaskin, Chairperson, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 043-90-11.

Proposal Number: PRN 1990-635.

In accordance with N.J.A.C. 7:11-2.11(a)4, **a pre-public hearing meeting** concerning this proposal will be held on:

January 8, 1991 at 10:00 A.M.
New Jersey Water Supply Authority Administration Building
Route 31, Clinton, New Jersey 08809

A **public hearing** concerning this proposal will be held on:

February 7, 1991 at 10:00 A.M. to close of comments
Rutgers University Labor Education Center, Auditorium
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

Submit written comments on or before March 19, 1991 to:

Helene P. Chudzik, Esq., Deputy Attorney General
Division of Law
Department of Law and Public Safety
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625
and
Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority and the Office of Administrative Law at the addresses given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 301
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1991. It is also proposing to adjust its existing annual debt service assessments on outstanding loans beginning July 1, 1991. In addition, the Authority is proposing certain deletions to the text of N.J.A.C. 7:11-2.2(b) and 2.9(a) to reflect that the Manasquan Reservoir Water Supply System began supplying water on July 1, 1990.

The General Rate Schedule for Operations and Maintenance in N.J.A.C. 7:11-2.2 was last adjusted effective July 1, 1990 (decreased from $102.78 to $96.45 per million gallons, (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1992 now indicate that an operations and maintenance rate component of $114.61 will be needed starting July 1, 1991. Most of the increased operations and maintenance expenses are due to the increased cost of employee salary requirements;

employee benefits costs; energy costs; special and professional services costs; and insurance costs. In addition, the operations and maintenance expense component sales base has decreased from 152.362 million gallons per day (mgd) in fiscal year 1991 to 152.296 mgd for Fiscal Year 1992.

The debt service assessment rate for the 1981 water supply bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1990 (fiscal year 1991) based on a sales base of 152.292 mg. The Authority anticipates that the applicable sales base for fiscal year 1992 will be 152.226 mgd. Application of this new sales base coupled with a slight reduction in the required debt service payment results in a decrease (.05) in the per mg rate component from $33.28 to $33.23 per mg for the 1981 bonds (N.J.A.C. 7:11-2.3(c)).

The debt service assessment rate for the 1988 water system revenue bonds issued to finance the Authority's current capital improvement program was based on a sales base of 152.292 mgd. The Authority anticipates that the applicable sales base for fiscal year 1992 will be 152.226 mgd. Application of this new sales base results in an increase (.02) in the per mg rate component from $44.97 to $44.99 per mg for the fiscal year starting July 1, 1991 (see N.J.A.C. 7:11-2.3(d)). This Debt Service Assessment is also projected to increase to $55.07 in fiscal year 1993 and to $56.91 in fiscal years 1994 and 1995 (see N.J.A.C. 7:11-2.3(d)).

Final action on the rate adjustment is scheduled for the April 1, 1991 meeting of the Authority.

Social Impact

The proposed amendments will have minimum social impact. The proposed amendments represent the Authority's efforts to ensure that rates for raw water withdrawn, diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority.

The 11-billion-gallon capacity Spruce Run Reservoir and the 55-billion-gallon capacity Round Valley Reservoir in Hunterdon County in conjunction with the sixty-mile long Delaware and Raritan Canal in Hunterdon, Mercer, Somerset, and Middlesex Counties provide both active and passive recreational opportunities to the public in addition to a basic raw water supply for approximately 1,200,000 individuals living in central New Jersey.

Economic Impact

The proposed adjustments to the rate schedule will result in a net increase in the total charge for the raw water supplied from the System ranging from $18.13 in fiscal year 1992 to $30.05 in fiscal year 1994 per mg. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to $1.81 in fiscal year 1992 increasing to $3.01 in fiscal year 1994 provided these increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive environmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoir and Delaware and Raritan Canal.

The reservoirs and canal also provide habitat for many species of waterfowl and wildlife in an increasingly urbanized region of the State.

The Authority's Raritan Base System is capable of supplying a dependable water supply of 225 mg per day throughout a re-occurrence of the worst drought of record while still maintaining adequate river flows through release of stored waters to support the ecological systems and wildlife which are dependent upon adequate stream flows in the River Basin.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments would not impose reporting, recordkeeping or other compliance requirements on small businesses because the amendments affect only the rate charged to users for water purchased from the Authority. The water companies which contract to purchase water from the Authority and which are impacted by these amendments do not qualify as "small businesses" pursuant to N.J.S.A. 52:14B-16 et seq.

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

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including, but not limited to, all of the following:

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of [152.362] **152.296** million gallons per day has been used in setting the rate listed at (b) below.

(b) General Rate Schedule for Operations and Maintenance:

[1. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	$104.26

2. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:]

Allocation	Rate/Million Gallons
Million Gallons per Day (MGD)	[$96.45]**$114.61**

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of 151.801 million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

Period	Allocation	Rate/Million Gallon
[7/1/90] **7/1/91** to 6/30/2002	Million Gallons per Day (MGD)	$13.90

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following debt service assessment rate, based on a sales base of [152.292] **152.226** million gallons per day, in addition to that included in (b) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
[7/1/90] **7/1/91** to 10/30/2006	Million Gallons per Day (MGD)	[$33.28] **$33.23**

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of [152.292] **152.226** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

Period	Allocation	Rate/Million Gallon
[7/1/90] **7/1/91** to 6/30/92	Million Gallons per Day (MGD)	[$44.97] **$44.99**
7/1/92 to 6/30/93	Million Gallons per Day (MGD)	[$55.04] **$55.07**
7/1/93 to [6/30/94] **6/30/95**	Million Gallons per Day (MGD)	[$56.88] **$56.91**

7:11-2.9 Standby Charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly Standby Charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

[i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month $104.26 plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:]

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month [$96.45] **$114.61** plus annual debt service assessment rate for 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

2. For Standby Contracts within the Raritan River Basin:

[i. If the Manasquan Reservoir System is not supplying water to purchasers by July 1, 1990:

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month $104.26 plus annual debt service assessment rate for the 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

ii. If the Manasquan Reservoir System is supplying water to purchasers by July 1, 1990:]

Maximum withdraw capacity Each 1 MGD (700 GPM) or fraction thereof.	Charge per month [$96.45] **$114.61** plus annual debt service assessment rate for 1969 Water Conservation Bonds, 1981 Water Supply Bonds and 1988 Water System Revenue Bonds.

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

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 and 4.9

Authorized By: Judith A. Yaskin, Chairperson, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 042-90-11.

Proposal Number: PRN 1990-636.

In accordance with N.J.A.C. 7:11-4.13(a)4, **a pre-public hearing meeting** concerning this proposal will be held on:

January 15, 1991 at 10:00 A.M.
New Jersey Water Supply Authority
Manasquan Reservoir System Administration Building
Hospital Road, Wall, New Jersey 07719

A **public hearing** concerning this proposal will be held on:

February 13, 1991 at 10:00 A.M. to close of comments
Wall Township Municipal Complex, Meeting Room
2700 Allaire Road
Wall, New Jersey 07719

Submit written comments on or before March 25, 1991 to:

Helene P. Chudzik, Esq., Deputy Attorney General
Division of Law
Department of Law and Public Safety
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

and

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority and the Office of Administrative Law at the addresses given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.
Executive Director
New Jersey Water Supply Authority
Post Office Box 5196
Clinton, New Jersey 08809

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 301
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Manasquan Reservoir Water Supply System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1991. It is also proposing to adjust its existing annual debt service assessment on System loans beginning July 1, 1991.

The initial Operations and Maintenance Expense Component in N.J.A.C. 7:11-4.3 was established effective July 1, 1990 ($345.09 per million gallons, (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1992 indicate that an operations and maintenance rate component of $314.75 will be needed starting July 1, 1991. The projected operations and maintenance expenses for employee salary requirements; employee benefits costs; energy costs; and insurance costs have increased for FY'92. However, the increases in these expenses are more than offset due to a decrease in the projected electrical costs for pumping. In addition, the operations and maintenance expense component sales base has increased from 14.905 million gallons per day (mgd) in fiscal year 1991 to 16.097 mgd for fiscal year 1992.

The debt service assessment in N.J.A.C. 7:11-4.4 will decrease from $687.66 to $686.11 per million gallons on July 1, 1991, from $720.52 to $718.78 per million gallons on February 1, 1992, from $753.39 to $751.67 per million gallons on February 1, 1993 and from $786.29 to $784.35 per million gallons on February 1, 1994 in accordance with the debt service coverage schedule specified in the project financing program.

The calculation of the operations and maintenance component as well as the debt service assessments is based upon a contractual sales base of 16.097 million gallons per day as of July 1, 1991.

Final action on the rate adjustment is scheduled for the April 1, 1991 meeting of the Authority.

Social Impact

The proposed amendments will have a positive social impact and effect. The proposed amendments represent the New Jersey Water Supply Authority's efforts to ensure that rates for the untreated water purchased from the Manasquan Reservoir System are equitably assessed to all purchasers and sufficient to provide the revenues required by the Authority.

This four billion gallon capacity reservoir provides a needed water supply to keep pace with the continuing growth in Monmouth County while reducing the dependence of water purveyors on the stressed ground water resources of the region.

Economic Impact

The proposed rate adjustments will result in a total charge for the uninterruptible untreated water supply from the Manasquan Reservoir System of $1,000.86 per million gallons ($314.75 for operation and maintenance plus $686.11 for debt service) starting July 1, 1991 and $1,033.53 per million gallons effective February 1, 1992 ($314.75 for operation and maintenance plus $718.78 for debt service).

The proposed adjustments to the rate schedule will result in a net increase of $.83 per million gallons in the total charge for the raw water supplied from the System in fiscal year 1992. It is estimated that the annual impact of the proposed wholesale water rate adjustment on the typical household will amount to $.08 provided these increased costs are passed through by the wholesale water customers without further fees.

Environmental Impact

The adequate financing of upkeep and operation of the Manasquan Reservoir System, which is provided by the proposed amendments, will result in a positive environmental impact. Sixty percent of the existing water supply in Monmouth County was derived from stressed ground water resources. The Manasquan Reservoir System relieves the use of a portion of the existing ground water supply and meets the needs of a developing area. This new water supply system will have a very important and positive environmental impact since its operation reduces the stress on the valuable ground water resources of the region by providing an alternate surface water supply. By reducing the pumping of ground water, salt water intrusion will be limited and present ground water levels will not be further reduced.

The 30 million gallon per day water supply which the system can provide will help to ameliorate the urgent need to protect the region's threatened ground water resources from further depletion. In addition, the 740 acre Manasquan Reservoir provides for the protection of waterfowl and wildlife in the region through several protected wetland sites for the rearing of waterfowl and wildlife.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses, because the amendments affect only municipalities and major water purveyors, all of which fail to qualify as small businesses as defined in N.J.S.A. 52:14B-16 et seq.

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

7:11-4.3 Operations and Maintenance Expense Component

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

(c) Operations and Maintenance Expense Component:

Effective Date	Rate/Million Gallons (based upon a [14.905] **16.097** mg per day sales base)
July 1, [1990] **1991**	[$345.09] **$314.75**

7:11-4.4 Debt Service Cost Component

(a) (No change.)

(b) The following Debt Service rates based on a sales base of [14.905] **16.097** million gallons per day, [will be applied] **apply** to all [persons] **water purchasers** who [enter] **entered** into a water purchase contract before **July 1, 1990,** the date upon which the Authority [commences] **commenced** operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and [begins] **began** to make uninterruptible service available to the purchasers ("System Operation Date").

Period	Rate/Million Gallons
[7/1/90 to 1/31/91]	[$654.91]
[2/1/91] **7/1/91** to 1/31/92 (Coverage 105 percent)	[$687.66] **$686.11**
2/1/92 to 1/31/93 (Coverage 110 percent)	[$720.52] **$718.78**
2/1/93 to 1/31/94 (Coverage 115 percent)	[$753.39] **$751.61**
2/1/94 (Coverage 120 percent)	[$786.29] **$784.35**

(c) A delayed water purchase surcharge will be assessed to all [persons] **water purchasers** who enter into a water purchase contract for an uninterruptible service commencing subsequent to the system operation date (delayed water purchase contract). This includes a purchaser under an initial water purchase contract which provides for an increase in the amount of uninterruptible service effective subsequent to the system operation date.

(d) (No change.)

7:11-4.9 Standby charge

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4.

Maximum withdrawal capacity	Charge per month
Each 1 MGD (700) GPM or fraction thereof.	[$345.09] **$314.75** plus annual debt service assessment rate established in N.J.A.C. 7:11-4.4.

(a)

DIVISION OF WATER RESOURCES

New Jersey Pollutant Discharge Elimination System Fee Schedule for NJPDES Permittees and Applicants

Proposed Amendment: N.J.A.C. 7:14A-1.8

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 58:10A-1 et seq., specifically 58:10A-9.

DEP Docket Number: 041-90-11.

Proposal Number: PRN 1990-637.

A **public hearing** concerning this proposal will be held on:
January 24, 1991 at 10:00 A.M.
New Jersey Records Storage Center
2300 Stuyvesant Avenue
Trenton, New Jersey

Submit written comments by January 28, 1991 to:
Samuel Wolfe, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("Department") is responsible for administering a program that regulates the discharge of pollutants to the surface and ground waters of the State. The Department's authority is derived from the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("State Act"), pursuant to which New Jersey qualified for and has primary enforcement responsibility under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) for the administration of the New Jersey Pollutant Discharge Elimination System ("NJPDES") permitting program. The NJPDES rules are set forth at N.J.A.C. 7:14A. Pursuant to Section 9 of the State Act, the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." The Department assesses fees to provide funds for the review of NJPDES permit applications, the development of specific permit terms and conditions (including wasteload allocations, water quality based effluent limitations, stream monitoring and computer modelling), conducting compliance and 24-hour sampling inspections, ground water compliance sampling, bioassay testing, supervising the installation of ground water monitoring wells, evaluating and approving ground water remediation alternatives, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program. N.J.S.A. 58:10A-10 provides the Department with the authority to seek civil and administrative penalties for failure to pay assessed NJPDES permit fees.

The Department is proposing to amend N.J.A.C. 7:14A-1.8 based on comments received during the pre-proposal comment period (see 22 N.J.R. 1652(a)). In general, the proposed changes will provide for a more equitable distribution of the cost of managing the NJPDES program. In N.J.A.C. 7:14A-1.8(a)9, the annual fee for all dischargers is calculated through the application of the following equation: the environmental impact of the discharge to surface water or ground water multiplied by the rate established by the Department for the category of discharge plus a base minimum fee.

In N.J.A.C. 7:14A-1.8(a)9, the Department has redefined, in simple language, the term "rate" used in the fee calculation formula. Rate, as now defined, is the cost for each unit of environmental impact. It is determined by dividing the total budget less the amount paid as minimum fees by the total environmental impact for the category. This is much simpler than the complex formula in the current rule.

In N.J.A.C. 7:14A-1.8(a)10, the Department has eliminated all references to a square root function in the environmental impact calculations. A maximum permit fee has been added to prevent any one permittee from paying a greatly disproportionate share of the NJPDES program costs. The maximum fee will represent 10 percent of the category budget. Establishing a maximum fee will continue to distribute the program costs based on environmental impact. The maximum fee performs a similar function as the prior cube root and square root in the fee assessment process. The few facilities that have reached the 10 percent maximum contribute over 60 percent of the environmental impact. To select a lower percentage would significantly increase costs paid by the facilities which discharge less than 40 percent of the environmental impact. Selecting a percentage greater than 10 percent would effectively eliminate the distribution of program costs based on environmental impact. Therefore, using the maximum fee preserves the integrity of the environmental impact calculations.

In N.J.A.C. 7:14A-1.8(c), procedures for calculating the total pollutant load when pollutants have been reported as below the minimum detection limit has been added. The more recent permits issued by the Department include discharge limitations for total volatile organics analyzed through a process which identifies both detected and undetected constituents. The Department has determined that volatile organic compounds, acid extractable organic compounds, base-neutral organic compounds, pesticides, and PCB's analyzed for but not detected through these types of tests should not affect a permittee's fee. These pollutants will not be counted into the total pollutant load if never detected in any samples during the monitoring period. For all other pollutants and where one or more samples reported concentrations above the minimum detection limit, the Department will calculate the total pollutant load using one-half the minimum detectable concentration. Where applicable, net loads which are reported as a negative value will be considered as a zero load. The removal of one pollutant such as total suspended solids (TSS) does not counteract the discharge of another pollutant. Effectively, this loophole is being eliminated.

The proposed amendments delete the date reference for the New Jersey Water Quality Inventory Report at N.J.A.C. 7:14A-1.8(c)1iv. The New Jersey Water Quality Inventory Report to be used will be specified in the Annual Fee Report. This will allow the Department to use the most recent available report without the need to revise the rule.

In N.J.A.C. 7:14A-1.8(d), the permeability rating for those permittees conducting corrective action is based upon the material which is contaminated. The Department has determined that a permeability rating of 10 will be applied to those facilities conducting ground water remediation which can demonstrate through piezometers that ground water flow has been reversed and no contamination is leaving the site. The rating of 10 represents the Department's evaluation that the permittee's remedial activity is preventing further migration of contamination. The rating of 10 is the lowest rating assigned at N.J.A.C. 7:14A-1.8(d)iii(4).

In N.J.A.C. 7:14A-1.8(d)2, the Department has also amended the procedure for calculating the total weighted concentration. The revised procedure is similar to the new procedure described above and used to calculate the total weighted load for surface water discharges. Volatile organic compounds, acid extractable organic compounds, base-neutral organic compounds, pesticides, and PCB's will not be counted into the total weighted concentration if never detected in any samples during the monitoring period. As stated above, if a limited pollutant is detected one or more times during the monitoring period, one-half the minimum detectable concentration will be used to calculate the total weighted concentration.

The Department is also proposing to completely revamp the environmental impact calculation for Significant Industrial Users (SIUs). The proposed environmental impact will be based upon the total weighted load of all limited pollutants. Chemical Oxygen Demand (COD) was the only pollutant used, along with a risk which was based on the type of wastewater discharged, and a pass-thru rate at the Publicly Owned Treatment Works (POTW). Risk factors have been developed by the Department and represent the degree of risk the pollutant poses to the receiving POTW, the POTW's sludge, the receiving stream the POTW discharges to, and the air. These risk factors are presented in Table I of the rule as the third category of risks, "Indirect Dischargers". The POTW pass-thru factor has been eliminated as a result of incorporating pollutant specific risk factors which evaluate the impact of each pollutant on the air, water and sludge. For additional background information on the risk factors for indirect dischargers, please refer to the FY1991 Annual Fee Report and Fee Schedule.

The Department is again adjusting the minimum fees for ground water fees. The proposed amendments affect only those facilities classified as Hazardous Waste Facilities (HWFs) and Industrial Waste Management Facilities (IWMFs) regulated pursuant to N.J.A.C. 7:26, and N.J.A.C. 7:14A-4. Federal and State laws have singled out these types of facilities for greater regulation. Currently, all hazardous waste facilities are assessed a minimum fee of $20,000 regardless of ground water monitoring activities being conducted by the permittee. The new minimum fee schedule will be similar to the sliding scale at N.J.A.C. 7:14A-1.8(h)2 for other ground water permittees. The proposed minimum fees for hazardous waste facilities are higher than for other ground water dischargers because potential environmental impact posed by the discharge and the complexity of the regulatory process. For facilities conducting detection monitoring, a minimum fee of $10,000 will be assessed. Once ground water contamination has been detected through a detection monitoring program or other ground water assessment program such as the Environmental Cleanup Responsibility Act ("ECRA"), N.J.S.A. 13:1K-6 et seq., N.J.A.C. 7:26B, Underground Storage Tank Program ("UST"), N.J.S.A. 58:10A-21 et seq., N.J.A.C. 7:14B, or other permit application, the Department will require the permittee to initiate a compliance monitoring program, ground water remediation and/or source removal program. The minimum fee for hazardous waste facilities conducting a compliance monitoring program is $40,000, until the facility initiates active ground water remediation and source removal. Once the permittee is actively controlling the ground water contamination through their remediation program, the minimum fee will be reduced to $20,000. The lower minimum fee recognizes the benefit to the environment and through this proposal the Department hopes to encourage this type of activity by permittees.

Furthermore, facilities which are conducting ground water monitoring for a unit unrelated to a hazardous waste unit regulated through RCRA, will not be assessed the higher minimum fees. When the ground water monitoring program is expanded to incorporate the potential discharge from these RCRA units, the NJPDES ground water permit will be modified. At that time, the facility will be subject to the appropriate minimum fee for hazardous waste facilities based upon the ground water monitoring status.

Many permittees are utilizing in place soil treatment to remediate contaminated soils. This activity is defined as "corrective action" and is subject to the minimum fee of $1,500 for ground water monitoring status factor of 5, unless the permittee is remediating soil at a NJPDES regulated RCRA unit. The minimum fee for soil treatment at a hazardous waste facility is $20,000.

The risk factor associated with Petroleum Hydrocarbons has been changed in Table I—Surface Water Risk Factors. The Department has reduced the risk factor for petroleum hydrocarbons from 10,000 to 100. This is the same risk factor for Oil and Grease. Oil and Grease effluent limitations are required pursuant to N.J.A.C. 7:14A-14, and the same concentration limits are required for both oil and grease and petroleum hydrocarbons. The specified analytical method is based on the source of the discharge. Discharges that are petroleum based are required to be analyzed for using method 418.1 for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes. Nonpetroleum based discharges are analyzed through the oil and grease method referenced in 40 CFR Part 136. At this time, the risk factor for Petroleum Hydrocarbons has been changed within the confines of the existing risk factor system. An overall evaluation of the risk factor system presented in Table I is required and will be completed in the future. Several pollutants which were not clearly listed in Table I have been included.

Social Impact

The Department's proposal to amend the NJPDES rules to provide for a more equitable distribution of the assessed fees will have a positive social impact. The Department, in amending the fee schedule, is acting to insure that those who do the most to introduce pollutants to the environment bear a greater share of the administrative cost. The revised environmental impact calculation for Significant Indirect Users (SIUs) base NJPDES fees on the quantity of all limited pollutants discharged to a Publicly Owned Treatment Works (POTW) and the risk associated with the indirect discharge of those pollutants, insuring that facilities that pose the greatest impact on POTW's are assessed an appropriate share of the NJPDES program costs. The revised minimum fee schedule for hazardous waste facilities will encourage hazardous waste facilities to

quickly implement corrective action programs. A procedure to exclude volatile organics, acid extractable organic compounds, based neutral organic compounds, pesticide and PCBs from environmental impact calculations if consistently reported as being below the minimum analytical detection limit, should minimize objections to extensive sampling because of the increase in permit fees. Further, this process insures that permittees are assessed their fair share of the program costs based on the impact of their discharge without the added cost of monitoring for non-detectable pollutants.

The enactment of the Clean Water Enforcement Act, with the additional monitoring requirements imposed by this legislation, will insure that those permittees who violate the conditions of their NJPDES permit are assessed mandatory penalties. This will result in a positive social impact as non-complying NJPDES permittees will be deterred from this unacceptable conduct and stay in compliance with the conditions of their NJPDES permit. Penalties assessed pursuant to the Clean Water Enforcement Act will be returned to the Department of Environmental Protection to be used to implement the requirements of the Water Pollution Control Act.

The Department's action reflects the opinion of the Appellate Division of the New Jersey Superior Court in *Public Service Electric & Gas v. Dep't of Environmental Protection,* 193 N.J. Super. 676 (App. Div. 1984), aff'd 101 N.J. 95 (1985) and *GAF Corp. v. New Jersey Dep't of Environmental Protection,* 214 N.J. Super. 446 (App. Div. 1986), that the fee schedule assess a greater portion of the cost of the NJPDES program to those facilities which create the need for regulation. Consistent with the Court's opinion, the Department is proposing to implement a fee schedule which graduates fees in proportion to the deleterious impact of the permittee's discharge.

Economic Impact

The proposed amendment is not intended to increase the revenue generated through the annual NJPDES fee assessment process. The amendment will allow the Department to calculate an environmental impact for a Significant Industrial User (SIU) based on the total pollutant load and the risk associated with the discharge of the specific pollutants. Under the existing rule, SIU fees are based on the quantity of Chemical Oxygen Demand discharged and a risk associated with the waste type classification. This amendment will also distribute a proportional share of the administrative costs associated with the NJPDES program to those facilities which have impacted ground water quality but no longer discharge wastewater to the ground waters of the State.

Establishing a maximum permit fee will better distribute the costs associated with the NJPDES permit program among NJPDES permittees. A maximum fee will preserve the environmental impact basis for cost distribution. While only very large dischargers will benefit directly, this is a more equitable system than existed with the cube root and square root functions. These previously used functions compressed all environmental impacts. A facility that discharged 100 units of environmental impact would pay only 10 times more than the facility that discharged one unit. Administratively, the Department will determine the annual rate, and evaluate if any permittees exceed the maximum fee of 10 percent. The total amount paid as maximum permit fees will be subtracted from the adjusted budget for the category and a new rate will be established. For example, if the budget is $1 million and one permittee has a calculated annual fee of $120,050, $100,000 would be subtracted from the adjusted budget and the rate would be rerun. The added cost to all permittees in the category would be $20,050.

The fees imposed by N.J.A.C. 7:14A-1.8 are expected to provide approximately $22.4 million in fiscal year 1991. The total cost of the NJPDES program is $4.6 million more than FY90. These fees will cover the costs for 217 professional and clerical positions currently filled to process, monitor and administer the NJPDES permit program. The average current salary cost for each position in the NJPDES program is $33,542. This budget also includes 40 vacancies within the Surface Water program. The cost associated with these vacant positions is $2.4 million. At this time, the Department has received approval to fill 33 of the 40 vacancies and is proceeding to fill these positions. A final adjustment to the budget will be made when this proposal is adopted and before the Department assesses the FY91 permit fees.

On May 23, 1990, the Governor signed the Clean Water Enforcement Act (P.L. 1990, c.28). The Department will begin initiating the requirements of the Clean Water Enforcement Act in FY91. The Department will increase the frequency and complexity of current NJPDES monitoring, sampling and inspections which are part of the NJPDES program. A total of 178 new positions will be required for the Department of Environmental Protection (DEP), the Division of Law (DOL) and the Office of Administrative Law (OAL) to fully implement this Act. Of the 178, 89 positions will be performing work activities which are NJPDES eligible. The NJPDES eligible cost associated with the Clean Water Enforcement Act will be phased into the NJPDES budget and fee schedule starting in FY91. When fully implemented in FY92, the total cost of the Clean Water Enforcement Act will be $12.4 million. NJPDES fee increases will provide approximately $6 million and penalties collected and deposited to the Clean Water Fund will provide the balance.

In FY91, the added cost of the Clean Water Enforcement Act is $2.59 million. This assumes that DEP and DOL also will have staff assigned to this work during FY91. Surface Water fees will be increased $2.2 million, while Ground Water fees are increased $0.4 million. This distribution is based upon the increased activity anticipated in each program. The projected costs of the added Clean Water Enforcement Act for categories within the Surface and Ground Water programs will be distributed based upon the number of current NJPDES work years.

The Department has prepared the FY91 Annual Fee Report and Fee Schedule which contains more detailed information concerning the NJPDES program budgets for FY91. This report includes NJPDES work plans for each major discharge category. Copies of the FY91 Annual Fee Report and Fee Schedule may be obtained from the Division of Water Resources—NJPDES Fee Management Section, CN029, Trenton, New Jersey 08625.

FY91 NJPDES personnel costs have been estimated for the fiscal year and include annual cost of living increases, promotions, and overtime. The fringe benefit rate of 28.65 percent has been established by Treasury in their OMB Circular Letter: 90-12-OMB. The indirect rate of 32.7 percent of salary plus fringe, has been established by the Department of Environmental Protection for FY91. The positions to be funded in FY91 and the associated costs as follows:

NJPDES Program Staff	Number
Assistant Director	2
Bureau Chief (Manager IV)	6
Section Chief	8
Administrative Analyst I	2
Administrative Analyst II	3
Administrative Assistant III	3
Environmental Scientist I	4
Research Scientist I	1
Geologist Trainee	1
Assistant Geologist	3
Senior Geologist	9
Principal Geologist	12
Supervising Geologist	7
Environmental Engineer Trainee	4
Assistant Environmental Engineer	7
Senior Environmental Engineer	5
Principal Environmental Engineer	11
Supervising Environmental Engineer	9
Environmental Specialist Trainee	4
Environmental Specialist	18
Senior Environmental Specialist	23
Principal Environmental Specialist	10
Supervising Environmental Specialist	5
Compliance Investigator I	5
Compliance Investigator II	1
Supervising Compliance Investigator	2
Computer Operator I	1
Computer Operator III	1
Data Processing Programmer II	1
Geographic Information Specialist	1
Assistant Technician MIS	1
Technician MIS	10
Senior Technician MIS	5
Principal Technician MIS	9
Secretarial Assistant II	1
Secretarial Assistant III	5
Clerk Typist	4
Senior Clerk Typist	4
Principal Clerk Typist	8
Supervisor of Accounts	1
TOTAL Work Years	217

Includes currently filled positions only.

	Surface Water	Ground Water
Total Salaries	4,424,366	2,836,622
Filled Positions	132	85
Vacant Positions (40)	1,341,680	-0-
Salary Adjustment (5%)	288,302	141,831
Fringe Benefits (28.65%)	1,734,570	853,326
Indirect Rate (32.7%)	2,546,976	1,252,991
Overtime	500,000	250,000
Total Personnel Costs	10,835,894	5,334,770
Copiers	83,000	77,000
System/36 Maintenance	16,000	16,000
PCS Data Processing	35,000	35,000
Telephones	75,000	80,370
Postage	34,510	63,145
Deputy Attorneys General	125,948	86,024
Laboratory Services	439,000	339,400
OTIS Data Processing	534,000	150,000
Vehicles	21,200	22,500
Central Motor Pool Rent	131,581	125,236
Office Supplies	36,036	15,500
Gas and Oil	46,187	13,150
Data Processing Supplies	42,940	38,340
Scientific Supplies	5,614	4,500
Professional Services	193,100	15,000
Travel, Conferences, Seminars	60,975	19,900
Training, Tuition Aid	35,785	43,300
Temp. Services	204,049	105,000
Legal Advertising	35,700	35,000
Building Maintenance	-0-	1,000
Equipment Maintenance	16,200	5,400
Pagers	4,100	2,860
Equipment, Furniture	21,085	23,400
Computer Equipment	51,558	99,800
Total Operating Costs	$2,248,208	$1,416,825
Existing PROGRAM COST	$13,084,102	$6,751,595
Clean Water Enforcement:		
Salaries	979,200	172,800
Fringe Benefits (28.65%)	280,541	49,507
Indirect Costs (32.7%)	411,935	72,694
Total Personnel Costs	$1,671,676	$295,001
Operating Costs	$535,500	$94,500
CLEAN WATER ENFORCEMENT	$2,207,176	$389,501
TOTAL NJPDES BUDGET WITH CLEAN WATER ENFORCEMENT ACTIVITIES		$22,432,374

Facilities which discharge industrial waste, sanitary wastewater, non-contact cooling water, decontaminated ground water, stormwater runoff or other types of treated and untreated types of wastewater to the surface waters of the State will be assessed a surface water discharge permit fee. The total of the NJPDES program budget to be distributed to industrial/commercial surface water permittees is $6.9 million. Sanitary surface water dischargers will be assessed $6.9 million of the total NJPDES program cost. Facilities classified as a Significant Indirect User ("SIU") will be assessed $1.5 million of the total NJPDES program cost. Fees are assessed based on the facility's potential impact on the environment. The average fee for a surface water discharge will be approximately $11,250. Surface water permittees which receive a NJPDES permit to construct a treatment works that have not begun discharging will be assessed the minimum fee of $500.00.

Facilities which actively discharge sanitary wastewater, industrial process wastewater, non-contact cooling water, filter backwash, treated ground water, stormwater runoff, or other types of wastewater to the ground waters of the State will be assessed a fee based on the potential environmental impact of the discharge plus a base minimum fee of $500.00. Where the Department has issued a ground water detection monitoring permit to evaluate the impact of a past discharge activity, only a minimum fee of $500.00 will be assessed.

Once environmental impact has been established through a detection monitoring program or other ground water assessment program, the permit fee will be assessed based on the magnitude of ground water contamination as measured by the area of the site and the maximum concentration of all pollutants detected in the monitoring wells and the risk associated with each pollutant plus the base minimum fee. The Department will use the area of the plume and the average pollutant concentrations after the permittee has defined the extent of ground water impact in accordance with their NJPDES permit requirements.

The base minimum fees for facilities which institute corrective action to mitigate further environmental impact is $1,500 while the base minimum fee for facilities in the compliance monitoring phase is $5,000.

This proposed amendment requires that only facilities which have been issued a NJPDES ground water permit for a RCRA unit will be subject to the higher minimum fees for hazardous waste. Also, minimum fees for hazardous waste facilities are now based upon the ground water monitoring status of the facility. Those facilities which pose the greatest risk, will be assessed the highest base minimum fee.

Permittees with ground water permits for discharges from sources other than landfills will be assessed a total of $5.2 million. Landfill permittees will be assessed $1.9 million.

Environmental Impact

The proposed amendment reflects the Department's policy of funding the NJPDES program with fees assessed to dischargers. The fees provide the Department with the financial means to protect, through enhanced technical evaluation, inspection and monitoring, the quality of the State's surface and ground waters. The additional monitoring requirements imposed by the Clean Water Enforcement Act will insure that those permittees who violate the conditions of their NJPDES permit do not benefit from their actions. Under the Clean Water Enforcement Act, facilities which violate their NJPDES permit will be assessed mandatory penalties which will be returned to the Department of Environmental Protection to be used to implement the requirements of the Water Pollution Control Act. This program will be funded through penalties paid under the Act and NJPDES permit fees. Only those activities required by the Clean Water Enforcement Act that are directly related to processing, monitoring and administering NJPDES permits, such as the processing of adjudicatory hearings on NJPDES permit conditions, increased compliance and sampling inspections, and data management are included in the NJPDES budget and fees schedule. If the Department realizes more penalties than originally projected, the cost of the NJPDES permit program may be reduced.

The proposed amendment to N.J.A.C. 7:14A-1.8 is designed to proportionally assess the cost of the NJPDES program to those facilities whose activity has the greatest negative impact on the environment. The proposed fee schedule will have a positive environmental impact and encourage ground water remediation and proper landfill closure. The inclusion of a procedure to handle non-detectable pollutants, will minimize the objections to monitor for pollutants which may not be detected. This will provide more information on the complex nature of wastewater discharges.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping or other compliance requirements on small businesses because the Department, in establishing each discharger's fee, will use the information currently reported by each discharger on discharge monitoring reports ("DMR"), monitoring report forms and/or information submitted to the Department as part of the NJPDES permit application or any other permit issued by the Department as required at N.J.A.C. 7:14A. The Department's use of the existing permitting process allows all NJPDES permittees to fully comply with these fee requirements without the administrative burden or financial expense of retaining any additional professional services.

The fees will be assessed to all NJPDES permittees, including the estimated 225 permittees which are considered to be small business as defined by N.J.S.A. 52:14B-16 et seq. The fee schedule takes into consideration the negative environmental impact of the permittee's discharge; those permittees who do the most to create a negative impact on the environment or do not remediate the negative environmental impact will bear the greater share of the Department's administrative costs.

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

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.-2. (No change.)

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. **The permittee may request a fee recalculation as provided at (a)8 below, once the first required monitoring report has been completed.**

4.-8. (No change.)

9. The annual fee for all discharges is calculated by applying the formula: Fee = (Environmental Impact × Rate) + Minimum Fee, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$\sum_{i=i}^{n}[A + (B \times E_i)] = \text{Budget for each category of discharge}$$

$\sum_{i=i}^{n}$ = Sum of the fees for all facilities

A = Minimum fee

B = Rate

E_i = Environmental Impact for facility$_i$

iii. Minimum fee is a base cost which is added to the calculated individual fee. The minimum fees are set forth in (h) below.]

Rate = (Budget-Sum of Minimum Fees)/ Total Environmental Impact

(1) Budget is the total budget for the category of Discharge.

(2) The Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge. The minimum fee is a base cost added to the calculated individual fee. The minimum fees are set forth in (h) below.

(3) Total Environmental Impact is the sum of environmental impact for all dischargers in the category.

10. The Department shall [take either the square root of] **use** the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate environmental impact. [for the period July 1, 1989 to June 30, 1990. The Department shall use the total pollutant load, total weighted concentration or quantity discharged in all subsequent fee years.] **The maximum fee to be assessed for any category of discharge shall be 10 percent of the budget for the category of discharge.**

(b) (No change.)

(c) The annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) × (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee reports a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.

(2) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected at least once in the monitoring period, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations.

ii.-iii. (No change.)

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey [1986] Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey [1986] Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey [1986] Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4. **The Department shall use the most recent edition of New Jersey Water Quality Inventory Report.**

2. (No change.)

(d) The annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct ground water monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct ground water monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk × Quantity × Ground Water Rating Factor) where:

i.-ii. (No change.)

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

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

(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological formation immediately beneath or facility liner material. **Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10.** Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2}. The rating numbers are assigned as follows:

Rating	Permeability
10	10^{-7}
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	10^{-2}

2. The Environmental Impact for a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal, and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area X Total Weighted Concentration X Ground Water Rating Factor) where:

i. (No change.)

ii. Total Weighted Concentration is the sum of all pollutant concentrations limited in the NJPDES permit and converted to milligrams per liter (mg/l) multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentration for all wells for the monitoring period selected by the Department in (a)7 above.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Weighted Concentration using one-half the reported minimum detection limit for pollutant concentrations.

iii. (No change.)

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

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula: Environmental Impact = **(Total Pollutant Load)**

[Toxicity Factor x (COD Load) where:

i. Toxicity Factor is the rating number, based on the degree of hazard, assigned by the Department to each industrial category. The rating numbers are assigned as follows:

Rating	Industrial Category
1	Food Products
2	Brewery/Yeast, Glass
3	Coffee, Soap and Detergent, Foundry, Pulp, Paper and Paperboard, Glue, Coil Coating
4	Explosives, Machine and Mechanical (Roller Bearing)
5	Electroplating, Leather Tanning, Tank Storage, Inorganic Chemicals
6	Organic Chemicals, Pharmaceuticals
10	Ground water decontamination, Hazardous Waste Facilities that recover and recycle hazardous waste
15	Landfill leachate
20	Hazardous Waste Facilities that treat and discharge hazardous waste, Industrial Waste Management Facilities

ii. COD Load is the quantity of Chemical Oxygen Demand discharged by the DTW (in kilograms per day) and is derived by multiplying the COD load discharged by the SIU (in kilograms per day) by the DTW's discharge rate (DTW effluent ÷ DTW influent).]

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations. The Department shall use one-half the reported detection limit for pollutant concentrations reported as non-detectable to calculate the Total Pollutant Load.

(h) Minimum fees are as follows:

1. (No change.)

2. The minimum fee for Discharge to Ground Water (DGW) permits, except for residuals and landfills covered in (h)3 and 4 below, shall be assessed as follows:

i.-iv. (No change.)

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit [and], facilities with a DGW/IWMF permit-by-rule **and facilities with a NJPDES ground water permit for a Resource Conservation Recovery Act (RCRA) unit assigned a Ground Water Monitoring Status of 1 or 2** shall be assessed a minimum fee of $[20,000] **10,000**;

vi. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a RCRA unit assigned a Ground Water Monitoring Status of 5 shall be assessed a minimum fee of $20,000; and

vii. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES Ground Water permit for a RCRA unit assigned a Ground Water Monitoring Status of 10 shall be assessed a minimum fee of $40,000.

3.-7. (No change.)

8. The minimum fee for land based soil treatment operation shall be $1,500 except for a RCRA unit which shall be subject to the minimum fee of $20,000.

TABLE I
RISK CATEGORIES

Risk Factor 10^0	10^1	10^2	10^3	10^4	10^5
			SURFACE WATER		
TDS	TSS	Tin	Styrene	Petroleum hydrocarbons	Lead
Chloride	Phosphorus	Aluminum	Nickel	Arsenic	Mercury
Sulfate	Phtahalic Acid	Antimony	Copper	Beryllium	Cadmium
Fluoride	Sulfide	Barium	Silver	Asbestos	Chromium-hex
Iron	Molybdenum	Chromium-trivalent	Cobalt	Acid fraction compounds	Pesticides
	Bismuth	Oil & Grease	Ammonia	Base-Neutral	PCB
	Manganese	Surfactants	Cyanide	Compounds	PBB
	Zinc	N(nitrite, nitrate Kjeldhal, diss. & Total)	Selenium	**Volatile Organics**	
		Oxidizable Matter			
		Petroleum Hydrocarbons			
			GROUND WATER		
TSS	TDS	Iron	Silver	Lead	Mercury
Aluminum	Chloride	Manganese	Fluoride	Arsenic	Cadmium
Phosphorus	Sodium	Chromium-trivalent	Barium	Beryllium	Chromium-hex
	[Anitomy] **Antimony**	Zinc	Nitrate	Pesticides	Petroleum
	Bismuth	Copper	Phenol	Acid fraction compounds	hydrocarbons
	Sulfate	Ammonia	Cobalt	Base-Neutrals	Total Volatile
		Oil & Grease	Selenium		Organics (including
		Surfactants	Nickel		TTHM)
		Oxidizable Matter			
		TOC			
			INDIRECT DISCHARGERS		
BOD	**TDS**	**1, 1-Dichloroethylene**	**Nickel**	**Beryllium**	**Carbon Tetrachloride**
TSS	**Iron**	**Copper**	**Silver**	**1,1,1-Trichloroethane**	**Mercury**
	Antimony	**Zinc**	**Asbestos**	**Lead**	**Cadmium**
	Bismuth	**Chromium-Trivalent**	**Cobalt**	**Arsenic**	**Chromium, hex & Total**
	Tin	**Barium**	**Selenium**	**Bis (2-ethylhexyl) phthalate**	**Pesticides**
	Manganese	**Cyanide**	**Benzene**	**Dichlorodifluoromethane**	**PCBs**
	Inorganic Sulfur Compounds	**Dimethyl phthalate**	**1,2-Dichloroethane**	**Trichlorofluoromethane**	**Dioxin**
		Surfactants	**Chloroform**	**Total Toxic Organics****	
		Oil & Grease	**Ethylbenzene**	**Volatile Organics***	
		Petroleum Hydrocarbons	**Naphthalene**	**TVOS as in N.J.A.C. 7:27-17.3****	
		Total Toxic Metals**	**1,2,4-Trichlorobenzene**		
		Nitrogen Compounds/ Ammonia	**Vinyl Chloride**		
			Base Neutral Compounds*		
			Acid Extractables Compounds*		
			1,1,2,2-Tetrachloroethane		
			Bromoethane		
			1,2-Dichloropropane		
			1,1-Dichloroethane		
			1,1,2-Trichloroethane		

*Unlisted
**Not Itemized

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries Administration
General Net Regulations
Proposed Amendment: N.J.A.C. 7:25-18.5

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 23:2B-1 et seq., 23:5-24.1 through 24.3, 23:10-20, et seq.
DEP Docket Number: 039-90-11.
Proposal Number: PRN 1990-615.

Submit comments by January 16, 1991 to:
Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 7:25-18.5(g)4 defines and limits the types of gear that shall be allowed under the provisions of N.J.S.A. 23:5-24.2. These gear definitions were part of the bait net rule proposal in the April 18, 1988 New Jersey Register at 20 N.J.R. 866(a), but were inadvertently omitted on adoption on June 20, 1988 at 20 N.J.R. 1345(a). These definitions are required to allow proper enforcement of this section.

The proposed amendment to N.J.A.C. 7:25-18.5(g)5 and (g)6 standardizes the means by which gill nets are marked while fishing by increasing

the number and types of markings required so as not to conflict with the requirements of the State of Delaware. It has been the experience of the Division that the current marking practice is insufficient to protect the nets even from other commercial fishermen, who are familiar with the industry in their area. *A fortiori,* other boatmen have caused a great deal of damage to their own vessels as well as the commercial fishing industry through accidental contact with these nets.

Social Impact

Adoption of this amendment will have a positive social impact. The provision concerning the marking of gill nets will make them more noticeable in the water during the day and at night and make New Jersey and Delaware gear marking requirements uniform. This will have a positive social impact by decreasing public confusion regarding gill net identification and by decreasing the likelihood of boats' running into gill nets which may result in damage to both nets and boats or in personal injury. Because the amended bait net definitions and limits reflect current practice, no adverse social impact is anticipated as a result of that portion of this amendment.

Economic Impact

Adoption of this amendment should have no major economic impact. The provision concerning bait net licenses will have no additional economic impact, since the gear defined is that currently in use by those fishermen taking fish for bait purposes, and this section reflects current Department licensing practices.

The provision regarding marking gill nets will cause a slight increase in the initial cost of gill net fishing due to the extra floats required by this amendment. However, anticipated reduction in the incidence of damage to gill nets by better day and night visibility of the gear and reduced confusion by the boating public will result in cost savings to the commercial fishery and to all segments of the boating community.

Environmental Impact

Adoption of this amendment will have a positive environmental impact. The provision concerning permitted types of bait nets is designed to prevent over-harvesting of various resources by reducing the by-catch of species whose harvests are regulated elsewhere in this Chapter or pursuant to Title 23 of New Jersey Statutes Annotated and to protect sensitive ecosystems as, for example, benthic habitats or submerged aquatic vegetation beds, that could be badly damaged by the use of inappropriate gear.

Regulatory Flexibility Analysis

This amendment applies to bait net and gill net fishermen. It is estimated that, of the total number of 600 licensees affected by this proposal, about 400 are "small business" as defined in the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-19) and will be affected. In order to comply with these amendments, gill-net fishermen will have to alter the markings on their nets. It is expected that the initial capital costs for each small business would be up to $20.00.

In developing this amendment, the Department has balanced the need to protect the environment against the economic impact of the proposed amendment and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:25-18.5 General net regulations

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

(g) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license. Upon receipt of the application and the prescribed license fee, the Commissioner may, in his discretion, issue single season licenses as specified for each net type for the taking of fish with nets only as follows:

1.-3. (No change.)

4. The bait net season shall begin on January 1 and shall end on December 31. [Bait] **Except as provided in N.J.S.A. 23:5-24.2, bait** net resident fees shall be $10.00 per license [for licenses required by P.L. 1987 c.68, amending N.J.S.A. 23:5-24.2].

i. Bait nets shall be limited to one or more of the following types:

(1) Dip nets 24 inches in diameter or less;

(2) Bait seines not exceeding 150 feet and mesh not exceeding 2.5 inches stretched;

(3) Cast nets not exceeding 30 feet in diameter;

(4) Lift or umbrella nets not exceeding four feet square; and

(5) Killipots not exceeding 10 inches in diameter or 25 inches in length if cylindrical or 2,000 cubic inches for any other conformation for the taking of killifish (Cyprinodontidae spp.) only;

[i.] **ii.** No person shall take more than 35 alewife or blueback herring in the aggregate per day with any dip net, cast net, **lift or umbrella net** or bait seine; and

[ii.] **iii.** The simultaneous possession of greater than 35 alewife or blueback herring in the aggregate and any dip net, cast net, **lift or umbrella net** or bait seine shall constitute prima facie evidence of the violation of this rule.

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched, beginning February 12 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. (No change.)

ii. Separate drifting gill nets or a series of joined drifting gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches [square] **by 12 inches** and suspended at least [two] **three** feet above the water, **measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each end marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;**

iii.-vi. (No change.)

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15.

i. (No change.)

ii. Separate staked or anchored gill nets or a series of joined staked or anchored gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches [square] **by 12 inches** and suspended at least [two] **three** feet above the water, **measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;**

iii.-ix. (No change.)

7.-12. (No change.)

(h) (No change.)

INSURANCE

(a)

DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

Administration

Proposed Readoption: N.J.A.C. 11:1

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

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

Proposal Number: PRN 1990-633.

Submit comments by January 16, 1991 to:

Verice M. Mason
Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order 66(1978), the Commissioner of Insurance proposes to readopt N.J.A.C. 11:1, entitled Administration. This chapter is due to expire on February 3, 1991.

This chapter includes rules related to different areas of insurance, including life/health and property/casualty, and the organization of the Department of Insurance ("Department"). Rules concerning the following subjects are codified in this chapter.

1. Organization of the Department;
2. Filings of rates, manual rules, rating plans, policy forms and endorsements;
3. Unfair discrimination;
4. Administrative orders and declarations;
5. New Jersey Property-Liability Insurance Guaranty Association surcharge;
6. Admission requirements for foreign and alien property and casualty insurers;
7. Conduct constituting violations by brokers and agents;
8. Corporate and partnership licensee requirements;
9. Petitions for rules;
10. Requirements for filing a downward deviation in currently approved rates;
11. Cancellation and nonrenewal of commercial insurance policies;
12. Loss reserve opinions;
13. Prohibition of certain cancellation and nonrenewal activity;
14. Official Department mailing lists: address information;
15. Annual publication of insurer profitability information; and
16. Formation of a domestic property and casualty insurance corporation (stock or mutual) or reciprocal insurance exchange.

The rules in this chapter were promulgated to implement many of the statutory requirements in Titles 17 and 17B of the New Jersey Statutes. The Department has undertaken a review of these rules at several levels to determine their current effectiveness and viability. The rules continue to provide the insurance industry and the consumer with vital information and useful standards concerning many aspects of insurance. The Department believes that the original purpose for each rule, as stated in the rule itself, continues to exist.

The rules in this chapter primarily serve two general purposes in implementation of statutory law. First, they protect the consumer by addressing issues such as unfair discrimination, cancellation and nonrenewal, temporary licensing of life, health and annuity agents, and unworthiness and bad faith by brokers and agents. Secondly, they provide guidance to the insurance industry respecting such business-related matters as rate and form filing approvals, admission requirements for foreign and alien property and casualty insurers, filing revised rates, general requirements of loss reserve opinions and formation of domestic insurers.

The public is further advised that the Department has proposed rules for this chapter which have been published in the New Jersey Register but which have not yet been adopted.

Social Impact

As noted above, the rules address several areas of concern to consumers and protect them from potential unfair trade practices concerning insurance and its solicitation. The rules concerning agent and broker avoidance of debts to insureds help ensure that consumers are protected from any bad faith practices on the part of insurance agents. The rules concerning cancellation and nonrenewal of commercial insurance policies protect insureds from invalid nonrenewals and cancellations, while nevertheless providing insurers with the flexibility to cancel and nonrenew policies due to conditions that warrant such actions.

The insurance industry also relies on the presence and effectiveness of these rules in its operation. Insurers are provided with guidance in filing of rates, manual rules, rating plans, policy forms and endorsements. The industry is also informed of the admission procedures, requirements and standards governing the application of a foreign or alien insurer to do property/casualty insurance business in this State. Also, insurers are aided by the rules in the submission of loss reserve opinions acceptable to the Department. Finally, insurers are guided by the rules in filing for a certificate of authority to transact business as a domestic property and casualty insurance corporation or reciprocal insurance exchange.

The rules in this chapter enable the Department to fulfill its regulatory duties under law. Failure to readopt these rules would impair the Department's regulatory powers and would unsettle established relations between insurers and the general public and between these two groups and the Department.

The protections that these rules afford the consumer and the operational guidance that they afford the insurance industry mandate their continued existence both to implement statutory provisions and to foster and promote a sound regulatory policy.

Economic Impact

The failure to readopt this chapter would require the insurance industry to perform many significant statutory functions without guidance from the Department. This would impose significant costs on the industry since current compliance requirements would not be readily available to the industry, requiring it to implement procedures which may not be acceptable to the Department. The industry has invested a great amount of time and resources in operating in compliance with the Department's current procedures and this results in benefits for both the insurer and the general public.

The rules may impose significant costs to insurers who must file for rate and form approval pursuant to Department guidelines. Foreign and alien insurers will also incur significant costs in seeking admission to do business in this State. In addition, additional cost would be incurred in the application for a certificate of authority as a domestic insurer in this State.

The rules clearly impact on the consumer public. The rules concerning bad faith actions on the part of brokers and agents help ensure that a consumer is not treated unfairly. In addition, rules concerning nonrenewal and cancellation provide requirements for notice to insureds of such actions and acceptable reasons for cancellation and nonrenewal, thereby providing a reasonable degree of assurance for an insured that coverage will be maintained.

The readoption of the current rules will enable the Department to continue to monitor insurance matters in a manner which appropriately meets its current fiscal resources and capabilities. The use of current procedures that have been proven effective over time has economies of procedures for the Department.

Throughout the years, the Department has carefully monitored, and continues to monitor, the impact of the rules in this chapter through communication with the insurance industry and the public. The Department is unaware of any provisions of these rules that impose undue or unnecessarily onerous financial burdens on the insurance industry.

Regulatory Flexibility Analysis

Few, if any, insurers regulated by the rules in this chapter are "small businesses" as defined at N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. Several rules (for example, conduct constituting violations by brokers and agents) relate to the conduct of insurance producers, most of whom are "small businesses".

Significant recordkeeping and reporting requirements imposed by this chapter include the requirement concerning rate and form filings, loss reserve opinions, and the provision of information to the Department for its annual publication of insurer profitability information.

The Department has determined that all such compliance, recordkeeping and reporting requirements continue to be necessary. The rules apply to all insurers or insurance producers, as the case may be, without regard to size since they implement statutory provisions and/or regulatory policies which allow for no such exceptions. The Department is unaware of any provisions of these rules that are excessively onerous to "small businesses" or unnecessary.

Future annual costs of compliance with these rules are not expected to differ from current annual cost, as explained in the Economic Impact statement. The use of professional services currently required by the rules will continue to be necessary.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:1.

(a)

DIVISION OF THE REAL ESTATE COMMISSION
Real Estate Guaranty Fund
Proposed Amendment: N.J.A.C. 11:5-1.36

Authorized By: the New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Authority: N.J.S.A. 45:15-6 and N.J.S.A. 45:15-40.
Proposal Number: PRN 1990-626.

Submit comments by January 16, 1991 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with N.J.S.A. 45:15-40, the New Jersey Real Estate Commission has proposed to amend N.J.A.C. 11:5-1.36 so as to impose a special assessment upon all licensees in order to replenish the Real Estate Guaranty Fund. It is necessary to impose this assessment at this time because over the period of approximately the last 18 months, payments made from the fund have resulted in more than a 50 percent reduction in the operating balance of the fund. In addition, as a result of pending claims against the fund, anticipated payments over the course of the next year exceed the remaining balance in the fund. Consequently, the Commission is required by law to impose an assessment upon licensees in order to maintain an adequate balance in the fund. As provided in N.J.S.A. 45:15-35 and N.J.S.A. 45:15-40(a), the amount of the assessment upon all broker licensees shall be $10.00 and the amount of the assessment upon all salesperson licensees shall be $5.00.

All licenses renewed by the Commission in 1990 will expire on June 30, 1991. All initial licenses issued by the Commission after July 1, 1990 will expire on June 30, 1991. Thus this amendment will affect all licensees who renew their licenses on July 1, 1991, regardless of whether they hold a license which was renewed on July 1, 1990 or a new license issued between July 1, 1990 and June 30, 1991.

Social Impact

The proposed amendment will have a beneficial social impact, as the replenishment of the Real Estate Guaranty Fund will assure that members of the public who have suffered losses as the result of the embezzlement, conversion or unlawful obtaining of money or property by a licensed real estate broker or salesperson, or an unlicensed employee of a real estate broker will continue to be afforded the protections provided by the Real Estate Guaranty Fund. The fund permits such persons to obtain a recovery of their losses up to a maximum of $10,000 for each claim filed.

Economic Impact

The proposed amendment will have a beneficial economic impact upon parties to real estate transactions who suffer economic losses as a result of the dishonest conduct of real estate licensees. The minimal amount of the assessments will impose only a very minor detrimental economic impact upon real estate licensees. However, by permitting aggrieved persons to recover up to $10,000 from the fund, many real estate licensees ultimately benefit from the fund's existence. This is true because a person's ability to recover from the fund may enable them to consummate a transaction which they otherwise might not have been able to complete, had they not been able to rely upon reimbursement from the fund of monies which had been wrongfully diverted by dishonest real estate licensees. By providing the wherewithall for such parties to complete real estate transactions, honest members of the licensee community benefit economically.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the requirement that all brokers, regardless of the size of their business, pay the $10.00 assessment. The amount of the assessment cannot be varied based upon the size of a broker's business because the $10.00 amount is established by statute at N.J.S.A. 45:15-35 and N.J.S.A. 45:15-40(a).

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

11:5-1.36 Real estate guaranty fund

(a) Every licensed real estate broker and licensed broker-salesperson shall pay an additional $10.00 and every licensed real estate [salesman] **salesperson** shall pay an additional $5.00 fee with [his] **their** application for license renewal next following [the effective date of this section] **January 1, 1991.**

1. Said fees shall be paid into the real estate guaranty fund and be utilized in accordance with N.J.S.A. 45:15-34, et seq.

(b) (No change.)

(b)

DIVISION OF FRAUD
General Requirements
Proposed Readoption: N.J.A.C. 11:16

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e), 17:33A-1 et seq., 17:23-8 et seq.
Proposal Number: PRN 1990-634.

Submit comments by January 16, 1991 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Division of Legislative and Regulatory Affairs
20 West State St.
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Commissioner of Insurance proposes to readopt N.J.A.C. 11:16, which expires on February 3, 1991. This chapter includes rules related to automobile insurance and, specifically, the following subjects:

1. Claim Form Statements.
2. Reports to the National Automobile Theft Bureau.

Subchapter 1 requires that insurance claim forms contain a statement of liability. Subchapter 2 requires insurers transacting motor vehicle insurance in New Jersey to report the theft or salvage of a motor vehicle to the National Automobile Theft Bureau (NATB) for inclusion in its central index file. An insurer is also required to reimburse the NATB for the cost of operation in a manner to be determined by the governing board of the NATB. Information provided to the NATB is to be confidential and will not be subject to public inspection.

This subchapter is not being amended on readoption. The Department has reviewed these rules and determined them to be necessary, reasonable, understandable, and responsive to the purpose for which they were promulgated. This review has included the Fraud Division and the Division of Legislative and Regulatory Affairs.

Social Impact

The rules require insurers to place on all claims forms a warning that any person who files a statement of a claim which contains false or misleading information is subject to criminal and civil penalties.

The rules clarify an insurer's obligation under N.J.S.A. 17:23-19 and will assure the continued effective implementation of this Legislation.

Economic Impact

Insurers will still be required to pay the cost of printing claim forms with the required warning.

Insurers transacting motor vehicle insurance in New Jersey will still be required to pay the cost of membership in the NATB or the service fees associates with service company status. In accordance with NATB procedures, such costs are assessed on the basis of net fire and theft premiums, including those fire and theft premiums written under comprehensive policies, on insurance written by each member or service company pertaining to the ownership, use or maintenance of motor vehicles. "Members" will be assessed on the basis of such premiums written throughout the country, while "service companies" will be assessed for New Jersey premiums only.

Regulatory Flexibility Analysis

The proposed readoption of these rules may affect "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the effect is primarily associated with the underlying legislation which requires reporting to and reimbursement of the NATB. The proposed readoption of these rules merely clarifies that such reporting and reimbursement cannot be accomplished without an insurer first securing the status of either a member of a service company or the NATB.

Since the underlying legislation does not so allow, there is no small business exception to the reporting and reimbursement requirement. Similarly, there is no exception in the time or other requirements of the proposed new rules since all companies, regardless of size, should be able to comply with the requirements of the proposed readoption. Moreover, the size of an insurer should not be permitted to impede the statutory purpose of frustrating automobile theft and related insurance fraud schemes.

No additional professional services will be necessary to abide by the requirements of the proposed readoption.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 11:16.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Rules of Practice and Procedure

Proposed Readoption with Amendments: N.J.A.C. 13:4

Authorized By: C. Gregory Stewart, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-6; 10:5-8(g), (h); 10:5-12(g), (h), (k).

Proposal Number: PRN 1990-631.

Submit comments by January 16, 1991 to:

C. Gregory Stewart, Director
Division on Civil Rights
383 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the Division on Civil Rights' Rules of Practice and Procedure, N.J.A.C. 13:4, expire on January 21, 1991. The Division has reviewed these rules and proposes to readopt N.J.A.C. 13:4 with amendments. The Division proposes technical amendments to existing rules under subchapters 1, 2, and 9 in order to clarify provisions under these subchapters. The Division has reviewed the rules in subchapters 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15 and has determined them to be necessary, reasonable and proper for the purpose for which they were originally intended. Therefore, the Division proposes to readopt these subchapters without amendment.

The Division has found its Rules of Practice and Procedure to be essential to the maintenance of orderly procedures by which the Division satisfies its mandate to enforce the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq. Likewise, these rules provide critical procedural guidance to complainants, respondents, attorneys and others who interface with the agency.

The following is a summary of the provisions of and proposed amendments to N.J.A.C. 13:4:

N.J.A.C. 13:4-1. This subchapter provides that the Division's Rules of Practice and Procedure shall govern all proceedings in the Division and shall be liberally construed by the Director. N.J.A.C. 13:4-1.4, which sets forth definitions of words and terms used in this chapter, is amended to provide the correct addresses of all Division offices within the definition of "Office of the Division". Also, the term "field investigator" has been changed to "investigator" to comport with Department of Personnel designations.

N.J.A.C. 13:4-2. This subchapter sets forth rules governing investigations conducted by the Division, and details the powers of the Director in the conduct of Director's investigations. The first line of N.J.A.C. 13:4-2.1(a) is amended to correct a typographical error, changing "N.J.S.A. 10:5-6.1" to "N.J.S.A. 10:5-6." Similarly, N.J.A.C. 13:4-2.3(a) is amended to change "settlements" to "settlement". N.J.A.C. 13:4-2.3 governs the conduct of fact-finding conferences as part of the Division's investigation of discrimination complaints.

N.J.A.C. 13:4-3. This subchapter governs the manner by which actions before the Division are commenced, and sets forth rules for the preparation, filing, form and contents, and service of complaints. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-5. This subchapter governs pleadings before the Division, and requires that respondents answer within 20 days of receiving the verified complaint, and include specific denials of designated allegations within the complaint. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-6. This subchapter governs other pleadings in the Division. N.J.A.C. 13:4-6.1 authorizes the Director to cause an investigation to be made respecting the allegations in a complaint, and provides that the Director shall then determine whether or not probable cause exists. Subsequent sections govern motions before the Division, amended pleadings, Director's orders, and motions to intervene. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-7. This subchapter provides that prior to a case being transmitted to the Office of Administration Law, every order and subsequent pleading to the original complaint, every motion and written notice, and every brief or memorandum of law shall be served by mailing copies to all parties, by registered or certified mail, within three days of filing. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-8. This subchapter generally controls investigatory depositions and interrogatories within the Division. The subchapter authorizes the Director to serve interrogatories when necessary to aid an investigation, and provides that parties may receive discovery after issuance of a finding of probable cause or any final determination, or after transmittal of the case to the Office of Administrative Law, or after any other agency closure. N.J.A.C. 13:4-8.3 establishes an interrogatory default procedure which provides that, if a respondent fails within a specified time to answer interrogatories served pursuant to a verified complaint, the Director may enter an order requiring the respondent to answer the interrogatories within 10 days, and warning that subsequent failure to respond will cause a default to be entered in the case. This section further provides that if after the expiration of this period the respondent has failed to fully answer the interrogatory, the Director shall order an entry of default on the docket of the Division, which shall constitute a waiver of respondent's right to an investigation, and result in matters about which questions were asked being taken as established in accordance with the claim of the complainant. N.J.A.C. 13:4-8.4 governs the taking of testimony by deposition by the Director. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-9. This subchapter governs the issuance of subpoenas by the Director, including whom and what evidence may be subpoenaed, and how subpoenas shall be served. This subchapter also provides that any person failing to comply with a subpoena shall be subject to the appropriate enforcement provisions of N.J.S.A. 10:5-8i, 10:5-19, and 10:5-26, as well as the provisions of N.J.A.C. 13:4-8.3, Interrogatory default procedure. The Division proposes a technical amendment to N.J.A.C. 13:4-9.1(d) by inserting "A" before "Subpoena".

N.J.A.C. 13:4-10. This subchapter provides that the Director may consolidate or sever complaints instituted with the Division. The Division proposes no amendment to this subchapter.

N.J.A.C. 13:4-11. This subchapter provides that a conciliation conference shall be scheduled after a finding of probable cause, and that the respondent shall have at least five days notice of the time and place of the conciliation conference. The Division proposes no amendments to this subchapter.

N.J.A.C. 13:4-12. This subchapter provides that the Director shall determine when a hearing is necessary in any matter, either before or after conciliation, except that a complainant may file a request to present an action before the OAL any time after 180 days from the filing of a verified complaint with the Division unless the Division has found no probable cause or otherwise dismissed the complaint. This subchapter also provides that the Director may seek temporary injunctive relief in the Superior Court of New Jersey if he or she determines that the interests of the complainant may be irreparably harmed by the lapse of time before a hearing or between a hearing and the ultimate disposition of the matter. The Division proposes no amendments to this subchapter.

N.J.A.C. 13:4-13 is reserved.

N.J.A.C. 13:4-14. This subchapter provides that the Director may reopen proceedings for good cause shown. No amendments are proposed to this subchapter.

N.J.A.C. 13:4-15. This subchapter governs orders of the Director, and provides that at any time during the course of the proceedings, the Director may enter such orders as are deemed appropriate to further the intent and purposes of the LAD. This subchapter also proscribes the taking of reprisals against anyone who has opposed discriminatory practices, filed a complaint, or assisted in any proceeding under the LAD. The Division does not propose to amend this subchapter.

Social Impact

The provisions of N.J.A.C. 13:4 that are proposed for readoption either without amendment or with only technical amendments are expected to continue to have a positive social impact. The Legislature enacted the LAD to reflect the belief that "discrimination threatens not only the rights and proper privileges of the inhabitants of the State, but menaces the institutions and foundations of a free democratic state". N.J.S.A. 10:5-3. New Jersey courts have recognized that the eradication of the cancer of discrimination has long been one of our State's highest priorities. *Peper v. Princeton*, 77 N.J. 55 (1978). Since the Division's rules govern virtually every aspect of practice and procedure within the Division ranging from the filing of a complaint to the issuance of a final Director's order, they are essential to the Division's fair and effective enforcement of the LAD. Moreover, the rules provide procedural predictability which facilitates interactions with the Division by complainants, respondents, attorneys, and others. Thus the rules proposed for readoption have had and will continue to have a positive social impact.

Economic Impact

The rules proposed for readoption have had no significant economic impact since they primarily govern procedures before the Division, and represent no change in the substantive legal obligations of those covered by the LAD. The rules are expected to continue to have little or no economic impact.

Regulatory Flexibility Statement

The proposed readoption will not impose any reporting or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, small businesses are prohibited from discriminating in violation of the LAD, just as are larger businesses, and therefore must comply with the rules of practice and procedure if subjected to an investigation by the Division. Because even small businesses are subject to the provisions of the LAD, lesser requirements for small businesses cannot be provided under these rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:4.

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

13:4-1.4 Definitions

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

. . .

["Field investigator"] **"Investigator"** means any employee of the Division designated under [Civil Service] **the Department of Personnel** as "[Field] Investigator, Division on Civil Rights."

"Office of Administrative Law" or "OAL" refers to the agency created by N.J.S.A. 52:14F-1[,] et seq.

"Office of the Division" means the office located at [1100 Raymond Boulevard] **31 Clinton Street**, Newark, New Jersey, and the offices located at 369 Broadway, Paterson, New Jersey; [35] **383** West State Street, Trenton, New Jersey; 130 Broadway, Camden, New Jersey; [Arcade Building, 1325 Boardwalk] **1548 Atlantic Avenue**, Atlantic City, New Jersey; **24 Washington Street, Morristown, New Jersey; 501 Landis Avenue, Vineland, New Jersey; 601 Bangs Avenue, Asbury Park, New Jersey;** and any additional offices which may from time to time be established.

"Respondent" means any party charged with unlawful discrimination under the Law Against Discrimination. (N.J.S.A. 10:5-1 *et seq.*)

13:4-2.1 Director's investigations

(a) The Director, pursuant to N.J.S.A. [10:5-6.1] **10:5-6**; 10:5-8c, g, h, i, j; 10:5-9.1, may, on his or her own motion or on the motion of any person entitled to be a complainant under N.J.A.C. 13:4-3.3, conduct investigations to determine the extent to which industries, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination.

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

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discrimination complaint, is subject to the following:

1. As part of its investigation, the Division may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement[s]. The fact-finding conference is not an adjudication of the merits of the complaint.

2. (No change.)

13:4-9.1 Issuance of investigatory subpoenas by Director

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

(d) [Subpoena] **A subpoena** may be issued by the Director upon the application of any party if that party can demonstrate to the Director that the subpoena is reasonable, and that the matters sought therein are relevant and material to the investigation.

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

(a)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims
Victims of Domestic Violence
Proposed Amendment: N.J.A.C. 13:75-1.6

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1990-603.

Submit comments by January 16, 1991 to:

Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment removes portions of N.J.A.C. 13:75-1.6(c) which no longer apply after passage of P.L. 1990, c.64. The amendment also clarifies the Board's handling of domestic violence claims arising after the passage of P.L. 1990, c.64.

The purpose of the Board's proposed amendment is to have the Board in compliance with the 1988 amendment to 42 U.S.C.A. 10601 et seq., which states that a state crime victim compensation program is an eligible program if it offers compensation to victims of domestic violence.

Social Impact

The addition of this amendment to the Board's rules will allow a new class of victims to apply to the Board for compensation and benefit from its provisions. Domestic violence victims had not been specifically included as eligible victims.

Economic Impact

The proposed amendment allows the Board to comply with the dictates of the 1988 amendment to 42 U.S.C.A. 10601 et seq. Therefore, the Board can be ensured it will continue to receive its yearly grant under the Federal Victims of Crime Act and can pay more claims in a given fiscal year. Victims of domestic violence may now be eligible for compensation from the Board.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes, and their attorneys, may make claims for compensation. The proposed amendment imposes no reporting, re-

cordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since it establishes compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.6 Eligibility of claims

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

(c) Any claimant who is held to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender or is injured while participating in an illegal activity[, or is a relative of the offender or living with the offender as a member of his family relationship group, as defined by N.J.S.A. 52:4B-2,] is not eligible for compensation. For incidents occurring after March 3, 1983 **and continuing through (the effective date of the amendment)**, a relative of the offender or a victim living with the offender as a member of the offender's family relationship group may recover, if, subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.

1. For incidents and injuries occurring on or after (the effective date of this amendment), the Board will apply the same standards that are applied to claims filed by victims of other violent crimes regardless of the familial relationship of the offender and the victim or the fact that they share a residence. However, no award will be made if compensation to the victim proves to be substantial unjust enrichment to the offender. Where the enrichment is inconsequential or minimal, compensation shall not be denied nor reduced. The factors to be considered in determining whether the unjust enrichment is substantial include, but are not limited to:

i. The amount of the award and whether it is made directly to the victim;

ii. Whether the offender has access to any cash payments coming into the household on behalf of the victim;

iii. Whether the award is essential to the well-being of the victim and other innocent and dependent family members;

iv. The amount of living expenses paid by the offender before and during the pendancy of the claim;

v. If a significant portion of the award will be used directly by the offender for living expenses;

vi. The legal responsibilities of the offender to the victim;

vii. Collateral resources available to the victim from the offender which resources include, but are not limited to, court-ordered restitution or support and insurance and pension benefits. In evaluating collateral resources the Board may consider whether the offender has a legal responsibility to pay, whether the offender has resources to pay, and whether payment is likely. The victim will not be penalized for failure of the offender to meet his or her obligation to pay for the costs of the victim's recovery; and

viii. The offender's cooperation in providing the Violent Crimes Compensation Board with information concerning medical insurance coverage and any other information necessary for the Board to make a determination.

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

(a)

VIOLENT CRIMES COMPENSATION BOARD

Eligibility of Claims and Compensable Damages for Victims of Drunk Driving

Proposed Amendments: N.J.A.C. 13:75-1.6 and 1.7

Authorized By: Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.

Authority: N.J.S.A. 52:4B-9.

Proposal Number: PRN 1990-601.

Submit comments by January 16, 1991 to:

Cindy R. Merker, Esq.
Violent Crimes Compensation Board
60 Park Place
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendments provide for and establish guidelines for payment of compensation to victims of drunk driving by the Board. These guidelines became necessary after the passage of P.L. 1990, c.64.

The purpose of the proposed amendments is to have the Board in compliance with the 1988 amendment to 42 U.S.C.A. 10601 et seq., which states that a state crime victim compensation program is an eligible program if it offers compensation to victims of drunk driving incidents. The proposed amendment to N.J.A.C. 13:75-1.7 also more clearly defines how the Board will handle compensation to victims of drunk driving incidents.

Social Impact

The addition of these amendments to the Board's rules will allow a new class of victims to apply to the Board for compensation and benefit from its provisions. Drunk driving victims had previously not been eligible for compensation.

Economic Impact

The proposed amendments allow the Board to comply with the 1988 amendment to 42 U.S.C.A. 10601 et seq. Therefore, the Board will be able to continue to receive its yearly grant under that Act which will enable the Board to pay more claims in a given fiscal year. Victims of drunk driving may now be eligible for compensation from the Board.

Regulatory Flexibility Statement

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes, and their attorneys, may make claims for compensation. The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

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

13:75-1.6 Eligibility of claims

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

(e) No compensation shall be awarded if the victim is injured as the result of the operation of a motor vehicle, boat, or airplane unless the same was used as a weapon in the deliberate attempt to run the victim down [or], if the same was used in the commission of a crime as defined by N.J.S.A. 52:4B-11 and the victim was injured by the same during the commission of said crime, **or as provided in N.J.A.C. 13:75-1.7(i)**.

(f) (No change.)

13:75-1.7 Compensable damages

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

(i) No passenger in a motor vehicle who knew or reasonably should have known that the driver was operating the vehicle while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50 nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving under the influence of alcohol or drugs.

i. "Under the influence" as used in this subsection means a substantial deterioration or diminution of mental faculties or physical capabilities of a person whether due to intoxicating liquor, narcotic, hallucinogenic or habit-producing drugs.

ii. In any matter involving a violation of N.J.S.A. 39:4-50 relating to driving a vehicle while under the influence of intoxicating liquor, the following factors will be taken into account.

(1) A blood alcohol reading of .10 percent is prima facie evidence of a violation of N.J.S.A. 39:4-50;

(2) A blood alcohol reading in excess of 0.05 percent but less than 0.10 percent shall not give rise to any presumption that the offender was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence; and

(3) A blood alcohol reading of 0.05 percent or less shall give rise to the presumption that the offender was not under the influence of intoxicating liquor.

2. The Board may deny or reduce an award if the Board finds the victim was not wearing protective equipment such as a safety belt or if the victim is the operator of a second vehicle and does not have automobile insurance as required by law.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Energy Emergency

Reproposed New Rules: N.J.A.C. 14A:2

Authorized By: Board of Public Utilities, Scott A. Weiner, President.
Authority: N.J.S.A. 52:27F-18.
BPU Docket Number: AX90080809.
Proposal Number: PRN 1990-638.

Submit comments by January 16, 1991 to:
Edward Beslow, Esq.
Office of the President
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

On June 15, 1989, Governor Thomas A. Kean issued a Reorganization Plan (No. 002-1989) to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities (Board) (see 21 N.J.R. 1937).

Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and transferred to the Board. Among the functions, powers and duties transferred was the responsibility and authority requiring the periodic reporting by energy industries of energy information, set forth in P.L. 1977, c.146, §16 (N.J.S.A. 52:27F-18) and the responsibility and authority for energy emergency planning and preparedness.

These administrative rules provide the Board with the authority to allocate various sources of energy within the State after gubernatorial declaration of an energy emergency. The specific energy sources are electricity, natural gas, regulation and control of the sale of motor gasoline, the State set-aside for major refined petroleum based fuels and supplies of motor gasoline. The rules proposed below are essentially identical to proposed rules that were published for comment in the September 17, 1990, New Jersey Register at 22 N.J.R. 2950(a), except as noted. As indicated in that notice, the Board conducted a public hearing concerning this proposal on October 11, 1990. At that time, oral testimony was presented only by Public Service Electric and Gas Company.

Written comments which were due on or before October 17, 1990, were received from:

New Jersey Petroleum Council
Public Service Electric and Gas Company
Atlantic Electric Company
South Jersey Gas Company
Elizabethtown Gas Company
East Orange General Hospital
Francis E. Parker Memorial Home.

The current proposal supersedes the proposal at 22 N.J.R. 2950(a) and is based on the public comments received. On November 7, 1990 the Board determined that the major change proposed herein is of a substantive nature requiring republication. The Board further decided to repropose these rules in toto in recognition of the substantial nature of the amendments and to avoid adoption without the opportunity for further public comments. The major change between the former proposal and the current one is the reversion to the curtailment plan which was based on Appendix A of the Board's Order in Docket No. 748-639 which was the basis for the rules formerly at N.J.A.C. 14A:2 which expired on April 17, 1989. Further changes include the dropping of references to gasohol because it is not sold in the State and the inclusion of a category of "natural gas" at N.J.A.C. 14A:2-2.3(a)3 because it had been inadvertently left out of the prior proposal. At N.J.A.C. 14A:2-4.2(a)2iv, reference to a specific percentage reduction was deleted from this proposal in order to correctly reflect both Board policy and standards established by the Pennsylvania Jersey Maryland Power Pool.

A more specific summary by subchapter is provided below:

SUBCHAPTER 1. GENERAL PROVISIONS

This subchapter contains the scope of the rules, definitions, provisions regarding exemptions and a reservation of the Board's right to modify emergency plans.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

This subchapter provides for several steps in resolving an impending supply in the State. First, a public appeal is issued through the news media requesting end-users to voluntarily reduce their use of electricity, natural gas and petroleum products. Should the public appeals not result in sufficient reduction of energy consumption, direct mandatory reductions or limitation of energy uses and reductions of hours of operation are specified.

SUBCHAPTER 3. NATURAL GAS

In the event that a significant shortage of natural gas is forecast over a period in which public appeals, mandatory reductions or limitations of energy uses and reductions of hours of operation do not provide sufficient relief, a Priority Plan involving a sequence of involuntary curtailments is specified. This curtailment plan is identical to that contained in Appendix A of the Board's Order in *In the Matter of the Board's Investigation into the Natural Gas Supply and the Priority Plan for Involuntary Curtailments in the State of New Jersey*, Docket No. 748-639.

SUBCHAPTER 4. ELECTRICITY

In the event that a significant shortage of electricity is forecast over a period in which public appeals, mandatory reductions or limitation of energy uses and reductions of hours of operation voluntary reductions do not provide sufficient relief, steps to maintain reliable service are specified.

SUBCHAPTER 5. STATE SET-ASIDE FOR PETROLEUM PRODUCTS

This subchapter would be implemented if the Governor finds that there is an existing or impending petroleum supply shortage of a dimension which imperils the public health, safety and welfare. A State Set-Aside Program would require a prime supplier of motor gasoline, aviation gasoline, kerosene, diesel fuel oil, distillate fuel oil, No. 4 fuel oil, residual oil and propane to set aside mandated percentages of product volume. The set aside percentages would be determined by the Board prior to the implementation of this subchapter. The subchapter sets a ceiling on the percentages for various covered products. The Board may designate certain geographic areas of the State as suffering from an intrastate supply imbalance and may issue an order releasing all or part of a prime supplier's set-aside volume through normal distribution channels.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

This subchapter contains the procedures which would be implemented during a period when there is a significant shortage of motor fuel. The key provisions of the procedure are limitations on the quantity of motor fuel to be sold to any one purchaser and days of access to retail dealers, commonly known as the "odd/even" system.

SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

This subchapter requires each supplier of petroleum products to retail dealers submit the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each covered product for each class of customer to the Board within 24 hours of a price change.

Social Impact

These proposed rules regarding energy emergencies will have a positive social impact in minimizing the daily disruptions to providers of critical

social services such as medical care in the event of a declared state of emergency. Exemption mechanisms are provided in the programs which would otherwise restrict access to motor fuels to school, hospital and emergency vehicles amongst others. The public utility emergency plans as well as the State emergency plans provide that facilities which provide critical social services will be kept on firm service to the maximum extent practicable.

Economic Impact

These emergency procedures will have a positive economic impact in the event of an energy emergency. In particular, the State Set-Aside for petroleum products is designed to give the State the maximum degree of flexibility to redirect fuels to geographical parts of the State which would otherwise suffer disproportionate economic disruption. The overall goal of all of these procedures is to provide a system which minimizes economic disruption across the State.

Environmental Impact

These emergency procedures will not have an adverse impact on the environment. Although it is not an intended outcome of the procedures, it may be anticipated that restricted access to motor fuels and increased ridesharing may result in improved air quality in all or part of the State.

Regulatory Flexibility Analysis

These rules will impose requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., particularly the retailers of motor fuels (see N.J.A.C. 14A:2-6). These requirements relate to the quantities and manner in which motor fuels are sold. No capital cost or professional services should be incurred or required to comply. The impact on businesses would be felt only during a period of declared energy emergency. Such a state of energy emergency has not been implemented since 1979.

These rules do provide for exceptions upon presentation to the Board of a documented hardship. However, no business-size hard exemption or differentiation is provided by the rules due to their emergency nature.

Full text of the reproposed new rules follows:

CHAPTER 2
ENERGY EMERGENCY

SUBCHAPTER 1. GENERAL PROVISIONS

14A:2-1.1 Scope

The following rules, with the exception of N.J.A.C. 14A:2-2.2, shall be implemented when the Governor, by Executive Order, has proclaimed a state of energy emergency under N.J.S.A. 52:27F-17. The declaration of an emergency shall be based upon a finding by the Board that there impends or exists a serious shortage of energy which poses a grave threat to the public health, safety or welfare in all or any part of the State. In making such a finding, the Board shall set forth whether the emergency shall be limited to a specific energy form or to any specific area of the State in which such a shortage exists or impends.

14A:2-1.2 Definitions

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

"Alternate fuel capabilities" means a situation where an alternate fuel could have been utilized whether or not the facilities for such use have actually been installed; provided, however, that when the use of natural gas is for plant protection, feedstock, or process uses, and the only alternate fuel is propane or other gaseous fuel, then the consumer will be treated as if he had no alternate fuel capability.

"Ambulatory handicap" means any physical condition which significantly impairs mobility requiring confinement to a wheelchair; or other disability where compliance with the provisions of this chapter would have the likelihood of seriously impairing or harming the health of the person.

"Authorized emergency vehicles" means vehicles of fire departments, utilities, police vehicles, ambulances, and such other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to the provisions of Title 39 of the Revised Statutes.

"Board" means the New Jersey Board of Public Utilities.

"Boiler fuel" means natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

"Commercial" means a classification of service to customers engaged primarily in the sale of goods or services, including institutions and local, State and Federal government agencies for uses other than those involving manufacturing or electrical power generation.

"Commercial vehicle" means motor vehicles not designed for the transportation of passengers and motor vehicles, designed but not used for the transportation of passengers, which either bear commercial plates or bear the name and address of the owner of the vehicle affixed to the exterior of the vehicle in the manner prescribed for commercial vehicles in chapter 4 of Title 39 of the Revised Statutes.

"Covered product" means any petroluem product subject to the State Set-Aside.

"Electric utility" means all public utilities, municipal electric departments and electric cooperatives engaged in the distribution of electricity within the State of New Jersey.

"End-user" means any person who is an ultimate consumer of energy.

"Energy emergency" means a shortage in the supply of a particular source of energy of a dimension which endangers the public health, safety or welfare in all or any part of the State of New Jersey.

"Farm vehicle" means any vehicle registered under the provisions of N.J.S.A. 39:3-24 (self-propelled farm tractors, traction equipment, and farm machinery) and N.J.S.A. 39:3-15 (farm trucks) which bear farmer, farm use, or tractor plates.

"Feedstock gas" means natural gas used as raw material for its chemical properties in creating an end product.

"Firm" means a classification of energy service from schedules or contracts under which seller is expressly obligated to deliver specific energy units within a given time period and which anticipates no interruption, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

"Gas utility" means all public utilities engaged in the distribution of gas within the State of New Jersey.

"Heat recovery system" means a system which uses previously wasted heat for useful purposes such as space heating, process heating, and so forth. It may involve the use of heat rejected from motors, processes, or other heat generating equipment which would otherwise be wasted or lost by being vented to the atmosphere or unrecaptured.

"Industrial" means a classification of energy service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power.

"Interruptible" means a classification of energy service from schedules or contracts under which seller is not expressly obligated to deliver specific energy units within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or impliedly require installation of alternative fuel capability.

"Motor fuel" means a mixture of volatile hydrocarbons such as gasoline or diesel fuel used in motor vehicles.

"Motor vehicle" means any vehicle propelled other than by muscular power, excepting such vehicles as run only upon rails or tracks.

"Omnibus" means buses, taxicabs and all other motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire.

"Operating reserve" means electric generating capability and/or equivalent generation in excess of forecast system peak load which must be available within 30 minutes or less to provide for load variations and forecasting errors, frequency regulation, area protection and equipment failure or malfunction.

"Passenger automobile" means any motor vehicle used and designed for transportation of passengers, except omnibus, school bus, and authorized emergency vehicle.

"Person" means and includes natural persons and partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator, or other officer appointed pursuant to law or by any court, State or Federal; also counties, municipalities, authorities and other political subdivisions of this State, singular or plural, and the State of New Jersey.

"Plant protection gas" means minimum volumes required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed, but shall not include deliveries required to maintain plant production. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.

"Prime supplier" means supplier, or producer who makes the first sale of petroleum products into the State distribution system for consumption within the State.

"Process gas" means gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics. For the purpose of this definition propane and other gaseous fuels shall not be considered alternate fuels.

"Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession.

"Residential" means a classification of energy service to all buildings and structures, or parts thereof, in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities.

"Retail dealer" means any person who engages in the business of selling motor fuel from a fixed location such as a service station, filling station, store, or garage directly to the operator of a motor vehicle by dispensing such motor fuel into the service tank of the motor vehicle.

"Sale" means and includes, in addition to its ordinary meaning, any exchange, gift or other disposition. In every case where motor fuel is exchanged, given, or otherwise disposed of, it shall be deemed to have been sold.

"School bus" means any motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or religious education which complies with the regulations of the Department of Education affecting school buses.

"Spinning reserve" means that portion of primary reserve synchronized to the system and under unrestricted control of the turbine governor.

"Supplier of motor fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies, sells, consigns, transfers or otherwise furnishes motor fuel to a retail dealer.

"Truck stop" means any retail dealer who provides service predominantly to trucks and truck tractors, as defined in chapter 1 of Title 39 of the Revised Statutes.

"Wholesale purchaser-consumer" means any person that is an ultimate consumer who, as part of its normal business practices, purchases or obtains a covered product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which purchased or obtained more than 50,000 gallons of that covered product in the completed calendar year prior to the declaration of the emergency.

"Wholesale purchaser-reseller" means any person who purchases, receives through transfer, or otherwise obtains (as by consignment) a covered product and resells or otherwise transfers it to other purchasers without substantially changing its form. They are designated in the trade as distributors, jobbers, resellers, retailers or service station operators.

14A:2-1.3 Exemptions

(a) Any person who is aggrieved by the implementation of any provisions of this chapter may apply for and shall be granted a review of whether compliance places an unreasonable burden upon that person in light of the prevailing conditions of emergency.

(b) Such application shall contain, as a minimum, the name, address and telephone number of the aggrieved party and a concise statement of the grievance.

14A:2-1.4 Reservation

The Board reserves the right to modify any of the various emergency measures set out in this chapter and to implement said measures in whole or in part.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

14A:2-2.1 Scope

The provisions of this subchapter shall apply to all energy end-users within the State of New Jersey.

14A:2-2.2 Public appeal

In the event of an impending supply shortage, the Board may make public appeals or require electric and gas utilities to make public appeals through appropriate news media requesting end-users to reduce their use of electricity, natural gas, and petroleum products.

14A:2-2.3 Energy reduction measures

(a) Upon declaration of an energy emergency, the Board may require energy users to implement in whole or in part various energy reduction measures or limitations of energy uses and reductions of hours of operation described in this subsection.

1. Measures for all energy users are as follows:

i. Heating energy sources shall not be used to maintain all temperatures within public buildings of State, county, local governments and school boards, including educational institutions, all industrial and commercial establishments, warmer than 65 degrees Fahrenheit during business hours, including start-up and preparation time, and not more than 55 degrees Fahrenheit during non-business hours.

ii. Where separate thermostats for heating and cooling are in use, air conditioning thermostats shall be at 80 degrees Fahrenheit or at some other level such that cooling energy is not used to achieve prescribed heating levels.

iii. Temperatures within all single and multiple family dwellings shall be set at 65 degrees Fahrenheit from 6:00 A.M. to 11:00 P.M. and 60 degrees Fahrenheit from 11:00 P.M. to 6:00 A.M.

iv. Portable space heaters and threshold heaters used as supplementary heating sources shall be prohibited.

v. Where applicable, window draperies and blinds shall be used to cut down heat losses by setting them to the closed position during the nighttime hours and on cold, cloudy days, and setting them to the open position during periods of sunshine.

vi. Thermostat control devices for hot water shall be set to maintain a maximum temperature of no more than 110 degrees Fahrenheit.

vii. Steps shall be taken to eliminate heating in all unused and seldom used areas, such as stairwells, where economically feasible.

viii. Work schedules for building cleaning, maintenance, restocking, and so forth, which would require offices or industrial facilities to be open beyond normal working hours, shall be minimized.

ix. Nighttime sports, entertainment and recreational activities shall be curtailed.

x. All public museums, art galleries and historic buildings shall be closed.

xi. Retail establishments shall be closed on Sunday except for those providing essential services to the public.

xii. Retail establishments shall be closed from 7:00 P.M. to 9:00 A.M., except those essential services to the public.

xiii. Swimming pool water heating is prohibited.

xiv. All nonessential energy uses shall be prohibited.

2. Measures for electricity users are as follows:

i. All outdoor flood and advertising lighting shall be eliminated, except for the minimum level to protect life and property and, where feasible, a single illuminated sign identifying commercial facilities that are open after dark.

ii. General lighting levels in stores and offices shall be reduced as close to minimum safety levels as possible.

iii. Show window and display lighting shall be eliminated.

iv. The number of elevators operating in office buildings during non-peak hours shall be reduced by at least 50 percent.

v. All aesthetic, ornamental lights shall be extinguished.

3. Measures for natural gas users are as follows:

i. All aesthetic, ornamental gas lights shall be extinguished.

ii. All exterior gas lighting, except for essential safety and security purposes, shall be eliminated.

14A:2-2.4 Hour limitations

In the event that the provisions of N.J.A.C. 14A:2-2.2 and 2.3 fail to provide adequate relief, the Board may impose further hour restrictions upon industrial and commercial operations.

14A:2-2.5 Exemptions

(a) Notwithstanding the provisions of N.J.A.C. 14A:2-2.2 and 2.3, the Board hereby exempts the following from all or a portion of the above requirements, so long as steps have been taken to reduce all non-essential energy use or unless so directed by order of the Board:

1. Railroads;
2. Local and suburban transit;
3. Interstate transportation by air;
4. Pipeline transportation;
5. Communications (telephone, radio, television and cable television);
6. Electric, gas and sanitary services;
7. Petroleum refining;
8. Hospitals;
9. Electric sales for resale under FERC jurisdiction;
10. Prisons;
11. Police and fire-fighting facilities;
12. Water supply;
13. Federal activities essential to national defense; and
14. Life support systems: Consideration should be given to advance notification of customers with life support systems such as iron lungs, shaker beds, and kidney machines.

SUBCHAPTER 3. NATURAL GAS

14A:2-3.1 Scope

The provisions of this subchapter shall apply to all gas utilities within the State of New Jersey.

14A:2-3.2 Priority plan for involuntary curtailment

(a) In the event that N.J.A.C. 14A:2-2.2, 2.3 and 2.4 do not provide sufficient relief, the following sequence of involuntary curtailment shall be implemented:

1. Reduce gas service to a minimum at company facilities;
2. Curtail all interruptible gas service other than for plant protection, process, or feedstock usage;
3. Curtail all interruptible gas service for plant protection, process, or feedstock usage;
4. Curtail all firm industrial service of 50 Mcfd or more, other than for plant protection, process, or feedstock usage;
5. Curtail all firm commercial boiler service of 50 Mcfd or more;
6. Curtail all firm industrial service for process and feedstock of 50 Mcfd or more and large commercial service of 50 Mcfd or more;
7. Curtail all firm industrial service of 50 Mcfd or less;
8. Curtail all firm industrial plant protection service;
9. Curtail all residential and small commercial service (50 Mcfd or less).

(b) Consecutive categories may be curtailed simultaneously to provide sufficient relief in a timely manner. However, higher priorities will not be curtailed prior to the curtailment of lower priorities.

14A:2-3.3 Inter-gas utility allocations

Pursuant to the provisions of section 15(b)(3), P.L. 1977, c.146, the Board may order the allocation of specific quantities of natural gas from one gas utility to another to prevent the curtailment of residential end-users.

14A:2-3.4 Residential curtailment

(a) Where all possible means of carrying system load have been taken and load reduction is still required, a gas utility shall curtail residential end-users.

1. The gas utility shall notify the Board as soon as is reasonably feasible and seek authority to implement sectional curtailment of residential end-users pursuant to section 15(b)(3), P.L. 1977, c.146.

2. In the event operating conditions are of such a critical nature that a system emergency is imminent and the implementation of N.J.A.C. 14A:2-2.2, 2.3 and 2.4 or the notification procedure pursuant to (a)1 above will cause a delay that could unduly jeopardize the integrity and proper operation of the system, the gas utility may implement N.J.A.C. 14A:2-3.2, including the curtailment of residential end-users. Under such conditions, the provisions of (a)1 above and N.J.A.C. 14A:2-2.2, 2.3 and 2.4 are deemed waived.

SUBCHAPTER 4. ELECTRIC

14A:2-4.1 Scope

The provisions of this subchapter shall apply to all electric utilities within the State of New Jersey.

14A:2-4.2 Programs to reduce energy consumption

(a) In the event that N.J.A.C. 14A:2-2.2, 2.3 and 2.4 do not provide sufficient relief, the following actions shall be instituted:

1. The electric utilities, insofar as is feasible, shall operate on a one-system basis, utilizing available fuel resources to produce electrical energy to supply the load of all electric utilities of the power pool to which they belong.

2. Departures from normal operating procedures, which have an acceptable impact on reliability and economy, shall be made. These include, but are not limited to, the following. These steps may be used in any sequence as judged necessary by an electric utility, the PJM Interconnection Dispatcher or the New York Power Pool Dispatcher.

i. Rescheduling of maintenance, to permit best use of the available fuel supply;

ii. Maximum practicable use of generation having the more abundant fuel supply from other areas, even when this is not in accord with economic dispatch;

iii. After careful analysis, opening of limiting transmission lines to avoid operation of capacity with limited fuel availability that would otherwise be required to control line loading;

iv. Reduction of the spinning component of the systems' operating reserve requirement, to avoid operation of capacity with limited fuel availability so long as quick-start units are available for operation;

v. Reliance on manual tripping of pumped storage hydro units, operating as pumps, to limit use of capacity with limited fuel availability that otherwise would be required to control line loadings following a contingency;

vi. Voluntary customer energy reduction programs, as agreed upon from time to time by an electric utility and its customers, shall be placed in effect; and

vii. A five percent voltage reduction is to be made effective on a continuous basis.

3. Loads are to be interrupted on a rotating basis every two hours, as determined by each electric utility. Where particular manufacturing or processing operations do not permit interruptions of service, or where such interruptions would cause severe hardship or would have an unacceptable impact on continuous operations, the electric utility shall, if reasonably feasible, secure the equivalent reduction in use from the customers that might otherwise be interrupted by some method other than the prescribed rotating interruptions.

14A:2-4.3 Implementation

The electric utilities shall inform the Board as soon as reasonably feasible and, if possible, prior to implementation of N.J.A.C. 14A:2-4.2, consistent with the interconnection agreements to which they are signatories.

SUBCHAPTER 5. STATE SET-ASIDE FOR PETROLEUM PRODUCTS

14A:2-5.1 Scope and purpose

(a) Upon declaration of an energy emergency the Board may establish a State Set-Aside for the following petroleum products: gasoline, aviation gasoline, kerosene, diesel fuel oil, distillate fuel oil, No. 4 fuel oil, residual fuel oil and propane.

(b) The Board shall utilize the State Set-Aside to meet hardships and emergency requirements of wholesale purchaser-consumers, end-users, and wholesale purchaser-resellers including wholesale purchaser-consumers and end-users which are part of any governmental organization.

14A:2-5.2 State Set-Aside volume

(a) Upon establishment of a State Set-Aside, a prime supplier shall report to the Board, on a form prescribed by the Board, on or before the 20th of each month;

1. The estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during the next month;

2. The State Set-Aside volume available during the next month, using the formula in (c) below; and

3. The actual volume of each covered product sold into the State's distribution system for consumption within the State during the previous month.

(b) When appropriate, the Board will determine the State Set-Aside percentage level for each covered product which set aside shall not exceed the levels as follows:

1. Gasoline: five percent;
2. Aviation gasoline: five percent;
3. Kerosene: four percent;
4. Diesel fuel oil: four percent;
5. Distillate fuel oil: four percent;
6. No. 4 fuel oil: three percent;
7. Residual fuel oil: three percent; and
8. Propane: three percent.

(c) The State Set-Aside volume available to the Board for a particular month shall be the amount calculated by multiplying the State Set-Aside percentage level by each prime supplier's estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during that month.

(d) The State Set-Aside for a particular month may not be accumulated or deferred. It shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

14A:2-5.3 Applications for State Set-Aside

(a) All hardship and emergency applications for assignment from the State Set-Aside and appeals shall be filed with the Board.

(b) Applications shall be in writing on a form prescribed by the Board. Applications may first be made by telephone, but must be confirmed in writing within five days.

(c) If the applicant does not have a supplier, it shall identify two suppliers whom the applicant has contacted and who could provide the covered product.

(d) The information to be supplied shall be sufficient to enable the Board to act properly on the application. Applications shall include, but are not limited to, name of applicant, address, telephone number, name of contact person, type of business, type of fuel requested, amount to be received in month of application, amount requested, justification for application, inventory, storage capacity, amount that was received in each month of the previous year from all prime suppliers or wholesale purchaser-resellers (if applicable) and their names.

14A:2-5.4 Assignments from State Set-Aside

(a) If the Board approves a hardship or emergency application, it shall assign a prime supplier and amount from the State Set-Aside to the applicant. Any prime supplier to the State may be assigned regardless of whether its brand, if any, is different from the brand of the applicant. To determine the appropriate prime supplier, the Board may coordinate with the State representative of the prime supplier.

(b) In order to facilitate relief of any hardship and meet the emergency requirements of wholesale purchaser-consumers and end-users, the Board may direct that a wholesale purchaser-reseller be supplied from the State Set-Aside, so that the wholesaler purchaser-reseller can supply the wholesaler purchaser-consumers and end-users experiencing such hardship or emergency.

(c) The Board shall issue an authorizing document to an applicant granted an assignment from State Set-Aside. The Board shall provide a copy of the authorizing document to the prime supplier's designated State representative.

(d) An authorizing document issued by the Board pursuant to this section is effective upon issuance and represents a call on the prime supplier set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month.

(e) An authorizing document not presented to either the prime supplier or designated wholesale purchaser-reseller of the prime supplier within 10 days of issuance shall expire after that time.

14A:2-5.5 Responsibilities of wholesale purchaser-resellers

The assigned products specified in the authorizing documents shall be made available to the wholesale purchaser-consumer or end-user at prices prevailing for similar classes of purchases in the locality of the wholesale purchaser or end-user at the time of the sale of the product.

14A:2-5.6 Prime suppliers

(a) Each prime supplier shall designate a representative to act on behalf of the prime supplier with respect to the State Set-Aside. Each prime supplier shall notify the Board in writing of such designation within 15 days of said designation.

(b) All prime suppliers shall supply products from their State Set-Aside volume each month, as directed by the Board, not to exceed the total State Set-Aside volume for each product for that month. That portion of a prime supplier's State Set-Aside volume for a particular month which is not assigned by the Board during that month, or which is not subject to an authorizing document issued no later than the last day of that month, shall become a part of the prime supplier's total supply for the subsequent month.

(c) The assigned products specified in the authorizing document shall be made available to the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at prices prevailing for similar classes of purchasers in the locality of the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at the time of the sale of the product.

14A:2-5.7 Releases of State Set-Aside

(a) At any time during the month, the Board may issue an authorizing document releasing part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(b) The Board may designate certain geographical areas within the State as suffering from an intrastate supply imbalance. At any time during the month, the Board may issue an authorizing document to some or all of the prime suppliers with purchasers within such geographical areas releasing part or all of their set-aside volume through their normal distribution systems to increase the supply of the prime supplier's purchasers located within such areas.

(c) Authorizing documents issued pursuant to this subsection (c) shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such authorizing documents shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

14A:2-5.8 Penalties

(a) Any person who violates the provisions of these rules shall be liable for a penalty of not more than $500.00 for the first offense and not more than $5,000 for the second or any subsequent offense, to be collected in a civil action by a proceeding under the penalty enforcement law (N.J.S.A. 2A:58-1 et seq.), or in any case before a

court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall also have jurisdiction to enforce the penalty enforcement law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

(b) The Board may compromise and settle any claim for a penalty under this section in such amount at the discretion of the Board as may appear appropriate and equitable under all of the circumstances.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

14A:2-6.1 Scope

In the event that the Board determines there is a significant shortage of motor fuel, this subchapter shall apply to the sale of all motor fuel made by retail dealers to operators of motor vehicles.

14A:2-6.2 Days of access to retail dealers—odd/even measure

(a) No retail dealer shall sell any motor fuel for use in a service tank in a passenger automobile except as set forth in the following schedule:

1. Operators of passenger automobiles bearing license plates the last number of which is an even number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on even numbered days of each month.

2. Operators of passenger automobiles bearing license plates the last number of which is an odd number or containing no number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on odd numbered days of each month.

3. Operators of passenger automobiles bearing license plates from any other state or foreign nation shall be permitted to purchase motor fuel on the same basis as any regulation in effect in their state.

4. For the purpose of determining the last number of the license plate, any number preceded by a hyphen or dash shall not be used in determining the right to purchase motor fuel described in this section.

5. The provisions of this section shall not be applicable on the 31st day of any month.

14A:2-6.3 Quantity of motor fuel

The Board may establish minimum or maximum quantities of motor fuel to be sold to any purchaser including limitations on the number of gallons to be sold and/or limitations on the number of dollars of motor fuel to be sold.

14A:2-6.4 Methods for notifying public

(a) Every retail dealer of motor fuel shall conspicuously display a flag, so that it is easily visible to the public, during such time that his place of business is open, as follows:

1. A red flag shall be displayed when motor fuel is not available for sale to members of the general public;

2. A green flag shall be displayed when all grades of motor fuel are available for sale to members of the general public without limitations in regard to the maximum amount which may be purchased;

3. A yellow flag shall be displayed when motor fuel is available to members of the general public but such sales are limited in regard to the maximum amount which may be purchased, or there is a grade of motor fuel which is unavailable for sale to members of the general public.

(b) Whenever a retail dealer displays a yellow flag, he shall post in a conspicuous place and manner the limitations applicable to sales of motor fuel.

(c) Every retail dealer of motor fuel shall post in a conspicuous place and manner the hours during which he shall be selling motor fuel to members of the general public.

(d) All signs posted by a retail dealer relating to the price of motor fuel being sold shall be properly maintained and accurately reflect the current selling price.

(e) Every retail dealer shall prominently indicate the last motor vehicle eligible to receive motor fuel from the retail dealer prior to closing.

(f) If a minimum purchase or minimum sale requirement is in effect, every retail dealer of motor fuel shall post in a conspicuous place and manner the requirement which is in effect at that time.

14A:2-6.5 Exemptions; self-implementing

(a) The following persons shall be exempt from N.J.A.C. 14A:2-6.2, Days of access to retail dealers—odd/even measure:

1. Operators of motor vehicles bearing license plates with "MD" identification marks in which a physician is riding on medical business;

2. Operators of commercial vehicles, farm vehicles, omnibuses, and school buses;

3. Operators of authorized emergency vehicles;

4. Operators of motor vehicles bearing license plates or handicap parking sticker which identify the operator as a disabled or handicapped driver;

5. Operators of motor vehicles which are being used as van pools recognized by the New Jersey Department of Transportation bearing a sticker issued by the Board. Operators of motor vehicles which are being used as van pools may apply to the Board for such an exemption sticker. The Board may require operators of van pools to furnish such proof as the Board may prescribe in order to establish a right to such an exemption; and

6. Operators of motor vehicles with weekday exemption stickers shall only be exempt from Monday through Friday inclusive.

14A:2-6.6 Exemptions on application

(a) In the absence of identifying license plates, persons who can establish to the satisfaction of the Board that they suffer from an ambulatory handicap or disability, and require the use of a passenger automobile for business, in connection with their employment or to obtain medical care or the necessities of life, shall be issued a sticker in the form prescribed by the Board, which when affixed to said automobile in the manner prescribed, shall exempt such persons from the provisions of N.J.A.C. 14A:2-6.2. Such persons shall be required to furnish such proof as may be required by the Board in the form and manner as the Board may prescribe in order to establish such right to exemption.

(b) Any person who can demonstrate to the satisfaction of the Board that an exemption is necessary for the health and welfare of the general public may receive an exemption sticker.

(c) An operator of a motor vehicle, who can demonstrate to the satisfaction of the Board that an exemption is necessary for employment, may receive a weekday exemption sticker.

1. The Board will consider an exemption necessary for an individual's employment when the individual demonstrates that:

i. A motor vehicle is required in pursuing his or her employment;

ii. The motor vehicle used for pursuit of his or her employment is supplied with motor fuel exclusively from a retail dealer;

iii. Alternative means of transportation to pursue his or her employment are unavailable;

iv. The individual travels a minimum of 125 miles per day at least four days a week, exclusive of commutation to and from work; and

v. The individual travels a minimum of 25,000 miles per year in the conduct of his or her employment.

2. To receive an exemption under this subsection, an individual shall submit a completed and notarized application on a form provided by the Board. This form shall be accompanied by a declaration of employment by the individual's employer on the stationery of the employer. Additionally, an individual may be asked to document all information submitted to the Board. The Board reserves the right to require that all applicants submit documentation in any requested form, including, but not limited to, Internal Revenue Service forms.

3. An individual in compliance with the requirements of this subsection will receive a weekday exemption.

14A:2-6.7 Arrangements permitted

(a) Any retail dealer who, prior to the declaration of emergency, had a bona fide agreement or written contract with a commercial account for the periodic sale of motor fuel to commercial vehicles,

omnibuses, school buses, or authorized emergency vehicles shall be allowed to continue those sale practices, notwithstanding the provisions of N.J.A.C. 14A:2-6.2 and 6.3.

(b) Provisions concerning special arrangements for emergency services are as follows:

1. The governing body of any New Jersey county or municipality or the senior officer of any Federal agency, the jurisdiction of which includes New Jersey or any portion thereof, which utilizes the services of a volunteer or professional fire department, police department, rescue squad, ambulance service, or the hospital administrator of any New Jersey hospital which utilizes the services of emergency medical personnel may enter into a written contract or agreement with designated retail dealer(s) to permit the sale of motor fuel at any time to such persons that provide said emergency services, notwithstanding any of the provisions of these regulations.

2. Said contracts or agreements shall designate by name those persons who provide said emergency services and shall designate by license plate number the motor vehicle used by said persons when responding to a call to provide said emergency services. Said contracts or agreements shall be submitted to the Board for approval consistent with a policy of motor fuel conservation and equitable allocation and the providing of essential emergency services.

3. Designated retail dealers shall obtain from persons purchasing motor fuel under the provisions of this subsection a signed and dated receipt declaring the motor fuel gallonage purchased. Said designated dealers shall, on a monthly basis, submit all such receipts to the appropriate governing body, senior officer or hospital administrator.

4. The governing body, senior officer, hospital administrator or authorized representative thereof shall conspicuously post in the appropriate municipal building, county office building, agency office building or hospital the names of all persons designated in any said contracts or agreements and the motor fuel gallonage purchased on a monthly basis, if any, by each said designated person. Said governing body, senior officer or hospital administrator shall retain a record of all purchases made under the provisions of this subsection and submit same, upon demand, for review by the Board.

(c) A retail dealer, who, prior to the effective date of this rule, qualified as a truck stop, may, at the dealer's option, restrict its sales of motor fuel to the operators of trucks and truck tractors only. Said options does not include the right to sell at the dealer's discretion to the operators of preferred customer passenger automobiles to the exclusion of all other passenger automobiles, and any such dealer who elects to sell to any operator of a passenger automobile after the effective date of this rule shall be required to sell to all operators of passenger automobiles subject to this subchapter. A retail dealer electing to sell only to the operators of trucks and truck tractors under the terms of this section shall post in a conspicuous place such restriction.

14A:2-6.8 Police authority to waive regulations in cases of emergency

(a) Notwithstanding any of the provisions of this subchapter, police departments of the Division of State Police in the Department of Law and Public Safety and police departments of any New Jersey municipality may, in cases of bona fide emergency, waive any of these rules and permit a retail dealer to sell motor fuel at any time to the operator of a motor vehicle who would otherwise not be entitled to purchase motor fuel. In every instance where a waiver of these rules is granted, the name of the person requesting such waiver, the waiver granted and the reasons therefor shall be entered onto the police blotter of the police department involved. A bona fide emergency exists where a police officer determines that the use of a motor vehicle is necessary for the life, health or safety of an individual or community.

(b) Any person procuring motor fuel by falsely claiming bona fide emergency shall be deemed to be in violation of this section.

(c) A retail dealer who sells motor fuel pursuant to a waiver as described in (a) above shall not be deemed to be in violation of this subchapter.

14A:2-6.9 Privileged vehicles

(a) Notwithstanding any of the provisions of this subchapter, an operator of an authorized emergency vehicle shall be entitled to be sold motor fuel immediately upon demand by a retail dealer at any time including those hours when a retail dealer is not open for the sale of motor fuel to the general public.

(b) A retail dealer who sells motor fuel in accordance with (a) above shall not be deemed to be in violation of this subchapter.

14A:2-6.10 Pre-emption

All local and county regulations, statutes, ordinances and proclamations dealing with the subject matter of this subchapter are hereby superseded.

14A:2-6.11 Interference with compliance

(a) No person shall threaten, interfere, or attempt to interfere with the retail dealer with respect to compliance with the provisions of this subchapter.

(b) No person shall knowingly or willfully misrepresent a motor vehicle as one entitled to an exemption from this subchapter or a priority thereunder. Such misrepresentation includes, but is not limited to, falsely identifying a motor vehicle as a commercial vehicle. If such misrepresentation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. Penalties imposed resulting from a violation of this section shall not preclude the application of any other penalties, civil or criminal, as prescribed by law.

14A:2-6.12 Modification or suspension of regulations

The Board may, from time to time and for such period as it deems appropriate, modify or suspend the operation and/or enforcement of any portion of or all of this subchapter, in whole or in part. Such modification or suspension may be made immediately effective without prior notice.

14A:2-6.13 Preferred customers; sale on first-come, first-served basis

(a) No retail dealer shall give proferential treatment including, but not limited to, separate pumps, separate pump lines, separate hours of sale, or sale by appointment to preferred or regular customers.

(b) All sales of motor fuel shall be on a first-come, first-served basis.

14A:2-6.14 Sale of motor fuel in containers

(a) No person shall, for other than commercial or farm purposes, purchase or attempt to purchase from a retail dealer by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

(b) No retail dealer shall, for other than commercial or farm purposes, sell, or attempt to sell, by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

14A:2-7.1 Scope

This subchapter shall govern the periodic reporting of energy information by persons who supply petroleum products to retail dealers.

14A:2-7.2 Reporting

(a) Each supplier of covered products shall submit to the Board the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each covered product for each class of customer within 24 hours of a price change. Submissions postmarked within 24 hours of a price change shall be deemed to be in compliance with this subsection.

(b) The above information shall be sent to:

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Attention: Office of the Economist

(a)

BOARD OF PUBLIC UTILITIES

Demand Side Management Resource Plan

Proposed Repeal: N.J.A.C. 14A:20

Proposed New Rules: N.J.A.C. 14:12

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-12, 13; N.J.S.A. 52:27F-1(g) and (q) and 27F-18.

BPU Docket Number: EX90040304.

Proposal Number: PRN 1990-639.

A **public hearing** concerning this proposal will be held on:
Thursday, December 20, 1990 at 10:00 A.M.
Board of Public Utilities Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by January 16, 1991 to:
Robert Chilton, Director
Electric Division
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

A rulemaking pre-proposal entitled: Limiting Barriers to Effective Conservation Progress and Implementing Conservation Ratemaking Incentives, Docket No. EX90040304, was published in the June 4, 1990 New Jersey Register at 22 N.J.R. 1692(a). This pre-proposal identified the existence of certain barriers to more extensive investment in energy conservation by consumers and utilities in the State. It also outlined possible utility ratemaking incentive mechanisms to remove some of the existing barriers and encourage energy conservation investments. The pre-proposal posed questions regarding the aforementioned subjects to elicit comments.

A public hearing was held by the Board of Public Utilities (Board) at its offices in Newark, New Jersey on June 25, 1990. A certified court reporter was present at the hearing and a complete transcript was produced and was made a part of the record of this proceeding. The hearing record remained open for written comments until July 9, 1990.

Oral testimony was received from the following individuals: Assemblyman George A. Spadoro, James Smith of Orange & Rockland Utilities (ORU), Gerald S. Levitt of South Jersey Gas Co. (SJG), R. William Potter of Haveson, Otis & Potter, Frederick W. Lark of Public Service Electric & Gas (PSE&G), Joseph Bowring of the Department of the Public Advocate, Richard M. Esteves of SESCO, Marvin Raber of GPU Service Corp., Fred Sacco of the Fuel Merchants Association of New Jersey, James Lees of Atlantic Electric Co. (AE), William Bodin of AWI, Inc., and Calvin D. MacCracken of Calmac. Written comments received from the following sources have also been made a part of the record: Frank T. Bahniuk of Elizabethtown Gas Co. (ETWN), Marvin Raber of GPU Service Corp., Victor A. Roque of Rockland Electric Company, David A. Kindlick of South Jersey Gas Co., Calvin D. MacCracken of Calmac, Richard M. Esteves of SESCO, Inc., R. William Potter of Haveson, Otis & Potter, Thomas J. Kononowitz of New Jersey Natural Gas Co. (NJNG), Shawn P. Leyden of Public Service Electric & Gas Co. (PSE&G), Robert K. Tucker of New Jersey Department of Environmental Protection (DEP), Robert K. Watson of Natural Resources Defense Council (NRDC), William D. Machold of Puget Energy Services, Inc. (PUGET), Diana Johnston of the Department of the Public Advocate, Renee Gast of the New Jersey Association of Plumbing-Heating-Cooling Contractors, Inc. (NJAPHCC), Fred Sacco of the Fuel Merchants Association of New Jersey (FMA), Joseph Pattok of the Society of the Plastics Industry, Inc. (SPI), Allied-Signal, Inc., David S. Dayton of NAESCO, Jack B. Kirsten of Greenberg Margolis, Rebecca DeLamotte of Energy Investment, Inc., Douglas Ames & Richard Ingelido of Transphase Systems, Inc. (Transphase), Frederick W. Taubert of Coastal Oil New York, Inc. (Coastal), and S. Lynn Sutcliffe of Sycom Corporation (Sycom).

The comments received, both written and oral, including discussions at a number of informal meetings convened by Board staff on this matter were considered in drafting these proposed rules. These written comments as well as transcripts from the public hearings are available at the Board's offices in Newark for review by the public.

It was the view of the majority of the commenters to the pre-proposal that the provision of some form of financial incentives to the utilities would foster an increased penetration of installed conservation, load management and energy efficiency (demand side management or "DSM") measures in the homes and businesses of the State. It was generally agreed that given the existing barriers to the full development of cost-effective energy efficiency technologies, including lack of information, lack of available capital and insufficient payback periods for many customers, utilities can play an important role in expanding the role of DSM in meeting the State's energy needs.

The Board recognizes the potential for an increased proactive role on the part of electric and gas utilities in assisting customers in their end-use decisions. As a result of this expanded role, these utilities must be considered more as energy service companies than as merely providers of energy.

It is also noteworthy that a number of other states, including New York, California, Wisconsin, Florida, Massachusetts, Washington and Rhode Island, have instituted programs designed to provide some form of incentives for utilities to actively encourage the installation of DSM measures in their service territories. These programs were considered in preparing the proposed rules. While a conclusive finding on the ultimate success of these programs is impossible because of their relatively short lives, it is clear that DSM activity has increased dramatically in those states where incentive programs have been implemented.

The concept of least cost utility planning (LCUP) has gained wide acceptance in utility regulatory jurisdictions throughout the country in recent years. The principles of LCUP hold that utilities should pursue those resources which permit them to continue to provide safe and reliable service at the lowest possible cost. For example, in addition to the myriad of supply-side technologies available to utilities to meet growing customer demands for energy, DSM measures offer an alternative resource which can be tapped to offset the need for new electric generating and transmission plant or natural gas supply sources and transmission facilities, and the concomitant environmental impacts. In short, imbalances between projected customer demands and electric and natural gas supplies can be addressed in one of two general ways: either by increasing supply or by reducing customer demands through installation of DSM measures. LCUP requires that the utility pursue the combination of supply and demand side resources which allows the maintenance of safe and reliable service at the lowest overall cost. Moreover, to the extent practicable, the determination of the overall cost of various resources should reflect the impact of each on environmental quality.

In order to encourage an increased emphasis of DSM technologies as a viable alternative to construction and procurement of new supply-side facilities, the Board has previously instituted initiatives which foster the application of utility least cost planning principles. Specifically, the Board has approved conservation plans for the implementation of certain programs designed to provide energy information, perform energy audits, provide appliance rebates, provide subsidized loans, provide grants and to accomplish numerous additional DSM objectives. Further, in 1988 the Board adopted a bid solicitation procedure for New Jersey electric utilities (Docket No. 8010-687B). Under this procedure, electric utilities annually identify a block of future capacity which is met through an integrated competitive bid solicitation for DSM and non-utility generator projects. The procedure is designed to foster the selection of the combination of supply and demand side projects which, subject to certain environmental, project viability and reliability and other criteria, minimize the ultimate cost to ratepayers. A Request for Proposals (RFP) is approved for release by the Board which provides project weighting criteria for supply and demand side bids. Price bids are capped at the utility's avoided cost, and points are awarded on a sliding scale for bid prices below avoided cost. In addition to price, other weighting criteria include environmental impacts, fuel diversity and project viability, as well as others. Payments by the utilities to the projects under approved power purchase agreements are permitted to be recovered from customers on a one-for-one basis through the annual fuel clause. This differs from the rate treatment of utility-constructed plant, which is placed in rate base and recovered over its useful life with an opportunity for the utility to earn a return on its investment.

The bid solicitation process has led to increased integration of the utility resource planning process, wherein supply and demand-side projects are considered on an equal and competitive basis and the outcome

produces a combination of the two which maximize the benefits to utility ratepayers and society at large.

In order to further enhance the integrated resource planning process in the State, the Board is of the view that a ratemaking plan should be instituted which would provide the electric and gas utilities in New Jersey with at least the same level of financial incentive which now exists for the addition of new supply-side resources.

The Board has received widespread support in the comments received concerning the pre-proposal for the concept of providing financial incentives for utilities to implement DSM programs, that is, to provide utilities with the opportunity to earn a return on investments in DSM measures. Indeed, a number of the utilities in response to the pre-proposal set forth an outline for incentive programs which they would propose in response to rules permitting such activities. The diversity of the program outlines provided underscores the need for flexibility in the promulgated rules to afford utilities some latitude in fashioning programs to meet the needs of their respective service territories. The proposed rules provide that flexibility. Nonetheless, there is also a need for a regulatory model to ensure that the various initiatives designed by the utilities conform with public policy goals. The rules set forth herein will serve as that model.

The proposed rules provide for the electric and gas utilities in the State to file, biennially, a Demand Side Management Resource Plan (Plan) for review and approval by the Board. Within the Plan the utilities are required to propose an overall savings target for the Plan, and a series of "Performance-Based DSM Programs". These programs will provide each utility with the opportunity to earn returns on investments in energy efficiency measures based upon the actual performance of the programs. Performance will be evaluated by comparing the costs associated with each program to the avoided cost savings to the utility. Along with the program descriptions, the utility will be required to file a program implementation plan, a performance measurement and verification plan for each performance-based program, an avoided cost study, and a proposed cost recovery mechanism to permit the timely recovery of program expenses through rates.

The avoided cost studies utilized in developing the incentives must be consistent with studies used to evaluate other utility resource acquisitions. It is recognized there has been less experience to date with calculation of avoided costs for natural gas utilities in the State than for electric utilities. The gas savings valuation methodologies employed in the August 1990 New Jersey Conservation Analysis Team (CAT) Report represent a substantial effort toward the development of avoided cost studies for gas and should provide guidance to the gas utilities and the Board in preparing and reviewing the DSM Plans.

Specifically, the framework for utility incentives provided for in the proposed rules is as follows. The utility will be allowed the opportunity to earn a foundation level of return on investments in Performance-Based Programs. In addition to the foundation level of return, the utility can earn incentives based upon a shared savings of a portion of the program's net benefits. As described earlier in the Summary, the net benefits are defined as the net present value of avoided cost savings less the net present value of program costs. The definition of net benefits which are subject to shared savings can be expanded to include incidental savings of other fuels (for example, heating oil) to the extent the utility can adequately demonstrate such additional savings.

In order to introduce a degree of risk sharing and allocation commensurate with the opportunity for earning incentives, the proposed rules provide for negative incentives to be deducted from the foundation level of return to the extent that the program results in negative net benefits.

The rules also provide a framework to reflect the potential environmental benefits associated with DSM technologies. This is accomplished by setting the base return on investment for DSM program costs, and permitting the utility to earn the base return on programs with savings of at least 80 percent of total costs. In this manner, a proxy weighting for up to 20 percent of the utility's avoided cost is provided to capture public benefits such as environmental externalities which would not otherwise be reflected. Incentives can be earned in addition to the base return when program net benefits exceed zero. Net benefits are defined as the difference between net present value avoided cost savings and net present value program costs.

While the proposed rules do not include a direct quantification of public benefits, such as environmental externalities, the Board reiterates the important role which demand side management technologies play in improving the quality of the environment. As emphasized throughout these rules, DSM provides the most environmentally benign approach to meeting growing energy needs.

A number of states have taken the approach of placing a specific value on environmental externalities for inclusion in program net benefit calculations. For instance, the New York Public Service Commission adopted a value of 1.4 cents per kilowatthour as the value for environmental savings due to conservation. The use by the Board at this time of the proxy valuation for public benefits described above, rather than a specific quantification for inclusion in the incentives calculation, reflects the difficulty in reaching a definitive quantification of such public benefits based upon the information before the Board at this time, as well as the public policy question of whether the utilities should be permitted to retain a portion of the public benefit values. The Board will continue its study of this issue in an attempt to reach a more precise quantification which can be incorporated as part of these rules.

Moreover, the Board is confident that the avoided cost shared savings available as a result of potential program initiatives will provide substantial incentive to the utilities to vigorously pursue DSM measures. However, by providing the proxy 20 percent weighting, these rules are not intended to preclude or discourage, strictly on the basis of insufficient calculable avoided utility cost savings, programs which may have substantial public benefit.

The rules also specify a number of specific conservation programs which the utilities are required to undertake in an attempt to maximize potential public benefits and in recognition of the difficulty in accurately quantifying the full benefits of such programs. These programs are designated as "Core Programs". The utilities are provided the flexibility to incorporate any of the specified programs in the Core section into the incentive-based program section if it can be demonstrated that said programs are cost-effective and that savings can be adequately measured.

The present system for an annual integrated DSM and supply-side bidding process for procurement of additional capacity and energy provides an opportunity for energy service companies (ESCOs) to compete for the ability to install energy efficiency measures in the homes and businesses located in each electric utility's service territory, and to receive payments for same. This process provides a setting in which DSM markets may expand and flourish in the State, and also fosters a healthy competitive environment. It is of great importance to the long-run development of DSM technologies in New Jersey that the vitality of the ESCO industry not be stifled by the utility conservation incentive programs. Rather, it is the Board's opinion that sufficient potential exists for all players in the energy market, utility and non-utility alike, to create business opportunities which foster energy efficiency in the State.

It is undeniable that the New Jersey electric and gas utilities enjoy a unique access to this State's energy consumers by virtue of the operation of their business and the existence of franchise areas. As well, this unique access affords the utilities the ability to obtain detailed customer usage and operations information which likely provides the utility with a competitive advantage over third-party ESCOs in identifying and approaching potential customers and procuring arrangements for the installation of energy-saving technologies at the facilities of utility customers.

As a result, the establishment of a fully competitive environment between utilities and ESCOs will present challenges which may require transitional planning. One possible solution to this dilemma is to require utilities to release customer information to all competing ESCOs. However, the Board agrees with the comments presented by some of the utilities that an uncontrolled widespread release of such information could lead to misuse or compromise individual customers' interests. An alternative solution is to establish separate procedures for utility-run programs and the process for soliciting projects to be designed, installed and operated by ESCOs. Under such an approach, the utility incentive-based program and the existing integrated bidding system employed by the electric utilities could coexist on parallel tracks. However, the Board recognizes that problems with this approach could arise if the DSM efforts being targeted by both programs overlap and undercut their respective effectiveness. A solution to this problem could be addressed by creating separate bidding procedures for individual programs.

The proposed rules provide utilities with the flexibility to propose different combinations of incentive-based programs and separate bidding procedures. However, in order to ensure that ESCOs and other suppliers/contractors have an opportunity to compete in a competitive market, the utility will be required to provide a mechanism so that no less than 25 percent of total DSM savings will be achieved via direct participation by third parties in the installation of conservation measures. This set aside for direct ESCO involvement can include a separate bidding system for turnkey planning and installation by ESCOs or a mechanism whereby ESCOs playing the role of subcontractors for utility-sponsored programs.

The proposed rules also provide each utility the opportunity to file, for review and approval by the Board, a proposed revenue adjustment mechanism to account for revenue erosion associated with DSM efforts. The loss of revenues and resultant loss in contribution towards fixed cost resulting from conservation measures has the potential to create a short-term disincentive for utilities, to the extent that earnings are negatively impacted. However, the addition of new customers as the result of growth in the service territory as well as added sales from existing customers can serve to offset these revenue erosions. The potential earnings enhancement related to increases in sales creates an inherent incentive for the utilities to promote increased sales. While efficient growth in energy demand resulting from economic expansion in the State is to be encouraged, increased sales resulting from the promotion of increased overall usage from existing customers or new applications for consumption of energy at new or existing customer sites must be examined carefully for compliance with state energy and environmental goals. One utility proposed during the pre-proposal comment period that, in lieu of a specific adjustment mechanism to compensate the utility for lost revenues, it be permitted to offset revenue erosion by promoting off-peak sales. As previously indicated, such a policy raises concerns with respect to consistency with goals to reduce growth in energy consumption and resultant environmental problems, to the extent that such sales are unnecessary, inefficient, or result in an increase in utility costs or environmental degradation.

The Board recognizes that there may be sufficient revenue growth resulting from increases in efficient sales due to economic expansion in the territory to offset some or all DSM-related revenue erosion. Accordingly, the utilities will be required to present proposals for a DSM lost revenue adjustment which address such factors. The proposals are subject to the Board's approval.

Each utility will be required to file a "Transition Strategy" which describes the utility's planned merger of existing DSM efforts with the proposed DSM Plan.

Finally, the proposed rules require each gas utility to file a proposed pilot procedure for the implementation of a competitive bid solicitation process for procurement of demand side load reductions. The Board recognizes that currently there is no established procedure for the implementation of a competitive bid solicitation for DSM measures by natural gas utilities in the State similar to the present integrated bidding system for electric utilities. The structure and nature of the natural gas supply industry in 1990 is such that a competitive bidding procedure which includes solicitations for purchases from third party gas suppliers is not necessary or appropriate, since there already exists substantial competition for wellhead supplies. However, the implementation of a bidding system for procurement of DSM measures in natural gas customer and use applications holds promise for fostering the development of a natural gas ESCO market much as the electric bidding system has done. There is no inherent reason that a bid solicitation for natural gas DSM measures should prove substantially more problematic than bidding for electricity DSM applications on the natural gas side than with electricity. There is, however, a smaller universe of potential DSM applications on the natural gas side than with electricity. Nonetheless it is the belief of the Board that, a smaller potential universe, while effecting the possible size and scope of bid solicitations, should not preclude the implementation of such a procedure. As a result, the proposed rules require each gas utility to prepare a pilot DSM bidding procedure. It is recognized that the long-term coexistence of separate DSM bidding procedures and utility-based incentive programs is still in question. The pilot nature of the natural gas bidding procedure reflects the need to gain more experience in this regard.

The rules proposed herein represent a more current and comprehensive regulatory model concerning the implementation of conservation programs by utilities in the State than the existing conservation rules in N.J.A.C. 14A:20 which had been promulgated by the former Department of Energy. On June 15, 1989, then Governor Thomas A. Kean issued a Reorganization Plan (No. 002-1989) to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board (see 21 N.J.R. 1937). Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and transferred with the responsibility and authority to design, implement and enforce a program for the conservation of energy in commercial, industrial and residential facilities. Because the proposed new rules would render the continued application of N.J.A.C. 14A:20 duplicative, N.J.A.C. 14A:20 is proposed for repeal.

Social Impact

The proposed rules are intended to lead to the accelerated implementation and installation of energy efficiency measures in the homes and businesses in New Jersey, by providing electric and natural gas utilities incentives to take a proactive role in encouraging energy conservation. The accelerated proliferation of energy efficiency on the part of electric and gas utilities and their customers is intended to, among other things, reduce customer bills, reduce the need for siting and construction of new energy supply facilities and reduce the combustion of fossil fuels, thereby improving the environmental quality of the State, as well as to reduce the State's reliance on imported energy sources. The proposed rules are also intended to ensure that activities to assist low income energy consumers will continue and even expand.

Economic Impact

The rules will have a positive economic impact on the State's investor-owned electric and gas utilities by creating opportunities for earning returns on investments in energy conservation activities which presently do not exist, and for mitigating the potential negative effects which now exist relating to sales erosion from energy conservation. The proliferation of utility-sponsored conservation activities will have a positive impact on the State's economy by reducing the overall utility bills of energy consumers and therefore enhancing the State's competitive position.

It is further anticipated that the affected utilities will realize a net benefit through the economic incentives for the successful implementation of conservation activities and the cost recovery mechanisms provided for in the rules.

Finally, the rules are intended to create significant business opportunities for independent entities such as energy service companies and energy efficiency equipment suppliers and installers.

Regulatory Flexibility Statement

The proposed rules do not require a regulatory flexibility analsysis since they do not specifically apply or impact on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules place requirements only on large businesses, that is, investor-owned electric and natural gas utilities in the State, all of which are large businesses in that they are the major energy utilities in the State and employ individually over 100 employees. Indeed, the rules require that the utilities take steps to create business opportunities for energy service companies and equipment suppliers and installers, many of which will likely be small businesses and will be positively impacted.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14A:20.

Full text of the proposed new rules follows:

CHAPTER 12
DEMAND SIDE MANAGEMENT

SUBCHAPTER 1. PUBLIC UTILITY PROGRAMS

14:12-1.1 Purpose and scope

The rules in this chapter are designed to provide financial incentives to electric and gas utilities for investment in demand side management initiatives. These incentives are intended to foster the increased penetration of end-use energy efficiency technologies into the homes and businesses of the State. Increased energy efficiency is regarded as a viable alternative to the construction or procurement of new electric and gas supply sources. These rules are designed to put in place mechanisms which permit utilities to earn financial returns equivalent to or, in recognition of the potential positive impact on the environment, greater than the returns provided on supply side projects. It is further the intent of the rules to create an environment for utilities to utilize their unique position as major energy providers in the State to foster increased energy efficiency while stimulating the further development and opportunities for independent energy service companies, contractors and suppliers to competitively compete for Demand Side Management (DSM) business opportunities.

14:12-1.2 Definitions

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

"Avoided cost savings" means the level of fuel, operation and maintenance, labor costs, capital costs, taxes and any other costs which the utility avoids having to incur as a result of displacement of customer demands through demand side management efforts.

"Core Programs" means a set of conservation programs required to be performed by the utilities and which are not subject to the incentive ratemaking formulae established in N.J.A.C. 14:12-3. The Core Programs shall constitute activities undertaken by the utility in order to foster the dissemination of energy efficiency information to the public as well as to accomplish certain socially desirable or other public benefit goals.

"Demand Side Management (DSM)" means the control of a public utility's energy needs through the development of cost-effective energy efficiency technologies, including, but not limited to, installed conservation, load management and energy efficiency measures in the homes and businesses of the State.

"Demand Side Management Resource Plan (DSM Plan)" means a comprehensive presentation of a utility's demand side management activities over a specified period as well as mechanisms for DSM program cost and revenue erosion recovery and incentive mechanisms to encourage DSM activities as specified in N.J.A.C. 14:12-2, 3 and 4.

"Energy service company" means a company not affiliated with the utility sponsoring particular programs and which provides energy services to end user customers.

"Free rider effects" means energy and capacity savings resulting from measures which would have been implemented even in the absence of the utility program.

"Fuel Adjustment Clause" means a mechanism through which a utility may recover its fuel costs on an annual basis. When used in this chapter, the term means specifically an electric utility's Levelized Energy Adjustment Clause (LEAC) or a gas utility's Raw Materials Adjustment (RMA) or Levelized Purchase Gas Adjustment (LPGA).

"Participant Test" means a comparison of participant utility bill reductions, incidental savings and incentive payments as benefits to the participant costs.

"Penetration levels" means the amount of customer participation in a particular program relative to the eligible universe of customers for that program.

"Program measure" means the particular end use device, technology or service being offered by the utility for a particular program to be installed in the targeted customers' premises or in the utilities energy delivery system.

"Public utility" or "utility" means all electric and natural gas public utilities as defined by N.J.S.A. 48:2-13, but does not mean municipally owned electric or natural gas public utilities.

"Ratepayer Impact Test" means a comparison of the avoided cost savings as benefits to the incentive payments to customers, utility program cost and the utility revenue loss as costs.

"Test year sales" means the level of sales utilized by the Board to set rates in the utility's most recent base rate proceeding.

"Total Resource Test" means a comparison of the avoided cost savings and incidental savings as benefits to the utility program and participant costs.

SUBCHAPTER 2. DEMAND SIDE MANAGEMENT RESOURCE PLAN

14:12-2.1 Filing

Every New Jersey electric and gas public utility subject to the jurisdiction of the Board shall initially file within 30 days of the effective date of this rule and by March 1, 1993 and every two years thereafter, a "Demand Side Management Resource Plan" (DSM Plan) for review and approval by the Board.

14:12-2.2 Plan elements

(a) The DSM Plan shall consist of the following elements, each of which shall be accompanied by technical support sufficient to provide the Board with a basis to evaluate the DSM Plan:

1. A target which establishes and specifies an overall energy and capacity savings goal in terms of kilowatthours (kwh) and kilowatts (kw) for electric utilities and therms for gas utilities to be achieved by virtue of the DSM Plan, as well as a specified time frame for attaining the goal;

2. An assessment of the effect of the Plan on the overall peak load and energy demand forecasts, construction plans, fuel purchase plans, capacity expansion plans and the future capital additions of the utility;

3. A list and description of "Performance-Based DSM Programs" which shall present the DSM efforts which the utility intends to implement over the succeeding two years and for which performance-based incentives will be sought pursuant to N.J.A.C. 14:12-3. DSM efforts proposed by the utility may include investments in increased energy delivery system efficiency in addition to end use efficiency;

4. A list, description and proposed budget for Core Programs which will be offered by the utility. As the benefits to be achieved from Core Programs may transcend a strict economic benefit/cost analysis or be difficult to accurately quantify, the Core Programs shall not be subject to the mechanisms applied to the Performance-Based DSM Programs as set forth in N.J.A.C. 14:12-3. Instead, the utilities will be permitted to expense the costs related to operation of the Core Programs on a timely basis through the DSM Cost Recovery Mechanism, as set forth in N.J.A.C. 14:12-4.1.

i. Unless otherwise directed by the Board, a utility's Core Programs shall include the following:

(1) The Home Energy Savings Program (HESP) as described in N.J.A.C. 14A:21. However, in order to increase the overall effectiveness of the Program, the utility may incorporate features such as target marketing, and prescreening of applicants to ensure that the applicant has not had a prior utility-sponsored energy audit within a specified number of years at his or her present location;

(2) A Low Income Direct Grant and/or Seal-Up Program;

(3) A Commercial and Apartment Conservation Service (CACS) energy audit program;

(4) A Home energy efficiency rating system program;

(5) A program encouraging the energy efficient design of new construction;

(6) Informational programs designed to foster conservation awareness;

(7) Educational programs designed to enhance the understanding of energy efficiency in the school systems;

(8) A program or package of programs offered by each electric utility directed at those residential customers within its service territory who utilize energy sources other than natural gas for space heating purposes; and

(9) Other programs as proposed by the utility or interested party and as deemed appropriate by the Board.

ii. In filing its DSM Plan, each utility shall have the opportunity to propose one or more Core Programs as a performance-based program, it being the intent of this section not to preclude the opportunity to earn incentives if an adequate measurement plan is provided by the utility.

5. For each Performance-Based DSM Program and Core Program, the DSM Plan shall include the following:

i. A program implementation plan, which shall include:

(1) The anticipated manner for the marketing and installation of program measures;

(2) Indications as to whether or not utility personnel or third parties are anticipated to actually perform the marketing, supply of materials or installation; and

(3) In the event that third parties will be utilized, a description of the selection process to be employed, and the standards to which the third parties will be held in performing work;

ii. The customer base which the program will target;

iii. The DSM program measures to be offered;

iv. The commitments or contributions which will be expected of customers; and

v. The penetration levels and overall energy and capacity savings expected to be achieved by each program.

SUBCHAPTER 3. INCENTIVES

14:12-3.1 Basis for incentives

Unless otherwise directed by the Board, each utility shall propose a base percentage return on investment for each Performance-Based Program. To the base return, the utility may add additional incentives based upon the achieved net benefits associated with the individual programs set forth in its Plan.

14:12-3.2 Net benefits

(a) Net benefits of the program shall be defined as the difference between the net present value of avoided energy and capacity costs associated with the program and the net present value of program costs as recovered from ratepayers.

(b) The net benefits calculation can be expressed utilizing the following formula:

$NB = NPV_{AC}\text{-}NPV_C$, where

NB = net benefits

NPV_{AC} = net present value of the energy and capacity savings,

calculated using the following formula:

$$\sum_{t=1}^{L} \frac{(E \times AEC)}{(1 + DR)^{t-1}} + \frac{(C \times ACC)}{(1 + DR)^{t-1}}$$

where t = years
L = length of program measure
E = kilowatt-hours (electric utilities) or therms (gas utilities) of energy avoided in year t by virtue of the DSM measures
C = kilowatts (electric utilities) or peak therms (gas utilities) of demand avoided in year t by virtue of the DSM measures
AEC = avoided energy cost (cents per kwh or cents per therm) as approved by the Board
ACC = avoided capacity cost (cents per kwh or cents per therm) as approved by the Board
DR = discount rate

NPV_C = net present value of total program costs as recovered from ratepayers

(c) Each electric and gas utility shall, at the time it submits its DSM Plan, file an avoided cost study which demonstrates the energy and capacity cost avoided by the utility by virtue of the existence of reductions in load growth from conservation and load management. Except for matters related to the timeliness of data, the avoided cost which forms the basis for utility incentives shall be consistent with that used as the cap for price offers available for non-utility supply project developers or third party energy service companies through utility bid solicitation or other supply and demand side procurement procedures, as reviewed and approved by the Board.

1. In preparing the avoided cost study filings, utilities shall reflect the capacity as well as commodity/energy costs avoided by virtue of displaced supply purchases and/or facilities.

2. Valuation of avoided energy and capacity shall be time-differentiated in order to permit a more accurate valuation of those DSM measures which are designed to shift and reduce customer usage during certain times of day, days of week or seasons of the year.

14:12-3.3 Incidental savings

(a) Subject to the express approval of the Board, a utility may request to receive additional incentives in excess of those established in N.J.A.C. 14:12-3.1 and 3.2 conditioned upon a demonstration of incidental savings related to a particular program. For purposes of this mechanism, incidental savings are defined as savings of energy sources other than that which the utility provides (for example, heating oil savings related to an electric utility program).

1. In the event that an electric utility requests additional incentives for particular programs related to incidental savings, the utility may propose a modification to the net benefits formula specified in N.J.A.C. 14:12-3.2(a) which reflects those savings.

2. A measurement and verification plan for the incidental savings shall accompany all proposals for receipt of additional incentives.

14:12-3.4 Shared savings

(a) Incentives to be provided to the utilities shall be based upon a shared savings of the net benefits as determined in N.J.A.C. 14:12-3.2.

(b) The incentives shall be calculated as a retention by the utility of a percentage of the net benefits achieved by virtue of each program.

(c) In order to provide increased incentive to achieve and surpass the overall DSM Plan savings goals established in N.J.A.C. 14:12-2.2(a)1, the actual percentage of net benefits from each program to be retained by the utility as specified in (b) above shall be tied to the overall savings achieved as a result of the DSM Plan. To that end, for actual achievement within a band width of plus or minus 10 percent of the Plan's overall savings goal as established in N.J.A.C. 14:12-2.2(a)1, the utility shall be permitted to retain a specified percentage as established pursuant to (b) above, of each program's net benefits.

(d) In the event that the overall savings achieved by the DSM Plan are less than 90 percent of the savings goal established in N.J.A.C. 14:12-2.2(a)1, the utility portion of shared savings shall be reduced from the percentage established in (b) above. Conversely, in the event that the overall savings achieved by the DSM Plan are greater than 110 percent of the savings goal established in N.J.A.C. 14:12-2.2(a)1, the utility portion of shared savings shall be increased from the percentage established in (b) above.

(e) Actual net benefits which are realized by virtue of each program will be tallied after the completion of measure installation and measurement verification. The level of energy and capacity savings assumed in these calculations shall be based upon the most recent measurement plan approved for that program by the Board pursuant to N.J.A.C. 14:12-3.6, and subject to the approved verification plan also filed pursuant to N.J.A.C. 14:12-3.6. As a result, the critical variables in the actual net benefit calculation will be the program penetration levels, verified performance and the level of actual program costs. Actual program costs shall include an appropriate allocation of program support from general utility operations.

(f) In the event that achieved net benefits of individual programs are less than zero, negative incentives shall result. These negative incentives shall be based upon poor performance resulting from such factors as poor penetration levels, program cost overruns and substandard actual performance of measures, and not upon after-the-fact changes in the measurement criteria.

(g) Notwithstanding the provisions of (f) above, negative incentives for programs that do not have net present value avoided cost benefits which exceed net present value costs shall not be applied within a range below the breakeven point ($NPV_{AC} = NPV_c$) wherein the ratio of present value savings to present value cost is between .80 and 1.0. Accordingly, in order to provide an accounting for environmental benefits available as a result of certain programs, any program which achieves net present value savings of at least 80 percent of net present value costs shall not be subject to negative incentives.

(h) A base level of return shall be established and provided for investments in each of the programs. The base level of return shall represent the percentage return on program investment to be provided the utility. Incentives (or negative incentives) achieved for realized program net benefits greater than zero (or achieved benefit/cost ratio of less than .80) as established in (b) through (g) above shall be added to (subtracted from) the base return.

(i) Proposals for specific shared savings percentages to be added to (subtracted from) the base return, as well as proposed base returns, shall be included in the filed DSM Plans. Such proposals shall

provide an adequate balance between risks and incentives for DSM initiatives as determined by the Board.

(j) During the initial DSM Plan filing and review process and each filing and review process subsequent thereto, the Board will consider mechanisms by which to more directly quantify environmental and other externalities. The utility or other interested parties may propose such mechanisms for the Board's approval. Any such proposals shall address the issue of whether the utility should share in a portion of such external benefits, in addition to the issue of quantification of such benefits for purposes of establishing a range within which negative incentives will not apply pursuant to (g) above.

14:12-3.5 Measurement plan

(a) A measurement plan for each DSM Performance-Based Program shall be filed as part of the Plan.

(b) The measurement plan for each program shall set forth the basis for energy and capacity savings estimates for each program as well as the specific mechanism to be employed for verifying the actual savings produced.

(c) Where practicable, the preferred measurement methodology shall be implemented through a metering arrangement, with appropriate adjustments for weather normalization and/or other factors influencing usage levels. In the alternative, engineering estimates or other appropriate methods may be utilized if demonstrated to be accurate and reliable.

(d) Estimates of energy and capacity savings shall expressly reflect deductions for any free rider effects.

(e) Program net benefits established in N.J.A.C. 14:12-3.2 shall be periodically reviewed by the Board to ensure that they reflect implementation experience as well as advances in measurement techniques. Said review shall be undertaken at least every two years concurrent with the filing and review process related to succeeding DSM Plans filed pursuant to N.J.A.C. 14:12-2, at which time the utility must demonstrate that the existing measurement plan remains the most appropriate. In the event of the development of new technologies, the Board, on its own motion or at the request of an interested party, may review an existing DSM Plan in less than two years to reconsider measurement techniques. Once a program savings measurement plan is approved by the Board, it shall remain the basis for evaluation until a revision is approved. Revised measurement criteria shall only apply prospectively to subsequent measure installations.

14:12-3.6 Additional Tests

In addition to the net benefit calculations described in N.J.A.C. 14:12-3.2, the utility shall include for each program an analysis of the expected performance of the program as measured by the Total Resource Test, the Ratepayer Impact Test, and the Participant Test. Said test results shall be utilized by the Board in its evaluation of the appropriateness of the programs provided, however, none of the additional tests will individually provide the sole basis for a decision by the Board to approve a particular program.

SUBCHAPTER 4. ADDITIONAL ELEMENTS OF THE DSM PLAN

14:12-4.1 Cost Recovery Mechanism

(a) A Demand Side Management Cost Recovery Mechanism proposal shall be filed, as part of the DSM Plan, by each electric and gas utility to permit the timely recovery of program expenses.

(b) The DSM Cost Recovery Mechanism shall be a deferred accounting mechanism which shall be adjusted on an annual basis concurrent with implementation of each utility's fuel adjustment clause to reconcile the difference between actual program expenditures and the level of expenditures recovered in rates for the most recent annual period.

(c) The expenditures subject to the adjustment mechanism shall be limited to costs incurred for implementing programs which have been previously approved by the Board pursuant to these rules.

14:12-4.2 Program transition strategy

As part of the initial DSM Plan filed pursuant to this chapter, each utility shall file a DSM Program Transition Strategy which describes the utility's proposed plan to merge its existing DSM program efforts into the DSM Plan. Such strategy shall address the proposed future status of each of the utility's existing programs, that is, whether an existing program is proposed to be rolled into the Performance-Based Programs or the Core Program established in N.J.A.C. 14:12-2, or whether it is proposed to be eliminated based upon a finding of non-cost-effectiveness and insufficient public benefits. A supporting rationale shall be included which underlies the proposed status of each program.

14:12-4.3 Third party participation

(a) The utilities' DSM Plan shall be designed in a manner that third party energy service companies and other contractors and suppliers are provided with an opportunity to participate in the provision of DSM services at customer premises. To that end, the utility must demonstrate, as part of its DSM Plan, that the achievement of at least 25 percent of the overall DSM savings during the period in which the Plan is in effect will be set aside for direct participation by third party energy service companies or contractors/suppliers.

(b) The set-aside required by (a) above may include either work performed by third parties as subcontractors under the DSM Plan, or demand side projects resulting from a separate competitive bidding process such as that employed by the electric utilities under procedures approved by the Board.

14:12-4.4 Revenue adjustment mechanism

(a) Along with the filing of its DSM Plan, each utility may propose for consideration by the Board a mechanism for addressing the impact of DSM initiatives on the overall level of revenues collected by the utility. Such proposals shall address:

1. The erosion of fixed cost contributions resulting from lower than test year sales to customers participating in DSM programs; and

2. Potential offsets to some or all of the revenue erosion established in (a)1 above resulting from sales at levels higher than established in the most recent test year.

14:12-4.5 DSM bidding for gas utilities

(a) As part of its initial DSM Plan filing, each gas utility shall file a proposed pilot DSM bidding procedure.

(b) The proposed procedure shall include proposed weighting criteria for economic factors, most notably price, as well as additional factors such as project viability, environmental, measurement plan, marketing plan and site control.

(c) The proposed procedure shall also include proposed minimum criteria for acceptance of bids as well as a proposed avoided cost ceiling price.

(d) The procedure may address a particular DSM measure or be more broad in scope.

(e) The filing shall also identify a specific bid block size to be targeted.

(f) Review by the Board of bidding procedures in subsequent DSM Plan filings shall be based upon the experience with the pilot bidding procedure.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Routes U.S. 46 including Route U.S. 1, 9, and 46, and U.S. 202 in Morris County
Proposed Amendments: N.J.A.C. 16:28-1.10 and 1.67

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-616.

Submit comments by January 16, 1991 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 U.S. 46 including Routes U.S. 1, 9, and 46, in the Town of Dover and U.S. 202 in Morristown Town and Morris Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions and upon requests from the local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of "speed limit" zones along Routes U.S. 46 including Route U.S. 1, 9, and 46 in the Town of Dover and U.S. 202 in the Town of Morristown and Morris Township, Morris County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.10 and 1.67 based upon the requests from the local governments, the surveys, and the traffic investigations.

The Department is proposing to amend the speed zones on Routes U.S. 46 and U.S. 202, changing their locations and designating them by mileposts, in addition to other landmarks.

Social Impact

The proposed amendments will establish revised "speed limit" zones along Routes U.S. 46 including Route U.S. 1, 9, and 46 in the Town of Dover and U.S. 202 in the Town of Morristown and Morris Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The revised speed zones provide the motoring public specific areas and locations within the various municipalities to which they are applicable and provide some clarity within the rules. 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 any additional "speed limit" signs as necessary. 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 Rules 7:7-3.

Regulatory Flexibility Statement

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

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

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9, and 46

(a) The rate of speed designated for the certain parts of Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-3. (No change.)

4. For both directions of traffic:

i.-xi. (No change.)

[xii. Zone 22: 35 mph to Maple Avenue, Town of Dover (milepost 38.77), except

(1) School zone: 25 mph in the Dover middle school zone, during recess or while children are going to or leaving school, during opening or closing hours; thence

xiii. Zone 23: 40 mph between Maple Avenue and the Rockaway Township line (George Street) (milepost 38.77 to 309.5); thence

(1) School zone: 25 mph in the East Dover elementary school zone, during recess or while children are going to or leaving school, during opening or closing hours.]

xii. In the Town of Dover, Morris County:

(1) Zone 22: 35 mph between the bridge over Central Railroad and Perry Street, except for 25 mph when passing through the Dover middle 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 38.18 to 39.14); thence

(2) Zone 23: 40 mph between Perry Street and the Rockaway Township line (George Street), except for 25 mph when passing through the East Dover elementary 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 39.14 to 39.5); thence

[(2)](**A**) 40 mph in Rockaway Township, Morris County (milepost 39.5 to 39.9); thence

[(3)](**B**) 40 mph between Rockaway Township line and Mannino Street, Rockaway Borough, Morris County (milepost 39.9 to 40.6); thence

Recodify existing xiv-xv as **xiii.-xiv.** (No change in text.)

5.-6. (No change.)

(b) (No change.)

16:28-1.67 Route U.S. 202[1]

(a) The rate of speed designated for the certain [part] **parts** of State highway Route U.S. 202 described in this [section] **subsection** shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-xix. (No change.)

xx. [35 miles per hour to the intersection of Sherman Avenue, Morris Township; thence] **In Morristown Town and Morris Township, Morris County:**

(1) 35 miles per hour to the intersection of Max Drive (approximate milepost 46.13); thence

xxi.-xxii. (No change.)

[1]See also N.J.A.C. 16:28-1.54.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes N.J. 71-35 Ramps (Ashley Avenue) in Monmouth County; N.J. 138 in Monmouth County; and U.S. 9 in Cape May County

Proposed Amendment: N.J.A.C. 16:28-1.41
Proposed New Rules: N.J.A.C. 16:28-1.39 and 1.40

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-619.

Submit comments by January 16, 1991 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 and new rules will establish "speed limit" zones along Routes N.J. 71-35 Ramps (Ashley Avenue) in Brielle Borough, Monmouth County; N.J. 138 in Wall Township, Monmouth County; and U.S. 9 in Lower Township, Cape May County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children while leaving school during opening or closing hours and during recess.

Based upon requests from the local governments in the interest of safety, and as part of a current review of conditions the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations and surveys. The investigations and surveys proved that the establishment of "speed limit" zones along Routes N.J. 71-35 in Monmouth County, N.J. 138 in Monmouth County, and U.S. 9 in Cape May County were warranted. Route U.S. 9 is being amended in Zone 1 to add a school zone speed limit and indicate new location by mileposts.

The Department therefore proposes to amend N.J.A.C. 16:28-1.41 and add new rules N.J.A.C. 16:28-1.39 and 1.40 based upon the requests from the local governments, the traffic investigations and surveys.

Social Impact

The proposed amendment and new rules will establish "speed limit" zones along Routes N.J. 71-35 Ramps (Ashley Avenue) in Brielle Borough, Monmouth County; N.J. 138 in Wall Township, Monmouth County; and U.S. 9 in Lower Township, Cape May County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safety of children when their presence is clearly visible from the roadway or while going to or leaving school, during opening or closing hours. 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 procurement of signs vary, based upon size, material used, 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 and new rules do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment and new rules primarily affect the motoring public and the governmental agencies responsible for enforcement of the rules.

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

16:28-1.39 [(Reserved)] **Route 71-35 Ramps (Ashley Avenue)**

(a) The rate of speed designated for the certain parts of State Highway Route 71-35 Ramps (Ashley Avenue) described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Brielle Borough, Monmouth County:

(1) 25 miles per hour between Higgins Avenue and Evergreen Avenue.

16:28-1.40 [(Reserved)] **Route N.J. 138**

(a) The rate of speed designated for the certain parts of State Highway Route 138 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Wall Township, Monmouth County:

(1) 55 miles per hour between Route N.J. 34 and Route N.J. 35 (approximate mileposts 0.00 to 3.50).

16:28-1.41 Route U.S. 9

(a) The rate of speed designated for the certain parts of State Highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Cape May County:

i. Lower Township:

(1) Zone 1: 50 miles per hour between Route 109 and Cresse Lane **except, for 35 miles per hour when passing through the LOWER CAPE MAY REGIONAL HIGH SCHOOL zone (mileposts 4.18 to 4.47), 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** (mileposts 3.00 to [3.81] **5.81**); thence

(2) Zone 2: 40 miles per hour between Cresse Lane and the Lower Township—Middle Township Corporate line (mileposts [3.81] **5.81** to 6.63); thence

ii.-iv. (No change.)

2. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes U.S. 40 and N.J. 50 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28A-1.28 and 1.100

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1.

Proposal Number: PRN 1990-618.

Submit comments by January 16, 1991 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 "no stopping or standing" zones along Routes U.S. 40 and N.J. 50 in Hamilton Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, and as part of a current review of conditions the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes U.S. 40 and N.J. 50 in Hamilton Township, Atlantic County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.28 and 1.100 based upon the requests from local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 40 and N.J. 50 in Hamilton Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zone signs. The costs for signs will vary, based upon numerous factors, including, but not limited to, size, location and method of installation. Motorists who violate the rules will be assessed the appropriate fines, in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection [are] **shall be** designated and established as "no stopping or standing" zones **where stopping or standing is prohibited at all times**.

1.-4. (No change.)

5. No stopping or standing in Hamilton Township, Atlantic County.

i. Along both sides:

(1) (No change.)

(2) Beginning at the easterly side of Old Harding Highway and extending 1,500 feet west therefrom.

ii. (No change.)

6.-8. (No change.)

(b) (No change.)

16:28A-1.100 Route 50

(a) The certain parts of State [Highway] **highway** Route 50 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-2. (No change.)

3. No stopping or standing in Hamilton Township, Atlantic County:

i. Along both sides beginning 200 feet south of the southerly curb line of Third Street to the northerly curb line of Fourth Street.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System
Nearest Attained Age; Enrollment; Retirement
Proposed New Rule: N.J.A.C. 17:2-1.13

Authorized By: Board of Trustees, Public Employees Retirement System, Janice Nelson, Secretary.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1990-609.

Submit comments by January 16, 1991 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule attempts to clarify the current procedures of the Division of Pensions in determining the age of a person regarding enrollment and retirement within or from the Public Employees' Retirement System. For enrollment or retirement purposes, if a person is beyond six months or more into his or her chronological age (for example, 25 years and eight months old), such a person will be treated for enrollment purposes as if he or she had reached his or her next birthday (for example, 26 years old in the previous example).

Social Impact

This proposed new rule may affect present and future members of the Public Employees' Retirement System who enroll or retire from that system. It is not anticipated that the proposed new rule will adversely affect any such persons. Because this age computation method is currently utilized by the System, no net change to any person's situation is anticipated.

Economic Impact

Since the proposed new rule reflects the current policy and procedure of the Division of Pensions, the individuals who might be affected by the rule will not be adversely affected. The rule is essentially codifying present practices and accepted standards that have been developed over the years. The method of computing age is used for payment into the System and for retirement. Therefore, there is no net change to any individual's situation.

Regulatory Flexibility Statement

A regualtory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this new rule will not have any effect upon small business or private industry in general.

Full text of the proposed new rule follows:

17:2-1.13 Nearest attained age; enrollment; retirement

(a) An individual who is six months or more than his or her current age at the time of his or her enrollment will have his or her pension contribution rate and retirement factor based upon the age on his or her next birthday.

(b) Retired members and survivors will have their benefits calculated upon the basis of the factors applicable to their age as set forth in (a) above.

(b)

DIVISION OF PENSIONS

Police and Firemen's Retirement System
Work-Related Travel; Accidental Disability and Accidental Death Benefits
Proposed New Rule: N.J.A.C. 17:4-6.17

Authorized By: Police and Firemen's Retirement System, Janice Nelson, Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1990-610.

Submit comments by January 16, 1991 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule attempts to clarify the eligibility for accidental disability benefits and accidental death benefits for persons on work-related travel who are enrolled in the Police and Firemen's Retirement System. The new rule is almost identical to the same type of rule governing members of the Public Employees' Retirement System and an attempt is being made to have uniform rules throughout all State-administered retirement systems, when feasible.

Social Impact

The proposed new rule will affect present and future members of the Police and Firemen's Retirement System who may suffer injuries or death during work-related travel that qualifies for either accidental disability or accidental death benefits. The rule clarifies when members are covered for such benefits, liberally defining the circumstances and situations under which coverage is provided.

Economic Impact

The proposed new rule clarifies eligibility for benefits payable in accordance with N.J.S.A. 43:16A-10, two-thirds of the employee's annual salary. (Ordinary disability is payable at a rate of one and one-half percent per year of service.)

By itself, the proposed new rule will not have any adverse economic effect upon the persons who may be affected by it. In effect, the new rule merely reflects the current procedures or policies used to determine the eligibility of accidental death or accidental disability benefits for members injured during work-related travel. The accidental death and disability benefits are higher than the normal death or disability benefits, but the proposed rule does not change the current requirements; it merely clarifies and codifies current procedures for eligibility determination.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this new rule will not have any effect upon small business or private industry in general.

Full text of the proposed new rule follows:

17:4-6.17 Work-related travel; accidental disability retirement and accidental death benefit coverage

(a) A member whose duties include regular or occasional travel in the course of employment will be considered in the "performance of his regular or assigned duties" for the purposes of accidental disability retirement or "in the actual performance of duty" for the purposes of accidental death benefits during employment-related travel as provided in this section. For the purposes of this section, "in performance of duty" means and includes both "performance of regular or assigned duties" and "in the actual performance of duty."

(b) If a member's duties require or authorize the member to travel between a regularly assigned office or workplace and other locations, or among other locations, the member is in performance of duty during travel between a regularly assigned office or workplace and other locations, or among other locations.

(c) If a member's duties require or authorize the member to travel between his or her place of residence and a location other than an office or workplace of the employer to which the member is regularly assigned or near to the regularly assigned office or workplace to perform the duties of the employment, the member is in performance of duty when he or she completely leaves the property of his or her residence and begins to travel to the other location, or until he or she begins entry to the property of residence after travel from the other location, and all expenses of the travel are paid for by the employer. A member's duties are considered to authorize or require travel from the place of residence to a location other than a regularly assigned office or workplace of the employer in the following situations:

1. The member's regular or assigned duties involve field work which requires or authorizes the member to travel to locations other than a regularly assigned office or workplace of the employer to perform his or her duties and do not require the member to report to a regularly assigned office or workplace before or after traveling to other locations. Travel by the member between a regularly assigned office or workplace of the employer and the place of residence of the member is not considered part of the member's duties.

2. The member's regular or assigned duties are usually performed at an office or workplace of the employer to which the member is regularly assigned but occasionally require or authorize travel to other locations.

3. The member is authorized or required by his or her employer to respond to an emergency situation outside of the member's regularly scheduled work hours, regardless of whether the member goes to a regularly assigned office or workplace or another location, or whether the expenses of the travel are paid for by the employer or the member.

4. The member is attending a meeting, seminar, convention or a similar type of work-related activity as authorized or required by the employer at a location other than a regularly assigned office or workplace, regardless of whether the expenses of the travel are paid for by the employer or the member. Where there are social or recreational activities associated with the work-related activity or attendance requires living accommodations, only travel to and from the general activity and participation in and travel to and from the work-related functions of the activity are considered part of the duties of the member. Activities related to social or recreational functions or living accommodations are not considered part of the duties of the member.

(d) In all cases, a certification from the employer is required and must include a copy of the member's job description, a statement of the member's work schedule on the day of the travel in question, and proof of or a statement by the employer that the travel was authorized or required by the employer and indicating who paid the travel expense.

(a)

CAPITAL CITY REDEVELOPMENT CORPORATION

Notice of Extension of Public Comment Period
Project Review Procedures
Proposed New Rules: N.J.A.C. 17:41

Take notice that the Capital City Redevelopment Corporation is extending the public comment period for its proposed project review procedure rules, N.J.A.C. 17:41, until December 28, 1990. The notice of proposal for these new rules appears in the November 19, 1990 New Jersey Register at 22 N.J.R. 3475(a).

Submit comments by December 28, 1990 to:

Robert M. Litke, Executive Director
Capital City Redevelopment Corporation
4 North Broad Street
CN 203
Trenton, NJ 08625-0203
Telephone: (609) 984-5664

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions; Slot Booths; Accounting Controls Within the Slot Booths
Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs
Procedures and Requirements for the Use of an Automated Coupon Redemption Machine (New Rule)
Proposed Amendments: N.J.A.C. 19:45-1.1, 1.34, 1.35 and 1.46
Proposed New Rule: N.J.A.C. 19:45-1.46A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 5:12-69e and 5:12-99a.

Proposal Number: PRN 1990-613.

Submit comments by January 16, 1991 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:45-1.1, 1.34, 1.35 and 1.46 and the proposed new rule N.J.A.C. 19:45-1.46A would permit casino licensees to utilize an automated coupon redemption machine for the purpose of redeeming coin coupons on the casino floor. The proposed amendments and new rule would further provide guidelines for the operation of the automated coupon redemption machines, including, but not limited to, the requirements for the coupons and the reconciliation of funds and coupons. A 90-day experiment commencing on August 27, 1990 through November 25, 1990 is being conducted to determine the feasibility of using an automated coupon redemption machine (see 22 N.J.R. 2542(a)). The proposed amendments also define the term change machine.

Social Impact

It is anticipated that the use of automated coupon redemption machines will provide gaming patrons with better service, and therefore, the proposed amendments and new rule will have a positive social benefit for the gaming patrons.

Economic Impact

The utilization of automated coupon redemption machines will have little or no economic impact initially. The cost of the machine(s) along with the cost of servicing the machine(s) will probably offset the cost of labor now required to redeem coin coupons. However, in the long run, cost savings are expected because of a reduction in labor costs.

Regulatory Flexibility Statement

These proposed amendments and new rule will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.1 Definitions

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

. . .

"Automated coupon redemption machine" means any mechanical, electrical or other device which operates independently of a slot machine and which upon insertion of a valid casino coupon or currency will dispense an amount of coin or slot tokens equivalent to the face value of the coupon or currency and shall immediately upon exchange cancel the coupon.

. . .

"Change machine" means any mechanical, electrical or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens. Change machines shall be governed by the accounting and internal control procedures pursuant to N.J.A.C. 19:45-1.35 with said procedures submitted to the Commission for review and approval.

. . .

19:45-1.34 Slot booths

(a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-7. (No change.)

8. The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40; [and]

9. The issuance of coin or slot tokens to automated coupon redemption machines in exchange for proper documentation; and

[9.]**10.** (No change in text.)

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

19:45-1.35 Accounting controls [within the] **for** slot booths **and change machines**

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

(e) The slot booth inventory may be used to supply automated coupon redemption machines with an imprest inventory of coin or slot tokens.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(i) Coupons redeemable for cash or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. Cancellation of coupons by changepersons shall be in a manner that will permit subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum. **Notwithstanding the above, an automated coupon redemption machine may be utilized to accept coupons, provided that the acceptance of coupons by an automated coupon redemption machine complies with the procedures and requirements established by this section and N.J.A.C. 19:45-1.46A.**

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

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a) All coupons utilized with or accepted by an automated coupon redemption machine shall be accounted for and controlled pursuant to N.J.A.C. 19:45-1.46 unless otherwise authorized by the Commission.

(b) All coupons accepted by an automated coupon redemption machine shall have encoded thereon, in addition to the requirements of N.J.A.C. 19:45-1.46(d), a bar code which contains the dollar value of the coupon and a unique code or other security measure as approved by the Commission, that is readable only by the automated coupon redemption machine to ensure that the coupon is valid.

(c) Each automated coupon redemption machine shall have the capability of establishing the validity of the coupon by comparing the unique code programmed into the machine to the bar code on the coupon referenced in (b) above. Each automated coupon redemption machine shall also have the capability to read the dollar value of the bar coded coupon.

(d) The method or methods utilized to comply with the requirements referenced in (c) above shall be submitted to and approved by the Commission.

(e) Each automated coupon redemption machine shall, at a minimum, accumulate the following data on a meter or a computer generated tape:

1. The total amount of coin or slot tokens dispensed by the automated coupon redemption machine; and

2. The total dollar amount of coupons accepted by the automated coupon redemption machine.

(f) Each automated coupon redemption machine shall have imprinted, affixed or impressed on the outside of the machine a unique asset identification number. Each automated coupon redemption machine shall contain a lockable coupon storage box which retains the coupons accepted by the machine. Each coupon storage box located inside the machine shall also have imprinted, affixed or impressed thereon the asset identification number of the corresponding machine.

(g) Each automated coupon redemption machine shall have, at a minimum, the following:

1. One lock securing the compartment housing the coupon storage box and one lock securing the coupon storage box within the compartment, the keys to which shall be different from each other. Such keys shall be controlled by two separate departments;

2. Two separate locks securing the compartment housing the coin storage container, the keys to which shall be different from each other. Such keys shall be controlled by two separate departments; and

3. One lock securing the contents of the coupon storage box, the key to which shall be different from the keys referenced in (g)1 and 2 above. Such key shall be controlled by a department independent of the two departments controlling the keys referenced in (g)1 and 2 above.

(h) On a daily basis, a slot cashier, accompanied by a security department representative, shall remove the coupons accepted by the automated coupon redemption machine. Any coin or slot tokens removed from the automated coupon redemption machine during the removal of coupons or during any other time shall be placed in a secured container, as approved by the Commission, with the automated coupon redemption machine asset identification number attached or recorded thereon. Upon removal of the coupons and/or coins or slot tokens from the automated coupon redemption machine, a serially prenumbered three-part form, at a minimum, shall be prepared by the slot cashier. Each series of forms shall be used in sequential order, and the series numbers of all forms received by a casino shall be accounted for by employees with no incompatible functions. All original, duplicate and triplicate void forms shall be marked "VOID" and shall require the signature of the preparer. The following copies shall contain, at a minimum, the following information:

1. The original, duplicate and triplicate:

i. The date and time of preparation;

ii. The denomination of the automated coupon redemption machine;

iii. The automated coupon redemption machine asset identification number;

iv. The total number of coin or slot tokens appearing on the meter or computer generated tape as dispensed by the automated coupon redemption machine;

v. The total dollar amount of coupons or the converted value of coupons appearing on the meter or computer generated tape as accepted by the automated coupon redemption machine;

vi. The signature of the slot cashier who removed the coupons and/or coin or slot tokens from the automated coupon redemption machine; and

vii. The signature of the security department representative who witnessed the removal of coupons and/or coin or slot tokens and who escorted the coupons and/or coin or slot tokens to the slot booth or master coin bank.

2. The original form shall contain the following additional information:

i. The total dollar amount of coupons received from the security representative referenced in (h)1vii above and counted by a master coin bank cashier or a slot cashier, other than the slot cashier who removed the coupons from the machine;

ii. The total dollar amount of coin or slot tokens received from the security department representative referenced in (h)1vii above and counted by a master coin bank cashier or a slot cashier, other than the slot cashier who removed the coins from the machine;

iii. Any additional information as may be required by the Commission to reconcile the coupons removed from the automated coupon redemption machine; and

iv. The signature of the master coin bank cashier or slot cashier who received and counted the coupons and/or coin or slot tokens.

(i) After meeting the signature requirements as described in (h)1vi and vii above, the coupons and any coin or slot tokens removed from the automated coupon redemption machine and the original and duplicate copies of the form referenced in (h) above shall be transported directly to a slot booth or master coin bank by the slot cashier in the presence of the security department representative. The triplicate form referenced in (h) above shall be placed in the automated coupon redemption machine until forwarded to accounting at the end of the gaming day. The duplicate copy of the form shall be given to the security department representative upon arrival at the slot booth or master coin bank. The security department representative shall immediately deposit the duplicate copy of the form into a locked accounting box maintained at the security podium.

(j) A master coin bank cashier or a slot cashier, other than the slot cashier who removed the coupons and any coin or slot tokens from the automated coupon redemption machine, shall count the coupons and coin or slot tokens and reconcile the amount(s) counted to the amount(s) recorded in accordance with (h)1iv and v above and shall sign the original form attesting to the reconciliation. The original copy of the form shall be maintained by the slot cashier or master coin bank cashier who verified the amounts until forwarded to accounting at the end of the gaming day.

(k) All coupons accepted by an automated coupon redemption machine shall be immediately cancelled in a manner which anyone can visually ascertain so that they are not redeemable in accordance with N.J.A.C. 19:45-1.34(a) or acceptable by another automated coupon redemption machine.

(l) A slot cashier shall prepare a form to authorize the distribution of coins or slot tokens to an automated coupon redemption machine. The slot cashier shall deliver all parts of the form to the master coin bank cashier for preparation of the funds. The form shall be, at a minimum, a serially prenumbered three-part form. Each series of forms shall be used in sequential order, and the series numbers of all slips received by a casino shall be accounted for by employees with no incompatible functions. All original, duplicate and triplicate void forms shall be marked "VOID" and shall require the signature of the preparer. The following information, at a minimum, shall be recorded on all copies of the form:

1. The date and time of preparation;

2. The automated coupon redemption machine asset identification number;

3. The number of bags and the dollar amount of each bag to be distributed;

4. The total dollar amount of the fill; and

5. The signature of the master coin bank cashier who prepared the coins or slot tokens for distribution to the automated coupon redemption machine.

(m) Upon meeting the signature requirements as described in (l)5 above, the master coin bank cashier shall retain the original copy of the form. The duplicate and triplicate copies of the form shall be given to the slot cashier filling the machine. A security department representative shall escort the slot cashier or above along with the funds and the duplicate and triplicate copies of the form to the automated coupon redemption machine and shall observe the filling of the machine. The security department representative and the slot cashier shall sign the duplicate and triplicate copies of the form. The duplicate shall be given to the security department representative who shall immediately deposit the duplicate form into a locked accounting box at the security podium. The triplicate shall be placed in the automated coupon redemption machine until forwarded to accounting at the end of the gaming day.

(n) At the end of the gaming activity each day, at a minimum, the original, duplicate and triplicate copies of the forms referenced in (h), (l) and (m) above shall be forwarded to the accounting department for agreement and shall be used to reconcile each automated coupon redemption machine in a manner as approved by the Commission.

(o) Notwithstanding this section, in addition to accepting coupons, an automated coupon redemption machine may accept currency provided the procedures governing the control and reconciliation of coupons and currency removed from the machine are submitted to the Commission for approval.

(a)

CASINO CONTROL COMMISSION

Internal Controls

Procedures for Transportation Expense Reimbursements

Proposed Amendment: N.J.A.C. 19:45-1.9A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 102m.

Proposal Number: PRN 1990-627.

Submit comments by January 16, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
3131 Princeton Pike, Building 5
CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to subsection 102m of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., a casino licensee may reimburse its gaming patrons for documented transportation expenses provided that the licensee complies with Casino Control Commission (Commission) regulations to ensure that such expenses are paid for or reimbursed only once (see N.J.S.A. 5:12-102m(2)). On November 22, 1989, the Commission adopted a new rule, effective December 18, 1989, at N.J.A.C. 19:45-1.9A, to implement subsection 102m(2) of the Act by establishing documentation procedures for the issuance of transportation expense reimbursements (see 21 N.J.R. 3931(b)).

The current rule requires that the tickets, invoices or receipts evidencing the transportation expense be in the name of the requesting patron, or, if an explanation is noted on the Travel Disbursement Voucher (Voucher), in the name of a person accompanying such patron (see N.J.A.C. 19:45-1.9A(b)3). On September 27, 1990, Trump's Castle Casino Associates (Trump's Castle) filed a petition for rulemaking pursuant to N.J.S.A. 5:12-69c, requesting that the Commission promulgate an amendment to N.J.A.C. 19:45-1.9A(b)3 to permit transportation reimbursement of $250.00 or less for tickets, invoices or receipts which do not indicate the purchaser's name, if an explanation thereof is noted on the Voucher (see 22 N.J.R. 3407(d)).

Social Impact

The proposed amendment will benefit casino patrons who have, in the past, been precluded from receiving travel reimbursement where the requisite tickets, invoices or receipts do not indicate the name of the individual incurring the transportation expense. The amendment accommodates these situations, where the amount of reimbursement is $250.00 or less, while ensuring adequate documentation of such expenses in accordance with N.J.S.A. 5:12-102m.

Economic Impact

The proposed amendment is not expected to result in any significant economic impact on the casino industry, since the documentation procedures in N.J.A.C. 19:45-1.9A have already been implemented and no additional costs of compliance should be incurred. The proposed amendment will provide an economic benefit to casino patrons who have been unable to receive travel reimbursements where the documentation issued by the transportation provider does not indicate the name of the individual incurring the transportation expense.

Regulatory Flexibility Statement

The proposed amendment affects only the operation of casino licensees, and therefore does not impact on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.9A Procedures for transportation expense reimbursements

(a) (No change.)

(b) Whenever a patron requests a casino licensee to reimburse transportation expenses, a Travel Disbursement Voucher ("Voucher") shall be prepared. Vouchers shall be maintained in a secure location approved by the Commission. Access to Vouchers, prior to use, shall be restricted to those individuals authorized by the licensee to approve such disbursements. Prior to the transportation expense reimbursement, an individual authorized to approve the disbursement shall examine the original tickets, invoices or receipts presented by the patron in support of the request for valid transportation expense reimbursement. Such tickets, invoices or receipts shall:

1.-2. (No change.)

3. Be in the name of the requesting patron, [or] **provided, however, that the tickets, invoices or receipts may be** in the name of a person accompanying said patron**, or contain no name if the amount of reimbursement is $250.00 or less,** [provided that] **as long as** an explanation thereof is noted on the Voucher; and

4. (No change.)

(c)-(h) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Procedure for Exchange of Checks Submitted by Gaming Patrons

Proposed Amendment: N.J.A.C. 19:45-1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 5:12-70g and 5:12-101b.

Proposal Number: PRN 1990-614.

Submit comments by January 16, 1991 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.25(e) would provide casino licensees with an additional method to verify the identification of a patron presenting a cash equivalent or casino check. More specifically, the casino would be permitted to compare the presenting patron's signature and physical description to that previously recorded and verified in the patron's credit file.

Social Impact

The proposed amendment would provide casino licensees with an alternate method of verifying a patron's identity thereby accommodating patrons who have previously established casino credit with the licensee, but who may not be carrying identification.

Economic Impact

The proposed amendment would permit casino licensees to accept cash equivalents or casino checks they may otherwise not have been able to accept, and therefore, the casinos may experience a slight economic benefit if the patron elects to use the money in their casino.

Regulatory Flexibility Statement

This proposed amendment will only affect the operations of casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. **In order to ensure the patron's identity,** [Prior] **prior** to the acceptance of a cash equivalent made payable to a presenting patron or of a casino check pursuant to N.J.S.A. 5:12-101(g), the general cashier shall **be required to** examine that patron's identification credentials **or verify that the patron's signature recorded on the cash equivalent or casino check and the patron's physical description agree with the information recorded in the patron's credit file prepared pursuant to N.J.A.C. 19:45-1.27.** [to ensure the patron's identity and] **Each casino licensee** shall maintain documentation supporting that examination **or verification.**

1. (No change.)

i.-iv. (No change.)

(f)-(p) (No change.)

HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Physician's Services

Proposed Readoption: N.J.A.C. 10:54

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

Authority: N.J.S.A. 30:4D-6a(5); 30:4D-7, 7a, b and c; 30:4D-12.

Agency Control Number: 90-P-21.

Proposal Number: PRN 1990-630.

Submit comments by January 16, 1991 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:54, the Manual for Physician's Services, expires on March 3, 1991. This proposed readoption is designed to readopt all four subchapters and Appendix A.

An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated.

Subchapter 1 contains relevant information pertaining to physicians who are treating Medicaid patients. For example, certain services require prior authorization from the Division's Medical Consultant. These services, and procedures, are listed in N.J.A.C. 10:54-1.5. There are also requirements for physicians' services in various settings, such as hospitals, long-term care facilities (now called nursing facilities), radiology services, etc., listed under "scope of service" at N.J.A.C. 10:54-1.2. The subchapter also describes Medicaid policies regarding physical medicine and rehabilitative services (N.J.A.C. 10:54-1.7), environmental equipment (N.J.A.C. 10:54-1.8), issues related to the prescribing of pharmaceuticals (N.J.A.C. 10:54-1.10, 1.12 through 1.18), and policies governing sterilization (N.J.A.C. 10:54-1.20).

Subchapter 2 describes the billing procedures, including the requirements for timely claim submittal, the need to attach prior authorization documents, as appropriate, and the procedures for the use of automated data exchange if the physician elects to use this method of billing.

Subchapter 3 is reserved.

Subchapter 4 references the Health Care Financing Administration (HCFA) Common Procedure Coding System, which is the basis of reimbursement for the majority of fee-for-service providers, including physicians. The HCPCS codes are referenced, but not reproduced, in the New Jersey Administrative Code.

Appendix A is a list of brand name drugs and their generic nomenclature.

There are no textual changes associated with this readoption.

Social Impact

This proposed readoption potentially affects all Medicaid recipients who may need physicians' services in the event of illness. Those recipients that are directly affected are those that are treated by physicians participating in the New Jersey Medicaid Program.

The proposed readoption affects Doctors of Medicine and Osteopathy that are licensed by the New Jersey Board of Examiners and that participate in the New Jersey Medicaid Program. The rules also apply to physicians licensed in other states that treat New Jersey Medicaid recipients.

The rules describe the conditions of Medicaid participation for physicians, the method of billing, the basis of reimbursement, and an indication of any limitations imposed (by Medicaid) on services, including, but not limited to, prior authorization, second opinion, etc.

Economic Impact

The economic impact of the rules proposed for readoption is as follows:

The cost of physicians' services provided by the New Jersey Medicaid Program was approximately $72,276,136 (Federal-State share combined) in State Fiscal Year 1990.

The basis of reimbursement for physicians is the Health Care Financing Administration Common Procedure Coding System (HCPCS Codes), which is referenced, but not reproduced, at N.J.A.C. 10:54-4. There is no change in physician reimbursement associated with this readoption; therefore, there is no change affecting Medicaid providers.

There is no cost to the Medicaid patient for physicians' services.

Regulatory Flexibility Analysis

This readoption pertains to physicians, some of whom might have practices that qualify as small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no changes in reporting, record keeping or other compliance requirements associated with this readoption. Pursuant to N.J.S.A. 30:4D-12, physicians are already required to keep sufficient records to indicate the name of the recipient being treated, date the service or treatment was rendered, nature and extent of the service or treatment, and any additional information as required by regulation. These requirements apply equally to all physicians because the standard of practice is the same whether the physician is a solo practitioner or is one of the members of a group practice. Therefore, there is no differentiation based upon size. There are no capital costs associated with the rules proposed for readoption. The proposed readoption does not require the physician to hire the services of a nurse to assist with his/her practice unless he or she chooses to do so. Physicians are not required to hire an accountant unless he or she chooses to do so. The proposed readoption is designed to minimize the adverse economic impact on physicians by requiring them to maintain only those patient records which would be part of regular medical practice and are necessary for the health, safety, and welfare of Medicaid patients receiving treatment. With respect to billing, the timely submission of a claim form accurately completed will facilitate provider reimbursement.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:54.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Supplier Manual

Proposed Readoption: N.J.A.C. 10:59

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

Authority: N.J.S.A. 30:4D-6b(2), (6); 30:4D-7, 7a, b and c; 30:4D-12; 42 C.F.R. 440.70, 120.

Agency Control Number: 90-P-24.

Proposal Number: PRN 1990-611.

Submit comments by January 16, 1991 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The purpose of this proposal is to readopt the entire Medical Supplier Manual, N.J.A.C. 10:59, which is due to expire March 3, 1991, pursuant to Executive Order No. 66(1978).

The Medical Supplier Services manual was promulgated to set forth the basic policies and procedures (of the Medicaid program) relating to medical supplies and durable medical equipment (DME).

An administrative review has been conducted, and a determination made that the rule is necessary, adequate, reasonable, efficient and responsive for the purpose for which it was promulgated. The rule should be continued to enable Medicaid patients to continue receiving assistance with medical supplies and durable medical equipment.

Subchapter 1 of N.J.A.C. 10:59 contains such topics as policies and procedures governing medical supplies and equipment (also called item(s)), such as wheelchairs, hospital beds and oxygen equipment. Additional topics covered in subchapter 1 include the qualifications for becoming a provider in the New Jersey Medicaid Program, prescription policies, prior authorization, non-covered items, and policies governing purchase and/or rental, and repairs.

A Medicaid patient who has a medical need for supplies and/or equipment must initially obtain a prescription form an authorized practitioner. The prescription accompanies the request for prior authorization which is submitted to the Medicaid District Office for review. If the request is approved, the patient receives the item and the provider submits a claim to the fiscal agent for reimbursement. If the request is denied, the patient is advised of his or her right to request a hearing.

Subchapter 2 concerns billing procedures for medical suppliers who participate in the New Jersey Medicaid Program. Topics included are verification of patient eligibility, submission of claim forms (HCFA-1500), and direct (computer) data exchange billing.

Subchapter 3 references the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS Codes). The HCPCS Codes, which are referenced but not reproduced in subchapter 3, are the basis for Medicaid reimbursement. The most significant amendment since the last readoption was the incorporation of the HCPCS Codes into N.J.A.C. 10:59-3 (see R.1986 d.52, at 18 N.J.R. 478(a)).

There are no textual changes associated with this readoption.

Social Impact

The rules have enabled Medicaid patients to obtain medical supplies and/or equipment, in order to remain in the community. The rules should be continued because the need for such supplies and equipment has not changed.

The rules impact upon medical supply providers by defining those items and services the Division is permitted to provide, the scope of Medicaid

services, and those procedures which medical suppliers must follow in order to submit claims for services rendered to Medicaid eligibles.

Economic Impact

The economic impact of the rules proposed for readoption is as follows.

There is no cost to recipients for services rendered through the Medicaid Program. The rules have enabled Medicaid patients who have a medical need for medical supplies and equipment to receive such items as hospital beds, wheelchairs and oxygen equipment. The rules make no change in recipient eligibility, nor do they make any alteration in the covered items and services.

The rules establish a fee schedule which defines the items and services the Division is permitted to provide. The rules make no change in the fee schedule; hence, there is no change in economic impact upon Medicaid providers. The basis of reimbursement for items and services provided to Medicaid recipients are the HCPCS Codes, which are referenced, but not reproduced, at N.J.A.C. 10:59-3.

The Division spent approximately $20,640,343. on Title XIX (Medicaid) Medical Supplies and Durable Medical Equipment Services in State Fiscal Year 1990 (Federal-State share combined).

Regulatory Flexibility Analysis

This proposed readoption could impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply to medical suppliers who participate in the New Jersey Medicaid Program. N.J.S.A. 30:4D-12(d) defines documentation for Medicaid services, requiring that the provider's records disclose the name of the recipient to whom the service was rendered, the date of the service and the nature and extent of the service rendered. The purpose of this documentation requirement is to enable verification of medical services for which the provider has billed the Program, that those services were performed and that they constituted quality medical care. This proposed readoption does not impose any additional reporting, record keeping and other compliance requirements. There is no differentiation among providers based upon size of the provider entity because the regulatory requirements and standards of care are the same for all medical suppliers. The New Jersey Medicaid Program does not require Medicaid providers to contract for outside professional services, although providers may find it desirable or useful to do so. There are no capital costs associated with the rules proposed for readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:59.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Independent Laboratory Services Manual

Proposed Readoption: N.J.A.C. 10:61

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

Authority: N.J.S.A. 30:4D-6a(3), 30:4D-7, 7a, b and c; 30:4D-12; 42 C.F.R. 440.30.

Agency Control Number: 90-P-25.

Proposal Number: PRN 1990-620.

Submit comments by January 16, 1991 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN-712
Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The purpose of this proposal is to readopt the entire Independent Laboratory Services Manual, N.J.A.C. 10:61, which is due to expire March 3, 1991, pursuant to Executive Order No. 66(1978).

The Independent Laboratory Services Manual was promulgated to set forth the policies and procedures (of the Medicaid program) relating to diagnostic tests.

An administrative review has been conducted, and a determination made that the rules are necessary, adequate, reasonable, efficient and responsive for the purpose for which they were promulgated. Medicaid patients sometimes require laboratory services in order to enable attending physicians to render accurate diagnoses of their illnesses or injuries. The rules should be continued to enable Medicaid patients to continue receiving this type of service.

Subchapter 1 contains such topics as definitions and qualifications relating to medical tests; limitations on laboratory services, scope of services and basis of laboratory payment; laboratory rebates; out-of-state laboratories, and right of inspection. Requirements for participation in New Jersey Medicaid as an independent laboratory include licensure and/or approval by the New Jersey State Department of Health and the State Board of Medical Examiners; certification as an independent laboratory under the Title XVIII Medicare program; a consistent practice to charge all patients for services provided; and approval for participation as an independent laboratory provider by the New Jersey Health Services Program.

All requests for laboratory services require a signed order from the attending physician, indicating the specific test requested. Such laboratory orders must be retained by the laboratory for a period of at least five years, along with the results of the tests billed.

Subchapter 2 concerns billing procedures for laboratory services under New Jersey Medicaid. Included in subchapter 2 are timeliness of claim submission and claim inquiry, combination Medicare/Medicaid claims, and instructions for completing the claim form and submitting it to the fiscal agent. Conditions for automated data exchange claims submissions are defined in the subchapter.

Subchapter 3 references the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS Codes). The HCPCS Codes are the basis for Medicaid reimbursement, and as such, HCPCS Codes comprise the fee schedule for laboratory services provided through New Jersey Medicaid. The most significant amendment since the last readoption was the incorporation of the HCPCS Codes into N.J.A.C. 10:61-3. These codes are referenced, but not reproduced, in subchapter 3. (See R.1986, d.52, at 18 N.J.R. 478(a)).

There are no textual changes associated with this readoption.

Social Impact

The rules have permitted Medicaid patients to obtain laboratory services in order to enable attending physicians to render accurate diagnoses and to evaluate the success of their therapies. The rule should be continued because the need for such testing has not changed.

The rules impact upon independent laboratory service providers by defining the requirements associated with those services, the scope of Medicaid services, and those procedures which such providers must follow in order to submit claims for laboratory services rendered to Medicaid eligibles.

Economic Impact

The economic impact of the rules proposed for readoption is as follows.

There is no cost to recipients for services rendered through the Medicaid Program. Reimbursement for services rendered to Medicaid recipients is based upon HCPCS Codes which are referenced, but not reproduced, at N.J.A.C. 10:61-3. The rules proposed for readoption make no change in the fee schedule; hence, there is no change in economic impact upon medicaid providers.

The Division spent approximately $4,881,621 on Title XIX (Medicaid) Independent Laboratory Services in State Fiscal Year 1990 (Federal-State share combined).

Regulatory Flexibility Analysis

This proposed readoption could impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply to independent laboratory providers who participate in the New Jersey Medicaid Program.

N.J.S.A. 30:4D-12(d) defines documentation for Medicaid services, requiring that the provider's records disclose the name of the recipient to whom the service was rendered, the date of the service and the nature and extent of the service rendered. The purpose of this documentation requirement is to enable verification of medical services for which the provider has billed the Program, that those services were performed and that they constituted quality medical care. This proposed readoption does not impose any additional reporting, record keeping and other compliance requirements. There is no differentiation among providers based upon size of the provider entity because the regulatory requirements and standards of practice are the same for all providers. Laboratory providers are required to hire or retain the services of qualified medical personnel in order to meet licensure standards. The rule does not require that

Medicaid providers engage the services of non-medical professionals, such as accountants, but providers who desire to use such services may do so. There are no capital costs associated with the rules proposed for readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:61.

CORRECTIONS

(a)

THE COMMISSIONER

Inspection and Identification of Incoming Correspondence
N.J.A.C. 10A:18-2.6
Notice of Withdrawal of Proposal

The Commissioner of the Department of Corrections has requested that the proposed amendment to N.J.A.C. 10A:18-2.6, Inspection and identification of incoming correspondence, which appeared in the January 16, 1990, New Jersey Register at 22 N.J.R. 147(a), be withdrawn.

This proposal is being withdrawn since the New Jersey Supreme Court, in *In the Matter of Rules Adoption Regarding Inmate Mail to Attorneys, Public Officials and News Media Representatives,* 120 N.J. 137 (1990), concluded that the existing "N.J.A.C. 10A:18-2.6 is constitutionally valid, under the standards set forth in *Turner* and *Thornburgh.*"

(b)

THE COMMISSIONER

Juvenile Detention Facilities
Juvenile Population Capacity
Reproposed Amendment: N.J.A.C. 10A:32-4.2

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 2A:4A-44d and *County of Monmouth v. Department of Corrections,* Dkt. No. A-6351-88T3F (App. Div. 11-16-89).

Proposal Number: PRN 1990-612.

Submit comments by January 16, 1991 to:

Elaine W. Ballai, Esq.
Supervisor, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

An amendment was proposed to N.J.A.C. 10A:32-4.2 and published in the June 18, 1990, issue of the New Jersey Register at 22 N.J.R. 1895(a). The proposed amendment was necessitated by a ruling of the Court in *County of Monmouth v. Department of Corrections,* Docket No. A-6351-88T3F (App. Div. November 16, 1989). The Court remanded this matter to the Commissioner, New Jersey Department of Corrections, with the direction that the Commissioner establish regulations under which the Department of Corrections will promptly comply with court ordered commitments of juveniles to State correctional facilities by removing sentenced juveniles from county detention facilities to State correctional facilities as expeditiously as possible upon notification of the court's disposition. Comments on the proposed amendment were received from the Camden County Freeholders along with a request for a Public Hearing. A Public Hearing was conducted on September 5, 1990, at which representatives from several counties expressed their concerns regarding the proposed amendment. As a result of written comments received, concerns expressed at the Public Hearing and further consideration of this matter, the New Jersey Department of Corrections is reproposing this amendment. This reproposal requires a juvenile, who receives a State sentence of incarceration, to be transferred from a county juvenile detention facility to the intake unit of the New Jersey Training School for Boys within three working days after the county notifies the Department of Corrections of the juvenile's sentence in the form of a signed commitment order and a presentence or predisposition report.

Social Impact

The Division of Juvenile Services, New Jersey Department of Corrections, has experienced a 91 percent increase in the number of juveniles assigned to the Division's custody from December 1984 to May 1989, from 908 commitments to 1,445 commitments. In addition, lengths of sentences have increased and are a major contributory factor to the current shortage of bed space.

The Division of Juvenile Services is committed to creating alternative programs to incarceration for appropriate juveniles committed to Division custody. Although three such projects are underway, which will increase the capacity of the Division by 95 beds, these are long-term solutions which cannot as yet alleviate the crowding in correctional facilities expected to be exacerbated by the Apellate Division's Order. Other ongoing projects, including renovation of a building at the New Jersey Training School for Boys with 40 beds, will not be completed for 12 to 18 months.

Thus, while relieving somewhat the stress being experienced by overcrowded county juvenile detention facilities, this amendment will increase the stress on State juvenile correctional facilities.

Economic Impact

The economic impact of this amendment can be assessed only in retrospect because it is dependent on the number of juveniles committed to State correctional facilities, the number of juveniles who can be placed in existing or newly created community programs, and the court's approval of a three-working-day grace period for transfer of juveniles from juvenile county detention facilities to the New Jersey Training School for Boys.

It is, however, anticipated that costs will increase in proportion to population and bed space increases due to the need for expanded services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment impacts on juvenile inmates and the New Jersey Department of Corrections and has no effect on small businesses.

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

10A:32-4.2 Juvenile population capacity

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

(d) A juvenile who receives a State sentence of incarceration shall be transported to the juvenile intake unit at the New Jersey Training School for Boys no later than three working days after the Department of Corrections receives notification, in the form of a signed commitment order and a presentence or predisposition report, from the county where the juvenile has been sentenced. The three working days shall be exclusive of the date on which the Department of Corrections receives the appropriate and necessary documentation.

(e) The county official who is responsible for transporting the juvenile shall contact the New Jersey Department of Corrections, Division of Juvenile Services, to ascertain the date on which such transfer may be effected.

(c)

THE COMMISSIONER

Adult County Correctional Facilities
General Conditions; Separation of Inmates
Proposed Amendments: N.J.A.C. 10A:31-3.5 and 22.2

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

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

Proposal Number: PRN 1990-596.

Submit comments by January 16, 1991 to:
Elaine W. Ballai, Esq.
Chief, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The present rule at N.J.A.C. 10A:31-3.5 requires that correctional facilities be designed in such a way as to provide for the separation of certain types of inmates. The present rule at N.J.A.C. 10A:31-22.2 governs the classification of inmates and establishes the types of inmates to be separated. Both rules apply exclusively to Adult County Correctional facilities.

The proposed amendment to N.J.A.C. 10A:31-3.5 deletes the listing of types of inmates who should not be confined in the same cells or living areas. The proposed amendment to N.J.A.C. 10A:31-22.2 modifies the listing of the types of inmates who should not be confined in the same cells or living areas. The proposed changes to the list at N.J.A.C. 10A:31-22.2 are based in part on a need to correct terms that have become legally obsolete, such as "misdemeanors" and "felons". Also it is necessary to build into the rules a certain amount of discretion by the use of the terms "serious" and "less serious" offenders. The proposed amendments are in response to a comment received at the December 5, 1989, public hearing on N.J.A.C. 10A:31 in which a commenter pointed out that the listing of the types of inmates is redundant and inappropriately codified in the section having to do with the design of correctional facilities. The object of these amendments is to avoid the repetition of listing classification and separation criteria in two separate subchapters. In case of separation of inmates, the rule requiring separation in N.J.A.C. 10A:31-3.5 should more properly be found in N.J.A.C. 10A:31-22.2.

Social Impact

Since current practices regarding separation of inmates are not being changed, the proposed amendments will have no new social impact other than the ongoing maintenance of security and safety within the correctional facility, which is enhanced by careful separation of certain types of inmates. The Department of Corrections does not anticipate any change in classification practices as a result of these amendments.

Economic Impact

Adult County Correctional Facilities may have incurred some costs, over the years, in providing for the separation of certain types of inmates. However, it would be difficult to assess exactly what the costs might be separate and apart from overall budgeted costs of operation. It should be noted that the proposed amendments represent the codification of longstanding practice and therefore no new costs are anticipated by these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on adult county correctional facilities, inmates assigned to these correctional facilities and the New Jersey Department of Corrections and have no significant effect on small businesses.

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

10A:31-3.5 General conditions

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

(f) The design of the **correctional** facility shall provide for the secure confinement of inmates and for adequate separation of inmates of one classification from inmates of another **(see N.J.A.C. 10A:31-22.2)**. [Inmates of the following classification shall not be confined in the same cells or living areas:

1. Material witnesses and persons committed for crimes;
2. Male and female inmates;
3. Sentenced inmates and unsentenced inmates;
4. Serious offenders and less serious offenders;
5. Inmates in the Work Release Program and inmates in the general population; and
6. Inmates classified as trustees and inmates in other classifications.]

(g)-(w) (No change.)

10A:31-22.2 Separation of inmates

(a) The following types of inmates shall be maintained separately insofar as space permits:

1.-4. (No change.)

5. [Misdemeanors and felons; and] **Serious offenders and less serious offenders; and**

6. [First offenders and habitual criminals.] **Sentenced inmates and detainees.**

(b) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Petroleum Gross Receipts Tax

Proposed New Rules: N.J.A.C. 18:18A

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1990-632.

Submit comments by January 16, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed new rules are issued pursuant to the Petroleum Products Gross Receipts Tax Act, P.L. 1990, c.42, N.J.S.A. 54:15B-1 et seq.

The proposed new rules contain definitions to supply guidance to taxpayers. In particular, the rules define important terms and concepts under the statute, including "exportation," "first sale of petroleum products within this State," "gross receipts," "petroleum products," "residential building" and "use."

Under the proposed rules, licensed motor fuels distributors and other companies applying for and receiving direct pay permit authority are authorized to remit tax directly to the Division of Taxation.

The proposed new rules supply examples to illustrate the application of principles in particular instances. The application of the proposed rules is in accordance with relevant principles of administrative law including those set forth in *Sorensen v. Taxation Division Director,* 184 N.J. Super. 393, (Tax Ct., 1981).

Subchapter 1 describes the scope of the rules and supplies definitions for the application of the tax.

Subchapter 2 sets forth the tax rate and supplies examples for the application of the tax on certain receipts and on imports.

Subchapter 3 sets forth the mechanism for obtaining direct payment authorization and supplies the good faith standard for accepting the direct payment certificate.

Subchapter 4 sets forth details for the use of an export certificate and supplies examples. It also provides a good faith standard and sets forth accounting methods to be used under the statute.

Subchapter 5 sets forth provisions applicable to heating oil dealers and propane dealers.

Subchapter 6 sets forth provisions applicable to blenders.

Subchapter 7 sets forth administrative provisions dealing with including record retention, assessments, refund claims and credit for similar taxes imposed by other jurisdictions.

Subchapter 8 deals with filing and the applicability of The State Tax Uniform Procedure Law.

The Appendix sets forth the application for the Direct Payment Permit, instructions for the use of the Direct Payment Certificate, and a facsimile of the certificate.

Social Impact

The purpose of the proposed new rules is to supply clear guidance to taxpayers and the affected members of the public under the Petroleum Products Gross Receipts Tax Act. The Division has received considerable input from various segments of the public and the industry which will be greatly impacted by the statute. The rules attempt to provide an administrative framework that will permit the administrator and the affected members of the public to operate as effectively as possible.

Economic Impact

P.L. 1990, c.42 (N.J.S.A. 54:15B-1 et seq.) was enacted for the purpose of raising 150 million dollars in Fiscal Year 1991. The amount of revenue generated in a particular period relates to market conditions. Political events may also affect prices, which in turn will have an effect on tax revenues. The rules implement the underlying statute.

Regulatory Flexibility Analysis

The proposed new rules describe qualifications and place filing and payment requirements on those companies subject to the Petroleum Products Gross Receipts Tax. The rules also contain requirements for obtaining a direct payment certificate, the use of an export certificate, and requirements for record retention, assessments, refund claims and credit. Some of the companies subject to the Petroleum Products Gross Receipts Tax may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Division does not believe that any differentiation based on business size is appropriate in the proposed new rules, since the rules simply clarify and implement the concepts contained in the statutes. The Division anticipates that the proposed new rules will not increase small business' capital costs or their need for certain professional services. However, there may be some additional costs or accountants' fees related to the need to monitor certain accounts and/or to file returns with the Division.

Full text of the proposal follows:

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). 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.

"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 which has registered with the Director pursuant to these rules and engages in blending, manufacturing, in the sale of No. 2 heating oil used for residential heating purposes or propane used for residential heating purposes, or consumes bunker fuels in interstate or foreign commerce, or is a common carrier consuming aviation fuel in interstate or foreign commerce. 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.

"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 number 2 heating oil to be used exclusively for residential heating or sales of propane gas used for residential heating. 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).

"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 number 2 heating oil and propane gas to be used exclusively for residential heating.

2. Petroleum products include, for example, and without limitation: acid oil, alkylates, aromatic chemicals, asphalt and asphaltic materials (liquid and solid), benzene, butadiene, 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.

"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.

SUBCHAPTER 2. TAX RATE; RECEIPTS AND IMPORTS

18:18A-2.1 Rate of Tax

The tax is imposed at a rate of two and three quarters percent (2¾%) 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

18:18A-2.2 Tax on imports

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%) multipled by the consideration given or contracted to be given 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. 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. 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 $2887.50 (105,000. × 2.65%).

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 from sales for exportation, sales of No. 2 heating oil, propane for residential use and the tax imposed by the act are not included in arriving at gross receipts subject to tax. The Act contains no exemption or exclusion for receipts from sales to the Federal, State, or municipal governments, their agencies or instrumentalities.

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: 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 subject to tax. The taxing statute does not contain an exemption for a company's gross receipts derived from sales to governmental agencies or authorities.

Example 3: 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.

(b) Receipts from first sales of petroleum products within this State are subject to tax although the purchaser will use or consume the product outside the State.

18:18A-2.4 Imports

(a) Purchases of petroleum products outside New Jersey for use in New Jersey are subject to tax. Purchases of petroleum products from outside New Jersey are subject to a $100,000 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: 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 tax is due on the transaction.

Example 3: A New Jersey municipality purchases fuel oil from a Pennsylvania dealer not licensed in New Jersey. The municipality is required to pay the tax directly to the State of New Jersey if purchases exceed $100,000 per quarter since the Act contains no provision which would exempt the purchase price from sales to municipalities from the tax.

Example 4: 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 purchase price of lubricating oil purchased by Company G and stored within New Jersey exceeded $100,000, 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

18:18A-3.1 Direct Payment Authority

(a) 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 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. The Director may issue direct payment permits which are restricted to the purchases of specified products.

(b) 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.

18:18A-3.2 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 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.

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 OIL AND PROPANE DEALERS

18:18A-5.1 No. 2 heating oil dealers

(a) Companies in the business of selling No. 2 heating oil for residential use and/or commercial use shall apply to the Director for a direct payment permit, in accordance with N.J.A.C. 18:18A-3.3. Upon registration with and authorization from the Director, heating oil dealers shall be registered to report and pay directly to the Director the tax applicable on their gross receipts from taxable sales of No. 2 heating oil. Such companies, when registered, would qualify to purchase No. 2 heating oil in nontaxable transactions from registered sellers.

(b) Gross receipts from sales of No. 2 heating oil 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 oil dealer obtains a direct payment registration certificate from the Director. Ninety percent of his sales of No. 2 heating oil are for residential use. The following year the taxpayer obtains a new commercial account which produces additional gross sales receipts. Taxpayer remits the gross receipt tax on 30 percent of his total receipts.

Example: Company T in New Jersey deals in gasoline and No. 2 heating oil but is not a licensed distributor. Company T obtains a direct payment for its sales of No. 2 heating 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 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

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.

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 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.

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 tax return on the form and in the manner required 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.

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.

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

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)

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

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.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Hospital Reporting of Uniform Bill—Patient Summaries (Inpatient)
Procedural and Methodological Regulations
Financial Elements and Reporting
Proposed Amendments: N.J.A.C. 8:31B

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1990-608.

Submit comments by January 16, 1991 to:

Beatrice E. Manning, Ph.D., Director
Reimbursement Systems Development,
Evaluation and Research
Room 602, CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

These proposed amendments to N.J.A.C. 8:31B are the first step in implementing the recommendations of the Governor's Commission on Health Care Costs. These changes increase the prospectivity of Chapter 83 reimbursement by providing automatic rate adjustments issued at the beginning of each rate year and restructuring the hospital rate appeal process as it now exists.

For payment of indirect costs, the Department proposes replacing the existing peer group standard unit payment with a DRG specific peer group amount based on the average length of stay within each DRG. This change, described in N.J.A.C. 8:31B-3.24, is proposed in response to suggestions that the indirect payment methodology by more sensitive to case-mix.

Another proposal is that a hospital's rates be automatically increased by a new update factor, the prospective operating adjustment. It will be equal to two percent of total direct and indirect costs, calculated after these costs have been increased by the economic and technology factors excluding the Capital Facilities Allowance. This prospective operating adjustment shall replace the current accept incentive of one percent of the Direct Patient Care portion of the rates, the operating margin (see N.J.A.C. 8:31B-3.38.), and numerous rate adjustments that result from accept option appeals.

An additional increment of 0.5 percent is proposed in lieu of Statewide legal and clinical appeals. Like the prospective operating adjustment, its calculation shall be based on total direct and indirect costs, and increased by the economic and technology factors.

The Department proposes that upon receipt of the rate package, two options shall be open to hospitals: implement their rates including all the update factors described above, or request revised rates and undergo a full rate review. For hospitals electing a full rate review, the Department shall consider the hospital's entire cost base, and all aspects of their performance in recent years, including comparison to state and/or national norms. The Department shall recommend to the Hospital Rate Setting Commission new rates as well as appropriate organizational and functional rearrangements. This recommendation, as approved by the Rate-Setting Commission, shall take the place of all automatic rate increases.

The proposed new indirect methodology is found in N.J.A.C. 8:31B-3.24. The prospective operating adjustment and the increment in lieu of Statewide legal and clinical appeals are addressed in new text at N.J.A.C. 8:31B-3.26. The proposed new text regarding rate implementation and full rate review is found in N.J.A.C. 8:31B-3.51 and 3.52, respectively. It should be noted that sections N.J.A.C. 8:31B-3.51, 3.52, 3.56, 3.58 and 3.59 have been deleted in their entirety, and proposed new text inserted for N.J.A.C. 8:31B-3.51 and 3.52.

Other regulatory changes are conforming changes, or deletions of the existing appeal procedures which these options would replace, as in N.J.A.C. 8:31B-3.9, 3.11(b), 3.32, 3.55, 3.57, and 3.63. Absent the current appeal process, certain issues must be addressed in other ways; the transfer of residents (N.J.A.C. 8:31B-3.22(b)9 through 11) and certain capital cost adjustments (N.J.A.C. 8:31B-3.27) become automatic, given submission of specified documentation. Changes to N.J.A.C. 8:31B-3.31 preserve necessary language from N.J.A.C. 8:31B-3.51, proposed for deletion.

Another proposed amendment, at N.J.A.C. 8:31B-3.73, is that reconciliation be based on the lower of aggregate charges or approved revenue for the rate year. This change should encourage hospitals to set charges closer to expected revenue, thus reducing confusion over patient bills and outpatient undercollections.

Certain timeframes have been changed in order to expedite the proposed new process. A 30-day notification period for data base closure is proposed, after which time additional cases will not be accepted for reconciliation. Rate implementation is changed to the first day of the month following 30 days after receipt of a Schedule of Rates, rather than the previous 30 working days (N.J.A.C. 8:31B-3.43). The proposed time for submitting exceptions to proposed audit adjustments is 60 days. In order to facilitate these processes and schedules, hospitals are now required to observe the timeframes, as in N.J.A.C. 8:31B-2.5, 3.16(d), and 3.17(c).

Finally, additional changes have been made in terminology. Because these changes move toward a Certified Revenue Base for hospitals, that language has been added in N.J.A.C. 8:31B-3.2. Clarifying language is also proposed at N.J.A.C. 8:31B-3.7 and 3.17(a). The treatment of gains on pension reversions has been specified in N.J.A.C. 8:31B-4.66 in conformance with Commission-established precedent.

Social Impact

New Jersey faces a health crisis due to the high and escalating cost of health care and health insurance, and the increasing numbers of those without health insurance. In April 1990, Governor Jim Florio appointed a Commission on Health Care Costs to study the components of New Jersey's health care system as they relate to cost and access and to recommend corrective strategies. One of the components he charged the Commission to examine was the overly complicated and burdensome hospital rate setting system, which had produced a serious and growing backlog of unsettled hospital rate appeals. This system was established in the early 1980s to contain the rising cost of health care services and to promote financial solvency of efficient, effective, and needed hospitals.

On October 1, 1990, the Governor's Commission on Health Care Costs presented Governor Florio with a report containing 92 recommendations for restructuring New Jersey's health care system. Areas addressed include access to health insurance programs, financing of health care for the uninsured, health facilities planning, health promotion and illness prevention, and cost containment.

Fifteen of these recommendations addressed reform of the hospital rate-setting and appeal system to better fulfill the original legislative mandate. Implementation of these 15 recommendations shall be phased in over a two-year period. These proposals represent the 1991 phase of implementation.

The proposed regulatory changes will provide increased prospectivity and predictability to the Chapter 83 system. The present system, in attempting to be responsive to hospitals, has become cumbersome and retrospective, with a backlog of rate appeals that prevents the system from being timely. These changes will replace retrospective adjustments based on appeals with automatic rate adjustments. For hospital patients, a more stable rate structure will result in hospital bills that no longer vary with the month of hospitalization. Administrative resources will be reallocated from numerous small and time-consuming rate and patient appeals, to full rate review of truly exceptional cases and refinement of the rates themselves.

Economic Impact

The two percent prospective discretionary adjustment and the 0.5 percent factor to replace statewide legal and clinical appeals, as well as the once-a-year establishment of rates shall allow hospitals and payers to predict revenue and expenditures with greater certainty prospectively. The automatic increase of direct and indirect rates by 2.5 percent as compared to the present operating margin and accept incentive, results in hospitals' rates (except capital) being increased automatically by approximately 1.5 percent above the automatic adjustment now received by hospitals accepting their rates. As a result, hospitals shall have the financial resources to meet obligations that, under the current system, might have necessitated cash flow requests and rate appeals.

These proposed amendments will assist in minimizing both large revenue undercollections for hospitals and the need for significant midyear insurance premium increases for third party payers. The two percent discretionary adjustment shall reduce the administrative time spent adjudicating numerous small appeals, and provide the time needed to address more significant payment issues. The full rate review shall allow the Department to identify potentially insolvent hospitals which need help to contain costs and return to solvency.

Reimbursing hospitals the lower of aggregate charges or approved revenue will provide financial incentives for hospitals to set realistic charges for both inpatient and outpatient services.

Regulatory Flexibility Statement

The proposed rules apply only to the 85 hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business as defined in Section 2 of New Jersey Regulatory Flexibility Act. (P.L. 1986, c.169).

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

SUBCHAPTER 1. GENERAL PROVISIONS

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.

. . .

"Full Rate Review" means an examination of a hospital's entire cost base and operating structure in order to evaluate proposed payment.

. . .

"Prospective Operating Adjustment" means that amount by which hospital payment rates are increased if hospitals choose to implement their rates upon issuance and not undergo a full rate review. This adjustment is not related to an operating margin as defined in Generally Accepted Accounting Principles.

. . .

8:31B-2.5 Health data submissions to the Department of Health

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

(g) Data shall be submitted to the Department of Health as follows:

1. (No change.)

2. Records not received by the Department of Health (including corrections of fatal errors), within the time frames specified, [may] **shall** not be included in the hospital's Final Reconciliation, and the direct costs associated with them [may] **shall** be foregone by the hospital [unless a penalty is paid to the Hospital Rate Setting Commission]. **The Department shall provide 30 days notice of its intent to close the data base, and no additional cases shall be added after that time, except under the provisions cited in N.J.A.C. 8:31B-3.73.**

[i. The amount of the penalty may be up to $200.00 times the number of working days from the date the patient billing and abstract records were due to the date the last record is received by the Department of Health.

ii. The imposition of the penalty, and amount to be paid (within the state limit), shall be at the discretion of the Commission.

iii. Under no circumstances shall data be allowed to be submitted after June 30 of the year following the close of the rate year without the imposition of a fine.]

3. (No change.)

(h) (No change.)

8:31B-3.2 Derivation of Preliminary Cost Base (**PCB**)

(a) For a group of hospitals the Commissioner, on or before January 31 of the rate year shall propose to the Commission a Preliminary Cost Base /**Certified Revenue Base (PCB/CRB)** 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 PCB/**CRB** for fiscal year hospitals shall be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year. The proposed Preliminary Cost Base for each hospital shall include:

1.-7. (No change.)

8:31B-3.5 Development of standards

(a) (No change.)

(b) The median cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including, but not limited to, the lowest cost per case at any institution which has treated more than ten patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in [appeals] **a full rate review**. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed **and issued for a rate year** shall remain unaffected [during the rate period by any appeals] and no adjustments, modifications or any other changes to the standards shall be made [during a rate period, unless so ordered by the Commission]. All standards developed herein may be used in evaluating effectiveness and efficiency of the health care system taken as a whole.

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed Schedule of Rates

(a) Consistent with the purposes and intent of Chapter 83, P.L. 1978, the Commissioner shall propose for each institution a Preliminary Cost Base using the raesonable direct cost per case for each DRG as described in N.J.A.C. 8:31B-3.23. The Preliminary Cost Base shall be adjusted for reasonable indirect patient care costs, net income from other sources, and update factors **to adjust for cost increases since the base year**. These adjustments are described in N.J.A.C. 8:31B-3.24 through 3.26.

(b) In order to determine reasonable physician costs, hospitals shall report to the Commissioner any significant changes in the contractual basis of any and all physician compensation arrangements which may have occurred since the Current Cost Base. Hospitals that fail to report such changes prior to the issuance of the Proposed Schedule of Rates or during the course of the rate year shall have said amount removed (plus interest thereon) from their Preliminary Cost Base at final reconciliation. [Unless appealed the] **The** dollar amount of indirect patient care cost so derived shall remain fixed for the rate period, except as adjusted for inflation or deflation as described in N.J.A.C. 8:31B-3.71 through 3.86.

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

8:31B-3.9 Conditional proposal

The Commissioner may issue an otherwise prospective Proposed Schedule of Rates in which particular aspects of the rates are made conditional. Any such aspects shall be specified and, with respect to these aspects, the rate shall be considered interim and may be implemented pursuant to N.J.A.C. 8:31B-3.44 through 3.45. A hospital may [accept] **implement** the rate; however, such [acceptance] **implementation** shall be considered conditional [acceptance and with respect to those aspects shall be appealable by any party under N.J.A.C 8:31B-3.51 through 3.62] **until final rates are issued**.

8:31B-3.10 Extraordinary expense

If supported by adequate documentation, the Proposed Schedule of Rates may include an appropriate adjustment for items of extraordinary expense of nonrecurring nature which occurred in the Current Cost Base, and which are reported to the Commissioner by [October 15] **April 15**, of the year prior to the issuance of the Proposed Schedule of Rates. Conversely, failure to report extraordinary items of a nonrecurring nature which were included in costs reported to the Department of Health shall entitle the Commissioner to [an appeal] **recommend an adjustment** under N.J.A.C. [8:31B-3.53] **8:31B-3.52**.

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 November 15 of the year prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order. [Hospitals found by the Commissioner to have duly designated programs may petition the Commission for an adjustment

to their Schedule of Rates in accordance with N.J.A.C. 8:31B-3.51 through 3.62].

8:31B-3.15 Certified Revenue Base

[Beginning in 1984, hospitals shall be able to obtain a Certified Revenue Base (CRB)]. A Certified Revenue Base [is] **shall be defined as** the preliminary cost base as approved by the Hospital Rate Setting Commission which is sufficient to meet a hospital's needs in providing adequate and appropriate health care. A hospital may elect to request a CRB, and remain on that CRB adjusted by [economic factor] **update factors (see N.J.A.C. 8:31B-3.26),** for as long as the hospital determines the CRB meets its needs or until such time as the Hospital Rate Setting Commission re-establishes rates for all hospitals. N.J.A.C. 8:31B-3.51, [Notification appeal and review] **Rate notification, approval, and implementation,** provides the procedures for determining the CRB.

8:31B-3.16 Current Cost Base

(a) (No change.)

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-3. (No change.)

4. Calculation of **update factors as defined in N.J.A.C. 8:31B-3.26.** [economic factor cost component as defined in N.J.A.C. 8:31B-3.26(a);

5. Calculation of the technology factor as described in N.J.A.C. 8:31B-3.26(b).

6. The costs used to set rates for the 1990 rate year shall be based on 1988 costs so as to meet an implementation date of January 1, 1990. If a total rebase to 1988 costs is not possible in order to meet this implementation date, the rebase shall be simulated based on best available data. 1990 rates shall be based on severity of illness-adjusted DRGs if agreement is reached upon an effective methodology for adjusting DRG rates.]

(c) (No change.)

(d) [Hospital's] **Hospitals'** actual cost reports cannot be substituted or rearranged once the Department has determined that the actual cost submission is suitable for entry into the data base. The Department shall **provide 30 days' notice of its intent to close the data base.** [In no case shall a hospital be allowed to revise the cost reports of a base year that have been used to establish payment rates for two or more years. Hospitals may then only revise their cost reports prior to the closing of the data base before the first and second years that the data is used to establish rates. Rearrangement of data after the first year but before the second year shall not be used to recalculate first year rates.]

8:31B-3.17 Financial Elements Reporting Audit Adjustments

(a) The aggregate Current Cost Base is developed from financial elements reported to New Jersey State Department of Health and includes:

1. (No change.)

2. Less net income from specified sources (**as defined in N.J.A.C. 8:31B-3.25**);

3. (No change.)

4. Adjustment to [working cash] **prompt payment discount (as defined in N.J.A.C. 8:31B-3.40)** [if approved by the Commission].

(b) (No change.)

(c) Hospitals shall submit a complete list of exceptions to the proposed audit adjustments, together with appropriate written documentation, within 60 days of receipt of the Department's written summary of these adjustments, or these adjustments shall be implemented in accordance with (b) above. Consideration shall be given only to documentation submitted in accordance with this schedule. Items previously reviewed under final reconciliation and other rate appeals shall not be included in this list of exceptions. Adjsutments approved by the Rate Setting Commission shall be implemented in subsequent years' rates.

(d) The Department must obtain Commission approval to make additional recommendations regarding any audit that has received final approval by the Commission. Reasons for obtaining Commisson approval include, but are not limited to, fraud and material misrepresentation.

8:31B-3.20 Preliminary Cost Base

The proposed Preliminary Cost Base is the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for [projected economic] **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-3.21 Reasonable Cost of Services Related to Patient Care

(a) (No change.)

(b) The Reasonable Cost of Services Related to Patient Care shall be adjusted by the [application of economic] **update** factors and changes 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) (No change.)

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1.-4. (No change.)

5. Hospitals, because of their specialized acute nature, having a majority of active medical staff in specialities which have an **Accreditation Council for Graduate Medical Education** (ACGME) approved residency may apply to the Commissioner for teaching status pursuant to N.J.A.C 8:31B-3.51 [through 3.62] **and 3.52.**

6.-8. (No change.)

9. The transfer of residents and associated costs between hospitals is permitted under the following conditions:

i. The number of positions transferred does not exceed the number relinquished;

ii. Both parties to the transfer must submit letters of agreement to the DOH; and

iii. The Advisory Graduate Medical Education Council of New Jersey (AGMEC) must have recommended the transfer as being consistent with maintenance or improvement of program quality.

10. An addition of resident positions by transfer may not result in a change to higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

11. Beginning in rate year 1992, the changes in number of residents and associated costs 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)-(d) (No change.)

(e) Calculation of standards shall be as follows:

1. The calculation of standards shall be based on [the group of hospitals first receiving a PCB or other] **an** appropriate sample of hospitals [thereafter] **and/or cases submitted pursuant to N.J.A.C. 8:31B-2.5**. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRGs is multiplied by each hospital's equalization factor (see N.J.A.C. 8:31B-3.24(c)) and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of graduate medical education (see Appendix XI) for the hospital pertaining to each DRG. The mean equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, is the incentive standard for each DRG.

2. (No change.)

8:31B-3.24 Reasonable indirect patient care costs

(a)-(b) No change.)

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) shall be determined for those hospitals that shall receive an initial PCB/**CRB**. Disincentive amounts shall be calculated in the Physician and Teaching Related Centers, **according to N.J.A.C. 8:31B-3.22**. The screening methodology shall compare base year actual cost data. Screens shall not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base/**Certified Revenue**

Base spread to all rates through the use of the overhead mark-up factor.

[1. The following indirect costs shall be equalized and then totaled by peer group: A&G/FIS, PLT and PCC (non-physician). This total cost shall be divided by the peer group adjusted admissions to create the equalized peer group standard unit cost. An adjusted admission is defined as admissions multiplied by total gross revenue divided by inpatient gross revenue. This standard unit cost shall be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.

2. The UTC indirect costs are totaled (but not equalized) by peer group, and divided by adjusted admissions to create a peer group (unequalized) standard unit cost. This standard unit cost shall be multiplied by the operating margin of 1.01 as set forth in N.J.A.C. 8:31B-3.38(a)3.

3. The costs used to calculate these peer group indirect standards shall be the actual base-year costs. The standard shall not be recalculated except for the inclusion of Statewide generic issues affecting one or more peer groups. If a loss of program accreditation would result in a hospital's reclassification into a lower peer group, that change shall be implemented in the rate year following the program loss. If as a result of an appeal a hospital moves to a higher peer group, its payment shall change, based on the existing standard unit cost of the new peer group into which it moves.

4. The adjusted admissions used to calculate these peer group standards shall be the base year adjusted admissions.

5. The equalized peer group standard unit cost is equalized using a hospital's equalization factor, and added to the peer group unequalized standard unit cost to form a hospital's unequalized indirect standard unit cost.

6. Hospitals that have an overall teaching adjustment factor of 18% or greater, or physical plants older than 10 years, may appeal for unit costs that reflect a portion of their own base-year costs, provided their base-year unit costs exceeded the peer group mean by 1.0 standard deviation. Specialty hospitals as recognized in accordance with N.J.A.C. 8:31B-3.22(b)5 and 3.24(c)5 may appeal for unit costs that reflect their own base-year costs. The hospitals making appeals under these options must also demonstrate that they are well utilized as measured by occupancy rates in the base years and subsequent rate years.]

1. The following indirect costs shall be equalized and then totaled by peer group: Administrative and General/Fiscal (A&G/FIS), Plant (PLT), and Patient Care Coordination/non-physician (PCC/non-physician). The inpatient portion of this peer group total equalized cost shall be divided by the total patient days to yield a peer group per diem amount. For each DRG, a peer group average length of stay shall be calculated. The peer group per diem shall be unequalized by the hospital unequalization factor and multiplied by the DRG specific peer group average length of stay to derive a DRG-specific payment rate.

2. The Utilities (UTC) indirect costs are totaled (but not equalized) by peer group, and the inpatient portion of these costs divided by the total patient days to derive a peer group standard per diem by DRG. The peer group standard per diem shall be multiplied by the peer group average length of stay by DRG to create a DRG-specific payment rate.

3. The costs used to calculate peer group indirect per diem standard shall be the actual base-year costs. The inpatient portion is determined by total actual indirect costs divided by adjusted admissions multiplied by admissions. The DRG-specific average length of stay shall be calculated from base-year length of stay data. Standards so developed shall remain unaffected during the rate period, and no adjustments, modifications, or changes to the standards shall be made during a rate period, unless so ordered by the Commission.

4. If a change in graduate medical education would result in a hospital's reclassification into a different peer group, that change shall be implemented in the rate year following the change.

[7.] **5.** Inpatient indirect costs are volume variable with the exception of those cost centers described in this subsection. **These costs shall be reconciled as described in N.J.A.C. 8:31B-3.73.** [Hospitals shall be reconciled to inpatient discharges multiplied by the standard rate.] Projected total indirect costs shall be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs shall remain fixed except for same-day surgery patients. **Outpatient costs are calculated by multiplying the hospital unit cost by the outpatient equivalent cost, defined as the difference between adjusted admissions and admissions.** Same day surgery indirect costs shall be volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same day surgery in the base year. [The Department shall examine additional refinements to the methodology for reimbursement of indirect costs, for possible implementation in the 1990 rate year.

i. As part of an entire reimbursement reform package, the Department shall recognize an operating margin for hospitals. When full standard reimbursement is in effect, then the phase-in of an operating margin shall begin.]

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

8:31B-3.26 Update factors.

(a) (No change.)

(b) Technology Factor: Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies. The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPAC's allowances for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC.

1. (No change.)

2. For each year that a hospital [accepts its rates] **implements its rates as initially issued, and does not undergo a full rate review**, the rates shall be updated propsectively by the technology factor calculated for that rate year.

(c) Prospective Operating Adjustment: For hospitals not receiving a full rate review, an additional two percent of direct and indirect costs shall be added to their current cost base.

1. The purpose of this adjustment is to compensate hospitals prospectively for expenses that may arise subsequent to the base year, including, but not limited to, the purchase of equipment, unusual cost increases in goods or services used by hospitals, changes in service mix, capital improvements, costs of mergers, acquisitions, and consolidations, and operating costs associated with Certificate of Need.

2. For direct patient care and indirects, if a portion of payment is based on standard, this adjustment shall assume 100 percent standard; if there is no standard in the rate, it shall be based on 100 percent of the payment rate. The rates thus generated shall be increased by the amount of the prospective operating adjustment, based on base year volume and case-mix. For 1992 and subsequent years, it shall be based on actual volume and case-mix.

(d) In lieu of Statewide clinical and legal adjustments, hospitals not receiving a full rate review shall also have added to their current cost bases an additional 0.5 percent of direct and indirect costs, calculated as described in (c)2 above.

(e) For 1991 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 inflated by the appropriate economic factor as described in (a) above.

(f) For 1991 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, inflated by the appropriate economic factor as described in (a) above, and resulting in an appropriate DRG adjustment.

(g) For 1991 only, educational costs related to sickle cell disease shall be based on 1990 annualized Commmission-approved adjustments inflated by the economic factor as described in (a) above.

(h) Beginning in 1991, on or before July 1 of each year, the DOH, in consultation with representatives of hospitals, payers, and other interested parties, may recommend to the Hospital Rate Setting Commission other adjustments to hospital rates if it is determined that

changes in the hospital environment that affect a significant number of hospitals have been so extraordinary as to substantially exceed the update factors described in (a) through (d) above. Taking into account the effectiveness and efficiency of the health care system as a whole, the Commission may approve such adjustments for inclusion in the following year's Preliminary Cost Base/Certified Revenue Base.

(i) Once a hospital has had its rates determined by a full rate review, those rates shall not be increased by any of the update factors described in (a) through (h) above. Rates for years subsequent to the full rate review shall be adjusted by annual update factors. If additional full rate reviews are undergone only update factors for the rate years after the most recent full rate review shall be used in calculating rates until a new base year is used.

8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base/**Certified Revenue Base** in the following manner:

1. Building and fixed equipment:

i.-vii. (No change.)

viii. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require Batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements.

(1) (No change.)

(2) Hospitals with costs per Adjusted Admission below the [calculated limit] **capital cap, or costs below their 1988 costs per Adjusted Admission,** will be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)1ii through v above.

(3) Hospitals with costs per Adjusted Admission, **based on the most recent available Actual financial data,** that are above the [calculated limit] **capital cap, and also above their 1988 capital cost per adjusted admission, will receive the higher of their 1988 capital costs per adjusted admission, or the capital cap calculated for the rate year. Such hospitals** may [appeal] **request** an increase to [the Hospital Rate Setting Commission to add the additional capital costs to] their Capital Facilities Allowance **by submitting to the Department, at least 30 days prior to the beginning of a rate year, documentation substantiating their costs. Increases deemed reasonable by the Department shall be recommended for action by the Hospital Rate Setting Commission.**

[(A) Where the Commission approves such amounts, in whole or in part, they shall be reimbursed in accordance with (a)1ii through v above;

(B) Absent Commission approval, no additional Capital Facilities Allowance reimbursement shall be permitted.]

2. (No change.)

8:31B-3.31 Commission adjustments and approvals

(a) (No change.)

(b) [The Commission] **Prior to the issuance of rates each year, the Department** shall also [approve] **determine prospective** adjustments to hospitals' Schedules 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[; for any costs associated with residents] **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 include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies. **In the case of a transfer of residents between hospitals, the procedures described in N.J.A.C. 8:31B-3.22 shall apply.**

[(c) The Commission may approve hospital appeals to transfer Commission approved resident positions and associated costs between hospitals. A hospital may appeal under any option to reduce or increase the number of resident positions by transfer. An addition of resident positions by transfer may not result in a change to a higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

(d) The Hospital Rate Setting Commission shall decide the hospital to which approved resident positions and associated costs may be transferred.]

8:31B-3.32 Overspending challenge

Hospital base year costs [shall] **may** be adjusted to eliminate any costs expended in excess of Hospital Rate Setting Commission total approved revenues for rate setting purposes should the hospital elect [to not accept] **a full rate review or implementation** of the Certified Revenue Base (N.J.A.C. 8:31B-3.15). The actual costs of the hospital shall be used, however, in the calculation of standards for rate setting purposes. The overspending challenge shall be applied as an indirect adjustment net of the estimated percent of standard for direct patient care to the hospital's approved revenue.

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

3. An operating margin shall be calculated and added to hospital rates as follows:

[i. Standard per unit indirect reimbursement as defined in N.J.A.C. 8:31B-3.24 shall be multiplied by 1.01.]

[ii.]**i.** The standard amount in each DRG shall be multiplied by 1.01 **in rates years 1989, 1990 and 1991. For 1991 and subsequent rate years, the 1 percent operating margin shall be replaced by the 2 percent prospective operating adjustment as described in N.J.A.C. 8:31B-3.26(c). For 1991 only, the 1 percent operating margin that is included in direct standard cost shall be netted from the 2 percent prospective operating adjustment. After that time, the 1 percent operating margin shall be removed from direct standard costs and shall no longer be netted from the prospective operating adjustment. The 1 percent operating margin shall be removed from indirect standards for 1991, and shall therefore not be netted from the prospective operating adjustment for 1991 or beyond.**

(b) Revenue requirements: Definition and calculation:

1. Revenue requirements shall be defined as the Gross Revenue Related to Patient Care estimated to produce New Revenue Related to Patient Care equal to an institution's Preliminary Cost Base as defined in N.J.A.C. 8:31B-3.20. Gross Revenue Related to Patient Care shall be projected by each hospital based upon the hospitals' projections of volumes and projected price increases, uncompensated care, Commission approved [payor] **payer** differentials and [working capital requirements] **prompt payment discounts** for each hospital in order to set payment rates. Appendix IV illustrates the calculation of gross revenue requirements relative to the Preliminary Cost Base for Commission approved deductions from revenue. Once the gross revenue requirements have been established (i.e., Revenue Budget) hospitals shall be required to align charges in direct patient care volume and case-mix as estimated by each hospital as reported on Appendix V.

2. Appendix IV shall be produced for each hospital at the time the Schedule of Rates is issued by the Commission, 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 [working capital] **prompt payment discounts**) subject to the Commissioner's review.

3.-4. (No change.)

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

8:31B-3.42 Schedule of rates—effective date

(a) Subject to N.J.A.C. 8:1B-3.71 through 3.86 Reconciliation, all rates issued pursuant to this subchapter, as approved or 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. However, except where a substantial inequity may

result, any [appeal,] adjustment or modification approved by the Commission pursuant to these regulations shall be implemented prospectively [on an interim basis in accordance with N.J.A.C. 8:31B-3.65] **in the following rate year.** For hospitals currently on Chapter 83, rates and charge masters in effect prior to January 1 of the rate year should be adjusted by the [economic factor] **appropriate update factors** until such time as a new Rate Order is issued. The Commission shall notify [payors] **payers** of the hospital's [economic factor adjustment to be applied] **rate adjustments** no less than 10 working days prior to implementation of changes. Any subsequent changes to the Schedule of Rates or mark-up factors shall be effective with discharges as of a particular date.

(b) If a hospital is to receive a full rate review, and does not have Commission approved rates for implementation, that hospital shall continue on the previous schedule of rates until the new rates are issued, effective on the first day of the month following 30 days after the issuance of the rates (see also 8:31B-3.65). For 1991 only, the previous schedule of rates shall be increased by the economic factor.

8:31B-3.43 Adjustment of charges

(a) Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month following 30 [working] days after receipt of the Schedule of Rates. Fifteen working days prior to this implementation a hospital shall:

1.-3. (No change.)

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

[8:31B-3.51 Notification appeal and review

(a) All hospitals within 15 working days of receipt of the Proposed Schedule of Rates, shall notify the Commissioner of any calculation errors in the rate schedule. If upon review it is determined by the Commissioner that the error is of substantive value, a revised rate shall be issued to the hospital within 10 working days. If the discrepancy is determined to be substantive and a revised Schedule of Rates is not issued by the Department within 10 working days, notification time frames above shall not become effective until the hospital received a revised Schedule of Rates.

(b) Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing of their decision to:

1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount shall be fixed and included as an indirect cost in the mark-up factor. Rates accepted shall also include an increase to direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 and the operating margin as described in 8:31B-3.38. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive shall be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates shall reflect the hospital's plan to eliminate inefficiencies. A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

i. Changes in number of residents:

(1) An increase in the number of residents that does not exceed the statewide number approved by the Commissioner for the 12 month period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission, and is offset corresponding decreases in resident costs in other New Jersey hospitals:

(2) A decrease in the number of approved residency positions caused by the hospital's inability to meet accreditation requirements as specified in N.J.A.C. 8:31B-3.22(b)1 through 3, its inability to hire residents meeting the criteria specified in N.J.A.C. 8:31B-3.22(b)6, or its voluntary reduction of its number of residency positions. In such cases the hospital must demonstrate that a decline in the services needed by the area population shall occur as the result of such reductions. In no case may the amount of revenue appealed for or the amount approved by the Hospital Rates Setting Commission exceed the costs associated with residency positions that were lost. Adjustments shall be limited to a maximum of two rate years.

ii. Statewide legal and clinical appeals as defined in N.J.A.C. 8:31B-3.58.

iii. Capital and MME projects subject to the requirements and limits as defined in N.J.A.C. 8:31B-3.27 and meeting all the following criteria:

(1) The costs result from approved certificates of need;

(2) Capital costs of the hospital do not exceed the applicable statewide limit as defined in N.J.A.C. 8:31B-3.27(a)1vii and viii; and

(3) Major Moveable equipment costs satisfying the Certificate of Need application and review process as defined in N.J.A.C. 8:33-27(a)1 through 3 and the definitions of "major moveable equipment" and "equipment unit" or "equipment systems" as defined in N.J.A.C. 8:33-1.6. Adjustments shall be net of any disincentive. No more than the total disincentive shall be removed for all appeals granted while rates are calculated using the same base-year. Replacement equipment costs are excluded from appeal under this option.

iv. Mergers, acquisitions or consolidations, provided that projected cost savings exceeding the appealed dollars can be demonstrated for one or more subsequent rate years or the Commission determines there is a quantifiable economic benefit to the system as a whole. If required, certificate of need approval must be granted. Adjustments shall be limited to operating costs for a maximum of two years.

v. Capital Facilities Formula Allowances as defined in N.J.A.C. 8:31B-3.55(b).

vi. Revenue adjustments as defined in N.J.A.C. 8:31B-3.56.

vii. Physician Compensation Arrangements which are defined as a change in the method of reimbursement of physicians from/to hospital compensation basis to/from a direct billing basis. Change in compensation due to salary or fee increases and/or the addition of personnel is not appealable for a hospital which has accepted its proposed Schedule of Rates.

viii. Indirect standard unit costs if the criteria in N.J.A.C. 8:31B-3.24(c)6 are met.

ix. 1987-1988 Commission-approved continuing adjustments not captured in the base year.

x. Operating costs associated with Certificates of Need provided that:

(1) The costs were submitted by the hospital as part of its CN application as defined in N.J.A.C. 8:33 and as approved by the Commissioner of Health.

(2) The costs are for services added since the base year.

(3) The costs are not associated with a regionalized service as defined in N.J.A.C. 8:31B-3.58(a)2.

(4) In evaluating operating costs related to new technologies, the overall adequacy of the technology factor to cover these costs shall be considered.

2. Not Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: A hospital not accepting the Proposed Schedule of Rates or adjusted Rate Order retains the right to appeal all issues subject to the guidelines described in (b)2iii below.

i. In evaluating appeals brought under this section, the Commission shall consider the relative efficiency of the hospital in the Current Cost Base year. The Commission shall examine in detail the degree to which cost increases between the Current Cost Base year and rate year can be attributed to activities intended to be covered by the update factors.

ii. A hospital not accepting its Proposed Schedule of Rates shall retain the operating margin and economic factor components of the rates. The one percent Accept option bonus and the rate year technology factor shall not be included in the rates. If a hospital chooses the Accept option in years subsequent to not accepting its rates, the technology factor for the year not accepted shall be included in future compounding.

iii. Under this option:

(1) Hospitals may not appeal indirect costs that are reimbursed on a volume-variable basis except as described in N.J.A.C. 8:31B-3.24(c).

(2) Appeals of issues described in sections 8:31B-3.55 through 3.59 are also subject to the criteria described in those sections.

3. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for Statewide increases in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commision.]

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 initially issued

i. Rates set prospectively in accordance with N.J.A.C. 8:31B-3.26 through 3.38, and approved by the Commission, shall constitute the hospital's Certified Revenue Base or Preliminary Cost Base, whichever is appropriate, and shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45.

ii. Hospitals electing implementation of rates as initially 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 statewide 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 initial rates, the Commission shall take action on the initial rates.

2. Undergo a full rate review and not implement rates as initially issued

i. If a hospital elects not to implement its initial rates, it shall receive neither the technology factor, the prospective operating adjustment, the 0.5 percent adjustment in lieu of statewide clinical and legal adjustments as described in N.J.A.C. 8:31B-3.26(b)-(d), nor, for rate years 1992 and subsequently, the economic factor.

ii. The hospital shall automatically undergo a full rate review, as defined in N.J.A.C. 8:31B-3.52, that shall include total review of hospital operations, including but not limited to management structure, service components, efficiency, and finances.

iii. As part of the process of the full rate review thus initiated, the Department shall determine the appropriateness of an adjustment to the hospital's Preliminary Cost Base/Certified Revenue Base. This adjustment shall take the place of all update factors described in N.J.A.C. 8:31B-3.26.

iv. Based on the results of a full rate review, the Department shall make a recommendation to the Hospital Rate Setting Commission regarding the need for a rate adjustment and any related conditions. The Commission shall take action on the rates prior to implementation.

(b) Should a hospital fail to notify the Department of its decision within the allotted time, it shall be assumed to have elected implementation of rates as initially issued.

[8:31B-3.52 Submission of exceptions

(a) Within 60 working days of receipt of the Proposed Schedule of Rates, hospitals shall submit in writing one copy to the Commission and two copies to the Commissioner, a list of exceptions, including Statewide appeals as defined in N.J.A.C. 8:31B-3.58, organized pursuant to the subsections immediately below, together with written documentation concerning all exceptions. Unless otherwise directed by the Commission, the Commissioner shall schedule a detailed review to be conducted by the Department not more than 45 working days following receipt of exceptions and documentation.

(b) Exceptions under either option shall be justified by a full presentation of the dollar value of the cost, the dollar value of the benefits and a complete explanation of any other benefits which cannot be given a dollar value. This documentation shall specify each exception, the costs associated with each exception, and the hospital's rationale for the request. Should the hospital fail to submit its appeal document within the allotted time or fail to appeal at the scheduled detailed review on the established date, it shall have forfeited its right of appeal and the Commissioner's Proposed Schedule of Rates shall have been accepted by the hospital.

(c) At the detailed review, the Analyst shall indicate which exceptions are not supported by the sufficient documentation to permit a resolution, and the hospital shall be permitted 10 working days in which to submit such documentation. Any adjustments to the Proposed Schedule of Rates shall be proposed to the Commission within 30 working days. The Analyst may give consideration only to documentation submitted pursuant to the deadline set forth immediately above in deciding upon any proposed exceptions. Should the hospital pursue any further appeal, the hospital may not submit documentation other than that provided to the Analyst unless the hospital can demonstrate to the satisfaction of the Commission the existence of good cause for failure to provide the documentation to the Analyst within the deadline set forth above.

(d) Any changes to the Proposed Schedule of Rates which may be approved by the Commission shall be implemented in accordance with N.J.A.C. 8:31B-3.63 through 3.70, and are subject to the procedures set forth in N.J.A.C. 8:31B-3.71 through 3.86.]

8:31B-3.52 Full rate review

(a) A full rate review may be initiated by a hospital or by the Department of Health.

(b) 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. A hospital must submit a request for a full rate review, together with all information required in (d) 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.

(c) A full rate review shall consist of an evaluation of the hospital's total operations, including its management, services, and finances in order to assess the adequacy of proposed payment and to determine the reasons for any shortfall. Specific components to be evaluated shall include, but not be limited to financial stability, role of the hospital in relation to identified patient care needs in the region, efficiency of operations, management structure, relationship with affiliated organizations, payment issues, service mix, and management initiatives. Specific areas in which a hospital experiences shortfalls shall be considered only in the context of total operations, including all areas in which revenues exceed costs.

(d) A full rate review shall include, but not be limited to, an evaluation of the following information:

1. Audited financial statements for the hospital and all related entities;

2. Financial ratios;

3. Efficiency indexes;

4. Current budget, income statements, cash flow, and liabilities;

5. Current incentives and disincentives in proposed schedule of rates;

6. Debt structure;

7. Occupancy, case-mix, acuity, and LOS information;

8. Occupancy and services in the surrounding area;

9. Changes in revenue, costs, services;

10. Comparison to appropriate state and national norms; and

11. Analysis of patient care needs in the geographic area.

(e) Based on its assessments using the data listed in (e) above, the Department may propose an adjustment in the Preliminary Cost Base/Certified Revenue Base for an efficient and needed facility. The adjustment may represent an increase or a decrease in payment, compared to the initial rates. This adjustment shall consider the extent to which any payment shortfall has a significant negative impact on total hospital operations. The Department may use the overspending challenge at N.J.A.C. 8:31B-3.22 in recommending a rate adjustment; it may also make recommendations regarding Certificate of Need restrictions, expense reductions, service composition changes, or any other aspect of hospital operations, and may pursue further review and monitoring of hospital operations as a condition of any recommended adjustment.

8:31B-3.55 Capital facilities

(a) (No change.)

[(b) At any time during the rate period, a hospital may petition the Commission regarding the Capital Facilities Formula Allowance approved in the hospital's Preliminary Cost Base.]

[(c)] (b) (No change in text.)

[(d) Under the "Not Accept" option (N.J.A.C. 8:31B-3.51(b)2), a hospital may petition the Commission to include in its Certified Revenue Base or Preliminary Cost Base, whichever is appropriate, the interest expense associated with the purchase of major movable equipment as set forth in N.J.A.C. 8:31B-4.66(e).]

8:31-3.56 [Revenue Adjustments] **(Reserved)**

[Any hospital may contest the adequacy of the revenue adjustment for working capital, income from other sources or expense recoveries and for uncompensated care, by providing adequate documentation with respect to reasonably expected changes affecting these elements. A hospital requiring an initial infusion of working capital cash shall submit the necessary information in accordance with the Uniform Cost Report Regulation. Any hospital receiving payment for uncompensated care in the Proposed Schedule of Rates, or requesting an adjustment pursuant to this section, shall supply adequate documentation to the Commissioner by February 1, of the rate year that its historic practices meet or surpass the appropriate collection procedures specified by the Commissioner in N.J.A.C. 8:31B-4.40. The Commission or any other party may propose, for hospitals failing to produce adequate documentation, an appropriate prospective offset, or mandatory year-end reconciliation. All changes authorized pursuant to this section shall be implemented in accordance with N.J.A.C. 8:31-3.60, Interim Adjustments Following Appeal, and are subject to the penalties set forth in N.J.A.C. 8:31B-3.71 through 3.86.]

8:31-3.57 Same Day Surgery

[(a) Hospitals may appeal the reasonableness of their DRG rates due to trim point exclusion of those patients who have undergone same day surgery as defined in N.J.A.C. 8:31B-3.11. Where appropriate, the Commission shall establish a reasonable charge for same day surgical services. The ancillary charges and the Same Day Surgical services constitute the reasonable payment for Same Day Surgical services. The Same Day Surgical charges shall be comprised of an incentive reward for the provision of Same Day surgical services, as approved by the Commission. Additionally, the Commission shall adjust the inpatient DRG cost per case to reflect the effect of those hospitals not performing same day surgery on the standard cost per case.]

[(b)] The Commission or the Commissioner may inquire why hospitals that do not provide same day surgical services are not providing these services and the Commission may make appropriate adjustments to the inpatient DRG rates in such hospitals.

8:31B-3.58 [Statewide legal and clinical appeals] **(Reserved)**

[(a) A Statewide appeal is either a legal appeal or a clinical appeal as defined below:

1. A legal appeal is a request for an adjustment in reimbursement for costs associated with changes in statutes and regulations since the base year. Under the accept option, a hospital must demonstrate that each statutory or regulatory change affects the cost of delivering health care, including reasonable costs of reporting fees related to these statutes or rules, and it must meet a materiality standard of $10,000 per issue. Hospital-specific adjustments shall be considered if the hospital submitted the issue in its rate appeal document and demonstrated reasonable costs meeting the materiality standard. For each rate year, the hospital accepting its rates shall receive a legal appeals adjustment for only those dollars exceeding 0.1 percent of its direct patient care rates.

2. A clinical rate appeal is a request for adjustment in the non-physician patient care costs resulting from a change in the treatment program or the relative frequency of a medical practice, or the use of new technologies defined as scientific advances in drugs, devices and medical and surgical procedures used in medical care. A statewide clinical appeal must at a minimum be raised by 35 percent of the hospitals or apply to 35 percent of the patients within the affected DRGs, or be associated with an approved Certificate of Need for a regionalized service as defined in planning rules or designated or recognized by the Department in the State Health Plan as a regionalized service. It may be raised under the Accept or Not Accept options in accordance with N.J.A.C. 8:31B-3.51 and 3.52. If the Statewide clinical appeal relates to a new technology, it must:

i. Not be addressed in the technology-specific portion of the technology factor.

ii. Exceed in aggregate the portion of the technology factor that accounts for technologies not included in the technology-specific projections of the Prospective Payment Assessment Commission (ProPAC).

(b) A Statewide legal or clinical appeal that meets the criteria in (a) above shall be submitted by individual hospitals as discrete parts of their rate appeal documents. Additionally, a Statewide clinical appeal may be raised by the Commission on its own motion, the Department of Health or another interested party. Interested parties must raise these issues in writing to the Department and the Hospital Rate Setting Commission within 60 working days of issuance of the rates.

(c) With recommendations from the Department, the Hospital Rate Setting Commission shall determine which appeals merit consideration as the rate year's statewide legal and clinical appeals. A Statewide clinical appeal shall be evaluated in accordance with N.J.A.C. 8:31B-3.59(b), (c) and (d).]

8:31B-3.59 [Hospital specific clinical rate appeals] **(Reserved)**

[(a) A hospital-specific clinical rate appeal must meet the definitional criteria in N.J.A.C. 8:31B-3.58(a)2 except for the Statewide impact requirements. It may be submitted by a single hospital as part of its rate appeal under the Not Accept option in accordance with N.J.A.C. 8:31B-3.51 and 3.52.

(b) Evaluation of all clinical rate appeals shall consider but not be limited to the following types of information:

1. The DRGs affected;

2. Volume of patients and changes in the frequency of specific procedures or medical practices;

3. Percent of total hospital admissions or patient care costs;

4. Length of stay and inlier/outlier statistics;

5. Patient care costs by cost center;

6. Type of patient population and areas served by the institution;

7. UB-PS patient-specific data for the affected Diagnosis Related Groups;

8. Positive and negative effects of the appeal issues as well as quality outcome measures with justification referenced in the medical literature;

9. Whether the medical practice is experimental or research in nature; and

10. In cases involving new technologies, indications for use; comparative analyses with old procedures; cost per procedure; length of stay impact; cost/benefit report if applicable; institutional resource requirements; and evaluation of patient outcomes.

(c) As part of the evaluation of any clinical rate appeal, the Department of Health may request further study by a qualified Utilization Review Organization in accordance with N.J.A.C. 8:31B-3.78(a)1iv.

(d) As part of the evaluation of any clinical rate appeal, the Department of Health may request a recommendation by the Commissioner's Physician Advisory Committee (CPAC) or another appropriate medical group.]

8:31B-3.63 Commission: Procedures

(a) [Unless otherwise ordered by the Commission within 15 working days from receipt of the notification the proposed Schedule of Rates, said rates shall be considered approved for purposes of implementation. Unless otherwise ordered by the Commission, within 15 working days from receipt of the hospital's notification, the Department and the institution shall conduct a detailed review regarding all exceptions arising under N.J.A.C. 8:31B-3.51 through 3.62. Following the completion of the review the Commissioner shall make recommendations regarding the settlement, disposition, or lack of resolution concerning all exceptions raised, within 85 working days of receipt of exceptions. Determination by the Commission shall be made within 45 working days of receipt of the Commissioner's recommendation.

(b) For issues that are common to more than one institution,] **Where appropriate,** the Commission may direct that the appellant's arguments be consolidated and that the issue be heard by an administrative law judge. Following issuance of the report of the Administrative Law Judge, the hospital and the Department shall have 10 days in which to petition the Commission concerning objections to the report. Such a petition should state what issues the petitioner wishes to have reviewed and what relevant facts were not addressed fully by the **Administrative** Law Judge in reaching his recommendation. The Commission shall review the petitions in reaching its final determination, and, at its discretion may recall witnesses from the hospital, the Department of Health, and any other parties involved to hear additional testimony on the issues. Final Determination by the Commission on all issues shall be made within 45 days of receipt of the recommendations from the **Administrative** Law Judge.

[(c) Final determination on all issues other than those heard by a Law Judge shall be made by the Commission after receipt of the recommendations from the Commissioner following the detailed review. The hospital shall have 10 working days after issuance of the Department's recommendation in which to petition the Commission concerning its objections to the report. Such a petition should state what issues the hospital wishes to have reviewed and what relevant facts were not addressed fully by the Department in reaching its recommendations. The Commission shall review the petitions in reaching its final determination on the documents submitted.

(d)](b) The Commission shall render its final decision within [140] **120** working days of receipt of notification by the appellant, except for matters referred to an Administrative Law Judge and except where a hospital fails to submit financial, statistical, or patient information required by law, or to fully document its appeal without demonstrating good cause for its failure to provide the information.

8:31B-3.65 [Interim adjustment following appeal] **Schedule of Rates Adjustments**

(a) **For 1991** [Rates] **rates** issued pursuant to these regulations, 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 inequity shall result, adjustments or modifications which may be approved [as a result of appeals determined] during the rate period shall be implemented through an appropriate [interim] adjustment to the Schedule of Rates for a given hospital, group of hospitals, DRG or group of DRGs, and shall take effect [in 30 days or on the first of the month following the Commission's Order] **at the beginning of the following rate year**. At the direction of the Commission, the Commissioner shall make an appropriate [interim] adjustment to the Schedules of Rates for affected Diagnosis Related Group(s), indirect costs, revenue, or [payor] **payer** adjustments. The hospital(s) shall make an appropriate adjustment to its charge master(s), and third party [payors] **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-3.72 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 explicity 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, [Implementation] **and shall become effective in the subsequent rate year, unless a substantial inequity shall result.**

1.-2. (No change.)

3. Application of 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 [economic factor] **update factors** and other adjustments. [Initial Working Cash Adjustment and] **The** Capital Facilities Allowance [portions] **portion** of the Schedule of Rates [are] **is** also adjusted accordingly, and a compliance adjustment to the Rate Order determined by the Commissioner and implemented by the hospitals and [payors] **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-10.7] **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. Variable financial elements:

i. Except as specified above, reconciliation for direct patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. **Hospitals shall be reconciled to the lower of aggregate charges or approved revenue for the rate year, utilizing the UB-82 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 the end of the second 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 measured 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.

ii.-v. (No change.)

2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined [or as approved through appeal] shall remain fixed during the rate period except as modified for actual inflation **for those components of indirect costs not included in (a)1ii above**. Any under or over collection of indirect patient care revenue from revenue centers which are not volume variable as indicated in N.J.A.C. [3:31B] **8:31B**-3.24 shall be compensated by a Schedule of Rates Variance as described below.

ii. Capital costs: Only capital indebtedness incurred before September 1, 1986 (as defined in N.J.A.C. **8:31B**-3:27(a)1) is considered a fixed financial element. With the exception of the Capital Facilities Formula Allowance and Major Moveable Equipment, these costs shall be reconciled to actual certified amounts, provided that any increase from the prospective amount approved by the Commissioner to the actual amount is related to Capital Facilities as defined in N.J.A.C. 8:31B-3.42.

3.-5. (No change.)

8:31B-3.75 Schedule of rates reconciliation

(a) Except for adjustments among payers and required bad debt reconciliation which may be made appropriately on a lump sum or prospective basis, all other adjustments [which may be required as a result of appeals implemented on an interim basis], **such as** under or over collection, audit, or other reconciliation procedures here required shall be made prospectively through an appropriate adjustment **in the following rate year**. The reconciliation adjustment shall be calculated so as to compensate for the required amount over a specified period approved by the Hospital Rate Setting Commission.

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base/**Certified Revenue Base**, an adjustment to the current year PCB/**CRB** shall be calculated. A compliance adjustment to the Rate Order shall then be issued to include this adjustment and adjustments for actual uncompensated care, payer differentials, and net income from other sources, in order to align gross revenue and payers' payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for [economic factors and other] **update factors and** adjustments issued by the Commission [during the year], shall be calculated for the hospital's [actual] discharges and patient visits for a reported period **pursuant to N.J.A.C. 8:31B-2.5 and 3.** Reasonable direct patient care costs per case, **including the DRG-specific indirect rate,** shall be multiplied by the number of cases in each DRG, to determine reasonable [direct] patient care costs for patients assigned to a DRG. **The aggregate charges for those same cases shall also be calculated.** Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, and Same Day Psychiatry shall be determined from the Uniform Cost Reporting Regulations. Outlier cases shall be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-3.38.

2.-4. (No change.)

8:31B-4.66 Administrative items

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

(e) Interest Expense for Major Moveable Equipment is excluded from Costs Related to Patient Care and treated as Case C **unless approved as part of a full rate review.** [However, hospitals under the "Conditional Accept" or "Not Accept" options (N.J.A.C. 8:31B-3. 51(b)2., 3.), may appeal to the Commission, pursuant to 8:31B-3.63(c) to have this interest expense or the interest expense in (d) above included in their PCB.]

(f) Gains on pension reversions are included as Services Related to Patient Care and, as such, shall be treated as Case B and offset against Costs Related to Patient Care, except in the case of restricted gains used to offset future pension costs in excess of the pension economic proxy.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Neighborhood Preservation Balanced Housing Program

Readoption: N.J.A.C. 5:14

Proposed: June 4, 1990 at 22 N.J.R. 1700(b).
Adopted: November 7, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: November 9, 1990 as R.1990 d.604, **without change**.

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

Effective Date: November 9, 1990.
Expiration Date: November 9, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: A comment was received from the Morris County Department of Community Development endorsing the readoption of the chapter, but recommending that the period of owner-occupancy required for a balanced housing loan to be forgiven be reduced from 10 to six years, so as to be consistent with COAH requirements and encourage greater use of the program.

RESPONSE: In response, the Department states that balanced housing funds are limited and there is greater benefit to be derived from using the funds to encourage longer term owner occupancy. There is no shortage of applicants who are prepared to commit themselves to living in the housing assisted by the program for 10 years.

Full text of the adoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:14.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Provisions for the Education of Homeless Children and Youth

Adopted New Rules: N.J.A.C. 6:3-7

Proposed: September 4, 1990 at 22 N.J.R. 2630(a).
Adopted: November 7, 1990 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.
Filed: November 26, 1990 as R.1990, d.615, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:38-1 and 18A:7B-12.

Effective Date: December 17, 1990.
Expiration Date: July 8, 1993.

Summary of Public Comment and Agency Responses:

The Department has received written commentary from two individuals with suggestions.

COMMENT: A commenter suggested revision of State aid to reflect current enrollment so as not to overburden already poor districts who must serve large numbers of homeless students.

RESPONSE: State aid is statutorily driven by law; this cannot be changed in these rules.

COMMENT: A commenter requested addition of "district of last attendance" as a placement option when district of residence cannot be determined.

RESPONSE: The Department agrees and has made the change upon adoption.

COMMENT: A commenter requested additional language concerning importance of parental preference among criteria governing educational placement.

RESPONSE: The Department declines to make this change since the rules require documentation of parental consultation in writing.

COMMENT: A commenter requested additional language to prevent overcharging for tuition for homeless students.

RESPONSE: The Department declines to make this change. The rules clarify the exact amount to be charged for tuition for homeless students.

COMMENT: A commenter requested elimination of the word "youth" from the body of the rules because "child" would cover those under age 18.

RESPONSE: Public schools shall be free to persons over five and under 20 years of age by statute, necessitating the word youth in the rules.

COMMENT: A commenter suggested deletion of the word "adequate" from the homeless definition in the rules with the substitution of "compliance with building codes."

RESPONSE: This cannot be changed because "adequate" is taken from the statute from which these rules are written.

COMMENT: A commenter suggested elimination of several examples of homeless situations from the rules.

RESPONSE: The Department disagrees with this suggestion. The data collected and technical assistance rendered regarding homeless students have found homeless students living in all the examples cited.

Summary of Changes upon Adoption:

At N.J.A.C. 6:3-7.4(a), the agency added a comma after the word "guardian(s)" which was omitted in error.

At N.J.A.C. 6:3-7.6(b), the agency added the following words after the word "residing": "or the school district of last attendance".

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

SUBCHAPTER 7. PROVISIONS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

6:3-7.1 Purpose

The purpose of this subchapter is to establish uniform Statewide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. Specific rules have been established to determine the educational placement of these students and to respond to appeals made by parents or other parties. These rules will implement N.J.S.A. 18A:38-1 and N.J.S.A. 18A:7B-12.

6:3-7.2 Definitions

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

"District liaison for the education of homeless children" means the person identified in each school district who facilitates all of the activities needed to ensure the timely educational placement of homeless children and youth.

"District of residence" for a homeless child whose parent(s) or guardian(s) temporarily move from one school district to another as the result of being homeless pursuant to N.J.S.A. 18A:38-1, N.J.A.C. 6:20-5.3(g) and N.J.S.A. 18A:7B-12 means the district in which the parent(s) or guardian(s) last resided prior to becoming homeless.

"Homeless" child or youth means one who lacks a fixed, regular, and adequate residence.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

6:3-7.3 Determination of homelessness

(a) A child or youth shall be considered homeless for purposes of this program if he or she resides in any of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:

i. Welfare hotels;
ii. Congregate shelters;
iii. Transitional housing for families; and
iv. Transitional housing for the mentally ill.
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.
(b) Additionally, a child or youth shall be considered homeless if he or she is:
1. Living with a parent in a domestic violence shelter;
2. A runaway living in a shelter;
3. A school-aged mother residing in a home for adolescent mothers;
4. Sick or abandoned and residing in a hospital and would otherwise be released if he or she had a permanent residence;
5. The child of a homeless family who is out of necessity living with relatives or friends; or
6. The child of a migrant family who lacks adequate housing.

6:3-7.4 Responsibilities of the district of residence
(a) The district of residence for a homeless child shall be responsible for the education of the child, shall determine the educational placement after consulting with the parent(s) or guardian(s)*,* shall pay the costs of tuition and transportation when the child attends school in another district, and shall provide transportation when a child attends school in the district of residence while residing in another district.
(b) The determination of a homeless child's district of residence shall be made by the school districts involved as described in N.J.A.C. 6:3-7.5 based upon information received from the Department of Human Services, shelter providers, school districts, involved agencies, case managers or parents.
(c) The school district which has been determined to be the district of residence for a homeless child shall be the district of residence for as long as the parent(s) or guardian(s) remains homeless.
(d) When a dispute occurs regarding the determination of the district of residence, the involved districts shall immediately notify the county superintendent of schools, who will resolve the dispute. When the dispute involves districts in different counties, the county superintendent(s) will work collectively to resolve the dispute. If the county superintendent(s) is unable to resolve the dispute, an appeal may be made to the Assistant Commissioner, Division of Finance, pursuant to N.J.A.C. 6:20-5.3(d), (e), and (f).
(e) When the district of residence cannot be determined for a homeless child or if the district of residence is outside of the State, the State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The Department of Education shall pay the amount to the school district in which the child is currently enrolled for as long as the parent(s) or guardian(s) remains homeless.

6:3-7.5 Responsibilities of the district liaison
(a) The superintendent of each school district shall identify a district liaison for the education of homeless children.
1. The liaison shall facilitate communication and cooperation between the district of residence and the district where the homeless child is temporarily residing.
2. The liaison shall develop a system to ensure that any homeless child residing in the district is enrolled and attending school according to the placement options described in N.J.A.C. 6:3-7.6(a).
(b) When a child becomes homeless and is living temporarily in a school district, the liaison of that district, upon receiving notification from the Department of Human Services, shelter directors, involved agencies, case managers, or parent(s) or guardian(s), shall notify the liaison of the district of residence within 24 hours. This procedure shall also apply to those children identified as homeless pursuant to N.J.A.C. 6:3-7.3 and who may not be receiving services through a social service agency.
(c) When the liaison in the district of residence of a homeless child receives notification of the need for educational placement, that person shall coordinate placement procedures immediately based on the best interest of the child and criteria set forth in N.J.A.C. 6:3-7.6(c).

6:3-7.6 Educational placement
(a) The district of residence shall decide the educational placement of the homeless child according to criteria described in this section. The options for placement are:
1. To continue the child's education in the school district of last attendance;
2. To enroll the child in the district of residence if the district of residence is not the district of last attendance; or
3. To enroll the child in the school district where the child is temporarily living.
(b) When the district of residence for a homeless child cannot be determined, the district in which the child is temporarily residing ***or the district of last attendance*** shall enroll the child immediately.
(c) The decision regarding educational placement of a homeless child shall be based on what is in the best interest of the child. The district of residence shall consider the following in the placement decision process:
1. The preference of the parent(s) or guardian(s) as to where the child should attend school;
2. The continuity of the child's educational program with consideration given to the child continuing in the same school, the length of time the child attended a particular school, the time remaining in the school year, graduation requirements and district policies regarding the number of credits needed for graduation, and geographical location where the family plans to seek permanent housing;
3. The eligibility of the child for special instructional programs, such as bilingual, compensatory, gifted and talented, special education and vocational programs; and
4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.
(d) When a decision is made to enroll an educationally handicapped homeless child in a district other than the district of residence and an immediate review of the placement options available to implement the pupil's current individualized educational program cannot be conducted, the child shall be placed in a program consistent with the goals and objectives of the current individualized educational program for a period not to exceed 30 calendar days. Within this 30 day period the district of residence must assure that the individualized educational program is reviewed and revised pursuant to N.J.A.C. 6:28.
(e) The district of residence shall determine the educational placement in a timely manner and only after consultation with the parent(s) or guardian(s) as described below:
1. Placement decisions shall be made by the superintendent of the district of residence or his or her designee within three school days of notification of the need for educational placement. Once the decision is made, the child shall be placed immediately.
2. Consultation with the parent(s) or guardian(s) regarding the placement decision and their right to appeal that decision shall be documented by the superintendent or his or her designee in writing.
3. When there is a dispute regarding the placement decision, the child will be enrolled when the county superintendent determines the educational placement pursuant to N.J.A.C. 6:3-7.7.
(f) When a decision is made to enroll the child in a district other than the district of residence, the district where the child last attended school shall forward to the new district all relevant school and health records. When the parent(s) or guardian(s) is homeless due to conditions of domestic violence, the transfer of pupil records shall be subject to the provisions of N.J.A.C. 6:3-2.6.

6:3-7.7 Disputes and appeals
(a) If the parent(s) or guardian(s), involved school district officials, involved agencies, case managers, or shelter providers object to the educational placement decision made by the district of residence, the superintendent or designee of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine the placement of the child within 48 hours

based on the child's best interest and the criteria set forth in N.J.A.C. 6:3-7.6(c).

(b) If the parent(s) or guardian(s) or any of the above parties object to the decision of the county superintendent, mediation shall be available through the Division of Compensatory/Bilingual Education's Office of Education for Homeless Children and Youth. Mediation shall be provided as follows:

1. A request for mediation shall be made to the Office of Education for Homeless Children and Youth either verbally or in written form. The mediation request shall cite the issue(s) in dispute and the relief sought;

2. A mediation conference with all parties present, including representation from the county superintendent's office, shall be conducted within five school days after the request is made at which time:

i. Issues shall be determined; and

ii. Options explored.

3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

i. Informal; and

ii. Held at a time and place reasonably convenient to the parties in the dispute.

5. If the mediation results in agreement, conclusions shall be incorporated into a written agreement, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation does not result in agreement, the Office of Education for Homeless Children and Youth shall assist the parent(s) or guardian(s) in filing an appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(c) Any dispute or appeal from any party at any stage of the process shall not delay the homeless child's immediate entrance into school. The homeless child shall be placed in the district designated by the county superintendent pending resolution of the dispute or appeal.

(d) Any disputes and appeals involving an educationally handicapped homeless child shall be pursuant to N.J.A.C. 6:28.

6:3-7.8 Tuition

(a) When the homeless child is enrolled in a district other than the district of residence, the district of residence shall pay the costs of tuition for the child to that district pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6:20-3.1.

(b) The district of residence shall also include the child on its annual Application for State School Aid (ASSA) for as long as the parent(s) or guardian(s) remains homeless and the child is enrolled in another school district.

(c) When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay the district in which the child is enrolled the State foundation amount plus the appropriate special education aid, if any.

6:3-7.9 Transportation

(a) When the homeless child is enrolled in a district other than the district of residence, the district in which the child is enrolled shall provide transportation services and the district of residence shall pay for any transportation costs incurred by that district pursuant to N.J.S.A. 18A:39-1 et seq. and N.J.A.C. 6:21.

(b) When the homeless child attends school in the district of residence while temporarily residing in another district, the district of residence shall provide for transportation to and from school pursuant to the provisions of N.J.A.C. 6:21.

(c) When a district of residence cannot be determined and the State has assumed fiscal responsibility for the payment of tuition, the district where the homeless child is enrolled shall provide transportation pursuant to N.J.A.C. 6:21.

(d) In implementing the transportation services required for a homeless child, school districts shall explore alternatives and provide the most economical and safest mode of transportation pursuant to N.J.A.C. 6:21.

6:3-7.10 Evaluation procedures for compliance

(a) The Department of Education shall monitor school districts responsible for implementing the requirements set forth in this subchapter, including:

1. Placement decisions made according to rules and within specified timelines; and

2. Provision of appropriate educational services and transportation.

(a)

STATE BOARD OF EDUCATION

Attendance and Pupil Accounting; Tuition for Private Schools for the Handicapped

Adopted Amendments: N.J.A.C. 6:20-1.1, 1.2, 4.1-4.4 and 4.7-4.10

Adopted New Rule: N.J.A.C. 6:20-4.11

Proposed: September 4, 1990 at 22 N.J.R. 2633(a).

Adopted: November 7, 1990 by John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: November 20, 1990 as R.1990 d.610, **without change.**

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:46-21.

Effective Date: December 17, 1990.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Department received one written comment concerning the criteria for auditor independence, N.J.A.C. 6:20-4.8(a), a letter from the American Institute of Certified Public Accountants (AICPA).

COMMENT: The commenter questions the new provision which restricts the auditor to performing only the year-end audit and tax return functions to remain independent. The AICPA's Code of Professional Ethics provides that as long as the member follows the specified criteria, his or her independence would not be compromised or impaired by the performance of write-up work and management advisory services for an attest client as long as the CPA does not assume the role of employee or of management conducting the operations of an enterprise.

RESPONSE: The Department recognizes that the accounting profession currently operates under the AICPA's Code of Professional Ethics but these standards are subjective and in most cases self-policing. The audit requirement contained in the rules is specialized and for the specific governmental purpose of the certification of tuition rates which is different than a standard audit of a corporation. Any additional work beyond the audit function and tax return may impact on the auditor's independent judgment. The performance of special services by an auditor can compromise the auditor's independence and even the AICPA recognizes the potential for conflict. While the AICPA does not prohibit the performance of such services it cautions that the degree of involvement in any one other service could in fact present either an actual or appearance of conflict. While the Department recognizes the AICPA's Code of Professional Ethics, it views the functions of write-up work and management advisory services as possible conflicts concerning an auditor's independence and took steps to establish an objective criteria.

Full text of the adoption follows.

6:20-1.1 School register

(a) The Commissioner shall prepare and distribute a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by district boards of education, except adult high schools.

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

6:20-1.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries plus the number of re-entries, less the number of transfers, withdrawals or dropouts in any such unit during a school year. The total number of original entries and re-entries, less the number of transfers, withdrawals or dropouts, in all the classes and schools of a school district shall constitute the school enrollment for that district board of education during any school year.

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

(d) Within 10 days of the start of the school year, a school district must determine whether any re-entering student who has not at-

tended school that year has an excused absence or has transferred, withdrawn or dropped out of the school district.

Recodify existing (d)-(f) as (e)-(g). (No change in text.)

6:20-4.1 Tuition rate procedures

(a) The term "actual cost per pupil" referred to in N.J.S.A. 18A:46-21, for the purpose of this subchapter shall be defined as the certified actual cost per pupil. For determining the tuition rate(s) for a 10 month school year or an extended school year for approved private schools for the handicapped located in New Jersey, the certified actual cost(s) per pupil shall mean the actual allowable cost for the year plus the applicable maximum surcharge/working capital fund divided by the average daily enrollment for a 10 month school year or total per diem days for an extended school year. Based on the certified actual cost(s) per pupil, the school's management shall determine the actual tuition rate(s) charged which is an amount less than or equal to the certified actual cost(s) per pupil. The certified actual cost(s) per pupil and actual tuition rate(s) charged shall be identified in the certified audit submitted pursuant to N.J.A.C. 6:20-4.8.

1. Actual allowable costs for the 10 month school year program shall be based on a minimum of 180 days of pupil instruction between September 1 and June 30 and for the extended school year program on the days of pupil instruction between July 1 and August 30. Such costs shall be consistent with the individualized education program of a handicapped pupil and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

2. "Average daily enrollment" for the purpose of determining the actual cost per pupil shall be the sum of the days present and absent of all school pupils enrolled in the register(s) of the school divided by the number of days the approved private school for the handicapped was actually in session rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days. A pupil enrolled in a preschool program (10 hours per week of pupil instruction), a half-day program or enrolled in a full day program on a shared time basis shall not have a maximum average daily enrollment in excess of 0.5.

(b) Whenever possible, direct costs which can be identified specifically with an approved private school facility, 10 month school year program or extended school year program shall be recorded in the prescribed bookkeeping and accounting system and used in determining the respective actual cost per pupil.

(c) Indirect costs are costs which are incurred for a common or joint purpose and not readily assignable to an approved private school facility, 10 month school year program or extended school year program. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be included on a consistent basis in the respective actual cost per pupil in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of the following ratios:

1. Direct costs for each program determined pursuant to (b) above to total direct costs; or

2. Average daily enrollment for each program to total average daily enrollment.

(d) Whenever a facility used by an approved private school for the handicapped is also used for unrelated activities and/or enterprises by related or unrelated parties, all costs, direct or indirect, associated with such facilities and operations shall be charged accordingly to the associated activities and/or enterprises which they benefit. Indirect cost pools may be established as appropriate for allocation between common or joint purposes at the end of the fiscal year. Indirect costs shall be distributed in accordance with an equitable allocation plan approved by the Commissioner or as follows:

1. For joint activities and enterprises which have a common purpose of educating pupils, the indirect costs shall be allocated consistent with the methods contained in (c) above.

2. For joint activities and enterprises which do not have a common purpose of educating pupils, indirect costs for the approved private school for the handicapped shall be based on the ratio of the revenues for the approved private school to the total of all revenues for all purposes.

(e) A tentative tuition rate shall be established by written contractual agreement between the approved private school for the handicapped and the sending district board of education. The tentative tuition rate shall be an amount not in excess of the approved private school's estimated actual cost per pupil for the ensuing school year. The written contract shall be on a form prepared by the Commissioner and shall be executed prior to the enrollment of a pupil.

1.-2. (No change.)

3. The contractual agreement shall require the sending district board of education to pay the approved private school for the handicapped the tentative tuition charge on a mutually agreed upon date but not later than 60 days after receipt of the monthly tuition bill and attendance report.

(f) The Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school for the handicapped shall submit to the sending district board of education a copy of the Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1.-3. (No change.)

(g) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for the handicapped can prove to the satisfaction of the Commissioner that the tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship, the approved private school for the handicapped shall be required to submit its request for a higher tentative tuition rate for the entire school no later than January 31 preceding the beginning of the ensuing school year. The request shall be forwarded to the Assistant Commissioner, Division of Finance and include, but not be limited to, the following information:

i. A budget, by major account category, reflecting projected costs, working capital fund or surcharge, estimated enrollment and the requested tuition rate based on this information;

ii. A detailed explanation, by major account category, of the need for increases in excess of those already provided in the tentative tuition rate calculation (twice the increase in state average net current expense budget); and

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ended December 31 immediately preceding the school year for such request. This report format is available at the Division of Finance, 225 West State Street, CN 500, Trenton, New Jersey.

2. Whenever a district board of education agrees to pay for a pupil's extraordinary services, the board shall notify the Commissioner within 30 days of such agreement. The notification shall include the pupil's initials, the private school, the type of extraordinary service(s) and the cost of the additional service(s).

(h) The Commissioner shall certify the actual tuition rate(s) charged according to these rules.

(i) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is greater than the actual tuition rate(s) charged for the school year, the private school for the handicapped shall pay each sending district board of education the difference no later than June 30 of the school year in which the actual tuition rate(s) charged is received from the Commissioner or not more than 30 days after an appeal on a certified amount is finally resolved.

(j) If the Commissioner determines that the tentative tuition rate(s) for a 10 month school year or an extended school year established by written contractual agreement is less than the actual tuition rate(s) charged for the school year, the approved private school for the handicapped may charge each sending district board of education all or part of the difference owed. The district board of education shall pay the difference on a mutually agreed upon date but not later than

the end of the second school year following the year for which the actual cost per pupil is certified.

(k) The Commissioner shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year.

(l) The Commissioner shall calculate and publish a list of maximum salaries by job title and county. Maximum salaries shall be based on the highest contracted salaries of certified staff in local public school districts for any prior year indexed by the Statewide average increase in salary between the two preceding school years for each job title. Under no circumstances shall the maximum salary calculated be less than the corresponding salary in the prior year for the same job title and county. For the purpose of this list, the maximum salary of the private school director shall be based on the title, chief school administrator/district superintendent. Other unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities.

6:20-4.2 New private schools for the handicapped

(a) For the first two years of operation of an approved private school for the handicapped which was first in operation after the 1985-86 school year, the estimated actual cost per pupil and per diem rate at each site or in each program shall be established annually and be based on budgeted allowable costs. These estimated cost(s) shall be submitted to the Commissioner for approval or disapproval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Commissioner which shall provide for, but not be limited to, the following:

1.-6. (No change.)

(b) If the Commissioner approves the estimated actual cost(s) per pupil, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per pupil for the first two years of operation.

(c) If, after each year of operation, the Commissioner determines that the actual cost per pupil or per diem rate differs from the estimated cost per pupil or per diem rate, the tentative tuition charges shall be adjusted in accordance with the provisions of N.J.A.C. 6:20-4.1.

6:20-4.3 Bookkeeping and accounting

(a) An approved private school for the handicapped shall maintain accounting and bookkeeping systems as prescribed in a publication issued by the Department of Education in accordance with the following standards:

1.-2. (No change.)

3. Fixed asset expenditures of $1,000 or more shall be capitalized and depreciated using the straight line method and a useful life consistent with current Federal tax law except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4.-5. (No change.)

6. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for the handicapped. Each expenditure or revenue account utilized shall be reflected on the approved private school's general ledger. The approved private school shall be restricted to those account categories listed in the chart of accounts.

7. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If both a 10 month school year program and extended school year program have been approved, financial information shall be segregated by program in the bookkeeping records. Bookkeeping records shall include, but not be limited to:

i.-vi. (No change.)

8. (No change.)

9. A payroll shall be prepared and supported by the employee time record in a format prescribed or approved by the Commissioner, signed by the employee and supervisor, prepared in the time period in which the work was done and completed at least semi-monthly.

10. A financial report prescribed by the Commissioner shall be prepared at a minimum each quarter for the 10 month program and once at the end of the session for the extended school year program. This report shall be submitted to the school's governing body. Acceptance of the financial report shall be documented in the minutes of the meetings.

11. (No change.)

12. An approved private school shall use the contract prescribed by the Commissioner for each pupil received from a local school district.

13. An approved private school which incurs contingent pay increases shall have in place an employee contract which contains the criteria by which the increase shall be paid. The payment of such increase must be paid if the contractual contingencies are met. The contract shall contain at least the following items:

i. The date and signature of both the staff member and authorized school representative;

ii. The specific performance or contingency which shall be met to generate the increase;

iii. The specific dollar amount or percentage of original contracted salary to be paid.

14. An approved private school for the handicapped which incurs merit pay increases shall have adopted a formal board policy which outlines the criteria of the merit pay plan(s). The plan(s) shall be filed with the Commissioner who may exclude from tuition any merit award(s) if the sole purpose of the award(s) is to avoid returning unexpended tuition funds to public schools. The plan(s) shall include the following:

i. Eligibility for all employees;

ii. Basis by which the pay is earned;

iii. The amount of the awards by plan(s);

iv. The maximum number of awards to be given by plan(s) for each year;

v. The date of board approval and date of initiation of the plan(s).

15. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed $1,500 and, except in the case of an emergency, no disbursement shall exceed $150.00.

Recodify existing 14.-15. as 16.-17. (No change in text.)

18. A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner.

19. Upon request from the Commissioner, a profit-making approved private school shall provide a copy of the Internal Revenue Service (I.R.S.) corporate tax return to the Department of Education. A non-profit approved private school shall provide a copy of I.R.S. form 990.

20. An approved private school shall maintain all pertinent financial record(s) for a period of seven years.

21. A non-profit approved private school for the handicapped shall file a copy of its corporation dissolution papers with the Commissioner within 90 days of dissolution. Such papers shall include the total dollar amount transfer of the working capital fund (public school placement restricted fund balance) and the name of the recipient non-profit corporation.

(b) An approved private school for the handicapped which receives a refund(s) from a current or prior year expenditure or cancels an accounts payable shall apply such refund or accounts payable as a reduction to the general expenditure account charged, which will reduce the current year expenditure account. If the original expenditure account charged is not charged in the current school year, such amount(s) shall be used to reduce total expenditures in the current year.

6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of the certified actual cost per pupil includes the following:

1.-2. (No change.)

3. Costs other than those governed by (a)52 below associated with lobbying in an attempt to influence:

i. The outcome(s) of any Federal, State, or local referendum, initiative or similar activity; or

ii. The introduction of Federal legislation, State legislation or State rulemaking or the enactment or modification of any Federal legislation, State legislation or State rulemaking.

4. The salary of a professional staff member who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6:11;

Recodify existing 4.-5. as 5.-6. (No change in text.)

7. A salary in excess of the associated maximum salary determined in N.J.A.C. 6:20-4.1(1) for a certified employee. Part-time or split-time positions shall be prorated;

8. The salary of the director of an approved private school in excess of the maximum salary determined in N.J.A.C. 6:20-4.1(1);

9. A salary of an employee not covered by (a)7 or 8 above, who does not hold a professional license or certificate or a bachelor's degree from an accredited institution commensurate with the job function, in excess of the lowest maximum salary in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1) when such employee is in a position which does not require certification or such employee, pursuant to a "save harmless" provision, is serving in a position requiring certification without such certification. The Bureau of Teacher Certification will determine if the individual meets the requirements;

10. A salary of an employee in a position covered by (a) 9 above, who holds a professional license, or certificate or bachelor's degree from an accredited institution commensurate with the job function, in excess of the maximum salary in the same or similar job title in the same county according to the list of maximum salaries determined in N.J.A.C. 6:20-4.1(1). The Bureau of Teacher Certification will determine if the individual meets the requirements;

11. The cost of fringe benefits which are based on a non-allowable salary;

12. A legal, accounting or consultant fee resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering at least the following factors:

i. Overall merit of the claim; and

ii. (No change.)

13. A consultant fee for professional services which does not include at least a detailed list of the nature of the professional services provided, the number of days worked, the charge per day and the product or outcome of the consultation. Professional services are services rendered or performed by a person authorized by law to practice a recognized profession and whose practice is regulated by law and the performance of which requires knowledge of an advanced type in a field of learning and is acquired by a prolonged, formalized course of specialized instruction and study. The consultant shall hold the appropriate school certification when such certification exists;

Recodify existing 10. as 14. (No change in text.)

15. Depreciation unacceptable under N.J.A.C. 6:20-4.3(a)3 and depreciation on:

i.-ii. (No change.)

iii. A single item costing below $1,000; and

iv. Autos in excess of the dollar or percentage limitation contained under Internal Revenue Service Code Section 280F;

16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of handicapped children;

17. Total annual costs in excess of $500.00 incurred for the entertainment of school employees, school officers, consultants and/or individuals providing professional services;

Recodify existing 14. as 18. (No change in text.)

19. The cost of a fine or penalty which results from a violation of or failure by the school to comply with a Federal, State and/or local law or rule;

Recodify existing 16. as 20. (No change in text.)

21. Fringe benefits when the benefits are determined in an arbitrary or capricious manner rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education or when the benefits are not an initial inducement for employment;

Recodify existing 18.-19. as 22.-23. (No change in text.)

24. Interest costs on loans when:

i. (No change.)

ii. The loan is a less-than-arm's length/related party transaction which has not been previously approved by the department;

iii. (No change.)

Recodify existing 21.-28. as 25.-32. (No change in text.)

33. The cost associated with a professional conference and/or meeting for a non-employee or employee whose position would not warrant attendance at the event;

34. The cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations, except when less than first-class accommodations are not reasonably available which shall be documented by the airline or travel agent;

Recodify existing 29.-30. as 35.-36. (No change in text.)

37. The cost of staff salary, supplies or printing and reproduction of a material for a research activity;

Recodify existing 32.-33. as 38.-39. (No change in text.)

40. Transportation costs for a pupil to and from school;

41. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;

Recodify existing 36.-38. as 42.-44. (No change in text.)

45. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution of his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but not be limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

ii.-iii. (No change.)

iv. Cost of personal services paid to a related party when such services are provided by an employee or consultant of the approved private school acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to wages, salaries, management fees and fringe benefits;

v. Cost of the purchase of services in excess of the actual allocated costs of ownership (such as salaries, fringe benefits, insurance, operation, maintenance, straightline depreciation) incurred by the related party owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The purchase agreement shall include a list of anticipated costs to be incurred by the related party, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

46. Cost of a less-than-arm's length/related party transaction when the related party does not provide documentation to support the actual costs of ownership to the Commissioner when requested and does not allow the Commissioner access to such information for review and audit during normal business hours. Documentation shall include, but not be limited to:

i. The related parties' tax returns; and

ii. The related parties' paid bills and cancelled checks concerning the transaction.

47. Rental costs under sale and leaseback arrangements in excess of the amount that would be incurred had the organization continued to own the property;

48. Costs of a salary increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6:20-4.3(a)13 or 14 or the merit pay award(s) are not consistent with the plan(s) on file with the Commissioner;

49. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6:20-4.1(d);

50. Cost of the year-end certified audit prepared by an individual who does not meet the requirements contained in N.J.A.C. 6:20-4.8(a);

51. Costs charged to account categories other than those reflected in the chart of accounts issued by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)6;

52. Costs for membership in civic, business, technical and professional organizations when the cost is:

i. Not reasonably related to the value of the services or benefits received;

ii. For membership in an organization which devotes any activities to influencing legislation or state regulation(s) not directly related to the educational instruction program of handicapped pupils and such activities are not subsidized by sources other than membership fees from private schools for the handicapped;

iii. Not an established annual rate charged to all members but one which is periodically adjusted during the year; or

iv. Not supported by an annual affidavit signed by the organization's board of directors indicating that all legal and lobbying costs not directly associated with the educational instruction programs for handicapped pupils were funded by sources other than dues from private schools for the handicapped.

53. Salary of a staff member which is not properly supported by the employee time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6:20-4.3(a)9; and

54. A cost found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant.

6:20-4.7 Calculation of pupil attendance

(a) Each approved private school for the handicapped shall maintain a public school register for recording pupil attendance in accordance with N.J.A.C. 6:20-1.3.

(b) Each approved private school for the handicapped shall submit the school summary register annually to the Commissioner by September 1 to verify the average daily enrollment for the previous school year.

6:20-4.8 Audit requirements

(a) Regardless of the fiscal year of the school, each approved private school for the handicapped shall, by November 1 of each year, submit to the Commissioner a certified audit based on the July 1 to June 30 school year. The audit shall be prepared by an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey; the accountant shall hold an uncancelled registration license as a public school accountant of New Jersey. Independence will be determined in accordance with standards set forth in the Code of Professional Ethics issued by and available from the American Institute of Certified Public Accountants. Additionally, an accountant shall not be considered independent if such accountant or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the private school for the handicapped.

(b) The audit shall follow audit standards and a format established and published by the Commissioner.

(c) The certified audit shall determine the certified actual cost(s) per pupil and actual tuition rate(s) charged at the end of the school year.

(d) The auditor and school management shall discuss the results of the auditor's determination of the certified actual cost per pupil in order for management to determine the actual tuition rate charged as a result of the audit. The actual tuition rate charged shall be an amount equal to or less than the certified actual cost per pupil. The audit report shall contain a letter signed by both the school auditor and an authorized school representative indicating that both parties met and discussed the audit and that the determination of the actual tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, management shall develop a corrective action plan in response to recommendations contained in the year-end audit and file such corrective action plan with the Commissioner. When the corrective action is based on the requirements of this subchapter, the Commissioner shall determine if the corrective action is adequate and, when appropriate, require additional action.

(f) The approved private school for the handicapped is precluded from amending the actual tuition rate charged upon certification by the Commissioner.

(g) Any adjustments necessary as a result of the certified audit or a tuition audit performed by the Commissioner which are in excess of $10.00 per sending school district shall be made in accordance with N.J.A.C. 6:20-4.1(i) and (j).

(h) Audits filed after the November 1 due date shall cause the estimated actual cost per pupil for the ensuing school year to be calculated based upon the audited actual cost per pupil for the school year two years prior to the current school year, and N.J.A.C. 6:20-4.1(g)1 shall not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for the handicapped on conditional approval status which precludes the school from accepting new pupils.

6:20-4.9 Appeals

(a) The decision of the Commissioner, regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6:20-4.1(g), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6:20-4.2(b) and regarding conditional approval status pursuant to N.J.A.C. 6:20-4.8(i), may be appealed in accordance with N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(b) The decision of the Commissioner in regard to certification may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27.

6:20-4.10 Out-of-State approved private schools for the handicapped

(a) Out-of-State private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education in accordance with N.J.A.C. 6:28-7.1(f).

(b) The Commissioner shall abide by the tuition regulations for approved private schools for the handicapped adopted by the department of education or other regulatory agency in the state in which the private school for the handicapped is located. The approved private school for the handicapped shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State department of education or other regulatory agency.

(c) If the out-of-State approved private school for the handicapped is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates such tuition rates shall be determined in the following manner:

1. The approved private school for the handicapped and the sending school district or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate must be agreed upon prior to the child's placement and a letter indicating agreement of such rate shall be forwarded to the Commissioner.

2. An approved private school for the handicapped which is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the approved private school, the sending school district and the Department of Human Services, Office of Education. The tuition rate must be agreed upon prior to the child's placement and documentation of such rate shall be forwarded to the Commissioner.

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey school or agency. The

cost of the audit contained in N.J.A.C. 6:20-4.8 may be charged to the sending school district(s) or agency which did not mutually agree to the tuition rate.

(d) An approved private school for the handicapped located in another state shall have bookkeeping and accounting records available for inspection upon request by the Commissioner.

6:20-4.11 Inspection of records

(a) All financial and accounting records maintained by the approved private school for the handicapped as required by this subchapter shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for the handicapped shall be open for review and audit during normal business hours by the Commissioner or his or her representative(s).

(c) All auditor's workpapers used in the preparation of the year-end audit shall be open for review during normal business hours by the Commissioner or his or her representative(s).

ENVIRONMENTAL PROTECTION

(a)

NEW JERSEY WATER SUPPLY AUTHORITY

Use of Water from the Manasquan Reservoir Water Supply System

Adopted New Rules: N.J.A.C. 7:11-5

Proposed: December 4, 1989 at 21 N.J.R. 3701(a).
Adopted: November 19, 1990 by Judith A. Yaskin, Chairperson, New Jersey Water Supply Authority, and Commissioner, Department of Environmental Protection.
Filed: November 26, 1990 as R.1990 d.629, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1B-7.

DEP Docket Number: 051-89-10.
Effective Date: December 17, 1990.
Operative Date: July 1, 1990.
Expiration Date: May 13, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Water Supply Authority (hereafter "Authority") is adopting rules at N.J.A.C. 7:11-5. The Authority held a pre-public hearing meeting with the Authority's contractual water purchasers and interested parties to present and explain the proposed regulations embodied in these rules. Notice of the pre-public hearing meeting was provided to the contractual water purchasers and interested parties including the Public Advocate's Office and the Board of Public Utilities. This meeting was held on December 12, 1989 at the Allaire State Park Headquarters Building conference room, Farmingdale, New Jersey, and was attended by 24 parties. Representatives from the Public Advocate, Division of Rate Counsel and the Board of Public Utilities did not attend.

A public hearing concerning these rules was held on January 11, 1990 at the Allaire State Park Headquarters Building Conference Room, Farmingdale, New Jersey, to provide interested persons the opportunity to present testimony. Notice of the public hearing was published in the Trenton Times, Newark Star Ledger, and Asbury Park Press. The notice was also mailed to the contractual water purchasers and 384 interested parties on the Authority's mailing list including the Public Advocate's Office and the Board of Public Utilities. Two individuals attended the public hearing and one attendee presented comments. Two letters were also received during the public comment period which closed on February 13, 1990. The written and oral comments received are summarized below:

COMMENT: N.J.A.C. 7:11-5.5(b). The time allowed for the purchaser to pay its quarterly water usage bill when due should be 30 days and not 10 days.

RESPONSE: The water purchase contracts which were negotiated specifies 10 days for cash flow reasons. It should be noted that the Manasquan Reservoir System contracts require quarterly payments as requested by the contract parties whereas the Raritan Basin System customers must pay on a monthly basis.

COMMENT: N.J.A.C. 7:11-5.5(d). The phrase ". . . or by any failure by the Authority to perform its obligations under the water purchase contract . . ." should be deleted.

RESPONSE: The important exception, relative to the Authority's obligations, specifies that the purchaser shall not be required to pay for any water which the Authority does not make available to the purchaser.

COMMENT: N.J.A.C. 7:11-5.5(e). The quarterly water payments under the Water Purchase Contract should be in equal installments. If unequal quarterly payments are required by the Authority, the **maximum** quarterly amount may coincide with a **minimum** quarterly gross income for the purchaser, which may strain the purchaser's cash flow.

RESPONSE: The Authority expects quarterly payments to be equal. However, notification of any difference in quarterly payments due will not be sudden. In fact, the water purchase contracts state that "The Authority shall notify the Purchaser not later than thirty days prior to the beginning of each Annual Payment Period of the amount of the Purchaser's Annual Payment for Uninterruptible Service hereunder and, if the Authority determines that the Quarterly Water Payments under this Contract and other Water Purchase Contracts should be made on a basis other than in equal installments, in order to permit the Authority to meet its obligations as they become due, it shall, concurrently with such notice, provide the Purchaser with a schedule of the amounts of each of the Quarterly Water Payments to be made by the Purchaser." Therefore, should unequal installments become necessary, purchasers will have advance notice annually.

COMMENT: N.J.A.C. 7:11-5.5(e). The proposed rule gives the Authority the right to vary the payment schedule on 30 days notice to purchasers. Thirty days is far too short a notice provision, and the rule does not give purchasers any opportunity to challenge the Authority's proposal. At least six months notice should be given the system purchasers so that they can adequately plan for their cash flow needs. In addition, the rule permits the Authority to switch to an unequal billing method **only** if the Authority determines that unequal payments are necessary in order to permit the Authority to meet its obligations as they become due. This determination by the Authority appears to be at the sole discretion of the Authority, without any opportunity for system purchasers to be heard prior to the implementation of the change. Any proposal to switch to an unequal billing method should be made only on notice to system purchasers and after a hearing in order that a justification for the proposed change can be made.

RESPONSE: N.J.A.C. 7:11-5.5(e). **does not** make provision for a variation in the quarterly payment upon 30 days notice. It provides for notification not later than thirty days prior to the beginning of each annual payment period. The annual payment period is defined in the proposed rate schedule and the Water Purchase Contracts as commencing on July 1 and ending on the next ensuing June 30. In the Water Purchase Contracts, the Authority agrees that it will adhere to at least a six-month period for official notice of any proposed rate adjustments. As a matter of procedure, the proposed quarterly payments are presented by the Authority as a part of the rate setting process which commences during the previous fall (six to eight months advance notice). The rate setting process has ample opportunities for the purchasers to evaluate the proposed quarterly payment schedules and to have input in the final recommendations of the Authority's Hearing Officer.

COMMENT: N.J.A.C. 7:11-5.5(h). The late payment charge should be reduced from 18 percent per annum to 12 percent per annum. The 18 percent is commonly applied in commercial billing or transactions. This is not a commercial transaction. The purchasers or purveyors are not commercial institutions guided by profit making. On the contrary most of them are **non-profit** utility companies to **serve the public.**

RESPONSE: The rate which is **not to exceed 18 percent** was previously negotiated with the water purchasers and is a part of their contracts.

COMMENT: N.J.A.C. 7:11-5.5(h). Will any late payment interest charges be pro-rated per day?

RESPONSE: Yes.

COMMENT: N.J.A.C. 7:11-5.5(i). The purchaser should **NOT** be obliged to send all payments, notices, communications, requests, replies, and correspondence by Registered or Certified Mail. The purchaser should be free to decide whether it wishes to send anything by regular mail or certified mail.

RESPONSE: This provision, which is also included in all water purchase contracts, was drafted by bond counsel and agreed to by the contract parties.

COMMENT: N.J.A.C. 7:11-5.5(i). Is it three days or three working days before notice becomes effective?

RESPONSE: Three working days.

COMMENT: N.J.A.C. 7:11-5.7(a). This provision specifies that each purchaser's allocation for uninterruptible service is the maximum amount to be withdrawn in any 24-hour period. This is too inflexible, especially at the present time when the reservoir system is operating only at 50 percent of its capacity. There should be some permissible tolerance over the daily withdrawal rate and the withdrawal should be averaged over a time period, for example 30 days, before there is any charge for excessive withdrawals.

RESPONSE: Under Section 6C of the Water Purchase Contracts, the Authority has pledged to operate the System such that it will not exceed the Safe Yield of the System or exceed the output capacity of the System. To assure that this commitment is met, the rates of flow and daily use must both be managed. The management parameters used for each individual user therefore consists of an instantaneous rate of flow based upon 110 percent of the specified daily rate of flow. Without these provisions the Authority would have no effective control on the total demand on the System at any point in time. In addition, uncontrolled peaking would also have an adverse impact on the electrical energy budget for the Reservoir System.

COMMENT: N.J.A.C. 7:11-5.9(c). The phrase ". . . until a new agreement is signed." should be added at the end of the paragraph.

RESPONSE: The Authority agrees that the following words should be added at the end of the last sentence of N.J.A.C. 7:11-5.9(c): ". . . until the effective date of any new agreement."

COMMENT: N.J.A.C. 7:11-5.11(a) and (c). The Force Majeure provision appears to contain a conflict; (a) states that obligations shall be suspended while (c) requires quarterly payments to be made.

RESPONSE: The complete text of the "Force Majeure" provisions can be found in Section 8 of the water purchase contracts which have been negotiated. It should be noted that this provision does not require the purchaser to pay for any water which the Authority does not make available.

COMMENT: N.J.A.C. 7:11-5.14(a) and (b). The water purchasers should be permitted to withdraw more than the daily contract amounts if needed.

RESPONSE: The response to the comment on N.J.A.C. 7:11-5.7(a) applies to these provisions as well. It should also be noted that an optional water use schedule is permitted under the terms of the Water Purchase Contracts. This optional schedule will be permitted as long as the total of all uninterruptible contract amounts is equal to or less than 25 mgd. The criteria for this optional water use schedule is to be found in Exhibit C of the Water Purchase Contract.

COMMENT: N.J.A.C. 7:11-5.14(e). This provision establishes the methodology by which the Authority would allocate the supply among system purchasers in the event of rationing. The rule proposal specifies that the Authority would choose either one of two methods, or some other equitable method. The provision fails to set forth any guidelines or standards by which the Authority will determine the precise method used in any given drought. The system purchasers must be given an opportunity to provide input to the Authority in the event that any rationing is necessary and to be heard prior to the imposition of any rationing system. The rule proposal fails to provide for this type of consultation and hearing process.

RESPONSE: Section 9C of the Standard Water Purchase Contract states, "In the event of an emergency, natural or otherwise, and, where practicable, after public notice and hearing in accordance with the "Administrative Procedure Act," P.L. 1968, c.410, as amended (N.J.S.A. 52:14B-1 *et seq.*), the Authority reserves the right temporarily to curtail or suspend the Purchaser's withdrawal of water from the System, in which event Purchaser's payment obligation shall be reduced as provided in Section 5.8 hereof."

Therefore, the Authority recommends the addition of the following new section to N.J.A.C. 7:11-5.14:

"In the event of an emergency, natural or otherwise, where practicable, after public notice and hearing in accordance with the Administrative Procedure Act, P.L. 1968, c.410, as amended, the Authority reserves the right to temporarily curtail or suspend the use of the System."

The Water Purchase Contract sets forth the basis for allocation of the available supply during an emergency or drought. The method proposed to be applied for a given situation would be presented for public input. The proposed allocation method would vary depending upon such things as the nature of the emergency, severity of the drought, availability of alternative supplies and the contractual obligation to distribute the available supply equitably among all System Water Purchasers.

COMMENT: N.J.A.C. 7:11-5.14(g). The Authority should provide at least 60 days prior notice of the elimination of any restrictions due to rationing.

RESPONSE: Rationing due to emergency conditions would normally be for short term periods and therefore could not be subject to long term notification of the removal of restrictions. Notification of the removal of restrictions due to drought conditions is also contingent upon the uncertainties of rainfall patterns. Therefore, it is not possible to stipulate a 60 day or any other specific time frame for the removal of restrictions. The Authority will make every reasonable effort to provide advance notice of the removal of drought related restrictions.

COMMENT: N.J.A.C. 7:11-5.18(c). The Authority should remove the part of this rule that states that the Authority may order suspension of withdrawal for failure to comply with orders to repair the flow meters.

RESPONSE: This provision is consistent with the operating rules for the Authority's Raritan Basin System. The Authority's judgment is that it must retain this provision to assure corrective actions by the purchaser.

COMMENT: Why are we going through a public hearing process if indeed most of these matters are already set in the executed water purchase contracts?

RESPONSE: The water purchase contracts require the Authority to officially adopt System rules and regulations. During the contract negotiations the water purchasers insisted on including in the contracts many detailed requirements which would normally only have been presented as a part of a set of rules and regulations for the use of the water. Since these details are included in the executed contracts the Authority must include them unchanged in the rules and regulations. The process is also helpful in clearing up any misunderstandings and it also allows the Authority to change certain provisions which are not fixed by the contracts.

COMMENT: Do the contracts provide for relief if the water is unusable?

RESPONSE: No; however, studies throughout the engineering phase indicate that this should not be a problem.

COMMENT: What is the chance of salt water affecting the system?

RESPONSE: The tidal effect in the Manasquan River is 3/4 mile downstream of the intake facilities.

COMMENT: What is the status of towns that have not entered into purchase agreements?

RESPONSE: Keansburg MUA has an interim solution through the purchase of excess winter water from New Jersey-American. To date, the Borough of Keyport has not complied with the NJDEP mandate. Freehold is expected to purchase water in the future. Some current customers may also increase their purchases before July 1, 1990 and this will reduce the O & M rate for all purchasers. The sales base may approach 15 mgd by July 1, 1990. Water purchased after that date will involve a surcharge. The State is holding bonds/debt for the unsold capacity of the system. A new customer in the first three years or thereafter will pay principal plus additional interest accruing during the first three years, according to a different debt service schedule or they may elect to pay the full surcharge amount up front. This option would be available in the case of a new development in the community.

COMMENT: Is the DEP authority under Title 58?

RESPONSE: Yes, under the Water Supply Management Act.

COMMENT: What is the range of interest that would accrue to any new customers?

RESPONSE: The project was financed with two loans. The initial loan carried a cost of borrowing of 7.15 percent and the completion loan carried a cost of borrowing of 7.16 percent. Customers purchasing system water after July 1, 1990 must pay their proportionate share of the initial and completion loans at 7.15 percent and 7.16 percent respectively.

COMMENT: When is the start of the surcharge interest charges?

RESPONSE: July 1, 1990.

COMMENT: If the contract was under negotiation on June 1, 1990, would it be subject to additional interest charges?

RESPONSE: Not if it was under contract by July 1, 1990.

Summary of Agency-Initiated Changes

N.J.A.C. 7:11-5.9(c) provides for a penalty to be assessed if a water purchaser fails to properly renew its water purchase contract. However,

the proposed rule does not specify when the penalty will end. The Authority proposes to remedy this concern by stipulating that the penalty will be in effect until the effective date of the new agreement.

N.J.A.C. 7:11-5.14(e) establishes the methodology by which the Authority would allocate the available water supply amongst system purchasers in the event of rationing or other cause. However, the proposed rule does not provide a mechanism for input to the Authority's decision making process by the affected system purchasers. The Authority proposes to remedy this concern by adding a paragraph to the proposed rule which provides for public notice and hearing where practicable.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 5. RULES FOR THE USE OF WATER FROM THE MANASQUAN RESERVOIR WATER SUPPLY SYSTEM

7:11-5.1 Application for water supply

Application for withdrawal of water from the Manasquan Reservoir System shall be submitted to the New Jersey Water Supply Authority (Authority) on an "Application for Water Supply" form, copies of which will be furnished by the Authority upon request. Any application for water from the Manasquan Reservoir System shall be accompanied by a water allocation permit approval from the New Jersey Department of Environmental Protection, stating the specific amount which is to be allocated to the applicant.

7:11-5.2 Definitions

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

"Authority" means the New Jersey Water Supply Authority established pursuant to N.J.S.A. 58:1B-1 et seq.

"Force Majeure" means acts of God, strikes, lockouts or other industrial disturbances, orders of the Government of the United States or the State or any agency or instrumentality thereof or of any civil or military authority, acts of terrorism, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, explosions, breakage or accidents to machinery, pipelines, dams or canals, partial or entire failure of water supply, arrests, civil disturbances, acts of any public enemy, and any other causes not reasonably within the control of the party claiming inability to timely comply with its obligations.

"Manasquan Reservoir System" means the water supply system constructed by the Authority in Monmouth County, the major components of which are a 740 acre, four-billion gallon reservoir facility in Howell Township, a raw water intake facility and pump station located adjacent to the Manasquan River in Wall Township, and a five mile transmission pipeline connecting the reservoir and the intake facility, together with all component plants, structures and other real or personal property, and additions and improvements thereto.

"Point of delivery" means the location where the Manasquan Reservoir System's delivery equipment interconnects with the purchaser's interconnection system.

"Purchaser" means the party who contracts with the Authority to purchase water from the Manasquan Reservoir System.

"Purchaser interconnection system" means the building, structures, piping, valves, meters and other control apparatus and equipment, to the extent located on properties or facilities owned by the Authority, to be installed by or on behalf of, and owned by, the purchaser to connect purchaser's water supply system with the Manasquan Reservoir System.

"Short-term service" means the supply of Manasquan Reservoir System water for interim or short-term uses, such as growing agricultural or horticultural products or meeting extraordinary requirements in consumer demand for potable water, provided on a non-guaranteed or interruptible basis.

"Standby service" means the supply of Manasquan Reservoir System water for certain occasional uses, such as fire protection or other emergencies, natural or otherwise.

"Uninterruptible service" means the supply of Manasquan Reservoir System water which the purchaser is authorized to continuously withdraw without interruption, for public water supply purposes.

7:11-5.3 Water purchase contract

(a) Water shall be withdrawn from the Manasquan Reservoir System only in accordance with the terms of this subchapter and a formal water purchase contract between the Authority and the purchaser.

(b) The water purchase contract shall be executed by the purchaser within 60 days after transmittal by the Authority; otherwise, the application for water withdrawal shall be null and void.

7:11-5.4 Rates, charges and debt service assessments

(a) The rates, charges and debt service assessments to be applied to water supplied from the Manasquan Reservoir System shall be the most current schedule of rates, charges and debt service assessments.

(b) The Authority reserves the right from time to time to adopt adjustments to the rate schedule in accordance with applicable laws and rules, including the public notice and hearing requirements and other requirements set forth in the rate schedule. If as a result of any such adjustments the annual payment for uninterruptible service is adjusted by the Authority subsequent to the notice given as provided in the rate schedule, the Authority shall notify the purchaser of the adjustment and of any revised schedule of quarterly water payments required to reflect such adjustment.

(c) The Operation and Maintenance Expense component of all rates shall be based upon point of delivery being located at the Authority's Manasquan River intake facility and any purchaser taking delivery of Manasquan Reservoir System water at a different point of delivery will be assessed an additional charge to cover additional operation and maintenance expense associated with establishment of and making delivery at such point of delivery. Such additional charges may include, but not be limited to, in the case of any purchaser establishing a point of delivery on the transmission line between the Manasquan River intake facility and the reservoir, an additional charge to cover the cost of pumping water to the reservoir to replace water delivered from the reservoir to such purchaser.

7:11-5.5 Payments

(a) The purchaser shall pay the Authority for all raw water taken from the Manasquan Reservoir System in accordance with the most current rate schedule.

(b) The purchaser shall make quarterly water payments for uninterruptible service not later than the 10th day of January, April, July and October in each year with respect to the calendar quarter ending on the last day of the immediately preceding month.

(c) Except as provided in (d) below, payments for uninterruptible service made with respect to all quarters of the same fiscal year shall be equal whether or not:

1. The purchaser elected to utilize the optional water use schedule as defined in the water purchase contract; or

2. The purchaser actually withdraws the full amount of water available pursuant to uninterruptible service.

(d) The purchaser is not required to make payment to the extent that the Authority does not make water available under such uninterruptible service (whether by reason of rationing or otherwise) except for an event of default by the purchaser. In all other cases, purchaser's obligations under the terms of the water purchase contract are absolute and unconditional, and shall not, except as expressly provided for under the terms of the water purchase contract, be affected by fluctuations in consumptive use by purchaser's customers or by any failure by the Authority to perform its obligations under the water purchase contract or be subject to any other defense or to any reduction, whether by offset, counterclaim or otherwise except for any reductions or credits provided for in the water purchase contract or in the most current rate schedule or this subchapter.

(e) The Authority shall notify the purchaser not later than 30 days prior to the beginning of each annual payment period as defined in the rate schedule or the water purchase contract of the amount of the purchaser's annual payment for uninterruptible service and, if the

Authority determines that the quarterly water payments under the water purchase contract should be made on a basis other than in equal installments, in order to permit the Authority to meet its obligations as they become due, it shall, concurrently with such notice, provide the purchaser with a schedule of the amounts of each of the quarterly water payments to be made by the purchaser.

(f) Payment for water provided to purchaser pursuant to either short-term service or standby service as defined in N.J.A.C. 7:11-5.2 or the water purchase contract, as well as for any other charges payable by reason of excessive withdrawals, shall be made within 30 days following receipt of the Authority's invoice therefore and shall be based upon Manasquan Reservoir System water actually consumed, or in the case of standby service, the demand charge referred to in the rate schedule.

(g) Payments shall be made as billed, at such place as the Authority may designate.

(h) All amounts not paid when due shall be subject to a late payment charge at two percent above the prime rate of the First Fidelity Bank, N.A., prevailing on the due date, but not to exceed 18 percent per annum, from the date when due until paid.

(i) Unless otherwise provided in the water purchase contract, any payment, notice, communication, request, reply or advice to be provided or permitted to be given, made or accepted by the Authority or purchaser to each other shall be given or be served either by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified.

1. Notice deposited in the mail in the manner described in paragraph (i) above shall be conclusively deemed to be effective, from and after the expiration of three days after it is so deposited.

2. Notice given in any other manner shall be effective only if and when received by the party to be notified.

7:11-5.6 Sale of excess water

(a) The purchaser may notify the Authority that for a period of not less than 60 days nor more than one year (surplus period) specified amounts of water available to it under the uninterruptible service provided for in the water purchase contract (surplus water) will be surplus to the needs of the purchaser, which notice shall be given not less than 30 days nor more than 90 days prior to commencement of the surplus period.

(b) Following receipt of such notice, the authority shall notify each other purchaser of the availability for purchase of the surplus water (and any surplus water under any other water purchase contract) on the same basis as provided for short-term service in the most current rate schedule.

(c) To the extent that the Authority shall receive purchase requests from purchasers for surplus water (which are in addition to and not in substitution for purchases of water on a short-term service or standby service basis under existing water purchase contracts), it will use its best commercially reasonable efforts to provide such surplus water (on a pro rated basis if other surplus water is also available) to such purchasers.

(d) The Authority shall pay over to the purchaser, or credit against the amounts due or to become due from the purchaser under the water purchase contract, the amounts received from the sale of the surplus water arising under the water purchase contract after first deducting therefrom all costs and expenses (pro rated as appropriate) incurred by the Authority in carrying out this section.

7:11-5.7 Peak demand

(a) The water purchase contract shall specify the uninterruptible service which will be provided in terms of million gallons per day (mgd). This represents the maximum amount to be withdrawn in any 24 hour period except as otherwise permissible under the optional water use schedule.

(b) The maximum permitted withdrawal rate shall be specified by the Authority in the water purchase contract.

7:11-5.8 Period of contract

(a) The effective date, period of contract, and date of commencement of charges shall be set forth in the water purchase contract.

(b) The water purchase contract shall expire at the end of the specified upon period, except as to those matters set forth at N.J.A.C. 7:11-5.9 and 5.10.

7:11-5.9 Renewal

(a) If the Department of Environmental Protection approves an apportionment of Manasquan Reservoir System water to the purchaser for an additional period beyond the term of the expiring water purchase contract, the purchaser shall immediately give notice to the Authority.

(b) If the purchaser desires to continue withdrawal of water from the Manasquan Reservoir System beyond the expiration date specified in the current water purchase contract, the purchaser shall submit to the Authority notification of intent to renew not less than 90 days in advance of the expiration date of the current water purchase contract.

(c) If the purchaser has not submitted a notification of intent to renew as provided in (b) above, the Authority shall notify the purchaser of the expiration date of the water purchase contract. If, after such notification by the Authority, the purchaser continues withdrawal, the charge for such withdrawal will be twice the rate per million gallons as specified in the Authority's rate schedule in effect at that time ***until the effective date of any new agreement***.

7:11-5.10 Temporary curtailment or suspension of service

In the event of an emergency, natural or otherwise, and where practicable, after public notice and hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Authority may temporarily curtail or suspend the purchaser's withdrawal of water from the Manasquan Reservoir System, in which event purchaser's payment obligation shall be reduced as provided in N.J.A.C. 7:11-5.5.

7:11-5.11 Force Majeure

(a) If by reason of Force Majeure either the Authority or purchaser shall be rendered unable wholly or in part to satisfy its obligations under the water purchase contract, the obligation of that party, to the extent affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed.

(b) The party claiming to be affected by the Force Majeure shall provide the other party with written notice of the facts and circumstances of the Force Majeure and how they impact upon contract performance.

(c) The existence of an element of Force Majeure shall in no event affect the obligation of the purchaser to make the quarterly water payments and other payments required under the water purchase contract (subject to the provisions of N.J.A.C. 7:11-5.5(b)), but nothing in this subchapter shall require the purchaser to make any payment for water which the Authority does not make available to the purchaser.

7:11-5.12 Assignment

(a) Neither party to the water purchase contract may assign its contractual rights or obligations without the consent of the other party or parties entitled to the benefit of such rights or obligations except for any assignment by a purchaser under the terms of a three party water purchase contract to New Jersey-American Water Company, Inc.

(b) In the case of New Jersey-American Water Company, Inc., upon any such assignment, and the delivery to the Authority of an instrument of assumption of the liabilities of the purchaser by New Jersey-American Water Company, Inc., the purchaser shall be relieved of all further liability under the terms of the water purchase contract.

7:11-5.13 Withdrawal scheduling

(a) Prior to withdrawal of Manasquan Reservoir System water, the purchaser shall submit in writing to the Authority a schedule for the normal withdrawal of water from the Manasquan Reservoir System, presented in terms of instantaneous withdrawals of water at specified gallons per minute and gallons per daily period.

(b) If the purchaser elects to utilize the optional water use schedule, it shall submit to the Authority the water use plan required by the optional water use schedule.

(c) The purchaser shall notify the Authority 48 hours in advance of any proposed departure from said schedule or plan.

(d) If an unanticipated emergency, natural or otherwise, necessitates the withdrawal of more water than contemplated by said schedule or plan, purchaser shall promptly notify, and to the extent feasible, secure prior approval of the Authority and notify the Authority of the proposed time of resumption of normal consumption.

(e) If the purchaser fails to notify the Authority, purchaser shall reimburse the Authority for any loss or expense occasioned thereby.

7:11-5.14 Withdrawal limitation

(a) The purchaser shall not withdraw any quantity of water on any day in excess of the amount in the schedule or plan submitted to the Authority pursuant to N.J.A.C. 7:11-5.13.

(b) The purchaser shall not, without the consent of the Authority, withdraw water at rates greater, in the aggregate for all supplies provided under the water purchase contract, than the maximum gallons per minute and total gallons in any daily period, as specified in the water purchase contract. These amounts shall be appropriately adjusted to reflect fluctuations in water use permissible under the optional water use schedule.

(c) The purchaser shall not withdraw any water under short-term service provisions of the water purchase contract without first giving notice to the Authority of its proposed utilization of the short-term service, and receiving approval for such utilization from the Authority, in accordance with the procedures established in N.J.A.C. 7:11-5.13.

(d) Subject to the provisions of uninterruptible service and/or short-term service as specified in the water purchase contract, purchaser may withdraw water under standby service without prior notification to the Authority.

(e) ***In the event of an emergency, natural or otherwise, and, where practicable, after public notice and hearing in accordance with the Administrative Procedure Act, P.L. 1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.), the Authority reserves the right to temporarily curtail or suspend the use of the System.*** If the Authority determines that rationing Manasquan Reservoir System water is necessary by reason of drought conditions (the existence of which shall be determined in compliance with all applicable provisions of law) or a Manasquan Reservoir System emergency, it shall allocate all available water first to providing uninterruptible service under all water purchase contracts, without any preference or priority based on date of entry into the water purchase contract or commencement of service thereunder, at the Authority's election in accordance with the following:

1. Pro rata in accordance with the volume of water available to each system water purchaser under the uninterruptible service provided for in the relevant water purchase contract;

2. Pro rata in accordance with the volume of water actually provided each system water purchaser during the last preceding annual payment period in which rationing of water was not necessary; or

3. Upon such other basis as shall be, in the judgment of the Authority, appropriate to distribute equitably among all system water purchasers the burden of such rationing.

(f) In the event that rationing is to be imposed by reason of a Manasquan Reservoir System emergency for more than a seven day period, the Authority shall act in accordance with the requirements of the Department of Environmental Protection.

(g) If such rationing is instituted, or if in fact the Authority does not provide the amount of water called for in the water purchase contract, or advises the purchaser that it will be unable to do so, the purchaser may procure replacement water from other sources but shall nevertheless at all times be required to pay for all water available for delivery to the purchaser from the Manasquan Reservoir System on an uninterruptible service basis, except to the extent that purchaser is required, in order to obtain replacement water, to contract for more replacement water than the amount of the curtailment imposed by the Authority.

(h) Purchaser shall notify the Authority of the terms upon which it arranges for such alternate supply of water.

7:11-5.15 Withdrawal system

(a) Water shall be withdrawn from the Manasquan Reservoir System at purchaser's sole cost and expense. Title to all water supplied from the Manasquan Reservoir System shall be in the Authority up to the point of delivery, at which point title shall pass to the purchaser upon its withdrawal of such water.

(b) The Authority shall grant to the purchaser an easement for the term of the water purchase contract permitting access for the purchaser's staff and equipment upon, over and under Manasquan Reservoir System property as may be necessary to install and construct the purchaser's interconnection system at the point of delivery and on adjoining Manasquan Reservoir System property at or near the point of delivery, and to replace, repair, operate and maintain purchaser's interconnection system, all at purchaser's sole cost and expense.

(c) Purchaser shall submit its engineering plans for purchaser's interconnection system to the Authority and shall commence construction of such interconnection system as soon as final approval of such plans by the Authority. Purchaser shall allow the Authority to test the interconnection system prior to operation of the interconnection system. Failure to complete construction of the purchaser's interconnection system shall not affect the obligation of purchaser to make the quarterly water payments and the other payments provided for under the water purchase contract.

(d) The purchaser shall make no material alterations in purchaser's interconnection system without the prior written approval of the Authority.

(e) The purchaser shall make such changes in its withdrawal system as may from time to time be ordered in writing by the Authority.

(f) The Authority or its designated representative shall have the right at any time to examine purchaser's interconnection system. The purchaser shall, at its sole cost and expense, within 10 days (or such longer period as may be required by law) after receipt of written demand from the Authority, make such modifications or repairs to purchaser's interconnection system as, in the opinion of the Authority, may be required to eliminate leakage of water from, or potential damage to, the System. On purchaser's failure to do so the Authority may make such modifications and repairs and the purchaser shall reimburse the Authority promptly after demand for the Authority's cost and expense in so doing.

7:11-5.16 Meter requirements

(a) The purchaser shall purchase or construct, install, operate, maintain and repair, as part of purchaser's interconnection system, at its sole cost and expense, a flow meter or measuring device of a type and in a location approved by the Authority.

(b) The purchaser shall have said flow meter tested for accuracy at its own sole cost and expense before installation, by a testing firm approved by the Authority, and shall furnish a certified report of such test to the Authority.

(c) The purchaser shall have such test repeated and furnish a report of said test to the Authority:

1. At least once each year no later than the anniversary date of the meter installation;

2. Following meter repairs; and

3. At such other reasonable times as the Authority may reasonably request at purchaser's sole cost and expense.

(d) In the event that any test required pursuant to (c)3 above establishes that the meter does not vary more than two percent from actual, such test shall be at the sole cost and expense of the Authority.

(e) In the case of a joint allocation to be operated through a single agent designated as the purchaser, there shall be provided by the purchaser in addition to the meter at the point of withdrawal, meters to measure the distribution to each of the several parties to the allocation.

7:11-5.17 Meter readings

(a) The purchaser shall meter all water withdrawn from the Manasquan Reservoir System.

(b) Monthly meter readings shall be taken by the purchaser on the last day of each month, unless otherwise approved by the Authority, or if that day falls on Sunday or a legal holiday, on the first working day thereafter.

(c) The purchaser shall keep a daily record of flow rates and cumulative daily water withdrawal totals and shall submit to the Authority, not later than the tenth business day of each such month, copies of such records for the preceding month.

(d) The Authority or its designated representative shall have the right at any time to examine the flow meter or other measuring device and the above mentioned records, as well as to order tests pursuant to N.J.A.C. 7:11-5.16, and repairs or replacements pursuant to N.J.A.C. 7:11-5.18.

7:11-5.18 Meter failure

(a) In the event of meter malfunction involving variances greater than two percent from actual, the Authority may estimate the amounts of water actually withdrawn and base charges upon such estimates rather than meter readings, without prejudice to the right of the purchaser in the event of any dispute to pursue any legal remedy in connection therewith. Such estimates shall be based on the purchaser's average daily withdrawals, with due consideration of the scale of plant operation before and during the breakdown period, or on such other method as the Authority shall select.

(b) In the event of repeated or prolonged failure of any meter or measuring device to operate properly, the purchaser shall, upon Authority order, repair or replace the meter or other measuring device at the purchaser's cost and expense.

(c) In the event of failure of the purchaser to comply with the order set forth in (b) above, the Authority may order suspension of withdrawal until the faulty meter or other measuring device has been repaired or replaced provided that such suspension shall not excuse the purchaser from payment of charges set forth in the applicable rate schedule.

7:11-5.19 Assistance to be furnished by purchaser

The purchaser, at his or her own expense, shall furnish the Authority such assistance as it may require for the purpose of examining the purchaser's withdrawal system, making meter tests, taking samples, or performing other duties in connection with the water purchase contract.

7:11-5.20 Water quality

(a) The water to be supplied by the Authority shall be raw, untreated water which the Authority shall supply to all system water purchasers without distinction as to source or quality of the water supplied.

(b) The Authority shall establish and maintain a system, of such design as the Authority shall, in its sole discretion, deem appropriate, to monitor the water quality of ground water and surface water from which Manasquan Reservoir System water is derived and to provide the information derived from such system to the purchaser.

(c) Water withdrawn for potable use shall be treated by the purchaser to meet the standards contained in N.J.A.C. 7:10.

7:11-5.21 Disposition of facilities

Within 90 days after termination of the water purchase contract or such longer period as may reasonably be required, the purchaser shall remove from Manasquan Reservoir System property purchaser's interconnection system and any other facilities installed by purchaser on Manasquan Reservoir System property, and shall restore said property to its former condition as nearly as may be and in a manner satisfactory in the reasonable judgment of the Authority and shall release and reconvey any easement granted pursuant to N.J.A.C. 7:11-5.15. On purchaser's failure to do so, the authority may make such removal and restoration at the sole cost and expense of the purchaser, which cost and expense the purchaser agrees to pay on demand. The Authority also reserves the option to sell purchaser's interconnection system and other facilities to assist in defraying the cost and expense of removal and restoration. Purchaser may, within 30 days after termination of the water purchase contract, submit a written offer to sell or donate such systems and/or facilities to the Authority, which the Authority shall accept or reject in writing within 60 days.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1991-92 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6

Proposed: July 16, 1990 at 22 N.J.R. 2071(a).

Adopted: November 21, 1990 by the Fish and Game Council, Cole Gibbs, Chairman.

Filed: November 26, 1990 as R.1990 d.617, **with 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-29 et seq. and 23:1-1 et seq.

DEP Docket Number: 023-90-06.

Effective Date: December 17, 1990.

Operative Date: January 1, 1991.

Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing news releases to 72 newspapers of general circulation and approximately 50 outdoor writers and specialty publications.

A public hearing concerning the proposal was held on August 14, 1990 at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division) located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Notice of the hearing was filed with the Secretary of State on August 9, 1990, was posted on the Secretary of State's bulletin board and was delivered to the Newark Star-Ledger and Atlantic City Press. The hearing was attended by 14 members of the general public of which seven presented verbal comment. There were no written comments received by the Department during the public comment period which closed on August 20, 1990.

General

COMMENT: We should continue to look at protection of species as well as exploitation—we have not done nearly enough.

RESPONSE: The Fish and Game Council is charged by statute (see N.J.S.A. 13:1B-28 and 13:1B-30) with formulating policies for the protection and propagation of fish, birds and game animals and the propagation and distribution of food fish and the keeping up of the supply thereof in the waters of this State. It is the function of the Department of Environmental Protection (Department) through the Division to ensure through scientific investigation that these functions are performed in a manner that gives due regard to the ecology, of which hunting and gathering Homo sapiens is an integral part (see N.J.S.A. 13:1D-4 and 13:1D-9). The Fish Code is designed to allow the angler to assume his natural place in the food chain, so that he is no more exploitive of the resource than any other natural predator.

N.J.A.C. 7:25-6.3(f)11

COMMENT: Expansion of trout-stocking to the Mulberry Street area of the Delaware-Raritan Canal in Trenton should not be undertaken because the water is not conducive to trout survival. The waters are polluted and too hot in the summer, which results in a lot of dead fish. Moreover, trout which previously would have been stocked in better native waters should not have to be diverted here—it would be better just to reset the boundary at Mulberry Street without reallocation of fish from other areas.

RESPONSE: The portion of the Delaware-Raritan Canal which is adjacent to the Mulberry Street expansion in Trenton and therefore shares its water quality is currently stocked. No fishkills in that area have been reported, and the Division has no experience of fish mortality. Moreover the proposed area has excellent access because of its relatively urban character. The adjacent portion of the canal attracts heavy angler usage and the proposed expansion is expected to provide for a significant increase in recreational opportunity, while the number of trout reallocated from other areas will be insignificant.

N.J.A.C. 7:25-6.3(f)11 and 13

COMMENT: Trout should not be reallocated from one place to another in order to add to the list of trout-stocked streams. Pequest Hatchery can raise only so many fish. If they come from the Musconetcong, a lot of people will be disappointed.

RESPONSE: The Division has instituted a new method of allocation for the purpose of equitably distributing fish among all trout-stocked waters. This is achieved using a formula which takes into account such factors as width, flow, angler access and capacity of the waters in question. Although this will result in some slight downward adjustments in trout-stockings in some waters, the effect will not be one of removing fish from one area to supply another. Moreover, the continued success of the Wild Trout Stream Program will have the opposite effect—that of increasing the stock of trout available to other waters.

N.J.A.C. 7:25-6.3(f)21

COMMENT: It is good that Columbia Lake is no longer on the closure list, but its upstream limit which comprises the boundary between Columbia Lake and the Paulinskill River should be defined because of separate regulations regarding stocking in the lake and in the Paulinskill River.

RESPONSE: The Council felt that the distinction between Columbia Lake and the Paulinskill River was self-evident. The Warrington Road bridge which is the most downstream of the bridges in that area is the downstream limit of the Paulinskill River and the upstream limit of Columbia Lake. The Council acknowledges the support of this commenter.

N.J.A.C. 7:25-6.4

COMMENT: Fly-fishing-only regulations on State-owned waters should be replaced with lure-fishing-only restrictions. The lure-only restriction is sufficient to accomplish the objective of reducing hooking mortality in catch and release programs. Applying a fly-fishing-only restriction to State-owned waters is denying people something for which they have paid.

RESPONSE: Research findings support the commenter's contention with regard to hooking mortality. All newly proposed special regulation trout fishing areas will be limited to artificial lures only—which includes fly-fishing—as opposed to fly-fishing-only regulations. Since only a few miles of stream remain restricted to fly-fishing only, the Division and Council have elected to maintain the status quo in these areas in order to provide for the traditional practice of the sport and the strong support for that opportunity as provided by these regulations. Thus, all segments of the fishing community may be accommodated.

COMMENT: Pequest Trout Conservation Area should not be extended by 0.7 miles and the "closure" date should not be extended to include the fall and the winter. Trout cannot be stockpiled in that area and there are very few trout there in the summer.

RESPONSE: The current half mile Trout Conservation Area is insufficient to provide for the number of people wishing to use it. This stretch also did not include the portion of river adjacent to the fish hatchery which, because of its high-quality waters and resultant ability to support native trout, was of primary concern to the Division when it originally proposed the area. It is the extremely high-quality of these trout waters which enable the stream to support a trout fishery during the summer and justifies extension of its length to approximately 1.2 miles.

The closed season (from March 17 to April 6, 1991) is not extended, but rather the designation of Trout Conservation Area (where only one 15-inch fish may be retained) is applied from May 20, 1991 to March 16, 1992. These dates are chosen to allow the eighth and last spring stocking to take place during that period of restriction in order to provide enough fish to support summer angling.

Thus, this redesignation not only allows anglers to keep most of the fish they catch before May 20, 1991, it also provides increased angling opportunity during the summer and, incidently, opens up the fishery to those seeking access from the Pequest Hatchery parking lot.

N.J.A.C. 7:25-6.5 to 6.7

COMMENT: There is no mention of spray-on scents that can be applied to artificial lures—specifically "power bait," which is deadly to brook and rainbow trout. It should be prohibited in all conservation areas and natural areas.

RESPONSE: Consideration of power bait is beyond the scope of the proposal. However, regulation of biologically or chemically enhanced baits is under consideration by the Council and the Division as the subject of possible future regulation.

N.J.A.C. 7:25-6.6

COMMENT: The Wild Trout Stream Program should be discontinued. These streams contain no native trout but rather stocked trout that have escaped. Cessation of stockings in these waters has eliminated 19 waters from public use.

RESPONSE: The primary objective of the Wild Trout Stream Program, adopted in 1989, was the preservation and enhancement of the State's limited naturally reproducing trout resources. These include both native brook trout, and naturally reproducing non-native trout of other species. Although these may be formerly introduced species that have escaped into the wild, they now fill a niche in the existing ecosystem.

In order to preserve this ecosystem, it is necessary to halt the practice of stocking hatchery-raised trout on top of the native trout population to eliminate competition between stocked and naturally reproducing trout for the same habitat, including food sources, and predation by fully grown stocked trout upon naturally reproducing trout fry or fingerlings. Although the use of these streams cannot be as great as it would be if the stocking were to continue, this decrease in use is not so great as to remove these waters from public use and is necessary to preserve the naturally reproducing trout fishery.

COMMENT: The concept of the Wild Trout Stream Program is one of the best things the Division and the Council have ever come up with. As a result, New Jersey has had remarkable fishing both in terms of quantity and quality in the past year. In the areas we have trout waters, we have fishing that is the equal of any place on the East Coast.

RESPONSE: The Council and the Division acknowledge the support of this commenter.

N.J.A.C. 7:25-6.7(b)3

COMMENT: If there is to be a 15-inch one-fish limit on trout in Trout Conservation Areas, there should be one hatchery pond set aside to raise the fish to 15 inches from which to take fish to stock these streams.

RESPONSE: This section remains unchanged and is beyond the scope of the proposal.

Moreover, as noted above (see Response to N.J.A.C. 7:25-6.3(f)11 and 13 Comment), trout stocks are allocated according to a formula which takes a number of factors into account. If additional hatchery resources are diverted to raising larger trout for Trout Conservation Areas, other waters will not receive an equitable share of stocked fish, particularly since adherence to the minimum size limit will allow these fish to obtain that size in the Trout Conservation Areas as well.

N.J.A.C. 7:25-6.19(a)

COMMENT: Increase in the size limits for smallmouth bass from nine to 12 inches and for walleye from 15 to 18 inches, as well as a decrease in the daily creel limit from five to three fish for walleye in the Delaware River, are good proposals.

RESPONSE: The Council acknowledges this support of these commenters.

N.J.A.C. 7:25-6.19(a)

COMMENT: The Council should distinguish between striped bass and hybrid striped bass and should provide for a hybrid striped bass season in the Delaware River. Also, the creel limit for striped bass should not be increased from one to two.

RESPONSE: The creel limit for striped bass had been two fish. However, amendment of the Striped Bass Act, N.J.S.A. 23:5-43 et seq., to include all waters, instead of just marine waters of this State, has removed the striped bass fishery from the ambit of regulation under this Chapter (N.J.A.C. 7:25-6).

Hybrid striped bass is provided for in N.J.A.C. 7:25-6.13(n). In order to clarify the application of this section to the section governing the Delaware River between New Jersey and Pennsylvania, a reference to N.J.A.C. 7:25-6.13 has been included in N.J.S.A. 7:25-6.19 on adoption.

N.J.A.C. 7:25-6.19(b)

COMMENT: New Jersey and Pennsylvania should have a reciprocal agreement to allow licensees of either state to fish from the shores of the other along the Delaware River without being required to obtain a non-residents' license in that state.

RESPONSE: Such an agreement is legislatively prohibited by N.J.S.A. 23:9-1, which requires a non-residents' and aliens' fishing license for fishing in the Delaware River throughout its entire length within the jurisdiction of this State.

Summary of Agency-Initiated Changes

N.J.A.C. 7:25-6.21 is recodified N.J.A.C. 7:25-6.2 and moved to the appropriate position.

A reference to N.J.A.C. 7:25-6.13(e) to (n) is added to N.J.A.C. 7:25-6.19 to avoid the impression that the exceptions listed in N.J.A.C. 7:25-6.13(a) to (d) apply to N.J.A.C. 6.13(e) to (n). Additionally, the reference to the Game Code was removed from N.J.A.C. 7:25-6.19(a) as confusing and inaccurate.

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

SUBCHAPTER 6. 1991-92 FISH CODE

7:25-6.1 (No change.)

***7:25-6.2 Definitions**

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Creel or possession limit" means the total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

"Baitfish" shall include the following species:

1. Alewife (landlocked form)	**Alosa pseudoharengus;**
2. Golden shiner	**Notemigonus crysoleucas;**
3. Banded killifish	**Fundulus diaphanus;**
4. Mummichog	**Fundulus heteroclitus;**
5. Spotfin killifish	**Fundulus luciae;**
6. Rainwater killifish	**Lucania parva;**
7. American brook lamprey	**Lampetra lamottei;**
8. Fathead minnow	**Pimephales promelas;**
9. Bluntnose minnow	**Pimephales notatus;**
10. Stonecat	**Noturus flavus;**
11. Tadpole madtom	**Noturus gyrinus;**
12. Margined madtom	**Noturus insignis;**
13. All shiner, dace, and minnows of the following genera:	**Notropis, Rhinichthys, and Semotilus.**

"Closures" (closed waters) means those waters in which angling is not permitted, particularly in reference to time (also Closed Season).

"Code" means the State Fish Code.

"Creeled trout" shall mean any trout which a fisherman has in his possession.

"Director" means Director of the Division of Fish, Game and Wildlife.

"Division" means the Division of Fish, Game and Wildlife.

"Foodfish" for purposes of N.J.A.C. 7:25-6.11 only, means the following species:

1. Atlantic sturgeon	**Acipenser oxyrhynchus;**
2. White sucker	**Catostomus commersoni;**
3. Carp	**Cyprinus carpio;**
4. American eel	**Anguilla rostrata;**
5. Blueback herring	**Alosa aestivalis;**
6. Hickory shad	**Alosa mediocris;**
7. American shad	**Alosa sapidissima;**
8. Gizzard shad	**Dorosoma cepedianum;**
9. Alewife (anadromous form)	**Alosa pseudoharengus;**
10. Yellow perch	**Perca flavescens;**
11. White perch	**Morone americana;**
12. White catfish	**Ictalurus catus;**
13. Black bullhead	**Ictalurus melas;**
14. Brown bullhead	**Ictalurus nebulousus;**
15. Yellow bullhead	**Ictalurus natalis;**
16. Channel catfish	**Ictalurus punctatus;**
17. Bowfin	**Amia calva; and**

18. Any other marine fish species that is legal for taking with net in marine waters.

"Natural bait" means any bait that in its live, preserved or original form would be consumed by fish.

"Open waters" (all sections except N.J.A.C. 7:25-6.9) means those waters in which angling is permitted, particularly in reference to time.

"Open waters" (N.J.A.C. 7:25-6.9) means those waters not covered with ice.

"Other fish species", and all hybrids and strains thereof, which are provided for by the provisions of this Code, either directly or implied, are as follows:

1. Shortnose sturgeon	**Acipenser brevirostrum**
2. Atlantic sturgeon	**Acipenser oxyrhynchus**
3. Striped bass hybrid	**Morone saxatilis x Morone chrysops**
4. White sucker	**Catostomus commersoni**
5. Creek chubsucker	**Erimyzon oblongus**
6. American eel	**Anguilla rostrata**
7. Blueback herring	**Alosa aestivalis**
8. Hickory shad	**Alosa mediocris**
9. American shad	**Alosa sapidissima**
10. Gizzard shad	**Dorosoma cepedianum**
11. Alewife (anadromous form)	**Alosa pseudoharengus**
12. Chinook salmon	**Oncorhynchus tshawytscha**

"Possession" means all fish, live or dead, under the control of the fisherman.

"Size limit" means the legal length of fish and may be expressed as a minimum size or a maximum size of a fish that may be retained. Length shall be the maximum total length.

"Snagging" means the hooking of fish other than inside the mouth, through the action of the fisherman.

"Trout" shall include the following species and all hybrids and strains thereof:

1. Brook trout	**Salvelinus fontinalis**
2. Lake trout	**Salvelinus namaycush**
3. Brown trout	**Salmo trutta**
4. Rainbow trout	**Oncorhynchus mykiss**

"Unattended" means user not available for questioning by officer at the time of inspection.

"Warmwater fish" includes the following species and all hybrids and strains thereof:

1. Largemouth bass	**Micropterus salmoides**
2. Smallmouth bass	**Micropterus dolomieui**
3. Black crappie	**Pomoxic nigromaculatus**
4. White crappie	**Pomoxic annularis**
5. Rock bass	**Ambloplites rupestris**
6. Redbreast sunfish	**Lepomis auritis**
7. Green sunfish	**Lepomis cyanellus**
8. Pumpkinseed	**Lepomis gibbosus**
9. Bluegill	**Lepomis macrochirus**
10. Longear sunfish	**Lepomis megalotis**
11. Redear sunfish	**Lepomis microlophus**
12. Yellow perch	**Perca flavescens**
13. Walleye	**Stizostedion vitreum vitreum**
14. White perch	**Morone americana**
15. White catfish	**Ictalurus catus**
16. Black bullhead	**Ictalurus melas**
17. Brown bullhead	**Ictalurus nebulousus**
18. Yellow bullhead	**Ictalurus natalis**
19. Channel catfish	**Ictalurus punctatus**
20. Redfin	**Esox americanus americanus**
21. Northern pike	**Esox lucius**
22. Muskellunge	**Esox masquinongy**
23. Chain pickerel	**Esox niger**
24. Bowfin	**Amia calva**
25. Carp	**Cyprinus carpio***

7:25-6.3 Trout Season and Angling in Trout-Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19, and (i) below; the trout season for 1991 shall commence 12:01 A.M. January 1, 1991 and extend to midnight March 17, 1991. The trout season shall re-open at 8:00 A.M. Saturday, April 6, 1991 and extend to include March 16, 1992.

(b) Except as provided in N.J.A.C. 7:25-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight of the 17th of March to 8:00 A.M. on April 6, 1991 in ponds, lakes or those portions of streams that are listed herein for stocking during 1991.

(c) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, waters with listed stocking dates shall be closed to all fishing from 5:00 A.M. to 5:00 P.M. on listed dates; included in these waters are all feeder

and tributary streams for a distance of 100 feet from the main channel.

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters from which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 12, 19, 26; May 3, 10, 17, 24.
2. Black River—Route 206, Chester, the posted Black River Fish and Game Club property at the lower end of Hacklebarney State Park—April 11, 18, 25; May 2, 9, 16, 23.
3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 8, 15, 22, 29; May 6, 13, 20.
4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 8, 15, 22, 29; May 6, 13, 20.
5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden footbridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 8, 15, 22, 29; May 6, 13, 20.
6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 12, 19, 26; May 3, 10, 17, 24.
7. Paulinskill River and E. Br. and W. Br.—County Route 648 Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April 11, 18, 25; May 2, 9, 16, 23.
8. Pequest River—Source to Delaware River—April 12, 19, 26; May 3, 10, 17, 24.
9. Pohatcong Creek—Route 31 to Delaware River—April 9, 16, 23, 30; May 7, 14, 21.
10. Ramapo River—State line to Pompton Lake—April 11, 18, 25; May 2, 9, 16.
11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 10, 17, 24; May 1, 8, 15, 22.
12. Raritan River S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 9, 16, 23, 30; May 7, 14, 21.
13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 8, 15, 22, 29; May 6, 13, 20.
14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April 8, 15, 22, 29; May 6, 13, 20.
15. Wallkill River—W. Mt. Road to Route 23 Hamburg—April 8, 15, 22, 29; May 6, 13, 20.
16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April 12, 19, 26; May 3, 10, 17, 24.

(e) Except as provided in N.J.A.C. 7:25-6.6 to 6.8, no person shall catch, take, kill or possess trout during the closed period (5:00 a.m. to 5:00 p.m.) on any of the waters listed for in-season closures.

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parentheses indicates the anticipated number of stockings to be carried out from April 8 through May 31, provided that, in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. (No change.)
2. Bergen County

Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)
Hohokus Brook—Forest Road to Whites Pond—(4)
Indian Lake—Little Ferry—(4)
Mill Pond—Park Ridge—(3)
Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)
Saddle River—State Line to Grove Street, Ridgewood—(5)
Tienekill Creek—Closter, entire length—(3)
Whites Pond—Waldwick—(4)

3.-9. (No change.)

10. Hunterdon County

Amwell Lake—Linvale—(3)
Beaver Brook—Clinton Township, entire length—(2)
Capoolong Creek—Pittstown, entire length—(5)
Delaware-Raritan Feeder Canal—Bulls Island to Hunterdon—Mercer County line—(6)
Everittstown Brook—Everittstown, entire length—(1)
Frenchtown Brook—Frenchtown, entire length—(2)
Hakihohake Creek—Holland Township, entire length—(5)
Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—(5)
Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—(5)
Neshanic River—Kuhl Road to Hunterdon County Route 514—(2)
Rockaway Creek—Readington Township, entire length—(4)
Rockaway Creek, S. Br.—Lebanon to Whitehouse, entire length—(5)
Round Valley Reservoir—Lebanon—(3)
Spring Mills Brook—Spring Mills, entire length—(2)
Spruce Run—Glen Gardner and Lebanon Township, entire length—(5)
Spruce Run Reservoir—Clinton—(3)
Sydney Brook—Sydney, entire length—(1)
Wickecheoke Creek—Covered Bridge, Sergeantsville, to Delaware River—(2)

11. Mercer County

Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—(4)
Colonial Lake—Lawrence Township—(3)
Delaware-Raritan Canal—Mulberry Street Trenton, to Alexander St., Princeton—(4)
Delaware-Raritan Feeder Canal—Hunterdon-Mercer County line to Upper Ferry Road Bridge—(6)
Rosedale Lake—Rosedale—(3)
Stony Brook—Woodsville to Port Mercer—(4)

12. (No change.)

13. Monmouth County

Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)
Englishtown Mill Pond—Englishtown—(3)
Garvey's Pond—Navesink—(3)
Hockhocksen Brook—Hockhocksen Road to Garden State Parkway bridge (northbound)—(5)
Holmdel Park Pond—Holmdel—(5)
Manasquan Reservoir—Howell Township—(3)
Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(5)
Mohawk Pond—Red Bank—(4)
Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)
Shark River—Hamilton, Route 33 to Remsen Mill Road—(5)
Spring Lake—Spring Lake—(3)
Takanassee Lake—Long Branch—(4)
Topenemus Lake—Freehold—(3)
Yellow Brook—Heyers Mill Road to Muhlenbrink Rd., Colts Neck Township—(2)

14. Morris County

Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—(4)
Drakes Brook—Flanders, entire length—(5)
Hibernia Brook—Hibernia, entire length—(5)
India Brook—Mountainside Ave. to Route 24, Ralston—(5)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Musconetcong—Netcong—(3)
Mill Brook—Center Grove, entire length—(2)
Mt. Hope Pond—Mt. Hope—(3)
Passaic River—White Bridge to Dead River—(6)
Pompton River—Pequannock Township (see Passaic Co.)—(4)

Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(2)
Speedwell Lake—Morristown—(4)
Whippany River—Tingley Road, Morris Township, to Rt. 202, Morristown—(2)
15. (No change.)
16. Passaic County
Barbour's Pond—West Paterson—(3)
Clinton Reservoir—Newark Watershed—(3)
Greenwood Lake—West Milford—(3)
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—(3)
Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(6)
Pompton Lake—Pompton Lakes—(3)
Pompton River—Pompton Lake to Newark-Pompton Turnpike—(4)
Ringwood Brook—State line to Sally's Pond, Ringwood Park—(5)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)
17. (No change.)
18. Somerset County
Harrison Brook—Liberty Corner, entire length—(1)
Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—(4)
Middle Brook, E. Br.—Martinsville, entire length—(2)
Passaic River—White Bridge to Dead River—(4)
Peapack Brook—Peapack, entire length—(5)
Raritan River—Jct. of Raritan River N.Br. and S.Br. to dam at Edgewater Road—(4)
Rock Brook—Zion, entire length—(1)
19. Sussex County
Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
Andover Junction Brook—Andover, entire length—(2)
Beaver Run Brook—Beaver Run, entire length—(1)
Bier's Kill—Shaytown, entire length—(2)
Big Flat Brook, Upper—Saw Mill Lake, High Point State Park, to 100 ft. above Steam Mill Bridge on Crigger Road—(4)
Canistear Reservoir—Newark Watershed—(3)
Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—(5)
Cranberry Lake—Byram Township—(3)
Culver's Lake Brook—Frankford Township, entire length—(2)
Dry Brook—Branchville, entire length—(3)
Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—(5)
Glenwood Brook—Lake Glenwood to State line—(2)
Iliff Lake—Andover Township—(3)
Kymer's Brook—Andover, entire length—(2)
Lake Musconetcong—Netcong—(2)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Ocquittunk—Stokes State Forest—(3)
Little Flat Brook—Sandyston Township, entire length—(5)
Little Swartswood Lake—Swartswood—(3)
Lubbers Run—Byram Township, entire length—(5)
Neldon Brook—Swartswood, entire length—(2)
Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)
Papakating Creek, W. Br.—Libertyville, entire length—(2)
Pond Brook—Middleville, entire length—(5)
Roy Spring Brook—Stillwater, entire length—(1)
Saw Mill Lake—High Point State Park—(3)
Shimers Brook—Montague Township, entire length—(2)
Stony Lake—Stokes State Forest—(3)
Swartswood Lake—Swartswood—(3)
Trout Brook—Middleville, entire length—(2)
Tuttles Corner Brook—Tuttles Corner, entire length—(2)
Wawayanda Lake—Vernon—(3)
20. Union County
Green Brook—Route 527, Berkeley Heights, to Route 22, Scotch Plains—(2)
Lower Echo Park Pond—Mountainside—(3)
Milton Lake—Madison Hill Road Bridge to Milton Lake Dam, Rahway—(4)
Rahway River—Route I-78 Bridge, Springfield, to St. George Ave. (Route 27), Rahway—(4)
Seeleys Pond—Berkeley Heights—(3)
21. Warren County
Barker's Mill Brook—Vienna, entire length—(1)
Beaver Brook—Silver Lake Dam to Pequest River—(5)
Blair Creek—Hardwick Center to Blair Lake—(2)
Blair Lake—Blairtown—(3)
Buckhorn Creek—Roxburg, entire length—(2)
Columbia Lake and Gatehole—Knowlton Township—(3)
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(2)
Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—(3)
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—(2)
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—(5)
Merrill Creek—Stewartsville, below reservoir—(2)
Merrill Creek Reservoir—Stewartsville—(3)
Mountain Lake—Buttzville—(3)
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen, to Delaware River—(2)
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—(2)
Trout Brook—Hope, entire length—(2)

(g) There shall be no minimum size prescribed for brook trout, brown trout, rainbow trout or hybrids thereof except as designated in N.J.A.C. 7:25-6.5 to 6.9.

(h) A person shall not take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 6, 1991 until midnight May 31, 1991 or more than 4 of these species during the periods of January 1, 1991 to midnight March 17, 1991 and June 1, 1991 through midnight March 16, 1992 except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir in Hunterdon County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 17, 1991 extending to 8:00 A.M., April 6, 1991 must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly Fishing Waters

(a) From 5:00 A.M. on Monday, April 15, 1991 to and including November 30, 1991 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1991 to midnight March 17, 1991 and from 8:00 a.m. on April 6, 1991 to midnight March 16, 1992 the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following rules shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than 6 trout may be killed daily during the April 6 through May 31 portion of the season; at other times the limit is four. Trout in excess of the creel limit may be caught provided such trout are immediately returned to the water unharmed.

3. No bait or lures of any kind may be used except artificial flies which are expressly limited to dry flies, wet flies, bucktails, nymphs and streamers. Expressly prohibited are metal, plastic or wooden lures, plugs, spinners and flies with spinners attached, or any multiple-hooked device. In the Musconetcong "no kill" area, only single pointed barbless hooks may be used.

4. Also expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel.

5. No person may have in possession while engaged in angling on the waters designated as fly waters, any natural bait, live or preserved, in that period of time during which fly-fishing only is in effect.

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stretch of the Pequest River is designated as a Seasonal Trout Conservation Area: An approximate 1.0 mile portion of the Pequest River, within the Pequest Wildlife Management area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to the Conrail Railroad Bridge upstream of the Pequest Trout Hatchery Access Road.

(b) During the period of May 20, 1991 through March 16, 1992 the following regulations shall apply to the above designated Pequest River Trout Conservation Area:

1.-5. (No change.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) The following streams, or portions thereof, are designated as "Wild Trout Streams." Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation:

1.-5. (No change.)

6. Dark Moon Brook, also known as Bear Brook (Johnsonburg)

7.-12. (No change.)

13. Lomerson Brook, also known as Herzog Brook (Pottersville)

14.-28. (No change.)

29. Willoughby Brook, also known as Buffalo Hollow Brook (Clinton Twp.)

(b) The following shall apply to the wild trout streams designated at (a) above:

1.-3. (No change.)

4. During the period extending from 8:00 A.M. April 6, 1991 to September 15, 1991, a person shall not have in possession any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed; and

5. (No change.)

7:25-6.7 (No change in text.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) (No change.)

(b) The following rules apply to the Trophy Trout Lake designated at (a):

1.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M. January 1, 1991 to midnight, September 15, 1991 and from December 1, 1991 to midnight, September 15, 1992.

5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Major Trout Stocked Lakes

(a) (No change.)

(b) The following regulations apply to the above designated Major Trout Stocked lakes.

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day, more than 6 in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 6, 1991 until May 31, 1991 or more than 4 of these species during the periods of January 1, 1991 to midnight March 17, 1991 and June 1, 1991 through midnight March 16, 1992. Trout, if taken during the period commencing at midnight, March 17, 1991 and extending to 8:00 A.M., April 6, 1991 must be returned to the water immediately and unharmed.

4. (No change.)

5. In Merrill Creek Reservoir, the season for lake trout shall extend from 12:01 A.M. January 1, 1991 to midnight September 15, 1991 and from December 1, 1991 to midnight September 15, 1992.

7:25-6.10 Baitfish

(a) Except as provided for in trout-stocked waters listed in N.J.A.C. 7:25-6.3, 6.11, and (b) and (c) below, up to 35 baitfish per person per day may be taken from the freshwaters of the state with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not over 30 feet in length, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter or an umbrella net no greater than 3.5 feet square may be used in any of the freshwaters of the state.

(b) In waters listed in N.J.A.C. 7:25-6.3 to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March 17 to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and 4 feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter or an umbrella net no greater than 3.5 feet square.

(c) (No change.)

(d) Baitfish may be taken from the freshwater of the State in number greater than 35 per day under special permit issued by the Division in its discretion.

7:25-6.11 Nets

(a) (No change.)

(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until the following Sunday at 12 midnight.

2. It shall be legal to take baitfish by means of a bait seine not more than 150 feet in length or a dip net not to exceed 24 inches in diameter.

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.2 by the following means:

i.-iii. (No change.)

iv. Drifting gill nets, the smallest mesh of which shall be five inches while being fished, and shall not exceed 50 fathoms in length, for all species excepting striped bass. March 1 to June 15.

(c) In the tidal waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking baitfish, from Saturday at 2:00 P.M. until Sunday at 12 midnight next ensuing in each week.

2. It shall be legal to take baitfish by means of minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1¼ inches in diameter; or a scoop net with a single handle and with a diameter or not more than two feet.

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.2 by means of a seine, gill net, eel pot or fyke net, each without wings, or a parallel net at the edge of low water.

4. It shall be illegal to take or attempt to catch and take Atlantic sturgeon by means of a seine or gill net the meshes of which are less than 13 inches stretched measure while being fished, or to catch and take or attempt to catch or take any other foodfish with a seine the meshes of which shall be less than 2½ inches stretched measure while being fished, or any gill net the meshes of which shall be less than 5¼ inches stretched measure while being fished, provided that gill nets with a mesh not smaller than three inches may be used from March 1 through June 10 in each year, for the purpose of taking herring only. No person shall catch and take or attempt to catch and take any foodfish, except Atlantic sturgeon, by means of a seine or gill net between June 10 in each and every year, and March 1 next

ensuing. Suckers may be taken with seine only from October 15 in each and every year to March 15 next ensuing.

5. No person shall catch and take or attempt to catch and take fish of any kind, with a pound net, or net of any character, which is anchored or staked or fastened down in any manner, permanently or otherwise, or use any net so anchored or fastened down in any manner, except for a parallel net set at the edge of low water, but no such net shall be set within 500 feet of a sluice, breach or intake emptying into the Delaware River or its tributaries.

6. Eelpots and fyke nets, each without wings, may only be used from July 1 to May 31, both dates inclusive, each year for the purpose of catching carp, catfish, eels, and suckers only, provided that the entrance of said eelpot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches. All other species of fish which may be caught in said nets must be returned unharmed immediately to the waters from which taken.

7. Parallel nets whose meshes are not less than 3½ inches stretched measure, when being fished, may be used from September 1 to May 31, next ensuing in each year for the purpose of taking carp only. No such net shall be set in a manner that will impede navigation.

8. Seines with meshes not smaller than 2½ inches, and case nets may be used from September 1 to May 31 for the purpose of taking catfish and carp only. All fish other than catfish and carp shall be returned unharmed to the water below low-water mark.

(d) In the tidal freshwater portions of the tributaries to the Delaware Bay and River between New Jersey and Delaware:

1. No person shall catch or take or attempt to catch or take fish of any kind by means of a net or use a net of any kind, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until Sunday at 12:00 midnight next ensuing in each week.

2. It shall be legal to take baitfish by means of a minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1¼ inches in diameter or a scoop net with a single handle and with a diameter of not more than two feet.

3. (No change.)

4. Shad may be taken with a drifting gill net, the meshes of which shall be not less than five and one-quarter inches stretched while being fished, from March 1 to June 15.

5. All foodfish may be taken with the following:

i.-iii. (No change.)

iv. Eelpots or fyke nets, each without wings, provided the entrance to said eelpots and fyke nets shall not exceed six inches in diameter and the outside diameter not exceed 30 inches may be used at any time for the taking of eels only.

6. Not more than one gill net or hauling seine shall be used from a boat.

7:25-6.12 Snagging Prohibited

The foul hooking of largemouth bass, smallmouth bass, striped bass, chain pickerel, northern pike, muskellunge, walleye, brook trout, lake trout, brown trout and rainbow trout, or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season.

7:25-6.13 Warmwater Fish

(a) Except as provided in N.J.A.C. 7:25-6.3, 6.14, and 6.19, closed seasons are hereby eliminated on all freshwater fish except walleye in Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir.

(b) Except as provided in N.J.A.C. 7:25-6.18, the size limits prescribed for rock bass, black crappie, white crappie, redfin pickerel and chain pickerel are hereby eliminated in all waters except in Lake Hopatcong and Swartswood Lake (Sussex County) and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches prescribed for chain pickerel.

(c) The provision that a person may not take or have in possession more than 25 in total of fish commonly classed as fresh water game and foodfish is hereby abolished.

(d) The minimum size of smallmouth bass shall be 9 inches, except 13 inches for Manasquan Reservoir (Monmouth County), Monksville Reservoir (Passaic County), Merrill Creek Reservoir (Warren County) and Round Valley Reservoir (Hunterdon County) and 12 inches in the Delaware River and Greenwood Lake.

(e) The minimum size of largemouth bass in lakes, ponds and reservoirs shall be 12 inches and in rivers, streams and other waters it shall be nine inches, except that in Lake Hopatcong during the period of April 1 through June 15, an 18-inch minimum size limit shall be in effect. There shall be no size limit on largemouth bass in Round Valley Reservoir.

(f) The daily creel and possession limit for largemouth bass and smallmouth bass shall be five in total except that in Lake Hopatcong during the period of April 1 through June 15, the limit for largemouth bass is one.

(g) Warmwater fish in excess of the daily limit may be caught provided they are returned to the water immediately and unharmed.

(h) (No change in text.)

(i) The minimum length prescribed for northern pike shall be 24 inches and 30 inches for the muskellunge and tiger muskie. The daily creel and possession limit for these species shall be two in aggregate.

(j) Fishing for all species of freshwater fish is permitted 24 hours daily except on those days that certain trout waters are closed for stocking during April and May.

(k) The daily creel and possession limit for chain pickerel shall be five.

(l) The minimum length prescribed for walleye shall be 15 inches, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be 18 inches.

(m) The daily creel and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be two with a closed season during the period of March 1, 1991 to April 30, 1991.

(n) The minimum length for striped bass x white bass hybrid shall be 16 inches. The daily creel and possession limit shall be two.

7:25-6.14 Ice fishing

(a) Except as provided in N.J.A.C. 7:25-6.3, ice fishing shall be permitted whenever ice is present.

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

7:25-6.15 Bow and arrow fishing

(a) Except as provided in N.J.A.C. 7:25-6.3, 6.18 and 6.19, it shall be legal to take any species of fish except brook trout, lake trout, brown trout, rainbow trout, landlocked Atlantic salmon, largemouth bass, smallmouth bass, striped bass, chain pickerel, northern pike, walleye, muskellunge, or any hybrids of any of these species, at any time by use of bow and arrow with line attached, provided a person has a proper fishing license. For the purpose of this section a bow means any longbow, recurved bow or compound bow that is hand-held and hand-drawn.

7:25-6.16 Closed waters

(a) It is illegal to fish, place any contrivance for the taking of fish, or attempt to catch or kill fish by any manner or means in any fish ladder or within 20 feet of any fish ladder entrance or exit.

(b) It is illegal to fish or attempt to catch or kill fish by any manner or means in waters within the boundaries of the State Fish Hatcheries, except where specifically permitted, that is, the Musconetcong River and Pequest River.

7:25-6.17 Emergency closure notice

It shall be illegal to fish or attempt to catch or kill fish by manner or means in any waters for which the Director of the Division of Fish, Game and Wildlife, upon approval of the Fish and Game Council, issues an Emergency Closure Notice. Such notice shall be effective and/or rescinded immediately upon public notification. It shall be based upon imminent threat to the well-being of the fishery resource and/or its users, and may include any exceptions to the total ban on fishing that the Director deems practical.

7:25-6.18 Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following rules for Greenwood Lake, which lies partly in Passaic County, New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1.	Season	Size	Creel Limit
Trout	No closed season	No minimum	3
Largemouth bass and smallmouth bass	No closed season	12″ minimum	5 singly or in aggregate
Chain pickerel	No closed season	15″ minimum	5
Muskellunge and any hybrid thereof	No closed season	30″ minimum	1
All other species	No closed season	No minimum	No limit

2. (No change.)

3. On Greenwood Lake, fishing will be permitted 24 hours a day.

4. Either New York or New Jersey fishing licenses will be honored on all of Greenwood Lake.

5. Bow and fishing for carp, suckers, herring, catfish and eels will be permitted on Greenwood Lake by properly licensed fishermen.

7:25-6.19 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, ***except as provided in N.J.A.C. 7:25-6.13(e) to (n),*** the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish *[and Game]* Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Daily Creel Limit
Trout	April 6-Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	12″ minimum	5 in total
Walleye	No closed season	18″ minimum	3
Chain pickerel	No closed season	12″ minimum	5
Muskellunge & any hybrid thereof	No closed season	30″ minimum	2
Northern pike	No closed season	24″ minimum	2
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

2. Fishing licenses of either New Jersey and Pennsylvania will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken in New Jersey and Pennsylvania, however, any person fishing from the shore must obtain a license in New Jersey and Pennsylvania on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank.

3. Angling may be done with two rods each with one line or two lines or one of each. Not more than three single hooks or three burrs of lines or one of each may be used per line.

4. Ice fishing shall be legal whenever ice is present. Open (unfrozen) water creel and size limits shall apply. The maximum size of the ice hole shall not exceed 10 inches in diameter. Five tip-ups or any combination of five devices that will include tip-ups of not more than two rods and lines or two hand lines or one of each may be used.

5. Spears (not mechanically propelled) and longbows may be used to take shad, eels, carp, suckers, herring and bullheads by properly licensed fishermen, except within 50 rods (825 feet) of an eel weir.

6. Bait fish may be taken and possessed for personal use only but not to exceed 50 per day.

7. Eel weirs for the catching of carp, catfish, eels, and suckers only, may be operated under permit from the Division of Fish, Game and Wildlife at any time of the year and at any time of day.

7:25-6.20 Fresh tidal tributaries of the Delaware River and Bay

The minimum length prescribed for Atlantic sturgeon shall be 60 inches with no daily creel limit.

*[7:25-6.21 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Creel or possession limit" means the total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

"Baitfish" shall include the following species:

1. Alewife (landlocked form) Alosa pseudoharengus;
2. Golden shiner Notemigonus crysoleucas;
3. Banded killifish Fundulus diaphanus;
4. Mummichog Fundulus heteroclitus;
5. Spotfin killifish Fundulus luciae;
6. Rainwater killifish Lucania parva;
7. American brook lamprey Lampetra lamottei;
8. Fathead minnow Pimephales promelas;
9. Bluntnose minnow Pimephales notatus;
10. Stonecat Noturus flavus;
11. Tadpole madtom Noturus gyrinus;
12. Margined madtom Noturus insignis;
13. All shiner, dace, and minnows of the following genera: Notropis, Rhinichthys, and Semotilus.

"Closures" (closed waters) means those waters in which angling is not permitted, particularly in reference to time (also Closed Season).

"Code" means the State Fish Code.

"Creeled trout" shall mean any trout which a fisherman has in his possession.

"Director" means Director of the Division of Fish, Game and Wildlife.

"Division" means the Division of Fish, Game and Wildlife.

"Foodfish" for purposes of N.J.A.C. 7:25-6.11 only, means the following species:

1. Atlantic sturgeon Acipenser oxyrhynchus;
2. White sucker Catostomus commersoni;
3. Carp Cyprinus carpio;
4. American eel Anguilla rostrata;
5. Blueback herring Alosa aestivalis;
6. Hickory shad Alosa mediocris;

7. American shad	Alosa sapidissima;
8. Gizzard shad	Dorosoma cepedianum;
9. Alewife (anadromous form)	Alosa pseudoharengus;
10. Yellow perch	Perca flavescens;
11. White perch	Morone americana;
12. White catfish	Ictalurus catus;
13. Black bullhead	Ictalurus melas;
14. Brown bullhead	Ictalurus nebulousus;
15. Yellow bullhead	Ictalurus natalis;
16. Channel catfish	Ictalurus punctatus;
17. Bowfin	Amia calva; and

18. Any other marine fish species that is legal for taking with net in marine waters.

"Natural bait" means any bait that in its live, preserved or original form would be consumed by fish.

"Open waters" (all sections except N.J.A.C. 7:25-6.8) means those waters in which angling is permitted, particularly in reference to time.

"Open waters" (N.J.A.C. 7:25-6.8) means those waters not covered with ice.

"Other fish species", and all hybrids and strains thereof, which are provided for by the provisions of this Code, either directly or implied, are as follows:

1. Shortnose sturgeon	Acipenser brevirostrum
2. Atlantic sturgeon	Acipenser oxyrhynchus
3. Striped bass hybrid	Morone saxatilis x Morone chrysops
4. White sucker	Catostomus commersoni
5. Creek chubsucker	Erimyzon oblongus
6. American eel	Anguilla rostrata
7. Blueback herring	Alosa aestivalis
8. Hickory shad	Alosa mediocris
9. American shad	Alosa sapidissima
10. Gizzard shad	Dorosoma cepedianum
11. Alewife (anadromous form)	Alosa pseudoharengus
12. Chinook salmon	Oncorhynchus tshawytscha

"Possession" means all fish, live or dead, under the control of the fisherman.

"Size limit" means the legal length of fish and may be expressed as a minimum size or a maximum size of a fish that may be retained. Length shall be the maximum total length.

"Snagging" means the hooking of fish other than inside the mouth, through the action of the fisherman.

"Trout" shall include the following species and all hybrids and strains thereof:

1. Brook trout	Salvelinus fontinalis
2. Lake trout	Salvelinus namaycush
3. Brown trout	Salmo trutta
4. Rainbow trout	Oncorhynchus mykiss

"Unattended" means user not available for questioning by officer at the time of inspection.

"Warmwater fish" includes the following species and all hybrids and strains thereof:

1. Largemouth bass	Micropterus salmoides
2. Smallmouth bass	Micropterus dolomieui
3. Black crappie	Pomoxic nigromaculatus
4. White crappie	Pomoxic annularis
5. Rock bass	Ambloplites rupestris
6. Redbreast sunfish	Lepomis auritis
7. Green sunfish	Lepomis cyanellus
8. Pumpkinseed	Lepomis gibbosus
9. Bluegill	Lepomis macrochirus
10. Longear sunfish	Lepomis megalotis
11. Redear sunfish	Lepomis microlophus
12. Yellow perch	Perca flavescens
13. Walleye	Stizostedion vitreum vitreum
14. White perch	Morone americana
15. White catfish	Ictalurus catus
16. Black bullhead	Ictalurus melas
17. Brown bullhead	Ictalurus nebulousus
18. Yellow bullhead	Ictalurus natalis
19. Channel catfish	Ictalurus punctatus
20. Redfin	Esox americanus americanus
21. Northern pike	Esox lucius
22. Muskellunge	Esox masquinongy
23. Chain pickerel	Esox niger
24. Bowfin	Amia calva
25. Carp	Cyprinus carpio]*

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Catastrophic Illness in Children Relief Fund Program

Adopted Amendments: N.J.A.C. 8:18-1.2, 1.5, 1.6, 1.8, 1.18 and Appendix I

Proposed: September 4, 1990 at 22 N.J.R. 2669(b).

Adopted: November 21, 1990 by the Catastrophic Illness in Children Relief Fund Commission, with the approval of Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Filed: November 26, 1990 as R.1990 d.619, **without change**.

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-154i.

Effective Date: December 17, 1990.

Expiration Date: November 6, 1994.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on September 4, 1990. During the comment period, nine comments in support of the proposed amendments were received from various agencies and interested parties. None were received from agencies or interested parties opposing the proposed amendment.

COMMENT: New Jersey State School Nurses Association, Monmouth County Office of Social Services Foundation, Bergen and Cumberland County Special Child Health Services Case Management Units, and one family from Burlington County support the proposed amendments in their entirety.

RESPONSE: The Department appreciates and acknowledges the support of the New Jersey State School Nurses Association, Monmouth County Office of Social Services Foundation, Bergen and Cumberland County Special Child Health Services Case Management Units and the family from Burlington County.

COMMENT: Cape May, Mercer and Morris County Special Child Health Services Case Management Units support the proposed amendments which would enable the Program to help families with a greater portion of their out-of-pocket medically-related expenses. The agencies also remarked on other aspects of the program, which were not specific to the proposed amendments.

RESPONSE: The Department appreciates their support, and will consider these additional comments at a later date.

COMMENT: Camden County Special Child Health Services Case Management Unit remarked on various issues that were non-specific to the proposed amendments.

RESPONSE: The Department will consider these additional comments at a later date.

Full text of the adoption follows.

8:18-1.2 Definitions

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

. . .

"Eligibility standard" means that dollar amount equal to 30 percent or 40 percent of family income.

. . .

"Family responsibility" means the amount equal to 10 percent of a family's income.

. . .

8:18-1.5 State Office and Commission review process

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

(d) In a cycle of batch reviews, the Commission shall review the applications and the State Office's disbursement schedule for each

application based on the annual cap and the sliding payment schedule and make a decision on the Fund's level of assistance for each case. The calendar for the batch reviews shall be made available to the public by the State Office in advance of each year.

8:18-1.6 Eligibility standard

Incurred, out-of-pocket medical expenses up to the 30 percent or 40 percent threshold shall be required for eligibility consideration. Those expenses above the family responsibility and below the 30 percent or 40 percent threshold shall be considered for reimbursement after the eligibility standard is determined and met (see examples in Appendix I).

8:18-1.8 Sliding payment schedule

If adequate funds do not exist in the Fund at the point in time when a particular batch is being considered by the Commission to pay all applicants the amount of their expenses below the annual cap, a sliding payment schedule shall be used in an effort to distribute the available monies to applicants in an equitable way that considers a family's income, assets and other factors which impact the ability to pay for care.

8:18-1.18 Special cases

(a) Special cases shall be referred to the Commission for its review and consideration. Special cases shall include, but are not limited to, the following:

1. In special cases in which a family has more than one child, with a catastrophic illness (as defined by expenses in excess of the 30 or 40 percent threshold for each child), consideration shall be given to waiving the family responsibility as outlined in N.J.A.C. 8:18-1.2 for the other child/children given that the family would have already met the family responsibility for the first child.

2. (No change.)

3. For special hardship cases that come before the Commission during a batch cycle, after the standard disbursement guidelines have been applied to each case in the batch and sufficient monies remain in the Fund, consideration shall be given to waiving the standard disbursement guidelines (that is, the family responsibility and the cap as outlined in N.J.A.C. 8:18-1.2 and 1.7).

APPENDIX I
EXAMPLES OF CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND PROGRAM

The examples below illustrate the extent which the Fund would assist two families with different income levels.

AGENCY NOTE: The following examples are to be added to the New Jersey Administrative Code.

FAMILY #1 (with income of $30,000)		
Family Income:	$30,000	
Eligibility Standard (30% of Family Income):	$ 9,000	
Amount of Eligible Medical Expenses Not Covered by Insurance:		$15,000
Family Responsibility (10% of Family Income):		$ 3,000
Amount of Fund's Financial Assistance to Family:		$12,000
Amount for which Family remains responsible:		$ 3,000
FAMILY #2 (with income of $80,000)		
Family Income:	$80,000	
Eligibility Standard (30% of Family Income):	$24,000	
Amount of Eligible Medical Expenses Not Covered by Insurance:		$15,000
Family Responsibility (10% of Family Income):		$ 8,000
Amount of Fund's Financial Assistance to Family:††		$ 0
Amount for which Family remains responsible:		$15,000

†Assuming: an annual $25,000 cap; adequate monies available in fund obviating need for additional restrictions and cost-sharing; all expenses are reasonable and customary; and none of the cases are in the "special" category.

††None: The eligibility standard is not met; expenses were not in excess of 30 percent of income; therefore, expenses cannot be considered for reimbursement.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Manual Reimbursement Methodology

Adopted Concurrent Amendment: N.J.A.C. 10:65-2.1

Proposed: October 15, 1990 at 22 N.J.R. 3253(a).
Adopted: November 19, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: November 19, 1990 as R.1990 d.609, **without change.**

Authority: N.J.S.A. 30:4D-6b(16), 7, 7a, b and c; 30:4D-12.

Effective Date: November 19, 1990.
Expiration Date: August 25, 1994.

Summary of Public Comments and Agency Responses:

There were two comments. One commenter was Richard R. Speranza, Vice President, HUBCO Health Care Group. The commenter requested the Division establish a cost based reimbursement methodology that would yield a more equitable way of determining rates and might increase provider participation. The Division's response is that it is not prepared to develop and monitor such a methodology at this time due to staffing constraints.

The other commenter was James E. Cunningham, New Jersey Association of Health Care Facilities, who was concerned that the 43 percent rate might not be equivalent to the "previous formula of 55 percent of the ICFB rate." The Agency's response is that the rate was increased to 45 percent in a proposal that appeared in the November 5, 1990 issue of the New Jersey Register at 22 N.J.R. 3327(b). There is also a provision for a one-time retroactive adjustment back to October 1, 1990. However, the Agency needs to adopt this proposed amendment because the "previous formula" is no longer valid after September 30, 1990 because there is no more ICFB rate.

Full text of the adoption follows.

10:65-2.1 General billing procedures

(a) (No change.)

(b) This subchapter contains basic information and instructions necessary for the proper completion and submission of a claim. Included are exhibits to be utilized by Medical Day Care Centers for use in submitting claims for covered items or services. All forms to be completed by the facility are available from Prudential Insurance Company.

1. (No change.)

2. Reimbursement: The center participating in the Medical Day Care Program shall agree to accept the reimbursement rate established by the Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program. In a nursing facility, the Medical Day Care per diem rate is 43 percent of that nursing facility's per diem rate. In free-standing centers, the medical day care per diem rate is based on an average of the rates paid to nursing facility medical day care providers or a percentage of nursing facility rates in effect as of July 1 and January 1 each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility-based providers. The reimbursement rates set for a Medicaid recipient in medical day care centers may not exceed

charges for non-Medicaid participants. The per diem reimbursement shall cover cost of all services listed in N.J.A.C. 10:65-1.4 with the following exceptions:

i.-ii. (No change.)

3.-4. (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled

Eligibility Factors, Including Income Exclusion, Renewals

Adopted Amendments: N.J.A.C. 10:69A-5.3, 6.1, 6.2 and 6.10

Proposed: August 6, 1990 at 22 N.J.R. 2218(a).

Adopted: November 20, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 20, 1990 as R.1990 d.614, **without change.**

Authority: N.J.S.A. 30:4D-20, 21, 24.

Effective Date: December 17, 1990.

Expiration Date: April 20, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:69A-5.3 Eligibility effective date

(a) (No change.)

(b) A PAAD beneficiary shall renew his/her eligibility every year unless his/her annual income is below $11,000 for single persons or $14,000 for married persons. In that case, he/she would renew every two years. Approximately four months prior to his/her eligibility expiration date, PAAD will advise the beneficiary if he/she is eligible for biennial eligibility, or if he/she will be required to complete a renewal form.

1.-2. (No change.)

10:69A-6.1 Age

(a) To be eligible for PAAD, the applicant shall be 65 years of age or older or shall be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Division of Medical Assistance and Health Services. The Division will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.

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

10:69A-6.2 Income standards

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

(c) All income, from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. (No change.)

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

i.-iv. (No change.)

v. Stipends from the Volunteers to Service in America (VISTA) and Foster Grandparents programs;

vi. Agent Orange payments.

(d)-(i) (No change.)

10:69A-6.10 Eligibility period

(a) A PAAD eligibility card is effective for one year. The PADD beneficiary shall renew his/her eligibility every year unless his/her income is below $11,000 for single persons or $14,000 for married persons. In that case, he/she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years.

(b) (No change.)

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF MORTUARY SCIENCE

Continuing Education

Adopted New Rules: N.J.A.C. 13:36-10

Proposed: November 20, 1989 at 21 N.J.R. 3655(a).

Adopted: November 15, 1990 by the State Board of Mortuary Science, Michael Petrolle, President.

Filed: November 19, 1990 as R.1990 d.608, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:7-38.

Effective Date: December 17, 1990.

Expiration Date: September 27, 1994.

The Board of Mortuary Science afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:36-10, relating to continuing education. The official comment period ended on December 20, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 20, 1989 at 21 N.J.R. 3655(a). Announcements were also forwarded to the New Jersey State Funeral Directors Association, the Star Ledger, the Trenton Times and Mark Samuel Ross, Esq.

A full record of this opportunity to be heard can be inspected by contacting the Board of Mortuary Science, 1207 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

COMMENT: The only comment on these proposed rules was from Mark Samuel Ross, a licensee of this Board and also an attorney at law of this State. It is Mr. Ross' position that the Board has no legal authority to establish a program of continuing education other than that which is provided for by N.J.S.A. 45:7-72, which statute directs the Board to provide and hold at the annual State Funeral Director's Association meeting, a course of lectures and practical demonstrations, subject to appropriations.

RESPONSE: Authority for the Board to adopt the proposed rules is found in N.J.S.A. 45:7-38 and 45:7-33. The first cited statute grants the Board authority to adopt rules and regulations "for the promotion or improvement of the standards of service, . . . protection and practice . . . of mortuary science, embalming and funeral directing . . . for and in the interest, preservation and improvement of the public health, morals, safety and welfare." In 1960, that statute was amended whereby the Board was granted power specifically to adopt rules and regulations which are set forth in paragraph 2, (a) through (f). (A), (b), (e) and (f) serve as additional authority for the Board to adopt continuing education regulations.

N.J.S.A. 45:7-33 provides further authorization for adoption of these rules by declaring the practice of mortuary science, embalming and funeral directing to be occupations charged with a high degree of public interest and subject to strict regulation and control.

The statute cited by Mr. Ross, N.J.S.A. 45:7-72, as well as N.J.S.A. 45:7-38, were enacted by chapter 340 of the laws of 1952. However, as previously stated, N.J.S.A. 45:7-38 was amended in 1960 by adding a second paragraph which specifically empowered the Board to adopt the proposed rules. It is the Board's conclusion that these two statutes are not mutually exclusive, but rather that N.J.S.A. 45:7-38 may be considered supplemental to N.J.S.A. 45:7-72. It should be noted that the last cited statute speaks only to those licensees who are members of the State Funeral Director's Association, membership of which is voluntary and not mandatory, and by enacting the amendment to N.J.S.A. 45:7-38 the

Legislature clearly foresaw the need for regulation of the kind here involved.

COMMENT: Mr. Ross was also of the opinion that the proposed rules do not in any concrete fashion address the issue of the wide range of education experience amongst its licensees, thereby making it necessary for every licensee to take continuing education courses.

RESPONSE: The rules provide that the Board may, for good cause, waive all or part of the continuing education requirement for biennial licensing, upon application made by a licensee.

Summary of Changes Between Proposal and Adoption:

The definitions of "Board" and "Division" in N.J.A.C. 13:36-10.2 have been amended to reflect the new address of the Board of Mortuary Science and the Division of Consumer Affairs.

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

SUBCHAPTER 10. CONTINUING EDUCATION

13:36-10.1 Purpose and scope

(a) The rules established by this subchapter were designed to ensure that the practitioners of mortuary science maintain the highest degree of quality in their profession.

(b) The requirements set forth under this subchapter apply to all Board licensees actively participating in the practice of mortuary science within the State of New Jersey except where the rules provide for exemption or waiver.

13:36-10.2 Definitions

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

"Actively participating" means practicing mortuary science within the State of New Jersey for more than three months out of any calendar year.

"Board" means the New Jersey State Board of Mortuary Science, *[1100]* ***1207*** Raymond Boulevard, *[Room 513,]* Newark, New Jersey 07102.

"Committee" means the standing Credentials Committee established by N.J.A.C. 13:36-10.5.

"Division" means the Division of Consumer Affairs, *[1100]* ***1207*** Raymond Boulevard, Newark, New Jersey 07102.

"Person" means any person as defined in N.J.S.A. 56:8-1.

"United States Armed Forces" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and the United States Coast Guard.

13:36-10.3 Minimum amount of credit hours

(a) By the completion of each biennial licensing period, every licensee shall, as a condition of license renewal, successfully complete 10 credit hours of approved continuing education courses, seminars or programs recommended by the Credentials Committee and approved by the Board.

(b) No licensee shall be permitted to carry over excess credit hours from one licensing period to the next.

(c) New licensees shall not be required to comply with the continuing education requirements during their first biennial licensing period.

13:36-10.4 Exemptions and waivers

(a) The following groups of licensees will be exempt from complying with the continuing education requirements:

1. Licensees serving on active duty in the United States Armed Forces; or

2. Licensees in their first biennial licensing period immediately following successful completion of the Board's examination requirements.

(b) The Board may, for good cause, waive all or part of the continuing education requirement for any biennial licensing period. A licensee may request that the Board grant a waiver. Such requests shall be in writing and accompanied by any documentation verifying the reasons for the request. Waivers shall be granted only for one biennial licensing period at a time. However, should the situation for which the waiver was granted continue past the specified biennial period, the licensee must apply in writing to the Board for an extension of the waiver no less than three months prior to the expiration of the specified biennial period.

13:36-10.5 Credentials Committee

(a) The Director of the Division of Consumer Affairs shall annually appoint a standing committee to be known as the Credentials Committee to assist the Board in establishing guidelines and criteria for the approval of continuing education courses, seminars, and programs.

1. The Director shall receive from the Board a list of nominees for consideration, and shall make the appointments in consultation with the Board;

2. The Committee shall consist of no fewer than four members, at least two of whom are members of the Board; the remaining members shall be either members of the Board or Board licensees;

3. At least one member of the Committee shall be an educator with a degree in mortuary science who is currently teaching or working in the mortuary science area.

(b) The Committee's responsibilities shall include:

1. Making recommendations to the Board as to approval of specific continuing education programs;

2. Developing procedures for the internal operation of the Committee;

3. Developing criteria for continuing education credit which shall include courses:

i. Concerning professional competency and ethics, as well as legal aspects relating to the practice of mortuary science;

ii. Designed to examine and train licensees in the utilization and application of new techniques, and scientific and clinical advances relating to mortuary science;

iii. Dealing with business management concepts as they relate to the delivery of efficient and professional services to consumers.

4. Developing standards for determining which, if any, out-of-State courses, seminars or programs qualify for the credit hour requirement of these rules; and

5. Reviewing and monitoring of all approved courses, seminars or programs. Upon evidence that the courses, seminars or programs fail to meet the criteria established by the Committee, the sponsoring institution or agency shall lose its approved status and shall be required to reapply for such approval.

13:36-10.6 Program and sponsor approval

(a) Any person desiring approval as a sponsor of a continuing education course, seminar or program shall apply to the Credentials Committee. Such application shall be supplied by the Board upon written request and shall include:

1. The person's educational history;

2. Approximate dates that the course, seminar or program is to be offered;

3. The subject of the course, seminar or program;

4. The total hours of instruction and credit; and

5. The names and educational qualifications of instructors.

(b) All sponsors shall secure Board approval prior to representing that any course, seminar or program fulfills the requirements of this subchapter.

(c) The Board may, at its discretion, grant credit to licensees who attend or participate in an educational course, seminar or program which is not approved or which is conducted by a non-approved sponsor. Licensees seeking such credit shall submit to the Board, within 30 days of completing the course, seminar or program, a written application setting forth:

1. The date and place where the course, seminar or program was given;

2. The subject matter covered;

3. The total hours of instruction; and

4. The names and educational qualifications of the instructors.

13:36-10.7 Credit hour reporting procedure

(a) The Board shall accept verification of credit hours accumulated by the licensee provided the licensee, at the time of license renewal,

submits appropriate evidence of the successful completion of an approved course, seminar or program, in the form of an original certificate or similar official record of completion, signed by the approved sponsor.

(b) The licensee shall also complete and sign the continuing education report card provided to the licensee by the Board. The licensee shall list on the report card all approved courses, seminars or programs which he or she successfully completed, as well as the number of hours of credit earned by the licensee.

(c) For those licensees registered in the New Jersey State Funeral Directors Association educational organization's continuing education reporting system, the Board shall recognize written verification from the Association stating the number of credit hours the licensee has accumulated during the biennial license renewal period.

(d) Where the Board denies a licensee's application for continuing education credit, either in whole or in part, the licensee may appeal the denial to the Board.

(a)

DIVISION OF CONSUMER AFFAIRS

Administrative Rules of the Division of Consumer Affairs

Readoption with Amendments: N.J.A.C. 13:45A
Adopted Repeal: N.J.A.C. 13:45A-17

Proposed: August 20, 1990 at 22 N.J.R. 2396(a).

Adopted: November 5, 1990 by Patricia A. Royer, Director, Division of Consumer Affairs, and October 25, 1990 by Robert J. DelTufo, Attorney General.

Filed: November 9, 1990 as R.1990 d.606, **without change**.

Authority: N.J.S.A. 56:8-4 and 45:17A-15 (applicable to N.J.A.C. 13:45A-17 only).

Effective Date: November 9, 1990, Readoption; December 17, 1990, Amendments and Repeal.

Expiration Date: November 9, 1995.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:45A, the administrative rules of the Division of Consumer Affairs, and the proposed repeal of N.J.A.C. 13:45A-17, entitled sale of advertising in journals relating or purporting to relate to police, firefighting or charitable organizations. The official comment period ended on September 19, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 20, 1990 at 22 N.J.R. 2396(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Asbury Park Press, the Bergen Record, the Better Business Bureau, Direct Selling Association, Direct Marketing Association, New Jersey Auto Dealers Association, Consumer Product Safety Commission, Electronic Industries Association, New Jersey Retail Merchants Association, Consumers League of New Jersey, National Motorists Association, Major Appliance Consumer Action Panel, National Tire Dealers Association, Racquet and Fitness Association, New Jersey Food Council, American Association of Fundraising Councils, Central New Jersey Fundraising Forum, Alliance of New Jersey Kosher Caterers, and various additional businesses, special interest groups and professional associations with an interest in the rules proposed for readoption.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, Room 504, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Division received two comments.

COMMENT: The New Jersey Chapter Coordinator of the National Motorists Association, whose stated goal is to minimize the number and extent of regulations, expressed the Association's support for the readoption of specific subchapters of the Division's administrative rules. The chapter coordinator stated that he had reviewed the proposed rules as they relate to motorists and found subchapters 2, 6, 7, 8 and 26 appropriate for the Association's comment. While expressing concern about the cost/benefit relationship of the Division's task force operations, he agreed that the readoption of the stated subchapters will enable the Division's Office of Consumer Protection to continue to respond to motorist complaints. The chapter coordinator also stated that while the Association could not help but wonder whether the competitive marketplace would weed out dishonest businesses, the Association agreed that these regulations place reasonable responsibilities on the businesses affected and that most of these responsibilities represent good, honest business practice.

RESPONSE: The Division acknowledges and appreciates the Association's comments in support of the readoption of the stated subchapters. The Division believes that well-reasoned regulations reinforce marketplace competition by reducing improper practices related to automotive merchandising.

COMMENT: A comment on the proposed readoption was also received from an administrative staff member of the Office of Consumer Protection. This individual detailed suggestions for improving the Division's rules governing merchandise advertising, N.J.A.C. 13:45A-9.

RESPONSE: The Division appreciates these suggestions and will undertake a study of the entire subchapter. However, because a thorough review cannot be accomplished prior to the expiration of these rules, the Division has determined to readopt this subchapter without change. Necessary revisions will be proposed in a future issue of the Register.

Division Note:

In reexamining the Summary Statement contained in the preamble of the rule proposal, the Attorney General noted minor inaccuracies relating to the history of the enactment of subchapter 17, which is now being repealed. While these inaccuracies do not affect the underlying basis for the repeal of subchapter 17, the Division nevertheless wishes to clarify this statement. Accordingly, the following is a restatement of the second and third paragraphs of the Summary Statement.

Subchapter 17, entitled sale of advertising in journals relating or purporting to relate to police, firefighting or charitable organizations, has been deleted in its entirety. This subchapter existed primarily because police organizations were permitted to solicit only on a face-to-face basis and were not permitted to benefit from the sale of advertising in journals or to engage professional fundraisers or solicitors who might sell such advertising. Fundraising activities of police and auxiliary or fraternal organizations were mainly regulated by N.J.S.A. 2A-170.20 et seq. specifically. Subchapter 17 was promulgated jointly under the Consumer Fraud Act, N.J.S.A. 56:8-4, and the Charitable Fundraising Act, N.J.S.A. 45:17A-1 et seq., in order to protect the consumer from unethical conduct by paid solicitors working for a private enterprise, particularly to protect the contributor from being misled to believe that the profits of the enterprise would inure to the benefit of police or firefighters. There was, however, a provision, N.J.A.C. 13:45A-17.3(b) which permitted endorsement or affiliation with the publication if a written agreement was entered into expressly authorizing the representation to be made. This is especially important in connection with the sale of advertising in journals relating or purporting to relate to police or firefighting organizations where the potential exists for abuse or the appearance of coercion.

However, as a result of the recent opinion by the Honorable Dickinson R. Debevoise of Federal District Court, Newark, in *Telco Communications, Inc. v. James J. Barry, Jr., et al.*, Dkt. No. 89-3393 (D.N.J. filed March 5, 1990), police organizations in the State of New Jersey may now solicit for contributions and engage professional fundraisers and solicitors for both charitable and non-charitable fundraising and may, if they wish, benefit from the sale of advertising in journals. Accordingly, the regulations in Subchapter 17 are now redundant since protective mechanisms are provided by the Charitable Fundraising Act and regulations as well as the balance of N.J.S.A. 2A:170-20.1 through 20.10 and including 20.12 which was not challenged nor found to be unconstitutional by the District Court. In addition, the consumer continues to be generally protected against fraud and misrepresentation under the Consumer Fraud Act.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:45A.

Full text of the adopted amendments follows.

13:45A-21.3 Display and handling requirements

(a) A Kosher food or food product sold by a restaurant, hotel, store, catering facility or other place which advertises, represents or holds itself out as selling, serving or offering for sale exclusively

Kosher food or food products or both Kosher and Non-Kosher food or food products may be falsely represented to be Kosher within the meaning of N.J.A.C. 13:45A-21.2 unless the following display and handling requirements are observed.

1.-3. (No change.)

13:45A-22.1 Definitions

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

"Properly identified Kosher meat" means Kosher meat which is obtained from animals which are approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba placed on such Kosher meat at the slaughterhouse where the animal was slaughtered.

"Properly identified Kosher poultry" means poultry which is approved and slaughtered in strict compliance with the laws and customs of the Orthodox Jewish religion and which has affixed thereto the Kosher plumba placed on such poultry at the slaughterhouse where the poultry was slaughtered.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits
Routes U.S. 9W in Bergen County
Adopted Amendment: N.J.A.C. 16:28-1.123

Proposed: October 15, 1990, at 22 N.J.R. 3196(b).
Adopted: November 15, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: November 20, 1990 as R.1990 d.612, **without change.**

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

Effective Date: December 17, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.123 Route U.S. 9W

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9W described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic

i. In Bergen County:

1. Fort Lee Borough:

(A) 35 miles per hour (mph) between Route N.J. 4 and the Englewood Cliffs Borough-Fort Lee Borough line (approximate mileposts 0.0 to 0.95); thence

2. Borough of Englewood Cliffs:

(A) Zone 1: 35 mph between the Fort Lee Borough-Englewood Cliffs Borough line and Middlesex Avenue (approximate mileposts 0.95 to 1.27); thence

(B) Zone 2: 40 mph between Middlesex Avenue and 800 feet north of Demarest Avenue (approximate mileposts 1.27 to 2.60); thence

(C) Zone 3: 50 mph between 800 feet north of Demarest Avenue and the Tenafly Borough-Englewood Cliffs Borough line (approximate mileposts 2.60 to 3.74); thence

3. Borough of Tenafly:

(A) 50 mph between the Englewood Cliffs Borough-Tenafly Borough line and the Alpine Borough-Tenafly Borough line (approximate mileposts 3.74 to 5.26); thence

4. Borough of Alpine:

(A) 50 mph between the Tenafly Borough-Alpine Borough line and the New York-New Jersey State Line (approximate mileposts 5.26 to 11.15).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Routes U.S. 22 Alternate in Warren County; N.J. 71 in Monmouth County; N.J. 77 in Cumberland County; U.S. 130 in Burlington County; and N.J. 184 in Middlesex County
Adopted Amendments: N.J.A.C. 16:28A-1.14, 1.38, 1.41 and 1.46
Adopted New Rule: N.J.A.C. 16:28A-1.111

Proposed: October 15, 1990, at 22 N.J.R. 3197(a).
Adopted: November 15, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: November 20, 1990 as R.1990 d.611, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.

Effective Date: December 17, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.14 Route U.S. 22 Alternate[1]

(a) The certain parts of State highway Route U.S. 22 Alternate described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing along both sides:

i. In Warren County:

(1) Pohatcong Township:

(A) Within the corporate limits, including all ramps and connections thereto under the jurisdiction of the Commissioner of Transportation.

[1]See also N.J.A.C. 16:28A-1.13.

16:28A-1.38 Route 71

(a) (No change.)

(b) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "Time Limit Parking" zones, where parking is prohibited except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. In Monmouth County:

i. Deal Borough:

(1) Two hours time limit parking from 8:00 A.M. to 8:00 P.M. daily along the east side (Norwood Avenue), between Poplar Avenue and Roosevelt Avenue.

ii. Ocean Township:

(1) Two hours time limit parking from 8:00 A.M. to 6:00 P.M. daily along the west side from a point 133 feet north of Roosevelt Avenue running thence south to the northerly curb line of West Morgan Avenue.

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

16:28A-1.41 Route 77

(a) (No change.)

(b) The certain parts of State highway Route 77 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the

provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. In the City of Bridgeton, Cumberland County:

i. Along the southbound (westerly) side:

(1) Far side bus stop:

(A) Washington Avenue—Beginning at the southerly curb line of Washington Avenue and extending 105 feet southerly therefrom.

ii.-iii. (No change.)

2.-4. (No change.)

(c) (No change.)

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-11. (No change.)

12. In Burlington Township, Burlington County:

i. Along the southbound (northerly) side:

(1) Near side bus stop:

(A) La Gorce Boulevard—Beginning at the prolongation of the northerly curb line of La Gorce Boulevard and extending 105 feet northerly therefrom.

ii. Along the northbound (easterly) side:

(1) Near side bus stop:

(A) La Gorce Boulevard—Beginning at the southerly curb line of La Gorce Boulevard and extending 135 feet southerly therefrom.

(c) (No change.)

16:28A-1.111 Route 184

(a) The certain parts of State highway Route 184 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. No stopping or standing:

i. In Middlesex County:

(1) Woodbridge Township:

(A) Along both sides of the entire length within the corporate limits of Woodbridge Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones. Signs to be posted only in areas where an official township resolution has been submitted;

(2) City of Perth Amboy:

(A) Along both sides of the entire length within the corporate limits of Perth Amboy City, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking zones. Signs to be posted only in areas where an official city resolution has been submitted.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turns
Routes U.S. 130 in Camden County and N.J. 27 in Middlesex County
Adopted Amendments: N.J.A.C. 16:31-1.22 and 1.26

Proposed: October 15, 1990, at 22 N.J.R. 3198(a).

Adopted: November 15, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: November 20, 1990 as R.1990 d.613, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: December 17, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:31-1.22 Route U.S. 130

(a) Turning movements of traffic in certain parts of Route U.S. 130 described in this subsection are regulated as follows:

1.-2. (No change.)

3. In Brooklawn Borough, Camden County:

i. No right turn:

(1) Southbound from Route U.S. 130 to westbound onto Community Road;

(2) Southbound from Route U.S. 130 to westbound onto Haakon Road;

(3) Southbound from Route U.S. 130 to westbound onto Nansen Avenue;

(4) Southbound from Route U.S. 130 to westbound onto Horton Avenue.

16:31-1.26 Route 27

(a) Turning movements of traffic in the certain parts of State highway Route 27 described in this subsection are regulated as follows:

1. In the Borough of Metuchen, Middlesex County:

i. (No change.)

ii. No left turn from Route 27 (southbound) (Lake Avenue) to New Street (eastbound) between the hours of 7:00 A.M. and 9:00 A.M., and between 3:00 P.M. and 6:00 P.M., Monday through Friday.

(b)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS
Zone of Rate Freedom Exemptions
Adopted Amendment: N.J.A.C. 16:53D-1.3

Proposed: October 15, 1990 at 22 N.J.R. 3199(a).

Adopted: November 21, 1990, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: November 26, 1990 as R.1990 d.631, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C 1:30-4.3).

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.25.

Effective Date: December 17, 1990.

Expiration Date: May 3, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Michael J. Marzano, Esquire, representing the New Jersey Motor Bus Association, commented on that part of the proposed rulemaking identified as N.J.A.C. 16:53D-1.3(b). He objected to the 30-day period therein for the filing of tariff adjustments regarding charter, special and casino bus operations, stating that a shorter period of 10 days advance filing would be advisable to allow quicker response by bus operators to increased costs. He also objected to the provisions in the same subsection of the proposed rulemaking that would require that public notice of tariff adjustments for such operations be posted in the autobuses, stating that such would cause unnecessary expense to bus companies and would be of little usefulness to the public. The commenter also referenced N.J.S.A. 48:4-2.25b, and opined that this statutory provision sets forth a public policy that public notice for charter, special and casino bus operations should be less than that imposed upon regular route bus operations.

RESPONSE: The Department will defer action at this time on the proposed subsection (b) of N.J.A.C. 16:53D-1.3 so that it may give further consideration to the comment received concerning that portion of the

rulemaking proposal. The Department will adopt the other amendments to the rule at N.J.A.C. 16:53D-1.3(a), which were not the subject of comment. The adopted revision introduces a provision that charter, special and casino bus operators make an annual filing by January 2nd of their then current schedules of rates, fares and charges. Such a provision serves as a procedure to update the tariffs of these operators that are kept on file with the Department.

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

16:53D-1.3 Exemptions

(a) The Commissioner hereby exempts casino or regular route in the nature of special, charter and special autobus operations from the rate regulation provisions set forth in N.J.A.C. 16:53D-1.1 and 16:53D-1.2 and in any other chapter of Title 48. Notwithstanding the rate regulation exemption, casino or regular route in the nature of special, charter and special autobus operators shall annually file with the Department by January 2 the then current schedules of their rates, fares or charges for such operations.

*[(b) Notwithstanding the aforementioned exemption, any casino or regular route in the nature of special, charter or special autobus carrier which seeks to adjust its rates, fares or charges shall be required to:

1. Notify the Department by filing a complete schedule of all current rates, fares and charges, and all rates, fares and charges to be adjusted, at least 30 days prior to the effective date of the new adjustment; and

2. Post a public notice in all autobuses used in the service to be affected by the adjusted rates, fares or charges and in all bus termini served by those autobuses, at least 30 days prior to the effective date of the new adjustment. The autobus carrier shall verify to the Department by filing a copy of said public notice and an affidavit that it has in fact posted such public notice, at least 30 days prior to the effective date of the new adjustment.]*

(a)

NEW JERSEY TRANSIT CORPORATION

Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures

Adopted New Rules: N.J.A.C. 16:78

Proposed: September 17, 1990 at 22 N.J.R. 2911(a).
Adopted: November 19, 1990 by the New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: November 26, 1990 as R.1990 d.616, **without change**.

Authority: N.J.S.A. 27:25-5(e) and 27:25-32(a).

Effective Date: December 17, 1990.
Expiration Date: December 17, 1995.

Summary of Public Comments and Agency Responses:

The Eastern Paralyzed Veterans Association (EPVA) filed the only comment on NJ TRANSIT's proposal to readopt and amend the Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures.

The EPVA has requested the term "special project account" be defined so that the money placed in the account cannot be used for services that have already been allocated to the county.

NJ TRANSIT does not believe it is necessary to attempt to define the use of these monies because:

1. Before any county will be approved for any funds in this account, the county would have had to certify that the existing Maintenance of Effort has been achieved and that these funds will not be used to offset previously committed dollars from other funding sources;

2. The county which has not expended the funds will have first priority regarding their use. The guidelines were made more specific in this area in order to provide NJ TRANSIT a mechanism to solicit more concrete descriptions from the counties of anticipated expenditures. It was also NJ TRANSIT's feeling that if the counties were aware that unexpended funds were not automatically made available in the next contract period there would be a greater impetus to spend the dollars as originally programmed in a more expedient manner;

3. The projects to be funded can only be used in accordance with the statute and regulations governing the Senior Citizen and Disabled Resident Transportation Assistance Act Program. It is NJ TRANSIT's hope that by making counties reapply for previous unexpended funds each county will better plan the service they provide and that every dollar available will be directed to where it is needed most; and

4. As with every application, NJ TRANSIT's Special Services Citizens Advisory Committee will have an opportunity to review and comment on the county's proposals.

Accordingly, the EPVA's comment has not been incorporated in the proposed readoption with amendments.

In addition, the rules proposed for readoption with amendments are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f), since N.J.A.C. 16:78 expired October 7, 1990, pursuant to Executive Order No. 66(1978).

Full text of the rules proposed for readoption, adopted as new rules, appears in the New Jersey Administrative Code at N.J.A.C. 16:78.

Full text of the adopted amendments to the rules proposed for readoption, adopted herein as new rules, follows.

16:78-1.2 Definitions

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

. . .

"Eligible counties" means counties, or the recipient designated by a county, submitting a proposal meeting the program guidelines.

. . .

16:78-2.2 Formula

(a) (No change.)

(b) The amount of money which each eligible county may receive will be based upon the number of persons 60 years of age and older residing in that county expressed as a percentage of the whole number of persons in this State of 60 years and older, as provided by the U.S. Bureau of Census. As similar data becomes available for the disabled population, such data will be used in conjunction with the senior citizens data to determine the county allocation formula. No eligible county will receive less than $150,000 nor more than 10 percent of the total funds available for allocation to the counties during a fiscal year under this program. NJ TRANSIT's Office of Special Services shall establish a minimum and maximum allocation at the start of each fiscal year. No matching funds are required.

16:78-2.3 Funds availability

(a) Available funds must be committed by December 31 of each year or they will revert back to the General Casino Fund.

(b) (No change.)

(c) The funds will be committed to a county upon notification of a grant awarded by NJ TRANSIT to the designated recipient.

1. The county or its designated recipient shall submit an application to NJ TRANSIT prior to May 15 for funds available for the calendar year starting the following January 1.

2. County contracts will run from January 1 through December 31 and require at least quarterly financial reports to be submitted within 30 days of the end of the quarter. This is a reimbursement program. Requests for reimbursement may be submitted monthly. When warranted, monthly advances may be given, but payments will be withheld if financial reports are not received when due.

3. Starting with the contract period which ends December 31, 1990, the balance of county funds remaining unexpended and/or unobligated by the county will be returned to NJ TRANSIT. Unexpended county funds at the end of the contract period will be reallocated as specified in N.J.A.C. 16:78-2.4.

16:78-2.4 Transfer of allocations

Any unexpended funds remaining at the end of the contract period will, after appropriate close-out and audit, be placed into a special project account. Each county will be eligible to submit an application

for any and/or all available funds in this account. Applications will be reviewed on a competitive basis by NJ TRANSIT.

16:78-3.4 Coordination plan requirements
(a)-(d) (No change.)
(e) The application for funds must comply with a comprehensive planning document as described in (d) above. The plan must be updated annually or as needed and a copy of the updated plan included in subsequent applications for funding.
(f)-(h) (No change.)

16:78-4.1 General
NJ TRANSIT in conjunction with the NJ TRANSIT Special Services Citizen Advisory Committee, its other advisory bodies, representatives and associations of counties, and other interested parties, has developed these regulations for transportation assistance to senior citizens and the disabled. The instrumentalities of local government, particularly the counties of this State, should play a major role in facilitating the provision of that transportation assistance. NJ TRANSIT and the counties should coordinate existing transportation services provided at the local level including, but not limited to, those services funded by any other State agency, and establish coordinated inter-county transportation services.

16:78-5.3 Budget
The application must contain a program budget which identifies expense categories as identified in *Coordinating Transportation Services for the Elderly and Handicapped, Volume 2, A Model Uniform Billing and Accounting System for Coordinated Transportation Systems.* This publication is sponsored by the United States Department of Transportation and is available from the National Technical Information Service, Springfield, Virginia 22161. These categories must be aggregated into Administration, Planning, Operation, and Capital expense functions. Two budgets should be submitted. The first should include program expenses. The second budget should only reflect the Senior Citizen and Disabled Resident Transportation Assistance Program expenses. Both budgets should be prepared using a January 1 to December 31 calendar year.

16:78-5.4 Coordination
(a) The application must include a description of the means by which the applicant will coordinate intra-county transportation, inter-county transportation and existing accessible fixed route services described in (b) through (d) below. This description should show that the recipient is implementing the comprehensive planning document described in N.J.A.C. 16:78-3.4.
(b)-(d) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Railroad Tax

Adopted Repeal and New Rules: N.J.A.C. 18:23-7
Adopted Amendments: N.J.A.C. 18:23-1.1, 3.6, 5.6, 6.3, 8.1, 8.2, 8.6, 11.2, 11.3, Appendix I

Proposed: August 6, 1990 at 22 N.J.R. 2250(a).
Adopted: November 26, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: November 26, 1990 as R.1990 d.630, **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. 54:29A-6, 54:29A-62, 54:50-1.

Effective Date: December 17, 1990.
Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:
The Division is making grammatical and minor language changes to N.J.A.C. 18:23-7.1 and 7.2 which would not require additional public notice and comment. A corrected cross-reference is added to N.J.A.C 18:23-11.2.

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

18:23-1.1 Definitions
. . .
"Railroad" means any common carrier by railroad engaged in, owning or constructing facilities for the transportation of persons or property in or through this State, including railroads not owning any rolling stock, other than a street railway or traction company using or occupying the public streets, highways, roads or other public places, the taxation of which is otherwise provided by law.
. . .

18:23-3.6 Real property deemed to be in railroad use
Real property shall be deemed to be in railroad use if such property is used for the transportation of persons or freight by a railroad, regardless of the ownership or possession of the real property.

18:23-5.6 Inspection of classifications and valuations; conference; appeal
(a)-(b) (No change.)
(c) Any matters not corrected at such time are not given further administrative review and may be corrected only by appeal to the Tax Court in accordance with applicable law.

18:23-6.3 Credit for taxes paid locally on omitted property
(a) Any taxpayer will be given credit against the assessment for the railroad property tax for the local tax paid if he:
1.-3. (No change.)
4. Has submitted satisfactory proof of such payment to the Director and to the Tax Court, if the matter is pending before it.

18:23-7.1 Appeals
Any taxpayer desiring to contest the validity or amount of any assessment or reassessment of property or franchise tax made by the Director of the Division of Taxation under the railroad tax law may appeal to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. (See *[N.J.A.C.]* ***N.J.S.A.*** 54:51A-13.)

18:23-7.2 Dual assessment; appeal to *[tax court]* ***Tax Court***
(a) If property of a taxpayer has or shall have been, in any year, assessed by the local *[authorities of the]* taxing district, and also has or shall have been classified as Class I or Class III property or classified and assessed by the Director of the Division of Taxation *[of the State Department of the Treasury]* as Class II property, an appeal may be taken to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., which *[court]* ***Court*** shall determine*[, in a summary manner,]* the character of the property and whether used for railroad purposes and by whom it has lawfully been assessed.
(b) Such determination shall be made whether the taxes in question have been paid or not and whether an appeal to review either assessment has been made or not.

18:23-8.1 Return of information
(a) Every taxpayer must, on or before March 1 of the pre-tax year, file with the Local Property Branch statements and/or schedules showing:
1.-2. (No change.)
(b) The Local Property Branch has developed and maintains a perpetual inventory of all property owned by each railroad or system in the State of New Jersey and only changes in the ownership, character or value of such property are required to be reported annually. Such annual returns of information must be submitted to the Local Property Branch on forms R.R. 51 through R.R. 452 which are available from said Branch.
(c) (No change.)

(d) On or before April 1 of the tax year, each taxpayer must file with the Director, through the Local Property Branch, at its own expense, a sworn and complete copy of its Railroad Annual Report for the pre-tax year, which has been filed or will be filed with the Interstate Commerce Commission or with the Department of Transportation of the State of New Jersey.

(e) Furthermore, all taxpayers must complete and file Local Property Branch Forms R.R. 551 through 556 with such Branch, together with such supplemental statements and schedules as may from time to time be required by the Director or the State Superintendent of the Local Property Branch, acting in his behalf.

18:23-8.2 Monthly statistics report

All taxpayers shall submit monthly reports of net railway operating income to the Local Property Branch, as soon as such information is available or projected. Such report shall include the monthly net railway operating income, and the complete net railway operating income for the year up to the month reported.

18:23-8.6 Payment

All checks shall be made payable to the New Jersey State Treasurer, and mailed or delivered to the Division of Budget and Accounting, 33 West State Street, Trenton, New Jersey 08625.

18:23-11.2 Taxpayer's right to informal conference

Where, under ***N.J.A.C. 18:23-5.6,*** a taxpayer requests an informal hearing, a conference will be held before the Local Property Branch to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

18:23-11.3 Taxpayer's right to formal hearing

(a) (No change.)

1.-3. (No change.)

4. The Director or any employee of the Division of Taxation he may designate, may conduct hearings, administer oaths to, and examine under oath, any taxpayer and the directors, officers, agents, and employees of any taxpayer, and all other witnesses relative to the liability of the taxpayer for any taxes pursuant to the provisions of the act.

(b) (No change.)

APPENDIX I
CALENDAR OF TAX EVENTS

PRE-TAX YEAR (No change.)

TAX YEAR
January 1 (No change.)
January 1 (No change.)
April 1 (On or before) (No change.)

June 1 (On or before) (No change.)
June 1 (After) (No change.)
June 10 (On or before) (No change.)
June 15 (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

General Provisions

Organization of the Casino Control Commission

Adopted Amendment: N.J.A.C. 19:40-2.1

Adopted: November 21, 1990, by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: November 26, 1990, as R.1990 d.618.

Authority: N.J.S.A. 5:12-54(a), 5:12-69(a) and 52:14B-4(b).

Effective Date: November 26, 1990.

Expiration Date: August 24, 1994.

Take notice that the Casino Control Commission has adopted an amendment to N.J.A.C. 19:40-1.2.

The proposed amendment is organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and is effective upon filing.

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

19:40-2.1 Organization

(a) (No change.)

(b) The officers of the Commission shall include a Chair and a Vice-chair who shall be members of the Commission, and an Executive Secretary who shall not be a member of the Commission.

1.-2. (No change.)

3. The Executive Secretary shall be appointed by the Commission and shall serve at the pleasure of the Commission. Under the supervision of the Chair, the Executive Secretary shall **act as the Chief of Staff of the Commission;** be responsible for the conduct of the **operational and** administrative affairs of the Commission and shall have custody of the Commission's seal and its official records. The Executive Secretary shall keep a record of the proceedings at all meetings of the Commission in a minute book and a resolution book or both, to be kept for the purpose, which shall be open at all reasonable times to inspection by any member of the Commission. He or she shall cause a verbatim transcript to be made of the public meetings of Commission, according to law. He or she shall affix the seal of the Commission to all papers authorized to be executed by the Commission requiring such seal to be affixed. He or she shall cause copies to be made of the verbatim transcript of the public meetings, and of all minutes, resolutions and other records and shall cause such copies to be filed with the appropriate authorities according to law. He or she shall give certificates under the seal of the Commission to the effect that such copies are true copies and all persons dealing with the Commission may rely on such certificates. He or she shall perform such other duties as are incident to his or her office or as may be assigned, from time to time, by the Commission or by the Chair.

(c) The Commission's staff [is] **shall be** comprised of the [following] divisions [and units:] **set forth below. Each division shall be organized into such operational units, and each unit shall have such assigned positions, as the Chair shall direct.**

1. The Administrative Division **shall** provide[s] the personnel, budget, data processing and administrative services necessary for operation of the Commission[,]; [and] maintain[s] the official records of the Commission and a record of all Commission proceedings; **and serve as the central filing location for petitions and submissions submitted to the Commission**. [The Administrative Division consists of the following units:

i. Budget and Fiscal Office;

ii. General Administrative Services Unit;

iii. Personnel Office; and

iv. Systems Analysis and Design Unit

2. The Affirmative Action and Planning Division monitors compliance by casino licensees, gaming schools and casino service and construction industries, with State equal employment, affirmative action, and minority and women's business enterprise requirements and evaluates the environmental, social, economic, and demographic impact of casinos on the Atlantic City region. The Affirmative Action and Planning Division consists of the following units:

i. Casino Unit;

ii. Industry and Constrution Unit; and

iii. Planning Unit.]

[3.] **2.** The Division of Financial Evaluation [and Control reviews and evaluates petitions and submissions related to accounting and internal controls, gaming equipment and rules of the game;] **shall** conduct[s] casino gross revenue audits[;], analyze[s] the financial position and operating performance of casino licensees[;], **and** assess[es] and collect[s] fees and gross revenue taxes[;]. [monitors compliance with regulations regarding accounting and internal controls, gaming equipment and rules of the games and receives casino patron complaints. The Division of Financial Evaluation and Control consists of the following units:

i. Accounting Unit;

ii. Audit Unit;
iii. Casino Operations Unit;
iv. Financial Evaluation Unit; and
v. Inspection Unit.

4. The Legal Division acts as legal counsel to the Commission and staff; represents the Commission in litigation; drafts and reviews proposed legislation and regulations; participates in license issuance and renewal hearings; and processes contested case matters. The Legal Division cconsists of the following units.

i. Hearings and Litigation Unit;
ii. Legal Advisory Unit;
iii. Legislation and Regulation Unit;
iv. License Advisory Unit; and
v. Special Projects Unit.]

[5.] **3.** The License Division **shall** process[es] and review[s] **casino,** casino key employee, casino employee, and junket representative license applications and renewals, hotel registrations and Employee License Internal Control Submissions; monitor[s] the business relationships between ancillary industries and casino licensees and casino applicants; process[es] gaming, non-gaming and junket-related casino service industry license applications and renewals, Vendor Registration Forms and Internal Control Submissions for Purchasing and Disbursing; **process contested case matters; and** review[s] all facility related matters which affect a casino license and casino-hotel alcoholic beverage related matters.[; maintains files pertaining to the above applications, registrations and submissions; and serves as a central filing location for petitions and submissions submitted to the Commission. The License Division consists of the following bureaus, sections and units:

i. Employee License Bureau;
ii. Enterprise License Bureau;
iii. Facilities Review Section; and
iv. Document Control Unit.]

4. The Compliance Division shall review and evaluate petitions and submissions related to accounting and internal controls, gaming equipment and rules of the games; monitor compliance with regulations regarding accounting and internal controls, gaming equipment and rules of the games; receive patron complaints; and monitor and promote compliance by casino licensees, gaming schools, casino service industries and constrution industries with State equal employment opportunity, affirmative action, and minority and women's business enterprise requirements.

5. The Office of the Commissioners shall consist of the General Counsel, the Public Information Officer, the Director of Governmental and Community Relations, and the Executive Secretary, together with the members of their respective staffs. The members of the office shall, together with the Chair and the directors of the several divisions, constitute the management team of the Commission, and shall execute general Commission policies as established by the Commissioners.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Procedures for Transportation Expense Reimbursements

Adopted Amendment: N.J.A.C. 19:45-1.9A

Proposed: September 17, 1990 at 22 N.J.R. 2913(a).
Adopted: November 7, 1990 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: November 9, 1990 as R.1990 d.605, **without change.**

Authority: N.J.S.A. 5:12-69 and 102m.

Effective Date: December 17, 1990.
Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendments were submitted by the Division of Gaming Enforcement (Division), Bally's Park Place Casino Hotel and Tower (Bally's Park Place), the Claridge Casino Hotel (Claridge, Harrah's Marina Hotel Casino (Harrah's), the Sands Hotel, Casino and Country Club (the Sands), Showboat Hotel and Casino (Showboat) and TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: Bally's Park Place, the Claridge, Harrah's, the Sands, Showboat and Tropworld submitted comments in general support of the proposed amendment.

RESPONSE: The Commission agrees with these comments, as evidenced by its adoption of the proposed amendment.

COMMENT: The Division stated its support of the proposed amendment, noting that the amendment would permit travel reimbursement transactions to be handled through the mail without compromising internal and accounting controls.

RESPONSE: The Commission agrees with this comment.

Full text of the adoption follows.

19:45-1.9A Procedures for transportation expense reimbursements

(a) All transportation expense reimbursement transactions, except as otherwise provided in (h) below, shall be performed at the casino cage.

(b) Whenever a patron requests a casino licensee to reimburse transportation expenses, a Travel Disbursement Voucher ("Voucher") shall be prepared. Vouchers shall be maintained in a secure location approved by the Commission. Access to Vouchers, prior to use, shall be restricted to those individuals authorized by the licensee to approve such disbursements. Prior to the transportation expense reimbursement, an individual authorized to approve the disbursement shall examine the original tickets, invoices or receipts presented by the patron in support of the request for valid transportation expense reimbursement. Such tickets, invoices or receipts shall:

1. (No change.)

2. Be dated within 30 days of the request for reimbursement; provided, however, reimbursements may be made for tickets, invoices or receipts which are dated more than 30 days but no more than 180 days prior to the date of request for reimbursement if an explanation is included on the Voucher as to why presentation was delayed.

3.-4. (No change.)

(c) (No change.)

(d) Vouchers shall be manually prepared or computer generated and shall contain, at a minimum, the following information:

1.-9. (No change.)

10. The patron's signature, indicating acknowledgment of the following statement which shall be included on the Voucher: "I affirm that the expenses for which I am seeking reimbursement are supported by genuine tickets, invoices or receipts which I (will provide) to (insert name of licensee) and I have not received reimbursement for these expenses from any other source. I am aware that this Voucher is required to be prepared by the regulations of the Casino Control Commission and I may be subject to civil or criminal liability if any material information provided by me is willfully false."

(e)-(g) (No change.)

(h) If a transportation expense reimbursement transaction cannot be completed at the casino cage due to the unavailability of required information or documentation, a casino licensee may perform a transportation expense reimbursement transaction by mail by complying with the requirements of (a) through (g) above except as otherwise modified below:

1. The authorizer shall record the date of request for reimbursement and the information noted in (d)2 above on the Voucher, and present the partially completed Voucher to the general cashier.

2. The general cashier shall obtain the patron's signature on the Voucher, verify the requesting patron's identity in accordance with (d)8 above, stamp the term "mail in" on the Voucher and sign the Voucher. Any partially completed Voucher shall be maintained by the casino licensee in a secure location within the casino cage, and shall be processed as soon as all required information or documentation is available.

3. The authorizer, upon receipt of all information and documentation required to complete the Voucher in accordance with (d) above, shall obtain the partially completed Voucher from the general cashier, and shall:

i. Record the information noted in (d)1 and (d)3 through (d)5 above;

ii. Sign the Voucher; and

iii. Present the original and duplicate Voucher, and original ticket, invoice, receipt or other documents to the general cashier.

4. The general cashier shall complete the Voucher in accordance with (g) above and sign the Voucher; provided, however, that the general cashier shall attach the cancelled ticket, invoice, receipt or any other additional documentation provided in accordance with (b)4 above, to the original Voucher, and shall return such documentation to the patron upon request; and the general cashier shall mail the corresponding reimbursement check to the requesting patron.

5. Any partially completed Voucher which is not completed within 60 days from the date of request for reimbursement shall be voided in accordance with (c) above.

Recodify as (i) (No change in text.)

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction

Home Energy Assistance Handbook

Eligibility Requirements; Income Eligibility Guidelines

Adopted Emergency Amendments: N.J.A.C. 10:89-2.2 and 2.3

Take notice that the Office of Administrative Law has discovered an error in the computation of the expiration date for the emergency amendments to N.J.A.C. 10:89-2.2 and 2.3 published in the November 19, 1990 New Jersey Register at 22 N.J.R. 3590(a). The correct date for the expiration of the emergency amendments is December 29, 1990, being 60 days from the date of filing (October 30, 1990) with the Office of Administrative Law. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Nonrenewal of Automobile Insurance Policies

Adopted Emergency Repeals and New Rules and Concurrent Reproposed Repeals and New Rules: N.J.A.C. 11:3-8.4, 8.5, 8.7 and Appendix A and B

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-8.2 and 8.6

Adopted Emergency Amendment and Concurrent Reproposed Amendment: N.J.A.C. 11:3-8.3.

Emergency New Rules, Repeals, and Amendment Adopted and Concurrent Proposed New Rules, and Amendments Authorized: November 26, 1990, by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules, Amendment and Repeal Filed: November 26, 1990 as R.1990 d.626.

Authority: N.J.S.A. 17:8.1, 17:1C-6(e), 17:22-6.14a1, 2 and 3, 39:6A-3, 39:6A-7, and 39:6A-19; N.J.S.A. 17:33B-1 et seq.

Concurrent Proposal Number: PRN 1990-646.

Emergency Adoption Effective Date: November 26, 1990.

Operative Date: April 1, 1991.

Emergency Adoption Expiration Date: January 25, 1991.

Submit written comments by January 16, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

These new rules, repeals and amendment are adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency adopted new rules, repeals, and amendment are being reproposed in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules, repeals and amendment become effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

These reproposed new rules, repeals and amendment implement changes as the result of amendments to N.J.S.A. 17:29C-7.1 and the enactment of the Fair Automobile Reform Act of 1990 (FAIR Act), N.J.S.A. 17:33B-1 et seq. The Department of Insurance (Department) previously proposed rules implementing these statutory changes on August 6, 1990 (see 22 N.J.R. 2224(b)). The Department has determined to make substantive changes based on public comments received and continuing Department review. The proposal therefore replaces and supersedes the prior proposal. Those comments and the Department's responses are summarized below.

COMMENT: One commenter objected to proposed N.J.A.C. 11:3-8.3(f) which requires nonrenewal notices to be mailed no less than 60 days and no more than 90 days prior to the expiration of the current policy. The commenter stated that the 60- to 90-day notice requirement presents significant time problems relative to the assessment of eligibility points. The commenter believed that more time will be needed for occurrences to be recorded by the Division of Motor Vehicles (DMV) for insurers to order the Motor Vehicle records and review them. The commenter argued that if not given additional time, underwriting decisions defining eligibility will be held for a year. The commenter recommended amending this section to provide the nonrenewal notice be mailed no less than 30 days and no more than 75 days prior to the expiration of the current policy. Additionally, the commenter suggested that the operative period for eligibility points be changed to a 36-month period ending 105 to 120 days prior to the expiration date of the current policy.

RESPONSE: The Department believes that insurers will have sufficient time to review DMV's records and to determine if someone is ineligible. Eligibility points for motor vehicle violations accrue when recorded by the DMV, and for accidents when claim payments are made (see N.J.A.C. 11:3-34). The Department notes that the 60- to 90-day provision was not proposed for change.

COMMENT: One commenter questioned whether the Department will interpret the term "date and other facts" necessary for identification of particular incidents in N.J.A.C. 11:3-8.3(f) on a case-by-case basis.

RESPONSE: The term "date and other facts" is not meant to be interpreted on a case-by-case basis. The terms require that sufficient information be stated on the notice of nonrenewal so that the insured can identify the incident and appeal the action if necessary. For example, if an insurer issues a notice of nonrenewal based upon a person accruing 10 automobile insurance eligibility points as a result of two at-fault accidents, the insurer shall provide the dates of those accidents, the claim payments made and the number of points accrued.

COMMENT: One commenter objected to N.J.A.C. 11:3-8.3(f)1 and stated that this section creates unduly burdensome informational requirements on insurers. The commenter argued that including the full text of the rule does not aid the understanding of the policyholder of his rights or the reason for the insurer's action. The commenter argued that it makes even less sense with the elimination of the "for cause" reasons for nonrenewal contained in the current N.J.A.C. 11:3-8.3. The commenter believed that providing the required information to the policyholder will only lead to confusion. The commenter suggested that insurers be permitted to provide a summary of the applicable provisions.

A second commenter objected specifically to the provision which provides that when "notice of nonrenewal is based on eligibility points, notice must identify the number of points and the events." This commenter suggested that the factual background be permitted to be stated in a simple format, and requested that the Department not insist on an exhaustive factual justification.

RESPONSE: The Department has revised N.J.A.C. 11:3-8.3(b)1. Insurers will not be required to provide the "text" on the notice of nonrenewal but must provide the designated provisions under which the action was taken. Insurers are required to provide the number of eligibility points and the events on which they were based so that the insured can understand the reason for being nonrenewed, and determine whether an appeal should be taken.

COMMENT: One commenter questioned what is meant by the term "sources" in proposed N.J.A.C. 11:3-8.3(f)1i. The commenter stated that

this is already covered by the Information Practices Act, N.J.S.A. 17:23A-1 et seq. The commenter further questioned why it is necessary to provide for this in this rule.

RESPONSE: The term "sources" refers to where the insurer obtained the information used to nonrenew someone. The Department believes this requirement is necessary in case there is a mistake made (for example, DMV abstract has the insured with the wrong number of motor vehicle point violations). The information will enable the insured to identify the source of the mistake.

COMMENT: One commenter believed proposed N.J.A.C. 11:3-8.3(f)iii needed clarification and suggested the following language: "In the event action is being taken under N.J.A.C. 11:3-8.4(b) to nonrenew a policy of an insured, etc."

RESPONSE: The Department does not believe that the amendment is appropriate. Insurers may issue notices of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34 (proposal published elsewhere in this issue of the Register). The insurer may, however, be obligated to offer to renew other persons insured under the policy.

COMMENT: One commenter objected to proposed N.J.A.C. 11:3-8.3(f)ii because his company writes automobile insurance on a countrywide basis. The commenter stated that it uses an automated system for sending notices in order to keep costs down; the system requires that notices be as uniform as possible. The commenter believed that specific changes would require his company to cite on their notices of nonrenewal the specific underwriting rule relied upon, which would require a costly change in their countrywide system. The commenter argued that such a drastic change might require them to manually issue such notices in New Jersey. These costs would be passed on to New Jersey consumers. The commenter believed that this provision serves no real regulatory purpose, and should be eliminated from the rule.

RESPONSE: This requirement is necessary in order to link the facts with the action taken, since the company's decision will be based upon the consistent application of its underwriting rules. The insurer could provide all of the underwriting rules to the insured and note which specific one applies.

COMMENT: Several commenters objected to proposed N.J.A.C. 11:3-8.3(f)1iii and iv, which require nonrenewals based on the "two percent" or "two for one" rules to be consecutively numbered. The commenters argued that this requirement is onerous, unnecessary and unmanageable for a significant number of companies. The commenters stated that if the Department needs to determine whether an insurer has exceeded the two percent barrier, then there are less intrusive ways to accomplish this goal.

A second commenter stated that they do not have a system to issue notices that are consecutively numbered by territory. The commenter argued that to put such a system in place would be costly and burdensome. In support of his position, the commenter stated that nonrenewal notices sent out today may be effective later than a nonrenewal notice sent out tomorrow or a nonrenewal sent out a week from tomorrow. Therefore, notices that were consecutively numbered when sent out will not be consecutively numbered as to their effective date. The commenter argued that the consecutively numbered notices will not correspond with the number of nonrenewals effective on a given date and will not provide the Insurance Department with useful information.

A third commenter recommended deleting this requirement since the Department will receive the data in the summary reports submitted under proposed N.J.A.C. 11:3-8.7.

RESPONSE: This provision gives the Department an avenue to provide immediate relief to people who have been improperly nonrenewed under the "two percent" or "two for one" rules. This system enables the Department to identify when a company has reached the maximum number of "two percent" or "two for one" allowances for that year. This system also permits insurers to keep track of the number of permissible nonrenewals.

COMMENT: One commenter stated that the proposed format of N.J.A.C. 11:3-8.3 is confusing. The commenter objected to the order in which the proposed rules address nonrenewals based on ineligible persons, the "two percent" rule and the "two for one" rule. The commenter believed the rules would be clearer if structured in a different order.

RESPONSE: The Department believes that the intent of the proposed rules and the basis for nonrenewals are sufficiently conveyed in the present format.

COMMENT: One commenter suggested amending proposed N.J.A.C. 11:3-8.3(f)2i (Consumer Complaint Notice). The commenter believed that in order to quickly resolve such complaints, the consumer should indicate the factual basis for the consumer's dispute with the insurer. The commenter stated the complaint should indicate, for example, that the insurer was in error in citing an accident or violation, or the insurer made a mistake in adding eligibility points, etc. Additionally, the commenter suggests the following amendatory language:

Your written complaint should indicate the facts on which you are basing your complaint.

RESPONSE: The Department agrees and has revised this section accordingly.

COMMENT: One commenter objected to the current provisions of N.J.A.C. 11:3-8.4 (which has been repealed) concerning accident involvement, convictions and the like. The commenter believed that these provisions were inconsistent with the definition of an eligible person.

RESPONSE: The Department has deleted this provision.

COMMENT: One commenter noted that the proposed new rules on nonrenewal indicates that under proposed N.J.A.C. 11:3-8.3(i), subsection (i) should remain unchanged. The commenter believed this section should be updated to reflect the numbering changes. Additionally, the commenter stated that the language does not fit with the statutory nonrenewal right under N.J.S.A. 17:29C-7.1.

RESPONSE: The proposed amendment does not affect the provisions of (g) through (i) and is consistent with the numbering system. Additionally, the Department believes that the language used is consistent with the statutory provisions under N.J.S.A. 17:29C-7.1.

COMMENT: Two commenters expressed concern with proposed 11:3-8.4(a)1. One commenter stated that this section implies that an insurer may not issue a notice of nonrenewal to someone who is an "eligible person." Yet, under the "two percent" and "two for one" rules, an insurer may indeed nonrenew "eligible persons." The commenter suggested that this section be clarified.

The second commenter stated that this section is in conflict with N.J.S.A. 17:20C-9, which requires nonrenewal notices to be sent to the named insured. The commenter argued that insurers should be advised of their rights with respect to policies that have ineligible persons insured thereunder.

RESPONSE: An insurer may nonrenew eligible persons under the "two percent" and "two for one" provisions of N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.5, and this section has been revised to clarify that point.

COMMENT: A number of commenters strongly objected to proposed N.J.A.C. 11:3-8.4(a)2. This section provides that the driving record of a member of a household may not form the basis for an adverse underwriting decision unless that person accounts for 10 percent or more of the use of the vehicle insured.

A second commenter argued that the 10 percent requirement establishes a relatively subjective and completely unverifiable standard. The commenter stated that to the extent that an "ineligible driver" designation presents a major price and coverage availability problem to any insured, this sets up both a temptation to misrepresent and a potential for many insured-insurer disputes. The commenter believed that this rule is wholly subjective, since few multi-driver and/or multi-car families know actual mileage driven by each driver. This commenter suggested permitting driver exclusion endorsements at least in situations where insurers are advised that an eligible driver in a household will not drive a specific vehicle.

A third commenter argued that it will be virtually impossible for a company to prove that a household resident uses the vehicle 10 percent or more of the time. The commenter argued that the occasional driver could, during the term of the policy, exhibit driving conduct of a consequence severe enough to warrant nonrenewal despite his or her limited time behind the wheel.

A fourth commenter objected to this provision, because it fails to address the nonrenewal of policies, only the nonrenewal of people. The commenter argued that it does not provide guidance as to what an insurer can do when faced with a policy with both eligible and ineligible persons insured under it.

A fifth commenter believed that there was no statutory basis for requiring that ineligible drivers be insured in the voluntary market. This commenter also believed that the Department has no authority to mandate that insurers voluntarily insure ineligible persons.

A sixth commenter argued that the restriction of nonrenewals is contrary to the FAIR Act and forces good drivers to subsidize bad drivers. The commenter argued that the definition of an insured in an auto insurance policy includes all resident relatives in the household (N.J.S.A. 39:6A-4). The commenter stated the regulation encourages fraud, because

households will be encouraged to state that an otherwise ineligible driver in their household drives less than 10 percent on all vehicles in the household. The commenter believed that household underwriting should be permitted to continue.

RESPONSE: The Department believes that this standard reasonably effects the intent of the FAIR Act. The FAIR Act requires insurers to provide coverage in the voluntary market for "eligible persons", namely, the owner or registrant of a vehicle who does not have certain negative characteristics (see N.J.S.A. 17:33B-13). The Department believes that the 10 percent minimum use of vehicle is a reasonable measure for a threshold at which a particular driver's risk characteristics should impact renewal or nonrenewal of the vehicle. The Department notes that, but for this standard, N.J.S.A. 17:33B-15 would appear to require an insurer to provide voluntary market coverage to an "eligible person" applicant for all owned or registered vehicles, even if all other drivers in the applicant's household were not eligible.

COMMENT: Several commenters expressed concern with proposed N.J.A.C. 11:3-8.4(a)3 and suggested that this section be clarified. The commenters believed that this section could be interpreted to disallow two percent nonrenewals since it prohibits the nonrenewal of any person qualified to be renewed in accordance with the insurer's filed and approved underwriting rules.

One commenter suggested amending this section to read: "Except in accordance with the provisions of 11:3-8.5 no insurer shall issue a notice of nonrenewal . . ." The commenter believed this amendment is necessary "to clarify that nonrenewals may be issued even to people who meet the insurer's underwriting criteria, under the provisions of N.J.S.A. 17:29C-7.1."

RESPONSE: The Department disagrees. The proposed amendments and new rules do not prevent an insurer from using the "two percent" and "two for one" nonrenewal rules. An insurer's filed and approved underwriting rules must provide that an insurer will write eligible persons in accordance with N.J.A.C. 11:3-34 and 11:3-35 (proposal published elsewhere in this issue of the Register).

COMMENT: Several commenters expressed concern with proposed N.J.A.C. 11:3-8.5(a). The commenters are concerned that under the rule insurers would be permitted to nonrenew two percent per territory or one for each two newly issued per territory. The commenters argued that this is contrary to the authorizing statute, N.J.S.A. 17:29C-7.1, which allows both.

One commenter argued that N.J.S.A. 17:29C-7.1 permits an insurer to nonrenew one policy for every two newly insured vehicles voluntarily written. The proposed regulation, however, only permits an insurer to nonrenew one automobile for every two newly insured vehicles voluntarily written.

The commenter further argued that the statute's language permits an insurer to nonrenew an entire multi-car policy. The proposed regulation, however, exceeds the statutory authority by only permitting insurers to nonrenew one automobile.

RESPONSE: The Department agrees with the first commenter and has revised this section accordingly. An insurer will be permitted to nonrenew by territory two percent of its voluntary market automobile insurance policies and one automobile for each two newly insured automobiles.

With regard to the second comment, the Department believes that the legislative intent was to permit nonrenewals in a ratio of one nonrenewal for each two newly insureds, and that the Legislature use the words "automobile" and "policy" as interchangeable. The Department notes that this section was mentioned in the Governor's Reconsideration and Recommendation Statement to S-2637, which became P.L. 1988, c.119 when it addressed this specific issue as follows: "In addition to flex rating, the bill allows insurance companies to terminate two percent of those drivers who they presently insure, whether those drivers are insured pursuant to the mandatory depopulation quotas of this bill or previously were insured by the company. Furthermore, the bill provides that for every two new policies written in the voluntary market, the insurer shall be permitted to refuse to renew one additional policy over and above the two percent limitation. In the spirit of compromise I have agreed to this "two-for-one" credit. (empahsis added).

As other commenters have specifically noted, most of their policies are issued to cover more than one automobile. It is not unusual for a single policy to cover as many as four automobiles. To interpret the statutory language literally would permit an insurer to nonrenew a policy containing as many as four automobiles simply as the result of adding a single automobile to each of two existing policies. It seems clear that the legislative intent was to encourage insurers to expand their business by covering more automobiles, while providing additional underwriting flexibility and a credit for the voluntary expansion of business. To construe the language of the statute literally, as urged by the commenters, may in fact encourage insurers to reduce the number of vehicles they cover. The Department therefore believes that the Legislature used the terms "automobile" and "policy" interchangeably, and so proposes the language in this rule. The reproposed rule uses "automobile" as the appropriate unit in calculating the "two-for-one" credit. While some insurers write a separate policy for each automobile, many insurers cover all household vehicles on a single policy. To use "one policy nonrenewed" for "each two new insurance policies" would likewise misstate the Legislature's intent. It would mean an insurer could nonrenew a policy covering four automobiles for two new policies each of which covered a single automobile. The Department further notes that all companies keep data on "exposures" that is, automobiles, and that to use the "policy" as the unit would unduly prejudice those companies that write each vehicle on a separate policy.

COMMENT: One commenter questioned how the "credit" will be determined. If an insurer has exceeded its most recent depopulation quota, the commenter inquired whether the excess amount becomes the basis for counting "newly insureds." The commenter argued that a strict reading of the statute seems to indicate that any new risk would count for a credit as long as insurers were not deficient on depopulation and making up a specific deficiency. The commenter stated that while each depopulation period has a future target, insurers should be able to take credit either based on exceeding the prior target or when the insurer believes it has exceeded the future target. The commenter stated that the depopulation targets are Statewide and this rule applies by territory; it could not see how this can be converted from one to another.

RESPONSE: The Department will determine an insurer's depopulation credit as of each date set forth in the statute. Once the period ends, the insurer is issued a new quota. In order to nonrenew an insured as the result of two newly insureds, the insurer will have to establish systems to calculate whether it has insured two additional automobiles.

COMMENT: One commenter expressed concern with the "Calendar Year Period" requirement in N.J.A.C. 11:3-8.5(a)2. The commenter believed that the regulation may improperly limit an insurer's ability to nonrenew policies. The commenter stated that the insurer should be permitted to accumulate nonrenewal credits for use in future months. The current requirement of writing and nonrenewing policies during the "Calendar Year Period" could limit the insurer who had written policies in December from nonrenewing policies at a later date, based on those December writings. The commenter believed that the removal of the term "Calendar Year Period" could provide insurers with the ability to accumulate nonrenewal credits.

RESPONSE: The Department disagrees. This provision is consistent with N.J.S.A. 17:29C-7.1. An insurer will not be permitted to accumulate and store nonrenewal credits for use in future years because this would disrupt the market. Additionally, the Department notes that depopulation is scheduled to end in 1992.

COMMENT: Several commenters expressed concern with proposed 11:3-8.6 and the capping of the assigned risk plan.

One commenter asserted that the proposal does not address the problem insurers and insureds will face when the assigned risk plan is closed by the Commissioner. The commenter noted that the proposed regulation requires insurers to renew any policy, even policies of ineligible insureds. This commenter questioned what happens when a company has sent a customer a nonrenewal notice and the Commissioner closes the assigned risk plan before the nonrenewal notice is effective.

A second commenter cautioned the Department that changing an insurer's underwriting operations is not an overnight fix and that it takes time to adjust their systems. The commenter suggested that in the event the assigned risk plan exceeds 10 percent of the market, and the Department orders insurers to cease normal underwriting, there needs to be a sufficient time delay for information.

RESPONSE: The Department is aware of the problems insurers and insureds will face if the assigned risk plan is closed by the Commissioner. The Department will take into account those problems and may address them in the Order closing the assigned risk plan, should such action become necessary.

COMMENT: Several commenters recommended amending proposed N.J.A.C. 11:3-8.6 to permit an insurer to nonrenew or cancel or refuse to issue a policy for nonpayment of premium, or for suspension or revocation of drivers' license or auto registration. The commenter believed that no insurer should be required to write or continue insurance for someone who does not pay for it. One commenter argued that the

former New Jersey assigned risk plan would not insure a driver whose license was revoked or who failed to register his vehicle. The commenter believed that insurers should not be required to do more than the plan in this respect.

RESPONSE: The commenters are referring to the cancellation of a policy. This rule addresses the nonrenewal of a policy. Nothing in this rule prohibits the proper cancellation of a policy pursuant to N.J.S.A. 17:29C-7. The Department notes that nonpayment of premium, or the suspension or revocation of driver's license, are all situations which result in a person being "ineligible" pursuant to N.J.A.C. 11:3-34.

The language of the rule has been clarified to limit its effect to nonrenewals as provided in ths subchapter.

COMMENT: One commenter expressed concern with proposed 11:3-8.7(a). The commenter believed that the maintenance of the data and the keeping of records for five years places a tremendous financial burden on companies. The commenter suggested that a two-year requirement is more reasonable.

RESPONSE: The five-year period is consistent with the Department's scheduling of market conduct examinations. Two years is insufficient.

COMMENT: Two commenters stated that the requirement of providing reports of nonrenewals on or before February 15 and August 15 of each year as required by N.J.A.C. 11:3-8.7(b) is duplicative and cumbersome.

RESPONSE: The reporting requirements are necessary in order to permit the Department to monitor and oversee the nonrenewal of automobile insurance policies.

COMMENT: One commenter suggested that Exhibit A—Column (10) and Exhibit B—Column (9) use the statutory phrase Voluntary Market Quota instead of JUA Depopulation Quota.

RESPONSE: The Department agrees and has revised this exhibit accordingly.

COMMENT: One commenter stated that they cannot quantify the total number of vehicles cancelled in a given year. The commenter stated that coverage may be cancelled on a particular vehicle because it was sold or replaced. While the insured's policy will note the change in coverage, separate records are not maintained in a manner to facilitate retrieval of the data. The commenter further stated that records are not kept when an insured moves from one territory to another. The commenter stated that technically this represents a cancellation in the old territory from a statistical perspective even though the vehicle remains insured. The commenter requested that the "Vehicle Cancelled" column be deleted.

RESPONSE: If an insurer is going to nonrenew two percent of its policies and/or one automobile for each two newly issued automobiles, then it will have to develop systems to calculate these numbers and this information will have to be reported. This information is currently used for the determination of an insurer's residual market depopulation quota.

COMMENT: One commenter stated that his policy writing system cannot accommodate the reporting requirements in the categories of "Vehicles Cancelled", "Vehicles N/R by Insured", and "Vehicles Newly Insured" under Exhibits A and B. The commenter believed that the difference between the reported categories of "Vehicles Insured 12/31" and "Vehicles Insured (date of request)" under Exhibit A and B would provide statistical data required by N.J.A.C. 11:3-8.7(a), because an "in force" vehicle count is thereby furnished. It also satisfies the data sought through the counts requested in Columns 3, 4, 9, (Vehicles Cancelled, Vehicles N/R by Insured, Vehicles Newly Insured).

RESPONSE: These reporting requirements are necessary in order to permit the Department to monitor and oversee the nonrenewal of automobile insurance policies.

COMMENT: One commenter stated that his company uses companywide automated systems to make periodic reports of requested information to the State.

The commenter argued that his company's automated system does not break down company nonrenewals into the four categories listed in columns (4), (5), (6), (7) and (8) of proposed Appendices A and B. The commenter stated that his company is willing and able to report the sum of all five columns for each territory in New Jersey, that if the insurer uses the "two percent" rule or the "two for one" nonrenewal rule, then all nonrenewals reflected in columns (4), (5), (6), (7), (8) will be considered as "two percent" and "two for one" nonrenewals. This way, the Department would know that the insurer is in compliance with the nonrenewal limits by territory, while the insurer saves expense dollars.

The commenter suggested that proposed Appendix A of N.J.A.C. 11:3-8 should be amended to add in the "notes" at the bottom of each form the following:

"Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% nonrenewals or 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory."

The commenter further suggested that proposed Appendix B of N.J.A.C. 11:3-8 should be amended to add in the "notes" at the bottom of each form,

"Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% nonrenewals or 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory."

RESPONSE: The Department agrees and has revised this exhibit accordingly.

COMMENT: One commenter inquired whether N.J.A.C. 11:3-8.1 is retained since the proposed amendments do not refer to it.

RESPONSE: N.J.A.C. 11:3-8.1 is retained in its current form.

The Department of Insurance ("Department") is reproposing substantial changes in its rules concerning nonrenewal of automobile insurance policies, N.J.A.C. 11:3-8.

The Department proposed amendments, new rules and repeals to its nonrenewal rules on May 15, 1989 (see 21 N.J.R. 1306(a)). As a result of public comments received, that proposal was modified and reproposed February 5, 1990 (see 22 N.J.R. 316(a)).

Earlier this year the Legislature enacted the Fair Automobile Insurance Reform Act of 1990 ("Fair Act"), N.J.S.A. 17:33B-1 et seq. The Fair Act creates new rights to obtain and renew automobile insurance policies in the voluntary market for defined "eligible persons". The Department is reproposing these new rules, amendments and repeals to implement statutory changes.

The Department reproposes a new rule, N.J.A.C. 11:3-8.2, which provides definitions for terms used in this subchapter. This reproposed new rule requires a recodification or renumbering of subsequent rules. Further references to rules in this Summary shall refer to the renumbered rules included in this reproposal.

The Department reproposes an amendment to N.J.A.C. 11:3-8.3, which sets forth the requirements of the notice of nonrenewal which insurers are required to provide. Amendment is necessary to make N.J.A.C. 11:3-8.3 consistent with the new statutory bases for nonrenewal, which are described in the subsequent sections. This reproposed amendment requires an insurer to identify the permissible reason for nonrenewal in this notice. The amendment further requires certain other information to be included in the notice, which is necesssry both to ensure that the insurer properly identifies the statutory and regulatory bases for the nonrenewal and to provide for monitoring by the Department.

The Department reproposes to repeal N.J.A.C. 11:3-8.4 (formerly N.J.A.C. 11:3-8.3). This rule contained several specific bases upon which an insurer was permitted to nonrenew an automobile insurance policy. Many of the specific provisions dealt with adverse events of driving behavior; others set forth special factual circumstances that may warrant nonrenewal. The FAIR Act provides, however, that insurers shall renew the policies of defined eligible persons. Adverse events of driving behavior are subsumed into the definition of "eligible person" as set forth in the FAIR Act, N.J.S.A. 17:33B-13, and reproposed rules N.J.A.C. 11:3-34, published elsewhere in this issue of the Register. The other specific factual circumstances set forth in the prior rule no longer appear to be necessary as a basis for nonrenewal in view of the general authority granted insurers by N.J.S.A. 17:29C-7.1c and to nonrenew additional polices at their discretion. In repealing the prior rule in its entirety, the Department notes that former N.J.A.C. 11:3-8.3(a)11 provided for certain duties of an insurer upon receipt of a notice from an insurance producer that a policy will not be renewed, but rather be written by another insurer. The Department will repropose an appropriate rule on this subject in the near future.

Reproposed new N.J.A.C. 11:3-8.4(a) incorporates the insurer's duty to renew all eligible persons by providing that an insurer may nonrenew insureds who fail to meet the definition of eligible person. The reproposed subsection further provides that the date for accrual of eligibility points in connection with the nonrenewal of a person who is not an eligible person shall be based upon the eligibility points accrued in the 36-month period ending 90 days prior to the policy expiration date. This is consistent with past practice and permits an insurer to issue the notice of nonrenewal in the 60-day period required by N.J.A.C. 11:3-8.3. Consistent with the reproposed new rules concerning insurer underwriting rules,

N.J.A.C. 11:3-35, published elsewhere in this issue of the Register, the reproposed rule prohibits issuance of a notice of nonrenewal when a member of the household is ineligible unless the ineligible member of the household accounts for more than 10 percent of the use of the insured vehicle. Furthermore, since an insurer may in its underwriting rules choose to renew some insureds who are not eligible persons, reproposed N.J.A.C. 11:3-8.4(a)3 provides that an insurer shall renew all persons who qualify in accordance with its approved underwriting rules. The reproposed rule also provides that insurers may nonrenew those who are not eligible persons and who no longer qualify for the non-standard rating plan filed and approved in accordance with proposed new rules N.J.A.C. 11:3-19, published elsewhere in this issue of the Register.

Reproposed new rule N.J.A.C. 11:3-8.5 sets forth the rules for discretionary nonrenewals pursuant to N.J.S.A. 17:29C-7.1. That statute permits insurers to nonrenew up to two percent of the policies in each territory, and to nonrenew in each territory one automobile for each two newly insured automobiles.

These reproposed new rules were thoroughly discussed in the prior proposals.

The Department reproposes new rule N.J.A.C. 11:3-8.6 to set forth a provision of the FAIR Act regarding renewals, N.J.S.A. 17:33B-25. Insurers shall not nonrenew any automobile insurance policies when the new assigned risk plan is not accepting new applications for coverage as the result of the Commissioner's certification that the number of insureds in the assigned risk plan exceeds 10 percent of the private passenger automobile insurance market.

The Department also reproposes the repeal of N.J.A.C. 11:3-8.7 and a new rule concerning recordkeeping and reporting requirements. These requirements are necessary in order to permit the Department to monitor and oversee the nonrenewal of automobile insurance policies.

Existing Exhibits A and B are reproposed for repeal. They are no longer necessary because of the repeal of N.J.A.C. 11:3-8.3 to which they relate.

As a result of the public comments received and further review by the Department, these rules contain substantive changes from the previous proposal that affect nonrenewals.

The Department has revised N.J.A.C. 11:3-8.5 to permit insurers to nonrenew "two percent" per territory and one automobile for each two newly insured automobiles.

Social Impact

The reproposed new rules and amendment will affect automobile insurance purchasers and automobile insurers. They implement recent legislative changes to the automobile insurance laws, and thus will have the positive social impact on the automobile insurance market as determined by the Legislature. They will prevent unfairly discriminatory nonrenewals.

Economic Impact

The proposed new rules and amendment will economically affect the Department, as the increase in automobile insurance nonrenewals is likely to increase the number of consumer complaints received and to which the Department must respond. If this proves correct, additional investigators must be added to the current staff. The number required cannot be determined at this time.

The reproposed new rules and amendment will also affect automobile insurers, which may be required to amend their current procedures for nonrenewal of policies to provide additional information on their nonrenewal notices. This change will be a minor one and the cost should be more than offset by the increased competitive flexibility regarding nonrenewals permitted by the legislation and the reproposed rules and amendment. The rules also require that a report summarizing the number of automobiles nonrenewed and specifying the reason for nonrenewal shall be submitted. This will involve some minimal expenditure by insurers, but is necessary for proper oversight.

Regulatory Flexibility Analysis

The reproposed new rules and amendment may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" consist of insurance companies authorized to write private passenger automobile insurance; a maximum of five automobile insurers may qualify as "small businesses."

The reproposed new rules and amendment impose requirements on these businesses in connection with the nonrenewal of automobile insurance policies. They permit nonrenewals for specified reasons, but require the regulatory bases be provided on the notice of nonrenewal to the insured. Overall the reproposed new rules and amendment increase the underwriting flexibility of all companies.

When an insurance company chooses to nonrenew a policy pursuant to the reproposed new rules and amendment, the rule authorizing it must be specified. This is a requirement of the current rule, and no additional costs are imposed. Some minor changes in internal company procedures may be required to adapt to the new reasons for nonrenewal, but they may be accomplished with the company's current underwriting staff. The legislation provides no additional flexibility for insurance companies that qualify as "small businesses."

The reproposed new rules and amendments require companies to maintain records of nonrenewals so as to provide a basis for regulatory oversight. These records must be maintained for the five-year period as provided in the rule prior to amendment. The records to be maintained are different, however, because they are to track nonrenewals based on the additional criteria now permitted by statute. The Department believes that this obligation has been minimized in the reproposed rule and the kinds of records required to be kept made clear by the report form. Reporting requirements have likewise been minimized, as set forth on this request form.

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

11:3-8.2 Definitions

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

"Automobile insurance eligibility points" or "eligibility points" means points calculated under the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/nonstandard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different base rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules, which has been filed and approved in accordance with N.J.A.C. 11:3-19.

11:3-[8.2] **8.3** General provisions

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

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes [the text of] the designated provision(s) of this subchapter under which action is being taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents. [In the event action is being taken under N.J.A.C. 11:3-8.3(a)1, the text of the exceptions under N.J.A.C. 11:3-8.3(a)2 must be included together with a statement that none of these exceptions are applicable.]

i. In the event action is being taken under N.J.A.C. 11:3-[8.3]**8.4** (a) [1, (b) or (c), the text of] **(ineligible person)**, the notice shall [include both the number of accidents or claims where the insurer's nonrenewal is contingent thereon, and the number of automobiles in the household] **provide the basis by which the insured fails to qualify as an eligible person. When notice of nonrenewal is based on automobile insurance eligibility points, the notice shall identify the number of eligibility points and the events and sources which resulted in their assessment.**

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(b) (underwriting rules) to nonrenew an insured who is not an eligible person

in accordance with the approved underwriting rules applicable to the non-standard rate level of an approved standard/non-standard rating plan, the notice shall provide the basis by which the insured fails to qualify as an eligible person and shall reference the specific underwriting rule by which the insured is disqualified. The notice shall set forth the specific facts upon which the insurer relied to determine that the insured is not an eligible person and is no longer qualified to be insured in accordance with the insurer's approved underwriting rules.

iii. In the event action is being taken under N.J.A.C. 11:3-8.5(a)1, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)1 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.5(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)2 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i[.] below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Each notice of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew [(or conditionally renew, as appropriate)] your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint with the New Jersey Department of Insurance, Division of Enforcement and Consumer Protection, CN [325] **329**, Trenton, New Jersey 08625-**0329. Your written complaint should indicate the facts on which you are basing your complaint.**"

[3. The notice of nonrenewal shall also include or be accompanied by a statement advising the insured of his possible eligibility for coverage through the New Jersey Automobile Full Insurance Underwriting Association.]

(g) through (i) (No change.)

11:3-[8.3] **8.4** Standards of nonrenewal applicable to all automobile policies

[(a) An insurer may issue notice of nonrenewal based upon one or more of the following reasons:

1. Accident involvement: The named insured or any operator who customarily operates the automobile has been involved during the 36-month period which ended 90 days prior to the expiration of the current policy in:

i. Two or more bodily injury accidents if there is one car in the household or three or more accidents if there are at least two cars in the household, provided a loss payment has been made or a loss reserve has been established for such accidents other than a payment for the personal injury protection benefits; or

ii. Two or more accidents involving damage to any property including his own of $300.00 or more for which accidents a payment was made if there is one car in the household, or three or more such accidents if there are at least two cars in the household, provided that loss payments under the comprehensive physical damage coverage shall not be counted; or

iii. A bodily injury and a physical damage accident as described in i. and ii. above if there is one car in the household. Two bodily injury and one physical damage accident or two physical damage and one bodily injury accident if there are at least two cars in the household.

2. Exceptions: Accidents under i. to iii. above shall not be counted if the accident occurred under the following circumstances:

i. The accident resulted in a claim or payment only under the Personal Injury Protection Coverage;

ii. The automobile was lawfully parked at the time of the accident (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as in the operation of the last operator);

iii. The named insured or anyone customarily operating the automobile, has been reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such persons;

iv. The automobile of the named insured or other customary operator was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident;

v. The operator of another automobile involved in such accident was convicted for a moving traffic violation and the named insured or other customary operator was not convicted of a moving traffic violation in connection therewith;

vi. The automobile operated by the named insured or anyone who customarily operates the automobile is damaged as a result of contact with a "hit and run" driver, provided that the accident has been reported to legal authorities within a reasonable time thereafter;

vii. The accident resulted from contact with animals or fowl.

3. Convictions concerning motor vehicle law: The named insured or any operator who customarily operates the automobile:

i. Has been convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for any one of the following motor vehicle law violations during the 36 months ended 90 days prior to the expiration date of the current policy:

(1) Driving while intoxicated or under the influence of drugs;

(2) Leaving the scene of an accident;

(3) Criminal negligence or assault arising out of the operation of a motor vehicle;

(4) Driving while license is suspended or revoked.

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more, as defined in the New Jersey Motor Vehicle Law, per car in the household or which result in an accumulation of nine or more points for any one such operator, provided that any operator who has been involved in such motor vehicle law violations continues to be an operator of the automobile at the time of renewal.

4. Convictions other than motor vehicle laws: The named insured or anyone customarily operating the automobile is convicted, entered a plea of guilty or nolo contendere, forfeited bail bond or other security for obtaining or attempting to obtain from any other person, insurance company or the Unsatisfied Claim and Judgment Fund any money or any other thing of value by falsely or fraudulently representing that such person is entitled to such consideration under the automobile insurance policy, or falsely or fraudulently making statement or presenting documentation in order to obtain such consideration, or by cooperating, conspiring or otherwise acting in concert with any person seeking to obtain or attempting to obtain falsely or fraudulently such consideration.

5. Use of the automobile in professional racing.

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for by corrective measures.

i. A nonrenewal premised upon physical or mental impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination report is not otherwise available, it must be secured by the insurer at its own expense.

7. Refusal to submit to a medical examination at company expense where there is reason for the company to doubt an operator's ability to operate the automobile safely.

8. Addition of an operator of the automobile during the policy term or for the new policy term with respect to whom any of the above causes for nonrenewal would apply.

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. The membership of an automobile or travel club does not constitute a qualified group subject to this paragraph.

10. Failure by an insured under the policy to comply with the cooperation or subrogation clause of the policy, subject to reasonable rules established by the Commissioner.

11. Written request by a producer of record not to renew the policy. The producer's request shall include a certification that the policy has been replaced with like coverage at approved rates in the voluntary market with an admitted insurer and shall specify the name of the replacing insurer. The producer's request shall also certify that the insured has been informed in writing of his or her right to renewal and has agreed in writing to the nonrenewal because the producer has obtained comparable coverage with an insurer. The producer's request not to renew the policy shall be submitted to the insurer not less than 90 days prior to the expiration date of the policy and a copy thereof shall be simultaneously sent by the producer to the named insured.

i. Upon receipt of such request from the producer, the transferor carrier shall advise the insured in writing of his or her right to renewal in the same company before obtaining the insured's consent to transfer and also of the insured's right to renew the policy if he or she is cancelled by the new insurer for reason other than nonpayment of premium or suspension or revocation of the registration or driver's license. Exhibit A appended to this subchapter is approved for this purpose. A nonrenewal based on such request shall be invalid and the original company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the new carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

ii. Failure by a terminated agent to request renewal during the period of nine months from the effective date of termination as provided in N.J.S.A. 17:22-6.14(a) shall be construed as a request not to renew in the context of this subchapter. In such event, the insurer shall in writing advise the insured of the status of the agent and that the agent's failure to request renewal denotes that replacement coverage as specified in 11 and 11i above has been obtained. The written notice shall also set forth the insured's right to renewal in the same company as set forth in 11i above. Exhibit B appended to this subchapter is approved for this purpose. The insurer's notice shall be sent to the insured not less than 60 days prior to the expiration date of the policy.

iii. Insurance companies and producers shall maintain copies of all correspondence required pursuant to 11, 11i and 11ii above for a period of three years.

iv. Notices to insureds set forth in Exhibits A and B shall be sent by certified mail or regular mail, if at the time of such mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured. The insurer shall also maintain documentation of the mailing.

(b) An insurer may issue notice of nonrenewal with respect to comprehensive physical damage coverage, including towing and labor coverage, if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid under such coverage claims each of which involve a loss payment by the insurer of at least $100.00, as specified in paragraphs 1 and 2 below:

1. Four or more such claims if there is one car in the household or six or more such claims if there are at least two cars in the household.

2. For any policy which covers more than one car, an insurer may nonrenew comprehensive physical damage coverage, including towing and labor coverage for one of the covered cars, if that single car has four or more claims.

(c) An insurer may issue notice of nonrenewal with respect to towing and labor coverage if the insurer, during the 12-month period ended 90 days prior to the expiration of the current policy, has paid claims under such coverage as specified in 1 below;

1. Four or more such claims if there is one car in the household or six or more claims if there are at least two cars in the household.

(d) Except as provided at N.J.A.C. 11:3-8.4, any refusal to renew a policy or coverage, as applicable, which is not based upon the standards set forth in (a) through (c) above shall be submitted to the Commissioner of Insurance for review no later than 120 days prior to the expiration of the policy. The Commissioner shall, in writing, acknowledge receipt of any refusal to renew submitted pursuant to this subsection. The Commissioner shall, within 45 days of receipt, either disapprove or authorize issuance of any nonrenewal submitted by an insurer for review and acknowledged by the Commissioner pursuant to this subsection. If the Commissioner shall fail to either disapprove or authorize issuance of the nonrenewal within such 45-day period, issuance of the nonrenewal shall be deemed to be authorized.]

(a) An insurer may issue a notice of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34.

1. For the purpose of determining whether a person is an eligible person who must be renewed, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy.

2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insured's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured.

3. No insurer shall issue a notice of nonrenewal to any person qualified to be renewed in accordance with the insurer's underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.

(b) An insurer which has filed a standard/non-standard rating plan pursuant to N.J.A.C. 11:3-19 may issue notices of intention not to renew any insured who is not an eligible person and who no longer qualifies for any rate level in accordance with its approved underwriting rules.

11:3-[8.4]**8.5** Additional nonrenewals [based on underwriting guidelines]

[(a) An insurer may issue notice of nonrenewal based upon a failure to meet current underwriting standards as specified in such insurer's underwriting guidelines provided that such nonrenewals may be issued only with respect to a policy:

1. Issued by the insurer to any policyholder who was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter; or

2. Issued by the insurer to any policyholder who was last insured through a statutorily mandated residual market mechanism; or

3. Issued by the insurer to any policyholder who is a first-time applicant for automobile coverage.

i. For the purpose of this section, the term "first-term applicant" shall mean a person seeking automobile insurance for the first-time, including a child applying for a policy in his or her own name after being on their parent's policy.

(b) Pursuant to the provisions of N.J.S.A. 17:22-6.14 a1., an insurer's underwriting guidelines shall not be arbitrary, capricious or unfairly discriminatory.

1. Nonrenewals based upon one or more of the following reasons are specifically prohibited:

i. The race, religion, nationality or ethnic group of an insured;

ii. Solely upon the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer, agent, broker which limits its market to one lawful occupation or profession, or to several related lawful occupations or professions;

iii. The principal location of the insured motor vehicle, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination. The insurer shall state the business purpose for such nonrenewal and provide the Department with documentation of such purpose on request;

iv. Solely upon the age, sex or marital status of an insured, except that this subparagraph shall not prohibit rating differentials based upon age, sex or marital status;

v. The insured previously obtained insurance coverage through a residual market insurance mechanism;

vi. Another insurer previously declined to insure the insured or terminated an existing policy of the insured.

(c) When policies are written subject to nonrenewal pursuant to this section, the company shall document that the insured is a first time applicant, was cancelled pursuant to N.J.S.A. 17:29C-7 or nonrenewed pursuant to this subchapter or was last insured through

a statutorily mandated residual market insurance mechanism. Insurance companies shall maintain copies of such documentation for a period of not less than five years. Such documentation shall be available to the Department on request.

(d) Issuance of a notice of nonrenewal pursuant to this section shall be limited to a period of three years from the date as of which the policy becomes effective after first issuance.]

(a) Any insurer may:

1. For each calendar year period, issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed two percent of the total number of voluntary market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer's territories; and

2. For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period, issue a notice of intention not to renew one additional automobile in that territory. For the purpose of this subsection, "voluntarily writes" shall not include any exposure voluntarily written by or assigned to an insurer to meet any quota established pursuant to N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 and shall not include any new business cancelled by the insurer pursuant to N.J.S.A. 17:29C-7.

(b) Any insurer that does not write its apportionment share of any quota established by the Commissioner pursuant to N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 within the applicable time shall be precluded from nonrenewing automobile insurance policies pursuant to (a) above during the following year.

(c) Nothing in this rule shall be construed to authorize insurers to act in contravention of any applicable State or Federal law prohibiting discrimination on impermissible bases.

11:3-8.6 Suspension of nonrenewals

(a) Notwithstanding the provisions of this subchapter, if the plan for automobile insurance established pursuant to N.J.S.A. 17:29D-1 is not accepting new applications for coverage pursuant to N.J.S.A. 17:29D-1(d), no insurer transacting automobile insurance in this State shall refuse to renew any private passenger automobile insurance policy in this State.

11:3-[8.5]**8.7** Reporting requirements

[(a) The Commissioner will review and monitor the operation of this subchapter to ensure compliance with its provisions, and further, to determine whether depopulation of the residual market is being effected through the utilization of the nonrenewal procedures specified at N.J.A.C. 11:3-8.4.

(b) In order to review and monitor the operation of this subchapter as indicated in (a) above the Commissioner may require the filing of such reports as he or she deems necessary.]

(a) Insurance companies shall maintain records of nonrenewals for not less than five years which shall include a copy of the notice of nonrenewal, data concerning the allowable number of nonrenewals in each territory computed in accordance with N.J.A.C. 11:3-8.5(a)1, and data concerning the actual number of newly insured automobiles and nonrenewals in each territory for each category, computed in accordance with N.J.A.C. 11:3-8.5(a)2. Such records and data shall be made available to the Department upon request. In addition, each insurer shall file summary reports of its nonrenewals as follows:

1. For insurers with approved standard/non-standard rating plans, in the form of report set forth as Exhibit A of the Appendix incorporated herein by reference; or

2. For all other insurers, in the form of report set forth as Exhibit B of the Appendix, incorporated herein by reference.

(b) An insurer shall submit summary reports of their nonrenewals for the year to date on or before February 15 and August 15 of each year to the following address:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
20 West State Street
CN-329
Trenton, New Jersey 08625-0329

Recodify existing N.J.A.C. 11:3-8.6 and 8.7 as **8.8 and 8.9** (No change in text).

[EXHIBIT A
COMPANY LETTERHEAD INFORMATION GOES HERE

Date
Policy No.
Expiration Date

Insured's Name
and Address

Dear Policyholder:

Your automobile insurance policy is due to expire on (date).

Under New Jersey law you have the right to RENEW your automobile policy with our company. It is our understanding that you have received written notification from your agent of your right to renew. Your agent has informed us, however, that after being so notified, you agreed in writing to the nonrenewal of your policy with us because your agent has obtained comparable coverage with another company. We have also been informed by your agent that your new policy will not be issued through the New Jersey Automobile Full Insurance Underwriting Association, also known as the JUA.

If any of these statements are not true and you wish to have your policy renewed by the (name of company) insurance company, please contact us before (date.)

If your replacement policy should be cancelled by your new company within 60 days after its effective date, you also have the right to RENEW your old coverage unless you have been cancelled by the new company for:

1. Nonpayment of premium, or
2. Suspension or revocation of car registration or driver's license.

If you want to renew your policy with our company, contact your agent or write or telephone us at:

New Jersey Telephone Number or 800 Number
Address]

[EXHIBIT B
COMPANY LETTERHEAD INFORMATION GOES HERE

Date
Policy No.
Expiration Date

Insured's Name
and Address

Dear Policyholder:

Your automobile insurance policy is due to expire on (date).

Your insurance agent (name of agent) is no longer an agent for the (name of company) insurance company. We have not been notified whether your agent wishes to renew your policy with our company. Under New Jersey laws, failure to request renewal means that your agent has obtained comparable coverage with another company.

If any of these statements are not true and you wish to have your policy renewed by the (name of company) insurance company, please contact us before (date.)

Under New Jersey laws, we MUST RENEW your auto insurance if you want us to. You are not eligible to be placed in the New Jersey Automobile Full Insurance Underwriting Association, also known as JUA.

If you have chosen to place your automobile insurance policy with another insurance company and it is cancelled by the new company within 60 days after its effective date, you also have the right TO RENEW your old coverage with us unless you have been cancelled by the new company for:

1. Nonpayment of premium, or
2. Suspension or revocation of car registration or driver's license.

If you want to renew your policy with our company, contact your agent or write or telephone us at:

New Jersey Telephone Number or 800 Number
Address]

APPENDIX

EXHIBIT A

NONRENEWAL REPORT—A
Standard/Nonstandard Rating System

Insurer Group Name: _____ NAIC Group No. _____

Company Name: _____ NAIC Company No. _____

(list all companies in _____ _____

standard/nonstandard plan) _____ _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicles N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4(a)1	Vehicles N/R Underwriting N.J.A.C. 11:3-8.4(b)	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	*(JUA Depopulation)* *Voluntary Market* Quota	Vehicles Insured -/-/
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										

*Does not include a vehicle cancelled within the first 60 days.

Insurer Group Name: _____ NAIC Group No. _____

Company Name: _____ NAIC Company No. _____

(list all companies in _____ _____

standard/nonstandard plan) _____ _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicles N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4(a)1	Vehicles N/R Underwriting N.J.A.C. 11:3-8.4(b)	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	*(JUA Depopulation)* *Voluntary Market* Quota	Vehicles Insured -/-/
22										
23										
24										
25										
26										
27										
Totals:										

Notes:
Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (11) shall contain information as of date in column (11).
No cancellation or nonrenewal shall be double counted by including it in more than one column.
Renewals within standard/nonstandard system are not to be reported as nonrenewals or cancellations.
Nonrenewals for underwriting (column 6) do not qualify for highest rated tier of standard/nonstandard plan.
Column (7) cannot be greater than .02 X column (2).
Report total only for column (10).
Column (11) equals column (2) plus column (9) minus columns (3), (4), (5), (6), (7) and (8).
Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% or 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory.

*Does not include a vehicle cancelled within the first 60 days.

Date Submitted

EXHIBIT B

NONRENEWAL REPORT—B
Individual Company

Company Name: _____ NAIC Company No.: _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicles N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	Depopulation)* *Voluntary Market*	*(JUA Vehicles Insured Quota	-/-/
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
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17										
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22										
23										
24										

*Does not include a vehicle cancelled within the first 60 days.

NONRENEWAL REPORT—B
Individual Company

Company Name: _____ NAIC Company No.: _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicles N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	Depopulation)* *Voluntary Market*	*(JUA Vehicles Insured Quota	-/-/
25										
26										
27										
Totals:										

Notes: Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (10) shall contain information as of date in column (10).
No cancellation or nonrenewal shall be double counted by including it in more than one column.
Column (6) cannot be greater than .02 × column (2).
Report total only for column (9).
Column (10) equals column (2) plus column (8) minus columns (3), (4), (5), (6), and (7).
Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% nonrenewals of 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory.

*Does not include a vehicle cancelled within the first 60 days.

Date Submitted

(a)

DIVISION OF ACTUARIAL SERVICES

Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance

Adopted Emergency Amendments and Concurrent Reproposed Amendments: N.J.A.C. 11:4-16.4, 16.5, 28.2 and 28.5

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-14.8 and 11:3-37

Emergency Amendments and New Rules Adopted and Concurrent Reproposed Amendments and New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (see N.J.A.C. 152:14B-4(c)): November 26, 1990.

Emergency Amendments and New Rules Filed: November 26, 1990 as R.1990 d.625.

Authority: N.J.S.A. 17:1-8, 17:1C-6(e) and 39:6A-4.3.

Concurrent Proposal Number: PRN 1990-645.

Emergency Amendment and New Rules Effective Date: November 26, 1990.

Emergency Amendment and New Rules Expiration Date: January 25, 1991.

Submit written comments by January 16, 1991 to:
Verice M. Mason, Assistant Commissioner
New Jersey Department of Insurance
Division of Legislative and Regulatory Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625

These amendments and new rules have been adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments and new rules are being reproposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The readopted rules and amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date. The concurrent reproposal of amendments and new rules supersedes the previous proposal of amendments and new rules which appeared at 22 N.J.R. 2642(a) on September 4, 1990.

The agency emergency adoption and concurrent reproposal follows:

Summary

The emergency adopted and concurrently reproposed amendments and new rules are intended to effectuate the purpose and intent of Section 6 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 ("FAIR Act"), which becomes operative January 1, 1991. Section 6 of the FAIR Act amends the personal injury protection option selections set forth at N.J.S.A. 39:6A-4.3. Section 6 requires that a new option be provided in automobile policies which would allow named insureds to choose the primary coverage provider for medical expenses incurred for the treatment of injuries resulting from an automobile-related accident ("medical expenses").

Currently, medical expenses are covered through an insured's personal injury protection benefits ("PIP") which are part of the required benefits for automobile insurance policies sold in New Jersey. Beginning January 1, 1991, New Jersey residents will be permitted to choose, on new or renewing automobile policies, whether primary coverage for medical expenses will be provided by the automobile insurer through the automobile policy's PIP provisions ("traditional coverage"), or by a health benefits provider through one or more health benefits plans ("alternative coverage"). When the alternative coverage selection is made, Section 6 (hereafter, N.J.S.A. 39:6A-4.3d) requires that the automobile insurer reduce the PIP provision premiums in recognition of the reduced potential for exposure with respect to payment of medical expenses.

N.J.S.A. 39:6A-4.3d also provides that if an insured who is subject to the alternative coverage option selection does not have health coverage at the time an accident occurs, then the automobile carrier will provide PIP benefits for that insured as if the alternative coverage selection had not been made. However, PIP benefits will be subject to a $750.00 deductible in addition to the deductible selected on the policy and the statutory copayment requirement of 20 percent for amounts up to $5,000.

The new rules and rule amendments are designed to address: (1) the order of benefit determination under either the traditional or alternative coverage option selections; (2) the provision of benefits for the insured when a dispute exists on the issue of primacy of coverage, or when an insured is eligible for coverage under more than one PIP plan; and (3) the calculation of benefits payable by the automobile insurer and health

benefits provider under either the traditional or alternative coverage option selection. These new rules and amendments are also designed to make it clear that health benefits providers are prohibited from creating or perpetuating plans that deny benefits based on the existence of PIP benefits.

The Department believes that emergency adoption of these new rules and rule amendments will prevent an imminent peril to the public welfare. These new rules and rule amendments provide both auto insurers and health benefits providers with the guidelines and details necessary to appropriately and uniformly effectuate the coverage selection option mandated by N.J.S.A. 39:6A-4.3d. If these new rules and rule amendments fail to become operative on or before the date N.J.S.A. 39:6A-4.3d becomes operative (January 1, 1991), then practical application of the option selection and subsequent coordination of benefits will be subject to extreme variations and a multiplicity of interpretation by an indefinite number of insurance and insurance-type entities. Significant inconsistencies and lack of reliability will prove detrimental to many insureds, auto insurers, employers, health benefits providers, and the health care delivery system in this State.

Reproposal of the previously proposed new rules and rule amendments is necessitated by revisions to the previous proposal which are of such a substantive nature as to require an additional public notice and comment period. The revisions to the previously proposed new rules and rule amendments, which prompted this reproposal, have been made in response both to comments received during the 30-day public comment period as well as additional reconsiderations initiated within the Department.

Comments were received from a total of 13 commenters. Seven commenters are insurers: five insurers write auto insurance in New Jersey, one insurer writes health insurance, and one insurer writes both auto and health insurance in this State. Three trade associations provided comments, as did a consumer advocacy group. In addition, comments were received from one independent insurance agent and one independent medical claims consultant. Not all comments received were responsive to the proposed amendments and new rules, and therefore not all have been addressed. Readers may note that some comments which the Department considers to be nonresponsive are discussed, because the Department believes the discussion will be beneficial. A summary of public comments and agency responses follows:

COMMENT: Two commenters state that the proposed rules do not effectuate the intent of the FAIR Act. One commenter states that the consequences of the Department's proposal are not required by the FAIR Act, but "consequences" is not defined. The second commenter states that the rules proposed—in conjunction with the proposed medical fee schedule—will raise health care provider rates and automobile insurer administrative costs, in direct opposition to the intent of the enabling statute.

RESPONSE: The Department disagrees. The intent of the legislation, first and foremost, is to reduce the costs to consumers of purchasing auto insurance. One of the methods the drafters of the FAIR Act selected to effectuate this intent is to allow consumers the opportunity not to purchase duplicative medical expense coverage. The proposed rules do not abrogate that intent, nor hinder use of the method chosen.

An increase in the administrative expenses for auto insurers is unavoidable. The FAIR Act requires that coordination of benefits must apply to the provision of personal injury protection medical expense coverage. Having always been the primary benefits provider for medical expenses related to auto accident injuries, automobile insurers have never been involved with coordination of benefits, for all intents and purposes. Being now required to coordinate benefits, auto insurers will necessarily incur some additional administrative expense. This cause and effect is largely independent of the proposed rules. However, the savings which auto insurers will derive from being secondary coverage providers should more than offset the additional administrative costs.

The intent of the proposed rules is to minimize the impact of the increased administrative costs over the long term to the greatest extent possible. Nothing in the proposed new rules is in direct opposition to the intent of the enabling statute.

COMMENT: One commenter states that the rules established by N.J.A.C. 11:3-37 are beyond the authorization of the enabling statute, which provides that "the principles of coordination of benefits shall apply." The commenter suggests that the rules set forth at N.J.A.C. 11:4-28 should be distilled to the situation at hand.

RESPONSE: N.J.A.C. 11:3-37 is a distillation of N.J.A.C. 11:4-28. Under N.J.A.C. 11:4-28, the auto insurance PIP plan was always primary for payment of auto accident injury medical expenses, and health benefits providers were always secondary, covering the PIP plan's deductibles and copayments, and other remaining uncovered allowable expenses, if any.

N.J.A.C. 11:3-37 is essentially the same as N.J.A.C. 11:4-28, except that it provides for the automobile insurance PIP plan to now pay benefits from the secondary payor position under certain circumstances. N.J.A.C. 11:3-37 maintains the polarization of health benefits plans and PIP plans found in N.J.A.C. 11:4-28, in order to make coordination of benefits for the auto insurer as easy as may reasonably be expected, given the complexity of coordination of benefits, in general.

N.J.A.C. 11:3-37 appears to be more exhaustive and complex than N.J.A.C. 11:4-28 because N.J.A.C. 11:3-37 states the underlying principles of coordination of benefits more explicitly, and in greater detail than does N.J.A.C. 11:4-28. This detail is provided for the benefit of auto insurers. Additional differences between the two sets of rules are necessary to accommodate the use of the medical fee schedules by auto insurers, and to incorporate nongroup health benefits plans, which are not subject to the rules of coordination set forth at N.J.A.C. 11:4-28. Otherwise, however, N.J.A.C. 11:4-28 and 11:3-37 are substantially similar in concept.

COMMENT: One commenter suggests an alternative coordination of benefits clause by which the secondary coverage provider would examine the expenses eligible under the secondary coverage, subtract from that amount the benefits which were paid by the primary benefits provider, take the unpaid amount and apply any deductible or copayment provision of the secondary insurer and pay the balance to the insured. The commenter provides the following example (which is based on the Department's example, and thus contains similar computation and typographical errors):

Medical Bills: $2,000 + $2,000 + $500 + $250 + $250 = $5,000

Health insurer: $200 Deductible and 20% co-pay

Eligible expenses per health insurer: $1,800 + $1,750 + $450 + $230 + $200 = $4,380

Health insurer payment: ($4,360 - $200) (.8) = $3,328

PIP insurer: $250 deductible and 20% co-pay of first $5,000 of expenses

Eligible expenses per PIP insurer: $1,800 + $1,750 + $450 + $230 + $200 = $4,380

If PIP is secondary coverage, the PIP insurer would pay as follows:

$4,380 - $3,328 = $1,052—unpaid **eligible** expenses

($1,052 - $250) (.8) = $641.60—PIP payment

The same procedure would be utilized by the health insurer if PIP were primary coverage.

The health insurer would pay as follows:

$4,360 - $3,304 = $1,056—unpaid eligible expenses

($1,056 - $200) (.8) = $684.80—health insurance payment

RESPONSE: The Department disagrees. The alternative method the commenter proposes is commonly referred to as "benefits minus benefits," and has been rejected for use under N.J.A.C. 11:4-28 by this Department. Additionally, this method is not one which is recognized as acceptable by the NAIC for its model coordination of benefits rules. This method does not promote cost containment in the traditional sense. Instead, the cost containment is created by shifting more of the **covered** expenses onto the insured. This is in direct opposition to the theory that an insured with additional insurance should be receiving additional coverage of allowable expenses, up to 100 percent. Under the method provided by the commenter, there is $1,000 of expenses left uncovered, even though both insurers owed the insured benefits of more than $3,000 each.

It is unclear from the commenter's example whether the commenter has made the eligible expenses for both the health benefits plan and the PIP plan the same for the sake of simplicity, or in advocation of abandonment of the medical fee schedule by the auto insurer when secondary. In any event, the method proposed is unacceptable.

COMMENT: Two commenters state that reimbursement of a plan's deductible and copayment requirements defeats the built-in cost containment features of the plans. One commenter suggested that benefits be calculated in such a way that the insured is not reimbursed for the lesser of the two deductible and copayment provisions between a health benefits provider and auto insurer's PIP plan.

RESPONSE: The Department acknowledges that reimbursement of deductibles and copayment tends to reduce the impact of the cost containment provisions of a plan. However, it is a generally accepted principle among health insurance regulators at this time that reimbursements of

deductibles and copayments should occur, generally, when coordinating benefits. The theory is that, if two or more coverages are being purchased, the beneficiary of those coverages has the right to expect up to 100 percent of allowable expenses to be covered, within the benefit limits of each plan.

COMMENT: One commenter questions whether it is correct to interpret the rules as treating the deductible and copayment requirements of health benefits providers and automobile insurers differently, and in a manner more favorable to the health benefits provider. The commenter interprets N.J.A.C. 11:3-37.9 as allowing health benefits providers, when secondary, to reduce actual benefits payable by the deductible and copayment requirements of the plan, while N.J.A.C. 11:3-37.7 does not allow the automobile insurer to reduce actual benefits payable by its deductible and copayment requirements.

RESPONSE: The commenter is correct. Health benefits providers will be incurring increased expenses at all levels, both as a primary coverage provider and as a secondary coverage provider (as auto insurers begin using the medical fee schedules). The Department determined that, at this point, health benefits providers should have some means of alleviating at least a portion of the large shift in expenses. Application of their deductibles and copayment in all circumstances is the means offered.

COMMENT: Two commenters questioned whether a conflict or incongruity exists between N.J.A.C. 11:3-37.3(c) and 11:3-37.5. N.J.A.C. 11:3-37.3(c) prohibits health benefits providers from excluding coverage on the grounds that the expenses could be covered under PIP, while N.J.A.C. 11:3-37.5 suggests that there may be health benefits providers which exclude coverage on those grounds.

RESPONSE: There is no conflict between the two rules. All health benefits providers subject to the regulatory jurisdiction of New Jersey must comply with N.J.A.C. 11:3-37.3(c). However, not all health benefits providers providing coverage to New Jersey residents are subject to regulation by this State. N.J.A.C. 11:3-37.5 acknowledges that there may be some health benefits providers which will choose not to comply with N.J.A.C. 11:3-37.3(c), and not be in violation of any laws.

COMMENT: Several commenters suggest that the Department promulgate a list of qualifying policies (that is, policies which will provide primary benefits) based on the health insurance policy forms filed with the Department.

RESPONSE: Promulgation of such a list at this time is a practical impossibility, but the suggestion will be taken under advisement. Automobile insurers should be aware of two things, however. First, all health benefits plans filed with or by the Department are "qualified" plans, by law. Second, even if such a list of "qualified" plans were to be promulgated, the list would be incomplete, because it would not be a comprehensive list of policies or contracts providing coverage to New Jersey residents, some of which may "qualify," and some of which may not.

COMMENT: One commenter states that the inclusion of self-insured welfare plans which are ERISA-exempt makes the definition of "health benefits provider" overly broad, as does the Department's attempt to apply its provisions to sponsors of self-insured welfare benefits plans covering New Jersey employees. The commenter suggests that clarification of the Department's position on such plans might resolve this issue expeditiously.

RESPONSE: To the extent that any plan is a qualified ERISA plan, it may be exempt from compliance with N.J.A.C. 11:3-37. However, the Department notes that not all plans which claim to be, or present themselves as being ERISA-exempt are actually qualified under ERISA.

To be an employee welfare benefit plan qualifying for ERISA exemption, the plan must provide benefits as set forth at section 3(1) of Title 1 of ERISA. Additionally, the plan must be established or maintained by an employer, an employee organization, or both, among other criteria. The terms "employee organization" and "employer" are defined in sections 3(4) and 3(5) of Title 1 of ERISA, respectively.

Even if a plan is an employee welfare benefit plan, if it also qualifies as a multiple employer welfare arrangement ("MEWA") within the meaning of section 3(40) of Title 1, it is subject to State regulation to the extent provided in subsection 514(b)(6)(A). Fully insured MEWAs are subject to State regulations in accordance with subsection 514(b)(6)(A)(i). For other MEWAs, State insurance laws may apply to the extent such laws are not inconsistent with Title 1 (see subsection 514(b)(6)(A)(ii)). The FAIR Act and N.J.A.C. 11:3-37 are not inconsistent with Title 1 of ERISA.

The Department is of the opinion that, until an employee welfare benefit plan located in this State provides the Department with an advisory opinion under ERISA Procedure 76-1 from the Pension and Welfare Benefits Administration, United States Department of Labor, stating that the plan, trust, or arrangement is exempt from compliance with some or all State insurance regulation, that employee welfare benefit plan must comply with N.J.S.A. 39:6A-4.3d, and N.J.A.C. 11:3-37.

COMMENT: Four commenters question whether publicly-funded plans, such as Medicare and Medicaid, will become primary coverage providers.

RESPONSE: Pursuant to a letter received from the Health Care Financing Administration, United States Department of Health and Human Services, the Department is advising that Medicare and Medicaid should not be elected as primary coverage providers at this time. The Automobile Insurance Buyer's Guide and the Coverage Selection Form contain a notation to Medicare and Medicaid recipients that Medicare and Medicaid will not provide primary coverage for auto accident-related injuries.

With regard to other public-funded plans, coordination and the acceptance of primary coverage provider status will depend upon interpretations of the plan's contracts and by-laws. The State Health Benefits Plan has indicated that it will allow for primary coverage provider status when its new contract becomes effective in July of 1991. The Department has not actively pursued contact with any other publicly-funded plans.

COMMENT: One commenter suggests that the Department review health benefits plans of the largest employers and unions in New Jersey, if such plans are not on file. The commenter suggested that the FAIR Act provides the Commissioner with the general authority to do so.

RESPONSE: The Department disagrees. The Department believes that the authority suggested is supplied by the Commissioner's right to determine the manner and extent to which a named insured must prove health coverage. The Department does not interpret this authorization statement as one providing the Commissioner with the right to review health benefit plan forms not otherwise required to be filed. Rather, the Department interprets the authorization statement as requiring the Commissioner to establish a means by which a named insured provides the automobile insurer proof of health benefits coverage. This has been done via the Coverage Selection Form.

COMMENT: Several commenters are concerned that the rules do not provide that health benefits plans must meet specified minimum benefit standards before "qualifying" as a primary coverage provider subject to the selection provided on the Coverage Selection Form. These commenters suggested that the Department should promulgate such minimum benefit standards to include major medical, hospitalization and per person deductibles of no more than $1,000 combined with copayment requirements of no more than 25 percent.

RESPONSE: The Department did consider inclusion of minimum benefit standards for health benefits plans selected as primary coverage providers by a named insured. The idea was rejected for several reasons.

First, verification of plan benefits by automobile insurers would be difficult: much more so than verification of the existence of a plan and the insured's eligibility for coverage. Promulgation of a list of "qualified" plans would be impractical and inconclusive. As discussed earlier, many plan forms are never filed with the Department, and properly so. Thus, many qualified plans might never appear on the list.

Second, most people are covered by health benefits plans which provide at least the minimum benefits suggested by the commenters. Most limited benefit plans, or plans which appear to be benefit-poor, are purchased by people who have other coverage and are trying to fill gaps, or who simply feel more secure with additional coverage. Thus, the imperative to establish minimum benefit standards is not that great.

Third, most people have employment-related health coverage. The Department was concerned that, by establishing minimum benefit standards, many employers and benefits consultants would have the guidelines, as well as the incentive, by which to design plans which avoid qualifying for the N.J.S.A. 39:6A-4.3d option selection. Plans not qualified for the option selection because of inadequate benefits would provide significantly fewer benefits than most employees currently receive. The Department does not want to see a flood of such plans coming into the marketplace. The Department considers the social and economic implications of reduced benefits in health coverage among large portions of the population to be of greater concern than the impact benefit-poor plans may have upon automobile insurers' costs for PIP.

COMMENT: One commenter suggests that N.J.A.C. 11:3-37 should specify certification procedures to validate that health coverage is in force.

RESPONSE: The Department has provided for certification similar to that suggested by the commenter, under a separate regulation. N.J.A.C. 11:3-14.5(b) states that insureds or prospective insureds must identify

their health benefits provider(s) on the Coverage Selection Form. The Coverage Selection Form is set forth under N.J.A.C. 11:3-15. The Coverage Selection Form provides for insureds to list their health benefits providers and policy, group or certificate number. The commenter has suggested that the named insured also provide the mailing address of health benefits providers and the group's name, if coverage is through a group contract. The Department will take the suggestion under advisement.

COMMENT: Several commenters request a confirmation that the selection made by a named insured is binding upon a resident relative who is not a named insured under another policy. One commenter questioned what would happen if a man, who is a husband and father, chooses his health benefits provider to be the primary coverage provider for auto accident-related medical expenses, but such health benefits plan does not also provide benefits for his wife and children.

RESPONSE: The N.J.S.A. 39:6A-4.3d selection of a named insured is binding upon all resident relatives who are not named insureds on another auto insurance policy. In the instance where only the named insured is eligible under a health benefits plan, then other insureds will receive benefits from the PIP plan subject to the statutory $750.00 deductible in addition to satisfying the personal injury medical expense deductible selected on the Coverage Selection Form.

If, however, the mother and children had health coverage under a separate health benefits plan, subject to New Jersey regulation, then that health benefits plan would also become a primary coverage provider, pursuant to the named insured's selection. If the wife and children are covered under a separate health benefits plan not subject to New Jersey regulation, which refuses to provide primary coverage for auto accident-related injuries, then again, coverage will be provided by the PIP plan, after satisfaction of the selected deductible and the additional $750.00 deductible. Deductibles for the PIP plan are subject to a per accident basis, not per person.

COMMENT: One commenter suggests that the definition of named insured is made too broad by including a spouse who ceases to be a resident of the named insured's household (for the duration of the automobile policy period). The commenter states that, in essence, a person could obtain a divorce, remarry and be the spouse of another person, living in the other person's household, and yet be covered under the former spouse's policy.

RESPONSE: The Department restated N.J.S.A. 39:6A-2g in setting forth the definition of "insured" at N.J.A.C. 11:3-37.2. A named insured under N.J.S.A. 39:6A-2g includes a spouse who leaves the household, until the policy period, in which cessation of residency occurred, expires.

COMMENT: One commenter questions whose responsibility it is to inform employees and covered individuals about their health coverage, and suggested that the rules provide a specific provision and mechanism for dissemination of this information.

RESPONSE: The Department believes that, essentially, it is the responsibility of each insured to find out whether their health benefits plan will provide primary coverage. For insureds under a group health benefits plan, where the terms of the policy may not be readily available to the certificate holders, the Department believes that it is incumbent upon policy holders to provide the assistance necessary for a certificate holder to make the appropriate determination of coverage.

The Automobile Insurance Buyer's Guide and Coverage Selection Form urge all insureds and applicants to speak with their health benefits provider(s) or their employer's personnel representative(s) who normally provide assistance on issues related to the health benefits plan, to determine ahead of time the appropriateness of making a health benefits provider the primary coverage provider for automobile accident-related medical expenses.

COMMENT: One commenter suggests that consumers be apprised that they may be subject to satisfaction of an additional $750.00 deductible before receiving PIP benefits, if the consumer chooses to make his or her health benefits provider primary, but does not have health coverage at the time of an accident, or has health coverage which will not be primary.

RESPONSE: The Automobile Insurance Buyer's Guide and the Coverage Selection Form provide such information.

COMMENT: One commenter questions how consumers would be made aware that automobile insurance PIP plans contain a per person, per accident maximum benefit of $250,000, while health benefits plans typically have per benefit period and lifetime maximums.

RESPONSE: This information is provided to consumers in the Automobile Insurance Buyer's Guide and the Coverage Selection Form. Automobile policies also contain provisions setting forth the coverage provided under the policy. Health policies and certificates also typically state the upper benefit limits, or this information may be available through a personnel office.

COMMENT: One commenter questions whether consumers will be protected from or compensated for inadequate coverage.

RESPONSE: The Department is uncertain what is meant by the term "inadequate coverage." Consumers will, in all instances, have some amount of coverage for their injuries, assuming all required automobile insurance premiums are paid. When benefits under a health benefits plan and/or an automobile policy are exhausted, the injured party may become eligible for coverage under publicly-funded programs. The question of other avenues for compensation remains with the courts.

It must be remembered that consumers are not without resources in determining whether or not they have coverage which meets their anticipated needs. Automobile Insurance Buyer's Guides are required to be delivered with Coverage Selection Forms, both providing explanations on coverage and options. Most employers have personnel to assist employees with health coverage questions. Many health insurers provide consumers with telephone numbers to call for answers to coverage questions. Many consumers purchase their health coverage through an agent. Proper use of these resources rests with the consumer.

COMMENT: Numerous comments have been received concerning N.J.A.C. 11:3-37.5(b), which provides for verification of the PIP-as-secondary selection option (that is, that the named insured does have health coverage which will be a primary coverage provider). Several commenters suggest that the 35 day time limit in which to verify the existence and primacy of a health benefits plan is inadequate. One commenter states that by requiring that cancellation for nonpayment of premium be delayed until the 60th day following a notification, a bias is created in favor of insureds failing to pay appropriate PIP premiums, as opposed to other insureds failing to pay other types of coverage premiums. One commenter states that the enabling statute allows for recovery of premium at any time, and thus, N.J.A.C. 11:3-37.5 is not authorized. One commenter suggests that N.J.A.C. 11:3-37.5 is deficient because it does not seem to contemplate that a named insured may provide false proof of health coverage, and should be revised to also apply when health coverage is not in effect. One commenter states that application of N.J.A.C. 11:3-37.5(b) will be complex to administer in addition to equity cancellation, and 30-day provisions for other nonpayment cancellations.

RESPONSE: The Department tends to disagree with the majority and agree with a minority of the comments. The Department has determined, however, to revise N.J.A.C. 11:3-37.5(b) substantially for the reasons set forth below.

When originally drafted, N.J.A.C. 11:3-37.5(b) was intended to provide protection for insurers while not infringing upon the consumer's rights, and certainty in the terms of the contract. Upon reflection, however, the Department has determined that N.J.A.C. 11:3-37.5(b) may result in lessened consumer protection. Decreased consumer protection was not an intent behind the rule.

The Department has determined that it is in the consumer's best interests not to restrict verification to the 35th day. It is more reasonable for an insurance contract to be amended whenever it is discovered that a health benefits plan will not be primary, or that there is no health coverage, rather than to wait until an accident which results in medical expenses. It is more reasonable for the insured to repay the premium reduction amount and return to the PIP-as-primary coverage condition whenever an error is discovered in the coverage election, than to wait until the insured must pay both the premium reduction amount and the $750.00 statutory deductible in addition to the selected PIP deductible, because of the occurrence of an auto accident.

Moreover, although the Department did not intend to imply that the 60 day noncancellation period should replace equity cancellations, it became apparent from the comments received that some commenters were making that inference. The language of the rule did not make that inference unreasonable. Obviously, consumers will be provided greater protection in most instances if the equity cancellation provision of N.J.A.C 11:3-7.6(b) is adhered to, than if cancellation occurs on the 96th day of a policy for nonpayment of a premium reduction amount. To avoid any possible confusion in this matter, the 60 day requirement is being withdrawn, and an equity cancellation provision is being substituted for it.

Auto insurers will be required to abide by the equity cancellation rule, but will not be permitted to invoke equity cancellations without having

notified the insureds of the invalidity of the PIP-as-secondary coverage selection, and the requirement of payment of the premium reduction amounts.

Additionally, auto insurers should note that at N.J.A.C. 11:3-37.5(b)3, the crediting system for premium reduction payments (should this occur) has been revised so that credits may be made against premium owed, rather than PIP premium owed. The Department determined the revision would ease administration of credits, and billing.

COMMENT: Two commenters questioned why auto insurers should not be allowed to recover premium reduction amounts for prior periods, when it is discovered via an auto accident or verification procedures that an insured does not have a health benefits plan which will provide primary coverage, or has no health benefits plan.

RESPONSE: The Department assumes that the term "prior periods" is meant to refer to prior contracts with that insured. Once a contract is completed and obligations on that contract have been discharged on both sides according to the terms of the contract, based on the facts then known to exist, it is no longer appropriate to amend that contract retroactively to recover premiums believed to be owed. The risk which that contractual arrangement was intended to insure against no longer exists.

COMMENT: One commenter suggests that the rules should clarify whether automobile insurers and health benefits providers are subject to the same fee schedules, or different fee schedules.

RESPONSE: The Department believes the rules are clear on this issue. The automobile insurer is subject to use of the medical fee schedules set forth at N.J.A.C. 11:3-29. Health insurers are subject to whatever fee schedule(s) they normally use, or any participating provider agreements they may have in force.

COMMENT: One commenter states that the proposed rules are complicated by the existence of "two" fee schedules: the medical fee schedules, and whatever fee schedules health benefits providers may use. The commenter suggests that one fee schedule—the health benefits provider's fee schedule—would eliminate the administrative problems associated with the secondary coverage provider calculating the benefits due.

RESPONSE: N.J.S.A. 39:6A-4.6 requires use of the medical fee schedules by the auto insurer when providing primary coverage, and, in the Department's opinion, when providing secondary coverage as well. Furthermore, the commenter neglects the very real possibility of a multiple number of health benefits plans coordinating benefits prior to the PIP plan, each with its own schedule of fees or participating provider agreements. In such instances, which schedule should be used?

It is best, for sake of continuity, that each plan uses its own set schedule of fees both when it is primary or secondary. This will provide the greatest administrative relief.

COMMENT: One commenter questioned whether the health benefits provider, when designated as a secondary payor, must pay up to the level of participating provider agreements, or whether the health benefits provider may pay in accordance with the automobile insurer's assumption of paying up to the medical fee schedule.

RESPONSE: Health benefits providers must pay in accordance with their own contractual arrangements. Although the Department had indicated in the proposal which appeared at 22 N.J.R. 2642(a) that, in some instances, a health benefits provider might reasonably rely on the automobile insurer's use of the medical fee schedule as a cap on allowable expense amounts, the Department has reconsidered the situation. A short discussion is provided under the Summary of Agency Initiated Changes.

The FAIR Act clearly intends to prohibit a health care provider from demanding payment from any person in excess of charges permitted under the medical fee schedules. Interpretation of the terms "person" and "demanding," and the extent of the application of the medical fee schedules in opposition to any existing contractual arrangements, will have to be provided through a forum other than this rulemaking process.

COMMENT: One commenter suggests that health care providers be required to code their bills, preferably using the CPT-4 coding system.

RESPONSE: Although the Department does not disagree, the Department does not have the authority to set forth such a requirement.

COMMENT: One commenter states that N.J.S.A. 39:6A-4.3d provides that if a health benefits provider is primary, an automobile insurer is liable for "reasonable medical expenses not covered by the health insurance coverage," but that the proposed rules translate this concept into "secondary coverage," a broader term which is beyond the scope of the enabling legislation.

RESPONSE: The Department disagrees. "Secondary coverage" is not a translation of remaining "reasonable medical expenses." "Secondary coverage provider" is a label designating a payment position in accordance with the coordination of benefits under N.J.A.C. 11:3-37. The term has nothing to do with payable amounts; these are determined via N.J.A.C. 11:3-37.7 or 37.9. Those two rules are the translation of remaining "reasonable medical expenses" and are within the authority of the statute.

COMMENT: One commenter suggests that in mandating the claims payment procedures, the Department has confused "reasonable expenses not covered by the health insurance coverage" with expenses for which an insured does not receive 100 percent reimbursement because of deductible and copayment requirements.

RESPONSE: There is no confusion on the part of the Department. The Department has followed normal principles of coordination in developing its claim payment procedures (benefit determinations), as required by the statute. There is no inherent discrepancy between the requirement that the automobile insurer should be liable for all reasonable expenses not covered by the health insurer, and the possibility that an insured may receive 100 percent coverage of allowable expenses. The statute does not require that insureds be reimbursed less than 100 percent for expenses which are considered reasonable (that is, allowable expenses). The principles of coordination anticipate that 100 percent coverage of allowable expenses is possible and acceptable.

COMMENT: Two commenters suggest that the Department should provide time limitations for health benefits providers in responding to automobile insurers, to assure that automobile insurers are able to meet the required 60 day claims payment standard.

RESPONSE: The Department disagrees. The commenters assume that health benefits providers will be slow and uncooperative in working with auto insurers, but the Department does not agree with that assumption. If health benefits providers prove to be uncooperative, then the situation may be addressed.

The 60 day period does not begin to run until the insured submits the claim amount to the automobile insurer. This applies whether the auto insurer is a primary coverage provider or a secondary coverage provider.

In the event a claim is submitted by the insured simultaneously to the health benefits provider and the auto insurer, the auto insurer may deny the claim coverage until disposition of the claim by the health benefits provider (assuming the auto insurer is the secondary coverage provider). Notice of disposition of the claim may be provided by the insured or the health benefits provider.

Simultaneous submissions are not likely to occur in great frequency.

COMMENT: Two commenters request a clarification of the term "ineligible" under N.J.A.C. 11:3-37.4. That is, does the phrase mean no health insurance is in place at the time of an accident, or that an in-force plan does not provide coverage for a specific medical expense incurred?

RESPONSE: "Ineligible" means that no health coverage is in place at the time of an accident, or that an effective health benefits plan refuses to become a primary coverage provider because PIP benefits would have been available (but for the N.J.S.A. 39:6A-4.3d option section). "Ineligible" does not refer to the lack of coverage by a health benefits plan of one or more specific medical expenses.

COMMENT: Two commenters question whether the health benefits provider would be permitted to be involved in actions for subrogation. If not, one commenter questions whether the auto insurer would be allowed to seek subrogation of the full amount of benefits paid (with reimbursement to the health benefits provider) or to seek only subrogation of amounts actually paid by the automobile insurer.

RESPONSE: The Department is uncertain how broadly the commenters may be using the term "subrogation."

Health benefits providers are not prohibited from seeking reimbursement when collateral sources are involved. With respect to recovery from collateral sources, since group health benefits plans, workers' compensation and temporary disability benefits usually emanate from a single policyholder/trustee, there is seldom any collateral source problem. Individual health benefits plans generally provide for exclusion of benefits or reductions in benefits when the same expenses are payable by a collateral source. Even so, individual health benefits providers are not precluded from seeking return of benefits paid when other source benefits have been received by the insured. Although not entitled to initiate an action for payment of collateral source benefits pursuant to N.J.S.A. 39:6A-6, a health benefits provider arguably would be permitted to join an auto insurer in pursuing such an action.

In regard to subrogation in accordance with N.J.S.A. 39:6A-9.1, the statute has been amended to allow health benefits providers to join in or initiate such actions. Normal legislative construction principles dictate that this amended statute serves as an exception to the general prohibition

against health benefits providers in subrogation actions. N.J.S.A. 39:6A-9.1, which provides for subrogation in very limited circumstances, read in conjunction with N.J.S.A. 39:6A-4.3, suggests that health benefits providers are entitled to seek recovery of all amounts paid when subrogation is permitted under N.J.S.A. 39:6A-9.1, except for reimbursements of the auto insurer deductibles and copayment amounts which may have been covered by the health benefits provider. These issues, however, ultimately may require judicial interpretation.

COMMENT: One commenter requests clarification as to whether the FAIR Act and the proposed rules mandate that all health benefits providers offer coverage for injuries sustained in an automobile accident. The commenter questions whether an authorized health benefits provider which does not currently offer coverage for health services resulting from an automobile accident must rewrite its contracts to include such coverage.

RESPONSE: Yes, the contract (forms) will have to be rewritten. The commenter should note that there is no requirement that benefits change, only that the provision (payment) of benefits change. If a treatment modality, a health specialist or services provided by a specific type of health care facility are not normally covered by the contract, the revised contract is **not** required to cover these treatments or services either. However, payment of benefits may no longer be premised upon whether the injury was one sustained in an auto accident, or be based upon the possible coverage of medical expenses by an auto insurer. The Department issued Bulletin No. 90-9 to health benefits providers in October informing them that language changes are necessary.

COMMENT: One commenter questions whether it is correct to interpret N.J.A.C. 11:3-37.9(d) as requiring a hospital expense benefits only contract to provide benefits for medical expenses as well when coordinating from a secondary coverage provider position, and, if so, the commenter questions whether such an interpretation is in conflict with N.J.A.C. 11:3-37.3(b) which states that nothing in the subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or services not otherwise covered under the terms of the health benefits plan.

RESPONSE: The commenter's interpretation is not correct in its entirety. The hospital expense benefits plan, like any other health benefits plan, must provide benefits for all allowable expenses remaining uncovered, up to but not exceeding the total actual benefits which would have been payable by that hospital expense benefits plan had it been providing primary coverage. The issue here is that of eligible expenses versus allowable expenses. That an expense is not considered eligible by a specific health benefits plan does not mean that it is not an allowable expense. Allowable expenses include all eligible expenses of all coordinating plans. Secondary coverage providers normally cover all remaining uncovered **allowable** expenses, under recognized coordination of benefits theories, up to the total dollar amount which they would have paid for **eligible** expenses, had they been primary.

There is no conflict between N.J.A.C. 3:37-3(b) and 37.9. No health benefits plan is required to provide benefits it would not normally provide as a primary coverage provider. For instance, $5,000 of total bills are submitted to the primary coverage provider, and $900.00 of that total $5,000 remains as uncovered allowable expenses. If the hospital benefits plan determines that it would have paid $0 in benefits on the $5,000 of total bills had it been the primary coverage provider because none of the items of expense were eligible expenses under the terms of the hospital benefits plan, then it will pay $0 towards the $900.00 remaining uncovered allowable expenses. But if it would have paid $800.00 of the total $5,000 bill as a primary coverage provider, then it should pay $800.00 towards the $900.00 remaining uncovered allowable expenses, discharging its contractual obligation. (If it would have paid $2,000 as a primary coverage provider, then it should cover the $900.00 of remaining uncovered allowable expenses. Here, it is at least partially discharging its contractual obligation, and saving money as well.)

Just because all of the items of expense which a health benefits plan has contractually agreed to cover may be paid by someone else in some circumstances, that does not mean that the plan's contractual obligation on those items of expense are extinguished. The plan owes something towards those expenses regardless of the order in which the bills containing those expenses happen to be submitted and disposed of by a previous paying plan.

The Department could devise rules whereby each secondary coverage provider would contribute directly towards coverage of its eligible expenses only (making duplicate benefit payments, which the insured or health care provider could then use to pay the other uncovered expenses), and produce the same result. However, it would be much more difficult and costly to administer such a system. The principle that a secondary payor should consider all remaining uncovered allowable expenses and pay either the total of the remaining uncovered allowable expenses or the total for eligible expenses it would have paid had it been primary, whichever amount is less, is a less costly and more efficient principle, and one which has been accepted by the NAIC and most states.

COMMENT: One commenter questions whether it is correct to interpret N.J.A.C. 11:3-37.9(e) as requiring a medical expense benefits only contract and a hospital expense benefits only contract to evenly split coverage for remaining allowable expenses even when such expenses are clearly allocable, and not allocated evenly.

RESPONSE: Each specific plan must consider all of the remaining uncovered allowable expenses, not the expenses each separate plan considers to be eligible expenses. The commenter's interpretation is correct, but please note that the Department has initiated a revision in this rule. A short discussion is provided in the Agency Initiated Changes section of the summary.

COMMENT: One commenter stated that, by defining "hospital expenses" as "at least those expenses defined at N.J.S.A. 39:6A-2f," the qualifier "at least" nullifies the meaning of the definition provided at N.J.S.A. 39:6A-2f. The commenter suggests that hospital expenses be defined as identical to the definition at N.J.S.A. 39:6A-2f.

RESPONSE: The definition includes the qualifier because although the term "hospital expenses" is statutorily defined for auto insurers, this is not the case for health benefits providers. Upon reflection, the Department has determined that the definition does require revision. The qualifier "at least" will be removed, and that definition at N.J.S.A. 39:6A-2f will be restricted to auto insurers. The definition of "hospital expenses" for health benefits providers will be as set forth in their separate policies or contracts.

COMMENT: One commenter notes that the definition of "health benefits provider" includes dental service corporations and dental plan organizations. The comment questions whether this means that an insured who has dental coverage only may argue that because the dental coverage covers injuries arising out of an automobile accident there is health coverage such that the option to make a health benefits provider primary may be successfully selected.

RESPONSE: No. A clarification will be provided. Auto insurers should note, however, that it is rare that any person has dental coverage only.

COMMENT: One commenter notes that under the current auto insurance system, there is PIP concurrency. The commenter questions what happens in the case of a household with two policies, one with the option selected to make health benefits providers the primary coverage provider(s), and the other with the option selection to make PIP benefits coverage primary, where there are additional resident relatives in the household who are eligible for coverage under either automobile insurance policy (and are not themselves named insureds).

RESPONSE: Rules of dependency supplemented by birthday rules will apply. The proposed new rules will be revised to reflect these coordination changes upon adoption. Essentially, a child will be considered covered by his or her parents' auto policy before any other resident relative's policy. If both parents have separate policies, or there is no auto policy upon which a parent is a named insured, then the birthday rule will apply. Under the birthday rule, the auto policy containing the named insured whose birthday falls earliest in a calendar year will be considered the dominant policy.

For example, three sisters share a house. Sister One has two children, and has her own auto insurance policy on which she is the named insured. She has selected her health benefits provider to be the primary coverage provider. Her birthday is June 4. Sister Two has one child. She has no automobile of her own, nor is she a named insured on any auto insurance policy. Sister Three has no children. She does have her own auto insurance policy on which she is the named insured. She has selected auto insurance to be her primary coverage provider. Her birthday is on October 9.

Sister Two and the three children become involved in an automobile accident, sustaining injuries and incurring medical expenses. Sister One's children are covered by Sister One's auto insurance policy, and thus, the health benefits provider should be the primary coverage provider (assuming Sister One has purchased health coverage for her children). Sister Two and her child will receive benefits for their injuries under the terms of Sister One's auto insurance policy as well, because Sister One's birthday occurs earlier in the calendar year than Sister Three's does.

If Sister Two has a health benefits provider which will be a primary coverage provider, then she (and her child, presumedly) would receive benefits from their health benefits plan. If Sister Two does not have health coverage, then she and her child will receive PIP benefits from Sister One's auto insurance policy, but only after satisfying the applicable deductible plus the additional $750.00 deductible.

COMMENT: One commenter noted that health benefits providers typically have pre-existing condition limitations, while automobile insurers do not. The commenter questioned what happens if a pre-existing condition is aggravated by an automobile accident, and the health benefits provider (as the primary coverage provider) will not provide coverage for the pre-existing condition.

RESPONSE: If a health benefits provider will not provide coverage on this basis, the auto insurer will have to provide that coverage. This is similar to exclusion by a health benefits provider of a specific expense. Exclusion of a specific treatment expense based on a pre-existing condition limitation does not mean that the health benefits plan is not primary. Auto insurers should be aware that group health coverage rarely contains a pre-existing condition limitation clause, while on individual policies, pre-existing condition exclusion clauses can not be enforced beyond two years, pursuant to New Jersey law.

COMMENT: One commenter notes that automobile insurers are allowed by law to require physical exams, which are utilized to ascertain reasonableness of treatment and to prevent fraud. The commenter states that health benefits providers are not allowed this option. The commenter goes on to state that if a health benefits provider is primary, there is little incentive for the automobile insurer to order a physical exam. The commenter questions how the Department intends to encourage fraud prevention and enforce the requirement of payment of reasonable expenses.

RESPONSE: The commenter's analysis is incorrect. There is nothing which prohibits health benefits providers from requesting physical exams of an insured, and it is not uncommon for health benefits providers to do so as a means of preventing fraudulent activity and questionable treatment proposals. Moreover, health benefits providers routinely request second opinions before authorizing payments for elective surgeries.

COMMENT: One commenter notes that health benefits providers are allowed to require a second opinion, but automobile insurers are not. The commenter questions whether auto insurers are required to pay for second opinions if the health benefits provider is primary but does not cover all costs of the examination. The commenter states that if automobile insurers must pay, then the automobile insurer should be allowed to obtain second opinions also.

RESPONSE: It is rare that a health benefits provider ordering a second opinion will not pay all of the costs of that second opinion (as opposed to when the insured seeks a second opinion). If some costs of the second opinion are not covered by the health benefits provider, then the auto insurer would be required to cover the remaining allowable costs. This does not mean that the auto insurer needs or should have "second opinion" rights also. Auto insurers are already entitled to require insureds to undergo a physical examination whenever a condition or procedure option is in doubt.

COMMENT: One commenter suggests that the rules should contain a provision requiring the health benefits provider to notify the automobile insurer if an insured's coverage is terminated.

RESPONSE: The Department disagrees. The suggestion is impractical. Health benefits providers are not likely to know which insureds or covered members have auto insurance coverage with which auto insurers. Furthermore, auto insurers should be aware that health benefits providers aren't required to notify certificate holders when a group policyholder has terminated a group policy or allowed it to lapse. There are legislative proposals to alter the current situation.

COMMENT: Two commenters suggest that the rules provide a forum or method for dispute resolution between health benefits providers and automobile insurers.

RESPONSE: The Department disagrees. The insurance industry has several alternative forums from which to choose. The Department assumes that the industry will choose to resolve disputes in the most efficient, cooperative and conciliatory forum available and in a manner conducive to the insured's well-being. If this does not prove to be the case, then the Department may specify a forum or method for dispute resolution.

COMMENT: One commenter states that the rules do not provide for adequate communication amongst health benefits providers and automobile insurers. The commenter suggests that health benefits providers be required to respond to automobile insurers within a limited amount of time, and be required to supply automobile insurers with a list of responsible personnel and phone numbers for administrative convenience.

RESPONSE: The Department disagrees that specific rules governing communication between insurers and health benefits providers are necessary, at this time. The Department believes that the insurance industry is equipped to address its communications problems on its own, in general. Communication and cooperation will benefit both property and casualty insurers and the life and health industry.

The commenter should note, however, that the Department's requirement of the development of an Explanation of Benefits form is intended to help facilitate auto insurer and health benefits provider communications.

COMMENT: One commenter suggested that health carriers should be required to be involved in fraud investigation and prevention activities to the same extent as automobile insurers are so required, and to cooperate with automobile insurers in assessing information.

RESPONSE: The Department disagrees that rules are necessary. The Department does not expect health benefits providers to be uncooperative in ferreting-out fraud. Health benefits providers do report fraudulent activity, or suspicious activity, to the Department, and make cases against parties independently as well.

COMMENT: Two commenters question N.J.A.C. 11:3-37.10 which sets forth requirements for an Explanation of Benefits form ("EOB"). One commenter states that this requirement is not authorized by the enabling statute, and that there is no need for automobile insurers to completely overhaul their method of communication with insureds since existing PIP documentation is sufficient. The other commenter noted that it currently utilizes an EOB meeting many of the requirements of N.J.A.C. 11:3-37.10. However, its EOB does not identify each procedure and relate it to its eligible expense, and that to do so would create tremendous mechanical and administrative problems for automobile insurers.

RESPONSE: The commenters have assumed that the EOB is intended only for communication with insureds, which is not the case. EOBs are intended to be used for communication with insureds, but more importantly, for communication between auto insurers and health benefits providers. Health benefits providers already utilize EOBs with the characteristics listed in N.J.A.C. 11:3-37.10. The EOB helps to identify who paid what, when, and why. Eligible expenses and ineligible expenses are identified. The use of EOBs helps to prevent duplication of benefits, and in this instance may reduce unnecessary payments of bills exceeding the medical fee schedule.

The Department believes an EOB having at least those characteristics prescribed is necessary.

COMMENT: One commenter suggested that the rules create unnecessary costs and duplication of effort by requiring both primary and secondary coverage providers to examine each item of every bill.

RESPONSE: The Department disagrees. Health benefits providers already routinely examine each item of a bill. Auto insurers will now need to do so because of use of the medical fee schedules. Close examination of bills may highlight questionable activity. Additionally, as a secondary coverage provider, examination of each item of a bill is necessary to determine what the coverage provider's upper level limit of liability on remaining uncovered allowable expenses is. Although in most instances remaining uncovered allowable expenses will be less than the secondary coverage provider's obligation on eligible expenses would have been had it been primary, this may not always be the case.

COMMENT: One commenter questions whether, on the EOB, if a chiropractor or physical therapist (for example) treats an insured several times in one week, and administers as many as six different modalities during each visit, each modality for each visit would be considered a separate "procedure" requiring individual identification and expense breakdown.

RESPONSE: The Department cannot provide a definitive answer; the answer will depend upon the structure of the medical fee schedules, and, to a lesser extent, the chiropractor's or physical therapist's billing practices.

COMMENT: One commenter questions what happens when the $250,000 automobile insurance benefits cap is reached.

RESPONSE: When the automobile insurance PIP benefits are exhausted, having reached $250,000, or whatever the upper level of benefits may be on that auto policy (some auto insurers provide additional PIP medical expense benefits options beyond $250,000) the insured will no longer receive any PIP benefits. The health benefits plan, if any, will continue to provide benefits unless and until its maximums have been

reached. Stacking of auto insurance policies is not permitted; an insured may not recover PIP medical benefits under more than one auto insurance policy per accident.

COMMENT: One commenter suggests that the Department should explore the concept of "Reallocation of Benefits." The commenter noted that, in most cases, the auto insurance PIP plan provides broader coverage than health benefits plans, covering such ancillary medical expenses as home care attendants, home modifications, specialized transportation needs, and occupational therapy. The commenter noted that when the option is selected to make a health benefits provider primary, the health benefits plan and PIP plan may coordinate in such a way so as to maximize benefits for the catastrophically injured. That is, the $250,000 of PIP benefits will be allocated more towards the ancillary medical expenses because most other medical (and hospital) expenses will be covered by the health benefits plan. However, if the PIP plan is selected to be primary, for the catastrophically injured, much of the $250,000 will be depleted before ancillary medical expenses begin to accumulate.

Reallocation of benefits would require the health benefits provider to retroactively credit any eligible expenses paid by the automobile insurer, and use this credit to pay for non-eligible ancillary expenses which the PIP plan would otherwise cover, until the $250,000 PIP benefit maximum is reached, or the health benefit plan's benefits are exhausted, whichever occurs first.

RESPONSE: The Department agrees that the concept of "Reallocation of Benefits" can maximize the insurance benefits available to the catastrophically injured insured under certain circumstances. The concept is also a logical extension of the coordination of benefit rules providing for coverage of allowable expenses rather than eligible expenses. However, the concept appears to be more far-reaching than what was intended by the FAIR Act. The Department will give serious consideration to this suggestion.

COMMENT: One commenter questions whether the option selection impacts upon pedestrians having no automobile insurance policy on which they are the named insured.

RESPONSE: The N.J.S.A. 39:6A-4.3d option selection applies to the named insureds and resident relatives of the named insured who are not named insureds on their own auto insurance policy. Neither pedestrians nor pedestrian PIP provisions are impacted.

COMMENT: Two commenters question whether the rules are properly designed so as to prevent double-dipping, or duplication of benefits.

RESPONSE: The use of the term "double-dipping" implies that there is something fraudulent or unseemly about duplicate insurance payments for the same event. In fact, where duplicate coverage exists and coordination or exclusion is not permitted (a situation sometimes occurring in nongroup health coverage), duplication of benefits will occur as the result of performance of contracts agreed to and paid for. Duplicative benefit payments are "bad" only to the extent that they increase the cost of insurance coverage. For this reason, coordination provisions are permitted.

The Department believes the rules should prevent duplicative benefit payments. An insured should receive primary coverage from one (type) of insurer and secondary coverage from the other (type) of insurer. Secondary coverage should only be provided for remaining uncovered allowable expenses. Proper use of EOBs should provide insurers knowledge as to what is and is not an allowable expense.

When the auto insurer is the primary coverage provider, both group and nongroup health benefits providers can limit benefits payable in accordance with the rules provided at N.J.A.C. 11:3-37. In most circumstances, this will not result in insured's collecting more than 100 percent coverage.

As a matter of policy, the Department considers nonexistence of coverage to be a greater evil than duplication of coverage. Therefore, the effect of these rules may, in certain instances, give rise to duplication of coverage in order to prevent simultaneous avoidance of coverage by both insurers.

COMMENT: One commenter requests an explanation of what "allowable expenses" are and how health benefits providers and automobile insurers treat them differently.

RESPONSE: Allowable expenses are the accumulated eligible expenses of all coordinating plans. For example, an individual sustains several broken ribs. The individual is billed for two days of services for in-hospital care, emergency room treatment, x-rays, services of a radiologist, services of an orthopedist, costs of the cast construction, three out-patient visits and cast removal. This individual has two Plans, each providing some benefits. Eligible expenses under Plan A include in-hospital services, x-rays, services of the orthopedist, costs of cast construction and removal, and the out-patient visits. (Plan A will not cover 100 percent of the billed amounts, however.) Eligible expenses under Plan B include emergency room services, services of the orthopedist, costs of cast construction and removal, and the out-patient visits. (Plan B will not cover 100 percent of the billed amounts, however.) Allowable expenses are, therefore, the costs of the in-hospital services, emergency room treatment, x-rays, services of the orthopedist, costs of the cast construction and removal and three out-patient visits. Costs for the radiologist's services do not represent an allowable expense.

Auto insurance and health benefits providers treat allowable expenses essentially the same.

COMMENT: One commenter states that a discrepancy in reasoning appears in the area of rates for PIP-as-secondary coverage in regard to higher deductibles. The commenter states that since the losses covered under health benefits plans may be used to fulfill the deductibles under PIP, the remaining losses would have a smaller percentage savings than for the minimum deductible, and suggested the Department should consider this beginning in 1992 when appropriate reductions are to begin, as opposed to the mandated 25 percent reductions.

RESPONSE: The Department will keep this comment under consideration. The Department notes, however, that while the straight (in this instance, 25 percent) reduction in base rates may be too high with respect to larger deductibles, the possibility also exists that a straight reduction, such as the 25 percent mandate, may be too low for the lesser deductibles. All of these factors will be taken into consideration. The Department recognizes that changes in statistical plans are necessary, so that in the future, the pricing of the PIP-as-secondary coverage option will reflect experience.

COMMENT: One commenter requests clarification as to the notification of the Unsatisfied Claim and Judgment Fund, and whether the $50,000 benchmark will be measured from the health benefits provider's payments, the automobile insurer's payments, or both.

RESPONSE: The auto insurer should notify the Unsatisfied Claim and Judgment Fund when it has paid out PIP medical expense benefits of $50,000. Only auto insurers are entitled to reimbursements from the Unsatisfied Claim and Judgment Fund.

COMMENT: One commenter requests clarification of N.J.A.C. 11:3-37.9(c)2 and 3 which governs what remaining allowable expenses a health benefits provider, in the secondary position, is required to consider. The commenter questions whether there is a conflict between N.J.A.C. 11:3-37.9(c)2, which sets forth those remaining allowable expenses which a health benefits provider shall consider, and N.J.A.C. 11:3-37.9(c)3, which sets forth those remaining allowable expenses which a health benefits provider "may not consider."

RESPONSE: No conflict was intended, but the Department agrees that the language did appear to conflict. It should be noted that the Department has eliminated N.J.A.C. 11:3-37.9(c)3, because the Department became concerned about the legal soundness of this provision.

COMMENT: One commenter requested that the rules be clarified at N.J.A.C. 11:3-37.11, governing coverage under disputed conditions. The commenter notes that while responsibility falls to the health benefits provider, the second sentence requires that automobile insurers may not unreasonably delay benefit payments. The commenter suggests that it be clarified that automobile insurers are responsible for providing benefits as the secondary coverage providers in those circumstances.

RESPONSE: The Department has initiated revisions to N.J.A.C. 11:3-37.11, negating the need for the clarification which the commenter requests.

COMMENT: One commenter requested clarification as to the applicability of these rules and the N.J.S.A. 39:6A-4.3d options to commercial automobiles.

RESPONSE: The Department is of the opinion that the N.J.S.A. 39:6A-4.3d option selections should be treated consistently with the Tort Threshold option. Therefore, a private passenger automobile insured under a commercial automobile policy is subject to the personal injury protection medical expense options. Accordingly, the named insured(s) under a commercial automobile insurance policy must be offered the N.J.S.A. 39:6A-4.3d personal injury protection medical expense options, to choose whether the auto insurance PIP plan or a health benefits plan will be the primary coverage provider for medical expenses incurred for the treatment of auto accident-related injuries.

Summary of Agency-Initiated Changes upon Reproposal:

The Department has received inquiry from several health benefits providers regarding policy language revisions required by N.J.A.C.

11:3-37 (and Bulletin 90-9) concerning limitations and exclusions for auto insurance no-fault coverage. Health benefit providers have questioned whether their policy language is to be constructed so as to be construed to provide duplicate coverage in states where auto insurance no-fault coverage is essentially always primary. Such construction and interpretation of policy provisions was not the Department's intent, but the Department acknowledges that the rules are not explicit in this respect.

In order to facilitate the construction of more appropriate language by health benefits providers, the Department is revising N.J.A.C. 11:3-37.2 and 37.3. The definition of "health benefits provider" and "PIP" are being revised, and a definition of "out-of-State automobile insurance coverage" is being incorporated. N.J.A.C. 11:3-37.3 will now include subsections (d) and (e), which allow health benefits providers to limit benefits with respect to "out-of-State automobile insurance coverage". Additionally, "out-of-State automobile insurance coverage" is now referenced at N.J.A.C. 11:4-16.4, 16.5 and 28.5.

The Department has revised the definition of "named insured" at N.J.A.C. 11:3-37.2 by removing the phrase which stated that the definition applied only to natural persons. The Department determined that that portion of the definition would be inconsistent with the application of the N.J.S.A. 39:6A-4.3d option to commercial automobiles owned by corporate entities.

The Department is removing N.J.A.C. 11:3-37.9(c)3. As originally proposed, this paragraph of the rule was meant to provide health benefits providers with a method by which to avoid liability in situations of balance billings. Upon reflection, however, the Department determined that this provision was inappropriate, and was likely to create greater legal dilemma than was necessary.

The Department is revising N.J.A.C. 11:3-37.9(e), concerning payment by plans which are part of a health benefits plan package providing secondary coverage. N.J.A.C. 11:3-37.9(e), as originally proposed, contains some ambiguities which may have the effect of causing a plan to provide benefits in excess of the benefits it would have paid had it been primary. The Department did not intend this effect. The language has been revised to require proportionate benefit payments rather than an even split of the uncovered remaining allowable expenses. Additionally, the reference of the phrase "shall not exceed total actual benefits payable" has been revised to more clearly refer to the plans, rather than the health benefits plan package, to avoid the ambiguity which could cause plans to exceed their primary coverage liability.

The Department is revising N.J.A.C. 11:3-37.11, addressing the payment of benefits when primacy is disputed or is not clearly established. The auto insurer may initially attempt to coordinate its benefits as a secondary coverage provider. However, if the health benefits plan will not provide primary coverage, then the auto insurer will have to assume the position of primary coverage provider. This is in accordance with the normal rules of benefit coordination. Readers may benefit by referring to N.J.A.C. 11:4-28.9, which also expresses this concept.

Without more, N.J.A.C. 11:3-37.11 as proposed could be particularly harsh on the insured, and could result in harsher treatment of those insureds who do have health coverage which disputes its position of primary coverage provider, than the treatment afforded those insureds who have no health coverage in effect at the time an accident occurs. That is, the insured who has no health coverage will receive primary benefits from the auto insurance PIP plan after satisfying the statutory $750.00 deductible in addition to the medical expense deductible selected on the auto insurance policy, while the insured who has health coverage disputing primacy very likely would receive only secondary coverage benefits from both the auto insurance PIP plan and the health benefits plan (or possibly no benefits from the health benefits plan). The situation for the insureds is inequitable. Moreover, the situation is akin to those situations involving plans considered to be "always secondary", for which the rules of benefit coordination already provide a solution that has a relatively favorable result for most insureds.

A summary of the emergency adopted and concurrently reproposed new rules and rule amendments follows:

N.J.A.C. 11:3-37.1 establishes the purpose and scope of proposed new subchapter 37. This proposed subchapter applies to all health benefits providers and automobile insurers providing coverage or offering to provide coverage to New Jersey residents through policies or contracts delivered or issued for delivery in this State.

N.J.A.C. 11:3-37.2 sets forth definitions of various terms.

N.J.A.C. 11:3-37.3 prohibits health benefits providers from incorporating any language in contracts or policies which would contravene the intent of the FAIR Act or this proposed subchapter. Proposed amendments to N.J.A.C. 11:4-16.4 and 16.5 and N.J.A.C. 11:4-28.2 and 28.5 are also intended to effectuate this prohibition.

N.J.A.C. 11:3-37.4 sets forth the guidelines for the scope of the application of the primary coverage option; that is, the option applies to the named insured and resident family members of the named insured.

N.J.A.C. 11:3-37.5 provides that automobile insurers may choose to verify that a named insured selecting the alternative coverage option has a health benefits plan and that it indeed will provide primary coverage for one of the insureds.

N.J.A.C. 11:3-37.6 sets forth standards for the order of benefit determination under the alternative coverage option. A distinction is made in this new subchapter between providing primary coverage under the alternative coverage option selection, and providing primary or secondary coverage in accordance with the coordination of benefits rules set forth at N.J.A.C. 11:4-28. Specifically, automobile no-fault benefits plans will no longer be plans with which health benefits providers may coordinate their plans using the rules of N.J.A.C. 11:4-28.

Rather, under these proposed new rules, either the PIP plan is categorized as "primary" and all health benefits plans are categorized as "secondary," or all health benefits plans are categorized as "primary," and the PIP plan is categorized as "secondary." (There may be more than one health benefits plan providing primary coverage, or secondary coverage, to an insured. If that is the case, and if the health benefits plans are group plans, then coordination of benefits may be achieved between the group plans using the coordination rules at N.J.A.C. 11:4-28.)

Some exceptions to these new rules may exist. Health benefits provided through programs or plans funded or owned by the Federal or State governments may be exempt from providing primary coverage. This may also be true for other health plans not subject to regulation by New Jersey. However, an automatic presumption of exemption does not exist.

N.J.A.C. 11:3-37.7 provides the guidelines for calculation of the benefits payment by an automobile insurer when the alternative coverage option is selected (that is, the PIP plan is secondary coverage). The automobile insurer should calculate the benefits it would have paid if the PIP plan was primary coverage. In so doing, (1) calculations are made only for the automobile insurer's recognized eligible expenses, and (2) the calculation is reduced by the policy deductible and statutory copayment amounts. In paying actual benefits, the automobile insurer is not required to exceed the medical fee schedule amounts for expenses, but the automobile insurer must (1) consider all remaining uncovered allowable expenses, whether or not such items of expense would be eligible expenses from the automobile insurer's viewpoint, and (2) not require actual satisfaction of the PIP deductible or statutory copayment amounts by the insured.

N.J.A.C. 11:3-37.8 restates the statute in establishing guidelines to be followed by the automobile insurer in the provision of PIP benefits when the alternative coverage option has been selected, but the specific insured has no health coverage in effect at the time the insured is injured in an automobile accident. This rule also provides that the automobile insurer may recoup the premium reductions provided on the policy during the contract period in which the automobile-related accident occurred.

N.J.A.C. 11:3-37.9 sets forth the standards for determining the order of benefits payable and calculating the benefits to be paid when the traditional coverage option is selected. Notably, health benefits providers may not make the provisions of benefits for remaining uncovered allowable expenses contingent upon the order of the receipt of health care provider charges (see proposed N.J.A.C. 11:3-37.9(d) and (e)).

N.J.A.C. 11:3-37.10 sets forth standards for the information required to be disclosed by the automobile insurer on an explanation of benefits form which is to be provided with the payments of benefits. This form should facilitate communication between the automobile insurer and health benefits provider. It should also alert insureds to the eligible expenses and charges determined to be reasonable by the automobile insurer and health benefits provider.

N.J.A.C. 11:3-37.11 establishes that when a dispute exists between a health benefits provider and an automobile insurer over the issue of primacy of coverage, the health benefits provider shall provide PIP benefits as if no PIP benefits existed. However, if the health benefits provider will not provide the automobile insurer the information it needs to coordinate from a secondary coverage provider position, or if the health benefits provider will not provide benefits as a primary coverage provider, then the automobile insurer must become the primary coverage provider. The automobile insurer may make the provision of benefits subject to the satisfaction of the statutory $750.00 deductible, and may request payment of the premium reduction amounts for that contract period.

Disputes may occur when a health benefits provider claims an exemption from compliance with these proposed rules, but there is a question as to the validity of the exemption. Disputes may also arise when it is unclear that an individual is an insured under an automobile policy in which the alternative coverage option has been selected.

N.J.A.C. 11:3-37.12 establishes the guidelines to be used in determining which auto policy's terms will apply when an insured is covered by more than one auto policy.

N.J.A.C. 11:3-37.13 is a penalty provision applicable to both automobile insurers and health benefits providers.

N.J.A.C. 11:3-37.14 provides that the rules of the subchapter are severable.

Social Impact

In enacting the FAIR Act, the Legislature intended to provide New Jersey residents with a means by which to obtain some relief from the automobile insurance premiums they have been paying. Selection of the N.J.S.A. 39:6A-4.3d alternative coverage option will provide that relief for many residents.

Economic Impact

Consumers who choose the alternative coverage option should see a reduction in their premiums associated with PIP. Automobile insurers should also see an overall reduction in their costs related to PIP benefits. However, the lower PIP costs for automobile insurers will be partially offset in the early years of implementation of the alternative coverage option because of added administrative costs associated with verification procedures and enhanced communications with insureds and health benefits providers. (Note, however, that verification of the validity of the alternative coverage option is voluntary at this time.)

Health benefits providers are expected to see an increase in costs. Virtually no health benefits plans previously provided first dollar coverage for medical expenses when PIP benefits were available. The increase in costs for these plans, therefore, will be noticeable almost immediately, and may be substantial. The actual cost increase will depend, of course, upon the number of covered members choosing the alternative coverage option and the total medical expenses incurred resulting from the option selection.

However, health benefits providers who provide secondary coverage may also see their costs increase as the automobile carriers begin to utilize the medical fee schedules. Additionally, health benefits providers whose plans do not comply with the FAIR Act and this new subchapter may still incur increased costs if they neglect to inform their covered members that they should not choose the alternative coverage option. These health benefits providers may have to provide coverage for the additional $750.00 deductible.

The increase in costs for health benefits providers will have a ripple effect. Premium increases will affect group and individual policies. Increases in the cost of providing group coverage will impact upon employers, union groups and trade associations. Changes in costs for health benefits providers and market competition may affect health care service provider contracts as well.

The full potential of the ripple effect is uncertain. Health benefits providers are considered to be more efficient than automobile insurers. Generally, health benefits providers are able to provide insureds a higher level of benefits while incurring a lower expense per dollar of benefits paid. Thus, while the initial impact of the alternative coverage selection may result in increased costs (and premiums) for health benefits coverage, the more efficient nature of the health benefits provider is expected to eventually contain and possibly drive down those costs. In the long-term, it is anticipated that costs (and premiums) will stabilize, resulting in a positive impact for health benefits providers, automobile insurers and consumers.

The Department of Insurance anticipates an increase in policy and rate filings as both automobile insurers and health benefits providers move to implement the N.J.S.A. 39:6A-3.4d option. Costs associated with these increased filings are expected to be absorbed by current Department of Insurance resources.

Regulatory Flexibility Analysis

The Department of Insurance is uncertain whether any "small businesses" (as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) will be impacted by the proposed amendments and new rules. There are no reporting or recordkeeping requirements, but the new rules and amendments will require new standards of compliance for both insurers and health benefits providers with respect to policy forms and coverage. Additionally, unless an insurer currently is using an Explanation of Benefits ("EOB") form which meets the criteria of N.J.A.C. 11:3-37.10, insurers must develop and implement a new, complying EOB.

However, no measures are being proposed which would effectively minimize the adverse economic impact on small businesses, if any. The Department of Insurance determined that it would be impractical in this instance to differentiate application of the amendments and new rules between insurers and health benefit providers based on their size. There are too many variables involved, and it is probable that consumers would be the party most often injured by compliance (or noncompliance) errors. Regulatory flexibility measures would tend to defeat the intended purpose of N.J.S.A. 39:6A-4.3d, which does not provide for a difference in application of the statute based on an insurer's or health benefits provider's size, or any other criteria.

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

11:3-14.8 Application of the option to choose health care insurance coverage as the primary insurer

When an insured or prospective insured elects to have a health insurer provide primary personal injury protection medical expenses benefits, the medical expense benefits available to the insured under his or her automobile policy's personal injury protection provisions shall become a secondary benefits provider. The order of benefit determination shall be in accordance with N.J.A.C. 11:3-37.

11:4-16.4 Policy definitions

(a) Except as provided hereafter, no health insurance policy delivered or issued for delivery in this State shall contain definitions respecting the matters set forth below unless such definitions comply with the requirements of this section.

1. "Accident", "accidental injury", "accidental means", shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visibile wounds" or similar words of description or characteristics.

i. "Injury" shall not be defined more restrictively than accidental bodily injury sustained by the insured person which is the direct cause of the loss, independent of disease, bodily infirmity or other cause, and which occurs while the insurance is in force.

(1) Such definition may provide that injuries shall not include injuries for which benefits are provided under workers' compensation, employer's liability or similar law, [compulsory motor vehicle no-fault plan, unless prohibited by law] **out-of-State automobile insurance coverage as defined at N.J.A.C. 11:3-37.2 and provided for at N.J.A.C. 11:3-37.3**, or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.

2.-17. (No change.)

11:4-16.5 Prohibited policy provisions

(a)-(k) (No change.)

(l) No policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, except as follows:

1.-7. (No change.)

8. Treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, [or any mandatory motor vehicle no fault law] **out-of-State automobile insurance coverage as defined at N.J.A.C. 11:3-37.2 and provided for at N.J.A.C. 11:3-37.3**; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

9.-12. (No change.)

(m)-(q) (No change.)

11:4-28.2 Definitions

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

. . .

"Plan" means coverage with which coordination is allowed. The definition of "plan" in the group contract must state the coverages which will be considered in applying the COB provision of that contract. The right to include a coverage shall be limited by 1 through 3 below.

1.-2. (No change.)

3. A "plan" may include:

i.-iii. (No change.)

iv. Group hospital indemnity benefit amounts exceeding $150.00 per day; **and**

[v. The medical benefits coverage in automobile "no-fault" and traditional "fault" type contracts; and]

[vi.]**v.** Medicare or other governmental benefits, except those benefits as provided in 4vii below. This part of the definition of "plan" may be limited to the hospital, medical and surgical benefits of the governmental program.

4. (No change.)

. . .

11:4-28.5 Prohibited coordination; benefit design

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

(c) No contract delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the contract on the grounds that such expenses or services would be covered under an automobile no-fault medical benefits plan for which the covered member would be eligible, except as provided for by N.J.A.C. 11:3-37.

SUBCHAPTER 37. ORDER OF BENEFIT DETERMINATION BETWEEN AUTOMOBILE PERSONAL INJURY PROTECTION AND HEALTH INSURANCE

11:3-37.1 Purpose and scope

The purpose of this subchapter is to establish guidelines for the order of benefit determination between a plan of health insurance and personal injury protection provided through an automobile policy, when a named insured elects to have his or her personal injury protection become secondary coverage for the provision of benefits for medical expenses incurred due to injuries sustained in an automobile accident. The provisions of this subchapter shall apply to all automobile policies, as that term is defined at N.J.S.A. 39:6A-2a, issued to New Jersey residents, or renewed on or after January 1, 1991, and to all health benefits plans which have been or will be delivered or issued for delivery in this State.

11:3-37.2 Definitions

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

"Actual benefits" means those benefits determined to be payable for allowable expenses.

"Allowable expense" means a medically necessary, reasonable and customary item of expense covered by an insured's health benefits plan(s) or PIP plan as an eligible expense, at least in part. When a plan provides benefits in the form of services, the reasonable monetary value of each such service shall be considered as both an allowable expense and a paid benefit.

"Benefits" means the provision of the following in consideration of payment of premiums or fees on a prepaid or postpaid basis:

1. Services, including supplies;

2. Payment of expenses incurred;

3. A combination of 1 and 2 above; or

4. An indemnification.

"Eligible expense" means:

1. In the case of health benefits plans, that portion of the medical expenses incurred for treatment of an injury which is covered under the terms and conditions of the plan, without application of the deductible(s) and copayment(s), if any.

2. In the case of PIP plans, that portion of the medical expenses incurred for treatment of an injury which, without considering any deductible and copayment, shall not exceed:

i. The percent or dollar amounts specified on the medical fee schedules, or the actual billed expense, whichever is less; or

ii. The reasonable amount, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an incurred medical expense is not included on the medical fee schedules.

"Health benefits provider" means any person, whether subject to the regulation of the New Jersey Department of Insurance, Department of Health, or both, or not otherwise subject to such regulation, who contracts to provide health services, provide reimbursement for the cost of health services in whole or in part, or to provide for indemnity in the event health services are used, in return for a prepaid or postpaid premium or fee or other consideration, including, but not limited to:

1. Insurers, as defined at N.J.S.A. 17B:17-2;

2. Hospital service corporations, as defined at N.J.S.A. 17:48-1;

3. Medical service corporations, as defined at N.J.S.A. 17:48A-1;

4. Health service corporations, as defined at N.J.S.A. 17:48E-1;

5. Health maintenance organizations, as defined at N.J.S.A. 26:2J-2;

6. Dental service corporations, as defined at N.J.S.A. 17:48C-2;

7. Dental plan organizations, as defined at N.J.S.A. 17:48D-2;

8. Medicare;

9. Medicaid;

10. State Employees Health Benefits Plan;

11. CHAMPUS;

12. Self-insured programs; and

13. An entity organized under the laws of any other state or jurisdiction which delivers certificates to residents of New Jersey evidencing coverage under a contract issued and delivered in a state or jurisdiction other than New Jersey.

"Hospital expenses," when used by the automobile insurance PIP plan, means those expenses defined at N.J.S.A. 39:6A-2f.

"Injury" means bodily injury sustained by an insured as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile.

"Insured" means a person eligible for coverage, at least in part, for medical expenses incurred for treatment of injuries, under an automobile policy PIP medical expense provision, and who meets the definition of a named insured or family member.

1. Named insured means the person identified as the insured in the automobile policy and that person's spouse, if the spouse is a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage for that spouse shall continue until the full term of any policy period in effect at the time of the cessation of residency has expired.

2. Family member means any relative of the named insured or the named insured's spouse who:

i. Is related to the named insured or named insured's spouse by blood, marriage, adoption or guardianship;

ii. Resides in the household of the named insured or spouse of the named insured; and

iii. Is not a named insured under another automobile policy.

"Medical expenses" means expenses for medical, surgical and dental treatment, professional nursing services, hospital expenses, rehabilitation services, diagnostic services, ambulance services, prosthetic devices, medications and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology or chiropractic in accordance with this State's laws, or by persons similarly licensed in other states or nations, or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Medical fee schedule" means that list of services, procedures and supplies to which have been assigned a maximum fee or percentage of a fee payable by an automobile insurer for expenses incurred as a result of the rendering to an insured any of those specific services, procedures or supplies for injuries, which list is set forth at N.J.A.C. 11:3-29.

"Out-of-State automobile insurance coverage" or "OSAIC" means any coverage for medical expenses under an automobile insurance policy other than PIP, as PIP is defined herein, including automobile insurance policies issued in another state or jurisdiction.

"PIP" means personal injury protection coverage provided as part of an automobile insurance policy issued in New Jersey, specifically those provisions for medical expenses coverage.

"Plan" means any policy, contract, certificate, booklet, evidence of enrollment, program, or other such term which evidences the existence of a relationship between a health benefits provider or PIP carrier and an insured with respect to the provisions of hospital, medical, surgical, dental and/or other health care related benefits, at least in part.

"Primary coverage" means coverage by any plan which determines its actual benefits payable on allowable expenses incurred by an insured for treatment of injuries without taking into consideration the existence of any coverage for which the insured may be eligible provided secondary in accordance with this subchapter. There may be more than one plan providing the insured primary coverage.

"Secondary coverage" means coverage by any plan which determines its actual benefits payable on all allowable expenses incurred by an insured for treatment of injuries after all plans providing primary coverage have considered expenses incurred and paid actual benefits.

11:3-37.3 Health benefits providers

(a) Nothing in this subchapter shall be construed as requiring any health benefits provider to offer, provide, or continue coverage to or for any individual or group, except as may be set forth by other laws of this State, or of the Federal government.

(b) Nothing in this subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or service not otherwise covered under the terms of the applicable health benefits plan.

(c) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that such expenses or services would be covered under an automobile policy PIP provision for which the insured would be eligible had the named insured on the automobile policy not selected the PIP-as-secondary coverage option.

(d) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement, or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury;
2. Such expenses are covered or paid by PIP; or
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(e) A health benefits contract or policy may provide that it is always primary to OSAIC, or may provide that it will determine its benefits as if it were secondary to any OSAIC. If the health benefits contract or policy provides that it will determine its benefits as if it were secondary to OSAIC and the OSAIC either contains a provision that it is always excess or secondary, or refuses to cooperate in determining the amount of benefits payable by the health benefits plan as secondary coverage provider, the health benefits plan shall provide primary coverage.

11:3-37.4 Application of the PIP-as-secondary coverage option

(a) When a named insured elects the PIP option, whereby the named insured intends that medical expenses incurred for treatment of an injury are to be covered by a health benefits provider or providers, as evidenced on the Coverage Selection Form, then the medical expense provisions of the PIP coverage shall be considered to be secondary coverage for the purposes of the order of benefit determination, and all health benefits plans of an insured subject to the PIP option elected shall be considered to be primary coverage.

(b) The election by the named insured to make PIP medical expense provisions secondary coverage shall apply to only the named insured and family members of the named insured who reside in the named insured's household and are not named insureds under other automobile policies.

(c) The election by the named insured to make PIP medical expense provisions secondary coverage shall continue in force as to subsequent renewal or replacement policies until the automobile policy insurer or its authorized representative receives a properly executed written request revoking the selection of this option.

(d) In the event that an insured is ineligible for health plan coverage of medical expenses, or is eligible for coverage under a dental expense or dental service plan only when an injury occurs, despite the selection of the PIP-as-secondary coverage option by the named insured, benefits shall be provided to the insured through PIP coverage in accordance with N.J.A.C. 11:3-37.8.

11:3-37.5 Health benefit plan standards and the PIP premium reduction

(a) An automobile insurer may eliminate the premium reduction on the base rate applicable to the amount of medical expense benefit chosen in conjunction with the PIP-as-secondary coverage option election if the automobile insurer verifies that the coverage specified by the named insured:

1. Excludes the provision of benefits for treatment of injuries of an eligible insured when expenses incurred in relation to treatment of those injuries are eligible expenses under an automobile policy's PIP provisions; or
2. Provides that it is always secondary, or otherwise will not be a primary provider of benefits; or
3. Provides benefits only for dental expenses or dental services.

(b) An automobile insurer shall notify a named insured if the automobile insurer determines that the health benefits plan(s) specified by the named insured contain exclusionary or restrictive coverage provisions as set forth in (a) above, or if the automobile insurer determines that the health benefits plan(s) specified by the named insured do(es) not provide coverage to at least one insured covered under the automobile insurance policy, and, therefore, the named insured's premium reduction for PIP medical expense benefits will be eliminated. The notice shall be in writing and shall specify the reasons why the automobile insurer believes the named insured's health plan coverage is not in compliance with this subchapter.

1. The automobile insurer may demand payment of the premium reduction difference. The effective date of the cancellation of a policy for nonpayment of premium shall not be earlier than 10 days prior to the last full day of which premium received by the company, prior to the date of preparation of the cancellation notice, would pay for coverage on a pro rata basis. In calculating the effective date of the cancellation, the premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time the cancellation notice was prepared shall be the premium used for the calculation and determination of such effective date.
2. No cancellation notice shall be mailed prior to 30 days in advance of its effective date.
3. If the insured provides payment of the full premium amount and subsequently provides proof that coverage is not restricted in the manner set forth in accordance with (a) above, the automobile insurer shall refund the monies paid in excess of the full reduction, or shall credit any excess paid on the reduced premium to the extent any premium payment is still unpaid on the policy.

11:3-37.6 Order of benefits determination when PIP is secondary coverage

(a) When the named insured of an automobile policy has selected the PIP-as-secondary coverage option, all health benefits plans for which the insured is eligible shall provide coverage for the allowable expenses incurred by the insured due to an automobile-related injury prior to any benefits for medical expenses being paid by a PIP plan.

(b) If the insured is eligible for coverage under more than one group health benefits plan, the group health benefits plans shall coordinate benefits with one another in accordance with the rules set forth for such plans at N.J.A.C. 11:4-28.

(c) The PIP plan shall provide benefits for allowable expenses remaining uncovered after all health benefits plans for which the insured is eligible have paid benefits towards those allowable expenses.

(d) The PIP plan shall continue to be liable for expenses related to the same occurrence as the expenses are incurred, whether or not the health benefits plan(s) in force at the time of the accident terminate(s) coverage, or benefits provided under the health benefits plan(s) are exhausted subsequent to the occurrence of the accident, up to the maximum PIP benefits available to the insured under the terms of the automobile policy.

(e) Total benefits paid by an insured's health benefits and PIP plans shall not exceed the amount of total allowable expenses.

11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage

(a) In calculating the actual benefits to be paid by the automobile insurer when the PIP-as-secondary coverage option has been selected, the automobile insurer shall first determine the amount of eligible expenses which would have been paid after application of the deductible and copayment limitations had the PIP-as-secondary coverage option not been selected.

1. In the event the remaining allowable expenses are less than the benefits calculated pursuant to (a) above, the automobile insurer shall pay actual benefits equal to the remaining allowable expenses, without reducing the remaining allowable expenses by its deductible or copayments.

2. In the event the remaining allowable expenses are greater than the benefits calculated pursuant to (a) above, the actual benefits paid by the automobile insurer shall be the benefits calculated pursuant to (a) above, without reducing the remaining allowable expenses by its deductible or copayments.

(b) In paying actual benefits, the automobile insurer shall not:

1. Reduce its actual benefits payable on account of any deductibles or copayments of the health benefits plans which have provided benefits ahead of the PIP plan due to the selection of the PIP-as-secondary coverage option; or

2. Reduce its actual benefits payable for any allowable expense remaining uncovered which item of expense otherwise would not be an eligible expense under the PIP plan, except as set forth by (c) below.

(c) In determining remaining uncovered allowable expenses, the automobile insurer shall not consider any amount for items of expense which exceed the dollar or percent amounts recognized by the medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6.

(d) The total amount of benefits to be provided through the PIP medical expense provisions for each insured per accident or occurrence shall not exceed the maximum PIP benefits as provided for by the terms of the policy.

11:3-37.8 Health benefits plan coverage ineligibility

(a) When, subsequent to the selection of the PIP-as-secondary coverage option by a named insured, it is determined that an insured did not have health coverage in effect at the time of an injury, then the insured shall be provided benefits for incurred medical expenses through the PIP medical expense provision.

1. Benefits payable shall be subject to a per accident deductible equalling the total of $750.00 plus the PIP deductible selected by the named insured of the policy.

2. Benefits payable shall be subject to a 20 percent copayment for amounts less than $5,000 after the deductible has been satisfied.

3. Determination of the amount of benefits payable shall be made in accordance with medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6 and set forth at N.J.A.C. 11:3-29, or on a reasonable basis, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an item of expense is not included on the medical fee schedules.

4. Total benefits paid for each insured eligible for benefits in any one accident shall not exceed the maximum PIP benefits provided for by the terms of the policy.

(b) All items of medical expense incurred by the insured for treatment of an injury shall be eligible expense to the extent the treatment or procedure from which the expenses arose is recognized on the medical fee schedules, or are reasonable medical expenses in accordance with N.J.S.A. 39:6A-4.

(c) The automobile insurer shall be entitled to recover, for the contract period in which the automobile-related injury occurred, the difference between the reduced premiums paid on the policy and the amount of premium which would have been due on the policy had the named insured not selected the PIP-as-secondary coverage option, and no premium reduction shall be provided on that policy for the PIP-as-secondary coverage option during the remainder of that current contract period.

11:3-37.9 Determination of benefits when PIP is primary coverage

(a) When no election has been made by a named insured to make his or her health benefits plan(s) primary coverage provider(s), so that the PIP plan will provide primary coverage for medical expenses incurred for treatment of injuries, the PIP plan shall provide benefits to the insured without consideration of any benefits for which the insured may be eligible under any health benefits plan.

(b) Actual benefits paid by the PIP plan shall be for all medical expenses which are eligible expenses incurred for treatment of injuries, subject to application of the deductible provided for by the terms of the automobile policy, and a 20 percent copayment requirement for amounts incurred after the deductible and up to $5,000.

(c) Actual benefits payable by a health benefits plan, when the PIP plan is providing primary coverage for medical expenses incurred for treatment of injuries, shall be the lesser of the remaining uncovered allowable expenses or the actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

1. Actual benefits payable may be reduced by the deductible(s) and copayment requirements applicable by the terms of the health benefits plan, and shall not exceed the amount of actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

2. Allowable expenses remaining uncovered, which the health benefits plan(s) shall consider when the PIP plan is providing primary coverage, include:

i. Any PIP deductible(s);

ii. Any PIP copayment amounts;

iii. Any expenses which exceed the medical expense coverage limits of the PIP plan per person per accident, as set forth by the terms of the automobile policy; and

iv. Any expenses not covered by the PIP plan when such expense was determined to be in excess of the reasonable charge for an item of expense not listed on the medical fee schedules, but for which the automobile insurer determined a reasonable charge based on the medical fee schedule for a similar item of expense in the region where the service or equipment was provided.

(d) When a health benefits plan provides hospital expense or service benefits only, or medical expense or service benefits only, and is not otherwise a part of a basic health benefits package, all allowable expenses remaining uncovered shall be considered by that health benefits plan for the provision of benefits, without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by that health benefits plan for the allowable expenses remaining uncovered shall not exceed the total actual benefits which would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

(e) When there is one health benefits plan providing insureds hospital expense or service benefits and another health benefits plan providing insureds medical expense or service benefits as two separate parts of one basic health benefits plan package, the hospital benefits plan and the medical benefits plan shall both consider all allowable expenses remaining uncovered and shall apportion such allowable expenses between the two plans on a pro-rata basis without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by each plan of the health benefits plan package shall not exceed the total actual benefits which would have been payable by each plan had the health benefits plan package been providing primary coverage.

(f) No insured shall be liable to a health care provider for any fees for services or supplies which exceed the dollar or percentage amounts recognized for those services or supplies on the medical fee schedules.

(g) No health benefits plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consideration of charges which were in excess of the amounts set forth in the medical fee schedules.

(h) If there is more than one group health benefits plan providing secondary coverage to an insured, these plans may coordinate their benefits with one another in accordance with N.J.A.C. 11:4-28.

11:3-37.10 Explanation of benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1. Each procedure for which a claim has been made;
2. Eligible expense related to each procedure with an indication of whether the eligible expense is based on the medical fee schedules or is the reasonable charge as determined by the automobile insurer;
3. Actual benefits paid;
4. The deductible applied; and
5. A concise explanation why any item of expense is considered an ineligible expense, when this occurs.

11:3-37.11 Dispute as to primacy of coverage

(a) If, subsequent to the selection of the PIP-as-secondary coverage option by the named insured, injuries are sustained by an insured eligible for health benefits plan coverage, but a dispute exists between the health benefits provider and the automobile insurer, then the health benefits provider shall provide benefit as if it were the primary coverage provider and no PIP benefits were available to the insured. In no event shall the provision of benefits be unreasonably delayed by either a health benefits provider or an automobile insurer.

(b) If the health benefits provider asserts that it is not subject to N.J.A.C. 11:3-37.3, and thus, will not act as the primary coverage provider then the automobile insurer shall assume the role of primary coverage provider, and provide its benefits in accordance with N.J.A.C. 11:3-37.8. The automobile insurer shall be entitled to recover premium reductions in accordance with N.J.A.C. 11:3-37.8(c).

11:3-37.12 Eligibility under two or more automobile policies

(a) If an insured is eligible for coverage of medical expenses under more than one automobile policy, the determination as to which automobile policy will assume coverage responsibility for that insured shall be as follows:

1. A named insured shall receive benefits for medical expenses under the terms of the automobile policy on which he or she, or his or her spouse, is identified as the named insured.

2. A family member who is a child of a named insured or the named insured's spouse shall receive benefits for medical expenses under the automobile policy of the named insured, subject to the following:

i. If the child is a child of more than one named insured or of more than one spouse of a named insured, the child shall receive benefits under the terms of the automobile policy of the named insured who has legal custody of that child or whose spouse has legal custody of that child.

ii. If the child is a child of more than one named insured or of more than one named insured's spouse, and legal custody of that child has either never been awarded, or has been awarded jointly, then the child shall receive benefits under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

iii. If the child is a named insured or the spouse of a named insured, (a)1 above shall apply.

3. If neither (a)1 nor (a)2 above apply to an adult or child family member, then that family member shall receive benefits for medical expenses under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

4. If an automobile policy identifies more than one person as a named insured on the automobile policy, the birthday of the named insured whose birthday occurs earliest in the calendar year shall be considered the determinant birthday on that automobile policy.

(b) An insured shall not receive benefits for medical expenses under more than one automobile policy.

(c) If an automobile policy PIP plan provides benefits for medical expenses for an insured who is eligible for medical expense benefits under more than one automobile policy PIP plan, the automobile insurer of the paying PIP plan may seek equitable pro rata contributions from the other automobile policy PIP plan(s) for the benefits actually paid by the paying PIP plan.

11:3-37.13 Penalties

Each automobile policy or health benefits plan subject to the terms of this subchapter which fails to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

11:3-37.14 Severability

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 11:3-16

Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency Amendments Filed: November 26, 1990 as R.1990 d.621.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29A-1 et seq.; 17:29A-36.2 and 36.3; 17:29A-44; P.L. 1990, c.8.

Concurrent Proposal Number: PRN 1990-641.

Emergency Amendments Effective Date: November 26, 1990.

Emergency Amendments Expiration Date: January 25, 1991.

Submit comments by January 16, 1991 to:

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

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follows:

Summary

The current private passenger automobile insurance rate filing rules, N.J.A.C. 11:3-16, were originally established in essentially the same form as Order A89-120 issued by the Commissioner of Insurance ("Commissioner") on May 12, 1989. The Department of Insurance ("Department") has had a full year of experience using these rules, and now proposes comprehensive amendments. It expects these amendments to streamline the process of reviewing automobile insurance rate filings and to reduce administrative costs of review for the Department, as well as costs for the insurers which prepare the filings. In order to allocate properly the resources available to the Department to conduct reviews of these filings, several amendments are proposed to reduce the amount of data required to be submitted. In proposing these amendments, the

Department has balanced the need for comprehensive data from each filer with the resources available to conduct a thorough review.

Since 1984, when the Department first proposed comprehensive rules to specify data filing requirements for private passenger automobile insurance, industry commenters on the several proposals (see 16 N.J.R. 2934(a); 20 N.J.R. 2135(a); 21 N.J.R. 611(a) and 21 N.J.R. 2182(a)) have objected consistently on the grounds that the requirements were "onerous" and "burdensome," and that the effort to meet them would drive up the costs for consumers. The Department proposes these amendments with the expectation that they will serve to help contain insurers' administrative costs.

These proposed amendments provide that the insurer's Excess Profits Report, required by N.J.A.C. 11:3-20, and the Financial Data Report, required by N.J.A.C. 11:3-31, shall comprise the annual informational filing required by N.J.S.A. 17:29A-36.2(b) to be filed by July 1 of each year (see amended N.J.A.C. 11:3-16.4). These reports provide a substantial amount of financial information about each company. They are sufficient in themselves to provide the Department with an appropriate level of oversight regarding the performance of a company at its established rates. Should it be determined that additional data on a particular subject is necessary at a particular time, the Department may issue a special data request by Order of the Commissioner.

These proposed amendments reduce the amount of data required to be submitted to support flex rate filings that adjust rates within limits pursuant to N.J.S.A. 17:29A-44, N.J.A.C. 11:3-16A and applicable orders of the Commissioner. The annual informational filing submitted by each insurer will satisfy the data requirements of a flex rate filing, supplemented by an informational statement and the manual rating pages and other exhibits related to the implementation of the flex rate change.

Data requirements for prior approval filings are also proposed to be reduced. The Department proposes to eliminate from its requirements data which is essentially duplicative of data found elsewhere in the filing and exhibits which have limited probative value in the establishment of private passenger automobile insurance rates. The Department also proposes to eliminate data from other states and other information considered by the filer but not actually used. Despite the reductions, the Department expects that the amended data requirements will provide sufficient information to review proposed rate changes for each filer accurately and thoroughly.

Groups of insurers will no longer be required to make separate filings for each individual company in the group. Rather, groups may make consolidated filings for those companies in the group that share the same rate levels and same underwriting guidelines. In proposing this amendment, the Department notes that each individual insurance company in a group will still be required to file separately its Excess Profits Report and Financial Data Report, which will be reviewed in connection with the annual informational filing and any flex rate filing.

The Department also proposes several amendments to make minor changes or additions to these rules to clarify requirements and to respond to questions posed by filers undertaking to comply with the rules as previously adopted. The definitions rule is proposed to be amended by adding definitions of "advisory organization," "affiliate," "base rate," "control," "group of coverages," "MTF," "NJAFIUA," and "rating organization"; by deleting definitions no longer necessary; and by clarifying others. The Department further proposes to limit the number of filers required to submit rating systems on computer disks to those with over 40,000 exposures for the latest year of data included in the filing; and to limit those required to make prior approval filings on computer disks as well as on paper to those with over 20,000 exposures for the latest year of data included in the filing. Other proposed amendments make minor changes in the information required, and the sequence of the exhibits, submitted with prior approval filings to improve the process of review. References in N.J.A.C. 11:3-16.8, 16.9 and 16.10 eliminate references to exhibits to be submitted with prior approval filings only, since these sections now apply only to prior approval filings.

These proposed amendments begin to implement some of the provisions of the recently enacted Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 ("Act"). First, the provisions in the current rules relating to rating organization filings have been eliminated since the Act prohibits them. Secondly, a proposed amendment requires insurers to submit a copy of all flex rate filings to the Division of Rate Counsel, Office of the Public Advocate ("Public Advocate"); the Act permits the Public Advocate to challenge a flex rate increase and requires the Commissioner to provide it information by which to conduct its review. Thirdly, N.J.A.C. 11:3-16.8(d)4 is proposed to be amended to include an evaluation of the effects of the Act, for example: the cap on personal injury protection benefits, the medical fee schedule, the health insurance option, the towing and storage fee schedule, the exclusion of automobile storage fees over 30 days from the expense base, etc. Fourthly, a provision has been added to N.J.A.C. 11:3-16.3 to confirm that rate filings should contain only voluntary market data and not include data from risks that may be insured through the assigned risk plan to be instituted pursuant to section 34 of the Act. Fifthly, N.J.A.C. 11:3-16.7 is repealed and a new rule proposed to provide for the dissemination of data by rating organizations and advisory organizations to implement section 69 of the Act. This section prohibits insurers from using rating organizations or advisory organizations for private passenger automobile insurance ratemaking, except for the collection, compilation and dissemination of historical data. The new rule sets forth the data that may be disseminated pursuant to section 69 of the Act as well as the data which may not be disseminated. Sixthly, N.J.A.C. 11:3-16.10 is amended to confirm that the Property-Liability Insurance Guaranty Association Assessment and the surtax imposed by sections 74 and 76 of the Act, respectively, may not be incorporated into the expense base for determining rates. This implements sections 75 and 78 of the Act which prohibit direct pass-through of the assessment or surtax to policyholders. The Act and the Constitution of the United States, however, provide that insurers are entitled to earn an adequate rate of return through the ratemaking process. An insurer may thus request rate relief if it is unable to earn an adequate rate of return due to imposition of the assessment or surtax. Accordingly, the Department is proposing a new rule, N.J.A.C. 11:3-16.11, which sets forth the filing requirements for an insurer desiring to modify its rates to reflect the assessment or surtax. The data filed will enable the Commissioner to evaluate the insurer's experience on all lines of business in New Jersey; the insurer's operational efficiency; the insurer's method of allocation of expenses; and the synergistic effect of mandated private passenger automobile insurance on the profitability of other lines of business. Finally, the Department proposes new rule N.J.A.C. 11:3-16.13 to address rate adjustments that may be required due to any repayment of the assessment imposed pursuant to N.J.S.A. 17:30A-8(9). Other provisions of the Act which may affect data and informational requirements for rate filings are currently being reviewed, and the Department may in the future propose further amendments that are required by the comprehensive reforms set forth in the Act.

The Department at this time proposes no change to its standard ratemaking methodology which uses the "Clifford formula" in the determination of rates. Nevertheless, it should be noted that the Department is currently reviewing whether some other methodology may be more appropriate. If the Department determines to change its standard ratemaking methodology as a result of this review, then further amendments to these rules may be proposed.

Exhibits AI and AII have been revised to conform to the proposed amendments. Exhibit E is being deleted; it is no longer necessary because it applies only to deviations from rating organization rates, which have been eliminated. New Exhibits E, F and G are added to specify the format for the reporting of data required by N.J.A.C. 11:3-16.5 and 16.11 as amended.

Social Impact

These proposed amendments will affect the Department and private passenger automobile insurers which submit filings to the Department, although the primary effect will be economic. Because data requirements are generally reduced, the proposed amendments will require less administrative work for insurers in order to comply, reducing insurer's costs which are included in its expense base for determining rates. Likewise, less time will be required for the Department to review each filing. By reducing the volume of data submitted with rate filings, the Department expects that they may be reviewed and resolved more expeditiously.

Economic Impact

These proposed amendments will affect the Department and private passenger automobile insurers which make rate filings. Since the proposed amendments significantly reduce the data required to be supplied in connection with annual informational filings, flex rate filings and prior approval filings, the cost to prepare these items for submission to the Department is reduced. Similarly, the cost within the Department to review each individual filing will be reduced.

Regulatory Flexibility Statement

These proposed amendments may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et

seq. These "small businesses" are insurance companies authorized to write private passenger automobile insurance.

A primary motive in proposing these amendments, which generally reduce the amount of data that insurers must submit with their rate filings, is to lessen the burden on small insurers which have limited resources with which to prepare and prosecute rate filings, and to which cost savings have a more significant impact. These proposed amendments will provide a better opportunity for small insurers to take flex rate changes and perhaps to avoid the substantial time and expense required for prior approval filings.

Although the proposed amendments do not otherwise distinguish between insurers that qualify as "small businesses" and others, the general lessening of the filing requirements as set forth in these proposed amendments will minimize adverse economic impact on small businesses, consistent with the statutorily mandated purpose of the rules to establish for all filers uniform data filing and ratemaking methodology in connection with the establishment of private passenger automobile insurance rates in the voluntary market.

Full text of the repealed exhibits may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-16 Appendix, Exhibit AI, Exhibit AII and Exhibit E.

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

SUBCHAPTER 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all [rating organizations and to all] insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers [and rating organizations] for the revision of base rates; informational filings to be made on July 1 of each year pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under the flex rate provisions of N.J.S.A. 17:29A-44.

(d) [This subchapter does not apply to rule and form filings that do not change base rates] **Any insurer wishing to effect the rate level by changing rates, rules or forms must file data pursuant to this subchapter.**

11:3-16.2 Definitions

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

. . .

"Advisory organization" means every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations, in ratemaking, by the collection and furnishing of loss or expense statistics, but which does not make filings.

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer making a filing.

. . .

"Base rate" means the rate inclusive of expense fee by coverage for basic limit of liability or $500.00 deductible collision or comprehensive for a single car adult pleasure risk.

["Basis point" means an annual interest rate of .01 percent (one one-hundredth of one percent).]

"Case reserves" means the [estimated value of the liability assigned to specific known] **reserves for reported** claims whether determined by [claim adjusters] **judgment** or set by formula.

. . .

"Control" is as defined in N.J.S.A. 17:27A-1.

. . .

"External trend data" means trend data derived from experience [outside of insurance industry statistics] **other than on policies issued by the filer.**

"Filer" means [a rating organization or] any insurer who makes an annual informational filing, flex rate filing or rate filing requiring prior approval pursuant to these rules.

. . .

"Group of coverages" means liability coverages (to include bodily injury liability, property damage liability, personal injury protection and uninsured/underinsured motorists) and physical damage coverages (to include collision and comprehensive).

"IBNR" or "incurred but not reported loss" means losses which have [occurred] **been incurred** but have not yet been reported as of a specified date [including, if applicable, deficiencies/redundancies in case reserves].

"Informational filing" means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues [if an insurer, or the policies issued by its qualified members and subscribers if a rating organization].

["Loss development parallelogram"] **"Loss development triangle"** means a display of losses showing accident year data by evaluation date, with the same number of accident years shown at each evaluation date. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year; subsequent evaluations shall be at 12-month intervals. IBNR shall be shown as a separate number at the latest evaluation date for each year displayed.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"NJAFIUA" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Public Advocate" means the Division of Rate Counsel, New Jersey Department of the Public Advocate.

["Qualified member" of a rating organization means an insurer member or subscriber of a rating organization whose total private passenger written car years insured, on a calendar basis, is less than 1.5 percent on January 1, 1990 and one percent on January 1, 1991, of the total written private passenger car years insured by all insurers writing motor vehicle insurance in this State in the voluntary market, pursuant to N.J.S.A. 17:29A-6.1a2.]

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table[,] **or** rating plan [or compilation] by whatever name described containing the rates **and rules** used by [any rating organization or by any insurer, or used by] any insurer [or by any rating organization] in determining or ascertaining a rate.

. . .

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively. All filers shall begin collecting this information in a manner so as to facilitate reporting no later than January 1, 1991 and report data so collected on filings made or required to be made on or after April **1**, 1992. **If a filer has collected this information, it may be included on filings made or required to be made prior to April 1, 1992.**

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8 and 16.9, and make the rate level calculation set forth in N.J.A.C. 11:3-16.10, [both separately] **either:**

1. Separately for each company [and combined] **with a different rate level or different underwriting guidelines; or**

2. Combined for [the group] **those companies of the group which use a common rating system, including both base rates and underwriting guidelines, or when the difference is based only on expense differences.**

(c) Small filers need not provide all of the information required by N.J.A.C. 11:3-16.8(c)[,] **and** (d)[, and (e)]; more limited requirements are set forth in those sections. Notwithstanding this, any filing by a small filer for a rate change[, including flex rate filings] shall include sufficient justification for all factors used.

(d) (No change.)

(e) A copy of all **rate change** filings submitted pursuant to N.J.S.A. 17:29A-14 **or N.J.S.A. 17:29A-44** [that require the Commissioner's approval prior to implementation of a rate change] shall be submitted simultaneously to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street
Newark, New Jersey 07102

(f) (No change.)

(g) All filings shall be accompanied by the following certification signed by an officer of the filer: "I ___ certify that the attached filing complies with all statutory and regulatory requirements and **that all the information it** contains [information that] is true and accurate. I further certify that I am authorized to execute this certification on behalf of the filer."

(h) Each filer shall submit **prior approval** filings in loose leaf form inserted into standard three-ring binders. The loose leaf sheets used in the filing shall be eight and one-half inches wide and 11 inches long and punched for three-hole standard binders. Only one side of the page shall be used. Each page shall be consecutively numbered.

(i) (No change.)

(j) Except for filers with less than [1,000] **40,000** exposures in the prior year, after January 1, 1991, each flex rate filing when made, or other rate change filing when effective, shall be accompanied by a computer disk(s) that contains the rating system to be implemented.

1.-3. (No change.)

(k) All data shall be reported on a direct basis exclusive of business ceded to reinsurers or reinsurance assumed from other companies. Notwithstanding this provision, transactions with the UCJF shall be reported as set forth in N.J.A.C. 11:3-16.8(d)**1**, 11:3-16.9(a)[4]**3** and 11:3-16.10[(d)4](**c**)**3**.

(1) Data submitted in any rate filing shall report only voluntary market experience and shall not include experience derived from risks insured through any assigned risk plan established pursuant to N.J.S.A. 17:29D-1. For the purpose of this subsection, "voluntary market" shall include risks insured by the filer in the voluntary market during any period of time certified by the Commissioner for the cessation of acceptance of applications or the issuance of new policies by the assigned risk plan pursuant to N.J.S.A. 17:29D-1d.

11:3-16.4 Insurer informational filings due July 1 of each year

(a) Informational filings shall be made by all insurers transacting private passenger automobile insurance in the voluntary market[, including all individual members and subscribers of rating organizations,] pursuant to N.J.S.A. 17:29A-36.2b.

(b) The informational filing shall consist of the following documents [and exhibits]:

1. The insurer's Excess Profits Report [to be] **for each company** filed [on or before July 1, 1989,] pursuant to N.J.A.C. 11:3-20 **and the Financial Data Report for each company filed pursuant to N.J.A.C. 11:3-31**. In lieu of providing copies, the filer may submit a certification of an officer that the [report has] **reports have** been filed and [is] **are** incorporated by reference.

2. Such other information as the Commissioner may specifically require by Order.

[2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was made under the theft portion of comprehensive coverage as a result of the theft of the automobile; and the aggregate payments made on account of those thefts.

3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by subrogation for each coverage.

4. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the total amount of dollars recovered by salvage for each physical damage coverage.

5. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth the information shown in Exhibit B.

6. An exhibit of investment earnings that contains the amount of investment income earned on loss, loss adjustment expense, and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey. This information shall be provided for the last two years, estimated for the current year, and estimated for the two following years. Calculations shall be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of the specified calendar years.

7. An exhibit that provides the following data regarding expenses:

i. Earned premium, incurred losses, incurred allocated loss adjustment expenses and incurred unallocated loss adjustment expenses for each of the latest five complete calendar years. Provide such information by coverage and group of coverages (that is, liability and physical damage).

ii. A statement regarding any expense saving activities undertaken in the last five years.

iii. Number of claims (all limits and all deductibles) and allocated loss adjustment expenses for each of the latest five complete calendar years. Provide such information by coverage and by group of coverages (that is, liability and physical damage).

iv. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the latest five complete calendar years for the following expense categories: commission and brokerage; other acquisition expenses; and general expense; and

v. New Jersey private passenger automobile insurance expense data shown separately for the most recent three complete calendar years using the format of the Underwriting and Investment Exhibit, Part-4 Expenses of the Statutory Annual Statement.

8. If the filer has not submitted data in the last three years to support its territorial relativities and classification differentials, it shall submit an exhibit containing the data set forth in N.J.A.C. 11:3-16.8(a)5 and 6i and ii. If the filer has submitted this data during the last three years, it shall include a statement that sets forth the date and Department filing number of the filing that contained this data.]

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A shall provide the following information in support of its flex rate filing:

1. A cover letter notifying the Department of its intention to adjust rates according to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A; a statement of the percentage and **total** dollar amount of the increase in rates by coverage **for each company included in the filing with subtotals by group of coverages and a grand total** (including the variable portion plus expense fees but excluding the policy constant and RMEC) **in the format of Exhibit E in the Appendix incorporated herein by reference**; a statement containing the effective date of the change; and the name, telephone number and mailing address of the company officer familiar with the filing to whom [further] inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit AI in the Appendix incorporated herein by reference;

3. The Excess Profits Report (required by N.J.A.C. 11:3-20) and the Financial [Experience] **Data** Report (required by N.J.A.C. 11:3-31). In lieu of providing copies, the filer may submit a certification by an officer that the documents have been filed and are in-

corporated into the filing by reference; **nevertheless, a complete copy of all documents required (including the Excess Profits Report and the Financial Data Report) shall be provided to the Public Advocate pursuant to N.J.A.C. 11:3-16.3(e)**;

[4. Data concerning the losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8;

5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;

6. Rate calculations, as set forth in N.J.A.C. 11:3-16.10; and]

4. An exhibit that illustrates that the new rates are within the range permitted by Order of the Commissioner issued pursuant to N.J.A.C. 11:3-16A.

i. When coverages are combined (for example, bodily injury liability and property damage liability) the method of combining shall be shown.

ii. When bodily injury liability is combined with any other coverage or coverages, the method of combining shall be shown separately for each tort threshold.

[7.] **5.** The manual rating pages and computer disk(s) containing the flex rate system to be implemented, **accompanied by an explanatory memorandum showing the calculation of the new manual rates, using the current manual rates as the starting point in the calculation. The memorandum shall also include the Department's file number and the effective date of use for the current rates**.

[(b) In accordance with N.J.S.A. 17:29A-6.1a2, all independent rate filers and all members or subscribers of rating organizations not defined as "qualified members" of rating organizations in N.J.A.C. 11:3-16.2 shall submit data and rate calculations in support of their flex rate filings based on their own loss experience and their own expenses.

(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8 and filed by the rating organization pursuant to N.J.A.C. 11:3-16.7, in lieu of providing their own data.

1. Qualified members of rating organizations who have been precluded by Order of the Commissioner from implementing the last approved rates of the rating organization may incorporate by reference the rating organization flex rate filing, as set forth in N.J.A.C. 11:3-16.7. Any flex rate change based upon an increase in losses and loss adjustment expenses shall, however, be limited to the percentage of increase in the rating organization flex rate filing as applied to the company's own current rates.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing its own loss and allocated loss adjustment expense data, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expenses higher than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A shall file the required exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those implemented by the rating organization pursuant to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix incorporated herein by reference. (See (c)1 above for insurers precluded by Order from using current rating organization rates.)]

11:3-16.6 Insurer filings for rates requiring prior approval

(a) Any insurer that desires to modify its rates or rating system in a manner other than that provided by N.J.S.A. 17:29A-44 and Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A regarding flex rates shall provide the following information in support of its application:

1. A cover letter notifying the Department of its intention to modify its rating system in a manner that requires prior approval, pursuant to N.J.S.A. 17:29A-14; a statement describing the proposed changes, which shall include the percentage and **total** dollar amount of any change in rates **for each company included in the filing with subtotals by groups of coverages and a grand total** (including the variable portion plus expense fees, but excluding the policy constant and RMEC) by coverage and overall; and the name, telephone number and mailing address of the company officer familiar with the filing, to whom further inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit AII in the Appendix incorporated herein by reference;

3. A narrative overview that sets forth the contents of the filing, and explains the reasons and procedures used to derive the rate change requested;

4. Data concerning the **premiums,** losses and loss adjustment expenses, as specified in N.J.A.C. 11:3-16.8;

5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;

6. Rate calculation, as set forth in N.J.A.C. 11:3-16.10; and

7. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be submitted in written copy and, except for purely textual information, on an MS-DOS formatted disk(s). **Filers with fewer than 20,000 exposures in the prior year are exempt from submitting the formatted disk.** The disk(s) may be either 5.25 inch 360 KB or 3.5 inch 1.44MB. The information shall be provided in a Lotus 1-2-3 or compatible spreadsheet. The left and top margins of each page shall indicate the row and column respectively of all data on the page. Each page of written copy shall also display in the bottom right corner the name of computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(b) All [independent] rate filers [and all members or subscribers of rating organizations not defined as "qualified members"] shall submit data in support of their application for approval of their proposed rating system based on their own loss experience **to the extent it is credible** (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) and their own rate calculation (N.J.A.C. 11:3-16.10).

[(c) Qualified members of rating organizations may incorporate by reference the loss and loss adjustment expense data filed by the rating organization, and approved by the Department, in lieu of providing their own data.

(d) Nothing in this section shall prohibit any member or subscriber of a rating organization from filing for approval its own data regarding losses and loss adjustment expenses, as set forth in N.J.A.C. 11:3-16.8.

1. Qualified members of rating organizations that seek to use losses and loss adjustment expense higher than those approved for the rating organization shall file all exhibits set forth in N.J.A.C. 11:3-16.8.

2. Qualified members of rating organizations that seek to use losses and loss adjustment expenses lower than those approved for the rating organization need only to file a statement justifying the downward deviation in the form of Exhibit E in the Appendix.]

[(e)](c) Upon approval insurers shall file manual rating pages and computer disk(s) containing the rating system on or before the effective date of the rates.

[11:3-16.7 Rating organization filings

(a) As its annual informational filing, each rating organization shall file the loss and loss adjustment expense data set forth in N.J.A.C. 11:3-16.8 and shall develop the data base and trend methodology set forth in N.J.A.C. 11:3-16.10(a)4 and 5. Rating organizations shall compile the data required using only information from its qualified members.

(b) The rating organization's annual informational filing shall also include the following exhibits compiled from the data of its qualified members:

1. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year: the number of insured automobiles for which payment was made under the theft portion of comprehensive coverage as the result of theft of the automobile; and the aggregate payments made on account of those thefts;

2. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by subrogation for each coverage;

3. An exhibit that contains, for each of the most recent five complete accident years evaluated as of March 31 of the current year, the total amount of dollars recovered by salvage for each physical damage coverage;

4. A Cause of Loss Report for comprehensive coverage for the latest five complete calendar years that sets forth information shown in Exhibit B in the Appendix incorporated herein by reference.

(c) As its flex rate filing, the rating organization may submit a loss and loss adjustment expense filing containing the data required by N.J.A.C. 11:3-16.8 for use by its qualified member companies in their individual flex rate filings if the rate level change requested is within the limits established by N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.S.A. 11:3-16A, and the rating organization submits the filing with a cover letter setting forth:

1. Notice to the Department that the filing is being submitted pursuant to N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.S.A. 11:3-16A as a flex rate filing;

2. The percentage and dollar amount of the increase in rates by coverage and overall (including the variable portion plus expense fees but excluding the policy constant and RMEC);

3. The effective date of the change, on or after which its qualified members may submit individual flex rate filings incorporating by reference the rating organization filing; and

4. The name, telephone number and mailing address of the rating organization officer familiar with the filing, to whom further inquiries about the filing may be directed.

(d) As its filing for rate changes requiring prior approval, the rating organization may submit a loss and loss adjustment expense filing for use by its qualified member companies in their individual filings submitted for prior approval pursuant to N.J.S.A. 17:29A-14, that provides the information set forth in N.J.A.C. 11:3-16.8 and that also includes the requirements set forth in N.J.A.C. 11:3-16.6(a)1, 2 and 6. A copy of such filings shall be transmitted to the Commissioner and simultaneously to the Public Advocate.

(e) Each time the rating organization that represents the greatest number of insurers in the private passenger automobile insurance market submits a flex rate filing pursuant to N.J.A.C. 11:3-16.7(c), or a filing requiring prior approval pursuant to N.J.A.C. 11:3-16.7(d), it shall also file the following information required to establish rates for the New Jersey Automobile Full Insurance Underwriting Association in accordance with the provisions of N.J.S.A. 17:30E-13:

1. The information concerning expenses and profit provisions, as set forth in N.J.A.C. 11:3-16.9 compiled from its qualified member companies;

2. The rate calculation, as set forth in N.J.A.C. 11:3-16.10 below, as calculated based upon its data submitted pursuant to N.J.A.C. 11:3-16.8 and 16.9; and

3. Upon making the flex rate filing or no later than the effective date for filings requiring prior approval, the manual rate pages both excluding and including provisions for company expenses and profit.]

11:3-16.7 Jointly developed historical data

(a) In connection with the dissemination of historical data by rating organizations or advisory organizations for ratemaking purposes, insurers shall comply with the following:

1. Historical data that may be compiled and disseminated by rating organizations or advisory organizations for use by insurers in ratemaking includes:

i. Written and earned premiums and exposures which may be adjusted to consistent levels;

ii. Losses paid;

iii. Reserves for reported claims (whether determined by judgment or set by formula by the insurers); and

iv. Claim counts.

2. For the purposes of this section, "compilation of historical data" includes:

i. Checking the data for accuracy and completeness and excluding data which is inaccurate or incomplete;

ii. Selection of experience (for example, type of business, type of vehicles, accident year or calendar year basis, and deductibles for physical damage);

iii. Selection of number of years;

iv. Calculation of claim cost and frequency, pure premiums, the combination of paid and outstanding losses into incurred losses and the conversion of car months into car years;

v. Compiling losses on a basic and excess limits basis for liability and adjusting losses to a common deductible level for physical damage; and

vi. The organization of or calculations on historical data according to classification detail such as territory, class, etc.

3. The following are not historical data and may not be disseminated for use in ratemaking:

i. Estimates of future values of any data compiled under (a)1 and 2 above;

ii. Reserves for claims which have been incurred but not reported (IBNR);

iii. Operating expenses and profit provisions, including unallocated loss adjustment expenses; and

iv. Trending.

4. Except for activities as a designated statistical agent or activities involved in the creation and maintenance of vehicle series rating systems for private passenger automobile collision and comprehensive coverages, the following are not historical data and may not be disseminated for use in ratemaking:

i. Credibility;

ii. Loss smoothing;

iii. Selection of weights;

iv. Relativities and relativity analysis; and

v. Final "pure premium" or "loss costs" as calculated, based on data permitted to be exchanged.

(b) For purposes of this section, "losses paid" and "reserves for reported claims" may include allocated loss adjustment expenses if they are also separately identified and limited to the following expenses which can be allocated to a particular claim:

i. Attorneys fees for claims in suit; and

ii. Court and other specific items of expense such as: medical examinations to determine the extent of a company's liability; expert, medical or other testimony; laboratory, x-ray and autopsy; stenographic; witnesses and summonses; and copies of documents.

(c) For the purposes of this section, "allocated loss adjustment expenses" shall not include: salaries and traveling expenses of company employees other than amounts allocated as attorneys' fees for costs in suit; overhead; and fees paid to independent adjusters, or attorneys, for adjusting claims.

(d) For purposes of this section, "trending" includes all projections of future costs and any representation of past costs adjusted by a mathematical or non-mathematical process. It does not, however, include displays of historical average costs or frequency, or the display of historical data (that is, loss development triangles with historical link ratios) from which an insurer can independently calculate loss development.

(e) Projections of the number and dollar value of incurred and/or paid known claims at future evaluation dates may not be disseminated.

(f) Data on the number and dollar value of claims which have been closed but are expected to reopen may not be disseminated.

(g) Projections of the increase in claim costs due to changes in the judicial and regulatory environments, legislative changes and economic variables such as inflation may not be disseminated.

(h) Except as provided in (a) above, marketing data, rate data and rate manuals may not be exchanged.

(i) Insurers may continue to use symbol, vehicle series and model year rating programs for physical damage coverages for model years 1991 and 1992. Pursuant to this section, insurers may jointly develop symbol assignments, vehicle series and model year data and determine adjustments to the symbol assignment through model year 1992.

11:3-16.8 [Loss] **Premium, loss** and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss and loss adjustment expense:

1. For each coverage, **or combined coverages when the premium is inseparable,** calculate **earned** premium at present rates using either the extension of exposures or on level factor methodologies. **Provide the rate level history. Provide the underlying calculations and** [Indicate] **indicate** how such calculations were produced and supply supporting

documentation for a sample of such calculations and justification of any factors used **where the on level factor methodology is used**. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information [both] **either** at basic limits [and] **or** at total limits.

[2. Rating organization filings shall include data from all qualified member companies writing non-fleet private passenger automobile insurance in New Jersey for which the organization has been given filing authorization. If data from such a company is excluded from, or if data from a non-authorized company is included with, the rate level, trend, loss development, catastrophe factor, expense determination, territorial development, classification relativity, or investment income calculations for any coverage, identify the coverage, the company and its market share and provide an explanation for its exclusion/inclusion.]

[3.] **2.** For each coverage and each **experience** year used in setting the overall rate level, the following information [both] **either** at basic limits [and] **or** total limits **whichever is consistent with the filer's methodology**:

i. [Paid losses] **Direct earned exposures measured in car years**;

ii. [Case reserves] **Incurred losses**;

iii. [Loss] **Applicable loss** development factor (**aged to ultimate**);

iv. [Incurred] **Paid or incurred** allocated loss adjustment expenses;

v. [Incurred] **Paid or incurred** unallocated loss adjustment expenses;

[vi. Trend factor;]

[vii.] **vi.** [Total trended and developed incurred losses] **Ultimate incurred losses and loss adjustment expenses;**

[viii. Total trended and developed allocated loss adjustment expenses;]

vii. Trend factor; and

viii. Trended ultimate incurred losses and loss adjustment expenses.

[ix. Total trended and developed unallocated loss adjustment expenses; and

x. Total trended losses and all loss adjustment expenses (that is, (a)3vii plus viii plus ix above.)]

[4.] **3.** Whenever New Jersey losses are separated into catastrophe and non-catastrophe losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophe loading, include as many years of data as available but at least 10 years. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

[5.] **4.** [For prior approval filings only, territorial] **Territorial** rate calculations including earned premiums, earned exposures, incurred losses, and the number of claims by territory separately for each coverage and each of the years used to determine the territorial relativities, or for each of the last [five] **three** years, whichever is greater.

[6.] **5.** [For prior approval filings only, all] **All** information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

i. All data [reviewed,] **and** worksheets used and judgments made;

ii. A description of the methodology used to arrive at the differentials;

[iii. A description of alternate methodologies used by the filer in other states;

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing;

v. A description regarding the application of these criteria in the selection of a methodology for this filing;] and

[vi.] **iii.** A description of the application of the methodology to this filing.

[7.] **6.** For all incurred loss adjustment expense data contained in the filing, show the related incurred losses used to determine any loss adjustment expense loadings.

(b) Filers shall provide all information related to the derivation of credibility factors contained in the filing, specifically including the following information:

1. All data [reviewed,] **and** worksheets used and judgments made;

2. A description of the methodology used to derive the factors; **and**

[3. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);

4. A description of the criteria used to select one of the various methodologies for inclusion in the filing (provide upon request for prior approval filings only);

5. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and]

[6.] **3.** A description of the application of the methodology to this filing [(provide upon request for prior approval filings only)].

(c) Each filer, except small filers, shall provide the data in (c)1 through [10] **9** below. Small filers shall provide the data in (c)4, 5, [7, 9, and 10] **and 6** below:

1. All information related to the derivation of loss development factors contained in the filing specifically including:

i. All data [reviewed,] **and** worksheets used and judgments made;

ii. A description of the methodology used to derive the factors; **and**

[iii. A description of alternate methodologies used in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provide upon request for prior approval filings only);

v. A description regarding the application of these criteria in the selection of the methodology for this filing (provide upon request for prior approval filings only); and]

[vi.]**iii.** A description of the application of the methodology to this filing [(provide upon request for prior approval filings only)].

2. For each coverage, complete [total limits paid] loss development [parallelograms] **triangles** for the 10 latest available accident years at each and every annual evaluation date from 15 months to 123 months for basic Personal Injury Protection ("PIP") and Bodily Injury Liability ("BI"), 15 months to 75 months for Property Damage Liability ("PD") **and uninsured/underinsured motorists**, and 15 months to 51 months for collision and comprehensive [and uninsured/underinsured motorists] **if accident year data is used by the filer to develop its rate level indications for collision and comprehensive coverages.** Provide the corresponding nine-year, five-year and three-year average loss development factors derivable from these parallelograms. **(These are minimum requirements. The filer may present additional accident years, further evaluations and other averages of factors);**

3. The information in (c)2 above for [basic] **total** limits paid losses;

4. The information in (c)2 above for total limits incurred losses;

5. The information in (c)2 above for basic limits incurred losses **if used by the filer to develop its rate level indications**;

6. [The] **For liability coverages only, the** information in (c)2 above for [paid] allocated loss adjustment expenses **on a paid or incurred basis. Alternatively, if allocated loss adjustment expenses are not available separately, the filer shall provide incurred losses and allocated loss adjustment expenses combined**;

[7. The information in (c)2 above for incurred allocated loss adjustment expenses;]

[8.]**7.** The information in (c)2 above for the number of paid claims;

[9.]**8.** The information in (c)2 above for the number of incurred claims; and

[10.]**9.** A statement regarding any changes in the filer's case loss reserving practices during the last five years [(for rating organization filings, this shall be provided for the 10 largest qualified members)].

(d) Each filer, except small filers, shall provide the following data regarding trend factors and their application:

1. [Include the following trend data set forth in (d)1i and ii below (if an insurer) or (d)1i and iii below (if a rating organization),] **All internal loss trend data on either a calendar year paid or incurred basis** shown separately for frequency and severity for the latest available five calendar years on [both a quarterly and] **a** quarterly year ending basis for all coverages on both a countrywide and New Jersey basis. Bodily injury liability **and property damage liability trend** data shall be given at basic [and] **or** total limits**, whichever is consistent with the filer's methodology**. [Property damage liability data shall be given at basic and total limits. Personal] **Basic personal** injury protection

("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 36:6-73.1 ($75,000 of insurer payments). Physical damage coverages shall be shown on the basis of [a] **the** $500.00 deductible[; all deductibles less than $500.00 combined; all deductibles greater than $500.00 combined; and] **or** all deductibles combined **adjusted to the $500.00 deductible basis. In the latter case the filer shall provide an explanation of the methodology for adjusting other than $500.00 deductible data to the $500.00 deductible level.** [Provide this for the following:

i. All internal loss trend data on both a calendar year paid and incurred basis; and either

ii. External loss trend data (severity only); or

iii. Fast-track loss trend data.]

2. For all trend data described above, calculate annual trend factors along with "T" statistics and the coefficient of correlation. This shall be done from a least-squares regression with time being the independent variable.

i. Include **trend results** calculations for the latest six, nine, 12, 16 and 20-point periods[.];

ii. A side-by-side comparison of the actual data[,] **and** fitted data [and differences]; and

iii. Include calculations on both an exponential and straight line basis.

3. All information related to the derivation of trend factors contained in the filing specifically including:

i. All data [reviewed] **used**, worksheets used, and judgments made;

ii. A description of the methodology used to derive the factors; **and**

[iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in a particular filing (provide upon request for prior approval filings only);

v. A description regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and]

[vi.]**iii.** A description of the application of the methodology to this filing [(provide upon request for prior approval filings only)].

4. [For prior approval filings only, information] **Information**, including studies, analyses, and fact sheets regarding the effects (both countrywide and in New Jersey) of the items described in (d)4i through [v] **vi** below if the filer has either compiled the information itself or relied upon outside information in the support of the filing. If the effects of such studies, etc., have been incorporated into the rate filing, describe in detail the methodologies used. Provide this information for the following:

i. Changes in seatbelt use;

ii. Use of passive restraint systems, including air bags, and any other safety or anti-theft devices including, but not limited to, anti-lock braking systems; and automatic traction control systems;

[ii.]**iii.** Changes in the drinking age;

[iii.]**iv.** Changes in the price and amount of gasoline purchased;

[iv.]**v.** Changes in the average miles driven; and

[v.]**vi.** Other legislative, regulatory, social, or economic factors that have an impact on loss frequency or severity, **including, but not limited to, the effects of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.**

(e) Each filer [except small filers] shall provide the following regarding changes in **the New Jersey** premium base and exposures:

1. Data on the mix of written exposures by different policy terms for the latest [five] **three** years. Include both the number of written exposures and the amount of written premium for different policy terms;

[2. Average age of insured vehicles and symbol relativities for the latest five years;]

[3.]**2.** Calculate the trend in the average model year and symbol relativities for [physical damage] **collision and comprehensive** coverages **separately** during the most recent five calendar years. Explain how these trends were calculated and provide all intermediate calculations. **Show the average age/model year and average symbol relativity for each of the latest five calendar years. Include the distributions of written exposure by age/model year and symbol for comprehensive and collision coverages separately for each of the latest five calendar years; and**

[4.]**3.** The most recent five-year history of the distribution, by deductible amount, of written exposures and premium of comprehensive and collision coverages purchased[;].

[5. The actual model year written exposure and premium distribution for comprehensive and collision coverages separately for each of the latest five calendar years; and

6. The most recent five complete calendar year history of the distribution, by limit of liability, of written exposures and premiums, separately for bodily injury, property damage, and combined single limit liability coverages.]

(f) Filers shall provide the following regarding [limiting factor development and application] **limitations applicable to the filing**:

1. Limitations on losses and/or loss adjustment expenses included in the statistical data used in the filing;

2. Limitations on the extent of the rate level change by coverage;

3. Limitations on the extent of territorial rate changes;

4. Limitations on the extent of classification rate changes; and

5. Any other limitations applied.

(g) Filers shall provide **the following New Jersey calendar year data on a direct business basis** by coverage and group of coverages [(that is, liability and physical damage) the following information]:

1. The amount of earned premium, incurred losses, incurred allocated and unallocated loss adjustment expenses for each of the latest five complete calendar years; and

2. The number of **incurred** claims (all limits and all deductibles) by coverage and allocated loss adjustment expenses for each of the latest five complete calendar years.

[(h) Filers shall show the overall Statewide rate change indicated by coverage.

(i) Rating organizations only shall provide a copy of the most recent corporate annual report (not the Statutory Annual Statement) and 10K Statements of its 10 largest qualified member companies.]

[(j)](**h**) [Provide] **Filers shall provide** any additional information specifically requested by the [Commissioner] **Department** which may be necessary to constitute a proper rate filing.

11:3-16.9 Data requirements for [company] expense and profit provisions

(a) Filers shall provide the data in (a)1 through [6]**3** below regarding expenses:

1. All information related to the derivation of expense provisions contained in the filing specifically including:

i. All data [reviewed,] **and** worksheets used and judgments made;

ii. A complete description of the methodology used to derive the provisions; **and**

[iii. A description of alternative methodologies used by the filer in other states (provide upon request for prior approval filings only);

iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (provide upon request for prior approval filings only);

v. Details regarding the application of these criteria in the selection of a methodology for this filing (provide upon request for prior approval filings only); and]

[vi.]**iii.** Details on the application of the methodology to this filing [(provide upon request for prior approval filings only)];

[2. A statement regarding any expense saving activities undertaken in the last five years.]

[3.]**2.** Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the last five complete calendar years for the following expense categories:

i. Commission and brokerage;

ii. Other acquisition expenses; [and]

iii. General expenses; **and**

iv. Taxes, licenses and fees;

[4.]**3.** The derivation of the expense flattening as required by N.J.S.A. 17:29A-37. The expense flattening calculation shall exclude the UCJF assessment for the excess medical benefits reimbursed to insurers by that fund. The expense shall be applied by coverage;

4. All data shall be on a direct basis excluding AIRE assessments and reimbursements;

5. New Jersey private passenger automobile insurance expense data separately for the most recent three complete calendar years using the format of the Underwriting Investment Exhibit, Part 4—Expenses of the Statutory Annual Statement; and

6. AIRE assessments and reimbursements in dollars and as a percent of bodily injury liability paid losses for the most recent five complete accident years evaluated as of March 31 of the current year.

(b) Filers shall provide the following data regarding proposed rates:

1. Proposed rates for each territory and coverage together with their derivation;

2. Classification differentials, with descriptions, if any proposed changes are being made to the currently approved classification plan. [Include an explanation of how classification rates are determined and a sample calculation];

3. (No change.)

[(c) Filers shall provide the following data regarding investment earnings:

1. The amount of investment income earned on loss, loss adjustment expense and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey shall be calculated for the latest two years and estimated for the current year and the two following years. Calculations should be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments; and

4. The cash flow pattern from policy inception date for losses, allocated loss adjustment expenses, and unallocated loss adjustment expenses.]

[(d)](c) Filers shall provide the following regarding identification and certification of statistical plans:

1. Identification of all statistical plans used or consulted in preparing the filing[, and a description of the data compiled by each plan]; and

2. (No change.)

[(e)](**d**) Filers shall provide the following information regarding investment earnings on capital and surplus:

1. Given the selected underwriting profit and contingency loadings contained in the filing, the resulting rate of return on equity capital and on total assets, showing the derivation on all factors used to produce the calculations; and

2. Justification that these rates of return are fair and reasonable. These calculations shall be performed by [coverage] **group of coverages**.

[(f) Filers shall provide the following data regarding the level of capital/surplus needed:

1. Premium to policyholders' surplus ratios, and their derivation, for the latest three calendar years for non-fleet private passenger automobile insurance in New Jersey;

2. Estimates of comparable ratios and their derivation for the current and the following two years; and

3. The information in (f)1 and 2 above for the loss plus loss adjustment expense reserve to policyholders' surplus ratio.]

[(g)](e) Filers shall provide also the following:

[1. For prior approval filings only, upon request, copies of documents relating to the various preliminary and intermediate steps taken in preparing the filing, including, but not limited to, agendas and minutes of all meetings concerning the filing for which agenda or minutes were produced. Both meetings dealing specifically with this filing and those dealing implicitly (for example, through the establishment of countrywide practices, etc.) shall be included. Include a list of attendees at any meetings for which minutes are supplied, their titles and their affiliations;

2. A copy of the most recent annual report (not the Statutory Annual Statement filed with Insurance Departments) and the latest 10-K statement;]

[3.]**1.** The amount of finance and other miscellaneous charges collected in New Jersey in connection with the sale of private passenger automobile insurance;

[4.]**2.** [For prior approval filings only, a] **A** description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company; and

[5.]**3.** Any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated **by group of coverages** as follows:

1. (No change.)

2. No deductions shall be made for prepaid expenses unless there is specific documentation included in the filing that supports the prepayment of those expenses[.], **which shall include the cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments.**

3. No deductions shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such delay in the remission of premiums, **which shall include the cash flow pattern from policy inception date until receipt of premium**.

4. (No change.)

5. The ratio of loss reserves to incurred losses shall be **on a direct business basis** derived from the appropriate line of business from Page 14 of the Statutory Annual Statement for New Jersey. The calculations shall be as follows:

i. The average of the loss reserve **(excluding the reserves for excess medical benefits claims over $75,000)** at the beginning of the year and at the end of the year divided by the **corresponding** incurred losses during the year;

ii. The ratio of **these** reserves to **corresponding** losses incurred shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic [trend] **change** in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part 3A—Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculations shall be as follows:

i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expense;

ii. This ratio shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic [trend] **change** in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The interest rate used in the calculation shall be [the most recently published value by the Internal Revenue Service to be used in discounting loss and loss adjustment expense reserves for investment income plus 200 basis points] **a simple average of the most recent 12 monthly numbers for the Treasury constant three-year maturity rate as published in the Federal Reserve statistical release "Selected Interest Rates"**.

(b) Underwriting expense provisions shall be determined as follows:

1.-7. (No change.)

8. The following expense items shall not be incorporated into the expense base for determining rates:

i. Fines against the company;

ii. Lobbying expenses;
iii. Charitable contributions;
iv. Political contributions;
v. Awards against the company itself for punitive damages and for bad faith claims; [and]
vi. Advertising and other expenses incurred in connection with proposed changes in the regulation of insurance; **and**
vii. Assessments and surtaxes imposed pursuant to N.J.S.A. 17:30A-8(9) and 17:33B-49, respectively.
9. The filing shall include for each of the categories in (b)8 above the dollars of expense that were excluded from the rate base, separately for each year of historic information and separately for each of the above [six] **seven** categories. If the filer submits a ratemaking methodology that includes these expenses pursuant to (f) below, specific justification for including these expenses shall be included.
10. (No change.)
(c) The data base to be used shall be as follows:
1. Accident year data shall be used for all **liability** coverages[, both liability and physical damage]. **Accident year or calendar year data shall be used for physical damage coverages.**
2. The most recent accident year data used in the filing shall end no more than 15 months prior to the date of submission of the filing.
[3. For prior approval filings only, each filing for a change in basic limits rates shall also include an experience review of increased limits data.]
[4.]**3.** Personal injury protection experience shall be limited to the direct "before reinsurance" exposure retained by the insurance company according to N.J.S.A. 36:6-73.1. Any losses reimbursed or subject to reimbursement to the insurer by the UCJF for excess medical benefits shall not be included with the experience contained in the filing.
(d)-(e) (No change.)
(f) The ratemaking methodology set forth in (a) through (e) above is the Department's preferred procedure and must be included in the filing. The filer may, however, propose an alternate procedure in total or in part and support it with such calculations and other information it deems appropriate to demonstrate the superiority of the alternate procedure in the determination of the filer's rates.
1. In the event the filer has computed the rates using an alternate methodology, it shall provide all information related to the derivation of the profit and contingency loading contained in the filing, specifically including:
i. All data [reviewed,] **and** worksheets used and judgments made;
ii. A description of the methodology used to arrive at the selected loading; **and**
[iii. A description of alternative methodologies used by the filer in other states (prior approval filings only);
iv. A description of the criteria used to select one of the various methodologies for inclusion in this filing (prior approval filings only);
v. Details regarding the application of these criteria in the selection of a methodology for this filing (prior approval filings only); and]
[vi.]**iii.** Details on the application of the methodology to this filing [(prior approval filings only)].
2. Filers which propose an alternate ratemaking methodology shall show the overall statewide rate change by coverage by both the standard and alternate methodologies.

11:3-16.11 Rate filings reflecting assessments and surtaxes

(a) All insurers who submit a rate filing which reflects assessments or surtaxes imposed pursuant to N.J.S.A. 17:30A-8(a), and 17:33B-49, respectively shall submit such rate filing independently of any prior approval rate filing submitted pursuant to N.J.A.C. 11:3-16.6.

(b) Any insurer desiring to modify its rates to reflect assessments or surtaxes imposed pursuant to N.J.S.A. 17:30A-8(9) and 17:33B-49, respectively shall provide the following information in support of its application:

1. All of the data required for prior approval filings submitted pursuant to N.J.A.C. 11:3-16.6;

2. A copy of the statutory property and casualty Annual Statement, Exhibit of Premiums and Losses (page 14) for New Jersey for each of the most recent 10 years. The insurer shall also file information combining this data for each of the most recent 10 years for all states and the District of Columbia, if applicable, in which the insurer is authorized to transact business; and shall provide a list of these jurisdictions;

3. The following data for all of its insurance affiliates for each of the most recent 10 years on a Statewide and countrywide basis;

i. For property and casualty affiliates, Exhibit of Premiums and Losses (page 14) of the statutory property and casualty Annual Statement;

ii. For title insurance affiliates, Operations and Investment Exhibit (page 4) and Schedule T—Exhibit of Premiums Written (page 39) of the statutory title insurance Annual Statement;

iii. For life and health affiliates, Liabilities, Surplus and Other Funds (page 3); Analysis of Operations by Lines of Business (page 5); and Exhibit 1 Part 1 and Part 2 (pages 7 and 7A) of the statutory life and health Annual Statement; and

iv. An estimate of the amount of business in other lines that is produced by the synergistic effects of the insurer writing private passenger automobile insurance in this State.

4. Certifications/representations by the insurer's Chief Financial Officer and President containing the information set forth in Exhibit F in the Appendix incorporated herein by reference;

5. A schedule of Key Performance Indicators (KPI's), as set forth in Exhibit G in the Appendix incorporated herein by reference, for the year of the rate filing and each of the preceding two years;

6. For the current year and preceding two years, a schedule of premiums, incurred losses and operating expenses by New Jersey lines of business corresponding to line items one (1) through twenty-two (22) of Part II of the IEE. In addition, provide a schedule of operating expenses by classification corresponding to line items one (1) through twenty-two (22) of Part I of the IEE. The aggregate of expenses reported by line item must agree with the total operating expenses related to New Jersey policies reported by line of business in Part II of the IEE, (sum of lines four (4) through eight (8));

7. For each line item expenditure included in the schedule required pursuant to (b)6 above, the following:

i. A description of all allocation methodologies used to allocate corporate-wide costs (including worldwide, countrywide and regionalwide costs) to New Jersey lines of business;

ii. A description of all allocation methodologies used to allocate operating expenses to New Jersey private passenger automobile liability and physical damage lines of business and to all other New Jersey lines of business;

iii. An explanation for any changes in allocation methodologies between years;

iv. For NJAFIUA/MTF servicing entities which are also insurers, an explanation for differences between allocation methodologies used to prepare the schedule required pursuant to (b)6 above and the methodologies used to prepare Exhibit P of the NJAFIUA/MTF reporting package; and

v. For each operating expense classification by each New Jersey line of business, a schedule which shows the expenses directly charged to a line of business; and indirect expenses allocated to various lines of business using a reasonable allocation methodology;

8. For each New Jersey line of business (including private passenger automobile), the following:

i. The number of insureds;

ii. The number of employees directly dedicated to the line of business;

iii. The square feet of office space dedicated to the line of business (excluding allocations of corporate or administrative office space);

iv. The hours of data processing time charged;

v. The number of exposures;

vi. The number of policies in force; and

vii. The number of claims reported during each of the three years requested;

9. A report, based on a study and evaluation of the insurer's system of internal accounting control and signed by an independent public accountant. The report shall state that in the accountants' opinion, the system of internal accounting control of the insurer in effect during the current year, taken as a whole, was sufficient to meet the objectives of a system of internal accounting control insofar as those objectives

pertain to the prevention or detection of errors or irregularities in amounts that would be material in relation to the insurer's financial statements;

10. A listing of all internal audits performed of the operations of the New Jersey private passenger automobile lines of business during the current year, including the scope of procedures performed;

11. Copies of all internal audit reports issued during the current year pursuant to (b)10 above and management responses to all internal audit findings;

12. Access to source documents which, in the opinion of the Commissioner, are necessary to support any and all transactions reported on the insurer's statutory annual statement filed with the Department or to support any other schedules referred to herein;

13. An explanation why the insurer believes that the assessment imposed by N.J.S.A. 17:30A-8(9) should be reflected in the requested private passenger automobile rates since the assessment, by statute, is classified as a loan; and

14. Any additional information specifically requested by the Commissioner which may be necessary to evaluate the request for rate relief.

(c) Upon written application and for good cause shown, the Commissioner may, in his or her discretion, waive any of the data filing requirements set forth in (b) above.

(d) The Commissioner shall not approve any increase in an insurer's rates on the basis that the insurer is required to pay assessments pursuant to N.J.S.A. 17:30A-8(9), or surtaxes pursuant to N.J.S.A. 17:33B-49, unless he or she shall find that an increase in revenue is necessary to ensure that the insurer earns a constitutionally adequate return. In making that determination the Commissioner shall consider:

1. The insurer's experience on all lines of its business in New Jersey, and in the case of insurers operating in an insurance holding company system, the experience of all of the lines of business of all affiliated companies in New Jersey, for a period of time over which an insurer could reasonably plan to earn a target rate of return;

2. Whether the insurer and its affiliates, if any, are reasonably efficient in their operations, including claims handling, subrogation and salvage, by comparison to insurers on a statewide and countrywide basis;

3. Whether the insurer and its affiliates, if any, have allocated expenses to New Jersey operations in a fair and equitable manner; and

4. The synergistic effect of mandated private passenger automobile insurance on the sale of other lines of insurance that the filer writes, including, but not limited to, higher premium volumes, lower operating costs and lower acquisition costs.

(e) Each filer shall present in its filing a formula it believes appropriate for determining the return required by relevant constitutional principles, with supporting analysis and data fully explaining why such formula should be utilized.

(f) The Commissioner may determine whether an insurer's rates are, as a result of the payment of the surtaxes and assessments, constitutionally adequate. In the event that the Commissioner determines that rate relief is deemed to be necessary, the Commissioner shall determine whether the rates should be adjusted immediately or over time, as may be appropriate.

11:3-[16.11]**16.12** (No change in text.)

11:3-16.13 Rate adjustments upon repayment of assessments

(a) At such time that the loans provided for in N.J.S.A. 17:30A-8(a)(10) from the Property-Liability Insurance Guaranty Association to the Automobile Insurance Guaranty Fund are repaid, the Guaranty Association shall determine the proportion of the repayment which is to be allocated to each insurer which paid assessments pursuant to N.J.S.A. 17:30A-8(a)(9).

(b) The Guaranty Association shall advise each insurer in writing of the amount of the repayment which is to be allocated to that insurer, and shall further advise the insurer that it must comply with the provisions of N.J.A.C. 11:3-16.13(c) before the funds will be remitted.

(c) Prior to receiving repayment of any funds attributable to the assessments paid to the Guaranty Association pursuant to N.J.S.A. 17:30A-8(a)(9), an insurer shall file a plan with the Commissioner for a reduction of rates commensurate with such repayment. Upon the Commissioner's review and approval of such plan, the Commissioner shall order the repayment of funds from the Guaranty Association to the insurer.

AGENCY NOTE: Exhibits AI, AII and E proposed for repeal are not reproduced herein, but may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-16 Appendix. The new text of these Exhibits follows.

APPENDIX

EXHIBIT A I

FLEX RATE FILINGS

COMPANY:_____

COMPANY FILE NO._____

RATE FILING REQUIREMENTS:	PAGE #
(1) COVER LETTER NOTIFYING THE DEPARTMENT OF INTENTION TO INCREASE RATES IN ACCORDANCE WITH N.J.S.A. 17:29A-44	____
(2) STATEMENT OF PERCENT OF INCREASE BY COVERAGE (INCLUDING VARIABLE PORTION AND EXPENSE FEES EXCLUDING POLICY CONSTANT AND RMEC)	____
(3) STATEMENT OF DOLLAR AMOUNT OF INCREASE BY COVERAGE	____
(4) EFFECTIVE DATE OF CHANGE	____
(5) NAME, ADDRESS AND TELEPHONE NUMBER OF COMPANY OFFICER FAMILIAR WITH FILING	____
(6) MANUAL PAGES CONTAINING THE FLEX RATES	____
(7) A COPY OF THE FILING MUST BE SUBMITTED TO THE NEW JERSEY PUBLIC ADVOCATE'S OFFICE	____
(8) FORM AMB 10 MUST BE INCLUDED	____
(9) CERTIFICATION BY COMPANY OFFICER THAT FILING MEETS STATUTORY AND REGULATORY REQUIREMENTS AND INFORMATION IS ACCURATE AND TRUE	____
(10) FILER'S NAME SHOWN	____
FILER'S IDENTIFYING NUMBERS	____
FILER NAIC #	____
GROUP NAIC #	____
(11) CERTIFICATION BY COMPANY OFFICER THAT EXCESS PROFITS REPORT REQUIRED BY N.J.A.C. 11:3-20 HAS BEEN FILED	____
(12) CERTIFICATION BY COMPANY OFFICER THAT FINANCIAL EXPERIENCE REPORT AS REQUIRED BY N.J.A.C. 11:3-31 HAS BEEN FILED	____
(13) CERTIFICATION BY COMPANY OFFICER THAT ANNUAL INFORMATION FILING AS REQUIRED BY N.J.A.C. 11:3-16.4 HAS BEEN FILED	____
(14) THE MOST RECENT FIVE COMPLETE CALENDAR YEAR HISTORY OF THE DISTRIBUTION, BY LIMIT OF LIABILITY OF WRITTEN EXPOSURES AND PREMIUMS FOR:	
BODILY INJURY LIABILITY	____
PROPERTY DAMAGE LIABILITY	____
COMBINED SINGLE LIMIT LIABILITY	____
UNINSURED/UNDERINSURED MOTORISTS	____
(15) EXHIBIT SHOWING COVERAGE WEIGHTS AND CALCULATION OF NEW VARIABLE BASE RATES IF COVERAGES ARE COMBINED	____
(16) COMMISSION EQUALIZATION WORKSHEET	____

EXHIBIT A II

PRIOR APPROVAL FILINGS

COMPANY_____

COMPANY FILE NO._____

RATE FILING DATA REQUIREMENTS: PAGE #

(1) Cover Letter notifying department of intention to modify rates which requires prior approval. ____

Statement of % of change by coverage and overall by company (including variable portion and expense fees exc. policy constant and RMEC). ____

Statement of dollar amount of change by coverage and overall by company. ____

Proposed Date of the Change. ____

Name, address and telephone number of company officer familiar with filing. ____

An overview of the contents of filing and the reasons and procedures used to derive the rate change requested. ____

Manual pages on or before the effective date of the rates. ____

Computer Disk containing rating system if over 40,000 exposures. ____

Data Disk if over 20,000 exposures. ____

(2) The following data must be filed by:

PREMIUM DATA:

Earned premium at present rates for each coverage or combined coverages using extension of exposures or on level factors. ____

A rate level history. ____

Explanation as to how calculations were produced and documentation for sample of such calculation and justification for factors used including the rate level history. ____

Justification for the selected method. ____

Data on a basic or total limits basis. ____

LOSS DATA:

For each coverage and each year used in calculating rate level loss data is provided on a basic or total limits basis. ____

Each year and each coverage includes:

Earned Exposures ____

Incurred Losses ____

Loss Development Factor ____

Unallocated Loss Adjustment Expense ____

Allocated Loss Adjustment Expense ____

Ultimate Incurred Losses and Loss Adjustment Expense ____

Trend Factor Expenses ____

Trended Ultimate Incurred Losses and Loss Adjustment Expenses ____

If New Jersey losses are separated into catastrophic and non-catastrophic, a description of method used to separate losses. ____

If the number of years used to determine catastrophe loading is different than number of years available, an explanation is provided, at least 10 years needed. ____

Territorial Rate Calculations include earned premiums, earned exposures, incurred losses, and number of claims by territory for each coverage and each of the years used to determine territorial relativities or last three years, whichever is greater. ____

Provide the following information with regard to classification differentials:

Data used, worksheets used and judgments made. ____

Methodology used to arrive at differentials. ____

Description of application of the methodology to this filing. ____

For loss adjustment expense data showing related incurred losses used to determine any loss adjustment expense loadings. ____

(3) DERIVATION OF CREDIBILITY FACTORS

Provide all data reviewed and judgments made. ____

Provide description of methodology used to derive factors. ____

(4) LOSS DEVELOPMENT

All data used, worksheets used and judgments made. ____

Description of the methodology used to derive the loss development factors. ____

By coverage provide total limits paid loss development parallelograms for the latest 10 accident years at each annual evaluation date from 15 months to 123 months for PIP and BI, 15 months to 75 months for PD and Uninsured/Underinsured Motorist, 15 months to 51 months for collision and comprehensive if on an accident year basis. ____

Nine, five, and three year average loss development factors by coverage. ____

Loss Development Data must be provided by:

Total Limits Paid Losses ____

Total Limits Incurred Losses ____

Basic Limits Incurred Loss if used for rate level ____

Allocated Loss Adjustment Expenses ____

Incurred Losses Allocated Loss Adjustment Expenses ____

Number of Paid Claims ____

Number of Incurred Claims ____

Statement regarding any changes in loss reserving practices during last five years. ____

(5) TREND FACTORS:

All internal loss trend data on either a calendar year paid or incurred basis for the latest five years on a quarterly year ending basis. ____

Bodily Injury Liability data on a basic or total limits basis (Frequency & Severity shown separately) ____

Property Damage Liability shown on a basic or total limits basis (Frequency & Severity shown separately) ____

PIP shown at a per person limit retained by insurer. ____

Collision and Comprehensive shown on basis of: ____

$500 Deductible or adjusted to $500 Deductible. ____

Calculate Annual Trend Factors, T-statistics, and coefficient of correlation using least squares regression for all trend data. ____

Calculations for at least 2 of 6, 9, 12, 16, 20 point periods on both exponential and straight line basis. ____

Side by side comparison of actual data, fitted data and differences. ____

All data used, worksheets used and judgments made regarding trend. ____

Description of methodology used to derive factors. ____

Description of application of the methodology used to this filing. ____

If filer has included the effects of any studies, analyses, or fact sheets, describe in detail the methodologies used for the following: ____

Changes in seatbelt use. ____

Changes in use of passive restraint system. ____

Changes in drinking age. ____

Changes in price and amount of gasoline purchased. ____

Changes in average miles driven. ____

Legislative, regulatory, social or economic factors. ____

(6) NEW JERSEY PREMIUM BASE AND EXPOSURES

a. Data on mix of written exposures by different policy terms for latest 3 years. Include both written exposures and amount of written premiums for different policy terms. ____

b. Calculation of trend showing all steps for average model year and symbol relativities for most recent 5 calendar years. ____

c. Actual model year and symbol written exposure and distribution for comprehensive and collision separately for each of the last 5 calendar years. ____

d. Five year history of distribution by written exposures and premium of comprehensive and collision by deductible amount. ____

(7) LIMITS ON FILING

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing. ____

Limitations on extent of rate level change by coverage. ____

Limitations on extent of territorial rate changes. ____

Limitations on extent of classification rate changes. ____

Limitations not provided for above. ____

(8) BY COVERAGE AND GROUP OF COVERAGES:

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar years. ____

Number of claims incurred for all limits and deductibles by coverage. ____

Allocated loss adjustment expenses for each of latest 5 calendar years. ____

(9) EXPENSE AND PROFIT PROVISIONS

For each filer provide all information related to derivation of expense provisions including:

All data used, worksheets used, and judgments made. ____

Description of methodology used to derive provisions. ____

For each of the latest 5 calendar years provide:

Average Incurred Expenses per exposure on a New Jersey basis for:

Commission & Brokerage ____

Other Acquisition ____

General Expense ____

Taxes, Licenses, Fees ____

Explanation of Basis of Allocation Taxes ____

Average Incurred Expenses per exposure on a countrywide basis for:

Commission & Brokerage ____

Other Acquisition ____

General Expense ____

Taxes, Licenses, Fees ____

Provide Derivation of Expense Flattening (Exclude UCJF assessment for excess medical). ____

Three years New Jersey auto expenses as in Part 4.

Underwriting Investment Exhibit, Annual Statement. ____

Five years AIRE assessments and reimbursements ____

(10) DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation. ____

If classification plan is changed describe classification differentials. Provide explanation of how classification rates are determined and provide a sample calculation. ____

Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36.

Base class not greater than 1.35 statewide average base rate (include expense fees). ____

Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65. ____

Comparison of average statewide variable rates and expense fees proposed and currently in use and # of exposures by coverage. ____

(11) INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense and unearned premiums reserve to earned premium for the latest 2 years, estimated for current and two following years. ____

Reserves at beginning and end of specified years:

Loss Reserve ____

Loss Adjustment Reserve ____

Unearned Premium Reserve ____

By coverage cash flow pattern from policy inception until premium received. ____

Cash flow pattern from inception for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments. ____

Cash flow pattern from inception for losses, allocated loss adjustment expense, and unallocated loss adjustment expense. ____

(12) STATISTICAL PLANS

Identify plans used or consulted in preparing filing. ____

Describe data compiled by each plan. ____

Certification by officer that data was collected by such plans and is true and accurate. ____

Identify data not collected in accordance with plan and used in filing. ____

(13) OTHER

Using the underwriting profit and contingency loadings selected for use in the filing, provide the rate of return on equity and assets by group of coverages. ____

Provide justification that rates of return are fair and reasonable. ____

Provide amount of finance and other miscellaneous charges collected in New Jersey for auto. ____

Provide a description of all products, and services supplied between filer and a parent company. ____

(14) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting and investment income on loss and LAE and unearned premium reserve is 3.5% of premium. ____

If there is deduction for prepaid expenses or delayed remission of premiums support is provided. ____

The ratio of unearned premium reserves to premium from Page 14 of annual statement. (Direct E.P. divided by Direct Premium Written) is provided. ____

The ratio of loss reserves to incurred losses from Page 14 of annual statement for 4 years (Avg. of LR at beg. of yr. & at end of yr. divided by incurred losses during yr.) Monotonic trend use latest ratio, otherwise use average of 4 years. ____

The ratio of loss adjustment expense reserves to loss reserves from annual statement for 4 years. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic trend use latest ratio, otherwise use average of 4 years. ____

The expected loss and LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Radio). ____

Interest Rate = Treasury 3-year constant maturity rate 12 months. ____

(15) UNDERWRITING EXPENSE PROVISIONS

NJ data for commission and brokerage. ____

NJ data for taxes, licenses, fees. ____

Basis of allocation for general expenses if NJ data is not used. ____

Provision for other acquisition and general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index and MAWWFCIE index and regression analysis). ____

Historic Exp. Provisions limited by % in Best Aggregates & Averages for comparable company. ____

UCJF loading = latest year. ____

Fines against companies, lobbying expenses, charitable and political contributions awards against company for punitive damages, advertising legal and expenses in connection with changes in regulation of insurance premium by surcharge are not included. Company must show dollar amount of expense excluded separately and by year. ____

Commissions for BI for $0 and verbal threshold are equalized. ____

(16) DATA BASE

Accident year used for either calendar or accident year for physical damage. ____

Most recent data year ends no more than 15 months prior to submission. ____

PIP limited to direct exposure retained by company. ____

(17) TREND

Separate determinations of loss severity and frequency trends. ____

Adjustment for symbol drift and model year rating. ____

(18) TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates. ____

(19) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used? ____

If yes, provide: all data reviewed used, worksheets used, description of methodology to arrive at selective loading. ____

Details on application of methodology to this filing. ____

Overall statewide rate change and by coverage standard and alternate methodology. ____

(20) GENERAL AND FORMAT REQUIREMENTS

Separate insurance companies make rate calculation separately and combined as a group if separate rate levels or underwriting guidelines are used. ____

Form AMB 10 must be included. ____

Certification by company officer (meets statutory and regulatory requirements). ____

Loose leaf binder, one side of page, consecutively numbered. ____

Filer's name shown ____

Filer's identifying numbers ____

Filer's NAIC # ____

Group NAIC # ____

(21) List of items the filer states are not included and the reason why. ____

(22) IF SURTAX AND GUARANTY FUND REFLECTED IN FILING:

Annual Statement, New Jersey, Page 14, for 10 years. ____

Annual Statement, Countrywide, Page 14 equivalent 10 years. ____

(A) EACH AFFILIATE, NEW JERSEY AND COUNTRYWIDE

PROPERTY AND CASUALTY

Annual Statement, New Jersey, Page 14, for 10 years. ____

Annual Statement, Countrywide, Page 14 equivalent 10 years. ____

TITLE INSURANCE AFFILIATES

Operations and Investment Exhibit, Page 4, 10 years. ____

Premiums Written, Schedule T, page 39, 10 years. ____

LIFE AND HEALTH AFFILIATES

Liabilities, Surplus and Other Funds, page 3, 10 years. ____

Analysis of Operations by lines of business, page 5, 10 years. ____

Exhibit I, Part 1 and Part 2, pages 7 and 7A, 10 years. ____

(B) ADDITIONAL DATA AND CERTIFICATIONS

Estimated amounts of business in other lines because the insurer writes private passenger automobile in New Jersey. ____

Certifications and representations by both Chief Financial Officer and President on information in Exhibit T. ____

Schedule of Key Performance Indicators in Exhibit G. ____

Current year and preceding two years operating expenses by classification for each New Jersey line of business. (Insurance Expense Exhibit Parts I and II.) ____

Description of all allocation methodologies used to allocate corporatewide costs to New Jersey lines of business. ____

Description of allocation methodologies to New Jersey private passenger automobile liability and physical damage lines of business. ____

Explanation of any allocation changes between the years. ____

For NJAFIUA/MTF servicing entities which we also insure. Differences in allocation methodologies for IEE and Exhibit P of NJAFIUA/MTF reporting package. ____

Each operating expense classification by each New Jersey line of business, directly charged expenses, and indirectly allocated expenses. ____

(23) DATA FOR EACH NEW JERSEY LINE OF BUSINESS:

Number of insureds. ____

Number of employees directly dedicated to business. ____

Square feet of office space dedicated to line of business. ____

Hours of data processing time. ____

Number of exposures. ____

Number of policies in force. ____

Number of claims in each of 3 years requested. ____

(24) ACCOUNTING REPORTS AND AUDITS

Report by independent public accountant evaluating the insurer's system of internal accounting controls. ____

Listing of internal audits for New Jersey private passenger lines of business current year. ____

Copies of all internal audits issued during the current year with management responses. ____

(25) OTHER INFORMATION

Why the assessment (17:30-8(9)) should be reflected in rates since it is a loan. ____

EXHIBIT E

	Percentage Change	Dollar Effect
Bodily Injury		
Verbal	_____	_____
Zero	_____	_____
Property Damage	_____	_____
Personal Injury Protection	_____	_____
Uninsured Motorists		
Verbal	_____	_____
Zero	_____	_____
Comprehensive	_____	_____
Collision	_____	_____
Total	_____	_____

Expense Fees	Current	Proposed
Single Limit Liability	_____	_____
Bodily Injury	_____	_____
Property Damage	_____	_____
Personal Injury Protection	_____	_____
Comprehensive	_____	_____
Collision	_____	_____

EXHIBIT F

The Chief Financial Officer and President must make the following representations regarding rate filing documents:

1. The schedule of operating expenses for the insurer's New Jersey private passenger automobile lines of business (corresponding to columns 19.1 through 19.4 and in columns 21.1 and 21.2 of the insurance expense exhibit (IEE)). Include only those costs which were incurred to support the insurer's New Jersey private passenger automobile insurance operations.
2. The allocation of expenses to each line of business on the insurance expense exhibit and the required schedule was made in accordance with the Instructions for Uniform Classifications of Expenses.
3. The allocation of corporate-wide (worldwide, countrywide and regionalwide) expenses to New Jersey lines of business represents only those corporate-wide costs that are properly allocable to New Jersey operations based on reasonable and prudent allocation methodologies.
4. The allocation methodologies used to allocate certain New Jersey general and administrative or indirect costs to New Jersey private passenger automobile lines of business were reasonable, adequately supportable, and did not result in costs being allocated which were incurred by reason of non-private passenger automobile insurance operations.
5. Allocation methodologies used were applied consistently from year to year or, if there were any changes in allocation methodologies, the insurer has stated the reasons for the changes and has quantified the effect of changing the methodologies.
6. The methodologies used to allocate indirect costs is consistent with the methodologies used to allocate indirect costs by the insurer's internal reporting system and, if the company is also an NJAFIUA/MTF servicing entity, the methodologies were consistent with those used in preparing the NJAFIUA/MTF operating statement (Exhibit P).
7. If the insurer operated separate cost centers for its New Jersey private passenger automobile lines of business, but expenses for these cost centers were allocated rather than accounted for directly, the insurer has accurately quantified the effect of not accounting for such expenses directly. Also, reasons for not using direct costing for the separate New Jersey private passenger auto cost centers have been provided.
8. The methodologies used to allocate indirect costs to the New Jersey private passenger automobile lines of business are consistent with the methodologies used to allocate indirect costs to other New Jersey lines of business.
9. The total pool of allocated costs (before allocating to the various lines of business in each state) represents all and only such costs as are reflected in the insurer's annual audited financial statements prepared under statutory accounting principles.

10. All paid allocated loss adjustment expenses reported for New Jersey private passenger automobile lines of business were incurred to settle specific claims and the guidelines used for determining these loss adjustment expenses are the same as those used for the insurer's other lines of business.
11. A reasonable, prudent person would not determine that there are allocation methodologies which could have been used that would clearly have resulted in a more accurate allocation of operating expenses.
12. Financial information on the IEE properly reconciles with the insurer's annual statements as reported to the Department.
13. The schedule provided for premiums, incurred losses and operating expenses (on a direct basis) by New Jersey lines of business properly reconciles to the insurer's total premiums, incurred losses and operating expenses by line of business (on a net basis) as reported in the IEE.
14. Net direct written premiums reported in the current year for each New Jersey line of business were determined in the same manner as in the preceding two years.
15. The Insurance Expense Exhibits for the current and preceding two years and the required supporting schedules were prepared in conformity with statutory accounting principles.
16. Adequate provision has been made for all incurred losses in each of the periods reported.
17. There were no violations of laws or regulations during the periods reported whose effects have not been considered in the results of operations reported.
18. The accounting records underlying the financial information provided accurately and fairly reflect, in reasonable detail, the transactions of the insurer's private passenger automobile and other lines of business.
19. The filer has complied with all aspects of contractual agreements that would have a material effect on the financial information provided in the event of noncompliance.
20. No events have occurred subsequent to the date of the most recent Insurance Expense Exhibit that would require adjustment to the financial information provided on the Insurance Expense Exhibits or to the financial information provided on the other schedules required.
21. There have been no:
    a. Irregularities involving management or employees who have significant roles in the internal control structure.
    b. Irregularities involving other employees that could have a material effect on the financial information provided.
    c. Communications from regulatory agents concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial information provided.

EXHIBIT G

KEY PERFORMANCE INDICATORS

The following data ratios should be provided for each line of business (for New Jersey business only). All of the ratios shall be calculated for the current year and preceding two years. Information on surplus as regards policyholders, accounts receivable, underwriting employees and number of adjusters shall be provided as of the last day of each year reported.

1. **Salvage Recoveries/Paid Losses (Collision Only)**
2. **Subrogation Recoveries/Paid Losses (Liability Coverages Only)**
3. **Premiums Collected/Earned Premiums**
4. **Accounts Receivable/Earned Premiums**
5. **Incurred Losses (excl. IBNR)/Earned Premiums**
6. **Earned Premiums/Earned Exposures**
7. **Exposures Written/Underwriting Employees**
8. **Underwriting Expenses/Exposures Written**
9. **Paid Losses/Claims Paid and Closed**
10. **Claims Outstanding/Number of Adjusters**
11. **Claim Expenses/Claims Reported**
12. **Other ratios as deemed necessary by the Department of Insurance**

In addition, the following data should be provided:

13. **Annual Net Written Premiums/Surplus as Regards Policyholders**
14. **Reduction to Surplus as Regards Policyholders during the current and preceding two years.**

(a)

DIVISION OF PROPERTY/LIABILITY
Standard/Non-Standard Rating Plans
Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-19

Emergency Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules Filed: November 26, 1990 as R.1990 d.628.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29A-45.

Concurrent Proposal Number: PRN 1990-648.

Emergency New Rules Effective Date: November 26, 1990.

Emergency New Rules Expiration Date: January 25, 1991.

Submit comments by January 16, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

These reproposed new rules implement N.J.S.A. 17:29A-45. The Department of Insurance (Department) previously proposed rules implementing N.J.S.A. 17:29A-45 on August 6, 1990 (see 22 N.J.R. 2231(a)). The Department has determined to make substantive changes based upon public comments received and continuing Department review. This proposal therefore replaces and supersedes the prior proposal.

The Department received 15 public comments from insurers, insurance trade assocations, producer trade associations and the Department's Consumer Advisory Council (CAC). Those comments, and the Department's responses, are summarized below.

COMMENT: One commenter suggested that the Department hold a special public hearing on these proposed rules, and others, that affect the automobile insurance marketplace. It stated that the traditional rulemaking process is ". . . not appropriate for the magnitude of the issues addressed by FAIR Act and these proposed regulations."

RESPONSE: While the Department appreciates the magnitude of market changes required by the FAIR Automobile Insurance Reform Act of 1990, P.L. 1990, c.8, (FAIR Act), it does not agree that a public hearing is necessary or required. The Department has received significant public comment to which it has given due consideration.

COMMENT: An insurer stated that the economic impact analysis, which states that the establishment of non-standard rating plans are optional, is incorrect. A non-standard rating plan will be an "absolute necessity" in order to absorb the risks that have previously been insured through the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA). Another commenter stated that companies would be forced to adopt non-standard rating plans or else be forced to write all eligible persons at standard rates. The CAC inquired about what system would be in place if an insurer did not file a standard/non-standard rating plan.

RESPONSE: The Department agrees that insurers should establish a non-standard rating plan and these reproposed rules require all insurers which write personal private passenger automobile insurance to do so.

COMMENT: A commenter stated that the Department's regulation fails to provide for a "third" rate level for risks depopulated from the Market Transition Facility (MTF). N.J.S.A. 17:29A-12, section 89 of the FAIR Act, provides that policies written in the voluntary market may be written at MTF rates for a period not in excess of three years, including the period during which the policy was written in the MTF.

RESPONSE: Nothing in the rules as proposed or reproposed prohibits insurers from charging MTF rates as permitted by N.J.S.A. 17:33B-12. Since this provision is not of continuing application beyond three years, the Department does not believe it need be specifically mentioned in the reproposed rules.

COMMENT: One commenter requested that the rules confirm that private passenger-type automobiles insured under commercial policies are not within the scope of these rules.

RESPONSE: This clarification has been made in N.J.A.C. 11:3-19.1(b) of the reproposed rules.

COMMENT: One commenter requested that the rules include a definition of "risk", "insured", and "applicant".

RESPONSE: Additional definitions have been provided.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-19.3(b) which prohibit insurers from filing, implementing or using a standard/non-standard rating plan that would increase the insurer's total revenue from its population of insureds that will exist on the date of implementation. Some commenters stated this was beyond the Department's statutory authority. Others stated that it prohibits insurers from making a fair return, and appears to cap total revenues for the coming years. A commenter stated that this provision would mean that rates would be required to be changed constantly as more high risk drivers are depopulated from the residual market. Another commenter stated that this would be devastating if the non-standard market exceeded 15 percent and were closed, as insurers would be required to write high risk drivers at less than standard rates. Another commenter cited the 1989 Department report on profitability of auto insurance in New Jersey and stated that it was the legislative intent to provide adequate rates for the depopulation of the residual market through non-standard rating systems. It stated that the legislative intent was to offset the residual market risks assumed through higher, non-standard rates.

RESPONSE: The Department agrees with some of the commenters that the specific provision for non-standard rating plans expresses a legislative intent to provide increased rates for higher risks to be depopulated from the residual market. When this provision was originally proposed, depopulation of the residual market had just begun. Since that time a significant amount of depopulation has already occurred in accordance with the FAIR Act, and more will occur by the time insurers file and implement standard/non-standard rating plans. Moreover, the reproposed rules require merit accident rating surcharges be included in the non-standard rate level. Due to these changes, the objectionable provision has been dropped from the reproposed rules.

COMMENT: One commenter requested clarification of N.J.A.C. 11:3-19.3(c)1iii. It stated that, as written, the rule would require continual monitoring of an insurer's in force business for proper tier placement; the commenter stated this would result in a significant burden and expense.

RESPONSE: The Department agrees that insurers will be required to monitor their business when it is renewed, in order to comply with N.J.S.A. 17:29A-46 which requires insurers to conduct business consistently with their underwriting rules. The Department notes that insurers now do this with respect to other characteristics of their insureds as these factors change over time.

COMMENT: A commenter objected to the requirement of N.J.A.C. 11:3-19.3(c)1i which requires both the percentage and dollar difference between the standard and non-standard rate levels. It stated that the percentage difference should be sufficient, and computing the dollar difference is expensive, time consuming and unnecessary.

RESPONSE: This provision has been changed in the reproposed rules to require only percentage differences. The commenter should note, however, that manual rate pages must be submitted upon approval of the plan for each rate level.

COMMENT: In connection with N.J.A.C. 11:3-19.3(c)2, an insurer inquired whether a company may submit underwriting rules for its non-standard rate level based on the type of vehicle to be insured.

RESPONSE: As previously proposed, N.J.A.C. 11:3-19.4(a)3 required that persons with no eligibility points who have been licensed to drive for the previous three years must be insured at the standard rate level. The reproposed rule makes significant changes in this structure, however, in response to various comments and continuing review. An insurer may not assign an insured to the non-standard rate level on the basis of type of vehicle.

COMMENT: One industry commenter expressed its favor for the provisions of N.J.A.C. 11:3-19.3(d), which provides that affiliated companies may file standard/non-standard rating plans that permit different individual insurance companies to write risks at different rate levels. A second commenter, however, inquired how this would operate.

RESPONSE: The Department expects that some companies may establish standard and non-standard rate levels within a single company; groups of affiliated insurers may choose to establish a plan that covers more than one company with different rate levels applying to different companies; that is, a plan by which one company writes all standard rate level risks, and a second company writes all non-standard rate level risks.

COMMENT: One commenter objected to N.J.A.C. 11:3-19.3(e), which required limitations on rates in accordance with N.J.S.A. 17:29A-36 be applied separately to each rate level. It stated that this precludes the use of the easiest and most cost effective method, uniform rate relativity.

RESPONSE: The Department has deleted this provision from the rule; limitations on rates established by N.J.S.A. 17:29A-36 will be addressed as necessary in the rate review process.

COMMENT: Several commenters inquired about N.J.A.C. 11:3-19.4(a)1, which requires the non-standard rate level not to exceed 135 percent of the combined standard/non-standard rate level in accordance with N.J.S.A. 17:29A-45(f). One requested an interpretation in actuarial terms, inquiring what is meant by "combined standard/non-standard rate level". Another asserted that the statute requires the level be 135 percent over the "industry average". A third asserted that the statute requires inclusion of current residual market equalization charges and "flat" charges to be included in the base. The CAC suggested that the rule provide for a graduated scale of percentage increases based on eligibility points ranging from one to eight.

RESPONSE: The combined standard/non-standard rate level is the average rate level of all its insureds in the voluntary market, both standard and non-standard. Although N.J.S.A. 17:29A-45 states that non-standard rate should not exceed ". . . 135 percent of the cost of private passenger automobile insurance in the voluntary market in this State.", the Department notes that it will be called upon to approve standard/non-standard rating plans one-at-a-time as submitted by each insurer. If each plan is subject to the 135 percent limit, then the aggregate of all plans will necessarily be limited as the statute provides.

The Department does not find any legislative intent to include policy constants and RMEC's in the "cost of private passenger automobile insurance." These charges were specifically abolished by the FAIR Act.

The rules have been changed to provide for an equitable gradation of rates based on eligibility points, that is, driving record.

COMMENT: A commenter objected to N.J.A.C. 11:3-19.4(a)2, which requires standard/non-standard rating plans to insure all "eligible persons" after April 1, 1992. The commenter asserted that section 27a of the FAIR Act only requires insurers to insure those eligible persons that meet their underwriting standards, and that: "There is no requirement that insurers write all eligible persons."

RESPONSE: The Department disagrees. The Department believes the FAIR Act requires insurers to write all eligible persons, although it allows them to be written at different rate levels, in accordance with the underwriting rules applicable to each rate level.

COMMENT: Several commenters objected to N.J.A.C. 11:3-19.4(a)3, which requires that standard/non-standard rating plans provide that persons who have been licensed to drive for the previous three years and who have accrued no eligibility points be insured at the plan's standard rate level. One insurer stated that it would have to write "relatively inexperienced drivers with a sports car in the standard market" while writing one with greater experience and one moving violation in the non-standard market. Another stated that the rule should not require "young drivers" be placed in the standard market, referring to testimony regarding the FAIR Act that persons in various age groups account for different percentages of automobile accidents. Another commenter suggested that five years' experience is a better measure. A commenter suggested that additional requirements for the standard rate level be included such as type of vehicle (high valued, high theft, customized, difficult to repair, etc.), mileage and other factors. Other commenters noted that policies are presently written by households and inquired whether if one driver in the household was non-standard, all persons and vehicles in the household be insured at non-standard rates. A commenter noted that the rule

seems to require tier placement by car rather than by policy and suggested that tier placement by policy is more equitable. The commenter noted that a separate policy per car eliminates multi-car discounts.

RESPONSE: This provision has been changed in the reproposed rules. The rule defining "eligible person" has been reproposed to assign eligibility points to inexperienced drivers (see reproposed N.J.A.C. 11:3-34 published elsewhere in this issue of the Register). In accordance with this change, the reproposed rule requires all those with no automobile insurance eligibility points be insured at standard rates, and requires non-standard rates to be graded reasonably by eligibility points.

If one person in a household is non-standard, that person and the vehicle he or she drives may be insured at non-standard rates, provided of course that the person accounts for 10 percent or more of the use of the vehicle (see reproposed N.J.A.C. 11:3-35 published elsewhere in this issue of the Register). This may be done by either a separate policy or different premium charges under a single policy that covers all of the drivers and vehicles in the household. The Department notes that insurers currently charge different premiums for various vehicles and drivers covered under a single policy.

COMMENT: A commenter objected to N.J.A.C. 11:3-19.4(a)2 and 3, stating they are "not appropriate in this rule" and should be in the underwriting standards rule (N.J.A.C. 11:3-35).

RESPONSE: The Department disagrees. These provisions are substantive and cross reference the rules concerning insurer underwritng standards.

COMMENT: A commenter objected to the provisions of N.J.A.C. 11:3-19.4(b), which provides that standard/non-standard rating plans may be modified by subsequent rule or order adopted pursuant to N.J.S.A. 17:29A-45(f) further defining the non-standard voluntary market. The commenter stated that this would discourage the use of non-standard rating as an insurer's carefully crafted plan could be upset by rule.

RESPONSE: The Department appreciates the commenter's concerns, but is mindful of the statute which contemplates the non-standard market not exceed 15 percent of the total market. This provision of the proposed rules is intended to alert insurers that modification of the plan may be required in the future in response to acts by the Commissioner in carrying out the statutory mandate to limit the non-standard market.

COMMENT: Several commenters questioned N.J.A.C. 11:3-19.5(c), which provides that insurers with approved standard/non-standard rating plans shall issue and renew policies at a standard rate level when the Commissioner has certified that the non-standard market exceeds 15 percent. One commenter stated that this was not required by the statute. Several commenters, including the CAC, inquired how this mechanism would operate. The CAC stated that the market percentages in the standard/non-standard and assigned risk plans should be published twice a year by the Department. Another commenter stated that if the non-standard market were to close, good drivers would have to pay higher rates to subsidize poor drivers. Another commenter expressed general reservations about filing a non-standard rating plan because of this provision.

RESPONSE: This provision has been deleted in the reproposed rules after careful review of the statutory provision it was intended to implement. Insurers should be aware, however, that the Commissioner will take appropriate action to further define the non-standard market should it appear that it contains an excessive number of insureds.

When the reporting mechanism is operating, the percentage in each market as compiled by the Department will be public information, available upon request.

COMMENT: Several commenters addressed N.J.A.C. 11:3-9.5(a), which requires insurers to issue and renew policies at the appropriate rate level in a standard/non-standard rating plan. One commenter objected to the requirement of the written notice when an insured is reassigned to the higher rate level. It stated that the insurer should simply provide insureds with an explanation of the changes that may occur when the insured first applies for a policy.

RESPONSE: The Department disagrees; the insured should be advised of the reason for a significant change in his or her rate, which results from assignment to a different rate level as the result of accruing eligibility points. The Department also expects that the shift to the non-standard rate level will often mean a change of company; this notice will advise the insured why this has occurred.

COMMENT: One commenter objected to the required language in the notice that the insured may contact other insurers to determine whether comparable insurance can be purchased elsewhere at less cost. It stated that an insurer should not provide advertising for its competitors.

RESPONSE: The Department disagrees. Since various insurers are permitted and expected to have different criteria and rates for their standard and non-standard plans, the Department believes that this is important advice, particularly since the FAIR Act requires companies to insure all eligible persons. It does not consider it "advertising" for a competitor.

COMMENT: One commenter noted that the reference to N.J.A.C. 11:3-8.2 appears to be in error, considering that that rule is in the process of being amended.

RESPONSE: The reference has been changed to be consistent with the amendments to that rule (see reproposed N.J.A.C. 11:3-8 published elsewhere in this issue of the Register).

COMMENT: An insurer commented that current motor vehicle records do not distinguish between "at-fault" and "no-fault" accidents, and stated that they must do so.

RESPONSE: Complete reliance on a Division of Motor Vehicles (DMV) abstract of driving record for eligibility point determination would be misplaced. An "at-fault" accident, as defined in the FAIR Act, requires payment of a claim by an insurer of at least $500.00. Insurers will have to rely on claim records as well as driving record abstracts; DMV's records do not include every accident. It is the Department's understanding that most insurers currently rely at least in part upon claim records to rate or nonrenew insureds.

COMMENT: An insurer expressed concern that issuing and renewing an insured at the appropriate rate level would require a manual review of policies on an annual basis.

RESPONSE: The Department notes that, pursuant to N.J.S.A. 17:29A-46, all insurers are required to file their underwriting rules for approval and to conduct business in accordance with those rules. If rates and rate levels are to be affected by events of driving experience (motor vehicle violations and at-fault accidents), insurers must institute systems to apply those factors consistently and without bias to all insureds and applicants.

COMMENT: An insurer inquired whether the Department would develop the wording of the notice of intent to transfer an insured to the non-standard rate level.

RESPONSE: The Department has no present intention to do so. The Department notes that the information set forth on the notice is similar to the information presently contained in nonrenewal notices pursuant to N.J.A.C. 11:3-8.2 in its present form.

COMMENT: The CAC inquired why the rule specified an upper limit for the notification (45 days) and questioned whether this was enough time for an insured to shop.

RESPONSE: The time limit proposed, 30 days to 45 days, is consistent with current notice requirements for renewing a policy. Since a person being shifted to the non-standard rate level is an "eligible person", other insurers would be required to provide coverage (as of April 1, 1992) if the insured applied. The Department is reluctant to disturb these long-established time schedules unless there are compelling reasons to do so. Should difficulties become apparent, the Department will consider changing them.

COMMENT: The CAC also suggested that when a policy is delivered to the insured, upon issuance or renewal, the insurance company should provide a list of points accrued and total charges.

RESPONSE: The Department agrees that this is a reasonable suggestion and has added a requirement that the policy declaration page set forth the number of eligibility points used to rate the policy. The specific incidents that resulted in the accrual of points are not required, however, in the policy format. The Department notes that separate notice is given that includes the incidents when accrued eligibility points shift a person to a non-standard rate level or render a person not eligible for the voluntary market.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-19.6(a), which require excess profits reports be filed separately for each rate level.

RESPONSE: This has been eliminated in the reproposed rules. Excess profits reports shall be filed as provided in N.J.A.C. 11:3-20.

COMMENT: An insurer objected to N.J.A.C. 11:3-19.6(b) which requires merit rating accident surcharges be applied on an equal dollar amount at each rate level.

RESPONSE: N.J.S.A. 17:29A-35(a) requires that surcharges "be uniform on a Statewide basis without regard to classification or territory." This rule was intended to carry out that requirement when an insurer

maintains separate rate levels. The reproposed rules merit rating surcharges be incorporated into the non-standard rate level only and not into the standard rate level.

COMMENT: The CAC stated that the Department should eliminate Merit Rating Accident Surcharges as contrary to the FAIR Act, which provides compensation for higher risks through the point eligibility system.

RESPONSE: The Department agrees in principle and has reproposed rules that require merit rating surcharges be incorporated into the non-standard rate level. The reproposed rules further require that currently approved rating systems be refiled to provide for standard/non-standard rating plans.

COMMENT: The CAC inquired whether the 10 days provided by N.J.A.C. 11:3-19.6(b)1 was sufficient time for the Public Advocate to advise of its intention to intervene.

RESPONSE: The Department believes that it is sufficient time, and notes that other rules require the Public Advocate to provide the Department with prompt notice of its intention to participate in a rate filing matter (see N.J.A.C. 11:3-18). The Department further notes that there is a 60-day "deemer" provision contained in N.J.S.A. 17:29A-45 that limits the time for Department review. A prompt decision by the Public Advocate is necessary so that the Department can act within this time limit.

COMMENT: An insurer inquired about the basis for Public Advocate participation in approval of a standard/non-standard rating plan.

RESPONSE: The Department believes that N.J.S.A. 17:29A-14 provides generally for Public Advocate participation in rate change filings.

COMMENT: A commenter objected to N.J.A.C. 11:3-19.7, noting that the rule did not contain a procedure for a hearing if the plan is disapproved. The commenter asserted that a disapproval should be heard as a contested case and that there was a constitutional right to a hearing in such circumstances.

RESPONSE: Nothing in these rules affects rights under generally applicable laws to challenge administrative decisions.

COMMENT: A commenter inquired whether it would qualify as an insurer with a rating plan on file as of November 14, 1989 if it used rates filed by a rating organization that were in effect on that date.

RESPONSE: Yes.

As a result of the public comments received and further review by the Department, these rules contain three substantive changes from the previous proposal that affect the structure of standard/non-standard rating plans. First, all insurers which write personal private passenger automobile insurance are required to file standard/non-standard rating plans. Secondly, a standard/non-standard rating plan shall incorporate in the non-standard rate level merit rating surcharges permitted in the voluntary market by N.J.S.A. 17:29A-35. Thirdly, standard/non-standard rating plans shall include an equitable, graduated scale of non-standard rates based on eligibility points accrued.

All of these changes are intended to implement the stated intent of the FAIR Act to provide an equitable system of rates based primarily on driving record. All insurers will be required as of April 1, 1992, to insure all eligible persons in the voluntary market. A standard/non-standard rating plan is necessary to provide standard rates for all those with clean driving records. Existing merit rating plans provide surcharges for at-fault accidents that have occurred in the previous three years and which result in a claim payment by an insurer above a stated minimum. N.J.A.C. 11:3-34 likewise provides for automobile insurance eligibility points to be accrued as a result of at-fault accidents resulting in claim payment of at least $500.00 by an insurer in the past three years. This reproposal provides that assignment to the non-standard rate level shall be based on accrued eligibility points. Since both systems provide for increased rates as the result of the same driving behavior, it is appropriate that the two be combined by incorporating the merit rating surcharges into the non-standard rate level. Moreover, this requirement avoids an inequitable "double surcharge" for the same behavior.

Because eligibility points accrue for each at-fault accident and motor vehicle moving violations, it is likewise equitable that more points should result in higher rates through a graduated scale. Nevertheless, the average non-standard rate is, of course, limited to 135 percent of the average of the combined standard and non-standard rate.

The specific sections of the reproposed subchapter are summarized as follows:

N.J.A.C. 11:3-19.1 sets forth the purpose and scope of the proposed rules.

N.J.A.C. 11:3-19.2 sets forth definitions of words and terms used throughout the subchapter.

N.J.A.C. 11:3-19.3 sets forth the filing requirements for standard/non-standard rating plans.

N.J.A.C. 11:3-19.4 sets forth standards for disapproval or modification of these rating plans.

N.J.A.C. 11:3-19.5 sets forth rules concerning the implementation of these plans with regard to renewal of policies at the proper rate level.

N.J.A.C. 11:3-19.6 sets forth procedural provisions for the filing of these plans, including the role of the Public Advocate in the approval of plan rates and rules, and the requirement to file standard/non-standard rating plans by March 1, 1991.

N.J.A.C. 11:3-19.7 provides for penalties for violations of this subchapter.

Social Impact

These reproposed rules set forth the filing requirements and standards for approval of standard/non-standard rating plans. The primary impact of these rules is to articulate clearly the requirements for filing, approval and implementation of these plans.

These reproposed rules require all insurers which write personal private passenger automobile insurance to file a standard/non-standard plan. When approved, these plans will serve to carry out the stated intent of the FAIR Act that automobile insurance rates be based primarily on driving record.

Economic Impact

These reproposed rules will affect the Department and automobile insurers that file standard/non-standard rating plans. These rating plans will affect insureds based upon the applicable plan standards and the average rate levels, which have been limited by statute to 135 percent of the voluntary market cost.

The Department expects that the statutory provisions will increase the number of automobile insurance filing requiremments to be reviewed by the Department. This additional work will require additional staff.

With respect to insurers, there will be costs associated with developing and implementing these rating plans. This is, however, a necessary cost of restructuring the market to provide for automobile insurance rates based primarily on driving record. To the extent that these reproposed rules have an impact on that process, the standards for filing and approval are made clear.

Regulatory Flexibility Analysis

These reproposed 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. Individual insurance companies authorized to write private passenger automobile insurance, some of which may be small businesses, are affected by these proposed rules.

These reproposed rules implement N.J.S.A. 17:29A-45, as amended by the FAIR Act. They provide reporting, recordkeeping and compliance requirements for those insurers that qualify as "small businesses" when they establish a standard/non-standard rating plan.

These rules do not establish different compliance requirements for insurers that qualify as small businesses. Those insurers may need to obtain the services of actuarial consultants to comply with the filing requirements if those services are not available in-house. Establishing different compliance requirements for automobile insurance companies that qualify as "small businesses" would be inconsistent with the purpose of these rules in establishing minimum standards. It would likewise be inconsistent with the purpose of the FAIR Act, which is to establish uniform and minimum requirements for the segments of the market reflected in the standard and non-standard rate levels.

Full text of the emergency adoption and concurrent reproposal follows:

SUBCHAPTER 19. STANDARD/NON-STANDARD RATING PLANS

11:3-19.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-45 as amended by section 37 of P.L.1990, c.8, by establishing standards for standard/non-standard rating plans in the voluntary automobile insurance market. It sets forth the items to be filed and approved by the Commissioner in order to create a standard/non-standard rating plan; standards to be applied by the Department in approving a plan; and standards for the functioning of a plan in the market.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to groups of affiliated companies which insure risks through separate individual insurance companies.

11:3-19.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Applicant" means a person applying to an insurer for a policy of automobile insurance who is not currently a named insured under a policy of automobile insurance issued by that insurer.

"Automobile insurance eligibility points" or "eligibility points" means points accrued in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Individual insurance company" means an insurance company separately licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless whether it is one of a group of affiliated companies.

"Insured" when used as a noun means a policyholder or other person insured under a policy of automobile insurance and not insured elsewhere.

"Insurer" includes a group of affiliated companies.

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different base rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules.

"Public Advocate" means the Division of Rate Counsel of the New Jersey Department of the Public Advocate, established pursuant to N.J.S.A. 52:27E-16.

"Renew" means to issue and deliver at the end of the policy period a policy superceding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with this subchapter.

"Risk" means the person or property exposed to loss or damage that is insured under an automobile insurance policy.

11:3-19.3 Filing requirements for standard/non-standard rating plans

(a) All insurers which write personal private passenger automobile insurance shall file standard/non-standard rating plans that provide different rates for risks separately described by the insurer's approved underwriting rules. No insurer shall implement or use a standard/non-standard rating plan that has not been filed and approved in accordance with N.J.S.A. 17:29A-45 and this subchapter.

(b) Merit rating surcharges, which are permitted to be included in rating systems by N.J.S.A. 17:29A-35, shall be incorporated only into the non-standard rate level of the voluntary market.

(c) An insurer shall initially establish a standard/non-standard rating plan by filing with the Commissioner the following items:

1. A narrative description of the plan, which shall include:

i. The percentage difference between the standard and non-standard rate levels;

ii. The variation of the difference by eligibility points;

iii. Any variation of the difference by coverage;

iv. The insurer's plan for determining upon renewal to which rate level a risk will be assigned; and

v. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the rate level to be used by each;

2. A complete set of underwriting rules that set forth qualifications for each rate level, which rules shall conform to the standards set forth in N.J.A.C. 11:3-35; and

3. Within 30 days of the date of approval of the underwriting rules or the effective date of the plan, whichever is later, manual rate pages for each rate level.

(d) A group of affiliated companies may file a standard/non-standard rating plan that provides that different individual insurance companies write risks at different rate levels.

11:3-19.4 Standards for disapproval or modification

(a) A standard/non-standard rating plan shall be disapproved for any of the following reasons:

1. If the average non-standard rate is in excess of 135 percent of the average of the combined standard and non-standard rates;

2. If the plan does not provide for an equitable graduated scale of non-standard rates based on accrued automobile insurance eligibility points;

3. If the plan does not provide that the insurer shall, after April 1, 1992, insure at either its standard or non-standard rate level all applicants and insureds defined as "eligible persons" in N.J.A.C. 11:3-34;

4. If the plan does not provide that the insurer shall insure at its standard rate level all insureds who have accrued no automobile insurance eligibility points during the previous three years;

5. If the underwriting rules do not meet the standards set forth in N.J.A.C. 11:3-35;

6. If the insurer fails to submit the items required for filing pursuant to N.J.A.C. 11:3-19.3; or

7. If the plan otherwise fails to meet any of the standards of this subchapter.

(b) The Commissioner may by rule or order direct an insurer with an approved standard/non-standard rating plan to modify its plan to conform to rules which may be adopted pursuant to N.J.S.A. 17:29A-45f that further define the non-standard voluntary market.

(c) A standard/non-standard rating plan may provide that any applicant who is not an "eligible person" as defined in N.J.A.C. 11:3-34 may be insured at the non-standard rate level during any period of time certified by the Commissioner for the cessation of the acceptance of applications or the issuance of new policies by the assigned risk plan, pursuant to N.J.S.A. 17:29D-1d.

11:3-19.5 Renewal of policy at proper rate level

(a) An insurer which has implemented a standard/non-standard rating plan shall issue and renew its policies at the appropriate rate level for which the risk qualifies in accordance with the insurer's approved underwriting rules. The transfer of a risk from one rate level to another within an insurer's standard/non-standard rating plan shall not be deemed to be a nonrenewal of the policy as provided by N.J.S.A. 39:6A-3 and N.J.A.C. 11:3-8 if the insurer complies with the provisions set forth below.

1. If the insured qualifies for the standard rate level after having been insured at the non-standard rate level, the insurer shall renew the insured at the standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3.

2. If the insured qualifies for the non-standard rate level after having been insured at the standard rate level, the insurer shall renew the insured at the non-standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3 after providing notice to the insured as follows:

i. Written notice shall be sent to the insured at least 30, but not more than 45, days before expiration of the policy;

ii. The written notice shall advise the insured that he or she no longer meets the insurer's approved underwriting rules for the standard rate level;

iii. The notice shall set forth a summary of the provisions of the underwriting rule that applies to the insured and the specific facts upon which the insurer relies to determine that the insured no longer is qualified for the standard rate level, including the specific events that resulted in the accrual of automobile insurance eligibility points; and

iv. The notice shall advise the insured of his or her right to contact other insurers to determine whether comparable insurance can be purchased elsewhere at less cost.

(b) An insurer which has implemented a standard/non-standard rating plan shall state on the policy declaration page the number of eligibility points that were used to rate the policy.

11:3-19.6 Procedural provisions

(a) An individual insurance company operating pursuant to a rating plan approved on or before November 14, 1989 may initially file a standard/non-standard rating plan in which the modification is expressed as a percentage increase or decrease of the existing rate level.

(b) Contemporaneously with filing a standard/non-standard rating plan with the Department, an insurer operating pursuant to a rating plan approved on or before November 14, 1989, shall deliver a copy of the filing to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
744 Broad Street
Newark, New Jersey 07102

1. The Public Advocate may intervene in the proceedings by filing notice with the Department within 10 days of date of receipt of the filing. A copy of the notice shall be contemporaneously sent to the insurer filing the plan.

2. The Public Advocate shall file with the Department its comments regarding the insurer's proposed rating plan and underwriting rules no later than 30 days after receipt of the filing. A copy of the comments shall be contemporaneously delivered to the insurer filing the plan.

3. The insurer may submit to the Department a response to the comments within 10 days of receipt. A copy shall be sent contemporaneously to the Public Advocate.

4. The decision of the Commissioner to approve or disapprove the rates and underwriting rules shall be based upon the documents submitted.

5. The Commissioner shall promptly notify the insurer whether the rating plan and underwriting rules have been approved or disapproved. A copy of the decision shall also be sent to the Public Advocate if it has filed a notice of its intention to intervene. Pursuant to N.J.S.A. 17:29A-45c, rates initially filed as a percentage increase or decrease of the existing rate level by an insurer which had rates approved on November 14, 1989, shall be deemed approved if not disapproved within 60 days.

(c) An individual insurance company which did not have a rating plan approved on or before November 14, 1989 may file a standard/non-standard rating plan by complying with the provisions of N.J.A.C. 11:3-19.3 and N.J.A.C. 11:3-16.5 (rate filing requirements for prior approval filings) even if it is one of a group of affiliated companies of which one or more companies has approved rates.

(d) All insurers which write personal private passenger automobile insurance shall file for approval on or before March 1, 1991 a standard/non-standard rating plan that meets the requirements of this subchapter.

11:3-19.7 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33-2.

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-29

Emergency New Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency Rules Filed: November 26, 1990 as R.1990 d.624.

Authority: P.L.1988, c.119, section 10, enacted September 8, 1988; as amended P.L.1988, c.156, section 4, enacted November 15, 1988; as amended P.L.1990, c.8, section 7, enacted March 12, 1990 (N.J.S.A. 39:6A-4.6).

Concurrent Proposal Number: PRN 1990-644.

Emergency New Rules Effective Date: November 26, 1990.

Emergency New Rules Operative Date: January 1, 1991.

Emergency New Rules Expiration Date: January 25, 1991.

Submit comments by January 16, 1991 to:

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

These rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

N.J.S.A. 39:6A-4.6 directs the Commissioner to promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to be made under the personal injury protection coverage provided by automobile insurance policies. The Department proposed promulgation of medical fee schedules in the April 3, 1989 issue of the New Jersey Register at 21 N.J.R. 842(b) but those schedules were never adopted.

Section 7 of the Fair Automobile Insurance Reform Act of 1990, P.L.1990, c.8 (enacted March 12, 1990) amended N.J.S.A. 39:6A-4.6 to require that the fee schedules incorporate the reasonable and prevailing fees of 75 percent of the practitioners within the region. If, in the case of a specialist provider, there are fewer than 50 specialists within a region, the fee schedule must incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis.

The law has also been amended to provide that no health care provider may demand or request any payment from any person in excess of that permitted by the medical fee schedules, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the fee schedules.

The medical fee schedules set forth in these reproposed new rules will apply to medical services and equipment provided on or after January 1, 1991, and represent the Department's second effort to implement the 1990 amendments and to develop schedules required by the new law. The initial proposal was published in the July 16, 1990 issue of the New Jersey Register at 22 N.J.R. 2086(a). That proposal elicited over 90 public comments from interested parties including insurance companies, health care providers, health care facilities and trade associations. The Department has been responsive to many of those comments in preparing this adoption and reproposal and is continuing to review others. The schedules are subject to biannual review (meaning twice a year) and thus may undergo refinement when and where appropriate.

Medical providers supplying services and equipment to those injured in automobile accidents include the following:

1. Providers of medical services, including medical doctors, osteopathic physicians, medical laboratories, etc.;
2. Chiropractors;
3. Dentists;
4. Nurses and other providers of allied health professional services, including registered nurses, physical therapists, speech therapists, occupational therapists, licensed practical nurses and home health agencies;
5. Providers of ambulance services; and
6. Providers of durable medical equipment and prosthetic devices.

The reproposed schedules are categorized by the type of service or equipment provided. Types of medical services are listed in a nationally recognized coding system known as the Physicians Current Procedural

Terminology, fourth edition (hereinafter "CPT-4"). The Department utilized the CPT-4 system as the basic code and description for medical services provided in the proposed fee schedule.

Using a large Statewide data base, the Department analyzed approximately 500,000 billed charges for CPT-4 services to determine levels of fees to be included in the schedule. The Department analyzed billed charges to develop Statewide and regional means. Statewide fees were used in the event the number of billed charges for a particular service in a particular region were inadequate for analysis.

To avoid wide disparities among regions for specific services, and to eliminate statistical anomalies, the scheduled fees were flattened so that all regions were within 10 percent of the fee that would exist had there been a single Statewide fee applied to each region. All fees were reviewed item by item and minor adjustments made where required to eliminate obvious fee aberrations among similar procedures.

Different payment schedules for different specialists are not established. The Department believes that the adopted fee schedules are sufficient to enable a specialist to receive just compensation compared to what a non-specialist might charge. Furthermore, only specialists will be doing the highly specialized procedures and the fee assigned to such procedures will reflect the specialized care being provided. The appropriate compensation for such procedures, therefore, will be the specialist's usual, customary and reasonable fee not exceeding the 75th percentile limit.

The schedule for medical services published on July 16, 1990, contained 390 CPT-4 codes which were aggregated into a smaller number of compressed codes, so that the fees for adjacent procedures were averaged. The new schedule decompresses these, so that a greater variability of fees depending on the intensity of the procedure is allowed. The new schedule contains 1018 CPT-4 codes and is thus much more complete than the July schedule. The underlying data for the new schedule uses a more recent experience period than was used previously.

To develop chiropractic fees, the Department used a large Statewide data base of 376,000 billed charges in four service categories. The resulting schedule allows for fee differentials among regions. The same methods were used here as for physicians' charges.

To develop dental service fees, the Department utilized the nationally recognized American Dental Association (hereinafter "ADA") numerical codes described on the schedules. The Department surveyed several large dental insurers and developed a database of over 2.6 million billed charges to establish the fees for each of the specific services described. The July 16th schedule contained 116 ADA codes and did not allow for fee differentials among the three mandated regions of the State. The new schedule includes data from two large sources, includes 286 ADA codes, allows for fee differentials among the regions, and uses a more recent experience period. The same methods were used here as for physicians' charges.

Nursing and allied health professional services provided to victims of traumatic injury include both nursing services and rehabilitation services for home physical therapy, home speech therapy and home occupational therapy. These services are generally billed on an hourly basis; home health care services are billed on a per visit basis. The Department surveyed a large medical insurer and several dozen providers of these services to determine the levels of fees billed and paid in the various regions of the State. The Department analyzed the level of prevailing fees for each of the specific services mentioned. With regard to these services, the data did not reveal significant or consistent differences among the various regions of the State; therefore the fees for each service are the same for each region.

Medical transportation services are provided to victims of automobile accidents both by Mobile Intensive Care Units (hereinafter "MICU") and by ambulance companies. For ambulance services, the Department referred to the Federal Medicare program rates for New Jersey. MICU services which are hospital based are subject to the jurisdiction of, and are regulated by, the New Jersey Department of Health.

In developing the schedule for durable medical equipment and prosthetic devices, the Department referred to a fee schedule used by the Federal Medicare program for New Jersey Medicare recipients. The Medicare program is the principal payer countrywide for durable medical equipment; it is generally the source of more than 50 percent of the total revenue of durable medical equipment providers. The July 16th schedule included 472 equipment codes; this proposed schedule has 974 codes with more recent Medicare-approved fees, including some rental-only equipment. The Medicare fee schedule contains a numerical code for each item which has been incorporated into the proposed schedule.

The schedule sets forth the retail purchase price, in some cases differentiating between new and used equipment, for each item of equipment and, where appropriate, the monthly rental for such equipment. The reproposed rules limit the monthly rental of any item to 10 percent of the purchase price and limit the total of rentals to 15 times the monthly rental fee. The Medicare schedule is applied in New Jersey without regard to region; therefore, the schedule reflects the same fee for durable medical equipment in each region.

With regard to services and equipment not currently on the fee schedules, these reproposed rules contain a provision that the limit of liability for medical expense benefits is a reasonable amount considering the fee schedule for similar services or equipment in the region where such services or equipment is provided or, in the case of elective services or equipment provided outside the State, the region where the insured resides.

N.J.A.C. 11:3-29.1 describes the purpose and scope, which is to establish medical fee schedules on a regional basis, as required by N.J.S.A. 39:6A-4.6 as amended. The scope is specifically limited to the medical expense benefit portion of the personal injury protection coverage in private passenger automobile insurance. The fee schedules do not apply to other automobile insurance coverages such as bodily injury liability, to other forms of health insurance, or to medical services or equipment provided outside of New Jersey unless provided at the election of the insured.

N.J.A.C. 11:3-29.2 sets forth definitions of various terms. "Basic Life Support" ("BLS") and "CPT-4" are now fully defined.

N.J.A.C. 11:3-29.3 sets forth the three regions into which the State of New Jersey is divided for purposes of these rules.

N.J.A.C. 11:3-29.4 sets forth specific rules for the application of the schedules.

N.J.A.C. 11:3-29.4(a) has been revised since the last proposal to clarify and emphasize that the reference in amended N.J.S.A. 39:6A-4.6 to the "reasonable and prevailing fees of 75% of the practitioners within the region" is not to be interpreted to mean that the prevailing fee at the 75th percentile should constitute a floor as well as a limit. On the contrary, health care providers are expected to continue to charge their usual, customary and reasonable fee—even if it is well below the 75th percentile. Subsection (a) is also intended to emphasize that only the cost of services and equipment that are medically necessary will be paid by insurers.

N.J.A.C. 11:3-29.4(b), (d)2 and (e) have been revised to state that when elective services or equipment are provided to New Jersey residents outside the State, the fee schedules prevailing in the region where the insured resides will apply.

N.J.A.C. 11:3-29.4(f) relating to multiple procedures has been revised to provide that reduced fees will not apply in cases involving two or more providers and/or different body regions.

Revised N.J.A.C. 11:3-29.4(g) prohibits the practice of "unbundling" or "fragmented" billing.

Formerly proposed N.J.A.C. 11:3-29.4(g) and (h), incorporating by reference hospital and health care facility fees established by the New Jersey Department of Health, have been deleted. The Department of Insurance does not intend to become involved in the regulation of fees charged by acute care hospitals, trauma centers, rehabilitation facilities, other specialized hospitals, residential alcohol treatment facilities and nursing homes. The fees charged by these facilities are appropriately regulated by the Department of Health. Included in these facilities' fees are fees for services provided by salaried providers and services that are normally billed by the institution. Not included are fees for services which are separately billed by the health care provider to the patient, and for which the fee schedules promulgated by the Department of Insurance would apply.

N.J.A.C. 11:3-29.5 sets forth the legislative prohibition against balance billing.

N.J.A.C. 11:3-29.6 consists of the medical fee schedules.

Social Impact

These reproposed rules affect automobile insurers, automobile insurance purchasers, and those who provide medical services and equipment to insureds injured in automobile accidents. The rules will have a positive social impact by furthering the legislative policy of controlling the cost of medical services and automobile insurance. The rules set limits of liability for medical services and equipment furnished to those injured in automobile accidents.

Economic Impact

These reproposed rules are expected to limit the amount of medical expenses paid by individuals and their automobile insurers. The fees included on the schedule are based on the reasonable and prevailing fees of 75 percent of the practitioners within the particular region. This will

result in an anticipated saving of a portion of the automobile insurance premium used for personal injury protection medical expenses. Some of this saving will be offset by the added costs to automobile insurers necessary to develop and implement the schedules through revised claims processing and adjudication procedures. Much of this administrative cost will be a capital cost that will provide rate savings over time. Health care providers will also incur some cost in the process of incorporating the fee schedules into their billing procedures and accepting lower fees in certain circumstances.

The Department will monitor the effect of these schedules to determine the actual economic impact, as provided in the legislation.

Regulatory Flexibility Statement

These reproposed rules will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" include insurers authorized to write private passenger automobile insurance. Less than 10 of the more than 200 automobile insurers in New Jersey qualify as "small businesses".

A regulatory flexibility analysis is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses beyond the statutory requirements. The medical fee schedules contained in the rules set forth the limits of liability for the medical expense benefit portion of the personal injury protection coverage contained in automobile insurance policies.

While the rules do not impose reporting, recordkeeping and other compliance requirements, it is fully expected that all automobile insurers, including those qualifying as small businesses, will implement the fee schedules in their claims adjudication processes so as to reduce loss expenses for personal injury protection medical expense claims.

Full text of the emergency adoption and concurrent reproposal follows:

SUBCHAPTER 29. MEDICAL FEE SCHEDULES: AUTOMOBILE INSURANCE PERSONAL INJURY PROTECTION COVERAGE

11:3-29.1 Purpose and scope

(a) This subchapter implements the provisions of amended N.J.S.A. 39:6A-4.6 to establish medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to be made by automobile insurers under PIP coverage.

(b) This subchapter applies to all insurers that issue policies of automobile insurance containing PIP coverage.

(c) These fee schedules do not apply to the following:

1. Other coverages contained in an automobile insurance policy such as coverage for bodily injury liability;

2. Any other kind of insurance including health insurance, even when the health insurer may be required pursuant to its health insurance contract to pay benefits to, or on behalf of, a person who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or an object propelled by or from an automobile; and

3. Medical services or equipment provided outside of the geographic boundaries of New Jersey except as set forth in N.J.A.C. 11:3-29.4(d)2.

11:3-29.2 Definitions

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

"Basic Life Support" ("BLS") means volunteer ambulance services, whose personnel are not required to be Emergency Medical Technicians, and municipal and proprietary ambulance services whose personnel are required to be Emergency Medical Technicians.

"CPT-4" means Physicians Current Procedural Terminology, 4th Edition, coding system and the description of medical service provided.

"Health insurance" means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. As used in this subchapter, health insurance includes workers' compensation coverage but does not include any PIP coverage.

"Health insurer" includes any insurer issuing a policy of health insurance as defined in this subchapter.

"PIP coverage" means personal injury protection coverage described in N.J.S.A. 39:6A-4a and N.J.S.A. 39:6A-10 as amended.

"PIP insurer" includes any insurer issuing a policy of automobile insurance on any vehicle that contains PIP coverage.

"Provider" includes all persons who furnish services or equipment for medical expense benefits for which payment is required to be made under PIP coverage in automobile insurance policies.

11:3-29.3 Regions

(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem.

(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, Sussex and Warren.

(c) Region III, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Morris, Passaic and Union.

11:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance issued in this State shall provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel a PIP insurer to pay more for any service or equipment than the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's limit of liability as set forth in the fee schedules. Insurers will not be required to pay for services or equipment which are not medically necessary.

(b) The region used to determine the proper fee set forth in the schedules shall be determined by the region in which the services were rendered or the equipment was provided or, in the case of elective services or equipment provided to New Jersey residents outside the State, by the region in which the insured resides.

(c) The fees set forth in the schedule for durable medical equipment are retail prices which may include purchase prices for both new and used equipment, and/or monthly rentals.

1. The insurer's limit of liability for monthly rental of durable medical equipment described in the schedule is 10 percent of the amount of the purchase price.

2. The insurer's total limit of liability for the rental of a single item of durable medical equipment set forth in the schedule is 15 times the monthly rental fee.

(d) The insurer's limit of liability for any medical expense benefit for service or equipment provided outside the State of New Jersey shall be as follows:

1. When the service or equipment is provided by reason of emergency or medical necessity, the reasonable and necessary costs shall not exceed fees that are usual, customary and reasonable for that provider in the geographic location where the service or equipment is provided.

2. When the service or equipment is provided by reason of the election by the insured to receive treatment outside the State of New Jersey, the reasonable and necessary costs shall not exceed fees set forth in the fee schedules for the geographic region in which the insured resides.

(e) The insurer's limit of liability for any medical expense benefit for any service or equipment not set forth in the fee schedules shall be a reasonable amount considering the fee schedule for similar services or equipment in the region where the service or equipment was provided or, in the case of elective services or equipment provided outside the State, the region in which the insured resides.

(f) When multiple procedures are performed in the same body region by the same provider at the same time, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principal procedure at an operative session shall be paid at 100

percent of the eligible charge, the second procedure at 50 percent, and, if performed, any additional procedures at a total of 25 percent of the charge. However, if two or more providers in different specialties perform procedures or if one provider performs multiple procedures on different body regions, each individual provider, or each individual body region procedure may be reimbursed separately. For purposes of such billing, the body shall be divided into: head (including skull and brain); face; neck; chest; abdomen; and pelvic regions. In addition, the extremities shall be subdivided into right and left, upper arm, forearm, wrist and hand; and thigh, lower leg, ankle and foot. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same medical visit.

(g) Artificially separating or partitioning what is inherently one total procedure into subparts which are integral to the whole for the purpose of increasing medical fees is prohibited. Such practice is commonly referred to as "unbundling" or "fragmented" billing. For surgery and many other procedures, it is established practice to include follow-up care and visits as part of the basic procedure charge. Such charges shall not be subject to additional billings. The existence of a CPT-4 code, per se, does not imply the right to receive separate compensation for the procedure/subprocedure so described. If a procedure is judged to be part of the major or principal procedure, only the charges for the principal procedure are eligible.

11:3-29.5 Balance billing prohibited

No health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules.

11:3-29.6 Medical Fee Schedules

(a) The following is the Medical Fee Schedule for physicians' services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—PHYSICIANS' SERVICES

CPT-4 Code	Description of Services	Region 1	Region 2	Region 3
10000	$I&D SEBACEOUS CYST; ONE LESION	91	91	96
10003	$I&D OF LESION WITH CAVITY TREATMENT	94	91	96
10020	$I&D OF FURUNCLE (BOIL)	91	91	91
10040	$ACNE SURGERY (CYSTS, PUSTULES ETC.)	48	48	54
10060	$I&D OF SKIN ABSCESS, SIMPLE	91	86	81
10061	I&D OF SKIN ABSCESS, COMPLICATED	275	269	269
10080	$I&D OF PILONIDAL CYST, SIMPLE	131	131	131
10100	$I&D OF ONYCHIA/PARONYCHIA, SIMPLE	48	43	43
10101	I&D OF ONYCHIA/PARONYCHIA, MULTIPLE	117	107	124
10120	$REMOVAL OF FOREIGN BODY, SIMPLE	99	91	86
10121	REMOVAL OF FOREIGN BODY, COMPLICATED	301	301	301
10140	$I&D OF HEMATOMA, SIMPLE	80	75	84
10160	$PUNCTURE ASPIRATION OF ABSCESS	92	102	112
11000	$DEBRIDEMENT OF SKIN; UP TO 10%	37	37	37
11040	DEBRIDEMENT; SKIN, PARTIAL THICKNESS	52	43	48
11041	DEBRIDEMENT; SKIN, FULL THICKNESS	93	107	113
11042	DEBRIDEMENT; SKIN, SUBCUTANEOUS TISS	168	162	140
11043	DEBRIDEMENT; SKIN, SUB-Q TISS, MUSCLE	454	454	486
11044	DEBRIDEMENT; SKIN, SUB-Q, MUSCLE, BONE	648	648	648
11050	$PARING/CURRETTE/SHAVING BGN LESION	46	45	54
11051	CURETTEMENT OF 2-4 BENIGN LESIONS	41	37	43
11052	CURETTEMENT OF > 4 BENIGN LESIONS	41	37	43
11100	BIOPSY 1 SKIN LESION, SUBCUTANEOUS	113	107	124
11101	BIOPSY EA ADDITIONAL SKIN LESION	75	75	75
11200	$EXCISION OF UP TO 15 SKIN TAGS	98	98	120
11400	EX BGN LES, TRUNK/LIMBS, TO 0.5 CM	123	124	150
11401	EX BGN LES, TRUNK/LIMBS, 0.6-1.0 CM	139	156	162
11402	EX BGN LES, TRUNK/LIMBS, 1.1-2.0 CM	211	216	259
11403	EX BGN LES, TRUNK/LIMBS, 2.1-3.0 CM	270	271	324
11404	EX BGN LES, TRUNK/LIMBS, 3.1-4.0 CM	403	377	432
11406	EX BGN LES, TRUNK/LIMBS, OVER-4.0 CM	589	530	648
11420	EX BGN LES, SCALP/NECK ETC, TO 0.5 CM	135	161	145
11421	EX BGN LES, SCALP/NECK ETC, .6-1.0 CM	179	194	216
11422	EX BGN LES SCALP/NECK ETC, 1.1-2.0 CM	253	275	296
11423	EX BGN LES SCALP/NECK ETC, 2.1-3.0 CM	351	316	377
11424	EX BGN LES SCALP/NECK ETC, 3.1-4.0 CM	416	416	416
11426	EX BGN LES SCALP ETC, OVER 4.0 CM	516	516	539
11440	EX BGN LES FACE/EARS ETC, TO 0.5 CM	133	145	162
11441	EX BGN LES FACE/EARS ETC, 0.6-1.0 CM	167	167	194
11442	EX BGN LES FACE/EARS ETC, 1.1-2.0 CM	230	269	269
11443	EX BGN LES FACE/EARS ETC, 2.1-3.0 CM	404	364	432
11444	EX BGN LES FACE/EARS ETC, 3.1-4.0 CM	550	550	550
11446	EX BGN LES FACE ETC, OVER 4.0 CM	597	597	597
11600	EX MAL LES TRUNK/LIMBS, TO 0.5 CM	283	283	291
11601	EX MAL LES TRUNK/LIMBS, 0.6-1.0 CM	253	269	310
11602	EX MAL LES TRUNK/LIMBS, 1.1-2.0 CM	291	291	356
11603	EX MAL LES TRUNK/LIMBS, 2.1-3.0 CM	403	403	432
11604	EX MAL LES TRUNK/LIMBS, 3.1-4.0 CM	592	592	592
11606	EX MAL LES TRUNK/LIMBS, OVER 4.0 CM	678	678	678
11620	EX MAL LES SCALP/NECK ETC, TO 0.5 CM	324	324	324

11621	EX MAL LES SCALP/NECK ETC, .6-1.0 CM	315	315	315
11622	EX MAL LES SCALP/NECK ETC, 1.1-2.0 CM	311	311	311
11623	EX MAL LES SCALP/NECK ETC, 2.1-3.0 CM	439	439	439
11624	EX MAL LES SCALP/NECK ETC, 3.1-4.0 CM	388	388	388
11640	EX MAL LES FACE/EARS ETC, TO 0.5 CM	305	274	336
11641	EX MAL LES FACE/EARS ETC, 0.6-1.0 CM	292	296	357
11642	EX MAL LES FACE/EARS ETC, 1.1-2.0 CM	311	326	377
11643	EX MAL LES FACE/EARS ETC, 2.1-3.0 CM	459	459	459
11644	EX MAL LES FACE/EARS ETC, 3.1-4.0 CM	465	465	453
11700	$DEBRIDEMENT NAILS, MANUAL; 5 OR LESS	28	32	32
11701	DEBRIDEMENT NAILS, EA ADD; 5 OR LESS	32	32	32
11710	$DEBRIDEMENT NAILS, GRINDER; 5 OR LESS	30	32	32
11711	DEBRIDEMENT NAILS, EA ADD; 5 OR LESS	32	32	37
11730	$NAIL AVULSION, SIMP, PARTIAL OR COM	61	61	50
11740	EVACUATION OF SUBUNGUAL HEMATOMA	48	48	48
11750	EX NAIL/MATRIX, PART/COMP, PERMANENT	346	372	377
11765	WEDGE EXC OF SKIN NAIL FOLD	146	146	146
11770	EX PILONIDAL CYST/SINUS; SIMPLE	487	487	487
11771	EX PILONIDAL CYST/SINUS; EXTENSIVE	1120	1120	1120
11772	EX PILONIDAL CYST/SINUS; COMPLICATED	1467	1467	1467
11900	$INJ INTRALESIONAL UP TO & INCLU 7	54	54	65
11901	$INJ INTRALESIONAL MORE THAN 7	80	75	86
12001	$SIMPLE REPAIR, SCALP ETC; TO 2.5 CM	107	124	120
12002	$SIMPLE REPAIR, SCALP ETC; 2.6-7.5 C	162	162	162
12004	$SIMPLE REPAIR, SCALP ETC; 7.6-12.5 C	233	233	233
12011	$SIMP REPAIR, FACE ETC; TO 2.5 CM	131	152	147
12013	$SIMP REPAIR, FACE ETC; 2.6-5.0 CM	190	190	189
12031	$INTER REPAIR, SCALP ETC; TO 2.5 CM	207	207	207
12032	$INTER REPAIR, SCALP ETC; 2.6-7.5 C	277	277	277
12041	$INTER REPAIR, NECK, ETC; TO 2.5 CM	218	218	218
12051	$INTER REPAIR, FACE ETC; TO 2.5 CM	438	394	482
12052	INTER REPAIR, FACE ETC; 2.6-5.0 CM	540	540	594
13121	COMPX REPAIR, SCALP ETC; 2.6-7.5 CM	637	637	637
13131	COMPX REPAIR, CHECKS ETC; 1.1-2.5 CM	547	547	547
13132	COMPX REPAIR, CHECKS ETC; 2.6-7.5 CM	846	846	809
13150	COMPX REPAIR, NOSE ETC; TO 1.0 CM	438	438	438
13151	COMPX REPAIR, NOSE ETC; 1.1-2.5 CM	639	639	648
13152	COMPX REPAIR, NOSE ETC; 2.6-7.5 CM	1040	1040	1040
13300	COMPLICATED REP; OVR 7.5 CM ANY AREA	1431	1431	1431
14040	ADJ TISS TRANS, CHIN ETC; TO 10 SQ CM	1225	1225	1269
14060	ADJ TISS TRANS, NOSE ETC; TO 10 SQ CM	1589	1589	1589
15100	SPLIT GRAFT, TRUNK ETC; TO 100 SQ CM	1261	1261	1261
16000	INITIAL TREATMENT, FIRST DEGREE BURN	75	75	75
16020	$DRESS/DEBRIDE SM BURN; NO ANESTHESIA	87	87	93
16025	$DRESS/DEBRIDE MED BURN; NO ANES	124	124	124
17000	$DESTROY FACE LES, ANY METH; ONE	83	96	99
17002	DESTROY FACE LES, ANY METH; OVER 3, EA	122	122	122
17010	DESTROY FACE LES, ANY METH; COMPLICATED	205	205	205
17100	$DESTROY SKIN LES, NOT FACE; ONE	70	81	81
17102	DESTROY SKIN LES, NOT FACE; 3-14, EACH	81	81	81
17105	DESTROY SKIN LES, NOT FACE; COMPLICATED	98	98	98
17110	$DESTROY WARTS, ANY METHOD; UP TO 15	81	79	81
17200	$ELECTROSURG DESTRUCTION TAGS; TO 15	109	113	107
17250	$CHEMICAL CAUTERIZATION OF WOUND	57	57	54
17304	CHEMOSURG, 1ST STG, FRESH TISSUE TECH	826	826	826
17340	$CRYOTHERAPY (C02 SLUSH, LIQUID N2)	67	70	81
17360	$CHEMICAL EXFOLIATION, ACNE; EG, PAST	78	78	78
19000	$PUNCTURE ASPIRATION CYST	107	118	113
19100	$BIOPSY OF BREAST; NEEDLE (SEP PROC	153	151	156
19101	BIOPSY OF BREAST; INCISIONAL	638	638	638
19120	EX BENIGN MALIG TUMOR/TISS ETC; UNI	794	794	970
19160	MASTECTOMY, PARTIAL, UNILATERAL	1093	1129	1134
19162	MASTECTOMY PART; AXILL LYMPHADENECT	2563	2563	2563
19240	MAST, MOD RAD, INC AXILL & PECT MUSCLE	2906	2906	3196
19318	REDUCTION MAMMOPLASTY	4974	4974	4974
20220	BIOPSY, BONE, TROCAR OR NEEDLE; SUPER	317	317	313
20299	BONE MARROW ASPIRATION BIOPSY	313	313	313
20500	$INJECTION SINUS TRACT; THERAPEUTIC	92	92	92
20550	$INJ, TEND SHEATH, LIGAMENT, TRIGGER P	96	96	91
20600	$ARTHROCENTESIS, ASP &/OR INJ; SM JNT	81	86	86
20605	$ARTHROCEN, ASP &/OR INJ; INTER JOINT	86	92	96

20610	$ARTHROCEN, ASP &/OR INJ; MAJOR JOINT	102	113	113
20670	$REMOVAL OF IMPLANT; SUPERFICIAL	187	187	187
20680	REMOVAL OF IMPLANT; DEEP	806	809	864
21320	MANIP TREATMNT, NOSE FX; STABILIZATION	719	719	719
23350	INJECTION PROC, SHOULDER ARTHROGRAPH	133	133	133
23420	REPAIR SHOULDER CUFF AVULSION, CHRON	3294	3294	3294
23500	TREAT CLOSED CLAVICLE FX; NO MANIPUL	237	237	237
23505	TREAT CLOSED CLAVICLE FX; W/MANIPUL	468	468	468
23600	TREATMENT CLOSED HUMERAL FX; NO MANIP	430	430	430
23650	TREAT CLOSED SHOULDER DISLOC, W/MANIP	470	470	470
24640	$RADIAL HEAD SUBLUXATION, CHILD, MANI	194	194	194
24650	CLOSED RADIAL HEAD/NECK FX; NO MANIP	505	505	505
25000	TEND SHEATH INCISION; RADIAL STYLOID	1022	1022	1022
25111	EXCISION GANGLION, WRIST; PRIMARY	1000	1000	1101
25500	CLOSED RADIAL SHAFT FX; NO MANIP	452	452	452
25505	CLOSED RADIAL SHAFT FX; W/ MANIP	559	559	559
25565	CLSD RADIAL & ULNAR SHAFT FX; W/ MANIP	843	843	843
25600	C/S DIS RAD FX/ EPIPHYS SEP; NO MANIP	498	486	513
25605	C/S DIS RAD FX/EPIPHYS SEP; W/ MANIP	657	594	702
25610	CLSD COMPLEX, DIST RAD FX/EPIPHY SEP	719	719	719
26055	TENDON SHEATH INCISION, TRIGGER FING	794	794	794
26160	EXCISION LESION TENDON SHTH OR CAPS	762	762	762
26600	TX CLOSED METACARP FX, SNG; W/O MANIP	323	323	346
26605	TX CLOSED METACARP FX, SNG; W/ MANIP	428	428	432
26720	TX CLOS PHALAN SHAFT FX; W/O MANIP	224	224	210
26725	TX CLOS PHALANG SHAFT FX, W/ MANIP	344	344	344
26750	TX CLOS DIST PHALANG FX; W/O MANIP	156	156	156
26755	TX CLOS DIST PHALANG FX; W/ MANIP	194	194	194
27093	INJECT FOR HIP ARTHROGRAPHY WO ANES	75	75	75
27130	#ARTHROPLAS; TOT HIP REPLAC W/WO GRF	4932	4618	5185
27236	OPEN TX CLOSE/OPEN FEM FX, INT FIX	3422	3422	3422
27244	OPEN TX CHANTERIC FEM FX; W INT FIX	2971	2971	2971
27447	#ARTHRO, KNEE, TOT, CNDYL&PLAT; MED & LAT	5022	5022	5402
27506	OPEN TX CLOS/OPEN FEM SHAFT FX	3955	3955	3955
27760	TX CLOSED DISTAL TIBIAL FX; W/O MAN	451	451	451
27786	TX CLOSED DISTAL FIBULAR FX; W/O MAN	521	521	518
27788	TX CLOSED DISTAL FIBULAR FX; W/ MAN	602	602	602
27810	TX CLOS BIMALLEOLAR ANKLE FX, W/ MAN	1033	1033	1033
27814	OPEN TX CLOS/OPEN BIMALL ANKLE FX	2522	2522	2522
27822	OPEN TX CL/OP TRIMALL ANKLE FX; ONLY	3155	3155	3155
28043	EXCIS, BENIGN TUM; SUBCUTANEOUS	444	444	444
28080	EXCISION MORTON NEUROMA, SNG, EA	967	967	967
28090	EXC LES TEN, SHEATH, CAP W/SYNOV; FOOT	844	844	844
28124	PART EX, PHALANX	687	687	687
28160	HEMIPHALANGECTOMY/JOINT EX, SNG, EACH	917	917	917
28285	#HAMMERTOE OPERATION; ONE TOE	910	910	935
28290	#BUNION OP; SILVER TYPE	1252	1252	1252
28292	#BUNION OP; KELLER, MCBRIDE, MAYO TYPE	1656	1656	1656
28296	#BUNION OP; MITCHELL OR CHEVRON TYPE	2209	2209	2209
28470	METATARSAL FX CLSD; W/O MANIP, EA	384	384	384
28475	METATARSAL FX CLSD; W/ MANIP, EA	390	390	390
28490	PHALANGES FX, CLSD; W/O MANIPULATION	148	148	148
28510	PHAL NT GT TOE FX CLSD W/O MANIP, EA	132	132	132
28515	PHAL NT GT TOE FX CLSD W/ MANIP EA	219	219	219
29065	CAST SHOULDER TO HAND (LONG ARM)	216	226	216
29075	CAST ELBOW TO FINGER (SHORT ARM)	188	216	205
29085	CAST HAND & LOWER FOREARM- GAUNTLET	185	185	185
29105	SPLINT LONG ARM (SHOULDER TO HAND)	137	137	137
29125	SPLINT SHORT ARM (FOREARM-HAND(STAT))	114	135	135
29130	SPLINT FINGER; STATIC	91	91	91
29240	STRAPPING; SHOULDER	89	89	89
29260	STRAPPING; ELBOW OR WRIST	69	69	70
29280	STRAPPING; HAND OR FINGER	58	58	62
29345	CAST LONG LEG (THIGH TO TOES)	279	279	279
29365	CAST CYLINDER (THIGH TO ANKLE)	208	208	208
29405	CAST SHORT LEG (BELOW KNEE TO TOES)	243	269	243
29425	CAST SHORT LEG; WALKING/AMBULATORY	280	291	296
29450	CAST CLUBFOOT W/MOLD/MANIP, L/SH, UNI	113	113	113
29455	CAST CLUBFOOT W/MOLD/MANIP, L/SH, BIL	182	182	182
29515	SPLINT SHORT LEG (CALF TO FOOT)	128	124	135
29530	STRAPPING; KNEE	93	93	91

29540	STRAPPING; ANKLE	75	75	75
29550	STRAPPING; TOES	59	59	65
29580	STRAPPING; UNNA BOOT	90	107	102
29700	CAST REM/BIV;GAUNTLET/BOOT/BODY	90	90	90
29705	CAST REM/BIV;FULL ARM/FULL LEG	83	83	86
29870	ARTHROSCPY, KNEE, DIAG, W/WO SYNOV BX	1785	1785	1785
29874	#ARTHROSCPY, KNEE, SURG; REMOVE F-BODY	2452	2452	2452
29875	ARTHROSCPY, KNEE, SURG; SYNOVECTMY, LTD	2594	2594	2594
29877	ARTHROSCPY, KNEE, SURG; CHONDROPLASTY	2640	2640	2640
29880	#ARTHRO, KNEE SRG, W/MENISECTOMY	2998	2998	2998
29881	#ARTHROSCOPY, W/MENISCTMY MED OR LAT	2627	2700	3106
29882	ARTHROSCOP, W/MENSCUS REP MED OR LAT	3189	3189	3189
29888	ARTHRO, AID ANT CRUC LGMNT, RP/AG/RC	4567	4567	4567
30200	$INJECTION TURBINATE(S), THERAPEUTIC	76	76	75
30420	RHINOPLASTY; INCL MAJOR SEPTAL REP	4041	4041	4213
30520	SEPTOPLASTY W/WO CARTILAGE IMPLANT	2479	2479	2700
30901	$CONTROL NASAL HEMORRHAGE, ANT SMP; U	104	107	102
30902	$CONTROL NASAL HEMORRHAGE, ANT, SMP; B	148	148	148
30903	$CNTROL NASAL HEMORRHAGE, ANT, COMP; U	159	143	162
31000	$LAVAGE CANNULATION; MAXIL SINUS, UNI	113	113	124
31001	$LAVAGE CANNULATION; MAXIL SINUS, BIL	150	150	150
31250	NASAL ENDOSCOPY, DIAGNOSTIC	226	226	226
31252	NASAL ENDOSCOPY SRG W/NASAL POLYPEC	311	311	311
31500	INTUBATION, ENDOTRACHEAL EMERGENCY	275	275	269
31505	LARYNGOSCOPY INDIRECT; DIAGNOSTIC	121	121	129
31515	LARYNGOSCOPY, DIRECT; FOR ASPIRATION	346	346	346
31525	LARYNGOSCOPY, DIR; DIAG, EXCEPT NEWBORN	421	421	421
31541	LARYNGOSCOPY, DIR, EX TUM/STRP; OP MIC	1319	1319	1431
31575	LARYNGOSCOPY, FLEX FIBERSCOPIC; DIAG	351	377	351
31600	TRACHEOSTOMY, PLANNED	1075	1075	1075
31622	BRONCHOSCOPY, DIAG; W W/O CELL WASHNG	737	702	778
31625	BRONCHOSCOPY; WITH BIOPSY	728	747	864
31628	BRONCHOSCOPY; WITH LUNG BIOPSY	909	909	972
32000	$THORACENTESIS, INITIAL/SUBSEQUENT	305	249	291
32020	TUBE THORACOSTOMY W/WO WATER SEAL	806	853	804
32480	LOBECTOMY, TOTAL OR SEGMENTAL	5660	5660	5660
33207	#INS PERM PACEMAKER/ELECT; VENTRICUL	2332	2332	2332
33208	#INS PERM PACEMAKER/ELECT; AV SEQ	2760	2760	2760
33210	INS TEMP CARD ELECT/PACEMAKER CATH	831	831	831
33212	INSERT/REPLC PULSE GENERATOR/AICD	1262	1262	1262
33405	REPLACMNT AORT VALV W CARD BYPASS	7986	7986	7986
33511	#CORONARY ARTERY BYPASS, AU GFT; TWO	6855	6855	6855
33512	#CORONARY ARTERY BYPASS, AU GFT; THREE	8142	8142	8186
33513	#CORONARY ARTERY BYPASS, AU GFT; FOUR	8520	8520	8373
33514	#CORONARY ARTERY BYPASS, AU GFT; FIVE	9183	9183	9183
35081	REP ANEURYSM, GFT; OCCLUS, ABDOM AORTA	5277	5277	5277
35301	THROMBOENDARDECTOMY; CAROTID, ETC; NCK	4215	4215	4215
35656	BYPASS GFT; FEMORAL-POPLITEAL	3937	3937	3937
36000	$INTRO NEEDLE/INTRACATHETER, VEIN; UN	118	103	124
36010	INTRO CATH; SUP/INF VENA CAVA, RT HRT	470	470	446
36200	CATHETER; AORTA	462	462	464
36400	VENIPUNCTURE, < 3 YR; FEM JUGULAR/SAGI	50	50	50
36410	$VENIPUNCTURE, > 3 YR, DIAG/THER, COMPL	41	41	43
36415	$ROUTINE VENIPUNCTURE 4 SPECMEN COLL	10	10	10
36425	VENIPUNCTURE, CUTDOWN; AGE 1 OR OVER	59	59	59
36430	TRANSFUSION, BLOOD/COMPONENTS; INDIR	153	153	162
36470	$INJ SCLEROSING SOLUTION; SINGLE VEI	81	81	81
36471	$INJ SCLEROS SOL; MULT VEINS, SAME LE	147	135	156
36488	$PLACE CENT VEN CATH; PERCUT; AGE 2& <	156	156	156
36489	$PLACE CENT VENOUS CAT; PERCUT, > 2	324	273	316
36491	$PLCMT CENT VEN CATH HYPERAL, > 2YR	444	442	437
36495	INSERT OF IMPLANTABLE INFUSION PUMP	1104	1118	1118
36600	$ART PUNCTURE, WITHDRAW BLD FOR DIAG	105	102	107
36620	ART CATH/CANNULAT FOR SAMP; PERCUTAN	216	216	216
36660	$CATH, UMBIL ART, NEWBORN, DIAG/THERAP	216	216	216
36800	INS CANNULA HEMODIALYSIS; VEIN-VEIN	571	571	571
36830	ARTERIOVEN FIST, NONAUTOGENOUS GRAFT	2833	2833	2833
36860	CANNULA DECLOTTING; WO BALLOON CATH	73	73	73
37609	LIGATION/BIOPSY, TEMPORAL ARTERY	584	584	584
37620	INTERRUPT, INFERIOR VENA CAVA BY SUT	2539	2539	2539
37720	#LIG&DIV STRIP LNG/SHORT SAPH VN, UN	1194	1194	1194
38500	BIOPSY/EX LYMPH NODE(S), SUPERFICIAL	463	463	463

38510	BX/EX LYMP NOD(S); DEEP, CERV NODE(S)	735	735	735
38745	AXILLARY LYMPHADENECTOMY; COMPLETE	2268	2268	2268
40812	EX LES MUCOSA&SUBMUCOSA; W/ SIMP REP	243	243	243
41820	GINGIVECTOMY, EX GINGIVA, EA QUADRANT	810	810	810
41896	OSSEOUS SURGERY	630	630	637
41897	TOOTH REMOVAL IMPACTED PARTIAL BONY	240	240	243
41898	TOOTH REMOVAL IMPACTED COMPLETE BONY	332	324	351
42820	#TONSILLECTOMY&ADENOIDECTOMY; < 12YRS	1039	999	1080
42821	#TONSILLECTOMY&ADENOIDECTOMY; > 12YRS	1103	1103	1103
42825	#TONSILLECTOMY, PRIM/SECOND; < AGE12	969	969	969
42826	#TONSILLECTOMY, PRIM/SECOND; 12/OVER	1075	967	1182
42830	#ADENOIDECTOMY, PRIMARY; < AGE 12	761	761	761
43204	ESOPHAGOSC W/INJ SCLEROSIS VARICES	952	952	952
43220	ESOPHAGOSC, RIG/FIBEROPT; W/DIR DILAT	918	918	918
43235	ESOPHAGOGASTRODUODENOSCOPY; DIAGNOST	594	541	648
43239	ESOPHAGOGASTRODUODENOSCOPY; W/ BIOP	713	604	702
43245	ESOPHAGOGASTRODUODENOSCOPY, DILATION	883	883	883
43246	ESOPHAGOGASTRODUODENOSCOPY, FOR TUBE	1093	1093	1093
43247	ESOPHAGOGASTRODUODENOSCOPY; W/REM FB	988	988	988
43255	ESOPHAGOGASTRODUOD; FOR HEMORRHAGE	1053	1053	1053
43260	ERCP W/WO BX +/SPEC COLLECTION	1000	939	1026
43450	$ESOPHAG, INDIRECT DILATE SOUND, INIT	152	152	152
43451	$ESOPHAG, INDIRECT DILATE SOUND, SUBS	162	162	162
43830	GASTROSTOMY, TEMPORARY (SEP. PROC.)	1594	1594	1594
44005	ENTEROLYSIS, ACUTE BOWEL OBSTRUCTION	2485	2485	2485
44120	ENTERECTOMY, RES SM INTES; W/ANASTOMO	2994	2994	2994
44140	COLECTOMY, PARTIAL; W/ANASTOMOSIS	3102	3102	3284
44143	COLECTOMY, PART; END COLOST/CLS DIST	3461	3461	3461
44145	COLECTOMY, PARTIAL; W/COLOPROCTOSTOMY	3501	3501	3501
44160	COLECTMY W/REM TERM ILEUM & ILEOCOL	3354	3354	3354
44950	APPENDECTOMY	1456	1404	1539
44960	APPENDECTMY RUP APPEN W/ABSCESS/PER	2036	2036	2036
45300	PROCTOSIGMOIDOSCOPY; DIAGNOSTIC (SEP)	129	129	124
45305	PROCTOSIGMOIDOSCOPY W/BIOPSY	222	222	222
45310	PROCTOSIGMOID W/REM POLYP/PAPILLOMA	284	284	284
45330	SIGMOIDOSCOPY, FLEX FIBEROPTIC; DIAGN	269	254	259
45331	SIGMOIDOSCOPY, FLEX FIBER, DIAG W/ BX	408	372	351
45333	SIGMOID, FLEXI FIBEROP REM POLYP LES	567	567	567
45355	COLONOSCOPY W/SIGMOID, TRANSAB/COLOT	354	377	335
45378	COLONOSCOPY, FIBER BEYOND SPLEN FLEX	809	702	783
45380	CLNSCPY, FIB, BEOND SPL FLEX W/BX&SPE	875	820	864
45383	COLNSCPY, FIB, BEYOND FLEX; ABLAT TUMR	1310	1310	1310
45385	CLNSCPY, FI, BE SP FLEX REM POLYP LES	1026	972	1080
46040	I&D ISCHIORECTAL/PERIRECTAL ABSCESS	466	466	466
46050	$I&D PERIANAL ABSCESS, SUPERFICIAL	155	155	155
46083	INCSN THROMBOSED HEMORROID, EXTERNAL	117	117	117
46200	FISSURECTOMY, W W/O SPHINCTEROTOMY	1080	1080	1080
46221	HEMORRHOIDECTOMY, SIMPLE LIGATURE	115	107	117
48255	#HEMORRHOIDECTOMY INT & EXT, SIMPLE	1295	1295	1295
46260	#HEMORRHOIDECTOMY, INT & EXT, COMPLIC	1448	1448	1431
46320	$ENUCLEATION/EXC EXT THROMB HEMORRH	199	199	188
46600	ANOSCOPY, DIAGNOSTIC (SEPARATE PROC)	93	114	93
46604	ANOSCOPY, DX W/DILATE, DIRECT, INSTRUM	124	124	124
46700	ANOPLASTY FOR STRICTURE, ADULT	1296	1296	1296
46900	$DSTRCT LES(S), ANUS, SIMPLE; CHEMICAL	84	84	84
46924	DESTRCT LES, ANUS, EXTENSIVE; ANY METH	1361	1361	1361
46934	#DESTRCT HEMRHD, ANY METHOD; INTERNAL	182	182	182
46945	LIGATE INT HEMORRHOIDS; SINGLE PROC	119	119	119
47000	$BIOPSY LIVER, NEEDLE, PERCUTANEOUS	396	396	396
47600	CHOLECYSTECTOMY	1991	1991	2433
47605	CHOLECYSTECTOMY W/CHOLANGIOGRAPHY	2183	2106	2296
47610	CHOLECYSTECTOMY W/EXPL COMMON DUCT	2686	2686	2686
49000	EXPLOR LAPAR/CELIOTOMY W/WO BX(S)	2114	2114	2204
49080	$PERITONEOCENTESIS, ABD PARACEN; INIT	202	216	247
49421	INS INTRAPERI CANN/CATH DRAIN, PERM	1012	1012	1012
49500	ING HERNIA, UNDER 5, W/WO HYDRO, UNI	1561	1561	1717
49505	ING HERNIA, OVER 5, UNILATERAL	1259	1340	1502
49506	ING HERNIA, OVER 5, BILATERAL	2592	2592	2592
49520	ING HERNIA, 5 OVER; UNILAT, RECURRENT	1733	1733	1733
49530	ING HERNIA, 5 OVER; UNI, INCARCERATE	1812	1812	1812
49560	REPAIR VENTRAL (INC) HERNIA (SEPAR)	1809	1809	1890

49581	REPAIR UMBILICAL HERNIA; 5 OR OVER	1422	1422	1422
50200	$RENAL BIOPSY, PERC (TROCAR, NEEDLE)	547	547	547
50590	LITHOTRIPSY, XTRACORPREAL SHOCK WAVE	2619	2619	2511
51700	$BLAD IRRIG, SIMP, LAVAGE &/ INSTILLA	70	65	78
51720	BLAD INSTILL ANTICARCINOGENIC AGNT	139	114	135
51725	SIMPLE CYSTOMETROGRAM	166	166	166
52000	CYSTOURETHROSCOPY	249	249	304
52005	CYSTOURETHROSC, W/URETERAL CATH	543	489	594
52204	CYSTOURETHROSCOPY, W/ BIOPSY	512	512	512
52214	CYSTOURETHROSC, W/FULG OF TRIBONE	648	648	648
52224	CYSTOURETHROSC, W/FULG, < .5CM	686	686	686
52234	CYSTOURETHROSC, W/FULG, BLAD, .5-2C	1032	1032	1032
52235	CYSTOURETHROSC, W/FULG, BLAD TM, 2-5CM	1360	1360	1296
52240	CYSTOURETHROSC, W/FULG, BLAD TM, > 5CM	1848	1848	1848
52276	CYSTOURETHROSC; DIR VIS INT URTHROT	964	964	964
52281	CYSTOURETHROSC W/DILAT URETH STR	464	432	486
52310	CYSTOURETHROSC; W/REM FB UR/BLAD, SIM	582	582	631
52332	CYSTOURETHROSC; W/ INS INDWELL STENT	866	866	945
52336	CYSTOURETHROSC; W/URET/PYEL; REM CALC	1877	1877	1877
52601	#TRNSURETHRAL RESECTION OF PROSTATE	2160	2109	2360
53600	$DILAT URET STRICT, W/ SOUND, MALE, IN	77	78	81
53601	$DILAT URET STRICT, W/ SOUND, MALE SU	64	64	63
53620	$DIL UR STRIC, FILLIFRM/FOLL, MALE, IN	132	132	132
53660	$DIL FEM UR W/ SUPPOS &/INSTILL, INIT	80	75	70
53661	$DIL FEM UR W/ SUPPOS &/ INSTILL, SU	69	65	59
53670	$CATHETERIZATION; SIMPLE	81	81	91
53675	$CATHETERIZATION; COMPLICATED	155	155	155
54050	$DSTRCT LES(S), PENIS, SIMPLE; CHEMICL	83	83	81
54055	$DESTR CONDYL, PENIS, MULT; ELECTRODES	163	163	163
54065	DESTRUCT LESION(S), PENIS, EXTENSIVE	351	351	351
54150	CIRCUMCISION, CLAMP PROC; NEWBORN	188	216	216
54160	CIRCUM, OT THAN CLAMP/DORS SLIT, NBRN	211	211	216
54161	CIRCUM, OT THAN CLMP/DORSLIT, XCPT NB	602	602	632
54235	INJ CORPORA CAVERNOSA W/PHARM AGNTS	105	105	104
55040	EXCISION OF HYDROCELE; UNILATERAL	1207	1207	1207
55250	VASECTOMY, UNI/BI, W POSTOP SEMEN XAM	621	539	573
55530	EX VARICOCELE/LIGATION SPERM VEINS	1897	1897	1897
55535	EX VARICO/LIG SPERM VEINS, ABDOM APP	1725	1725	1725
55700	NEEDLE/PUNCH BIOPSIE(S) OF PROSTATE	367	324	324
55821	#PROSTATECTOMY, COMP; SUPRAPUBIC, SUBT	2970	2970	2970
56420	$I&D BARTHOLIN GLAND ABSCESS, UNILAT	201	201	201
56440	MARSUPIALIZATION BARTHOLIN'S CYST	816	816	816
56501	DEST LESION(S), VULVA, SIMPLE; ANY MET	155	155	155
56515	DSTRCT LES, VULVA, EXTNSY, ANY METHOD	1044	1044	1044
56600	$BIOPSY OF VULVA (SEPARATE PROCEDURE	158	158	158
57061	DEST VAGINAL LESION(S); SMPL; ANY MET	232	232	232
57160	$INSERTION OF PESSARY	61	61	61
57452	$COLPOSCOPY (VAGINOSCOPY)	240	216	210
57454	$COLPOSCOPY W BIOPSIES/BIOPSY CERVI	302	286	269
57500	$BIOPSY/EXC CERV LESION, W/WO FULGUR	160	162	162
57505	ENDOCERVICAL CURETTAGE	254	254	254
57510	CAUTERIZATION CERVIX, ELECTRO/THERML	154	154	151
57511	$CRYOCAUTERIZATION OF CERVIX	188	188	216
57513	CAUTERIZATION CERVIX W/ LASER	780	780	780
57520	CONE BIOPSY CERVIX W/WO D&C/REPAIR	1184	1296	1188
57700	CERCLAGE UTER CERVIX, NONOBSTETRICAL	1394	1394	1394
57820	DILATION & CURETTAGE, CERVICAL STUMP	833	833	833
58100	$ENDOMETRIAL BIOPSY, SUCTION TYPE	188	194	173
58101	$ENDOMETRIAL WASHINGS, EG CYTOL SAMP	100	100	100
58102	OFFICE ENDOMETRIAL CURETTAGE	211	258	216
58120	D & C DIAG &/ THERAPEUTIC NONOBSTET	706	799	809
58140	MYOMECTOMY, SING/MULT, ABDOM APPROACH	2939	2939	2939
58150	#TOTAL HYSTERECTOMY, W/WO TUBES &/OVA	3121	3241	3781
58260	#VAGINAL HYSTERECTOMY	3233	3233	3233
58265	#VAG HYSTEREC W/ ANT & POST COLPORR	3382	3382	3382
58310	ARTIFICIAL INSEMINATION	159	143	175
58311	ARTIFICIAL INSEMINATE; SPERM WASHING	208	208	194
58340	$INJ PROC FOR HYSTEROSALPINGOGRAM	179	188	162
58600	LIG/TRANSECT FALL TUBE(S), UNI/BILAT	1669	1669	1669
58605	LIG/TRANSECT FALL TUBE POSTPARTUM	1349	1349	1349
58720	#SALPINGO-OOPHORECTOMY, PAR/COM, UN/B	2809	2809	2809

58925	OVARIAN CYSTECTOMY, UNILAT/BILATERAL	2731	2731	2731
58940	#OOPHORECTOMY, PART/TOTAL, UNI/BILATE	2635	2635	2635
58980	LAPAROSCOPY; SURGICAL	1747	1620	1922
58982	LAPAROSCOPY W/ FULGURATION OVIDUCTS	1576	1620	1620
58983	LAPAROSCOPY W/ OCCLUS OVID W DEVICE	1464	1464	1464
58985	LAPAROSCOPY W/ LYSIS OF ADHESIONS	2031	2031	2031
58990	HYSTEROSCOPY; DIAGNOSTIC	539	539	539
59000	$AMNIOCENTESIS, ANY METHOD	297	269	307
59020	$FETAL OXYTOCIN STRESS TEST	135	135	135
59025	FETAL NON-STRESS TEST	106	130	107
59160	D & C FOR CURETTAGE, POSTPARTUM	848	848	848
59400	RTE OBSTET CARE, INC ANTEPART, VAGIN	2355	2592	2781
59410	VAG DEL ONLY INC POSTPARTUM CARE	2458	2458	2485
59420	ANTEPARTUM CARE ONLY SEPARATE PROC	189	189	208
59499	OBSTETRICAL WITH CIRCUMCISION	2830	2830	2830
59502	#REPEAT C-SEC, LOW CERV & IH PP CARE	3103	3103	3103
59503	#REPEAT C-SEC, LOW CERV, ANT/PP CARE	3509	3509	3509
59510	OB CARE ANTE/POSTPARTUM CAR, C SECT	2794	3025	3241
59515	CESAREAN DELIV INC POSTPARTUM CARE	2968	2968	3187
59812	SPONT ABORT, TRIMEST, COMPLETE SURG	773	773	809
59820	TREAT MISS ABORT, COMP SURG, 1ST TRIM	756	809	809
59840	INDUCED ABORTION BY DILAT & CURETTG	744	728	756
59841	INDUCE ABORT BY DILAT & EVACUATION	756	702	809
59851	INDUCE ABORT W D&C &/EVACUATION	1026	1026	1026
60100	$BIOPSY THYROID NEEDLE	212	212	216
60220	TOTAL THYROID LOBECTOMY UNILATERAL	2802	2802	2802
61070	$PUNCT OF SHUNT TUBING/RESERVOIR	151	151	151
61510	CRANIEC/OTOMY, EXC BRAIN TUMOR, SUPRA	7258	7258	7258
62270	$SPINAL PUNCTURE LUMBAR; DIAGNOSTIC	216	216	216
62278	$INJ ANESTH SUB; EPIDURAL/CAUDAL, SIM	388	354	388
62279	$INJ ANESTH SUB; EPIDURAL/CAUDAL, CON	378	378	378
62282	$INJ NEUROLYTIC SUB; EPIDURAL/CAUDAL	486	486	486
62284	$INJ PROC MYELOGRAPHY, SPINAL/POST	535	535	589
62289	$INJ SUB OT THAN ANES/NEUROLYT; EP/C	420	420	432
63030	#LAMINOTOMY; 1 INTRSP, LMBR, UNILAT	4650	4650	4861
64440	$INJ, ANESTH AGNT; PARAVERTEBR, NRV, SN	92	92	83
64445	$INJ, ANESTHETIC AGENT; SCIATIC NERV	113	113	113
64450	$INJ, ANESTH AGNT; OT PERIPH NRV/BRAN	84	84	86
64505	$INJ, ANESTH AGNT; SPHENOPALATINE GAN	432	432	432
64640	DESTR BY NEUROLYTIC AGNT; OT PER NRV	118	118	118
64721	NEUR &/ TP; MEDIAN NRV @ CARPAL TUN	1380	1620	1620
64998	ACUPUNCTURE	51	48	54
65205	$REM FB, EXTERN EYE; CONJUNC SUPERFI	53	53	53
65210	$REM FB, EXTERN EYE; CONJUNC EMBEDDE	80	80	80
65220	$REM FB, EXTERN EYE; CORN, W/O SLIT L	103	103	103
65222	$REM FB, EXTERN EYE; CORN W/ SLIT LM	112	112	113
65855	TRABECULOPLSTY BY LASER, 1/MORE SESS	1460	1344	1583
66170	FIST SCLERA GLAUC; TRABECULECTOMY	2160	2160	2160
66761	IRIDOTMY BY PHOTOCOAG; FOR GLAUCOMA	1323	1350	1296
66821	#DISCIS 2NDARY MEMB CATARACT; LASER	1036	1042	1188
66830	#RM 2ND MEM CAT W/WO IRIDECTOMY	1256	1256	1256
66983	#INCAP CATRACT EX W INSRT LENS PROT	2356	2356	2356
66984	#EXCAP CATRACT REM W INSRT LEN PROT	2463	2485	2700
66985	INSRT INTRAOC LENS SUB TO CAT REM	2144	2144	2144
67101	REP RET DETACH, CRYOTHERAPY/DIATHERM	1646	1646	1646
67105	REP RET DETACH; PHOTCOAG, W/WO DRAIN	1635	1635	1635
67107	REP RETINAL DETACH; SCLERAL BUCKLIN	3714	3714	3714
67141	PROPHYLAXIS RET DETACH; DIATHERMY	1709	1709	1709
67145	PROPHY RET DETACH; PHOTOCOAGULATION	1508	1508	1508
67210	DESTRCT LOCAL LES RETINA; PHOTOCOAG	1321	1350	1296
67227	DESTRCT PROGRES RETNOPATHY, DIATHERM	1195	1195	1195
67228	DESTRCT PROGRES RETNOPATH; PHOTOCOAG	1296	1134	1296
67312	STRAB SURG ON NEW PAT; ANY 2 MUSCLE	1984	1984	1984
67500	$RETROBULBAR INJECTION; MEDICATION	126	126	126
67700	$BLEPHAROTOMY, DRAIN ABSCESS EYELID	86	86	86
67800	EXCISION CHALAZION; SINGLE	238	216	262
67801	EXCISION CHALAZION; MULTI, SAME LID	285	285	296
67820	$CORECT TRCHIASIS; EPILATION, FORCE	70	70	70
67840	$EX LES'N EYELID W/WO SIMPLE CLOSUR	251	251	269
68110	EXCISION LESION CONJUNCT; TO ONE CM	140	140	140
68800	$DILATION LACRIM PUNCTUM, W/WO IRRI	81	81	81

68820	$PROBING NASOLACRIM DUCT, W/WO IRRI	101	101	101
69200	REM F-BODY EXT AUD CANAL; W/O ANES	94	94	96
69210	REM IMPACTED CERUMEN, ONE/BOTH EARS	60	65	70
69400	EUST TUBE INFLATE, TRANSNAS; W CATH	81	81	81
69420	$MYRING W ASPIRE &/EUST TUBE INFLA	167	167	183
69433	$MYRNG/TYMPNOSTMY, LOC/TOP ANES, TUBE	306	306	324
69434	$MYRNG/TYMPNOST, L/T ANES; BOTH W TUB	475	475	475
69436	#MYRING/TYMPANOSTMY, GEN ANES; W TUBE	704	704	704
69437	#MYRING/TYMPNOST, GEN ANES; BOTH W TUB	657	648	686
70110	X-RAY MANDIBLE, COMP, MIN 4 VIEWS	65	65	65
70150	X-RAY FACIAL BONES, COMP, MIN 3 VIEWS	69	69	69
70160	X-RAY NASAL BONES, COMP, MIN 3 VIEWS	60	60	66
70200	X-RAY ORBITS, COMP, MIN 4 VIEWS	72	72	65
70210	X-RAY SINUSES, PARTIAL, > 3 VIEWS	82	82	86
70220	X-RAY SINUSES, COMP, MIN 3 VIEWS	95	89	102
70250	X-RAY SKULL, > 4 VIEWS, W/WO STEREO	67	67	67
70260	X-RAY SKULL, COMP, MIN 4 VIEWS, W/WO	81	74	70
70330	X-RAY TMJ, OPEN/CLOSED, BILATERAL	166	166	166
70336	MRI, TEMPOROMANDIBULAR JOINT	875	875	875
70355	ORTHOPANTOGRAM	70	70	70
70360	X-RAY NECK, SOFT TISSUE	45	45	43
70450	CAT SCAN, HEAD OR BRAIN, W/O CONTRAST	453	371	432
70460	CAT SCAN, HEAD OR BRAIN W/CONTRAST	517	428	458
70470	CAT SCAN, HEAD/BRN, WO CONT, FOL CONTR	612	535	535
70480	CAT SCAN, ORBIT/SELLA/FOSSA, WO CONTR	536	536	539
70481	CAT SCAN, ORBIT/SELLA/FOSSA, W/CONTR	505	505	505
70486	CAT SCAN, MAXILLOFACIAL, W/O CONTRAST	539	536	539
70491	CAT SCAN, NECK, SOFT TISSUE, W CONTR	501	501	481
70540	MRI, ORBIT, FACE AND NECK	918	918	918
70551	MRI, BRAIN, W/O CONTRAST	891	891	918
70552	MRI, BRAIN, W/CONTRAST	1096	1096	1096
71010	X-RAY CHEST, SINGLE, FRONTAL	43	41	48
71020	X-RAY CHEST, 2 VIEWS, FRONTAL/LATERAL	66	57	65
71021	X-RAY CHEST, 2 VIEWS, APICAL LORDOTIC	70	70	70
71022	X-RAY CHEST, 2 VIEWS, OBLIQUE PROJECT	80	80	80
71030	X-RAY CHEST, COMPLETE, MIN 4 VIEWS	73	77	77
71035	X-RAY CHEST, SPECIAL VIEWS	15	15	15
71100	X-RAY RIBS, UNILAT, 2 VIEWS	80	68	75
71101	X-RAY RIBS, UNI, INCL CHEST, 3 VIEWS	81	89	91
71110	X-RAY RIBS, BILAT, 3 VIEWS	80	80	80
71111	X-RAY RIBS, BI, INCL CHEST, 3 VIEWS	96	96	96
71120	X-RAY STERNUM, MIN 2 VIEWS	70	70	70
71250	CAT SCAN, CHEST, W/O CONTRAST	513	467	475
71260	CAT SCAN, CHEST, W/CONTRAST	580	527	507
71270	CAT SCAN, CHEST, WO CONT, FOL BY CONTR	476	476	476
72010	X-RAY SPINE, ENTIRE, SURVEY, A/P & LAT	135	129	145
72020	X-RAY SPINE, SINGLE VIEW	53	53	43
72040	X-RAY CERVICAL SPINE, A/P & LATERAL	65	65	65
72050	X-RAY CERV SPINE, A/P LAT, MN 4 VIEWS	107	96	107
72052	X-RAY CERV SPINE, COMP, OBLIQ/FLEX/EX	117	105	113
72070	X-RAY THORACIC SPINE, A/P & LATERAL	73	71	75
72074	X-RAY THOR SPINE, COMP, INCL OBLIQUES	83	83	83
72080	X-RAY THORACOLUMBAR SPINE, A/P & LAT	75	72	70
72090	X-RAY SPINE, SCOLIOSIS STUDY	79	79	75
72100	X-RAY LUMBOSACRAL SPINE, A/P & LAT	75	75	75
72110	X-RAY LUMBOSACRAL SPINE, COMPLETE	129	108	118
72114	X-RAY LUMB/SAC SPINE, INCL BENDING	140	133	131
72120	X-RAY LUMB/SAC SPINE, BENDING ONLY	81	81	89
72125	CAT SCAN CERVICAL SPINE WO CONTRAST	453	453	498
72128	CAT SCAN THORACIC SPINE WO CONTRAST	572	572	572
72131	CAT SCAN LUMBOSACRAL SPINE WO CONTR	550	513	577
72141	MRI, CERVICAL SPINE, W/O CONTRAST	918	864	891
72148	MRI, LUMBOSACRAL SPINE, W/O CONTRAST	914	914	918
72170	X-RAY PELVIS, ANTEROPOSTERIOR ONLY	66	59	63
72190	X-RAY PELVIS, COMP, 3 OR MORE VIEWS	67	67	67
72192	CAT SCAN PELVIS, W/O CONTRAST	413	413	372
72193	CAT SCAN PELVIS, W/CONTRAST	432	392	353
72194	CAT SCAN PELVIS, WO CONT FOL BY CONT	550	550	550
72196	MRI, PELVIS	938	938	938
72200	X-RAY SACROILIAC JOINTS, < 3 VIEWS	77	77	77
72202	X-RAY SACROILIAC JOINTS, 3 OR MORE	93	93	93

72220	X-RAY SACRUM & COCCYX, MIN 2 VIEWS	73	73	75
72265	MYELOGRAM, THORACIC, R SPINE	320	320	320
73000	X-RAY CLAVICLE, COMPLETE	61	60	65
73010	X-RAY SCAPULA, COMPLETE	62	62	62
73020	X-RAY SHOULDER, 1 VIEW	62	62	65
73030	X-RAY SHOULDER, COMPLETE, MIN 2 VIEWS	70	70	70
73041	ARTHROGRAM SHOULDER, COMPLETE PROC	295	295	295
73050	ARTHROGRAM, ACROMIOCLAVICULAR, BILAT	81	81	81
73060	ARTHROGRAM, HUMERUS, MIN 2 VIEWS	73	66	66
73070	X-RAY ELBOW, A/P & LATERAL	65	59	65
73080	X-RAY ELBOW, COMPLETE, MIN 3 VIEWS	67	65	70
73090	X-RAY FOREARM, A/P & LATERAL VIEWS	63	59	59
73100	X-RAY WRIST, A/P & LATERAL VIEWS	62	62	59
73110	X-RAY WRIST, COMPLETE, MIN 3 VIEWS	70	65	70
73120	X-RAY HAND, 2 VIEWS	59	54	59
73130	X-RAY HAND, MINIMUM 3 VIEWS	65	65	65
73140	X-RAY FINGER(S), MINIMUM 2 VIEWS	56	51	59
73220	MRI UPPER EXTREMITY, NOT JOINT	929	929	929
73221	MRI UPPER EXTREMITY JOINT	902	902	902
73500	X-RAY HIP, UNIL, 1 VIEW	63	63	65
73510	X-RAY HIP, UNIL, COMP, MIN 2 VIEWS	81	70	75
73520	X-RAY HIPS, BIL, MIN 2 VIEWS EA SIDE	96	100	102
73540	X-RAY PELVIS & HIPS, INFNT/CHILD, MIN 2	73	73	73
73550	X-RAY FEMUR, A/P & LATERAL VIEWS	75	70	70
73560	X-RAY KNEE, A/P & LATERAL VIEWS	70	70	70
73562	X-RAY KNEE, AP & LAT, OBLIQ, MIN 3 VIEWS	75	80	80
73564	X-RAY KNEE, COMPLETE	91	91	91
73590	X-RAY TIBIA, & FIBULA, A/P & LATERAL	65	65	75
73600	X-RAY ANKLE, A/P & LATERAL	57	57	70
73610	X-RAY ANKLE, COMPLETE PROCEDURE	75	65	70
73620	X-RAY FOOT, A/P & LATERAL	54	57	55
73630	X-RAY FOOT, COMPLETE, MIN 3 VIEWS	70	70	70
73650	X-RAY CALCANEUS, MINIMUM 2 VIEWS	59	64	65
73660	X-RAY TOE(S), MINIMUM 2 VIEWS	59	56	57
73700	CAT SCAN LEG, W/O CONTRAST	486	486	486
73720	MRI LOWER EXTREMITY, NOT JOINT	891	908	918
73721	MRI LOWER EXTREMITY JOINT	907	896	891
74000	X-RAY ABDOMEN, SINGLE A/P VIEW	54	53	59
74010	X-RAY ABDOMEN, AP, OBLIQUE, CONE VIEWS	48	44	39
74020	X-RAY ABDOMEN, COMP, DECUB/ERECT	46	54	54
74022	X-RAY ABDOMEN, ACUTE SERIES	61	60	60
74150	CAT SCAN ABDOMEN, W/O CONTRAST	465	423	443
74160	CAT SCAN ABDOMEN, W/CONTRAST	575	471	513
74170	CAT SCAN ABD WO CONT FOLL BY CONT	624	578	583
74181	MRI, ABDOMEN	958	958	958
74210	X-RAY PHARYNX &/OR CERV ESOPHAGUS	108	108	108
74220	X-RAY ESOPHAGUS	114	112	113
74230	SWALLOW FUNCT, PHAR/ESOPH, CINE/VIDEO	140	140	140
74240	X-RAY UPPER GI, W/O KUB	159	173	178
74241	X-RAY UPPER GI, W/KUB	182	187	221
74245	X-RAY UPPER GI, W/SM BOWEL, MULT FILM	221	220	259
74246	UPPER GI SERIES/BARIUM, W/O KUB	174	190	209
74247	UPPER GI SERIES, BARIUM, W/KUB	216	223	226
74249	UPPER GI, BARIUM, W/SM BOWEL FOLLOW	284	284	300
74250	X-RAY SMALL BOWEL, INCL MULT FILMS	153	153	162
74270	CONTRAST X-RAY COLON, BARIUM ENEMA	167	166	199
74280	CONTRAST X-RAY COLON, BARIUM, AIR CONT	232	222	229
74290	CHOLECYSTOGRAPHY, ORAL CONTRAST	104	116	127
74300	CHOLANG/PANCREATOGRAPHY INTRAOP	52	52	52
74400	UROGRAPHY/PYELOGRAPHY, IV, W WO KUB	168	168	173
74405	UROGRAPHY, IV, W/HYPERTENSIVE CONTR	210	210	210
74410	UROGRAPHY, INFUSION, DRIP/BOLUS TECH	188	188	188
74415	UROGRAPHY, INF, W/NEPHROMATOGRAPHY	198	216	226
74420	UROGRAPHY, RETROGRADE, W WO KUB	55	55	55
74431	CYSTOGRAPHY, MIN3 VIEWS, COMP PROC	151	151	151
74456	URETHROCYSTOGRAM, VOIDING, COMP PROC	235	235	235
74740	HYSTEROSALPINOGRAPHY, SUPRV/INTERP	146	146	146
74741	HYSTEROSALPINGOGRPHY, COMPLETE PROC	253	253	269
75821	VENOGRAPHY, EXTREMITY, UNI, COMP PROC	286	286	286
76000	FLUOROSCOPY, UP TO ONE HOUR	67	67	65
76020	X-RAYS FOR BONE AGE	68	68	68
76090	MAMMOGRAPHY, UNILATERAL	107	96	101

76091	MAMMOGRAPHY, BILATERAL	129	125	140
76096	LOCALIZE BREAST NODULE, PREOP, SNG	263	263	266
76098	X-RAY, BREAST SURGICAL SPECIMEN	59	59	59
76100	X-RAY, SINGLE PLANE BODY SECTION	120	120	120
76125	CINERADIOGR, COMPLEMENT ROUTINE EXAM	162	162	162
76140	CONSULT, XRAY MADE ELSEWHERE, WRITTEN	54	53	54
76150	XERORADIOGRAPHY	24	23	26
76370	CAT SCAN, GUIDE RADIOTHERAPY FIELDS	151	151	151
76375	CAT SCANS, OTHER PLANES	243	232	216
76499	DIAG RADIOLOGY, DEFAULT CODE	171	154	174
76506	ECHOENCEPHALOGRAPHY	101	101	101
76511	OPHTHALMIC ULTRASOUND, A-MODE	216	216	216
76512	OPHTHALMIC ULTRA, CONTACT B-SCAN	298	298	296
76516	OPHTHAL BIOMETRY, ULTRASOUND, A-MODE	188	196	216
76519	OPHTHAL BIOMETRY, W IOL POWER CALC	188	202	216
76536	ECHOGRAM, HEAD/NECK, B-SCAN/REAL TIME	182	182	191
76645	ECHOGRAM, BREAST, UNI/BI, B-SCAN/REAL	148	134	124
76700	ECHOGRAM, ABDOMEN, W IMAGE DOCUMENT	226	213	221
76705	ECHOGRAM, ABDOMEN, LIMITED	203	168	173
76770	ECHOGRAM, RETROPERITONEAL, COMPLETE	232	221	226
76775	ECHOGRAM, RETROPERITONEAL, LIMITED	198	198	198
76805	ECHOGRAM, PREGNANT UTERUS, COMPLETE	243	216	216
76815	ECHOGRAM, PREGNANT UTERUS, LIMITED	177	146	162
76816	ECHOGRAM, PREG UTERUS, REPEAT/FOLOWUP	132	132	119
76818	FETAL BIOPHYSICAL PROFILE	223	223	216
76825	ECHOGRAM, FETAL HEART	243	243	243
76830	ECHOGRAM, TRANSVAGINAL	269	269	269
76855	ECHOGRAM, PELVIC AREA (DOPPLER)	246	246	246
76856	ECHOGRAM, PELVIC, NON-OB, COMPLETE	226	185	194
76857	ECHOGRAM, PELVIC, NON-OB, LTD/FOLLOW	147	164	180
76870	ECHOGRAM, SCROTUM AND CONTENTS	291	291	269
76872	ECHOGRAM, PROSTATE, TRANSRECTAL	311	311	311
76880	ECHOGRAM, EXTREMITY, NON-VASCULAR	246	246	246
76925	ECHO, PERIPH VASC (DOPPLER, BSCAN)	255	232	216
76943	ULTRASONIC GUIDE, NEEDLE BIOPSY, COMP	446	446	446
76946	ULTRASONIC GUIDE, AMNIOCENTESIS, S/I	150	150	150
76947	ULTRASONIC GUIDE, AMNIOCENTESIS, COMP	242	242	218
77261	RADIOTHERAPY PLANNING, SIMPLE	216	216	216
77280	SET RADIOTHERAPY FIELD, SIMPLE	135	135	135
77300	BASIC RADIATION DOSIMETRY	107	107	107
77336	RADIATION PHYSICS CONSULT	140	140	140
77400	DAILY MEGAVOLT THEREAPY, SIMPLE	54	54	54
77410	DAILY MEGAVOLT THERAPY, COMPLEX	175	175	175
77415	PORT VERIFICATION FILMS, PER COURSE	43	43	43
77420	WEEKLY RADIATION THERAPY, SIMPLE	735	735	735
77430	WEEKLY RADIATION THERAPY, COMPLEX	475	475	475
78000	THYROID UPTAKE, SINGLE DETERMINATION	86	86	86
78006	THYROID IMAGING W/UPTAKE, SINGLE	233	233	243
78007	THYROID IMAGING W/UPTAKE, MULTIPLE	171	171	171
78010	THYROID IMAGING, ONLY	107	107	107
78215	LIVER & SPLEEN IMAGING, STATIC ONLY	164	164	164
78223	HEPATOBILIARY DUCT IMAGE, INCL GALL	145	145	145
78300	BONE IMAGING, LIMITED AREA	193	193	193
78305	BONE IMAGING, MULTIPLE AREAS	324	319	313
78306	BONE IMAGING, WHOLE SKELETON	296	269	269
78315	BONE SCAN, 3-PHASE TECHNIQUE	269	269	269
78351	BONE DENSITY, DUAL PHOTON ABSORPT	199	199	199
78415	CARDIAC BLOOD POOL, FUNCTIONAL IMAGE	188	188	188
78435	CARDIAC FLOW IMAGING	118	118	118
78460	MYOCARDIAL IMAGING, RESTING	258	258	254
78461	MYOCARDIAL IMAGING, EXERCISE	513	568	469
78464	MYOCARDIAL IMAGING, TOMOGRAM, REST	628	628	628
78465	MYOCARDIAL IMAGING, TOMOGR, EXERCISE	697	697	848
78470	CARDIAC OUTPUT	107	107	107
78471	CARDIAC BLOOD POOL, GATED EQ, EJ FRAC	246	246	265
78472	CARD BLD POOL, WALL MOTION, REG EJ FR	339	339	339
78481	CARD BLD POOL, 1ST PASS, EJ FRACTION	205	205	205
78484	CARD BLD, 1ST PASS, EJ FRAC, VENT VOL	269	269	269
78487	CARD BLD, 1ST PAS, EJF, VENT VOL, EX/PH	702	702	702
78580	PULM PERFUSION IMAGING, PARTICULATE	115	115	113
78585	PULM PERF IMAGING, PARTIC, REBREATH	175	175	175

78587	PULM VENTILAT IMAGING, AEROSOL, MULT	113	113	113
78701	KIDNEY IMAGING W/VASCULAR FLOW	237	237	237
78707	KIDNEY IMAGING, VASC & FUNCT STUDIES	310	310	310
78802	RADIONUCLIDE LOCAL TUMOR, WHOLE BODY	178	178	178
78890	AUTOMATED DATA, NUCL MED, TO 30 MIN	115	115	115
78891	AUTOMATED DATA, NUCL MED, OVER 30 MIN	150	150	151
78990	PROVISION OF DIAG RADIONUCLIDES	89	89	107
78999	NUCLEAR DIAGNOSTIC EXAM, DEFAULT	86	86	86
80002	*1-2 CLINICAL CHEM TESTS	35	35	35
80003	3 CLINICAL CHEMISTRY TESTS	25	25	25
80004	4 CLINICAL CHEMISTRY TESTS	24	24	24
80006	6 CLINICAL CHEMISTRY TESTS	51	51	51
80007	7 CLINICAL CHEMISTRY TESTS	26	26	26
80010	*10 CLINICAL CHEMISTRY TESTS	29	29	29
80012	*12 CLINICAL CHEMISTRY TESTS	37	37	37
80016	*13-16 BLOOD/URINE TESTS	46	51	43
80018	*17-18 BLOOD/URINE TESTS	41	37	43
80019	*19 OR MORE BLOOD/URINE TESTS	37	42	37
80031	DRUG MONITORING, ONE DRUG	80	80	80
80050	GENERAL HEALTH SCREEN PANEL	53	54	54
80055	OBSTETRIC PROFILE	82	82	82
80058	HEPATIC FUNCTION PANEL	45	45	45
80061	LIPID PROFILE	48	51	54
80062	CARDIAC EVALUATION PANEL	51	51	51
80070	THYROID PANEL	51	47	48
80099	PANEL, NOT SPECIFIED	66	66	67
80500	LAB PATHOLOGY CONSULTATION, LIMITED	39	39	39
81000	*URINALYSIS WITH MICROSCOPY	12	12	13
81002	*ROUTINE URINE ANALYSIS	12	12	10
81005	*URINALYSIS, ANY #NO	11	11	11
81015	*MICROSCOPIC EXAM OF URINE	8	8	8
82150	*ASSAY OF SERUM AMYLASE	18	18	16
82172	APOLIPOPROTEIN IMMUNOASSAY	18	18	18
82250	*ASSAY BLOOD BILIRUBIN	19	19	19
82270	*TEST FECES FOR BLOOD	12	12	15
82310	*ASSAY CALCIUM IN BLOOD, CHEMICAL	16	16	16
82372	ASSAY SERUM CARBAMAZEPINE	57	57	57
82374	*ASSAY BLOOD CARBON DIOXIDE	11	11	11
82465	*ASSAY SERUM CHOLESTEROL, TOTAL	16	15	15
82533	RIA ASSAY PLASMA CORTISOL	62	62	62
82550	*ASSAY CPK IN BLOOD, T.K.U. METHOD	21	21	20
82565	*ASSAY BLOOD CREATININE	15	15	15
82607	RIA ASSAY FOR VITAMIN B-12	60	60	60
82643	RIA ASSAY FOR DIGOXIN	49	49	49
82660	TEST FOR DRUGS	67	67	67
82670	RIA ASSAY OF ESTRADIOL	71	71	71
82728	ASSAY FERRITIN	22	22	21
82746	BLOOD FOLIC ACID RIA	53	53	53
82756	*FREE THYROXINE INDEX (T-7)	32	32	32
82784	ASSAY GAMMAGLOBULIN A/D/G/M	96	96	96
82947	*ASSAY BLOOD FLUID GLUCOSE	12	12	12
82948	STICK ASSAY OF BLOOD GLUCOSE	13	13	12
82950	GLUCOSE TEST	14	14	13
82951	GLUCOSE TOLERANCE TEST (GTT)	42	42	42
82952	GTT-ADDED SAMPLES	45	45	45
83001	PITUITARY GONADOTROPIN RIA	66	66	66
83002	PITUITARY GONADOTROPINS RIA	59	59	59
83020	ASSAY HEMOGLOBIN	13	13	12
83036	GLYCOSYLATED HEMOGLOBIN TEST	38	38	39
63540	*ASSAY SERUM IRON	15	15	15
83550	*SERUM IRON BONDING TEST	31	31	31
83555	SERUM IRON BINDING, AUTO-TEST	12	12	12
83705	ASSAY BLOOD LIPID GROUPS	29	29	29
83718	*ASSAY BLOOD LIPOPROTEIN, PRECIP	17	18	15
83719	*BLOOD LIPOPROTEIN ASSAY, ULTRACENT	33	33	33
83720	*BLOOD LIPOPROTEIN ASSAY, FRACT CALC	16	16	16
83725	ASSAY BLOOD LITHIUM	27	27	26
83735	*ASSAY BLOOD MAGNESIUM, CHEMICAL	25	25	25
84045	ASSAY PHENYTOIN	57	57	57
84065	ASSAY PROSTATE PHOSPHATASE, FRACTION	41	41	41
84075	*ASSAY ALKALINE PHOSPHOTASE, BLOOD	15	15	15

84132	*ASSAY BLOOD POTASSIUM	13	13	12
84144	ASSAY PROGESTERONE	62	62	68
84146	RIA ASSAY FOR PROLACTIN	79	79	80
84180	ASSAY URINE PROTEIN	30	30	30
84231	RADIOIMMUNOASSAY	94	94	94
84233	ASSAY ESTROGEN	43	43	43
84295	*ASSAY BLOOD SODIUM	19	19	19
84403	RIA ASSAY BLOOD TESTOSTERONE	95	95	95
84420	ASSAY THEOPHYLLINE	54	54	54
84435	*ASSAY THYROXINE (T-4)	25	25	25
84436	RIA ASSAY, TRUE THYROXINE	22	24	21
84439	*RIA ASSAY, FREE THYROXINE	53	53	50
84443	ASSAY THYROID STIM HORMONE	60	59	66
84450	*UV-ASSAY TRANDAMINASE (SGOT)	14	14	14
84460	*UV-ASSAY TRANSAMINASE (SGPT)	14	14	14
84478	*ASSAY BLOOD TRIGLYCERIDES	18	18	16
84479	*ASSAY TRIIODOTHYTONINE (T-3)	16	16	15
84480	RIA ASSAY, TT-3	58	58	64
84520	*ASSAY BUN	12	12	13
84550	*ASSAY BLOOD URIC ACID	19	19	19
84702	CHORIONIC GONADOTROPIN TEST	58	58	60
84703	CHORIONIC GONADOTROPIN ASSAY	29	29	30
84999	CLINICAL CHEMISTRY TEST	90	90	90
85005	BASOPHIL BLOOD CELL COUNT	15	15	15
85007	*DIFFERENTIAL WBC COUNT, W/MORPH+PLT	12	12	11
85009	DIFFERENTIAL WBC COUNT, BUFFY COAT	9	9	9
85014	*HEMATOCRIT	12	10	12
85018	*HEMOGLOBIN, COLORIMETRIC	12	10	10
85021	AUTOMATED HEMOGRAM, R/WBC, HGB, HCT, IN	17	15	16
85022	AUTOMATED HEMOGRAM, MAN DIFF, WBC	19	21	21
85023	AUTOMATED HEMOGRAM, PLAT, AUT+MAN, CBC	31	31	25
85024	AUTOMATED HEMOGRAM, PLT, AUT+AUT PART	27	30	26
85025	*AUTO HEMOGRAM, PLATLETE, AUT+AUT COMP	18	18	18
85027	AUTOMATED HEMOGRAM, HEM+PLAT COUNT	23	22	23
85029	AUTOMATED HEMOGRAM, RDW+MPV 1-3 IND	4	4	4
85031	*MANUAL HEMOGRAM, COMPLETE CBC	21	20	21
85044	RETICULOCYTE COUNT	15	15	15
85060	BLOOD SMEAR INTERPRETATION	37	37	37
85580	*BLOOD PLATELET COUNT	15	15	15
85595	*ELECTRONIC PLATELET COUNT	14	15	14
85610	PROTHROMBIN TIME	16	15	14
85650	RBC SEDIMENTATION RATE, WINTROBE	16	15	16
85651	RBC SEDIMENTATION RATE, WESTERGREN	15	15	14
85730	THROMBOPLASTIN TIME, PART, PLAS/WHOLE	23	23	22
86006	*ANTIBODY, QUALITATIVE, FIRST	26	26	26
86008	ANTIBODY, QUANT., FIRST	54	54	54
86016	RBC SALINE ANTIBODIES, HP+ANTIHUMAN	18	18	18
86038	ANTINUCLEAR ANTIBODIES, RIA	42	42	42
86060	ANTISTREPTOLYSIN O TITER	32	32	32
86082	*BLOOD TYPING, ABO & RHO(D)	23	23	20
86100	BLOOD TYPING, RHO(D) ONLY	6	6	6
86128	BLOOD AUTOTRANSFUSION	432	432	432
86140	C-REACTIVE PROTEIN	25	25	25
86149	CARCINOEMBRYONIC ANTIGEN, GEL	66	66	66
86151	CEA ASSAY, RIA OR EIA	74	74	77
86171	COMPLEMENT FIXATION, EACH	58	58	64
86225	DNA ANTIBODY	62	62	62
86244	ASSAY ALPHA-1 FETROPROTEIN	65	65	65
86255	FLUORESCENT ANTIBODY; SCREEN	78	78	83
86256	*FLUORESCENT ANTIBODY; TITER	68	68	68
86280	HEMAGGLUTINATION INHIBITION	30	30	30
86287	HEPATITIS HAA, RIA, OR EIA	32	32	31
86289	HEPATITIS BC ANTIBODY TEST, HBCAB	49	49	49
86291	HEPATITIS BS ANTIBODY TEST, HBSAB	37	37	37
86296	HEPATITIS A ANTIBODY TEST, HAAB	51	51	51
86300	HETEROPHILE ANTIBODY SCREEN	20	20	20
68310	HETEROPHILE ANTIBODIES	35	35	35
86312	HIV ANTIBODY DETECTION	51	51	51
86316	IMMUNOASSAY, TUMOR ANTIGEN	61	61	63
86317	IMMUNOASSAY, INFECTIOUS AGENT	67	74	60
86329	IMMUNODIFFUSION, EACH	67	67	67

86357	LYMPHOCYTES, T&B DISTINCTION	179	179	179
86403	RAPID TEST, INFECTIOUS AGENT	20	20	19
86421	RADIOALLERGOSORBENT TESTS, 5/ <	34	34	34
86422	RADIOALLERGOSORBENT TESTS, 6/ >	346	346	346
86423	RADIOIMMUNOSORBENT TEST IGE, QUANT	58	58	58
86430	*RHEUMATOID FACTOR TEST	18	18	16
86580	TB INTRADERMAL TEST	15	15	15
86585	TB TINE TEST	14	13	15
86592	*BLOOD SEROLOGY, QUALITATIVE	15	15	14
86999	IMMUNOLOGY PROCEDURE	82	82	82
87040	BLOOD CULTURE FOR BACTERIA	51	51	54
87045	STOOL CULTURE FOR BACTERIA	45	45	45
87060	NOSE/THROAT CULTURE, BACTERIA	15	15	16
87070	CULTURE SPECIMEN, BACTERIA	35	32	36
87072	CULTURE OF SPECIMEN BY KIT	20	18	21
87081	BACTERIA CULTURE SCREEN	18	16	19
87082	CULTURE OF SPECIMEN BY KIT, SINGLE	19	19	19
87084	CULTURE OF SPECIMEN BY KIT, COL EST	19	19	19
87086	URINE CULTURE, COLONY COUNT	30	26	31
87087	URINE BACTERIA CULTURE, COMMERC KIT	22	22	24
87088	URINE BACTERIA CULTURE, ID+COM KIT	26	26	26
87101	SKIN FUNGUS CULTURE	25	25	25
87102	FUNGUS ISOLATION CULTURE	38	38	38
87106	FUNGUS IDENTIFICATION	26	26	26
87109	MYCOPLASMA CULTURE	74	74	74
87110	CULTURE, CHLAMYDIA	80	80	80
87177	OVA AND PARASITES SMEARS	63	63	63
87184	*ANTIBIOTIC SENSITIVITY, EACH, DISC	25	25	22
87186	*ANTIBIOTIC SENSITIVITY, MIC	16	16	16
87205	SMEAR, STAIN & INTERPRET, ROUTINE	17	17	17
87210	SMEAR, STAIN & INTERPRET, WET+SIMPLE	16	16	15
87253	VIRUS INOCULATION FOR TEST, ADDL STD	70	70	70
87999	MICROBIOLOGY PROCEDURE	26	26	26
88104	CYTOPATHOLOGY, W/CENTRIF, WO/CRV+VAG	73	73	71
88108	CYTOPATHOLOGY, CONCENTRATION	102	102	102
88150	CYTOPATHOLOGY, PAP SMEAR, TECH	19	21	21
88151	CYTOPATHOLOGY INTERPRETATION, PHYS	21	21	21
88155	CYTOPATHOLOGY, PAP SMEAR, W/HORMONAL	25	23	21
88160	CYTOPATHOLOGY, ANY OTHER SOURCE	46	46	46
88161	CYTOPATHOLOGY, PREP, SCRN+INTERPET	9	9	9
88267	CHROMOSOME ANALYSIS:PLACENTA	626	626	626
88300	SURGICAL PATHOLOGY, GROSS	28	28	26
88302	SURGICAL PATHOLOGY, COMP, NORM TISS	48	50	48
88304	SURGICAL PATHOLOGY, COMP, ABNORM TSS	73	80	75
88305	SURGICAL PATHOLOGY, COMP, WO/COMPLEX	124	124	129
88307	SURGICAL PATHOLOGY, COMP, COMPLEX	192	192	194
88309	SURGICAL PATHOLOGY, COMP, COMPLX, DIS	269	269	269
88313	SPECIAL STAINS, GROUP2+OTHERS	21	21	21
88331	CONSULT DURING SURG, FROZEN SECTIONS	147	147	145
88346	IMMUNOFLUORESCENT STUDY	42	42	42
88399	SURGICAL PATHOLOGY PROCEDURE	43	43	43
89300	SEMEN ANALYSIS, PRES+/MOT, HUHNER	72	72	72
89320	SEMEN ANALYSIS, COMPLETE	114	114	114
89389	LABORATORY, DEFAULT CODE	75	62	67
89399	PATHOLOGY, DEFAULT CODE	40	40	36
90000	OFFICE/OP VISIT, NEW, BRIEF	49	60	59
90010	OFFICE/OP VISIT, NEW, LTD	54	54	56
90015	OFFICE/OP VISIT, NEW, INTERM	66	66	81
90017	OFFICE/OP VISIT, NEW, EXTEND	91	67	107
90020	OFFICE/OP VISIT, NEW, COMPRH	129	107	118
90025	OFFICE VISIT, NEW/ESTAB, DEFAULT CODE	52	54	60
90030	OFFICE/OP VISIT, EST, MINIM	32	32	32
90040	OFFICE/OP VISIT, EST, BRIEF	37	43	43
90050	OFFICE/OP VISIT, EST, LTD	44	44	53
90060	OFFICE/OP VISIT, EST, INTERM	48	48	54
90070	OFFICE/OP VISIT, EST, EXTEND	70	64	75
90080	OFFICE/OP VISIT, EST, COMPRH	86	81	91
90140	HOME VISIT, BRIEF	189	189	189
90150	HOME VISIT, LIMITED	82	82	82
90200	HOSPITAL CARE, NEW, BRIEF	142	142	145
90215	HOSPITAL CARE, NEW, INTERMED.	148	139	162
90220	HOSPITAL CARE, NEW, COMPREH.	162	162	167

90225	HOSPITAL CARE, NEW, NEWBORN	152	138	135
90240	HOSPITAL VISIT, BRIEF	58	63	65
90250	HOSPITAL VISIT, LIMITED	55	59	65
90260	HOSPITAL VISIT, INTERMEDIATE	54	54	65
90270	HOSPITAL VISIT, EXTENDED	82	84	96
90280	HOSPTIAL VISIT, COMPREHENSIVE	97	88	86
90282	NORMAL NEWBORN CARE, HOSPITAL	85	85	81
90292	HOSPITAL DISCHARGE DAY	81	81	91
90510	EMERGENCY CARE, NEW, LIMITED	72	72	72
90515	EMERGENCY CARE, NEW, INTERMED	100	100	101
90517	EMERGENCY CARE, NEW, EXTEND.	139	139	139
90600	LIMITED CONSULTATION	102	102	107
90605	INTERMEDIATE CONSULTATION	131	131	135
90610	EXTENDED CONSULTATION	140	162	162
90620	COMPREHENSIVE CONSULTATION	178	178	194
90630	COMPLEX CONSULTATION	216	189	216
90635	CONSULT (INIT/FUP), DEFAULT CODE	116	116	116
90640	BRIEF FOLLOW-UP CONSULT	68	68	68
90641	LIMITED FOLLOW-UP CONSULT	76	76	81
90642	INTERMEDIAT FOLLOWUP CONSULT	86	86	105
90643	COMPLEX FOLLOW-UP CONSULT	124	124	135
90650	2ND OR 3RD OPINION, LIMITED	113	113	113
90652	2ND OR 3RD OPINION, EXTENDED	162	162	162
90653	2ND OR 3RD OPINION, COMPREHENSIVE	135	135	135
90701	DTP IMMUNIZATION	31	31	31
90707	MMR VIRUS IMMUNIZATION	51	51	51
90712	ORAL POLIOVIRUS IMMUNIZATION	28	28	28
90761	PREVENTIVE MEDICINE, 12-17	51	51	51
90762	PREVENTIVE MEDICINE, 5-11	46	46	46
90763	PREVENTIVE MEDICINE, 1-4	45	45	45
90764	PREVENTIVE MEDICINE, INFANT	44	44	48
90782	INJECTION SUBCU/(IM)	27	29	26
90799	THERAPEUTIC INJ, DEFAULT CODE	30	30	27
90841	INDIVIDUAL PSYCHOTHERAPY, UNSPEC	95	95	95
90843	INDIVIDUAL PSYCHOTHERAPY, 20-30 MIN	78	78	78
90844	INDIVIDUAL PSYCHOTHERAPY, 45-50 MIN	128	129	129
90935	HEMODIALYSIS, SINGLE EVAL	1868	1868	1868
92004	EYE EXAM & TREATMENT, NEW PT, COMP	75	75	75
92012	EYE EXAM & TREATMENT	57	57	59
92014	EYE EXAM & TREATMENT	75	75	75
92020	GONIOSCOPY W/EVALUATION	59	59	59
92081	VISUAL FIELD EXAM, LIMITED	57	57	57
92082	VISUAL FIELD EXAM, INTERMEDIATE	65	65	65
92083	VISUAL FIELD EXAM, ENTENDED	89	89	89
92100	SERIAL TONOMETRY, 1 OR MORE SESSIONS	42	42	42
92225	OPHTHALMOSCOPY, EXTENDED, INITIAL	126	126	126
92226	OPHTHALMOSCOPY, EXTENDED, SUBSEQUENT	65	65	65
92235	OPHTHALMOSCOPY W/ANGIOGRAPHY	287	287	287
92250	OPHTHALMOSCOPY W/FUNDUS PHOTOGRAPHY	74	74	74
92551	PURE TONE AUDIOMETRY, AIR ONLY	24	24	24
92552	PURE TONE AUDIOMETRY, AIR & BONE	33	33	33
92553	AUDIOMETRY, AIR & BONE	47	47	47
92557	COMPREHENSIVE AUDIOMETRY	80	80	72
92566	IMPEDANCE HEARING TEST	30	30	32
92567	TYMPANOMETRY	24	22	26
92982	PERCUT TRNSLUMINL CORN ANGIO; 1 VESL	3207	3207	3241
93000	ELECTROCARDIOGRAM, COMPLETE	54	54	59
93010	ELECTROCARDIOGRAM REPORT	38	37	43
93014	REPORT ON TRANSMITTED ECG	40	40	40
93015	CARDIOVASC STRESS TEST, TRAC/INTERP	291	269	296
93018	CARDIOVASC STRESS TEST, INTERP ONLY	183	183	188
93040	RHYTHM ECG WITH REPORT	47	47	47
93042	RHYTHM ECG, REPORT	27	27	27
93224	24 HR ECG, SCANNER, RECORD/INTERP	322	322	322
93307	ECHOCARDIOGRAPHY, REALTIME, COMPLETE	342	308	376
93320	DOPPLER ECHOCARDIOGRAPHY, COMPLETE	257	257	232
93501	HEART CATHETERIZATION RIGHT, ONLY	1117	1117	1117
93503	HEART CATH RT; W/SWAN-GANZ CATH	774	756	809
93547	HRT CATH LFT COR ANG & VENT ANG	1583	1620	1566
93548	HRT CAT LFT COR ANG VENT AORT RT AO	1539	1539	1539
93549	HRT CAT RT & LFT COR ANG VENT ANG	1674	1755	1993
93552	LT HRT CAT COR ANG VEN CIN; VIS BYPS	2183	2183	2183

93762	PERIPHERAL THERMOGRAM	432	432	432
93870	CAROTID ARTERY IMAGING	397	397	432
93910	LOWER LIMB ARTERY STUDY	257	257	256
93950	NONINVASIVE EXTREMITY VEIN STUDIES	171	171	171
93960	QUANTITATIVE VENOUS FLOW STUDIES	269	269	269
94010	SPIROMETRY	64	57	65
94060	BRONCHOSPASM EVALUATION	127	127	135
94160	VITAL CAPACITY SCREENING	25	25	25
94240	RESIDUAL LUNG CAPACITY	81	81	81
94375	RESPIRATORY FLOW VOLUME LOOP	88	88	84
94700	BLOOD GAS ANALYSIS, REST ONLY	60	60	60
94720	CARBON MONOXIDE DIFFUSING CAPACITY	107	107	107
95000	PERCUTANEOUS ALLERGY TESTS: 1-30	79	79	79
95020	INTRCUT TSTS, EXTRACTS, 15-20 MIN: <11	76	76	76
95021	INTRCUT TSTS, EXTRCTS, 15-20 MN:11-20	107	107	107
95115	IMMUNOTHERAPY, 1 INJ, PROF SERV ONLY	26	26	26
95117	IMMUNOTHERAPY INJECTIONS, PROF SERV	23	23	26
95120	IMMUNOTHERAPY, 1 ANTIGEN, COMPLETE	27	27	27
95125	IMMUNOTHERAPY, MULTIPLE ANT, COMP	30	30	37
95819	EEG, STANDARD/PORTABLE, SAME FACILITY	166	162	162
95860	ELECTROMYOGRAPHY, 1 LIMB	265	265	265
95861	ELECTROMYOGRAPHY, 2 LIMBS	314	314	314
95869	ELECTROMYOGRAPHY, SPECIFIC MUSCLES	179	179	179
95900	MOTOR NERVE CONDUCTION TESTING, EA	224	224	224
95904	SENSORY NERVE CONDUCTION TESTING, EA	189	189	189
96912	PHOTOCHEMOTHERAPY: PSORALENS & PUVA	32	32	32
97110	PHYSIOTHERAPY: THERAPEUTIC EXERCISE	43	43	43
97128	PHYSIOTHERAPY: ULTRASOUND	13	13	13
97799	PHYSICAL MEDICINE, DEFAULT CODE	43	43	43
99000	SPECIMEN HANDLING, DOC TO LAB	11	10	12
99050	AFTER HOURS, ADD TO BASIC SERVICE	54	54	54
99058	OFFICE EMERGENCY CARE	52	52	52
99070	SPECIAL SUPPLIES	91	91	100
99172	CRITICAL CARE, FOLLOW-UP, LIMITED	140	140	140
99173	CRITICAL CARE, FOLLOW-UP, INTERMED	220	220	220
99199	OTHER MEDICAL SERV, DEFAULT CODE	92	92	93

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(b) The following is the Medical Fee Schedule for chiropractors' services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—CHIROPRACTORS' SERVICES

Description of Services	Region 1 Fee	Region 2 Fee	Region 3 Fee
Initial visit—with or without adjustment and/or PT modalities	79	81	85
Routine visit, incl. adjustment	32	36	36
Extended visit—including adjustment and phys therapy	53	52	52
Interim complete visit—eval'n to validate need for extd. addl trtmt; w/wo adj & PT modalities	69	71	76

(c) The following is the Medical Fee Schedule for dental services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—DENTAL SERVICES

ADA Code	Description of Services	Region 1	Region 2	Region 3
0110	INITIAL ORAL EXAM	24	26	28
0120	PERIODIC ORAL EXAM	18	21	21
0121	RECALL EXAM-ADULT (W/X RAYS & PROPHY)	68	70	79
0122	RECALL EXAM-CHILD (W/X RAYS, PROPHY, FLUOR)	68	65	72
0123	RECALL EXAM-CHILD W/X-RAYS, PROPHY, FLUO	54	61	62
0124	RECALL EXAM-ADULT, W/PROPHY	58	54	61
0130	EMERGENCY ORAL EXAM	27	27	30
0210	FULL MOUTH X-RAY SERIES	55	55	61
0220	X-RAY, PERIAPICAL, FIRST FILM	8	10	10
0222	X-RAY INTRA-ORAL TWO FILMS	15	15	16
0223	X-RAY INTRA-ORAL THREE FILMS	19	19	22
0224	X-RAY INTRA-ORAL FOUR FILMS	24	27	27
0225	X-RAY INTRA-ORAL FIVE FILMS	29	30	32
0226	X-RAY INTRA-ORAL SIX FILMS	33	32	37
0227	X-RAY INTRA-ORAL SEVEN FILMS	42	40	43

0228	X-RAY INTRA-ORAL EIGHT FILMS	41	43	48
0229	X-RAY INTRA-ORAL NINE FILMS	46	48	48
0230	X-RAY, PERIAPICAL, ADDITIONAL FILM	5	5	6
0240	X-RAY, INTRAORAL OCCLUSAL FILM	18	20	21
0270	X-RAY, BITEWING, SINGLE FILM	10	10	10
0272	BITEWING X-RAYS, TWO FILMS	16	16	17
0273	BITEWING X-RAYS, THREE FILMS	18	20	22
0274	BITEWING X-RAYS, FOUR FILMS	22	21	26
0280	BITEWING X-RAY, ADDITIONAL FILM	5	5	5
0290	X-RAY POST-ANT-LAT-SKLL FCL BN SURV	54	54	54
0321	X-RAY TMJ SINGLE FILM	36	36	36
0330	PANORAMIC X-RAY SERIES	48	51	55
0340	CEPHALOMETRIC FILM	50	53	55
0410	BACTERIOLOGIC CULTURE	22	24	21
0450	HISTOPATHOLOGIC EXAMINATION	63	63	64
0460	PULP VITALITY TESTS	20	21	24
0470	DIAGNOSTIC CASTS	43	46	45
0471	DIAGNOSTIC PHOTOGRAPHS	26	26	25
1110	PROPHYLAXIS, ADULT-INCL. SCALING	42	48	49
1120	PROPHYLAXIS, CHILD-INCL. SCALING	28	31	32
1201	TOPICAL APPL OF FLUORIDE W/PROPHYLAXIS	40	40	49
1203	TOPICAL APPL OF FLUORIDE	17	18	21
1210	FLUORIDE SOD TOP APPL 4 EXCL PROPH	16	16	19
1211	TOP APPL SOD FLUOR 4 INCL PROPHYL	47	53	53
1220	FLUORIDE STAN TOP APPL 1 EXCL PROPH	17	19	21
1221	TOP APPL STAN FLUOR 1 INCL PROPHYL	43	45	53
1230	TOPICAL APPL OF FLUORIDE	17	19	21
1231	APPLICATION OF FLUORIDE W/PROPHYLAXIS	43	44	51
1330	ORAL HYGIENE INSTRUCTION	23	28	25
1340	TRAINING IN PREVENTIVE DENTAL CARE	30	30	28
1350	TOPICAL APPL OF SEALANT, PER QUAD	39	32	37
1351	TOPICAL APPL OF SEALANT, PER TOOTH	24	26	29
1510	SPACE MAINTAINER-FIXED UNILATERAL	168	196	188
1515	SPACE MAINTAINER-FIXED BILATERAL	285	306	257
1550	RECEMENTATION OF SPACE MAINTAINER	33	33	33
2110	AMALGAM, ONE SURFACE, PRIMARY TOOTH	44	43	44
2120	AMALGAM, TWO SURFACES, PRIMARY TOOTH	57	64	64
2130	AMALGAM, THREE SURFACES, PRIMARY TOOTH	76	83	83
2131	AMALGAM, FOUR SURFACES, PRIMARY TOOTH	98	101	98
2140	AMALGAM, ONE SURFACE, PERM. TOOTH	42	45	49
2150	AMALGAM, TWO SURFACES, PERM. TOOTH	57	64	65
2160	AMALGAM, THREE SURFACES, PERM. TOOTH	74	81	86
2161	AMALGAM, 4+ SURFACES, PERMANENT	91	100	107
2170	RESTORATION AMALGAM PIN RETAINED	79	79	79
2190	PIN RETENTION, EXCLSVE OF AMLGM, PER PIN	20	20	24
2210	SILICATE RESTORATION, ONE SURFACE	18	16	20
2310	ACRYLIC OR PLASTIC RESTORATION	30	30	37
2330	COMPOSITE-ONE SURFACE	52	55	60
2331	COMPOSITE-TWO SURFACES	71	77	83
2332	COMPOSITE-THREE SURFACES	92	102	105
2334	PIN RETENTION	22	26	26
2335	COMPOSITE INVOLVING INCISAL ANGLE	114	125	135
2336	LIGHT CURED COMPOSITE-INCISAL	137	151	158
2337	LIGHT CURED COMPOSITE, 1 SUR W/ACID ETCH	59	64	70
2338	LIGHT CURED COMPOSITE, 2 SUR W/ACID ETCH	81	86	97
2339	LIGHT CURED COMPOSITE, 3 SUR W/ACID ETCH	112	118	135
2340	ACID ETCH FOR RESTORATION	28	26	31
2510	GOLD INLAY, 1 SURFACE	294	294	294
2520	GOLD INLAY, 2 SURFACES	423	423	415
2525	2 SURFACE INLAY INCLUDING ONLAY	545	545	551
2530	3-SURFACE GOLD FOIL	507	505	508
2535	3 SURFACE INLAY INCLUDING ONLAY	649	622	643
2540	ONLAY PER TOOTH (IN ADD'N TO INLAY)	481	501	505
2630	INLAY, PORCELAIN/CERAMIC, THREE SURFACES	495	495	492
2710	CROWN, PLASTIC (ACRYLIC)	201	206	246
2711	CROWN, PLASTIC (ACRYLIC-PREFABRICATED)	169	186	157
2720	CROWN, RESIN/HIGH NOBLE METAL	591	550	603
2722	CROWN, RESIN/NOBLE METAL	518	518	518
2740	CROWN, PORCELAIN	567	625	605
2750	CROWN, PORCELAIN/HIGH NOBLE	555	605	628
2751	CROWN, PROCELAIN/BASE METAL	540	552	580
2752	CROWN, PORCELAIN/NOBLE METAL	534	560	588

2790	GOLD/HIGH NOBLE METAL	626	608	648
2791	BASE METAL FULL CAST	474	438	482
2792	NOBLE METAL FULL CAST	553	537	589
2810	CROWN, 3/4 CAST-GOLD	656	613	672
2830	CROWN, STAINLESS STEEL (PREFABRICATED)	131	143	160
2840	TEMPORARY CROWN-FRACTURED TOOTH	106	91	102
2891	CAST POST & CORE (IN ADD'N TO CROWN)	1056	864	864
2892	PREFAB. POST & CORE (IN ADD'N TO CROWN)	158	170	182
2910	RE-CEMENT INLAY	39	41	45
2920	RECEMENT CROWN	37	41	42
2930	PREFAB STAINLESS STEEL CROWN-PRIMARY	124	133	151
2932	PREFABRICATED RESIN CROWN	153	153	153
2940	SEDATIVE FILLING	42	43	46
2950	CROWN BUILDUP, PIN OR POST RETAINED	126	134	148
2951	PIN RETN. PER TOOTH IN ADD'N TO RESTOR.	19	19	24
2952	CAST POST & CORE IN ADD'N TO CROWN	187	212	212
2954	PREFAB POST & CORE IN ADD'N TO CROWN	150	159	175
2960	LABIAL VENEER (LAMINATE) CLAIRSIDE	334	314	328
2962	LABIAL VENEER (PORCELAIN LAMINATE) LAB.	373	425	425
2980	REPAIR TO CROWN	133	123	133
3110	PULP CAP, DIRECT-OVER PULP EXPOSURE	31	30	37
3120	PULP CAP, INDIRECT	25	25	30
3130	RECALCIFICATION TEMPORARY PER TOOTH	40	40	40
3220	VITAL PULPOTOMY	85	82	80
3310	ROOT CANAL THERAPY, ONE CANAL	340	319	327
3315	RT CANAL THER 1 EXC RST-TRADITIONAL	324	351	351
3320	ROOT CANAL THERAPY, TWO CANALS	401	399	407
3325	RT CANAL THER 2 EXC RST-TRADITIONAL	405	432	459
3330	ROOT CANAL THERAPY, THREE CANALS	501	516	521
3335	RT CANAL THER 3 EXC RST-TRADITIONAL	497	541	568
3340	ROOT CANAL THERAPY, FOUR CANALS	539	610	591
3410	APICOECTOMY (AND/OR) CURETTAGE, SEP SURG PR	288	300	327
3411	APICOECTOMY PER TOOTH, EA ADD'L ROOT	186	186	186
3420	APICOECTOMY W/ENDODONTIC PROC PER ROOT	314	318	310
3430	RETROGRADE FILLING (PER ROOT)	101	90	92
3440	APICAL CURETTAGE	147	140	132
3450	ROOT AMPUTATION (PER ROOT)	217	195	238
3920	HEMISECTION	177	166	194
3940	RECALCIFICATION	20	20	20
3950	CANAL PREP & PREFITTING PREFORMED POST	56	56	52
3960	BLEACHING DISCOLORED TOOTH	73	72	73
4210	GINGIVECTOMY/GINGIVOPLASTY PER QUAD	259	273	264
4211	GINGIVECTOMY/GINGIVOPLASTY SINGLE SITE	104	106	106
4212	GINGIVECTOMY PER TOOTH LESS THAN 5	71	81	81
4220	GINGIVAL CURETTAGE PER QUADRANT	102	109	104
4240	GINGIVAL FLAP PROCEDURES	309	325	371
4250	MUCOGINGIVAL SURGERY PER QUADRANT	330	330	330
4260	OSSEOUS SURGERY, PER QUADRANT	628	570	597
4261	OSSEOUS GRAFT, SINGLE SITE	271	244	296
4262	OSSEOUS GRAFT, MULTIPLE SITES	380	380	380
4263	OSSEOUS SURGERY, SINGLE SITE	398	398	425
4270	PEDICLE SOFT TISSUE GRAFTS	391	391	391
4271	FREE SOFT TISSUE GRAFTS	365	419	422
4272	APICALLY REPOSITIONING FLAP	334	334	334
4320	PROVISIONAL SPLINT, INTRACORONAL	94	100	97
4321	PROVISIONAL SPLINT, EXTRACORONAL	80	80	98
4330	OCCLUSAL ADJUSTMENT, LIMITED	45	50	52
4331	OCCLUSAL ADJUSTMENT, COMPLETE	199	172	176
4340	PERIO SCALING & ROOT PLANING, FULL MOUTH	112	91	105
4341	PERIO SCALING & ROOT PLANING, PER QUAD	115	108	107
4345	SCALING-GINGIVAL INFLAMMATION	55	55	55
4360	APPLIANCE TO BREAK HARMFUL HABIT	270	270	296
4361	APPLIANCE FOR BRUXISM	266	266	292
4910	PERIODONTAL PROPHYLAXIS	65	69	75
5110	COMPLETE UPPER DENTURE	630	689	739
5120	COMPLETE LOWER DENTURE	633	705	739
5130	IMMEDIATE UPPER DENTURE	694	769	796
5140	IMMEDIATE LOWER DENTURE	685	745	804
5211	PARTIAL DENTURE, UPPER	431	468	506
5212	PARTIAL DENTURE, LOWER	569	555	601
5213	PARTIAL DENTURE, UPPER	872	827	871

5214	LOWER PARTIAL	723	794	830
5215	UPPER PARTIAL DENTURE	780	810	800
5216	PARTIAL DENTURE, LOWER	745	745	781
5217	DENT PART LOWER 2 GOLD CLASPS ACR	718	718	718
5218	PARTIAL DENTURE, LOWER	796	796	847
5230	PARTIAL DENTURE-LOWER	726	726	702
5231	PARTIAL DENTURE-LOWER	676	784	730
5240	DENT PART LWR LGL BAR 2 CLSP CST BS	750	750	750
5241	DENT PART LOWER CHROME LNGL BAR CST	745	757	757
5250	PARTIAL DENTURE-UPPER	702	702	701
5251	PARTIAL DENTURE-UPPER	676	756	703
5261	DENT PART UPPER CHROME PLTL BAR CST	750	757	757
5281	UNILATERAL PARTIAL DENTURE	388	388	388
5310	DENT PART ADDTL CLASP WITH RST EACH	81	81	81
5410	DENTURE ADJUSTMENT	36	35	38
5415	DENT ADJUST COMPL OR PART U OR L	35	35	35
5421	LOWER PARTIAL DENTURE ADJUSTMENT	31	31	31
5510	REPAIR BROKEN COMPLETE DENTURE BASE	81	74	89
5520	REPL. EA. MISS/BROKEN TOOTH COM. DEN.	61	55	68
5610	DENTURE REPAIR	69	80	80
5620	DENTURE REPAIR	83	80	87
5630	DENTURE REPAIR	60	66	74
5640	DENTURE REPAIR	60	64	72
5650	DENTURE REPAIR	75	80	88
5660	DENTURE REPAIR	102	103	123
5670	DENTURE REPAIR	76	76	76
5680	DENTURE REPAIR	84	82	90
5690	DENTURE REPLACE BROKN CLSP EA ADDTL	80	80	80
5725	REBASE U/L DENTURE PART OR COMPLETE	190	190	171
5730	DENTURE RELINING: UPPER COMPLETE	142	142	145
5731	DENTURE RELINING: LOWER COMPLETE	150	150	150
5735	RELINE U/L DENT PART OR COMP OFFICE	162	162	162
5740	DENTURE RELINE PARTIAL UPPER OFFICE	118	118	121
5741	DENTURE RELINE PARTIAL LOWER OFFICE	135	135	135
5750	DENTURE RELINE UPPER COMPLETE LAB	195	199	209
5751	DENTURE RELINE LOWER COMPLETE LAB	205	205	212
5755	RELINE U/L DENT PART OR COMP LAB	198	242	216
5760	DENTURE RELINE UPPER PARTIAL LAB	205	201	214
5761	DENTURE RELINE LOWER PARTIAL LAB	203	203	212
5820	DENTURE, TEMPORARY PARTIAL UPPER	266	270	269
5821	DENT TEMP PART-STAYPLATE LOWER	270	270	270
5850	TISSUE CONDITIONING	78	71	86
5974	ENDOSSEOUS IMPLANT (IN THE BONE)	948	948	948
6210	BRIDGE PONTIC CAST HIGH NOBLE METAL	594	594	606
6212	BRIDGE PONTIC CAST NOBLE METAL	517	517	517
6240	BRIDGE PONTIC PORCELAIN FUSED/HI NOBLE	579	604	629
6241	BRIDGE PONTIC PROCELAIN FUSED/BASE METAL	552	537	581
6242	BRIDGE PONTIC PROCELAIN FUSED/NOBLE	532	563	586
6250	BRIDGE PONTIC RESIN/HIGH NOBLE METAL	579	579	577
6251	BRIDGE PONTIC/PREDOM BASE METAL	438	438	438
6252	BRIDGE PONTIC RESIN WITH NOBLE METAL	533	533	533
6530	GOLD INLAY-THREE SURFACES	552	552	552
6545	BONDED RESIN RETAINER (MARYLAND BRIDGE)	197	224	233
6640	REPAIRS REPL BRKN FCNG WITH ACRYLIC	102	108	102
6710	BRIDGE ABUTMENT CROWN, PLASTIC	224	224	224
6720	BRIDGE ABUTMENT CROWN RESIN/HIGH NOBLE	565	565	574
6721	BRIDGE ABUTMENT CROWN PLASTIC/NON-PREC	486	486	486
6722	BRIDGE ABUTMENT CROWN RESIN/BASE METAL	553	553	553
6750	BRIDGE ABUTMENT CROWN RESIN/NOBLE METAL	588	612	632
6751	BRIDGE ABUTM CROWN PORCELAIN/NOBLE MTL	552	546	583
6752	BRIDGE ABUTM CROWN PROCELAIN/NOBLE MTL	538	562	588
6780	BRIDGE ABUTMENT CROWN 3/4 CAST NOBLE MTL	614	614	614
6790	BRIDGE ABUTM CROWN FULL CAST HIGH NOBLE	658	592	681
6792	BRIDGE ABUTM CROWN FULL CAST NOBLE METAL	566	566	589
6930	RECEMENT BRIDGE	53	55	57
6950	PRECISION ATTACHMENT	217	219	215
6960	DOWEL PIN METAL	161	161	151
6970	REPAIRS TO CROWNS	125	125	135
6980	REPAIR TO FIXED BRIDGE	148	159	154
7110	EXTRACTION, SINGLE TOOTH	60	69	69
7111	TOOTH EXTRACT. W/X-RAY & GENL ANAESTH	114	114	114

7120	SIMPLE EXTRACTION-ADDITIONAL TOOTH	56	64	65
7130	ROOT REMOVAL-EXPOSED ROOTS	78	70	81
7210	SURGICAL EXTRACTION	113	120	132
7220	SURGICAL EXTRACTION-TISSUE IMPACTION	161	176	170
7230	SURGICAL EXTRACTION-PARTIAL IMPACTION	236	234	232
7235	EXTRACTION SURG PARTIAL BONY IMPACT	238	243	216
7240	SURGICAL EXTRACTION-FULL IMPACTION	306	283	293
7241	SURGICAL EXTR-FULL IMPACT.-DIFFICULT	332	322	336
7245	EXTRACTION SURG COMPL BONY IMPACT	324	286	324
7250	SURGICAL REMOVAL, RESIDUAL ROOTS	110	117	124
7270	TOOTH REIMPLANTATION	233	233	233
7280	SURG. EXPOSURE OF TOOTH FOR ORTHO	272	272	296
7281	SURG. EXPOSURE OF TOOTH TO AID ERUPTION	191	207	172
7286	BIOPSY OF ORAL TISSUE, SOFT	124	131	115
7310	ALVEOPLASTY-PER QUAD W/EXTRACTIONS	137	116	138
7320	ALVEOPLASTY-PER QUAD W/O EXTRACTIONS	189	189	177
7425	EXCISION PERICORONAL GINGIVA	119	119	131
7430	SURGICAL EXCISION	214	211	226
7431	SURGICAL EXCISION	271	271	271
7450	REMOVAL OF CYST	168	151	181
7451	REMOVAL OF CYST	359	359	362
7460	REMOVAL OF CYST	238	238	238
7461	REMOVAL OF CYST	559	559	559
7470	REMOVAL OF EXOSTOSIS	355	355	366
7510	INCISION & DRAINAGE, INTRAORAL ABSCESS	65	70	69
7881	T.M.J. THERAPY	251	251	252
7910	SUTURE OF WOUND	78	78	78
7960	FRENECTOMY	227	222	236
7970	SURG. REPAIR EXCISION OF HYPERPLASTIC	158	150	174
8000	ORTHODONTIC PAYMENT	638	638	638
8001	ORTHODONTIC-FIRST PAYMENT	1657	1657	1657
8002	ORTHODONTIC-FINAL PAYMENT	1791	1791	1791
8010	ORTHODONTIC WORK-UP	183	188	186
8110	TOOTH GUIDANCE APPLIANCE REMOVABLE	308	326	293
8120	TOOTH GUIDANCE APPLIANCE FIXED	478	515	478
8210	REMOVABLE APPLIANCE THERAPY	282	278	317
8220	FIXED APPLIANCE THERAPY	357	357	357
8360	REMOVABLE APPLIANCE THERAPY	247	247	247
8370	FIXED APPLIANCE THERAPY	397	397	397
8460	ORTHO TREATMENT MIXED DENT CL 1 MAL	3354	3354	3354
8470	ORTHO TREATMENT MIXED DENT CL 2 MAL	3597	3462	3516
8560	ORTHO TREATMENT PERM DENT CL 1 MAL	3240	3340	3354
8570	ORTHO TREATMENT PERM DENT CL 2 MAL	3408	3354	3462
8580	ORTHO TREATMENT PERM DENT CL 3 MAL	3380	3380	3570
9110	EMERGENCY PALLIATIVE TREATMENT	39	41	46
9210	LOCAL ANESTHESIA	27	25	30
9220	GENERAL ANESTHESIA	115	99	102
9230	ANALGESIA	25	27	30
9240	INTRAVENOUS SEDATION	92	88	102
9310	CONSULTATION	54	47	53
9430	VISITS OFFICE REG HRS-NO OPER SV	36	31	37
9610	DRUGS THERAPEUTIC INJECTION	35	35	35
9630	DRUGS OTHER AND/OR MEDICAMENTS	18	20	21
9910	APPLICATION OF DESENSITIZING MEDICATION	21	22	22
9930	COMPLICATIONS UNUSUAL CIRCUMSTANCES	41	41	41
9950	OCCLUSION ANALYSIS MOUNTED CASE	75	75	75
9951	OCCLUSAL ADJUSTMENT	29	26	32

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(d) The following is the Medical Fee Schedule for nursing and allied professional health services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
NURSING AND ALLIED PROFESSIONAL HEALTH SERVICES

Service	Fee		
PRIVATE NURSING CARE (PER HOUR)		HOME HEALTH VISITS (PER VISIT)	
Registered nurse	40.00	Registered nurse	82.00
Licensed practical nurse	35.00	Licensed practical nurse	58.00
Home health aide	15.50	Physical therapist	77.00
Live-in attendant (per 24-hour shift)	136.00	Speech therapist	77.00
		Occupational therapist	77.00

(e) The following is the Medical Fee Schedule for ambulance services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
AMBULANCE SERVICES

Code	Description	Fee
A0010	Ambulance service basic life support (BLS), base rate, emergency transport, one way	110.00
A0020	Ambulance service (BLS) per mile, transport, one way	4.50
A0070	Ambulance service, oxygen administration and supplies life sustaining situation	30.00
Z0224	Cardiac monitoring during an ambulance trip	50.00

(f) The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES
CODES BEGINNING WITH 'A'

HCPCS Code	Description	Fee for New Equipment
A4214	Sterile saline or water, 30 cc vial	.81
A4310	Insertion tray without drainage bag and without catheter (accessories only)	6.61
A4311	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastometer, or hydrophilic, etc.)	8.34
A4312	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way, all silicone	8.34
A4313	Insertion tray without drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	8.34
A4314	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer, or hydrophilic, etc.)	15.46
A4315	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way, all silicone	15.46
A4316	Insertion tray with drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	15.46
A4320	Irrigation tray for bladder irrigation with bulb or piston syringe	5.00
A4322	Irrigation syringe, bulb or piston	2.50
A4323	Sterile saline irrigation solution, 1000 ml	8.00
A4328	Female external urinary collection device; pouch, each	10.00
A4329	External catheter starter set, male/female, includes catheters/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7-day supply	39.95
A4338	Indwelling catheter; Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer or hydrophilic, etc.)	8.14
A4340	Indwelling catheter; specialty type, (e.g., Coude, Mushroom, Wing, etc.)	10.00
A4344	Indwelling catheter, Foley type, two-way, all silicone	15.52
A4346	Indwelling catheter, Foley type, three-way, for continuous irrigation	10.34
A4347	Male external catheter with or without adhesive, with or without anti-reflux device; per dozen	30.51
A4351	Intermittent urinary catheter; straight tip	5.00
A4352	Intermittent urinary catheter; Coude (curved) tip	5.00
A4354	Insertion tray with drainage bag but without catheter	13.73
A4355	Irrigation tubing set for continuous bladder irrigation through a three-way indwelling Foley catheter	11.90
A4356	External urethral clamp or compression device (not to be used for catheter clamp)	37.03
A4357	Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube	7.93
A4358	Urinary leg bag; vinyl, with or without tube	7.12
A4359	Urinary suspensory; without leg bag	31.90
A4361	Ostomy faceplate	31.53
A4362	Skin barrier; solid, 4 × 4 or equivalent; each	5.03
A4363	Skin barrier; liquid (spray, brush, etc.) powder or paste; per oz.	4.07

A4364	Adhesive for ostomy or catheter; liquid (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.	4.58
A4367	Ostomy belt	6.98
A4398	Irrigation supply, bags	2.25
A4399	Irrigation supply, cone/catheter	11.25
A4400	Ostomy irrigation set	19.07
A4402	Lubricant	4.32
A4404	Ostomy rings	1.22
A4611	Battery, heavy duty; replacement for patient-owned ventilator	180.00
A4612	Battery cables; replacement for patient-owned ventilator	44.00
A4615	Cannula, nasal	7.50
A4617	Mouth piece	5.00
A4618	Breathing circuits	9.15
A4619	Face tent	10.00
A4620	Variable concentration mask	10.00
A4621	Tracheotomy mask or collar	10.17
A4622	Tracheostomy or laryngectomy tube	75.00
A4623	Tracheostomy, inner cannula (replacement only)	6.00
A4624	Tracheal suction catheter, any type, each	2.00
A4625	Tracheostomy care or cleaning starter kit	8.00
A4626	Tracheostomy cleaning brush, each	3.00
A5051	Pouch, closed; with barrier attached (1 piece)	3.05
A5052	Pouch, closed; without barrier attached (1 piece)	3.05
A5053	Pouch, closed; for use on faceplate	3.05
A5054	Pouch, closed; for use on barrier with flange (2 piece)	3.05
A5055	Stoma cap	2.00
A5061	Pouch, drainable; with barrier attached (1 piece)	4.07
A5062	Pouch, drainable; without barrier attached (1 piece)	4.07
A5063	Pouch, drainable; for use on barrier with flange (2 piece system)	4.07
A5064	Pouch, drainable; with faceplate attached; plastic or rubber	4.07
A5065	Pouch, drainable; for use on faceplate; plastic or rubber	4.07
A5071	Pouch, urinary; with barrier attached (1 piece)	4.07
A5072	Pouch, urinary; without barrier attached (1 piece)	4.07
A5073	Pouch, urinary; for use on barrier with flange (2 piece)	4.07
A5074	Pouch, urinary; with faceplate attached; plastic or rubber	4.07
A5075	Pouch, urinary; for use on faceplate; plastic or rubber	4.07
A5081	Continent device; plug for continent stoma	3.50
A5082	Continent device; catheter for continent stoma	11.00
A5093	Ostomy accessory; convex insert	1.65
A5012	Bedside drainage bottle, rigid or expandable	28.00
A5105	Urinary suspensory; with leg bag, with or without tube	31.90
A5112	Urinary leg bag; latex	7.12
A5113	Leg strap; latex, per set	4.00
A5114	Leg strap; foam or fabric, per set	8.95
A5119	Skin barrier; wipes, box per 50	9.50
A5121	Skin barrier; solid, 6 × 6 or equivalent, each	5.03
A5122	Skin barrier; solid, 8 × 8 or equivalent, each	5.03
A5123	Skin barrier; with flange (solid, flexible or accordion), any size, each	6.00
A5126	Adhesive: disc or foam pad	1.25
A5131	Appliance cleaner, incontinence and ostomy appliances, per 16 oz.	16.25

CODES BEGINNING WITH 'E'

HCPCS Code	Description	Fee For New Eqpt	Fee For Used Eqpt	Monthly Rental
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	14.44	11.18	1.44
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	38.07	27.89	3.81
E0110	Crutches, forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tips and handgrips	55.85	41.88	5.59
E0111	Crutch forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrip	63.10	47.33	6.31
E0112	Crutches underarm, wood, adjustable or fixed, pair, with pads, tips and handgrips	45.77	34.33	4.58
E0113	Crutch underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	18.81	14.10	1.88
E0114	Crutches underarm, aluminum, adjustable or fixed, pair with pads, tips and handgrips	66.11	49.58	6.61
E0116	Crutch underarm, aluminum, adjustable or fixed, each, with pad, tip and handgrip	18.31	13.73	1.83
E0130	Walker, rigid (pickup), adjustable or fixed height	53.94	40.42	5.39
E0135	Walker, folding (pickup), adjustable or fixed height	57.31	42.08	5.73

E0141	Walker, wheeled, without seat	92.44	69.33	9.24
E0142	Rigid walker, wheeled, with seat	331.54	248.66	33.15
E0143	Folding walker, wheeled, without seat	105.16	78.87	10.52
E0145	Walker, wheeled, with seat and crutch attachments	170.30	127.72	17.03
E0146	Walker, wheeled, with seat	306.88	230.16	30.69
E0147	Heavy duty, multiple breaking system, variable wheel resistance walker	199.33	149.50	19.93
E0150	Underarm pad, crutch, replacement, each	10.07	7.55	1.01
E0151	Handgrip, crane, crutch, or walker replacement, each	2.44	1.83	.24
E0152	Tip, cane or crutch, walker replacement, each	1.67	1.25	.17
E0153	Platform attachment, forearm crutch, each	53.39	40.04	5.34
E0154	Platform attachment, walker, each	66.11	49.58	6.61
E0155	Wheel attachment, rigid pick-up walker attachments	24.71	18.53	2.47
E0156	Seat attachment, walker	20.34	15.26	2.03
E0157	Crutch attachment, walker, each	53.39	40.04	5.34
E0158	Leg extensions for a walker	32.54	24.41	3.25
E0160	Sitz type bath, portable, fits over commode seat	9.16	6.87	.92
E0161	Sitz type bath, portable, fits over commode seat, with faucet attachments	50.85	38.14	5.09
E0163	Commode chair, stationary, with fixed arms	85.98	59.22	8.60
E0164	Commode chair, mobile, with fixed arms	203.40	66.39	20.34
E0165	Commode chair, stationary with detachable arms	174.55	157.90	17.46
E0166	Commode chair, mobile with detachable arms	255.88	191.90	25.59
E0167	Pail or pan for use with commode chair	9.83	7.37	.98
E0175	Foot rest, for use with commode chair, each	42.50	31.88	4.25
E0180	Pressure pad, alternating with pump	231.86	181.22	23.19
E0181	Pressure pad, alternating with pump, heavy duty	254.32	181.53	25.43
E0182	Pump for alternating pressure pad	280.69	155.60	28.07
E0183	Flotation pad, for wheelchair	85.46	64.10	8.55
E0184	Flotation mattress, dry	66.11	49.58	6.61
E0185	Decubitus care pad, flotation or gel pad with foam leveling pad (mattress size)	60.00	60.00	6.00
E0188	Synthetic sheepskin pad	20.34	15.26	2.03
E1089	Lambswool sheepskin pad, any size	20.34	15.26	2.03
E0190	Decubitus care mattress, includes flotation or gel mattress	241.87	203.19	24.19
E0191	Heel or elbow protector, each	9.97	7.48	1.00
E0192	Low pressure and positioning pad for wheelchair	315.00	236.25	31.50
E0193	Powered air flotation bed (low air loss therapy)	7113.92	5335.44	711.39
E0195	Replacement pad for use with medically necessary alternating pressure pad owned by the patient	46.03	34.52	4.60
E0200	Heat lamp, without stand (table model), includes bulb, or infrared element	35.60	26.70	3.56
E0205	Heat lamp, with stand, includes bulb, or infrared element	35.60	26.70	3.56
E0210	Electric heat pad, standard	25.11	18.83	2.51
E0215	Electric heat pad, moist	34.60	25.95	3.46
E0225	Hydrocollator unit, includes pads	30.51	22.88	3.05
E0235	Paraffin bath unit, portable	187.44	119.94	18.74
E0238	Non-electric heat pad moist	30.51	22.88	3.05
E0249	Pad for water circulating heat unit	120.00	90.00	12.00
E0250	Hospital bed, with side rails, fixed height, with mattress	849.97	749.97	85.00
E0251	Hospital bed, with side rails, fixed height, without mattress	648.34	648.34	64.83
E0252	Hospital bed, fixed height, with mattress	1045.98	935.33	104.60
E0255	Hospital bed, with side rails, variable height, Hi-Lo, with mattress	929.80	864.32	92.98
E0260	Hospital bed, with side rails, semi-electric, head and foot adjustment, with mattress	1487.23	1217.35	148.72
E0265	Hospital bed, total electric with side rails (head, foot and height adjustments, with mattress)	1841.08	1450.45	184.11
E0266	Hospital bed, with side rails, total electric head, foot, and height adjustments without mattress	1871.28	1403.46	187.13
E0271	Mattress, innerspring	162.52	121.89	16.25
E0272	Mattress, foam rubber	150.00		15.00
E0275	Bed pan, standard, metal or plastic	15.26	11.41	1.53
E0276	Bed pan, fracture, metal or plastic	12.15	9.12	1.22
E0280	Bed, cradle, any type	28.48	21.36	2.85
E0305	Bed side rails, half length	138.64	103.98	13.86
E0310	Bed side rails, full length	158.86	119.15	15.89
E0325	Urinal: male, jug type, any material	6.30	4.73	.63
E0326	Urinal: female, jug type, any material	8.95	6.71	.90
E0450	Volume ventilator; stationary	10170.00	7627.50	1017.00
E0451	Volume ventilator; portable (includes battery, battery charger, and battery cables)	5524.34	4143.26	552.43
E0456	Chest shell (cuirass)	400.00		40.00
E0458	Negative pressure pump	4803.99		480.40
E0459	Chest Wrap	520.00		52.00
E0461	Negative pressure ventilator; stationary (e.g., Iron-lung)	1830.60	1372.95	183.06

E0480	Percussor, electric or pneumatic, home model	269.50	171.81	26.95
E0500	IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization	452.57	339.42	45.26
E0505	IPPB machines with manual valves, electrically driven with internal power source, built-in nebulization	661.05	495.79	66.11
E0510	IPPB machines with automatic valves, external power source includes cylinder regulator, built-in nebulization	661.05	495.79	66.11
E0515	IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization	452.57	339.43	45.26
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade	304.08	228.06	30.41
E0560	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.	62.33	46.75	6.23
E0565	Compressor, air power source for equipment which is not self-contained or cylinder driven	488.01	291.75	48.80
E0570	Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid	160.26	114.29	16.03
E0575	Nebulizer, self-contained, ultrasonic	706.82	530.12	70.68
E0580	Nebulizer, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter	116.96	87.72	11.70
E0585	Nebulizer, with compressor and heater	116.96	87.72	11.70
E0600	Suction pump, home model, portable	395.10	296.33	39.51
E0601	Nasal continuous airway pressure (CPAP) device	1017.00	762.75	101.70
E0605	Vaporizer, room type	29.49	22.12	2.95
E0606	Postural drainage board	152.55	114.41	15.26
E0607	Home blood glucose monitor	150.91	113.18	15.09
E0609	Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)	488.16	366.12	48.82
E0610	Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)	324.42	243.32	32.44
E0615	Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)	324.42	243.32	32.44
E0620	Seat lift chair, motorized to assist patient in standing and sitting	799.31	530.37	79.93
E0621	Sling or seat, patient lift, canvas or nylon	61.10	45.83	6.11
E0630	Patient lift, hydraulic, with seat or sling	899.38	690.50	89.94
E0635	Patient lift, electric with seat or sling	742.67	411.70	74.27
E0650	Pneumatic compressor, non-segmental home model, (lymphedema pump)	503.42	377.57	50.34
E0651	Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure	706.82	530.12	70.68
E0652	Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure	3254.40	3024.31	325.44
E0655	Pneumatic appliance for use with pneumatic compressor, half arm	80.44	60.33	8.04
E0660	Pneumatic appliance for use with pneumatic compressor, full leg	132.21	84.95	13.22
E0665	Pneumatic appliance for use with pneumatic compressor, full arm	86.55	64.91	8.66
E0666	Pneumatic appliance for use with pneumatic compressor, half leg	127.13	95.35	12.71
E0667	Pneumatic appliance for use with segmental pneumatic compressor, leg	249.17	186.87	24.92
E0668	Pneumatic appliance for use with segmental pneumatic compressor, arm	218.66	171.62	21.87
E0720	TENS, two lead, localized stimulation	531.79		53.18
E0730	TENS, four lead, larger area/multiple nerve stimulation	527.15		52.72
E0740	Replacement batteries for medically necessary TENS owned by the patient	2.74		.27
E0744	Neuromuscular stimulator for scoliosis	995.00	746.25	99.50
E0745	Neuromuscular stimulator, electronic shock unit	1011.92	758.94	101.19
E0746	Electromyography (EMG), biofeedback device	670.00	502.50	67.00
E0747	Osteogenesis stimulator (non-invasive)	2644.20		264.42
E0776	IV pole	89.66	67.25	8.97
E0781	Ambulatory infusion pump with administrative equipment, worn by patient	608.46	456.35	60.85
E0791	Parenteral infusion pump, stationary	1895.00	1421.25	189.50
E0840	Traction frame, attached to headboard, simple cervical traction	35.60	26.70	3.56
E0850	Traction stand, free standing, simple cervical traction	35.60	26.70	3.56
E0860	Traction equipment, overdoor, cervical	26.20	19.65	2.62
E0870	Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)	80.85	60.64	8.09
E0880	Traction stand, free standing, simple extremity traction (e.g., Buck's)	66.11	49.58	6.61
E0890	Traction frame, attached to footboard, simple pelvic traction	77.60	58.20	7.76
E0900	Traction stand, free standing, simple pelvic traction (e.g., Buck's)	77.60	58.20	7.76
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	157.90	157.90	15.79
E0920	Fracture frame, attached to bed, includes weights	380.36	285.27	38.04
E0930	Fracture frame, free standing, includes weights	380.36	285.27	38.04
E0940	Trapeze bar, free standing, complete with grab bar	303.55	213.32	30.36
E0941	Gravity assisted traction device, any type	371.21	278.41	37.12
E0942	Cervical head harness/halter	15.26	11.45	1.53
E0943	Cervical pillow	40.00	30.00	4.00
E0944	Pelvic belt/harness/boot	31.57	23.68	3.16

E0945	Extremity belt/harness	35.60	26.70	3.56
E0946	Fracture, frame, dual with cross bars, attached to bed, (e.g., Balken, 4 poster)	862.42	646.82	86.24
E0950	Tray	80.00	60.00	8.00
E0951	Loop heel, each	14.50	10.88	1.45
E0952	Loop toe, each	14.50	10.88	1.45
E0953	Pneumatic tire, each	89.29	66.97	8.93
E0954	Semi-pneumatic caster, each	45.77	34.33	4.58
E0958	Wheelchair attachment to convert any wheelchair to one arm drive	406.29	260.86	40.63
E0959	Amputee adapter (device used to compensate for transfer of weight due to lost limbs to maintain proper balance)	71.19	53.39	7.12
E0961	Brake extension, for wheelchair	11.20	8.40	1.12
E0962	1" cushion, for wheelchair	45.77	34.33	4.58
E0963	2" cushion, for wheelchair	58.99	44.24	5.90
E0964	3" cushion, for wheelchair	68.14	51.11	6.81
E0965	4" cushion, for wheelchair	76.28	57.21	7.63
E0966	Hook on head rest extension	49.83	37.37	4.98
E0967	Wheelchair hand rims with 8 vertical rubber tipped projection, pair	101.70	76.28	10.17
E0968	Commode seat, wheelchair	174.92	131.19	17.49
E0970	No. 2 footplates, except for elevating legrest	91.53	68.65	9.15
E0971	Anti-tipping device wheelchairs	48.49	36.37	4.85
E0973	Adjustable height detachable arms, desk or full length, wheelchair	88.48	66.36	8.85
E0974	"Grade-Aid" (device to prevent rolling back on an incline) for wheelchair	66.11	49.58	6.61
E0975	Reinforced seat upholstery, wheelchair	53.90	40.43	5.39
E0976	Reinforced back upholstery, wheelchair	53.90	40.43	5.39
E0977	Wedge cushion, wheelchair	47.80	35.85	4.78
E0978	Belt, safety with airplane buckle, wheelchair	35.60	26.70	3.56
E0979	Belt, safety with velcro closure, wheelchair	25.00	25.43	2.50
E0980	Safety vest, wheelchair	25.43	19.07	2.54
E0990	Elevating legrest, each	74.39	55.79	7.44
E0991	Upholstery seat	35.60	26.70	3.56
E0992	Solid seat insert	41.94	31.46	4.19
E0993	Back, upholstery	26.97	20.23	2.70
E0994	Arm rest, each	12.94	9.71	1.29
E0995	Calf rest, each	20.34	15.26	2.03
E0996	Tire, solid, each	22.25	16.69	2.23
E0997	Caster with a fork	54.92	41.19	5.49
E0998	Caster without fork	30.51	22.88	3.05
E0999	Pneumatic tire with wheel	88.48		8.85
E1000	Tire, pneumatic caster	47.80	35.85	4.78
E1001	Wheel, single	89.50	67.13	8.95
E1005	Replacement, batteries for medically necessary electric wheelchair owned by the patient	73.34	55.00	7.33
E1050	Fully-reclining wheelchair, fixed full length arms, swing away detachable elevating legrests	1178.91	653.52	117.89
E1060	Fully-reclining wheelchair, detachable arms, desk or full length, swing away detachable elevating legrests	1178.91	658.06	117.89
E1065	Power attachment (to convert any wheelchair to motorized wheelchair; e.g., Solo)	2318.76	1739.07	231.88
E1066	Battery charger	233.91	175.43	23.39
E1069	Deep cycle battery	89.67	67.25	8.97
E1070	Fully-reclining wheelchair, detachable arms, desk or full length, swing away detachable footrest	877.16	648.34	87.72
E1083	Hemi-wheelchair, fixed full length arms, swing away detachable elevating legrest	691.56	668.40	69.16
E1084	Hemi-wheelchair, detachable arms desk or full length arms, swing away detachable elevating legrests	1011.85	759.70	101.19
E1085	Hemi-wheelchair, fixed full length arms, swing away detachable foot rests	799.62	742.06	79.96
E1086	Hemi-wheelchair, detachable arms desk or full length, swing away detachable footrests	1065.97	635.38	106.60
E1087	High strength lightweight wheelchair, fixed full length arms, swing away detachable elevating legrests	1111.58	747.53	111.16
E1088	High strength lightweight wheelchair, detachable arms desk or full length, swing away detachable elevating legrests	1481.97	968.62	148.20
E1089	High strength lightweight wheelchair, fixed length arms, swing away detachable footrest	1093.53	706.04	109.35
E1090	High strength lightweight wheelchair, detachable arms desk or full length, swing away detachable footrests	1445.56	801.35	144.56
E1091	Youth wheelchair, any type	1287.42	965.64	128.74
E1092	Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway detachable elevating legrests	1318.44	1119.72	131.84

E1093	Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway detachable footrests	1210.23	907.67	121.02
E1100	Semi-reclining wheelchair, fixed full length arms, swing away detachable elevating legrests	1017.00	762.75	101.70
E1130	Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests	409.34	394.14	40.93
E1140	Wheelchair, detachable arms, desk or full length, swing-away detachable footrests	672.38	476.74	67.24
E1150	Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	748.81	615.52	74.88
E1160	Wheelchair, fixed full length arms, swing-away detachable elevating legrests	580.09	507.64	58.01
E1170	Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests	1137.61	853.21	113.76
E1171	Amputee wheelchair, fixed full length arms, without footrests or legrests	658.00	493.50	65.80
E1172	Amputee wheelchair, detachable arms (desk or full length) without footrests or legrests	846.14	634.61	84.61
E1180	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests	904.45	749.78	90.45
E1190	Amputee wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrests	1044.97	855.23	104.50
E1195	Heavy duty wheelchair, fixed full length arms, swingaway detachable elevating legrests	992.39	744.29	99.24
E1200	Amputee wheelchair, fixed full length arms, swing-away detachable footrest	778.34	636.90	77.83
E1210	Motorized wheelchair, fixed full length arms, swing-away detachable elevating legrests	3516.58	2637.44	351.66
E1211	Motorized wheelchair, detachable arms, desk or full length, swingaway detachable elevating legrest	3152.70	2364.53	315.27
E1212	Motorized wheelchair, fixed full length arms, swingaway detachable footrests	2809.97	2107.48	281.00
E1213	Motorized wheelchair, detachable arms, desk or full length, swingaway detachable footrests	3152.70	2364.53	315.27
E1230	Power-operated vehicle (3-wheel non-highway), indicate brand name & model number	1566.18	991.58	156.62
E1240	Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrest	1019.42	599.71	101.94
E1250	Lightweight wheelchair, fixed full length arms, swingaway detachable footrest	608.17	559.43	60.82
E1260	Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable footrest	839.74	839.74	83.97
E1270	Lightweight wheelchair, fixed full length arms, swingaway detachable elevating legrests	701.73	701.73	70.17
E1280	Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests	1226.65	1226.65	122.67
E1285	Heavy duty wheelchair, fixed full length arms, swingaway detachable footrest	963.99	615.92	96.40
E1290	Heavy duty wheelchair, detachable arms (desk or full length), swingaway detachable footrest	1336.79	741.05	133.68
E1295	Heavy duty wheelchair, fixed full length arms, elevating legrest	909.40	682.05	90.94
E1296	Special wheelchair seat height from floor	272.56	204.42	27.26
E1297	Special wheelchair seat depth, by upholstery	58.99	44.24	5.90
E1298	Special wheelchair seat depth and/or width, by construction	293.91	220.43	29.39
E1310	Whirlpool, non-portable (built-in type)	3152.70	2364.53	315.27
E1355	Stand/rack	45.00	33.75	4.50
E1372	Immersion external heater for nebulizer	172.89	15.65	17.29
E1375	Nebulizer portable with small compressor, with limited flow	167.81	125.86	16.78

CODES BEGINNING WITH 'L'

HCPCS Code	Description	Fee for New Equipment
L0100	Cervical, craniostenosis, helmet molded to patient model	279.68
L0110	Cervical, craniostenosis, helmet, non-molded	76.28
L0120	Cervical, flexible, non-adjustable (foam collar)	14.03
L0130	Cervical, flexible, thermoplastic collar, molded to patient	66.11
L0140	Cervical, semi-rigid, adjustable (plastic collar)	30.51
L0150	Cervical, semi-rigid, adjustable molded chin up (plastic collar with mandibular/occipital piece)	93.97
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	127.13
L0170	Cervical, collar, molded to patient model	274.59
L0172	Cervical, collar, semi-rigid, thermoplastic foam, two-piece	85.43
L0174	Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension	142.38
L0180	Cervical, multiple post collar, occipital/mandibular supports, adjustable	208.23
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types)	305.10
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	249.17

L0210	Thoracic, rib belt, custom fitted	14.05
L0220	Thoracic, rib belt, custom fabricated	30.51
L0300	Thoracic-lumbar-sacral-orthoses, (TLSO), flexible dorso-lumbar surgical support, custom fitted	106.37
L0310	TLSO, flexible dorso-lumbar surgical support, custom fabricated	268.49
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	150.00
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	175.00
L0320	TLSO, anterior-posterior control (Taylor type), with apron front	345.27
L0330	TLSO, anterior-posterior-lateral control (Knight-Taylor type), with apron front	349.29
L0340	TLSO, anterior-posterior-lateral-rotary control (Arnold, Magnuson, Steindler types), with apron front	584.78
L0350	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, custom fitted	864.45
L0360	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, molded to patient model	1,017.00
L0370	TLSO, anterior-posterior-lateral-rotary control, hyperextension (Jewett, Lennox, Baker, Cash types)	313.24
L0380	TLSO, anterior-posterior-lateral-rotary control, with extensions	584.78
L0390	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model	1,067.85
L0400	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,210.94
L0410	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model	940.73
L0420	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model, with interface material	971.24
L0430	TLSO, anterior-posterior-lateral control (body jacket), with interface material, custom fitted	610.20
L0440	TLSO, anterior-posterior-lateral control (body jacket), with overlapping front section, spring steel front, custom fitted	813.60
L0500	Lumbar-sacral-orthoses, (LSO), flexible, (lumbo-sacral surgical support), custom fitted	82.36
L0510	LSO, flexible (lumbo-sacral surgical support), custom fabricated	118.75
L0520	LSO, anterior-posterior-lateral control (Knight, Wilcox types), with apron front	320.36
L0530	LSO, anterior-posterior control (Macausland type), with apron front	244.08
L0540	LSO, lumbar flexion, (Williams flexion type)	406.80
L0550	LSO, anterior-posterior-lateral control (body jacket), molded to patient model	966.15
L0560	LSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,118.70
L0565	LSO, anterior-posterior-lateral control (body jacket), custom fitted	533.93
L0600	Sacroiliac, flexible (sacroiliac surgical support), custom fitted	50.85
L0610	Sacroiliac, flexible (sacroiliac surgical support), custom fabricated	113.50
L0700	Cervical-thoracic-lumbar-sacral-orthoses (CTLSO), anterior-posterior-lateral control, molded to patient model (Minerva type)	1,474.65
L0710	CTLSO, anterior-posterior-lateral control, molded to patient model, with interface material (Minerva type)	1,627.20
L0810	Halo procedure, cervical halo incorporated into jacket vest	2,542.50
L0820	Halo procedure, cervical halo incorporated into plaster body jacket	1,525.50
L0830	Halo procedure, cervical halo incorporated into Milwaukee type orthosis model	2,745.90
L0860	Addition to halo procedures, magnetic resonance image compatible system	575.00
L0900	Torso support, ptosis support, custom fitted	147.47
L0910	Torso support, ptosis support, custom fabricated	355.95
L0920	Torso support, pendulous abdomen support, custom fitted	259.34
L0930	Torso support, pendulous abdomen support, custom fabricated	381.38
L0940	Torso support, post surgical support, custom fitted	152.55
L0950	Torso support, post surgical support, custom fabricated	305.10
L0960	Torso support, post surgical support, pads for post surgical support	76.28
L0972	LSO, corset front	86.45
L0976	LSO, full corset	169.84
L0978	Axillary crutch extension	122.04
L0980	Peroneal straps, pair	20.34
L1000	Cervical-thoracic-lumbar-sacral orthosis (CTLSO) (Milwaukee), inclusive of furnishing initial orthosis, including model	1,441.60
L1010	Addition to cervical-thoracic-lumbar-sacral orthosis (CTLSO) of scoliosis, axilla sling	86.45
L1020	Addition to CTLSO or scoliosis orthosis, kyphosis pad	35.60
L1025	Addition to CTLSO or scoliosis orthosis, kyphosis pad, floating	96.62
L1030	Addition to CTLSO or scoliosis orthosis, lumbar bolster pad	81.36
L1040	Addition to CTLSO or scoliosis, lumbar of lumbar rib pad	45.77
L1050	Addition to CTLSO or scoliosis orthosis, sternal pad	76.28
L1060	Addition to CTLSO or scoliosis orthosis, thoracic pad	76.28
L1070	Addition to CTLSO or scoliosis orthosis, trapeze sling	91.53
L1080	Addition to CTLSO or scoliosis orthosis, outrigger	40.68
L1085	Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions	175.00
L1090	Addition to CTLSO or scoliosis orthosis, lumbar sling	71.19
L1100	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather	111.87
L1110	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model	142.38
L1120	Addition to CTLSO or scoliosis orthosis, cover for upright, each	20.34
L1210	Addition to TLSO (low profile), lateral thoracic extension	152.55
L1220	Addition to TLSO (low profile), anterior thoracic extension	264.42
L1230	Addition to TLSO (low profile), Milwaukee type superstructure	406.80
L1240	Addition to TLSO (low profile), lumbar derotation pad	55.94
L1250	Addition to TLSO (low profile), anterior asis pad	55.94
L1260	Addition to TLSO (low profile), anterior thoracic derotation pad	55.94
L1270	Addition to TLSO (low profile), abdominal pad	55.94

L1280	Addition to TLSO (low profile), rib gusset (elastic), each	76.28
L1290	Addition to TLSO (low profile), lateral trochanteric pad	50.85
L1300	Other scoliosis procedure, body jacket molded to patient model	1,525.50
L1310	Other scoliosis procedure, post-operative body jacket	1,525.50
L1500	Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame, (Newington, Parapodium types)	1,678.05
L1510	THKAO, standing frame	1,296.68
L1500	Hip orthosis (HO), abduction control of hip joints, flexible, freika type with cover	51.26
L1610	HO, abduction control of hip joints, flexible, frejka cover only	77.30
L1620	HO, abduction control of hip joints, flexible, Pavlik harness	101.70
L1630	HO, abduction control of hip joints, semi-flexible (Von Rosen type)	254.25
L1640	HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs	256.28
L1650	HO, abduction control of hip joints, static, adjustable, custom fitted (llfled type)	152.72
L1660	HO, abduction control of hip joints, static, plastic, custom fitted	93.56
L1680	HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type)	1,525.50
L1685	HO, abduction control fo hip joint, post-operative hip abduction type, custom fabricated	762.75
L1686	HO, abduction control of hip joint, post-operative hip abduction type, custom fitted	750.00
L1700	Legg Perthes orthosis, Toronto type	1,525.50
L1730	Legg Perthes orthosis, Scottish Rite type	1,017.00
L1755	Legg Perthes orthosis, patten bottom type	1,067.85
L1800	Knee orthosis, KO, elastic with stays	34.17
L1810	KO, elastic with joints	56.66
L1815	KO, elastic with condylar pads	91.53
L1820	KO, elastic with condylar pads and joints	90.51
L1825	KO, elastic knee cap	35.60
L1830	KO, immobilizer, canvas longitudinal	89.50
L1832	KO, adjustable knee joints, positional orthosis, rigid support, custom fitted	400.00
L1834	KO, without knee joint, rigid, molded to patient model	485.00
L1840	KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model	661.05
L1845	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted	584.78
L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	661.05
L1850	KO, Swedish type	188.15
L1855	KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model	762.75
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)	762.75
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	694.61
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	610.20
L1880	KO, double upright, non-molded thigh and calf cuffs/lacers with knee joints	457.65
L1990	Ankle-foot orthosis (AFO), spring wire, dorsiflexion assist, calf band	228.83
L1902	AFO, ankle gauntlet, custom fitted	61.02
L1904	AFO, molded ankle gauntlet, molded to patient model	355.95
L1906	AFO, multiligamentus ankle support	61.02
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	254.25
L1920	AFO, single upright with static or adjustable stop, (Phelps or Perlstein type)	198.32
L1930	AFO, custom fitted, plastic	203.40
L1940	AFO, molded to patient model, plastic	569.98
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	675.00
L1950	AFO, spiral, molded to patient model, (IRM type), plastic	813.60
L1960	AFO, posterior, solid ankle, molded to patient model, plastic	490.26
L1970	AFO, plastic molded to patient model, with ankle joint	711.90
L1980	AFO, single upright, free dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	291.88
L1990	AFO, double upright, free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	365.10
L2000	Knee-ankle-foot-orthosis (KAFO), single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	722.93
L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	966.15
L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis)	690.72
L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs, (double bar "AK" orthosis), without knee joint	1,118.70
L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,271.50
L2037	KAFO, full plastic, single upright, free, molded to patient model	1,125.00
L2038	KAFO, full plastic, without knee joint, multi-axis, molded to patient model (lively orthosis or equal)	1,250.00
L2040	HKAFO, torsion control, bilateral rotation straps, pelvic band/belt	177.98
L2050	HKAFO, torsion control, bilateral torsion cables, hip joint, pelvic band/belt	223.74
L2060	HKAFO, torsion control, bilateral torsion cables, ball bearing hip joint, pelvic band/belt	264.42
L2070	HKAFO, torsion control, unilateral rotation straps, pelvic band/belt	152.55
L2080	HKAFO, torsion control, unilateral, torsion cable, hip joint, pelvic band/belt	284.05
L2090	HKAFO, torsion control, unilateral torsion cable, ball bearing hip joint, pelvic band/belt	193.23
L2102	Ankle-foot-orthosis (AFO), fracture orthosis, tibial fracture cast orthosis, plaster type casting material, molded to patient	203.40

L2104	AFO, fracture orthosis, tibial fracture cast orthosis, synthetic type casting material, molded to patient	254.25
L2106	AFO, fracture orthosis, tibial fracture cast orthosis, thermoplastic type casting material, molded to patient	355.95
L2108	AFO, fracture orthosis, tibial fracture cast orthosis, molded to patient model	711.90
L2112	AFO, fracture orthosis, tibial fracture orthosis, soft custom fitted	305.10
L2114	AFO, fracture orthosis, tibial fracture orthosis, semi-rigid custom fitted	401.72
L2116	AFO, fracture orthosis, tibial fractures orthosis, rigid custom fitted	457.65
L2122	Knee-ankle-foot-orthosis (KAFO), fracture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	635.63
L2124	KAFO, fracture orthosis, femoral fracture cast orthosis, synthetic type casting material, molded to patient	711.90
L2126	KAFO, fracture orthosis, femoral fracture cast orthosis, thermoplastic type casting material, molded to patient	813.60
L2128	KAFO, fracture orthosis, femoral fracture cast orthosis, molded to patient model	1,118.70
L2132	KAFO, fracture orthosis, femoral fracture cast orthosis, soft custom fitted	610.20
L2134	KAFO, fracture orthosis, femoral fracture cast orthosis, semi-rigid custom fitted	661.02
L2136	KAFO, fracture orthosis, femoral fracture cast orthosis, rigid custom fitted	788.18
L2180	Addition to lower extremity fracture orthosis, plastic shoe insert with ankle joints	67.12
L2182	Addition to lower extremity fracture orthosis, drop lock knee joint	61.02
L2184	Addition to lower extremity fracture orthosis, limited motion knee joint	86.45
L2186	Addition to lower extremity fracture orthosis, adjustable motion knee joint, lerman type	127.13
L2188	Addition to lower extremity fracture orthosis, quadrilateral brim	254.25
L2190	Addition to lower extremity fracture orthosis, waist belt	61.02
L2192	Addition to lower extremity fracture orthosis, hip joint, pelvic band, thigh flange, and pelvic belt	254.25
L2200	Addition to lower extremity, limited ankle motion, each joint	42.94
L2210	Addition to lower extremity, dorsiflexion assist, (plantar flexion resist), each joint	54.07
L2220	Addition to lower extremity, dorsiflexion and plantar flexion assist/resist, each joint	113.21
L2230	Addition to lower extremity, split flat caliper stirrups and plate attachment	79.32
L2240	Addition to lower extremity, round caliper and plate attachment	77.29
L2250	Addition to lower extremity, foot plate, molded to patient model, stirrup attachment	277.02
L2260	Addition to lower extremity, reinforced solid stirrup (Scott-Craig type)	381.38
L2265	Addition to lower extremity, long tongue stirrup	40.00
L2270	Addition to lower extremity, varus/valgus correction ("T") strap, padded/lined or malleolus pad	66.06
L2280	Addition to lower extremity, molded inner boot	254.25
L2300	Addition to lower extremity, abduction bar (bilateral hip involvement), jointed, adjustable	190.07
L2310	Addition to lower extremity, abduction bar, straight	116.96
L2320	Addition to lower extremity, non-molded lacer	122.04
L2330	Addition to lower extremity, lacer, molded to patient model	193.23
L2335	Addition to lower extremity, anterior swing band	152.55
L2340	Addition to lower extremity, pre-tibial shell, molded to patient model	380.36
L2350	Addition to lower extremity, prosthetic type "BK" socket, molded to patient model (used for "PTB" "AFO" orthosis	559.35
L2360	Addition to lower extremity, extended steel shank	45.22
L2370	Addition to lower extremity, patten bottom	228.93
L2375	Addition to lower extremity, torsion control, ankle joint and half solid stirrup	116.96
L2380	Addition to lower extremity, torsion control, straight knee joint, each joint	40.00
L2385	Addition to lower extremity, straight knee joint, heavy duty, each joint	66.11
L2390	Addition to lower extremity, offset knee joint, each joint	101.45
L2395	Addition to lower extremity, offset knee joint, heavy duty, each joint	91.53
L2405	Addition to knee joint, drop lock, each joint	30.51
L2415	Addition to knee joint, cam lock (Swiss, French, Bail types), each joint	127.13
L2425	Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint	142.38
L2435	Addition to knee joint, polycentric joint, each joint	122.04
L2492	Addition to knee joint, lift loop for drop lock ring	101.70
L2500	Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring	149.50
L2510	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model	762.75
L2520	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted	427.14
L2525	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, molded to patient model	825.00
L2526	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, custom fitted	475.00
L2530	Addition to lower extremity, thigh/weight bearing, lacer, non-molded	183.06
L2540	Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model	247.13
L2550	Addition to lower extremity, thigh/weight bearing, high roll cuff	76.28
L2570	Addition to lower extremity, pelvic control, hip joint, clevis type, two position hip joint, each	355.95
L2580	Addition to lower extremity, pelvic control, pelvic sling	305.10
L2600	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, free, each	172.99
L2610	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, lock, each	137.30
L2620	Addition to lower extremity, pelvic control, hip joint, heavy duty, each	203.40
L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	213.57
L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	152.55
L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	1,050.00
L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	1,050.00
L2630	Addition to lower extremity, pelvic control, band and belt unilateral	225.77
L2640	Addition to lower extremity, pelvic control, band and belt bilateral	256.28
L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	112.12

L2660	Addition to lower extremity, thoracic control, thoracic band	42.71
L2670	Addition to lower extremity, thoracic control, paraspinal uprights	116.96
L2680	Addition to lower extremity, thoracic control, lateral support uprights	111.87
L2750	Addition to lower extremity orthosis, plating chrome or nickle, per bar	66.11
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	40.68
L2770	Addition to lower extremity orthosis, stainless steel, per bar or joint	81.36
L2780	Addition to lower extremity orthosis, non-corrosive finish, per bar	50.85
L2785	Addition to lower extremity orthosis, drop lock retainer, each	20.34
L2795	Addition to lower extremity orthosis, knee control, full knee cap	77.77
L2800	Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull	81.36
L2810	Addition to lower extremity orthosis, knee control, condylar pad	81.36
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	50.85
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	50.85
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	35.00
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal each	42.00
L3300	Lift-elevation, heel, tapered to metatarsals, per inch	36.61
L3310	Lift-elevation, heel and sole, neoprene, per inch	40.68
L3320	Lift-elevation, heel and sole, cork, per inch	61.02
L3330	Lift-elevation, metal extension (skate)	81.36
L3334	Lift-elevation, heel, per inch	15.25
L3340	Heel wedge, Sach	50.85
L3350	Heel wedge	15.25
L3360	Sole wedge—outside sole	20.34
L3370	Sole wedge—between sole	34.58
L3380	Clubfoot wedge	30.51
L3390	Outflare wedge	30.51
L3400	Metatarsal bar wedge—rocker	20.34
L3410	Metatarsal bar wedge—between sole	35.60
L3420	Full sole and heel wedge—between sole	40.68
L3580	Miscellaneous shoe addition, convert instep to velcro closure	24.41
L3600	Transfer of an orthosis from one shoe to another, caliper plate existing	61.02
L3610	Transfer of an orthosis from one shoe to another, caliper plate new	96.62
L3620	Transfer of an orthosis from one shoe to another, solid stirrup existing	45.00
L3630	Transfer of an orthosis from one shoe to another, solid stirrup new	96.62
L3640	Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes	35.60
L3650	Shoulder orthosis (SO), figure of "8" design abduction restrainer	40.68
L3660	SO figure of "8" design abduction restrainer, canvas and webbing	76.28
L3670	SO, acromio/clavicular (canvas and webbing type)	122.04
L3700	Elbow orthosis (EO), elastic with stays	45.77
L3710	EO, elastic with metal joints	76.28
L3720	EO, double upright with forearm/arm cuffs, free motion	655.97
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	793.26
L3740	EO, double upright with forearm/arm cuffs, adjustable position lock with active control	1,306.85
L3800	Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments	45.32
L3805	WHFO, long opponens, no attachment	254.25
L3810	WHFO, addition to short and long opponens, thumb abduction "C" bar	35.60
L3815	WHFO, addition to short and long opponens, second M.P. abduction assist	35.60
L3820	WHFO, addition to short and long opponens, I.P. extension assist with M.P. extension stop	76.28
L3825	WHFO, addition to short and long opponens, M.P. extension stop	35.60
L3830	WHFO, addition to short and long opponens, M.P. extension assist	55.94
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	76.28
L3840	WHFO, addition to short and long opponens, spring swivel thumb	40.68
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with M.P. stop	45.77
L3850	WHFO, addition to short and long opponens, action wrist with dorsiflexion assist	81.36
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	101.70
L3860	WHFO, addition to short and long opponens, adjustable H.P. flexion control and I.P.	152.55
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	1,017.00
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	1,123.79
L3902	WHFO, external powered, compressed gas	1,118.70
L3904	WHFO, external powered, electric	788.18
L3906	WHFO, wrist gauntlet, molded to patient model	462.74
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	355.95
L3908	WHFO, wrist extension control cock-up, canvas or leather design, non-molded	91.36
L3910	WHFO, Swanson design	274.60
L3912	WHFO, flexion glove with elastic finger control	91.53
L3914	WHFO, wrist extension cock-up	76.28
L3916	WHFO, wrist extension cock-up, with outrigger	91.53
L3918	WHFO, knuckle bender	66.11
L3920	WHFO, knuckle bender, with outrigger	76.28
L3922	WHFO, knuckle bender, two segment to flex joints	81.36
L3924	WHFO, Oppenheimer	76.28

L3926	WHFO, Thomas suspension	81.36
L3928	WHFO, finger extension with clock spring	50.85
L3930	WHFO, finger extension, with wrist support	76.28
L3932	WHFO, safety pin, spring wire	40.68
L3934	WHFO, safety pin, modified	40.68
L3936	WHFO, Palmer	61.02
L3938	WHFO, dorsal wrist	61.02
L3940	WHFO, dorsal wrist, with outrigger attachment	76.28
L3942	WHFO, reverse knuckle bender	66.11
L3944	WHFO, reverse knuckle bender, with outrigger	76.28
L3946	WHFO, composite elastic	81.36
L3948	WHFO, finger knuckle bender	45.77
L3950	WHFO, combination Oppenheimer, with knuckle bender and two attachments	122.04
L3952	WHFO, combination Oppenheimer, with reverse knuckle bender and two attachments	122.04
L3954	WHFO, spreading hand	66.11
L3960	Shoulder-elbow-wrist-hand orthosis SEWHO, abduction positioning, airplane design	584.78
L3962	SEWHO, abduction positioning, Erbs Palsey design	533.93
L3963	SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint	864.45
L3964	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, adjustable	661.05
L3965	SEWHO, radial arm support attached to wheelchair, balanced and fitted to patient, adjustable Rancho type	762.75
L3966	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, reclining	666.14
L3968	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal joints)	813.60
L3969	SEWHO, mobile arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support	508.50
L3970	SEWHO, addition to mobile arm support, elevating proximal arm	254.25
L3972	SEWHO, addition to mobile arm support, offset or lateral rocker arm with elastic balance control	203.40
L3974	SEWHO, addition to mobile arm support, supinator	203.40
L3980	Upper extremity fracture orthosis, humeral	325.44
L3982	Upper extremity fracture orthosis, radius/ulner	406.80
L3984	Upper extremity fracture orthosis, wrist	406.80
L3985	Upper extremity fracture orthosis, forearm, hand with wrist hinge	457.65
L3986	Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example—Colles fracture)	833.94
L3995	Addition to upper extremity orthosis, sock, fracture or equal, each	18.50
L4000	Replace girdle for Milwaukee orthosis	884.79
L4010	Replace trilateral socket brim	676.31
L4020	Replace quadrilateral socket brim, molded to patient model	355.95
L4030	Replace quadrilateral socket brim, custom fitted	244.08
L4040	Replace molded thigh lacer	421.80
L4045	Replace non-molded thigh lacer	127.13
L4050	Replace molded calf lacer	142.38
L4055	Replace non-molded calf lacer	76.28
L4060	Replace high roll cuff	152.55
L4070	Replace proximal and distal upright for "AKO"	213.57
L4080	Replace metal bands "KAFO", proximal thigh	91.53
L4090	Replace metal bands "KAFO-AFO", calf or distal thigh	53.90
L4100	Replace leather cuff "KAFO", proximal thigh	101.70
L4110	Replace leather cuff "KAFO-AFO", calf or distal thigh	66.11
L4130	Replace pretibial shell	279.68
L4310	Multi-Podus or equal orthotic preparatory management system for lower extremities	250.00
L4320	Addition to AFO, Multi-Podus (or equal) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface for AFO, with velcro closure, custom fitted	90.00
L4350	Pneumatic ankle control splint (Aircast or equal)	65.00
L4360	Pneumatic walking splint (aircast or equal)	200.00
L4370	Pneumatic full leg splint (aircast or equal)	110.00
L4380	Pneumatic knee splint (Aircast or equal)	70.00
L5000	Partial foot, shoe insert with longitudinal arch, toe filler	491.95
L5010	Partial foot, molded socket, ankle height, with toe filler	864.45
L5020	Partial foot, molded socket, tibial tubercle height, with toe filler	1,322.10
L5050	Ankle Symes, molded socket, Sach foot	1,728.90
L5060	Ankle Symes, metal frame, molded leather socket, articulated ankle/foot	2,542.50
L5100	Below knee, molded socket, shin, Sach foot	1,223.14
L5105	Below knee, plastic socket, joints and thigh lacer, Sach foot	2,500.00
L5150	Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot	3,457.80
L5160	Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot	3,457.80
L5200	Above knee, molded socket, single axis constant friction knee, shin, Sach foot	1,528.10
L5210	Above knee, short prosthesis, no knee joint ("stubbies"), with foot blocks, no ankle joints, each	1,728.90
L5220	Above knee, short prosthesis, no knee joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each	2,135.70
L5230	Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot	2,008.58
L5250	Hip disarticulation, Canadian type; molded socket, hip joint, single axis constant friction knee, Sach foot	3,864.60

L5300	Below knee, molded socket, Sach foot, endoskeletal system including soft cover and finishing	1,700.14
L5310	Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing	3,559.50
L5320	Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	1,983.02
L5330	Hip disarticulation, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	3,559.50
L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	5,085.00
L5400	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee	894.96
L5410	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	1,322.10
L5420	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation	915.30
L5430	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment	457.65
L5450	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee	254.25
L5460	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee	305.10
L5500	Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	923.70
L5505	Initial, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	1,228.03
L5510	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model	923.70
L5520	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,220.40
L5530	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,423.80
L5535	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,250.00
L5540	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,260.84
L5560	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,423.80
L5570	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,525.50
L5580	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,678.05
L5585	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,561.10
L5590	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,475.29
L5595	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,650.00
L5600	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	2,800.00
L5611	Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control	960.00
L5613	Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control	1,550.00
L5616	Addition to lower extremity, above knee, universal multiplex system, friction swing phase control	915.30
L5618	Addition to lower extremity, test socket, Symes	203.40
L5620	Addition to lower extremity, test socket, below knee	234.04
L5622	Addition to lower extremity, test socket, knee disarticulation	305.10
L5624	Addition to lower extremity, test socket, above knee	301.98
L5626	Addition to lower extremity, test socket, hip disarticulation	381.38
L5628	Addition to lower extremity, test socket, hemipelvectomy	432.23
L5629	Addition to lower extremity, below knee, acrylic socket	350.00
L5630	Addition to lower extremity, Symes type, expandable wall socket	355.95
L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	400.00
L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	177.98
L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	330.53
L5636	Addition to lower extremity, Symes type, medial opening socket	559.35
L5637	Addition to lower extremity, below knee, total contact	200.00
L5638	Addition to lower extremity, below knee, leather socket	406.80
L5639	Addition to lower extremity, below knee, wood socket	750.00
L5640	Addition to lower extremity, knee disarticulation, leather socket	508.50
L5642	Addition to lower extremity, above knee, leather socket	508.50
L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	864.45
L5644	Addition to lower extremity, above knee, wood socket	508.50

L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	406.80
L5646	Addition to lower extremity, below knee, air cushion socket	330.53
L5647	Addition to lower extremity, below knee, socket suction	279.68
L5648	Addition to lower extremity, above knee, air cushion socket	381.38
L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,423.80
L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	472.81
L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	661.05
L5652	Addition to lower extremity, suction suspension, above knee or knee disarticulation, socket	515.13
L5653	Addition to lower extremity, knee disarticulation, expandable wall socket	610.20
L5654	Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	330.53
L5655	Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	217.57
L5656	Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	347.05
L5658	Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	331.03
L5660	Addition to lower extremity, socket insert, Symes, silicone gel or equal	406.80
L5661	Addition to lower extremity, socket insert, multi-durometer, Symes	432.23
L5662	Addition to lower extremity, socket insert, below knee, silicone gel or equal	381.38
L5663	Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal	483.08
L5664	Addition to lower extremity, socket insert, above knee, silicone gel or equal	483.08
L5665	Addition to lower extremity, socket insert, multi-durometer, below knee	279.68
L5666	Addition to lower extremity, below knee, cuff suspension	48.67
L5668	Addition to lower extremity, below knee, molded distal cushion	75.95
L5670	Addition to lower extremity, below knee, molded supracondylar suspension ("PTS" or similar)	255.77
L5672	Addition to lower extremity, below knee, removable medial brim suspension	279.68
L5674	Addition to lower extremity, below knee, latex sleeve suspension, each	59.67
L5675	Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each	50.85
L5676	Addition to lower extremity, below knee, knee joints, single axis, pair	201.21
L5677	Addition to lower extremity, below knee, knee joints, polycentric, pair	254.25
L5678	Addition to lower extremity, below knee, joint covers, pair	23.42
L5680	Addition to lower extremity, below knee, thigh lacer, non-molded	208.28
L5682	Addition to lower extremity, below knee, thigh lacer, gluteal/ischial, molded	483.08
L5684	Addition to lower extremity, below knee, fork strap	39.93
L5686	Addition to lower extremity, below knee, back check (extension control)	40.68
L5688	Addition to lower extremity, below knee, waist belt, webbing	51.01
L5690	Addition to lower extremity, below knee, waist belt, padded and lined	82.65
L5692	Addition to lower extremity, above knee, pelvic control belt, light	87.97
L5694	Addition to lower extremity, above knee, pelvic control belt, padded and lined	146.35
L5695	Addition to lower extremity, above knee, pelvic control, sleeve suspension, neoprene or equal, each	125.00
L5696	Addition to lower extremity, above knee or knee disarticulation, pelvic joint	145.50
L5697	Addition to lower extremity, above knee or knee disarticulation, pelvic band	40.47
L5698	Addition to lower extremity, above knee or knee disarticulation, silesian bandage	83.99
L5699	All lower extremity prosthesis, shoulder harness	144.16
L5710	Addition, exoskeletal knee-shin system, single axis, manual lock	211.09
L5711	Addition, exoskeletal knee-shin system, single axis, manual lock, ultra-light material	355.95
L5712	Addition, exoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	282.37
L5714	Addition, exoskeletal knee-shin system, single axis, variable friction swing phase control	355.95
L5716	Addition, exoskeletal knee-shin system, polycentric mechanical stance phase lock	533.93
L5718	Addition, exoskeletal knee-shin system, polycentric friction swing and stance phase control	533.93
L5722	Addition, exoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	915.30
L5724	Addition, exoskeletal knee-shin system, single axis, fluid swing phase control	1,118.70
L5726	Addition, exoskeletal knee-shin system, single axis, external joints, fluid swing phase control	813.60
L5728	Addition, exoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,957.73
L5780	Addition, exoskeletal knee-shin system, single axis, pneumatic/hydrapneumatic swing phase control	762.75
L5785	Addition, exoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	254.25
L5790	Addition, exoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	381.38
L5795	Addition, exoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	508.50
L5810	Addition, endoskeletal knee-shin system, single axis, manual lock	330.53
L5811	Addition, endoskeletal knee-shin system, single axis, manual lock, ultra-light material	406.80
L5812	Addition, endoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	355.95
L5814	Addition, endoskeletal knee-shin system, single axis, variable friction swing phase control	500.00
L5816	Addition, endoskeletal knee-shin system, polycentric, mechanical stance phase lock	493.08
L5818	Addition, endoskeletal knee-shin system, polycentric, friction swing and stance phase control	690.00
L5822	Addition, endoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	1,400.00
L5824	Addition, endoskeletal knee-shin system, single axis, fluid swing phase control	762.75
L5828	Addition, endoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,800.00
L5830	Addition, endoskeletal knee-shin system, single axis, pneumatic swing phase control	1,345.00
L5850	Addition, endoskeletal system, above knee or hip disarticulation, knee extension assist	50.85
L5910	Addition, endoskeletal system, below knee, alignable system	342.00
L5920	Addition, endoskeletal system, above knee or hip disarticulation, alignable system	350.00
L5940	Addition, endoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	279.68
L5950	Addition, endoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	331.03
L5960	Addition, endoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	584.78

L5970	All lower extremity prosthesis, foot, external keel, Sach foot	97.83
L5972	All lower extremity prosthesis, flexible keel foot (Safe, Sten, Bock Dynamic or equal)	152.55
L5974	All lower extremity prosthesis, foot, single axis ankle/foot	136.76
L5976	All lower extremity prosthesis, energy storing foot (Seattle Carbon Copy II or equal)	355.95
L5978	All lower extremity prosthesis, foot, multi-axial ankle/foot (Greissinger or equal)	159.18
L5980	All lower extremity prosthesis, flex foot system	2,542.50
L5982	All exoskeletal lower extremity prosthesis, axial rotation unit	508.50
L5984	All endoskeletal lower extremity prosthesis, axial rotation unit	381.38
L5986	All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal)	381.38
L6010	Partial hand, Robin-Aids, little and/or ring finger remaining (or equal)	1,271.25
L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,423.80
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	1,983.15
L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,423.80
L6110	Below elbow, molded socket (Muenster or Northwestern suspension types)	1,805.18
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,932.30
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	2,542.50
L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,830.60
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	3,152.70
L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	2,008.58
L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,695.05
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	2,339.10
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,525.50
L6350	Interscapular theracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm	3,025.58
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,932.30
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,779.75
L6380	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components and one cast change, wrist disarticulation or below elbow	864.45
L6382	Immediate post surgical or early fitting, application of initial rigid dressing including fitting alignment and suspension of components and one cast change, elbow disarticulation or above elbow	1,017.00
L6384	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, shoulder disarticulation or	1,220.40
L6386	Immediate post surgical or early fitting, each additional cast change and realignment	279.68
L6388	Immediate post surgical or early fitting, application of rigid dressing only	254.25
L5400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,505.16
L5450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,627.20
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,922.13
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,237.40
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,745.90
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, molded to patient model	1,017.00
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, direct formed	864.45
L6584	Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	1,449.23
L6586	Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,245.83
L6588	Preparatory shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	2,166.21
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,983.15
L6600	Upper extremity additions, polycentric hinge, pair	122.04
L6605	Upper extremity additions, single pivot hinge, pair	147.47
L6610	Upper extremity additions, flexible metal hinge, pair	132.21
L6615	Upper extremity addition, disconnect locking wrist unit	76.28
L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	75.00
L6620	Upper extremity addition, flexible-friction wrist unit	315.27
L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	483.08
L6625	Upper extremity addition, rotation wrist unit with cable lock	200.00
L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	355.95
L6630	Upper extremity addition, stainless steel, any wrist	86.45
L6632	Upper extremity addition, latex suspension sleeve, each	40.68
L6635	Upper extremity addition, lift assist for elbow	152.55
L6637	Upper extremity addition, nudge control elbow lock	371.21
L6640	Upper extremity additions, shoulder abduction joint, pair	162.72
L6641	Upper extremity addition, excursion amplifier, pulley type	122.04
L6642	Upper extremity addition, excursion amplifier, lever type	172.89
L6645	Upper extremity addition, shoulder flexion-abduction joint, each	193.23
L6650	Upper extremity addition, shoulder universal joint, each	190.00
L6655	Upper extremity addition, standard control cable, each	71.19
L6660	Upper extremity addition, heavy duty control cable	50.85

L6665	Upper extremity addition, teflon or equal, cable lining	30.51
L6670	Upper extremity addition, hook to hand, cable adapter	61.02
L6672	Upper extremity addition, harness, chest or shoulder, saddle type	137.30
L6675	Upper extremity addition, harness, figure of "8" type, for single control	111.87
L6676	Upper extremity addition, harness, figure of "8" type, for dual control	142.38
L6680	Upper extremity addition, test socket, wrist disarticulation or below elbow	203.40
L6682	Upper extremity addition, test socket, elbow disarticulation or above elbow	228.83
L6684	Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic	188.15
L6686	Upper extremity addition, suction socket	508.50
L6687	Upper extremity addition, frame type socket, below elbow or wrist disarticulation	305.10
L6688	Upper extremity addition, frame type socket, above elbow or elbow disarticulation	355.95
L6689	Upper extremity addition, frame type socket, shoulder disarticulation	406.80
L6690	Upper extremity addition, frame type socket, interscapular thoracic	457.65
L6691	Upper extremity addition, removable insert, each	305.10
L6692	Upper extremity addition, silicone gel insert or equal, each	300.00
L6700	Terminal device, hook, dorrance, or equal Model #3	269.51
L6705	Terminal device, hook, dorrance, or equal Model #5	188.15
L6710	Terminal device, hook, dorrance, or equal Model #5X	264.42
L6715	Terminal device, hook, dorrance, or equal Model #5XA	183.06
L6720	Terminal device, hook, dorrance, or equal Model #6	544.10
L6725	Terminal device, hook, dorrance, or equal Model #7	210.52
L6730	Terminal device, hook, dorrance, or equal Model #7LO	236.15
L6775	Terminal device, hook, dorrance, or equal Model #555	265.00
L6780	Terminal device, hook, dorrance, or equal Model #SS555	304.00
L6790	Terminal device, hook, "ACCU" hook or equal	376.29
L6795	Terminal device, hook "2" load or equal	884.80
L6800	Terminal device, hook—APRL VC or equal	701.73
L6805	Terminal device, modifier, wrist flexion unit	234.93
L6806	Terminal device, hook, TRS grip, VC	1,169.55
L6807	Terminal device, hook, TRS adept, child, VC	889.88
L6808	Terminal device, hook, TRS adept, infant, VC	737.33
L6809	Terminal device, hook, TRS Super Sport, passive	244.08
L6810	Terminal device, hook, pincher tool, Otto Bock or equal	127.13
L6825	Terminal device, hand, dorrance, VO	355.95
L6830	Terminal device, hand, APRL, VC	986.50
L6835	Terminal device, hand, Sierra, VO	864.45
L6860	Terminal device, hand, Robin-Aids, VO soft	508.50
L6865	Terminal device, hand, passive hand	213.57
L6867	Terminal device, hand, Detroit infant hand, (mechanical)	762.75
L6868	Terminal device, hand, Passive infant hand, (Steeper, Hosmer or equal)	152.55
L6872	Terminal device, hand, NYU child hand	711.90
L6873	Terminal device, hand, mechanical infant hand, Steeper or equal	203.40
L6875	Terminal device, hand, Bock, VC	686.48
L6880	Terminal device, hand, Bock, VO	406.80
L6890	Terminal device, glove for above hands, production glove	106.79
L6895	Terminal device, glove for above hands, custom glove	376.29
L6900	Hand restoration (cast, shading and measurements included), partial hand, with glove, thumb or one finger remaining	1,271.25
L6905	Hand restoration (casts, shading and measurements included), partial hand, with glove, multiple fingers remaining	1,271.25
L6910	Hand restoration (cast, shading and measurements included), partialhand, with glove no fingers remaining	1,271.25
L6915	Hand restoration (shading, and measurements included), replacement glove for above	406.80
L7010	Electronic hand, Otto Bock, Steeper or equal switch controlled	1,728.90
L7015	Electronic hand, Systemteknik, Variety Village or equal switch controlled	3,966.30
L7020	Electronic Greifer, Otto Bock or equal switch controlled	2,440.80
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,339.10
L7030	Electronic hand, Sytemteknik, Variety Village or equal, myoelectronically controlled	4,068.00
L7035	Electronic Greifer, Otto Bock or equal, myoelectronically controlled	2,339.10
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,830.60
L7045	Electronic hook, child, Michigan or equal, switch controlled	889.88
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,712.05
L7185	Electronic elbow, child, Variety Village or equal, switch controlled	6,000.00
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	6,340.00
L7260	Electronic wrist rotator, Otto Bock or equal	1,678.05
L7261	Electronic wrist rotator, for Utah arm	3,051.00
L7266	Servo control, Steeper or equal	610.20
L7272	Analogue control, UNB or equal	1,423.80
L7274	Proportional control, 12 volt, Utah or equal	4,576.50
L7360	Six volt battery, Otto Bock or equal, each	203.40
L7362	Battery charger, six volt, Otto Bock or equal	172.89
L7364	Twelve volt battery, Utah or equal, each	325.44
L7366	Battery charger, twelve volt, Utah or equal	432.23

L8000	Breast prosthesis, mastectomy bra	21.59
L8010	Breast prosthesis, mastectomy sleeve	59.42
L8020	Breast prosthesis, mastectomy form	67.31
L8030	Breast prosthesis, silicone or equal	156.79
L8300	Truss, single with standard pad	56.12
L8310	Truss, double with standard pad	114.49
L8320	Truss, addition to standard pad, water pad	30.51
L8330	Truss, addition to standard pad, scrotal pad	31.53
L8400	Prosthetic sheath, below knee, each	15.26
L8410	Prosthetic sheath, above knee, each	14.29
L8415	Prosthetic sheath, upper limb, each	14.24
L8420	Prosthetic sock, wool, below knee, each	16.95
L8430	Prosthetic sock, wool, above knee, each	18.35
L8435	Prosthetic sock, woold, upper limb, each	10.17
L8440	Prosthetic shrinker, below knee, each	36.61
L8460	Prosthetic shrinker, above knee, each	46.51
L8465	Prosthetic shrinker, upper limb, each	42.21
L8470	Stump sock, single ply, fitting, below knee, each	3.22
L8480	Stump sock, single ply, fitting, above knee, each	3.16

CODES BEGINNING WITH 'Q' THROUGH 'Z'

HCPCS Code	Description	Fee for New Eqpt	Fee for Used Eqpt	Rental Per Month
Q0036	Oxygen concentrator high humidity			287.90
Q0037	Oxygen and water vapor enriching system			287.90
Q0038	Oxygen contents, gaseous, per unit (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned; 1 unit = 50 cubic feet)	195.84		
Q0039	Oxygen contents, liquid, per unit (for use with owned stationary liquid systems or when both a stationary and portable liquid system are owned; 1 unit = 10 lbs.)	195.84		
Q0040	Portable oxygen contents, gaseous per unit (for use only with portable gaseous systems when no stationary gas system is used; 1 unit = 5 cubic ft.)	27.73		
Q0041	Portable oxygen contents, liquid, per unit (for use only with portable liquid systems when no stationary liquid system is used; 1 unit = 1 lb.)	27.73		
Q0042	Stationary compressed gas system rental, includes contents (per unit), regulator with flow gauge, humidifier, nebulizer, cannula or mask and tubing, 1 unit = 50 cubic feet.			287.90
Q0043	Stationary liquid oxygen system rental, includes content (per unit), use of reservoir, contents indicator, flowmeter, humidifier, nebulizer, cannula or mask and tubing; 1 unit of contents = 10 lbs.			287.90
Q0046	Portable liquid oxygen system rental, includes flowmeter, refill adapter, contents gauge, cannula and tubing			57.80
V2620	Prosthetic, eye, glass, stock	76.28		
V2621	Prosthetic, eye, plastic, stock	76.28		
V2622	Prosthetic, eye, glass, custom	606.13		
V2623	Prosthetic, eye, plastic, custom	606.13		
Y2624	Reglazing of ocular prosthesis	30.51		
Z0010	Hospital bed, variable height, Hi-Lo, with mattress	948.33	691.59	94.83
Z0015	Hospital bed, semi-electric, head and foot adjustment, with mattress	1304.00	1133.29	130.40
Z0020	Hospital bed, total electric, head, foot, and height adjustment, with mattress	1841.08	1450.45	184.11
Z0460	Hand-held nebulizer	5.09		
Z0462	Regulator (replacement)	94.90	71.18	9.49
Z0520	Aerosol therapy unit with compressor	147.88	110.91	14.79
Z0783	Drug maintenance/supply kit for home infusion therapy—subcutaneous line or implanted access device	40.00		
Z3255	Orthopedic shoes attached to brace	74.96		
Z4330	Catheter plug	.86		
Z4331	Irrigation solution, 500 ml	9.72		
Z4332	Irrigation solution, 1000 ml	11.38		
Z4351	Catheter irrigation tray with bulb syringe	5.09		
Z4352	Urethral catheter tray	6.10		
Z4353	Foley catheter tray	6.10		
Z4405	Ostomy wafers	10.17		
Z4406	Ostomy deodorant	8.01		
Z4407	Skin prep wipes	6.31		
Z4442	Tracheostomy suction kit	6.41		

(a)

DIVISION OF ADMINISTRATION

Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-34

Emergency New Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules Filed: November 26, 1990 as R.1990 d.620.

Authority: N.J.S.A. 17:33B-13 and 14; N.J.S.A. 17:1C-6(e).

Concurrent Proposal Number: PRN 1990-640.

Emergency New Rules Effective Date: November 26, 1990.

Operative Date: April 1, 1991.

Emergency New Rules Expiration Date: January 25, 1991.

Submit written comments by January 16, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
N.J. Department of Insurance
20 West State Street
Trenton, New Jersey 08625-0325

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency adopted new rules are being reproposed in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules become effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

These reproposed new rules implement N.J.S.A. 17:33B-13 and 14. The Department of Insurance (Department) previously proposed rules implementing N.J.S.A. 17:33B-13 and 14 on July 16, 1990 (see 22 N.J.R. 2108(a)). The Department has decided to make substantive changes based on public comments received and continuing Department review. This proposal therefore replaces and supercedes the prior proposal. Those comments and the Department's responses are summarized below.

COMMENT: Several commenters objected to the definition of an "at-fault accident" in N.J.A.C. 11:3-34.3 because it allows insurers to determine or assess fault.

RESPONSE: Insurers have always made an assessment of fault for evaluating and settling liability claims and thus for underwriting and rating purposes. The proposed new rules provide for the use of an objective criteria for this process.

COMMENT: Several commenters stated that the definition of an "at-fault accident" (N.J.A.C. 11:3-34.3) was not clear. One commenter stated that "while the definition uses the term resulted in payment, section 11:3-34.5(b)(1) specifies that points for an at-fault accident accrue ". . . when the insurer has knowledge of the event, that is, when the accident is reported or a claim is made," that an at-fault accident is chargeable when knowledge of the event is known and a definition of both fault and apparent value of the claim has taken place. The commenter preferred this interpretation because the actual payment of many liability claims may not take place for some time particularly when litigation is involved.

RESPONSE: The Department has revised N.J.A.C. 11:3-34.5(b)1, so that eligiblity points accrue for an "at-fault accident," from the date that total payment by the insurer equals or exceeds $500.00.

COMMENT: One commenter stated that "the definition of an at-fault accident should not include a consideration of a dollar amount of damage. If the dollar amount must be considered, it should be based on incurred damage, not payment."

A second commenter suggested that the definition of an at-fault accident should be amended so that the $500.00 claim payment is given without consideration of the deductible. The commenter believed that this would prevent inequitable treatment between insureds with different coverage deductibles.

A third commenter argued that a $500.00 minimum payment for an at-fault accident is too low because an accident with minimum damage to a headlight and trim can cost $500.00. Since the insurance carrier is not authorized to assess fault or the percentage of fault, if payment is less than $2,000, the commenter suggests that the amount be raised to $2,000.

A fourth commenter recommended that the requirement of payment by the insurer should be omitted and amended to read ". . . which resulted in Bodily Injury or Property Damage (including his or her own) of $500 or more. Under the current definition, eligibility points would not be applied to a single car accident if the vehicle was without collision protection."

RESPONSE: The Fair Automobile Insurance Reform Act (FAIR Act) at N.J.S.A. 17:33B-14 specifically provides that an "at-fault accident" is one that "results in **payment by the insurer** of at least a $500 claim" and the proposed rule is consistent with this provision. The Department believes that points should accrue for "at-fault accidents" when the total payments by the insurer for that claim equals or exceeds $500.00 as a result of an accident.

COMMENT: One commenter objected to the use of proportionate responsibility to determine fault. The commenter believes that this would be cumbersome to monitor, unfair to certain drivers, and would quickly fill up the assigned risk market. The commenter argued that the definition could result in several drivers being charged for an at-fault accident when they are not the primary cause of the accident. The commenter suggested that the definition be amended to charge points for an at-fault accident only to the driver determined to hold the greatest percentage of fault.

A second commenter suggested modifying the definition of an at-fault accident from ". . . for which the driver is **at least** proportionately responsible . . . to . . . for which the driver is **more than** proportionately responsible . . ." in addition to providing a definition of proportionately responsible. The revised definition removes any ambiguity and also makes it clear that no points would be assigned for an accident where equal fault was found.

RESPONSE: The Department believes that the definition proposed adequately defines an at-fault accident. The Department has determined that if two people are found to be equally responsible for an accident, then they both warrant the accrual of points. Each person is to be held responsible for his or her behavior. It is possible for two people to be each 50 percent responsible for a two-car accident.

COMMENT: One commenter requested that the rule clarify the types of accidents where "at-fault" (that is, negligence) does not apply. The commenter advised that under current practice, the following are not considered at-fault accidents: 1) accidents involving damage by contact with animals or fowl; 2) accidents involving physical damage limited to and caused by flying gravel or falling objects. The commenter further questioned if there is a standard that insurers use to determine fault. The commenter also questioned if this rule provides that standard.

RESPONSE: The Department agrees that the rule should include a list of the types of accidents where the driver is clearly not responsible and has revised this section accordingly. The proposed rule does not include the standard that insurers use to determine fault. Insurers apply a negligence standard to determine fault.

COMMENT: Several commenters objected to N.J.A.C. 11:3-34.4(a), which provides the qualifications for an "eligible person." One commenter stated that this section should be amended to require the applicant for insurance to have the automobile to be insured or registered in his or her own name. A second commenter wanted this section amended "to include all persons insured within an insured's household." The commenter argued that the definition of eligible person fails to assign a point value which measures the "eligible risk" to be insured. An auto policy insures the name insured and all those who regularly reside in a household.

A third commenter argued that most companies write polices to include household members. The commenter stated that "the regulation must clarify what to do when a named insured is eligible per the rules, but other members of the household are not". The commenter believes that, unless eligibility is defined on a household basis, as opposed to an individual basis, the regulation will work against the FAIR Act by inviting fraud and driving up the rates.

A fourth commenter believed that if one person owns all the vehicles to be covered under the policy and one of the designated drivers does not meet the "eligible person" definition, then the policy should not be considered "eligible."

A fifth commenter objected to the definition of an eligible person because he believes the definition does not take into account certain other risk characteristics which also play an important role in determining the acceptability of a risk, for example, the type of vehicles, vehicle usage, maturity in experience of operators, and overall claim activity. The commenter states that eligibility points should be accumulated on a per-policy or per-account basis. The commenter questioned how a company would be able to avoid exposure when other family members are deemed eligible, and will the Department or courts permit named driver exclusions.

RESPONSE: In accordance with N.J.S.A. 17:33B-13, the proposed rules further define those persons eligible for automobile insurance in the voluntary market. Eligibility is determined on an individual basis, and not on a household basis. The proposed rules on Nonrenewal of Automobile Insurance Policies (N.J.A.C. 11:3-8), published elsewhere in this issue of the New Jersey Register, provide the standards insurers are to use in nonrenewing automobile insurance policies. The proposed rules on Private Passenger Automobile Underwriting Rules (N.J.A.C. 11:3-35), published elsewhere in this issue of the New Jersey Register, require insurers to file and use underwriting rules that contain the definition of an "eligible person." Each rule provides requirements that insurers are to follow in nonrenewing or writing a policy where an eligible and ineligible driver reside in the household.

COMMENT: One commenter stated that N.J.A.C. 11:3-34.4(a) would require insurers to write vehicles registered outside of New Jersey, should the owner hold a valid New Jersey license. A second commenter stated that this section should be amended to provide that "the registered automobile must be principally garaged in the state." The commenter believed that if clarification is not made, the problem of rate evasion will be exacerbated.

RESPONSE: The Department agrees and has revised this section accordingly.

COMMENT: Two commenters noted that there is an incorrect citation under N.J.A.C. 11:3-34.4(a) which should read N.J.S.A. 39:4-50.4a, instead of N.J.S.A. 39:4-50.5a.

RESPONSE: The Department agrees and has revised this section accordingly.

COMMENT: Two commenters stated that insurance companies will have difficulty determining whether a person has been convicted of a crime under N.J.A.C. 11:3-34.4(a)2. One of the commenters stated that "to require insurers to somehow check criminal court records or to contact prior insurers for all applicants creates a seemingly unmanageable situation".

RESPONSE: This provision is part of the FAIR Act's definition of an eligible person. Information is included on the Division of Motor Vehicle (DMV) abstract if the driver's license has been suspended as a result of crime. This rule does not specifically require insurers to check criminal court records. The rule permits insurers to use information of a criminal conviction as a basis for declaring a person ineligible for insurance in the voluntary market.

COMMENT: Another commenter questioned the need to limit a criminal conviction to "the use of a motor vehicle" under N.J.A.C. 11:3-34.4(a)2. The commenter stated that any criminal conviction of a serious nature is a valid underwriting criteria for eligibility.

RESPONSE: The commenter's suggestion that N.J.A.C. 11:3-34.4(a)2 should apply to any criminal conviction is not consistent with N.J.S.A. 17:33B-13(a).

COMMENT: Three commenters noted that N.J.A.C. 11:3-34.4(a)3 appears inconsistent with N.J.S.A. 17:33B-13(c). The definition of an eligible person as proposed does not apply to any person whose driver's license to operate an automobile is under a **court-ordered** suspension or revocation. The commenter inquired, "Why does the regulation stipulate that the suspension or revocation of the license be by court order when the FAIR Act does not include the court order stipulation?" The commenter also wanted to know if the Department intended insurance companies to insure someone who has a suspended or revoked license if it was not done by court order.

A second commenter believed this section precludes an insurer from considering a suspension that occurred within the experience period unless the suspension were currently in effect.

A third commenter was concerned that this section would permit suspensions and revocations **not court ordered** to be eliminated from consideration of eligibility.

A fourth commenter believed that there is a need for a time frame or other constraining parameters associated with this item. For example, there are cases when the court, at the discretion of the judge, will order a 30-day license suspension for a traffic violation in addition to ticket and court costs. The commenter did not believe that this situation was addressed by these rules.

RESPONSE: The Department agrees with the first commenter and has revised N.J.S.A. 11:3-34.4(a)3 by deleting the terms "court ordered."

A person whose license is suspended is not an eligible person; additionally, for each full year of a court imposed suspension within the preceding three years, a person receives three automobile insurance eligibility points.

COMMENT: One commenter questioned if the term "insurance fraud" under N.J.A.C. 11:3-34.4(a)4 only included automobile insurance fraud.

A second commenter argued that fraud not related to auto insurance should not be used to determine: 1) good driver rating or 2) a driver's automobile premium.

RESPONSE: The proposed rule is consistent with the FAIR Act's definition of an eligible person. The FAIR Act states that a person who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an **insurance claim** or an application for insurance is not considered an eligible person. The statute does not limit insurance fraud to only that involving automobile insurance.

COMMENT: One commenter objected to N.J.A.C. 11:3-34.4(a)5 which finds a person not eligible who has been denied payment of a claim by the insurer when there is evidence or intent to defraud involving an auto claim or application. The commenter argued that a driver should be presumed innocent, and allowed due process. The commenter believed that the insurance carrier should be required to pursue the charge of fraud.

RESPONSE: The Department has revised N.J.A.C. 11:3-34.4(a)5 to establish a presumption that there is no fraud if the insurer failed to report the illegally fraudulent activity to the Department's Insurance Fraud Division, pursuant to N.J.S.A. 17:33B-9.

COMMENT: One commenter objected to N.J.A.C. 11:3-34.4(a)5ii. The commenter did not believe that this section should permit the presumption that a claim was successfully denied. The commenter believes the presumption should be in favor of the insured being innocent and the company should pursue the fraud before assigning eligibility points.

RESPONSE: If an insured is denied insurance based upon a claim that has been denied, the insured can pursue this determination pursuant to proposed N.J.A.C. 11:3-33 (Appeals from the Denial of Automobile Insurance) (see 22 N.J.R. 2457(a)).

COMMENT: Two commenters expressed concerns with proposed N.J.A.C. 11:3-34.4(a)6. The first commenter stated that defaults in payment of JUA surcharges should be considered nonpayment of premiums.

The second commenter stated that "this section of the regulation as well as the corresponding section of the FAIR Act will be difficult to monitor by both insurers and producers". The commenter stated that "many consumers may let their policy cancel for nonpayment when they are changing companies without realizing this provision will remove them from the definition of eligible person". The commenter suggested that this section be amended to read as follows: ". . . cancelled for nonpayment of premium, with a lapse of coverage, within the immediately preceding two year period." The commenter further suggested that "in order to monitor this portion of the regulation and statute it will be necessary for the Division of Motor Vehicles to provide data which would indicate lapse of coverage based on the information provided to them by the insurers".

RESPONSE: Failure to pay insurance surcharges that are charged as additional premium are considered nonpayment of premiums. DMV surcharges are not considered premiums.

The Department agrees with the second commenter and has revised this section accordingly.

COMMENT: One commenter objected to proposed N.J.A.C. 11:3-34.4(a)7. The commenter argued that the "provision allowing clubs or groups to carve out what amounts to their own eligibility criteria separate from the regulation fundamentally discriminates against non-club insurers. This exception defeats the purpose of **Take All Comers** in that it allows some insurers to determine eligibility based on membership that has nothing to do with the person's driving ability or past conduct relating to fraud. What is even more disconcerting is that the **Take All Comers** law can be likened to the Assigned Risk plans from before; club-type organizations were never exempted from participation in the past. Even worse, these organizations have been soliciting the good risks which do not meet their membership criteria. They now should not be allowed to shield themselves from the **bad** risks, using membership criteria as a smoke screen."

A second commenter also expressed concern with N.J.A.C. 11:3-34.4(a)7. The commenter stated that this provision provides clubs or groups who may select drivers for coverage with an unfair advantage over other insurers who must take all comers. In addition, the commenter argued that consumers are then required to pay additional fees (dues) to meet the requirements of an eligible person with a group or club, a fee that they might not otherwise be obligated to pay.

RESPONSE: This provision is consistent with the eligible persons qualifications set forth in N.J.S.A. 17:33B-13(e). The proposed rule permits companies that have always operated in this manner to continue to do so.

COMMENT: Several commenters objected to N.J.A.C. 11:3-34.4(a)8. One commenter recommended that this section be amended by "requiring an eligible person to be licensed for the preceding three years without interruption. Otherwise the convicted drunk driver and the inexperienced driver will be automatically eligible. As a matter of fact anyone who has been suspended or incarcerated for the last three years will meet the present definition of eligibility."

RESPONSE: The Department disagrees. The schedule includes a provision by which a person is assigned three points for each full year of a court imposed driver's license suspension within the preceding three years. Therefore, a person who has been under a court ordered suspension for the last three years will receive nine points for a three year court ordered suspension.

COMMENT: Several commenters objected to the impact that the "retroactive 3-year period" in N.J.A.C. 11:3-34.4(a)8 will have on the consumer. One commenter believed that drivers who have worked at cleaning up their driving record, and are at a point where that goal is about to be achieved, will again be penalized for past offenses. The commenter argues that "it is like trying a person twice for the same crime." The commenter further stated that, "a point of stronger disagreement is the fact that you are adding retroactive points for past accidents. How fair is it to give someone points for something that happened in the past when there were no points given?" The commenter suggests the deletion of the "retroactive" clause.

A second commenter recommended that in paragraph (a)8 the experience period be 34 months prior to the effective date of coverage, excluding the last three months. According to the commenter, this would allow the insurer to get three full years of experience and allows the Division of Motor Vehicles three months to post the convictions.

A third commenter suggested that the accumulation of points over three years should only apply to new points.

A fourth commenter asked the following questions: 1) Will this be implemented retroactively to the three-year period for non-DMV points? 2) Who has been keeping track of this information? 3) Is it legal to penalize people retroactively for violations they did not know would affect their insurance rate? 4) Will everyone start with zero points for non-DMV plus DMV points?

A fifth commenter suggested that a transition period should be used to mitigate or avoid retroactive implementation of the Act. The commenter further recommends giving motorists a four-point credit for any eligibility points that would be assessed under Schedule I or 2, for offenses committed prior to 1990.

RESPONSE: The Department is adhering to provisions of the FAIR Act, N.J.S.A. 17:33B-13(b), which requires eligibility points to be based on a person's driving record for the three year period immediately preceding application for, or renewal of, an automobile insurance policy.

Insurers have always used a person's driving record for underwriting and rating purposes. This rule sets an objective standard and imposes a limit on that determination. This rule is not a penalty but a definition of those drivers that qualify for coverage in the voluntary market.

COMMENT: One commenter objected to the provisions of proposed N.J.A.C. 11:3-34.4(a)8 because he felt it will negatively impact the municipal court system. The commenter recommended rewording the proposal to allow companies the flexibility of initially (first three years after the law takes effect) considering a driver's entire record rather than just a three year retroactive period.

RESPONSE: The Department acknowledges that there may be an impact on municipal courts. The FAIR Act requires that the driving record of an individual is considered during the three-year period immediately preceding application for, or renewal of, an automobile policy, except as provided for in the definition of an eligible person.

COMMENT: One commenter stated that comprehensive and other claim experience should be recognized in N.J.A.C. 11:3-34.5, Automobile insurance eligibility points.

RESPONSE: The commenter does not state the manner by which comprehensive and other claim experience should be recognized. The FAIR Act provides that points are to be based on at-fault accidents or violations. A comprehensive claim is not considered fault-based.

COMMENT: Several commenters expressed their concern with proposed N.J.A.C. 11:3-34.5(b)1. One commenter suggested that the Department allow points for at-fault accidents to accrue from the date of the accident and not when the accident is reported or a claim is made.

A second commenter suggested that points for at-fault accidents accrue when the insurer has knowledge of the event. The commenter suggested that the date of the accident be used as a criteria to avoid persons not reporting accidents in order to lessen the impact of the eligibility point system.

A third commenter suggested that points should be assessed for at-fault accidents at the "date of loss." This is a date certain which has ready reference under current practice by auto insurers doing business today in New Jersey.

A fourth commenter suggested the "date of first payment," because negligence will have been firmly established and the $500.00 threshold will have been determined.

RESPONSE: The Department has revised this section, so that automobile insurance eligibility points for at-fault accidents accrue on the date that total payment by the insurer equals or exceeds $500.00.

COMMENT: One commenter stated that accidents pursuant to N.J.A.C. 11:3-34.5(b)1 accrue as of the report date, yet they are not considered at-fault until $500.00 is paid. The commenter questioned that if the claim is not settled with any swiftness, whether this represents a loss for the period of time that insurers could have been surcharging.

RESPONSE: The Department has revised this section so that points for an at-fault accident accrue on the date that total payment by the insurer equals or exceeds $500.00.

COMMENT: One commenter argued that N.J.A.C. 11:3-34.5(b)1 will be difficult to administer where insureds have changed insurers during the recent four-year period. The commenter stated that a new insurer will not know when the previous insurer had "knowledge of the event" and therefore would not know the trigger date for the "event."

The commenter further questioned whether a new insurer, just first learning of a two-year-old accident from the MVR, can toll the three years from that point.

The commenter provided the following example: "If an insured has an at-fault accident in January. The new insurer writes a policy in February. The new insurer learns of the accident in March. Does the new insurer rerate the policy? (The former insurer could possibly have picked it up in time for renewal.) If the new insurer delays until renewal, the accident may be included for 2 years, not 3."

RESPONSE: The Department has revised this section to provide that points for an at-fault accrue from the date when total payment by the insurer equals or exceeds $500.00. A new insurer may request this information from the previous insurer, or the applicant. Automobile insurance eligibility points are to be considered at the time of application for or the renewal of an automobile insurance policy.

COMMENT: Two commenters objected to the manner in which the recording date of the DMV abstract would be used. One commenter believed that the use of the recording date by DMV may cause some problems. The commenter argued that an insurer may have knowledge of an uncontested conviction prior to the posting on the DMV abstract. The commenter suggested using the date of the occurrence.

A second commenter stated that proposed N.J.A.C. 11:3-34.5(b)2 would tie points for convictions of motor vehicle violations to the New Jersey DMV abstract. The commenter believed that this would be a problem when they use an abstract from another state which may show two dates, one of the violation and the other of the conviction. The commenter recommended that the Department amend the regulation so that the conviction date is the date that is used.

RESPONSE: The Department decided to use the DMV abstract for administrative convenience since this system is already in place. The use of this system also provides consistency for the accrual of automobile insurance eligibility points based on when the event is recorded in DMV's records.

COMMENT: Several commenters objected in general terms to the automobile insurance eligibility point schedule, especially the fact that the Department adopted the Division of Motor Vehicles' schedule.

One commenter stated that "DMV's schedule does not appropriately address the current realities of risk exposure and appears to be obsolete or inappropriate for this purpose. The Department points to no basis

for these points assigned other than the arguable DMV schedule. The Department should assign points based upon reliable data indicating insurability."

A second commenter believed that "the problem with adopting DMV's point schedule is that the Insurance Department has bought on to the idea that the same criteria for determining whether or not a person should hold a driver's license, are equally appropriate for establishing a person's eligibility for the lowest possible automobile insurance rates. However, because the underwriting of automobile insurance involves not merely a determination of whether a person is competent to drive a vehicle on the state's highways, but looks into such things as the seriousness of the person's past convictions and accidents, the propensity of the person to break society's standards of safe driving, and the overall conduct of the person applying for insurance all pointing to the likelihood of future claims, the DMV's point schedule is wholly inappropriate for the purposes of determining an 'eligible person' for automobile insurance."

A third commenter stated that "there will be very few families which will have multiple incidents in a 3-year period. Those that do should be subject to tougher standards than the standards suggested by this program. Assuming the 9-point threshold, we believe that families with more than 2 moving violations in 3 years should not qualify as an 'eligible person.' Therefore, all 2- and 3-point listed violations should be increased to 4 points."

RESPONSE: The Department has attempted to adhere to the requirements of the FAIR Act in providing for the apportionment of drivers between a voluntary and residual market based on an insured's driving record. The FAIR Act required the Department to develop a schedule that assessed a point value to driving experience related violations as a result of convictions, suspensions, revocations, and determinations of responsibility for civil infractions. The Department determined after examining data from the Division of Motor Vehicles (DMV), that the best way to accomplish this would be to incorporate the DMV point schedule and to assign points to certain other violations that were not assigned points under the DMV schedule. DMV's schedule was used for administrative convenience and to prevent confusion for the public, producers and companies that would result if a totally different schedule was developed.

COMMENT: Two commenters objected to the offense "Refusal to submit to a chemical test" in Schedule 1 of the Appendix. One commenter believed that the offense needed to be clarified. The commenter questioned whether the offense applied, while operating a vehicle, to the driver only, or to the refusal to submit to a chemical test in the work place.

A second commenter objected to the above offenses being placed on the schedule. The commenter argued that whatever the Department's reasoning was for adding the offense to schedule, the schedule of qualifications and point values should have been developed to reflect the relationship of accident risk to each qualification and to the violations in Schedule 2. The commenter believed that this would produce a fairer system.

The commenter further suggested that the Department consider the "frequency of offense" and "if injury or other damage was caused." Additionally, he suggested the use of the BAC (Blood Alcohol Content) level. The commenter stated that the "New Jersey State Police fatality report for the last number of years will show that BAC levels of .15 percent and over produced the majority of DUI fatalities (e.g., 56% in 1988). Therefore, the higher the BAC, the more points." The commenter suggested the following:

First Offense—3 points
Second Offense—4 points
Third Offense—6 points
The BAC Schedule is as follows:
<0.1%—1 point (intoxication proven otherwise)
0.1%—0.14%—3 points
0.15%—0.19%—5 points
>0.2%—6 points

To calculate a point total, the commenter suggested adding points for an offense and BAC level. The commenter further states that:

"Rather than trying to add in qualifications for an accident involvement with or without injury or fatality, we are assuming that points for at-fault accidents, including those with fatalities, would accrue separately and the motorist would be assigned the greater of accident related points or DUI points.

For the chemical test refused offense, five points should be assigned rather than the nine points suggested in the proposed rules. To calculate a point total, add the five points for this offense to the points for the DUI (Driving under the influence) frequency of offense."

RESPONSE: The offense of refusing to submit to a chemical test is set forth at N.J.S.A. 39:4-50.4. The DMV does not, however, assess points for this violation. Since the refusal to take a chemical test warrants a driver's license suspension, the Department believed that a person should be assessed nine eligibility points as a result of this conviction.

The Department believes that the suggested sliding scale for points as a result of a DWI conviction or based on the BAC or whether it is the first subsequent offense would be difficult to administer. A reduction in points to less than nine is irrelevant since the person who is convicted pursuant to N.J.S.A. 39:4-50.4 is declared ineligible for insurance by N.J.S.A. 17:33B-13a. A reduction does not adequately take into account the severity of the offense and the risk to the insurer.

COMMENT: One commenter objected to the Department assigning nine points for operating a motor vehicle while a person's driving privilege is suspended and for operating a motor vehicle without liability insurance. The commenter argues that the Department stretched the legislative intent of the FAIR Act by listing them because they do not relate to accident risk. The commenter argued that, in some cases, these offenses can result from state or insurance company errors.

The commenter believed circumstances that result in the conviction of these offenses independently make a motorist an ineligible person for any of the reasons cited in N.J.A.C. 11:3-34.4. The commenter questioned what purpose is served by making them an assigned risk. The commenter suggested that these two offenses be deleted from Schedule 1.

RESPONSE: The Department disagrees. The Department believes that a conviction of operating a motor vehicle while a person's driving privilege is suspended or operating a motor vehicle without liability insurance should warrant the assessment of nine points.

COMMENT: Two commenters suggested that the points assigned to the offense of "each at-fault accident" should be changed. One commenter states that "an at-fault accident receives 5 points only when payment is made of at least $500.00. The present DIP program permits insurers to charge a point if the payment is at least $300.00." The commenter suggests that an at-fault payment under $500.00 should either be considered a two point event or be given no points, but if the same person has two at-fault accidents for less than $500.00 they should be considered as one at-fault accident and accumulate five points.

The second commenter believed that the Department should have created a schedule of points for an at-fault accident. The parameters of this schedule should include various cost thresholds of the accident to the insurer above $500.00 as well as bodily injury and death. The commenter suggested that the Department adopts the following schedule for at-fault accidents:

1. Property damage totaling between $500.00 and $1599—3 points;
2. Property damage totaling between $1600 and $2699—4 points;
3. Property damage totaling greater than $2700 and/or bodily injury—5 points.

RESPONSE: In accordance with the FAIR Act, the Department examined at-fault accidents and assigned five automobile insurance eligibility points to each at-fault accident. A single at-fault accident would not disqualify a person for insurance in the voluntary market as long as they did not accumulate sufficient additional eligibility points within a three-year period. The suggested schedule of points based on the amount of damage would be extremely difficult to administer.

COMMENT: One commenter needed clarification on the offense "for each full year of a court imposed driver's license suspension within the preceding three years." The commenter questioned how the Department came up with the one-year period, and could they suspend licenses for non-driving related offenses.

A second commenter suggested that three points be assigned for each year or **fraction of a year** of a court imposed driver's license suspension.

A third commenter argued that "DUI violation and chemical test refusals, already a part of Schedule 1, result in mandatory court-imposed license suspension that can extend one, two, or ten years. These suspensions should not be included as part of this three point per year offense since they are already adequately covered with eligibility points. Additionally, any court ordered suspension that will result in this three point per year offense should relate to driving or accident risk. For example, a loss license for underage purchase of alcohol is part of the punishment for that offense; however, insurance eligibility points should not apply since the particular license suspension had nothing to do with driving."

RESPONSE: The Department included three points for each full year of a court imposed driver's license suspension within the preceding three years to prevent someone who has been suspended for the last three years

as a result of a driving related violation from immediately becoming eligible for insurance in the voluntary market. The Department does not believe that a suspension for a fraction of a year warrants the assigning of automobile insurance eligibility points.

COMMENT: Schedule 1 of the Appendix to the proposed rules provides that the offense of being involved in a fatal accident may result in either four eligibility points or two eligibility points. However, Schedule 1 does not define what it means to be "involved in a fatal accident" and does not describe those circumstances which would result in four eligibility points and those which would result in two eligibility points. The proposed new rules should be amended to include such clarification.

A second commenter suggested that to ensure that the phrase "involved in a fatal accident" is associated with at-fault accidents as intended, the word "involved" should be changed to at-fault. The commenter also suggested that since the offense of being involved in a fatal accident EFIL/NFTL (fatal violation) is in addition to the five points for an at-fault accident the Department should include the following:

Death resulting from no violations—6 points.

RESPONSE: A person who is involved in a fatal accident is assigned two or four points based on the seriousness of the conduct, as determined by the Division of Motor Vehicles. Those cases are determined on a case-by-case basis and subject to administrative review.

COMMENT: One commenter stated that "it is unclear from the proposed rules whether eligibility points may be assessed both for a motor vehicle violation and for an at-fault accident if the accident resulted in the insured being assessed motor vehicle points. For example, if an individual is involved in an accident resulting in the Motor Vehicle Department assessing points for driving recklessly, may an insurer impose eligibility points for the at-fault accident and impose additional eligibility points for reckless driving? The proposed rules should be amended so that it is clear that drivers accrue eligibility points for both the accident and the motor vehicle points".

RESPONSE: Eligibility points are cumulative and accrue for all motor vehicle violations and at-fault accidents as defined in these rules. The Department has revised N.J.A.C. 11:3-34.5(c) to clarify this point.

COMMENT: Several commenters expressed concern with the Department assigning five points in Schedule 1 of the Appendix to the following offenses: 1) Obtaining a drivers license or registration through deception; 2) Make or use counterfeit plate or plates other than issued; 3) Make, alter or counterfeit drivers license or registration.

One commenter stated that "given the emphasis on penalizing and deterring fraudulent activity, the assignment of only five points is overly lenient".

A second commenter stated that "all three of these convictions indicate premeditated illegal activity undertaken by an individual in order to operate a vehicle in the State of New Jersey". The commenter believed that the individuals committing these offenses should receive a minimum of nine points for each conviction, and placement in the Assigned Risk Plan.

Several other commenters objected to the Department assigning any points to these offenses. One commenter stated that "the Department really stretched the legislative intent of Section 26 of the Act with these offenses, because, not only do they not relate to accident risk, but they don't even relate to operating a vehicle. Some of the offenses may not even relate to a motorist's own license, registration or plates." The commenter suggested that these three offenses be deleted from Schedule 1, since these offenses have their own penalties under current law.

A second commenter objected to the assigning of five points because many non-driving related infractions fall under statutes which are severe in nature ("... if your license plate is not affixed properly to your car, it falls under the counterfeit plates statute. The driver receives 5 points, a 65% rate hike, a surcharge, a DMV surcharge and a court imposed fine."). The commenter believed that no driver should suffer monetarily or on his record for such a minor offense.

RESPONSE: The Department disagrees and believes that the accrual of five points is appropriate given the type of activity. The statutory offense, using counterfeit license plates, involves both dishonesty and operation of a motor vehicle. This provision does not assign points for improperly affixed license plates.

COMMENT: One commenter suggested that the Department clarify the term "counterfeit." The commenter also inquired about how specific is the designation of 0338/3381.

RESPONSE: The Department does not believe that any further clarification of the term "counterfeit" is necessary. The numbers 0338 and 3381 are DMV event identifiers. Each number represents a specific offense (DMV event). The statutory cite for the respective offenses are N.J.S.A. 39:3-38 (0338) and N.J.S.A. 39:3-38.1 (3381).

COMMENT: One commenter wanted the term "verify insurance" clarified. The commenter questioned, "Is it when you don't have it on you?"

A second commenter stated that "the Department assigned two points for failure to verify insurance involved in an accident. While it was interesting to see how low the point values would go in Schedule 1, we can't figure out why this offense is listed. It certainly has nothing to do with accident risk and the motorist is already inconveniently insured. If they are not insured, existing penalties would apply. This offense should be deleted from Schedule 1".

RESPONSE: This is an administrative offense that results from action of the DMV. It appears on the DMV abstract of the person's driving record in this form, and results in a period of driver license suspension. It does not include N.J.S.A. 39:3-29, failure to display credentials when requested by a law enforcement officer.

COMMENT: One commenter questioned why the violations and points on Schedule 2 of the Appendix only apply to the New Jersey Turnpike, Garden State Parkway and Atlantic City Expressway.

A second commenter noted that although these violations (moving against traffic, improper passage and unlawful use of median) may not occur frequently, when they do they can result in a major accident, and should result in a higher point charge.

A third commenter argued that the likelihood of a fatal accident occurring is greater in moving against traffic on one of the State's major roads than it would be in improperly passing on one of those same roads. The commenter questioned why improper passing on one of the three thruways is a four-point offense, while moving against traffic on those roads is just two points.

RESPONSE: The Department incorporated by reference the DMV point schedule for these violations. It is an existing system based on specified moving violations under New Jersey law with accompanying record systems in place, and is familiar to New Jersey drivers, insurers and insurance producers. The Department did not want to develop a totally different point system from DMV, which could result in confusion for the public.

COMMENT: One commenter noted that several of the listed offenses seem to carry a lesser penalty than certain others which would seem to endanger human life or cause damage to personal property to a lesser degree (that is, failure to observe a "stop" or "yield sign", "failure to yield to a pedestrian in a crosswalk" and "careless driving," etc., all result in two-point penalties, while "improper turn at traffic light" and "improper 'U' turn" merit three points). The commenter questioned whether police or insurance industry statistics were used in determining the incidence of such offenses and in assigning point value to each.

RESPONSE: The Department incorporated by reference the DMV point system which adequately assesses a point value to driver experience related violations and is administratively convenient to use.

COMMENT: One commenter believed that racing on the highway should be assigned nine points, due to the serious nature of the offense, which indicates a total disregard for all other drivers on the highway and should at a minimum result in placement in the assigned risk pool.

RESPONSE: The Department believes that the assessment of five points for racing on the highway is sufficient. The point schedule is based on a system already in place for tracking and assessment purposes.

COMMENT: Two commenters expressed concern with the offense of N.J.S.A. 39:4-129, leaving the scene of an accident. One commenter believed that points for leaving the scene of an accident should be in addition to the points assigned for an at-fault accident.

The second commenter believed that the difference in point value between accidents with injury and without, simply implies that leaving the scene of an accident without any injuries is somehow justified. The commenter believed that leaving the scene of any accident is one of the more egregious violations and there should be no point value differential between leaving the scene with injuries, and leaving without injuries. Additionally, the commenter feels that a minimum of nine points should be assigned to both convictions.

RESPONSE: Points assigned as a result of a conviction for leaving the scene of an accident are in addition to the points assigned for an at-fault accident. The Department does not believe that the offense warrants the increasing of the points assessed. The Department notes that the points conform to the DMV point schedule.

COMMENT: Two commenters expressed concern with N.J.S.A. 39:5D-4, "moving violation out-of-state." One commenter believed this

offense needs to be clarified. The commenter asked whether a New Jersey driver arrested for DWI in Connecticut would receive nine points under the eligibility point schedule rather than a mere two points for a moving violation out-of-state.

RESPONSE: The Department agrees that a person who is convicted of DWI (driving while under the influence) should be assigned nine points under Schedule 1 of the automobile insurance eligibility point schedule, regardlesss of the jurisdicion in which the offense occurred.

COMMENT: Two commenters expressed concern that the automobile insurance eligibility point schedule did not address the inexperienced driver. One commenter suggested that several points should be assigned to the inexperienced driver.

RESPONSE: The Department has revised the point schedule to include the inexperienced driver. An inexperienced driver receives one point for each year that he or she did not hold a driver's license for the preceding three years.

COMMENT: One commenter questioned whether points should be added for not wearing a seat belt and not placing a child in an appropriate restraint system. Additionally, the commenter questioned whether running a traffic light should be more than two points.

RESPONSE: Currently there is no way to verify these two offenses because they do not result in DMV points or otherwise appear on a DMV abstract of a driving record.

COMMENT: One commenter questioned: 1) Where is the two-point reduction for taking the Defensive Driving Course; 2) Does it cost to take these courses; and 3) Is the charge affordable. The commenter further stated that perhaps the insurance companies should be responsible for providing these courses for free. The commenter suggested that if the DMV recognizes this as a valid way of improving driver safety, then the insurance companies should be bound by this as well.

RESPONSE: Automobile insurance eligibility points are based on events occurring during a three-year period. There are no point reduction credits. The FAIR Act does not require eligibility point reductions. The commenter is referring to the driver rehabilitation provisions of the DMV point system which is not part of the automobile eligibility point schedule. Some insurers give premium rate reductions for completion of a defensive driving course.

COMMENT: One commenter believed that since the proposed rating system is based on DMV point assignment system, it should correspondingly reflect DMV's reduction rules after one year of no moving violations.

RESPONSE: The Department disagrees. The FAIR Act specifically requires that automobile insurance eligibility points accrue for violations and accidents that occur in the three-year period immediately preceding application for or the renewal of a policy of automobile insurance policy. The Act does not provide for point reduction.

COMMENT: One commenter inquired about other mechanisms available to consumers to lower their accumulated points.

RESPONSE: Eligibility points expire at the end of the three-year period for which they were accrued.

COMMENT: One commenter questioned if there is a reward system for proven good drivers.

RESPONSE: Drivers with zero eligibility points will be able to obtain insurance at standard rates in the voluntary market.

COMMENT: One commenter believed that the insurance companies should be mandated to provide graduated rates in the one- to eight-point range. The commenter argued that a driver with one or two points should not be paying as high a rate as one with seven or eight points, and requests clarification in the regulation.

RESPONSE: This is addressed in the standard/nonstandard rating plans rules proposed at N.J.A.C. 11:3-16, published elsewhere in this issue of the Register.

COMMENT: One commenter believed that the Department should require that if a company denies a consumer standard rates, then a copy of the DMV abstract used to determine points be provided to the consumer. In this way consumers will be able to easily identify incorrect information on DMV records that may be adversely affecting the insureds rates.

RESPONSE: This is addressed in the proposed nonrenewal rules (see N.J.A.C. 11:3-8.2 published elsewhere in this issue of the Register) and the proposed Appeals from Denial of Automobile Insurance procedures (see N.J.A.C. 11:3-33.1 at 22 N.J.R. 2457(a)), but insurers do not have to provide a copy of the abstract if the insurer denies a person standard rates but they must indicate the incidents for which the assessments of points were used to determine ineligibility.

COMMENT: One commenter inquired who pays ". . . the additional insurance fee when a licensed driver who doesn't own a car gets a point violation when driving someone else's car?"

RESPONSE: When a person is assessed points for an offense(s) while driving someone else's car, the eligibility points accrue to the individual driver and will affect his personal policy, in accordance with N.J.A.C. 11:3-35 and N.J.A.C. 11:3-8.2 (see proposals published elsewhere in this issue of the Register).

COMMENT: One commenter questioned whether the Department has calculated or estimated the number or percentage of New Jersey drivers who would be eligible to be classified as good drivers, those who would be in the intermediate higher-paying group, and those who would be classified as bad drivers and who will pay the most. If so, the commenter asked whether such statistics played a role in the drafting of these rules.

RESPONSE: The Department has estimated the number and percentage of drivers who would be "eligible" and "ineligible" and used that information in developing these rules. The Department notes that the database of DMV contains records of motor vehicle violations and insurer's claim records contain information about at-fault accidents. The Department recognizes that the point schedule may be refined over a period of time if necessary.

COMMENT: One commenter asked whether automobile insurance eligibility points are considered as part of the persons driving experience for a period of three years, and when does the three-year period start and end.

RESPONSE: Automobile insurance eligibility points are determined based on the person's driving record for the three-year period immediately preceding the application for or renewal of a policy of automobile insurance. In the case of renewals an insurer shall consider eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy.

COMMENT: Several commenters objected to establishing nine points as the threshold for eligibility. The commenters felt this number was too high.

One commenter argued that "clean drivers will be unnecessarily subsidizing drivers who have run stop signs or red lights on two or three occasions. Good drivers will pay higher rates than is reasonable to keep drivers who are inarguably unsafe and a risk to the general population eligible for voluntary market coverage." This commenter further requested the Department to demonstrate that the number of New Jersey drivers with nine plus points is less than or equal to the 10 percent maximum of the driving population permitted to be in the assigned risk plan. This commenter expressed concern that drivers in the nine plus category could be written on a voluntary basis if the number of nine plus point drivers exceeds 10 percent of the driving population. The commenter believed this problem could be exacerbated if those drivers who are cancelled for non-payment become insured through the assigned risk plan. The commenter suggested that the Department consider persons cancelled for nonpayment of premium and nine plus point drivers be exempt from the 10 percent cap.

A second commenter argued that the number of points permitted for eligibility in the voluntary market will make it difficult, if not impossible, for an insurance company to realize a profit on that business.

RESPONSE: The Department believes that at this time the nine-point threshold for eligibility is a reasonable threshold based on the estimated number of drivers in this State, drivers with violations, and point values assigned to violations and accidents, in light of the requirements of the FAIR Act for establishing the standard/nonstandard and assigned risk markets.

COMMENT: A commenter questioned whether these rules will replace the two percent nonrenewal provision currently in effect.

RESPONSE: These rules do not replace the two percent nonrenewal provision (see N.J.A.C. 11:3-8 published elsewhere in this issue of the Register).

The Department of Insurance ("the Department") reproposes new rules in accordance with the Fair Automobile Insurance Reform Act ("the Act") N.J.S.A. 17:33B-14. The Act requires the Commissioner of Insurance ("Commissioner") to promulgate a schedule of automobile insurance eligibility points. The automobile insurance eligibility points schedule shall be used to determine which persons shall be eligible for insurance in the voluntary market. The schedule assesses a point value to driving experience related violations as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions. Automobile insurance eligibility points are to be used to refine the definitions of "eligible person" as set forth in N.J.S.A.

17:33B-13. The FAIR Act provides that "eligible persons" shall secure automobile insurance coverage in the voluntary market. The reproposed new rules set forth certain driving experience related violations, as well as certain insurance law violations that preclude a person from being an eligible person.

In promulgating the schedule of eligibility points, the Department examined data from the Division of Motor Vehicles ("DMV") which included convictions for serious violations and statistical compilations of the number of drivers with various numbers of DMV points on their driving records.

The Department designed the automobile insurance eligibility point schedule to incorporate the DMV point schedule. The Department examined other driving experience related violations that were not assigned points under the Department of Motor Vehicles system and assigned them automobile insurance eligibility points. In examining these driving experience related violations, the Department determined that certain violations were severe enough that a person committing any one of these violations warranted being classified as an ineligible person. The Department assigned the most severe violations nine automobile eligibility points, which is the minimum number that makes a person "ineligibile".

The Department in accordance with the Act examined at-fault accidents and assigned five automobile insurance eligibility points to each at-fault accident. The Department determined that if a person was involved in one at-fault accident, they would still be eligible for insurance in the voluntary market as long as they did not accumulate sufficient additional eligibility points within a three-year period.

The Department also examined and assigned automobile insurance eligibility points to certain other motor vehicle violations that did not result in DMV points, but nevertheless were serious motor vehicle violations that included an element of dishonesty. These violations were assigned five eligibility points.

As a result of the public comments received and further review by the Department, these rules contain four substantive changes from the previous proposal that affect the eligible person qualifications and eligible point schedule.

The Department has clarified the definition of an at-fault accident by listing types of accidents that have been recognized traditionally as not based on fault.

The Department revised N.J.A.C. 11:3-34.4(a)5 to require an incident must have been reported to the Department of Insurance Fraud Division in order to disqualify a person from the voluntary market.

The Department revised N.J.A.C. 11:3-34.5(b)1 which provides when points accrue for an at-fault accident. Points for at-fault accidents accrue on the date that total payment by the insurer equals or exceeds $500.00.

The Department revised Schedule 1 to provide points for "inexperienced drivers", that is, a person who has not held a driver's license for the immediately preceding three years.

N.J.A.C. 11:3-34.1 states the purpose of the proposed new rules.

N.J.A.C. 11:3-34.2 states the scope of the proposed new rules.

N.J.A.C. 11:3-34.3 provides the definition of terms that are used in the proposed new rules.

N.J.A.C. 11:3-34.4 provides the qualifications to be used in determining whether a person meets the definition of an "eligible person."

N.J.A.C. 11:3-34.5 establishes the automobile insurance eligibility point schedule.

Social Impact

The reproposed new rules are designed to carry out the stated intent of the FAIR Act, which is to assure that drivers with good driving records are able to procure automobile insurance coverage in the voluntary market. The reproposed new rules provide an eligibility point schedule which assigns a point value to adverse events based on a person's driving experience. Accumulating nine points renders a person ineligible for coverage in the voluntary market.

Conversely, the reproposed new rules will require insurers to provide insurance in the voluntary market to any eligible person as this term is defined in these rules. Since the voluntary market contains lower rates, an insured's automobile insurance premium will be directly related to his or her driving record.

The reproposed new rules will affect all New Jersey insureds procuring automobile insurance.

Economic Impact

The reproposed new rules are expected to increase those insureds' premiums whose driving record indicates that they are higher risks based on the number of automobile eligibility points accumulated within the preceding three years. Those insureds who have no automobile insurance eligibility points will be able to secure automobile insurance at lower rates than a person in the nonstandard or assigned risk markets, with the same car but more eligibility points. No economic impact on insurers is anticipated beyond the statutory requirements.

Regulatory Flexibility Analysis

The reproposed new rules impose no reporting or recordkeeping requirements. Insurance companies authorized to transact private passenger automobile insurance, which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the reproposed new rules.

These reproposed new rules implement N.J.S.A. 17:33B-14 which requires the Commissioner to promulgate a schedule of automobile insurance eligibility points. The reproposed new rules are to be used by insurers and producers to determine a person's eligiblity for automobile insurance in the voluntary market. In order to provide for uniform and consistent applicability of these rules in the automobile insurance market, no differential treatment is accorded small businesses. The reproposed new rules will not require small businesses to use any other kinds of professional services to comply.

Full text of the reproposed new rules follows:

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person", and to provide the schedule for "automobile insurance eligibility points" pursuant to P.L. 1990, c.8 (N.J.S.A. 17:33B-13 and 14).

11:3-34.2 Scope

The provisions of this subchapter apply to all insurers which write personal private passenger automobile insurance and all persons who are required to procure automobile insurance coverage in this State.

11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least $500.00, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33⅓ percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;

2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;

3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;

4. For physical damage losses other than collision;

5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or

6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.

"Automobile" means an automobile as defined in N.J.S.A. 39:6A-2.

"Automobile insurance" means insurance for an automobile including any or all of the following coverages: bodily injury liability, and property damage liability, comprehensive and collision cov-

erages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

"Automobile insurance eligibility points" means points calculated under the schedule promulgated by the Commissioner pursuant to this subchapter.

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

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

"State" means the State of New Jersey.

11:3-34.4 Eligible person qualifications

(a) An "eligible person" is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who holds a valid New Jersey driver's license to operate an automobile, but does not include any person:

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;

2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;

3. Whose driver's license to operate an automobile is under suspension or revocation;

4. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an insurance claim or an application for insurance;

5. Who has been successfully denied, within the immediately preceding five years, payment by an insurer of a claim in excess of $1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application. For the purpose of this section:

i. If the claim has been subject to litigation between the insurer and the insured in which the insurer defended against payment of the claim in whole or in part on grounds of fraud, it shall be conclusively presumed that the claim was successfully denied if judgement was entered for the insurer in the litigation; and conclusively presumed that the claim was not successfully denied if judgment was entered for the insured;

ii. If the claim has not been subject to litigation between the insurer and the insured, but the insurer denied the claim without payment by reason of fraud, it shall be presumed that the claim was successfully denied. This presumption may be overcome in an administrative proceeding pursuant to N.J.A.C. 11:3-33;

iii. If the incident was not reported to the New Jersey Department of Insurance, Fraud Division pursuant to N.J.S.A. 17:33A-9 it shall be presumed that there was no evidence of fraud or intent to defraud;

6. Whose automobile insurance policy has been cancelled for nonpayment of premiums, or financed premium with a lapse of coverage, within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium;

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; or

8. Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of nine or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5.

11:3-34.5 Automobile insurance eligibility points

(a) Automobile insurance eligibility points shall be accumulated as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions in accordance with the schedule set forth in the Appendix to this subchapter herein incorporated by reference.

(b) Automobile insurance eligibility points shall be deemed to accrue as follows:

1. Points for at-fault accidents shall accrue on the date that total payment by the insurer equals or exceeds $500.00.

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey Division of Motor Vehicles, or comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

(c) Automobile insurance eligibility points are cumulative and accrue for all offenses set forth on Schedules 1 and 2, except as noted on Schedule 1.

(d) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Division of Motor Vehicles by rule, N.J.A.C. 13:19-10.1, which is hereby incorporated by reference. Any additions, deletions or modifications to N.J.A.C. 13:19-10.1 shall likewise be incorporated as of the effective date of amendment. Schedule 2 is included in the Appendix for convenience.

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. SECTION NUMBER	DMV EVENT DESCRIPTION	DMV EVENT IDENTIFIER(S)	POINTS
39:4-50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9
39:4-50.4	Refusal to submit to a chemical test	4504	9
2C:11-2	Vehicular homicide	C115	9
39:3-40	Operating a motor vehicle while driving privilege is suspended	0340	9
39:6B-2	Operating a motor vehicle without liability insurance	06B2	9
	Misrepresentation of insurance coverage	6A15	9
	Each at fault accident		5
	*For each full year of a court imposed driver's license suspension within the preceding 3 years		3
	*For each full year within the immediately preceding 3 years that a person has not held a driver's license		1
	Involved in a fatal accident	EFTL; NFTL	4 2
39:3-37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	5
39:3-38	Make or use counterfeit plate or plates other than issued	0338	5
39:3-38.1	Make, alter or counterfeit driver's license or registration	3381	5
	Failure to verify insurance involved in an automobile accident	FVIA	2

*Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23-29	Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23-29	Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23-29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3-20	Operating constructor vehicle in excess of 30 mph	3
39:3-76.7 & 39:4-14.3q	Operating motorcycle or motorized bicycle without protective helmet	2
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bike	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through a safety zone	2
39:4-52 & 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper "U" turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of a frozen dessert truck	4

39:4-129	Leaving the scene of an accident	
	No personal injury	2
	Personal injury	8
39:4-144	Failure to observe "stop" or "yield" signs	2
39:5D-4	Moving violation out-of-state	2

(a)

DIVISION OF PROPERTY/LIABILITY

Private Passenger Automobile Insurance Underwriting Rules

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-35

Emergency New Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules Filed: November 26, 1990 as R.1990 d.627.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6e; N.J.S.A. 17:22-6.14(a)1; N.J.S.A. 17:29A-46; P.L.1990, c.8, Section 27B (enacted March 12, 1990).

Concurrent Proposal Number: PRN 1990-647.

Emergency New Rules Effective Date: November 26, 1990.

Emergency New Rules Expiration Date: January 25, 1991.

Submit comments by January 16, 1991 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
Trenton, New Jersey 08625-0325

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follow:

Summary

These reproposed new rules implement N.J.S.A. 17:29A-46. The Department of Insurance (Department) previously proposed rules implementing N.J.S.A. 17:29A-46 on August 6, 1990 (see 22 N.J.R. 2233(a)). The Department has determined to make substantive changes based upon public comments received and continuing Department review. This proposal therefore replaces and supersedes the prior proposal.

Twelve timely comments were received from automobile insurers, an insurance trade organization and a consumer organization.

COMMENT: Several insurers objected to the provisions of the rules that require all private passenger automobile insurers to file their underwriting rules for approval. These commenters stated that N.J.S.A. 17:29A-46 requires the filing of underwriting rules only by insurers which file standard/non-standard or multi-tier rating systems (see proposed N.J.A.C. 11:3-19, 22 N.J.R. 2231(a)). These commenters stated that if an insurer maintains only a single tier of rates, it is exempted from filing for approval its underwriting rules. Some of the commenters contended that N.J.S.A. 17:29A-46 refers back to N.J.S.A. 17:29A-45, which provides for standard/non-standard rating systems, and further noted that both sections were enacted at the same time.

RESPONSE: The Department construes N.J.S.A. 17:29A-46 as requiring all insurers to file their underwriting rules for approval. Section a of the statute states: "Insurers shall put in writing all underwriting rules applicable to each rate level utilized pursuant to section 6". Section 6 (N.J.S.A. 17:29A-45a) provides that: ". . . **every** insurer transacting or proposing to transact private passenger automobile insurance may file rating plans in the voluntary market **for standard risks, nonstandard risks, or both.**" (emphasis added) The Department construes the emphasized language to demonstrate a legislative intent to require all underwriting rules be filed by all private passenger automobile insurers.

The Fair Automobile Insurance Reform Act of 1990, P.L.1990, c.8. (N.J.S.A. 17:33B-1 et seq.) (FAIR Act) clearly requires all insurers to file their underwriting rules. Section 27b of the FAIR Act (N.J.S.A. 17:33B-15b) provides: "No insurer shall refuse . . . coverage . . . to an eligible person who meets its underwriting rules as filed with and approved by the commissioner . . ." Moreover, as stated in proposed N.J.A.C. 11:3-35.1, the Department believes that the filing and approval of underwriting rules is necessary to monitor compliance with the requirement that insurers provide coverage to eligible persons. The Department further notes that N.J.S.A. 17:22-6.14a1 authorizes the Commissioner to direct insurers to file their underwriting rules.

The Department has clarified the intent of these rules in N.J.A.C. 11:3-35.1 by stating that the underwriting rules to be filed are those used to accept or reject new business, renew or nonrenew current business or assign a risk to the standard or non-standard rate level.

COMMENT: Several insurers inquired whether the rules apply to commercially insured vehicles. One commenter suggested that the title be changed from "Private Passenger Automobile Insurance Underwriting Rules" to "Personal Automobile Insurance Underwriting Rules."

RESPONSE: These rules are not intended to apply to commercially insured vehicles. Additional language has been inserted at N.J.A.C. 11:33-5.1(a) and (b) to clarify this intent.

COMMENT: Several insurers objected to the provisions of N.J.A.C. 11:3-35.4 which requires insurers to file rules that will insure "eligible persons" for renewals upon adoption of the rules and all applicants after April 1, 1992. Two commenters noted that the provisions of section 27b of the FAIR Act (N.J.S.A. 17:33B-15b) provide that insurers shall not refuse to insure or to renew ". . . an eligible person who meets its underwriting rules . . ." Others stated that the requirement to renew "eligible persons" does not take effect prior to April 1, 1992. One commenter asserted that the requirement to renew eligible persons was contrary to clear legislative intent.

RESPONSE: The Department believes that this rule is necessary to carry out the provisions of N.J.S.A. 17:33B-15b, pursuant to the language of N.J.S.A. 17:29A-46 quoted above. Regarding the statement that the requirement to renew eligible persons does not take effect prior to April 1, 1992, the Department notes that section 3 of the FAIR Act amends N.J.S.A. 39:6A-3 to provide: "No licensed insurance carrier shall refuse to renew the required coverage stipulated by this Act of an eligible person as defined in section 25 of P.L. 1990, c.8 (C. 17:33B-13) . . ." This provision concerning the requirement to renew does not contain a delayed effective date. The Department has therefore concluded that the requirement to renew eligible persons takes effect upon the adoption of rules defining "eligible person" (see proposed N.J.A.C. 11:3-34 published elsewhere in this issue of the Register).

COMMENT: One commenter objected generally to the requirements that insurers write or renew eligible persons. The commenter expressed concern that this may result in more business for an insurer than it can efficiently handle, even though it is financially able to do so. It objected to the removal of all subjective judgments; for example, it suggested that an insurer should not have to insure an eligible person who acted in a threatening or obstreperous manner. It noted the ability of an insurer to nonrenew up to two percent of its insureds in any territory in accordance with the provisions of N.J.S.A. 17:29C-7.1, but objected to the requirement to write the insured in the first instance; nonrenew them after a year; and rewrite them again if they applied. It inquired whether an insurer may use any remaining extra "2% credits" to refuse to write some applicants.

RESPONSE: Insurers are required to provide coverage in the voluntary market to defined eligible persons beginning April 1, 1992 pursuant to N.J.S.A. 17:33B-15. These proposed rules are intended to effectuate that statute and N.J.S.A. 17:29A-46 which, as discussed in a response to a previous comment, requires insurers to file their underwriting rules for approval.

Further, the Department notes that an insurer may request relief from the requirement that it insure all eligible persons pursuant to N.J.S.A. 17:33B-19 and 20. The FAIR Act also continues to provide an insurer with limited discretion to nonrenew up to two percent of its insureds in each territory based on subjective judgments pursuant to N.J.S.A. 17:29C-7.1. This statute does not create "credits" as suggested by the commenter, but merely permits discretionary nonrenewals of existing business within certain limits. Accordingly, an insurer may not refuse to

write some applicants in the first instance as suggested by the commenter but must insure all eligible persons in the voluntary market beginning April 1, 1992 pursuant to N.J.S.A. 17:33B-15.

COMMENT: One commenter stated that the approach of the rules was too rigid and that it would create an uncompetitive market.

RESPONSE: The Department disagrees. The underwriting rule standards set forth objective criteria for the evaluation of an insurer's underwriting rules that are used to accept or reject, renew and nonrenew, or assign a risk to the standard and non-standard rate levels. Although the commenter objects to the standards set forth in the rules, it does not suggest alternatives.

COMMENT: One commenter stated that it objected to the definition of "eligible person" in proposed rule N.J.A.C. 11:3-34 as a basis for many of the objections to this proposal; it reiterated its objection to this proposal, which incorporates the definition of "eligible person".

RESPONSE: This commenter is referred to the response to its comment concerning the rules defining "eligible persons", N.J.A.C. 11:3-34.

COMMENT: One insurer noted that the rules contemplate that insurers would have to order abstracts of driving records from the Division of Motor Vehicles before renewing. The commenter stated that this would greatly increase expenses. It inquired whether the insurer may restrict its abstract requests to a sample, or to particular insureds based on loss/claim histories. It stated that ordering an abstract for all renewals is wasteful.

RESPONSE: Insurers are required by N.J.S.A. 17:29A-46b to "apply their underwriting rules uniformly and without exception throughout the State". Insurers should develop and implement systems to do so. The systems required will be based upon the underwriting rules applicable to each insurer.

Consistent application throughout the State is a key element. An insurer may limit its ordering of abstracts of motor vehicle records, for example, to once every three years or to a random sample of its insureds. The sample may not, however, be biased toward certain territories, age groups, or other such factors. It may be used in connection with renewal questionnaires or other unbiased methods of gathering pertinent information.

COMMENT: One commenter requested a clarification regarding the use of "administrative requirements." It stated that insurers typically require signatures on applications, submission of renewal questionnaires and a certain percentage of the premium for a down payment before an application can be accepted and bound. It further stated that certain types of vehicles are unacceptable to some insurers, such as high performance and luxury cars. It stated that these types of administrative rules do not appear to be precluded by this proposal, but requested clarification.

RESPONSE: Nothing in the rules prohibits insurers from requiring signed applications, etc., before an application can be accepted and bound. The FAIR Act requires insurers to provide coverage for eligible persons regardless of the type of vehicle driven. Insurers are free to submit for approval underwriting rules within these parameters.

COMMENT: A consumer organization inquired how an "eligible person" would obtain coverage after October 1, 1990 when the NJAFIUA ceases to insure new applicants and before April 1, 1992 when the "eligible person" criteria is effective for new applicants. It suggested that the eligible person criteria be made effective as of October 1, 1990.

RESPONSE: Section 88 of the FAIR Act (N.J.S.A. 17:33B-11) creates a Market Transition Facility to issue and renew personal automobile insurance polices until October 1, 1992 for those unable to purchase insurance in the voluntary market.

COMMENT: A consumer organization commented favorably on the rules' flexibility to allow an insurer to broaden its own acceptance of "eligible persons" and its standard rate applicability in a standard/nonstandard rating plan. It noted, however, that this was only an option and inquired what incentive is provided to do so.

RESPONSE: The Department believes that competition and the desire to retain "good" business may encourage insurers to do so. For example, an insurer may wish to continue to write a claim free risk at standard rates even though the driver has been convicted of an isolated, minor traffic violation.

COMMENT: Three commenters objected to the provisions of N.J.A.C. 11:3-35.3(c)2, which require a "reasonable and demonstrable relationship" between the risk insured and the hazards insured against. One commenter stated that the word "demonstrable" was unnecessary; the word "reasonable" conveys sufficient intent. Another commenter noted that insurers may not be able to demonstrate the relationship for some rules in that they have not collected data segregated by such factors.

RESPONSE: The standard set forth in N.J.A.C. 11:3-35.3(c)2 is derived from various actuarial treatises and publications concerning the classification of risks for underwriting and rating purposes. This provision, and N.J.A.C. 11:3-35.3(c)3, establish general standards applicable to all objective underwriting rules. The Department disagrees that the word "demonstrable" is unnecessary; if a "reasonable" relationship cannot be demonstrated in practice, it has little value as an objective basis for an underwriting rule.

COMMENT: A consumer organization also objected to N.J.A.C. 11:3-35.3(c)3 for several reasons. First, it stated that the terms "reasonable and demonstrable" were subject to broad interpretation. Secondly, it expressed concern about the interpretation of "risk characteristics of drivers" and reiterated its concerns about the proposed definition of "eligible person" in N.J.A.C. 11:3-34 (see 22 N.J.R. 2108(a)). Thirdly, it expressed concern with the interpretation of "risk characteristics of vehicles". The commenter suggested that an insurer may be able to penalize motorists whose vehicles, for example, do not contain certain safety features such as anti-lock brakes and air bags. The commenter stated that the insurance industry has data that it uses to justify higher rates for certain models or certain types of vehicles, and noted that the vehicle cannot be blamed for an accident. It requested that the "specific and verifiable measurements" be applied strictly to demonstrate a cause and effect relationship between the rule and the risk's potential for loss.

RESPONSE: While the Department agrees that "reasonable and demonstrable" are broad terms, the Department also believes that they are necessary to encompass all of the possible underwriting rules that may be approvable, as well as to provide insurers with sufficient flexibility to develop them. The response to this commenter's concerns about the proposed definition of "eligible person" is set forth in connection with the emergency adoption and concurrent reproposal of N.J.A.C. 11:3-34, published elsewhere in this issue of the Register. Regarding the "risk characteristics of vehicles," the Department notes that while this has been a historic means to classify risks, and is recognized in section 44 (N.J.S.A. 17:33B-32) of the FAIR Act for rating purposes, it is not appropriate as a means to assign a risk to a particular market segment. This phrase has therefore been deleted.

The use of the terms "specific and verifiable measurements" address the requirement that an underwriting rule be susceptible to practicable application. For example, annual mileage driven is measurable. The proposed standard does not require absolute proof of causality, which would result in the prohibition of totally and appropriate underwriting rules.

COMMENT: Several insurers objected to N.J.A.C. 11:3-35(c)3, which requires that an underwriting rule be based upon "specific and verifiable measurements" and disqualifies underwriting rules based on purely subjective judgments. One commenter stated that the term "measurement" fails to convey the necessary factor of subjective underwriting. It agreed conceptually that underwriting rules should not be based on purely subjective judgments, but stated that the requirement of "specific and verifiable measurements" was unnecessary. The commenter also inquired what the Department meant by the phrase" "unsatisfactory environment to conduct business." A second commenter stated that the rule would prohibit necessary underwriting discretion to apply judgments that cannot be quantified. A third commenter approved of the use of vehicle characteristics, but stated it was unclear how vehicle characteristics could be used due to the requirement to insure "eligible persons."

RESPONSE: As stated above, the Department believes that N.J.A.C. 11:3-35(c)3 is an essential, generally applicable standard that all objectively determined underwriting rules should meet. The Department notes that these underwriting rules are to be used by insurers to reject risks that must then obtain insurance in the residual market, and to classify risks into the standard, nonstandard and residual markets. Objectively in assignment of a risk to a market is essential to carry out the stated purposes of the FAIR Act.

With regard to the phrase "unsatisfactory environment to conduct business," the Department is equally puzzled. This phrase is quoted directly from one automobile insurer's underwriting rules submitted in response to a Department survey conducted in 1989. To the extent that the rules prohibit subjective criteria and "judgments that cannot be quantified," the Department believes this is entirely appropriate for the reasons set forth above.

The reproposed rules delete "vehicle characteristics" as the basis of an underwriting rule that assigns a vehicle to a particular market. This does not prohibit rate differential based on vehicle characteristics, but does

prohibit assignment of a vehicle to a market rate level based upon factors other than driver characteristics.

COMMENT: A consumer organization commended the requirement that no underwriting rule be based on subjective judgments, but requested more detail concerning what constitutes specific and verifiable measurements. It expressed concern that statistics developed by the insurance industry would be arranged to show correlations and "then jump to statements that claim a causal relationship exists because of that correlation." It stated that there is never data that supports the technical definition of causation. The commenter suggested that the "specific and verifiable measurements" be supported by the full application of scientific method.

RESPONSE: As stated in response to a previous comment, the phrase "specific and verifiable measurements" requires that the rule be capable of being applied in a practical manner. This standard is not intended to require "full application of the scientific method" to demonstrate conclusively the relationship between a reliable underwriting criterion and a resulting automobile accident claim.

COMMENT: Two commenters requested clarification of N.J.A.C. 11:3-35.3(c)5, which prohibits an underwriting rule based upon the fact that an insured was previously insured in the non-standard or residual market. One commenter noted that Section 89 of the FAIR Act permits an insurer to charge market transition facility rates in the voluntary market for a limited period of time. Another commenter inquired whether this would prohibit the "promotion" of an insured to standard rates from non-standard rates.

RESPONSE: Nothing in this rule prohibits an insurer from charging rates permitted by section 89 of the FAIR Act (N.J.S.A. 17:33B-12.) It recognizes that many persons currently insured in the residual market meet objective criteria for coverage in the voluntary market. The fact that these persons previously were insured in the residual market because they were unable to find a voluntary market insurer should not continue to disqualify them from a better rate level, which it currently does in many insurers' present underwriting rules.

Nothing in this rule prohibits the "promotion" of an insured to the standard rate level when the insured qualifies for it in accordance with the insurer's approved underwriting rules; in fact, N.J.S.A. 17:29A-46 requires it.

COMMENT: One commenter objected to N.J.A.C. 11:3-35.3(c)6, which prohibits an underwriting rule based upon whether an insured purchases other insurance or services from the insurer. The commenter stated that a preference should be provided for insureds that purchase other products. It indicated that statistics show such insureds are better risks. It stated that this application was distinguishable from requiring an applicant to purchase other products in order to be eligible.

RESPONSE: The Department disagrees; it cannot conceive of an approvable underwriting rule that would assign a person to the residual market or to a separate rate level based on the purchase of other insurance products.

COMMENT: Two insurers objected to the provisions of N.J.A.C. 11:3-35.3(c)7, which prohibits an underwriting rule based upon the lawful occupation or profession of an insured, except when an insured limits all of its insureds to one lawful occupation or profession. The insurer stated that this unfairly allows some insurers to limit the "take all comers" provisions of the FAIR Act.

RESPONSE: The Department notes that this rule is derived from the Department's rules concerning nonrenewal of automobile insurance policies (proposed N.J.A.C. 11:3-8). These rules are currently being amended (see emergency adoption and concurrent reproposal published elsewhere in this issue of the Register). The Department believes that this is an appropriate standard for rules that deal with the acceptance of business.

The FAIR Act permits insurers which have traditionally limited their business based on such criteria to continue to do so (see N.J.S.A. 17:33B-13). Several insurers doing business in New Jersey fit this description.

COMMENT: An insurer objected to N.J.A.C. 11:3-35.3(c)8, which prohibits an underwriting rule based upon whether the insured has changed employment. The commenter stated that it can demonstrate that changes in employment have a "reasonable and demonstrable" relation to risk.

RESPONSE: The Department believes that this rule sets forth a reasonable standard for an objective underwriting rule that meets the criteria of being both "reasonable and demonstrable" and based on "specific and verifiable measurement," which will be applied uniformly and without exception throughout the State. While insurers have argued that "changes in employment" are evidence of "instability," the Department notes that people change employment for various reasons and that an underwriting rule that assigns a person to the non-standard or residual market based upon a change of employment would be patently unfair and difficult to apply consistently throughout the State.

COMMENT: An insurer inquired whether N.J.A.C. 11:3-35.3(c)9 provides insurers with the ability to deny coverage if medication is taken that impairs driving ability.

RESPONSE: N.J.A.C. 11:3-35.3(c)9 prohibits underwriting rules based on physical or mental disabilities except those that curtail the ability to operate an automobile safely. An insurer may submit for approval an underwriting rule that meets the general criteria of N.J.A.C. 11:3-35.3(c)2, 3 and 9, which it intends to apply uniformly and without exception throughout the State.

COMMENT: Many commenters objected to N.J.A.C. 11:3-35.3(c)10, which prohibits underwriting rules based on whether a member of the insured's household is not an "eligible person," has not been licensed to drive for the previous three years, or has accumulated automobile insurance eligibility points unless the member of the household usually accounts for 10 percent or more of the use of the vehicle insured. The commenters uniformly requested that this proposed rule be stricken entirely. The commenters stated that this rule would serve to hide bad drivers in eligible households; would take the occasional operator beyond the scope of underwriting review; would invite fraud; would be costly to verify; would result in needless disputes between the insurer and the insured; and that it would be difficult for an insurer to sustain the burden of proof regarding percentage of use at a hearing. One commenter suggested that the rule be modified to provide for the total use of a vehicle by all other members of the household; that is, that the vehicle may be ineligible for insurance in the voluntary market if the total percentage of use by all ineligible persons is 10 percent or more.

RESPONSE: The Department believes that this standard reasonably effects the intent of the FAIR Act to require insurers to provide coverage in the voluntary market for "eligible persons," namely, the owner or registrant of a vehicle who does not have certain negative characteristics (see N.J.S.A. 17:33B-13). It notes that, but for this standard, N.J.S.A. 17:33B-15 would appear to require an insurer to provide voluntary market coverage to an "eligible person" applicant for all owned or registered vehicles, even if all other drivers in the applicant's household were ineligible.

Nevertheless, the Department does not construe the FAIR Act as providing that the assigned risk plan cover only those persons who live in households in which all drivers are ineligible persons. This would result in a much smaller percentage of drivers in the assigned risk plan than the 10 percent maximum contemplated. But the Department similarly does not believe that the FAIR Act intends that all vehicles and drivers who live in a household with an ineligible person be insured as assigned risks; this would likely be substantially more than 10 percent of the market. Rather, the Department construes the FAIR Act as providing that ineligible persons and the vehicles they regularly drive be insured as assigned risks. It believes this rule is a reasonable method of effectuating these provisions of the law.

The rule contains two presumptions that are intended to facilitate administration and to minimize the potential for fraud or misstatement by generally providing that drivers are assigned to separate automobiles in multi-car households. This is consistent with current industry practice to rate vehicles and drivers. The Department believes that 10 percent minimum use of a vehicle is a reasonable measure for a threshold at which a particular driver's risk characteristics should impact the assignment of the vehicle to a different market segment.

These reproposed rules delete references to inexperienced drivers, that is, those who have held a driver's license less than three years. Reproposed N.J.A.C. 11:3-34 (published elsewhere in this issue of the Register) assigns eligibility points to inexperienced drivers.

COMMENT: One commenter objected to presumptions set forth in N.J.A.C. 11:3-35.3(c)10i and ii. It stated that a driver in fact may be the principal driver of more than one vehicle. It further stated that there is no basis to presume that a person is not the principal driver of more than one vehicle.

RESPONSE: The Department believes that the presumptions are reasonable. To provide otherwise would invite abuse by insurers, fraud by insureds and needle disputes. These presumptions are necessary to carry out the intent of the law that eligible persons and the vehicles they drive be insured in the voluntary market, and ineligible persons and the vehicles they drive be insured as assigned risks.

COMMENT: Several commenters stated that N.J.A.C. 11:3-35.4, which requires underwriting rules provide that an insurer will insure eligible persons, is in conflict or contrary to the provisions of N.J.S.A. 17:29C-7.1 which permits an insurer to nonrenew two percent of the insureds in each territory. Other commenters requested a clarification of the relationship between these two provisions.

RESPONSE: The Department does not believe that there is any conflict. Nothing in these rules prohibits an insurer from exercising its discretion to nonrenew in accordance with N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8 (see reproposed amendments to N.J.A.C. 11:3-8 published elsewhere in this issue of the Register). These rules require insurers to file for approval underwriting rules to be used to assign applicants to the standard, non-standard and residual markets. An insurer may continue to nonrenew two percent of its insureds in each territory pursuant to N.J.S.A. 17:29C-7.1.

COMMENT: An insurer inquired whether the rules prohibited the establishment of more than one rate level within a standard/non-standard rating plan. It stated that the rules should not prohibit the use of class plans for rating different risks differently.

RESPONSE: Non-standard rates should provide a reasonable and equitable gradation of rates based upon automobile insurance eligibility points (see reproposed N.J.A.C. 11:3-19 published elsewhere in this issue of the Register). Nothing in the rules prohibits the use of approved class plans for rating purposes that provide different premiums within the same rate level.

COMMENT: An insurer objected to the provisions of N.J.A.C. 11:3-35.5(a), which require underwriting rules for standard/non-standard rating plans assign to the standard rate level all drivers licensed for at least three years and who have accrued no automobile insurance eligibility points. It stated that standard rates were not appropriate for all such risks; for example, the vehicle characteristics should be considered. It stated that insuring a Buick is different than insuring a Lamborghini both for physical damage and liability.

RESPONSE: This provision, which was complementary to the proposed N.J.A.C. 11:3-19.4(a)3, has been modified in accordance with the changes to provisions of the rules concerning eligibility points and standard/non-standard rating plans (see reproposed N.J.A.C. 11:3-34 and 11:3-19 published elsewhere in this issue of the Register). While the rates for different vehicles may differ, the market in which the vehicle is insured shall be based on the driver's characteristics.

COMMENT: An insurer inquired whether a company is excused from filing its underwriting rules if the Commissioner has exempted it from insuring all eligible persons in accordance with N.J.S.A. 17:33B-20.

RESPONSE: A company would not be excused from filing its underwriting rules merely because of an exemption order. Any insured exempted from insuring all eligible persons in accordance with N.J.S.A. 17:33B-20 would nevertheless require underwriting rules for the renewal or nonrenewal of its current book of business, as well as rules for acceptance or non-acceptance of new business, if any. Upon implementation of a standard/non-standard rating plan, underwriting rules are necessary to assign risks to the proper rate level.

COMMENT: Several insurers requested that the rules include a "deemer date" for Department approvals of filed underwriting rules. One commenter stated that the rules were defective in that they did not set forth a time within which the Department must act and a procedure for hearing disputes. One insurer inquired what rules would be in effect if the insurer failed to have its underwriting rules approved within the time provided.

RESPONSE: The Department is unwilling to provide a "deemer date" at this time. Experience has shown that most insurers wait until the deadline to make filings and many filings require resubmission. Approval of each insurer's rules, depending upon their complexity, may require a substantial amount of Department resources. While underwriting rule filings will be processed as promptly as possible, the Department cannot guarantee that all filings will be reviewed as of a certain date.

The Department does not agree that the rules are "defective" in that they do not include a procedure for hearing disputes; nothing in these rules affects rights under generally applicable laws to contest administrative decisions.

An insurer is not relieved of the obligation to renew all eligible persons pursuant to section 3 of the FAIR Act (N.J.S.A. 39:6A-3) or to provide insurance in accordance with section 27 of the FAIR Act (N.J.S.A. 17:33B-15) by reason of its failure to meet the time requirements of this rule.

COMMENT: A consumer group suggested that the $500.00 penalty for violations, which is set forth in N.J.A.C. 11:3-35.6(b), is too low, and that the penalty should be increased to $1000.

RESPONSE: This penalty is consistent with the penalty set forth in N.J.S.A. 17:29A-46a.

COMMENT: Regarding N.J.A.C. 11:3-35.3(c)7, which prohibits underwriting rules from being based on lawful occupation or profession, a commenter stated: "The use of occupation as an underwriting factor for the writing of personal automobile insurance is a necessity. Many individuals use their personal automobiles in business pursuits."

RESPONSE: Nothing in the proposed rule prohibits underwriting rules based upon the nature of the use of a vehicle. Profession or occupation is not, however, the operative factor in the commenter's example.

These rules implement N.J.S.A. 17:29A-46 as amended by the FAIR Act and require that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new and renewal business and to assign business to the standard or non-standard rate level of their standard/nonstandard rating plans. This will ensure that each insurer conducts its business in a manner consistent with the market structure mandated by the FAIR Act. Insurers are required to renew "eligible persons" as defined in N.J.A.C. 11:3-34 beginning April 1, 1991, and to accept and insure all "eligible persons" after April 1, 1992. These rules set forth the filing requirements and standards for approval of personal private passenger automobile insurance underwriting rules. With the differences noted below, these rules are similar to those proposed August 6, 1990 (see 21 N.J.R. 2233(a)).

The Department has deleted the reference to persons "who have not been licensed to drive for the previous three years" in N.J.A.C. 11:3-35.3(c)10 and 11:3-35.5(a) and (b). Drivers without three years' experience have been assigned automobile insurance eligibility points in N.J.A.C. 11:3-34 (see reproposal published elsewhere in this issue of the Register). Specific mention of three years' driving experience is, therefore, no longer necessary, since the changed provisions include references to eligibility points.

The time limit within which insurers must file their underwriting rules has been stated as March 1, 1991 in order to accelerate implemenation of the FAIR Act reforms.

N.J.A.C. 11:3-35.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-35.2 sets forth definitions of terms used throughout the subchapter.

N.J.A.C. 11:3-35.3 sets forth general requirements and the format for filing underwriting rules.

N.J.A.C. 11:3-35.4 establishes the requirements of underwriting rules for eligible persons.

N.J.A.C. 11:3-35.5 establishes the requirements for standard/non-standard rating plans.

N.J.A.C. 11:3-35.6 requires insurers to file their underwriting rules for approval by March 1, 1991, and provides penalties for failure to do so. It also sets forth the penalty provided in N.J.S.A. 17:29A-46a for failing to conduct business in accordance with approved underwriting rules.

Social Impact

These reproposed new rules affect private passenger automobile insurers and insureds, as well as the Department. These rules carry out the statutory purposes of the market structure provisions of the FAIR Act by requiring insurers to file for approval of underwriting rules that establish the voluntary market as provided in the FAIR Act. In doing so, insureds which are "eligible persons" shall be guaranteed access to insurance in the voluntary market. Moreover, insureds that are proven "good drivers", that is, have accrued no automobile insurance eligibility points, will be provided insurance at standard market rates. These reproposed rules further permit an insurer to file for approval underwriting rules by which it may choose to renew business, or accept new business, even though the risk is not an "eligible person". These reproposed rules further permit an insurer which files a standard/non-standard rating plan to choose to insure at standard market rates renewal business, or new business, even though the person has accrued eligibility points.

Economic Impact

These reproposed new rules will impact private passenger automobile insurers and the Department. Insurers are required by N.J.S.A. 17:29A-46 to file for approval their underwriting rules. Doing so will, of course, involve some administrative expense. This impact should be minimal,

however, as the rules set forth a simple and standardized format for these filings.

The Department will incur some additional cost in carrying out its duty to review and approve insurer underwriting rule filings. These anticipated costs will require additional personnel and resources, as will the Department's duty to enforce the provisions of N.J.S.A. 17:29A-46, as amended by the FAIR Act.

Regulatory Flexibility Analysis

The reproposed new rules will affect insurers authorized to transact the business of personal private passenger automobile insurance in New Jersey. Some automobile insurance companies may be considered "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements imposed by these reproposed rules are largely a function of the statutory mandate of N.J.S.A. 17:29A-46, which requires insurers to file for approval their underwriting rules. Specific compliance requirements are imposed by this rule, which include the format of the rules, certain standards for approval and the requirement that all insurers file their underwriting rules for approval by March 1, 1991. Insurers will be required to expend certain administrative costs in developing and filing their underwriting rules. Since all insurers currently operate using their own internally developed underwriting rules, the Department believes that these reproposed rules will not require insurers to hire additional professional or non-professional staff.

These proposed rules further carry out the statutory mandates of the market structure provisions of the FAIR Act which requires all insurers to insure in the voluntary market those persons defined as "eligible persons". Since the underlying statutory authority does not allow for disparate treatment for "small businesses", the rules apply equally to all insurers affected by their provisions.

Full text of the emergency adoption and concurrent reproposal follows:

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

11:3-35.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46 which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new or renewal business or to assign risks to the standard or non-standard rate levels. Approval of underwriting rules shall serve to confirm that each insurer's business practices are consistent with law regarding the acceptance of new business, the renewal of current business and the assignment of a risk to an insurer's standard or non-standard rate level.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to affiliated companies which insure risks through different individual insurance companies.

11:3-35.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Automobile insurance eligibility points" means points accrued as provided in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Individual insurance company" means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless of whether it is one of a group of affiliated companies.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

11:3-35.3 General requirements and filing format

(a) All insurers which write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to the standard or non-standard rate level of an approved standard/non-standard rating plan, in accordance with N.J.S.A. 17:29A-46 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number. The underwriting rules filing shall clearly identify the rate level to which the underwriting rules will be applied and whether the underwriting rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(c) Underwriting rules shall meet the following standards:

1. No underwriting rule shall be based on the territory in which an insured resides.

2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.

3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

5. No underwriting rule shall be based on whether the applicant or insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

6. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer's employees or agents.

9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

10. No underwriting rule shall be based on whether a member of the insured's household is not an "eligible person" as defined in N.J.A.C. 11:3-34 or has accumulated one or more automobile insurance eligibility points, unless the member of the household usually accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purpose of this section:

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.

11:3-35.4 Underwriting rules for eligible persons

(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse

to insure, refuse to renew or limit coverage available to any of its insureds, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

11:3-35.5 Underwriting rules for standard/non-standard rating plans

(a) Insurers shall file underwriting rules applicable to each rate level of a standard/non-standard rating plan in accordance with N.J.A.C. 11:3-19.3(c) which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.

(b) Insurers shall file underwriting rules that provide that its insureds and applicants who have accrued no automobile insurance eligibility points shall be assigned to its standard rate level.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard rate level any person who has accrued one or more automobile insurance eligibility points.

11:3-35.6 Penalties

(a) An insurer which fails to file its underwriting rules for approval pursuant to N.J.S.A. 17:29A-46 and this subchapter by March 1, 1991 shall be subject to penalties as provided by N.J.S.A. 17:33-2.

(b) An insurer which knowingly fails to transact automobile insurance business consistently with its approved underwriting rules shall be subject to a fine of not less than $500. for each violation, pursuant to N.J.S.A. 17:29A-46a.

(a)

DIVISION OF FRAUD

Automobile Physical Damage Insurance Inspection Procedures

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-36

Emergency New Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules Filed: November 26, 1990 as R.1990 d.622.

Authority: N.J.S.A. 17:33B-33.

Concurrent Proposal Number: PRN 1990-642.

Emergency New Rules Effective Date: November 26, 1990;

Operative Date: March 1, 1991.

Emergency New Rules Expiration Date: January 25, 1991.

Submit comments by January 16, 1991 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
Trenton, New Jersey 08625-0325

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency adopted new rules are being reproposed in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

These reproposed new rules implement N.J.S.A. 17:33B-33 through 40. The Department of Insurance (Department) previously proposed rules implementing these statutory provisions on July 16, 1990 (see 22 N.J.R. 2111(a)). The Department has decided to make substantive changes based on public comments received and continuing Department review. This proposal therefore replaces and supersedes the prior proposal. Those comments and the Department's responses are summarized below.

COMMENT: The definition section is misnumbered, it should be renumbered to read N.J.A.C. 11:3-36.2.

RESPONSE: The Department agrees and has revised this section accordingly.

COMMENT: One commenter suggested amending the definition of "automobile physical damage insurance" to mean a policy **with a period of one year from the date of which a covered policy becomes effective upon first issuance or renewal** providing one or more . . . etc. The commenter believes that this modification will make the required inspection occur only annually, not every six months if the policy were to be issued on such basis.

RESPONSE: The commenter has misinterpreted the proposed rule. The rule does not require an inspection to be conducted every six months for policies issued on that basis. In any event, this provision has been deleted in favor of random inspections upon renewal for at least one out of every seven automobiles of the insurer's total number of automobiles insured for physical damage coverage.

COMMENT: One commenter suggested changing the word "inspection" in the definition section so that it will not be confused with DMV inspections. The commenter recommended using the words "certified" or "verified" instead.

RESPONSE: The Department has revised the term "inspection" by adding "automobile physical damage insurance" to the definition in order to clarify that the Department is referring to insurance inspections.

COMMENT: One commenter argued that "insurer" is defined in the proposed new rules to include "all affiliated companies within a group," but insurer is not defined in P.L.1990, c.8 (N.J.S.A. 17:33B-33 et seq.) which is the statutory authority for this proposal. The commenter does not believe that the definition operates to improve the inspection program. The commenter objected to assuming that two insurance companies are "affiliates" as defined by the Insurance Holding Company System Act (N.J.S.A. 17:27A-1 et seq.) reason of as little as 10 percent direct or indirect stock ownership interest and that they operate independently of each other. The commenter states that under the proposed new rules, an inspection could be waived under proposed N.J.A.C. 11:3-36.4(c)8 for an insured of one of the companies, whether or not the other has an inspection facility within 10 miles.

Two commenters suggested that the definition of "insurer" should be amended to delete affiliates operating independently of each other.

RESPONSE: The Department has revised N.J.A.C. 11:3-36.4(c)8. The waiver applies to automobiles that are principally garaged out-of-State and where there is no inspection facility within 10 miles of the city or town.

COMMENT: Two commenters expressed concern with the definition of "new automobile" which is defined as a vehicle not previously titled with less than 300 recorded miles. One commenter stated that the definition is significant because of the content of N.J.A.C. 11:3-36.4 which permits mandatory inspection to be waived where a "new automobile" is purchased from a franchised dealer and certain data is provided to the insurer. The commenter agrees that, as presently proposed, the waiver of inspection of new cars is at the insurer's option. The commenter agreed that it is not uncommon for a policyholder to purchase previously untitled vehicles with odometer readings in excess of 300 miles. The commenter argued that if a vehicle had in excess of 300 miles at the time of purchase, physical damage coverage could only be provided with an inspection. The commenter questioned whether an insurer can, under these circumstances, be sure to some degree of certainty that coverage is in place.

A second commenter stated that the definition is too restrictive and is at odds with present New Jersey Motor Vehicle statutes (see for example N.J.S.A. 39:10-2). The commenter argued that the mileage limitation of 300 miles fails to take into account new vehicles used by franchised dealers as demonstrators which remain untitled until sale to a retail customer but could have several thousand miles on their odometers.

A third commenter requested an affirmative statement, consistent with the Fair Act, in the rule's definition of "private passenger automobile" (N.J.A.C. 11:3-36.3) that inventory held by dealers for resale, and not yet titled by New Jersey Division of Motor Vehicles is exempt from the provisions of the rule.

RESPONSE: The Department is only exempting new automobiles. The Department believes demonstrators should be inspected in accordance with these rules. Demonstrators may have been driven several

thousand miles and are subject to prior damage. The Department believes that automobiles which have in excess of 300 miles will be identified on the bill of sale. The definition of a new automobile is not in conflict with any statutory provision.

COMMENT: One commenter stated that a bare reference to a statute (N.J.S.A. 39:6A-2a) in the definition of a private passenger automobile is sometimes unclear, and it should be clear from the reading of any regulatory enactment what is intended by the regulation. The commenter suggested that the relevant language from the statute be incorporated into this section.

RESPONSE: The Department agrees and has revised the definition of private passenger automobile accordingly.

COMMENT: One commenter suggested amending the definition of "authorized representative" to include ... a producer who elects in authorized writing by the insurer to conduct such inspections or an inspection service. The commenter requests the amendment so that the decision as to whether the producer is required to conduct the inspection is left up to the producer.

RESPONSE: The Department does not regulate the contractual relationship between producers and insurers. If insurers request producers to conduct inspection, it is a matter to be resolved between the producer and the insurer.

COMMENT: One commenter stated that the word "endorsement" in N.J.A.C. 11:3-36.3(a)1 seems superfluous as a result of the content of N.J.A.C. 11:3-36.3(a)2 which addresses additional and replacement cars.

RESPONSE: The Department disagrees. An endorsement includes the adding of coverages as well as automobiles.

COMMENT: Several commenters objected to N.J.A.C. 11:3-36.3(a)3 which requires all automobiles to be inspected during the first year of the rule. One commenter argued that this section exceeds the scope of the Fair Act and should be deleted. The commenter believed the Fair Act confines the mandatory inspection program to newly issued policies and additional or replacement vehicles. The commenter does not believe that insurers are required to inspect all autos presently insured for physical damage upon renewal but only new business and additional or replacement vehicles. The commenter argued that the Department's inclusion of all autos in the inspection program significantly increases the burden imposed on insurers by the Act and jeopardizes the success and compliance rate of the inspection program. The commenter argues that as a practical matter, both because of the frequency with which autos are purchased and sold and because policyholders change insurance companies from time to time, it will take only a few years before most of the cars in the State have been inspected.

A second commenter argued that its Material Damage Claim Officer reviewed the inspection forms and determined that it would take about 20 minutes to inspect, take photos and fill out the forms. The commenter stated that given the number of automobiles it insures it would take at least six months to get all the automobiles inspected. The commenter argued that this provision is not time effective or cost effective. The commenter does not believe that the Fair Act requires inspection before renewal.

A third commenter suggested that N.J.A.C. 11:3-36.3(a)3 be modified to allow for a phase-in period to coincide with the exemption noted under the waiver provisions.

A fourth commenter suggested that odd-month expirations be inspected in 1991 and even months in 1992.

RESPONSE: The Department has deleted this section in favor of a requirement that insurers randomly inspect at least one out of every seven automobiles insured for physical damage coverage annually.

COMMENT: Several commenters objected to N.J.A.C. 11:3-36.3(b)2. One commenter suggests the elimination of an inspection as a condition to renewal. The commenter believes that this option could lead to mass nonrenewals based on a technicality which relates only to physical damage.

A second commenter argued that the Fair Act does not limit the reasons for which an insurer may require the insured to submit to an auto inspection. The commenter believes that the rule should not imply that insurers are free to require inspection only under limited circumstances. The commenter stated that this subsection of the rule does not serve any purpose promoted by the Fair Act and should be deleted.

RESPONSE: N.J.S.A. 17:33B-34b of the Fair Act provides that an insurer may require as a condition of renewal that the automobile be made available for inspection. This rule is consistent with that requirement. The Fair Act permits the Commissioner to exempt or defer inspections under circumstances specified by regulation.

COMMENT: One commenter suggested a modification to N.J.A.C. 11:3-36.3 which would add a new subsection (c):

"Any inspection required by this regulation shall be the responsibility of the insurer to perform; in no event shall any insurer representative be held liable for any act performed or not performed under this section unless grossly negligent or willful."

The commenter believed this is necessary to ensure that insurer representatives are not held accountable or liable for any act or omission which was merely negligent and not grossly or willfully negligent.

RESPONSE: This rule applies to the inspection of an automobile for insurance purposes. This is not a safety inspection. All insurers are required to make sure that inspections are performed in accordance with the proposed rules.

COMMENT: One commenter suggested rewording N.J.A.C. 11:3-36.4(a) to require that an insurer "shall" waive the mandatory inspection under certain circumstances.

RESPONSE: The Department believes insurers should have the discretion to waive inspections under the circumstances listed in N.J.A.C. 11:3-36.4(a).

COMMENT: One commenter suggested that N.J.A.C. 11:3-36.4(a)1i be amended to include the following new language:

"Vehicle Buyer's Order (contract) and/or the dealership invoice to the buyer, including all options and accessories."

RESPONSE: The Department agrees with the commenter and has revised this section accordingly.

COMMENT: One commenter suggested adding a new section to N.J.A.C. 11:3-36.4(a), which would provide:

A copy of an authorized inspection report, completed, signed and certified will be suitable for the copy of the bill of sale and the window sticker.

RESPONSE: When a person has an inspection performed on a new car they no longer need to have it waived pursuant to N.J.A.C. 11:3-36.4(a).

COMMENT: Three commenters objected to N.J.A.C. 11:3-36.4(a)2. The commenters disagreed with the waiver of automobiles nine or more model years old. One commenter argued that the requirement to inspect cars up to this age limit is unreasonable. In fact most people do not continue physical damage coverage, especially collision, on cars of that age. The commenter notes that most car theft problems are on newer cars. The commenter suggests exempting cars more than five years old. Two other commenters recommended using the New York regulation's policy of waiving vehicles more than seven years old. Another commenter suggested only requiring inspections for cars six years old or less.

RESPONSE: The Department has revised this section to provide an inspection waiver for automobiles more than seven model years old.

COMMENT: Five commenters objected to the N.J.A.C. 11:3-36.4(a)3 which permits an inspection to be waived when there has been continuous coverage for five or more years. The commenters suggested shorter periods of time. One commenter believed that two years is sufficient.

Two commenters noted that the nature of the offense (fraud) and companies' experience in these matters support the proposition that those prone to submit dishonest claims do so early on in their relationship with an insurer.

One commenter suggested that "continuously" insured include lapses of 30 to 60 days to cover situations where a person sells a car and does not buy another one immediately.

Another commenter believed that this section should be amended to add the following: "... and have no record of claims within that five year period."

RESPONSE: The Department has determined that a waiver should not be granted under those circumstances and has deleted this provision.

COMMENT: Two commenters suggested that in N.J.A.C. 11:3-36.5(a)5 the waiver for commercial policies covering 10 or more autos should be reduced to five.

Another commenter believed this section should be deleted because commercial customers can and do perpetrate fraud.

RESPONSE: The Department believes that commercial policies with 10 or more automobiles should be subject to an inspection in accordance with this rule. The Department also believes that commercial customers do perpetrate fraud.

COMMENT: One commenter suggested that N.J.A.C. 11:3-36.4(a)6, which requires an inspection to be waived when an insurance producer is transferring a book of business, be amended to read "... providing an inspection already exists."

RESPONSE: The Department does not believe this amendment is necessary.

COMMENT: Two commenters believed that the term "hardship" in N.J.A.C. 11:3-36.4(a) is vague and not easily applied to day-to-day situations. Therefore, guidelines as to what constitutes "hardship" need to be formulated in order to avoid future uncertainties and disputes.

RESPONSE: The Department has deleted this provision.

COMMENT: Several comments objected to N.J.A.C. 11:3-36.4(a)8, which requires inspections to be waived if no inspection facility is within 10 miles of the city/town where the automobile is located. One commenter believed that requiring inspection facilities to be located within 10 miles may be unreasonable when our State's more rural areas are considered. This commenter suggested adopting the New York 10-mile standard for some sections of the State, and increasing the standard to 25 miles for less populous areas.

Two commenters believed that allowing inspections to be waived if insurers do not adhere to this provision allows insurers to only authorize a limited number of people or limit the number of inspection sites to cut down the need for inspections.

RESPONSE: The Department has revised this section with regard to waivers. A waiver may be granted to an automobile garaged out-of-State if there is no inspection facility within 10 miles. The requirement that an inspection facility shall not be more than 10 miles from the city or town where the automobile is principally garaged is a standard set forth in N.J.A.C. 11:3-36.6. The Department believes the requirement is reasonable.

COMMENT: One commenter suggested adding the following new section to N.J.A.C. 11:3-36.4(a):

10. Where a nonowned automobile is insured under a policy providing automobile physical damage insurance issued by an insurer which has inspected such automobile in accordance with the provisions of this section.

RESPONSE: The Department does not believe this amendment is necessary. The Department believes that this situation should be considered as new business and the automobile should be inspected unless waived by the new insurer under the provision in N.J.A.C. 11:3-36.4.

COMMENT: One commenter stated that in N.J.A.C. 11:3-36.4(b), as well as N.J.A.C. 11:3-36.5(a)(2) and 36.6(f), there are requirements that inspections or other information be held "in the insured's policy record." The commenter believes that the intent is the insurer's file, and its wording could be interpreted to include the producer or even the insured's own file.

RESPONSE: The Department intends for this information to be kept in the insurer's file on the insured. This section has been revised to reflect this change.

COMMENT: One commenter suggested adding a new subsection (d) to N.J.A.C. 11:3-36.4 which would read as follows:

(d) An insurer shall waive a mandatory inspection under any of the following circumstances: 1) a temporary substitute automobile; and 2) an automobile which is leased for less than six months, provided the insurer receives the lease or rental agreement containing the description of the leased automobile, including its condition. Payment of a physical damage loss shall be conditioned upon receipt of the lease or rental agreement.

RESPONSE: The Department agrees in part with the commenter's suggestion and has revised the rule to incorporate part of that suggestion (see N.J.A.C. 11:3-36.4(a)7 and 8).

COMMENT: One commenter questioned the application of N.J.A.C. 11:3-36.5. The commenter believed that the deferral provision has the potential for a great deal of confusion. The commenter noted that a great deal of systems support will have to be developed to manage this situation, and perhaps the deferral period should be extended to 14 or more days.

RESPONSE: The Department believes that to the extent the deferral of an inspection for physical damage goes beyond seven days, it defeats the purpose of this rule and would increase the opportunity for the commission of fraud. The Department believes that insurers will be able to develop systems to manage this situation by the operative date of the proposal.

COMMENT: Two commenters stated that in N.J.A.C. 11:3-36.5 the terms "hardship" and "serious inconvenience" are somewhat vague and may lead to disputes and misunderstandings unless some standards are established.

RESPONSE: The Department will permit insurers to determine what constitutes a hardship or serious inconvenience in order to defer inspections. The Department will monitor abuses by reports submitted to the Department in accordance with N.J.A.C. 11:3-36.9.

COMMENT: One commenter suggested that N.J.A.C. 11:3-36.5(a)1 be modified to read:

When an inspection is deferred pursuant to (a) above, an insurance producer shall on the next business day . . .

RESPONSE: The Department agrees that this section needs to be modified and has revised the section accordingly.

COMMENT: One commenter argued that the proposed regulation does not address the issue of how inspections must be accomplished if an additional or replacement vehicle is acquired by the insured outside of New Jersey. The commenter suggested that proposed N.J.A.C. 11:3-36.5 be modified to include a new subsection (c) which reads:

"(c) If the insured acquires an additional or replacement automobile outside of New Jersey, and such automobile will be located outside New Jersey until after the expiration of the deferral period permitted by this section, the insurer shall arrange to conduct the inspection by an authorized representative during the deferral period at a place which shall not be more than 50 miles from the temporary location."

RESPONSE: The rule addresses the deferral of inspections that are required by N.J.A.C. 11:3-36.3. Automobiles principally garaged out-of-State are covered by N.J.A.C. 11:3-36.4(a)6.

COMMENT: One commenter believed that N.J.A.C. 11:3-36.6(a) should be amended by adding the following language: "If there is no such convenient location the insurer shall make arrangement for an authorized representative to inspect the insured's vehicle at the insured's place of business or home."

RESPONSE: There is nothing in this rule that prevents an insurer from requiring this from their authorized representatives. The proposal only requires an inspection facility to be not more than 10 miles from the city or town where the automobile is principally garaged.

COMMENT: One commenter argued that subsection (b) of N.J.A.C. 11:3-36.6 does not require disclosure of the Vehicle Identification Number (VIN) when the notices of either Appendix A or Appendix B are issued.

RESPONSE: The VIN number will be filled in by the person conducting the inspection. The Department requires this so that there are no discrepancies between the car that is insured and the one that is inspected.

COMMENT: One commenter suggested amending the language in N.J.A.C. 11:3-36.6(c)2, from "shall be attached to the report" to "shall be a part of the report," and add "photographs of areas of the vehicle which contain prior damage are to be taken; one photo for each area of damage."

RESPONSE: N.J.A.C. 11:3-36.6(c)4 permits additional photographs to be taken showing damaged areas and the Department has revised N.J.A.C. 11:3-36.6(c)2 in accordance with the commenter's suggestion.

COMMENT: Three commenters objected to N.J.A.C. 11:3-36.6(c)3 which requires a photograph of the VIN. One commenter believed that the third photograph added approximately 30 percent to their inspection costs.

All three commenters argued that photographs of the VIN would not be legible.

RESPONSE: In order to take a legible photograph of the VIN, a special camera attachment (a hood) is needed.

COMMENT: One commenter suggested the following changes to N.J.A.C. 11:3-36.6.

4. Delete 4. as it exists and substitute . . . The authorized representatives must be able to produce duplicate photographs should the original photographs become lost or mutilated.

5. (d)2. Add . . . maintain a control system so that photos which may become separated from reports can be identified with a report and brought together with the proper inspection report.

(f) add . . . insurers who maintain electronic image files for hard copy records. Such systems must have a read one write once memory which serves as legal records documentation.

(g) add . . . a central number will be established to receive consumer complaints concerning inspection service or customer treatment.

(h) change as follows:

1. When the inspection report indicates prior damage

2. When there is suspicion of fraud and/or the possibility of a "Prima Facie" case being developed

(i) add . . . "A copy of . . . all total loss claims, insurers which utilize electronic image systems are not required to maintain hard copies of photographs in the files when there was no prior damage noted in the inspection report."

RESPONSE: The Department agrees with the commenter that it is necessary to require insurers to utilize systems which provide duplicate photographs and that insurers should maintain a control system so that

photographs which become separated from reports can be identified. The Department has revised this section accordingly.

COMMENT: Two commenters objected to N.J.A.C. 11:3-36.6(d)2 which requires sequentially-numbered inspection reports. One commenter believed that this would add substantially to the cost of doing business with no apparent benefit. Another commenter believed that as long as insurers are satisfied with the security procedures of an inspection service, they should be able to do business without requiring the use of a particular type of clerical system.

RESPONSE: The Department does not require sequentially numbered inspection reports, but suggests it as a proper alternative, so that some degree of control is maintained. Sequentially-numbered reports permit insurers to substantiate the date of inspection, and prevents the back-dating of inspection reports.

COMMENT: Several commenters questioned N.J.A.C. 11:3-36.6(e). One commenter asked whether the phrase "no charge directly or indirectly to the insured" means that insurers rate filings cannot reflect the added expense of inspection in their rates.

A second commenter offered a different suggestion with regard to this provision. The commenter suggested that a provision be incorporated which permits the insurance producer to recover the cost associated with making the inspection. The commenter suggested adding the following language to this section:

except if such inspection is performed by an insurance producer who has elected in writing with the insurer his or her decision to perform such inspections. In such instances, the producer shall be entitled to reasonable compensation from the insurer for each inspection.

RESPONSE: The Department has revised this provision to require that "there shall be no direct charge to the insured." The Department did not intend to prevent insurers from reflecting the expense of an inspection in their rate filings as a cost of doing business.

COMMENT: Three commenters believed that N.J.A.C. 11:3-36.6(f), which requires records to be maintained as long as the car is insured for physical damage, is too long a period to maintain records. The commenters believed that a three-year record retention is sufficient. One commenter suggested that insurers be free to retain these records in accordance with their voluntary record retention policies. A second commenter suggested allowing the insurer's "authorized representative" to maintain the records in question.

A third commenter suggested adding a new subsection which would require all records that have to be maintained to be forwarded to the insurer for its retention. This commenter further suggested the adding of a new provision which would require forms to be provided, by the insurer at its own cost, to its authorized representatives.

RESPONSE: The Department has revised this section and requires records to be maintained for five years. Insurers are free to retain these records in accordance with their normal record keeping or filing procedures as long as they maintain the records for at least five years.

COMMENT: One commenter did not believe that N.J.A.C. 11:3-36.6(g), which requires the insurer to maintain an up-to-date list of all authorized representatives and to send a copy of that list to the Department semiannually, requires them to provide a list of inspection sites of independent inspection services which they may use.

RESPONSE: An insurer is required to submit to the Department of Insurance, Fraud Division, a list of all authorized representatives and inspection sites performing inspections for the insurer.

COMMENT: Three commenters objected to N.J.A.C. 11:3-36.6(h) which provides when an inspection report shall be used. One commenter believes that by limiting this subsection to total theft loss, as is done in New York, the State can still fulfill its objective and relieve the insurer from an onerous burden that will not substantially further the regulatory intent.

A second commenter believed that this proposal may cause delays and inconvenience to claimants because of the time needed to retrieve documents from storage, review them and return them to storage. This commenter argues that it will be expensive and burdensome for insurers. The commenter suggests that the information be limited to information other than mileage and options and, therefore, the necessity of retrieving large numbers of inspection reports would be mitigated.

A third commenter urged the Department to revise the requirement of paragraph (h)3 when the damage exceeds $1,000. The commenter suggests $2,000 plus the insured's deductible. The commenter argued that the proposed figure is too low and would affect too great a portion of claims.

A fourth commenter questioned whether, in accordance with N.J.A.C. 11:3-36.6(h), an inspection report is required to be made whenever the three conditions are found to exist in connection with a claim. The commenter stated that it is impossible to inspect an "unrecoverable theft."

RESPONSE: The Department has revised this section to require an inspection report to be used by the insurer when the appraisal indicates prior damage and the new damage (claim) exceeds $1,000, or the new damage (claim) exceeds $3,000. The Department does not require insurers to inspect an "unrecoverable theft." The Department requires insurers to use the inspection report in settling the claim.

COMMENT: One commenter believed that under N.J.A.C. 11:3-36.7(b)1, which provides for the suspension of physical damage coverage and notice thereof up to 30 days later, creates the potential for serious problems, especially in cases where lienholders are involved. The commenter provided the following example: the carrier has certified to the bank that physical damage coverage is suspended, an accident occurs, and the bank is notified of the suspension almost a month later.

A second commenter questioned why there should be a 30 day period for the company to send out the cancellation notice. The commenter believed this should be immediate so the consumer knows exactly what coverage they have.

RESPONSE: The Department believes that the time period given to insurers to send out notices is reasonable. Considering the volume of business that insurers do, it would be impossible for them to send out notices immediately. The insured has already received one notice of the consequences of failing to obtain an inspection; this notice simply acts as a confirmation.

COMMENT: One commenter suggested amending N.J.A.C. 11:3-36.7(b)2, which requires an insurer to "obtain a certificate of mailing or other evidence of mailing of the notice of suspension to the insured." The commenter believed that the latter provision should be changed, for consistency, to "retain the certificate or other evidence and copy of the Notice." The commenter believed that this section allows for the retention in a centralized location of the certificate or other evidence and copy of the Notice.

RESPONSE: The Department requires the insurer to retain the certificate of mailing for enforcement purposes. This rule does permit the retention of the certificate or other evidence and copy of the notice in a centralized location.

COMMENT: Three commenters expressed concern with N.J.A.C. 11:3-36.7(c), which addresses the reinstatement of physical damage coverage upon inspection and payment by the insured of the adjusted premium. One commenter recommended deleting this provision, because calculating the amount due is complicated by the fact that coverage is not effective until payment is made by the insured. The commenter inquired whether insurers must anticipate when the check will be received in order to calculate the adjusted premium due.

Another commenter believed that the proposal should clearly indicate that payment to the authorized representative (producer) of the insurer should be acceptable as a condition of the reinstatement of physical damage coverage.

A third commenter suggested modifying this section to read as follows:

in [full or in] accordance with the insurer's normal payment plan[, at the insurer's option.] **Any such reinstatement shall be effective at the time of the inspection and, for purposes of the insurance law shall not be considered new business.**

RESPONSE: This provision provides for payment by the insurer to be made in its normal payment procedures. If the producer is an agent of the company, payment to him may be accepted as a condition of the reinstatement of physical damage coverage. The Department has incorporated part of the third commenter's suggestion into the rule.

COMMENT: One commenter objected to N.J.A.C. 11:3-36.7(e), which provides that physical damage coverage shall not be suspended by an insured's failure to submit the window sticker or invoice and bill of sale for a newly purchased vehicle. The commenter believed that the production of these items is less burdensome on an insured than having to report to an inspection site. The commenter argued that there is no compelling reason why owners of new vehicles should not have to furnish the documents within a reasonable time or face a suspension of coverage. The commenter believed that new car buyers should be subject to the provisions of N.J.A.C. 11:3-36.5, Deferral of inspection, as well as N.J.A.C. 11:3-36.7, Suspension of physical damage coverage, to allow new vehicles to be treated like other autos. The commenter argued that Appendix A and B should likewise be amended to allow suspension for failure to produce the sticker and bill of sale.

RESPONSE: The Department has revised this rule to permit an insurer to waive an inspection for new car buyers, if the appropriate documentation is provided. The Department has revised N.J.A.C. 11:3-36.7(e) to provide that physical damage coverage on a new automobile shall be suspended due to the insured's failure to provide the documents required by N.J.A.C. 11:3-36.4(a)1 within seven calendar days.

COMMENT: One commenter noted that N.J.A.C. 11:3-36.8(a)1 makes the insurer responsible for "the conduct" of authorized representatives. The commenter believed that this requirement is excessively broad. The commenter questioned if it includes criminal conduct, fraud against the insurer or something else. The commenter believed this provision should be deleted or narrowed so that specific responsibility is known.

RESPONSE: This provision makes the insurer responsible for compliance with this rule.

COMMENT: Several commenters offered different evaluations of N.J.A.C. 11:3-36.9. One commenter believed that records of the costs related to this subchapter should be relatively easy to collect and submit. However, the commenter did not believe the same could be said concerning the savings which may result from the implementation of the proposal.

A second commenter argued that this provision would impose additional administrative burdens on the insurer with no practical value. The commenter also questioned how savings are calculated.

A third commenter argued that they were not aware of any methodology that would enable an insurer to estimate savings that result for implementation of these inspection procedures.

RESPONSE: Every time an inspection report is used to adjudicate a claim, that in itself is an example of cost savings because an insurer can identify whether there was any prior damage.

COMMENT: Two commenters believed that N.J.A.C. 11:3-36.9(b) was incomplete in that it does not state what insurers should do upon supplying the monthly audited inspection reports to the authorized representatives.

RESPONSE: The Department agrees and has revised this section accordingly.

COMMENT: Two commenters believed N.J.A.C. 11:3-36.9(b), which requires the monthly auditing of inspection reports, to be an unnecessary burden and redundant. One commenter stated that "in reality, each inspection would be reviewed on a daily basis upon receipt, and if found to be incomplete, it would be returned to the agent."

RESPONSE: The Department requires the monthly auditing of inspection reports in order to count the number of inspections being performed by companies. The monthly auditing is required so that companies can provide the Department with the information requested in N.J.A.C. 11:3-36.9(c).

COMMENT: Two commenters suggested that N.J.A.C. 11:3-36.9(c), which requires the reporting of the number of incomplete or incorrect reports received, be deleted. One commenter believed that there will be little benefit, and substantial cost to comply with this provision.

A second commenter urged the Department to consider quarterly reporting.

A third commenter suggested amending this provision to include the number of automobiles inspected with prior damage.

RESPONSE: The Department believes that the number of incomplete or incorrect reports received are necessary to determine if inspections are being conducted properly, and to aid the Department in monitoring the number of inspections deferred for hardship and serious inconvenience granted by insurers in accordance with this rule. The number of automobiles inspected with prior damage should be important to insurers.

COMMENT: One commenter believed that the Appendices should be reviewed by an expert who knows how to read and write forms for semi-illiterate people. The commenter argued that the present language used in the proposal is somewhat intimidating. The commenter also believed that across the top of each letter should be a notice that states: "If you do not understand this important letter, please call ____." The commenter suggested that the phone number should be that of the Department of Insurance. The commenter further believed that in Appendix B there should be a line indicating where the insured is to go for the "inspection" or direct reference to the sheet that will be attached offering options for places to get cars "inspected."

RESPONSE: The notices are intended to impress upon the insured the importance of obtaining an insurance inspection when required. The Department has amended Appendix A and B to incorporate the last commenter's suggestions.

COMMENT: One commenter suggested amending Appendix B which contains the following language: "Please Disregard this Notice if you have already had your car inspected," to additionally read and photographed for insurance purposes. The commenter believed that this is necessary to prevent insureds from believing that the notice concerns inspections by the Division of Motor Vehicles.

RESPONSE: The Department does not believe the suggested language is needed in light of other additions to Appendix A and B. It is noted on Appendix A and B that this is not a safety inspection.

COMMENT: One commenter questioned whether Appendix C establishes minimum standards or is a mandatory form. The commenter believed companies should be permitted to amend forms as certain equipment becomes standard equipment or as new options are added to new cars.

RESPONSE: Appendix C establishes minimum standards for the report to be used in accordance with the rules. When certain equipment becomes standard equipment or as new options are added to new cars, the Department may amend the Appendix. There is also a heading for special custom options or additions under Appendix C.

COMMENT: One commenter wanted "built-in" under Appendix C to be defined. The commenter questioned whether a component (that is, cassette player, car phone, CB radio, radar detector or stereo amplifier, etc.) needed to be bolted in place, since some modern radios are designed to be removed and inserted easily as means of theft prevention. The commenter suggests that this section should only apply to equipment intended to remain in the car via a permanent mounting configuration, and clarify what special wheels, tires and hub caps mean. The commenter also believed that the scope of anti-theft devices should be clarified.

RESPONSE: Each insurer has its own definition of the types of equipment that apply in their policy language.

COMMENT: One commenter believed that Appendix C under the section concerning the physical condition of the vehicle, the heading "DAMAGED/RUSTED" should be separated to indicate the respective columns they are identifying.

The commenter also noted that "WORD/TORN" should be "WORN/TORN."

RESPONSE: The Department agrees with the first commenter and has revised this section accordingly. The terms worn/torn are not misspelled in the proposal.

COMMENT: One commenter noted that the Department should explore ways to incorporate the State-required physical damage inspection into the State (DMV) required safety inspection.

RESPONSE: N.J.S.A. 17:33B-33 requires insurers or their authorized representatives to conduct inspections.

COMMENT: One commenter believed that the content of this proposal, as well as those sections of the statute dealing with mandatory inspection, appear to conflict with language in the existing Personal Auto Policy. The commenter argued that since the Fair Act provides that the inspection scheme will become effective upon the adoption of implementing regulations, the assumption is that an effective date for the proposed regulation will be selected to resolve the conflict between the Act and contracts of insurance presently in force.

RESPONSE: The Department recognizes that insurers will have to file amended policy forms with the Department reflecting the statutory and regulatory changes.

COMMENT: Several commenters believed lead time will be needed in order to allow this proposal to work. One commenter argued that it would need time for computer programming and the development of procedures as well as limiting the inconvenience to the public. Two commenters stated that they needed at least six months. A third commenter requested that implementation of the proposal be delayed for at least 120 days.

RESPONSE: The Department recognizes this and provides for a delayed operative date.

COMMENT: One commenter recommended that the Department amend the proposal to include a form of endorsement to policies subject to the regulation until companies can obtain approval of their own endorsement forms.

RESPONSE: The Department will not provide standard forms. Companies should submit the appropriate endorsement forms for approval.

COMMENT: One commenter questioned whether the proposed new rules apply to collateral protection insurance and other forms of insurance which are purchased by a secured creditor when the debtor fails to maintain the required physical damage insurance.

RESPONSE: These rules apply to the single interest (insured) policy. This does not apply to collateral protection insurance policies.

The Department of Insurance (the "Department") reproposes new rules in accordance with the Fair Automobile Insurance Reform Act of 1990 (the "Act") (N.J.S.A. 17:33B-33 et seq.), which requires the Department to establish procedures for the inspection of an automobile by the insurer prior to the issuance of automobile physical damage insurance coverage.

The Act requires the Commissioner to exempt new automobiles from insurance inspections under conditions established by these rules. The Act permits insurers to require, as a condition of renewal, that the automobile be made available for inspection at locations and times reasonably convenient to the insured. The Act requires that insurers inspect an automobile acquired by the insured as a replacement for or in addition to an automobile insured for physical damage insurance coverage.

The reproposed new rules establish procedures for the inspection of an automobile by the insurer prior to the issuance of physical damage insurance coverage. The reproposed new rules apply to all private passenger automobiles being insured for physical damage insurance coverage in this State.

As a result of the public comments received and further review by the Department, these rules contain substantive changes from the previous proposal that affect the automobile physical damage insurance inspection procedures.

A summary of the various provisions of the reproposed new rules follows:

N.J.A.C. 11:3-36.1 states the purpose and scope of the reproposed new rules.

N.J.A.C. 11:3-36.2 provides the definitions for terms that are used in the reproposed new rules.

N.J.A.C. 11:3-36.3 provides the mandatory inspection requirements for private passenger automobiles insured under a new policy or endorsement, or insured as an additional or replacement automobile.

N.J.A.C. 11:3-36.4 provides the circumstances under which insurers may waive mandatory inspections.

N.J.A.C. 11:3-36.5 provides the circumstances and the length of time for which insurers may defer the inspection of an automobile.

N.J.A.C. 11:3-36.6 provides the standards and procedures to be used by the insurer in the inspection of the automobile.

N.J.A.C. 11:3-36.7 provides the standards and procedures for suspending physical damage insurance coverage on the insured's automobile when the insured fails to present the vehicle for inspection after deferral.

N.J.A.C. 11:3-36.8 addresses the enforcement of this subchapter by the Department.

N.J.A.C. 11:3-36.9 sets forth the recordkeeping and reporting requirements.

N.J.A.C. 11:3-36.10 sets forth the severability of the provisions with this subchapter.

Social Impact

The reproposed new rules are designed to curtail fraudulent physical damage claims. The reproposed new rules require insurers to inspect the physical condition of an automobile prior to issuing physical damage insurance coverage. The inspection is intended to reduce fraudulent claims for pre-existing damage. Inspections should also prevent fraudulent schemes in which nonexistent "paper cars" are insured and then reported stolen.

The reproposed new rules will affect all New Jersey insureds with automobile physical damage insurance coverage. Unless exempted by these rules or the Act, the proposed new rules require that insureds make their automobiles available for inspecton by the insurer's authorized representative.

The reproposed new rules will affect insurers in that it requires them to inspect private passenger automobiles prior to the issuance of physical damage insurance coverage and requires inspection records to be kept. The reproposed new rules allow insurers to waive the inspection requirements under specified conditions.

Economic Impact

The Department expects the reproposed new rules to help stabilize premiums on physical damage coverage that have increased partly due to fraudulent physical damage claims. The reproposed new rules are expected to reduce fraudulent collision claims and eliminate fraudulent theft claims for nonexistent or "paper" cars.

The Department expects that insurers will incur additional costs as a result of the reproposed new rules, which are necessary for compliance with the FAIR Act and these rules. The Department believes, however, that these costs will be balanced by a reduction in fraudulent claims. The reproposed new rules do not require insurers to hire additional personnel to conduct the automobile inspections. The reproposed new rules permit insurers to use their employees to conduct the inspection of automobiles. The reproposed new rules are cost effective and are intended to reduce the cost of fraudulent claims paid by insurers.

Regulatory Flexibility Analysis

The reproposed new rules impose reporting, recordkeeping and compliance requirements on insurance companies authorized to transact private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All insurers are required to maintain records and to provide reports to the Department of specific inspection data. The rules set forth the requirements for performing inspections, and for the waiver or deferral of inspections.

The Department is unable to estimate the costs that will be incurred or the need for professional services that may be required by small business insurers to comply with these rules, which effectuate the Fair Automobile Insurance Reform Act's inspection requirements. The costs and need for services will vary substantially depending upon each insurer's internal resources and insured base. In order to effectuate the goals of these rules and meet the requirements of the Act, no differentiation in requirements based upon business size can be provided.

Full text of the reproposed new rules follows:

SUBCHAPTER 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

11:3-36.1 Purpose and scope

(a) The purpose of this subchapter is to provide rules for the inspection of automobiles in connection with the issuance of physical damage insurance coverage by insurers pursuant to N.J.S.A. 17:33B-33 through 17:33B-40.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State.

11:3-36.2 Definitions

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

"Authorized representative" means any person which is authorized by the insurer to conduct insurance inspections pursuant to this subchapter; an authorized representative may be an employee of the insurer, a producer or an inspection service.

"Automobile physical damage insurance" means a policy providing one or more of the following insurance coverages:

1. Collision;
2. Comprehensive; and
3. Fire and theft.

"Automobile physical damage insurance inspection" means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth in N.J.A.C. 11:3-36.6.

"Book of business" means all private passenger automobile insurance written by one producer with one insurer.

"Certificate of mailing" means a receipt from the United States Postal Service that the item was received by it with the proper postage affixed for delivery.

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

"Inspection service" means any person or legal entity other than the insurer, established and operated to perform the inspections required by this subchapter.

"Insured" means the named insured (as defined in the policy) or an applicant for automobile physical damage insurance.

"Insurer" means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes all affiliated companies within a group.

"New automobile" means an automobile not previously titled with less than 300 recorded miles.

"Private passenger automobile" or "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; and 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 meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Renewal" means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

"Replacement automobile" is a vehicle acquired to replace one shown in the declarations.

11:3-36.3 Mandatory inspection requirements

(a) No insurer shall provide automobile physical damage insurance coverage prior to conducting an insurance inspection in accordance with this subchapter, under the following circumstances:

1. When a new policy or endorsement insuring a private passenger automobile is effected; and

2. When coverage is effected for an additional or replacement private passenger automobile.

(b) An insurer may require, prior to continuing physical damage coverage on an automobile, that the insured present the automobile for inspection, under the following circumstances:

1. When the automobile insured for physical damage coverage has been in an accident or otherwise damaged; or

2. As a condition of renewal.

(c) Notwithstanding the provisions in (b) above, upon renewal an insurer shall randomly inspect on an annual basis at least one out of every seven automobiles of the insurer's total number of automobiles insured for physical damage coverage, in accordance with the standards and procedures for inspections as required by this subchapter.

11:3-36.4 Waivers of mandatory inspection

(a) An insurer may waive a mandatory inspection under any of the following circumstances:

1. When a new automobile is purchased from a franchised automobile dealership and the insurer is provided at the time of application with the following:

i. A copy of the bill of sale which contains a full description of the automobile, including all options and accessories; or

ii. A copy of the window sticker or advanced dealer shipping notice (invoice) showing the itemized options and equipment, the total retail price of the automobile, and any dealer installed option purchased by the customer; or

iii. Vehicle buyer's Order (contract) and/or the dealership invoice to the buyer, including all options and accessories;

2. When the automobile is more than seven model years old. For example: in 1991 an insurer shall inspect 1984 and newer model year vehicles and in 1992 an insurer shall inspect 1985 and newer model year vehicles;

3. When a policy is being renewed or issued by a different individual insurance company within a group of affiliated companies;

4. When the insured automobile is insured under a commercially rated policy which insures 10 or more automobiles;

5. When an insurance producer or insurer is transferring a book of business from one insurer to another insurer(s);

6. When the automobile is garaged out-of-state and the insurer has no inspection facility or authorized representative within 10 miles of the city or town in which the automobile is garaged;

7. When the automobile is a temporary substitute automobile; or

8. When the automobile is leased for less than six months.

(b) Insurers shall maintain a record of the waiver in the insured's policy record.

(c) Insurers shall decide whether to waive an inspection based solely on underwriting criteria uniformly applied and not based on the age, race, sex or marital status of the insured, the principal place of garaging or the fact that the automobile is insured in the residual market.

11:3-36.5 Deferral of inspection

(a) An insurer, by itself or through its authorized producers, may defer inspections required by N.J.A.C. 11:3-36.3 for not more than seven calendar days if an inspection at the time of the request for coverage would create a serious inconvenience or hardship for the insured.

1. When an inspection is deferred pursuant to (a) above, the insurer or producer shall:

i. At the time insurance application is completed, obtain the Acknowledgement of Requirement for Insurance Inspection form (as set forth in Appendix A and incorporated herein by reference) signed by the insured if the insured has applied for coverage in person; or

ii. At the time insurance application is completed, confirm physical damage coverage and advise the insured of the inspection requirements and mail the insured the Notice of Insurance Inspection form (as set forth in Appendix B and incorporated herein by reference) if the insured has applied for coverage by mail or by telephone.

2. In addition to the notice requirements set forth in (a)1i and ii above, the insurer or producer shall furnish the insured with information about where an inspection can be conducted and the consequences of the insured's failure to have the automobile inspected.

3. The insurer shall retain documentation of the required notice in the insurer's file on the insured.

(b) An insurer shall decide whether to defer an inspection based solely on underwriting criteria and not based on age, sex, race, or marital status of the insured, the principal place of garaging, or the fact that a policy is insured in the residual market.

11:3-36.6 Standards and procedures for inspection

(a) Inspections shall be made by an authorized representative of the insurer at a time and place reasonably convenient to the insured. A reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours. A reasonably convenient place shall not be more than 10 miles from the city or town where automobile is principally garaged.

(b) Whenever an insurer requires an automobile to be inspected pursuant to this subchapter, the insurer by itself or through its authorized producer shall provide the insured with a Notice of Inspection in the form set forth in Appendix B or an Acknowledgement of Requirement for Insurance Inspection as set forth in Appendix A. Any form so provided shall not contain the vehicle identification number (VIN) of the automobile to be inspected.

(c) The inspection shall include the following:

1. Completion of the recorded Automobile Insurance Inspection Report as set forth in Appendix C incorporated herein by reference;

2. Two color photographs of the automobile, taken as directed on the inspection report (Appendix C), which shall be a part of the report;

3. A third close-up color photograph showing the VIN located on the Environmental Protection Agency/Federal Certification Label (EPA sticker) affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and VIN is legible. If the EPA sticker is damaged, faded, missing or otherwise not legible, a photograph of the EPA sticker, or of the area of the door jamb where the sticker is normally located, is still required;

4. A fourth close-up color photograph of the odometer;

5. The authorized representative may take additional photographs showing any damaged areas, which shall also be a part of the report; and

6. The authorized representative shall provide a copy of the report, without photographs, to the insured at the time of inspection.

(d) The insurer shall utilize authorized representatives and systems to implement the provisions of this subchapter which meet the following standards:

1. Verifies the accuracy, completeness and identity of the person completing each inspection report;
2. Provides a control system for its inspection reports such as the use of sequentially numbered or coded reports;
3. Completes all required information for each automobile on the Automobile Insurance Inspection Report set forth in Appendix C;
4. Takes photographs as required in (c)2 through 4 above;
5. Provides for the storage and retrieval of reports and photographs in a manner that facilitates their use as set forth in paragraph (h) below;
6. Provides for a backup system or other duplicate or secondary source for the report and photographs to ensure against loss;
7. For inspections conducted on and after April 1, 1994, provides the ability to view inspection reports and photographs on a computer system monitor;
8. For inspections conducted on and after April 1, 1994, provides the ability to print inspection reports and photographs from a computer system with a code that identifies the document by policy number, inspection report number or other common identifying code; and
9. For inspections conducted on and after April 1, 1994, provides the ability for all of the insurer's New Jersey claims offices to view or access the inspection report and photographs.

(e) There shall be no direct charge to the insured by the authorized representative or insurer in connection with an inspection.

(f) After the inspection is completed, the report and photographs shall be retained in the insurer's file on the insured for five years.

(g) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list shall include the names, addresses and business telephone numbers of all authorized representatives. The insurer shall send a copy of the list to the Department and update it semi-annually at the following address:

New Jersey Department of Insurance
Fraud Division
CN 324
Trenton, New Jersey 08625

(h) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the automobile on physical damage claims whenever:
1. The appraisal indicates prior damage and the new damage (claim) exceeds $1,000;
2. The automobile is a total loss or unrecovered theft; or
3. The new damage (claim) exceeds $3,000.

(i) A copy of the inspection report and photographs shall be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report shall be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein.

11:3-36.7 Suspension of physical damage coverages

(a) If the inspection is not conducted prior to the expiration of the deferral period or the expiration of the policy in the case of renewals, the insurer shall suspend automobile physical damage coverage on the automobile at 12:01 A.M. of the day following the last day for inspection. Suspension of coverage shall apply to all insureds, owners and lienholders.

(b) Whenever physical damage coverage is suspended, the insurer shall:
1. No later than the 30th calendar day after the effective date of the suspension, mail to the insured, the producer of record and any lienholders a Notice of Suspension of physical damage coverage (as set forth in Appendix D incorporated herein by reference);
2. Obtain a certificate of mailing or other evidence of mailing of the Notice of Suspension to the insured and shall retain the certificate and copy of the Notice in the insured's policy record; and
3. Make a pro-rata premium adjustment (premium refund or credit) whenever there is a suspension of physical damage coverage for more than 10 days. A refund of premium, if applicable, shall be sent to the insured within 45 days of the effective date of suspension.

(c) A reinstatement of physical damage coverage shall only be effective upon inspection and payment by the insured to the insurer of the adjusted premium for the physical damage coverage in full or in accordance with the insurer's normal payment plan. Any such reinstatement shall be effective at the time of inspection.

(d) If the automobile is not inspected pursuant to this subchapter due to the fault of the insurer, or if the insurer fails to give the verbal or telephone notice required by the subchapter or mail or deliver the Notice of Insurance Inspection (Appendix B) or obtain the Acknowledgement of Requirements for Insurance Inspection (Appendix A) as set forth in this subchapter, physical damage coverage on the motor vehicle shall not be suspended. The failure of the insurer to act promptly does not relieve it of its obligation to inspect. An insurer's failure, however, to comply with (b) above shall not restore physical damage coverage, but shall subject the insurer to a penalty pursuant to N.J.S.A. 17:33B-39.

(e) Physical damage coverage on a new automobile shall be suspended due to the insured's failure to provide the documents required by N.J.A.C. 11:3-36.4(a)1 within seven calendar days. A reinstatement of physical damage coverage shall be effective upon inspection.

11:3-36.8 Enforcement

(a) A violation of any provision of this subchapter by an insurer shall be punishable by a $500.00 fine pursuant to N.J.S.A. 17:33B-39.
1. Insurers shall be responsible for the conduct of their authorized representatives with respect to all duties imposed by this subchapter.
2. Each issuance, procurement, or negotiation of a policy of insurance, or maintenance of a record in violation of this subchapter shall be deemed a separate offense.

11:3-36.9 Results and audits

(a) Insurers shall maintain records as to the costs and savings related to this subchapter and shall make such records available to the Department upon request.

(b) Insurers shall maintain and be responsible for the monthly auditing of inspections reports received from their authorized representatives.

(c) Insurers shall report the following information to the New Jersey Department of Insurance Fraud Division on a quarterly basis:
1. The number of automobiles inspected; and
2. The number of automobiles which were not inspected by reason of the insured's failure to present the automobile for inspection.

11:3-36.10 Severability

If any section or portion of a section of this subchapter or its application to any person, entity or circumstance is held invalid by any court, the remainder of this regulation or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.

APPENDIX A

IFD 30 A

(COMPANY LETTERHEAD)

ACKNOWLEDGMENT OF REQUIREMENT FOR INSURANCE INSPECTION
(THIS IS NOT A SAFETY INSPECTION)

NAME OF INSURED
OR APPLICANT: _____
ADDRESS: _____
_____
_____

EFFECTIVE DATE
OF COVERAGE: _____
(Date)
INSPECTION SHALL BE
COMPLETED BY: _____
(Date: not more than 7 days after the effective date of coverage)

AUTOMOBILE(S) TO BE INSPECTED

	YEAR	MAKE	MODEL
1.	_____,	_____,	_____.
2.	_____,	_____,	_____.
3.	_____,	_____,	_____.

BY MY SIGNATURE BELOW I CERTIFY THAT I HAVE BEEN INFORMED THAT MY AUTOMOBILE(S) WHICH IS (ARE) BEING INSURED FOR FIRE AND THEFT/ COMPREHENSIVE AND/OR COLLISION COVERAGE SHALL BE INSPECTED BY A REPRESENTATIVE OF THE INSURER. THIS INSPECTION SHALL BE COMPLETED NO LATER THAN THE DATE SHOWN ABOVE TO AVOID A SUSPENSION IN COVERAGE.

I UNDERSTAND THAT FAILURE TO SUBMIT TO THE REQUIRED INSPECTION(S) WILL RESULT IN THE SUSPENSION (LOSSES WILL NOT BE COVERED) OF THE PHYSICAL DAMAGE COVERAGES (FIRE AND THEFT/COMPREHENSIVE, COLLISION), AS OF 12:01 A.M. OF THE DAY FOLLOWING THE DATE BY WHICH THE INSPECTION SHALL BE COMPLETED, AS SHOWN ABOVE.

I UNDERSTAND THAT IF COVERAGE IS SUSPENDED IT WILL BE RESTORED ONLY AFTER THE INSPECTION HAS BEEN COMPLETED AND THE ADJUSTED PREMIUM DUE FOR SUCH COVERAGE(S) HAS BEEN PAID.

SIGNATURE OF INSURED OR
APPLICANT: _____ _____
(Date)

SIGNATURE OF PRODUCER
OR INSURANCE COMPANY
REPRESENTATIVE: _____ _____
(Date)

NAME, ADDRESS & TELEPHONE NUMBER OF PRODUCER OR INSURANCE REPRESENTATIVE COMPLETING THIS FORM: _____
_____
_____
_____

INSURED/APPLICANT MUST RECEIVE A COMPLETED COPY OF THIS FORM ALONG WITH A LIST OF AUTHORIZED AUTOMOBILE PHYSICAL DAMAGE INSPECTION SITES.

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX B

IFD 30 B

(COMPANY LETTERHEAD)

NOTICE OF INSURANCE INSPECTION
(THIS IS NOT A SAFETY INSPECTION)

IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE

_____
(Date of mailing)

Name of Insured: _____
Address: _____
_____
_____

EFFECTIVE DATE OF COVERAGE: _____ (Date)

INSPECTION SHALL BE COMPLETED BY: _____ (Date)

POLICY #: _____

Dear Policyholder,

This will confirm coverage for FIRE AND THEFT/COMPREHENSIVE _____; COLLISION _____; on your

1. _____, _____, _____.
2. _____, _____, _____.
3. _____, _____, _____.

YEAR MAKE MODEL

Please disregard this notice if you have already had your car inspected.

This notice will also serve as a reminder that the above described car(s) shall be inspected by the date indicated above, or your physical damage coverages will be suspended effective 12:01 A.M. on _____.
(Date)

If you have your car inspected after the above deadline your coverage will only be restored after your car has been inspected and the adjusted premium due for the coverages listed above had been paid. You will have no coverage for any physical damage loss that occurs during the suspension period. Attached is a list of authorized automobile physical damage inspection sites.

FOR FURTHER INFORMATION PLEASE CALL:

_____
Name and phone number of Company Representative

Very truly yours,

_____

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX C(1)

IFD 30C

INSURANCE COMPANY LETTERHEAD
OR
INSPECTION SERVICE LETTERHEAD

CONTROL NUMBER _____ SITE ID NO. _____

DATE OF INSPECTION	TIME OF INSPECTION AM PM	INSURANCE COMPANY NAME	INSURED'S POLICY NUMBER	NUMBER OF PHOTOS

INSURED'S NAME _____ INSURED'S ADDRESS _____ TELEPHONE NO. _____

INSPECTOR'S NAME _____ INSPECTION SITE NAME AND ADDRESS _____ TELEPHONE NO. _____

	STYLE		COLOR	INTERIOR	
YEAR:_____	___ 2 DR	___ STG WGN	MAJOR _____	___ CLOTH	___ LEATHER
MAKE:_____	___ 4 DR	___ VAN	MINOR _____	___ VINYL	___ COLOR
MODEL:_____	___ CPE	___ HTCHBK			

ODOMETER READING _____ PRINCIPAL PLACE OF GARAGING _____ VEHICLE ID NUMBER (NOT FROM REGISTRATION FORM) _____ LICENSE PLATE NO. AND STATE _____

/ / / / / / / / / / / / / / / / /

V.I.N. LOCATION: _____

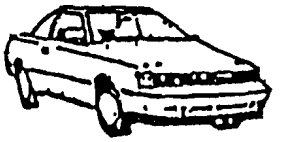
ACCESSORIES AND OPTIONAL EQUIPMENT
(COMPLETE FOR ALL VEHICLES INCLUDING VANS)

( ) AIR CONDITIONER
( ) MANUAL TRANSMISSION
() 3 SPD ()4 SPD () 5 SPD
( ) AUTOMATIC TRANSMISSION
( ) OVERDRIVE
( ) AM RADIO
( ) AM/FM RADIO ( ) STEREO
( ) CASSETTE PLAYER
BRAND_____
BUILT IN ( ) YES ( ) NO
( ) COMPACT DISC PLAYER
BRAND_____
( ) CAR PHONE
BRAND_____
BUILT IN ( ) YES ( ) NO
( ) CAR PHONE ANTENNA
( ) CAR PHONE TRANSMITTER
( ) C.B. RADIO
BRAND_____
BUILT IN ( ) YES ( ) NO
( ) STEREO AMPLIFIER
BRAND_____
BUILT IN ( ) YES ( ) NO

( ) CRUISE CONTROL
( ) REAR DEFROSTER
( ) REAR WIPER
( ) TILT WHEEL
( ) TINTED GLASS
( ) POWER STEERING
( ) POWER BRAKES
( ) POWER WINDOWS
( ) POWER LOCKS
( ) POWER ANTENNA
( ) VINYL TOP/ROOF
( ) T-TOP ROOF
( ) SUN ROOF
FACTORY INSTALLED
( ) YES ( ) NO
TYPE_____
( ) SPECIAL ROOF
TYPE_____
( ) BUCKET SEATS
( ) SPECIAL WHEELS
( ) SPECIAL TIRES
TYPE_____
( ) SPECIAL HUB CAPS
( ) RADAR DETECTOR
BRAND_____

( ) ANTI-THEFT DEVICE
TYPE_____
( ) CAR ALARM
BRAND_____
( ) HIGH MOUNTED BRAKE LIGHT
( ) ROOF RACK
( ) SPARE TIRE (OUTSIDE MOUNT)
( ) CARPETING
( ) INSTRUMENTATION
TYPE_____
_____
_____
( ) SPECIAL MIRRORS
TYPE_____
( ) TRAILER HITCH
( ) AUTO RECOVERY SYSTEM
TYPE_____
( ) SPECIAL CUSTOM OPTIONS OR
ADDITIONS (LIST)
_____
_____
_____
_____
_____

APPENDIX C (2)



Front and Passenger Side



Rear and Driver Side

ATTACH AT LEAST TWO (2) COLOR PHOTOGRAPHS OF THE AUTOMOBILE TAKEN FROM THE ANGLES SHOWN ON THE DIAGRAMS TO THE RIGHT. ALSO ATTACH CLOSE-UP PHOTO OF THE E.P.A. STICKER (INCLUDING THE V.I.N.) FROM DRIVER'S SIDE DOOR JAMB

PHYSICAL CONDITION OF VEHICLE
(CHECK DAMAGED AREAS OR AREAS IN POOR CONDITION AND DESCRIBE BELOW)

DAMAGED/RUSTED			DAMAGED	
( )	( )	FRONT BUMPER	( )	WINDSHIELD
( )	( )	LEFT FRONT FENDER	( )	LEFT FRONT SIDE GLASS
( )	( )	LEFT FRONT DOOR	( )	RIGHT FRONT SIDE GLASS
( )	( )	LEFT REAR DOOR	( )	LEFT REAR SIDE GLASS
( )	( )	LEFT REAR QUARTER PANEL	( )	RIGHT REAR SIDE GLASS
( )	( )	REAR BUMPER	( )	REAR WINDOW
( )	( )	REAR DOOR/TRUNK LID	( )	REAR VIEW MIRROR
( )	( )	RIGHT REAR QUARTER PANEL	( )	WHEEL COVERS
( )	( )	RIGHT REAR DOOR	( )	WORN/TORN OR SOILED INTERIOR
( )	( )	RIGHT FRONT DOOR		
( )	( )	RIGHT FRONT FENDER	( )	OTHER DAMAGE OR
( )	( )	HOOD PANEL	( )	RUST (LIST)
( )	( )	ROOF PANEL		
( )	( )	GRILL		
( )	( )	UNDER CARRIAGE		

( ) CHECK HERE IF NO EXISTING DAMAGE, RUST OR MISSING PARTS

DESCRIBE EXISTING DAMAGES OR RUST:

LIST ANY MISSING PARTS:

DESCRIBE ANY ALTERATIONS FROM FACTORY DESIGN:

THE ABOVE IS A TRUE STATEMENT OF ANY EXISTING DAMAGE, RUST, OR MISSING PARTS AS OF THE DATE OF THIS INSPECTION. I CERTIFY THAT THIS INSPECTION REPORT IS TRUE AND COMPLETE AND THAT I HAVE SEEN AND PHOTOGRAPHED THE VEHICLE IDENTIFIED ABOVE.

DATE: _____

INSPECTOR'S SIGNATURE: _____

NAME AND ADDRESS OF PERSON PRESENTING VEHICLE FOR INSPECTION TO INSURED: _____

SIGNATURE: _____ RELATIONSHIP: _____

APPENDIX D

IFD 30 D

(COMPANY LETTERHEAD)

NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

_____
(Date of Mailing)

Name of Insured: _____
Address: _____
_____
_____

POLICY #: _____

Dear Policyholder,

The vehicle(s) listed below is (are) no longer covered for FIRE AND THEFT/ COMPREHENSIVE _____; COLLISION _____;

1. _____, _____, _____.
2. _____, _____, _____.
3. _____, _____, _____.

YEAR MAKE MODEL

DATE COVERAGE WAS REQUESTED _____
DATE COVERAGE WAS SUSPENDED _____

The physical damage coverage(s) indicated above, has (have) been suspended on the vehicle(s) described, effective 12:01 a.m. on the suspension date. Such coverage has been suspended due to your failure to comply with the Physical Damage Insurance Inspection Regulation (N.J.A.C. 11:3-36), as required by the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

If your coverage has been suspended for more than ten (10) days, you will receive a premium adjustment (return premium or credit) for the suspended coverage(s) within forty-five (45) days from the date of suspension.

The coverage(s) will be restored when you have your vehicle(s) inspected and the adjusted premium due for such coverage(s) has been paid.

_____
INSURER REPRESENTATIVE

_____
TELEPHONE NUMBER

cc: PRODUCER OF RECORD
LIENHOLDER

(a)

DIVISION OF FRAUD

Towing and Storage Fee Schedule for Private Passenger Automobiles Damaged or Stolen

Adopted Emergency New Rules and Concurrent Reproposed New Rules: N.J.A.C. 11:3-38

Emergency New Rules Adopted and Concurrent Reproposed New Rules Authorized: November 26, 1990, by Samuel F. Fortunato, Commissioner, Department of Insurance.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): November 26, 1990.

Emergency New Rules Filed: November 26, 1990 as R.1990 d.623.

Authority: N.J.S.A. 17:33B-47 and 48.

Concurrent Proposal Number: PRN 1990-643.

Emergency New Rules Effective Date: November 26, 1990.

Operative Date: January 1, 1991.

Emergency New Rules Expiration Date: January 25, 1991.

Submit written comments by January 16, 1991 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Division of Legislative and Regulatory Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency adopted new rules are being reproposed in compliance with the normal rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules become effective upon acceptance of the notice of adoption for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent reproposal follows:

Summary

These reproposed new rules implement N.J.S.A. 17:33B-47 and 48. The Department of Insurance (Department) previously proposed rules implementing N.J.S.A. 17:33B-47 on August 20, 1990 (see 22 N.J.R. 2455(a)). The Department has decided to make substantive changes based on public comments received and continuing Department review. This proposal therefore replaces and supersedes the prior proposal. Those comments and the Department's responses are summarized below.

COMMENT: One commenter objected to proposed N.J.A.C. 11:3-38.3, which establishes Region I and Region II. The commenter believed that the use of two regions will encourage certain abuses. The commenter further argued that additional investigation and verification will be required to detect these abuses which would cost more than the small difference in fees. The commenter recommended the use of one schedule Statewide.

RESPONSE: N.J.S.A. 17:33B-47 of the FAIR Act requires the Commissioner to promulgate a towing and storage fee schedule on a regional basis. The rules are consistent with this requirement. The proper fee for towing services is based on the region in which the tow vehicle's base of service is located. For storage fees, the fee is based on the region in which the facility is located. The Department does not believe it will be difficult to determine the appropriate county and the corresponding fee in accordance with the fee schedule.

COMMENT: One commenter objected to N.J.A.C. 11:3-38.4(d)1 which provides that towing rates would be calculated based on the total distance traveled from the tow vehicle's base of operation to the job site and return by way of the shortest available route. The commenter argued that insurers will have no way to verify that the wrecker was at home base when called. The commenter believed that without verification, a claim would be subject to high charges when the vehicle is closer to the disabled vehicle than to its tow base. The commenter recommended that the initial charge should include a standard fee covering mileage to the scene of disablement, with separate mileage charges covering from the scene of disablement to the final destination point. A second commenter suggested the use of a flat fee based on five miles or less, because all tows from an accident scene to a storage location are usually within a five mile radius.

RESPONSE: The Department believes that the present standard is reasonable. The insurer can verify the tow vehicle's base of operation and the accident site. If the insurer believes that the tow operator fraudulently stated the mileage travelled based on the vehicle's base of operation and the accident site, the insurer should report this information to the Department of Insurance Fraud Division, pursuant to N.J.S.A. 17:33A-9.

COMMENT: Several commenters objected to N.J.A.C. 11:3-38.5 which establishes the towing and storage fee schedules. Several commenters argued that classifying storage facilities by the number of spaces, whether the location is inside, outside secured or outside unsecured would be counterproductive and subject to abuse. One commenter argued that their adjusters would have no way to determine how many spaces in fact existed unless they visit every site. The commenters stated that this provision serves no useful purposes and is totally unenforceable and should be deleted.

A second commenter suggested using only Outside and Inside. This commenter suggested the use of the following schedule:

Outside		Inside	
Days		Days	
1-5	$ 8.00	1-5	$15.00
6-15	$10.00	6-15	$20.00
More than 15	$15.00	More than 15	$25.00

A third commenter suggested that "the minimum rate for storage should be $20.00 per day for outside secured storage, $10.00 per day for unsecured outside storage, and $25.00 per day for inside storage."

A fourth commenter stated that the storage fees appear a little higher than what is reasonable.

RESPONSE: The Department believes that its classification of facilities based on the number of spaces and whether the location is inside, outside secured/unsecured is reasonable. The Department did not want to unfairly penalize small facilities by having a storage fee that did not take into account the fact that most of the small facilities are located in cities where the overall operational cost is more and space is limited.

COMMENT: Several commenters objected to the proposed rules because they believed that the rules do not set forth fees for winching a vehicle from off the roadway or uprighting an overturned vehicle. Some commenters argued that there should be rates for "clean-up time" which is the time spent on cleaning the roadway of accident debris and "yard fees" which is the charge to bring the salvage from the yard to the street.

One commenter suggested adding new language to N.J.A.C. 11:3-38.4(a) to make it clear that flatbedding, waiting time, winching, and cleanup cost, etc., are included in the proposed fees.

RESPONSE: The towing schedule promulgated by the Department reflects the maximum fees to be charged to any person for the towing or storage of a private passenger automobile which was damaged as a result of an accident or recovered after being stolen. The proposed fees are the maximum flat fees to be charged and include use of a flatbed, winching, uprighting of a vehicle or using additional men.

COMMENT: Several commenters stated that the proposed rules contain no enforcement provision in case a fee is charged in excess of the maximum fee permitted by the proposed rules. The commenter stated that "towing or storage services will not return a car until the fee it charges is agreed to and/or paid." The commenter also stated that the service may not even permit inspection of the vehicles so that an insurer may not know if further damage to the vehicle occurred while being towed or stored, as is too often the case. The commenter argued that the Division of Motor Vehicles has jurisdiction over towing and storage facilities and can enforce the fee schedules. The commenter further recommended that the Division of Motor Vehicles promulgate regulations to enforce this fee schedule.

RESPONSE: The Department will enforce violations to the towing and storage fee schedule pursuant to N.J.S.A. 17:33A-9.

COMMENT: The Department's proposed Towing and Storage Fee Schedule fails to consider the current regulation of towing and storage services by the New Jersey Turnpike Authority and by an estimated 80 percent of the municipalities in this State. The establishment of a rate schedule on a regional basis is unworkable and fails to consider factors such as local property taxes and property values.

In addition, the commenter contends that the fee structure does not reflect the actual cost of doing business. The excessively low rate allegedly would prohibit the most reputable towing and storage facilities from earning a reasonable profit in violation of the New Jersey Constitution,

Art. 1, Par. 20 and the Fifth and Fourteenth Amendments of the Federal Constitution.

RESPONSE: According to the commenter, municipal regulation of towing and storage practices by municipal ordinance pursuant to N.J.S.A. 40:48-2.49 varies in extent and kind among some of the municipalities and is non-existent in others. The Department's concern is with the impact of towing and storage fees on the insurance premium costs borne by insureds throughout the State. The FAIR Act dictates that this concern be addressed through the promulgation of fee schedules on a regional basis for the reimbursement by insurers of towing and storage charges for private passenger automobiles that are damaged in accidents or recovered after being stolen. The existing regulations of municipalities which govern the provision of towing and storage services may conflict with the proposed fee schedule to the extent that municipalities permit fees in excess of those found in the schedule to be charged for the towing or storage of private passenger automobiles which were damaged in an accident or recovered after being stolen.

The fee schedule proposed by the Department is constitutional. The fee schedule, together with other reforms found in the FAIR Act, is rationally related to the legitimate governmental objective of reducing the car insurance premiums of New Jersey residents. The fees realistically provide a reasonable rate of return for reputable towing and storage facilities as is demonstrated by the fact that they are based on a survey of insurance carriers in New Jersey and the amount of charges the carriers actually incurred as a result of having an insured's automobile towed or stored.

COMMENT: Several commenters questioned whether these rules would actually result in reduced insurance premiums.

RESPONSE: The Department expects that by limiting the fees attributable to towing and storage, insurance premiums will be reduced significantly, as this will prevent price gouging.

COMMENT: Several commenters suggested that the Department consider placing restrictions on insurance companies as to the number of days a car may be left in storage before an estimator is sent to inspect it. The commenters explained that many times cars are left for weeks before they are either inspected or moved to another shop and this results in the accumulation of unnecessary storage time and fees which must be reimbursed by the insurance companies.

RESPONSE: The Department has revised the rules in accordance with N.J.S.A. 17:33B-48 of the FAIR Act, to provide that no insurer or rating organization shall include any expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile insurance rates used or to be used in this State.

COMMENT: One commenter stated that "the Department of Insurance should not establish a separate and distinct rate schedule for towing and storage but should monitor and/or approve the ratemaking activities of local governmental units."

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-47 requires the Department to promulgate a schedule on a regional basis, not to monitor or approve each municipality's separate schedules. The proposed rules apply to the amount of charges any person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being stolen.

COMMENT: One commenter questioned the effect of Assembly Bill 3011 which removes local government towing contracts from bidding requirements of the "Local Contract Law" upon the establishment of a rotating list of tow contractors.

RESPONSE: The bill in its present form affects how municipalities select towing services. It does not affect the scope of the fee schedule promulgated in these rules.

COMMENT: One commenter questioned the exclusion of mechanical breakdowns from the rules.

RESPONSE: N.J.S.A. 17:33B-47 requires the Commissioner of Insurance to promulgate a towing and storage fee schedule. The statute limits the application of this schedule to the amount of charges any person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being stolen. These rules do not apply to mechanical breakdowns.

COMMENT: One commenter stated that the proposal does not recognize existing liability in contracts already in effect between tow truck operators and governmental and private entities.

RESPONSE: The proposed rules only affect those existing contracts to the extent that they apply to towing and storage charges for automobiles damaged in an accident or recovered after being stolen.

COMMENT: One commenter stated that the proposal fails to address the cost impact of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 which becomes effective in 1992. The commenter argued that under CMVSA, all tow truck operators will be required to hold commercial driver's licenses commencing in 1992. The commenter stated that the passage rate for the exam is approximately nine percent. The commenter stated that the low passage rate may lead to a shortage of qualified tow truck operators. The commenter argued that wages for these operators can therefore be expected to rise also contributing to overhead expenses.

RESPONSE: The rules require the Commissioner to review the fee schedule annually and permits the Commissioner to revise the schedule if necessary. If, in 1991, the Commissioner believes the affects of CMVSA warrant revision of the fee schedule, he is permitted to do so in accordance with proposed N.J.A.C. 11:3-38.4(c).

COMMENT: One commenter stated that the FAIR Act is designed to lower the cost of automobile insurance provided to the residents of this State. The commenter questioned whether the rules apply to the high percentage of out-of-State vehicles and motorists on the Turnpike, even if insured by a company no longer licensed to issue automobile insurance in New Jersey.

RESPONSE: The rules apply to all insurers which write private passenger automobile insurance for automobiles insured in New Jersey. The rules do not apply to any vehicles registered out-of-State.

COMMENT: One commenter stated that the purpose of the statute is to lower automobile insurance rates by reducing the cost to insurers arising from accidents within the State, but questioned whether the rate schedules apply if the persons do not have collision or comprehensive coverage.

RESPONSE: This schedule would not apply if a person has no collision or comprehensive coverage. The rules apply to towing and storage charges for private passenger automobiles that are damaged in accidents or recovered after being stolen.

COMMENT: One commenter stated that because of safety concerns, wreckers with a vehicle in tow must exit the Turnpike at the first available exit and return to the garage (or other destination) without further use of the Turnpike in the reverse direction. The commenter questioned whether the "shortest available route" covers this circumstance.

RESPONSE: Yes. This type of situation would constitute the "shortest available route" in accordance with N.J.A.C. 11:3-38.4(d)1.

COMMENT: One commenter stated that while the Turnpike Authority does not directly regulate storage charges once the towed vehicle reaches an off-Turnpike garage, many of its towers are already subject to regulation of their charges by the municipality in which their garage is situated, pursuant to the authority granted by N.J.S.A. 40:48-2.49. The commenter questioned whether these rules are meant to override any municipal storage schedule.

RESPONSE: The proposed rules apply to all reimbursements by insurers in the State of New Jersey for towing and storage charges as a result of an automobile being damaged in an accident or recovered after being stolen. The Department notes that N.J.S.A. 40:48-2.50 limits fees to be paid to an operator by a municipality for the storage of removed motor vehicles to $3.00 a day for the first 30 days and $2.00 per day for the 31st day of storage and thereafter. The statute also limits a fee of $4.00 per vehicle regardless of the duration of storage.

COMMENT: The New Jersey Turnpike Authority stated that its present system of regulating towing and storage services has provided consumers with reliable, safe and low cost service. The Authority requested that the proposed rules, if otherwise adopted, exempt limited access highways run by independent State authorities.

RESPONSE: The towing and storage fee schedule applies throughout the State of New Jersey to towing and storage charges for private passenger automobiles which are damaged in an accident or recovered after being stolen. The FAIR Act did not exempt any roads or highways in the provision.

As a result of the public comments received and further review by the Department, these rules contain a substantive change from those previously proposed that affects the towing and storage fee schedule for private passenger automobiles damaged or stolen.

The Department has clarified that the schedule for towing rates reflects the maximum flat fees to be charged for towing services and that there shall be no additional charges for services such as flatbedding, waiting time, winching, uprighting, cleanup cost and additional labor.

The Department has included a provision from N.J.S.A. 17:33B-48 of the FAIR Act which prevents insurers from including any expense for

storage of a private passenger automobile for more than 30 days into the base rate for determining private passenger automobile insurance rates used or to be used in this State.

The Department has included a penalty provision and has renumbered N.J.A.C. 11:3-38.6 of the towing and storage fee schedule.

A summary of the various provisions of the emergency adoption and reproposed new rules follows:

N.J.A.C. 11:3-38.1 states the purpose and scope of the rules.

N.J.A.C. 11:3-38.2 provides the definitions for terms that are used in the rules.

N.J.A.C. 11:3-38.3 provides the list of counties that are in regions 1 and 2.

N.J.A.C. 11:3-38.4 sets forth specific rules for the application of the schedules.

N.J.A.C. 11:3-38.5 provides the penalties for violations to this subchapter.

N.J.A.C. 11:3-38.6 consists of the towing and storage fee schedules.

Social Impact

The reproposed new rules will affect automobile insurers and those who provide towing services and storage services. The reproposed new rules will have a positive social effect in carrying out the legislative policy to control the cost to insurers for the reimbursement of towing and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen. The rules provide maximum towing and storage fee limits for which a person may be liable to those providing these services for a private passenger automobile which was damaged in an accident or recovered after being reported stolen.

Economic Impact

The reproposed new rules are expected to reduce or contain the amount of towing and storage expenses paid by insurers, which are reflected in the rates paid by purchasers of automobile insurance policies. The Department acknowledges that some towing services and storage facilities may experience a reduction in the revenue that they were receiving for providing towing and storage services for the automobiles damaged in an accident or stolen. The purpose of these rules is to establish a reasonable schedule in accordance with the FAIR Act in order to contain these costs.

Regulatory Flexibility Analysis

These reproposed rules may apply to "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are providers of automobile towing and storage services.

These reproposed new rules implement N.J.S.A. 17:33B-47 which requires the Commissioner to promulgate a towing and storage fee schedule. The towing and storage fee schedule contained in the rules sets forth the maximum amount a provider of these services may charge for the towing and storage of private passenger automobiles damaged in an accident or recovered after being reported stolen. No recordkeeping or reporting requirements are mandated; rather, the rule simply limits what may be charged. No professional or other services are required in order to comply.

The towing and storage fee schedule set forth in these proposed rules applies equally to all businesses covered by its terms. There is no statutory basis for different treatment of small businesses. Different treatment of small businesses may, in fact, be contrary to the intent of the statute.

Full text of the reproposed new rules follows:

SUBCHAPTER 38. TOWING AND STORAGE FEE SCHEDULE

11:3-38.1 Purpose and scope

(a) The purpose of this subchapter is to establish towing and storage fee schedules on a regional basis pursuant to N.J.S.A. 17:33B-47 for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State and to all persons who provide towing and storage services in this State for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

11:3-38.2 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; and a motor vehicle with a pickup body, or 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 meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

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

"Department" means the New Jersey Department of Insurance.

"Inside buildings" means a vehicle storage facility that is completely indoors, having one or more openings in the walls for storage and removal of vehicles and that is secured by a locking device on each opening.

"Motor vehicle accident" means an occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility.

"Tow vehicle's base of service" means the towing operator's principal place of business where the tow vehicle is stationed when not in use.

"Outside secured" means an automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier that is at lest six feet high and is installed with a passive alarm system or a similar on-site security measure. The facility is to be lighted at night.

"Outside unsecured" means an automobile storage facility that is not indoors and is not secured by a fence, wall or other man-made barrier, and all other storage facilities not defined above as inside building or outside secured.

"Storage charges for 24 hour period" means the maximum allowable amount to be charged by a storage facility for a 24 hour period or fraction thereof. A new 24 hour period begins at 12:01 A.M.

"Tow vehicle" means only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by its manufacturer for the removal or transport of private passenger automobiles.

11:3-38.3 Regions

(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem.

(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.

11:3-38.4 Application of storage and towing fee schedule

(a) No person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any fees in excess of those permitted by the towing and storage fee schedules established in this subchapter.

(b) The region used to determine the proper fee set forth on the schedules shall be determined as follows:

1. For towing services, the fee shall be based on the region in which the tow vehicle's base of service is located.

2. For storage services, the fee shall be based on the region in which the facility is located.

(c) The fee schedules shall be reviewed by the Commissioner on an annual basis and may be revised if necessary.

(d) The fees set forth on the schedule for towing rates are the maximum charges that shall apply to a private passenger automobile

towed by a tow vehicle as a result of an accident or theft recovery. There shall be no additional charges other than those provided in N.J.A.C. 11:3-36, including, but not limited to, flatbedding, waiting time, winching, uprighting, cleanup cost, and additional labor.

1. The towing rates shall be calculated based on the total distance travelled from the tow vehicle's base of service to the job site and return, by way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.

2. Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.

3. When towing services are required at the scene of an automobile accident, the Day rate shall apply when the time of the accident is between 8:00 A.M. and 4:30 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.

4. When towing services are otherwise required, the Day rate shall apply when the vehicle is transported (pickup to delivery) entirely between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.

(e) The fees set forth on the schedule for storage fees are the maximum storage charges per 24 hour period that shall apply to a private passenger automobile that is stored by a person as a result of an accident or theft recovery.

(f) No insurer or rating organization shall include any expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile rates used or to be used in this State.

11:3-38.5 Penalties

Failure of a person to abide by the requirements of this subchapter may be punishable by a fine not to exceed $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation pursuant to N.J.S.A. 17:33A-5.

11:3-38.6 Towing and storage fee schedules

(a) The following is the fee schedule for towing services:

	Region	
Days	1	2
First mile or less	$35.00	$40.00
Each additional mile	$ 1.75	$ 1.75
Nights, Weekends and New Jersey State Holidays		
First mile or less	$45.00	$50.00
Each additional mile	$ 1.75	$ 1.75

(b) The following is the fee schedule for storage services:

Inside Building:	Region	
Storage Facility Capacity	1	2
21 or more spaces	$13.00	$15.00
10-20 spaces	$18.00	$20.00
Less than 10 spaces	$22.00	$25.00

Outside Secured:	Region	
Storage Facility Capacity	1	2
21 or more spaces	$ 9.00	$10.00
10-20 spaces	$11.00	$12.00
Less than 10 spaces	$13.00	$15.00

Outside Unsecured:	Region	
Storage Facility Capacity	1	2
21 or more spaces	$ 7.00	$ 8.00
10-20 spaces	$ 9.00	$10.00
Less than 10 spaces	$10.00	$12.00

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Vocational Education Safety/Health Compendium Request For Proposal

1. INTENT: The purpose of this grant is to bring together in one document all the federal, State and local safety and health regulations impacting all New Jersey public vocational programs thereby providing vocational educators and administrators with a comprehensive compendium of safety and health checklists and supportive materials.

2. STATUTORY/REGULATORY SOURCE: This agreement will be 100 percent federally funded under the Carl D. Perkins Vocational Education Act, P.L. 98-524, Title II, Part B.

3. RATIONALE: The first responsibility of vocational educators is to ensure the safety and health of students in their programs. It is also critical that they prepare students to protect their own occupational safety and health. As a result of increasing research and awareness in occupational safety and health, regulations protecting workers and students have expanded extensively. Schools are now covered by a much wider number of statutes and codes. These statutes and regulations are developed and monitored by a variety of federal, state and local agencies, few of which coordinate with each other. The unfortunate outcome of this absence of coordination is a confused and frustrated educational community, lacking understanding and the ability to communicate effectively in this area. This often translates into hazards to students and staff which remain unidentified until an accident or injury occurs.

Surveys of vocational administrators and instructors, as well as state staff, point out the need for checklists which can be used by educators and students to monitor their own programs and environments for compliance with the myriad of regulations. However, there is no single document which brings together all the regulations appropriate to occupational and prevocational/career orientation shops (e.g. trade and industrial education, home economics related occupations education, industrial arts education, etc.).

Administrators often know regulations exist, but cannot locate relevant information or citations. Further, those who are unaware of the regulations may easily be discouraged when they realize how many governmental agencies are involved. They will almost certainly be confused when they attempt to determine which regulations from which agencies apply to their specific educational programs.

In vocational education, students are also required to develop competencies in safety and health relevant to their specific occupational areas, as an integral part of their training. A comprehensive document would be a teaching tool to assist them in attaining competencies related to awareness of the laws, standards and codes which apply to their specific fields. Further, it would provide staff and students with checklists that they can use to monitor their working environment for compliance with relevant safety and health regulations.

This grant will provide funds to the successful applicant to research, develop, field test, print, market and disseminate a compendium of vocational education safety and health checklists. This unified and coordinated approach to vocational program safety and health will provide an invaluable resource enabling educators and administrators to:

- improve their programs and facilities;
- better protect the health and safety of staff and students;
- bring facilities and vocational programs in line with current workplace standards; and
- improve the relevance of the curriculum as related to specific occupational needs.

3.1 Goals

The goal of this grant is to develop and disseminate to vocational educators a compendium of safety and health checklists and supportive materials which provides in one document, all relevant safety and health statutes, codes and standards that apply to vocational education shops.

3.2 Objectives

- To establish an interagency task force which will collaborate and provide guidance in the development of the compendium and be comprised of representatives from:

— all agencies regulating vocational education shops;

— the major safety and health organizations in New Jersey (e.g. New Jersey Safety Council); and

— representatives of the target groups within local districts and the Department of Education who have responsibility for ensuring compliance with vocational education regulations.

- To conduct a needs assessment that identifies all pertinent safety and health information needed for the development and effective use of the compendium by answering the following questions:

1. What are all the specific shops that exist in public vocational secondary schools?
2. What would you find most helpful in a checklist for each shop?
3. What else should go in the compendium?
4. What format would be most useful?
5. What are the barriers to complying with regulations?
6. What is the best way of getting input on these questions from a larger sample?

- To identify through a regulations search and literature review all safety/health and related environmental regulations applicable to all public vocational education shops. These must include at least:

1. Fire Protection (National Fire Protection Association-NFPA);
2. Public Employees Occupational Safety and Health Act (PEOSHA);
3. Right to Know (RTK);
4. Hazardous Waste Disposal;
5. Air Pollution;
6. Sanitation;
7. Building and Construction Code (BOCA);
8. Pesticide Use and Control;
9. Radon;
10. SARA-Superfund Amendments and the Authorization Act (hazardous materials emergency response and planning);
11. New Jersey Administrative Code (NJAC);
12. Department of Health (Other Regulations);
13. Department of Labor (Other Regulations); and
14. Environmental Protection Agency (EPA).

- To develop the safety and health compendium which includes:

1. comprehensive checklists which cover all safety and health regulations for all public vocational education shops;
2. introductions to each regulating agency;
3. A "how to use this manual" section;
4. descriptive sections on all the specific regulations covered;
5. information on technical assistance available to schools;
6. guidelines for successfully working with regulating agencies;
7. an information resource section; and
8. additional sections identified through the needs assessment.

- To pilot test the draft of the compendium with a sample of vocational educators from districts in northern, central and southern counties representing urban, suburban, and rural areas, and all types of public secondary schools. To obtain reviews from representatives of the department of education with responsibility for facilities safety and health monitoring, and from task force representatives.
- To print and publish 700 copies of the finalized compendium.
- To train a minimum of:

—42 local trainers (2 from each of the 21 counties), identified in cooperation with the county superintendent, who agree to be county/regional turnkey trainers;

—20 program specialists from the Division of Vocational Education representing all program areas; and

—all 21 county vocational specialists.

- To disseminate the compendium to:

1. all public secondary schools in New Jersey (398);
2. county offices (21);
3. Division of Vocational Education lead staff (20);
4. The National Network for Curriculum Coordination in Vocational Technical Education (NNCCVTE) (15); and
5. additional safety and health units of agencies participating in the project, as well as project consultants (100).

• To market the compendium, at a cost recovery rate, to other educational agencies and organizations in New Jersey which provide vocational education programs and services to secondary and postsecondary populations.

3.3 Program Implementation Timelines
April 15, 1991—June 30, 1992

4. FUNDING: The amount available for this grant is $170,000. Funding for this project is contingent upon the availability of federal funds.

5. ELIGIBILITY:

5.1 Program Eligibility
This grant program is open to any public or private agency or institution located in New Jersey which demonstrates the required characteristics listed below.

Characteristics of the Applicant
1. Has worked with and provided services in occupational and environmental safety and health to the educational community.
2. Has collaborated on occupational safety and health projects with governmental regulatory agencies, industry, and labor.
3. Has faculty and/or staff with demonstrated research, curriculum development and training expertise in occupational safety and health.
4. Has an institutional commitment to occupational safety and health.
5. Has cooperative arrangements with a medical school or teaching hospital, a public health school and an engineering school, or their equivalents, all with established programs in occupational safety and health.

The review of characteristics of the applicant will be conducted under the leadership of the evaluation panel. Please refer to page 12 of this document for the description of appropriate selection criteria which they will use.

5.2 Application Due Date
An original and four copies of the complete proposal must be received in the:
Application Control Center
Department of Education
225 West State Street
CN 500
Trenton, New Jersey 08625
no later than 4:00 p.m. on February 1, 1991. A late proposal will not be accepted.

A complete proposal includes an application title page; an application narrative and supporting materials; a statement of assurances; a budget summary; and resolutions or letters from the boards or authorizing bodies of project applicants.

Notification of this award will be made by March 15, 1991.

6. DISSEMINATION AND TECHNICAL ASSISTANCE:

6.1 Dissemination
The State Department of Education will distribute an RFP and application materials to any agency requesting these documents. The availability of this grant program will be announced in the New Jersey Register, The Newark Star Ledger, The Asbury Park Press and the Courier Post.

To receive application materials contact:
Bureau of Vocational Grants Management
Division of Vocational Education
New Jersey Department of Education
225 West State Street
CN 500
Trenton, New Jersey 08625
(609) 292-5622

6.2 Technical Assistance
A technical assistance workshop will be provided to all potential applicants for this grant by the Division of Vocational Education on January 4, 1991, 10:00 a.m.-12:00 noon at The Northeast Curriculum Coordination Center, Aberdeen, New Jersey. To register for this workshop, call Joanne Darvas at (609) 292-5744.

7. APPEAL PROCEDURE FOR DENIAL: An appeal will only be heard if it has been alleged that the Department of Education has violated a statutory or regulatory provision in the awarding of a grant.

8. STATE EDUCATION AGENCY MONITORING OF PROJECT: The Department of Education will conduct 6 and 12 month on-site monitoring visits to determine whether activities are progressing as planned. An evaluation plan for the program must be developed and quarterly and final evaluation reports submitted. The outlines for both the evaluation plan and evaluation reports are located in sections 10.4 and 10.5.

9. STATE EDUCATION AGENCY EVALUATION OF THE GRANT PROGRAM:

9.1 Outcome Evaluation
The Department of Education will use the outcome indicators identified for this grant and will evaluate overall project performance using on-site visits and interim and final reports. Additionally the Division of Vocational Education will constitute a review panel to review and approve all final products.

9.2 Expected Outcomes
As a result of this contract, the grant recipient will develop and disseminate to vocational educators a safety/health facilities checklist compendium which provides in one document, all relevant statutes, codes and standards that apply to vocational education shops. Deliverables (outcome indicators) will include:

• The vocational education safety/health checklist compendium which includes:
—floor to ceiling checklists for all public secondary vocational education shops; and
—introductory and resource sections as identified in the initial needs assessment.
• Seven hundred (700) copies of the compendium for dissemination;
• Training for a minimum of:
—42 local trainers (2 from each of the 21 counties) who agree to be county/regional turnkey trainers;
—20 program specialists from the Division of Vocational Education representing all program areas; and
—all county vocational specialists.
• Dissemination of the compendium to:
—all public secondary schools in New Jersey;
—county offices;
—Division of Vocational Education staff;
—The National Network for Curriculum Coordination in Vocational Technical Education (NNCCVTE); and
—additional safety and health units of agencies participating in the project.
• A marketing plan for sale of the compendium, at a cost recovery rate, to other educational agencies and institutions in New Jersey which provide vocational education programs and services to secondary and postsecondary populations.
• Informational articles about the compendium published in a minimum of five (5) relevant professional newsletters and/or journals.
• Two (2) copies of the compendium on 5 1/4 inch diskettes as ASCII files. If possible, one of the following pieces of software should be used:
Multimate
Displaywrite
Word Perfect
Word Star

10. ADDITIONAL APPLICATION CONSIDERATIONS:

10.1 Eligible Costs

Salaries	eligible
Fringe Benefits	eligible
Consultant Services	eligible
Travel	eligible
Supplies	eligible
Printing	eligible
Postage	eligible
Telephone	eligible
Rent	ineligible
Equipment (no renovations)	eligible
Contractual (Subcontracts)	ineligible
Other	eligible
Total Eligible Costs	$170,000

10.2 Allowable Cost and Budget Description
• Salaries
Salaries and fringe benefits (up to a maximum of 29%) are eligible for project coordinator and/or director, research assistant and secretary to manage, coordinate, develop and disseminate project deliverables.
• Consultant Services

Consultant services to create, develop, process, and review sections of the compendium, to train target groups in its use, and to evaluate the project are eligible.

• Travel

Travel costs are eligible for program coordinator and/or director, research assistant, and secretary to attend meetings, training and pilot district sites and for dissemination activities at two major vocational conferences (one national and one state).

• Supplies

Educational and office supplies necessary for tasks and activities needed to complete project objectives are fundable.

• Printing

Printing costs necessary for document development, pilot testing, publishing, training, and marketing purposes are eligible.

• Postage

Postage necessary for tasks and activities needed to complete project objectives are fundable.

• Telephone

Monthly telephone costs for tasks and activities needed to complete project objectives are fundable.

• Equipment

A computer necessary for completion of project objectives is eligible up to a maximum of $2,000.

• Other

Other necessary costs for tasks and activities required to complete project objectives are fundable.

• Indirect costs are permissible for this project.

10.3 Supplemental Information

The applicant must submit its proposal on the forms provided in this application package. The budget detail section must be completed in entirety.

Applicant must submit evidence to demonstrate that it possesses the eligibility characteristics specified on page 4 of this RFP.

An official copy of the resolution authorizing the applicant's submission must accompany the application.

Following designation of successful applicant, project staff will meet with department personnel to finalize the operational plan and negotiate the terms and conditions of the contract.

Please be advised that as a result of the Stevens Amendment to the Department of Defense's Appropriations Act (Section 8136) which has government-wide application to grant recipients that:

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money and (2) the dollar amount of Federal funds for the project or program.

All project documents and marketing materials must clearly specify that funding for this project is through a grant from the New Jersey Department of Education, Division of Vocational Education.

The materials developed through this RFP are the sole property of the New Jersey State Department of Education and, at the close of this project, will be distributed under their authority. Reproduction and distribution of contents will require the express permission of the Department of Education. The completed compendium will be copyrighted by the Department of Education in accordance with all required policies and procedures.

10.4 Evaluation Plan

An evaluation plan for the project must be structured around the following components:

Program Goals: Specify the goals for the project which set the overall direction for action. These goals should be framed in response to the rationale (Section 3) in this RFP.

Program Objectives: Provide the project objectives. Objectives should delimit an intent; define specific outcomes in measurable terms; and be accomplished within a pre-specified time frame.

Objectives should describe the outcomes of services and programs as well as the process.

Objectives should describe specific and quantifiable standards which are anticipated to be attained as a result of the grant.

Evaluation Questions: List the questions which the evaluation will answer.

Evaluation Design: Provide information as to what statistical techniques will be utilized during the evaluation. An example would be pre-test/post-test measurement, etc.

Data Sources: Specify the sources of information (students, administrators, teachers, the community).

Timelines: Specify when data will be collected.

Staffing: Indicate who will be responsible for aspects of the evaluation.

Instrumentation: List the instruments to be used for gathering the data (surveys, questionnaires, observation scales, tests, etc.). If instruments are to be developed, describe the development process.

Success Criteria: Describe how you will know if the project was successful in meeting the stated goals and objectives.

Use and Dissemination: Describe how the findings of the evaluation will be presented and what impact the evaluation will have in program improvement or decision-making.

10.5 Evaluation Reports

Quarterly reports on project implementation are required as well as a final evaluation report.

Fiscal expenditure reports are required at the close of FY '91 and FY '92.

Both the interim and final evaluation reports must follow the guidelines provided below:

Summary Narrative: Provide a summary narrative clearly describing the program which was provided through the funding source. The narrative should also highlight the program outcomes and successes and provide any data and statistical information available on the program participants.

Needs: Describe the degree to which the program met the needs previously identified.

Target Groups: Describe who participated in the program and what criteria were used for selection. Describe their major demographic characteristics. Indicate the number of participants in each demographic group. If relevant, provide the number of participants who did not complete the program and the reason why.

Goals and Objectives: Describe how all the objectives related to each of the goals were met. Describe any modifications to the program which were necessary during the implementation.

Operational Plan: Describe the degree to which the timelines, responsibilities and activities set forth in the Operational Plan were implemented. Discuss the implications, if any, for the budget.

Program Results: Describe the results of the program. Present documentation to indicate that the program was successful. Provide statistical information available on program participants, product development and distribution of services rendered, etc.

Results should be described for each of your program objectives. All relevant findings, positive and negative, should be reported. The evidence presented in this section should be objective and some evidence should be quantitative. Data should relate to the evaluation design described in the evaluation plan.

Use of Results: Describe how the results of the program evaluation will be used to plan a future program or continuation.

Contribution to Vocational Education: Describe the contribution the program will make to vocational education statewide, regionally and at the local program level.

11. STATEMENT OF ASSURANCES AND CERTIFICATION (ETC.): A signed statement of assurances indicating that the applicant will comply with all federal and state statutes and regulations as outlined in the Statement of Assurances in this application package must accompany the application for funds.

12. SUBMISSION: An original and four (4) copies of the completed application must be received no later than 4:00 p.m. on February 1, 1991 as per the instructions in Section 5.2 of this document.

13. USE OF GRANT FUNDS FOR NONEMPLOYEE COMPENSATION: In the event a grant recipient agency plans to use grant funds provided pursuant to a Department of Education third party contract to pay for nonemployee compensation, such as consultants and/or subcontractors, the agency must complete a "Nonemployee Compensation" form for each individual or entity, as required by Attachment B-1, Terms and Conditions of the New Jersey Department of Education Third Party Contract.

14. USE OF SOLE SOURCE VENDORS: If a grant recipient agency plans to obtain a product from an individual or entity supplying a product as a sole vendor who will receive a payment of 20% or more of the bid

threshold as set forth in the Public Schools Contracts Law from a grant provided pursuant to a Department of Education third party contract, the grant recipient agency must complete a "Product(s) Purchased From a Sole Source" form. A sole source transaction may occur when a product is so unique that only one source of supply is available. Any payments of 20% or more of the bid threshold for a product supplied by a sole source vendor must be made pursuant to a formal contract with the individual or entity receiving payment. A copy of the formal contract must be attached to the "Sole Source" form. This requirement is detailed in Attachment B-1, Terms and Conditions of the New Jersey Department of Education Third Party Contract.

15. SELECTION CRITERIA: Grant applications will be evaluated on a competitive basis and rated by a panel of three readers. The evaluation panel will consist of one person from the originating division, one representative from another division within the Department of Education and one representative from another state agency which regulates occupational safety and health.

In order to be eligible for funding, the application must receive an average score of 65 points or better.

The application will be rated on the basis of the criteria described below:

Organization, Leadership and Staff: To what extent does the applicant document the required organization, leadership and staff characteristics? Does the applicant provide:

1. A list of educational agencies with which it has worked? Does it specify the services or assistance it provided to each of these educational agencies? Does the list include: participation on school safety/health committees; consultation on facility and environmental safety and health; assistance in setting up and managing occupational safety and health programs; specific occupational safety/health inservice training of teachers and administrators; assistance with occupational safety/health curriculum development (attach bibliographic references and products when possible); and participation on specific educational advisory boards?

2. A list of the specific governmental regulatory agencies and bureaus, companies, organizations, and labor groups with which it has collaborated on occupational safety and health projects? Does it describe the projects and specify its role in each? Does the list include projects in occupational and environmental safety and health?

3. Resumes of anticipated project staff? Do these resumes include lists of occupational and environmental safety and health: curricula and resource documents they have developed and published which are being incorporated by schools; courses and workshops they have developed and taught to educators; research they have conducted related to secondary school education programs? Do resumes include certification and/or credentials in occupational and environmental safety and health?

4. Published documents which include their agency's: mission statement; philosophy; goals and objectives; and present activities all of which clearly show their commitment to occupational and environmental safety and health?

5. Copies of agreements they have with a medical school or teaching hospital, public health school and engineering school or their equivalents? Do the agreements spell out the nature of their cooperative efforts in occupational and environmental safety and health? Do these cooperating institutions provide technical assistance to the applicant? Are the staff, libraries, and resources of these cooperating agencies available to support applicant efforts? Do these cooperating agencies play an active role in the development and implementation of occupational and environmental safety and health regulations at the state and/or national levels?

35 Points

Program Description: Does the applicant provide a clear description of the project? Are major activities identified and clearly related to the project need? Are major evaluation strategies identified?

5 Points

Goals and Objectives: Does the applicant propose to accomplish the required goal and nine (9) objectives **exactly** as specified on pages 2-4 of the RFP?

5 points

Operational Plan: Does the operational plan encompass all objectives? Will the completion of the proposed activities lead to the completion of all objectives? Have those activities which need to be accomplished been identified? Are the activities properly sequenced? To what extent has the applicant identified human resources needed? Are the human resources congruent with the outlined activities? Have completion dates for the activities been established? Has an appropriate amount of time to accomplish these activities been allocated? Have evaluative criteria and appropriate timelines been established throughout the plan in order to assess progress and outcomes? Is the operational plan appropriate to meet the purpose of the RFP?

30 points

Evaluation Plan: Are the methods of evaluation appropriate and sufficient? Have both formative (process) and summative (product) evaluation criteria been described? Are the components of the evaluation plan sequential and timely? To what extent will the results impact on future agency activities?

10 points

Budget Summary: Is the applicant's total request in line with the amount specified in the RFP? To what extent does the budget appear adequate in light of the proposed operational plan? Are the costs specified in the budget reasonable?

15 points

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Petition for Rulemaking
N.J.A.C. 7:1E, Appendix A
Petition to Amend List of Hazardous Substances
Petitioner: National Refrigerants, Inc.

Take notice that on October 23, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the list of hazardous substances set forth in the regulations promulgated under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. (the "Spill Act"). The list appears at N.J.A.C. 7:1E, Appendix A. Petitioner requests that the Department remove the following substances from the list:

Dichlorodifluoromethane (CFC-12)
Trichlorofluoromethane (CFC-11)
Dichlorotetrafluoroethane (CFC-114)
Monochloropentafluoroethane (CFC-115)
Trichlorotrifluoroethane (CFC-113)

Petitioner asserts that the above substances should be deleted from the list because they have no direct toxicity effect, and are not subject to being "spilled" or "discharged" in the sense envisioned by the Legislature in drafting the Spill Act.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Granting of Petition for Rulemaking concerning Requirements for Hazardous Waste Storage Facilities
N.J.A.C. 7:26-9.2(b)1 and 2; N.J.A.C. 7:26-9.3(b)8
Petitioner: Pharmacaps, Inc.

Authority: N.J.S.A. 13:1E-6(a)2; N.J.S.A. 52:14B-4(f).

Take notice that on April 9, 1990, the Department of Environmental Protection ("Department") received a petition from Pharmacaps, Inc. requesting amendments to N.J.A.C. 7:26-9.2(b)1 and 2 and N.J.A.C. 7:26-9.3(b)8, concerning storage tank requirements for liquid hazardous waste in underground storage tanks (USTs).

A Notice of Receipt acknowledging receipt of the petition was filed with the Office of Administrative Law on April 23, 1990 and appeared in the May 21, 1990 New Jersey Register at 22 N.J.R. 1632(d).

Specifically, the petitioner requested amendments to N.J.A.C. 7:26-9.2(b)1 and 2 to allow the installation of new USTs for the purpose of containing liquid hazardous waste, provided that such tanks are double-walled and comply with the technical requirements of the UST rules proposed August 7, 1989 at 21 N.J.R. 2242(a). The Petitioner also requested that the Department amend N.J.A.C. 7:26-9.3(b)8 to allow

generators of hazardous waste to store hazardous waste in USTs for 90 days or less without a hazardous waste facility permit provided that such tanks comply with the technical requirements of the proposed UST rules.

The Department filed a Notice of Action with Office of Administrative Law on May 15, 1990 which appeared in the June 18, 1990 New Jersey Register at 22 N.J.R. 1947(c). The Notice of Action stated that the petition would be retained until the UST rules were adopted and that the petition would be evaluated in light of the adopted UST rules rather than the proposed UST rules.

New USTs for hazardous waste are currently prohibited under N.J.A.C. 7:26-9.2(b)1. However, any USTs for hazardous wastes which were in existence prior to the adoption of N.J.A.C. 7:26-9.2(b)1 were not subject to the prohibition. Such existing USTs are currently subject to Federal regulation under 40 C.F.R. Part 265 Subpart J, promulgated on July 11, 1986 (51 Fed. Reg. 25422). The adoption of the State UST rules, published in the New Jersey Register on September 4, 1990 at 22 N.J.R. 2758(a), also affect the regulation of existing underground hazardous waste storage tanks.

The Department has reviewed the petition in light of the State's adopted UST rules and believes that, in combination with the Federal standards for hazardous waste UST systems at 40 C.F.R. Parts 264 and 265, Subparts J, the technical standards will be protective of human health and the environment. Although the petition requests that a generator be able to use a UST without a permit for the 90-day period, it also appears to allow the generator standards to be based on the State UST rules rather than a combination of the State UST rules and Federal regulations for hazardous waste UST systems. The Department currently believes all hazardous waste UST systems, including generator systems, should be regulated under uniform rules.

Therefore, in accordance with the provisions of N.J.A.C. 7:1-1.2, the petition for rulemaking is granted, except as noted above for generator UST systems.

Although the Department has granted the petition, it cannot simply base the new amendments upon the State UST rules. The Department is required to compare and evaluate the provisions of the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq., regulations (40 C.F.R. Parts 264 and 265, Subparts J) with the State UST rules, and to be at least as stringent as the Federal regulations when formulating the necessary rule amendments. The petition indicates that this situation was contemplated by the Petitioner since the requested amendments included language that rules promulgated under the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., would take precedence where they are "stricter or conflict" with the State UST rules. When the Department completes its analysis of the relationship between the two regulatory schemes, it will proceed with the rulemaking procedures on this topic. Due to the complex and technical nature of this undertaking, the Department cannot accurately predict when a rule proposal will be published but will make a diligent, good faith effort in completing this task in a timely manner.

The Department has mailed a copy of this Notice of Action to the Petitioner in accordance with the provisions of N.J.A.C. 7:1-1.2.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for Secaucus Town. The WMP allows for the initial expansion of the Koelle Boulevard Sewage Treatment Plant (STP) to a design capacity of 5.12 million gallons per day (mgd) and the future expansion of this facility to treat a 2010 projected wastewater flow of 6.37 mgd. The WMP identifies the existing and future sewer service areas for this facility. The Meadowlands Parkway, Gilbert Systems and Secaucus Motor Lodge STPs are proposed to be abandoned with flow directed to the Koelle Boulevard STP when capacity is available.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Monmouth County Water Quality Management Plan Holmdel Corporate Office Center

Public Notice

Take notice that on November 7, 1990, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), the Holmdel Corporate Office Center was re-reviewed and found to be consistent with the Monmouth County Water Quality Management Plan based on information in the Holmdel Township Wastewater Management Plan (WMP). The Holmdel Township WMP provides for ground water discharges in this area in which the above-cited project is located and for future flows that could be serviced.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on November 15, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment allows for the expansion of the Medford Lakes Borough sewer service area to include Block 6409, Lot 2.02 of Medford Township. This tract is adjacent to the boundary of Medford Lakes Borough and is located within the Pinelands Regional Growth Area in Medford Township.

(d)

DIVISION OF WATER RESOURCES

Notice of Public Hearing 1990-91 Annual Fee Report and Fee Schedule

Take notice that the Department of Environmental Protection will hold a public hearing to present the 1990-91 NJPDES Annual Fee Report and Fee Schedule. The Department has also proposed to use a new fee assessment methodology for dischargers to the surface and ground water of the State by proposing amendments to N.J.A.C. 7:14A-1.8. The proposed amendments appear in this issue of the New Jersey Register. The fee assessments presented in the 1990-91 NJPDES Annual Fee Re-

port and Fee Schedule are calculated using the proposed fee assessment methodology. The Department plans to adopt amendments to N.J.A.C. 7:14A-1.8 before assessing the 1990-91 NJPDES permit fees.

The **public hearing** on the 1990-91 NJPDES Annual Fee Report and Fee Schedule will be held on:

January 24, 1991
New Jersey Records Storage Center
2300 Stuyvesant Avenue
Trenton, New Jersey

The hearing on the proposed amendments to N.J.A.C. 7:14A-1.8 will commence at 10:00 A.M. The hearing on the 1990-91 NJPDES Annual Report and Fee Schedule will commence after all testimony on the proposed amendments to N.J.A.C. 7:14A-1.8 have been received. **Written comments** for both hearings will be accepted until January 28, 1991. Submit written comments to:

Samuel Wolfe, Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625

Copies of the 1990-91 NJPDES Annual Fee Report and Fee Schedule will be mailed to NJPDES permittees on or about December 5, 1990. Interested parties may request free copies from:

New Jersey Department of Environmental Protection
Division of Water Resources
NJPDES Fee Management Section
CN 029
Trenton, New Jersey 08625

Additional documentation concerning the proposed NJPDES budgets for 1990-91 and expenditures for 1988-89 and 1989-90 are available for review at the Department of Environmental Protection, Division of Water Resources, 401 East State Street, Trenton, New Jersey. Contact the NJPDES Fee Management Section to schedule an appointment to review the additional documentation or for further information at (609) 984-4428.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

A One Time Only Moratorium on the Submission of Certificate of Need Applications for Major Capital Projects for One Year by the New Jersey State Department of Health

Public Notice: N.J.A.C. 8:33-1.5

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB), is deleting the capital batching cycles (hospital bed additions; modernization/renovation/new construction of $10 million or more) that are scheduled in accordance with N.J.A.C. 8:33-1.5 to be submitted on or before January 1, 1991 and July 1, 1991. No health care services other than proposed new or expanded capital projects are affected by this proposed action. No applications for Certificates of Need for major capital projects will be accepted for the 1991 review cycles. This one year moratorium is in response to recommendations made by the Governor's Commission on Health Care Cost, which recommended this action in order to "allow the regulatory process to complete the re-evaluation of physical plant needs statewide and allow a better review of Certificate of Need applications for major capital expenditures." This one year moratorium will become effective with the February 15, 1991 certificate of need review cycle (January 1, 1991 application submission deadline) and will end with the February 15, 1992 certificate of need review cycle (January 1, 1992 application submission date).

Any inquiries should be sent to:

John C. Scioli, Director
Health Policy, Planning, and
Certificate of Need, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Petroleum Products Gross Receipts Tax
Notice of Additional Extension of Time for Filing and Payment

Take notice that taxpayers required to pay the New Jersey Petroleum Products Gross Receipts Tax will receive an additional automatic extension before the first return and payment are due. These returns, originally due on or before October 20, 1990, must now be filed on or before November 30, 1990. The additional extension was granted pursuant to the general powers of the Director under N.J.S.A. 54:50-1 and 54:15B-8.

As a result of the recently enacted tax package, many existing tax forms had to be revised, new tax forms had to be designed, and information had to be developed and distributed to taxpayers. The Division was unable to provide taxpayers affected by this new tax with the returns and information they needed well in advance of the first return's due date. Recognizing the difficulty this delay could cause, the Division is granting an additional automatic extension for filing this return only. The next quarterly return must be filed on or before its normal due date of January 20, 1991.

To help taxpayers understand and satisfy their tax liability under the new tax, the Division has sent draft tax regulations to all companies which had returns mailed to them.

Taxpayers who did not receive their first quarterly return, which was mailed by the Division on October 12, 1990 or draft regulations mailed on November 13, 1990 or who have questions about the tax should contact the Division of Taxation, Miscellaneous Tax Branch, 50 Barrack Street, CN 243, Trenton, NJ 08646-0243. Telephone: (609) 633-8043.

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 November 5, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 15, 1990

NEXT UPDATE: SUPPLEMENT NOVEMBER 19, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)		
1:1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)		
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:6A-18.3	Special Education hearings: administrative correction	———	———	22 N.J.R. 3478(a)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
1:10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)		
1:13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)		
1:30	Agency rulemaking	22 N.J.R. 3281(a)		
Most recent update to Title 1: TRANSMITTAL 1990-5 (supplement September 17, 1990)				
AGRICULTURE—TITLE 2				
2:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)	R.1990 d.579	22 N.J.R. 3478(b)
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:16	Plant certification	22 N.J.R. 3285(a)		
2:48	Dairy industry rules	22 N.J.R. 2625(a)	R.1990 d.572	22 N.J.R. 3619(a)
2:53	Retail milk stores	22 N.J.R. 3609(a)		
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)	R.1990 d.529	22 N.J.R. 3359(a)
Most recent update to Title 2: TRANSMITTAL 1990-8 (supplement October 15, 1990)				
BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1	General provisions of Department	22 N.J.R. 3425(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
3:26	Savings and loan associations	22 N.J.R. 3428(a)		
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)	R.1990 d.603	22 N.J.R. 3619(b)
3:41	Cemetery Board rules	22 N.J.R. 2627(a)	R.1990 d.537	22 N.J.R. 3363(a)
Most recent update to Title 3: TRANSMITTAL 1990-6 (supplement October 15, 1990)				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)	R.1990 d.552	22 N.J.R. 3481(a)
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)	R.1990 d.554	22 N.J.R. 3482(a)
4A:4-5.5	Working test period	22 N.J.R. 2629(a)	R.1990 d.553	22 N.J.R. 3482(b)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)	R.1990 d.555	22 N.J.R. 3482(c)
	Most recent update to Title 4A: TRANSMITTAL 1990-4 (supplement August 20, 1990)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)	R.1990 d.544	22 N.J.R. 3363(b)
5:10-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)	R.1990 d.604	22 N.J.R. 3734(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)	R.1990 d.562	22 N.J.R. 3482(d)
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)		
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)	R.1990 d.558	22 N.J.R. 3483(a)
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)		
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)	Expired	
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:34	Local public contracts	22 N.J.R. 724(a)	R.1990 d.595	22 N.J.R. 3639(a)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)	R.1990 d.540	22 N.J.R. 3364(a)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		
	Most recent update to Title 5: TRANSMITTAL 1990-10 (supplement October 15, 1990)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
EDUCATION—TITLE 6				
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)	R.1990 d.615	22 N.J.R. 3734(b)
6:5-2	Organization of Department	Exempt	R.1990 d.561	22 N.J.R. 3484(a)
6:20-1.1, 1.2, 4.1-4.4, 4.7-4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)	R.1990 d.610	22 N.J.R. 3736(a)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		
6:28-2.3, 3.1	Special education: administrative corrections	———	———	22 N.J.R. 3365(a)
	Most recent update to Title 6: TRANSMITTAL 1990-7 (supplement October 15, 1990)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)	R.1990 d.577	22 N.J.R. 3505(a)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9	Water pollution control	22 N.J.R. 3297(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)	R.1990 d.629	22 N.J.R. 3741(a)
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)	R.1990 d.548	22 N.J.R. 3508(a)
7:18-6.6	Certification of laboratories for water analysis: administrative correction	———	———	22 N.J.R. 3365(b)
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)	R.1990 d.617	22 N.J.R. 3746(a)
7:25-18.1	Taking of striped bass	22 N.J.R. 3078(a)	R.1990 d.607	22 N.J.R. 3628(b)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:26	Hazardous waste management	22 N.J.R. 2882(a)	R.1990 d.578	22 N.J.R. 3514(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.3	Hazardous waste from small quantity generators: administrative correction	———	———	22 N.J.R. 3366(a)
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)		
7:26-8.21	Hazardous constituents for groundwater monitoring: administrative correction	———	———	22 N.J.R. 3366(b)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)	R.1990 d.538	22 N.J.R. 3367(a)
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)	R.1990 d.559	22 N.J.R. 3516(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)	R.1990 d.502	22 N.J.R. 3545(a)
8:9	Handling of human remains	22 N.J.R. 3458(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)	R.1990 d.542	22 N.J.R. 3547(a)
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)	R.1990 d.619	22 N.J.R. 3754(a)
8:21	Food and drugs	22 N.J.R. 2465(a)	R.1990 d.563	22 N.J.R. 3559(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		

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8:31C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)		
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)	R.1990 d.566	22 N.J.R. 3578(a)
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)	R.1990 d.567	22 N.J.R. 3579(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)		
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)	R.1990 d.568	22 N.J.R. 3581(a)
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)	R.1990 d.543	22 N.J.R. 3392(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:65-10.5	Controlled substances: administrative correction to Schedule V	———	———	22 N.J.R. 3619(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)	Expired	
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)	R.1990 d.571	22 N.J.R. 3582(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)		
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9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)	R.1990 d.546	22 N.J.R. 3370(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)	R.1990 d.545	22 N.J.R. 3371(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)	R.1990 d.547	22 N.J.R. 3371(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)	R.1990 d.556	22 N.J.R. 3485(a)
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)	R.1990 d.557	22 N.J.R. 3485(b)
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		
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10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)	R.1990 d.591	22 N.J.R. 3620(a)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)	R.1990 d.593	22 N.J.R. 3620(b)
10:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
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10:51	Pharmacy Manual	22 N.J.R. 2217(a)	R.1990 d.530	22 N.J.R. 3372(a)
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)		
10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)		
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10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)		
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)		
10:65-2.1	Medical day care reimbursement	22 N.J.R. 3253(a)	R.1990 d.609	22 N.J.R. 3755(a)
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)		
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)	R.1990 d.614	22 N.J.R. 3756(a)
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	22 N.J.R. 2604(a)	R.1990 d.524	22 N.J.R. 3372(b)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)	R.1990 d.541	22 N.J.R. 3373(a)
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)	R.1990 d.565	22 N.J.R. 3486(a)
10:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	Emergency (expires 12-29-90)	R.1990 d.590	22 N.J.R. 3590(a)
10:89-2.2, 2.3	Home Energy Assistance eligibility criteria: administrative correction	———	———	22 N.J.R. 3766(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		

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10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)	R.1990 d.564	22 N.J.R. 3488(a)
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10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)		
10A:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)		
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11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
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11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	Emergency (expires 1-25-91)	R.1990 d.626	22 N.J.R. 3766(b)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:3-16	Automobile insurance rate filings	Emergency (expires 1-25-91)	R.1990 d.621	22 N.J.R. 3790(a)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	Emergency (expires 1-25-91)	R.1990 d.628	22 N.J.R. 3804(a)
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11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	Emergency (expires 1-25-91)	R.1990 d.624	22 N.J.R. 3809(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	Emergency (expires 1-25-91)	R.1990 d.620	22 N.J.R. 3847(a)
11:3-35	Private passenger automobile insurance: underwriting rules	Emergency (expires 1-25-91)	R.1990 d.627	22 N.J.R. 3856(a)
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	Emergency (expires 1-25-91)	R.1990 d.622	22 N.J.R. 3861(a)
11:3-38	Automobile towing and storage fee schedule	Emergency (expires 1-25-91)	R.1990 d.623	22 N.J.R 3874(a)
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	Emergency (expires 1-25-91)	R.1990 d.625	22 N.J.R. 3777(a)
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)	R.1990 d.594	22 N.J.R. 3625(b)
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
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12:17	Unemployment benefit payments	22 N.J.R. 3445(a)		
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12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:55-1	Payroll deductions for mass transportation: administrative correction	———	———	22 N.J.R. 3499(a)
12:56	Wage and hour	22 N.J.R. 2235(a)	R.1990 d.520	22 N.J.R. 3379(b)
12:57	Wage orders for minors	22 N.J.R. 2240(a)	R.1990 d.521	22 N.J.R. 3382(a)
12:58	Child labor	22 N.J.R. 2241(a)	R.1990 d.522	22 N.J.R. 3383(a)
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12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)	R.1990 d.596	22 N.J.R. 3628(a)

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13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2–4.6, 4.9, 4.14–4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)		
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13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
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13:29-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)	R.1990 d.525	22 N.J.R. 3384(a)
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
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13:36-9.3	Mortuary practice: administrative correction	_____	_____	22 N.J.R. 3384(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)	R.1990 d.608	22 N.J.R. 3756(b)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)	R.1990 d.551	22 N.J.R. 3499(b)
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)	Expired	
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
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13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)	R.1990 d.606	22 N.J.R. 3758(a)
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)		
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)	R.1990 d.574	22 N.J.R. 3499(c)
13:70-3.44	Thoroughbred racing: public telephones at tracks	22 N.J.R. 2402(a)	R.1990 d.533	22 N.J.R. 3385(a)
13:70-13.8	Thoroughbred racing: protest by jockey	22 N.J.R. 2402(b)	R.1990 d.532	22 N.J.R. 3385(b)
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)	R.1990 d.576	22 N.J.R. 3499(d)
13:70-14A.11	Thoroughbred racing: licensee violations of drug use prohibition	22 N.J.R. 3451(a)		
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