

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 16, 1991

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 21, 1992

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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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NEW JERSEY REGISTER, TUESDAY, FEBRUARY 18, 1992

EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 50(1992)
Limited State of Emergency
Atlantic, Cape May, Monmouth and Ocean Counties

Issued: January 4, 1992.

Effective: January 4, 1992.

Expiration: Indefinite.

WHEREAS, severe weather conditions of January 3 and 4, 1992, including heavy rains, winds and high tides have created flooding, hazardous road conditions, and threatened homes and other structures in the coastal areas of the State; and

WHEREAS, these weather conditions pose a threat and constitute a disaster from a natural cause which threatens and presently does endanger the health, safety or resources of the residents of more than one municipality and county of this State; and which is in some parts of the State and may become in other parts of the State too large in scope to be handled in its entirety by the normal municipal operating services; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of the Law of 1942, Chapter 251 (N.J.S.A. App: 9-30 et seq.) and the Laws of 1979, Chapter 240 (N.J.S.A. 38A:3-6.1) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers.

THEREFORE, I, James J. Florio, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim that a limited State of Emergency has and presently exists in Atlantic, Cape May, Monmouth and Ocean Counties.

NOW THEREFORE, in accordance with the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard, that, in his judgment, are necessary to provide aid to those localities where there is a threat or danger to the public health, safety and welfare. He may authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary to support the members so ordered.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251 as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, through the police agencies under his control, to determine the control and direction of the flow of such vehicular traffic on any State highway, municipal or county road, including the right to detour, reroute or divert any or all traffic and to prevent ingress or egress from any area that, in his discretion, he deems necessary for the protection of the health, safety and welfare of the public.

The Superintendent of the Division of State Police is further authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from their residences during the course of this emergency.

FURTHERMORE, the Superintendent of the Division of State Police is hereby authorized to order the evacuation of all persons, except for those emergency and governmental personnel whose presence he deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

FURTHERMORE, in accordance with the Laws of 1942, Chapter 251, I reserve the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

This order shall take effect immediately and shall remain in effect until such time as I determine that an emergency no longer exists.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 51(1992)
Limited State of Emergency
Cumberland County

Issued: January 10, 1992.

Effective: January 10, 1992.

Expiration: Indefinite.

WHEREAS, similar weather conditions to those in Atlantic, Cape May, Monmouth and Ocean Counties, which justified the declaration of a limited State of Emergency in Executive Order No. 50 also existed in Cumberland County on January 3 and 4, 1992; and

WHEREAS, together with the conditions which existed in Atlantic, Cape May, Monmouth and Ocean Counties, the conditions in Cumberland County constituted a disaster from a natural cause and continued to pose a threat and endangered the health, safety or resources of the residents of one or more municipality and county of this State; and which was in some parts of the State, and threatened to become, too large in scope to be handled in its entirety by normal municipal operating services; and

WHEREAS, after consultation with and upon the recommendation of State Emergency Management Personnel, on January 4, 1992, I verbally declared that a Limited State of Emergency also existed in Cumberland County on January 3 and 4, 1992, and extended Executive Order No. 50 to encompass Cumberland County; and

WHEREAS, at the time of my verbal declaration of the Limited State of Emergency in Cumberland County, I was unavailable to execute a written Executive Order to extend to Cumberland County Executive Order No. 50, which I issued earlier on January 4, 1992,

THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people in the State of New Jersey, do declare and proclaim that the limited State of Emergency, which I verbally declared on January 4, 1992, extending Executive Order No. 50 to encompass Cumberland County, is hereby memorialized.

This Order shall take effect immediately and shall remain in effect until such time as I determine that an emergency no longer exists.

(c)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 52(1992)
Prisons and Other Penal and
Correctional Institutions
State of Emergency
Continuation of Prior Executive Orders

Issued: January 17, 1992.

Effective: January 17, 1992.

Expiration: Indefinite.

WHEREAS, the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property and resources of the State; and

WHEREAS, Executive Order No. 24 of January 18, 1991 will expire on January 20, 1992; and

WHEREAS, the conditions specified in Executive Order No. 106 of June 19, 1981, continue to present a substantial likelihood of disaster;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution

and by the Statutes of this State, do hereby declare a continuing state of emergency and ORDER and DIRECT as follows:

1. Executive Order No. 106 (Byrne) of June 19, 1981; No. 108 (Byrne) of September 11, 1981; No. 1 (Kean) of January 20, 1982; No. 8 (Kean) of May 20, 1982; No. 27 (Kean) of January 10, 1983; No. 43 (Kean) of July 15, 1983; No. 60 (Kean) of January 20, 1984; No. 78 (Kean) of July 20, 1984; No. 89 (Kean) of January 18, 1985; No. 127 (Kean) of January 17, 1986; No. 155 (Kean) of January 12, 1987; No. 184 (Kean) of January 4, 1988; No. 202 (Kean) of January 26, 1989; No. 226 (Kean) of January 12, 1990; and No. 24 (Florio) of January 18, 1991, shall remain in effect until January 20, 1993 notwithstanding any sections in them stating otherwise.

2. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 53(1992)

Continuation of Governor's Task Force on Child Abuse and Neglect

Issued: January 24, 1992.

Effective: January 24, 1992.

Expiration: December 31, 1993.

WHEREAS, Executive Order No. 51 created a Governor's Task Force on Child Abuse to (a) study the problem of child abuse in New Jersey and make recommendations for corrective action, (b) educate the public about this problem and offer prevention strategies, (c) develop mechanisms to facilitate early detection of child abuse, furnish appropriate services to the victims of child abuse and their families, and foster cooperative working relationships between responsible agencies, and (d) provide other information on child abuse as the Governor may request; and

WHEREAS, the Governor's Task Force on Child Abuse was to conclude its work by January 1, 1985; and

WHEREAS, the Governor's Task Force on Child Abuse was subsequently renamed the Governor's Task Force on Child Abuse and Neglect, was continued in existence for additional two year periods by Executive Orders No. 110, 173, and 217 and expired on December 31, 1991; and

WHEREAS, there continues to be a need for the Task Force to educate the community and make the public aware of this serious social problem, to prevent child abuse and neglect, to coordinate activities relating to child abuse and neglect, and to ensure community support for these child protection measures;

NOW, THEREFORE, I, James T. Florio, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this state, do hereby ORDER and DIRECT:

1. The Governor's Task Force on Child Abuse and Neglect is continued in existence until December 31, 1993, retroactive to December 31, 1991.

2. Except as expressly provided herein, the powers and responsibilities of the Task Force pursuant to Executive Order No. 51, Executive Order No. 110, Executive Order No. 173 and Executive Order No. 217 are continued.

3. The Task Force may solicit, receive, disburse and monitor grants and other funds available from any governmental, public, private, not-for-profit or for-profit source, including, but not limited to, funding available under any Federal or State law, regulation or program.

4. The Department of Human Services is authorized and directed to furnish the Task Force with such staff, office space and supplies as necessary to accomplish the purpose of this Order.

5. All other provisions of Executive Order No. 51, Executive Order No. 110, Executive Order No. 173 and Executive Order No. 217 shall remain in full force and effect without any modification.

6. This Order shall take effect immediately and shall expire on December 31, 1993.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION ON AGING

Congregate Housing Services Program

Proposed Readoption with Amendments: N.J.A.C. 5:70

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

Authority: N.J.S.A. 52:27D-188.

Proposal Number: PRN 1992-72.

Submit comments by March 19, 1992 to:

Louis Hull, Director
Division on Aging
CN 807
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5:70, the Congregate Housing Services Program rules, expires on July 9, 1992. The Division on Aging has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated as required by the Executive Order.

The Congregate Housing Services Program has been in operation since the rules were originally adopted on August 16, 1982. The chapter was readopted, pursuant to Executive Order No. 66(1978), on July 9, 1987. Since that time, there have been no changes to the rules, with the exception of an annual revision of N.J.A.C. 5:70-6.3(e), to accommodate annual percentage increases in Social Security payments to recipients. The rules currently provide, in addition to general administrative provisions and definitions, program development, service and cost requirements, as well as service subsidy limits, resident eligibility requirements, performance review and assessment, record maintenance and appeal procedures for housing agencies, programs, or applicants.

The amendments proposed with this readoption will add a definition for adjusted income, referencing N.J.A.C. 5:70-6.3(b).

The word "care" in N.J.A.C. 5:70-4.1(a) has been deleted, since that term has come to mean services given in a more medically-oriented facility to a more dependent population, such as feeding, bathing or dressing of those who cannot perform these tasks themselves. The program does not provide that type of service, but does provide house cleaning or assistance with housework or laundry, at least one hot or other nutritious meal each day, and assistance in the completion of the tasks of daily living, such as eating, bathing, grooming and dressing, as well as assistance in getting from one location to another (such as to a doctor's office or grocery store). While program recipients are required to be mobile, they may accomplish this through the use of mobility devices and wheelchairs.

An amendment has been made to N.J.A.C. 5:70-4.4(c)5 to add the provision of assistance in home management activities. This change will help the program recipients remain in their apartments longer than they would without this help.

The amendment to N.J.A.C. 5:70-6.3(e) has been made to accommodate the percentage increase in Social Security benefits to those taking part in the congregate Housing Services Program. Under the contract rules, the participants in the program may be required to pay an additional amount for program costs if they receive an increase in Social Security. With the adoption of this amendment, they should not be required to pay the additional amount.

Social Impact

A growing and major social problem is the need to plan for the health and welfare of hundreds of thousands of "young old" people who moved into the many senior citizen housing projects developed during the 1960's and 1970's and who are still residing in these housing projects. They are now into their late 70's, 80's and 90's. Some are approaching or are over 100 years of age.

Approximately half of the tenants using congregate housing services could be defined as pre-nursing home candidates, and at least 25 percent would likely be Medicaid eligible for nursing home entry if not maintained in their independent setting. The mobility of these tenants is often impaired; fewer than half can walk without a cane, walker, or wheelchair. These physically impaired elderly are forced to enter nursing homes or other medically oriented facilities when they become unable to care for themselves and their living unit without assistance.

The Congregate Housing Services Program is having a profound impact upon the management of subsidized housing facilities. There is growing evidence that persons can now be admitted to these facilities with a higher degree of frailty than was previously possible and can remain in their apartments longer.

In addition, tenants are able to return to the facility after a hospital or nursing home stay because of the availability of the services of the program, such as meals, housekeeping and assistance with the tasks of daily living.

The building managers and congregate services coordinators report a growing positive relationship with families of these tenants and acceptance of the program among other residents of the facility.

Economic Impact

The Congregate Housing Services Program provides economic savings to the general public, as taxpayers, and to individuals who receive the services.

The provision of services through the Congregate Housing Services Program enables many of the frail elderly to live in their communities, at a lower cost than would be incurred if they were to reside in alternate living arrangements, such as nursing homes. Subsidies for services offered through the program, in accordance with the formula provided in N.J.A.C. 5:70-6.3(e) are available to any person who qualifies for the program, providing assistance which would otherwise be beyond the means of the elderly on fixed incomes.

The adjustment in the categories of disposable income of the financial subsidy formula has an economic impact on the older tenant living in subsidized housing facility who is currently receiving congregate housing services and who is eligible for a subsidy. Each income category set forth is adjusted according to the percentage increase given to Social Security Recipients pursuant to 42 U.S.C.A. 415, in the immediately preceding calendar year. This will have a positive economic impact on the participants of the Congregate Housing Services Program; they will not be disadvantaged by having to pay more when they receive a percentage increase in Social Security benefits pursuant to 42 U.S.C.A. 415.

Regulatory Flexibility Analysis

The rules proposed for readoption apply to qualified housing agencies under the Congregate Housing Services Act. Such agencies include nonprofit and limited dividend housing sponsors which qualify as small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed readoption of these rules will continue the requirements that such agencies prepare and maintain the reports and records concerning: (1) the individuals receiving program subsidies for certain living expenses they incur while residing at housing projects owned and operated by such agencies; and (2) the manner in which such agencies utilize program funds in defraying the costs of providing certain services to such individuals. Preparation of certain of the required reports, that is financial audits, will require the agencies to obtain professional accounting assistance.

Based upon the Department's prior experience in administering the program, it is not anticipated that any initial capital costs will have to be incurred either by agencies which have participated in the program in the past or by agencies which may become participants in the program in the future. Further, based upon the Department's past administration of the Program, the Department estimates that the annual cost of compliance with the continuing reporting and recordkeeping requirements will be minimal. Agencies which have participated in the program have not indicated any significant costs incurred in this regard beyond those costs normally incurred for the reporting and recordkeeping activities required by their business activities.

To the extent that any nonpublic agencies may experience any adverse economic impact by virtue of the rules' recordkeeping, reporting and

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other compliance requirements, the Department would consider providing program funds under the Act to assist such agencies in dealing with any such impact.

The requirements for approval of a grant application to provide congregate housing services impose no significant additional burden on the applicants. The descriptions and proofs required do not entail the use of professional services, although the agencies may choose to utilize such services. The rules regarding the provision of services do not specifically require the hiring of certain professionals, beyond the qualified nutritionist who is to approve all menus. N.J.A.C. 5:70-7.1 requires the establishment of a professional advisory committee, which consists of at least the management of the housing facility, the Congregate Housing Services Coordinator, a physician or other suitable health professional and a representative designated by the county Office on Aging. Any housing agency, program applicant or program participant has a right to a hearing, provided in N.J.A.C. 5:70-10.1. Some agencies, if they are non-profit corporations, may need the services of an attorney; however, this is not specifically required in the rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:70.

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

5:70-2.1 Definitions

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

...
"Adjusted income" means annual income minus the allowances determined in accordance with N.J.A.C. 5:70-6.3(b).

...
"Disposable Income (DI)" is the income of a participant determined by deducting rent [and other allowable medical expenses] from the individual's [net] adjusted income.

5:70-4.1 General requirements

(a) The provision of Congregate Housing Services under the Act shall include a program of supportive services including the provision of meals, housekeeping assistance and personal [care] assistance. However, if one or more of these supportive services is provided at an eligible facility by another agency or program, the Division may, upon application of the program sponsor, waive the aforesaid requirement that the sponsor provide such service or services as part of the sponsor's congregate housing services program.

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

5:70-4.4 Housekeeping and Personal Services

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

(c) The minimal functional abilities of program participants eligible for supportive services are defined as:

1.-4. (No change.)

5. [Transferring: Must be mobile, but does not prohibit persons in wheelchairs or requiring mobility devices.] **Home Management Activities: May need assistance in doing housework or laundry or getting to and from one location to another, for activities such as going to the doctor or shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.**

5:70-6.3 Income, program costs, and service subsidy formula

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

(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:

1. Step 1

$$\begin{array}{rcl} \text{ADJUSTED} & & \text{DISPOSABLE} \\ \text{INCOME} & - & \text{RENT} = \text{INCOME} \\ (\text{AI}) & - & (\text{R}) = (\text{D.I.}) \end{array}$$

2. The following STEP II shall be operative from January 1, 1992 through December 31, 1992:

D.I. of \$0.00 to \$191.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

PROPOSALS

D.I. of \$191.01 to \$320.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of \$320.01 to \$451.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of \$451.01 to \$581.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of \$581.01 to \$711.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

[2.] 3. The following STEP II shall be operative from January 1, [1991] 1993 through December 31, [1991] 1993

D.I. of \$0.00 to [\$181.00] **\$198.00**: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of [\$182.00] **\$198.01** to [\$304.00] **\$332.00**: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of [\$305.00] **\$332.01** to [\$428.00] **\$468.00**: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of [\$429.00] **\$468.01** to [\$551.00] **\$602.00**: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of [\$552.00] **\$602.01** to [\$675.00] **\$737.00**: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

[3. The following STEP II shall be operative from January 1, 1992 through December 31, 1992:

D.I. of \$0.00 to \$191.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of \$191.01 to \$320.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of \$320.01 to \$451.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of \$451.01 to \$581.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of \$581.01 to \$711.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)]

EDUCATION

STATE BOARD OF EDUCATION

Private Vocational Schools

Proposed Readoption: N.J.A.C. 6:46

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

Authority: N.J.S.A. 18A:1-1; 18A:4-10, 15, 16, 24 and 25;
18A:7A-1 et seq.; 18A:54-1 et seq.; 18A:69-1 et seq. and
34:1A-38.

Proposal Number: 1992-73.

Submit written comments by March 19, 1992 to:

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

The agency proposal follows:

Summary

The State Board of Education, pursuant to N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:4-16, 18A:4-24, 18A:4-25, 18A:7A-1 et seq., 18A:54-1 et seq., 18A:69-1 et seq. and N.J.S.A. 34:1A-38, proposes a readoption of

the rules pertaining to Private Vocational Schools, N.J.A.C. 6:46. The rules generally specify standards for private vocational schools, correspondence schools, contracting by district boards of education with private vocational schools and the completion of apprentice training.

N.J.A.C. 6:46 was originally adopted in accordance with the provisions of the State Plan for Vocational Education, N.J.S.A. 18A, P.L. 90-576, and the rules and regulations of the State Board of Education. Revisions were made to the chapter with amendments being effective in 1971, 1973, 1978, 1982, 1987, 1989, 1990 and 1991.

In 1986 the Governor granted a waiver of Executive Order No. 66(1978) which extended the expiration date for N.J.A.C. 6:46-1 through 6:46-9 from December 1, 1986 to December 1, 1987. The chapter, Area Vocational and Private Schools, was renamed Local Area Vocational School Districts and Private Vocational Schools and readopted effective October 5, 1987 with amendments that completely revised the chapter. Recodification changes were effective November 2, 1987.

On July 3, 1991, the chapter was renamed Private Vocational Schools, with amendments that repealed Subchapter 2, Local Area Vocational School Districts. These changes, along with the deletion of certain definitions not applicable to private vocational schools, became effective on August 5, 1991.

The chapter expires on October 5, 1992. No amendments or repeals are being proposed at this time as it is anticipated that legislation will be introduced that will consolidate and centralize the approval, regulation and oversight of private vocational schools within the New Jersey Department of Education. Included will be private vocational schools offering occupational education that are currently regulated by other State agencies.

The anticipated legislation will result from recommendations made by the New Jersey State Employment and Training Commission (SETC) and accepted by Governor Jim Florio. New and revised rules regarding private vocational schools will be developed and adopted pursuant to requirements of the new legislation.

Readopting the current rules will provide a continuation of minimum standards during the time period required to develop, adopt and implement law and rules to accomplish the objectives of the SETC recommendations.

The Department intends that these rules will have an expiration date of two years after the effective date of the readoption.

A summary of Chapter 46, Private Vocational Schools, follows:

N.J.A.C. 6:46-1 defines words and phrases used in the chapter.

N.J.A.C. 6:46-2 is reserved.

N.J.A.C. 6:46-3 recognizes the Department as the agency responsible for the administration and approval of the related training and instruction portion of apprenticeship programs in compliance with Federal standards.

N.J.A.C. 6:46-4 establishes rules for the regulation of private vocational schools, to include rules that:

1. Define exempted institutions;
2. Set standards for school names;
3. Set standards for school facilities and instructional equipment;
4. Establish qualifications for the approval of instructors and administrative personnel;
5. Require character and financial references for proposed school owners, require authority for out-of-State corporations to do business in New Jersey, require submission of financial audit reports, and require bonding for advance tuition collected;
6. Define standards for the content and approval of courses and programs;
7. Require the filing of costs and cost changes with the Commissioner, and set limits on application and registration fees charged;
8. Define minimum content of the enrollment agreement;
9. Define minimum refunds to be returned to pupils who withdraw or are terminated by the school;
10. Define the minimum content of the school bulletin;
11. Define the minimum general, pupil and personnel records to be maintained by the school;
12. Establish standards for the collection of fees for pupil services or products, establish minimum admission standards and require termination of a pupil with excessive unexcused absences;
13. Define acceptable publicity, advertising and solicitation standards;
14. Define scholarship and financial assistance standards;
15. Require annual renewal of approval to operate and require approval for a change in school ownership or location;

16. Define actions to be taken by the Department if a school violates the rules;

17. State that approval does not waive a school's responsibility to comply with other applicable local, State or Federal laws or regulations;

18. Establish a school monitoring process;

19. Establish fees for the initial and annual reapproval to operate for regulated schools; and

20. Recognize institutional and programmatic accreditation by accrediting agencies recognized by the United States Secretary of Education.

N.J.A.C. 6:46-5 establishes standards for the approval and operation of correspondence schools.

N.J.A.C. 6:46-6 establishes standards and procedures for the approval of a private vocational school to contract with a district board of education to provide vocational education courses to pupils.

The rules have been effective in establishing minimum requirements for the approval and operation of private vocational and correspondence schools in New Jersey in accordance with current law. Standards are established concerning the conduct of the schools, qualifications of instructors and administration, adequacy of facilities, equipment and courses, financial responsibility and monitoring to help ensure consistency and the integrity of the approved schools. Pupils who enroll in schools that adhere to the standards can reasonably expect that the schools and their staff will deliver a quality education and other services promised.

Social Impact

Readoption of N.J.A.C. 6:46-3 will permit the continued authority of the Department to administer and approve the related training and instruction portions of apprenticeship programs so that approximately 40,000 apprentices may participate in a program in compliance with Federal standards.

Readoption of N.J.A.C. 6:46-4 and N.J.A.C. 6:46-5 will permit the continuation of rules that provide at least minimum consumer protection to approximately 45,000 pupils who are enrolled in or plan to enroll in courses and programs in the regulated private vocational and correspondence schools.

Readoption of N.J.A.C. 6:46-6 will continue to permit district boards of education to contract with approved private vocational schools for the occupational education not otherwise available to secondary pupils.

Economic Impact

Readoption of N.J.A.C. 6:46-3 and N.J.A.C. 6:46-5 will have no economic impact on the entities regulated by the rules. There are no fees or other charges attached to the apprenticeship program approval or for contracting between private vocational schools and district boards of education.

There will be no additional economic impact on the private vocational schools or correspondence schools through the readoption of N.J.A.C. 6:46-4 and N.J.A.C. 6:46-5.

It is estimated that New Jersey private vocational and correspondence schools collect approximately \$70 million in tuition each year. The tuition is from various public and private sources, to include federal student financial assistance programs. Fees received by the Department from the schools annually total approximately \$68,000. Initial approval of a private vocational school is \$700.00 and annual renewal of approval is \$450.00. Correspondence schools are charged \$100.00 for initial approval and \$50.00 for annual renewal. Sales representatives for correspondence schools are charged an initial approval fee and annual renewal fee of \$10.00.

Schools are free to increase or decrease their tuition rates upon 60 days' notice to the Commissioner. Approval and operating costs associated with meeting regulatory requirements have been calculated into the administrative operating expenses of the school. It is not anticipated that readoption will increase or decrease operating expenses of the schools.

Regulatory Flexibility Analysis

There are currently 110 approved private vocational schools operating in 206 locations in New Jersey. There are seven approved correspondence schools. There are 35 initial applications for approval to operate a private vocational school on file at various stages of compliance in the approval process. The overwhelming majority of the approved schools meet the definition of a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The schools are required to submit an annual enrollment and tuition source report to the Department. Included in the enrollment report are

data regarding courses offered, current tuition rates, number of new enrollees by course, carry-over pupils, dropouts, graduates and graduates placed. The tuition source report contains data regarding sources of tuition, total numbers of pupils using each source and the total tuition received during the enrollment year.

The annual application for renewal of approval to operate contains the current bulletin, enrollment agreement, advertising, personnel listing, audited financial statements, proof of local fire and health approval, statement of ownership, proof of tuition bonding, if appropriate, and required fees. Professional services required are generally limited to those needed for auditing services and reports and insurance and bonding. The professional services are common costs generally applicable to any operating business.

The rules apply to all private vocational and correspondence schools regardless of size because they are designed to protect the welfare of the general public as consumers of the services offered by private vocational and correspondence schools. Therefore, no differing standards are provided based on business size.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:46.

(a)

STATE BOARD OF EDUCATION

Vocational Education Safety and Health Standards

Proposed Readoption with Amendments: N.J.A.C. 6:53

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

Authority: N.J.S.A. 18A:4-15, 18A:33-1 et seq., 18A:40-12.1 and 12.2 and 18A:54-1 et seq.

Proposal Number: PRN 1992-82.

Submit written comments by March 19, 1992 to:

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

The agency proposal follows:

Summary

N.J.A.C. 6:53, Vocational Education Safety Standards, originally became effective on August 3, 1977. The standards were readopted, without substantive change, and became effective on October 18, 1982. The chapter was readopted with amendments on July 1, 1987. At that time, the majority of the rules and regulations contained in the chapter were repealed because of the enactment of N.J.S.A. 34:6A-25 et seq. (enacted January, 1984), the New Jersey Public Employees Occupational Safety and Health Act (NJPEOSHA) and the promulgation of N.J.A.C. 12:100 (adopted October 18, 1984), Safety and Health Standards for Public Employees, pursuant to NJPEOSHA. The statute and resulting rules and regulations protect employees in the public sector and include employees of any school district or special purposes district created pursuant to law.

N.J.A.C. 12:100 incorporated by reference the standards promulgated under Section 6 of the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. These are the safety and health standards which apply to all private workplaces.

PEOSHA rules and regulations are more comprehensive than those that were contained in N.J.A.C. 6:53. The adoption of PEOSHA, therefore, ensured that vocational students in the same classrooms as vocational instructors would also be protected by these general industry safety and health standards. Certain rules and regulations that were more stringent for vocational education programs were maintained, since the safety and health of pupils with little experience was a consideration.

Deletion of the majority of N.J.A.C. 6:53 and adoption of N.J.A.C. 12:100 by reference precluded duplication of rules and regulations, ensured that pupils were protected by the same set of comprehensive standards and that those standards would be part of pupils' occupational training.

Pursuant to the requirements and criteria of Executive Order 66 (1978), the chapter is set to expire on July 7, 1992. This chapter is being

proposed for readoption because safety and health standards continue to be critical factors in all vocational programs. Compliance with these standards reduces injury and illness to program pupils and staff. Safe and healthy work practices are also essential elements of all jobs and must, therefore, continue to be an integral part of all occupational training programs.

The proposed rules provide safety and health standards to govern the use of tools, machines, equipment, protective devices, hazardous substances, handling of blood and body fluids and the implementation of safety and health programs.

This chapter clearly informs affected educational institutions and agencies about nationally accepted standards. When followed, these rules can assist them in protecting the health and safety of pupils and instructors whose welfare they are charged with protecting.

The chapter is summarized as follows:

Chapter 6:53 has been renamed, "Vocational Education Safety and Health Standards," to emphasize the fact that both occupational safety and health hold equal importance in hazard prevention.

N.J.A.C. 6:53-1.1, Scope and purpose, is amended to expand the rules to cover hazardous substances and more clearly defines which vocational education programs and courses in agencies and institutions under the regulatory authority of the Department of Education are affected. N.J.A.C. 6:53-1.1 also cross-references other current rules: N.J.A.C. 6:43, Vocational and Technical Education Programs and Standards; and N.J.A.C. 6:28, Special Education.

N.J.A.C. 6:53-1.2 adopts by reference for all vocational programs the PEOSHA standards which already cover vocational instructors. No changes were required except an address correction.

N.J.A.C. 6:53-1.3, Definitions, has been modified to better clarify terms which were questioned in the past. The term "vocational education program and/or course" has been modified to include career orientation programs and to be consistent with the definition of vocational programs contained in N.J.A.C. 6:43-1.2, Vocational and Technical Education Programs and Standards, Words and phrases defined. Other terms used in the field of occupational safety and health have also been defined to assist non-subject matter experts.

N.J.A.C. 6:53-2.1, Applicability and implementation of safety and health standards, spells out what districts must do in order to comply with these standards. This section has been expanded to include safety and health standards for hazardous substances used in vocational education programs. It informs agencies and institutions covered by this chapter that any equipment, materials or vocational program activities out of compliance with these standards may not be used or carried out.

N.J.A.C. 6:53-2.2, Safety and health program, contains technical clarification regarding agency or institution approval of the safety and health program. It further requires district boards of education and other agencies or institutions operating vocational education courses and/or programs to designate a person or persons, other than the chief executive and/or chief administrative officer, who will implement the safety and health program. This fixes accountability for ensuring compliance with safety and health standards for vocational programs.

The minimum requirements for safety and health programs are also established. They include those elements believed to be necessary for effective development and implementation of an organization's safety and health program. Certain elements have been retained including development of safety and health program policies and procedures, specification of safe and healthy practices, hazard identification, emergency procedures, and assessment of pupil safety and health competencies. New elements address problems identified in the earlier program requirements. The additions which rectify these problems include: a new requirement for a safety and health analysis for each vocational course and/or program in operation; procedures to ensure that pupils comply with prescribed practices; and procedures to ensure that all new vocational education staff and pupils receive appropriate initial safety and health program training prior to working or participation in the course and/or program.

N.J.A.C. 6:53-2.3, Reporting requirements, specifies the requirements of the vocational education accident reporting system which is used to track and help eliminate the causes of accidents and illnesses in vocational programs. This section clarifies a reportable accident as one which requires treatment by a licensed medical doctor, including one which occurs in traveling to and from an off-premises training site or at the site itself.

N.J.A.C. 6:53-3, General Requirements for All Machines, contains rules more stringent than those contained in N.J.A.C. 12:100. It is

necessary to include these additions because pupils are the primary users of vocational program machines. These precautionary measures protect pupils more effectively than is possible under N.J.A.C. 12:100 alone, and address certain hazards which are caused by constant pupil use of equipment. Technical changes in this subchapter make it consistent with rules contained in N.J.A.C. 6:22, School Facility Planning Services.

N.J.A.C. 6:53-4.1, Storage of flammable and combustible materials, updates the mailing address from which the "Flammable and Combustible Liquids Code" may be obtained.

N.J.A.C. 6:53-4.2, Use and disposal of hazardous substances, has been renamed for clarification purposes. It requires that pupils as well as staff be trained in the use of hazardous substances in accordance with N.J.A.C. 8:59, Worker and Community Right to Know Act rules. A new subsection deals with hazardous waste and references N.J.A.C. 7:26, the Hazardous Waste Regulations. These regulations provide guidance to vocational programs in appropriately disposing of their hazardous wastes.

N.J.A.C. 6:53-5.1, Foundry operations, contains detailed requirements for personal protection in vocational program foundry operations. These requirements are not specified in the NJPEOSHA Standards. The required use of inhibited asbestos protective devices has been eliminated. Devices now required include: duckbib-type aprons, leggings and gloves which must be heat resistant and fireproof; and closed leather footwear which must contain metatarsal guards.

N.J.A.C. 6:53-5.2, Protection of personnel, provides rules for the use of eye protection in vocational programs and is consistent with N.J.A.C. 6:3-1.14, Eye protection in public schools. No changes were required.

N.J.A.C. 6:53-5.3, Handling of blood and body fluids, is a new rule. It requires all individuals handling blood and body fluids in vocational education programs to implement universal precautions in accordance with the rules for Health, Safety and Physical Education, N.J.A.C. 6:29-2.5, Routine procedures for sanitation and hygiene, when handling body fluids.

Social Impact

Local school districts have been required to comply with NJPEOSHA and N.J.A.C. 12:100 since November 6, 1986. In addition, private sector institutions have been required to comply with Federal OSHA since 1970. As a result, educational institutions in both the public and private sectors can be expected to be in various stages of compliance depending on their knowledge of the Federal OSHA and NJPEOSHA standards and their regulation of the safety and health conditions in these agencies and institutions. However, it is anticipated that the following benefits will be realized by the readoption of and amendments to N.J.A.C. 6:53:

- Pupils in all vocational programs and courses under the regulatory authority of the Department of Education will continue to be protected by comprehensive safety and health standards.
- Reduced numbers of injuries and illnesses in vocational education programs will result.
- Educational agency and institution compliance with OSHA or NJPEOSHA will be reinforced.
- Redundancies within the Administrative Code from different State agencies will be eliminated.
- The stringent standards in N.J.A.C. 6:53 will be maintained. The pupil learning environment (vocational shops and laboratories) is the same as the workplace of the employee instructor. Therefore, the standards established pursuant to Federal OSHA and NJPEOSHA also apply.

• The more stringent safety and health standards over and above those in PEOSHA are being maintained in N.J.A.C. 6:53 for the protection of pupils. These will be no different from those in effect for the last 10 years.

• Except for the more stringent standards being maintained by the Department of Education, the Commissioner of Labor will retain primary responsibility to inspect public employers for compliance with safety and health standards promulgated pursuant to NJPEOSHA.

• Educational agencies and institutions serving vocational education students will increasingly use the technical expertise of the Departments of Labor, Health and Community Affairs to improve the overall quality of safety and health in their organizations.

Economic Impact

The effective risk management steps necessitated by compliance with the rules proposed for readoption with amendments will have a positive economic impact on the agencies and institutions affected. Fewer accidents and injuries in their vocational programs will yield cost savings

in areas such as insurance premiums, workman's compensation claims, and the increasing costs of litigation resulting from preventable accidents.

This proposed readoption will have no economic impact upon the State and little or no negative economic impact upon the agencies and institutions covered by the standard. The readoption imposes one new safety standard at N.J.A.C. 6:53-5.3 regarding the handling of blood and body fluids. Minimal additional expenditures will be required to achieve compliance with the rule. Any additional expenses that could possibly be incurred to maintain required safety standards would rather be the result of compliance with Federal OSHA or NJPEOSHA. As employers, agencies and institutions covered by this standard are included within the purview of either OSHA or PEOSHA and must comply fully with their requirements.

Regulatory Flexibility Analysis

The small businesses impacted by the proposed readoption include 206 private vocational schools and 135 approved private schools for the handicapped. These private sector employers have been required to comply with Federal OSHA since 1970. Therefore, adoption of the OSHA standards imposes no new regulatory burden or initial capital costs.

If the agencies affected require technical assistance in complying with the OSHA standards, they are eligible to receive such assistance, at no cost, from the Occupational Health and Safety Consultation Services. These services are available as described in OSHA Pamphlet No. 3047, rev., entitled "Consultation Services for the Employer."

The limited number of more stringent standards contained in N.J.A.C. 6:53 are those affecting machinery used by pupils. Any school providing vocational instruction to pupils would be sure to comply with these in order to protect the safety and health of their students and their staff.

The only reporting requirement imposed by these rules is reporting to the Department of Education any vocational program accident requiring the attention of a medical doctor. In order to assist the small businesses impacted by this requirement, forms precoded for each agency or institution will be provided by the Department of Education. These forms will need to be completed by the teacher who witnessed the accident; therefore, no additional professional services will be required in order to meet this requirement. Analysis of these reports by the Department of Education will result in valuable technical assistance on future accident prevention.

As indicated in the Economic Impact Statement, effective risk management resulting from compliance with the rules proposed for readoption will have a positive economic impact on small businesses. By eliminating injuries and illnesses in vocational programs, costs of insurance, workers' compensation claims, and litigation will be significantly reduced.

The rules apply to all private vocational schools regardless of size because they are designed to protect the welfare of the general public as consumers of the services offered by private vocational schools, and therefore no differing standards of compliance have been provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:53.

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

CHAPTER 53 VOCATIONAL EDUCATION SAFETY AND HEALTH STANDARDS

6:53-1.1 Scope and purpose

(a) The rules in this chapter prescribed and approved by the State Board of Education pursuant to N.J.S.A. 18A:1-1, 18A:4-15, 18A:33-1 et seq., 18A:40-12.1, 18A:40-12.2 and 18A:54-1 et seq. provide safety and health standards to govern the use of tools, machines, equipment [and], protective devices and hazardous substances in vocational education programs and courses.

(b) These programs and courses include those regulated by the Department of Education and offered in public schools, private vocational schools as defined in N.J.A.C. 6:43-1.2, approved private schools for the handicapped as defined in N.J.A.C. 6:28-1.3 and institutions or agencies receiving either State or Federal vocational education funds administered by the Department of Education.

6:53-1.2 Adoption by reference

(a) (No change.)

(b) The standards are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN [301] 049, Trenton, New Jersey 08625.

6:53-1.3 Definitions

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

...
"Hazard analysis" means a method of reviewing vocational program equipment, materials, procedures and processes in order to identify potential causes of injury or illness.

"Hazardous substance[s]" means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the Department of Health pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced or otherwise handled at a facility.

"NFPA" means the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269.

...
"Universal precautions" means routine procedures for sanitation and hygiene when handling body fluids including the use of barrier precautions to prevent direct skin contact with blood or any body fluid containing blood.

"Vocational education program and/or course" means any vocational or career orientation program and/or course [in any school under the regulatory authority and jurisdiction of the Department of Education] as defined in N.J.A.C. 6:43-1.2.

6:53-2.1 Applicability and implementation of safety and health standards

(a) All tools, machines, equipment [and], personal protective devices and hazardous substances used in vocational education programs shall meet the safety and health standards contained in this chapter.

(b) Tools, machines, equipment [and], personal protective devices and hazardous substances not in compliance with these standards shall be removed from service.

6:53-2.2 Safety and health program

(a) All district boards of education and other institutions and agencies identified in N.J.A.C. 6:53-1.1(b) operating vocational education programs and/or courses shall organize, adopt and implement a vocational education safety and health program. A copy of the program, indicating the district board of [education] education's, the agency's or institution's adoption and approval, shall be retained on file by the [local education] agency or institution and make available, upon request, to the Department of Education.

(b) Each district board of education and other institution or agency as specified in N.J.A.C. 6:53-1.1(b) operating vocational education programs and/or courses shall designate a person or persons, other than the chief executive and/or chief administrative officer, who will implement the approved safety and health program.

[(b)](c) The safety [education] and health program shall contain, as a minimum, the following [sections]:

1. Objectives of the safety [education] and health program;
2. A safety and health hazard analysis for each vocational course and/or program in operation;

[2.]3. A statement of the general policies for the safe and healthy operation of all vocational courses;

[3.]4. Specific statements of practices and precautions required for safe and healthy operation within each separate course;

[4.]5. A plan and procedures for periodic inspections and maintenance of facilities, tools, machines, equipment [and], personal protective devices[;], hazardous substances, and

[5. A plan] for the [identification and] elimination of potential or identified hazards;

6. (No change.)

7. Methods to be used for each vocational course to provide safety and health education to pupils including methods for incorporating the results of the hazard analysis; [and]

8. [Methods] Procedures and methods to be used to document and assess pupils' knowledge of safe and healthy practices and procedures[.];

9. A system, which may include disciplinary action, to ensure that pupils comply with safe and healthy practices; and

10. Procedures to ensure that all new vocational education staff and pupils receive appropriate initial safety and health program training prior to working or participating in any vocational course and/or program.

6:53-2.3 Reporting requirements

(a) (No change.)

(b) A reportable accident is any accident which requires treatment by a licensed medical doctor that occurs in a vocational education program, either on the school premises or at an approved off-premises training site including cooperative work training [station, which requires treatment by a licensed medical doctor] site and travel to and from that off-premises training site.

6:53-3.2 Unattended machines and equipment

Machines and equipment requiring the presence of an operator shall not be left unattended while in operation or still in motion.

6:53-3.3 Machine controls and equipment

(a) An electrical power control shall be provided on each machine to make it possible for the operator to cut off the power without leaving [his/her] the operating position [at the point of operation].

(b) On all nonportable motorized equipment and machinery, [provision] a magnetic-type switch shall be [made] provided to prevent machines from automatically restarting upon restoration of power after an electrical failure or electric cutoff.

(c) Power controls and operating controls shall be located within easy reach of the operator while [he or she] the operator is at the regular work location, thereby making it unnecessary to reach over the point of operation to make adjustments.

(d) Each machine operated by [electric motors] electrical power shall be provided with positive means for rendering [the motor starting controls] it inoperative while repairs or tool changes are being made.

(e) Push-type emergency [cut-off] cutout switches shall be provided at appropriate locations within shops to de-energize the electrical supply to nonportable machinery in accordance with N.J.A.C. 6:22-[2.4(a)9]5.4(f)1.

(f) Power tools and machines in shops which generate dust shall be provided with dust collecting equipment in accordance with N.J.A.C. 6:22-[2.4(a)12]5.4(b)5.

6:53-4.1 Storage of flammable and [combustible] combustible materials

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

(d) Flammable or combustible liquids shall be stored in accordance with the requirements as specified in NFPA 30-[1976] 1990, "Flammable and Combustible Liquids Code" which with all subsequent amendments and supplements is hereby adopted as a rule.

1. This document is available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN [301] 049, Trenton, New Jersey 08625.

2. This document may be purchased from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269.

6:53-4.2 [Hazardous] Use and disposal of hazardous substances

(a) Hazardous substances shall be stored, handled and used in accordance with N.J.A.C. 8:59, Worker and Community Right to Know Act, promulgated pursuant to the authority of the Worker and Community Right to Know Act, P.L. 1983, c.315[,] and N.J.S.A. [34:54-1] 34:5A-1 et seq.

1. These rules are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Adminis-

trative Law, Quakerbridge Plaza, Bldg. 9, CN [301] 049, Trenton, New Jersey 08625.

2. (No change.)

(b) **Hazardous waste shall be disposed of in accordance with N.J.A.C. 7:26-1, and 7:26-7 through 12, the Hazardous Waste Regulations, promulgated pursuant to the authority of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.**

1. These rules are available for review at the Department of Education, Division of Vocational Education, 225 West State Street, CN 500, Trenton, New Jersey 08625 or at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, CN 049, Trenton, New Jersey 08625.

2. The rules may be requested from the State of New Jersey, Department of Environmental Protection, CN 028, Trenton, New Jersey 08625.

6:53-5.1 Foundry operations

(a) Individuals engaged in the melting of metal to be cast or the pouring of molten metals shall be protected by the wearing of the following:

1.-2. (No change.)

3. [Inhibited asbestos] **Fire resistant** or fireproof duckbib-type apron that extends below the top of leggings or equivalent;

4. [Inhibited asbestos] **Fire resistant** or fireproof duckspring-type leggings;

5. (No change.)

6. [Inhibited asbestos] **Heat resistant, fireproof** gloves; and

7. Closed leather footwear with **metatarsal** guards, or equivalent.

(b) (No change.)

6:53-5.3 Handling of blood and body fluids

All individuals handling blood and body fluids in vocational education programs shall implement universal precautions in accordance with N.J.A.C. 6:29-2.5.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Limited Assignment Distribution Servicing Carriers

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

Proposed Amendment: N.J.A.C. 11:1-32.4

Authorized By: Jasper J. Jackson, Acting Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq. and 17:29D-1.

Proposal Number: PRN 1992-83.

Submit comments by March 19, 1992 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:29D-1 provides that the Commissioner of Insurance (Commissioner) may adopt, issue and promulgate rules establishing a plan for the providing and apportionment of insurance coverage for applicants who are entitled to, but are unable to procure, insurance through ordinary methods. This statute was amended by the Fair Automobile Insurance Reform Act of 1990 (FAIR Act) to provide, among other things, that any plan established must provide "for a limited assignment distribution system permitting insurers to enter into agreements with other mutually agreeable insurers or other qualified entities to transfer their applicants and insureds under such plan to such insurers or other entities."

In order to implement N.J.S.A. 17:29D-1, as amended by the FAIR Act (N.J.S.A. 17:29D-1c) the Department of Insurance (Department) has proposed these new rules which set forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution servicing carrier (LAD servicing carrier), and for all insurers which seek to appoint a LAD servicing carrier pursuant to N.J.S.A. 17:29D-1c. A LAD servicing carrier under these rules is an insurer or other qualified entity with whom an insurer enters into a contract to perform certain duties of the insurer, including underwriting and claims processing, but who does not assume any of the risk of the insurer. Procedures and requirements governing the transfer of an insurer's applicants and insureds to other insurers, including the assumption of risk (to be known as a LAD carrier), shall be set forth in the plan of operation of the New Jersey Personal Automobile Insurance Plan developed and approved in accordance with Order No. A92-102 (as codified in proposed N.J.A.C. 11:3-2, published in the February 3, 1992 issue of the New Jersey Register).

The application requirements set forth in these proposed new rules will enable the Commissioner to review the financial condition and methods of operation of an applicant to ensure that the applicant is financially sound and that the applicant possesses the requisite knowledge and expertise to enable it to fulfill its obligations as a LAD servicing carrier. Upon a finding that the applicant has satisfied all of the requirements set forth in the rules, the Commissioner shall issue a Certificate of Registration (Certificate) which shall authorize the applicant to act as a LAD servicing carrier in this State. The proposed amendment to N.J.A.C. 11:1-32.4 also imposes fees for the issuance or renewal of a Certificate.

These proposed new rules also require that any actions by a LAD servicing carrier on behalf of an insurer be authorized by a written contract, and set forth specific provisions that the written contract between the insurer and its LAD servicing carrier must contain. These provisions delineate the respective duties of the parties, including, but not limited to, maintenance and accounting of premiums collected by the LAD servicing carrier on behalf of its insurer; withdrawal of premiums from any accounts by the LAD servicing carrier; and maintenance of books and records by the LAD servicing carrier of all transactions performed on behalf of the insurer. These proposed new rules further impose duties on an insurer which appoints a LAD servicing carrier. For example, an insurer which appoints a LAD servicing carrier must: (1) direct and pay for an independent financial audit of its LAD servicing carrier; (2) periodically conduct an on-site review of the LAD servicing carrier's underwriting and claims processing operations; and (3) obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses on business produced by its LAD servicing carrier. These requirements place an affirmative duty on the insurer which appoints the LAD servicing carrier to review the operations of its LAD servicing carrier, and to evaluate the financial impact of the LAD servicing carrier's actions on the insurer. This will enable both the insurer and the Department to ensure that the actions of the LAD servicing carrier are consistent with the terms of the written contract; that the LAD servicing carrier continues to possess requisite expertise to fulfill its obligations as a LAD servicing carrier; and that the actions of the LAD servicing carrier do not threaten the financial health of the insurer on whose behalf it is acting.

Since a LAD servicing carrier does not assume any risk of the insurer, there is concern that services provided may not be comparable to those provided by the insurer which is responsible for payments associated with the risks it insures. Accordingly, the Department has determined it appropriate to provide that the Department will, within two years of the effective date of the rules, review and reevaluate the feasibility and desirability of maintaining a LAD servicing carrier system as provided in these proposed rules.

In the interest of consistency and uniformity, N.J.A.C. 11:1-32, which sets forth fees for services provided by the Department, is amended at N.J.A.C. 11:1-32.4(b) to incorporate the \$1,000 application fee and \$250.00 renewal fee for a Certificate of Registration authorizing an insurer or other entity to act as a LAD servicing carrier in this State.

These proposed new rules thus provide a regulatory framework by which the Department may authorize an insurer or other entity to act as a LAD servicing carrier, and to regulate the actions of insurers which seek to appoint LAD servicing carriers. This, in turn, will benefit both insurers which seek to appoint a LAD servicing carrier and insureds.

Proposed N.J.A.C. 11:3-3.1 sets forth the purpose and scope of these proposed new rules.

Proposed N.J.A.C. 11:3-3.2 sets forth definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:3-3.3 provides the general requirements for persons seeking to act as a limited assignment distribution servicing carrier.

Proposed N.J.A.C. 11:3-3.4 sets forth the minimum provisions that any written contract between a limited assignment distribution servicing carrier and its insurer or insurers must contain.

Proposed N.J.A.C. 11:3-3.5 provides requirements for insurers which appoint limited assignment distribution servicing carriers.

Proposed N.J.A.C. 11:3-3.6 provides for the application of the rules to persons acting as LAD servicing carriers, and insurers utilizing LAD servicing carriers, prior to the effective date of the rules.

Proposed N.J.A.C. 11:3-3.7 sets forth the penalties for violations of this subchapter.

Social Impact

These proposed new rules provide a regulatory framework by which the Department may regulate LAD servicing carriers and insurers which appoint LAD servicing carriers. The proposed new rules will enable the Department to ensure that entities which seek to become a LAD servicing carrier possess the required expertise and financial resources to fulfill their obligations, and that insurers which appoint LAD servicing carriers adequately oversee their actions. This, in turn, should benefit both insurers and the public.

Economic Impact

Insurers and other entities which seek to become a LAD servicing carrier will be required to bear any costs associated with complying with the application requirements to obtain a Certificate of Registration, including the bond/deposit requirement and payment of the \$1,000 application fee and \$250.00 renewal fee. LAD servicing carriers and insurers which appoint LAD servicing carriers similarly will be required to bear any costs associated with complying with the contractual obligations imposed by these rules, as well as fulfilling the oversight responsibilities imposed on insurers with respect to the operations of LAD servicing carriers. The Department will be required to review all applications for Certificates of Registration, review proposed contracts between insurers and their LAD carriers to ensure that such contracts comply with the minimum requirements set forth in these rules, and oversee the actions of both insurers and LAD servicing carriers to ensure compliance with these rules.

Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules will apply to small businesses which are insurers and other entities which seek to become a LAD servicing carrier, insurers and other entities which are LAD servicing carriers, and insurers which appoint LAD servicing carriers. To the extent that the proposed new rules apply to small businesses, they will impose a greater economic burden on small businesses in that they will be required to devote proportionately more staff and financial resources to comply with the regulatory requirements set forth in these proposed new rules.

Both LAD servicing carriers and insurers seeking to utilize them will incur administrative costs in complying with these rules. Entities seeking to become LAD servicing carriers, and to continue as such, must pay application and renewal fees, submit a bond or deposit, and possibly obtain errors and omissions insurance. Annual financial statements audited by a certified public accountant and a plan of operation are required as part of the application process. The contract between the LAD servicing carrier and the insurer it will serve must be drawn up for review and approval by the Commissioner. Specific requirements of the contract include quarterly accounting to the insurer, fiduciary account recordkeeping and minimum retention requirements for all books and records relating to transactions for an insurer. Insurers utilizing a LAD servicing carrier are required to pay for an annual financial statement of such carrier audited by a certified public accountant, and to conduct at least semi-annual procedural review of certain LAD servicing carrier operations. Such an insurer must also obtain, annually, the opinion of an actuary attesting to the adequacy of loss reserves established by the LAD servicing carrier, if the LAD servicing carrier establishes such reserves. In meeting these requirements, the professional services of lawyers, certified public accountants and actuaries will be necessary.

The proposed new rules provide no different compliance requirements, as described in the Summary above, for small businesses. These proposed new rules provide a regulatory framework by which the Department may

ensure that persons seeking to become a LAD servicing carrier possess required expertise and financial resources sufficient to fulfill its contractual obligations. These proposed rules also impose specific duties upon insurers which appoint LAD servicing carriers to ensure that the insurer is apprised of its LAD servicing carrier's actions to enable both the Department and insurers to monitor the LAD servicing carrier's compliance with the terms of the written contract and these rules. The duties and obligations of LAD servicing carriers do not vary based on business size. In the interest of consistency and uniformity, and in the interest of protecting both insurers and their policyholders, these rules provide no differentiation in compliance requirements based on business size.

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

11:1-32.4 Fees; general

(a) (No change.)

(b) The following fees shall be paid for services provided by the Commissioner in addition to those set forth in (a) above as follows:

1.-11. (No change.)

12. Processing an application for the issuance of a Certificate of Registration pursuant to N.J.A.C. 11:3-3—\$1,000; processing an application of renewal of Certificate of Registration—\$250.00.

SUBCHAPTER 3. LIMITED ASSIGNMENT DISTRIBUTION SERVICING CARRIERS

11:3-3.1 Purpose and scope

(a) The purpose of this subchapter is to set forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution servicing carrier and all insurers which seek to appoint a limited assignment distribution servicing carrier as referenced in N.J.S.A. 17:29D-1c. A limited assignment distribution servicing carrier under these rules is a person with whom an insurer enters into a contract to perform certain duties of the insurer, such as underwriting and claims processing, but who does not assume any of the risk of the insurer.

(b) This subchapter applies to all insurers and other qualified entities which seek to become a limited assignment distribution servicing carrier and to all insurers which seek to appoint a limited assignment distribution servicing carrier.

(c) The Commissioner shall, within two years from the effective date of this subchapter, review and reevaluate the feasibility of maintaining the system established herein, and make any revisions that he or she may deem necessary.

11:3-3.2 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means an entity authorized to transact the business of property and casualty insurance in this State pursuant to N.J.S.A. 17:17-1 et seq., N.J.S.A. 17:32-1 et seq., or N.J.S.A. 17:50-1 et seq.

"LAD servicing carrier" means an insurer or other qualified entity registered as a limited assignment distribution servicing carrier in this State pursuant to this subchapter.

"Person" means any individual, insurer, corporation, association, organization, society, partnership, syndicate, trust, company or other legal entity.

11:3-3.3 General requirements; registration

(a) No person shall act as, offer to act as, or hold itself out to be a LAD servicing carrier in this State unless registered as a LAD servicing carrier pursuant to the subchapter.

(b) Persons, other than insurers licensed in this State, seeking to act as a LAD servicing carrier in this State shall make an application to the Commissioner for a Certificate of Registration. The application shall be on a form approved by the Commissioner and include or be accompanied by the following information and documents:

1. All basic organizational documents of the applicant, including articles of incorporation, articles of association, partnership agreements, trade name certificate, trust agreement, shareholder agreement, other applicable documents, and all amendments to such documents;

2. The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

3. The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of affairs of the applicant; including the following:

i. All members of the board of directors, board of trustees, executive committee or other governing board or committee;

ii. The principal officers, in the case of a corporation, or the partners or members, in the case of a partnership or association;

iii. Shareholders holding directly or indirectly 10 percent or more of the voting securities of the applicant; and

iv. Any other person who exercises control or influence over the affairs of the applicant;

4. Annual financial statements or reports for the two years immediately preceding the date of application audited by a certified public accountant, and such other information as the Commissioner may request in order to review the current financial condition of the applicant;

5. A plan of operation, including information on staffing levels and activities proposed in this State. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in various areas including, but not limited to, claims processing, recordkeeping, accounting, underwriting, customer service and producer relations;

6. A copy of the proposed contracts between the LAD servicing carrier and the insurer;

7. The application fee set forth in N.J.A.C. 11:1-32.4(b)12; and

8. Such other information as the Commissioner may request.

(c) An insurer licensed in this State which seeks to obtain a Certificate of Registration shall submit, in lieu of all of the requirements in (b) above, a plan of operation which contains the information set forth in (b)5 above, a copy of the proposed contract as set forth in (b)6 above, and the application fee as set forth in (b)7 above.

(d) Upon a finding that the applicant has satisfied all of the requirements set forth in (b) or (c) above, and that its proposed methods of operation are not such as would render its operation hazardous to the public or policyholders, the Commissioner shall issue a Certificate of Registration to the applicant which shall authorize the applicant to act as a LAD servicing carrier in this State. The Commissioner may refuse to issue a Certificate of Registration if he or she determines that the applicant, or any individual responsible for the conduct of affairs of the applicant, is not competent, trustworthy, financially sound or of good personal and business reputation, or in the case of an insurer, has had an insurance license denied or revoked for cause by any state.

(e) A Certificate of Registration issued pursuant to (d) above shall remain in effect from the date of issuance until June 30 immediately following, and shall be renewed each year prior to June 30, unless surrendered, suspended or revoked by the Commissioner, for so long as the LAD servicing carrier continues in business in this State and remains in compliance with this subchapter and any other applicable laws.

(f) A LAD servicing carrier seeking to renew its certificate shall submit the following information to the Department by June 1 of the year of the expiration of the certificate:

1. A financial statement for the year immediately preceding the date of expiration of the certificate;

2. Any other information that is substantially different from the information provided in the original application or from information provided in the last renewal period; and

3. The renewal fee set forth in N.J.A.C. 11:1-32.4(b)12.

(g) A LAD servicing carrier shall immediately notify the Commissioner of any material change in its ownership, control, plan of operation, contract with the insurer or other fact or circumstance affecting its qualification for a Certificate of Registration in this State.

(h) The Commissioner shall require a LAD servicing carrier to submit a bond or deposit in an amount not less than \$250,000, in a form acceptable to the Commissioner.

(i) The Commissioner may require the LAD servicing carrier to maintain an errors and omissions policy in a form and amount acceptable to the Commissioner.

11:3-3.4 LAD servicing carriers; contract provisions

(a) No entity shall act as a LAD carrier on behalf of an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1. All insurance charges or premiums collected by a LAD servicing carrier on behalf of an insurer or insurers, and the return of premiums received from that insurer or insurers, shall be immediately remitted to the person or persons entitled to them, or shall be deposited promptly in a fiduciary account established and maintained by the LAD servicing carrier in a Federally or state insured financial institution for each insurer with whom it has contracted. The written contract between the LAD servicing carrier and the insurer shall also provide for the LAD servicing carrier to render, at least quarterly, an accounting to the insurer detailing all transactions performed by the LAD servicing carrier pertaining to the business underwritten by the insurer;

2. If insurance charges or premiums are deposited in fiduciary accounts on behalf of or for one or more insurers, the LAD servicing carrier shall keep records clearly recording the deposits in, and withdrawals from, the separate account for each insurer. The LAD servicing carrier shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to such deposits and withdrawals;

3. The LAD servicing carrier shall not pay any claim by withdrawal from a fiduciary account in which premiums or insurance charges are deposited. Withdrawals from such account shall be made as provided in the contract between the LAD servicing carrier and the insurer. With respect to withdrawals from the fiduciary account, the contract shall address, but not be limited to, the following:

i. Remittance to the insurer for whom the fiduciary account is maintained;

ii. Deposit in an account maintained in the name of the insurer;

iii. Transfer to and deposit in a claims-paying account, with claims to be paid as provided in (a)4 below;

iv. Payment to the LAD servicing carrier of its commissions, fees or charges; and

v. Remittance of return premium to the person or persons entitled to such return premium;

4. All claims paid by the LAD servicing carrier from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of the insurer and as authorized by the insurer;

5. If the contract provides for contingency-based compensation of the LAD servicing carrier (for example, contingent upon savings effected in adjustment, settlement and payment of losses, or upon premiums or charges collected or number of claims paid or processed), the contract shall so specify. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modification of the compensation provision made as he or she shall deem necessary;

6. The LAD servicing carrier shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance recordkeeping and shall be maintained for a period of not less than the longer of either:

i. Five years from the date of their creation; or

ii. Until the filing of the next financial condition examination by the insurer's state of domicile;

7. The Commissioner shall have access to books and records maintained by a LAD servicing carrier for the purposes of examination, audit and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificateholders, shall be kept confidential, except that the Commissioner may use such information in any proceeding instituted by him or her against the LAD servicing carrier;

8. The insurer shall own the records generated by the LAD servicing carrier pertaining to the business of the insurer. The LAD servicing carrier shall nevertheless retain the right to continuing access to books and records to permit the LAD servicing carrier to fulfill all of its contractual obligations to insured parties, claimants, and the insurer;

9. In the event the insurer and the LAD servicing carrier cancel their agreement, notwithstanding the provisions of (a)7 above, the LAD servicing carrier may, by written agreement with the insurer, transfer all records to a new LAD servicing carrier rather than retain them for the time period set in (a)6i and ii above. In such cases, the new LAD servicing carrier shall acknowledge, in writing, that it is responsible for retaining the records of the prior LAD servicing carrier as required by (a)6 above;

10. The contract may not be assigned in whole or part by the LAD servicing carrier;

11. The contract shall specify the rates, rules, policy forms and underwriting guidelines of the insurer to be used by the LAD servicing carrier;

12. If the contract permits the LAD servicing carrier to settle claims on behalf of the insurer, the LAD servicing carrier shall comply with N.J.S.A. 17:29B-4(9), and any administrative rules promulgated by the Commissioner thereunder. In addition:

i. All claims shall be reported to the insurer in a timely manner; and

ii. A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim has the potential to exceed, or exceeds the limit set forth in the contract;

13. Where electronic claims files are in existence, the contract shall address the timely transmission of the data;

14. If the contract provides for a sharing of interim profits by the LAD servicing carrier, the contract shall specify the manner and the LAD servicing carrier's authority with respect to the determination of interim profits. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modifications made as he or she deems necessary;

15. The LAD servicing carrier shall not, without the prior approval of the insurer:

i. Pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which amount shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year; or

ii. Subcontract underwriting and claims processing; and

16. The LAD servicing carrier shall not assume any of the risk of the insurer.

11:3-3.5 Requirements for insurers appointing LAD servicing carriers

(a) The LAD servicing carrier shall retain on file an annual independent financial audit of a certified public accountant, directed and paid for either individually or jointly by all insurers with which it does business, in a form acceptable to the Commissioner.

(b) The insurer shall, at least semi-annually, conduct an on-site procedural review of the underwriting, financial and claims processing operations (including the establishment of any case basis reserves), of the LAD servicing carrier.

(c) If a LAD servicing carrier establishes loss reserves for an insurer, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the LAD servicing

carrier. Such loss reserve opinion shall be in the format of and otherwise satisfy all requirements of N.J.A.C. 11:1-21.

(d) Within 30 days of executing or terminating a contract with a LAD servicing carrier, the insurer shall provide written notification of such appointment or termination to the Commissioner. In the case of the appointment of a LAD servicing carrier, the insurer shall provide with such notification a copy of the contract, and shall provide a statement describing any differences between the contract entered into and the proposed contract submitted pursuant to N.J.A.C. 11:2-3.3. The appointment of the LAD servicing carrier shall take effect 60 days after written notification thereof is filed with the Department, unless disapproved by the Commissioner prior to that date. In the case of the termination of a LAD servicing carrier, the insurer shall provide a statement that sets forth the manner and methods by which it intends to service the business and perform the duties delegated to the LAD servicing carrier. Any agreement to terminate shall take effect 90 days after the date of the execution of the agreement.

(e) The acts of the LAD servicing carrier shall be considered the acts of the insurer on whose behalf it is acting. The Commissioner may examine a LAD servicing carrier as if it were the insurer. Pursuant to N.J.S.A. 17:23-4, expenses of examinations shall be borne by the insurer or insurers on whose behalf the LAD carrier is acting.

11:3-3.6 Application of rules to persons currently acting as LAD servicing carriers and insurers utilizing LAD servicing carriers

(a) Any person acting as a LAD servicing carrier and any insurer utilizing the services of a LAD servicing carrier prior to the effective date of this subchapter shall, within 30 days of the effective date of this subchapter:

1. Notify the Department in writing of the existence of such relationship; and

2. Certify that it intends to comply with the requirements of this subchapter within 90 days of the effective date of this subchapter.

(b) Any person acting as a LAD servicing carrier prior to the effective date of this subchapter may continue to act in such capacity provided the person satisfies the requirements set forth in (a) above.

11:3-3.7 Penalties

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

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices

Written Notice by Insurers of Payment of Third-Party Claims

Proposed New Rule: N.J.A.C. 11:2-17.11

Authorized By: Jasper J. Jackson, Acting Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq.,
17B:30-1 et seq.

Proposal Number: PRN 1992-84.

Submit comments by March 19, 1992 to:

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

The agency proposal follows:

Summary

This proposed new rule requires insurers, at the same time payment of a third-party claim is being made, to provide written notice of payment to the claimant. The purpose of this amendment is to ensure that third-party claimants are made aware that payment of their claim has been

made in order to deter those rare instances where the client's attorney or other representative would attempt to misappropriate these funds.

This proposed rule stems from a recent decision of the New Jersey Supreme Court striking down Opinion 635 of the Advisory Committee on Professional Ethics (ACPE) approving the use by attorneys of an Authorization to Endorse form. (See *In the Matter of Advisory Committee on Professional Ethics Opinion 635*, A-118/119, decided July 25, 1991). Such a form would permit attorneys to endorse settlement checks on behalf of their clients only after a settlement had been consummated, the release had been executed, and the client had signed the required closing statement. It was the court's opinion that such a procedure should be used only in certain extraordinary circumstances because the advantage gained in client convenience by using the form was outweighed by the risk of unscrupulous lawyers victimizing their clients.

Nevertheless, the court pointed out that the risks implicit in the use of such a procedure would be substantially reduced if a regulation were in place requiring the clients to be notified by their insurers when and for what amount a check had been issued. The court made reference to the success of such a regulation in effect in New York since 1988. Accordingly, this proposed rule addresses the court's concern that unscrupulous attorneys could successfully misrepresent to their clients whether and for what amount a check had been issued by an insurer in payment of a third-party claim.

The proposed rules are based on New York's regulation (N.Y. Comp. Codes R. & Regs., tit. xi, § 216.9 (1988)) requiring insurers to notify third party claimants when and in what amount any check of \$5,000 or more in payment of the claim has been issued to the claimant's attorney or other representative. The New York regulation further states that only the Insurance Department may initiate a cause of action against an insurer who violates the regulation, and that the regulation is not intended to establish a defense for any party to any cause of action resulting from a violation of the regulation.

The proposed rule at N.J.A.C. 11:2-17.11, like the New York regulation, requires an insurer to mail written notice to a third-party claimant when payment of the claim is made to the claimant's attorney or other representative. Unlike New York's regulation, the proposed rule requires that the insurer notify the claimant in all cases where the settlement check is \$1,000 or more. It is the Department's position that the potential misappropriation by an attorney of a client's \$1,000 claim settlement check is as serious a matter as the claimant's potential loss of a claim payment of \$5,000 or more. Moreover, it cannot be considered burdensome in either case for the insurer to mail notice of payment to the claimant. For these reasons, the proposed rule applies to all third-party claim settlement checks in an amount of at least \$1,000.

Social Impact

This proposed rule will have a favorable social impact on third-party claimants affected by the rule insofar as the rule will deter those rare instances where an attorney would attempt to misappropriate a client's third-party claim settlement check. It is less likely that an attorney would attempt to mislead a client concerning a claim settlement check when the attorney is fully aware that the client was notified by the insurer of payment of the claim.

Economic Impact

The proposed rules will have a minimal economic impact on those insurers making payment on third-party liability claims insofar as they will be required to mail written notice of payment to the third-party claimant. This requirement may cause the insurers to incur additional expenses in actually preparing the notices and the mailing costs. However, these costs would be so minimal so as to be insignificant. Moreover, these costs are far outweighed by the benefits the public will obtain (that is, protection against the possible misappropriation of client funds).

The proposed rule will have no economic impact on the Department.

Regulatory Flexibility Analysis

The proposed rules will affect certain insurers that are small businesses in that the rule requires all insurers making payment on third-party liability claims to mail written notice of payment to the third-party claimant. However, the cost of preparing and mailing such notice would be minimal. The rule requires only that very fundamental information be conveyed to third-party claimants in the notice, demanding that no additional significant amount of time be spent by the insurer's staff. No professional services are required. Additionally, the insurer would only incur regular mail costs to send the notices.

Full text of the proposed new rule follows:

11:2-17.11 Written notice by insurers of payment of third-party claims

(a) Upon payment of \$1,000 or more in settlement of any third-party liability claim, where the claimant is a natural person, the insurer or its representative (including the insurer's attorney) shall mail to the third-party claimant written notice of payment at the same time payment is made to the third-party claimant's attorney or other representative.

(b) The written notice referred to in (a) above shall be mailed to the claimant by regular mail at the claimant's last known address, and shall

include at least the following information:

1. The amount of the payment;
2. The party or parties to whom the check is made payable;
3. The party to whom the check was mailed; and
4. The address of the party to whom the check was mailed.

(c) Nothing in (a) above shall create, or be construed to create, a cause of action for any person or entity, other than the Department of Insurance, against the insurer or its representative based upon a failure to serve such notice, or the defective service of such notice. Nothing in (a) above shall establish, or be construed to establish, a defense for any party to any cause of action based upon a failure by the insurer or its representative to serve such notice, or the defective service or such notice.

Recodify existing 11:2-17.11 through 17.14 as 17.12 through 17.15 (No change in text.)

(a)

DIVISION OF ADMINISTRATION

Standards for Written Notice: Buyer's Guide and Coverage Selection Form

Proposed Amendments: N.J.A.C. 11:3-15.6, 15.7 and 15.9

Authorized By: Jasper J. Jackson, Acting Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, N.J.S.A. 17:1C-6e, N.J.S.A.
17:33B-34, N.J.S.A. 17:33B-44, N.J.S.A. 39:6A-4; N.J.S.A.
39:6A-10; and N.J.S.A. 39:6A-23.

Proposal Number: PRN 1992-85.

Submit comments by March 19, 1992 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

Summary

These proposed amendments make several changes in the automobile insurance Buyer's Guide and Coverage Selection Form set forth in N.J.A.C. 11:3-15.6 and 15.7 and in related rule N.J.A.C. 11:3-15.9. As discussed further below, these changes:

1. Require insurers to delete confusing references to "Additional PIP" in the Buyer's Guide and Coverage Selection Form when the insurer does not offer that coverage;

2. Include references and information in the Buyer's Guide concerning other new rules that provide for an insurance physical damage inspection, N.J.A.C. 11:3-36; and anti-theft and safety device discounts, N.J.A.C. 11:3-39; and

3. Make other minor technical changes to the Buyer's Guide to improve its clarity.

The Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (the FAIR Act) amended N.J.S.A. 39:6A-4 to limit the payment of personal injury protection (PIP) medical benefits to \$250,000. The FAIR Act also amended N.J.S.A. 39:6A-10 to provide that an insurer may, however, offer the option to purchase PIP medical expense coverage in excess of the \$250,000 limit (Additional PIP).

In practice, few insurers currently offer Additional PIP coverage. Many insurance companies which do not offer Additional PIP nevertheless reference it in their Buyer's Guide and Coverage Selection Form. These companies have apparently copied the Buyer's Guide and Coverage Selection Form verbatim from N.J.A.C. 11:3-15.6 and 15.7. The Department of Insurance (Department) has received complaints from various insureds who have opted for Additional PIP on their Coverage Selection Form, as discussed in the Buyer's Guide, only to discover that their insurance company does not offer it. Some insurers are not currently notifying insureds who have made this affirmative choice that no coverage exists. The Department believes that this is unfair to consumers who are led to believe that they have more coverage than they have actually purchased. These proposed amendments are intended to avoid the possibility of misleading a consumer as to the purchase of Additional PIP coverage. They will also eliminate the exposure of producers to an errors and omissions liability claim and the exposure of insurers to pay the additional benefits even though they do not offer them.

The Department proposes that N.J.A.C. 11:3-15.6 and 15.7 be amended to require those automobile insurers which do not offer this coverage to delete any reference to it from their Buyer's Guide and Coverage Selection Form. Currently, N.J.S.A. 11:3-15.6(c) provides "Insurance companies which do not offer all coverages described in the Buyer's Guide may delete those sections and shall indicate clearly that they do not offer those coverages." Proposed N.J.S.A. 11:3-15.6(c) requires that insurance companies which do not offer coverages described in the Buyer's Guide "shall" delete those coverages from the Buyer's Guide. Additionally, proposed N.J.A.C. 11:3-15.6(n) also requires that an insurance company which is not offering Additional PIP shall not include any reference to this optional coverage in its Buyer's Guide. Proposed N.J.A.C. 11:3-15.7(h) provides that those insurance companies which do not offer Additional PIP shall delete any reference to same from the Coverage Selection Form.

N.J.A.C. 11:3-15.9 provides the effective dates for all new policies, renewals and midterm policy changes regarding private passenger automobile insurance which are required to be made on the Coverage Selection Form. The rule currently requires that choices for new policies and midterm policy changes required to be made on the Coverage Selection Form are effective the day following the date of postmark, or when personal delivery is made and the postmark is illegible, the day following receipt of the Form by the insurance company or a producer with binding authority.

This provision of the rule has been the source of some confusion when N.J.A.C. 11:3-36, the Auto Physical Damage Inspection procedures, requires the automobile to be inspected prior to providing comprehensive and collision coverage. The use of the date following the postmark as an effective date for coverage will not allow the insured enough time to obtain an inspection of the automobile, which is required to effectuate physical damage coverage.

To avoid any misunderstanding of the effective dates of coverage in relation to choices made on the Coverage Selection Form by the insurer, producer or consumer, amendments are proposed to N.J.A.C. 11:3-15.9 to except situations when a physical damage inspection is required.

Additionally, it is desirable to amend the Buyer's Guide to provide information about the physical damage inspection requirements of N.J.S.A. 17:33B-34 and N.J.S.A. 17:33B-35, and to inform buyers about the availability of discounts for certain anti-theft and safety devices.

These proposed amendments provide several technical changes to the Buyer's Guide and Coverage Selection Form that are intended to improve accuracy and understanding.

In proposing these amendments, the Department notes that it will separately address in the near future the need for amendments to these rules concerning the marketing of private passenger automobile insurance as a commercial line.

Social Impact

These amended rules affect property-casualty insurers which write either personal automobile insurance, producers and consumers of this type of insurance.

The proposed amended rules will alleviate any misunderstanding by consumers who select Additional PIP when such coverage is not offered by their insurer. They will encourage consumers to shop for automobile insurance that will fulfill their needs and not leave them unexpectedly wanting for Additional PIP coverage if they suffer a catastrophic loss.

These proposed amended rules will minimize the time constraints created when a consumer is attempting to obtain or renew physical damage coverage for a private passenger automobile. They will also

render a degree of uniformity to the effective date of those coverage choices indicated by the purchaser of insurance on their Coverage Selection Form.

Economic Impact

The proposed amendment will impact insurers, producers and insureds.

Insurers must change their existing Buyer's Guides and Coverage Selection Forms. However, this will eliminate any liability which they have for misleading their insureds regarding Additional PIP and insulate producers from any errors and omissions liability. Insureds who desire to obtain the Additional PIP can take the steps necessary to obtain it from an insurer who offers such coverage.

Consumers will be better able to obtain or renew physical damage coverage without incurring a coverage lapse.

These amended rules will not significantly impact the Department.

Regulatory Flexibility Analysis

The proposed amended rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq. The proposed rules will apply to small businesses which are insurers of private passenger automobiles as defined in N.J.S.A. 39:6A-2(a). These insurers will be required to conform to the requirements of these amended rules regarding the publication of their New Jersey Automobile Buyer's Guide and Coverage Selection Form, and will incur attendant costs.

The proposed amendments provide no different compliance requirements based on business size. In the interest of consistency and uniformity in the dissemination of information to the insurance purchasing public, no differentiation in compliance requirements is provided based on business size.

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

11:3-15.6 Minimum standards for New Jersey Auto Insurance Buyer's Guide

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

(c) In preparing the Buyer's Guide, insurance companies shall use the text provided in this subchapter. Insurance companies which do not offer all the coverages described in the Buyer's Guide [may] **shall** delete those sections and shall indicate clearly that they do not offer those coverages. Insurance companies may add information to the Buyer's Guide provided that the additional information is consistent with the purpose of the written notice.

(d)-(m) (No change.)

(n) **An insurance company which does not offer additional medical expense benefits above limits of \$250,000 per person, per accident, shall not include any reference to this optional coverage in its Buyer's Guide, nor shall any reference be made to such coverage in its Coverage Selection Form.**

[(n)](o) The text of the New Jersey Auto Insurance Auto Buyer's Guide follows:

AGENCY NOTE: The text of the current Buyer's Guide is reproduced below with amendments indicated in boldface italics **thus**. For purposes of this publication in the New Jersey Register, those words appearing in the following new text in standard type boldface **thus** appear as they should in the actual Buyer's Guide, and do not signify proposed additions.

New Jersey Auto Insurance Buyer's Guide

This contains only general information and is not a legal document

Summary

There have been several important changes in New Jersey law that affect your insurance coverage.

The changes give New Jersey consumers additional rights.

For instance, if the insurance company you choose won't sell you auto insurance, the company has to tell you why, and, if you request it, the company has to respond in writing. If you're not satisfied, you can ask the New Jersey Department of Insurance for help. Under certain circumstances, you may also ask for a hearing. **Any consumer who believes his or her insurance company has improperly**

charged them for an at-fault accident can contact the Department, which will investigate the allegations.

The insurance agent or the insurance company also must tell you whether you qualify for auto insurance from one of its other insurance companies or affiliates. *Any insurance applicant with eight or fewer eligibility points can obtain coverage from the company to which they apply, providing they fulfill all other eligibility requirements.*

You also have the right to receive from your agent auto insurance premium rates from all the insurance companies he represents for which you qualify.

The law requires that you maintain auto liability coverage which, subject to the terms and limits of the policy, protects you in case you are sued, and pays for damages that you cause to someone else's property. **Please see page XX.**

You are also required to purchase personal injury protection which pays the auto accident-related medical bills of you and your family. **Please see page XX.**

[Effective immediately, you] You can choose whether your health insurance will pay first for injuries stemming from auto accidents (if you have health insurance which pays for such injuries), or whether you want your auto insurer to pay medical expenses first. You may save on your auto premiums by choosing the health insurance option. To find out more about this option, please see the section beginning on **page XX.**

Your medical benefits are [now] capped at \$250,000. That means your auto insurer can only pay up to \$250,000 per person, per accident. But, for an additional premium, you may be able purchase more coverage for yourself or your family.

You must also carry uninsured motorist coverage, which pays for damages caused by a driver who has no insurance. **Please see page XX.**

If you want additional coverage, you can buy collision or comprehensive which pay for damages to your own car or for auto theft. These will add to your total insurance cost. *In many cases, State law requires a special insurance inspection of a vehicle before this coverage takes effect.* You can save on your collision or comprehensive coverage by choosing higher deductibles. **Please see page XX.**

The law also allows you to choose whether you want an unlimited right to sue for auto-related damages—the "no threshold" option—or to save money by limiting your right to sue for serious injuries only—the "lawsuit threshold" option (also known as the "verbal threshold"). **Please see page XX.**

The Buyer's Guide will explain each of these terms. It will help you fill out the Coverage Selection Form. You can also learn how to get a comparison of premiums for all auto insurers (**page XX**).

Explanation of Coverages

Your auto insurance policy is actually several kinds of policies, or coverages, rolled into one.

For each coverage, you are charged a separate price which is known as the premium.

You pay only one price for auto insurance, but that price is determined by adding the premiums for all the coverages you buy.

Use your Coverage Selection Form to indicate what coverages you will buy in accordance with New Jersey law.

The coverages are:

**LIABILITY
PERSONAL INJURY PROTECTION
UNINSURED/UNDERINSURED MOTORIST
COLLISION
COMPREHENSIVE**

Use these explanations to help you complete the Coverage Selection Form.

Liability Coverage (Required by Law)

Item 1 on the Coverage Selection Form

Liability coverage pays for injuries to other people or damages to their property if you are legally responsible for their losses. The company will pay damages only up to the amount of coverage you have chosen.

There are two kinds of liability coverage:

Bodily injury coverage involves cases in which another person is hurt or dies as a result of an auto accident. If you are legally responsible, it will compensate for pain, suffering or other personal hardships, and will also pay for some economic damages such as lost wages.

Property damage coverage will reimburse other people if you are legally liable for damage to their belongings as a result of an auto accident.

If a liability claim is filed against you, your insurance company will investigate the claim and will decide whether it should be paid, negotiated, or defended in court. Your insurance company will pay the legal bills.

Under state law, you must buy coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Some companies sell a combined single limit which must be at least \$35,000 per accident.

Higher limits of liability coverage are available at relatively low cost.

If you cause an accident and don't have enough insurance to cover your legal responsibilities, you then are personally responsible and could lose some of your assets or spend years paying this debt.

COST SAVER: Lawsuit Threshold (Verbal Threshold) Item 2 on the Coverage Selection Form

In order to hold down insurance premiums, New Jersey motorists may choose to limit when they may sue for non-economic loss which means pain, suffering and inconvenience resulting from an auto accident.

The "Lawsuit Threshold" option, also known as the "Verbal Threshold," uses words, rather than a dollar amount of medical bills, to describe when a suit may be filed. If you select this limitation, then you, your spouse and children living with you who are not covered by name by another auto insurance policy will not be able to sue unless the injury sustained appears on this list:

- "death;
- dismemberment;
- significant disfigurement;
- a fracture;
- loss of a fetus;
- permanent loss of use of a body organ, member, function or system;
- permanent consequential limitation of use of a body organ or member;
- significant limitation of use of a body function or system; or
- a medically determined injury or impairment of a non-permanent nature which prevents the injured person from performing substantially all of the material acts which constitute that person's usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence of the injury or impairment." (N.J.S.A. 39:6A-8, effective January 1, 1989)

You can reject this threshold and retain the right to sue for any auto-related injury. This option, called "No Threshold," will increase the price of your insurance policy.

Under state law, you must choose either the Lawsuit Threshold or the No Threshold option. The same choice should be made under all policies that you have. **If you do not choose one of these options, you are considered by law to have selected the Lawsuit Threshold option.**

Personal Injury Protection (PIP) (Required by Law)

Item 3 on the Coverage Selection Form

New Jersey law requires Personal Injury Protection, sometimes called PIP or no-fault coverage, which pays all reasonable medical bills up to a maximum of \$250,000 per person, per accident regardless of who caused an auto accident.

However, you may also have the option to select your health insurer or health maintenance organization to pay your auto accident no-fault claims.

Basic PIP Coverage provides:

[In addition to paying medical bills, the Basic PIP Coverage provides these benefits:]

- **Medical Expenses:** *Payment of reasonable and necessary medical expenses within certain limits set by state law—a \$250 deductible for each accident, only 80 percent reimbursement for the expenses from \$251 through \$5,000 for each accident, and a maximum benefit of \$250,000 per person per accident.*

- **Income Contribution:** If you can't work because of an auto accident injury, you can collect up to \$100 a week [for one year] up to a total limit of \$5,200 for lost wages.

- **Essential Services:** You can collect as much as \$12 a day [for one year] up to a total limit of \$4,380 to pay someone to do necessary services that you normally do yourself, such as cleaning your house, mowing your lawn, shoveling snow or doing laundry.

- **Death Benefit:** If you die from auto accident injuries, your family or estate will receive any benefits you haven't already collected under the income continuation and essential services coverages.

- **Funeral Expense Benefit:** In addition to the death benefit, reasonable funeral expenses are covered up to \$1,000.

COST SAVER: PIP Medical Expenses Only Coverage

If you wish, you can buy PIP medical coverage without any income continuation, essential services, death benefits and funeral expense benefits. This is called PIP Medical Expenses Only.

You might want this cost-saving option if you and relatives who live with you wouldn't lose income if any of you were disabled by an auto accident. For example, this option should be considered if your sources of income are pensions, Social Security or investments which would continue regardless of an auto accident, and if someone is always available to care for your personal needs, and if your funeral expenses are covered in some other way.

But the option is a package deal. Either you keep all four of these non-medical expense PIP benefits, or you drop them all. You can't pick and choose.

Additional PIP Coverage

On the other hand, you and relatives who live with you and who do not have their own auto insurance policies might want higher benefits. You can purchase higher benefits for income protection and essential services, *funeral expenses* and higher death benefits, than the amounts provided in the basic PIP plan.

Additional Medical Expense Coverage

Your auto insurance company may also offer additional medical expense benefits above limits of \$250,000 per person, per accident.

If you buy additional benefits, the price of your insurance will be higher.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

Personal Injury Protection (PIP)

Health Insurance Option (Cost Saving Option)

Item 4 on Coverage Selection Form

Most New Jersey residents [now] have the option of selecting their health coverage provider, rather than their auto insurance company, to pay for their no-fault medical expense claims. A health coverage provider may be an insurance company, an HMO or some other type of benefit plan provided by your employer.

Medicare and Medicaid will NOT provide primary coverage. If your health benefits are provided by either Medicare or Medicaid, you cannot choose this option.

If you select your health coverage provider to be the primary payer of auto no-fault claims, you may save on your auto premium. **Before selecting this option, however, check to make sure that your health coverage provider will pay for auto accident injury treatment expenses.** If your employer supplies your health coverage, your company should be able to give you this information; otherwise, check with your health coverage provider directly.

Deductibles and co-pays of your health policy or plan will still apply. And coverage limits of your health policy or plan will be in effect.

Most HMOs offer unlimited coverage. Most other health coverage providers offer lifetime benefit limits of \$1 million.

That means the health coverage provider will pay all eligible health claims, as long as they do not total more than \$1 million during your lifetime. **Be sure to ask your health coverage provider what limits apply under your policy or plan.**

Your health policy or plan may not cover all procedures or treatments. Exclusions listed in your policy or plan will apply. But your auto insurer should pay for necessary expenses not covered by your health policy or plan.

If you choose your health coverage provider to be responsible for paying auto accident-related medical bills, you must provide the name of your health coverage provider and the policy, plan, membership or group certificate number on the Coverage Selection Form. You must also maintain your health coverage.

If you are in an accident and your *health* coverage is no longer in effect, your auto insurer must pay PIP medical benefits. However, you will be required to pay a \$750 additional deductible.

PIP Medical Expenses Deductible

Auto Insurer Option

Item 5 on Coverage Selection Form

This option involves only the medical bills paid by PIP, not the income continuation, essential services, death benefits or funeral expense benefits, which will be paid under Basic PIP coverage regardless of whether you select your health insurer or auto insurer to be the primary payer of your auto-accident related medical bills.

Under New Jersey law, unless you choose your health insurer to pay your auto-accident related medical bills, your auto insurance policy will cover your *reasonable and necessary* medical bills up to a maximum of \$250,000 per person, per accident, if you are injured in an auto accident.

However, for the first \$5,000 of medical bills per accident, your auto policy will pay only part of the cost of your treatment or the treatment of others covered by your policy. There is a \$250 deductible, meaning the first \$250 will not be covered. The deductible applies only once per accident regardless of the number of people injured.

There is also a 20 percent co-payment which means that for the bills from \$251 to \$5,000, the policy will pay only 80 percent. Medical bills above \$5,000 are paid in full by the policy.

You can choose a \$250 deductible, a \$500 deductible, a \$1,000 deductible or a \$2,500 deductible. A way to lower the price of your auto insurance is to have a larger PIP deductible. The 20 percent co-payment still applies to expenses between the deductible chosen and \$5,000.

You should consider the \$2,500 PIP deductible if you are already covered by a health insurance policy or a health maintenance organization (HMO). In most cases, those plans will pay part of the medical bills which auto insurance won't pay.

Before taking this option, ask your health insurance company or HMO two things:

- Will your health policy or HMO cover auto-related medical bills not paid by auto insurance? The Department of Insurance requires that health insurance sold in New Jersey cover treatment for auto-related injuries the same as other injuries. But your policy may not follow this rule because you may be covered by a health insurance group sold out of state or an employer self-insurance plan. Find out.

- What are your health policy's or HMO's own deductible, co-payments and exclusions? Find out what your health plan covers. For instance, it may cover only hospitalization but not doctor visits. Also, your health insurance or HMO has its own rules regarding what you pay out of your pocket for medical treatment. Those rules will apply if you use your health plan to cover the [\$2,500] PIP deductible.

Uninsured Motorist Coverage (Required by Law)

Item 6 on the Coverage Selection Form

Despite New Jersey law, which requires auto insurance, many cars are not covered by insurance. Some motorists break the law. Many other motorists are residents of other states which don't require auto insurance by law.

Because these motorists can cause accidents, you are required to buy uninsured motorist coverage. This coverage does not benefit the uninsured driver. It will provide benefits to you, your passengers or relatives living with you if a motorist without insurance is legally liable for injuries to these persons or for damage to your car or its contents.

There are other motorists who have auto insurance coverage but with very low limits. When you buy uninsured motorist coverage, you are also provided coverage to protect you from those motorists who are underinsured. If you are in an accident caused by such a motorist, underinsured motorist coverage will pay damages up to the difference between your underinsured motorist coverage limit and the other driver's liability coverage limit.

You must by law purchase uninsured motorist coverage which will pay, for each accident, at least the following amounts:

- \$15,000 for any one person's injuries;
- \$30,000 when more than one person is injured;
- \$ 5,000 for property damage.

Many companies sell a combined single limit which must be at least \$35,000. The property damage coverage has a basic \$500 deductible, which means you pay the first \$500 of a claim under that coverage.

You can buy higher uninsured/underinsured motorist coverage limits, but only as high as the liability coverages you have purchased. Most companies sell up to \$250,000/\$500,000/\$100,000 coverage or a combined single limit of \$500,000.

Collision and Comprehensive Coverages (Optional)

Items 7 and 8 on Coverage Selection Form

Collision coverage and comprehensive (also known as "other than collision") coverage pay for damage to your car. These coverages will pay to repair your car or pay for its value at the time of the loss if it is stolen or declared a total loss.

These coverages are **not** required by law. But, if you borrowed money to buy your car or if you are leasing the car, the lender or lessor may require you to buy these coverages. Note that some companies will provide collision coverage only if you buy comprehensive coverage too. Contact your company for details.

Collision pays for damage to your car caused by your car hitting things like other cars, trees or telephone poles, or for the car overturning, or for other moving objects hitting your car.

Comprehensive insurance pays for nearly every other kind of damage to your car, such as fire, theft, flood, vandalism, or contact with a bird or animal.

In order to obtain collision or comprehensive coverage for a newly insured vehicle, you must notify your auto insurance company immediately. Under a new State law, in most cases, collision or comprehensive coverage cannot be provided on a newly acquired vehicle until the auto insurance company is notified. Also, many such vehicles must be inspected for insurance purposes before coverage can be provided. See the section entitled "Mandatory Insurance Inspection" for more details.

COST SAVER: No Collision or No Comprehensive

If your car is older and is paid for, consider eliminating collision or comprehensive coverage, or both. This decision will reduce your premium.

To make the decision, consider what you will pay for these coverages versus the possible benefit if you file a claim.

Collision and comprehensive coverage will reimburse you only up to the actual cash value of your car. The insurance payment probably will be less than the actual cash value because of deductibles.

COST SAVER: Collision and Comprehensive Deductibles

If you decide that you need collision or comprehensive coverage or both, a significant way to hold down the price of your insurance policy is to select higher deductibles.

If you file a claim, a deductible is the amount of money you will pay before the insurance company starts paying. Deductibles are a way of reducing insurance company costs, and thereby lowering the price of your insurance policy.

The standard deductible for auto insurance in New Jersey is \$500. You still have the right to buy collision or comprehensive coverage with higher or lower deductibles. The lower the deductible, the higher the price of your insurance policy.

MANDATORY INSURANCE INSPECTION

For Newly Insured Vehicles

Under the new State law, many vehicles to be insured for collision or comprehensive (also known as "other than collision") coverage must first be inspected for insurance purposes. The law is intended to reduce insurance fraud by documenting the condition of newly insured private passenger automobiles.

Whenever you acquire a vehicle and desire collision or comprehensive coverage on it, the most important thing to do is to notify your auto insurance company immediately. They will tell you everything necessary to comply with the law and obtain the coverage you desire.

Until you notify your auto insurance company the vehicle may not be covered for collision or comprehensive.

It is important to understand that the Mandatory Insurance Inspection is in addition to the Motor Vehicle Inspection program conducted by the State of New Jersey. Two separate inspections take place.

In many cases, an insurance inspection may not be necessary. The law says that insurance inspections may be waived for vehicles which are older than seven model years. The law also says that an insurance inspection may not be necessary for a "new automobile" purchased from a franchised dealer if you submit an invoice documenting your purchase. If your auto insurance policy has been in effect for four years or longer, an inspection may not be required by law. Your auto insurance company will explain when you call.

Otherwise, an inspection is required for newly insured vehicles. If your vehicle must be inspected, your auto insurance company can provide temporary coverage for only seven days after the day you notify them about the vehicle.

The only way to make sure that you meet the State requirements and receive the coverage you want is to call your auto insurance company before or as soon as any change of a vehicle occurs.

Anti-Theft Device Discount—Your auto insurance company encourages the use of anti-theft and vehicle recovery devices as another means to reduce losses. The following types of devices are among those which may qualify for a reduction in the Comprehensive premium:

1. Alarm System;
2. Fuel Cut-Off;
3. Hydraulic Brake Lock;
4. Ignition or Starter Cut-Off;
5. Steering Wheel Collar;
6. Transmitter which enables the location of the vehicle to be traced;

or

7. Window Etching Vehicle Identification System.

Other types may also qualify.

If your auto is equipped with an anti-theft or vehicle recovery device, contact your auto insurance company for more details and an Anti-Theft Questionnaire.

Safety Feature Discount—Your auto insurance company encourages the use of safety features as another means to reduce losses. The following types of safety features are among those which may qualify for a reduction in the Collision premium.

1. Anti-Lock Braking System;
 2. Traction Control Systems;
 3. Five mile per hour bumpers;
- Other types may also qualify.*

If your auto is equipped with a safety feature, contact your auto insurance company for more details.

Price Comparison

If you would like a copy of the annual auto insurance premium comparison published by the New Jersey Department of Insurance, please send a stamped, self-addressed envelope to:

**Auto Comparison
Division of Public Affairs
NJ Department of Insurance
CN 325**

Trenton, NJ 08625-0325

Recodify existing (o)-(r) as (p)-(s) (No change in text.)

11:3-15.7 Minimum standards for Coverage Selection Form

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

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name: _____

For new policies, you must choose one option for each item below. For changes upon renewal and mid-term policy changes, you must use this Form when you:

(a) elect the "No Threshold" option;

(b) change from the "No Threshold" option to the "Lawsuit Threshold" option;

(c) desire collision or comprehensive deductibles other than \$500;

(d) desire to change to the \$500 deductible for collision or comprehensive coverage;

(e) desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills; or

(f) desire your auto insurance carrier to be the primary insurer for your auto accident-related medical bills.

The following item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

- ☐ _____
☐ _____
☐ _____
☐ _____

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. My bodily injury liability premium will be ___ % to ___ % higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be \$___ to \$___ higher on each _____ renewal of my policy if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contract my insurance company or my insurance producer i.e., agent or broker) for specific details.

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual.")

(Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage which includes income continuation, essential services, death benefits and funeral expense benefits as well as medical expense benefits, or

☐ PIP Medical Expenses Only Coverage, for a ___ % to ___ % savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.);

☐ Additional PIP Coverage at an extra cost. Note: This option is not available if you have selected PIP Medical Expenses Only coverage. Contact your insurance company or insurance producer (i.e., agent or broker) for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.)

☐ Additional Medical Expense Coverage.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

4. PIP Health Insurance Option. Choose if you want your health insurer, other than Medicare or Medicaid, to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible and request an answer in writing. To choose this option, health coverage must cover the named insured and members of his family residing in the household.

☐ Yes, I choose the PIP health insurer option.

(NOTE: Your auto insurance company may invalidate this option selection and request payment of the discounted premium amount if it checks but cannot verify that (1) your health coverage is in effect, and (2) your health insurer will provide primary coverage for your auto accident-related medical expenses.

The name of my health insurer(s) is (are):

1. _____

Number: _____

Policy, Plan, Membership or Group
Certificate Number (circle one)

2. _____

Number: _____

Policy, Plan, Membership or Group
Certificate Number (circle one)

☐ No, I do not want the PIP health insurer option.

5. PIP Medical Expenses Deductible. Choose only one:

☐ \$250 deductible, minimum required by law.

☐ \$500 deductible, for a ___ % to ___ % reduction in the premium.

☐ \$1,000 deductible, for a ___ % to ___ % reduction in the premium.

☐ \$2,500 deductible, for a ___ % to ___ % reduction in the premium.

6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself? Your auto insurance company must offer this coverage up to the bodily injury and property damage liability limits you have selected.

- ☐ _____
☐ _____
☐ _____
☐ _____

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

7. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic \$500 deductible.

☐ Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000.

This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(WARNING: YOU MAY NOT ADD COLLISION COVERAGE TO AN EXISTING VEHICLE OR ADD AN ADDITIONAL VEHICLE TO YOUR EXISTING POLICY WITHOUT HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic \$500 deductible.

☐ Yes, with the deductible circled here: \$1,000, \$1,500 or \$2,000. This premium will be proportionately less than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: \$50, \$100, \$150, \$200 or \$250. This premium will be proportionately more than the premium with the basic \$500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the \$200 deductible or \$250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

(WARNING: YOU MAY NOT ADD COMPREHENSIVE COVERAGE TO AN EXISTING VEHICLE OR ADD AN ADDITIONAL VEHICLE TO YOUR EXISTING POLICY WITHOUT HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

I have read the Buyer's Guide outlining the coverage options available to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer (i.e., agent or broker) with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that:

(a) if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option;

(b) if I carry collision or comprehensive coverage without making a written choice for Item 7 or Item 8, I will receive the \$500 deductible; and

(c) if I do not make a written choice for the PIP health insurer option in Item 4, my auto insurer will be the primary health insurer for PIP medical expense benefits.

I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except when changes are required by a law becoming effective during the term of my previous policy.

I understand that these choices take effect in the following manner:

(1) for new policies and mid-term policy changes, the choices on this Form are effective the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following receipt of this Form by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority; and

(2) for changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority prior to the renewal date.

SIGNATURE _____ DATE _____

(i)-(k) (No change.)

11:3-15.9 Use of Coverage Selection Form

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

(c) The coverage changes in (b)1i through vi above shall become effective in the following manner, except when coverage for comprehensive or collision is effected by a required inspection pursuant to N.J.A.C. 11:3-36:

1.-2. (No change.)

(a)

DIVISION OF PROPERTY AND CASUALTY

Reporting Financial Disclosure and Excess Profits

Proposed Repeal and New Rule: N.J.A.C. 11:3-20—

Appendix

Proposed Amendment: N.J.A.C. 11:3-20.5

Authorized By: Jasper J. Jackson, Acting Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:29A-5.6 et seq.,
17:30A-16 and 17:33B-56.

Proposal Number: PRN 1992-86.

Submit comments by: March 19, 1992 to:

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

Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17:29A-5.6 et seq. (effective September 8, 1988) requires insurers authorized to transact private passenger automobile insurance in this State to file an Excess Profits Report on or before July 1 of each year. N.J.A.C. 11:3-20 was adopted and became effective on May 15, 1989, and provides the procedures and forms for the filing of the Excess Profits Reports. The rules were subsequently amended effective September 17, 1990 (see 22 N.J.R. 1025(a) and 22 N.J.R. 2969(c)), and January 7, 1991 (see 22 N.J.R. 2082(b) and 23 N.J.R. 106(a)).

The Department of Insurance ("Department") has had three years' experience with the current excess profits rules and reporting forms. Upon review and reevaluation of the current rules and procedures, the Department has determined that changes are necessary and appropriate to more accurately reflect whether an insurer is required to refund excess profits consistent with N.J.S.A. 17:29A-5.6 et seq. Accordingly, the Department proposes to repeal the existing Appendix which contains the reporting forms for purposes of filing an Excess Profits Report, and to propose replacement exhibits. The new exhibits essentially retain the current reporting format with the following changes: (1) revise the calculation of actual investment income (Exhibit Eight—Part One-A); (2) require the separate reporting of loss data for property damage liability, and combine the reporting of loss data for uninsured/underinsured motorist coverage with bodily injury liability coverage (Exhibits One through Ten); (3) eliminate the UCJF premium offset as developed in Exhibit 12, and utilize an alternative determination of the UCJF assessment for excess profits reporting purposes; and (4) adjust the dates on all of the exhibits to reflect the Excess Profits Report filed July 1, 1991. In addition, the Department proposes to amend N.J.A.C. 11:3-20.5 to specifically provide that assessments and surtaxes paid by insurers pursuant to N.J.S.A. 17:30A-8a(9) and 17:33B-49 may not be included as expenses in the Excess Profits Report, thereby codifying this requirement previously provided in Bulletin No. 91-8.

The calculation of actual investment income has a substantial impact on the determination whether an insurer is required to refund excess profits in accordance with N.J.S.A. 17:29A-5.6 et seq. Currently, the Department considers only the investments of an insurer in corporate or industrial bonds. As a result of recent litigation, the Department has been directed to reevaluate and revise this current practice to more accurately reflect an insurer's actual investment income. "Actual investment income" is defined in N.J.S.A. 17:29A-5.6a to mean that portion of income generated by investment of policy-holder-supplied funds. The New Jersey Superior Court, Appellate Division recently interpreted this provision as requiring a methodology which would "reflect as clearly as

possible, the investment income actually generated by policyholder-supplied funds invested during the relevant period." *In the Matter of Adoption of N.J.A.C. 11:3-20.1 et seq. and N.J.A.C. 11:3-20A.1*, Dkt. Nos. A-5312-88T1, A-5315-88T1, and A-1401-89T10 (July 25, 1991). The Court recognized that the relevant period is the three calendar-accident years immediately preceding the date the Excess Profits Report is due.

Policyholder-supplied funds are the premiums paid by insureds. Insurers, however, do not separately identify policyholder-supplied funds from funds obtained through other sources (for example, shareholder-supplied funds) in their investment accounts. It is therefore necessary to provide procedures to determine the rate of return through the investment of policyholder-supplied funds during the relevant period only. Proposed Exhibit Eight—Part One-A provides that the income generated by policyholder-supplied funds shall be derived from an insurer's net investment income as reported in the statutory annual statement. The method of calculation of investment yield from the investment of policyholder-supplied funds in the Exhibit, which excludes capital gains or losses and investments in stocks, is consistent with the calculation of investment income in the Insurance Expense Exhibit. The insurer's investment earnings for investments made during the relevant period as reported in the statutory annual statement is considered, excluding capital gains or losses and investments in stocks.

It is appropriate to exclude capital gains or losses and income from investments in stocks in determining the income generated from policyholder-supplied funds because policyholder-supplied funds are generally held by the insurer to pay claims; prudent insurers therefore invest policyholder-supplied funds in investments which provide the liquidity necessary to pay claims when due. Capital gains or losses and income from investment in stocks, however, may result from short-term fluctuations in the investment market. Further, an insured pays the premium for private passenger automobile insurance to receive coverage for potential losses which are covered, not to speculate in the investment market. The Department therefore believes that insureds should not bear the risk of capital losses nor receive any benefit of capital gains.

The proposed exhibits are further changed to require the separate reporting of loss data for property damage liability and to combine the reporting of data for uninsured/underinsured motorist coverage with that for bodily injury liability. Currently, property damage liability and uninsured/underinsured motorist coverage are combined and reported as "other liability." The Department has determined through experience that loss data for uninsured/underinsured motorist coverage develops over a period of time more like the period of time over which loss data for bodily injury liability develops. The Department believes, therefore, that it is appropriate to require that loss data for property damage liability be reported separately, and that loss data for uninsured/underinsured motorist coverages be reported combined with the loss data for bodily injury liability. The exhibits are thus revised to provide that claim data for property damage liability will be developed to ultimate up to 51 months, and claim data for uninsured/underinsured motorist coverage will be developed to ultimate based on incurred development through 87 months, as is bodily injury liability.

The reporting requirements are further changed to eliminate the reporting of data for the Unsatisfied Claim and Judgment Fund (UCJF) offset in Exhibit 12. This exhibit provided an offset to premium for the reserving of two future UCJF assessments for the two years immediately preceding the date of the Excess Profits Report. The Department believes that considering only the actual UCJF assessment paid by an insurer for each year reported in the Excess Profits Report more accurately reflects an insurer's financial condition for the years on which excess profits are determined, and is consistent with the legislative intent of providing reimbursement of medical expenses to insurers by the UCJF.

Pursuant to N.J.S.A. 39:6A-4, medical expense benefits paid by an insurer in accordance with the statute, which are in excess of \$75,000, are reimbursed to the insurer by the UCJF in accordance with N.J.S.A. 39:6-73.1. A goal of the reimbursement by the UCJF was to eliminate the need for reserving for large claims and the corresponding impact on rates. As noted by the Assembly Commerce, Banking and Insurance Committee in its Statement to Senate Bill No. 1380, P.L. 1977, c.310: "At present, when an insurer receives . . . a potentially large claim, it sets aside a considerable sum of money as a reserve for such loss. This, in turn, is taken into consideration for the rate making purpose even though the money has not actually been paid out. This legislation would eliminate this distortion by eliminating the need for the larger reserve." Consistent with the intent of the Legislature, the Department considers

only the actual UCJF assessment paid by the insurer in reviewing and approving requested rates for private passenger automobile insurance.

The determination of excess profits is related to the rates charged for private passenger automobile insurance. The Excess Profits Report is utilized to determine whether an insurer's rates are excessive for the years reported in the Excess Profits Report, in accordance with the standard set forth in N.J.S.A. 17:29A-5.8. The Department therefore believes that it is reasonable and appropriate to consider only the actual UCJF assessment paid by the insurer for the purpose of determining whether excess profits exist, as is the case in reviewing and approving requested private passenger automobile insurance rates.

The Department has therefore revised the Excess Profit Report to consider only the actual assessment paid by the insurer for each year reported in the Excess Profits Report, as reported in Exhibit One. The Department believes that this will more accurately reflect an insurer's condition for the three years on which excess profits are determined.

Further, as a result of recent litigation regarding the calculation of actual investment income, the Department intends to require insurers either to refile the 1991 Excess Profits Report, or to submit a letter waiving this option. In order to reduce the likelihood of confusion regarding the refiling of the 1991 Report, the dates on all the exhibits are adjusted to reflect the Excess Profits Report due July 1, 1991. It must be noted, however, that insurers will be required to adjust the dates on the exhibits as appropriate for excess profits reports due in later years.

Finally, the Department proposes to amend N.J.A.C. 11:3-20.5 to provide that assessments paid by insurers to the New Jersey Property-Liability Insurance Guaranty Association (PLIGA) pursuant to N.J.S.A. 17:30A-8a(9), and surtaxes paid by insurers pursuant to N.J.S.A. 17:33b-49 may not be included as expenses in the Excess Profits Report, which will codify existing procedures set forth in Bulletin No. 91-8. N.J.S.A. 17:30A-8a(9) requires the PLIGA to assess member insurers in amounts necessary to make loans in the amount of \$160 million per calendar year to the New Jersey Automobile Insurance Guaranty Fund established pursuant to N.J.S.A. 17:33B-5, in order to pay claims and other obligations of the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA). N.J.S.A. 17:30A-16 provides that member insurers may not impose a surcharge on the premiums of any policy to recoup those assessments.

In addition, N.J.S.A. 17:33B-49 requires that insurers pay an annual surtax on all taxable premiums collected in this State for contracts of automobile insurance, except those collected by the NJAFIUA, or the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11. N.J.S.A. 17:33B-51 directs the Commissioner of Insurance to take necessary steps to ensure that policyholders shall not pay the surtax.

In accordance with these statutory provisions, the Department adopted rules that generally prohibit insurers from including the assessment and surtax as expenses in requested private passenger automobile insurance rates (see N.J.A.C. 11:3-16). The determination of excess profits involves a retrospective review of an insurer's rates for private passenger automobile insurance for the immediately preceding three years. The data in the Excess Profits Report therefore must reflect the insurer's condition for the relevant period. Including assessments and surtaxes in the Excess Profits Report which were not reflected in the insurer's approved private passenger automobile insurance rates for the relevant period will distort the insurer's excess profits results. Further, including assessments and surtaxes as expenses, which were not reflected in the insurer's approved rates pursuant to N.J.A.C. 11:3-16.11, could result in policyholders indirectly paying the assessment or surtax through a reduction or elimination of the return of excess profits which otherwise would have been returned, in contravention of N.J.S.A. 17:30A-16 and 17:33B-51. The Department therefore believes it appropriate to provide that insurers may not include those assessments and surtaxes as expenses for purposes of the excess profits calculation.

Social Impact

The Department believes that the exhibits in the proposed new Appendix will benefit insurers required to file Excess Profits Reports by providing more appropriate procedures for the determination of income generated by policyholder-supplied funds, and through the separate reporting of loss data for property damage liability and uninsured/underinsured motorist coverages, the alternative method of considering UCJF assessments, and the exclusion of assessments and surtaxes not otherwise reflected in approved private passenger automobile insurance rates. The Department believes that these changes should more accurately reflect the insurer's actual condition and thus enable the Department

to more accurately determine whether excess profits exist under N.J.S.A. 17:29A-5.6 et seq. The adjustment in the dates of the Excess Profits Reporting filing forms should similarly benefit insurers filing the reports by reducing any confusion regarding the data to be submitted.

Economic Impact

The proposed change to the determination of income generated by investment of policyholder-supplied funds should benefit insurers as this more accurately reflects an insurer's current income based on its investment portfolio for the determination of excess profits.

The requirement that insurers separately report data for property damage liability and uninsured/underinsured motorist coverages should similarly benefit insurers as loss data for these two coverages develops differently. Reporting the data for property damage separately more accurately reflects the insurer's actual underwriting results. The Department does not believe that requiring that the data be reported separately will impose any undue burden on insurers as this data is readily available. Similarly, eliminating the UCJF premium offset and prohibiting the inclusion of assessments and surtaxes not otherwise reflected in an insurer's approved rates will enable the Department to more accurately determine whether excess profits exist. Reporting of data showing actual UCJF assessments which are not adjusted by the offset and excluding assessments and surtaxes paid by an insurer not otherwise reflected in its approved rates more accurately reflects an insurer's actual condition.

The Department does not anticipate any additional adverse economic impact through these proposed changes since the general reporting format remains unchanged.

Regulatory Flexibility Analysis

This proposed amendment and new Appendix may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the amendment and new Appendix apply to small businesses, they will be insurers authorized to transact private passenger automobile insurance in this State. The amendment and new Appendix change the criteria for determining income generated through investment of policyholder-supplied funds, requires separate reporting of property damage loss data, and the combining of loss data for uninsured/underinsured motorists coverage with the loss data for bodily injury liability, eliminates the UCJF premium offset, adjusts the dates on the exhibits to reflect the Excess Profits Report filed July 1, 1991, and codifies the existing Department procedures that assessments and surtaxes paid by insurers may not be included in expenses for purposes of determining excess profits.

The proposed amendment and new Appendix provide no different reporting, recordkeeping or compliance requirements based on insurer size. N.J.S.A. 17:29A-5.6 et seq. and N.J.A.C. 11:3-20 require all private passenger automobile insurers to file an Excess Profits Report, unless exempted pursuant to N.J.S.A. 17:29A-5.11, regardless of insurer size. Since no statutory exemption is provided based on insurer size, and to ensure consistency and uniformity in the data submitted, and the determination of excess profits, no differentiation is provided based on insurer size.

Full text of the Appendix proposed for repeal appears in the New Jersey Administrative Code at N.J.A.C. 11:3-20 Appendix.

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

11:3-20.5 Profits report

(a) Each insurer shall submit a complete and accurate profits report in the format of the exhibits appended to this subchapter, which exhibits are hereby incorporated by reference as part of these rules.

(b) (No change.)

(c) In addition to the requirements in (b) above, each insurer shall file in the format of the exhibits appended to this subchapter, the following information for the calendar-accident year ending December 31 immediately preceding the date the profits report is due:

1.-3. (No change.)

4. Allowance for profit and contingencies[,] (obtained by multiplying premiums earned by the profit and contingency factors authorized for use with the insurer's approved rate filings);

5.-7. (No change.)

(d) (No change.)

(e) No expenses included in the Excess Profits Report shall include assessments paid to the New Jersey Property Liability Insurance Guaranty Association pursuant to N.J.S.A. 17:30A-8a(9) or surtaxes paid pursuant to N.J.S.A. 17:33B-49, except to the extent the insurer was permitted to reflect the assessments and surtaxes in its approved rates for private passenger automobile insurance pursuant to N.J.A.C. 11:3-16.11 for any of the three years reported in the Excess Profits Report.

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

APPENDIX

EXCESS PROFIT EXHIBITS—INSTRUCTIONS

In all Exhibits, dollars are stated as whole numbers, ratios and fractions are expressed as decimals and rounded to the third decimal place. Where a three year sum is expressed as a ratio, the ratio required is the ratio of three years' dollar figures and not the sum of three ratios.

The Exhibits attached are 1990 exhibits. Where exhibits for prior years or later years must be reported, the filer is required to submit Exhibits which are substantially similar to the attached Exhibits to report the prior years' or later years' data, and which contain all information, including dates, adjusted accordingly.

Exhibit One

General Instructions

Exhibit One is to be completed using data for calendar year 1990. Exhibits substantially similar to Exhibit One are to be completed for each of the years 1983 through 1989.

The filer is completing and submitting five Exhibits One (i.e. one for each of four coverages and a total of all four coverages) for each of eight calendar years (i.e. 1983 through 1990, inclusive) for a total of forty Exhibits One.

Item 1 is the premium and loss data as shown on Page 14 for New Jersey of the statutory annual statement for the various calendar years. For the various private passenger auto coverages, for 1990, use the data shown on Page 14 of the 1990 annual statement as follows:

BI Liability and Uninsured/Underinsured Motorists

Coverage included in	Page 14 Line 19.2
PD Liability included in	Page 14 Line 19.2
No fault	Page 14 Line 19.1
Physical Damage	Page 14 Line 21.1

For years prior to 1990, use corresponding Page 14 data for those years. In Item 1, fill in the Page 14 line which is the source of the data. Item 1A is the UCJF Assessment for the year. Items 2 through 10 are deductions from Item 1 for loss data (see Col (3), Col (4), or Col (7)) or Item 1B for premium data (see Col (1) or Col (2)), as described below. Items 2 through 10 are to be completed **ONLY IF PREMIUM, LOSS OR DIVIDEND DATA FOR ITEMS 2 THROUGH 10 ARE INCLUDED IN ITEM 1.**

In listing the exclusions in Items 2 through 10, note that where a premium, loss or dividend amount is contained in an Item, it is not to be contained in another Item.

For example, all excess medical benefits are to be contained in Item 2 (see below), and not contained in any of the other Items 3 through 10. Therefore, any excess medical benefits paid on a motorcycle policy are to be included in Item 2, and not in Item 3. Item 3 is to contain motorcycle premiums, losses and dividends not included in Item 2.

As another example, premiums, losses and dividends contained in Item 6, Excess and Umbrella Policies are premiums, losses and dividends on Excess/Umbrella policies that are not contained in Items 2 through 5.

Individual Items

Item 2 is the dollars of losses included in Item 1 which are excess medical benefits, and for which the insurer may be reimbursed by the UCJF, per NJSA 39:6-61 et seq.

With regard to Item 5, please note that the New Jersey Automobile Full Insurance Availability Act (NJSA 17:30E-1 et seq.), which established the "JUA", was effective 01 January 1984, and the Market Transition Facility established pursuant to the Fair Automobile Insurance Reform Act of 1990 which was operative as of October 1, 1990.

Premiums, losses and dividends for private passenger type commercial vehicles are to be listed in Item 7 as a "write in", but only if they are contained in Item 1, for loss data, or Item 1B, for premium data, and

then only the dollars of premiums and losses not contained in Items 2 through 6.

Provision is made for other "write in" exclusions in Items 8 and 9. A filer may modify the form to add more lines for exclusions if three lines are not sufficient.

Where any "write in" exclusion is used, a written explanation as to what is listed as an exclusion, and why it is appropriate to list the exclusion, is to be provided on a piece of paper attached to Exhibit One.

Premiums and losses for private passenger motor homes are NOT to be listed as exclusions.

Item 12 states the premiums, losses and dividends which are to be used for the excess profits calculation. For premium data, Item 12 is Item 1B minus Item 11. For loss data, Item 12 is Item 1 minus Item 11.

Item 13, Col (3) states the claim settlement costs paid during 1990 that are directly assignable to specific claims for which loss data is included in Item 12. Item 13, Col (4) states the claim settlement costs incurred during 1990 that are directly assignable to specific claims for which loss data is included in Item 12.

Item 14, Col (3) states the costs associated with the claim settlement function that were paid during 1990, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12. Item 14, Col (4) shows the costs associated with the claim settlement function that were incurred during 1990, which are not directly assignable to specific claims, but which are assignable to claims for which loss data is included in Item 12.

Item 15 states unpaid claim settlement costs as of 31 December 1990, which are assignable to unpaid losses shown in Item 12, Col (7).

Exhibit Two

A corresponding Exhibit Two is to be completed for each calendar year and coverage for which an Exhibit One is to be completed. Therefore, the filer is completing and submitting forty Exhibits Two. The six parts of Exhibit Two show incurred and paid losses and expenses by calendar/accident year during each calendar year for which data is reported in an Exhibit One, and also during the first three months of 1991.

For example, for the Exhibit Two that corresponds to Exhibit One for 1990, Exhibit Two—Part One shows:

(a) payments for losses that occurred during calendar/accident year 1990, and were paid during 1990, and during the first three months of 1991.

(b) payments for losses that occurred during calendar/accident year 1989, and were paid during 1990, and during the first three months of 1991.

(c) etc.

For example, for the Exhibit Two that corresponds to Exhibit One for 1989, Exhibit Two—Part One shows:

(a) payments for losses that occurred during calendar/accident year 1989, and were paid during 1989, and during the first three months of 1990.

(b) payments for losses that occurred during calendar/accident year 1988, and were paid during 1989, and during the first three months of 1990.

(c) etc.

A description of each part of Exhibit Two follows.

Exhibit Two—Part One states the calendar year losses paid, as stated in Exhibit One, Item 12, Col (3), according to calendar/accident year. Col (2) shows losses paid during 1990, and Col (3) shows further losses paid during the first three months of 1991.

Exhibit Two—Part Two states the calendar year losses incurred in Exhibit One, Item 12, Col (4), according to calendar/accident year. Col (2) states losses incurred during 1990, and Col (3) shows further losses incurred during the first three months of 1991.

Exhibit Two—Part Three states the calendar year allocated loss adjustment expenses paid in Exhibit One, Item 13, Col (3), according to calendar/accident year. Col (2) states the allocated loss adjustment expenses paid during 1990, and Col (3) shows further allocated loss adjustment expenses paid during the first three months of 1991.

Exhibit Two—Part Four states the calendar year allocated loss adjustment expenses incurred in Exhibit One, Item 13, Col (4), according to calendar/accident year. Col (2) states incurred allocated loss adjustment expenses incurred during 1990, and Col (3) shows further allocated loss adjustment expenses incurred during the first three months of 1991.

Exhibit Two—Part Five states the calendar year unallocated loss adjustment expenses paid in Exhibit One, Item 14, Col (3), according

to calendar/accident year. Col (2) states unallocated loss adjustment expenses paid during 1990, and Col (3) shows further unallocated loss adjustment expenses paid during the first three months of 1991.

Exhibit Two—Part Six states calendar year unallocated loss adjustment expenses incurred in Exhibit One, Item 14, Col (4), according to calendar/accident year. Col (2) shows unallocated loss adjustment expenses incurred during 1990, and Col (3) shows further unallocated loss adjustment expenses incurred during the first three months of 1991.

Exhibit Three states the "development triangles" of incurred losses for BI Liability and Uninsured/Underinsured Motorists and PIP.

Exhibit Three—Part One states the losses incurred for the various calendar/accident years during various intervals (the first 15 months, the next 12 months, etc.).

Exhibit Three—Part Two states the accumulated losses for each calendar/accident year as of the various stages of development (15 months, 27 months, etc.).

Exhibit Three—Part Three states the historical development factors based on the accumulated losses shown in Exhibit Three—Part Two.

In Exhibit Three—Part Three the "selected factor" stated in Col (5A) is determined as follows. Of the various historical factors for each development interval (15-27 months, 27-39 months, etc.) a simple mean is determined with the high and low values omitted. Where there are fewer than three factors, the low and high values are not to be omitted from the calculation. The "projection factor" stated in Col (6A) is the group of factors from Col (5A) accumulated to project losses at each stage of development to ultimate. The projection factor for 87 months to ultimate is the selected factor for development from 75 to 87 months.

In Exhibit Three—Part Three the "Ultimate Incurred" stated in Col (3) is determined by multiplying the calendar/accident year losses evaluated as of 31 March 1991 by the Projection Factor from Col (6A). Each "Projection Factor to Ultimate" in Col (2) of Exhibit Three—Part Three is identical to the "Projection Factor" stated in Col (6A).

Exhibit Four summarizes data from Exhibit Two to get the "development triangles" of paid losses, for Property Damage Liability and Physical Damage. The various parts of Exhibit Four analyze paid losses in the same way that Exhibit Three analyzes incurred losses. The only difference is that, for Physical Damage and Property Damage Liability, ultimate paid is deemed to be reached at 51 months of development.

Exhibits Five and Six analyze the sum of losses and loss adjustment expenses in the same way that Exhibits Three and Four analyze losses.

Note that Exhibit Five, Parts Four, Five and Six are to be completed with data through calendar/accident year 1989. The projections based on data through calendar/accident year 1989 are used to produce the "Development Adjustment" in Exhibit Five—Part Seven.

Note that Exhibit Six, Parts Four, Five and Six are to be completed with data through calendar/accident year 1989. The projections based on data through calendar/accident year 1989 are used to produce the "Development Adjustment" in Exhibit Six—Part Seven.

Exhibit Seven, Part One, states countrywide premiums and expenses from the statutory Insurance Expense Exhibit. An Exhibit Seven, Part One, is to be completed for each of the years 1990, 1989 and 1988. Other Acquisition and General Expenses are to be stated, in Col (2) and Col (3A) as ratios to Net Earned Premium. Commission and Brokerage and Taxes, Licenses and Fees are to be stated, in Col (2) and Col (3A) as ratios to Net Written Premium. Loss Adjustment Expenses Incurred are to be stated in Col (2) and Col (3A) as ratios to Losses Incurred.

Exhibit Seven—Part Two

Exhibit Seven, Part Two, states New Jersey expenses for each coverage, with ratios, in Col (2), to earned premium, written premium and losses as described for Exhibit Seven—Part One above.

Exhibit Seven, Parts Three-A, Three-B and Three-C develop the Commission and Brokerage expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Three-A, Three-B and Three-C are to be completed to develop the Taxes, Licenses and Fees expenses to be stated in Exhibit Seven, Part Two.

Exhibit Seven, Parts Four-A, Four-B and Four-C develop the General Expense expenses to be stated in Exhibit Seven, Part Two. Exhibits substantially similar to Parts Four-A, Four-B and Four-C are to be completed to develop the Other Acquisition expenses stated in Exhibit Seven, Part Two and to develop the Loss Adjustment expenses stated in Exhibit Seven, Part Two.

Exhibit Seven, Part Two, Prepaid Expenses, Item 9, Col (1) = $\frac{1}{2} \times (\text{Item 2, Col (1)} + \text{Item 3, Col (1)}) + \text{Item 5} + \text{Item 6}$.

Exhibit Seven, Part Two, Item 9, Col (2) = $\frac{(\text{Item 9, Col (1)})}{(\text{Item 4, Col (1)})}$.

Exhibit Seven, Part Two, Three and Four are to be completed for each of the calendar years 1990, 1989 and 1988.

Exhibit Eight, Part One shows investment income attributable to New Jersey private passenger auto for the purpose of completing excess profits reports.

Item 1 is countrywide data from the 1990 statutory annual statement, page 2, column 1, the sum of lines 9.1, 9.2, 9.3, 10 and 11.

Item 2 is countrywide data from the statutory annual statement, page 3, column 1, line 9.

NOTE: Limit Item 3 to a maximum of 1,000.

Item 4 is Exhibit Seven—Part Two, Col (1), Item 9.

Item 5 is Exhibit One, Col (1), Item 12.

NOTE: Limit Item 6 to a maximum of 1,000.

Item 7 is Exhibit One, Col (6), Item 12, for 1990.

Item 8 is Exhibit One, Col (6), Item 12, for 1989.

Item 9A = Item 9 × (1—Item 3—Item 6). Limit Item 9A to a minimum of zero.

Item 10 is Exhibit One, Col (7), Item 12, for 1990.

Item 11 is Exhibit One, Col (7), Item 12, for 1989.

Item 13 is Exhibit One, Col (7), Item 15, for 1990.

Item 14 is Exhibit One, Col (7), Item 15, for 1989.

Item 16G is the expected loss and loss adjustment expense ratio which is used to determine the investment income offset in the filer's filed and approved rate filings. The filer must submit a copy of the portion of the filing showing this figure, and show how it was used to determine the investment income offset.

Item 18 is Exhibit Eight Part One-A, Item 7, for 1990.

Item 19 is Actual Investment Income for 1990.

Exhibit Eight—Part Two shows Anticipated Investment Income and Excess Investment Income.

Item 1 is Exhibit One, Col (2), Item 12.

Item 2 shows the filed and approved investment income offset, expressed as a ratio to premiums, for the filer's approved filings over the interval 1988 through 1990. The investment income offset is the percent used in the company's rate filing to reduce the "Clifford" target 3.5% rate of return to premiums for the effect of investment income. A copy of the portion of the filing showing this calculation is to be attached to Exhibit Eight—Part Two. If the filer submits no documentation of the investment income offset that has been approved by the Department, then Item 2 is the number zero.

Item 3 is Item 1 multiplied by Item 2.

Item 4 is Exhibit Eight—Part One, Item 19.

Item 5 = Item 4 - Item 3.

Exhibit Nine shows the estimate of the ultimate amount the filer reasonably expects to receive, as "AIRE Compensation", provided by NJSA 39:6A-22 et seq. In estimating the ultimate value of the compensa-

tion, keep in mind that there are few data points of actual experience. The estimate involves projecting to ultimate paid reimbursement for liability claims. For these reasons, the Department believes significant development beyond payments already received may be reasonable.

Exhibit Ten uses the data developed in Exhibits One through Nine to calculate excess profits.

The sources of data for Exhibit Ten follow.

Item 1: Direct Calendar Year Written Premium, Exhibit One, Item 12.

Item 2: Direct Calendar Year Earned Premium, Exhibit One, Item 12.

Item 2A: Exhibit Nine—Part Three, Col (3).

Item 2B: AIRE Charges are the amounts the filer is assessed, according to NJSA 39:6A-22. The calendar/accident year in which an AIRE charge is assigned is the calendar year in which the filer is informed of the AIRE charge and not the calendar year in which the filer pays the AIRE charge, if different.

Item 3: For BI Liability and Uninsured/Underinsured Motorists and PIP, "Ultimate Incurred", per Exhibit Five—Part Three, Col (3). For Property Damage Liability and Physical Damage, "Ultimate Incurred", per Exhibit Six—Part Three, Col (3).

Item 5: Exhibit Seven—Part Two

Item 7: Exhibit Seven—Part Two

Item 9: Exhibit Seven—Part Two

Item 11: Exhibit Seven—Part Two

Item 13: Exhibit One, Item 12B.

Item 14: Exhibit One, Item 12A.

Item 18: Insurer's filed and approved allowance for profits and contingencies in the filer's approved rate filing, expressed as a ratio, and multiplied by the earned premium stated in Item 2.

Item 19 = Item 17 - Item 18

Item 20: Exhibit Five—Part Seven, Total, Col (3), for BI Liability and Uninsured/Underinsured Motorists and PIP; Exhibit Six—Part Seven, Col (3), for Property Damage Liability and Physical Damage.

Item 21 = Item 19 - Item 20

Item 22: Exhibit Eight—Part Two, Item 5.

Item 24 = Item 21 + Item 22 - Item 23.

Item 25 is .005 × Item 2 for a filer that is a member of a holding company system, and 0 for all other filers.

Item 26 is Item 24 minus Item 25.

Exhibit Eleven must be completed for calendar years 1988, 1989 and 1990.

Item 1 states what PIP losses would have been without the portion that is assumed by the UCJF.

Items 2, 3, 4, and 5 are self-explanatory.

Exhibit 1

Private Passenger Auto

THESE EXHIBITS MUST BE SENT SO THAT THEY ARE RECEIVED BY THE DEPARTMENT OF INSURANCE BY 01 JULY 1991

Group Name _____

Group NAIC Number _____

Company Name _____

Company NAIC Number _____

BEFORE COMPLETING THE EXHIBITS, PLEASE READ THE ACCOMPANYING INSTRUCTIONS

NEW JERSEY

Private Passenger Auto Data

Exhibit One

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

INSURANCE

PROPOSALS

Calendar Year 1990
(This exhibit is also to be completed for each of the years 1983 through 1989)

	Col (1)	Col (2)	Col (3)	Col (4)	Col (5)	Col (6)	Col (7)
	Direct Premiums Written	Direct Premiums Earned	Direct Losses Paid	Direct Losses Incurred	Dividends on Direct Business	Direct Unearned Premium Reserves	Direct Losses Unpaid
Item 1 Sources line _____ of Page 14	_____	_____	_____	_____	_____	_____	_____
Item 1A UCJF Assessments	_____	_____	X	X	X	X	X
Item 1B Item 1 minus Item 1A	_____	_____	X	X	X	X	X
NOTE: LIST DATA IN EXCLUSIONS (ITEMS 2 THROUGH 10) ONLY IF THE DATA IS INCLUDED IN ITEM ONE.							
Exclusions:							
Item 2 Excess Medical Benefits	X	X	_____	_____	X	X	_____
Item 3 Motorcycles	_____	_____	_____	_____	X	X	_____
Item 4 "Off Road" Vehicles	_____	_____	_____	_____	X	X	_____
Item 5 JUA/MIF Business	_____	_____	_____	_____	X	X	_____
Item 6 Excess/Umbrella Policies	_____	_____	_____	_____	X	X	_____
Other Exclusions (list):							
Item 7 _____	_____	_____	_____	_____	X	X	_____
Item 8 _____	_____	_____	_____	_____	X	X	_____
Item 9 _____	_____	_____	_____	_____	X	X	_____
Item 10 Finance and Service Charges	_____	_____	X	X	X	X	X
Item 11 Subtotal (Sum Items 2 through 10)	_____	_____	_____	_____	X	X	_____
Item 12 Excess Profits Data	_____	_____	_____	_____	_____	_____	_____
Item 12A Refund of Excess Profits Included in Item 12, Col (5)	X	X	X	X	_____	X	X
Item 12B All Other Dividends Included in Item 12, Col (5)	X	X	X	X	_____	X	X
Item 13 Allocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	(Col 3) Paid Allocated LAE	(Col 4) Incurred Allocated LAE	_____	_____	_____
Item 13A Ratio Item 13, Col (3), to Item 12, Col (3)	X	X	_____	X	_____	_____	_____
Item 13B Ratio Item 13, Col (4) to Item 12, Col (4)	X	X	X	_____	_____	_____	_____
Item 14 Unallocated loss adjustment expenses corresponding to Item 12, Cols. (3) and (4), respectively	X	X	Col (3) Paid Unallocated LAE	Col (4) Incurred Unallocated LAE	_____	_____	_____
Item 15 Unpaid less adjustment expenses (allocated plus unallocated) corresponding to unpaid losses shown in Item 12, Col (7)	X	X	X	X	X	X	_____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

**Exhibit Two
Calendar year 1990**

(This Exhibit is also to be completed for each of the calendar years 1983 through 1989)

Check one:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Exhibit Two—Part One			Exhibit Two—Part Two		
	Col (2) Losses Paid During 1990	Col (3) Losses Paid During 1Q 1991		Col (2) Losses Incurred During 1990	Col (3) Losses Incurred During 1Q 1991
Calendar/Accident Years:			Calendar/Accident Years:		
1990	_____	_____	1990	_____	_____
1989	_____	_____	1989	_____	_____
1988	_____	_____	1988	_____	_____
1987	_____	_____	1987	_____	_____
1986	_____	_____	1986	_____	_____
1985	_____	_____	1985	_____	_____
1984	_____	_____	1984	_____	_____
prior	_____	_____	prior	_____	_____
Total	_____	_____	Total	_____	_____

Exhibit Two—Part Three			Exhibit Two—Part Four		
	Col (2) ALAE Paid During 1990	Col (3) ALAE Paid During 1Q 1991		Col (2) ALAE Incurred During 1990	Col (3) ALAE Incurred During 1Q 1991
Calendar/Accident Years:			Calendar/Accident Years:		
1990	_____	_____	1990	_____	_____
1989	_____	_____	1989	_____	_____
1988	_____	_____	1988	_____	_____
1987	_____	_____	1987	_____	_____
1986	_____	_____	1986	_____	_____
1985	_____	_____	1985	_____	_____
1984	_____	_____	1984	_____	_____
prior	_____	_____	prior	_____	_____
Total	_____	_____	Total	_____	_____

Exhibit Two—Part Five			Exhibit Two—Part Six		
	Col (2) ULAE Paid During 1990	Col (3) ULAE Paid During 1Q 1991		Col (2) ULAE Incurred During 1990	Col (3) ULAE Incurred During 1Q 1991
Calendar/Accident Years:			Calendar/Accident Years:		
1990	_____	_____	1990	_____	_____
1989	_____	_____	1989	_____	_____
1988	_____	_____	1988	_____	_____
1987	_____	_____	1987	_____	_____
1986	_____	_____	1986	_____	_____
1985	_____	_____	1985	_____	_____
1984	_____	_____	1984	_____	_____
prior	_____	_____	prior	_____	_____
Total	_____	_____	Total	_____	_____

Exhibit Three

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

PIP _____

**Exhibit Three—Part One
Development of Incurred Losses
Calendar/Accident Year**

Losses Incurred During	84	85	86	87	88	89	90
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Three—Part Two
Development of Incurred Losses
Calendar/Accident Year**

Losses Incurred As Of	84	85	86	87	88	89	90
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____
63 months	_____	_____	_____	_____	_____	_____	_____
75 months	_____	_____	_____	_____	_____	_____	_____
87 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Three—Part Three
Incurred Loss Development Factors
Calendar/Accident Year**

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Incurred Losses As Of	Col (6A) Projection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____	51 months	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____	63 months	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____	75 months	_____
								87 months	_____
Calendar/ Accident Year	Col (1) Losses at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred						
90	_____	_____	_____						
89	_____	_____	_____						
88	_____	_____	_____						
87	_____	_____	_____						
86	_____	_____	_____						
85	_____	_____	_____						
84	_____	_____	_____						

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

Exhibit Four

Check One:

Property Damage Liability _____

Physical Damage _____

**Exhibit Four—Part One
Development of Paid Losses
Calendar/Accident Year**

Losses Paid During	84	85	86	87	88	89	90
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Four—Part Two
Development of Paid Losses
Calendar/Accident Year**

Losses Paid As Of	84	85	86	87	88	89	90
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Four—Part Three
Development of Paid Losses
Calendar/Accident Year**

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Paid Losses As Of	Col (6A) Projection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
Calendar/Accident Year	Col (1) Losses at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred						
90	_____	_____	_____						
89	_____	_____	_____						
88	_____	_____	_____						

Exhibit Five

Check One:

BI Liability & Uninsured Motorists _____

PIP _____

**Exhibit Five—Part One
Development of Incurred Losses and LAE
Calendar/Accident Year**

Losses and LAE Incurred During	84	85	86	87	88	89	90
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Five—Part Two
Development of Incurred Losses and LAE
Calendar/Accident Year**

Losses and LAE Incurred During	84	85	86	87	88	89	90
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____
63 months	_____	_____	_____	_____	_____	_____	_____
75 months	_____	_____	_____	_____	_____	_____	_____
87 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Five—Part Three
Incurred Loss and LAE Development Factors
Calendar/Accident Year**

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Pro- jection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____	51 months	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____	63 months	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____	75 months	_____
87 mos-ultimate	_____	_____	_____	_____	_____	_____	_____	87 months	_____

Calendar/ Accident Year	Col (1) L+LAE at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
90	_____	_____	_____
89	_____	_____	_____
88	_____	_____	_____
87	_____	_____	_____
86	_____	_____	_____
85	_____	_____	_____
84	_____	_____	_____

**Exhibit Five—Part Four
Development of Incurred Losses and LAE
Calendar/Accident Year**

Losses and LAE Incurred During	83	84	85	86	87	88	89
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Five—Part Five
Development of Incurred Losses and LAE
Calendar/Accident Year**

Losses and LAE Incurred As Of	83	84	85	86	87	88	89
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____
63 months	_____	_____	_____	_____	_____	_____	_____
75 months	_____	_____	_____	_____	_____	_____	_____
87 months	_____	_____	_____	_____	_____	_____	_____

PROPOSALS

Interested Persons see Inside Front Cover

INSURANCE

**Exhibit Five—Part Six
Incurred Loss and LAE Development Factors
Calendar/Accident Year**

Development Factors	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Incurred Losses and LAE As Of	Col (6A) Pro- jection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
51-63 months	_____	_____	_____	_____	_____	_____	_____	51 months	_____
63-75 months	_____	_____	_____	_____	_____	_____	_____	63 months	_____
75-87 months	_____	_____	_____	_____	_____	_____	_____	75 months	_____
87 mos-ultimate	_____	_____	_____	_____	_____	_____	_____	87 months	_____

Calendar/ Accident Year	Col (1) L+ LAE at 3/90	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred
89	_____	_____	_____
88	_____	_____	_____
87	_____	_____	_____
86	_____	_____	_____
85	_____	_____	_____
84	_____	_____	_____
83	_____	_____	_____

**Exhibit Five—Part Seven
Development Adjustment**

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

PIP _____

Calendar/ Accident Year	Col (1) Ultimate Incurred per Exhibit Five— Part Six Col (3)	Col (2) Ultimate Incurred per Exhibit Five— Part Three Col (3)	Col (3) Difference Col (2) minus Col (1)
87	_____	_____	_____
86	_____	_____	_____
85	_____	_____	_____
84	_____	_____	_____
Total	X	X	_____

Exhibit Six

Check One:

Property Damage Liability _____

Physical Damage _____

**Exhibit Six—Part One
Development of Paid Losses and LAE
Calendar/Accident Year**

Losses and LAE Paid During	84	85	86	87	88	89	90
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Six—Part Two
Development of Paid Losses and LAE
Calendar/Accident Year**

Losses and LAE Paid As Of	84	85	86	87	88	89	90
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Six—Part Three
Paid Loss and LAE Development Factors
Calendar/Accident Year**

Development Factors	84	85	86	87	88	89	Col (5A) Selected Factor	Col (6) Paid Losses and LAE As Of	Col (6A) Pro- jection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
Calendar/ Accident Year	Col (1) L + LAE at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred						
90	_____	_____	_____						
89	_____	_____	_____						
88	_____	_____	_____						
87	_____	1,000	_____						

**Exhibit Six—Part Four
Development of Paid Losses and LAE
Calendar/Accident Year**

Losses Paid During	83	84	85	86	87	88	89
0-15 months	_____	_____	_____	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Six—Part Five
Development of Paid Losses and LAE
Calendar/Accident Year**

Losses Paid As Of	83	84	85	86	87	88	89
15 months	_____	_____	_____	_____	_____	_____	_____
27 months	_____	_____	_____	_____	_____	_____	_____
39 months	_____	_____	_____	_____	_____	_____	_____
51 months	_____	_____	_____	_____	_____	_____	_____

**Exhibit Six—Part Six
Paid Loss and LAE Development Factors
Calendar/Accident Year**

Development Factors	83	84	85	86	87	88	Col (5A) Selected Factor	Col (6) Paid Losses As Of	Col (6A) Pro- jection Factor
15-27 months	_____	_____	_____	_____	_____	_____	_____	15 months	_____
27-39 months	_____	_____	_____	_____	_____	_____	_____	27 months	_____
39-51 months	_____	_____	_____	_____	_____	_____	_____	39 months	_____
Calendar/ Accident Year	Col (1) L + LAE at 3/90	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Incurred						
89	_____	_____	_____						
88	_____	_____	_____						
87	_____	_____	_____						

PROPOSALS

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**Exhibit Six—Part Seven
Development Adjustment**

Calendar/ Accident Year	Col (1) Ultimate Incurred per Exhibit Six— Part Six Col (3)	Col (2) Ultimate Incurred per Exhibit Six— Part Three Col (3)	Col (3) Difference Col (2) minus Col (1)
87	_____	_____	_____

**Exhibit Seven
Part One—Countrywide Expenses From Insurance Expense Exhibit
Calendar Year 1990
(This Exhibit is also to be completed separately for calendar years 1989 and 1988.)**

	Private Passenger Auto Liability Col (1)	Col (2)	Private Passenger Auto Physical Damage Col (3)	Col (3A)
Net Earned Premium	_____	1.000	_____	1.000
Other Acquisition	_____	_____	_____	_____
General Expenses	_____	_____	_____	_____
Net Written Premium	_____	1.000	_____	1.000
Commission and Brokerage	_____	_____	_____	_____
Taxes, Licenses, Fees	_____	_____	_____	_____
Losses Incurred	_____	1.000	_____	1.000
Loss Adjustment Expenses Incurred	_____	_____	_____	_____

**Exhibit Seven
Part Two—New Jersey Expenses
Calendar/Accident Year 1990
(This Exhibit is also to be completed for calendar/accident years 1989 and 1988.)**

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

	Col (1)	Col (2)	Col (3)	Col (3A)
Item 1: Direct Earned Premium	_____	1.000	_____	1.000
Item 2: Direct Other Acquisition	_____	_____	_____	_____
Item 3: Direct General Expenses	_____	_____	_____	_____
Item 4: Direct Written Premium	_____	1.000	_____	1.000
Item 5: Direct Commission and Brokerage	_____	_____	_____	_____
Item 6: Direct Taxes, Licenses, Fees	_____	_____	_____	_____
Item 7: Direct Losses Incurred	_____	1.000	_____	1.000
Item 8: Direct Loss Adjustment Expenses Incurred	_____	_____	_____	_____
Item 9: Prepaid Expenses	_____	_____	_____	_____

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Exhibit Seven—Part Three—A

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1990

	Col (2)
Item 1: 1990 Direct Written Premium	_____
Item 2: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	_____
Item 3: Dollars of 1990 Direct Written Premium that are earned in 1990	_____
Item 4: Ratio Item 3 divided by Item 1	_____
Item 5: Item 2 multiplied by Item 4	_____
Item 6: 1989 Direct Written Premium	_____
Item 7: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	_____
Item 8: Dollars of 1989 Direct Written Premium that are earned in 1990	_____
Item 9: Ratio Item 8 divided by Item 6	_____
Item 10: Item 9 multiplied by Item 7	_____
Item 11: 1990 Commission and Brokerage Incurred Item 10 plus Item 5	_____

Exhibit Seven—Part Three—B

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1989

	Col (6)
Item 1: 1989 Direct Written Premium	_____
Item 2: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	_____
Item 3: Dollars of 1989 Direct Written Premium that are earned in 1989	_____
Item 4: Ratio Item 3 divided by Item 1	_____
Item 5: Item 2 multiplied by Item 4	_____
Item 6: 1988 Direct Written Premium	_____
Item 7: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	_____
Item 8: Dollars of 1988 Direct Written Premium that are earned in 1989	_____
Item 9: Ratio Item 8 divided by Item 6	_____
Item 10: Item 9 multiplied by Item 7	_____
Item 11: 1989 Commission and Brokerage Incurred Item 10 plus Item 5	_____

PROPOSALS

Exhibit Seven—Part Three—C

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Allocation of Commission and Brokerage Fees to Calendar/Accident Year 1988

	Col (11)
Item 1: 1988 Direct Written Premium	_____
Item 2: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 1	_____
Item 3: Dollars of 1988 Direct Written Premium that are earned in 1988	_____
Item 4: Ratio Item 3 divided by Item 1	_____
Item 5: Item 2 multiplied by Item 4	_____
Item 6: 1987 Direct Written Premium	_____
Item 7: Commission and Brokerage Fees that arise from the writing of policies, the premium of which is listed in Item 6	_____
Item 8: Dollars of 1987 Direct Written Premium that are earned in 1988	_____
Item 9: Ratio Item 8 divided by Item 6	_____
Item 10: Item 9 multiplied by Item 7	_____
Item 11: 1988 Commission and Brokerage Incurred Item 10 plus Item 5	_____

Exhibit Seven—Part Four—A

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses Calendar Year 1990

	Col (3)
Item 1: General Expenses Paid During 1990	_____
Item 2: General Expenses Unpaid at 12/31/90	_____
Item 3: General Expenses Unpaid at 12/31/89	_____
Item 4: Item 1 + Item 2 - Item 3	_____

Exhibit Seven—Part Four—B

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses Calendar Year 1989

	Col (7)
Item 1: General Expenses Paid During 1989	_____
Item 2: General Expenses Unpaid at 12/31/89	_____
Item 3: General Expenses Unpaid at 12/31/88	_____
Item 4: Item 1 + Item 2 - Item 3	_____

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Exhibit Seven—Part Four—C

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

General Expenses
Calendar Year 1988

Col (12)

Item 1: General Expenses Paid During 1988 _____
Item 2: General Expenses Unpaid at 12/31/88 _____
Item 3: General Expenses Unpaid at 12/31/87 _____
Item 4: Item 1 + Item 2 - Item 3 _____

Exhibit Eight

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

**Exhibit Eight—Part One
Actual Investment Income
Calendar Year 1990**

(This exhibit is also to be completed for each calendar year
1988 and 1989.)

Col (2)

Item 1	Agents Balances—Countrywide	_____
Item 2	Unearned Premium Reserve—Countrywide	_____
Item 3	Ratio (Item 1)/(Item 2)	_____
Item 4	Direct Prepaid Expenses	_____
Item 5	Direct Premiums Written	_____
Item 6	Ratio (Item 4)/(Item 5)	_____
Item 7	Direct Unearned Premium Reserves—1990	_____
Item 8	Direct Unearned Premium Reserves—1989	_____
Item 9	(Item 7 + Item 8)/2	_____
Item 9A	Investable Unearned Premiums	_____
Item 10	Direct Losses Unpaid—1990	_____
Item 11	Direct Losses Unpaid—1989	_____
Item 12	(Item 10 + Item 11)/2	_____
Item 13	Direct Loss Adjustment Expenses Unpaid—1990	_____
Item 14	Direct Loss Adjustment Expenses Unpaid—1989	_____
Item 15	(Item 13 + Item 14)/2	_____
Item 16	(Item 12 + Item 15)	_____
Item 16A	Exhibit One, Item 12, Col (4)	_____
Item 16B	Exhibit One, Item 13, Col (4)	_____
Item 16C	Exhibit One, Item 14, Col (4)	_____
Item 16D	Item 16A + Item 16B + Item 16C	_____
Item 16E	Ratio Item 16/Item 16D	_____
Item 16F	Exhibit One, Item 12, Col (2)	_____
Item 16G	Filed and Approved Expected Loss Ratio	_____
Item 16H	Item 16E × Item 16F × Item 16G	_____
Item 17	(Item 16H + Item 9A)	_____
Item 18	Exhibit Eight—Part One—A Item 7	_____
Item 19	(Item 18) × (Item 17)	_____

Exhibit Eight—Part One—A

Note: The data for Exhibit Eight—Part One—A is the investments made during the three (3) years 1990, 1989 and 1988 as contained in the data reported in the statutory annual statement for each calendar year at the pages indicated.

ADJUSTED INVESTED INCOME		Year Investment Purchased		
		1990	1989	1988
Data is for investments purchased during 1990, 1989 & 1988				
Item 1	TOTAL OF INT, DIVS & R/EST INCOME pg. 6, part 1, col 8, line 10	_____	_____	_____
Item 2	TOTAL INVESTMENT EXPENSES INC'D pg. 6, part 1, line 11	_____	_____	_____
Item 3	DEPRECIATION ON REAL ESTATE pg. 6, part 1, line 12	_____	_____	_____
Item 4a	PREFERRED STOCKS (unaffiliated) pg. 6, part 1, col 8, line 2.1	_____	_____	_____
Item 4b	PREFERRED STOCKS OF AFFILIATES pg. 6, part 1, col 8, line 2.11	_____	_____	_____
Item 4c	COMMON STOCKS (unaffiliated) pg. 6, part 1, col 8, line 2.2	_____	_____	_____
Item 4d	COMMON STOCKS OF AFFILIATES pg. 6, part 1, col 8, line 2.21	_____	_____	_____
Item 5	TOTAL DEDUCTIONS Item 2 + 3 + 4a + 4b + 4c + 4d	_____	_____	_____
Item 6	ADJUSTED INVESTMENT INCOME Item 1—Item 5	_____	_____	_____

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ADJUSTED MEAN INVESTED ASSETS

Data is for investments purchased during 1990, 1989 & 1988

Item 1.1	BONDS (pg. 2, col 1, line 1 + pg. 2, col 2, line 1)/2	_____	_____	_____
Item 2.1	MORTGAGE LOANS ON REAL ESTATE (pg. 2, col 1, line 3 + pg. 2, col 2, line 3)/2	_____	_____	_____
Item 2.2	REAL ESTATE (occupied + other props) ((pg. 2, col 1, line 4.1 + line 4.2) + (pg. 2, col 2, line 4.1 + line 4.2))/2	_____	_____	_____
Item 3.1	COLLATERAL LOANS (pg. 2, col 1, line 5 + pg. 2, col 2, line 5)/2	_____	_____	_____
Item 4.1	CASH ON HAND AND ON DEPOSIT (pg. 2, col 1, line 6.1 + pg. 2, col 2, line 6.1)/2	_____	_____	_____
Item 4.2	SHORT-TERM INVESTMENTS (pg. 2, col 1, line 6.2 + pg. 2, col 2, line 6.2)/2	_____	_____	_____
Item 5.1	OTHER INVESTED ASSETS (pg. 2, col 1, line 7 + pg. 2, col 2, line 7)/2	_____	_____	_____
Item 6.1	ADJUSTED MEAN INVESTED ASSETS Item 1.1 + 2.1 + 2.2 + 3.1 + 4.1 + 4.2 + 5.1	_____	_____	_____
Item 7	INVESTMENT INCOME AS % OF INVESTED ASSETS Item 6/Item 6.1 Note: The value of Item 7 may be subject to a minimum as provided by a regulation issued pursuant to N.J.S.A. 17:29A-5.8	_____	_____	_____

Exhibit Eight—Part Two

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

Anticipated Investment Income

	Calendar/Accident Year	1988	1989	1990
Item 1:	Earned Premium	_____	_____	_____
Item 2:	Filed and Approved Investment Income Offset	_____	_____	_____
Item 3:	Anticipated Investment Income	_____	_____	_____
Item 4:	Actual Investment Income	_____	_____	_____
Item 5:	Excess Investment Income	_____	_____	_____

Exhibit Nine—Part One Development of AIRE Compensation to Ultimate

	Calendar/Accident Year	88	89	90
AIRE Compensation Received During				
0-15 months	_____	_____	_____	_____
15-27 months	_____	_____	_____	_____
27-39 months	_____	_____	_____	_____

Exhibit Nine—Part Two Development of AIRE Compensation to Ultimate

	Calendar/Accident Year	88	89	90
AIRE Compensation Received As Of				
15 months	_____	_____	_____	_____
27 months	_____	_____	_____	_____
39 months	_____	_____	_____	_____

Exhibit Nine—Part Three AIRE Compensation Development Factors Calendar/Accident Year

	Development Factors	88	89	
15-27 months	_____	_____	_____	
27-39 months	_____	_____	_____	
	Calendar/Accident Year	Col (1) AIRE Comp'n at 3/91	Col (2) Projection Factor to Ultimate	Col (3) Ultimate Comp'n
	90	_____	_____	_____
	89	_____	_____	_____
	88	_____	_____	_____
	87	_____	_____	_____
	86	_____	_____	_____

PROPOSALS

Interested Persons see Inside Front Cover

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**Exhibit Ten
Excess Profit Calculation**

Check One:

BI Liability & Uninsured/Underinsured Motorists _____

Property Damage Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

	1988	1989	1990	Three Year Total
Item 1: Direct Calendar Year Written Premium	_____	_____	_____	_____
Item 2: Direct Calendar Year Earned Premium	_____	_____	_____	_____
Item 2A: AIRE Compensation, Developed to Ultimate	_____	_____	_____	_____
Item 2B: AIRE Charges	_____	_____	_____	_____
Item 2C: Item 2A-Item 2B	_____	_____	_____	_____
Item 3: Direct Calendar/Accident Year Losses and Loss Adjustment Expenses Incurred, Developed to Ultimate	_____	_____	_____	_____
Item 4: Item 3 as a Ratio to Item 2	_____	_____	_____	_____
Item 5: Direct Commission and Brokerage Fees Incurred	_____	_____	_____	_____
Item 6: Item 5 as a Ratio to Item 1	_____	_____	_____	_____
Item 7: Direct Other Acquisition, Field Supervision and Collection Expenses Incurred	_____	_____	_____	_____
Item 8: Item 7 as a Ratio to Item 1	_____	_____	_____	_____
Item 9: Direct General Expenses Incurred	_____	_____	_____	_____
Item 10: Item 9 as a Ratio to Item 2	_____	_____	_____	_____
Item 11: Direct Taxes, Licenses and Fees Incurred	_____	_____	_____	_____
Item 12: Item 11 as a Ratio to Item 1	_____	_____	_____	_____
Item 13: Direct Policyholder Dividends Other Than Excess Profits, Refunds or Credits Incurred	_____	_____	_____	_____
Item 14: Credit or Refund of Excess Profits	_____	_____	_____	_____
Item 15: Subtotal Item 13 + Item 14	_____	_____	_____	_____
Item 16: Item 15 as a Ratio to Item 2	_____	_____	_____	_____
Item 17: Underwriting Income = Item 2 + Item 2A - Item 2B - Item 3 - Item 5 - Item 7 - Item 9 - Item 11 - Item 15	_____	_____	_____	_____
Item 18: Allowance for Profit and Contingencies	_____	_____	_____	_____
Item 19: Actuarial Gain	_____	_____	_____	_____
Item 20: Total Development Adjustment	X	X	X	_____
Item 21: Total Actuarial Gain	X	X	X	_____
Item 22: Excess Investment Income	_____	_____	_____	_____
Item 23: Item 22 times .025	_____	_____	_____	_____
Item 24: Excess Profit	X	X	X	_____
Item 25: Non-excessive Subsidization (.005 times Item 2)	X	X	X	_____
Item 26: Excessive Subsidization	X	X	X	_____

**Exhibit Eleven—Supplementary Data
Year _____**

Item 1:	PIP Incurred Losses exclusive of limitation due to reimbursement by UCJF, as provided by N.J.S.A. 39:6-61 et seq.	_____
Item 2:	Dollars of PIP Losses Assumed by UCJF	_____
Item 3:	UCJF Assessments Paid	_____
Item 4:	UCJF Reimbursements Rec'd	_____
Item 5:	Item 2 + Item 4 - Item 3	_____

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION**Automobile Insurance****Appeals from Denial of Automobile Insurance****Reproposed Amendment: 11:17A-1.2****Reproposed New Rules: 11:17A-1.7 and 11:3-33**

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

Authority: N.J.S.A. 17:33B-13 through 18; 17:33B-21; 17:1C-6(e).
Proposal Number: PRN 1992-87.

Submit comments by March 19, 1992 to:

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

The agency proposal follows:

Summary

The reproposed amendment and new rules implement provisions of the "Fair Automobile Insurance Reform Act of 1990" (P.L. 1990, c.8, hereinafter "Act") (N.J.S.A. 17:33B-1 et seq.) relating to insurance producers and insurers with respect to the declination and solicitation of automobile insurance.

The Department of Insurance (Department) previously proposed rules implementing N.J.S.A. 17:33B-13 through 18 and 17:33B-21 on August 20, 1990 (see 22 N.J.R. 2457(a)). The Department has determined to make substantive changes based on public comments received and continuing Department review.

The Department received 42 public comments from insurance companies (Allstate Insurance Company, CNA Insurance Companies, MCA Insurance Company, Prudential Property and Casualty Insurance Company, Reciprocal Management Corporation, Selective Insurance and State Farm Insurance Companies), the Citizen Advisory Council, various insurance agencies (Elizabeth Agency Insurance Group, Edward F. Martz, Inc.), a producer trade association (Independent Insurance Agents of New Jersey), and a motorists trade association (National Motorists Association). These comments and the Department's responses are summarized below:

COMMENT: Based upon experience in other states, this proposal will encourage, and therefore substantially increase, complaints. Consequently, the proposal will require insurers to hire additional employees to address complaints and create a program for the various notices required. This will significantly add to company expenses. In addition, this proposal will result in higher legal expenses associated with contested cases and appeals.

RESPONSE: While the insurer disagrees with this procedure they have not suggested alternative language to address their concerns. This proposal implements a legislative requirement. The nature of the appeal process makes these additional procedures necessary.

COMMENT: The proposed definition of declination at N.J.A.C. 11:17A-1.2 varies from the definition contained in Section 25 of the FAIR Act of 1990. The first phrase of paragraph 3 of the proposed definition, "The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an eligible person" is consistent with the FAIR Act provision, but the second phrase, "including the refusal to make requested changes to an existing policy and the offer to insure or renew at a less favorable rate level which is unacceptable to an insured or prospective insured" does not appear in the statute. The problem with the added language is that it includes as a declination the offer of coverage at a less favorable rate pursuant to an approved multi-tier rating plan. The statute expressly authorizes insurers to promulgate multi-tier rating plans and to put applicants or insureds in the proper tier. N.J.S.A. 17:29A-45, 46 as amended by Sections 37 and 38 of the FAIR Act of 1990. Placing an insured or applicant in the proper multi-tier rating plan is not intended by statute to be a declination of coverage.

Another problem with the added language is that an insurer must refuse a requested change in existing coverage when the requested change is barred by law. An insurer cannot legally drop statutory PIP

coverage upon request. An insurer cannot legally alter its policy form for an individual upon request. Such refusal to do an illegal change in existing coverage would not be a declination of coverage as that term is intended by statute to be defined.

To avoid these problems, the added language should be dropped. The statutory language is sufficient. (State Farm, CNA, Allstate)

RESPONSE: The Department agrees that the section "and the offer to insure or renew at a less favorable rate level which is unacceptable to the insured or prospective insured" should be deleted. The Department does not intend that the rule consider such action on the part of an insurer as a declination.

COMMENT: Paragraph 3 of the proposed definition of "declination" should be amended to exclude situations where the insured or applicant requests terms or conditions not offered by the insurer. For example, some insurers do not offer \$1 million/\$1 million bodily injury liability coverage. The definition should also take into account that insurers may have to refuse to make a change to an existing policy under certain circumstances, such as when the law requires written election and the insured does not provide written election. In its present form, paragraph 3 could submit insurers to the appeals process every time there is implementation of a general rate increase. The definition seems to include as a declination, offers to insure or renew at a less favorable rate level which could include approved rate increases.

RESPONSE: The Department agrees with the commenter and has revised this section accordingly.

COMMENT: Paragraphs 5 and 6 of the definition of "declination" are also unauthorized and should be deleted since these provisions do not appear in the statute.

RESPONSE: The Department partially agrees with the commenter and has revised the appropriate section. These rules pertain to the statutory appeal process from the denial of automobile insurance on the basis of eligible person status. In that regard the Department partially agrees with the commenter and has revised paragraph 5 of the N.J.A.C. 11:17A-1.2 definition of "declination" to conform with its interpretation of the Act.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(a) should be amended by changing "... or an insurance broker who has a brokerage relationship with an insurer ..." to simply "... or an insurance broker ..." The reference to "brokerage relationship" is unnecessary, as N.J.A.C. 11:17A-1.2 currently refers to the statutory definition of "insurance broker" at N.J.S.A. 17:22A-2(g).

RESPONSE: The Department disagrees. The FAIR Act specifically defines "insurance agent" in this manner at N.J.S.A. 17:33B-13.

COMMENT: By requiring an agent to provide each applicant with a quotation from every insurer represented by that agent, the FAIR Act and proposed N.J.A.C. 11:17A-1.7(a)2 essentially remove the professional insurance agent from the process, ignore differences in coverages, and destroy any incentive for innovation by insurers. The end result, of course, will be that "price" will become the only consideration for New Jersey consumers, and this does not bode well for the continued health and stability of the New Jersey marketplace.

RESPONSE: Price is a major factor when an insurance consumer is selecting coverage. It is the intention of the FAIR Act to expand the availability and affordability of automobile insurance to the general public. The requirement mandated by N.J.A.C. 11:17A-1.7(a)2 gives people such an opportunity to examine those coverages available to them. The insurance company or insurance producer should lend its expertise to the applicant in selecting the type of policy best suited to the applicant.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(a)2 may require a producer representing several insurers to provide quotations for each of those insurers and for each of the forms or types of coverage offered by each of those insurers. If a producer represents several carriers (as many independent agencies do), each offering a full range of coverages, it is conceivable that the consumer could be presented with countless premium figures. Such requirements would not be in the best interest of the consumer or the insurance producer because:

(1) The consumer would receive quotations for coverage which he may not need or desire. (For example, it could be interpreted that a producer must provide quotations for physical damage and all the optional deductibles when the insured has an older model vehicle for which he had no intention of insuring for physical damage);

(2) The consumer would be presented with so many premium calculations that he would be unable to make a clear determination of exactly what coverage and company he should select;

(3) The extent of quotations required would prevent producers who might otherwise quote automobile insurance over the phone from doing

so thus creating a hardship for working consumers who would have obtained quotations in this manner; and

(4) Producers representing several insurers would experience a substantial increase in workload and financial costs in order to comply with the rule, while producers who represent one insurer, or insurers operating without producers, would not be subject to the extensive quotation requirements of the rule as it could be currently interpreted.

The intent of the underlying legislation (Section 30a(1) of the Fair Act) could be met if the rule clearly stated that the producer shall "... provide each eligible person seeking automobile insurance with premium quotations for the forms or types of coverage **requested by the eligible person.**" (Suggested new language is in boldface.)

RESPONSE: The Department recognizes the validity of this comment and has provided this specific language at N.J.A.C. 11:17A-1.7(a)2. The Fair Act provides that the insurance producer make these premium quotations available for the forms or types of automobile coverages which are offered by all insurers represented by the agent.

It is the responsibility of the producer to guide, advise and answer questions which are posed by a prospective applicant. The producer is expected to use his or her expertise in providing the type of policy which an applicant's situation would indicate is necessary.

This is a statutory requirement of the FAIR Act which will serve to enhance the affordability and availability of automobile insurance to the insurance purchaser. It is the position of the Department that the producer shall provide eligible people seeking automobile insurance with premium quotations for the forms or types of coverage requested by the eligible person.

COMMENT: Requiring producers to provide auto insurance quotes to all applicants, from all insurers represented, and further to take applications for whichever insurer the applicants desire, seems to be an exercise in futility since the insurers are not obligated "to take all comers" until 1992. The effective date of the rule should be made concurrent as to producers and insurers, so that once an application is submitted both the producer and the applicant will know that a policy will be forthcoming.

RESPONSE: These rules will not be operative prior to April 1, 1992 when N.J.S.A. 17:33B-15 requires insurers to provide coverage to eligible persons and N.J.S.A. 17:33B-16 and 18 require certain duties of producers. These repropoed rules interpret those statutes, amend current Department rules as necessary to set forth these new statutory duties, and provide a procedure to resolve disputes pursuant to N.J.S.A. 17:33B-17, which will apply to denials occurring on or after April 1, 1992.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(a)4 states that an agent or broker must advise an applicant in writing of receipt of written declination from an insurer. This requirement is totally unnecessary where the insurer directly sends the written declination to the applicant or insured. The proposed regulation should make an exception to avoid placing this burden on the agents and brokers.

One commenter proposed that N.J.A.C. 11:17A-1.7(a)4 should be amended by changing the first sentence to read:

"Within 10 days after receiving a declination (See N.J.A.C. 11:3-33) from an insurer to which a written application has been submitted, so advise the applicant in writing **except if the written declination was sent by the insurer to the applicant or insured.**" (Boldface language is to be added.)

RESPONSE: The Department agrees with this commenter. N.J.A.C. 11:17A-1.7(a)4 has been revised accordingly.

COMMENT: A commenter stated that it interprets proposed N.J.A.C. 11:17A-1.7(a)4, which would require written notice to an applicant, as not applying to cancellations or nonrenewals as there is no written application in those cases. Similarly, for nonrenewals and cancellations, a written explanation should not be required even if requested by the applicant within 90 days as the explanation has already been provided with the cancellation notice or notice of nonrenewal.

RESPONSE: The commenter's interpretation is correct. The rule applies to applications for initial or revised coverage. A notice of cancellation sent pursuant to N.J.A.C. 17:29C-7 or a notice of nonrenewal that meets the standards of N.J.A.C. 11:3-8.3 fulfill the requirements of this rule since it specifies the facts which make the nonrenewal operative.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(a)(4) and 11:3-33.4(b) both require that an insurer or agent must respond within 10 calendar days of a request for a written declination from an insured or applicant. Ten calendar days may be insufficient time for an agent to receive the request, send the request and supporting information to a regional office, have it received and reviewed by the regional office, and a written

response sent out, especially around a holiday weekend. Twenty calendar days should be allowed.

RESPONSE: The Department believes that when an applicant has been declined coverage, time is of the essence. The appeal process will be controverted if it is extended further. However, the Department has amended the appropriate section of the regulation to provide 10 working days.

COMMENT: N.J.A.C. 11:17A-1.7(a)6 requiring inspection of the automobile by the insurer before coverage is bound or renewed, is inconsistent with N.J.A.C. 11:3-36.5 which permits deferral of inspections for up to seven calendar days in the event that inspection at the time of request would create a serious inconvenience for the insured.

RESPONSE: The Department agrees with this commenter. The appropriate section of the rule has been amended accordingly.

COMMENT: The last sentence of N.J.A.C. 11:17A-1.7(a)(6) reading, "See N.J.A.C. 11:3-32." should be deleted and the following phrase should be added to the preceding sentence: "... pursuant to the provisions of N.J.A.C. 11:3-36."

RESPONSE: The Department agrees with this commenter. The appropriate section of the rule has been amended accordingly.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(b) would define automobile insurance to include comprehensive and collision coverage. These coverages are not required by law. The State should not force "voluntary" companies to provide a market for kit cars, Corvettes, \$100,000 Rolls Royces, etc. At a minimum, denials of requests for such coverage should not be "declinations" within the proposal.

RESPONSE: The insurer must provide the requested coverage if the company has a filed rate for it and the applicant is an eligible person.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(b) and N.J.A.C. 11:3-33.2 include in the definition of automobile insurance the following phrase: "and any other automobile insurance required by law." The Federal Motor Carrier Act regulations require that persons who transport "... any quantity of Class A or Class B explosives, any quantity of poison gas, or highway route controlled quantity of radioactive materials ... in interstate or foreign commerce ..." in any vehicle including a private passenger automobile must provide \$5 million limits of liability insurance via a federally prescribed Motor Carrier Act endorsement. Code of Federal Regulations Title 49 §§387.3, 387.7, 387.9. It is not the intent of the FAIR Act of 1990 that insurers provide Federally required insurance on Federally proscribed insurance forms. It is the intent that insurers provide the automobile insurance required by New Jersey law. The proposed regulation should so state. Proposed N.J.A.C. 11:17A-1.7(b) and the automobile insurance definition in N.J.A.C. 11:3-33.2 should both be amended to close by stating, "and any other automobile insurance required by New Jersey state law." (Boldface language is to be added.)

RESPONSE: These provisions of the rules have been deleted in its entirety. "Personal private passenger automobile insurance" and "automobile insurance" have been defined at N.J.A.C. 11:17A-1.2.

COMMENT: Proposed N.J.A.C. 11:17A-1.7(b) and N.J.A.C. 11:3-33.8 provide penalties of up to \$2,000 for the first violation and up to \$5,000 for the second violation. The statutory authority for these penalties is Section 33 of the FAIR Act of 1990. Section 33 of the FAIR Act of 1990 is not effective until April 1, 1992. FAIR Act of 1990 §27. Further, Section 33 of the FAIR Act only applies to the denial of coverage to eligible risks pursuant to Sections 25 to 32 of the FAIR Act which are not effective until April 1, 1992. It has no relation to the regulation of nonrenewals prior to April 1, 1992 pursuant to N.J.S.A. 39:6A-3. The proposed regulations must be amended to reflect that the penalty provisions are not effective until April 1, 1992. Also, there is no statutory authority to make the penalties "... in addition to any other penalty ..." as proposed N.J.A.C. 11:17A-1.7(c) purports to do. Nothing in Section 33 of the FAIR Act states that these penalties are to be added to other penalties for the same violation. This language in the proposed regulation should be deleted.

RESPONSE: This comment is rendered moot as this repropoed rule will not become operative prior to April 1, 1992. The provision concerning additional penalties in N.J.A.C. 11:17A-1.7(b) has been confined to those provided by law.

COMMENT: Due to the severity of the penalties imposed by the statute, the Department should analyze the infraction committed by the producer (on a first time offense) to determine whether the intent was to deliberately avoid compliance with the regulation, prior to imposing penalties.

RESPONSE: The Department routinely considers all mitigating and aggravating circumstances in determining penalties.

COMMENT: The penalties for violations seem unduly harsh, especially since there is no mitigation for nonwillful violations. The problem with such extreme penalties is that insurers are forced to request a contested case hearing for any determination adverse to an agent or insurer. This has a negative economic impact on the Department as well as on the insurers, since unnecessary time is absorbed in review of the appeals and administrative hearings.

RESPONSE: The Department disagrees. The penalties which are mandated are preventative in nature. They are not absolute in that they may be less than the maximums set forth in the rule.

COMMENT: Proposed N.J.A.C. 11:3-33.1 would apply to "... an insurer who is not exempt pursuant to N.J.S.A. 17:33B-19 ..." The commenter believes that the Department's intent in the above quoted language would be more precisely expressed as follows, "... an insurer as to which the Commissioner has not suspended, under either N.J.S.A. 17:33B-19 or N.J.S.A. 17:33B-20, the obligation to issue policies in compliance with the provisions of N.J.S.A. 17:33B-15 ..."

RESPONSE: The Department agrees with this commenter. The appropriate provision of this rule has been amended accordingly.

COMMENT: A reciprocal insurance exchange, organized and regulated pursuant to N.J.S.A. 17:50, should be exempted from this proposed rule.

RESPONSE: The Department disagrees. The rules do not establish the duties of insurers to write eligible persons, which is established by N.J.S.A. 17:33B-15. It provides for the appeal process when individuals are declined for failure to meet eligibility requirements mandated by the FAIR Act. The definition of "insurer" has been changed to reference applicable statutes and administrative rules concerning the duty to write eligible persons.

COMMENT: N.J.A.C. 11:3-33.1 contemplates an administrative hearing for those persons who have been nonrenewed on the grounds that they are "ineligible persons." The commenter assumes that those eligible persons nonrenewed under the "two percent" or "2 for 1" rules (Sections 29C-7.1(c) and (d) of N.J.S.A.) are not entitled to a similar administrative challenge. If they are not entitled to such a hearing, this should be specified in the regulation.

RESPONSE: The Department acknowledges that those individuals who are nonrenewed under the "two percent" or "2 for 1" rules are not entitled to an administrative hearing because they were not nonrenewed on the grounds that they are not "ineligible persons." The Department has amended the definition of "declination" as it appears in the rule, for clarification. The rule applies specifically to those applicants who are declined personal private passenger automobile coverage or are nonrenewed on the basis that they are not "eligible persons."

COMMENT: The last sentence of N.J.A.C. 11:3-33.1 should be broadened to cover nonrenewals for either permitted reason cited in N.J.A.C. 11:3-8.4. (Selective)

RESPONSE: The rule has been amended to include those individuals who are not "eligible persons" as per N.J.A.C. 11:3-34.4.

COMMENT: In N.J.A.C. 11:3-33.2, the definition of "automobile" should expressly exclude commercial automobiles as done in N.J.A.C. 11:3-8.1. (Allstate)

RESPONSE: The Department agrees with the commenter. A definition of "personal private passenger automobile insurance" or "automobile insurance" has been provided. This will confirm that private passenger automobiles insured on a commercial policy are not within the scope of this subchapter.

COMMENT: The proposed rules do not define the terms "denied" and "denial" which are used throughout the proposed N.J.A.C. 11:3-33. This commenter proposes that "denied" or "denial" means "declination" as defined in N.J.A.C. 11:17A-1.2.

RESPONSE: The Department agrees with the commenter. The appropriate section of this rule has been amended accordingly.

COMMENT: One commenter stated that the definition of "insurer" in N.J.A.C. 11:3-33.2 should be amended to include only those insurers actually writing automobile insurance in New Jersey. The commenter indicates that this should be consistent with proposed N.J.A.C. 11:3-35.3(a) which would provide all insurers which write private passenger automobile insurance in New Jersey shall file their underwriting rules for approval.

RESPONSE: These repropounded rules do not mandate which insurers must provide insurance for eligible persons, but simply provides an appeals process when an insurer denies coverage based on eligible person status. The Department will be proposing rules in the near future which address what insurers must provide insurance to eligible persons.

COMMENT: One commenter noted that N.J.A.C. 11:3-33.4 provides that either the agent or the company can issue an explanation of denial. If the company sends this notice to an insured, the agent's notice seems unnecessary.

N.J.A.C. 11:3-33.4(c) states the insurer shall provide the notice set forth in N.J.A.C. 11:8-8.3 in lieu of any other notice. This commenter interprets "any other notice" to refer to notices proposed under N.J.A.C. 11:17A-1.7 as well as the above referenced section.

RESPONSE: The Department believes that "any other notice" could include notices proposed under N.J.A.C. 11:17A-1.7, as well as other notices which may be mandated by other rules.

COMMENT: N.J.A.C. 11:3-33.4(c) requires the insurer or agent who is issuing a denial to provide an applicant with the letter and appeal form with which to appeal to the Department. If an individual makes an oral request and is denied, the agent may not be provided with his or her address. In such a case, the commenter requests that a letter and an appeal form should not be provided to persons who inquire and are denied coverage by telephone unless they are requested.

RESPONSE: The Department has changed the language of N.J.A.C. 11:3-33.4(c) to provide that an insurer or agent who issues a written denial shall notify the applicant of his or her right to appeal to the Department.

COMMENT: Various commenters indicated that the 90-day time frame which N.J.A.C. 11:3-33.5 allows for the filing of an appeal from a denial of automobile insurance in the voluntary market is far too long. Two commenters suggested 20 and 30 days respectively.

RESPONSE: The Department disagrees. The 90-day requirement provides the affected applicant with a reasonable time frame in which to appeal the declination and is mandated by N.J.S.A. 17:33B-1 et seq.

COMMENT: In regards to N.J.A.C. 11:3-33.5(a)(2), the commenter inquired what are "supporting" documents and where does a consumer obtain them.

RESPONSE: The basis for appeal in specific instances which make a particular individual "an eligible person" are listed in the letter and appeal form which appear at N.J.A.C. 11:3-33.9. As an example, if an individual had been denied insurance coverage on the basis that his or her driver's license had been suspended or revoked for a 36-month period within the preceding three years, which resulted in the accrual of nine eligibility points, that individual should submit a certified motor vehicle abstract with their appeal form to demonstrate that they were not, in fact, suspended or revoked.

COMMENT: Several commenters questioned whether there is coverage during the period of time that a matter is contested. They indicated that N.J.A.C. 11:3-33.6(a) is unclear on this issue.

RESPONSE: If no coverage had been issued, there would be no coverage in place until the appeal was complete or the insured obtained alternative coverage. The vehicle may not be operated or registered per N.J.S.A. 39:6A-3.

COMMENT: N.J.A.C. 11:3-33.6 indicates that the Insurance Department shall send a copy of all pertinent documents submitted by the appellant to the insurance company and/or agent. There is a requirement that a final written response be submitted within 30 days of the receipt of these documents. Allstate indicates that this time frame should be extended to 45 days in view of the fact that an insured or applicant has 90 days in which to file an appeal.

RESPONSE: The Department disagrees. The Department believes that insurers can respond within the allotted time since the reason for the declination was known at the time it occurred.

COMMENT: The commenters raise several issues regarding N.J.A.C. 11:3-33.6(c). Does this portion of the regulation empower the Commissioner to order that coverage be provided on a retroactive basis? Does the failure of an insurer to timely respond require that coverage should be provided even if an insured is truly ineligible? Must insurers reinstate coverage pending a final hearing if the insurer appeals the Commissioner's decision? Coverage mandated by Commissioner pursuant to subsection (c) of 11:3-33.6 should be contingent upon the applicants payment of premium.

RESPONSE: In the case of a successful appeal the company is only required to "offer" coverage on a retroactive basis. This rule will require an offer of coverage only if there is a valid appeal. This will provide a greater incentive for insurance companies to respond in a timely manner. Insurers must offer coverage pending a final hearing if the insurer appeals the Commissioner's decision. An offer of coverage, mandated by the Commissioner pursuant to N.J.A.C. 11:3-33.6(c), will be contingent upon the applicant's payment of premium.

COMMENT: One commenter stated that the Commissioner's decision which is issued to the insurer, agent or person denied automobile insurance under N.J.A.C. 11:3-33.7(b)1i, should be sent by certified mail so as to afford the proper party the opportunity to reply in the allotted time frame.

RESPONSE: The Department agrees with the commenter. The appropriate provision of the rule has been amended accordingly.

COMMENT: A commenter asked how long it will take OAL to hear a contested case.

RESPONSE: The hearing of contested cases regarding the appeal process is a new procedure. The Department is unable to estimate the number of cases generated and the resultant schedule of the Office of Administrative Law.

COMMENT: Several commenters objected to N.J.A.C. 11:3-33.8 for various reasons. One commenter indicated that the imposition of penalties should occur only if declinations are found to be general business practices and not an isolated instance. Another commenter indicates that the penalties are unduly harsh for nonwillful violations. The amount of those penalties forces insurers to request a contested case hearing for any determination adverse to an insurer or agent.

RESPONSE: The Department disagrees. The penalties which are mandated are preventative in nature. They are not absolute. The rule indicates that they can be up to the amounts which are mentioned. The rule will not be operative prior to April 1, 1992.

COMMENT: One commenter indicated that the notation in the appendix of N.J.A.C. 11:3-33 which states "the procedure for filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33," is purposely intimidating and consumer unfriendly. It suggested that the Department produce a brochure which indicates an outline of the appeals process.

RESPONSE: The Department agrees. The Department fully intends to endeavor to keep the public apprised of their rights, including the right to appeal and the manner to do it. Until such time as the Department can create that type of a document, it has attempted to capture as much information as the public may need in the Notice and Appeal Form. At this juncture, the public should refer to the rule for informational purposes.

COMMENT: The commenter indicated that the word "declination" in the Appendix should be replaced with the phrase "Letter of Denial" or other simple wording.

RESPONSE: The definition of "declination" has been amended to include "denied" and "denial" at N.J.A.C. 11:3-33.2.

COMMENT: One commenter indicated that the appeal form reinforces that each driver is to be considered for voluntary coverage independent of all other drivers in the household. That position is inconsistent with the 10 percent proposal of the Department, which permits determination of eligibility on a household basis.

RESPONSE: The Department agrees with this commenter. The appropriate section in the "Automobile Declination Appeal" form has been amended.

COMMENT: The rule restricts insurers to the use of motor vehicle records for driving record information. Insurers should be able to submit other sources of information.

RESPONSE: The Department disagrees with the commenter. Nothing in these rules restrict insurers to the Department of Motor Vehicles (DMV) driving record abstracts. In fact in many instances other documentation is required. For example, it would be necessary for an insurer to show a \$500.00 payment regarding at-fault accidents.

COMMENT: One commenter indicated that the consumer will not know when it is appropriate to include a "certified Motor Vehicle Driver Abstract." It should be clear as to what "appropriate" is.

RESPONSE: The Department believes that the term "appropriate" indicates to an appellant that the DMV abstract should be included when information from that document would be the basis of an appeal.

COMMENT: The commenter indicated that the second statement under "Basis For Your Appeal" reads, "my driver's license is not suspended or revoked nor has it been for any 12-month period in the preceding three years." Since the FAIR Act indicates that an eligible person does not include an individual whose driver's license to operate an automobile is under suspension or revocation, the fact that that individual has not been suspended in three years is not relevant to the appeal. The fourth statement under "Basis For Your Appeal" reads, "... and I am able to pay the full annual premium for this policy." The FAIR Act mandates that the insured must have paid in full before issuance of a policy, if he or she was cancelled for nonpayment in the last two

years. Consequently, the declined applicant should be required to provide the Insurance Department with proof of payment.

RESPONSE: The Department disagrees. N.J.A.C. 11:3-34 assigns three points for each 12 month period during the preceding three years in which a license was suspended. Therefore, this information is necessary to assess the accumulation of eligibility points. The Department agrees with the second portion of this comment. The appropriate provision of this rule has been amended accordingly.

COMMENT: One commenter stated that it would like to put more emphasis on denials as a result of insurance company underwriting criteria. Although the form submitted to the Department has a check list that focuses on eligibility issues and leaves a category for "other", there should be some generic categories that handle anticipated denials which are not part of the eligibility system.

RESPONSE: This comment is not clear. The formal appeal process is intended only for those denials that are based upon a person not being eligible. N.J.S.A. 17:33B-15 requires that insurers provide coverage to all eligible persons who meet their underwriting rules. N.J.S.A. 11:3-35.4 requires insurers to file underwriting rules in accordance with their standard/non-standard rating plan (see N.J.A.C. 11:3-19) that provide for coverage to all eligible persons beginning April 1, 1992.

The repropoed rules implement N.J.S.A. 17:33B-13 through 18 and 17:33B-21 by:

1. Reproposing rules concerning an insurance producer's duty to assist in providing automobile insurance for all eligible persons; and

2. Reproposing rules concerning complaint procedures for persons who believe that they have been improperly denied automobile insurance in the voluntary market.

Concerning item 1 above, in addition to codifying relevant statutory provisions for organizational and informational purposes, the repropoed rules require insurance producers to provide applicants with premium quotations for the forms or types of coverage which are offered by all insurers represented by the agent or broker with whom he places risks, BEFORE application for coverage with an insurer is made. This requirement clarifies the statutory language. The repropoed rules also require that an insurance producer must advise an applicant, in writing, within 10 working days of receiving a declination of coverage from an insurer when written application is made. The 10 working day period also applies to cases under the Act where an applicant requests an insurance producer to provide a written declination where the application or request for coverage was made orally. The rules clarify that in addition to revocation of licensure, the Commissioner may impose upon an insurance producer a civil penalty of up to \$2,000 for the first violation and of up to \$5,000 for the second and each subsequent violation. Finally, consistent with the Act, the rules provide that insurance producers cannot bind coverage for new policies or provide a renewal of auto physical damage coverage without an inspection of the vehicle, when required by the insurer pursuant to N.J.A.C. 11:3-36.

The repropoed new rules also establish a complaint procedure for persons who believe that they have been improperly denied automobile insurance in the voluntary market, in implementation of N.J.S.A. 17:33B-17d. The following provisions apply:

1. Appeals from a denial of automobile insurance in the voluntary market must be made within 90 days of the date of a written declination by an insurer or insurance agent on a form prescribed by the Department.

2. The above-noted form requests a copy of the written declination and a form statement from the person denied coverage in the voluntary market indicating the reasons why the denial is incorrect.

3. Upon receipt of the form by the Department, the Department will provide the insurer or agent with a copy and request a response within 30 days.

4. After receipt of the insurer's or agent's response, the Commissioner will issue a written decision "on the papers."

5. Appeals from decisions of the Commissioner will be heard as contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

It should be noted that these proposed rules establish processes and procedures, not substantive rights to automobile insurance coverage. Therefore, these proposed rules include a special provision regarding compliance, N.J.A.C. 11:3-33.9, which cross-references the statutory provision concerning these substantive rights, N.J.S.A. 39:6A-3 and N.J.S.A. 17:33B-15.

As a result of the public comments received and further review by the Department, these rules contain substantive changes from the previous proposal, as described in this Summary.

Social Impact

The repropoed new rules fulfill several of the Department's implementing obligations under the Fair Automobile Insurance Reform Act of 1990. Insurance producers and insurers are provided with clarification as to their obligations under the relevant sections of the Act, concerning declination of coverage and attendant complaint procedures. The consumer is provided with a clear and simple complaint mechanism by which he can appeal a denial of insurance coverage in the voluntary market. Consumers will also benefit from the time requirements imposed on insurance producers and insurers to provide a written declination.

Economic Impact

As distinct from the underlying statutory provisions which they implement, the proposed rules do not themselves impose any appreciable economic impact on insurers or insurance producers. The 10 working day requirement for providing applicants with written declinations should not impose an economic burden on insurers or agents, nor should the 30-day response provision concerning appeals from a denial of insurance in the voluntary market. Insurance producers and insurers will be required to expend resources and time to provide written declinations and to respond to consumer complaints. Insurance producers and insurers will also be required to provide to persons denied insurance in the voluntary market an appeal form and cover letter prescribed by the Department.

The Department of Insurance will incur costs associated with the preparation and review of complaint forms and with the decisional process. The Office of Administrative Law will incur costs associated with the appeal of contested cases.

Regulatory Flexibility Statement

The proposed new rules will affect insurers authorized to write automobile insurance in New Jersey and insurance producers who service such policies (insurance agents and insurance brokers who have a brokerage relationship with an insurer). While few, if any insurers, are "small businesses" as defined at N.J.S.A. 52:14B-16 et seq., most insurance producers are "small businesses".

The compliance requirements imposed by the new rules are largely a function of the underlying statutory mandate and are clearly expressed in the rules themselves. Specific compliance requirements imposed by these rules include the requirement that declinations be issued to consumers within 10 working days and that insurers and insurance producers file a written response to an appeal from a declination denying auto insurance in the voluntary market within 30 days. Insurers and insurance producers will also be required to supply persons who have been denied insurance with a form for appeal to the Department. The rules do not impose reporting or recordkeeping requirements on insurers or insurance producers. As noted above, insureds and prospective insureds are required by the rules to appeal a denial of automobile insurance in the voluntary market on a form provided by the Department and to file same with the Department within 90 days of the date of the denial. Since the underlying statutory authority does not allow for disparate treatment for "small businesses," the rules apply equally to all insurers and insurance producers affected by their provisions.

Initial and annual capital costs of compliance will vary depending upon the number of appeals from denials of coverage in the voluntary market. Accordingly, some costs may be controlled by the insurer and insurance producer.

The Department believes that the rules will require insurers or insurance producers to hire additional professional or non-professional staff. To some degree these costs are controllable by careful evaluation of applicants and the costs will depend upon the number of appeals that are made.

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

11:17A-1.2 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, 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.

... **"Declination" means:**

- 1. Refusal by an insurance agent to submit an application on behalf of an applicant to any of the insurers represented by the agent;**
- 2. Refusal by an insurer to issue an automobile insurance policy to a person upon receipt of an application for automobile insurance;**
- 3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by a person, including the refusal to make requested changes to an existing policy that are available to other insureds with that company, or the offer to insure at a rate applicable to other than an eligible person;**
- 4. The refusal by an insurer or agent to provide, upon the request of a person, an application form or other means of making an application or request for automobile insurance coverage;**
- 5. The refusal by an insurer to renew a policy of automobile insurance based on the eligible person status; or**
- 6. The cancellation of an automobile insurance policy by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium.**

... **"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.**

... **"Personal private passenger automobile insurance" or "automobile insurance" means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.**

11:17A-1.7 Personal private passenger automobile insurance solicitation

(a) An insurance agent, or an insurance broker who has a brokerage relationship with an insurer, when soliciting personal private passenger automobile insurance, shall:

- 1. Not attempt to channel an eligible person away from an insurer or insurance coverage so as to avoid the agent's or broker's obligation to submit an application or an insurer's obligation to accept an eligible person;**
- 2. Provide each eligible person seeking automobile insurance with premium quotations for the forms or types of coverage requested by the eligible person, which are offered by all insurers represented by the agent or broker with whom the agent or broker places risks. The agent or broker shall provide quotations to the eligible person, orally if the request was oral or in writing if the request was written, before application for coverage with an insurer is made;**
- 3. Upon request, submit an application of an eligible person for automobile insurance to the insurer selected by the eligible person;**
- 4. Within 10 working days after receiving a declination (see N.J.A.C. 11:3-33) from an insurer to which a written application has been submitted, so advise the applicant in writing unless the written declination was sent by the insurer to the applicant or the insured;**
- 5. Where no written application has been made prior to declination, the agent or broker shall, if so requested by the applicant within 90 days, provide the applicant with a written explanation of the declination within 10 days of the request. Such communication shall, when applicable, include the reasons why coverage offered is with less favorable terms or conditions than those requested; and**
- 6. Not bind coverage for automobile physical damage perils prior to inspection of the automobile by the insurer when the insurer**

requires such inspection pursuant to the provisions of N.J.A.C. 11:3-36.

(b) For the purpose of this section the Commissioner of Insurance may impose a civil penalty in an amount of up to \$2,000 for the first violation and up to \$5,000 for the second and each subsequent violation and any other penalty provided by law.

Recodify existing 11:17A-1.7 and 1.8 as 1.8 and 1.9 (No change in text.)

SUBCHAPTER 33. APPEALS FROM DENIAL OF AUTOMOBILE INSURANCE

11:3-33.1 Purpose; scope

This subchapter sets forth an appeal procedure for a person who has been either denied personal private passenger automobile insurance or nonrenewed in the voluntary market by an insurer on the basis that they are not an eligible person as defined in N.J.A.C. 11:3-34.4. This subchapter applies to such persons and agents and insurers who must write private passenger automobile insurance pursuant to statutes and rules.

11:3-33.2 Definitions

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

"Applicant" means an insured or prospective insured who has made a request for personal private passenger automobile insurance on either a first time or renewal basis.

"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.

"Cancellation" means termination of insurance during the policy term pursuant to the provisions of N.J.S.A. 17:29C-7.

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

"Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decision, determination, or other, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

"Declination", "denied" or "denial" means:

1. Refusal by an insurance agent to submit an application on behalf of an eligible person applicant to any of the insurers represented by the agent;

2. Refusal by an insurer to issue an automobile insurance policy to an eligible person upon receipt of an application for automobile insurance;

3. The offer of automobile insurance coverage with less favorable terms or conditions than those requested by an eligible person, including the refusal to make requested changes to an existing policy that are available to other insureds with that insurer, or the offer to insure at a rate applicable to other than eligible persons;

4. The refusal by an insurer or agent to provide, upon the request of an eligible person, an application form or other means of making an application or request for automobile insurance coverage.

5. The refusal by an insurer to renew a policy of insurance based on eligible person status unless either a member of the insured's household is not an eligible person and that person accounts for

10 percent or more of the use of the vehicle pursuant N.J.A.C. 11:3-8.4(a)2 or that eligible person is nonrenewed pursuant to the provisions of N.J.A.C. 11:3-8.5; or

6. The cancellation of an automobile insurance policy of an eligible person by the insurer pursuant to N.J.S.A. 17:29C-7 for any reason other than nonpayment of premium.

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

"Eligible person" means an eligible person as defined at N.J.A.C. 11:3-34.4.

"Insurance agent" or "agent" means an insurance agent as defined at N.J.S.A. 17:22A-2 and shall also include an "insurance broker" as defined at N.J.S.A. 17:22A-2 who has a brokerage relationship with an insurer.

"Insurer" means any person transacting the business of personal private passenger automobile insurance with a duty to write personal private passenger automobile insurance in New Jersey for an eligible person, pursuant to N.J.S.A. 17:33B-15 and rules promulgated pursuant thereto by the Commissioner.

"Person" means an individual, association, corporation, partnership or other entity.

"Personal private passenger automobile insurance" or "automobile insurance" means direct insurance on private passenger automobiles issued by an insurer in accordance with a personal lines rating system filed and approved pursuant to N.J.S.A. 17:29A-1 et seq.

"Voluntary market" means automobile insurance written other than through a plan of operation established pursuant to N.J.S.A. 17:29B-1 et seq., 17:30E-1 et seq. or 17:33B-11.

"Working day" means any day except Saturday, Sunday or New Jersey State legal holidays.

11:3-33.3 Right to appeal

Any eligible person who has been denied automobile insurance in the voluntary market by an insurer shall be entitled to appeal the denial in the manner provided by this subchapter.

11:3-33.4 Duties of insurer or insurance agent

(a) If the application or request for coverage was made in writing, the insurer or agent shall provide the applicant with an explanation of the reasons for the denial in writing. If the application or request for coverage was made orally, the insurer or agent may provide the applicant with an oral explanation instead of a written explanation, and shall provide a written explanation if the applicant requests a written explanation within 90 days of the oral denial.

(b) An insurer or agent, upon denying automobile insurance in the voluntary market, shall, within 10 working days of its determination when written application is made, or within 10 working days of a request for a written determination when oral application is made, notify the applicant, in writing, of each specific reason for the denial. The reasons provided by an insurer or insurance agent shall be comprehensive and written in plain language. The reasons shall identify the specific basis on which the applicant fails to qualify as an "eligible person."

(c) An insurer or agent who has issued a written denial shall notify an applicant of his right to appeal to the Department pursuant to the provisions of this subchapter. That insurer or agent shall also advise the applicant that they have an obligation to obtain coverage as a condition of operation of the vehicle. As part of this notification, an insurer or agent shall provide an applicant with the letter and appeal form which comprise the Appendices A and B to this subchapter set forth and incorporated into this rule. For nonrenewals, the insurer shall provide the notice set forth in N.J.A.C. 11:3-8.3 in lieu of any other notice.

11:3-33.5 Procedure for filing an appeal

(a) Appeals from a denial of automobile insurance in the voluntary market shall be submitted to the Department, on a form prescribed by the Department (Appendix B to this subchapter, which is incorporated herein by reference as part of this rule), within 90 days of the date of a written denial from an insurer or insurance agent. In addition to the obligation of an insurer or agent to provide

a person with this form upon a denial of initial coverage (see N.J.A.C. 11:3-33.4(c)), copies of this form can be obtained by contacting the Department by telephone (609) 984-2426; or by mail at the address below:

Department of Insurance
Division of Enforcement and Consumer Protection
Attn: Auto Insurance Denial
20 West State Street
CN 329
Trenton, New Jersey 08625

(b) The form prescribed by the Department shall be completed and submitted to the address above and shall include, at a minimum, the following information:

1. A copy of the written denial obtained from the insurer or agent pursuant to N.J.S.A. 17:33B-16 and N.J.A.C. 11:3-33.4. When a person receives an oral denial, he or she shall request a written denial as provided by N.J.A.C. 11:3-33.4; and

2. A statement from the person who has received a denial of coverage, including supporting documentation, if any, indicating the reasons why the denial is incorrect.

11:3-33.6 Processing appeals

(a) Upon receipt of an appeal submitted in accordance with N.J.A.C. 11:3-33.5, the Department shall send to the insurer and/or insurance agent who provided the written denial, a copy of all pertinent documents which have been submitted by the appellant, and shall require a final written response within 30 days of the receipt of these documents.

(b) Upon receipt of the insurer's response to the appeal, and upon review of the papers, the Department shall render its decision on the appeal. The decision shall be in writing and shall set forth the reasons why the denial was appropriate or inappropriate under law. Copies of the Department's decision shall be mailed by certified mail to the appellant and to either the insurer or insurance agent, as the case may be. The Department's decision shall also include a written notice explaining the procedures for appealing the decision pursuant to N.J.A.C. 11:3-33.7.

(c) The failure of an insurer or agent to timely respond pursuant to (a) above shall result in a decision by the Department based upon the papers submitted to the Department by the applicant and any other information available to the Department at that time, pursuant to this subchapter. Such failure by an insurer or agent to timely respond pursuant to (a) above shall also be a violation of this subchapter and may result in penalties provided in N.J.A.C. 11:3-33.8.

(d) Upon a determination by the Department that a denial was improper the insurer shall offer to the applicant the requested coverage effective on the date of the declination.

11:3-33.7 Contested case hearings; pleadings

(a) An appeal from a decision of the Department made pursuant to N.J.A.C. 11:3-33.6 shall be heard as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The procedure for filing an appeal from the Department's decision in N.J.A.C. 11:3-33.6 shall be as follows:

1. Upon receipt of the decision of the Department, the insurer, agent or person denied automobile insurance shall, within 20 calendar days of receipt of the decision, file with the Department a written request for a contested case hearing. If there is a failure to timely file an appeal as required by this section the Department's decision shall remain the final agency action pursuant to N.J.A.C. 11:3-33.6. The request shall contain the following information:

- i. The name and address of the appellant;
- ii. The Department's case or file number;
- iii. If the appellant is the person denied insurance, the name and address of the insurance company and/or insurance agent which issued the denial of automobile insurance. If the appellant is the insurance company, the name and address of the insurance agent who issued the denial of coverage, if any, and the name and address of the person to whom automobile insurance was denied;

iv. A statement explaining, in detail, the reasons why the Department's determination is erroneous, including the filing therewith of supporting documentation, if any; and

v. A statement as to whether the appellant is represented by legal counsel, or another person pursuant to N.J.A.C. 1:1-5.1, and the name, address and telephone number of said person.

(c) Upon receipt of the items set forth in (b) above within the time provided, the Department shall send a copy of the documents to the opposing party and shall transmit the matter to the Office of Administrative Law for hearing as a contested case.

11:3-33.8 Penalties

Any insurer or insurance producer who violates any provision of this subchapter shall be subject to the penalties provided by law, including, but not limited to, the suspension or revocation of a certificate of authority or licensure and a civil penalty in an amount of up to \$2,000 for the first violation and of up to \$5,000 for the second and each subsequent violation, pursuant to N.J.S.A. 17:33-2.

11:3-33.9 Compliance

(a) Pursuant to N.J.S.A. 39:6A-3 and 17:33B-15, compliance with the provisions of this subchapter shall be effected in the following manner:

1. Appeals from denials concerning new policies on or after April 1, 1992 may be filed in the manner prescribed by this subchapter; and

2. Appeals from denials concerning policy renewals which take effect on or after April 1, 1992, may be filed in the manner prescribed by this subchapter.

APPENDIX A

Dear Applicant,

The "Fair Automobile Insurance Reform Act of 1990" (Act) provides that on or after April 1, 1992, every insurer, either by one or more separate rating plans, shall provide automobile insurance for eligible persons.

Therefore, an insurer may deny coverage only to those applicants who are not eligible. New Jersey law provides that any person who owns or has registered an automobile in New Jersey or a person who has a valid New Jersey drivers license is eligible except a person:

1. Who, in the last three years, has been convicted of driving under the influence or refusing a chemical test in New Jersey or elsewhere;

2. Who, in the last three years, has been convicted of a crime involving an automobile;

3. Whose driving license is suspended or revoked by a court;

4. Who, in the last five years, has been convicted of fraud or intent to defraud involving an insurance claim or application;

5. Who, in the last five years, has been denied payment of an insurance claim in excess of \$1,000, if there was evidence of fraud or intent to defraud;

6. Whose automobile insurance policy, in the last two years, was cancelled because of nonpayment of premium or financed premium (unless the entire annual premium for the new coverage is paid in full before issuance or renewal);

7. Who fails to maintain membership in a club, group or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance;

8. Whose driving record, for the last three years, has an accumulation of nine or more eligibility points. (Eligibility points are accumulated as a result of convictions, suspensions, revocations and determination of responsibility for civil infractions in accordance with schedules adopted by the New Jersey Department of Insurance. For example, one at-fault accident has been assigned five eligibility points.)

NOTE: The above description is a simplification of the statutory definition. For a more extensive description, see the New Jersey Administrative Code at N.J.A.C. 11:3-34.

The Commissioner of Insurance has established an appeal process for persons who have been denied automobile insurance. The procedure for filing a written appeal can be found in the New Jersey Administrative Code at N.J.A.C. 11:3-33. Most New Jersey public libraries have this material.

To begin the appeal process, you must complete the attached form and mail it, with the necessary documentation, to the address indicated.

WARNING: You must have automobile insurance if you plan to operate and/or register a vehicle during the appeal process. Filing an appeal does not provide you with insurance.

APPENDIX B

NOTE: YOU HAVE 90 DAYS FROM THE DATE ON WHICH A WRITTEN DENIAL OF AUTOMOBILE INSURANCE IS MADE TO FILE THIS APPEAL.

**NEW JERSEY DEPARTMENT OF INSURANCE
AUTOMOBILE DECLINATION APPEAL**

Your Name: _____

Your Address: _____

Your Telephone Number: (____) _____

Insurance Company and/or Insurance Producer (agent or broker) that declined your application for automobile insurance coverage in the voluntary market (if producer, please provide the name and address):

Company _____

Producer _____

YOU MUST ATTACH A COPY OF THE DECLINATION (If you have not received a written declination from the insurance company or producer, you must request one within 90 days from the date you first applied for insurance.)

BASIS FOR YOUR APPEAL (Please indicate with an "X" those statements or reasons that apply and attach a copy of pertinent documentation supporting your appeal. Such documentation should include a certified motor vehicle driver "abstract", where appropriate, available from the Division of Motor Vehicles, 120 South Stockton Street, CN 142, Trenton, New Jersey 08666. There is a \$5.00 fee for each copy of the DMV abstract.)

- ☐ I have not been convicted of Driving Under the Influence (N.J.S.A. 39:4-50) or of refusing to submit to a chemical test (N.J.S.A. 39:4-50.4(a)), or for a similar offense in another jurisdiction, or of a crime involving an automobile or theft of a motor vehicle.
- ☐ My driver's license is not suspended or revoked, nor has it been for any 12-month period in the preceding three years.
- ☐ I have not been convicted of insurance fraud or intent to defraud, or have not had an insurance claim (in excess of \$1,000) denied because of evidence of fraud within the five-year period immediately preceding application or renewal.
- ☐ My auto insurance has not been cancelled for nonpayment of premium within the last two years and I provide proof of payment OR I have had my policy cancelled for nonpayment AND I am able to pay the full annual premium for this policy.
- ☐ I am qualified as a member of a group or organization in which membership is required in order to obtain this insurance policy.
- ☐ I have fewer eligibility points accumulated than alleged in the declination letter as evidenced by the attached copy of my driving record.
- ☐ The accident record indicated in the declination letter is wrong as evidenced by the attached.
- ☐ No other person who is a member of the same household and who will drive more than 10 percent of the time is an ineligible person.
- ☐ Other (Specify and provide proof, if appropriate).

CERTIFICATION OF APPEAL

The information contained in this appeal is true and complete to the best of my knowledge and belief.

I UNDERSTAND THAT FILING THIS APPEAL DOES NOT PROVIDE ME WITH AUTOMOBILE INSURANCE. IF MY AUTO IS REGISTERED IN NEW JERSEY OR IS BEING DRIVEN, I HAVE OBTAINED OTHER AUTO INSURANCE.

Your Signature _____ Date _____

MAIL THIS COMPLETED FORM AND NECESSARY DOCUMENTATION TO:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
CN 329
Trenton, New Jersey 08625
Attn: Auto Insurance Denial

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF PHARMACY

Reciprocal Registration

Proposed Amendment: N.J.A.C. 13:39-3.9

Authorized By: State Board of Pharmacy, H. Lee Gladstein,
Executive Director.

Authority: N.J.S.A. 45:14-8; 45:14-26.2.

Proposal Number: PRN 1992-77.

Submit written comments by March 19, 1992 to:

H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Pharmacy is proposing to amend N.J.A.C. 13:39-3.9 in order to reduce the hours of pharmacy experience required for reciprocal registration and to permit completion of a practicum in New Jersey as an alternate means of gaining the required experience. The Board annually receives a large number of requests to waive the practice requirement, and it has found that the current requirement of 2,000 hours within one year prior to application—approximately 40 hours per week—is unnecessarily restrictive and not comparable to the requirements of surrounding states.

The proposed reduction in the practice requirement to 1,000 hours within two years (approximately 10 hours per week), together with the alternative of a 500-hour practicum within one year, will provide broader access to New Jersey licensure for qualified out-of-State applicants. At the same time, the Board is confident that the proposed new practice requirement will ensure that the applicant for licensure by reciprocity has sufficient current pharmacy experience for the protection and maintenance of the public health.

Social Impact

The revised reciprocal registration practice requirement will affect an unknown number of out-of-State pharmacists who desire New Jersey licensure but who do not qualify under the existing rule because of insufficient hours of pharmacy experience. The Board annually receives requests for waiver of the practice requirement from in excess of 70 out-of-State pharmacists, who would otherwise be required to retake the National examination. The proposed amendments will enable some or all of these pharmacists, and perhaps others, to qualify for New Jersey licensure. By completion of a practicum in the presence of a New Jersey licensee, pharmacists without the requisite experience will be able to live and work in New Jersey while qualifying for licensure.

A degree of benefit may also be felt by potential employers looking for additions to their staffs. Pharmacists continue to be in demand and the field is fully-employed, with shortages in some areas. If more applicants achieve licensure because of the revised practice requirement, the number of licensees available for employment will increase.

Consumers will continue to be protected because, in the Board's opinion, 1,000 hours of pharmacy experience within a two-year period will satisfy the Board's high standards of professional competency.

Economic Impact

Out-of-State pharmacists seeking New Jersey licensure who do not qualify for reciprocal registration under the present rule may benefit economically. If these individuals qualify as a result of the proposed amended practice requirement, they will avoid the expense of taking the National examination. Individuals who do not qualify under the proposed amendments but who choose to complete a practicum will also benefit

economically, in that they will be able to earn a salary as a pharmacist while gaining the experience required for licensure by reciprocity. To the extent that the proposed amendments result in fewer waiver requests, the Board's administrative costs of processing waiver applications should decrease. No economic impact upon the consumer is anticipated.

Regulatory Flexibility Statement

The proposed amendment to N.J.A.C. 13:39-3.9 will affect only individual applicants for reciprocal registration. No regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 is, therefore, necessary.

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

13:39-3.9 Out of state practice requirement for transfer of license from a mutually reciprocating state

[An applicant for reciprocal registration to the State of New Jersey must have practiced in a pharmacy for at least 2000 hours within the one year immediately prior to application and be in good standing with that state and any other state in which the applicant is licensed.]

(a) An applicant for reciprocal registration to the State of New Jersey must be in good standing with any state in which the applicant is licensed and must have:

1. Practiced in pharmacy for at least 1000 hours within the two years immediately prior to application; or
2. Served a pharmacy practicum in New Jersey, in the presence of a New Jersey registered pharmacist approved by the Board, of not fewer than 500 hours within the one year immediately prior to application.

(a)

STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Notice of Comment Period Extension

Land Surveyors; Corner Markers

Proposed Amendment: N.J.A.C. 13:40-5.1

Take notice that the State Board of Professional Engineers and Land Surveyors has extended the public comment period for the proposed amendment to N.J.A.C. 13:40-5.1, Land Surveyors; Corner Markers, published in the January 6, 1992 New Jersey Register at 24 N.J.R. 51(a), from February 5, 1992 to March 3, 1992.

Submit comments by March 3, 1992 to:

Arthur Russo, Executive Director
Board of Professional Engineers and Land Surveyors
124 Halsey Street, 6th Floor
P.O. Box 45015
Newark, New Jersey 07101

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PROFESSIONAL PLANNERS Fees

Proposed Amendment: N.J.A.C. 13:41-3.2

Authorized By: State Board of Professional Planners,

Richard Weisman, Executive Director.

Authority: N.J.S.A. 45:14A-4.

Proposal Number: PRN 1992-78.

Submit written comments by March 19, 1992 to:

Richard Weisman, Executive Director
State Board of Professional Planners
Post Office Box 45016
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Professional Planners is proposing a general increase in its fee schedule, N.J.A.C. 13:41-3.2, in order to cover increases in

investigative, examination and program costs since these fees were last amended approximately seven years ago. The increases are necessary to prevent a fiscal loss to the Board, which is required pursuant to N.J.S.A. 45:1-3.2 to cover its expenses.

Amendments are also proposed to reflect a determination of the Division of Consumer Affairs to accurately and specifically identify within the fee schedules of the professional boards the actual expense elements which a board incurs and to create within the Division a uniform method of assessing and collecting fees. In that regard, the following amendments to the fee schedule are proposed:

1. Several new fees have been added; for example, fees for the National Examination only, duplicate wall certificate and name change.
2. The fee for duplicate licensure certificate has been renamed "duplicate license" and has been moved to a more appropriate place within the fee schedule.
3. The \$1.00 Secretary of State fee has been included in the biennial renewal fee and therefore has been deleted as a separate item from the fee schedule.
4. N.J.A.C. 13:41-3.2(a)2iii (Licensure in accordance with N.J.S.A. 45:14A-11) has been renamed "Initial License Fee." This fee, which is currently higher than the biennial renewal fee, will now be the same as the renewal fee, and it has been prorated on an annual basis.

Social Impact

The proposed fee increases will enable the Board of Professional Planners to discharge its statutory obligations pursuant to the Professional Planners Licensing Act, N.J.S.A. 45:14A-1 et seq. The Board's responsibilities under the Act include the evaluation of applicants for licensure and the regulation of the practice of professional planning. The new fee schedule, which will affect all current and potential licensees of the Board of Professional Planners, will allow the Board to continue to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high professional standards.

Economic Impact

The proposed amendment to the Board's fee schedule will impact upon all applicants for licensure and all Board licensees in that they will be required to pay higher licensing fees. However, pursuant to N.J.S.A. 45:1-3.2, the Board is required to be self-funding; that is, its administrative expenses must be met through licensing fees. The current fees have been in place since 1985, and since that time the Board's examination and administrative expenses have increased considerably. The proposed licensing fee increases will prevent a fiscal loss to the Board.

The Board does not anticipate that the proposed fee schedule will necessitate an increase in fees charged to the consumer, since as a business expense the increase—approximately \$32.00 per year—is reasonable.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., professional planners are deemed "small businesses" within the meaning of the statute, the following statements are applicable.

The Board of Professional Planners currently licenses approximately 3,700 individuals. The proposed amendments, which include a general increase in the Board's fee schedule, do not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. The fee increases are necessary to enable the Board to avoid operating at a loss. Since the fees have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:41-3.2 Fee schedule

(a) The fees charged by the State Board of Professional Planners shall be:

1. Application for a Professional Planner or
Planner-In-Training license [\$ 25.00]
\$ 75.00

PROPOSALS

Interested Persons see Inside Front Cover

LAW AND PUBLIC SAFETY**2. Examination [and Reexamination] Fees**

i. Combined National and State Examination[s]	\$175.00
	\$275.00
ii. State Examination only	\$ 25.00
	\$200.00
iii. National Examination only	\$225.00
[iii. Licensure in accordance with N.J.S.A.	
45:1A-11	\$150.00
[3. Duplicate Licensure Certificate	\$ 10.00
4. Fee for Secretary of State as required by	
N.J.S.A. 22A:4.1	\$ 1.00
3. Initial license fee:	
i. During the first year of a biennial renewal	
period	\$130.00
ii. During the second year of a biennial renewal	
period	\$ 65.00
[5.]4. Biennial License Fee and	
Renewal-Professional Planner	\$ 65.00
	\$130.00
[6.]5. Late Renewal Fee	\$ 10.00
	\$ 50.00
[7.]6. Reinstatement Fee	\$ 75.00
	\$200.00
[(Plus \$10 for each year license is in arrears.)]	
7. Duplicate license	\$ 25.00
8. Name Change	\$ 25.00
9. Duplicate Wall Certificate	\$ 25.00

(a)**NEW JERSEY RACING COMMISSION****Thoroughbred Rules****Stay Pending Appeal****Proposed Amendment: N.J.A.C. 13:70-13A.8**

Authorized By: New Jersey Racing Commission,

Frank Zanzuccki, Executive Director.

Authority: N.J.A.C. 5:5-30.

Proposal Number: PRN 1992-81.

Submit written comments by March 19, 1992 to:

Frank Zanzuccki, Executive Director
 New Jersey Racing Commission
 200 Woolverton Street, CN 088
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Racing Commission is proposing to remove the requirement to forward a bond when appealing a decision of the stewards or judges to the Office of Administrative Law. The purpose of this bond was to insure that the cost of the shorthand reporting service would be paid by the appellant. This is no longer necessary since the Office of Administrative Law has eliminated the use of shorthand reporters to transcribe racing-related hearings conducted at its offices. A tape recording system is utilized in its place. Copies of tapes are available at a nominal fee to interested parties and only released after payment has been received.

Social Impact

This proposed amendment should create a positive social impact since the Racing Commission is making it easier to appeal a decision of its officials. Appellants will no longer be required to forward money as a prerequisite to proceeding with their right of due process.

Economic Impact

The economic impact on governmental bodies will be positive since the Racing Commission will no longer be required to maintain a separate bond account requiring administrative oversight. The public will also benefit economically because they will no longer be required to post a bond with the Commission.

Regulatory Flexibility Statement

The proposed amendment imposes no 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 amendment eliminates a requirement for the posting of security when requesting a stay pending an appeal of a judges' or steward's decision. Therefore, a regulatory flexibility analysis is not required.

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

13:70-13A.8 Stay pending appeal

(a) A notice of appeal filed with the Commission pursuant to this subchapter may be accompanied by a request for a stay pending a final decision by the Commission. Such a request for a stay shall be made on a form prescribed by the Commission [and shall be accompanied by security of not less than \$100.00]. The Executive Director of the Commission may approve such stay requests in matter involving:

1.-3. (No change.)

(b) (No change.)

(b)**NEW JERSEY RACING COMMISSION****Harness Rules****Stewards Hearing****Proposed Amendment: N.J.A.C. 13:71-3.3**

Authorized By: New Jersey Racing Commission,

Frank Zanzuccki, Executive Director.

Authority: N.J.A.C. 5:5-30.

Proposal Number: PRN 1992-79.

Submit written comments by March 19, 1992 to:

Frank Zanzuccki, Executive Director
 New Jersey Racing Commission
 200 Woolverton Street, CN 088
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Racing Commission is proposing to remove the requirement of conducting hearings for minor rule violations by its standardbred stewards. Standardbred judges conduct hearings for all rule violations. Appellants were automatically permitted to appeal the judges' decision to the State steward. The stewards conduct hearings and issue decisions that rarely, if ever, differ from the judges' decisions. These hearings are time consuming for all involved and unnecessary for decisions that included suspensions of less than 10 days. The State steward will only conduct hearings involving major suspensions of 10 days or more. This change will also make the appeal similar to the thoroughbred process.

Social Impact

Some of the licensees who are accustomed to appealing minor suspensions in order to delay the imposition of the suspension will object to this change. The Commission's decision to make this change in conjunction with the elimination of the requirement to post a bond when appealing a judges' decision to the Office of Administrative Law (see proposed amendment to N.J.A.C. 13:71-3.8 published elsewhere in this issue of the New Jersey Register) will eliminate any claim by licensees that the Commission is restricting their right to due process.

Economic Impact

The State steward will have more time to devote to major cases as a result of eliminating the requirement to conduct hearings on all minor violations. This should indirectly save time and money for the State by presenting better cases to the Office of Administrative Law with less time required by Deputy Attorneys General.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed

amendment limits appeals from decisions of the board of judges to the State steward to only those involving major suspensions of 10 or more days. Therefore, a regulatory flexibility analysis is not required.

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

13:71-3.3 Stewards hearing

(a) All appeals from decisions of the board of judges **involving major suspensions of 10 days or more** shall be considered by the State steward. Such appeal hearing shall be a de novo proceeding and the steward may modify any penalty imposed by the board of judges upon notice and opportunity to be heard afforded to the affected person or persons.

(b) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Stay Pending Appeal

Proposed Amendment: N.J.A.C. 13:71-3.8

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1992-80.

Submit written comments by March 19, 1992 to:

Frank Zanzuccki, Executive Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Racing Commission is proposing to remove the requirement to forward a bond when appealing a decision of the stewards or judges to the Office of Administrative Law. The purpose of this bond was to insure that the cost of the shorthand reporting service would be paid by the appellant. This is no longer necessary since the Office of Administrative Law has eliminated the use of shorthand reporters to transcribe racing-related hearings conducted at its offices. A tape recording system is utilized in its place. Copies of tapes are available at a nominal fee to interested parties and only released after payment has been received.

Social Impact

This proposed amendment should create a positive social impact since the Racing Commission is making it easier to appeal a decision of its officials. Appellants will no longer be required to forward money as a prerequisite to proceeding with their right of due process.

Economic Impact

The economic impact on governmental bodies will be positive since the Racing Commission will no longer be required to maintain a separate bond account requiring administrative oversight. The public will also benefit economically because they will no longer be required to post a bond with the Commission.

Regulatory Flexibility Act Statement

The proposed amendment imposes no 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 amendment eliminates a requirement for the posting of security when requesting a stay pending an appeal of a judge's or steward's decision. Therefore, a regulatory flexibility analysis is not required.

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

13:71-3.8 Stay pending appeal

(a) A notice of appeal filed with the Commission pursuant to this subchapter may be accompanied by a request for a stay pending a final decision by the Commission. Such a request for a stay shall be made on a form prescribed by the Commission [and shall be

accompanied by security of not less than \$100.00]. The Executive Director of the Commission may approve such stay requests in matter involving:

1.-3. (No change.)

(b) (No change.)

TRANSPORTATION

(b)

NEW JERSEY TRANSIT CORPORATION

Reduced Fare Transportation Program for the Elderly and Handicapped

Proposed New Rules: N.J.A.C. 16:73

Authorized By: New Jersey Transit Corporation,
Shirley A. DeLibero, Executive Director.

Authority: N.J.S.A. 27:25-5(e) and 27:1A-68.

Proposal Number: PRN 1992-71.

Submit written comments by March 19, 1992 to:

Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
One Penn Plaza East
Newark, New Jersey 07105-2246

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), N.J.A.C. 16:73, NJ TRANSIT's Reduced Fare Transportation Program for the Elderly and Handicapped, expired on January 30, 1992. Pursuant to N.J.A.C. 1:30-4.4, the New Jersey Transit Corporation (hereinafter "NJ TRANSIT") herein proposes these expired rules as new rules, without change.

The provisions of Executive Order No. 66(1978) require that NJ TRANSIT review periodically its present regulations to determine their continuing usefulness. Accordingly, NJ TRANSIT has reviewed its Reduced Fare Transportation Program for the Elderly and Handicapped and has determined the rules to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which it was originally promulgated.

N.J.A.C. 16:73 contains the rules governing the reduced fare transportation program. Specifically, subchapter 1 describes the general provisions of the Reduced Fare Transportation Program. Subchapter 2 describes identification and registration of participants in the Program. Subchapter 3 describes the agreements for services and payment which are entered into with those carriers that participate in the Program. Subchapter 4 is reserved at this time.

Social Impact

The adoption of these new rules will cause no change in the impact of the expired rules on senior citizens and handicapped persons. The rules will continue to provide NJ TRANSIT with a mechanism to provide a reduced fare transportation program to eligible senior citizens and handicapped persons.

Economic Impact

The adoption of these new rules will not cause a change in the economic impact of the expired rules on the participants or the participating autobus carriers. Eligible senior citizens and handicapped persons will continue to pay reduced fares for bus and rail transportation.

Regulatory Flexibility Statement

These proposed new rules do not impose any recordkeeping, reporting or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules set forth the procedures for senior citizens or handicapped persons to follow to obtain reduced fare tickets under the program. Carriers participating in the program do so pursuant to a contractual agreement with NJ TRANSIT which specifies their responsibilities. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:73.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Garden State Arts Center

Definitions; Prohibitions; Seating; Ticket Resales;

Readmission; Merchandise Sales

Proposed Amendments: N.J.A.C. 19:8-1.1 and 2.11

Authorized By: New Jersey Highway Authority, David W. Davis,
Executive Director (with approval of the Board of
Commissioners).

Authority: N.J.S.A. 27:12B-5(j) and 27:12B-24.

Proposal Number: PRN 1992-69.

Submit written comments by March 19, 1992 to:

David W. Davis, Executive Director

New Jersey Highway Authority

P.O. Box 5050

Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed amendments clear up certain ambiguities and tighten restrictions regarding security for the Garden State Arts Center. In particular, the definitions are expanded to include the term "amphitheater," which means the theatre and lawn areas within the confines of the fence which surrounds the theater located at the Garden State Arts Center. The term "Arts Center" has been redefined to include the amphitheater, plaza, mall, all roads leading to and from the amphitheater and all parking areas supporting the amphitheater.

The amendments make clear that no person may occupy any space within the amphitheater without a ticket stub for the occupied space. The amendments make it clear that certain defined behavior is prohibited within the amphitheater itself as opposed to the larger previously defined "Arts Center." In addition, "video cameras" have been added to the items prohibited to be brought into the amphitheater.

The amendments provide that ticket resales are governed by New Jersey State statutes. Further, patrons may not be readmitted to the amphitheater upon departure unless approval has been obtained from the Authority. Finally, no person may sell merchandise within the Arts Center property without the express permission of the Authority.

Social Impact

These amendments clear up certain ambiguities and tighten restrictions regarding security for the Garden State Arts Center. These amendments should positively contribute to the use and enjoyment of the Garden State Arts Center by the vast majority of its patrons by restricting inappropriate behavior of the few.

Economic Impact

These amendments will result in no increased costs for the patrons of the Garden State Arts Center.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The sole effect of the amendments is to regulate patron behavior at the Garden State Arts Center.

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

19:8-1.1 Definitions

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

"Amphitheater" means the theater and lawn areas within the confines of the fence which surrounds the theater located at the Garden State Arts Center.

"Arts [center] Center" means the [Garden State Arts Center] amphitheater, plaza, mall, all roads leading to and from the

amphitheater and all parking areas supporting the amphitheater.

...

["Garden State Arts Center" means the amphitheater located on the Garden State Parkway at Telegraph Hill Park, Holmdel, New Jersey.]

...

19:8-2.11 Garden State Arts Center

(a) [No] For events requiring a ticket, no person shall be admitted to the [Arts Center] amphitheater without a ticket, including minors. For events requiring a ticket, no person, including a minor, may occupy a reserved seat at the amphitheater unless able to produce a ticket stub for that seat nor occupy lawn space unless able to produce a ticket stub.

(b) No person shall be admitted to the [Arts Center] amphitheater unless properly attired. Bare feet are not permitted.

(c) No person shall be admitted to the [Arts Center] amphitheater with the following in his or her possession:

1.-2. (No change.)

3. Cameras, video cameras, recording equipment, radios, televisions or other [unauthorized] electronic equipment unless specifically authorized by the Authority;

4. Pets.

(d) To effect compliance with (c) above, the Authority shall have the right to inspect any such package, can, bottle, cooler, box, flask, thermos bottle, bag or container of any description in the possession of any persons seeking admission to the [Arts Center] amphitheater. Any refusal to permit such inspection shall be grounds to prohibit the admission of any person to the [Arts Center] amphitheater.

[(e) No person may occupy a reserved seat at the Arts Center unless able to produce a ticket stub for that seat, including minors.

(f) Food or beverages under the roof to the amphitheater are prohibited.]

[(g)](e) No person may take or leave their reserved seat when the house lights are out, unless accompanied by an usher.

[(h) No person shall sell or offer to sell or dispose of, or possess with intent to sell or dispose of, any ticket of admission or any ticket entitling the holder to the use of a seat, lawn, mall or parking facilities of the Arts Center, at or for a price in excess of the sale price established for such ticket as printed on the face thereof.]

(f) Ticket resales are prohibited except in accordance with Title 56 of the New Jersey statutes.

(g) After any person has been admitted to the amphitheater, there shall be no departure and readmittance permitted without the approval of the Authority.

(h) No person shall sell any merchandise of any description or kind within the Arts Center without express permission of the Authority.

(b)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Emergency Service

Proposed Amendment: N.J.A.C. 19:8-2.12

Authorized By: New Jersey Highway Authority, David W. Davis,
Executive Director (with approval of the Board of
Commissioners).

Authority: N.J.S.A. 27:12B-5(j), 27:12B-18 and 27:12B-24.

Proposal Number: PRN 1992-70.

Submit written comments by March 19, 1992 to:

David W. Davis, Executive Director

New Jersey Highway Authority

P.O. Box 5050

Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:8-2.12 will increase the maximum charges for emergency services on the Garden State Parkway. The proposed increased charges are as follows:

The service charge is increased from \$12.00 to \$15.00. Vehicle towing up to 6,999 pounds (lbs.), is increased from \$2.00 per mile or fraction thereof to \$2.25 per mile or fraction thereof (basic charge is increased from \$30.00 to \$35.00). Vehicle towing over 7,000 lbs. and two-axle trucks is increased from \$2.25 per mile or fraction thereof to \$2.50 per mile or fraction thereof (basic charge is increased from \$45.00 to \$50.00). Vehicle towing over 14,999 lbs. is increased from \$2.50 per mile or fraction thereof to \$3.00 per mile or fraction thereof (basic charge is increased from \$75.00 to \$85.00). In addition, the charge for use of Land All Trailer (Low Boy) is increased from \$100.00 to \$110.00 for the first hour. Rates for additional hours increase from \$50.00 to \$55.00 per each additional hour. Towing charges increase from \$4.00 to \$4.50 per mile. Finally, the charge for the use of a heavy-duty Under Reach is \$200.00 per hour, plus \$4.50 per mile or fraction thereof.

Social Impact

The allowance of these increases will permit the Authority to continue to maintain reliable and professional emergency services for patrons of the Garden State Parkway and contribute to the use and enjoyment of the Garden State Parkway by the traveling public.

The proposed increases are consistent with increased costs and will be borne by those patrons of the Garden State Parkway who must avail themselves of emergency services.

If the proposed increases are adopted, charges for emergency services on the Garden State Parkway will continue to remain lower than similar charges permitted under the regulations governing the New Jersey Turnpike. In addition, Parkway charges will be lower than the rates permitted by New Jersey Department of Insurance regulations.

Economic Impact

The rate increases imposed by this amendment will result in minimal increased costs for the traveling public which the Authority believes are reasonable, while providing a reasonable profit for the licensed towing operators.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal 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 sole effect of this proposed amendment is to permit providers of emergency services to increase fees charged for said services.

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

19:8-2.12 Emergency service

(a) (No change.)

(b) Rules on road service for all vehicles are as follows:

1. Service charge: 24 hours per day, [\$12.00] **\$15.00**;

2.-3. (No change.)

(c) Rules on towing cars and campers up to a registered maximum gross weight of 6,999 lbs. are as follows:

1. Towing charge: [\$30.00] **\$35.00** plus [\$2.00] **\$2.25** per mile or fraction thereof[.];

(d) Rules on towing trucks and buses (two axles) and cars and campers registered gross weight 7,000 lbs to 14,999 lbs. are as follows:

1. Towing charge[, \$45.00]: **\$50.00** plus [\$2.25] **\$2.50** per mile or fraction thereof[.];

(e) Rules on towing trucks, with or without trailers, and buses (three-axes or more) or with a registered gross weight exceeding 14,999 lbs. are as follows:

1. Towing charge: [\$75.00] **\$85.00** plus [\$2.50] **\$3.00** per mile or fraction thereof.

2. The charge for use of a Land All Trailer (Low Boy) is [\$100.00] **\$110.00** for the first hour, with an additional [\$50.00] **\$55.00** charge for each additional hour used. In addition, there will be a towing charge of [\$4.00] **\$4.50** per mile.

3. The charge for the use of a heavy-duty Under Reach is \$200.00 per hour, plus \$4.50 per mile or fraction thereof.

(f) (No change.)

(a)

CASINO CONTROL COMMISSION

Pai Gow

Rules of the Game

Gaming Equipment

Accounting and Internal Controls

Gaming Schools

Proposed New Rules: N.J.A.C. 19:46-1.13C, 1.19A and 1.19B; 19:47-10

Proposed Amendments: N.J.A.C. 19:44-8.3; 19:45-1.11 and 1.12; 19:46-1.15, 1.16 and 1.20; and 19:47-8.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e) and P.L. 1991, c.182.

Proposal Number: PRN 1992-74.

Submit comments by March 19, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

The proposed new rules and amendments included in this proposal are intended to govern the implementation of the game of pai gow in Atlantic City casinos. The actual rules of the game are set forth in N.J.A.C. 19:47-10.1 through 10.11.

Briefly, pai gow is played with a set of 32 dominoes known as tiles. The rules establish rankings for specific pairs of tiles and for each individual tile. Each player and the dealer receive four tiles, which they then arrange to form a high and low hand each consisting of two tiles. The player's hands are then compared to the two hands of the dealer. A player wins if both his or her high hand and low hand are higher in rank than the high hand and low hand of the dealer or bank. The player's wager is considered to be a tie ("push"), if one of his or her hands are higher in rank than one of the hands of the dealer or bank and one is identical or lower in rank. The player loses if both of his or her hands are lower in rank than, or equal in rank to, the hands of the dealer or bank. Winning wagers in pai gow are paid 1 to 1. A five percent vigorish is charged on all winning hands, including hands when banking or co-banking is offered.

Banking involves a player covering the winning wagers of the other players at the table. Banking is optional and involves a player playing against other players, unlike most of the other casino games in Atlantic City which involve players wagering against the house. Co-banking is another option, in which the casino may elect to "co-bank" with a player and cover one-half of the winning wagers.

Proposed new rule N.J.A.C. 19:46-1.13C contains the requirements governing the physical characteristics of pai gow tables and pai gow shakers. Proposed new rules N.J.A.C. 19:46-1.19A and 1.19B specify the physical characteristics of pai gow tiles and the procedures concerning their receipt, distribution and control. Amendments to N.J.A.C. 19:46-1.15 address the physical characteristics of pai gow dice. Proposed new rule N.J.A.C. 19:47-10.8 contains the provisions concerning player banking, co-banking and the selection of the bank.

The proposed amendments to N.J.A.C. 19:44-8.3 establish minimum training hours for a student being trained to deal pai gow. The remainder of the proposed new rules and amendments are technical proposals which govern the operation of pai gow in Atlantic City casinos.

Social Impact

The proposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory

authorization of the game of pai gow. The proposed rules do not reflect any social judgments made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of pai gow.

Economic Impact

Implementation of any new game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of pai gow on casino revenue would be highly speculative at this time. The proposed amendments and new rules may require the regulatory agencies to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce and test the game of pai gow in Atlantic City casinos.

Regulatory Flexibility Statement

The proposed new rules and amendments will affect casino licensees and casino employees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendment to N.J.A.C. 19:44-8.3 will affect licensed gaming schools (four at present) that may choose to offer training in pai gow. These schools, which may be small businesses, would be required to comply with minimum training hours prescribed for dealing pai gow. No exemption is provided for these small businesses because the Commission has determined that such training is needed to ensure the integrity and the proper conduct of the game, as noted above.

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

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer [of roulette, blackjack, baccarat or craps] shall satisfy the following minimum requirements:

1. For a student being trained to deal [his] **a** first game the following minimum hours of training and instruction shall be required:

- i. 160 hours to [prepare a student to] deal blackjack;
- ii. 208 hours to [prepare a student to] deal baccarat and minibaccarat;
- iii. 200 hours to [prepare a student to] deal roulette; [and]
- iv. 240 hours to [prepare a student to] deal craps; **and**
- v. **270 hours to deal pai gow.**

2. For a student being trained to deal [his] **a** second or subsequent game the following minimum hours of training and instruction shall be required:

- i. For a student [who has been trained] **certified** to deal blackjack;
 - (1) 180 hours to [prepare him to] deal craps;
 - (2) 120 hours to [prepare him to] deal roulette; [and]
 - (3) 85 hours to [prepare him to] deal baccarat and minibaccarat; **and**

(4) **210 hours to deal pai gow.**

- ii. For a student [who has been trained] **certified** to deal roulette:
 - (1) 180 hours to [prepare him to] deal craps;
 - (2) 80 hours to [prepare him to] deal blackjack [and]
 - (3) 88 hours to [prepare him to] deal baccarat and minibaccarat; **and**

(4) **210 hours to deal pai gow.**

- iii. For a student [who has been trained] **certified** to deal craps:
 - (1) 120 hours to [prepare him to] deal roulette;
 - (2) 80 hours to [prepare him to] deal blackjack; [and]
 - (3) 88 hours to [prepare him to] deal baccarat and minibaccarat; **and**

(4) **210 hours to deal pai gow.**

- iv. For a student [who has been trained] **certified** to deal baccarat:
 - (1) 180 hours to [prepare him to] deal craps;
 - (2) 120 hours to [prepare him to] deal roulette; [and]
 - (3) 80 hours to [prepare him to] deal blackjack;

- (4) 10 hours to [prepare him to] deal minibaccarat; **and**
- (5) **210 hours to deal pai gow.**

3. For a student who has been [trained] **certified** to deal blackjack and baccarat, five hours shall be required to prepare him **or her** to deal minibaccarat.

- (b) (No change.)

19:45-1.11 Casino licensee's organization

- (a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

- 1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

- i.-vi. (No change.)
- vii. Red dog; [and]
- viii. Sic bo; **and**

ix. Pai Gow.

- 5.-9. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

- (a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

- 1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, [and] big six **and pai gow** table to directly operate and conduct the game.

- 3.-4. (No change.)

- 5. Floorperson shall be:

- i.-ii. (No change.)

iii. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than one baccarat **or pai gow** table;

- iv. (No change.)

- 6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six, red dog, sic bo, **pai gow** or baccarat, provided, however, the number of supervised tables complies with the following limitations:

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six, red dog, sic bo, **pai gow** or baccarat tables or a combination thereof.

- 7.-9. (No change.)

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

19:46-1.13C Pai gow table; pai gow shaker; physical characteristics

(a) **Pai gow shall be played at a table having on one side places for the players and on the opposite side a place for the dealer. The**

cloth covering the pai gow table shall have imprinted thereon the name of the casino.

(b) Each pai gow layout shall be approved by the Commission and shall contain, at a minimum, the following:

1. Six separate designated betting areas for the players at the table with each area being numbered one through six; and

2. A separate area, located to the left of the dealer, for the placement of four tiles which shall be referred to as the "dead hand."

(c) Each pai gow table shall have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

(d) Pai gow shall be played with a container, to be known as a "pai gow shaker," which shall be used to shake three dice before each hand of pai gow is dealt in order to determine the starting position for the dealing of the pai gow tiles. The pai gow shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:

1. The pai gow shaker shall be capable of housing three dice and shall be designed so as to prevent the dice from being seen while the dealer is shaking it; and

2. The pai gow shaker shall have the name or identifying logo of the casino imprinted or impressed thereon.

19:46-1.15 Dice; physical characteristics

(a) [Each] Except as otherwise provided in (b) below, each die used in gaming [at craps or sic bo] shall:

1.-4. (No change.)

5. Have all edges and corners perfectly square[, that is] and forming perfect 90 degree angles;

6.-8. (No change.)

9. Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound which is equal in weight to the weight of the cellulose drilled out and which forms a permanent bond with the cellulose cube, and shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch; and

10. Have imprinted or impressed thereon the name of the casino in which the die is being used [imprinted or impressed thereon]

[(b) Each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound equal in weight to the weight of the cellulose drilled out and which will form a permanent bond with the cellulose cube.

(c) Each spot shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch.]

(b) Each die used in gaming at pai gow shall comply with the requirements of (a) above except as follows:

1. Each die shall be formed in the shape of a perfect cube which shall be .640 of an inch in size on each side;

2. Instead of the name of the casino, a casino licensee may, with the approval of the Commission, have an identifying mark or logo imprinted or impressed on each die; and

3. The spots on each die do not have to be equal in diameter.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to [commission] Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet [or] with a

primary or secondary storage area. [The] Dice which are to be distributed to gaming pits or tables for use in gaming shall be placed in a cabinet [or primary storage area shall be located] in the cashiers' cage or in another secure [place] primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee]. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. [The] All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

(b) [The cabinet or] All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the [keys] casino department key. Dice stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of [gaming] each [shift or] gaming day and at such other times as may be necessary, the assistant shift manager or [person above him] casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of [sets of] dice for that [shift or] gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport [preinspected] dice [to the casino floor and those collected by security at the end of each shift or day] shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission [or its authorized designee].

(e) [Unless otherwise approved by the Commission or its designee, all] All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. The assistant shift manager or [person above him] casino supervisor thereof and the casino security officer who removed the dice from the [cabinet or] primary storage area shall distribute sufficient [sets] dice directly to the craps supervisor in each craps pit [and] or to a pit boss in each sic bo pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] a casino supervisor thereof;

ii. At the time of receipt, a box person at each craps table and the floorperson at each sic bo table shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept in a compartment at each craps table or pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play;

iii. (No change.)

iv. The pit boss shall place extra [sets of] dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] a casino supervisor thereof. No dice taken from the reserve shall be used for actual gaming until and unless inspected in accordance with [(d)] (e)1ii above.

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. The assistant shift manager or [person above him] casino supervisor thereof and the casino security officer who removed the

dice from the [cabinet or] primary storage area shall distribute [sufficient sets] the dice directly to the [craps] casino supervisor identified in (e)2ii below who will perform the inspection in each [craps] pit [and to the pit boss who will perform the inspection in each sic bo pit].

ii. [Inspection procedures areas follows] **The inspection of the dice at the pit stand shall be performed by:**

(1) For craps, a craps supervisor [shall], in the presence of another craps supervisor, neither of whom shall be a pit boss or a [person above the pit boss in the organizational hierarchy, inspect the dice at the pit stand] **casino supervisor thereof**;. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.]

(2) For sic bo, a pit boss [shall], in the presence of a casino security officer[, inspect the dice at the pit stand. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.]; and

(3) For pai gow, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss.

iii. **The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.** The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. [Following this inspection] **After completion of the inspection, the dice shall be distributed as follows:**

(1) For craps, the craps supervisor who inspected the dice shall distribute such dice to the boxperson at each craps table. The boxperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming and while the dice are at the table they shall never be left unattended; [and]

(2) For sic bo, the pit boss shall in the presence of the casino security officer **who observed the inspection** place three dice into the shaker and seal or lock the sic bo shaker. The pit boss shall then secure the sic bo shaker to the table in the presence of the casino security officer [who observed the inspection]. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours[.]; and

(3) For pai gow, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor, **distribute such dice directly to the dealer at each pai gow table. The dealer shall immediately place the dice in the pai gow shaker.**

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand.

(1) Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] **a casino supervisor thereof.**

(2) All dice taken from the reserve shall be reinspected by a casino supervisor in the presence of another casino supervisor in accordance with the inspection procedures set forth in (e)2ii and iii above, prior to their use for actual gaming; provided, however, that if reserve dice are maintained in a locked compartment under dual key control as approved by the Commission, the reserve dice may be used for gaming without being reinspected.

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

i. **Inspection of dice in an approved primary storage area shall be performed by:**

(1) For craps, a craps supervisor, in the presence of an assistant shift manager or [person above him] **casino supervisor thereof**, and

a casino security officer[, shall inspect sets of dice in an approved storage area.];

(2) For sic bo, [the] **an assistant shift manager or [above] casino supervisor thereof**, in the presence of a casino security officer[, who shall inspect the dice to be placed in the sic bo shakers.]; and

(3) For pai gow, a casino supervisor, in the presence of a casino security officer.

[(1)]ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. [(2)] These instruments shall be maintained in the [cabinet or primary] storage area.

iii. **After completion of the inspection, the person performing the inspection shall seal the dice as follows:**

[(ii)](1) For craps, after each set of at least five dice are inspected [and found to conform to Commission standards], they shall be placed in a sealed envelope or container; provided, however, that reserve dice may be placed in individual sealed envelopes or containers. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection [together with the security officer present at the time] shall be attached to each envelope or container;

[(iii)](2) For sic bo, [following inspection, the assistant shift manager or above shall place] **after each set of three dice are inspected, they shall be sealed or locked in [into the] a sic bo shaker** [and seal or lock in the sic bo shaker. The assistant shift manager or above shall then place some form of seal over the area that allows access to open the sic bo shaker and sign and date the seal attesting to the completion of the inspection. The security officer who witnessed the inspection of the dice shall also sign the seal]. **A seal that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall then be placed over the area that allows access to open the sic bo shaker.**

(3) For pai gow, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

iv. At the beginning of each [shift or] gaming day and at such other times as may be necessary, an assistant shift manager or [person above him] **casino supervisor thereof** and a casino security officer shall distribute the [sic bo shaker to the pit boss supervising the game of sic bo and the] **dice as follows:**

(1) **For craps, the sealed envelopes or containers of dice shall be distributed to a [craps supervisor] pit boss in each craps pit or [place the dice] placed in a locked compartment in the pit stand [, keys to which shall be in the possession of the pit boss or those persons above him in the organizational hierarchy;] by the pit boss. When the sealed dice are distributed to the craps table, [v. For craps,] a boxperson, at each craps table, after assuring the seals are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in a cup on the table for use in gaming. While dice are on the table, they shall never be left unattended.**

(2) **For sic bo[-], the sealed sic bo shakers shall be distributed to the pit boss supervising the game of sic bo. [a] The pit boss shall then secure the sic bo shaker to the table. No sic bo shaker shall remain on a table for more than 24 hours.**

[(1)] While dice are on the table, they shall never be left unattended.]

(3) **For pai gow, the sealed envelope or container shall be distributed to a pit boss in each pai gow pit or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the pai gow table by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the pai gow shaker.**

[(2)]v. When the envelope or container or the seal is damaged, broken or [tampered with] shows indication of tampering, the dice

shall not be used for gaming activity unless the dice are reinspected as follows:

(1) [for] For craps [shall be reinspected by the boxperson, in the presence of the dealer, and the dice for sic bo, shall be reinspected by the pit boss in the presence of the dealer;] and sic bo, in accordance with the procedures in (e)1 or (e)2 above; and

(2) For pai gow, in accordance with the procedures in (e)2 above.

vi. The pit boss shall place extra sets of dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy;] casino supervisor thereof.

vii. A micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet shall also be maintained in a locked compartment in each [craps and sic bo] pit stand; and].

viii. Any primary storage area in which dice are inspected in accordance with this alternative, shall be equipped with closed circuit television camera coverage capable of observing the entire inspection procedure.

(f) The casino licensee shall remove any dice at any time of the gaming day if there is any indication of tampering, flaws or other defects that might affect the integrity or fairness of the game, or at the request of [an authorized representative of] the Commission or Division.

(g) At the end of each [shift or] gaming day or at such other times as may be necessary, [for craps, a craps supervisor other than the one who originally inspected the dice, and for sic bo a sic bo pit boss other than the one who originally inspected the dice, shall reinspect] the casino supervisor identified in (g)1 below shall visually inspect each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to [an agent of] the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. The inspection required by this subsection shall be performed by:

i. For craps, a craps supervisor other than the one who originally inspected the dice;

ii. For sic bo, a sic bo pit boss other than the one who originally inspected the dice; or

iii. For pai gow, the floorperson assigned to the table.

[1.2. [Such] Any dice showing evidence of tampering shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by:

(1) For craps, the boxperson and [floorperson or pit boss or craps dice and] casino supervisor;

(2) For sic bo, the pit boss [for sic bo dice]; or

(3) For pai gow, the dealer and casino supervisor.

ii. A casino supervisor or casino security officer responsible for delivering the dice to [an agent of] the Commission shall also sign the label.

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commission Booth. [(1)] The duplicate copy shall be delivered to the [Division's] Division office located within the casino hotel facility. (2) The] and the triplicate copy shall be returned to the pit and maintained in a secure place within the pit until collection by a casino security officer [collects it at the end of each shift or day].

[2.3. All other dice [at this time] shall be put into envelopes or containers at this time.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the [boxperson and floorperson or pit boss for craps dice and the pit boss for sic bo dice] appropriate persons identified in (g)2i above.

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until collection by a casino security officer [collects it at the end of each shift or day].

[(h) At the end of each shift or day, a security officer shall collect and sign all envelopes or containers of used dice and collect all triplicate copies of Dice Discrepancy Reports, if any, and shall transport them to the security department for cancellation or destruction.]

(h) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(i) At the end of each [shift or] gaming day or at such other times as may be necessary, a casino security officer shall collect [all extra dice in dice reserve] and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any.

(j) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra dice in dice reserve. If collected, dice shall be returned to the primary storage area; provided, however, that any dice which have not been inspected and sealed pursuant to the requirements in (e)3 (Alternative No. 3) above shall, prior to use for actual gaming, be inspected as follows:

1. For craps or sic bo, in accordance with the requirements in (e)1 or (e)2 above; or

2. For pai gow, in accordance with the requirements in (e)2 above.

[(j)](k) The casino licensee shall submit to the Commission [or its authorized designee] for approval[,] procedures for:

1. (No change.)

2. A [daily] reconciliation on a daily basis of the dice distributed [and], the dice destroyed and cancelled [and/or], the dice returned to the primary storage [room] area and, if any, the dice in dice reserve; and

3. A physical inventory of the dice at least every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required in [(j)] (k)1i above.

ii. (No change.)

[(k)](l) All destruction and cancellation of dice, other than those retained for Commission or Division inspections, shall be completed within 48 hours of collection [be either destroyed or cancelled].

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

19:46-1.19A Pai gow tiles; physical characteristics

(a) Pai gow shall be played with a set of 32 rectangular blocks to be known as tiles. Each tile in a set shall be identical in size and shading to every other tile in the set.

(b) Each tile used in gaming at pai gow shall:

1. Be made of a non-transparent black material, formed in the shape of a rectangle, and be of a size no smaller than 2.500 inches in length, 1.000 inch in width and .375 of an inch in thickness;

2. Have the surface of each of its sides perfectly flat, except that the front side of each tile shall contain spots which shall extend into the tile exactly the same distance as every other spot;

3. Have on the back of each tile an identifying feature unique to each casino;

4. Have the texture and finish of each side, with the exception of the front side, exactly identical to the texture and finish of all other sides;

5. Have the back and sides of each tile within a set be identical and no tile within a set shall contain any marking, symbol or design that will enable a person to know the identity of any element on the front side of the tile or that will distinguish any tile from any other tile within a set; and

6. Have identifying spots on the front of the tiles which are either red or white or both.

(c) Each set of tiles shall be composed of 32 tiles as set forth in N.J.A.C. 19:47-10.2(g).

(d) Each set of tiles shall be packaged separately and completely sealed in such a manner so that any tampering shall be evident.

19:46-1.19B Pai gow tiles; receipt; storage; inspections and removal from use

(a) When sets of tiles to be used at pai gow are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each package are intact, unbroken and free from tampering. Packages that do not satisfy these criteria shall be inspected at this time to assure that the tiles conform to Commission standards and there is no evidence of tampering. Packages satisfying these criteria, together with packages having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet within a primary or secondary storage area. Sets of tiles which are to be distributed to gaming pits or tables for use in gaming shall be placed in a cabinet in the cashiers' cage or in another secure primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission. Secondary storage areas shall be used for the storage of surplus tiles. Tiles maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the tiles have been moved to a primary storage area. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission.

(b) All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the casino department key. Tiles stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of each gaming day and at such other times as may be necessary, the assistant shift manager or casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of sets of tiles for that gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport tiles shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission.

(e) The assistant shift manager or casino supervisor thereof shall distribute sufficient sets of tiles to the pit boss in each pai gow pit.

1. The pit boss shall then distribute the sets to the dealer at each table, and shall place extra sets in reserve at the pit stand.

2. Sets of tiles in reserve shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or casino supervisor thereof.

(f) If during the course of play any damaged tile is detected, the entire set of tiles shall be immediately replaced. The dealer or floorperson shall request that the pit boss bring a substitute set of tiles to the table from the reserve in the pit stand.

1. The set of damaged tiles shall be placed in a sealed envelope, identified by table number, date and time and shall be signed by the dealer and casino supervisor.

2. The pit boss shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.

(g) Tiles used at pai gow shall be changed at least every eight hours. The casino supervisor shall collect used tiles which shall be placed in a sealed envelope or container.

1. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the dealer and casino supervisor.

2. The pit boss shall maintain the envelopes or containers in a secure place within the pit until collection by a casino security officer.

(h) The casino licensee shall remove any tiles at any time of the gaming day if there is any indication of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game, or at the request of the Commission or Division.

(i) All extra sets of tiles in reserve which have been opened shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

(j) At the end of each gaming day or at such other times as may be necessary, a casino security officer shall collect and sign all envelopes or containers with damaged tiles, tiles used during the gaming day, and all extra tiles in reserve which have been opened, and shall return the envelopes or containers to the casino security department.

(k) At the end of each gaming day or at such other times as may be necessary, an assistant shift manager or casino supervisor thereof may collect all extra sets of tiles in reserve which have not been opened. If collected, all unopened sets of tiles shall either be cancelled or destroyed or returned to the storage area.

(l) When the envelopes or containers of used tiles and reserve sets of tiles which have been opened are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional tiles or anything that might indicate unfair play.

1. The casino licensee shall cause to be inspected all sets of tiles used during the gaming day;

2. The procedures for inspecting all sets of tiles shall at least include the following:

i. The sorting of tiles by pairs;

ii. The visual inspection of the sides and back of each tile for tampering, markings or alterations; and

iii. The inspection of the sides and back of each tile with an ultra-violet light;

3. The individual performing the inspection required by (l)1 and 2 above shall complete a work order form which shall detail the procedures performed and list the tables from which the tiles were removed and the results of the inspection. The individual shall sign the form upon completion of the inspection procedures; and

4. Evidence of tampering, marks, alterations, missing or additional tiles or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to the Commission and Division by the completion of a three-part report.

i. The report shall accompany the tiles when delivered to the Commission;

ii. The tiles shall be retained for further inspection by the Commission; and

iii. The Commission Inspector receiving the tiles shall sign the original, duplicate and triplicate report and shall retain the original at the Commission Booth. The duplicate copy shall be delivered to the Division office located within the casino hotel facility. The triplicate copy shall be retained by the casino licensee.

(m) If after completing the inspection procedures required in (l) above, it is determined that a complete set of 32 tiles removed from a gaming table is free from tampering, markings or alterations, that set may be returned to the pai gow storage area for subsequent gaming use in accordance with procedures approved by the Commission. In no event may individual tiles from different sets be used to make a complete set for subsequent gaming use.

(n) The casino licensee shall submit to the Commission for approval, procedures for:

1. An inventory system which shall include the recordation of at least the following:

i. The balance of sets of tiles on hand;

ii. The sets of tiles removed from storage;

iii. The sets of tiles returned to storage or received from the manufacturer;

iv. The date of the transaction; and

v. The signatures of the individuals involved.

2. A reconciliation on a daily basis of the sets of tiles distributed and the sets of tiles destroyed and cancelled, the sets of tiles returned to the storage area and, if any, the sets of tiles in tile reserve;

3. A physical inventory of the sets of tiles at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of the sets of tiles on hand as required in (n)1i above.

ii. Any discrepancies shall immediately be reported to the Commission and Division.

(o) All destruction and cancellation of tiles other than those retained for Commission or Division inspection, shall be completed within 48 hours of collection. The method of destruction or cancellation shall be approved by the Commission. The destruction and cancellation of tiles shall take place in a secure place, the location and physical characteristics of which shall also be approved by the Commission.

19:46-1.20 Approval of gaming equipment; retention by Commission and Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming equipment and other devices used in a casino as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, **pai gow shakers**, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, **pai gow tiles**, locking devices and data processing equipment.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino including, without limitation, gaming tables, layouts, roulette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, **pai gow shakers**, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, data processing equipment, tokens and slot machines have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice [and], cards and **pai gow tiles** may be found at N.J.A.C. 19:46-1.16[(g) and], 19:46-1.18[(l)] and 19:46-1.19B, respectively.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at the table games shall be as follows:

1-8. (No change.)

9. **Pai Gow:**

i. If the minimum wager at the table is \$5.00 or less, the maximum wager shall be at least \$100.00.

(c) (No change.)

SUBCHAPTER 10. PAI GOW

19:47-10.1 Definitions

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

"Bank" shall mean the player who elects to have the other players and dealer play against him or her and accepts the responsibility to pay all winning wagers.

"Co-banking" is defined in N.J.A.C 19:47-10.8.

"Copy hand" shall mean either a high hand or low hand of a player which is identical in pair rank or point value and contains the same highest ranking tile as the corresponding high hand or low hand of the dealer or bank.

"Dead hand" is defined in N.J.A.C. 19:46-1.13C.

"Gongs" is defined in N.J.A.C. 19:47-10.2.

"High hand" shall mean the two tile hand formed with two of the four tiles dealt at the game of pai gow so as to rank higher than the hand formed from the remaining two tiles.

"Low hand" shall mean the two tile hand formed with two of the four tiles dealt at the game of pai gow so as to rank lower than the hand formed from the remaining two tiles.

"Matched pairs" is defined in N.J.A.C. 19:47-10.2.

"Mixed or unmatched pairs" is defined in N.J.A.C. 19:47-10.2.

"Push" is a tie as defined in N.J.A.C. 19:47-10.7(h).

"Rank or ranking" shall mean the relative position of a pai gow hand as set forth in N.J.A.C. 19:47-10.2.

"Setting the hands" shall mean the process of forming a high hand and a low hand from the four dealt tiles.

"Supreme pair" shall mean the pair of tiles that form the highest ranking hand in the game of pai gow and shall be formed with the six (2-4) tile and the three (1-2) tile.

"Value" shall mean the numerical point value assigned to a pair of tiles in accordance with the provisions of N.J.A.C. 19:47-10.2.

"Washing" is defined in N.J.A.C. 19:47-10.4.

"Wongs" is defined in N.J.A.C. 19:47-10.2.

19:47-10.2 Pai gow tiles; ranking of hands, pairs and tiles; value of the hand

(a) Pai gow shall be played with one set of 32 tiles which shall meet the requirements of N.J.A.C. 19:46-1.19A.

(b) When comparing high hands or low hands to determine the higher ranking hand, the determination shall first be based upon the rank of any permissible pair of tiles which are contained in the hands. A hand with any permissible pair of tiles shall rank higher than a hand which does not contain any permissible pair. The permissible pairs of tiles in pai gow and their rank, with the "supreme pair" being the highest or "first" ranking pair, are as follows:

Ranking

First

Second

Third

Fourth

Fifth

Sixth

Seventh

Eighth

Ninth

Tenth

Eleventh

Twelfth

Thirteenth

Fourteenth

Fifteenth

Sixteenth

Seventeenth

Eighteenth

Nineteenth

Pairing

Supreme Pair

Six (2-4) and Three (1-2)

Matched Pairs

Twelve (6-6) and Twelve (6-6)

Two (1-1) and Two (1-1)

Eight (4-4) and Eight (4-4)

Four (1-3) and Four (1-3)

Ten (5-5) and Ten (5-5)

Six (3-3) and Six (3-3)

Four (2-2) and Four (2-2)

Eleven (5-6) and Eleven (5-6)

Ten (4-6) and Ten (4-6)

Seven (1-6) and Seven (1-6)

Six (1-5) and Six (1-5)

Mixed or Unmatched Pairs

Mixed Nines (3-6 and 4-5)

Mixed Eights (3-5 and 2-6)

Mixed Sevens (3-4 and 2-5)

Mixed Fives (1-4 and 2-3)

Wongs

Twelve (6-6) and Nine (4-5)

Twelve (6-6) and Nine (3-6)

Two (1-1) and Nine (4-5)

Two (1-1) and Nine (3-6)

Gongs

Twelve (6-6) and Eight (2-6)

Twelve (6-6) and Eight (3-5)

Twelve (6-6) and Eight (4-4)

Twentieth Two (1-1) and Eight (2-6)
Two (1-1) and Eight (3-5)
Two (1-1) and Eight (4-4)

(c) When comparing high hands or low hands which are of identical permissible pair rank, the dealer or, if applicable, the bank shall win that hand (copy hand).

(d) When comparing the rank of high hands or low hands which do not contain any of the pairs listed in (b) above, the higher ranking hand shall be determined on the basis of the "value" of the hands. The value of a hand shall be a single digit number from zero to nine inclusive and shall be determined by adding the total number of spots which are contained on the two tiles which form the hand. If the numeric total of the spots is a two digit number, the left digit of such number shall be discarded and the right digit shall constitute the value of the hand. Examples of this rule are as follows:

1. A hand composed of a two (1-1) and a six (3-3) has a value of eight; and

2. A hand composed of an eleven (5-6) and a seven (1-6) has a numeric total of 18, but a value of only eight, since the left digit ("1") in the number 18 is discarded.

(e) Notwithstanding the provisions of (d) above, if the tiles which form the supreme pair are used separately, the numeric total of the three (1-2) may be counted as a six and the numeric total of the six (2-4) may be counted as a three. When the three (1-2) is counted as six, its individual ranking pursuant to (g) below shall be fifteenth instead of seventeenth and when the six (2-4) is counted as three its individual ranking shall be seventeenth instead of fifteenth.

(f) When comparing high hands or low hands which are of identical value, the hand with the highest ranking individual tile shall be considered the higher ranking hand.

(g) The individual ranking for each tile, with "first" representing the highest ranking, is as follows:

Ranking	Tile	Number of Tiles in Set
First	Twelve (6-6)	2
Second	Two (1-1)	2
Third	Eight (4-4)	2
Fourth	Four (1-3)	2
Fifth	Ten (5-5)	2
Sixth	Six (3-3)	2
Seventh	Four (2-2)	2
Eighth	Eleven (5-6)	2
Ninth	Ten (4-6)	2
Tenth	Seven (1-6)	2
Eleventh	Six (1-5)	2
Twelfth	Nine (3-6)	1
Twelfth	Nine (4-5)	1
Thirteenth	Eight (2-6)	1
Thirteenth	Eight (3-5)	1
Fourteenth	Seven (2-5)	1
Fourteenth	Seven (3-4)	1
Fifteenth	Six (2-4)	1
Sixteenth	Five (1-4)	1
Sixteenth	Five (2-3)	1
Seventeenth	Three (1-2)	1

(h) If the highest ranking tile in each hand being compared is of identical rank after the application of (f) above, the hand shall be considered a copy hand, and the hand of the dealer or bank, as applicable, shall be considered the high ranking hand.

19:47-10.3 Dice; number of dice; pai gow shaker

(a) Pai gow shall be played with three dice which shall be maintained at all times inside a pai gow shaker while at the table. The dice used to play pai gow shall meet the requirements of N.J.A.C. 19:46-1.15 and the pai gow shaker shall meet the requirements of N.J.A.C. 19:46-1.13B.

(b) The pai gow shaker and the dice contained therein shall be the responsibility of the dealer and shall never be left unattended while at the table.

(c) No dice that have been placed in a pai gow shaker for use in gaming shall remain on a table for more than 24 hours.

19:47-10.4 Opening of the table for gaming; shuffling procedures

(a) After receiving one set of tiles at the table in accordance with N.J.A.C. 19:46-1.19B, the dealer shall sort and inspect the tiles and the floorperson assigned to the table shall verify the inspection. Nothing in this section shall preclude a casino licensee from cleaning the tiles prior to the inspection required herein. The inspection of tiles at the gaming table shall require the following:

1. Each set shall be sorted into pairs in order to assure that the supreme pair and all 15 matched and unmatched pairs as identified in N.J.A.C. 19:47-10.2(b) are in the set.

2. Each tile shall be placed side by side in order to determine that all tiles are the same size and shading.

3. The back and sides of each tile shall be examined to assure that it is not flawed, scratched or marked in any way.

i. If, after checking the tiles, the dealer finds that certain tiles are unsuitable for use, a casino supervisor shall bring substitute tiles to the table from the reserve in the pit stand.

ii. The unsuitable tiles shall be placed in a sealed envelope or container, identified by table number, date and time and shall be signed by the dealer and casino supervisor.

(b) Following the inspection of the tiles and the verification by the floorperson assigned to the table, the tiles shall be turned face up, then placed into 16 pairs and arranged according to rank starting with the supreme pair. The tiles shall be left in pairs for visual inspection by the first player to arrive at the table.

(c) After the first player is afforded an opportunity to visually inspect the tiles, the tiles shall be turned face downward on the table, mixed thoroughly by a "washing" of the tiles and stacked.

(d) The "washing" of the tiles shall be performed by the dealer and be known as the shuffle and shall be performed with the heels of the palms of the hands. The dealer shall shuffle the tiles in a circular motion with one hand moving clockwise and the other hand counterclockwise. Each hand shall complete at least eight circular motions in order to provide a random shuffle. The dealer shall then randomly pick up four tiles with each hand and place them side by side in stacks in front of the table inventory container, forming eight stacks of four tiles.

(e) If during the stacking process described in (d) above, a tile is turned over and exposed to the players, the entire set of tiles shall be reshuffled.

(f) After each round of play has been completed, the dealer shall turn all of the tiles face down and shuffle the tiles in accordance with (d) above.

(g) If there is no gaming activity at the pai gow table, the tiles shall be turned face up and placed into 16 pairs according to rank starting with the supreme pair. Once a player arrives at the table, the procedures in (c) and (d) above shall be followed.

19:47-10.5 Wagers

(a) All wagers at pai gow shall be made by placing gaming chips or plaques on the appropriate betting area of the pai gow layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow.

(b) Only players who are seated at the pai gow table may place a wager at the game. Once a player has placed a wager and received tiles, that player must remain seated until the completion of the round of play.

(c) All wagers at pai gow shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-10.6. No wager at pai gow shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-10.6 Procedures for dealing the tiles

(a) Once the dealer has completed shuffling the tiles, the dealer shall announce "No more bets" prior to shaking the pai gow shaker. The dealer shall then shake the pai gow shaker at least three times so as to cause a random mixture of the dice.

(b) The dealer shall then remove the lid covering the pai gow shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first stack of tiles.

(c) To determine the starting position for dealing the tiles, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position, regardless of whether there is a wager at the position, and the dead hand counted in order until the count matches the total of the three dice. Examples are as follows:

1. If the dice total nine, the dealer would receive the first stack of four tiles; or
2. If the dice total 15, the sixth wagering position would receive the first stack of four tiles.

(d) The dealer shall deal the first stack of four tiles, starting from the right side of the eight stacks, to the starting position as determined in (c) above and, moving counterclockwise around the table, deal all other positions including the dead hand and the dealer a stack of tiles, regardless of whether there is a wager at the position. The dealer shall place a marker on top of his or her stack of tiles immediately after they are dealt.

(e) After all the stacks of tiles have been dealt, the dealer shall, without exposing the tiles, collect any stacks dealt to a position where there is no wager and place the stacks with the dead hand on the layout to the left of the dealer in front of the table inventory container.

(f) Once all tiles have been dealt and any tiles dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow shaker and shake the shaker once. The pai gow shaker shall then be placed to the right of the dealer.

19:47-10.7 Procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish

(a) After the dealing of the tiles has been completed, each player shall set his or her hands by arranging the tiles into a high hand and low hand. After setting the hands the tiles shall be placed face down on the layout immediately behind that player's betting area and separated into two distinct hands.

(b) Each player at the table shall be responsible for setting his or her own hands and no other person except the dealer may touch the tiles of that player. Each player shall be required to keep the four tiles in full view of the dealer at all times. Once each player has set a high hand and low hand and placed the two hands face down on the layout, the player shall not touch the tiles again.

(c) After all players have set their hands and placed the tiles on the table, the four tiles of the dealer shall be turned over and the dealer shall set his or her hands by arranging the tiles into a high and low hand. The high hand shall be placed on the layout face up to his or her right and the low hand shall be placed on the layout face up to his or her left.

(d) Except as provided in (e) below, the dealer shall be required to comply with the following rules when setting the hands of the dealer:

1. If the dealer has the supreme pair, it shall be played as such;
2. If possible, the dealer shall always play a pair, wong or gong as set forth in N.J.A.C. 19:47-10.2;
3. If the dealer does not have any combinations described in (d)1 or (d)2 above, the dealer shall play any two tiles together which have a value equal to nine, eight or seven; and
4. If the dealer does not have a combination listed in (d)1 through (d)3 above, the dealer shall play the highest ranking tile with the lowest ranking tile.

(e) Each casino licensee shall submit to the Commission in its Rules of the Games Submission the manner in which it proposes to require the hands of the dealer to be set, and shall specifically note any exceptions it proposes to the rules listed in (d) above.

(f) A player may surrender his or her wager after the hands of the dealer have been set. The player must announce his or her intention to surrender prior to the dealer exposing either of the two hands of that player pursuant to (g) below. Once the player has announced his or her intention to surrender, the dealer shall:

1. Immediately collect the wager from that player; and
2. Collect the four tiles dealt to that player and stack them face down on the right side of the table in front of the table inventory container without exposing the tiles to anyone at the table.

(g) Once the dealer has set a high and low hand, the dealer shall expose both hands of each player, starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall always compare the high hand of the player to the high hand of the dealer and the low hand of the player to the low hand of the dealer and shall announce if the wager of that player shall win, lose or be considered a tie ("push").

(h) All losing wagers shall be collected immediately by the dealer along with the tiles of that player. A wager made by a player shall lose if the high hand of the player is identical in rank or lower in rank than the high hand of the dealer, and the low hand of the player is identical in rank or lower in rank than the low hand of the dealer or has a value of zero.

(h) If a wager is a push, the dealer shall not collect or pay the wager, but shall immediately collect the tiles of that player. A wager made by a player shall be a push if:

1. The high hand of the player is higher in rank than the high hand of the dealer, but the low hand of the player is identical in rank to the low hand of the dealer (copy hand), lower in rank than the low hand of the dealer or has a value of zero; or

2. The high hand of the player is identical in rank to the high hand of the dealer (copy hand) or lower in rank than the high hand of the dealer, but the low hand of the player is higher in rank than the low hand of the dealer.

(i) All winning hands shall remain face up on the layout. Winning wagers shall be paid after all hands have been exposed. The dealer shall pay winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager made by a player shall win if the high hand of the player is higher in rank than the high hand of the dealer and the low hand of the player is higher in rank than the low hand of the dealer.

(j) A winning pai gow wager shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to 25 cents or the next highest multiple of 25 cents. A casino licensee shall collect the vigorish from a player at the time the winning payout is made. After a winning wager has been paid and the vigorish collected, the dealer shall then collect the tiles from that player.

(k) All tiles collected by the dealer shall be picked up in order and in such a way that they can be readily arranged to reconstruct each hand in case of a question or dispute and shall be placed face up to the right of the dealer in front of the table inventory container.

19:47-10.8 Player bank; co-banking; selection of bank; procedures for dealing

(a) A casino licensee may, in its discretion, offer to all players at a pai gow table the opportunity to bank the game. If the casino licensee elects this option, all the other provisions of this subchapter shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank.

(b) A player may not be the bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to restack and shuffle the tiles in accordance with the procedures set forth in N.J.A.C. 19:47-10.4(b) or (g).

(c) After the first round of play pursuant to (b) above, each player at the table shall have the option to either be the bank or pass the bank to the next player. The dealer shall, starting with the player farthest to the right of the dealer, offer the bank to each player in a counterclockwise rotation around the table until a player accepts the bank. The dealer shall place a marker in front of the player who accepts the bank. If the first player offered the bank accepts, the player seated to the right of that player shall first be

offered the bank on the next round of play. The initial offer to be the bank shall rotate counterclockwise around the table until it returns to the dealer. In no event may any player bank two consecutive rounds of play. If no player wishes to be the bank, the round of play shall proceed in accordance with the rules of play provided in this subchapter.

(d) Before a player may be permitted to bank a round of play, the dealer shall determine that:

1. The player placed a wager against the dealer during the last round of play in which there was no player banking the game; and

2. The player has sufficient gaming chips on the table to cover all of the wagers placed by other players at the table for that round of play.

(e) A casino licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the casino licensee offers this option, it shall make it available to all players at the table. If the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers. When the bank covers 50 percent and the casino covers 50 percent of the winning wagers, it shall be known as "co-banking." When the dealer is co-banking, the dealer shall be responsible for setting the hand of the bank in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-10.7. When co-banking is in effect, the dealer may not place a wager against the bank.

(f) If a player is the bank, the player may only wager on one betting area.

(g) Once the tiles have been shuffled, the bank shall have the option to cut the tiles. The bank shall point to the location of tiles that he or she would like moved. Upon direction from the bank, the tiles may be moved to the right or left of the stack. If the bank does not wish to cut the tiles, there shall be no cut.

(h) Once the dealer has determined that a player may be the bank pursuant to (d) above and after the tiles have been shuffled, the dealer shall remove gaming chips from the table inventory container in an amount equal to the last wager made by that player against the dealer or in an amount, the calculation of which has been approved by the Commission. This amount shall be the amount the dealer wagers against the bank. The bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play. Any amount wagered by the dealer shall be placed in front of the table inventory container. Immediately upon receipt of the four tiles dealt to the dealer, the dealer shall place his or her wager on top of these tiles before dealing the remaining tiles, instead of the marker required by N.J.A.C. 19:47-10.6.

(i) Once the dealer has announced "No more bets," the bank shall shake the pai gow shaker. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow shaker, the dealer shall remove the lid covering the pai gow shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow shaker to be covered and reshaken by the bank.

(j) To determine the starting position for dealing the tiles, the dealer shall count counterclockwise around the table, with the position of the bank considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

(j) The dealer shall deal the first stack of four tiles, starting from the right side of the eight stacks, to the starting position as determined in (i) above and, moving counterclockwise around the table, deal all other positions including the dead hand and the dealer a stack of tiles, regardless of whether there is a wager at the position. The dealer shall place his or her wager, if any, on top of his or her stack of tiles immediately after they are dealt.

(k) After all the stacks of tiles have been dealt, the dealer shall, without exposing the tiles, collect any stacks dealt to a position where there is no wager and place the stacks with the dead hand on the layout to the left of the dealer in front of the table inventory container.

(l) Once all tiles have been dealt and any tiles dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow shaker and shake the shaker once. The pai gow shaker shall then be placed to the right of the dealer.

(m) If the tiles dealt to the dealer have not been previously collected, after each player has set his or her two hands and placed them on the layout, the two hands of the dealer shall then be set. Once the dealer has formed a high and low hand, the dealer shall expose the hands of the bank and determine if the hands of the dealer are higher in rank than the hands of the bank. If the dealer wins, the tiles of the dealer shall be stacked face up to the right of the table inventory container with the amount wagered by the dealer against the bank placed on top. If the dealer pushes, the dealer shall return the amount wagered by the dealer against the bank to the table inventory container. If the dealer loses, the amount wagered by the dealer against the bank shall be moved to the center of the layout.

(n) If banking is in effect, once the dealer has determined the outcome of the wager of the dealer against the bank, if any, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted all winning wagers have been paid, the dealer shall collect from the bank an amount equal to the remaining winning wagers and place that amount in the center of the layout. The remaining winning wagers shall be paid from the amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a five percent vigorish in accordance with N.J.A.C. 19:47-10.7. Once the vigorish has been paid, the remaining amount shall be given to the bank.

(o) If co-banking is in effect, once the dealer has set the co-bank hand pursuant to (e) above, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount equal to one-half of the remaining winning wagers and place that amount in the center of the layout. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout. The remaining winning wagers shall be paid from the total amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container. The dealer shall collect a five percent vigorish in accordance with N.J.A.C. 19:47-10.7 on the remaining amount and place the vigorish amount in the table inventory container. The remaining amount shall then be given to the co-bank.

(p) Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.

(q) Each player who has a winning wager against the bank shall pay a five percent vigorish on the amount won to the dealer, in accordance with N.J.A.C. 19:47-10.7.

19:47-10.9 Irregularities; invalid roll of the dice

(a) If the dealer uncovers the pai gow shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.

(b) If the dealer uncovers the pai gow shaker and a die or dice fall out of the shaker, the dealer shall call a "no roll" and reshake the dice.

(c) If the dealer incorrectly totals the dice and deals the tiles to the wrong positions, all hands shall be void and the dealer shall reshuffle the tiles.

(d) If the dealer exposes any of the tiles dealt to a player, the player has the option of voiding the hand. Without looking at the unexposed tiles, the player shall make the decision either to play out the hand or to void the hand.

(e) If a tile dealt to the dealer, the dead hand or any position where there is no wager is exposed, all hands shall be void and the tiles shall be reshuffled.

19:47-10.10 Minimum and maximum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each pai gow table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each pai gow table.

19:47-10.11 A player wagering on more than one betting area

(a) Except as provided in N.J.A.C. 19:47-10.8(f), a casino licensee may, in its discretion, permit a player to wager on no more than two betting areas at a pai gow table, which areas must be adjacent to each other.

(b) If a casino licensee permits a player to wager on two adjacent betting areas, the tiles dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall be required to rank and set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked and set and placed face down on the layout, the hand may not be changed.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Baccarat and Minibaccarat Tables; Physical Characteristics

Proposed Amendment: N.J.A.C. 19:46-1.12

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69 and 70(f).

Proposal Number: PRN 1992-76.

Submit comments by March 19, 1992 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:46-1.12(c) currently limits the number of betting areas at minibaccarat to seven. The proposed amendment would increase the permissible number of betting areas to nine and would set forth minimum size dimensions for a minibaccarat table with six, seven, eight or nine betting areas. The inclusion of the size dimensions for tables with six

and seven betting areas simply formalizes the existing industry standard. In addition, minor changes have been made to eliminate the reference to the minibaccarat diagram presently included in the regulation. Since N.J.A.C. 19:46-1.12(c) clearly describes the information that must appear on the layout, a diagram is no longer necessary and is therefore proposed for deletion.

Social Impact

The proposed amendment is not anticipated to have any significant social impact. The proposal would allow a casino licensee the option to utilize a minibaccarat layout with more betting areas, which may increase interest and participation among patrons.

Economic Impact

Casino licensees who elect to offer minibaccarat tables with eight or nine betting areas may experience an increase in revenue. Theoretically, an increase in casino revenue and corresponding table win should occur as a result of the increased patron interest and participation. In addition, a casino licensee may benefit from the more efficient use of limited casino floor space associated with a large minibaccarat layout with nine betting areas. There will be no adverse economic impact on a casino licensee that utilizes a six or seven betting area minibaccarat layout, as the proposed table dimensions are presently applied industry wide.

Regulatory Flexibility Statement

This proposed amendment will only affect the operations of New Jersey casino licensees, none of which qualify as a small 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]):

19:46-1.12 Baccarat and minibaccarat tables; physical characteristics

(a) Baccarat-Punto Banco shall be played on a table having numbered places 10 to 14 seated players. The cloth covering the table shall have imprinted thereon the name of the casino and shall be marked in a manner similar to that depicted in the following diagram.

Editor's Note: A diagram for an acceptable baccarat table was adopted with these rules but is not reproduced herein. Information on this diagram may be obtained from the Casino Control Commission, [Building 5, 3131 Princeton Pike Office Park, Trenton, New Jersey 08625] **Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey 08401.**

(b) (No change.)

(c) Minibaccarat shall be played at a table having on one side places for the participants, and on the opposite side a place for the dealer.

1. (No change.)

2. [Unless authorized by the Commission, the] **The** minibaccarat layout shall have [rectangular, circular, or oval betting areas for the] **specific areas designated for the placement of wagers on the "Banker's Hand," [and] "Player's Hand,]" and "Tie Hand."** [Such areas shall not exceed seven in number.] **Each table may have a maximum of nine areas for the players at the table with each area being numbered.**

3. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

- i. Tie bets pay 8 to 1[, and an area for such wagers to be placed];
- ii. [Boxes numbered one to seven] **Numbered boxes** that correspond to the seat numbers for the purpose of marking ["vigorish" or "commission"] **vigorish**; and
- iii. (No change.)

4. If marker buttons are used for the purpose of marking ["vigorish" or "commission,"] **vigorish**, these marker buttons shall be placed in the table inventory float container or in a separate rack designed for the purpose of storing marker buttons and such rack shall be placed in front of the table inventory float container during gaming activity.

5. Each minibaccarat table shall have a drop box and a tip box attached to it [at approximately the locations depicted in the following diagram:] **on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.** (AGENCY NOTE: The minibaccarat table diagram appear-

ing at N.J.A.C. 19:46-1.12(c) is proposed for deletion but is not reproduced herein.)

6. The dimensions of a minibaccarat table, at its longest and widest points, shall comply with the following specifications:

- i. A minibaccarat table with six or seven betting areas shall be at least 80½ inches long and 46 inches wide; or
- ii. A minibaccarat table with eight or nine betting areas shall be at least 90¾ inches long and 68 inches wide.

(a)

CASINO CONTROL COMMISSION

Pai Gow Poker

Rules of the Games

Gaming Equipment

Accounting and Internal Controls

Gaming Schools

Proposed New Rules: N.J.A.C. 19:46-1.13B and 19:47-11

Proposed Amendments: N.J.A.C. 19:44-8.3; 19:45-1.11 and 1.12; 19:46-1.15, 1.16, 1.17, 1.18 and 1.19; and 19:47-8.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-5, 69(a), 70(f), (j), 99 and 100(e) and P.L. 1991, c.182.

Proposal Number: PRN 1992-75.

Submit comments by March 19, 1992 to:

Catherine A. Walker, Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed new rules and amendments included in this proposal are intended to govern the implementation of the game of pai gow poker in Atlantic City casinos. The Commission has determined pursuant to N.J.S.A. 5:12-5 that pai gow poker constitutes a variation of the authorized game of pai gow, subject to the Commission ultimately finding that pai gow poker is suitable for casino use after an appropriate test period. The actual rules of the game are set forth in N.J.A.C. 19:47-11.1 through 11.13.

Briefly, pai gow poker is a card game in which players are dealt seven cards, which they then arrange to form a five card high hand and a two card low hand, using poker rankings to determine the relative rank of the hands. The two hands of the player are then compared to the two hands of the dealer. A player wins if both his or her high hand and low hand are higher in rank than the high hand and low hand of the dealer or bank. The player's wager is considered to be a tie ("push"), if one of his or her hands is higher than one of the hands of the dealer or bank and one is identical or lower. The player loses if both of his or her hands are identical to or lower than the hands of the dealer or bank. Winning wagers in pai gow poker are paid 1 to 1. A five percent vigorish is charged on winning hands.

Banking involves a player covering the winning wagers of the other players at the table. Banking is optional and involves a player playing against other players, unlike most of the other casino games in Atlantic City which involves players wagering against the house. Co-banking is another option, in which the casino may elect to "co-bank" with a player and cover one-half of the winning wagers.

Proposed new rule N.J.A.C. 19:46-1.13b contains the requirements governing the physical characteristics of a pai gow poker table and a pai gow poker shaker. N.J.A.C. 19:46-1.15 is amended to specify physical characteristics of pai gow poker dice and amendments to N.J.A.C. 19:46-1.17 address the physical characteristics of pai gow poker cards. Proposed new rule N.J.A.C. 19:47-11.10 contains the provisions concerning player banking, co-banking and the selection of the bank.

The proposed amendments to N.J.A.C. 19:44-8.3 establish minimum training hours for a student being trained to deal pai gow poker. The remainder of the proposed new rules and amendments are technical proposals which govern the operation of pai gow poker in Atlantic City casinos.

Social Impact

The proposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory authorization of variations to the game of pai gow. The proposed rules do not reflect any social judgments made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of pai gow poker.

Economic Impact

Implementation of any new game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of pai gow poker on casino revenue would be highly speculative at this time. The proposed amendments and new rules may require the regulatory agencies to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce and test the game of pai gow poker in Atlantic City casinos.

Regulatory Flexibility Statement

The proposal affects casino licensees and casino employees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

The proposed amendment to N.J.A.C. 19:44-8.3 will affect licensed gaming schools (four at present) that may choose to offer training in pai gow poker. These schools, which may be small businesses, would be required to comply with minimum training hours prescribed for dealing pai gow poker. No exemption is provided for these small businesses because the Commission has determined that such training is needed to ensure the integrity and the proper conduct of the game, as noted above.

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

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer [of roulette, blackjack, baccarat or craps] shall satisfy the following minimum requirements:

1. For a student being trained to deal [his] a first game the following minimum hours of training and instruction shall be required:

- i. 160 hours to [prepare a student to] deal blackjack;
- ii. 208 hours to [prepare a student to] deal baccarat and minibaccarat;
- iii. 200 hours to [prepare a student to] deal roulette; [and]
- iv. 240 hours to [prepare a student to] deal craps; **and**
- v. **180 hours to deal pai gow poker.**

2. For a student being trained to deal [his] a second or subsequent game the following minimum hours of training and instruction shall be required:

- i. For a student [who has been trained] **certified** to deal blackjack:
 - (1) 180 hours to [prepare him to] deal craps;
 - (2) 120 hours to [prepare him to] deal roulette; [and]
 - (3) 85 hours to [prepare him to] deal baccarat and minibaccarat; **and**
 - (4) **95 hours to deal pai gow poker.**
- ii. For a student [who has been trained] **certified** to deal roulette:
 - (1) 180 hours to [prepare him to] deal craps;
 - (2) 80 hours to [prepare him to] deal blackjack; [and]
 - (3) 88 hours to [prepare him to] deal baccarat and minibaccarat; **and**
 - (4) **110 hours to deal pai gow poker.**
- iii. For a student [who has been trained] **certified** to deal craps:
 - (1) 120 hours to [prepare him to] deal roulette;

(2) 80 hours to [prepare him to] deal blackjack; [and]
 (3) 88 hours to [prepare him to] deal baccarat and minibaccarat; and

(4) 110 hours to deal pai gow poker.

iv. For a student [who has been trained] certified to deal baccarat:

(1) 180 hours to [prepare him to] deal craps;

(2) 120 hours to [prepare him to] deal roulette; [and]

(3) 80 hours to [prepare him to] deal blackjack.

(4) 10 hours to [prepare him to] deal minibaccarat; and

(5) 95 hours to deal pai gow poker.

3. For a student who has been [trained] certified to deal blackjack and baccarat, five hours shall be required to prepare him or her to deal minibaccarat.

(b) (No change.)

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department shall be responsible for the operation and conduct of the following games:

i.-vi. (No change.)

vii. Red dog; [and]

viii. Sic bo; and

ix. **Pai Gow Poker.**

5.-9. (No change.)

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) (No change.)

(b) The following personnel shall be used to operate the table games in an establishment:

1. (No change.)

2. Dealers shall be the persons assigned to each craps, baccarat, blackjack, roulette, minibaccarat, red dog, sic bo, [and] big six and **pai gow poker** table to directly operate and conduct the game.

3.-4. (No change.)

5. Floorperson shall be:

i.-iii. (No change.)

iv. The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than two minibaccarat or **pai gow poker** tables or a combination of one minibaccarat or **pai gow poker** table and [a blackjack, roulette, red dog, or big six table] **one other authorized gaming table excluding craps.**

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six, red dog, sic bo, **pai gow poker** or baccarat, provided, however, the number of supervised tables complies with the following limitations:

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six, red dog, sic bo, **pai gow poker** or baccarat tables or a combination thereof.

7.-9. (No change.)

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

19:46-1.13B Pai gow poker table; pai gow poker shaker; physical characteristics

(a) **Pai gow poker shall be played at a table having on one side places for the players and on the opposite side a place for the dealer. The cloth covering the pai gow poker table shall have imprinted thereon the name of the casino.**

(b) Each pai gow poker layout shall be approved by the Commission and shall contain, at a minimum, the following:

1. Six separate designated betting areas for the players at the table with each area being numbered one through six;

2. Two separate areas located below each betting area which shall be designated for the placement of the high and low hands of that player; and

3. Two separate areas designated for the placement of the high and low hands of the dealer.

(c) Each pai gow poker table shall have a drop box and tip box attached to it on the same side of the gaming table as, but on opposite sides of, the dealer in a location approved by the Commission.

(d) **Pai gow poker shall be played with a container, to be known as a "pai gow poker shaker," which shall be used to shake three dice before each hand of pai gow poker is dealt in order to determine the starting position for the dealing of the cards. The pai gow poker shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:**

1. **The pai gow poker shaker shall be capable of housing three dice and shall be designed so as to prevent the dice from being seen while the dealer is shaking it; and**

2. **The pai gow poker shaker shall have the name or identifying logo of the casino imprinted or impressed thereon.**

19:46-1.15 Dice; physical characteristics

(a) [Each] **Except as otherwise provided in (b) below, each die used in gaming [at craps or sic bo] shall:**

1.-4. (No change.)

5. Have all edges and corners perfectly square[, that is] and forming perfect 90 degree angles;

6.-8. (No change.)

9. Have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots and the side containing three spots is directly opposite the side containing four spots; **each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound which is equal in weight to the weight of the cellulose drilled out and which forms a permanent bond with the cellulose cube, and shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch; and**

10. Have **imprinted or impressed thereon** the name of the casino in which the die is being used [imprinted or impressed thereon].

[(b) Each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound equal in weight to the weight of the cellulose drilled out and which will form a permanent bond with the cellulose cube.

(c) Each spot shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 of an inch.]

(b) **Each die used in gaming at pai gow poker shall comply with the requirements of (a) above except as follows:**

1. **Each die shall be formed in the shape of a perfect cube which shall be .640 of an inch in size on each side;**

2. Instead of the name of the casino, a casino licensee may, with the approval of the Commission, have an identifying mark or logo imprinted or impressed on each die; and

3. The spots on each die do not have to be equal in diameter.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

(a) When dice for use in the casino are received from the manufacturer or distributor thereof, they shall immediately following receipt be inspected by a member of the casino security department and a casino supervisor to assure that the seals on each box are intact, unbroken and free from tampering. Boxes that do not satisfy these criteria shall be inspected at this time to assure that the dice conform to [commission] Commission standards and are completely in a condition to assure fair play. Boxes satisfying these criteria, together with boxes having unbroken, intact and untampered seals shall then be placed for storage in a locked cabinet [or] within a primary or secondary storage area. [The] Dice which are to be distributed to gaming pits or tables for use in gaming shall be placed in a cabinet [or primary storage area shall be located] in the cashiers' cage or in another secure [place] primary storage area in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee]. Secondary storage areas shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the dice have been moved to a primary storage area. [The] All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

(b) [The cabinet or] All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organization hierarchy shall have access to the [keys] casino department key. Dice stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.

(c) Immediately prior to the commencement of [gaming] each [shift or] gaming day and at such other times as may be necessary, the assistant shift manager or [person above him] casino supervisor thereof, in the presence of a casino security officer, shall remove the appropriate number of [sets of] dice for that [shift or] gaming day from a primary storage area.

(d) All envelopes and containers used to hold or transport [preinspected] dice [to the casino floor and those collected by security at the end of each shift or day] shall be transparent.

1. The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering shall be evident.

2. The envelopes or containers and seals shall be approved by the Commission [or its authorized designee].

(e) [Unless otherwise approved by the Commission or its designee, all] All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. The assistant shift manager or [person above him] casino supervisor thereof and the casino security officer who removed the dice from the [cabinet or] primary storage area shall distribute sufficient [sets] dice directly to the craps supervisor in each craps pit [and] or to a pit boss in each sic bo pit or place them in a locked compartment in the pit stand, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] a casino supervisor thereof;

ii. At the time of receipt, a box person at each craps table and the floorperson at each sic bo table shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments

shall be kept in a compartment at each craps table or pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play;

iii. (No change.)

iv. The pit boss shall place extra [sets of] dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] a casino supervisor thereof. No dice taken from this reserve shall be used for actual gaming until and unless inspected in accordance with [(d)] (e)1ii above.

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i. The assistant shift manager or [person above him] casino supervisor thereof and the casino security officer who removed the dice from the [cabinet or] primary storage area shall distribute [sufficient sets] the dice directly to the [craps] casino supervisor identified in (e)2ii below who will perform the inspection in each [craps] pit [and to the pit boss who will perform the inspection in each sic bo pit].

ii. [Inspection procedures are as follows] The inspection of the dice at the pit stand shall be performed by:

(1) For craps, a craps supervisor [shall], in the presence of another craps supervisor, neither of whom shall be a pit boss or a [person above the pit boss in the organizational hierarchy, inspect the dice at the pit stand] casino supervisor thereof. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.]

(2) For sic bo, a pit boss [shall], in the presence of a casino security officer, inspect the dice at the pit stand. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play.]; and

(3) For pai gow poker, a casino supervisor, in the presence of another casino supervisor, neither of whom shall be a pit boss.

iii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet, which instruments shall be kept at the pit stand, to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. [Following the inspection] After completion of the inspection, the dice shall be distributed as follows:

(1) For craps, the craps supervisor who inspected the dice shall distribute such dice to the boxperson at each craps table. The boxperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming and while the dice are at the table they shall never be left unattended; [and]

(2) For sic bo, the pit boss shall in the presence of the casino security officer who observed the inspection place three dice into the shaker and seal or lock the sic bo shaker. The pit boss shall then secure the sic bo shaker to the table in the presence of the casino security officer [who observed the inspection]. No sic bo shaker that has been secured to a table shall remain there for more than 24 hours.]; and

(3) For pai gow poker, the casino supervisor who inspected the dice shall, in the presence of the other casino supervisor, distribute such dice directly to the dealer at each pai gow poker table. The dealer shall immediately place the dice in the pai gow poker shaker.

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand.

(1) Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those

persons above him in the organizational hierarchy] a **casino supervisor thereof**.

(2) All dice taken from the reserve shall be reinspected by a casino supervisor in the presence of another casino supervisor in accordance with the inspection procedures set forth in (e)2ii and iii above, prior to their use for actual gaming; provided, however, that if reserve dice are maintained in a locked compartment under dual key control as approved by the Commission, the reserve dice may be used for gaming without being reinspected.

3. Alternative No. 3: Inspection in **primary storage area** and distribution to tables:

i. **Inspection of dice in an approved primary storage area shall be performed by:**

(1) For craps, a craps supervisor, in the presence of an assistant shift manager or [person above him] **casino supervisor thereof**, and a **casino security officer**[, shall inspect sets of dice in an approved storage area.];

(2) For sic bo, [the] **an assistant shift manager or [above] casino supervisor thereof**, in the presence of a **casino security officer**[, who shall inspect the dice to be placed in the sic bo shakers.]; and

(3) For **pai gow poker**, a **casino supervisor**, in the presence of a **casino security officer**.

[(1)]ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet to assure that the dice conform to Commission standards and are otherwise in a condition to assure fair play. [(2)] These instruments shall be maintained in the [cabinet or primary] storage area.

iii. **After completion of the inspection, the person performing the inspection shall seal the dice as follows:**

[(i)](1) For craps, after each set of at least five dice are inspected [and found to conform to Commission standards], they shall be placed in a sealed envelope or container; provided, however, that reserve dice may be placed in individual sealed envelopes or containers. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection [together with the security officer present at the time] shall be attached to each envelope or container;

[(i)](2) For sic bo, [following inspection, the assistant shift manager or above shall place] **after each set of three dice are inspected, they shall be sealed or locked in** [into the] a **sic bo shaker** [and seal or lock in the sic bo shaker. The assistant shift manager or above shall then place some form of seal over the area that allows access to open the sic bo shaker and sign and date the seal attesting to the completion of the inspection. The security officer who witnessed the inspection of the dice shall also sign the seal]. **A seal that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall then be placed over the area that allows access to open the sic bo shaker.**

(3) For **pai gow poker**, after each set of three dice are inspected, they shall be placed in a sealed envelope or container. A label that identifies the date of the inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

iv. At the beginning of each [shift or] **gaming day** and at such other times as may be necessary, an assistant shift manager or [person above him] **casino supervisor thereof** and a **casino security officer** shall distribute the [sic bo shaker to the pit boss supervising the game of sic bo and the] **dice as follows:**

(1) For craps, the sealed envelopes or containers of dice shall be distributed to a [craps supervisor] **pit boss** in each craps pit or [place] placed in a locked compartment in the pit stand [, keys to which shall be in the possession of the pit boss or those persons above him in the organizational hierarchy;] **by the pit boss. When the sealed dice are distributed to the craps table,** [v. For craps,] a boxperson, at each craps table, after assuring the seals are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in a cup on the table for use in gaming. **While dice are on the table, they shall never be left unattended.**

(2) For sic bo[-], the sealed sic bo shakers shall be distributed to the pit boss supervising the game of sic bo. [a] The pit boss shall then secure the sic bo shaker to the table. No sic bo shaker shall remain on a table for more than 24 hours.

[(1) While dice are on the table, they shall never be left unattended.]

(3) For **pai gow poker**, the sealed envelope or container shall be distributed to a pit boss in each **pai gow poker pit** or placed in a locked compartment in the pit stand. When the sealed dice are distributed to the **pai gow poker table** by the pit boss, a floorperson, after assuring the seal and envelopes or containers are intact and free from tampering, shall open the sealed envelope or container, in the presence of the dealer, and place the dice in the **pai gow poker shaker**.

[(2)]v. When the envelope or container or the seal is damaged, broken or [tampered with] **shows indication of tampering**, the dice shall not be used for gaming activity unless the dice are reinspected as follows:

(1) [for] For craps[, shall be reinspected by the boxperson in the presence of the dealer and the dice for sic bo, shall be reinspected by the pit boss in the presence of the dealer;] and sic bo, in accordance with the procedures in (e)1 or (e)2 above.

(2) For **pai gow poker**, in accordance with the procedures in (e)2 above.

vi. The pit boss shall place extra sets of dice for dice reserve in the pit stand. Dice in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy;] **casino supervisor thereof**.

vii. A micrometer or any other approved instrument which performs the same function, balancing caliper, steel set square and magnet shall also be maintained in a locked compartment in each [craps and sic bo] pit stand; and].

viii. Any **primary storage area** in which dice are inspected in accordance with this alternative, shall be equipped with closed circuit television camera coverage capable of observing the entire inspection procedure.

(f) The casino licensee shall remove any dice at any time of the **gaming day** if there is any indication of tampering, flaws or other defects that might affect the integrity or fairness of the game, or at the request of [an authorized representative of] the Commission or Division.

(g) At the end of each [shift or] **gaming day or at such other times as may be necessary**, [for craps, a craps supervisor other than the one who originally inspected the dice, and for sic bo a sic bo pit boss other than the one who originally inspected the dice, shall reinspect] the **casino supervisor identified in (g)1 below shall visually inspect** each die for evidence of tampering. Such evidence discovered at this time or at any other time shall be immediately reported to [an agent of] the Commission and the Division by completion and delivery of an approved three-part Dice Discrepancy Report.

1. The inspection required by this subsection shall be performed by:

i. For craps, a craps supervisor other than the one who originally inspected the dice;

ii. For sic bo, a sic bo pit boss other than the one who originally inspected the dice; or

iii. For **pai gow poker**, the floorperson assigned to the table.

[1.2. [Such] Any dice showing evidence of tampering shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by:

(1) For craps, the boxperson and [floorperson or pit boss for craps dice and] **casino supervisor**;

(2) For sic bo, the pit boss [for sic bo dice]; or

(3) For **pai gow poker**, the dealer and casino supervisor.

ii. A casino supervisor or **casino security officer** responsible for delivering the dice to [an agent of] the Commission shall also sign the label.

PROPOSALS

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OTHER AGENCIES

iii. The Commission Inspector receiving the dice shall sign the original, duplicate and triplicate copy of the Dice Discrepancy Report and retain the original at the Commission Booth. [(1)] The duplicate copy shall be delivered to the [Division's] **Division** office located within the casino hotel facility. (2) The] **and the** triplicate copy shall be returned to the pit and maintained in a secure place within the pit until **collection** by a **casino security officer** [collects it at the end of each shift or day].

[2.]3. All other dice [at this time] shall be put into envelopes or containers **at this time**.

i. A label shall be attached to each envelope or container which shall identify the table number, date and time and shall be signed by the [boxperson and floorperson or pit boss for craps dice and the pit boss for sic bo dice] **appropriate persons identified in (g)2i above**.

ii. The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until **collection** by a **casino security officer** [collects it at the end of each shift or day].

[(h) At the end of each shift or day, a security officer shall collect and sign all envelopes or containers of used dice and collect all triplicate copies of Dice Discrepancy Reports, if any, and shall transport them to the security department for cancellation or destruction.]

(h) **All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.**

(i) At the end of each [shift or] **gaming day or at such other times as may be necessary**, a **casino security officer** shall collect [all extra dice in dice reserve] **and sign all envelopes or containers of used dice and any dice in the dice reserve that are to be destroyed or cancelled and shall transport them to the casino security department for cancellation or destruction. The casino security officer shall also collect all triplicate copies of Dice Discrepancy Reports, if any.**

(j) At the end of each **gaming day or at such other times as may be necessary**, an **assistant shift manager or casino supervisor thereof** may collect all extra dice in dice reserve. If collected, dice shall be returned to the primary storage area; provided, however, that any dice which have not been inspected and sealed pursuant to the requirements in (e)3 (Alternative No. 3) above shall, prior to use for actual gaming, be inspected as follows:

1. For craps or sic bo, in accordance with the requirements in (e)1 or (e)2 above; or

2. For pai gow poker, in accordance with the requirements in (e)2 above.

[(j)]k The casino licensee shall submit to the Commission [or its authorized designee] for approval[,] procedures for:

1. (No change.)

2. A [daily] reconciliation **on a daily basis** of the dice distributed [and], the dice destroyed and cancelled [and/or], the dice returned to the **primary storage [room] area and, if any, the dice in dice reserve; and**

3. A physical inventory of the dice at least every three months. i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required in [(j)](k)1i above.

ii. (No change.)

[(k)](l) All **destruction and cancellation of dice**, other than those retained for Commission or Division inspection, shall **be completed** within 48 hours of collection [be either destroyed or cancelled].

1.-2. (No change.)

3. The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

19:46-1.17 Cards; physical characteristics

(a) Cards used to play blackjack, baccarat/minibaccarat, **pai gow poker** and red dog shall be in decks of 52 cards each with each card identical in size and shape to every other card in such deck. **Notwithstanding the foregoing, decks of cards used to play pai gow**

poker shall include one additional card, a joker, which shall be identical in size and shape to every other card in such deck.

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

(f) The design to be placed on the backs of cards used by a casino shall be submitted to the [chairman] **Commission** for approval prior to use of such cards in gaming activity.

(g) (No change.)

(h) Nothing in this section shall prohibit a manufacturer from manufacturing decks of cards with **one or more** jokers contained therein; provided, **however**, such jokers [are] **shall not be used by the casino in the play of [the] any games other than pai gow poker in accordance with the provisions of N.J.A.C. 19:47-11.**

19:46-1.18 Cards; receipt, storage, inspections and removal from use

(a) When decks of cards are received for use in the casino from the manufacturer or distributor thereof, they shall be placed [for] **in a storage [in a locked cabinet] area by at least two individuals, one of whom shall be from the casino department and the other from the casino security department. The [cabinet or] primary storage area shall be located in the cashiers' cage or in another secure place in or immediately adjacent to the casino floor, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee]. Secondary storage areas shall be used for the storage of surplus cards. Cards maintained in secondary storage areas shall not be distributed to gaming pits or tables for use in gaming until the cards have been moved to a primary storage area. [Any] All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].**

(b) [The cabinet or] **All primary and secondary storage areas, other than the cashiers' cage, shall have two separate locks. The casino security department shall maintain one key and the casino department or cashiers' cage shall maintain the other key; provided, however, that no person employed by the casino department below the assistant shift manager in the organizational hierarchy shall have access to the [keys] casino department key. Cards stored in a cabinet within the cashiers' cage shall be secured by a lock, the key to which shall be maintained by an assistant shift manager or casino supervisor thereof.**

(c) Immediately prior to the commencement of [gaming] each [shift or] **gaming day and at other times as may be necessary, the assistant shift manager or [person above him] casino supervisor thereof, in the presence of a casino security officer, shall [open the cabinet or primary storage area and shall] remove the appropriate number of decks of cards for that [shift or] gaming day from a primary storage area.**

(d) The assistant shift manager or [persons above him] **casino supervisor thereof and the casino security officer who removed the decks shall distribute sufficient decks to the pit boss.**

1. (No change.)

2. Cards in the pit stand shall be placed in a locked compartment, keys to which shall be in the possession of the pit boss or [those persons above him in the organizational hierarchy] **casino supervisor thereof.**

(e) Prior to their use at a table, **all** decks shall be inspected by the dealer, and the inspection verified by a floorperson. [(f)] Card inspection at the gaming table shall require each pack to be used to be sorted into sequence and into suit to assure that all cards are in the deck. [1.] The dealer shall also check the back of each card to assure that it is not flawed, scratched or marked in any way.

[i.]1. If, after checking the cards, the dealer finds that [certain cards are damaged or improper] **a card is unsuitable for use**, a casino supervisor shall bring [cards in substitution] **a substitute card** from the card reserve in the pit stand.

[ii.]2. The [damaged or improper cards] **unsuitable card** shall be placed in a sealed envelope or container, identified by table number, date, **and** time and shall be signed by the dealer and casino supervisor. **The casino supervisor shall maintain the envelope or container in a secure place within the pit until collection by a casino security officer.**

OTHER AGENCIES

[2.](f) All envelopes and containers used to hold or transport cards collected by security [at the end of each shift or day] shall be transparent.

[i.](1) The envelopes or containers and the method **used** to seal them shall be designed or constructed so that any tampering shall be evident.

[ii.](2) The envelopes or containers and seals shall be approved by the Commission [or its authorized designee].

[iii.](3) The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until a security officer collects them at the end of the shift or day.]

(g) Any cards which have been opened and placed on a gaming table shall be changed at least every 24 hours. In addition:

1. Cards opened for use on a baccarat table shall be changed at least once during the gaming day; and

2. Cards opened for use on a pai gow poker table shall be changed at least every eight hours.

[(g)](h) Cards damaged during the course of play shall be replaced by the dealer who shall request a casino supervisor to bring cards in substitution from the pit stand.

1. (No change.)

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until **collection by a casino security officer** [collects them at the end of the shift or day].

[(h)](i) At the end of each [shift or] **gaming day** and at such other times as may be necessary, the casino supervisor shall collect all **used** cards [used to play out the shift or day].

1. These cards shall be placed in a sealed envelope or container. A label shall be attached to each envelope or container which shall identify the table number, date, **and** time and shall be signed by the dealer and casino supervisor.

2. The casino supervisor shall maintain the envelopes or containers in a secure place within the pit until **collection by a casino security officer** [collects them at the end of the shift or day].

[(i)](j) The casino licensee shall remove any cards at any time [of] **during the day** if there is any indication of tampering, flaws, scratches, marks or other defects that might affect the integrity or fairness of the game, or at the request of [an authorized representative of] the Commission or Division.

(k) All extra decks in card reserve with broken seals shall be placed in a sealed envelope or container, with a label attached to each envelope or container which identifies the date and time and is signed by the pit boss.

[(j)](l) At the end of each [shift or] **gaming day or at such other times as may be necessary**, a casino security officer shall collect and sign all envelopes or containers with damaged cards, [and] cards used during the [shift or] **gaming day**, and **all extra decks in card reserve with broken seals** and shall return the envelopes or containers to the casino security department.

[(k)](m) At the end of each [shift or] **gaming day or at such other times as may be necessary**, [a security officer shall] **an assistant shift manager or casino supervisor thereof may** collect all extra decks in card reserve. **If collected, all** [1. All] sealed decks shall either be cancelled or destroyed or returned to the [cabinet or primary] storage area.

[2. All decks with broken seals shall be placed in a sealed envelope or container.

i. A label shall be attached to each envelope or container which shall identify the date and time and be signed by the pit boss, and the security officer collecting the cards.

ii. The envelopes or containers shall be returned to the security department for cancellation or destruction.]

[(l)](n) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the casino security department, they shall be inspected for tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play.

1. For cards used in blackjack, baccarat or minibaccarat, [The] casino licensee shall cause to be inspected either:

i. All decks used during the day; or

ii. A sample of decks selected at random or in accordance with an approved stratification plan provided that the procedures for selecting the sample size and for assuring a proper selection of the sample [is] **are** submitted to and approved by the Commission [or its authorized designee];

2. The casino licensee shall also inspect:

i. Any cards which the Commission or Division requests the casino licensee to remove for the purpose of inspection; [and]

ii. Any cards the casino licensee removed for indication of tampering; **and**

iii. **All cards used for pai gow poker;**

3. The procedures for inspecting all decks required to be inspected under this subsection shall, at a minimum, include:

i. The sorting of cards sequentially by suit;

ii. The inspection of the backs with an [infra red filter] **ultra-violet light**; and

iii. The inspection of the sides of the cards for crimps, bends, cuts and shaving.

4. The individuals performing said inspection shall complete a work order form which shall detail the procedures performed and list the tables from which the cards were removed and [inspected] **the results of the inspection**. The individual shall sign the form upon completion of the [stated] inspection procedures.

5. The casino licensee shall submit the training procedures for those employees performing the inspection, which shall be approved by the Commission [or its authorized designee];

6. Evidence of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play discovered at this time, or at any other time, shall be immediately reported to [an agent of] the Commission and Division by the completion and delivery of an [approval] three-part Card Discrepancy Report.

i. The report shall accompany the cards when delivered to the [agent of the] Commission.

ii. The cards shall be retained for further inspection by the Commission.

iii. The Commission Inspector receiving the cards shall sign the original, duplicate and triplicate copy of the Card Discrepancy Report and retain the original at the Commission Booth. The duplicate copy shall be delivered to the [Division's] **Division** office located within the casino hotel facility. The triplicate copy shall be retained by the casino licensee.

[(m)](o) The casino licensee shall submit to the Commission [or its authorized designee] for approval[,] procedures for:

1. A card inventory system which shall include, at a minimum, the recordation of the following:

i-iv. (No change.)

v. The signatures of the individuals involved;

2. A [daily] reconciliation **on a daily basis** of the cards distributed, [and] the cards destroyed and cancelled, [and/or] **the cards** returned to the storage [room] **area and, if any, the cards in card reserve; and**

3. A physical inventory of the cards at least once every three months.

i. This inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of cards on hand required in [(m)] (o)1i above.

ii. Any discrepancies shall immediately be reported to the Commission and Division.

[(n)](p) Where cards in an envelope or container are inspected and found to be without any indication of tampering, marks, alterations, missing or additional cards or anything that might indicate unfair play, those cards [and all other used cards] shall within 48 hours of collection be destroyed or cancelled. Once released by the Commission and Division, the cards submitted as evidence shall immediately be destroyed or cancelled.

1.-2. (No change.)

3. The destruction and cancellation of cards shall take place in a secure place, the location and physical characteristics of which shall be approved by the Commission [or its authorized designee].

19:46-1.19 Dealing shoes

(a) (No change.)

PROPOSALS

(b) Cards used to game at blackjack, **pai gow poker**, minibaccarat, and red dog shall be dealt from a dealing shoe which shall be [securely chained] **secured** to the gaming table [during gaming hours] **when the table is open for gaming activity** and secured in a locked compartment [during non-gaming hours] **when the table is not open for gaming activity**. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack, **pai gow poker**, minibaccarat and red dog in addition to or in place of a dealing shoe, provided that [such a] **the device and the procedures for dealing and shuffling the cards through the use of the device are** [is] submitted to and approved by the Commission.

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

(f) A **pai gow poker** dealing shoe, in addition to meeting the requirements of (d) above, shall also contain a sliding door or other device approved by the Commission on the front of the face plate so as to preclude the players from viewing the next card to be dealt.

[(f)](g) All dealing shoes and shuffling devices in the casino shall be inspected at the beginning of each gaming day by a [floorman] **floorperson assigned to the table** prior to cards being placed in them. The purpose of this inspection shall be to assure that there [is no contrivance with or through] **has been no tampering with the shoe or shuffling device**.

19:47-8.2 Minimum and maximum wagers

(a) (No change.)

(b) The spread between the minimum wager and the maximum wager at table games shall be as follows:

1.-8. (No change.)

9. Pai Gow Poker:

i. If the minimum wager at the table is \$5.00 or less, the maximum wager shall be at least \$100.00.

(c) (No change.)

SUBCHAPTER 11. PAI GOW POKER

19:47-11.1 Definitions

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

"Bank" shall mean the player who elects to have the other players and dealer play against him or her and accepts the responsibility to pay all winning wagers.

"Co-banking" is defined in N.J.A.C. 19:47-11.10.

"Copy hand" shall mean either a two card hand or a five card hand of a player which is identical in rank to the corresponding two card hand or five card hand of the dealer or bank.

"High hand" shall mean the five card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank higher than the two card low hand.

"Low hand" shall mean the two card hand which is formed from the seven cards dealt at the game of pai gow poker so as to rank lower than the five card high hand.

"Push" is a tie as defined in N.J.A.C. 19:47-11.9(h).

"Rank or ranking" shall mean the relative position of a card or group of cards as set forth in N.J.A.C. 19:47-11.3.

"Set or setting the hands" shall mean the process of forming a high hand and low hand from the seven cards dealt.

"Suit" shall mean one of the four categories of cards, that is, diamond, spade, club or heart.

19:47-11.2 Cards; number of decks; dealing shoe

(a) Pai gow poker shall be played with one deck of cards with backs of the same color and design and one additional solid yellow or green cutting card. The deck of cards used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.17 and shall include one joker. Nothing in this section shall prohibit a casino licensee from using decks which are manufactured with two jokers provided that only one joker is used for gaming at pai gow poker.

(b) All cards to be used in pai gow poker shall be dealt from a dealing shoe which shall meet the requirements of N.J.A.C.

19:46-1.19 and which shall be located on the table to the left of the dealer.

19:47-11.3 Pai gow poker rankings; cards; poker hands

(a) The rank of the cards used in pai gow poker, in order of highest to lowest rank, shall be: ace, king, queen, jack, 10, nine, eight, seven, six, five, four, three, and two. Notwithstanding the foregoing, an ace may be used to complete a "straight flush" or a "straight" formed with a two, three, four and five. Except as otherwise provided in (c) below, the joker shall be used and ranked as an ace.

(b) The permissible poker hands at the game of pai gow poker, in order of highest to lowest rank, shall be:

1. "Five aces" is a high hand consisting of four aces and a joker;

2. "Royal flush" is a high hand consisting of an ace, king, queen, jack and ten of the same suit;

3. "Straight flush" is a high hand consisting of five cards of the same suit in consecutive ranking, with ace, two, three, four, and five being the highest ranking straight flush; king, queen, jack, 10, and nine being the second highest ranking straight flush, and six, five, four, three and 2 being the lowest ranking straight flush;

4. "Four-of-a-kind" is a high hand consisting of four cards of the same rank regardless of suit, with four aces being the highest ranking four-of-a-kind and four twos being the lowest ranking four-of-a-kind;

5. "Full house" is a high hand consisting of a "three-of-a-kind" and a "pair," with three aces and two kings being the highest ranking full house and three twos and two threes being the lowest ranking full house;

6. "Flush" is a high hand consisting of five cards of the same suit, regardless of rank, with all flushes being of identical rank;

7. "Straight" is a high hand consisting of five cards of consecutive rank, regardless of suit, with an ace, king, queen, jack and 10 being the highest ranking straight; an ace, two, three, four and five being the second highest ranking straight, and a six, five, four, three and two being the lowest ranking straight;

8. "Three-of-a-kind" is a high hand containing three cards of the same rank regardless of suit, with three aces being the highest ranking three-of-a-kind and three twos being the lowest ranking three-of-a-kind;

9. "Two pairs" is a high hand containing two "pairs," with two aces and two kings being the highest ranking two pair hand and two threes and two twos being the lowest ranking two pair hand; and

10. "Pair" is either a high hand or a low hand consisting of two cards of the same rank, regardless of suit, with two aces being the highest ranking pair and two twos being the lowest ranking pair.

(c) For purposes of setting the hands, a joker may be used as any card to complete a "straight," a "flush," a "straight flush" or a "royal flush."

(d) Notwithstanding the provisions of (b) above, a casino licensee may, in its discretion, determine that a straight flush formed with an ace, two, three, four and five of the same suit shall be the lowest ranking straight flush and that a straight formed with an ace, two, three, four and five, regardless of suit, shall be the lowest ranking straight. If a casino licensee chooses to exercise this option, it shall so indicate in its Rules of the Games Submission.

(e) When comparing two high hands or two low hands which are of identical poker and hand rank pursuant to the provisions of this section, or which contain none of the poker hands authorized herein, the hand which contains the highest ranking card as provided in (a) above which is not contained in the other hand shall be considered the higher ranking hand. If the two hands are of identical rank after the application of this subsection, the hands shall be considered a copy hand.

19:47-11.4 Dice; number of dice; pai gow poker shaker

(a) Pai gow poker shall be played with three dice which shall be maintained at all times inside a pai gow poker shaker. The dice used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.15 and the pai gow poker shaker shall meet the requirements of N.J.A.C. 19:46-1.13B.

(b) The pai gow poker shaker and the dice contained therein shall be the responsibility of the dealer and shall never be left unattended while at the table.

(c) No dice that have been placed in a pai gow poker shaker for use in gaming shall remain on a table for more than 24 hours.

19:47-11.5 Opening of the table for gaming

(a) After receiving one deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection as required by N.J.A.C. 19:46-1.18. If the deck of cards used by the casino licensee contains two jokers, the dealer and a casino supervisor shall ensure that only one joker is utilized and that the other joker is torn in half and discarded.

(b) Following the inspection of the cards by the dealer and the verification by the floorperson assigned to the table, the cards shall be spread out face up on the table for visual inspection by the first player to arrive at the table. The cards shall be spread out according to suit and in sequence and shall include one joker.

(c) After the first player is afforded an opportunity to visually inspect the cards, the cards shall be turned face down on the table, mixed thoroughly by a "washing" or "chemmy shuffle" of the cards and stacked. Once the cards have been stacked, they shall be shuffled in accordance with N.J.A.C. 19:47-11.6.

(d) All cards opened for use on a pai gow poker table shall be changed at least every eight hours.

19:47-11.6 Shuffle and cut of the cards

(a) Immediately prior to commencement of play and after each round of play has been completed, the dealer shall shuffle the cards so that they are randomly intermixed.

(b) After the cards have been shuffled, the dealer shall offer the stack of cards to be cut, with the backs facing up and faces facing the layout, to the player determined pursuant to (c) below. If no player accepts the cut, the dealer shall cut the cards.

(c) The cut of the cards shall be offered to players in the following order:

1. The first player to the table, if the game is just beginning;
2. The player who accepts the bank pursuant to N.J.A.C. 19:47-11.10; provided, however, if the bank refuses the cut, the cards shall be offered to each player moving counterclockwise around the table from the bank until a player accepts the cut; or
3. The player at the farthest position to the right of the dealer, if there is no bank during a round of play; provided, however, if there are two or more consecutive rounds of play where there is no bank, the offer to cut the cards shall rotate in a counterclockwise manner after the player to the far right of the dealer has been offered the cut.

(d) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take all the cards on top of the cutting card and place them on the bottom of the stack. The cutting card shall then be placed on the bottom of the stack and the cards shall be inserted into the dealing shoe for commencement of play.

(e) If there is no gaming activity at the pai gow poker table, the cards shall be removed from the dealing shoe and spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-11.5(c) shall be completed.

19:47-11.7 Wagers

(a) All wagers at pai gow poker shall be made by placing gaming chips or plaques on the appropriate betting area of the pai gow poker layout. A verbal wager accompanied by cash shall not be accepted at the game of pai gow poker.

(b) Only players who are seated at the pai gow poker table may place a wager at the game. Once a player has placed a wager and received cards, that player must remain seated until the completion of the round of play.

(c) All wagers at pai gow poker shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-11.8. No wager at pai gow poker shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-11.8 Procedures for dealing the cards

(a) Once the dealer has completed shuffling the cards and the cards have been placed in the shoe, the dealer shall announce "No more bets" prior to shaking the pai gow poker shaker. The dealer shall then shake the pai gow poker shaker at least three times so as to cause a random mixture of the dice.

(b) The dealer shall then remove the lid covering the pai gow poker shaker, total the dice and announce the total. The total of the dice shall determine which player receives the first card.

(c) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one and continuing around the table with each betting position counted in order, regardless of whether there is a wager at the position, until the count matches the total of the three dice. Examples are as follows:

1. If the dice total eight, the dealer would receive the first card; or
2. If the dice total 14, the sixth wagering position would receive the first card.

(d) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (c) above and, moving clockwise around the table, deal all other positions including the dealer a card, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position including the dealer has seven cards.

(e) After seven cards have been dealt to each position and the dealer, the dealer shall collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards. The dealer shall then remove the remaining cards from the shoe and determine that exactly four cards are left. The four cards shall not be exposed to anyone at the table and shall be placed in the discard rack. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(f) Once seven cards have been dealt to each position and the dealer and any cards dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.

19:47-11.9 Procedures for completion of each round of play; setting of hands; payment and collection of wagers; payout odds; vigorish

(a) After the dealing of the cards has been completed, each player shall set his or her hands by arranging the cards into a high hand and low hand. When setting the two hands, the five card high hand must be higher in rank than the two card low hand. For example, if the two card hand contains a pair of sevens, the five card hand must contain at least a pair of eights.

(b) Each player at the table shall be responsible for setting his or her own hands and no other person except the dealer may touch the cards of that player. Each player shall be required to keep the seven cards in full view of the dealer at all times. Once each player has set a high and low hand and placed the two hands face down on the appropriate area of the layout, the player shall not touch the cards again.

(c) After all players have set their hands and placed the cards on the table, the seven cards of the dealer shall be turned over and

the dealer shall set his or her hands by arranging the cards into a high and low hand. The dealer shall then place the two hands face up on the appropriate area of the layout.

(d) Each casino licensee shall submit to the Commission in its Rules of the Games Submission the manner in which it will require the hands of the dealer to be set.

(e) A player may surrender his or her wager after the hands of the dealer have been set. The player must announce his or her intention to surrender prior to the dealer exposing either of the two hands of that player pursuant to (f) below. Once the player has announced his or her intention to surrender, the dealer shall:

1. Immediately collect the wager from that player; and
2. Collect the seven cards dealt to that player without exposing the cards to anyone at the table. The dealer shall verify that seven cards were collected by counting them face down on the layout prior to placing them in the discard rack.

(f) Once the dealer has set a high and low hand, the dealer shall expose both hands of each player, starting from the right and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the dealer and shall announce if the wager of that player shall win, lose or be considered a tie ("push").

(g) All losing wagers shall be immediately collected by the dealer along with the cards of that player. A wager made by a player shall lose if:

1. The high hand of the player is lower in rank than the high hand of the dealer and the low hand of the player is lower in rank than the low hand of the dealer;
2. The high hand of the player is identical in rank to the high hand of the dealer or the low hand of the player is identical in rank to the low hand of the dealer (a "copy hand") and the other hand of the player is identical in rank or lower in rank than the other hand of the dealer;
3. The high hand of the player was not set so as to rank higher than the low hand of that player; or
4. The two hands of the player were not otherwise set correctly in accordance with the rules of the game (for example, a player forms a three card low hand and a four card high hand).

(h) If a wager is a push, the dealer shall not collect or pay the wager, but shall immediately collect the cards of that player. A wager made by a player shall be a push if:

1. The high hand of the player is higher in rank than the high hand of the dealer, but the low hand of the player is identical in rank to the low hand of the dealer (copy hand) or lower in rank than the low hand of the dealer; or
2. The high hand of the player is identical in rank to the high hand of the dealer (copy hand) or lower in rank than the high hand of the dealer, but the low hand of the player is higher in rank than the low hand of the dealer.

(i) All winning hands shall remain face up on the layout. Winning wagers shall be paid after all hands have been exposed. The dealer shall pay winning wagers beginning with the player farthest to the right of the dealer and continuing counterclockwise around the table. A wager made by a player shall win if the high hand of the player is higher in rank than the high hand of the dealer and the low hand of the player is higher in rank than the low hand of the dealer.

(j) A winning pai gow poker wager shall be paid off by a casino licensee at odds of 1 to 1, except that the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to 25 cents or the next highest multiple of 25 cents. A casino licensee shall collect the vigorish from a player at the time the winning payout is made. After a winning wager has been paid and the vigorish collected, the dealer shall then collect the cards from that player.

(k) All cards collected by the dealer shall be picked up in order and placed in the discard rack in such a way that they can be readily arranged to reconstruct each hand in case of a question or dispute.

19:47-11.10 Player bank; co-banking; selection of bank; procedures for dealing

(a) A casino licensee may, in its discretion, offer to all players at a pai gow poker table the opportunity to bank the game. If the casino licensee elects this option, all the other provisions of this subchapter shall apply except to the extent that they conflict with the provisions of this section, in which case the provisions of this section shall control for any round of play in which a player is the bank.

(b) A player may not be the bank at the start of the game. For the purposes of this section, the start of the game shall mean the first round of play after the dealer is required to shuffle the cards in accordance with the procedures set forth in N.J.A.C. 19:47-11.5(c).

(c) After the first round of play pursuant to (b) above, each player at the table shall have the option to either be the bank or pass the bank to the next player. The dealer shall, starting with the player farthest to the right of the dealer, offer the bank to each player in a counterclockwise rotation around the table until a player accepts the bank. The dealer shall place a marker in front of the player who accepts the bank. If the first player offered the bank accepts, the player seated to the right of that player shall first be offered the bank on the next round of play. The initial offer to be the bank shall rotate counterclockwise around the table until it returns to the dealer. In no event may any player bank two consecutive rounds of play. If no player wishes to be the bank, the round of play shall proceed in accordance with the rules of play provided in this subchapter.

(d) Before a player may be permitted to bank a round of play, the dealer shall determine that:

1. The player placed a wager against the dealer during the last round of play in which there was no player banking the game; and
2. The player has sufficient gaming chips on the table to cover all of the wagers placed by other players at the table for that round of play.

(e) A casino licensee may, in its discretion, offer the bank the option of having the casino cover 50 percent of the wagers made during a round of play. If the casino licensee offers this option, it shall make it available to all players at the table. If the bank wishes to use this option, the bank must specifically request the dealer to accept responsibility for the payment of one-half of all winning wagers. When the bank covers 50 percent and the casino covers 50 percent of the winning wagers, it shall be known as "co-banking." When the dealer is co-banking, the dealer shall be responsible for setting the hand of the bank in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-11.9. When co-banking is in effect, the dealer may not place a wager against the bank.

(f) If a player is the bank, the player may only wager on one betting area.

(g) Once the dealer has determined that a player may be the bank pursuant to (d) above and after the cards have been shuffled, the dealer shall remove gaming chips from the table inventory container in an amount equal to the last wager made by that player against the dealer or in an amount, the calculation of which has been approved by the Commission. This amount shall be the amount the dealer wagers against the bank. The bank may direct that the sum wagered by the dealer be a lesser amount or that the dealer place no wager during that round of play. Any amount wagered by the dealer shall be placed in front of the table inventory container.

(h) Once the dealer has announced "No more bets," the bank shall shake the pai gow shaker. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow shaker, the dealer shall remove the lid covering the pai gow shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow shaker to be covered and reshaken by the bank.

(i) To determine the starting position for dealing the cards, the dealer shall count counterclockwise around the table, with the posi-

tion of the banker considered number one and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

(j) Each card shall be removed from the dealing shoe with the left hand of the dealer, and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (i) above and, moving clockwise around the table, deal all other positions including the dealer a card, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position including the dealer has seven cards.

(k) After seven cards have been dealt to each position and the dealer, the dealer shall collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards. The dealer shall then remove the remaining cards from the shoe and determine that exactly four cards are left. The four cards shall not be exposed to anyone at the table and shall be placed in the discard rack. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a player or the dealer has more or less than seven cards, all hands shall be void pursuant to N.J.A.C. 19:47-11.11. If the cards have not been misdealt, all hands shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(l) Once seven cards have been dealt to each position and the dealer and any cards dealt to positions with no wagers have been collected, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow shaker shall then be placed to the right of the dealer.

(m) If the cards dealt to the dealer have not been previously collected, after each player has set his or her two hands and placed them on the appropriate area of the layout, the two hands of the dealer shall then be set. Once the dealer has formed a high and low hand, the dealer shall expose the hands of the bank and determine if the hands of the dealer are higher in rank than the hands of the bank. If the dealer wins, the cards of the dealer shall be stacked face up to the right of the table inventory container with the amount wagered by the dealer against the bank placed on top. If the dealer pushes, the dealer shall return the amount wagered by the dealer against the bank to the table inventory container. If the dealer loses, the amount wagered by the dealer against the bank shall be moved to the center of the layout.

(n) If banking is in effect, once the dealer has determined the outcome of the wager of the dealer against the bank, if any, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the bank, an amount equal to the remaining winning wagers and place that amount in the center of the layout. The remaining winning wagers shall be paid from the amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount shall be charged a five percent vigorish in accordance with N.J.A.C. 19:47-11.9. Once the vigorish has been paid, the remaining amount shall be given to the bank.

(o) If co-banking is in effect, once the dealer has set the co-bank hand pursuant to (e) above, the dealer shall expose the hands of each player starting with the player farthest to the right of the dealer and proceeding counterclockwise around the table. The dealer shall compare the high and low hand of each player to the high and low hand of the bank and shall announce if the wager shall win, lose

or be considered a push against the bank. All losing wagers shall be immediately collected and placed in the center of the table. After all hands have been exposed, all winning wagers, including the dealer's wager, shall be paid by the dealer with the gaming chips located in the center of the table. If this amount becomes exhausted before all winning wagers have been paid, the dealer shall collect from the co-bank, an amount equal to one-half of the remaining winning wagers and place that amount in the center of the layout. The dealer shall remove an amount equal to one-half of the remaining winning wagers from the table inventory container and place that amount in the center of the layout. The remaining winning wagers shall be paid from the total amount in the center of the layout. If, after collecting all losing wagers and paying all winning wagers, there is a surplus in the center of the table, this amount will be counted and the dealer shall place half of this amount into the table inventory container. The dealer shall collect a five percent vigorish in accordance with N.J.A.C. 19:47-11.9 on the remaining amount and place the vigorish amount in the table inventory container. The remaining amount shall then be given to the co-bank.

(p) Immediately after a winning wager of the dealer is paid, this amount and the original wager shall be returned to the table inventory container.

(q) Each player who has a winning wager against the bank shall pay a five percent vigorish on the amount won to the dealer, in accordance with N.J.A.C. 19:47-11.9.

19:47-11.11 Irregularities; invalid roll of the dice

(a) If the dealer uncovers the pai gow poker shaker and all three dice do not land flat on the bottom of the shaker, the dealer shall call a "No roll" and reshake the dice.

(b) If the dealer uncovers the pai gow poker shaker and a die or dice fall out of the shaker, the dealer shall call a "No roll" and reshake the dice.

(c) If the dealer incorrectly totals the dice and deals the first card to the wrong position, all hands shall be called dead and the dealer shall reshuffle the cards.

(d) If the dealer exposes any of the cards dealt to a player, the player has the option of voiding the hand. Without looking at the unexposed cards, the player shall make the decision either to play out the hand or to void the hand.

(e) If a card or cards in the hand of the dealer is exposed, all hands shall be void and the cards shall be reshuffled.

(f) A card found turned face up in the shoe shall not be used in the game and shall be placed in the discard rack. If more than one card is found turned face up in the shoe, all hands shall be void and the cards shall be reshuffled.

(g) A card drawn in error without its face being exposed shall be used as though it was the next card from the shoe.

(h) If any player or the dealer is dealt an incorrect number of cards, all hands shall be void and the cards reshuffled.

(i) If the dealer does not set his or her hands in the manner submitted to the Commission pursuant to N.J.A.C. 19:47-11.9, the hands must be reset in accordance with this submission and the round of play completed.

(j) If the bank does not set his or her own hands correctly, the wager shall not be lost pursuant to N.J.A.C. 19:47-11.9, and the bank shall be required to reset the hands so that the round of play may be completed.

19:47-11.12 Minimum and maximum wagers

(a) Each casino licensee shall submit to the Commission for review and approval, in accordance with N.J.A.C. 19:47-8.2, the minimum wagers permitted at each pai gow poker table.

(b) Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each pai gow poker table.

19:47-11.13 A player wagering on more than one betting area

(a) Except as provided in N.J.A.C. 19:47-11.10(f), a casino licensee may, in its discretion, permit a player to wager on no more than two betting areas at a pai gow poker table, which areas must be adjacent to each other.

PROPOSALS**Interested Persons see Inside Front Cover****OTHER AGENCIES**

(b) If a casino licensee permits a player to wager on two adjacent betting areas, the cards dealt to each betting area shall be played separately. If the two wagers are not equal, the player shall be required to rank and set the hand with the larger wager before ranking and setting the other hand. If the amounts wagered are

equal, each hand shall be played separately in a counterclockwise rotation with the first hand being ranked and set before the player proceeds to rank and set the second hand. Once a hand has been ranked and set and placed face down on the appropriate area of the layout, the hand may not be changed.

RULE ADOPTIONS

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

Reporting of Crimes

Adopted Amendments: N.J.A.C. 3:6-4.5 and 3:26-3.1

Adopted New Rules: N.J.A.C. 3:6-4.6 and 3:26-3.2

Proposed: October 7, 1991 at 23 N.J.R. 2903(a).

Adopted: January 14, 1992 by Jeff Connor, Commissioner,
Department of Banking.

Filed: January 17, 1992 as R.1992 d.73, **without change**.

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

Effective Date: February 18, 1992.

Expiration Date: March 1, 1996, N.J.A.C. 3:6
December 31, 1995, N.J.A.C. 3:26.

Summary of Public Comments and Agency Responses:
The Department received **no comments**.

Full text of the adoption follows:

3:6-4.5 Notice of crime by other perpetrators

In the event of a crime against the bank, capital stock savings bank or mutual savings bank by one other than an officer, director, attorney, or agent or employee of the institution, including crimes in which no immediate loss or any loss is incurred by the bank, capital stock savings bank or mutual savings bank, the board of directors or managers shall promptly report the apparent criminal violation to the Commissioner of Banking if the suspected criminal activity involves an actual or probable loss in excess of \$9,000. For purposes of reporting to the Department pursuant to this section, a suspected civil fraud shall be treated like a crime.

3:6-4.6 Notice to criminal authorities

(a) A bank, capital stock savings bank or mutual savings bank must notify the appropriate criminal authorities of all suspected criminal activity it is required to report to the Commissioner.

(b) A bank, capital stock savings bank or mutual savings bank may notify the appropriate criminal authorities of any suspected criminal activity which it is not required to report pursuant to (a) above.

3:26-3.1 Action upon detection or discovery of crime

(a) Every State association, including any service corporation which is owned, wholly or jointly, by a State association, shall immediately notify the Commissioner of the detection or discovery of any embezzlement, defalcation, misapplication, or misuse of funds by any director, officer, employee, attorney or agent of the State association or service corporation. An association may comply with this section by filing with the Commissioner a copy of forms required under rules adopted by any appropriate Federal agency concerning reporting of crimes.

(b) Any fraud, embezzlement, defalcation, misapplication or misuse of the institution's funds committed by an agent or employee of the association which involves amounts of \$5,000 or less is exempt from the requirements of this section.

(c) In the event of a crime against the association by one other than an officer, director, attorney, or agent or employee of the institution, including crimes in which no immediate loss or any loss is incurred by the association, the association shall promptly report the apparent criminal violation to the Commissioner of Banking if the suspected criminal activity involves an actual or probable loss in excess of \$9,000. For purposes of reporting to the Department, a suspected civil fraud shall be treated like a crime.

3:26-3.2 Notice to criminal authorities

(a) An association must notify the appropriate criminal authorities of any suspected criminal activity which it is required to report to the Commissioner.

(b) An association may notify the appropriate criminal authorities of any suspected criminal activity which it is not required to report pursuant to (a) above.

(b)

OFFICE OF REGULATORY AFFAIRS

Credit Unions

Readoption: N.J.A.C. 3:21

Proposed: December 16, 1991 at 23 N.J.R. 3686(b).

Adopted: January 21, 1992 by Jeff Connor, Commissioner,
Department of Banking.

Filed: January 24, 1992 as R.1992 d.92, **without change**.

Authority: N.J.S.A. 17:13-90.

Effective Date: January 24, 1992.

Expiration Date: January 24, 1997.

Summary of Public Comments and Agency Responses:
The Department received **no comments**.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3:21.

(c)

DIVISION OF SUPERVISION

Low-Income Credit Unions

Adopted New Rules: N.J.A.C. 3:21-1

Proposed: October 7, 1991 at 23 N.J.R. 2905(a).

Adopted: January 14, 1992 by Jeff Connor, Commissioner,
Department of Banking.

Filed: January 17, 1992 as R.1992 d.74, **without change**.

Authority: N.J.S.A. 17:1-8, 17:13-90, and 17:13-113.

Effective Date: February 18, 1992.

Expiration Date: January 24, 1997.

Summary of Public Comments and Agency Responses:
The Department received **no comments**.

Full text of the adoption follows:

SUBCHAPTER 1. LOW-INCOME CREDIT UNIONS

3:21-1.1 Definitions

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

"Applicant" means an applicant for designation as a low-income credit union.

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

"Credit union" means a State-chartered credit union or an entity which has submitted an application for a State charter for a credit union.

"Low-income credit union" or "LICU" means a credit union which has been designated a low-income credit union pursuant to this subchapter.

"Low-income members" or "low-income residents" means those members or residents:

1. Whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment Training Administration of the U.S. Department of Labor;

2. Who are residents of a public housing project who qualify for such residency because of low income;

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF ENVIRONMENTAL QUALITY Notice of Administrative Correction Discharges of Petroleum and Other Hazardous Substances Discharge Notification N.J.A.C. 7:1E-5.3

Take notice that the Department of Environmental Protection and Energy has discovered a typographic error in the text of N.J.A.C. 7:1E-5.3(a). In the first sentence of that subsection, the phrase "any person or person responsible" should read "any person or persons responsible." This error was included in both the proposal and adoption of the rule (see 23 N.J.R. 1335(a) and 2656(a), respectively), but could have been properly interpreted through the correct phrase ("any person or persons responsible") appearing in the subsection's second sentence. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:1E-5.3 Discharge notification

(a) Immediately after a discharge commences, any person or persons responsible for a discharge who knows or reasonably should know of the discharge, shall immediately notify the Department at (609) 292-7172. In the event that this number is inoperable, any person or persons responsible for a discharge shall immediately notify the State Police at (609) 882-2000.

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

(b)

DIVISION OF PARKS AND FORESTRY Natural Areas and the Natural Areas System Adopted Amendments: N.J.A.C. 7:5A-1.3 through 1.9 and 1.12 through 1.14.

Proposed: July 1, 1991 at 23 N.J.R. 1985(b).

Adopted: January 16, 1992 by Scott A. Weiner, Commissioner,
Department of Environmental Protection and Energy.

Filed: January 17, 1992 as R.1992 d.77, **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-3; 13:1B-15.4 et seq.; 13:1B-15.12a et
seq.; and 13:1D-9.

DEPE Docket Number: 017-91-03.

Effective Date: February 18, 1992.

Expiration Date: June 24, 1993.

Summary of Public Comments and Agency Responses:

On July 1, 1991 at 23 N.J.R. 1985(b), the Department of Environmental Protection, now the Department of Environmental Protection and Energy, (Department) proposed to amend N.J.A.C. 7:2-11 in order to correct or clarify several sections of the Natural Areas System rules and to change the administering agency for five Natural Areas. **The Department did not receive any written comment** during the public comment period on the proposal ending August 30, 1991. On October 7, 1991, the Natural Areas and Natural Areas System rules formerly at N.J.A.C. 7:2-11 were removed by separate rulemaking from the State Park Service rules and recodified without change at N.J.A.C. 7:5A (see 23 N.J.R. 3005(a)). The Department now adopts the amendments to this chapter with one minor technical change to correct an error in the proposal.

Summary of Agency-Initiated Changes:

Part of former N.J.A.C. 7:2-11.9(e)16iii(1), now N.J.A.C. 7:5A-1.9(e)16iii(1), which was not intended to be amended, was reproduced incorrectly in the proposal. This subparagraph has been

3. Who qualify as recipients in a community action program; or
4. Who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

"NCUA" means the National Credit Union Administration.

"Predominantly" means a majority.

"State" means the State of New Jersey.

3:21-1.2 Application for designation as a low-income credit union

(a) A credit union may apply to the Commissioner for designation as a low-income credit union pursuant to this subchapter.

(b) An applicant shall submit the following to the Department:

1. A completed application, the form of which may be prescribed by the Commissioner;

2. Sufficient evidence to allow the Commissioner to determine whether the applicant meets the criteria set forth in (c) below;

3. An application fee of \$50.00; and

4. Such other information as the Commissioner may require.

(c) The Commissioner shall approve an applicant for designation as a LICU:

1. In the case of an existing credit union, whose members are predominantly low-income; or

2. In the case of an entity which has submitted or which intends to submit an application for a State charter for a credit union, which is located in a well-defined neighborhood, community, or rural geographical area, recognized as distinct by residents and populated predominantly by low-income residents.

3:21-1.3 Concurrence of the appropriate Regional Director of the NCUA

Upon approving an application for designation as an LICU, the Commissioner shall forward that determination, along with the materials submitted by the applicant, to the appropriate Regional Director of the NCUA for concurrence.

3:21-1.4 Publication and effective date of designation

(a) Upon the Commissioner's receipt of the concurrence of the appropriate Regional Director in the designation of a credit union as an LICU, the Commissioner shall, by mail, inform the applicant, the New Jersey Credit Union League and the National Credit Union Association of the designation.

(b) The designation of the credit union as an LICU shall be effective on the date of the Commissioner's notice to the applicant.

3:21-1.5 Removal of designation

The Commissioner may, after opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-14F and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and with the concurrence of the appropriate Regional Director of the NCUA, remove the designation of a credit union as a LICU upon determining that the credit union no longer meets the criteria set forth in N.J.A.C. 3:21-1.2(c).

3:21-1.6 Examination fees for LICU's

Examination fees for LICU's shall be computed according to the following schedule:

<u>Total Assets</u>	<u>Fee</u>
Not more than \$49,999	\$0.00
Over \$49,999 but less than \$324,399	\$100.00
Over \$324,399 but less than \$272,250,000 total	.000308262 × total assets
\$272,250,000 and over	\$83,924.32 plus .0000898762 × assets over \$272,250,000.

rectified on adoption to correctly state the respective roles of the Natural Areas Council and the Commissioner in reviewing plans for new or enlarged trails in natural areas. In addition, several references in the rules to rules under their former codifications are corrected upon adoption.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

***[7:2-11.3]**7:5A-1.3* Definitions**

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

...
 "Natural Areas System", hereafter "System", means those lands designated as natural areas pursuant to this subchapter, identified at N.J.A.C. ***[7:2-11.2]* *7:5A-1.13*** and consisting of lands that serve as habitat for rare plant species or animal species, or both, or are representative of natural communities.

...
 "Natural Heritage Inventory" means a mapped and computerized data base of the State's rare plant and animal species and representative natural communities, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.

"Prescribed burning" means the open burning of plant material under such conditions that the fire is confined to a predetermined area and accomplishes the environmentally beneficial objectives of habitat management and prevention or control of wildfires.

"Preservation" means any measures, including no action at all, which are required in order to avoid injury, destruction or decay of a natural resource feature within a Natural Area or otherwise maintain or protect those features indicated in the designation objective.

...
 "Register" means the registry, required by N.J.S.A. 13:1B-15.12a6, of all lands, public and private, which are suitable for inclusion within the System. See also N.J.A.C. ***[7:2-11.4]* *7:5A-1.4***.

...
 "Register site summary" means a written report, on file with the Division, summarizing site-specific information on the suitability for inclusion of a site on the Register, and containing a map indicating the boundary of the site.

***[7:2-11.4]**7:5A-1.4* Register of Natural Areas**

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

(c) Any individual or organization may suggest that a site be included on the Register by submitting a Register site summary to the Commissioner or the Council. Potential sites may also be studied and Register site summaries presented to the Council by the Department's Office of Natural Lands Management.

(d) Upon review of the Register site summary by the Council, and subsequent to the recommendation of the Council, the Commissioner may place a site on the Register. Placement of a site on the Register shall be effective upon publication of notice in the New Jersey Register. The site must satisfy one or more of the following criteria:

1. (No change.)

2. Natural community: The site supports a significant, viable example of a rare natural community or an extremely high quality representative of other natural communities of New Jersey. Quality includes, but is not limited to, characteristics of structure, composition, age, size, and degree of disturbance.

3. (No change.)

(e) (No change.)

(f) The Division shall maintain the Register together with copies of the Register site summary.

(g) A site may be removed from the Register by the Commissioner upon a finding and recommendation by the Council that the site no longer satisfies the criteria enumerated in (d) above. Removal of a site from the Register shall be effective upon publication of notice in the New Jersey Register.

***[7:2-11.5]**7:5A-1.5* Natural Areas Council**

(a) The Natural Areas Council shall advise the Commissioner in matters relating to the administration of the Natural Areas Act (N.J.S.A. 13:1B-15.4 et seq.) and the Natural Areas System Act (N.J.S.A. 13:1B-15.12a et seq.). The specific functions of the Council include, but are not limited to, the following:

1.-6. (No change.)

***[7:2-11.6]**7:5A-1.6* Natural areas designation**

(a) To qualify for designation to the System, a site must be:

1. (No change.)

2. Owned in fee or held as a conservation easement by the Department.

(b) Upon request of the Commissioner or a majority vote of the Council, the Division shall undertake a study of a Register site to assess appropriateness of designation as a natural area. This study shall include, but not be limited to, the following analyses:

1.-9. (No change.)

(c) Upon review of the study and comments from the administering agency, the Council shall submit a final recommendation to the Commissioner for designation of the land in question for inclusion within the System. If the Council favors designation, its recommendation shall include:

1. (No change.)

2. A summary of qualifications of the site related to quality, diversity, and scarcity of the feature or species and potential management practices which may be necessary to ensure preservation; and

3. An interim classification for the area as provided in N.J.A.C.

[7:2-11.7]* *7:5A-1.7

(d) After considering the final recommendation of the Council, the Commissioner may propose such designation as an amendment to this subchapter and the Department shall hold a public hearing on the proposal, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

***[7:2-11.7]**7:5A-1.7* Classification of natural areas**

(a) (No change.)

(b) Upon designation to the System, each natural area shall be categorized into one of the following interim classifications:

1.-2. (No change.)

(c) Upon adoption of a management plan for a natural area, the interim classification assigned to the area shall be superseded by the specific management practices prescribed by the management plan.

(d) As part of an adopted management plan, specified zones within the natural area may be categorized as buffer areas. A buffer area serves the purpose of protecting ecological reserves and conservation preserves.

***[7:2-11.8]**7:5A-1.8* Natural area management plans**

(a) Management and uses of natural areas shall be subject to:

1. Interim management practices conducted by the administering agency.

2. Management practices requiring approval by the Commissioner as provided in N.J.A.C. ***[7:2-11.9]* *7:5A-1.9***; or

3. A management plan adopted by the Commissioner specifying uses, activities, or management.

(b) The Division, with the cooperation of the administering agency and other units of the Department, shall prepare a management plan for each natural area in the System. The primary purpose of a management plan is to describe the natural features of the area and prescribe management practices and public uses to ensure preservation in accordance with the designation objective of the natural area.

(c) An adopted management plan may supersede the interim management practices listed at N.J.A.C. ***[7:2-11.9]* *7:5A-1.9***, if the Commissioner determines through his or her approval of the management plan that the practices in the management plan more specifically address the requirements of the designation objective for that area. Any interim management practice listed at N.J.A.C. ***[7:2-11.9]* *7:5A-1.9*** and not specifically addressed or superseded

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by the adopted management plan for the area shall remain in effect in a natural area following adoption of the management plan.

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

(f) The Council shall review the draft management plan and the comments of the administering agency and shall request additional information from the Division or recommend to the Commissioner that the plan be adopted.

Recodify existing (f) as (g) (No change in text.)

(h) The Commissioner shall review the draft management plan, the recommendation of the Council, and the recommendation, if any, of the Division and shall take the following action on the draft management plan:

1. Adopt the draft management plan as the management plan for the natural area, effective upon publication of notice of the plan adoption in the New Jersey Register; or

2. Request the Council and the Division's reconsideration of the draft management plan, after which the Council and the Division may resubmit the draft management plan for the Commissioner's approval.

(i) An adopted management plan for a natural area may be amended subject to the following:

1. The Council shall review any proposed amendments to an adopted management plan, and the comments of the administering agency on the proposed amendments, and shall request additional information or recommend to the Commissioner that the proposed amendments be adopted;

2. If the administering agency disagrees with the recommendation of the Council, the recommendations of each shall be forwarded to the Commissioner for a final decision; and

3. Adoption of amendments to a management plan for a natural area shall be effective upon publication of notice of the adopted amendments in the New Jersey Register.

[7:2-11.9]**7:5A-1.9 Interim management practices

(a) (No change.)

(b) Interim management practices listed at (e) or (f) below which require the approval of the Commissioner shall first be submitted to the Council for its review and recommendation.

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

(e) The following interim management practices apply generally to all natural areas upon designation to the System and until and unless superseded by the provisions of an adopted management plan:

1.-4. (No change.)

5. Existing structures may be maintained in a natural area; new structures and enlargement of existing structures may be undertaken upon approval by the Commissioner, provided the structures directly or indirectly contribute to the designation objective; new structures, of a temporary nature, may be constructed for research purposes in accordance with N.J.A.C. ***[7:2-11.10]* *7:5A-1.10***;

6.-11. (No change.)

12. Habitat manipulation may be undertaken if preservation of a particular habitat type or species of native flora or fauna is included in the designation objective of the natural area and upon approval by the Commissioner of a specific habitat manipulation plan prepared by the Department.

13. Gypsy moth control activities may be implemented as an interim management practice after approval of a gypsy moth control plan by the Commissioner; the Commissioner shall review a gypsy moth control plan only after the State Forester has determined that egg mass counts and prior year defoliation indicate the tree mortality will be severe without intervention; to the extent practicable, biological controls, rather than chemical means, shall be used to control gypsy moths;

14. There shall be no physical manipulation of a natural area or application of chemicals known as adulticides for the purpose of controlling mosquitoes; the application of larvacides may be permitted in salt marshes only and only as follows:

i. (No change.)

ii. The application of other larvacides may be initiated upon approval by the Commissioner of a specific mosquito control plan submitted by a mosquito control agency; the plan shall identify the

ENVIRONMENTAL PROTECTION

specific area where a larvacide application will be made, the types and amount of larvacide to be applied, the need for the application, and the reason why BTI cannot be used for this application;

15. Research activities and the collection of specimens may only be conducted in accordance with N.J.A.C. ***[7:2-11.10]* *7:5A-1.10*** and upon approval of the administering agency; and

16. Public use of natural areas shall be allowed only to the extent and in a manner that will not impair natural features; the administering agency may restrict access and use as necessary to protect the natural area; the following are permissible public uses of natural areas:

i.-ii. (No change.)

iii. Existing trails may be maintained, but not enlarged in any manner, by the administering agency to allow public use and prevent erosion, trampling of vegetation beyond the trails, and other deterioration as follows:

(1) New trails or enlargement of existing trails for interpretive purposes may be initiated subsequent to review of a plan by the ***[Commissioner]* *Council*** and approval of that plan by the Commissioner.

(2)-(3) (No change.)

iv. (No change.)

(f) The following interim management practices, unless superseded by an adopted management plan, apply to the appropriate specified natural area classifications:

1.-4. (No change.)

Recodify existing 6. and 7. as 5. and 6. (No change in text.)

[7:2-11.12]**7:5A-1.12 Boundaries of natural areas

(a) The Division shall maintain, and make available to the administering agency and members of the public, general location maps of each natural area in the System.

(b) All boundaries of natural areas shall conform with physical features identifiable in the field or the edge of State ownership of the natural area.

(c) The Department may correct errors in the boundary of a natural area effective upon publication of notice of the correction in the New Jersey Register.

(d) Changes in boundaries of natural areas may be made pursuant to the procedure at (f) through (j) below.

(e) In order to qualify for addition to a natural area through a boundary change, a site must be owned in fee or held as a conservation easement by the Department.

(f) Any person may petition the Department to change the boundary of a natural area by completing a proposal as specified at (g) below and submitting copies to the Council, the Division, and the administering agency for the natural area. The Division may propose to change the boundary of a natural area by providing the information specified at (g) below to the Council and the administering agency for the natural area.

(g) A proposal to change the boundary of a natural area shall be in written form and shall contain the following information:

1. The name, address, and affiliation of the petitioner;

2. The relationship of the petitioner to the natural area for which a boundary change is proposed;

3. A map, at U.S.G.S. scale or larger, clearly showing the current boundary of the natural area and the proposed boundary adjustment;

4. An explanation of the reason for the proposed boundary change; and

5. A general description of the land proposed for exclusion or inclusion in the natural area, including, but not limited to, a description of:

i. Vegetative community types;

ii. Habitat types (wetland and upland);

iii. Ecological community age, structure and quality; and

iv. Structures and other man-made features.

(h) If the proposed change would result in a net change of not more than 25 percent of the total acreage of the natural area, the Council shall review the proposal at the next regularly-scheduled meeting after receiving the proposal and shall submit its recommendation on the proposal to the Commissioner for decision.

(i) If the proposed change would result in a net change of more than 25 percent of the total acreage of the natural area, public notice of the proposal shall be provided in the New Jersey Register. The Department shall accept written comment on the proposal and the Council shall review the proposal at the next regularly-scheduled meeting after the close of the public comment period on the proposal. The Council shall submit its recommendation and a summary of any written public comment received on the proposal to the Commissioner for decision.

(j) The Commissioner shall review the recommendation of the Council and shall take one of the following actions on the proposal:

1. Approve the boundary change, effective upon publication of notice of the boundary change in the New Jersey Register, upon a finding that the boundary change:

i. Conforms with physical features identifiable in the field or the limits of State ownership; and

ii. Serves to protect the natural area or further its designation objective; or

2. Request that the Council reconsider its recommendation and resubmit the proposal for the Commissioner's review; or

3. Deny the proposal, effective upon publication of notice of the denial in the New Jersey Register, upon a finding that the proposed boundary change:

i. Does not conform with physical features identifiable in the field or the limits of State ownership; or

ii. Does not serve to protect the natural area or further its designation objective.

***[7:2-11.13]**7:5A-1.13* Natural Areas System**

(a) The following are designated as components of the Natural Areas System:

1.-9. (No change.)

10. Cape May Wetlands Natural Area:

i. Location: Avalon Borough, Dennis and Middle Townships, Cape May County;

ii.-iv. (No change.)

11.-15. (No change.)

16. Fanny Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry, through Ringwood State Park;

17. Great Bay Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Fish, Game and Wildlife, through Assunpink Wildlife Management Area;

18.-23. (No change.)

24. Manahawkin Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Fish, Game and Wildlife, through Assunpink Wildlife Management Area;

25.-31. (No change.)

32. Strathmere Natural Area:

i. (No change.)

ii. Designation Objective: preservation of a dune habitat, plant community associations, and rare species habitat;

33.-36. (No change.)

37. Troy Meadows Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry through Ringwood State Park;

38.-41. (No change.)

42. Whittingham Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Fish, Game and Wildlife, through Whittingham Wildlife Management Area.

***[7:2-11.14]**7:5A-1.14* Public information**

Interested persons may obtain information on the Natural Area System or inspect location maps of natural areas by contacting:

Office of Natural Lands Management

Division of Parks and Forestry

Department of Environmental Protection

CN 404

Trenton, New Jersey 08625-0404

(609) 984-1339

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Notice of Postponed Operative Date

Solid Waste Fees

Annual Compliance Monitoring Fees for Thermal Destruction Facilities

N.J.A.C. 7:26-4.3(b)

Take notice that the Department of Environmental Protection and Energy (Department) has postponed the operative date of the portions of amendments to N.J.A.C. 7:26-4.3(b) which concern annual fees for compliance monitoring of thermal destruction facilities.

On July 15, 1991, the Department promulgated amendments to its solid waste fee rules, including an increase in annual fees for compliance monitoring of thermal destruction facilities (see 23 N.J.R. 2166(a)). However, in response to public comments and after reviewing its compliance monitoring activities, the Department determined that it could perform compliance monitoring with a smaller, more efficient staff; as a result, the Department also determined that it could reduce the compliance monitoring fee.

The Department established March 1, 1992 as the operative date for the increase in the compliance monitoring fee, intending to promulgate amendments reducing that fee before the operative date. The Department will publish a proposal of those amendments in the March 16, 1992 New Jersey Register; to allow time for the promulgation of those amendments, the Department is postponing the operative date of the increase in compliance monitoring fees for thermal destruction facilities to a date which will be no earlier than **July 1, 1992**. The new operative date will be stated in the March 16, 1992 proposal, and in an accompanying notice.

(b)

HAZARDOUS WASTE REGULATION

Hazardous Waste Listing of Polychlorinated

Biphenyls (PCBs)—Corrections

Adopted Amendments: N.J.A.C. 7:26-7.7, 8.2, 8.3, 8.4, 8.20 and 9.1

Proposed: September 16, 1991 at 23 N.J.R. 2855(a).

Adopted: January 16, 1992 by Scott A. Weiner, Commissioner,

Department of Environmental Protection and Energy.

Filed: January 17, 1992 as R.1992 d.78, **without change**.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEPE Docket Number: 033-91-08.

Effective Date: February 18, 1992.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendments were proposed September 16, 1991. The comment period was open until November 15, 1991. **No comments were received.**

Full text of the adoption follows:

7:26-7.7 Exemption from manifest rules

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

(e) A generator who generates PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is exempt from the requirement at N.J.A.C. 7:26-7.4 for the PCB hazardous waste which is transported intrastate provided the following requirements are met:

1.-3. (No change.)

4. The generator complies with all relevant provisions of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), as amended, and Federal regulations promulgated pursuant thereto, at 40 C.F.R. pt. 761 as amended, including recordkeeping requirements. Any such records must be available for review by the Department; and

5. (No change.)

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-25. (No change.)

26. Small capacitors provided that:

i.-ii. (No change.)

iii. The capacitor is disposed of as industrial solid waste (I.D. 27) or at a TSCA approved chemical landfill; and

iv. (No change.)

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

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

7:26-8.4 Residues of hazardous waste in empty containers

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

(e) A container or inner liner which held PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is empty if:

1.-2. (No change.)

3. The container or inner liner has been triple rinsed in accordance with procedures described at 40 C.F.R. pt. 761, as amended, with a suitable solvent containing 50 ppm PCBs or less, the solubility of PCBs in the solvent being five percent or more by weight;

4.-5. (No change.)

(f) (No change.)

7:26-8.20 State hazardous waste from non-specific sources

(a) (No change.)

(b)

Generic	NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
1.-2. (No change.)			
3.	X752	Drained, electrical, hydraulic or other equipment which at the time of draining contained liquids with 500 ppm or more of PCBs by dry weight.	(T)

4.-5. (No change.)

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-16. (No change.)

17. The owner or operator of a facility which is used for the storage of PCB hazardous waste generated by the owner or operator of the facility, provided the following conditions are met:

i. (No change.)

ii. The facility is constructed and operated in full compliance with the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, including the requirement at 40 C.F.R. §761.65, as amended, to dispose of the PCB hazardous waste within one year of placing it into storage; and

iii. The owner or operator of a facility which was in operation on May 21, 1990 and generates and stores its own PCB waste files the notice of his or her intent to store PCB hazardous waste, pursuant to this paragraph, with the Department on or before August 19, 1990; or

iv.-vi. (No change.)

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

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

OFFICE OF EMERGENCY MEDICAL SERVICES

Certification and Operation of Emergency Medical Technician-Defibrillation Programs

Adopted New Rules: N.J.A.C. 8:41A

Proposed: May 6, 1991 at 23 N.J.R. 1254(a).

Adopted: January 7, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, State Department of Health.

Filed: January 10, 1992 as R. 1992 d.63, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-15 and 26:2K-39 et seq.

Effective Date: February 18, 1992.

Operative Date: May 1, 1992.

Expiration Date: February 18, 1997.

Summary of Public Comments and Agency Responses:

Comments were received from the following organizations and individuals:

Burlington County First Aid Council, Burlington County Squad Captains Assoc., Inc., Chilton Memorial Hospital, Rich Freeman, Healthtec, Howard A. Kirkwood, Esq., Invalid Coach Service of N.J., Inc., James Craig Jones, EMT-A, Klaus J. Schulz, M.D., Memorial Hospital of Burlington County, Muhlenberg Regional Medical Center, New Jersey Association of MICU Program Administrators, New Jersey State First Aid Council, New Jersey State First Aid Council, Education Committee, New Jersey State First Aid Council, 22nd District, Robert Wood Johnson University Hospital, Township of Medford, Department of Public Safety, Tri-County Mobile Intensive Care Network, Underwood Memorial Hospital, V. E. Ralph & Son, Inc. and West Orange First Aid Squad, Inc.

COMMENT: Several commenters expressed concerns that the training, equipment and certification costs would represent a financial hardship to EMS personnel.

RESPONSE: The Department acknowledges that the required equipment and training may expose some to significant expenditures; however, the legislation establishing EMT-D (N.J.S.A. 26:2K-39 et seq.) allows for no monies to offset these costs. Further, the law allows projects sponsoring the training to charge a reasonable fee to provide that training.

COMMENT: Burlington County Squad Captains Assoc., Township of Medford, and James C. Jones commented that the rules exclude police, fire and other first responders from participating and requested the training and certification be extended to these persons.

RESPONSE: The Department is required by law to certify only Emergency Medical Technicians who are certified by the Commissioner. If these first responders are EMT-A certified and operate under an approved agency, they may provide the service. If the first responders are not EMT-As, the law does not allow for their participation in the program. These rules cannot change the requirement to supersede the law.

COMMENT: Howard A. Kirkwood and Klaus Schultz commented that there is a need for the Department to proceed rapidly to develop the program, train and certify personnel as soon as practical to ensure rapid availability of the project.

RESPONSE: The Department has taken this comment under advisement, and will proceed as rapidly as possible, given the resources available.

COMMENT: Burlington County Squad Captain's Assoc. questioned who would be responsible for the paperwork process, for example, issuance of cards, oversight of documentation, programmatic monitoring, etc.

RESPONSE: The Office of Emergency Medical Services in the Department is the responsible agency, and this has been included in the definitions.

COMMENT: Burlington County Squad Captains Assoc. commented that they feel this project will not be available or implemented in rural areas.

RESPONSE: These rules are constructed so that the project is available to all areas of the state, in the same form and context. These rules are designed to insure the same quality of training and service in rural, suburban and urban areas.

COMMENT: Barbara Aras, New Jersey State First Aid Council Education Chair, supported the rules. She also addressed the concept of integrating the course material with the curriculum for EMT-A training.

RESPONSE: The Department acknowledges the support of the First Aid Council. The issue of integration of EMT-D with EMT-A will be studied after this project is implemented and evaluated.

COMMENT: Invalid Coach Service commented that there are questions regarding the reimbursement issue for proprietary BLS providers. The reimbursement structure for insurance and Medicaid, as well as the reimbursement for training, need to be evaluated and modified, according to the commenters.

RESPONSE: The Department, through the Office of Emergency Medical Services (OEMS), has no control over reimbursement rates. Upon successful approval as an EMT-D agency, the techniques performed by a certified EMT-D operating on a licensed BLS ambulance are deemed to be BLS, not ALS. No funding is provided by the law (N.J.S.A. 26:2K-39, et seq.) for training or implementation of this project. The law does permit the training program to charge a reasonable fee to the candidate for the training and certification of EMT-Ds.

N.J.A.C. 8:41A-1.2 Definitions

COMMENT: Healthtec commented that it felt the definition of "agency" excluded proprietary EMS providers from participation in the program.

RESPONSE: Although proprietary EMS providers were not listed, the rules stated "... but not limited to ...". The Department recognizes the value of proprietary EMS providers in the prehospital area and has expanded the definition to include these professionals.

COMMENT: Several responses questioned the definition of "Emergency Medical Technician-Ambulance." The majority of the comments expressed concern that the phrase "... and affiliated with an emergency medical service organization" could be interpreted to exclude police, fire and other first responders who are EMT-A certified from participation in the program.

RESPONSE: The Department did not intend this definition to be interpreted in this manner. For clarity, the definition has been amended to exclude this phrase.

COMMENT: Several comments were received regarding the definition of "semi-automatic defibrillator." All the comments received stated that the requirement of an event summary and dual track, on scene voice recording was duplicative and excessive, and may exclude some lower priced models from consideration.

RESPONSE: Upon review of the requirements for semi-automatic defibrillator, the Department has determined that only the printed summary has value in the quality assurance process required under this chapter. Further, the tapes may provide difficulty in interpretation as they will record ambient conversation as well as treatment progression. Therefore, the rules have been amended to require only the ability to produce an event summary with ECG and treatment documentation.

COMMENT: Rich Freeman commented that the term "Staff Member of a licensed MICU" is undefined, and does not preclude clerical or support staff of these units.

RESPONSE: The Department acknowledges that some confusion could arise from the use of this term. It has been amended to read "pre-hospital ALS provider" and is defined in Subchapter 1.

COMMENT: Tri-County MICU Network commented that the definition of "staffed" is not provided.

RESPONSE: "Staffed" and "equipped" refer to the time the service is provided. If an agency is not covered by the required personnel, they are not staffed at that time.

N.J.A.C. 8:41A-2.2 Project sponsor requirements

COMMENT: The New Jersey State First Aid Council and the Burlington County Squad Captain's Assoc. questioned the need for the project sponsor to be an approved MICU hospital. The First Aid Council felt this was an unnecessary exclusion of certain hospitals.

RESPONSE: The Department has determined that the project will be best served in this developmental phase if MICU Hospitals serve as project sponsors. These facilities have a demonstrated expertise in pre-hospital emergency medical services, and generally have established a working relationship with the basic life support providers in their service

area. The Department cannot compel the MICU projects to be the project sponsor, and if it should not participate then any hospital in the area may be utilized. The use of MICU hospitals provides for an integrated approach to pre-hospital care and will lead to a more uniform development of the system.

COMMENT: The Tri-County MICU Network requested clarification on whether non-MICU hospitals may participate if a MICU hospital is participating in the same area.

RESPONSE: These rules do not preclude participation of non-MICU hospitals in a cooperative effort with a MICU hospital, provided that the responsible project sponsor and medical director are from the MICU hospital. This may be practical in areas of personnel and cost sharing. In this instance, the Department would recognize the MICU Hospital as the responsible sponsor.

N.J.A.C. 8:41A-2.3 Project medical director requirements

COMMENT: Tri-County MICU Network requested that the quarterly report required by N.J.A.C. 8:41A-2.3(b)3 be simple in order to facilitate compliance, while the MICU project Administrators commented that they would be available to identify data sets to make the report useful.

RESPONSE: The Department is taking both comments under advisement, and will endeavor to keep the form as simple as possible. The Department appreciates the assistance of the administrators.

COMMENT: Chilton Memorial Hospital commented that the requirements for training should include at least one Advanced Cardiac Life Support Instructor of the American Heart Association at each course.

RESPONSE: Although the Department recognizes the advanced standing of ACLS instructors, the curriculum does not require that level of supervision and such a requirement may be deemed overly burdensome to the project. Certification as an ACLS instructor implies the proficiency in teaching ACLS, and not other material, for example, CPR.

N.J.A.C. 8:41A-3.2 Approval criteria

COMMENT: Healthtec submitted a comment that proposed subparagraph N.J.A.C. 8:41A-3.2(a)1i(3) could be interpreted to preclude the use of EMT-D procedures by an agency if an advanced life support unit is not available due to its being on another call, etc.

RESPONSE: The Department finds this passage is somewhat unclear, and is modifying the passage to reflect that EMT-Ds may operate if the requested unit is unavailable.

COMMENT: Invalid Coach Service commented that the reference to vehicles should be deleted as it complicates the rule.

RESPONSE: The Department has determined that the requirement of a vehicle may unduly prevent the participation of non-transporting EMS agencies such as industrial first aid squads. This section has been amended to reflect that if an agency does not transport, it must submit documentation that arrangements have been made for the cooperative transport of any patient treated by EMT-Ds.

COMMENT: Tri-County MICU Network commented that the requirement that agencies maintain a vehicle would be unduly burdensome for some agencies, and that the staffing of a vehicle needed further definition.

RESPONSE: In view of the deletion of the vehicle requirement, there is no staffing requirement with respect to vehicles. The only requirement is that an EMT-D certified (or greater certified) person be in attendance with the patient in the rear of the ambulance.

N.J.A.C. 8:41A-3.3 Required equipment

COMMENT: Several responses reflected that an error was made in the citation of the textbooks in N.J.A.C. 8:41A-3.3, regarding the "Textbook of Advance Coronary Life Support".

RESPONSE: The Department has changed the citation to read correctly. The passage will reflect "Textbook of Advanced Cardiac Life Support".

COMMENT: Invalid Coach commented that the inclusion of vehicles complicates the project, and recommended simplification of the requirements concerning the semi-automatic defibrillator.

RESPONSE: The Department has removed the requirement of a vehicle from the rules, and has amended this section to reflect a semi-automatic defibrillator as defined in this chapter.

N.J.A.C. 8:41A-3.4 Documentation/quality assurance

COMMENT: Several of the commenters questioned who would be producing the run report that would be used by EMT-Ds. Howard Kirkwood, Klaus Schulz, Memorial Hospital of Burlington County and

Robert Wood Johnson University Hospital stated that they felt the project sponsor should design the form, while Tri-County MICU Network stated the Department should develop the form for continuity and simplicity.

RESPONSE: In order to provide continuity, simplicity and uniformity and in recognition of overlapping coverage areas of BLS/MICU projects, the Department will develop and promulgate the run form that is to be used by each project and agency in the State.

COMMENT: Tri-County MICU Network commented that under quality assurance requirements, if an EMT-D were to violate these rules, the medical director should have the ability to levy penalties and have the agency responsible for the enforcement of those penalties.

RESPONSE: The responsibility for the enforcement of these rules is placed upon the Department by statute and cannot be delegated. A mechanism is in place in the rules for the redress of grievances filed by the medical director which provides for impartial review of the complaint. Therefore, no change has been made to this section in this regard.

COMMENT: Howard Kirkwood commented that he feels the 100 percent review requirement is excessive. Memorial Hospital of Burlington County commented that the 100 percent review is necessary due to the new step forward the requirements represent.

RESPONSE: In that this project represents a new dimension in pre-hospital care, close monitoring of the project is needed. It is not anticipated that the project would initially generate a volume of run reports that would be deemed burdensome to the program sponsor. In addition, the elimination of the voice recording requirement should simplify the review process. This will allow the project medical director to monitor and provide useful feedback to the project participants. Therefore, no change has been made to this section.

COMMENT: Several of the comments received again stated the use of the dual channel recorder was unnecessary and duplicative.

RESPONSE: This requirement (at N.J.A.C. 8:41A-3.4(a)2) has been removed, and the section has been renumbered.

COMMENT: Vernon Ralph submitted a comment regarding the requirement for the printed event summary from the memory of the semi-automatic defibrillator. The commenter stated that this requirement may inadvertently limit the use of defibrillators, as some use a remote printer or memory module reader.

RESPONSE: While this requirement does require the summary to be printed from the memory of the semi-automatic defibrillator, it does not require that the defibrillator print that summary. It may be printed by a remote "memory reader," personal computer, or by the device itself. The memory may be digital or analog, provided that a summary is generated that displays cardiac rhythm and treatment rendered with times of that treatment.

COMMENT: Invalid Coach Service commented that the length of time required to keep the documentation does not match the requirements of N.J.A.C. 8:40, which requires documents to be kept for 10 years.

RESPONSE: Upon review of various rules and recommendations, this requirement has been changed to 10 years, to reflect the amount of time most other medical records are required to be kept. This will allow for continuity in medical records storage.

COMMENT: Robert Wood Johnson University Hospital commented that the agency should keep all records for a period of seven years, with the records made accessible to the Office of Emergency Medical Services (OEMS) or the sponsoring agency.

RESPONSE: The Department has revised the timeframe for the retention of records to more accurately reflect the existing standard of 10 years. The project sponsor is responsible for the retention of records for the participating agencies for the required time frame. This is required in that the project sponsor must receive all documentation to provide the QA required under this chapter. This mechanism will allow more immediate access by either the project sponsor or the Department.

N.J.A.C. 8:41A-3.5 Interface with advanced life support

COMMENT: The New Jersey State First Aid Council commented that this section could be interpreted to preclude operation by an EMT-D if an MICU is not operational in an area, or is otherwise not available.

RESPONSE: The Department has modified this section to reflect that advanced life support units shall be utilized when available.

N.J.A.C. 8:41A-3.6 Advanced life support personnel as EMT-Ds

COMMENT: The term "staff member of a licensed mobile intensive care unit" is undefined, and may include non-EMT personnel.

RESPONSE: The term has been replaced with "pre-hospital ALS provider" and which is defined at N.J.A.C. 8:41A-1.2.

N.J.A.C. 8:41A-4.2 Instructor qualifications/responsibilities

COMMENT: The Burlington County Squad Captain's Assoc. stated that there are people who could be trained to provide the required training who do not meet the requirements as specified in this chapter.

RESPONSE: The training of EMT-Ds need be done by people who are not only conceptually familiar with the principles of the semi-automatic defibrillator, but by individuals who have a demonstrated competence in safe defibrillation. These rules act to establish a Statewide minimum standard for qualified individuals. Therefore, no change has been made to this section.

COMMENT: Tri-County MICU Network commented that there needs to be a short, simple training project for the instructional staff, which should be administered by the project sponsors.

RESPONSE: The Department will develop a training project for instructors that will be short, concise and simple. It will be administered by the sponsoring projects under the direction of the project medical director.

N.J.A.C. 8:41A-4.4 Curriculum development

COMMENT: Several comments were received regarding the anticipated length of initial training. All comments questioned why the requirements of the proposed curriculum necessitated a longer training program than those of commercial and existing EMT-D programs on the market.

RESPONSE: While the proposed curriculum for initial training does exceed other courses offered out-of-State, there is additional material that must be incorporated to provide the candidate with an adequate base of knowledge to perform to the standards of this chapter. In addition to the standard curriculum, information must be presented on patient assessment, EMS systems integration and documentation. Although it is essential that this additional material be presented in the initial training, it is unnecessary to present it in each recertification period. In order to clarify these requirements, they have been added to the curriculum.

COMMENT: Tri-County MICU Network commented that any standing orders adopted under this chapter should be uniform throughout the State and follow American Heart Association Guidelines.

RESPONSE: The Department will promulgate uniform, Statewide standing orders that are reflective of American Heart Association Guidelines, upon the recommendation of the Mobile Intensive Care Unit Medical Advisory Board.

N.J.A.C. 8:41A-4.5 Certification

COMMENT: Tri-County MICU Network commented that the period of certification should be one year, not indefinite as stated in this section.

RESPONSE: The Department has determined that subsection (c) should be modified to reflect an annual certification, as outlined in N.J.A.C. 8:41A-4.6.

N.J.A.C. 8:41A-4.6 Recertification

COMMENT: Several comments were received regarding the requirements for recertification. All comments expressed the opinion that the requirements were excessive, in that the hour requirement matched the initial training. Most comments favored a four hour annual continuing education requirement, and annual skills testing. The proposed rule required eight hours of continuing education and semi-annual testing.

RESPONSE: Upon review, the Department has determined that the proposed requirements for recertification are excessive. The total number of hours required has been lowered to four hours annually, and the skills evaluation has been changed from semi-annual to annual. The project medical director shall annually endorse the certification of an EMT-D who has met the recertification requirements. To make the process less cumbersome, the agency recommendation requirement is being deleted. In addition, these continuing education hours shall apply to the optional hours required to maintain EMT-A certification.

COMMENT: Tri-County MICU Network commented that the agency should keep the records of continuing education.

RESPONSE: The responsibility for the maintenance of continuing education records lies with the individual EMT-D, who must produce evidence of this documentation upon demand of the project sponsor. Failure to comply with this requirement could lead the project sponsor to refuse to recertify the EMT-D. If the project sponsor should offer a continuing education project, it would be expected that it would also maintain a record of attendance at that project.

COMMENT: Tri-County MICU Network commented that if an EMT-D's certification should lapse, they should be required to complete an entire initial training project.

RESPONSE: The Department has determined that this would be excessive. If a lapsed EMT-D cannot recertify through completion of the update project held by the project medical director, then referral to an initial training project may be justified. There is no need to change this section.

N.J.A.C. 8:41A-5.3 Right to hearing

COMMENT: The New Jersey State First Aid Council commented that this section appeared to exclude individuals who were denied admission to a project for training.

RESPONSE: The Department did not intend this rule to deprive candidates who were not selected for training of the right to have a hearing. This section has been amended to include applicants refused training.

Summary of Agency-Initiated Changes:

Agency initiated changes have been made to include an expanded definition of the Office of Emergency Medical Services, as well as grammatical and structural changes to the body of these rules.

Full text of the adopted new rules follows (additions to proposal indicated by boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 41A

CERTIFICATION AND OPERATION OF EMERGENCY MEDICAL TECHNICIAN-DEFIBRILLATION PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

8:41A-1.1 Scope and applicability

These rules shall apply to agencies which utilize individuals certified at the level of EMT-D or individuals of higher training, including, but not limited to, paramedics and registered nurses, who are authorized to function as EMT-Ds under these rules.

8:41A-1.2 Definitions

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

"Advanced life support" means an advanced level of prehospital, inter-hospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care and other techniques and procedures authorized in writing by the Commissioner and which is provided by paramedics and/or mobile intensive care nurses on a mobile intensive care unit approved under provisions of N.J.S.A. 26:2K-7 et seq. and N.J.A.C. 8:41 ***[et al]***.

"Agency" means an organization, including, but not limited to, volunteer first aid squads, ***proprietary EMS providers,*** fire departments, police departments and industry, which is staffed with trained and certified EMT-Ds and is equipped with a semi-automatic defibrillator to support the functions of an EMT-D project ***at the time the service is provided***.

...

"Commissioner" means the Commissioner of the State Department of Health.

"Defibrillation" means the discharge of electrical current through the fibrillating myocardium for the purpose of restoring a perfusing cardiac rhythm.

"Department" means the New Jersey State Department of Health.

"Emergency Medical Technician-Ambulance (EMT-A)" means an individual trained and currently certified by the Commissioner, in accordance with the United States Department of Transportation EMT-A training course, as outlined in the standards established by the Federal Highway Safety Act of 1966 (amended), 23 U.S.C. 401 et seq., to deliver basic life support services, and who has completed the national standard curriculum, as published by the United States Department of Transportation for Emergency Medical Technician-

Ambulance ***[and who is affiliated with an emergency medical services organization]***.

"Emergency Medical Technician-Defibrillation (EMT-D)" means a currently certified Emergency Medical Technician, who has completed an approved training program and who is certified by the Commissioner to treat out-of-hospital cardiac arrest by semi-automatic defibrillation, in accordance with this chapter.

"Medical director" means a physician licensed in New Jersey who provides off-line medical direction to prehospital providers.

"Office of Emergency Medical Services" means the lead office within the Department which is responsible for monitoring and coordinating various aspects of New Jersey's emergency medical services system^{*}, **including the approval, monitoring and inspection of projects and the issuance of certifications***.

...

"Off line medical control" means medical direction provided to EMT-Ds by a medical director or his or her designee, in the training and support of EMT-Ds before and after defibrillations, but not necessarily providing direct medical control during an actual defibrillation.

Pre-hospital ALS provider means a paramedic certified by the Commissioner, or a registered nurse approved to operate on an authorized mobile intensive care unit.*

...

"Project sponsor" means a licensed New Jersey hospital which has been approved by the Office of Emergency Medical Services to coordinate the activities of EMT-Ds.

"Protocol" means general standards for emergency medical services practice within the EMS system.

"Semi-automatic defibrillator" means a defibrillator:

1. Which will electronically detect the presence of ventricular fibrillation and rapid ventricular tachycardia;

2. Which requires the user to deliver an electrical countershock; and

3. Which is capable of ***[continuous recording of the electrocardiogram and simultaneous recording of voice communications at the scene, and]*** the production of event summaries ***which shall include ECG and defibrillation activity with the times the defibrillations were administered as part of the summary***.

"Standing orders" means medical orders authorized by the Commissioner to be used by EMT-Ds in the treatment of cardiac arrest due to ventricular fibrillation or pulseless ventricular tachycardia, and adopted from the American Heart Association Guidelines, Textbook of Advanced ***[Coronary]* *Cardiac*** Life Support, 1987, incorporated herein by reference.

SUBCHAPTER 2. PROJECT ORGANIZATION

8:41A-2.1 Project approval requirements

No agency, group, organization, hospital or other entity shall serve as part of an EMT-D project, or engage in training of EMT-D personnel, unless approved and authorized by the Commissioner, pursuant to the requirements of this chapter.

8:41A-2.2 Project sponsor requirements

(a) To be recognized as an EMT-D project sponsor, the following criteria shall be met and supporting documentation shall be submitted to the Department's Office of Emergency Medical Services:

1. The primary choice for an EMT-D project sponsor ***[is]* *shall be*** a mobile intensive care (MICU) hospital, licensed pursuant to N.J.A.C. 8:43***[J.]* *G***;

2. If the MICU hospital chooses not to participate in EMT-D activities in its primary MICU service area, then the project sponsor shall be a hospital licensed pursuant to N.J.A.C. 8:43***[J.]* *G***, capable of caring for patients treated by the EMT-Ds, 24 hours-a-day***[.]* *;**

3. The project sponsor shall provide a medical director who meets all requirements specified in N.J.A.C. 8:41A-2.3***[.]* *;**

4. The project sponsor shall provide EMT-D training to all eligible individuals***[.]* *;**

5. The project sponsor shall provide a letter of agreement to provide off-line medical control, quality assurance, continuing educa-

tion and skills documentation to all EMT-Ds sponsored by the project and to maintain documentation and training files for all EMT-Ds sponsored by the project*[*] *; and*

6. Each project sponsor shall permit authorized representatives from the Department to review call *[audio-tapes and]* reports and training documentation.

(b) The Department's Office of Emergency Medical Services shall receive applications from potential project sponsors, shall evaluate each application for compliance with the criteria in (a) above, and shall notify the applicant of approval or denial of its status as an EMT-D project sponsor. The applicant shall not undertake any EMT-D activities until approval is granted.

8:41A-2.3 Project medical director requirements

(a) The medical director shall:

1. Be licensed as a physician by the New Jersey Board of Medical Examiners, pursuant to N.J.A.C. 13:35*[*] *;*

2. Be on the staff of the project sponsor's hospital and actively involved in the delivery of emergency care or critical care; and

3. Maintain current Advanced Cardiac Life Support certification pursuant to the requirements of the American Heart Association.

(b) The roles and responsibilities of the medical director are as follows:

1. The medical director shall review and endorse agency applications to provide EMT-D service. This endorsement shall accompany each agency's application for approval to the Department*[*] *;*

2. The medical director shall insure that all training conducted by the project sponsor complies with the training program approved by the Department's Office of Emergency Medical Services*[*] *;*

3. The medical director, or his or her designee, shall forward a quarterly report to the Department's Office of Emergency Medical Services regarding EMT-D activity of the project sponsor, including call review documentation*[*] *;*

4. The medical director, or his or her designee, shall review all applications for admission to the EMT-D training program and approve all candidates, based on the criteria outlined in N.J.A.C. 8:41A-4.3*[*] *;*

5. The medical director, or his or her designee, shall conduct recertification training, as required by N.J.A.C. 8:41A-4.6*[*] *;*

6. The medical director shall advise the Department's Office of Emergency Medical Services whenever an EMT-D's authorization to practice in the project sponsor's area should be suspended for violations of N.J.A.C. 8:41A*[*] *; and*

7. The medical director shall insure compliance with all medical standing orders and protocols, as approved by the Department's Office of Emergency Medical Services.

SUBCHAPTER 3. AGENCY APPROVAL AND OPERATION

8:41A-3.1 Agency approval and operation requirements

No agency, group, individual or entity shall operate as an EMT-D agency, or provide services of an EMT-D, without first obtaining approval from the Department's Office of Emergency Medical Services.

8:41A-3.2 Approval criteria

(a) No agency shall be approved as an EMT-D provider agency, unless the following criteria are met. Appropriate documentation shall be provided to the Department's Office of Emergency Medical Services, as required.

1. Each agency interested in applying for approval as an EMT-D provider shall send to the project sponsor hospital in its area:

i. A signed letter of agreement that:

(1) Each patient transported after defibrillation shall be accompanied by at least one EMT-D in the patient compartment of the vehicle. *[*Staff]* *Pre-hospital ALS providers* of an approved mobile intensive care program are deemed to meet this requirement;

(2) It will abide by all rules, regulations and policies set forth in this chapter, and as promulgated by the Department and the project sponsor;

(3) EMT-D and advanced life support will be simultaneously dispatched for all potential EMT-D calls*; however, the inability to

deploy an Advanced Life Support MICU due to unavailability or non-covered areas shall not preclude utilization of EMT-D services*; and

(4) *[*It shall maintain a vehicle capable of carrying the appropriate crew and equipment.]* If this *[vehicle]* *agency* is not capable of transporting the patient immediately after initial care has been provided, the applying agency shall submit documentation that such transport is *[immediately]* available.

ii. A completed application to become an EMT-D provider agency, which includes, but is not limited to:

(1) Agency identification (name, address, telephone);

(2) Service classification (public, volunteer, private);

(3) Staffing;

(4) Primary service area;

(5) Communication (dispatch and radio capability);

(6) Project affiliation (sponsoring agency and medical director);

(7) Verification of information; and

(8) Medical director's approval.

(b) The Department's Office of Emergency Medical Services shall receive applications for EMT-D agency approval from the project sponsor hospitals, shall evaluate each application for compliance with the criteria in (a) above, and shall notify each applicant and its corresponding project sponsor of approval or denial of its status as an EMT-D provider agency. The applicant agency shall not undertake any EMT-D activities until approval is granted.

8:41A-3.3 Required equipment

All *[vehicles used as EMT-D vehicles]* *agencies* shall be equipped with a semi-automatic defibrillator, as outlined in the American Heart Association Guidelines and adopted from the Textbook of Advanced *[Coronary]* *Cardiac* Life Support, 1987*, and as defined by this chapter*.

8:41A-3.4 Documentation/quality assurance

(a) All calls involving the defibrillation of a patient by an EMT-D shall be documented as follows:

1. At the conclusion of the call, the EMT-D shall complete a patient run report; *and*

[2. A dual channel tape recording of the event shall be made, labeled and forwarded to the project sponsor's medical director for review; and]

*[3.]*2.* An event summary shall be printed from the memory of the semi-automatic defibrillation device.

(b) The project medical director, or his or her designee, shall review all call documentation. The medical director shall address any discrepancies or deviation from protocols, and shall take corrective action.

(c) Documentation shall remain on file with the EMT-D project sponsor for a minimum of *[two years for audio tapes and seven]* *10* years for run forms and defibrillation event summaries. The project sponsor shall present these items to authorized representatives of the Department for audit and review, as requested.

8:41A-3.5 Interface with advanced life support

The EMT-D program is not a substitute for the existing mobile intensive care unit system in New Jersey. It is designed to enhance the existing system. Any time a patient receives treatment from an EMT-D, the appropriate advanced life support services shall be requested and utilized *if available* as per the local protocols of each MICU service area.

8:41A-3.6 Advanced life support personnel as EMT-Ds

A *[staff member]* *pre-hospital ALS provider* of a licensed mobile intensive care program may perform as an EMT-D, provided he or she has first obtained an orientation to the EMT-D program from the project sponsor's medical director.

SUBCHAPTER 4. TRAINING, CERTIFICATION AND CONTINUING EDUCATION

8:41A-4.1 Training, certification and continuing education approval requirements

No agency, group, individual or entity shall operate as an EMT-D training program, or engage in the training of EMT-Ds, without first obtaining the approval of the Department.

8:41A-4.2 Instructor qualifications/responsibilities

(a) All instructors in the EMT-D program shall be under the sponsorship of an approved EMT-D project sponsor and medical director and must be licensed or certified by the State of New Jersey as physicians, registered nurses and/or paramedics.

(b) All instructors in the EMT-D program shall be currently certified by the American Heart Association in Advanced Cardiac Life Support.

8:41A-4.3 Student qualifications

(a) Students desiring to enter an EMT-D training program ***[must]* *shall*** meet the following criteria:

1. Be, at a minimum, 18 years of age;
2. Be currently certified as an EMT-A by the Department;
3. Be currently certified in CPR to a professional rescuer status by either the American Heart Association or the American Red Cross;
4. Be affiliated with an approved EMT-D agency;
5. Have written approval to enter training from the project sponsor's medical director and the affiliated agency; and
6. Be physically capable of performing all basic life support and defibrillation skills, as outlined in the EMT-D curriculum.

8:41A-4.4 Curriculum development

(a) The Department's Office of Emergency Medical Services shall develop the curriculum for training EMT-Ds. The curriculum shall be consistent with the National Standards for EMT-D, as developed by the National Council of State Emergency Medical Services Training Coordinators, in care of the Council of State Governments, P.O. Box 11910, Iron Works Pike, Lexington, KY 40578 and the American Heart Association, National Center, 7320 Greenville Avenue, Dallas, TX 75231.

(b) The EMT-D curriculum shall include, but not be limited to:

1. Course introduction and required documentation;
2. Standing orders;
3. Use of the semi-automatic defibrillator;
4. Cardiac arrest and airway management;
5. Medical control;
6. Troubleshooting the semi-automatic defibrillator;
- *7. Physical assessment;***
- *8. Overview of the EMS system;***
- *9. Incident documentation;***
- *[7.]*10.* Small group practice; *and***
- *[8.]*11.* Evaluation.**

8:41A-4.5 Certification

(a) No person shall be certified as an EMT-D until the following criteria are met:

1. Completion of an approved EMT-D training program;
2. Successful completion of a written exam; and
3. Successful completion of a practical exam, as outlined in the EMT-D curriculum.

(b) Certification as an EMT-D shall be valid only as long as certification as an EMT-A is maintained.

(c) ***[The certification of an EMT-D will not have an expiration date, but will be considered to be current as long as the requirements in N.J.A.C. 8:41A-4.6(a) are met. The certifications of those persons not meeting the requirements will lapse immediately.]* *The certification period for an EMT-D shall be one year from the date of certification. Recertification shall be done on an annual basis as provided for in N.J.A.C. 8:41A-4.6.***

8:41A-4.6 Recertification

(a) In order to be recertified, the EMT-D shall:

1. Maintain current EMT-A and CPR certifications;
2. Complete a minimum of ***[eight]* *four*** hours of continuing education per year. This continuing education must relate to the EMT-D curriculum and does not include the time spent in annual CPR certification and/or the ***[semi-]*annual performance/practical skills evaluation*. These continuing education hours may also be accredited to the EMT-A recertification requirements under elective hours*;**

3. Successfully complete ***[a]* *an*** ***[semi-]*annual performance/practical skills evaluation, as conducted by the project medical director, or his or her designee; *and***

[4. Receive an annual recommendation from his/her EMT-D agency; and]

***[5.]*4.* Receive an annual recommendation from the EMT-D project sponsor's medical director*, and shall have his or her certification endorsed annually by the project medical director if he or she has successfully completed these recertification requirements*.**

(b) An EMT-D whose certification lapses shall regain certification by completing the recertification requirements given in (a) above and attending an update program conducted by the EMT-D project sponsor's medical director.

SUBCHAPTER 5. ENFORCEMENT

8:41A-5.1 Enforceability

The Department shall have the power to enforce the provisions of this chapter, in accordance with N.J.S.A. 26:2K-39 et seq.

8:41A-5.2 Penalties

Any person, agency, individual, or group which violates the provisions of this chapter shall be subject to the fines and penalties as set forth in N.J.S.A. 26:2K-44.

8:41A-5.3 Right to hearing

(a) Informal hearings may be held in cases where approvals or certifications may be suspended or revoked*, **or if entrance into an approved training program is refused***. At the conclusion of the informal hearing, any EMT-D who shall be subject to suspension or revocation shall be entitled to a formal hearing by the Department under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.*, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Application shall be made to the Department for any hearing, and the plaintiff shall be entitled to bring legal representation to any informal or formal hearing.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Hospital Licensing Standards

Adopted New Rules: N.J.A.C. 8:43G-7.28, 7.40, 18.4 and 18.6

Adopted Repeals and New Rules: N.J.A.C. 8:43G-7.16 and 7.33

Adopted Amendments: N.J.A.C. 8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.34, 7.37, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.5, 18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6 and 35.2

Proposed: September 3, 1991 at 23 N.J.R. 2590(a).

Adopted: January 15, 1992 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 16, 1992 as R.1992 d.72, with substantive and technical changes not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: February 18, 1992.

Operative Date: April 1, 1992.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

The Department of Health ("Department") received 50 written comments submitted by hospitals, professional associations, State agencies, the University of Medicine & Dentistry of New Jersey, the Group Against Smoking Pollution (GASP), private medical record companies, and individuals.

The hospitals which commented include: Bergen Pines County Hospital, Children's Specialized Hospital, Clara Maass Medical Center, Cooper Hospital/University Medical Center, Elizabeth General Medical Center, Holy Name Hospital, Jersey Shore Medical Center, Jersey Shore Medical Center Dialysis Unit, JFK Medical Center, Kimball Medical Center, Memorial Hospital of Burlington County, Monmouth Medical Center, Morristown Memorial Hospital, Newark Beth Israel Medical Center, Newton Memorial Hospital, Overlook Hospital, Riverview Medical Center, Saint Barnabas Medical Center, St. Elizabeth Hospital, St. Peter's Medical Center, Social Work Department of Monmouth Medical Center, The Mountainside Hospital, and The Valley Hospital.

The professional associations which commented include: Medical Record Association of New Jersey, National Kidney Foundation of New York/New Jersey, New Jersey Chapter of the American College of Emergency Physicians, New Jersey Hospital Association, Council of Nephrology Social Workers, and the New Jersey State Society of Anesthesiologists.

The public agencies which commented include: Division of Epidemiology and Communicable Disease Control, Department of Health; Division of Environmental Quality, Department of Environmental Protection; Hunterdon County AIDS/HIV Task Force; Radiologic Technology Board of Examiners; Chronic Renal Disease Program for the Advisory Committee to the Chronic Renal Disease Program; County of Essex Department of Health and Rehabilitation; Division of Mental Health and Hospitals, Department of Human Services and the Department of the Public Advocate.

The private businesses which commented include: Health Care Information Service; Burlington Anesthesia Associates, Brach, Eichler, Rosenberg, Silver, Bernstein, Hammer & Gladstone, Counsellors at Law and the Smart Corporation.

Individual commenters include: Greg Riley, Esq.; Solomon Goldberg, DDS MPH; Sushil K. Mehandru, MD FACP; John Mele, MD; Ira Strauss, MD; Muhammed Huq, MD; Raymond Rai, MD; Gail Schesser, ACSW; Bonnie Geld, MSW; Eleanor Brossoie, ACSW; Karen Testa, ACSW; Ray Regan, ACSW; Kathy Hegene, RN; Cecilia Gruda, RN; Ruth Franklin, RN; Marilyn Sigler, MS, RP; Evelyn Caubonell, ACSW; Michele Winters; JoAnn Gurdi-Harzel, BSW; Jay Levin; Margo Limmer, MSW, MPH; D. Uloudcork, RN; A. Brylon, RN; Kathy Murphy, BSW; Janemarie Molina; Roseane Carchin, RN; Debra DiNuzzo, MS, RP; Cynthia Schwartz, ACSW; Lyn Wade, MSW; Richard Hessler; Margaret Elker; Eileen Faga; and Dianna Overton.

N.J.A.C. 8:43G-4 PATIENT RIGHTS

N.J.A.C. 8:43G-4.1(a)27

COMMENT: One commenter noted that the proposed amendment which would require that the patient rights summary be provided in the patient's native language if 10 percent or more of the population speak that language should not be enforced until all hospitals and Departmental surveyors are provided with uniform data indicating which hospitals are affected by the amendment. It was claimed that the means of determining the extent to which a foreign language is spoken, including the source of usable data, is not obvious.

RESPONSE: The Department has determined that, should a disagreement arise as to the applicability of the rule to a particular hospital, data collected as part of the 1990 U.S. decennial census will be able to be used to decide the issue. This data, which is expected to become

available in early 1992 or 1993, will yield the number of people within municipalities of at least 10,000 people who speak one of a set of the more commonly spoken languages in the United States. There will also be data available at the county level and a mechanism to retrieve data for smaller areas. The data is expected to be published and publicly available at Federal depository libraries by 1992 or early 1993. Copies of the New Jersey section will probably be available at most local libraries in New Jersey. The title will indicate that the publication addresses social and economic characteristics of the population on the basis of the 1990 census and will bear the designation "CP2."

COMMENT: Cooper Hospital/University Medical Center, while not objecting to the rule, did indicate that facilities in certain geographic areas will incur costs due to increases in several different ethnic groups.

RESPONSE: As stated in the Department's analysis of the economic impact of the proposed amendment, which was published as part of the notice of proposal, an initial cost of translating the summary of patient rights is to be expected for some hospitals, but this cost is justified by the resultant benefit to patients. The Department also acknowledges that subsequent translations may become necessary as the demography changes and that the financial impact of these changes will differ from hospital to hospital. The fact that some hospitals and the New Jersey Hospital Association have expressed interest in preparing foreign language translations of the patient rights summary raises the possibility of cost savings through the sharing of translated documents.

COMMENT: Disparate comments were received in reference to the amendment requiring that a summary of patient rights be posted in each patient room and in public places throughout the hospital. Essex County Hospital Center suggested that the cost to permanently affix the summary to the wall of each patient room would be prohibitive. According to this commenter, it is sufficient that notice be permanently affixed to a bulletin board in a patient lounge area and given to each patient upon admission, and that the full text of the "statute" be accessible to staff. In contrast, the New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, stated that, in allowing a summary, rather than the "full listing," of patient rights to be posted in each patient's room, the amendment conflicts with the State statute concerning patient rights, which requires posting of "a written notice listing these rights." The statute permits distribution of a summary at the time of admission. The commenter recommended that the Department continue to require posting of the complete statement in patient rooms.

RESPONSE: Posting of a statement of patient rights in each patient's room has been required since N.J.A.C. 8:43G became operative in July 1990 and is also required of general hospitals by State law. The extent of compliance with N.J.A.C. 8:43G-4.1(a)27 observed by the Department thus far in general hospitals suggests that the cost of compliance is not prohibitive. (Essex County Hospital Center is presently licensed as a psychiatric hospital.)

The Department has interpreted the statutory phrase "written notice listing these rights" as including a summary in the form of a listing. In fact, the Department distributed an acceptable model summary, in the form of a listing, to each licensed hospital in June 1990 for use by the hospital. The Department does not agree with the commenter's interpretation of the statute, in which the proposed amendment and use of a summary in the form of a listing are seen to conflict with the statute. It is the Department's belief that a summary may be more understandable to patients. Furthermore, the proposed amendment ensures that complete copies of N.J.A.C. 8:43G-4 are available for review by patients and their families or guardians. Consequently, the amendment has not been revised in the manner suggested.

COMMENT: The New Jersey State Department of the Public Advocate, Division of Mental Health Advocacy, commented that the proposed deletion of the requirement for all hospital staff members to receive a complete statement of the rights listed in N.J.A.C. 8:43G-4 "cannot be justified by substantial cost or burden" and could result in inadvertent violation of the rules due to "staff ignorance of patients' rights." It was recommended that the Department continue to require distribution of a complete statement of patient rights to hospital staff members.

RESPONSE: The Department shares the commenter's concern that ignorance of patient rights on the part of staff could lead to violation of the rules in N.J.A.C. 8:43G-4. N.J.A.C. 8:43G-5.7(a), as adopted, is intended to ensure that the formal orientation program for all new permanent staff includes "training in patient rights as found at N.J.A.C. 8:43G-4." On the basis of N.J.A.C. 8:43G-5.7(a) and N.J.A.C. 8:43G-4.1(a)27, which requires that complete copies of the subchapter

be available at nurse stations, the Department maintains that the adopted amendments adequately address the issue of staff education regarding patient rights, and the rule has not been revised in the manner suggested.

N.J.A.C. 8:43G-5 ADMINISTRATIVE AND HOSPITAL-WIDE SERVICES

N.J.A.C. 8:43G-5.2(f)

COMMENT: The Valley Hospital commented that this standard addressed day-to-day management of hospitals and could not be readily monitored. Elizabeth General believed the standard to be too vague to be applicable across the board to all patient interactions, and objected to the Department's "prescriptiveness."

RESPONSE: The Department's concern in regard to this standard is to protect patients from unnecessarily long waiting periods. The Department believes the 30 minute timeframe set forth is reasonable, and is reflective of the average waiting period experienced by most patients. The Department does not believe determining compliance with this standard involves close monitoring on the part of the hospital.

N.J.A.C. 8:43G-5.5(i)

COMMENT: The Valley Hospital believed the intent of the standard was already being met through the existence of a code team capable of immediate response to any cardiac arrest. Elizabeth General Medical Center believed the standard will place an extreme burden on new personnel training and annual inservice education, and suggested hospitals be allowed to develop their own system to respond to the need for cardiopulmonary resuscitation.

RESPONSE: The Department believes cardiopulmonary resuscitation should be initiated immediately in the event of an emergency. Standard hospital practice should ensure that resuscitation is initiated immediately and continued until arrival of the code team. The Department does not believe sole reliance on the availability of one code team provides a sufficient level of protection for patients. In reference to the concern about the effect this standard may have on training and in-service education, the Department points out that it does not require hospital-wide training of all staff. The Department hopes, however, that all health care professionals recognize the value and need for this skill and voluntarily choose to maintain competency in this area.

N.J.A.C. 8:43G-5.2(n)

COMMENT: Eleven letters of comment were received in opposition to the Department's allowance for designated smoking rooms. Commenters included the New Jersey Hospital Association (NJHA), the Group Against Smoking Pollution (GASP), the Medical Society of New Jersey, the University of Medicine & Dentistry of New Jersey and seven hospitals. The commenters unanimously felt designation of smoking rooms was contradictory to the concept of a smoke-free hospital, and should not be an option condoned by the State Department of Health. Appropriating funds for the purpose of altering rooms to accommodate smoking was not believed to be cost-beneficial or effective, particularly in light of the cost constraints under which hospitals operate. NJHA objected to the Department's selective use of HVAC standards from an existing code and believed coordination with other parts of the code could be lost as a consequence; they also added that compliance with the standards would require extensive modifications to existing HVAC systems. The University of Medicine and Dentistry of New Jersey (UMDNJ) acknowledged that the proposed standards represented regulatory constraints needed to control recirculation of tobacco smoke pollution within hospitals and were an integral part of the smoke-free initiative proposed by the Department several years ago. UMDNJ suggested, however, that the Department reconsider whether the option of designated smoking rooms was still necessary considering the strides made throughout the country in requiring buildings used by the public to be entirely smoke-free. UMDNJ recommended the Department defer taking action on this proposal at the present time, and urged the Department to reexamine its position regarding the need for designated smoking rooms in hospitals.

RESPONSE: The Department believes the commenters have raised valid concerns, and agrees with UMDNJ that the option for permitting designated smoking rooms should be reconsidered. Since adoption of the hospital licensure standards in February 1990, biomedical research has continued to confirm the adverse health effects caused by tobacco smoke. Additionally, evidence that involuntary inhalation of cigarette smoke by nonsmokers places the nonsmoker significantly at risk has been strengthened by epidemiological studies. In the face of mounting biomedical research, the Department believes it would be remiss in provid-

ing patients the opportunity to continue smoking while receiving care in a health care institution. In keeping with the Department's responsibility to promote policies which are in the best interest of the health and welfare of the patient, it no longer believes hospitals should be given the option of establishing designated smoking rooms. The Department will be proposing an amendment to delete this option. In the interim, the Department has withdrawn the proposed ventilation requirements, N.J.A.C. 8:43G(n)1 through 3, and has amended the rule to clarify that the phrase "designated area with outside ventilation" prohibits smoking in rooms that share the same ventilation system as rooms occupied by patients and/or nonsmokers.

N.J.A.C. 8:43G-5.18(b)

COMMENT: Cooper Hospital/University Medical Center expressed concern about the ability to assure additional supplies of red cell during times in which the American Red Cross may be experiencing blood supply shortages.

RESPONSE: The intent of the standard is to ensure that hospitals have identified a source for obtaining additional blood supplies when needed. The commenter demonstrates compliance through its arrangement with the American Red Cross. The concern raised pertains to the operation of blood banks, and is not within the scope of this rule.

N.J.A.C. 8:43G-7 CARDIAC

N.J.A.C. 8:43G-7.5(c)2 and 7.15(b)2

COMMENT: Two commenters remarked that the proposed rules do not address the issue of failing the board certification examination and what effect this has on the individual practitioner's eligibility to continue to perform various cardiac procedures.

RESPONSE: The Department's position for practitioner eligibility is consistent with that of the American Board of Internal Medicine. An individual physician's board eligibility status is limited to three examinations or a period of six years, whichever occurs first. Consequently, a physician who fails a certification examination but remains within the parameters for board eligibility identified above, may continue to perform cardiac catheterization. The Department believes this position supports the delivery of effective cardiac care by well trained physicians who continue to demonstrate exceptional skill and experience as they perform in their particular hospital setting as they attempt to become board certified. The rule remains as proposed.

N.J.A.C. 8:43G-7.16, 7.24(a) and 7.27(a)

COMMENT: Mountainside Hospital and the Radiologic Technology Board of Examiners of the Department of Environmental Protection (DEP) commented that the Hospital Licensing Rules as they currently exist are inconsistent with the Radiologic Technologist Act, N.J.S.A. 26:2D-24 and 27(a), and N.J.A.C. 7:28-19.3(d), which all require properly licensed personnel to operate radiologic equipment and position patients during radiologic procedures, such as during a cardiac catheterization (PTCA).

RESPONSE: While the Department recognizes the statutory requirement identified above, the lack of its codification in these rules does not negate responsibility of providers to comply with the requirements of another agency with jurisdiction. Although availability of licensed radiological technicians has been noted as a problem in achieving compliance, the Department recognizes the need to have properly trained personnel available, for patient safety. Representatives of the Department met with representatives of the Department of Environmental Protection and Energy and anticipate reevaluating this rule with the Hospital Advisory Quality Task Force in the near future. However, any addition to the rules requiring the presence of a licensed radiologic technician during the performance of various diagnostic and therapeutic cardiac procedures is believed to represent a substantive change and therefore cannot be made on adoption. The rule remains as proposed.

COMMENT: Newark Beth Israel Medical Center commented that the apparent relaxation of the requirement for staffing during a cardiac catheterization procedure represents a potentially serious problem in non-teaching hospitals and would like to see the rule amended to include the addition of a fourth person to be immediately available in the cath lab suite to assist with emergencies.

RESPONSE: The Department revised this standard after consultation with the Commissioner's Cardiac Services Committee and believes the interests of patient safety are protected by this amended rule, which establishes minimal staffing requirement. The rule has not been revised in the manner requested.

N.J.A.C. 8:43G-7.26

COMMENT: Cooper Hospital submitted information that the American College of Cardiology will be providing board certification in electrophysiology in 1997. Cooper believes that board eligibility or certification in this subspecialty and the completion of a four year fellowship with two years in electrophysiology are appropriate qualifications.

RESPONSE: The Department appreciates Cooper's assistance in providing the anticipated credentialing requirements for physicians performing EPS. The proposed amendments to the rule are the result of collaboration between the Hospital Advisory Quality Task Force and the Commissioner's Cardiac Services Committee and reflect the minimum credentialing requirement necessary for practitioners to perform safe and effective cardiac diagnostic and therapeutic procedures. The rule remains as proposed.

N.J.A.C. 8:43G-8 CENTRAL SUPPLY

COMMENT: The Valley Hospital suggested that N.J.A.C. 8:43G-8.7(d) be modified to read "Accessories to scopes shall be sterilized or given high-level disinfection after each use according to the manufacturers' recommendations or according to hospital policy." The commenter stated that it is important for the hospital to follow the manufacturers' recommendations regarding high-level disinfection for accessories to avoid possible intra-operative breakdown of equipment.

RESPONSE: The Department accepts the need to revise the amendment in order to specify appropriate levels of processing for different types of accessories. Critical instruments, such as biopsy forceps which break the mucosal barrier, require sterilization. Other accessories which are heat stable may require ethylene oxide sterilization or high level disinfection. In these cases, the manufacturers' recommendations shall be followed for processing. Consequently, N.J.A.C. 8:43G-8.7(d) has been revised as follows: "Accessories to scopes shall be sterilized or processed according to manufacturers' recommendations after each use."

N.J.A.C. 8:43G-9 CRITICAL AND INTERMEDIATE CARE

N.J.A.C. 8:43G-9.9

COMMENT: Mountainside Hospital requested definition of intermediate care beds and asked if telemetry beds are intermediate care beds.

RESPONSE: The Department has left to the determination of the hospital the criteria to be applied in classifying intermediate care beds. While telemetry beds are generally considered intermediate care beds, non-monitored beds may also be designated as intermediate care beds if the hospital elects to identify them as such and has written policies and procedures delineating the criteria for admission to the intermediate care bed. The number or percentage of beds on the service that provide continuous monitoring should also be addressed in the written policies for the unit.

N.J.A.C. 8:43G-9.19(b)

COMMENT: Valley Hospital expressed concern regarding the additional expenses associated with equipment and staffing that will be necessary with the isolation of additional beds for intermediate care.

RESPONSE: The Department believes that the introduction of an intermediate care unit in a hospital which has a critical care unit will in effect curtail overall expenses. Studies show that admitting the low risk patient to intermediate care areas that have the capability to provide monitoring, but not necessarily intensive therapies, is both cost and quality effective and will help to assure that there is proper use of the limited health care resources available. The rule remains as proposed.

N.J.A.C. 8:43G-10 DIETARY

N.J.A.C. 8:43G-10.1(b)

COMMENT: Bergen Pines County Hospital has requested specificity in regard to the content of a nutrient analysis, and suggested the analysis include at least: protein, fat, carbohydrate, total calories, vitamin A, ascorbic acid, thiamin, riboflavin, niacin, calcium and iron. The commenter also asked for clarification with respect to the types of diets which required such analysis.

RESPONSE: The Department believes guidelines from the American Dietetic Association should be used in determining the content of a nutrient analysis. The Department prefers to provide the dietary department with flexibility in this area rather than prescribing a detailed list to be followed by all hospitals. The Department believes the analysis presented by the commenter is adequate, but would recommend the

addition of sodium and cholesterol. A nutrient analysis should be performed on all diets.

N.J.A.C. 8:43G-12 EMERGENCY DEPARTMENT

COMMENT: The New Jersey Chapter of the American College of Emergency Physicians commented that the proposed rules at N.J.A.C. 8:43G-12.3 "are an ideal which we participated in creating and continue to support." However, the Chapter believes that they may be difficult to achieve in some areas of the State due to a manpower shortage, since there are only two residency programs in Emergency Medicine in New Jersey graduating a combined total of six to eight emergency physicians per year. The Chapter also recommends that the requirement for advanced pediatric life support training for emergency physicians be broadened to include both Advanced Pediatric Life Support (APLS) and Pediatric Advanced Life Support (PALS) courses; the Chapter believes that their certifications should be considered interchangeable.

RESPONSE: The Department acknowledges that there may be instances of hospitals having difficulty in recruiting qualified emergency physicians. In these instances, the hospitals demonstrating hardship would be asked to submit a written request for approval of an extension along with a plan for meeting the standard. However, the Department refers the commenter to 22 N.J.R. 510-511 for a full discussion of the subject of emergency department staffing, and notes that the standards provide three available options to meet credentialing requirements: (1) board certification or eligibility in emergency medicine; (2) successful completion of an approved residency program in one of the four major specialty areas of primary care; or (3) a specified period of clinical experience in emergency medicine. The proposed amendment changes only the amount of clinical experience in the third option, and specifies that hospitals have until July 1, 1994 to meet this requirement. No change is made in this rule.

The Department accepts the suggestion to include the title of an additional training course in advanced pediatric life support, and N.J.A.C. 8:43G-12.3(c) has been changed to reflect this requirement.

COMMENT: Dolores McCarthy, M.D., F.A.C.E.P., Director of Emergency Medicine at Monmouth Medical Center, commented that the proposed amendment would exclude physicians training in residency programs from "moonlighting" in an emergency department. Dr. McCarthy wrote that "resident moonlighters help meet the demand of busy emergency departments, and it would be wrong to limit their ability to do so." Elizabeth General Medical Center also asked for clarification of the proposed amendment relative to part-time emergency department physicians and moonlighters.

RESPONSE: The Department refers the commenters to the response immediately above, in which the three methods of qualifying to practice in a hospital emergency department are delineated. Limiting or eliminating "moonlighting" in hospital emergency departments was a goal of licensure reform when the current licensing standards were developed, as explained at 22 N.J.R. 511: "Moonlighting by residents is considered detrimental to quality of care for patients. In a moonlighting situation, care is being provided by staff who are both underqualified and also, by definition, working at more than one job under conditions of mental and physical exhaustion," and who, therefore, may not be able to provide a high level of patient care in a very demanding environment. No change has been made to the amendment.

COMMENT: The Valley Hospital suggested that the time period to secure certification in Advanced Periodic Life Support should be extended due to limited availability of courses.

RESPONSE: As noted above, the rule has been broadened to include an alternative training course; this will provide additional options for training. The time period in which to obtain certification remains within 12 months of initial assignment to the emergency department.

COMMENT: Memorial Hospital of Burlington County asked for clarification, since physicians who are board certified in emergency medicine are not required to have a separate pediatric ACLS certification.

RESPONSE: The commenter is correct. N.J.A.C. 8:43G-12.3(c) states that "Physicians who are board certified or currently eligible to be certified in emergency medicine shall be exempt from this requirement."

N.J.A.C. 8:43G-15 MEDICAL RECORDS

COMMENT: A letter in support of the proposed changes was received from Bergen Pines County Hospital. This letter indicated that the cap on copying charges and search fees (N.J.A.C. 8:43G-15.3(d)1 and 2) is "appropriate and justifiable," and that the "search fee will permit the institution to recoup some of its costs incurred from postal fees and sales tax."

RESPONSE: The Department appreciates these supportive comments regarding the proposed amendments.

COMMENT: Gregg Riley, an attorney who states that he represents many clients in personal injury cases, objected to the allowance for a \$10.00 search fee, and added that the copying charge of \$1.00 per page was excessive given that copies can be made at the local drugstore or library for 20 cents per page. In regard to the search fee, Mr. Riley commented that the "search" referenced in the rule involved entering a name into the computer or pulling the record from a file cabinet, and did not justify a \$10.00 charge. Mr. Riley stated that his office bills out copying at the rate of 20 cents per page. He considered this to be a reasonable fee for patients who, in many instances have been injured, are out of work, and "in the worst position to pay an expensive fee to obtain a copy of his hospital record . . . the rule should be clarified to permit no search fee."

RESPONSE: Although the Department acknowledges that in some cases actual costs will not be equivalent to the caps included in the rule, a hospital will have the burden of demonstrating that it does. However, it is permissible to set a charge structure which averages high and low actual costs for administrative efficiency. The Department believes that the proposed fee schedules are reasonable and justifiable. Hospitals incur costs of staff time and billing expenses, for example, which generally would not apply to clients who make copies of documents at the local drugstore or library. The amendment has been retained as proposed.

N.J.A.C. 8:43G-15.3(d)

COMMENT: Health Care Information Service (HCIS), a medical records copying service employed by hospitals, commented on definitions at N.J.A.C. 8:43G-15.3(d). The commenter requested clarification of "third party insurer where permitted by law," and asked whether "patient's authorized representative" is intended to include those who represent the patient's attorney, such as investigative services who obtain records from the hospital in the attorney's name.

RESPONSE: In these rules, "third party insurer where permitted by law" is intended to mean an agent of a health insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient's attorney has been authorized by the patient to obtain a copy of the medical record, the rules do not preclude the attorney from employing staff or other individuals to procure the copy from the hospital. Such agents would, of course, need to provide the hospital with verifiable identification and written evidence of the patient's authorization to release the copy to the attorney or the attorney's agent.

COMMENT: Two comments were received from copying services which objected to the per page charges specified in the amendment at N.J.A.C. 8:43G-15.3(d)1. Smart Corporation recommended that fees be changed as follows: \$10.00 for the first 10 or fewer pages, \$1.00 per page for pages 11 through 100, \$0.25 per page for pages 101 and beyond, up to a maximum of \$200.00 for the entire record. HMIS suggested that the \$0.25 per page specified in the amendment for records which exceed 100 pages be increased to \$0.50 per page.

RESPONSE: The Department believes that the proposed fee schedules are reasonable and justifiable. A fee structure with different rates is acceptable where all charges fall below the specified caps. The amendment has been retained as proposed.

COMMENT: Six commenters objected to the proposed amendment at N.J.A.C. 8:43G-15.3(d)2iii, which allows for postage charges of actual costs for mailing of medical records, not to exceed \$5.00. The HCIS commenter recommended that actual mailing costs or a flat fee for every request be allowed, in order to help compensate for those records which are mailed free. The commenters from the Medical Record Association of New Jersey, Elizabeth General Medical Center, St. Peter's Medical Center, and JFK Medical Center also stated that reimbursement of actual postage charges should be allowed, with no upper limit. Both JFK and the Medical Records Association pointed out that mailing expenses for many-paged records or requests for Federal Express or overnight delivery will always exceed \$5.00. Smart Corporation's comment stated that a \$5.00 limit, in cases where multi-volumes are to be sent, is "quite unreasonable." Mr. Riley commented that he understood the need to charge for postage, but believed that "handling" charges were unjustified.

RESPONSE: Although the amendment allows for a postage charge of actual costs of mailing, not to exceed \$5.00, there is no requirement for "handling" charges. The Department believes that the \$5.00 limit on postage should remain as proposed, in order to limit postage costs to consumers and to discontinue the assessment of unreasonable postage charges. However, if a patient or his or her authorized representative

requests overnight delivery or Federal Express delivery of the record, the actual charges for these special services may be assessed. These special delivery methods may be used only at the patient's option, and only if the patient has been advised of and agrees to the additional cost of the service.

COMMENT: Five commenters pointed out that the proposal does not address costs related to the reproduction of records which have been stored on microfilm or microfiche. Letters regarding this issue were received from HCIS, JFK, St. Peter's Medical Center, the Medical Record Association, and Smart Corporation. According to the Medical Records Association, "the cost of copying microfiche records far exceeds the costs of copying a hard copy record." Commenters suggested that separate or increased fees be established by the Department for processing of medical records which are stored on microfilm or microfiche. HCIS suggested that the amendment allow for reproducing the actual film or fiche which would allow the requester to make his own paper copy, and, thus, bring the costs down.

RESPONSE: Patients' medical records are stored on microfilm or microfiche for the convenience of the facility. The Department believes that the costs associated with such storage should not be passed on to the patient. Although Department policy requires the hospital to provide a paper reproduction of the record, a microfilm or microfiche copy may be offered as an alternative. This alternative may be attractive to the patient if the cost is lower than that of a paper reproduction.

COMMENT: The comment letter from HCIS indicates that the meaning of "single request" and "subsequent request" is not clear. St. Peter's Medical Center and the Medical Record Association also request clarification of these terms which are used in the summary statement of the proposal, specifying that the caps on fees are intended to apply to "a single request for a copy of a medical record," and that "all subsequent requests must be charged at a reasonable rate," according to N.J.A.C. 8:43G-4.1(a)25, patient rights. The Medical Records Association commenter asks whether this means "that subsequent requests for a record that was already copied are not subject to the \$200.00 cap and that the requester may be charged at a different rate that may exceed \$200.00?"

RESPONSE: The Department has determined that the caps on fees apply to each medical record arising from a separate patient admission. The patient may request, in writing, one copy of the record, or may sign an authorization for the record to be provided to another individual. However, the fee schedule delineated in the rules is applicable to only one copy of the record. If the patient or his or her legally authorized representative has already obtained one copy of the record, subsequently requested copies (second or third copy of the same record, for example) would not be subject to these fee limitations, and could exceed \$200. Subsequent additional copies which may be requested must be furnished at a reasonable fee based on actual costs. In order to prevent unreasonable fees from being assessed for additional copies of the same record and to ensure a uniform fee schedule, a new N.J.A.C. 8:43G-15.3(f) has been added to the rule, indicating that such charges shall not exceed \$1.00 per page. Existing N.J.A.C. 8:43G-15.3(f)-(g) have been recodified.

N.J.A.C. 8:43G-16 MEDICAL STAFF

N.J.A.C. 8:43G-16.1

COMMENT: The comment from the New Jersey State Society of Anesthesiologists concerned the deletion, at N.J.A.C. 8:43G-16.1(k), of the word "physician" and its replacement by the word "practitioner," in order to make the rules consistent with the Medical Conduct Reform Act, P.L.1989, c.300. In the summary statement for subchapter 16, the Department stated that the word "practitioner" is used in the Act to indicate a category of professionals which includes licensed M.D.'s and D.O.'s, licensed podiatrists and residents. The commenter recommended that "dentists," should also be included, since hospitals today refer to their staff as "medical and dental staffs."

RESPONSE: The word "practitioner," as used in N.J.A.C. 8:43G-16.1(k), refers only to those individuals who are affected by the Medical Conduct Reform Act, P.L.1989, c.300, which requires that specified events be reported to the Medical Practitioner Review Panel of the New Jersey State Board of Medical Examiners. Only licensed M.D.'s and D.O.'s, licensed podiatrists, and residents are reported to this Panel. Other licensed staff may be reported to different boards, such as the Board of Dentistry or the Board of Nursing. In order to clarify this specific use of the word "practitioner" for purposes of this section of the rule, a definition of the term has been added as N.J.A.C. 8:43G-16.1(o).

Although "practitioner" is narrowly defined as used in this section of the rule, individual hospitals are, of course, free to define the categories of professionals who may be included in their medical and dental staffs, in accordance with facility requirements and policies.

COMMENT: The commenter from Cooper Hospital/University Medical Center stated that the change at N.J.A.C. 8:43G-16.1(l), deleting the 30 day notification period for adverse actions and adding a requirement that notifications are to be provided within seven days of the reported event, is "unacceptable." The commenter recommended that the notification period be changed to 15 days, as Federal regulations require and to allow sufficient time for completing the "internal process" of adverse action, as these actions "can be controversial."

RESPONSE: The amendment to N.J.A.C. 8:43G-16.1(l) was made in order to bring the rule into compliance with New Jersey law. According to the Medical Conduct Reform Act, P.L.1989, c.300, adverse actions are to be reported to the Medical Practitioner Review Panel of the State Board of Medical Examiners within seven days of the action. Therefore the amendment has been retained as proposed.

N.J.A.C. 8:43G-16.6

COMMENT: Holy Name Hospital's commenter suggested that the change in the time frame for completion of each patient's medical history and physical examination, from 14 days to seven days, at the proposed amendment of N.J.A.C. 8:43G-16.6(b), is not a workable time period, and recommended that the 14 day period be retained.

RESPONSE: The Department changed the time frame for completion of each patient's medical history and physical examination in order to make the rule consistent with the Federal Conditions of Participation: Medical Records, 42 CFR 482.24(C)(2)(i), published June 17, 1986, in volume 51, number 116 of the Federal Register, which requires the history and physical to be performed within seven days prior to admission. Therefore, the amendment has been retained as proposed.

COMMENT: The comment letter from the Department of Human Services, Division of Mental Health and Hospitals, included an objection to the deletion of the word "complete" from N.J.A.C. 8:43G-16.6(b). According to this comment, deletion of the word "complete" from the requirement for a medical history and physical examination makes it "unclear how extensive the history and physical should be and/or by what time frame a comprehensive history and physical must be completed, if at all."

RESPONSE: The hospital is required, in accordance with N.J.A.C. 8:43G-15.2(d)2, to include a **complete** history and physical examination, in accordance with medical staff policies and procedures, as a part of the complete medical record. Therefore, deletion of the word at N.J.A.C. 8:43G-16.6(b) does not change the need for a complete history and physical. The amendment has been retained as proposed.

SUBCHAPTER 18. NURSING CARE

The Department received seven letters of comment regarding N.J.A.C. 8:43G-18.4, Nursing care; use of restraints. Letters were received from The Valley Hospital, Memorial Hospital of Burlington County, The Mountainside Hospital, Holy Name Hospital, Riverview Medical Center, the Division of Mental Health and Hospitals, and the Department of the Public Advocate.

COMMENT: The Valley Hospital has stated that, based on current practice, it has the following concerns: the requirement for a physician order before application of restraints, the requirement for a physician assessment and renewal of restraint order every 24 hours, and the requirement that medications must be part of the medical treatment plan, and not used for restraint, discipline, or convenience of staff. This hospital suggested that the nursing staff perform a reassessment every eight hours and that policies be developed to support restraint/no restraint as described in the state standards. Enforcement of physician assessment and renewal would be a difficult and time consuming problem, according to Valley.

RESPONSE: The Department wishes to clarify the fact that the requirement for a physician order prior to application of restraints refers to non-emergency situations only; it ensures that this procedure is part of the medical treatment plan for the patient. The requirement for renewal of restraint orders every 24 hours is based both upon patient safety and upon the existing rule at N.J.A.C. 8:43G-16.6(f), Medical staff patient services, which mandates that every acute care patient be seen by a clinical practitioner every day. (Although this rule states an exception, the use of restraints would obviate the exception.) N.J.A.C. 8:43G-16.2(d) requires a written entry in the patient's medical record

after each visit, at which time the order should be renewed. Enforcement would occur through visual observation of the patient's medical record.

Reassessment by nursing staff every eight hours is considered inadequate for patient safety; the rule at N.J.A.C. 8:43G-18.4(f)1 requires assessment for physical and mental status and reevaluation of need for restraints at least every two hours. The Department agrees that the hospital should develop policies and procedures for the use of restraints and has included this requirement at N.J.A.C. 8:43G-18.4(b). Finally, the Department is committed to the concept of eliminating the use of psychotropic medications for restraint discipline, or convenience of staff. These medications shall be used only as part of the medical treatment plan of the patient.

COMMENT: Memorial Hospital wrote that the standards are unnecessarily restrictive and cost prohibitive in the acute care hospital setting. They would require one-on-one nursing to implement, assure adequacy of progressive range of restraints, and protect safety. Additional cost would be inherent in surveillance measures and developing/implementing alternatives. The hospital is unaware of any published studies indicating a high degree of misuse of restraints in New Jersey hospitals, and suggested that the Department meet with nursing representatives in the community hospital nursing management areas.

RESPONSE: The Department does not believe that the implementation of these standards would necessarily require one-on-one nursing care and higher cost. The use of restraints is a well-studied and well-documented issue (although specific academic study of the type the commenter described has not been done); a repeated finding in the literature is that a more carefully thought out approach to restraints leading to a reduction in their use has a cost-saving effect. This has been attributed to various factors, including that of a reduction in staff time needed for monitoring and calming the restrained patient. The commenter is advised that the proposed standards were developed through the joint efforts of the Department and an Ad Hoc Advisory Group on Restraints comprised of several directors of nursing, geriatric nurse specialists, a physician, and representatives from the New Jersey Hospital Association, the Division of Mental Health and Hospitals, and the Department of the Public Advocate. The standards were also approved by the standing Advisory Committee on Hospital Quality.

COMMENT: The Mountainside Hospital commented that the requirement to have a non-psychiatric restraint order renewed every 24 hours is impractical and unnecessary. Riverview Medical Center wrote that physicians may not be available. Both hospitals stated that professional nursing staff is qualified to make judgment to assess the need for physical restraints. Mountainside qualified this to recommend nursing use of restraints once a physician's order has been written. Riverview stated that the RN could confer with the physician via telephone, with the order documented by the RN and co-signed by the physician within 24 hours.

RESPONSE: The commenters are referred to the response to The Valley Hospital above, in which the Department cites rules for daily physician visits and clinical notes following each visit, at which time restraint orders would be renewed. The Department agrees that professional nursing staff is qualified to make judgments, and relies upon that judgment in the rules addressing initiation of emergency restraint procedures and reevaluation of the need for restraints; both of these duties are performed by licensed nursing personnel. Riverview's description of telephone consultation and written physician orders within 24 hours reflects the intent of the rule for emergency use of restraints at N.J.A.C. 8:43G-18.4(d).

COMMENT: Mountainside wrote that restraints for medical/surgical patients are not used for "acting out" as in psychiatry; they are used to keep the patient from falling, injuring himself, or dislocating an IV. The hospital believes that these guidelines are appropriately used for psychiatric patients, but are an unnecessary requirement on a medical/surgical floor.

RESPONSE: The Department differs with the commenter that rules for restraints are appropriate for psychiatric but not for medical/surgical patients. It is necessary to address the hospital-wide use of restraints based on issues of patient rights, the physical and emotional consequences of immobility, patient safety, and a trend in all health care facilities for least-restrictive environments. The intent of the rules is to address these issues for all patients, regardless of their diagnosis or location in the hospital.

COMMENT: Holy Name Hospital asked for clarification as to what constitutes an emergency and would like the amendment modified to "an emergency as defined by hospital policy." Riverview Medical Center stated that the distinction between emergent and non-emergent needs

to be better defined; for example, does the potential for endangerment of patients who extubate themselves constitute an emergency?

RESPONSE: The Department defines an emergency situation as one that poses a risk to self or others. In the example cited by Riverview, patients extubating themselves would be endangering themselves; therefore this could be considered an emergent situation. The Department has not accepted the suggestion for change of this rule.

COMMENT: Riverview Medical Center commented that assessing the need for restraints every two hours does not always afford a comprehensive picture of the continuing need for restraints. The confused elderly patient may have moments of lucidity or may become confused only at night; if restraints are removed the likelihood of falls or injuries is increased.

RESPONSE: The commenter seems to be addressing an issue of clinical judgment which does not negate the need for frequent assessment of the physical and mental status of the patient and reevaluation of the need for restraints. No change has been made.

COMMENT: In regards to N.J.A.C. 8:43G-18.4(f)4iii, Riverview Medical Center has noted that a chest or pelvic restraint does not restrict the free movement of limbs; therefore, range of motion procedures or opportunities for exercise are not always necessary.

RESPONSE: The Department dissents, citing the well-documented physical hazards of immobility such as circulatory obstruction, pressure sores, pneumonia, loss of muscle tone and bone mass, incontinence, constipation, and loss of ability to walk independently. Emotional and behavioral consequences which may occur soon after the application of restraints are anxiety, agitation, depression, confusion, and erratic behavior, which may lead to further use of restraints in a malignant cycle. Release from restraints and opportunities for exercise can alleviate at least some of the potentially toxic effects. The rule has not been changed.

COMMENT: Riverview wrote that at N.J.A.C. 8:43G-18.4(g)1, there needs to be a better definition of the term "unstable" to differentiate between subparagraphs (g)i and ii.

RESPONSE: The Department has proposed this rule in order to permit clinical judgment based upon the changing condition of the patient. The accepted definition of "unstable" is "not firmly fixed, unsteady, liable to change," and the Department views this as an intermediate condition between one that requires constant surveillance and one that has stabilized and requires less frequent monitoring. No change has been made.

COMMENT: Riverview Medical Center wrote that due to sharing workloads and scheduling of diagnostic tests, patients receive assistance with bathing once a day, not every 24 hours.

RESPONSE: The intent of the standard is to ensure that a patient in restraints, who may perspire more profusely than normal and not have the ability to wash, receives assistance with bathing at least once a day. The standard has been modified to read "at least once a day."

Riverview Medical Center noted, regarding N.J.A.C. 8:43G-18.4(h)1, that the condition of many patients and proper application of restraints does not warrant observations more frequently than every two hours.

RESPONSE: This rule permits clinical judgment to be used in determining how often visual observation is needed, based upon the patient's condition, within the following parameter: for reasons of safety, every patient in restraints must be visually checked at least once per hour. There has been no modification of this requirement.

COMMENT: At N.J.A.C. 8:43G-18.4(h)4, Riverview wrote that the registered professional nurse possesses the knowledge and experience necessary to delegate the removal of restraints to non-licensed nursing personnel. A representative of the Division of Mental Health and Hospitals has also noted that the assignment of interventions by nursing personnel was confusing and problematic.

RESPONSE: Based on these comments, the Department has reconsidered whether it is necessary to assign tasks to specific levels of staff in the rules for restraints, and has concluded that this assignment should appropriately fall within the hospital's nursing care policies. These policies, in turn, would be based upon scopes of practice set forth by the New Jersey Board of Nursing. Consequently, the subsections at N.J.A.C. 8:43G-18.4(f) and (g), referring to interventions by nursing personnel, have been modified to read: "Interventions while a patient is restrained, except as indicated at (g) below, shall be performed by nursing personnel in accordance with nursing care policy. They shall include at least the following and shall be documented." The actual interventions have been renumbered consecutively.

COMMENT: Dennis Lafer, Deputy Director of the Division of Mental Health and Hospitals wrote that there is a need to harmonize the

provisions of P.L.1991, c.234, addressing use of restraints and seclusion for psychiatric patients in screening services and short-term care facilities within hospitals with the use of restraints in N.J.A.C. 8:43G-18.4 and the use of seclusion in N.J.A.C. 8:43G-26.2. The commenter also stated that if periodic visual observation is necessary only every 30 to 60 minutes, the patient should be released from restraints.

RESPONSE: The Department notes that the standards for the use of restraints in subchapter 18 were designed to address issues of patient rights, health, and safety, and pertain to all patients in the hospital, regardless of diagnosis or location. Standards for the use of seclusion in subchapter 26 were revised to meet guidelines of the American Psychiatric Association Task Force Report No. 22 and to ensure careful attention to the patient's health and safety. Regarding periodic visual observation, the Department concurs that the release of the patient from restraints, as noted by the commenter, would be the ideal circumstance, and hospitals are encouraged through these rules to implement the least restrictive environment possible for each patient. However, there will be circumstances in which a patient has been stabilized but still requires restraints. Safeguards are mandated through frequent nursing assessments and renewal of physician orders every 24 hours. The rule specifying timeframes for periodic visual observation has been retained.

COMMENT: The New Jersey Department of the Public Advocate wrote in support of the effort to merge standards for every kind of restraint, since medical considerations are often the same for medical as they are for psychiatric patients. However, the proposed amendments, according to the commenter, dispense with American Psychiatric Association standards, which are minimal for psychiatric patients; these standards should be restored, since increased monitoring requirements appear to reduce use of restraints by facilities.

RESPONSE: The APA Task Force Report gives guidelines but does not have the force of regulation. The Department has relied upon those guidelines, along with many other resources, in the development of standards which it believes adequately address issues of patient rights and safety. Therefore, no change has been made.

COMMENT: The Public Advocate has asked the Department to clarify "imminent harm" by adding "physical" or "bodily."

RESPONSE: The Department believes that those terms are implicit in the descriptive phrase "imminent harm" and makes no change.

COMMENT: According to the Public Advocate, only imminent risk of future property damage (not past behavior) justifies the use of restraints; this will then comport with statutory language requiring "free[dom] from physical restraint and isolation."

RESPONSE: The Department accepts the comment, and has modified N.J.A.C. 8:43G-18.4(d) to read, in pertinent part, "... only when the safety of the patient or others is endangered or there is imminent risk that the patient will cause substantial property damage."

COMMENT: The Public Advocate indicated that the Department should amend the proposal to restore the following monitoring standards as delineated in APA standards:

- Physician's personal evaluation within one to three hours of emergency restraint application, at least for first application.
- Physician's personal evaluation at least twice per day.
- Release of each limb from restraint at least once per hour.
- Fifteen-minute checks regardless of patient's stability.

RESPONSE: The Department concurs with the concern for patient safety and welfare as set forth by the Office of the Public Advocate. However, the Department would note that the stringent guidelines in the APA Task Force Report emphasize the monitoring of psychiatric patients in seclusion and do not address as clearly the needs of a more general patient population for whom the use of restraints becomes necessary. The guidelines that the Public Advocate has recommended through the APA document are an ideal but are not feasible in a general acute care hospital setting. The fiscal impact upon patient and facility alike would be extremely great and needs to be balanced against the possible benefit. In such a cost-benefit analysis, the Department believes that the standards, developed through the Advisory Committee process, have achieved a good balance with adequate safeguards for patient rights, health, and safety. Suggested modifications to the rule have not been made.

N.J.A.C. 8:43G-18.6(g)

COMMENT: Elizabeth General Medical Center questioned whether the term "drug error" refers to incorrect medication delivered to a unit by the pharmacy or to incorrect medication administered to a patient. It was claimed that documentation in the medical record should reflect

only appropriate treatment and intervention and that drug errors are reported by means of incident reports, in accordance with policies and procedures concerning quality assurance and risk management.

RESPONSE: "Drug error" means the administration of the wrong medication or dose of medication, drug, diagnostic agent, chemical, or treatment requiring use of such agents, to the wrong patient, or at the wrong time, or the failure to administer such agents at the specified time, or in the manner prescribed or normally considered as accepted practice. Errors may be classified as "commissions," that is, medications incorrectly administered to the patient, such as unordered medication or medication in the wrong strength, or as "omissions," that is, medications not administered at prescribed times.

Proposed N.J.A.C. 8:43G-18.6(g) reflects the need to thoroughly communicate and document the occurrence of a drug error so as to minimize the degree to which the patient may be negatively affected. The Department contends that, if the proposed rule were to be revised in such a way as to confine reporting of drug errors to "incident reports" and to exclude such reporting from the medical record, health care personnel could be deprived of important information concerning the patients to whom they are providing services. Consequently, the proposed amendment has not been revised.

N.J.A.C. 8:43G-19 OBSTETRICS

N.J.A.C. 8:43G-19.2(a)5

COMMENT: Holy Name Hospital requested the Department to address the timeliness of the physician assessment conducted prior to the use of oxytocics, and suggested it be performed immediately prior to administration.

RESPONSE: The Department retains the hospital's prerogative to establish a time frame for physician assessments, but has amended N.J.A.C. 8:43G-19.2(a)5 to address the availability of a physician to manage any problems which may arise during infusion. Additionally, the Department has amended N.J.A.C. 8:43G-19.13(d) to specify that the physical examination must occur immediately prior to administration.

N.J.A.C. 8:43G-19.13(d)

COMMENT: Newton Memorial Hospital believed a certified nurse midwife should be permitted to examine the patient prior to the administration of oxytocics, and also added that the exam should be permitted to occur in the physician's office prior to the patient's admission to the hospital.

RESPONSE: The Department seeks to ensure that the health care professional who examines the patient prior to administration of oxytocics is capable of performing cesarean deliveries, thereby precluding nurse midwives from performing this particular physical exam. The rule has been clarified to specify that the examination must occur within one hour prior to administration of an oxytocic.

N.J.A.C. 8:43G-19.14

COMMENT: Memorial Hospital of Burlington County believes that the ASA Physical Status Classification system is too prescriptive and will require monitoring of patients, who may not, in the physician's judgment, need that level of monitoring. The commenter interprets the intent of the standard as being a means to ensure monitoring of patients receiving unscheduled emergency procedures, and believes the intent would be better served by allowing anesthesiologists more flexibility in defining emergency procedures. Burlington Anesthesia Associates informed the Department that almost all deliveries would be classified as an ASA Emergency, because deliveries, for the most part, are unplanned procedures.

RESPONSE: The Department's primary purpose in mandating use of the ASA Physical Status Classification system is to evaluate each patient's risk to anesthesia. The classification of a patient as an ASA Emergency would be based on an evaluation of the patient's condition as it related to the risk of anesthesia. Although the Department recognizes that most deliveries are unscheduled procedures, the delivery process is, nevertheless, a normal and desired phase of pregnancy. Viewed from this context, the Department does not believe the nature of the delivery process should be used as a criteria for classifying every patient as an ASA Emergency. The Department reiterates its belief that patients classified as ASA III and higher are sufficiently at risk to necessitate the level of monitoring prescribed in the standard.

N.J.A.C. 8:43G-19.14(b)5

COMMENT: Holy Name Hospital objects to the use of pulse oximetry and EKG monitoring for patients receiving anesthetic or pain control agents classified as ASA Class I or II.

RESPONSE: The Department does not prescribe the type of monitoring required for women undergoing nonsurgical deliveries classified as ASA Class I or II. The monitoring needs of these patients are determined by the obstetric service in consultation with the anesthesia service.

N.J.A.C. 8:43G-19.14(b)6

COMMENT: Holy Name Hospital supports the requirement for pulse oximetry and EKG monitoring for non-surgical obstetric patients classified for anesthesia risk as ASA Class III, IV or V.

RESPONSE: The Department acknowledges the support of Holy Name Hospital, and adds that this level of monitoring is also required for patients classified as ASA "Emergency."

N.J.A.C. 8:43G-19.14(c)6ii and 7i

COMMENT: The Mountainside Hospital has questioned the need for the recovery area to be staffed by a registered nurse with critical care training. The commenter believes critical care training is an onerous requirement. Holy Name Hospital objected to the need for the second professional to be physically present in the recovery area, and believed it to be sufficient for that individual to be "readily available."

RESPONSE: The Department specifies that a registered nurse with critical care training is required in the recovery area only when a patient recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency is present. Because these patients are recognized to be at higher risk and are thus representative of patients who recover in the Post Anesthesia Care Unit, the Department believes the recovery area should be staffed at a level comparable to that of the PACU at those times. The Department believes its use of the term "recovery area" provides flexibility for assignment of the second individual.

N.J.A.C. 8:43G-19.14(c)7i

COMMENT: Memorial Hospital of Burlington County does not believe the second healthcare personnel required to be available during the recovery phase of delivery should have to be a professional nurse. The commenter believes a unit secretary or nursing assistant is adequate, and has commented that requiring higher level staff in this situation would result in a high level of undue cost to the State and patients.

RESPONSE: The Department does not believe the staffing substitution suggested by the commenter ensures an adequate level of patient safety in the event of an emergency. Therefore, no change has been made.

N.J.A.C. 8:43G-20 EMPLOYEE HEALTH

COMMENT: Kimball Medical Center wrote in support of nurse practitioners functioning within the Employee Health Service in hospital settings.

RESPONSE: The Department acknowledges the commenter's position, and agrees that nurse practitioners working in a collaborative role with physicians provide a valuable and cost effective service in this setting.

N.J.A.C. 8:43G-20.1(a)5

COMMENT: The Division of Epidemiology and Communicable Disease Control has encouraged the Department to require vaccination of employees who are seronegative or non-immune rather than rely upon clinical restrictions.

RESPONSE: Although the Department does not mandate vaccination, it strongly encourages hospitals to facilitate vaccination of these employees as described at N.J.A.C. 8:43G-20.2(i).

N.J.A.C. 8:43G-20.2(f)

COMMENT: Bergen Pines County Hospital has questioned the employee screening requirement. The commenter believes a more cost effective approach to controlling the transmission of measles would be to offer a booster dose of MMR to all employees who were born after 1957 who have not had a second dose of MMR sometime in the recent past. The Essex County Hospital Center commented that additional blood testing and stocking of vaccines would result in significant additional expenses. The Division of Epidemiology and Communicable Disease Control wrote in support of the proposed rule and believed that this measure would significantly decrease measles morbidity among hospital employees. The Division cautioned however, that adults may

have difficulty providing written documentation of physician-diagnosed measles, and that reported cases of measles are sometimes misdiagnosed.

RESPONSE: The Department acknowledges the clinical efficiency and benefits derived from the approach suggested by Bergen Pines County Hospital; however, it applies only to those staff whose immune status has previously been determined. The Department is concerned about the risk posed by individuals who are seronegative but who have never been vaccinated; the suggested approach would not identify these individuals. In regard to the concern raised regarding the cost impact of the standard, the Department does not specifically mandate that the costs must be absorbed entirely by the hospital. The Department appreciates the support of the Division of Epidemiology and Communicable Disease Control and acknowledges and shares the concerns expressed by the Division.

N.J.A.C. 8:43G-23 PHARMACY

N.J.A.C. 8:43G-23.2(a)9 and 11

COMMENT: The term "up-to-date" was found by Saint Barnabas Medical Center to be ambiguous. The proposed amendments to N.J.A.C. 8:43G-23.2(a)9 and 11 would require up-to-date reference materials and an up-to-date formulary. It was noted that the New Jersey State Board of Pharmacy requires that the hospital have "current" editions of suitable reference texts. The commenter also indicated that, since a formulary may be reviewed in sections throughout the year, it is not clear whether or not such a formulary would be considered "up-to-date" by the Department.

RESPONSE: The proposed amendment to N.J.A.C. 8:43G-23.2(a)9 which refers to "up-to-date reference materials" was intended to ensure that medical and nursing staff have access to the most recent editions of reference texts, supplements, and other sources of information. Based on this intent of the amendment and on the commenter's statement, the proposed rule has been revised through the replacement of the term "up-to-date" by the term "current."

The Department believes that the practice of reviewing the formulary in sections throughout the year is not contrary to the intent of the proposed amendment to N.J.A.C. 8:43G-23.2(a)11. It is expected, however, that the policies and procedures required by the rule will specify the frequency of review, as determined by the pharmacy and therapeutics committee of the hospital. The proposed amendment has not been revised.

N.J.A.C. 8:43G-23.2(a)13

COMMENT: Saint Barnabas Medical Center stated that compliance with the proposed amendment would be so difficult that hospitals would be effectively precluded from offering the option of self-administration of drugs. The provision requiring precautions to ensure that a patient does not take the drugs of another patient and the provision concerning patient training and education were identified as being particularly difficult to satisfy.

RESPONSE: The Department does not agree with the commenter. The two provisions cited seem to be essential for patient safety, if the rules are to allow patients to administer drugs to themselves in a hospital environment. Moreover, the rules for hospital pharmaceutical services which were in effect from June 1984 to June 1990 contained similar provisions. The Department is not aware that the former rules effectively precluded hospitals from offering the option of self-administration. The rule, therefore, has not been revised.

N.J.A.C. 8:43G-23.6(f)

COMMENT: Practical problems would be encountered by hospitals if the proposed amendment to N.J.A.C. 8:43G-23.6(f) were to be adopted, according to Saint Barnabas Medical Center. The proposed amendment would require that cautionary instructions and ancillary information about drugs be communicated in writing to personnel responsible for administering the medications. The respondent stated that these professionals are responsible for knowing, or learning from reference materials or from the pharmacy, such information prior to administering a drug to a patient. Since use of the unit dose system makes it nearly impossible to include the required written information with each dose of medication, compliance with the proposed amendment might necessitate the preparation and periodic review by the hospital of notebooks which would need to be read by the nurses. The commenter suggested that this "would be very labor intensive and would require a large amount of time to implement and keep current."

RESPONSE: The Department does not agree that additional reference materials would have to be prepared and reviewed in order to

satisfy the amended rule. The hospital pharmacy could, for example, provide an ancillary label with the individual dose, place the dose in an envelope on which the cautionary instructions and ancillary information are written, or include this additional information on the medication administration record. This third option is especially convenient in the case of computer-generated medication administration records. Given the feasibility of these options, the rule has not been revised.

N.J.A.C. 8:43G-25 POST MORTEM

N.J.A.C. 8:43G-25.1(a)7

COMMENT: Two responses were received in regard to the proposed amendment to N.J.A.C. 8:43G-25.1(a)7. Both commenters disagreed with the way in which the proposed change seems to support the use of handling and identification procedures at variance with the principles of "universal precautions." The Hunterdon County AIDS/HIV Task Force stated that these "universal precautions" were correctly adopted by facilities on the recommendation of the Centers for Disease Control and the Occupational Safety and Health Administration and that adoption of this amendment would "give credibility to the irrational fears surrounding AIDS," would promote use of a medically unwarranted "double standard," and would lead to a "false sense of security."

RESPONSE: N.J.A.C. 8:43G-25.1(a)6 has been revised so as to reflect both its original intent and that of the proposed amendment to N.J.A.C. 8:43G-25.1(a)7. The revised rule is explicitly in agreement with Centers for Disease Control guidelines and the State statute concerning notification in the case of death related to AIDS or to a contagious, infectious, or communicable disease. As a result of this revision, proposed N.J.A.C. 8:43G-25.1(a)7 was rendered redundant and has been deleted. N.J.A.C. 8:43G-25.1(a)8 through 11, accordingly, have been recodified as N.J.A.C. 8:43G-25.1(a)7 through 10.

N.J.A.C. 8:43G-25.1(a)10

COMMENT: Holy Name Hospital recommended that the "specified time frames" of proposed N.J.A.C. 8:43G-25.1(a)10 be amended so as to read "specified time frames as per hospital policy."

RESPONSE: The Department agrees that the hospital is responsible for establishing the time frame for availability of autopsy reports. Since the proposed rule does not specify a particular time frame, the rule has not been revised.

N.J.A.C. 8:43G-26 PSYCHIATRY

COMMENT: The Division of Mental Health and Hospitals commented that subchapter 26, Psychiatry, does not reference P.L. 1987, c.116, which establishes screening services, short-term care facilities, and the role of mental health screeners. It was also noted that subchapter 26 does not reference P.L. 1991, c.234, which provides additional statutory rights to psychiatric patients in screening services and short term care facilities within hospitals; according to this commenter, references to these statutory provisions should be added to N.J.A.C. 8:43G-26.2.

RESPONSE: Although the Department concurs that P.L. 1987, c.116 and P.L. 1991, c.234 are applicable, proposed amendments to N.J.A.C. 8:43G-26.2 are limited to rules regarding the use of seclusion, restraints, and electroconvulsive therapy. Adding references to the screening law and patient rights in screening and short term care facilities would represent a substantive change requiring additional rulemaking. The Department will address this concern at a future date.

N.J.A.C. 8:43G-28 RADIOLOGY

COMMENT: The Mountainside Hospital has commented that the requirement to have non-obstetric ultrasound available within one hour at all times is unnecessary and costly; they have found that the need for an emergency ultrasound is a very rare occurrence.

RESPONSE: The Department has been advised that ultrasound technology must be available at all times for any hospital which has an emergency department (that is, for any general acute care hospital). Although its use may be infrequent, ultrasound is a potentially life-saving diagnostic tool in obstetric and certain other emergency situations. The amendment remains unchanged.

COMMENT: Monmouth Medical Center has commented that the requirement that specialized radiologic services be provided by programs approved through the Certificate of Need process would necessitate the transfer of approximately 500 inpatients per year out of the county for service, since the MRI facility serving all of Monmouth County is not a Certificate of Need approved facility. Counsel to the Radiological Society of New Jersey (Brach, Eichler, Rosenberg, Silver, Bernstein,

Hammer & Gladstone) has also commented that the rule, if adopted in its present form, would prohibit a hospital from transporting an inpatient to a non-certificated health care service without regard to the patient's condition or hospital length of stay. The Radiologic Society refers specifically to the limited number of certificated MRI sites, and recommends that the rule provide flexibility to hospitals in referring patients to non-certificated sites.

RESPONSE: The amendment as proposed does not change the scope of the rule; the intent of the amendment is to clarify the language. The rule requires hospitals which directly offer MRI or other specialized services to have obtained approval through the Certificates of Need process for this service to be offered off-site. It does not require non-certificated sites to obtain Certificates of Need, although under the terms of Chapter 187, new services may now require Certificate of Need. The amendment does not require the transport of inpatients to a certificated site. The insurer's ability to deny reimbursement of such services, however, is outside the scope of this rule. The amendment remains unchanged.

COMMENT: The New Jersey Department of Environmental Protection, Radiologic Technology Board of Examiners, has commented that the amendment proposed at N.J.A.C. 8:43G-28.8(c) infers that a nurse, under the direction of a physician, could legally perform tasks which may infringe upon the scope of practice of a licensed diagnostic radiologic technologist. The Board stated that a registered professional nurse shall not position patients for radiographic procedures nor operate radiation equipment unless licensed pursuant to the Radiologic Technologist Act.

RESPONSE: The Department accepts the Board's comment, and clarifies the intent of the standard with the following revision: "A registered professional nurse shall be available in the radiology service when needed, in the physician's judgement, to administer medications and perform other nursing duties."

SUBCHAPTER 29. PHYSICAL AND OCCUPATIONAL THERAPY

One letter of comment was received in response to the proposed amendments to subchapter 29.

COMMENT: The commenter from Essex County Hospital Center indicated that "an extreme shortage" of occupational therapists exists, especially to public health care facilities, and suggested that "an alternative therapeutic modality embodying some of the components and principles of occupational therapy might be investigated and made available."

RESPONSE: Amendments were proposed at N.J.A.C. 8:43G-29.13(h) and 29.17, specifying, respectively, that hospitals which contracted with an occupational therapy service must comply with policies and procedures delineated at N.J.A.C. 8:43G-29.13-29.23, and that hospitals must only have the capacity to offer services when required by a physician's order. These amendments were proposed in order to allow greater flexibility to hospitals in obtaining occupational therapy services when they are required. The Department believes that physician's orders must be carried out exactly as written, in order to assure quality care for patients and to protect their health and safety. Modifying physician's orders or substituting such unspecified "alternative modalities" would not be in the best interests of patients. Therefore, the rule has not been changed.

N.J.A.C. 8:43G-30 RENAL DIALYSIS

N.J.A.C. 8:43G-30.3(d)

COMMENT: The Department received numerous letters of opposition to the proposed amendment eliminating specific credentialing requirements for the social worker assigned to the renal dialysis service.

RESPONSE: The Department acknowledges the concerns expressed by commenters and agrees that adoption of this amendment may impact the delivery of renal services. Additionally, the Department acknowledges that the Federal rules at CFR 405.2102(6)(i)(ii), which appeared in the Federal Register of June 3, 1976, mandate that all social workers in End Stage Renal Disease settings have masters degrees, unless they were hired prior to 1976. The proposed amendment has been withdrawn.

N.J.A.C. 8:43G-30.6(f)

COMMENT: The Advisory Committee to the Chronic Renal Disease Program of the Department of Health commented that if a patient refuses reuse dialysis treatment, the unit should be able to transfer the patient to a nearby facility for single use dialysis treatment.

RESPONSE: The Department believes the patient's decision to receive single use dialysis treatment should be honored in the facility most easily accessible for the patient. The patient should not feel compelled

to accept a particular treatment modality simply to remain in that facility. The rule has not been revised in the manner requested.

N.J.A.C. 8:43G-30.6(l)

COMMENT: The Advisory Committee to the Chronic Renal Disease Program of the Department of Health suggested rewording the proposed amendment. The suggested wording would eliminate any confusion that the Department intended to require trained helpers for all unsupervised dialysis treatments.

RESPONSE: The Department agrees with the Renal Advisory Committee and has reworded the standard to include the phrase "trained patients and/or helpers" to accurately reflect the intent of the standard.

N.J.A.C. 8:43G-32 SAME DAY STAY

N.J.A.C. 8:43G-32

COMMENT: The New Jersey State Society of Anesthesiologists suggests codification of a requirement for same-day service to advise patients that a responsible adult should be present to care for their needs during the 24 hours following surgery.

RESPONSE: The Department believes such a requirement is implicit in N.J.A.C. 8:43G-32.3(a)7. Hospitals are required to address a patient's self-care capability as part of his or her discharge criteria and procedures; the Department believes it is standard medical practice to advise those patients assessed not to be capable of caring for themselves that accommodations should be made to ensure that someone capable of assisting the patients is available.

N.J.A.C. 8:43G-32.3(a)9

COMMENT: The New Jersey State Society of Anesthesiologists recommends replacement of the phrase "accompanied by another person" with "accompanied by a responsible adult." The commenter believes it is necessary to clarify that the individual to whom the patient is released must be a responsible adult.

RESPONSE: The Department agrees and has revised the language of the rule as suggested.

N.J.A.C. 8:43G-32.5(e)4

COMMENT: Memorial Hospital of Burlington County and Morristown Memorial Hospital object to requiring completion of a history and physical examination within seven days. Memorial Hospital believes the existing time-frame of 14 days is more reasonable. Morristown Memorial Hospital comments that conflicts due to either the patient or physician's schedule often occur, and preclude the scheduling of elective procedures within seven days of the physician office visit. Morristown Hospital's suggestion is to delete reference to a specific time-frame.

RESPONSE: The Department has amended the standard to allow for a 14-day time-frame, given the scheduling delays that can often occur in this area.

Summary of Agency-Initiated Changes:

At N.J.A.C. 8:43G-15.2(b)1, language referring to an "electronic physician's signature" has been changed, for clarity, to "physician's electronic signature."

N.J.A.C. 8:43G-15.3(d)2ii, allowing for sales tax where required by law, has been deleted. Following recent inquiry, the Department has received a response during the comment period from the Department of the Treasury, Division of Taxation, indicating that, in their opinion, retrieval service for medical records is not subject to sales tax. N.J.A.C. 8:43G-15.3(d)2iii has been recodified.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets *[thus]*).

SUBCHAPTER 4. PATIENT RIGHTS

8:43G-4.1 Patient rights; mandatory

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

1.-26. (No change.)

27. To be given a summary of these patient rights, as approved by the New Jersey State Department of Health, and any additional policies and procedures established by the hospital involving patient

rights and responsibilities. This summary shall also include the name and phone number of the hospital staff member to whom patients can complain about possible patient rights violations. This summary shall be provided in the patient's native language if 10 percent or more of the population in the hospital's service area speak that language. In addition, a summary of these patient rights, as approved by the New Jersey State Department of Health, shall be posted conspicuously in the patient's room and in public places throughout the hospital. Complete copies of this subchapter shall be available at nurse stations and other patient care registration areas in the hospital for review by patients and their families or guardians;

28.-29. (No change.)

SUBCHAPTER 5. ADMINISTRATIVE AND HOSPITAL-WIDE SERVICES

8:43G-5.2 Administrative and hospital-wide policies and procedures; mandatory

(a) (No change.)

(b) A patient shall be transferred to another hospital only for a valid medical reason, or in order to comply with other standards and rules, or by clearly expressed and documented patient choice. The hospital's inability to care for the patient shall be considered a valid medical reason. The sending hospital shall receive approval from a physician and the receiving hospital before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include, at least:

1.-4. (No change.)

5. Patient information collected by the sending hospital, as specified in N.J.A.C. 8:43G-15.2(e);

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

(f) Upon arrival at a service location, an inpatient's treatment shall be initiated within 30 minutes. Following completion of treatment, the patient shall be returned to his or her hospital room within a reasonable length of time not to exceed 30 minutes.

Recodify existing (f)-(l) as (g)-(m). (No change in text.)

(n) If the hospital permits controlled smoking by patients, any room designated for smoking shall ***not share the same ventilation system as rooms occupied by patients and/or nonsmokers.*** * [meet the following ventilation requirements for acceptable indoor air quality:

1. A ventilation system which prevents contaminated air from recirculating through the hospital;

2. The number of air changes per hour within the designated smoking room shall be equivalent to the number necessary to achieve 60 cubic feet per minute per smoker, based on an occupancy of no greater than 5 smokers per 100 sq. ft.; and

3. Negatively pressurized air to prevent backstreaming of smoke into nonsmoking areas of the facility.]*

(o) The hospital shall have a written policy establishing the maximum number of patients permitted in a designated smoking room at the same time, and procedures for monitoring patients while in the smoking room. The maximum number of patients permitted in a designated smoking room at the same time shall not exceed five smokers per 100 square feet.

Recodify existing (m) as (p). (No change in text.)

8:43G-5.3 Administrative and hospital-wide staff qualifications; mandatory

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

(d) If the hospital performs organ transplants, the director of the medical staff shall ensure that all health professionals serving the patient have sufficient clinical experience in transplantation care, based on predetermined criteria established in hospital policies and procedures or set by the National Organ Procurement and Transplantation Network.

8:43G-5.5 Administrative and hospital-wide patient services; mandatory

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

(e) The hospital shall have developed a system for organ donation in accordance with N.J.S.A. 26:6-57 et seq.

1. (No change.)

2. The hospital shall provide counseling regarding anatomical gifts for families of those patients suitable for organ or tissue donation in which death appears to be imminent.

3. (No change.)

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

(i) Each department in the hospital providing direct patient care shall have a health care professional capable of initiating cardiopulmonary resuscitation on duty at all times when patients are present.

8:43G-5.7 Administrative and hospital-wide staff education; mandatory

(a) There shall be a formal orientation program for all new permanent staff that includes at least training in patient rights as found at N.J.A.C. 8:43G-4, a tour of the hospital, orientation to the hospital's security system and disaster plan, and review of procedures to follow in case of an emergency.

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

8:43G-5.9 Department education programs; mandatory

(a) Each department in the hospital shall develop, revise as necessary, and implement a written plan of staff education. The plan shall address the education needs, relevant to the service, of different categories of staff on all work shifts. The plan shall include education programs conducted at least annually in the service, in other areas of the hospital, or off-site.

(b) The plan shall include education programs that address at least the following:

1.-4. (No change.)

5. Education on statutory requirements relevant to the specific service, such as identification and reporting of victims of abuse; and

6. (No change.)

(c) (No change.)

8:43G-5.12 Occupational health policies and procedures; mandatory

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

(c) The hospital shall have available and shall comply with the most current version of the following guidelines, incorporated herein by reference, to protect health care workers who may be exposed to infectious blood-borne diseases, such as AIDS and hepatitis-B:

1. "Enforcement Procedures for Occupational Exposure to Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV)," OSHA Instruction CPL-2-2.44B, August 15; February, 1990;

2. "Recommendations for Prevention of HIV Transmission in Health-Care Settings," CDC, Morbidity and Mortality Weekly Report (MMWR) 1987; Volume 36 (supplement 2S); and

3. "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," CDC Morbidity and Mortality Weekly Report (MMWR) 1988; Volume 37.

Note: (No change.)

(d) (No change.)

8:43G-5.16 Disaster planning; mandatory

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

(f) While developing the hospital's plan for evacuating patients, the disaster planner shall communicate with the facility or facilities designated to receive relocated patients.

Recodify existing (f)-(j) as (g)-(k). (No change in text.)

8:43G-5.18 Blood bank; mandatory

(a) (No change.)

(b) The hospital shall maintain an emergency supply of blood and shall have access to additional supplies as needed.

(c) (No change.)

SUBCHAPTER 7. CARDIAC

8:43G-7.5 Cardiac surgery staff time and availability; mandatory

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

(c) An anesthesiologist responsible for providing anesthesia care during cardiac surgery shall meet one of the following qualifications:

1. Is board certified in anesthesiology, and has completed additional training in providing anesthesia care during cardiac surgery; or

2. Is board eligible in anesthesiology, has completed additional training in providing anesthesia care during cardiac surgery, and is examined for certification within two years of initial anesthesia board eligibility.

(d)-(i) (No change.)

8:43G-7.15 Cardiac catheterization staff qualifications; mandatory
(a) (No change.)

(b) Any physician performing cardiac catheterization as primary operator in the cardiac catheterization laboratory shall meet one of the following qualifications:

1. Is board certified in internal medicine and the subspecialty of cardiovascular disease and has completed the current training and experience requirement in cardiac catheterization, including twelve months experience in the cardiac catheterization laboratory, as required by the American Board of Internal Medicine; or

2. Is board eligible in the subspecialty of cardiovascular disease, has completed the current training and experience requirement in cardiac catheterization, including 12 months experience in the cardiac catheterization laboratory, as required by the American Board of Internal Medicine, and is examined for certification within two years of initial cardiac board eligibility.

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

8:43G-7.16 Cardiac catheterization staff time and availability; mandatory

(a) The following staff shall be present for all cardiac catheterization procedures:

1. A physician who meets the requirements in N.J.A.C. 8:43G-7.15(b);

2. A registered professional nurse, trained and experienced in assisting in cardiac catheterization procedures, who acts as the circulating nurse; and

3. One of the following:

i. A scrub nurse, who is either a registered professional nurse or a licensed practical nurse; or

ii. A technician, who has been trained in assisting in cardiac catheterization procedures.

8:43G-7.22 Percutaneous transluminal coronary angioplasty policies and procedures; mandatory

(a) Percutaneous transluminal coronary angioplasty (PTCA) shall be performed only in cardiac surgical centers approved by the New Jersey State Department of Health.

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

8:43G-7.23 PTCA staff qualifications; mandatory

(a) Any physician performing PTCA as primary operator shall meet one of the following qualifications:

1. Is board certified in both internal medicine and the subspecialty of cardiovascular disease, or is board eligible in the subspecialty of cardiovascular disease and shall be examined within two years of initial cardiac eligibility. Physicians meeting either of these qualifications must additionally complete the training and experience requirement in cardiac catheterization including 24 months in the cardiac catheterization laboratory during which time the individual actively participated in at least 200 PTCA's under the supervision of primary operators provided by no more than two separate institutions; or

2. Is board certified in internal medicine and the subspecialty of cardiovascular disease as of July 1, 1990 and has performed at least 50 PTCA's per year as the primary operator for each of the past two years.

Recodify existing (c) as (b). (No change in text.)

8:43G-7.24 PTCA staff time and availability; mandatory

(a) The following staff shall be present for all PTCA procedures:

1. A physician who meets the requirements in N.J.A.C. 8:43G-7.23(a);

2. A registered professional nurse certified in basic cardiac life support, and trained and experienced in cardiac catheterization and PTCA who acts as the circulating nurse; and

3. One of the following individuals:

i. A scrub nurse who is either a registered professional nurse or a licensed practical nurse; or

ii. A technician who has been trained in assisting with cardiac catheterization and PTCA.

8:43G-7.26 Electrophysiology studies staff qualifications; mandatory

(a) The physician performing electrophysiology studies (EPS) as primary operator shall meet at least one of the following qualifications:

1. Fulfills the criteria of being a catheterizing physician as defined in N.J.A.C. 8:43G-7.15(b)1 or 2; or

2. Is board eligible in the subspecialty of cardiovascular disease and has performed 25 complex cases per year as primary operator for each of the past five years.

(b) (No change.)

8:43G-7.27 EPS staff time and availability; mandatory

(a) The following staff shall be present during all EPS procedures:

1. A physician who meets the requirements in N.J.A.C. 8:43G-7.26(a) and (b);

2. A registered professional nurse certified in basic cardiac life support and trained and experienced in cardiac catheterization and EPS who acts as the circulating nurse; and

3. One of the following individuals:

i. A scrub nurse who is either a registered professional nurse or a licensed practical nurse; or

ii. A technician who has been trained in assisting with cardiac catheterization and EPS.

8:43G-7.28 Board eligibility status

Board eligibility status in the subspecialty of cardiovascular disease shall be of limited duration as defined by the American Board of Internal Medicine.

8:43G-7.32 Pediatric cardiac surgery staff time and availability; mandatory

(a) All staff providing clinical services to the pediatric cardiac surgical patient shall be trained and experienced in pediatric cardiac surgical care.

Recodify existing (a)-(f) as (b)-(g). (No change in text.)

8:43G-7.33 Pediatric cardiac surgery space and environment; mandatory

The hospital shall designate beds in the cardiac surgical intensive care service, the pediatric surgical intensive care service or the pediatric medical intensive care service for patients from the pediatric cardiac surgical service.

8:43G-7.34 Pediatric cardiac surgery supplies and equipment; mandatory

(a) There shall be monitoring and treatment equipment available that is appropriate for the pediatric cardiac surgical patient.

Recodify existing (a) as (b). (No change in text.)

8:43G-7.37 Pediatric cardiac catheterization policies and procedures; mandatory

(a) (No change.)

(b) The pediatric cardiac catheterization service may share the catheterization laboratory with the adult cardiac catheterization program. However, the staff who participates in the pediatric catheterization shall be trained and experienced in the care of the pediatric cardiac patient and the equipment used shall be appropriate to meet the needs of the pediatric patient.

(c) (No change.)

8:43G-7.40 Staff qualifications waiver

Exceptions for physicians with hospital privileges to these minimum board certification and training requirements may be granted by the Commissioner or his or her designee upon application by an institution providing acceptable documentation which assures that the physician's qualifications are at a level assuring the level of patient safety intended by the requirements of these rules. As part of the waiver request, the hospital shall provide documentation

of the practitioner's qualifications that at a minimum addresses the following:

1. A curriculum vitae which describes the practitioner's academic training and professional experience;
 2. Documentation of the volume of procedures that the practitioner has completed on an annual basis;
 3. Length of experience in performance of procedure;
 4. Current status and future intention to meet the requirements for board-certification; and
 5. Documentation of the practitioner's complication rates in performing the procedure for which a waiver is sought.
- (b) Additional information may be requested from the hospital by the Department in making a determination or it may obtain the recommendations from the Commissioner's Cardiac Services Advisory Committee.

(c) Waivers may be granted for periods not to exceed three years and are renewable at the discretion of the Commissioner.

SUBCHAPTER 8. CENTRAL SUPPLY

8:43G-8.4 Central supply patient services; mandatory

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

(e) Shelf life of packaged sterile items shall be determined and indicated on the items according to central supply sterilization policies and procedures which follow guidelines recommended by the Association for the Advancement of Medical Instrumentation (AAMI) as outlined in "Good Hospital Practice: Steam Sterilization and Sterility Assurance," incorporated herein by reference.

8:43G-8.7 Central supply space and environment; mandatory

(a) (No change.)

(b) Laparoscopes, arthroscopes, and other scopes that enter normally sterile areas of the body shall be sterilized or given high-level disinfection after each use according to manufacturers' recommendations or according to policy established by the hospital's infection control committee.

(c) Scopes and all channels that enter non-sterile areas of the body shall be given high level disinfection after each use according to the manufacturers' recommendations or according to hospital policy.

(d) Accessories to scopes shall be sterilized ***or processed according to manufacturers' recommendations*** after each use.

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

8:43G-8.11 Sterilizer patient services; mandatory

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

(f) Methods for processing reusable medical devices shall conform with the following or revised or later editions, if in effect, incorporated herein by reference:

1. The current edition of the Centers for Disease Control "Methods for Assuring Adequate Processing and Safe Use of Medical Devices";
 2. The Association for the Advancement of Medical Instrumentation, (AAMI) requirements, "Good Hospital Practice: Steam Sterilization and Sterility Assurance;" and
 3. The Association for the Advancement of Medical Instrumentation, (AAMI) requirements, "Good Hospital Practice: Steam Sterilization Using the Unwrapped Method (Flash Sterilization)."
- (g) (No change.)

SUBCHAPTER 9. CRITICAL AND INTERMEDIATE CARE

8:43G-9.7 Critical care staff time and availability; mandatory

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

(d) Nursing students shall render care to patients in the critical care service only when qualified supervision, as defined by the hospital and the nursing school, is available in the unit.

8:43G-9.9 Critical care patient service; mandatory

Information and explanation shall be provided to the patient and the patient's family and documented in the patient's record, regarding the patient's condition, equipment, and specific procedures.

8:43G-9.13 Critical care supplies and equipment; mandatory

(a) (No change.)

(b) Emergency supplies, as defined by the policies and procedures of the critical care unit, shall be accessible for all patients.

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

8:43G-9.19 Intermediate care structural organization; mandatory

(a) (No change.)

(b) Dedicated intermediate care beds shall be provided within an identifiable patient care nursing unit. There shall be a separate physical area devoted to nursing management for the care of the intermediate patient. This separate area may be designated within an existing nursing station located on the intermediate nursing care unit.

SUBCHAPTER 10. DIETARY

8:43G-10.1 Dietary policies and procedures; mandatory

(a) (No change.)

(b) A diet manual detailing nutritional and therapeutic standards for meals and snacks, and a nutrient analysis of menus, shall be annually reviewed. A current diet manual shall be available at each nurses station and in the dietary department and medical library.

(c) (No change.)

8:43G-10.4 Dietary staff time and availability; mandatory

(a) (No change.)

(b) Dietary service members shall be assigned duties based upon their education, training and competencies and in accordance with their job descriptions.

SUBCHAPTER 11. DISCHARGE PLANNING

8:43G-11.5 Discharge planning patient services; mandatory

(a) (No change.)

(b) The hospital shall make a diligent effort to find and effect an appropriate placement for any patient ready for discharge but requiring further care. Documentation shall be included in the patient's medical record.

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

(g) For all patients who receive discharge planning, the patient's medical record shall include on-going documentation and a summary or summaries of the patient's discharge plan prepared by a member of the discharge planning team at the time of discharge, or within 30 days of discharge.

SUBCHAPTER 12. EMERGENCY DEPARTMENT

8:43G-12.2 Emergency department policies and procedures; mandatory

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

(d) The emergency department shall have a written protocol that addresses the ability of family members and significant others to remain with patients during treatment. The protocol shall also address the special needs of patients who are unable to communicate for reasons of language, disability, age, or level of consciousness.

(e) (No change.)

8:43G-12.3 Emergency department staff qualifications; mandatory

(a) Effective July 1, 1992, each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall meet at least one of the following qualifications:

1.-2. (No change.)

3. Within the past five years has at least one year of full-time clinical experience in emergency medicine. Effective July 1, 1994, the physician shall have three years of full-time clinical experience in emergency medicine within the past five years.

(b) (No change in text.)

(c) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's

graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Cardiac Life Support and ***either*** Advanced Pediatric Life Support ***or Pediatric Advanced Life Support*** within 12 months of initial assignment. Physicians who are board certified or currently eligible to be certified in emergency medicine shall be exempt from this requirement.

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

8:43G-12.7 Emergency department patient services; mandatory

(a)-(l) (No change.)

(m) A patient shall be transferred to another health care facility only for a valid medical reason or by patient choice. The sending emergency department shall receive approval from a physician and the receiving health care facility before transferring the patient. Documentation for the transfer shall be sent with the patient, with a copy or summary maintained by the transferring hospital. This documentation shall include at least:

1.-6. (No change.)

(n)-(p) (No change.)

(q) The emergency department staff shall conform with hospital policies and procedures for complying with applicable statutes and protocols to report child abuse, sexual abuse, and abuse of elderly or disabled adults, specified communicable disease, rabies, poisonings, and unattended or suspicious deaths.

(r)-(w) (No change.)

8:43G-12.10 Emergency department staff education and training; mandatory

(a) (No change.)

(b) Regularly assigned emergency department staff shall attend training or educational programs related to the identification and reporting of child abuse and/or neglect in accordance with N.J.S.A. 9:6-1 et seq.; sexual abuse; domestic violence; and abuse of the elderly or disabled adult.

SUBCHAPTER 13. HOUSEKEEPING AND LAUNDRY

8:43G-13.4 Housekeeping patient services; mandatory

(a)-(n) (No change.)

(o) Fly strips shall not be located over food preparation and service areas or in patient care areas.

(p) (No change.)

8:43G-13.13 Laundry supplies and equipment; mandatory

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

(c) The laundry service shall monitor at least the following:

1. pH;

2.-4. (No change.)

(d) (No change.)

SUBCHAPTER 14. INFECTION CONTROL AND SANITATION

8:43G-14.1 Infection control structural organization; mandatory

(a) There shall be a hospital infection control committee that includes representatives from at least: infection control, medical staff, nursing service, administration, clinical laboratory, respiratory care service, surgery, and the employee health service. The committee shall receive formal advice from all other services upon its request.

(b) The infection control committee shall direct and assure compliance with the infection control program, including at least the following:

1. Formulating a system for identifying and monitoring nosocomial infections that is at least equivalent to the Centers for Disease Control "Definitions for Nosocomial Infections, 1988", PB88-187117, and CDC Guidelines for Isolation Precautions in Hospitals incorporated herein by reference.

2.-6. (No change.)

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

8:43G-14.9 Sanitation patient services; mandatory

(a) (No change.)

(b) Hot running water (between 95 and 110 degrees Fahrenheit) and cold running water shall be provided in patient care areas.

SUBCHAPTER 15. MEDICAL RECORDS

8:43G-15.2 Medical records policies and procedures; mandatory

(a) (No change.)

(b) All entries in the patient's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

1. If computer generated orders with ***[an electronic]* *a*** physician's ***electronic*** signature are used, the hospital shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of ***any*** computer generated signature.

2. If a facsimile communications system (FAX) is used, entries into the medical record shall be in accordance with the following procedures:

i. The physician shall sign the original order, history and/or examination at an off-site location;

ii. The original shall be Faxed to the hospital for inclusion into the medical record;

iii. The physician shall submit the original for inclusion into the medical record within 72 hours; and

iv. The Faxed copy shall be replaced by the original.

(c) Medical records, including outpatient records, shall be organized in a uniform format within each clinical service.

(d)-(k) (No change.)

8:43G-15.3 Medical record patient services; mandatory

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

(d) If a patient or the patient's legally authorized representative requests, in writing a copy of his or her medical record, a legible, written copy of the record shall be furnished at a fee based on actual costs. ("Legally authorized representative" means spouse, immediate next of kin, legal guardian, patient's attorney, or third party insurer where permitted by law.) One copy of the medical record from an individual admission shall be provided to the patient or the patient's legally authorized representative within 30 days of request, in accordance with the following:

1. The fee for copying records shall not exceed \$1.00 per page or \$100.00 per record for the first 100 pages. For records which contain more than 100 pages, a copying fee of no more than \$0.25 per page may be charged for pages in excess of the first 100 pages, up to a maximum of \$200.00 for the entire record;

2. In addition to per page costs, the following charges are permitted:

i. A search fee of no more than \$10.00 per patient per request;

[ii. Where required by law, sales tax; and]

[iii.]*ii. A postage charge of actual costs for mailing, not to exceed \$5.00. No charges shall be assessed other than those permitted in (d)1 and 2 above.

3. The hospital shall establish a policy assuring access to copies of medical records for patients who do not have the ability to pay; and

4. The hospital shall establish a fee policy providing an incentive for use of abstracts or summaries of medical records. The patient or his or her representative, however, has a right to receive a full or certified copy of the medical record.

*** (e) If the patient or the patient's legally authorized representative subsequently requests additional copies of a medical record which has been furnished in accordance with (d) above, the additional copy(s) shall be furnished at a fee based on actual costs, and in no case shall exceed \$1.00 per page.***

[(e)]*(f) The Department shall periodically reevaluate the reasonableness of the fee scale contained in (d) above, and shall report to the Health Care Administration Board on or before July 1, 1993 on the need for amendment.

[(f)]*(g) Access to the medical record shall be limited only to the extent necessary to protect the patient. A verbal explanation for any denial of access shall be given to the patient or legal guardian by the physician and there shall be documentation of this in the

medical record. In the event that direct access to a copy by the patient is medically contraindicated (as documented by a physician in the patient's medical record), the medical record shall be made available to a legally authorized representative of the patient or the patient's physician.

Recodify existing (f)-(g) as *[(g)-(h)]* *(h)-(i)* (No change in text.)

SUBCHAPTER 16. MEDICAL STAFF

8:43G-16.1 Medical staff structural organization; mandatory

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

(k) The hospital shall notify the New Jersey State Board of Medical Examiners, or a medical practitioner review panel created by legislation and subordinate to the Board, if a practitioner who is employed by, under contract to render professional services to, or has privileges at the hospital:

1. Voluntarily resigns from the staff while the facility is reviewing the practitioner's conduct or patient care or has through any member of the medical or administrative staff expressed an intention to do so;

2. Voluntarily relinquishes any partial privileges to perform a specific procedure while the hospital is reviewing the practitioner's conduct or patient care or has, through any member of the medical or administrative staff, expressed an intention to do so;

3. Has fully or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct or impairment;

4. (No change.)

5. Is granted a leave of absence pursuant to which he or she may exercise clinical privileges or practice within the hospital if the reasons provided in support of the leave relate to any physical, mental, or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety;

6.-7. (No change.)

(l) Notifications required by (k) above shall be provided within seven days of the reported event and shall be submitted on forms approved by the Department of Health for that purpose.

(m) (No change.)

(n) The hospital shall provide, upon request, to the following:

Office of the Assistant Commissioner
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

copies of all reports regarding physician hospital privileges sent to the New Jersey State Board of Medical Examiners, or to the practitioner review panel created by legislation and reporting to the board. All records regarding such copies shall be made available to the Department of Health personnel for official purposes and, for each report, to the specific facility mentioned in the report.

(o) For the purposes of (k) through (n) above, "practitioner" means only a person licensed to practice: medicine and surgery under N.J.S.A. 45:9-1 et seq. or a medical resident or intern; or podiatry under N.J.S.A. 45:5-1 et seq.

8:43G-16.2 Medical staff policies and procedures; mandatory

(a) (No change.)

(b) All physician orders for medication, treatment, and restraints shall be in writing. All orders for restraints shall be made in accordance with requirements at N.J.A.C. 8:43G-18.4(c) through (e) and (i).

8:43G-16.6 Medical staff patient services; mandatory

(a) (No change.)

(b) Each patient admitted to the hospital shall have a medical history and physical examination that includes a provisional diagnosis performed by a physician within seven days prior to the admission or within 24 hours after admission. If the history and physical were performed within seven days prior to admission, the patient's history

and physical examination record completed by the attending physician shall be included in the medical record, with any subsequent changes recorded at the time of admission.

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

8:43G-16.7 Medical staff education; mandatory

Requirements for the medical staff education program shall be as provided in N.J.A.C. 8:43G-5.9(a) and (b).

SUBCHAPTER 18. NURSING CARE

8:43G-18.4 Nursing care; use of restraints*; **mandatory***

(a) The standards in this section shall apply to the use of physical restraints in all patient care areas of the hospital. Physical restraints are defined as devices, materials, or equipment that are attached or adjacent to a person and that prevent free bodily movement to a position of choice.

(b) The hospital shall have written policies and procedures regarding the use of physical restraints that are reviewed annually, revised as needed, and implemented. They shall include at least the following:

1. Protocol for the use of alternatives to physical restraints, such as staff or environmental interventions, structured activities, or behavior management. Alternatives shall be utilized whenever possible to avoid the use of restraints;

2. Protocol for the use and documentation of a progressive range of restraining procedures from the least restrictive to the most restrictive;

3. A delineation of indications for use, which shall be limited to:

i. Prevention of imminent harm to the patient or other persons when other means of control are not effective or appropriate; or
ii. Prevention of serious disruption of treatment or significant damage to the physical environment;

4. Contraindications for use, including at least clinical contraindications, convenience of staff, or discipline of the patient;

5. Identification of restraints which may be used in the hospital, which shall be limited to methods and mechanical devices that are specifically manufactured for the purpose of physical restraint;

6. Protocols for notifying the family or guardian of reasons for use of restraints, and for informing the patient and requesting consent when clinically feasible; and

7. Protocol for removal of restraints when goals have been accomplished.

(c) Except in an emergency, a patient shall be physically restrained only after the attending physician or another designated physician has personally seen and evaluated the patient and has executed a written order for restraint.

(d) An emergency restraint procedure, beginning with the least restrictive alternative that is clinically feasible, shall be initiated by licensed nursing staff only when the safety of the patient or others is endangered or ***[the patient has caused]* *there is imminent risk that the patient will cause*** substantial property damage. The attending physician or another designated physician shall be notified immediately and shall respond within one hour. A physician order shall be given if the use of restraints is to continue beyond one hour. The physical and mental condition of the patient shall be evaluated and documented by medical or licensed nursing personnel at least once every two hours. The attending or designated physician shall personally observe and evaluate the patient within 24 hours, and continuation of restraints shall occur only upon written physician orders.

(e) In all cases, the attending or designated physician shall observe the restrained patient at least once every 24 hours to evaluate any changes in the patient's physical or mental status. The need for continued restraint shall be documented in the patient's record and implemented only by written physician orders, which must be renewed every 24 hours.

(f) Interventions ***[by licensed nursing personnel]*** while a patient is restrained, except as indicated at (g) below, shall ***be performed by nursing personnel in accordance with nursing care policy. They shall*** include at least the following and shall be documented:

1. Assessment for physical and mental status and reevaluation of need for restraints at least every two hours;
2. Toileting at least every two hours with assistance if needed;
3. Monitoring of vital signs **[in accordance with nursing care policy]**; and
4. Release of restraints at least once every two hours in order to:

- i. Assess circulation and skin integrity;
- ii. Perform skin care; and
- iii. Provide an opportunity for exercise or perform range of motion procedures for a minimum of five minutes per limb.

[(g) Interventions by nursing personnel while a patient is restrained, except as indicated at (h) below, shall include at least the following and shall be documented:]

**[1.]*5.* Periodic visual observation which is performed with the following frequency:*

- i. Continuously if clinically indicated by the patient's condition; or
- ii. At least every 15 minutes while the patient's condition is unstable; and
- iii. Thereafter at least every 30 to 60 minutes based upon an evaluation of the patient's acuity;

**[2.]*6.* Administration and monitoring of adequate fluid intake;*

**[3.]*7.* Adequate nutrition through meals at regular intervals, snacks, and assistance with feeding if needed;*

[4.]*8.* Assistance with bathing as required, occurring at least once [every 24 hours]* **a day*; and*

**[5.]*9.* Ambulation at least once every four hours if clinically feasible.*

[(h)]*(g)* Interventions **[by nursing personnel] for patients wearing vest or similar restraints for overnight sleeping shall **be performed by nursing personnel in accordance with nursing care policy. They shall*** include at least the following and shall be documented:*

1. Periodic visual observation based on patient acuity occurring at least once every hour;
2. Administration of fluids as required;
3. Toileting as required; and
4. Release of restraints **[by licensed nursing personnel]** at least once every two hours for repositioning and skin care, unless clinically contraindicated.

**[(i)]*(h)* Registered professional nursing staff shall evaluate and ensure appropriate monitoring and documentation of the effects of all psychotropic medications. These medications shall be administered only upon written physician orders as part of the patient's treatment plan and shall not be used as a method of restraint, discipline, or for the convenience of staff.*

8:43G-18.5 Nursing care patient services; mandatory

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

Recodify existing (j)-(l) as (i)-(k) (No change in text.)

8:43G-18.6 Nursing care services related to pharmaceutical services*; **mandatory***

(a) All medications administered by nursing personnel shall be administered in accordance with prescriber orders, medical staff policy, and all Federal and State laws and regulations.

(b) Medications for individual patients shall not be removed from their original prescription containers by nursing personnel until the time of drug administration.

(c) Drugs packaged in unit dose containers shall not be removed from the containers by nursing personnel until the time of drug administration. Such drugs shall be administered immediately after the dose has been removed from the container, and by the individual who prepared the dose for administration.

(d) Each patient shall be identified prior to drug administration.

(e) Drugs dispensed for one patient shall not be administered to another patient.

(f) If the facility permits self-administration of drugs, nursing personnel shall implement policies and procedures approved by the pharmacy and therapeutics committee regarding self-administration of drugs.

(g) Nursing personnel shall report drug errors and adverse drug reactions immediately to the nurse in charge of the unit and to the prescriber. By the end of the shift, an entry shall be made in the patient's medical record. The incident shall be reported in accordance with policies and procedures concerning quality assurance and risk management. The incident shall be reported to the pharmacy, in accordance with policies and procedures approved by the pharmacy and therapeutics committee, within 24 hours.

(h) Drugs in patient care areas shall be maintained under proper **[conditions]* **conditions****, as indicated by the United States Pharmacopoeia, product labeling, and/or package inserts.

(i) All drugs, needles, and syringes in patient care areas shall be kept in locked storage areas, except those drugs exempted by the pharmacy and therapeutics committee or equivalent under specified conditions. Drugs for external use shall be kept separate from drugs for internal use.

(j) Nursing personnel shall return drugs to the pharmacy for disposal in accordance with N.J.A.C. 8:43G-23.6(i).

(k) Nursing personnel shall store, use, and dispose of needles and syringes in accordance with all applicable Federal and State laws and rules, including those specified at N.J.A.C. 8:43G-14.12(b).

8:43G-18.7 Nursing care staff education and training; mandatory

(a) Requirements for the nursing care education program shall be as provided in N.J.A.C. 8:43G-5.9.

(b) All nursing staff shall receive orientation and annual training regarding the use of restraints, including at least:

1. Policies and procedures in accordance with N.J.A.C. 8:43G-18.4(a);

2. Emergency and nonemergency procedures; and

3. Interventions by licensed and non-licensed nursing personnel.

SUBCHAPTER 19. OBSTETRICS

8:43G-19.2 Obstetric policies and procedures; mandatory

(a) The obstetric service shall have written policies and procedures that govern and are available in all areas of the obstetric service and are reviewed annually, revised as needed, and implemented. These policies and procedures shall include at least:

1.-4. (No change.)

5. A protocol for the use of oxytocics for induction and stimulation of labor, including physician assessment of the patient before the drug's use, monitoring of the patient and fetus during its use, indications for discontinuance of the drug, **[and]** educating staff in the use of oxytocin **and a policy which addresses the availability of a physician to manage any complications that may arise during infusion***;

6.-10. (No change.)

(b) A current list of physicians and nurse-midwives, their specific obstetric service privileges, and an on-call schedule shall be available in the department to professional staff.

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

(f) The hospital shall require submission of a copy of the prenatal record for all patients registered to deliver at the hospital once the patient reaches 34 weeks gestation. These prenatal records shall be accessible to the obstetrical unit at all times.

8:43G-19.5 Obstetrics patient services; mandatory

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

(g) Criteria shall be developed in consultation with the dietary department for identifying patients at nutritional risk. Patients determined to be at nutritional risk shall receive dietary counseling.

8:43G-19.13 Labor and delivery staff time and availability; mandatory

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

(d) Oxytocics shall be administered **[only after]* **within one hour of examination of the patient by**** a physician with obstetrical privileges **[has examined the patient]** and ***initiation of*** electronic fetal monitoring **[initiated]**.

(e) (No change.)

(f) Effective January 1, 1992, there shall be a health professional certified in neonatal resuscitation immediately available to the newborn service whenever an infant is present.

(g) (No change.)

8:43G-19.14 Labor, delivery, anesthesia and recovery patient services; mandatory

(a) A registry of all births or maternity log books shall be maintained in the labor and delivery room and shall include the minimum data set required by the Maternal and Child Care Committee of the New Jersey Medical Society as accepted by the Department of Health.

(b) Obstetrics anesthesia services policies and procedures shall include at least:

1. The obstetric service in consultation with the anesthesia service shall develop and implement written policies and procedures that govern anesthesia services in all labor, delivery and recovery areas. The policies and procedures shall be reviewed annually, revised and implemented.

2. All individuals who administer anesthetic agents to obstetric patients shall be credentialed in accordance with medical staff policies. The physician director of anesthesia services shall participate in the credentialing process and delineation of privileges of all personnel who administer anesthetic agents.

3. The obstetric service, in consultation with the anesthesia service, shall establish protocols governing the use of anesthetic agents for pain management. These shall include the qualifications and responsibilities of persons who administer the use of anesthetic agents for pain management. Policies and procedures shall address the use of patient monitoring equipment and identify the types and levels of agents which may be used for pain management.

4. A preanesthesia note, reflecting evaluation and classification of the patient according to American Society of Anesthesiologists (ASA) Physical Status system, shall be made or certified by the physician administering or supervising the administration of anesthesia and entered into the medical record of each patient who will be administered an anesthetic agent.

5. Anesthetic or pain control agents administered to non-surgical obstetric patients classified for anesthesia risk as an ASA Class I or II shall be administered and monitored in accordance with obstetric service policies and procedures governing anesthesia care.

6. Anesthetic or pain control agents administered to non-surgical obstetric patients classified for anesthesia risk as an ASA Class III, IV, V or Emergency shall be in accordance with the following sections of N.J.A.C. 8:43G-6, Anesthesia Services, as amended:

i. N.J.A.C. 8:43G-6.1, Definitions;

ii. N.J.A.C. 8:43G-6.3(d) through (k), Anesthesia qualifications for administering anesthesia;

iii. N.J.A.C. 8:43G-6.5(b), Anesthesia patient services;

iv. N.J.A.C. 8:43G-6.6, Anesthesia supplies and equipment; safety systems;

v. N.J.A.C. 8:43G-6.7, Anesthesia supplies and equipment; maintenance and inspection; and

vi. N.J.A.C. 8:43G-6.8, Anesthesia supplies and equipment; patient monitoring.

7. For patients undergoing surgical deliveries, including cesarean sections, anesthesia care shall be in accordance with all applicable sections of N.J.A.C. 8:43G-6, Anesthesia Services.

8. There shall be a program of quality assurance for anesthesia care provided in obstetric services that is integrated into the hospital and the anesthesia service quality assurance programs.

(c) There shall be written policies and procedures for the care of patients during the recovery phase of delivery. The policies and procedures shall be reviewed annually, revised as needed, and implemented. These policies and procedures shall include at least:

1. Delineation of the primary medical responsibility for postanesthesia care of the patient;

2. Monitoring of patients, including availability of monitoring equipment, and use of an objective scoring system to determine when the patient has recovered from anesthesia;

3. Requirements for documentation of patient status;

4. Protocol for patient emergencies;

5. Criteria and responsibility for discharge from recovery;

6. Recovery staff qualifications, which shall be as follows:

i. All registered professional nurses assigned to recovery services shall have training in basic cardiac life support.

ii. Recovery services shall be staffed at all times by at least one registered professional nurse with critical care training, as defined by the hospital, whenever a patient recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency is present;

7. Recovery staff time and availability, which shall be as follows:

i. There shall be at least two health care personnel, one of whom is a registered professional nurse and the other of whom is either a registered professional nurse or a licensed practical nurse, present in recovery services whenever a patient in the recovery phase of delivery is present. The nurse identified in (c)6ii above may function as the registered professional nurse required herein.

ii. There shall be a ratio of at least one registered professional nurse present in the recovery service area for every three patients in the recovery phase of delivery; and

8. Recovery patient services, which shall be as follows:

i. Postanesthesia notes shall be entered into the patient's medical record by a member of the hospital's anesthesia team early in the postoperative period.

ii. The condition of each patient shall be continually evaluated, with an objective scoring system used to track the patient until she has recovered from anesthesia.

iii. The patient's vital signs shall be monitored and recorded at least every 15 minutes during recovery.

iv. Postanesthesia care for patients recovering from a cesarean section and/or classified as ASA Class III, IV, V or Emergency shall also follow 8:43G-35.4(a) through (i).

8:43G-19.15 Postpartum policies and procedures and staff time and availability; mandatory

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

(c) There shall be written policies and procedures for the care of postpartum patients. The policies and procedures shall be reviewed annually, and revised as needed, and shall include at least the following:

1. Monitoring and documentation of patient's vital signs, condition of uterus, and rate of bleeding.

2. Identification and management of postpartum complications; and

3. Physical care, including care of the perineum and breasts, and ambulation.

8:43G-19.17 Newborn care policies and procedures; mandatory

(a) A current roster of physicians, their specific pediatric privileges, and an on-call schedule shall be kept in each nursing unit in newborn care.

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

(e) The newborn nursery shall identify and report any outbreak of disease, or any single case of a disease as specified in N.J.A.C. 8:57-1.1 through 1.5 also known as Chapter II of the State Sanitary Code.

(f) The hospital shall comply with State laws for screening infants for high risk factors associated with hearing impairment (N.J.S.A. 26:2-101 et seq.), early detection of biochemical disorders in newborns (N.J.S.A. 26:2-110 through 112), reporting congenital defects (N.J.S.A. 26:8-40.20 et seq.), and completing birth certificates (N.J.S.A. 26:8-28) and death certificates.

(g)-(h) (No change.)

(i) The newborn's medical record shall include at least:

1.-13. (No change.)

14. Documentation of eye prophylaxis, as recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists for ophthalmia neonatorum, administration of any other medication or treatment and response, and performance of inborn error and hearing screenings.

ADOPTIONS

HEALTH

8:43G-19.18 Newborn care staff qualifications; mandatory

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

(e) Effective January 1, 1992, there shall be a health professional certified in neonatal resuscitation immediately available to the newborn service whenever an infant is present.

8:43G-19.22 Newborn care supplies and equipment; mandatory

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

Recodify existing (h) as (g) (No change in text.)

8:43G-19.23 Scope of nurse midwifery standards

The standards in N.J.A.C. 8:43G-19.24 through 19.29 shall apply only to hospitals that have a separate, designated service or unit for nurse-midwifery. Hospitals which do not have a separate, designated service or unit for nurse-midwifery but grant obstetrical privileges to nurse-midwives are not required to follow N.J.A.C. 8:43G-19.26(a) and 19.27.

8:43G-19.33 Obstetric/non-obstetric mix patient services; mandatory

(a) (No change.)

(b) No obstetric patient shall be excluded from the obstetric service. A bed shall be made available, when needed by obstetric patients, by the transfer of a non-obstetric patient.

(c)-(h) (No change.)

SUBCHAPTER 20. EMPLOYEE HEALTH

8:43G-20.1 Employee health policies and procedures

(a) Employee health service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available for employees to review and include at least the following:

1.-2. (No change.)

3. Precautionary measures to prevent the transmission of communicable diseases from employees to patients;

4. Requirements for a physician note approving an employee's return to work after an absence due to a communicable disease; and

5. Clinical restrictions for employees exposed to rubella or rubeola who are seronegative and unvaccinated.

8:43G-20.2 Employee health services

(a) Each new employee shall receive an initial health evaluation, which includes at least a documented history, which may be performed by a registered professional nurse or physician, and a physical examination.

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

(f) Each new employee, including members of the medical staff employed by the hospital shall be given a rubella screening test upon employment in accordance with (e) above.

(g) Each employee, including members of the medical staff employed by the hospital, born in 1957 or later shall be given a measles (rubeola) screening test using the Hemagglutination inhibition test or other rubeola screening test by March 1, 1992. The only exceptions are employees who can document receipt of live measles vaccine on or after their first birthday, physician-diagnosed measles, or serologic evidence of immunity.

(h) Each new employee, including members of the medical staff employed by the hospital, born in 1957 or later shall be given a rubeola screening test, upon employment, in accordance with (g) above.

(i) The hospital shall offer rubella and rubeola vaccination to all employees and medical staff.

Recodify existing (f)-(j) as (j)-(n) (No change.)

SUBCHAPTER 22. PEDIATRICS

8:43G-22.2 Pediatrics and pediatric intensive care policies and procedures; mandatory

(a) The service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1.-6. (No change.)

7. Protocols for specific types of patient emergencies;

8. An emergency transfer policy which specifies mechanisms for transport of pediatric patients requiring specialized or intensive care services to facilities providing such care; and

9. Safety measures for the purpose of preventing electrical and bodily injury to patients.

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

8:43G-22.3 Pediatrics and pediatric intensive care patient services; mandatory

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

(e) The parents or guardians of pediatric patients shall be included in the development of the nursing patient plan of care.

8:43G-22.12 Pediatrics space and environment; mandatory

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

(c) There shall be an adult supervising when children under seven years of age are present in the recreation room or playroom.

8:43G-22.17 Pediatric intensive care patient services; mandatory

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

(c) There shall be a policy that addresses optional overnight stays in the hospital or adjacent buildings for parents or guardians of pediatric intensive care patients.

8:43G-22.20 Pediatric intensive care supplies and equipment

(a) The pediatric intensive care unit shall have immediate access to equipment that has the capability for continuous monitoring of at least:

1.-7. (No change.)

8. Temperature; and

9. Three simultaneous pressure capability.

(b) The pediatric intensive care unit shall have immediate access to the following equipment:

1. Defibrillator;

2. Intravenous fluid warmer;

3. Metabolic bed scale; and

4. Pulse oximeter.

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

SUBCHAPTER 23. PHARMACY

8:43G-23.1 Pharmacy structural organization; mandatory

(a) (No change.)

(b) A multidisciplinary pharmacy and therapeutics committee, or an equivalent multidisciplinary body which includes a pharmacist licensed to practice pharmacy in New Jersey, shall meet at least quarterly and document its activities, findings, and recommendations.

8:43G-23.2 Pharmacy policies and procedures; mandatory

(a) The pharmacy and therapeutics committee, or its equivalent, shall review, approve, and ensure implementation of policies and procedures addressing at least the following areas:

1.-8. (No change.)

9. *[Up-to-date]* *Current* reference materials kept at drug distribution stations and in the pharmacy, and made available to medical and nursing staff;

10. (No change.)

11. Approval and maintenance of an up-to-date formulary;

12. Pharmacists' clarifications of physician orders; and

13. Self-administration of drugs, if permitted by the hospital, including a requirement for written prescriber orders, storage of drugs, labeling of drugs, documentation of self-administration in the patient medical record, patient training and education, and precautions to ensure that a patient does not take the drugs of another patient.

8:43G-23.6 Pharmacy patient services; mandatory

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

(f) Cautionary instructions and ancillary information about medication shall be communicated, in writing, to the personnel responsible for administering medications.

(g)-(m) (No change.)

SUBCHAPTER 24. PLANT MAINTENANCE AND FIRE AND EMERGENCY PREPAREDNESS

8:43G-24.9 Physical plant general compliance for construction, alteration or renovation completed during the period of July 1, 1979 through May 7, 1981 or May 8, 1981 through October 1, 1987; mandatory

For construction, alteration or renovation completed during the period of July 1, 1979 through May 7, 1981 or May 8, 1981 through October 1, 1987, the hospital shall comply with the New Jersey Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 79-14500. In order to avoid conflict, sections 502 (except as it pertains to area limitations), 1702.7, 1716.0, article 7 except sections 712.0, 716.0 and 717.0, and article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 79-14500 shall serve as the Uniform Code for the matters regulated by these sections.

8:43G-24.13 Fire and emergency preparedness; mandatory

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

(h) Fire detectors and alarm systems shall be inspected and tested at least twice a year by a certified testing agency. Written reports of the last two inspections shall be kept on file.

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

(k) There shall be a procedure for investigating and reporting fires. All fires that result in a patient or patients being moved shall be reported to the New Jersey State Department of Health immediately by telephone at (609) 588-7725 or (609) 392-2020 after business hours and followed up in writing within 72 hours. In addition, a written report of the investigation shall be forwarded to the Department of Health as soon as it becomes available.

(l) (No change.)

SUBCHAPTER 25. POST MORTEM

8:43G-25.1 Policies and procedures; mandatory

(a) The morgue shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies shall delineate the responsibilities of the medical staff, nursing, and morgue staff, and shall include procedures for at least the following:

1.-4. (No change.)

5. Infection control, including disinfection of equipment;

6. ***[Handling]* *Identifying and handling high-risk and/or* infectious bodies, in accordance with Centers for Disease Control guidelines, and in compliance with N.J.S.A. 26:6-8;**

[7. Identifying and handling high-risk or potentially high-risk cases, such as AIDS or hepatitis B;]

***[8.-9.]* recodified as *7.-8.* (No change.)**

[10.]*9.*** Availability of autopsy reports, including reports of microscopic autopsy findings, to physicians and in medical records, within specified time frames; and**

[11.]*10.*** (No change.)**

SUBCHAPTER 26. PSYCHIATRY

8:43G-26.2 Psychiatry policies and procedures; mandatory

(a) The psychiatric service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available on the inpatient unit and include at least the following:

1.-9. (No change.)

Recodify existing 11-12 renumbered as 10-11 (No change in text.)

12. Patient grievance procedures;

13. Criteria for use of seclusion in accordance with procedures delineated in the current or revised or later edition, if in effect, of the American Psychiatric Association Task Force Report No. 22 on Restraint and Seclusion, incorporated herein by reference, available

from the American Psychiatric Association, 1400 K Street NW, Washington, D.C. 20005;

14. Review by physician director or designee of restraints or seclusion used in excess of 72 consecutive hours for a patient; and

15. Criteria for physician monitoring of patients in restraints more frequently than every 24 hours based on patient acuity.

(b) The psychiatric service shall develop and implement written policies and procedures for use of restraints in accordance with N.J.A.C. 8:43G-18.4.

(c) The psychiatric service shall develop and implement written policies and procedures for use of electroconvulsive therapy (ECT), in accordance with the recommendations of the current or revised or later edition, if in effect, of the American Psychiatric Task Force on ECT: "The Practice of ECT: Recommendations for Treatment, Training, and Privileging" and the New Jersey Patient's Bill of Rights at N.J.S.A. 30:4-24.2(d)(2), incorporated herein by reference, including at least:

1.-6. (No change.)

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

8:43G-26.3 Psychiatry staff qualifications; mandatory

(a) (No change.)

(b) Any physician currently holding the position of director shall have completed a residence in psychiatry or neurology and shall be able to demonstrate the skills and experience at least equivalent to certification by the American Board of Psychiatry and Neurology. Effective July 1, 1990 any newly appointed physician director shall be board certified or shall meet the training and experience requirements for examination by the Board and shall be examined within two years of eligibility.

8:43G-26.9 Psychiatry space and environment; mandatory

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

(f) Opportunities to participate in structured physical exercise programs shall be made available to patients.

Recodify existing (f)-(i) as (g)-(j). (No change in text.)

SUBCHAPTER 28. RADIOLOGY

8:43G-28.1 Radiology structural organization

Radiological services shall be provided on-site, except for specialized services that have been approved through the Certificate of Need process to be provided on an off-site regional basis.

8:43G-28.8 Diagnostic services staff time and availability; mandatory

(a) (No change.)

(b) A currently licensed radiologic technologist shall be present in the hospital or on call at all times; if on call, the technologist shall be able to arrive, and shall arrive, at the hospital within 30 minutes of being summoned, under normal transportation conditions.

(c) A registered professional nurse shall be available in the radiology service when needed, in the physician's judgment, to administer medications and perform other ***[tasks]* *nursing duties*.**

8:43G-28.10 Diagnostic services patient services; mandatory

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

(d) Ultrasound shall be available within one hour at all times, unless the machinery is temporarily disabled or in use.

(e)-(h) (No change.)

SUBCHAPTER 29. PHYSICAL AND OCCUPATIONAL THERAPY

8:43G-29.13 Occupational therapy policies and procedures; mandatory

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

(h) Hospitals that contract with an occupational therapy service shall ensure compliance with N.J.A.C. 8:43G-29.13 through 29.23.

8:43G-29.17 Occupational therapy patient services; mandatory

(a) (No change.)

(b) The occupational therapy service shall have the capacity to offer services, when required by a physician's order, at least five days a week, excluding holidays.

SUBCHAPTER 30. RENAL DIALYSIS

8:43G-30.1 Scope of renal dialysis standards; mandatory

The standards in this subchapter shall apply only to hospitals that have an on-site separate, designated unit or service for renal dialysis. If a hospital has a renal dialysis unit or service, the standards shall apply to both hemodialysis and peritoneal dialysis units, and to both chronic and acute treatment.

8:43G-30.2 Renal dialysis policies and procedures; mandatory

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

(c) All staff members of the renal dialysis service shall be screened for hepatitis in accordance with the current edition of the Centers for Disease Control publication "Hepatitis Surveillance", as amended and supplemented, available from the Centers for Disease Control, Atlanta, Georgia 30333.

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

8:43G-30.3 Renal dialysis staff qualifications; mandatory

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

(d) *[A professional member of the social work department shall be] ***The social worker*** assigned to the renal dialysis unit ***[to meet the psychosocial needs of renal dialysis patients and families.]*** ***shall have at least:**

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or

2. A bachelor's degree from an accredited social work program and one year of experience in social work, if the person was hired prior to 1976.*

8:43G-30.5 Renal dialysis staff time and availability; mandatory

(a) There shall be a registered professional nurse with administrative or clinical responsibility for all nursing care in the dialysis service.

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

(e) Nurses on the renal dialysis staff shall receive on-site training in renal dialysis techniques as determined by the hospital before they are permitted to work unsupervised with patients.

Recodify existing (e)-(h) as (f)-(i) (No change in text.)

8:43G-30.6 Renal dialysis patient services; mandatory

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

(d) There shall be multidisciplinary committee meetings that take place on a periodic basis to discuss multidisciplinary communication, management, and issues about the care of patients treated in the dialysis unit. The committee shall include representatives from at least nursing, the medical staff, dietary services, and social work services.

(e) (No change.)

(f) The hospital's policy on dialyzer reuse shall be explained to all renal dialysis patients. Patients who consent to reuse shall sign an informed consent form. If the patient declines reuse, arrangements shall be made for the patient to receive single-use treatment in the unit.

(g)-(k) (No change.)

(l) The home (self) care training program shall have a written outline of course material for persons undergoing training which shall include didactic and practical sessions to prepare trained ***patients and/or*** helpers to perform unsupervised dialysis treatments.

(m) If a hospital has a home (self) care training program, the hospital shall provide, either directly or through agreement with another health care facility, the following services;

1. Surveillance of the patient's home adaption, including provisions for visits by a staff member to the home and by the patient to the hospital;

2. Documentation in the patient's medical record of the number and content of surveillance visits;

3. Ensurances that patient teaching materials are available for patient use during and after home (self) care dialysis training and at times other than during the dialysis procedure;

4. Consultation for the patient with a social worker and a dietician;

5. A recordkeeping system which ensures continuity of care;

6. Installation and maintenance of equipment in the home;

7. Testing and treatment of the water in the home, according to current industry wide practices for home dialysis; and

8. Ordering of supplies for the home on an on-going basis.

8:43G-30.8 Renal dialysis supplies and equipment; mandatory

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

(c) Water treatment equipment, water and dialysate shall conform with the requirements in the AAMI publication "American National Standard for Hemodialysis Systems", as amended and supplemented, incorporated herein by reference. Water and dialysate shall be microbiologically analyzed monthly. Water samples shall be taken immediately following the last water treatment device and at locations in the treatment area which will assure the water throughout the distribution lines conforms with AAMI standards. Chemical analysis of the water shall be performed every six months.

(d) A DPD test kit or similar method shall be used daily to detect chloramine break through and chloramine levels in water used to prepare dialysate and shall not exceed the AAMI standard of 0.1 ppm.

Note: (No change.)

8:43G-30.11 Renal dialysis quality assurance methods; mandatory

There shall be a program of quality assurance for the renal dialysis service that is integrated into the hospital quality assurance program and includes regularly collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data. The program monitors those indicators required by the Trans-Atlantic Renal Council and shall include monitoring of home dialysis patients.

SUBCHAPTER 32. SAME-DAY STAY

8:43G-32.3 Same-day surgery services policies and procedures; mandatory

(a) The same-day surgery service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. They shall include at least:

1.-5. (No change.)

6. A system for handling medical and non-medical emergencies. Recodify existing 6. and 7. as 7. and 8. (No change in text.)

9. A requirement that patients who receive anesthesia, excluding minor local blocks, not drive themselves home after discharge and are accompanied home by ***[another person]*** ***a responsible adult***. If the patient fails to comply with the requirement, the circumstances shall be documented in the patient's medical record.

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

8:43G-32.5 Same-day surgery services patient services; mandatory

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

(e) The medical record for same-day surgery patients shall include at least:

1.-3. (No change.)

4. Documentation of the history and physical examination performed by physician within ***[seven]*** ***14*** days prior to the procedure;

5.-6. (No change.)

7. A perioperative nurses' note that describes the patient's condition during the procedure;

8. A medication record reflecting the drug given, date, time, dosage, route of administration, and signature and status of individual administering the drug;

Recodify existing 7.-10. as 9.-12. (No change in text.)

HUMAN SERVICES

8:43G-32.9 Same-day surgery service quality assurance methods; mandatory

(a) (No change.)

(b) The infection control program shall monitor infection control practices and outcomes for same-day surgery services. If same-day surgery patients are treated on inpatient units, the infection control program for those units shall fulfill this requirement.

8:43G-32.12 Same-day medical services policies and procedures; mandatory

(a) (No change.)

(b) When a same-day medical patient is admitted to the hospital as an inpatient, a statement shall be made in his or her same-day medical record giving the reason for admission.

SUBCHAPTER 33. SOCIAL WORK

8:43G-33.6 Social work patient services; mandatory

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

(d) Families or guardians shall be included in services provided by the social work department, where indicated.

(e) (No change.)

(f) The social work department shall coordinate child-abuse reporting and follow-up services with appropriate follow-up agencies in accordance with N.J.S.A. 9:6-1 et seq. The department shall participate in reporting and follow-up services for other victims of abuse.

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

SUBCHAPTER 35. POSTANESTHESIA CARE

8:43G-35.2 Postanesthesia care staff qualifications; mandatory

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

(c) All registered professional nurses assigned to the postanesthesia care unit shall be trained in postanesthesia care, including at least:

1. The management of airway and ventilatory functions;

2.-8. (No change.)

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services

Definitions; General Policies for Participation; Services Covered by the New Jersey Medicaid Program; Authorization for Transportation Service; Reimbursement Policy; Combination Medicare/Medicaid Claims; Transportation Certification; Fiscal Agent Billing Supplement

Adopted Amendments: N.J.A.C. 10:50-1

Adopted Repeal: N.J.A.C. 10:50-2

Adopted New Rules: N.J.A.C. 10:50-1.7 and 10:50, Appendix

Adopted Recodification: N.J.A.C. 10:50-3 as 10:50-2

Proposed: December 2, 1991 at 23 N.J.R. 3619(a).

Adopted: January 22, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 22, 1992 as R.1992 d.83, **without change**.

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Effective Date: February 18, 1992.

Expiration Date: February 27, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

(CITE 24 N.J.R. 610)

ADOPTIONS

SUBCHAPTER 1. GENERAL PROVISIONS

10:50-1.1 Scope

This manual describes the policies and procedures of the New Jersey Medicaid Program for reimbursement of approved providers of transportation services. Questions about this manual may be directed to any Medicaid District Office (MDO) listed in N.J.A.C. 10:49 Appendix or to the Division of Medical Assistance and Health Services, CN-712, Trenton, New Jersey 08625-0712.

10:50-1.2 Definitions

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

"Air ambulance service" means the provision of emergency or non-emergency medical transportation in an aircraft (fixed wings) certified by and operated in accord with Federal Aviation Administration requirements.

...

"Ground ambulance service" means the provision of emergency or non-emergency medical transportation in a vehicle that is licensed, equipped, and staffed in accord with New Jersey State Department of Health rules, as specified in N.J.A.C. 8:40.

"Invalid coach service" means the provision of non-emergency medical transportation in a vehicle that is licensed, equipped, and staffed in accord with New Jersey State Department of Health rules, as specified in N.J.A.C. 8:40.

...

"Multiple loading" means that more than one Medicaid recipient is being transported in the same vehicle at the same time.

"Provider means air ambulance (fixed wings) service, ground ambulance service, invalid coach service, or livery service.

"Transportation" means the use of an approved vehicle to move a Medicaid recipient from place to place for the purpose of obtaining a Medicaid-covered service.

10:50-1.3 General policies for participation

(a) The approval process for becoming a transportation service provider is as follows:

1.-2. (No change.)

3. A ground ambulance or invalid coach company providing service in New Jersey shall possess a Certificate of Need, provider license, and vehicle license(s) issued by the New Jersey State Department of Health.

i. A potential provider seeking approval to provide ground ambulance and/or invalid coach service shall forward photocopies of the Certificate of Need approval letter, provider license, and vehicle license(s) to the Fiscal Agent for the New Jersey Medicaid Program.

4.-9. (No change.)

(b) (No change.)

10:50-1.4 Services covered by the New Jersey Medicaid Program

(a) Ground ambulance service is a covered service under the following conditions:

1.-4. (No change.)

5. An air ambulance (fixed wings), under extenuating circumstances, may be used as a carrier to transport the sick, injured or disabled Medicaid recipient.

i. The service is restricted to the emergency condition where transportation by air is medically considered the only acceptable form of travel and the conditions are such that its utilization is feasible. The New Jersey Medicaid Program retains the option to utilize this form of transportation in such situations where, at the Program's discretion, it could represent a significant cost savings when compared to ground ambulance or invalid coach service involving trips covering similarly long distances.

6. (No change.)

(b) Invalid coach service is a covered service under the following conditions:

1. When the service is provided to a Medicaid recipient as indicated in N.J.A.C. 10:50-1.6(b); and

i. If the recipient is wheelchair bound; or

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ii. If the recipient is ambulatory but unable to take an alternative mode of transportation (such as taxi, bus, livery, or private vehicle) without assistance or supervision.

2. The invalid coach driver and/or crew shall comply with New Jersey State Department of Health rules governing the duties of staff, as specified in N.J.A.C. 8:40. In addition, the invalid coach driver and/or crew shall:

i. Provide "portal-through-portal" (door-through-door) assistance at the recipient's place of departure and destination; and

ii. Provide assistance in the placement and removal of the recipient into and out of the vehicle at his or her place of departure and destination.

3. (No change.)

4. The invalid coach shall carry no more than four recipients at one time. All wheelchairs shall be restrained and the driver and all vehicle occupants shall wear automotive safety belts in accord with New Jersey State Department of Health rules, as specified in N.J.A.C. 8:40.

5. The use of an extra crew for invalid coach services is covered when two or more persons are used to move a recipient under the following circumstances:

i. The recipient is wheelchair bound;

ii. The recipient's place of departure or destination has no elevator service available; and

iii. The recipient is unable to ambulate even with the assistance of another person, such as the invalid coach driver; and

(1) The recipient's place of departure or destination is accessible only by means of five or more steps; or

(2) The recipient's place of departure or destination is accessible only by means of two or more steps and he or she weighs 200 or more pounds.

(c) Livery service is a covered service under the following conditions:

1. When the service is provided to a Medicaid recipient as indicated in N.J.A.C. 10:50-1.6(b).

2. Livery service shall be limited to the transport of ambulatory recipients. Only a New Jersey-based company is eligible to participate in the New Jersey Medicaid Program as a provider of livery service.

3-4. (No change.)

5. All providers shall make available their livery service to Medicaid recipients from 6 A.M. to 10 P.M., Monday through Saturday.

10:50-1.5 Authorization for transportation services

(a) Prior authorization from the Medicaid District Office (MDO) is required for air ambulance service and invalid coach service. See (f) below for the policy concerning authorization for Medicaid recipients transported by invalid coach to/from a nursing facility.

(b) Procedures for obtaining prior authorization are as follows:

1. Written request: The provider submits a Transportation Prior Authorization Form (MC-12(A)) to the MDO. Upon receipt of this document, an MDO staff person reviews the information to verify the medical necessity for the use of the respective mode of transportation and approves or denies the request. The data is then sent electronically by the MDO to the Fiscal Agent. If the request is approved, the provider is notified in writing by the Fiscal Agent of the MDO's decision and the authorized date or time frame. If the request is denied or if the MDO requires additional information, the provider is notified in writing by the Fiscal Agent.

2. Oral request: The provider may call the MDO to request prior authorization. An MDO staff person completes a Transportation Prior Authorization Form (MC-12(A)), reviews the information to verify the medical necessity for the use of the respective mode of transportation, and approves or denies the request. The data is then sent electronically by the MDO to the Fiscal Agent. If the request is approved, the provider is notified in writing by the Fiscal Agent of the MDO's decision and the authorized date or time frame. If the request is denied or if the MDO requires additional information, the provider is notified in writing by the Fiscal Agent.

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(c) Prior authorization for air ambulance (fixed wings) service includes approval of both the service and the rate of reimbursement for the service as indicated in N.J.A.C. 10:50-1.6(d)

1. The following documentation shall be submitted to the MDO in support of both written and oral requests for air ambulance authorization:

i. A detailed explanation of the reason(s) why air ambulance service, as opposed to ground ambulance service or invalid coach service, is medically considered the only acceptable form of travel, as indicated in N.J.A.C. 10:50-1.4(a)5;

ii. A detailed description of the recipient's health condition at the time of transport;

iii. A log showing actual flight time; and

iv. An itemized bill.

2. As indicated in N.J.A.C. 10:50-1.4(a)5, reimbursement for the use of air ambulance service may be considered only under extenuating circumstances after all alternative, less costly modes of transportation have been considered and ruled out.

(d) A request for invalid coach authorization may be approved for an extended period of time when, in the opinion of an MDO staff person, the Medicaid recipient's health condition will not improve to the extent that a lower mode of service would be appropriate during the period under consideration. An extended authorization may range from one month through 12 months in duration.

1. After the provider receives approval from the Fiscal Agent for the extended period of time, claims for reimbursement for actual trips provided during the extended period of time may be forwarded by the provider directly to the Fiscal Agent for processing.

(e) Retroactive request for authorization: When communication between the provider and the MDO cannot be established because the MDO is closed and the provision of the service can not be delayed, the provider may perform the service. In such instances, the provider shall request retroactive authorization from the MDO within 10 working days from the date of service. The request for retroactive authorization may be written or oral, following the procedures specified in (b)1 or (b)2 above. The provider will be notified in writing by the Fiscal Agent that the request has been approved, denied, or that additional information is required.

(f) Authorization from the MDO is not required for invalid coach service when a recipient's place of origin or destination is a nursing facility or intermediate care facility for the mentally retarded. A nursing facility (formerly called a long-term care facility) is defined in the Long-Term Care Services Manual, N.J.A.C. 10:63. In these instances only, providers may render the invalid coach service and submit a Transportation Claim (Form MC-12) and Transportation Certification directly to the Fiscal Agent for the New Jersey Medicaid Program, without obtaining authorization from the MDO. A post-payment review will be conducted on an ongoing basis to ensure the accuracy and validity of claims submitted for reimbursement.

1. The HCFA Common Procedure Coding System (HCPCS) procedure codes used when billing the base allowance for invalid coach service in these instances must be followed by the modifier "XA", as indicated in N.J.A.C. 10:50-2. HCFA Common Procedure Coding System (HCPCS).

10:50-1.6 Reimbursement policy

(a) The following definitions shall apply for the purpose of reimbursement:

1. "Loaded mile" means mileage accrued when a vehicle is actually carrying a Medicaid recipient. Mileage for ground ambulance, invalid coach, and livery service is measured by odometer from the point at which the recipient enters the vehicle to the point at which he or she exits the vehicle.

i. In a multiple-load situation for ground ambulance service and invalid coach service, the charge for loaded mileage and waiting time is applicable to one recipient only. Reimbursement is limited to the distance traveled by the recipient whose place of departure and destination represent the greatest distance. No mileage charge is permitted for additional recipients whose distance traveled lies between these two points.

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ii. For livery service, the amount reimbursable for vehicle mileage accrued is on a per-person basis. However, when two or more recipients are transported in the same vehicle at the same time from the same departure point to the same destination point, mileage may only be charged for one recipient.

iii. For trips by ground ambulance and invalid coach in excess of 15 miles one way, loaded mileage is reimbursable beginning with the first mile, at a higher rate as indicated in N.J.A.C. 10:50-2, HCFA Common Procedure Coding System (HCPCS). The higher rate of reimbursement is applicable to both the one way trip and to the return trip.

(1) When billing for trips in excess of 15 miles one way, the HCFA Common Procedure Coding System (HCPCS) procedure codes used to identify mileage charges must be followed by the modifier "22", as indicated in N.J.A.C. 10:50-2, HCFA Common Procedure Coding System (HCPCS).

2. "Transportation reimbursement allowance" means that claims are paid on a fee-for-service basis, as indicated in N.J.A.C. 10:50-2, HCFA Common Procedure Coding System (HCPCS). For HCPCS procedure codes and maximum fee schedule, see N.J.A.C. 10:50-2. The least expensive mode of transportation suitable to the recipient's needs is to be used.

3. "Waiting time" means that period of actual time, in increments of 15 minutes, beginning 30 minutes following delivery of the recipient to his or her destination, for ground ambulance and invalid coach service. There is no reimbursement for waiting time on round trips, and it is limited to a maximum of one hour on one-way trips. Waiting time is applicable to one recipient only in a multiple-load situation. An explanation of the need for waiting time shall be attached to the claim (Form MC-12).

(b) Transportation service provided to a Medicaid recipient is reimbursable by the New Jersey Medicaid Program under the following conditions only:

1. The medical care provider/facility to which and/or from which the recipient is being transported either participates as a provider in the Medicaid program or meets the requirements for participation as a provider in the Medicaid program; and

2. The medical service rendered to the recipient by the provider/facility is a covered Medicaid service (as listed in N.J.A.C. 10:49) at the time the transportation is provided.

(c) Reimbursement is not permitted when a Medicaid recipient is transported under the following conditions:

1.-3. (No change.)

(d) Air ambulance (fixed wings) reimbursement shall be based on a rate authorized by the Medicaid District Office, not to exceed the charge made to non-Medicaid recipients for the same service.

(e) Hospital-based transportation service provided to a Medicaid recipient who is transported to other than the base hospital is reimbursable on a fee-for-service basis in the same manner as a non-hospital based transportation provider. In such instances, the hospital shall be enrolled as a transportation provider as defined in N.J.A.C. 10:50-1.2. A Transportation Claim (Form MC-12) and Transportation Certification shall be used when submitting a claim for transportation services, as described in the Fiscal Agent Billing Supplement, incorporated herein by reference as an Appendix to this chapter.

(f) When a transportation provider renders a round trip service to a Medicaid recipient in a general hospital whose status remains "inpatient," the transportation provider bills the hospital for the service.

(g)-(h) (No change.)

(i) The appropriate modifier shall be entered on the Transportation Claim (Form MC-12) when billing for the following services:

1. Mileage, ground ambulance and invalid coach service, in excess of 15 miles one way (see N.J.A.C. 10:50-1.6(a) and 10:50-2, HCFA Common Procedure Coding System (HCPCS)); and

2. Base allowance, invalid coach service, when a Medicaid recipient is transported to or from a nursing facility (see N.J.A.C. 10:50-1.5(f) and 10:50-2, HCFA Common Procedure Coding System (HCPCS)).

(j) If a transportation service is operated by an organization which has established a policy of providing service without cost for a

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specific class of individuals, or individuals living within a given area, then it shall be understood that such service is also available without cost to individuals falling within such category who are covered under the New Jersey Medicaid Program.

(k) Services not directly reimbursable by the New Jersey Medicaid Program include transportation by taxi, train, bus, plane and other public conveyances. Reimbursement for arranging/providing these "lower mode" services shall be made by the appropriate county welfare agency/board of social services on behalf of the New Jersey Medicaid Program.

(l) (No change.)

10:50-1.7 Transportation certification

A transportation certification form shall be used in conjunction with the "Transportation Claim" (Form MC-12) when billing for ambulance, invalid coach, and livery service. The Fiscal Agent Billing Supplement contains a sample transportation certification form and instructions for the form's proper completion. At a minimum, the elements appearing on the sample transportation certification form shall appear on the certification form furnished and prepared by the transportation provider.

Recodify existing N.J.A.C. 10:50-3 as 10:50-2 (No change in text.)

APPENDIX

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter/manual but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages will be distributed to providers and copies will be filed with the Office of Administrative Law. For a copy of the Fiscal Agent Billing Supplement, write to:

Unisys Corporation

CN-4801

Trenton, New Jersey 08650

or contact:

Office of Administrative Law

Quakerbridge Plaza, Bldg. 9

CN-049

Trenton, New Jersey 08625.

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(a)

THE COMMISSIONER

Classification Process

Adopted New Rules: N.J.A.C. 10A:9

Proposed: December 16, 1991 at 23 N.J.R. 3721(a).

Adopted: January 15, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 22, 1992 as R.1992 d.79, **without change**.

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

Effective Date: February 18, 1992.

Expiration Date: February 18, 1997.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:9, Classification Process, expired on January 20, 1992. The chapter is therefore being adopted as new rules pursuant to N.J.A.C. 1:30-4.4(f).

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment on this proposed readoption with amendments from Robert R. Reldan, an inmate at the New Jersey State Prison. The comment and the Department of Corrections' response are as follows:

COMMENT: Commenter objected to a modification to N.J.A.C. 10A:9-3.10(a) and (b) in which the word "shall" in each of these sections was changed to "may." The commenter believes that this will result in fewer inmates being referred for mental health assessment and treatment and is concerned that some harm will come to these inmates.

RESPONSE: In cases where mental health is at issue, it is important to provide health care professionals with discretion to determine which

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individuals are most in need of treatment, and to prioritize the cases on that basis. Use of the word "may" provides the necessary discretion for these situations. As commenter has pointed out in a related observation, there are also other administrative and disciplinary means by which to handle certain types of aberrant inmate behavior.

Full text of the adoption follows.

10A:9-1.1 Purpose

(a) The purpose of this chapter is to:

1.-4. (No change.)

5. Establish a mechanism for deciding whether to recommend parole for persons confined pursuant to N.J.S.A. 2C:47 and 2A:164;

6. Provide a process for assignment and transfer of juvenile offenders; and

7. Establish rules and regulations to adequately fulfill the functions of the Department of Corrections as enumerated in N.J.A.C. 10A:1-1.1.

10A:9-2.1 Reception activity

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

(e) At the end of the reception process, a male inmate admitted to the Garden State Reception and Youth Correctional Facility shall appear before the Inter-Institutional Classification Committee (I.I.C.C.) and the decisions on the degree of custody and the appropriate correctional facility to which the inmate will be assigned shall be made.

(f)-(g) (No change.)

10A:9-3.1 Responsibilities of the Institutional Classification Committee (I.C.C.)

(a) Each correctional facility shall establish an Institutional Classification Committee(s) (I.C.C.) which shall be responsible for:

1.-7. (No change.)

8. Reviewing the imposition of Administration Segregation;

9. Reviewing Restrictive Activities Program assignments at the Adult Diagnostic and Treatment Center (A.D.T.C.);

10. Reviewing referrals by the Disciplinary Hearing Officer; and

11. Reviewing and approving or disapproving applications for the Electronic Monitoring Home Confinement Program.

10A:9-3.2 Composition of the Institutional Classification Committee (I.C.C.)

(a) The members of the Institutional Classification Committee (I.C.C.) at each of the adult correctional facilities shall be composed of the:

1. Superintendent or Assistant Superintendent;

2. Director of Psychology;

3. Director of Education;

4. Social Work Supervisor;

5. Director of Custody Operations or Correction Captain;

6. Supervisor of State Use Industries; and

7. Classification Officer (non-voting member).

(b) Staff members other than those listed above, may be designated by the Superintendent to serve as members or alternate members of the I.C.C.

(c) The I.C.C. shall meet weekly, and more often as required.

10A:9-3.3 Institutional Classification Committee (I.C.C.) decision making criteria

(a) Decisions on transfers and assignments to housing; work, educational, vocational, or treatment programs; custody status; and community release programs shall be made after consideration of the following factors:

1.-20. (No change.)

10A:9-3.4 Initial classification

(a) Upon assignment to an adult correctional facility or its satellite, an inmate shall be interviewed and may be tested to determine the inmate's aptitudes, abilities, interests and problems.

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

10A:9-3.5 Review dates

(a) (No change.)

(b) The frequency of case review shall be dependent on the review date determined by the Institutional Classification Committee

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(I.C.C.) or a change in the inmate's status. Factors that may be considered include:

1.-5. (No change.)

(c) The Classification Officer shall be responsible for scheduling all reviews set by the I.C.C.

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

10A:9-3.8 Work assignments

(a) (No change.)

(b) When the I.C.C. has assigned an inmate to a job, the inmate may not request a job change until at least two months of work has been completed on the job.

10A:9-3.9 Educational assignments

(a) Determining factors in referring an inmate to an educational program may include:

1.-5. (No change.)

10A:9-3.10 Counseling assignments

(a) Inmates with emotional and/or personal problems may be referred to the appropriate staff members.

(b) Inmates may be approved for group counseling and other therapy programs by the Institutional Classification Committee (I.C.C.) and may be assigned by the staff member in charge of the program.

(c) (No change.)

10A:9-3.12 Community release programs

The Institutional Classification Committee (I.C.C.) may assign an inmate to a community release program when the inmate has been classified as full minimum custody and meets the criteria for assignment to the program in which the inmate will participate.

10A:9-4.1 Eligibility for reduced custody

(a) There are three categories of custody status within the New Jersey Department of Corrections:

1. Maximum custody;

2. Gang minimum; and

3. Full minimum.

(b) The criteria set forth in this subchapter shall be applied by Institutional Classification Committee (I.C.C.) to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum status, except as provided by N.J.A.C. 10A:9-4.4;

2.-3. (No change.)

10A:9-4.4 Authority of Classification Committee

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

(c) The I.I.C.C. is authorized, at initial classification, to assign eligible inmates directly to full minimum custody status at Jones Farm and other minimum security correctional facilities without the prerequisite service of time required for gang minimum custody status.

10A:9-4.5 Discretion of Institutional Classification Committees (I.C.C.); factors to be considered

(a) In making decisions to reduce an inmate's custody status, Institutional Classification Committee (I.C.C.) shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody status. These factors may include, but not be limited to:

1.-5. (No change.)

6. Any reason which, in the opinion of the Superintendent and Institutional Classification Committee, relates to the best interests of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

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

(e) An inmate who has been granted reduced custody status may have his or her custody status increased for any of the following reasons, subject to confirmation by the Institutional Classification Committee (I.C.C.):

1.-5. (No change.)

6. Any reason which, in the opinion of the Superintendent and Institutional Classification Committee, relates to the best interests

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of the inmate or the safe, orderly operation of the correctional facility or the safety of the community or public at large.

(f) (No change.)

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

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

(e) Inmates who were considered for reduced custody status prior to April 2, 1990, and were sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the following service of time has been met. Any New Jersey county jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1.-3. (No change.)

(f) Inmates who were considered for reduced custody status on or after April 2, 1990, and were sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum. Any New Jersey county credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

(g)-(h) (No change.)

(i) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status and full minimum custody status:

Length of Sentence	Months in Maximum
30 years to life	42
25 through 29 years	30
20 through 24 years	18
15 through 19 years	6
Up to 15 years	None

(j) (No change.)

(k) Inmates with detainers from other jurisdictions outside New Jersey shall be eligible as follows:

1.-3. (No change.)

4. In those cases in which application has been made under the Interstate Agreement on Detainers (I.A.D.) for disposition of the detainer, if the inmate is not brought to trial within 180 days from the date of the inmate's request and no court-ordered continuances were granted, the detainer shall be disregarded for classification purposes.

(l) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1.-2. (No change.)

3. Controlled dangerous substance offenses, if 1st, 2nd or 3rd degree crimes;

4.-13. (No change.)

(m) (No change.)

10A:9-4.7 Criteria for consideration for gang minimum custody status only

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

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of a sexual offense may be considered for gang minimum custody status provided:

1. (No change.)

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; or

3. (No change.)

(d) (No change.)

10A:9-5.1 Authority

(a) Commutation credit is awarded to inmates pursuant to N.J.S.A. 30:4-140, which provides:

1. For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional facility for a minimum-maximum term there shall be remitted to him or her from both the maximum and minimum terms of his or her sentence, for continuous orderly deportment, the progressive commutation credits indicated in the schedule herein.

2. Commutation credits are not awarded until after the expiration of the mandatory minimum portion of the sentence. When the mandatory minimum part of the sentence has been served, commutation credits are awarded on the full sentence.

3. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then commutation credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence.

4. No commutation credits shall be calculated as provided for in this subchapter on time served by any person in custody between his or her arrest and the imposition of sentence.

5. In case of any flagrant misconduct, commutation credits may be declared to be forfeited pursuant to N.J.A.C. 10A:9-5.3.

(b) (No change.)

10A:9-5.2 Exceptions; time in custody; failure to work

(a) No commutation or work credits shall be given to any inmate sentenced for sex offenses under the provisions of N.J.S.A. 2A:164. However, those inmates who have been sentenced or resentence under N.J.S.A. 2C are eligible to receive commutation and work credits from the effective date of that law, September 1, 1979.

(b) In all cases where the sentence includes a mandatory minimum term of imprisonment, commutation credits, work credits, gap time and minimum credits may not be applied to the mandatory minimum term, but may only reduce the maximum term.

(c) In no case may commutation credits, work credits, gap time and minimum credits be used to reduce a maximum sentence to a period of incarceration that is less than the judicial or statutory mandatory minimum term.

(d) (No change.)

(e) Work credits may not be applied in cases where an inmate does not work because of choice, unavailability of sufficient job assignments, medical lay-in (except for job related injuries), court remand, disciplinary lock-up or similar incapacity. Inmates who refuse to perform assigned work shall receive disciplinary charges in accordance with N.J.A.C. 10A:4.

(f) Work credits may be awarded to Administrative Segregation inmates pursuant to N.J.A.C. 10A:5-3.19, Work opportunities.

10A:9-5.3 Forfeiture of commutation credits

(a) Commutation credits may be declared to be forfeited as a penalty for misconduct. See N.J.S.A. 30:4-140.

(b) Forfeitures shall be determined by the Disciplinary Hearing Officer or Adjustment Committee pursuant to N.J.A.C. 10A:4. All decisions shall be reviewed by the Superintendent or Acting Superintendent, who may approve or modify the amount of commutation credits forfeited.

(c) In no case shall more than 365 days of commutation credits be declared forfeited for any single disciplinary offense.

10A:9-5.4 Forfeiture of commutation credits by parolees

A parolee under the supervision of the State Parole Board is subject to forfeiture of commutation credits in the event the parolee violates a condition of parole.

10A:9-5.5 Restoration of forfeited commutation credits

(a) The following procedures for restoring forfeited commutation credits apply to all inmates who received charges for acts which occurred on or after May 24, 1979.

1. Up to 75 percent of the forfeited commutation credits may be restored to inmates over the three year period following the incident

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which resulted in the loss of commutation credits. The three years must run consecutively, calculated beginning with the date of the incident. Credits shall be restored at the rate of 25 percent for each year which is free of any disciplinary charges with a guilty finding, as follows:

- i.-ii. (No change.)
- iii. If the inmate completes all three years without a charge which results in a guilty finding, the inmate will have 75 percent of the forfeited credits restored at the rate of 25 percent at the completion of each of the respective three years.

Example: An inmate commits a disciplinary infraction on January 1, 1985, and the sanction imposed includes a forfeiture of commutation credits. On January 25, 1985, the inmate commits another disciplinary infraction and is found "guilty." The inmate receives no disciplinary charge between January 25, 1985, to January 25, 1986. The inmate, therefore, has 25 percent of his or her commutation credits restored. The inmate is again free of guilty findings from January 24, 1986, to January 25, 1987, an additional 25 percent of his or her commutation credits is restored. From January 25, 1987, to January 25, 1988, the inmate is again free of guilty finding but is not eligible for an additional 25 percent restoration of commutation time because more than three years have elapsed since January 1, 1985, date which resulted in the loss of the commutation credits.

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

10A:9-5.6 Work credits for inmates housed in county correctional facilities

(a) State sentenced inmates who are being housed in county correctional facilities shall be credited with one day work credit for every five days worked beginning on the sixteenth day after sentencing. All inmates confined in county correctional facilities are charged with the responsibility to keep their cells clean; such assignments shall be considered as five day per week jobs. Work credits prior to sentencing must be certified by county authorities.

(b) Inmates that are parole violators without additional charges who are held in a county correctional facility on a parole warrant will receive work credits beginning on the sixteenth day after they have been in custody.

(c) Inmates that are Intensive Supervision Program (I.S.P.) violators, who are in county correctional facilities, will receive work credits beginning on the sixteenth day after they have been in custody.

(d) Parolees housed in county correctional facilities on additional charges and sentenced on additional charges may receive work credits and wages beginning on the sixteenth day after sentencing. If an inmate's parole is revoked prior to sentencing, the effective date on which to begin wages and work credits shall be the date of the parole revocation.

- (e) (No change.)
- (f) Inmates with approved parole dates who are transferred to county correctional facilities prior to parole shall receive work credits as if the inmates was still assigned to a five day or seven day per week job in a State correctional facility. Inmates in minimum custody status at the time of transfer shall continue to receive compensation for that status during their stay in the county correctional facility in accordance with N.J.S.A. 30:4-92.

10A:9-6.1 Responsibilities of the Inter-Institutional Classification Committee (I.I.C.C.)

- (a) (No change.)
- (b) Inmates shall be assigned to either the New Jersey, East Jersey, Northern, Bayside and Riverfront State Prisons and the Mid-State or Southern State Correctional Facility or to the Garden State, Albert C. Wagner or Mountainview Youth Correctional Facilities when appropriate.
- (c)-(d) (No change.)

10A:9-6.2 Composition of the Inter-Institutional Classification Committee (I.I.C.C.)

(a) The Deputy Director of the Division of Adult Institutions shall serve as permanent Chairperson of the Inter-Institutional Classification Committee (I.I.C.C.). In addition, the I.I.C.C. shall be com-

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posed of the Superintendents of the New Jersey, East Jersey, Northern, Bayside and Riverfront State Prisons and the Mid-State and Southern State Correctional Facilities.

- 1.-2. (No change.)
- (b) (No change.)

10A:9-6.3 Criteria for assignment of inmates

(a) (No change.)

(b) Inmates assigned to the New Jersey State Prison shall generally be men who, in the opinion of the I.I.C.C., require a higher degree of custody and more constant supervision than inmates in other State prisons. Known instigators and agitators, and extreme assaultive types, shall be assigned to the New Jersey State Prison. Other criteria which shall be considered in an assignment to New Jersey State Prison include, but are not limited to:

- 1.-3. (No change.)
- (c) (No change.)
- (d) Inmates who have a maximum sentence of up to and including 15 years may be assigned to Northern State Prison. An inmate shall not be assigned to Northern State Prison if he:

- 1. Is a known instigator or agitator; or
- 2. Has an aggressive homosexuality record.

(e) Inmates who have a maximum sentence of up to and including 20 years may be assigned to Bayside State Prison. An inmate shall not be assigned to Bayside State Prison if he has:

- 1.-5. (No change.)
- (f) Inmates eligible for parole within three years may be assigned to Mid-State Correctional Facility. An inmate shall not be assigned to Mid-State Correctional Facility if he has:

- 1.-4. (No change.)
- (g) Inmates with a maximum sentence of up to and including 20 years may be assigned to Southern State Correctional Facility. An inmate shall not be assigned to Southern State Correctional Facility if he has:

- 1.-4. (No change.)
- (h) Inmates with a maximum sentence of up to and including 20 years may be assigned to Riverfront State Prison. An inmate shall not be assigned to Riverfront State Prison if he has:

- 1.-2. (No change.)
- (i) An inmate may be assigned directly to Jones Farm if he meets the following requirements:

- 1.-4. (No change.)
- (j) Assignment to Jones Farm shall be permitted for those individuals who have previous convictions for assaultive offenses, if the present offense(s) and sentence(s) fall within the presently established criteria for assignment to Jones Farm.

(k) An inmate shall be assigned to one of the youth correctional facilities, such as, Garden State, Albert C. Wagner or Mountainview Youth Correctional Facility if, in the opinion of the I.I.C.C., the inmate is younger and less sophisticated than other prison inmates or the inmate can benefit from the educational, vocational, therapeutic and rehabilitative programs available at those correctional facilities.

10A:9-8.9 Parole records

(a) For all parolees who are sentenced under N.J.S.A. 2C:47 and 2A:164, the Coordinator shall receive copies of the following:

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

(a)

THE COMMISSIONER**Community Release Programs****Residential Community Release Agreement Programs****Adopted New Rules: N.J.A.C. 10A:20-4**

Proposed: December 2, 1991 at 23 N.J.R. 3624(a).

Adopted: January 15, 1992 by William H. Fauver, Commissioner, Department of Corrections.

Filed: January 22, 1992 as R.1992 d.80, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 30:4-91.2.

Effective Date: February 18, 1992.

Expiration Date: February 18, 1997.

Summary of Public Comments and Agency Responses:

The Department of Corrections received comments from the Division of Youth and Family Services (DYFS), Department of Human Services. The comments and the Department of Corrections' responses are as follows:

COMMENT: The Division of Youth and Family Services (DYFS) suggested that N.J.A.C. 10A:20-4.12 be amended to add an additional exclusion that inmates with a history of child abuse not be permitted to work in a Residential Community Release Agreement Program which services minors.

RESPONSE: The Department of Corrections believes that such inmate assignments are being made; however, the suggested language will be added to encourage careful review of inmate placement into Residential Community Release Agreement Programs.

COMMENT: Commenter suggested that pre-release services to inmates who were convicted of an offense against a child include appropriate treatment for such conduct, and that the inmate's acceptance of treatment be made a condition of his or her participation in the Residential Community Release Agreement Program.

RESPONSE: Depending on the type of Residential Community Release Agreement Program to which the inmate is sent, the contract with the agency requires treatment. Moreover, the inmate's program application includes the requirement that the inmate abide by rules, participate in agency programs, etc. Failure to participate satisfactorily is cause for removal.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisk ***[thus]***).

**CHAPTER 20
COMMUNITY RELEASE PROGRAMS**

SUBCHAPTERS 1-3. (RESERVED)**SUBCHAPTER 4. RESIDENTIAL COMMUNITY RELEASE AGREEMENT PROGRAMS****10A:20-4.1 Definitions**

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

"Contract agency" means an agency in the community which has a contract with the New Jersey Department of Corrections to provide halfway house or substance abuse treatment services.

"Furlough plan" means a written plan which specifies a home or destination approved by a District Parole Office for an inmate to visit while the inmate is on furlough.

"Halfway house" means a Residential Community Release Agreement Program with specific emphasis on employment and/or educational activities.

"Regional institution" means the correctional facility designated to provide support services to a contract agency; such as medical, security, administration, disciplinary returns, psychological evaluations and parole hearing scheduling.

"Residential Community Release Agreement Program" means the provision of halfway house or substance abuse treatment services to inmates, under the jurisdiction of the New Jersey Department of Corrections, by a contract agency in the community in accordance with a contractual agreement between the agency and the New Jersey Department of Corrections.

"Substance Abuse Treatment Program" means a Residential Community Release Agreement Program with specific emphasis on substance abuse treatment.

10A:20-4.2 Authority

Pursuant to N.J.S.A. 30:4-91.2, the Commissioner, New Jersey Department of Corrections, or his or her designee may designate as a place of confinement any available, suitable and appropriate institution or facility whether owned by the State or otherwise, and may at any time transfer an inmate from one place of confinement to another.

10A:20-4.3 Contract between the New Jersey Department of Corrections and community agencies

All agencies outside of the New Jersey Department of Corrections shall enter into a formal contract with the Department of Corrections prior to receiving inmates for placement into Residential Community Release Agreement Programs.

10A:20-4.4 Administration of Residential Community Release Agreement Programs

The Bureau of Contract Administration, Division of Adult Institutions, shall be responsible for the administration of Residential Community Release Agreement Programs under contract with the New Jersey Department of Corrections.

10A:20-4.5 Correctional facility staff assigned to program; duties

(a) The correctional facility Superintendent shall designate a staff member to serve as the Institutional Community Release Agreement Program Coordinator. The Institutional Community Release Agreement Program Coordinator shall:

1. Maintain liaison with the Bureau of Contract Administration and the contract agency;
2. Make periodic visits to contract agencies and attend training sessions provided by the Bureau of Contract Administration;
3. Be responsible for having a thorough familiarity with contract agencies and advise correctional facility staff of changes in policies of contract agencies;
4. Be responsible for explaining contract agency programs to inmates; and
5. Be responsible for notifying the Bureau of Contract Administration of any change that occurs in an inmate's status, such as, medical, custody, detainees or any such circumstances that would render the inmate ineligible for participation in the Program.

10A:20-4.6 General eligibility criteria for Residential Community Release Agreement Programs

(a) Candidates for participation in Residential Community Release Agreement Programs shall:

1. Be classified full minimum by the Institutional Classification Committee (I.C.C.) and have successfully completed a minimum of one month in full minimum custody status;
2. Have a positive psychological evaluation not more than six months old which shall address the inmate's readiness and ability to adequately adapt to the pressures and responsibilities of living outside the correctional facility;
3. Have made a satisfactory overall correctional facility adjustment and be seen as not likely to pose a threat to the safety of the community; and
4. Have completed Form 686-I RESIDENTIAL COMMUNITY RELEASE AGREEMENT PROGRAM APPLICATION.

(b) Inmates assigned to the Mountainview Youth Correctional Facility, a minimum security correctional facility, are eligible to apply for participation in Residential Community Release Agreement Program two months after admission to that correctional facility.

10A:20-4.7 Eligibility criteria for halfway houses

(a) In addition to the general criteria in N.J.A.C. 10A:20-4.6, candidates for halfway houses shall be within 12 months of:

ADOPTIONS

1. An established parole date;
2. An expiration of maximum sentence;
3. An actual parole eligibility date established by the New Jersey State Parole Board; or
4. An anticipated parole date, as established by the New Jersey State Parole Board, for inmates serving indeterminate sentences.

10A:20-4.8 Eligibility criteria for Substance Abuse Treatment Programs

(a) In addition to the general criteria in N.J.A.C. 10A:20-4.6, candidates for Substance Abuse Treatment Programs shall be within 15 months of:

1. An established parole date;
2. An expiration of maximum sentence;
3. An actual parole eligibility date established by the New Jersey State Parole Board; or
4. An anticipated parole date, as established by the New Jersey State Parole Board, for inmates serving indeterminate sentences.

10A:20-4.9 Exclusions from Residential Community Release Agreement Programs

(a) The following circumstances may make an inmate ineligible for participation in Residential Community Release Agreement Programs:

1. A previous violation of the:
 - i. Intensive Supervision Program (I.S.P.);
 - ii. Intensive Supervision Surveillance Program (I.S.S.P.);
 - iii. Electronic Monitoring/Home Confinement Program;
 - iv. Work/Study Release Program;
 - v. Furlough Program; or
 - vi. Other Residential Community Release Agreement Programs;
2. Detainers or warrants which do not preclude eligibility for full minimum custody status but on which an arrest would be made by local police departments if an inmate were transferred to a contract agency;
3. Association with organized crime as indicated on the commitment paper or in the pre-sentence report;
4. A medical condition requiring the inmate to take psychotropic and/or addictive medication;
5. Dental work in progress; and/or
6. A pending surgical procedure.

10A:20-4.10 Inmate application and review by the Institutional Community Release Agreement Program Coordinator

(a) An inmate interested in participating in a Residential Community Release Agreement Program shall complete and sign all sections of Form 686-I RESIDENTIAL COMMUNITY RELEASE AGREEMENT PROGRAM APPLICATION and submit it to the Institutional Community Release Agreement Program Coordinator for review.

(b) The Institutional Community Release Agreement Program Coordinator shall explain to the inmate that the inmate's signature on Form 686-I merely signifies a willingness to participate in the Residential Community Release Agreement Program and does not signify that the inmate has been approved for the Program.

(c) The Institutional Community Release Agreement Program Coordinator, upon receipt of the application from the inmate, shall determine:

1. That Form 686-I is completely and accurately filled out; and
2. That the inmate-applicant meets all the general criteria established for inmate participation in the Residential Community Release Agreement Program and the criteria specific to the Program for which the inmate is applying.

(d) If the inmate does not meet the criteria, the inmate shall be notified of the reason(s), in writing, by the Institutional Community Release Agreement Program Coordinator.

(e) If the inmate meets the criteria, the Institutional Community Release Agreement Program Coordinator shall submit the signed Form 686-I to the Institutional Classification Committee (I.C.C.) for review.

CORRECTIONS

10A:20-4.11 Medical review of applicants for Residential Community Release Agreement Programs

(a) A complete review of an inmate's medical records shall be made when the inmate is being considered for placement in a Residential Community Release Agreement Program.

(b) The Chief Physician shall be responsible for reviewing an inmate's medical records and considering the following factors which include, but are not limited to:

1. The employability of the inmate;
2. The work limitations of the inmate, such as no food handling, light duty, no work around machinery;
3. Medication(s), such as psychotropic and addictive medication;
4. Chronic illness, such as diabetes, asthma;
5. Dental work in progress; and
6. Impending surgery.

(c) The chief Physician shall be responsible for completing Form 686-II MEDICAL EVALUATION and submitting the Form to the Institutional Community Release Agreement Program Coordinator who will forward Form 686-II to the Institutional Classification Committee (I.C.C.).

(d) If there are questions regarding the appropriateness of medically approving an inmate for participation in a Residential Community Release Agreement Program, the Chief Physician shall contact the Office of Institutional Support Services (O.I.S.S.), Health Service Unit, Director of Medical Services, for assistance prior to sending the completed Form 686-II to the Institutional Community Release Agreement Program Coordinator.

(e) The Institutional Community Release Agreement Program Coordinator shall notify the Bureau of Contract Administration of any changes in the inmate applicant's medical condition that occur during the period of time between the completion of the medical review and the transfer of the inmate to the Program.

10A:20-4.12 Institutional Classification Committee's (I.C.C.) review and disposition

(a) The Institutional Classification Committee (I.C.C.) shall have the authority to review the inmate's file, and the discretion to approve or reject the inmate's application to participate in a Residential Community Release Agreement Program after considering:

1. The general eligibility criteria in N.J.A.C. 10A:20-4.6;
2. The circumstances which make an inmate ineligible for program participation outlined in N.J.A.C. 10A:20-4.9;
3. The nature and circumstance(s) of the present and/or previous convictions;
4. The inmate's overall correctional facility adjustment;
5. The professional and medical reports on the inmate;
6. The extent of the inmate's offense history;
7. The extent of the inmate's substance abuse history;
8. The inmate's assaultive history;
9. The inmate's present and/or previous parole violation(s);
10. The inmate's previous failure in a Residential Community Release Agreement Program; and/or
11. Any other factor(s) which in the judgement of the I.C.C., would assist the I.C.C. in determining the suitability of the inmate to participate in a Residential Community Release Agreement Program.

(b) The I.C.C. is authorized to evaluate the seriousness and/or recency of an inmate's previous violations of the Intensive Supervision Program, Intensive Supervision Surveillance Program, Electronic Monitoring/Home Confinement Program, Work/Study Release Program, Furlough Program, or other Residential Community Release Agreement Programs in order to determine the appropriateness of the inmate for a Residential Community Release Agreement Program placement.

(c) The I.C.C. shall reject an inmate's application when placement of the inmate in a Residential Community Release Agreement Program would pose a threat to the community or cause adverse community reaction*, or the Residential Community Release Agreement Program services minors and the inmate has a history of child abuse*.

(d) The I.C.C. should use its discretion in considering the above factors when reviewing an inmate's application for a Residential Community Release Agreement Program.

(e) The Institutional Community Release Agreement Program Coordinator shall attend all meetings of the I.C.C. when Residential Community Release Agreement Program cases are being reviewed.

(f) The Institutional Community Release Agreement Program Coordinator will notify the inmate, in writing, of the status of the inmate's application to a Residential Community Release Agreement Program.

10A:20-4.13 Forwarding documents to the Bureau of Contract Administration

(a) Following approval of an inmate to participate in a Residential Community Release Agreement Program, the Institutional Community Release Agreement Program Coordinator shall submit Form 686-I RESIDENTIAL COMMUNITY RELEASE AGREEMENT PROGRAM APPLICATION and Form 686-II MEDICAL EVALUATION to the Bureau of Contract Administration along with two copies of the following:

1. Up-to-date classification material for the inmate-applicant which includes a psychological evaluation not more than six months old;

2. The progress sheet from the inmate's classification folder and any other relevant information regarding the inmate's correctional facility adjustment and program participation;

3. The inmate's criminal history record (rap sheet);

4. The inmate's parole plan;

5. The New Jersey State Parole Board hearing decision, if available;

6. Form 684-VI REQUEST FOR INVESTIGATION OF FURLOUGH DESTINATION or, if available, the results of that investigation from the appropriate District Parole Office;

7. A recent inmate photograph with physical description on the reverse side;

8. The status of detainers on file;

9. The Pre-Sentence Report;

10. The court commitment order when fines, penalties or restitution are part of the sentence; and

11. Keep separate orders.

(b) If the inmate has not previously applied for furlough, Form 684-VI should be completed and submitted to the Bureau of Contract Administration along with the material listed above.

10A:20-4.14 Role of the Bureau of Contract Administration

(a) The Bureau of Contract Administration shall make every effort to assign the inmate to the Residential Community Release Agreement Program to which the inmate has applied.

(b) The Bureau of Contract Administration may suggest an alternate placement if:

1. Bed space is unavailable at the Residential Community Release Agreement Program to which the inmate has applied and bed space is available at a similar program; or

2. Another program is better suited for meeting the inmate's needs.

(c) When an alternate placement is suggested, the Bureau of Contract Administration shall notify the Institutional Community Release Agreement Program Coordinator who shall discuss the alternate program with the inmate and secure the inmate's written acceptance of the alternate program.

(d) The Institutional Community Release Agreement Program Coordinator shall advise the Bureau of Contract Administration of the inmate's decision to accept or reject an alternate program.

(e) When the applicant is accepted by the contract agency, the Bureau of Contract Administration shall prepare the transfer orders necessary for the inmate to be transferred from the correctional facility to the contract agency.

(f) A waiting list of inmates eligible for consideration by contract agencies for assignment to their programs shall be maintained by the Bureau of Contract Administration.

10A:20-4.15 Notification of contract agency that an inmate is available for a Community Release Agreement Program; contract agency responsibility

(a) After Form 686-I Section V. AUTHORIZATION FOR RELEASE OF INFORMATION has been signed by the inmate, classification material shall be forwarded by the Bureau of Contract Administration to the contract agency for purpose of screening the inmate applicant for the program. The contract agency must treat classification material with strict confidentiality.

(b) If desired, the contract agency may contact the Institutional Community Release Agreement Program Coordinator to arrange for an interview with the inmate.

(c) After a review of the inmate's application and classification material, the contract agency shall notify the Bureau of Contract Administration of the agency's decision to accept or reject the inmate for participation in their program.

(d) When the applicant is not accepted by the contract agency, all classification materials must be returned to the correctional facility with a written statement citing reasons for the denial. A copy of the denial shall be forwarded to the Bureau of Contract Administration by the contract agency.

10A:20-4.16 New Jersey State Parole Board hearing

New Jersey State Parole Board hearings for inmates assigned to Residential Community Release Agreement Programs shall be arranged and conducted in accordance with N.J.A.C. 10A:71-3 and any applicable statutes.

10A:20-4.17 New Jersey State Parole Board extension after inmate is approved for program and is awaiting placement

(a) When an inmate receives a New Jersey State Parole Board extension, after the inmate has been approved for transfer and is on the waiting list for a bed, the Bureau of Contract Administration shall request an updated parole eligibility date.

(b) When the inmate's updated parole eligibility date indicates that the inmate will be eligible again for placement in a Residential Community Release Agreement Program within the next three months, the application shall be held in the Bureau of Contract Administration "Pending File" until the inmate is eligible.

(c) When the inmate is eligible for placement in a Residential Community Release Agreement Program, the Bureau of Contract Administration shall request that the Institutional Community Release Agreement Program Coordinator forward updated information, such as psychological, progress sheet, and medical, to the Bureau for review.

10A:20-4.18 New Jersey State Parole Board extension for halfway house residents

(a) When an inmate's parole eligibility date has been extended, the parent correctional facility, the Regional Institution, the Bureau of Contract Administration and the Director of the halfway house shall determine whether the inmate will remain at the halfway house by reviewing the following:

1. The updated parole eligibility date;

2. The inmate's overall progress and adjustment in the Residential Community Release Agreement Program;

3. The inmate's prognosis for successfully completing the program if allowed to remain;

4. The total length of time the inmate will be in the program (if less than 15 months); and

5. Any other pertinent information.

(b) When an inmate's parole eligibility date has been extended, and the inmate's parole eligibility date would extend participation in the Residential Community Release Agreement Program beyond 15 months, the inmate shall be returned to the correctional facility, but the inmate may reapply when eligible.

(c) Parole eligibility dates shall not be projected in determining appropriate placement of inmates in halfway houses or other Residential Community Release Agreement Programs.

10A:20-4.19 Preparation for transfer to contract agency

(a) A complete medical and dental checkup shall be given each inmate prior to an inmate's transfer to a contract agency.

ADOPTIONS

(b) A check for the money remaining in the inmate's account shall accompany the inmate to the contract agency.

(c) Copies of the transfer authorization shall be sent by the Bureau of Contract Administration to appropriate personnel at:

1. The parent correctional facility;
2. The regional institution;
3. The New Jersey State Parole Board; and
4. The appropriate District Parole Office.

(d) The District Parole Office shall, in turn, notify the affected police department of the inmate's transfer to the contract agency and of the inmate's furlough address.

(e) The Bureau of Contract Administration shall be notified immediately of the cancellation of an impending transfer of an inmate to a contract agency so that another inmate may be selected for placement.

(f) The Institutional Community Release Agreement Program Coordinator shall encourage and assist the inmate, when appropriate, in obtaining documents that will be necessary in the inmate's search for employment and should be processed, if possible, prior to transfer. These documents may include:

1. A Social Security card;
2. A driver's license; and/or
3. A birth certificate.

(g) Only personal property, which can be carried inside two boxes not exceeding two feet by three feet by two feet, may accompany the inmate to the contract agency. All other personal property will be forwarded to the inmate's home or other designated address.

10A:20-4.20 Transportation of inmate

(a) The parent correctional facility shall be responsible for transporting or making the arrangements necessary for transporting the inmate to the contract agency.

(b) Inmates may be transported without restraint to the contract agency in a State owned passenger vehicle.

(c) After an inmate has been assigned to, and is living at, a Residential Community Release Agreement Program, the inmate shall be transported to the regional institution and parent correctional facility in accordance with internal management practices and procedures established to provide transportation between Residential Community Release Agreement Programs and regional institutions or parent correctional facilities.

10A:20-4.21 Contract agency rules, regulations and discipline

(a) An orientation to the contract agency and written rules and regulations shall be given to the inmate immediately following the inmate's arrival at the contract agency.

(b) Inmate residents who violate contract agency rules and regulations shall be subject to such restriction of privileges by contract agency staff as would apply to other inmate residents. Such restrictions shall be imposed in accordance with procedures developed by contract agency staff and agreed upon by the director of the contract agency and the Commissioner, Department of Corrections, or his or her designee (see N.J.A.C. 10A:4).

(c) Major disciplinary violations shall be reported immediately to the regional institution and the Bureau of Contract Administration.

(d) Major violations shall result in immediate return of the inmate to the parent correctional facility. Major disciplinary violations shall include, but are not limited to:

1. Charges by police for violation of law, except minor traffic and municipal violations;
2. Charges for or evidence of violation of any statute governing the use of a controlled dangerous substance (C.D.S.);
3. Asterisk prohibited acts as listed in the N.J.A.C. 10A:4-4, except for prohibited act *.207;
4. Some non-asterisked prohibited acts (see N.J.A.C. 10A:4), such as prohibited act .254 Refusing to Work, which interferes with the purpose of the Residential Community Release Agreement Program since one of the primary goals of the Program is to provide employment for inmates;
5. Unauthorized absences in excess of two hours;
6. Travel outside of the State of New Jersey;
7. Imbibing in alcoholic beverages; and
8. Sexual relations on the premises of the contract agency.

CORRECTIONS

(e) All minor violations and in-house disciplinary actions shall be recorded in the contract agency's log book and the inmate's file for review by the Bureau of Contract Administration staff members.

10A:20-4.22 Urine monitoring

(a) All inmates who participate in Residential Community Release Agreement Programs shall be subject to urine monitoring.

(b) Urine monitoring at contract agencies shall be conducted in accordance with the requirements N.J.A.C. 10A:3-5.9.

(c) In order to comply with N.J.A.C. 10A:3-5.9(b), the director of the contract agency shall be considered the equivalent of the superintendent, and a staff supervisor shall be considered the equivalent of a correction officer of the rank of sergeant or above.

(d) Form 172-I CONTINUITY OF EVIDENCE—URINE SPECIMEN shall accompany all urine samples which are delivered by the contract agency to the Department of Corrections' laboratory.

(e) The laboratory shall report the results of a positive urine analysis to the Bureau of Contract Administration. The Bureau of Contract Administration shall notify the contract agency by telephone of positive urine analysis results and forward the laboratory report to the parent correctional facility with a copy to the contract agency.

(f) When the urine analysis is positive, the contract agency is responsible for:

1. Contacting the regional institution;
2. Making arrangements for the inmate's return to the parent correctional facility; and
3. Writing disciplinary charges in accordance with N.J.A.C. 10A:4.

10A:20-4.23 Emergency medical and dental treatment

(a) Emergency medical and dental services shall be provided for inmates assigned to Residential Community Release Agreement Programs.

(b) The directors of Residential Community Release Agreement Programs shall arrange for a hospital or alternate medical or dental facility to provide emergency medical and dental treatment to inmates assigned to their programs.

(c) When an inmate in a Residential Community Release Agreement Program is hospitalized due to an emergency, the director of the Residential Community Release Agreement Program shall notify the Superintendent of the regional institution and furnish the following information:

1. The inmate's name;
2. The inmate's number;
3. The name and location of hospital;
4. The diagnosis; and
5. The name of attending physician.

(c) It shall be the responsibility of the regional institution to notify the parent correctional facility and the Health Services Unit, Office of Institutional Support Service, of an emergency admission.

10A:20-4.24 Non-emergency medical services

(a) Residential Community Release Agreement Program which do not have physicians on staff, or do not have a written affiliation agreement with a hospital, shall utilize the non-emergency procedures at the regional institution.

(b) Non-emergency hospitalization or surgery shall be considered for approval by the Director of Medical Services, Health Services Unit, Office of Institutional Support Services (O.I.S.S.).

10A:20-4.25 Health care plans use and additional costs

(a) Inmates covered by health care plans through private sector employers may receive medical services from participating physicians to the extent of the provisions of the health care plan.

(b) Any initial per visit cost to determine the nature of a health problem required by health care plans shall be the responsibility of the inmate.

(c) Prior to using a health care plan, the inmate must sign a statement acknowledging that:

1. The inmate voluntarily chooses to use his or her health care plan; and
2. The inmate is cognizant that the New Jersey Department of Corrections would provide medical services to the inmate without charge.

CORRECTIONS

(d) When the cost of non-emergent medical/dental treatment exceeds the amount of coverage provided by an inmate's private sector health care plan, the regional institution and the Director of Medical Services, Office of Institutional Support Services (O.I.S.S.), Health Services Unit, shall review the case to determine whether to approve payment of the additional cost prior to the inmate receiving treatment.

(e) When the regional institution determines that the inmate's requested non-emergent medical/dental treatment is elective, the regional institution shall not pay the additional cost which exceeds the amount of coverage provided by the inmate's private sector health care plan. However, the inmate may submit a request for approval to assume for himself or herself the additional cost of the non-emergent medical/dental treatment to the Chief, Bureau of Contract Administration, for submission to the Director of Medical Services, O.I.S.S., Health Services Unit, for review, pursuant to (d) above.

(f) A listing of health care plans and the inmates covered by them shall be kept on file at the contract agency.

10A:20-4.26 Medication or prescriptions

(a) The parent correctional facility shall be responsible for forwarding a 30-day supply of medication for the inmate with the correction personnel who are transporting the inmate to the Residential Community Release Agreement Program. The correction personnel shall be responsible for turning the medication over to the director of the Residential Community Release Agreement Program or his or her designee.

(b) Prescriptions cannot be continued beyond 30 days. If a prescription extension is required, the inmate shall be evaluated by:

1. The regional institution physician;
2. The physician under contract with the contract agency; or
3. The private health care plan physician.

10A:20-4.27 Inmate work credits

Inmates assigned to a contract agency shall be awarded work time credit pursuant to N.J.S.A. 30:4-92.

10A:20-4.28 Inmate wages in Substance Abuse Treatment Programs

(a) Inmates assigned to a Substance Abuse Treatment Program shall receive wages paid by the regional institution for a five day week based on the semi-skilled average pay level established by internal management policies and procedures.

(b) The regional institution shall forward a check to the Substance Abuse Treatment Program in the name of each inmate at the contract agency. The contract agency shall ensure that the inmate endorses and deposits the funds into an account for the inmate's personal use.

(c) The contract agency shall be responsible for notifying the Institutional Community Release Agreement Program Coordinator when an inmate secures paid employment.

(d) Wages paid by the regional institution shall terminate when the inmate secures paid employment.

10A:20-4.29 On site evaluation of pre-release employment sites

(a) The Bureau of Contract Administration shall be responsible for the evaluation of all prospective places of employment for pre-releases.

(b) The Bureau of Contract Administration staff shall initially survey any prospective pre-release employment placement, and the factors which may be taken into account include, but are not limited to:

1. Legitimacy of place of employment;
2. Credibility of the employer and other employees;
3. Proximity to the contract program;
4. Working conditions of the employees;
5. Availability of transportation;
6. Training opportunities afforded;
7. Potential health hazards to employees;
8. The ability of the employer to meet the New Jersey Department of Corrections' requirements, such as Workman's Compensation and minimum wage;

ADOPTIONS

9. Reaction of union toward inmate employees; and

10. Reputation of place of employment in the community.

(c) The Bureau of Contract Administration shall:

1. Prepare and transmit pre-release employment evaluations, in writing, to the contract agencies and appropriate District Parole Offices;

2. Monitor contract agencies for compliance with employment policies and procedures; and

3. Maintain a current record of pre-release employment sites and completed employment evaluations.

10A:20-4.30 Notification of local police

The contract agencies shall notify the local police, in writing, immediately following an inmate's employment in the community.

10A:20-4.31 Monitoring employment/education sites

(a) Contract agencies shall monitor pre-release employment and education sites in accordance with applicable laws.

(b) The Bureau of Contract Administration shall be responsible for monitoring contract agencies for compliance with applicable laws and for periodic on-site monitoring of the pre-release employment and education sites.

(c) When an inmate starts employment or begins attending educational classes, the Bureau of Contract Administration shall implement a plan for monitoring the placement site as frequently as is necessary. The plan for monitoring the placement shall include periodic contacts with the employer, in the case of an employment placement, or with the campus security office, in the case of education placement.

(d) The periodic contacts may be concerned with factors that include, but are not limited to:

1. The inmate's attendance;
2. The quality of the inmate's relationship with the employer or school administration;
3. The quality of the inmate's relationship with the peer group at the placement site;
4. The inmate's adherence to standards at the placement site;
5. The inmate's work habits and attitudes;
6. The inmate's progress and/or problems;
7. The impact of the program upon the employer and community employees;

8. The reaction of the community to the program; and

9. The likelihood of the inmate retaining the employment or continuing the training after parole.

(e) The Bureau of Contract Administration shall report the results of contacts with the employment or education placement to the contract agency following each time the placement has been monitored.

(f) The Bureau of Contract Administration shall make the results of employment evaluations and periodic monitoring available to the appropriate District Parole Office, upon request.

10A:20-4.32 Maintenance fees

(a) All employed inmates who have been placed in a halfway house under contract with the Department of Corrections shall be required to pay a maintenance fee. The maintenance fee is in accordance with N.J.S.A. 30:4-91.4.

(b) Inmates placed in a Substance Abuse Treatment Program shall be required to pay a maintenance fee when the inmates reach the work release phase of the program.

(c) The maintenance fee is computed as follows:

1. Weekly gross earnings that total \$50.00 shall not be subject to maintenance; and
2. Gross earnings over \$50.00 and up to \$1,000 per week shall be charged a 15 percent maintenance fee, not to exceed \$142.50 per week.

(d) Residents shall be given a receipt for the maintenance paid and a copy shall be maintained by the contract agency.

(e) The maintenance fee shall be collected from each inmate by a designated staff member of the contract agency and the amount shall be deducted from the Department of Corrections' monthly invoice by the contract agency.

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(f) Information relating to the collection of these maintenance fees shall be attached to Form 50/54.

10A:20-4.33 Payment of fines, penalties and restitution

All employed inmates who have been placed in a contract agency shall be required to pay fines, penalties and/or restitution required by the courts, statutes or Parole Board Authority.

10A:20-4.34 Bank accounts

(a) An inmate resident may open a passbook savings account in a commercial bank or other saving institutions for his or her use while at a contract agency.

(b) An inmate resident may not:

1. Open a bank checking account;
2. Open a charge account;
3. Purchase any item on an installment plan; or
4. Enter into any type of contract, unless approved by the Bureau of Contract Administration.

10A:20-4.35 Personal property

(a) Neither the Department of Corrections nor the contract agency shall be responsible for the personal property of inmates.

(b) Inmates may be permitted to retain in their possession such items of personal property in the contract agency as are permitted by contract agency regulations.

(c) Inmates shall make arrangements to have valuable and excessive property sent home prior to transfer to the contract agency.

10A:20-4.36 Resident passes and furloughs

(a) Inmate residents may receive passes and/or overnight furloughs in accordance with the contract agency's phase system which has been approved by the Bureau of Contract Administration.

(b) The contract agency shall develop a written accountability procedure, to be utilized while the inmate resident is on a pass or overnight furlough, which shall be submitted to the Bureau of Contract Administration for review. If approved, the accountability procedure shall be incorporated into the contract agency's policy and procedure manual.

10A:20-4.37 Overnight furlough limitations

Overnight furloughs shall not exceed two nights or 56 hours within a seven day period unless prior approval has been granted by the Bureau of Contract Administration.

10A:20-4.38 Overnight furlough exclusions

(a) An inmate shall be excluded from receiving an overnight furlough if the inmate:

1. Does not have an approved furlough plan; or
2. Is unemployed and is not engaged in an educational or vocational training program.

10A:20-4.39 Escapes

(a) An inmate residing at a contract agency shall be deemed an escapee under the following conditions:

1. The inmate leaves the contract agency without the authorization of the director or his or her designee; or

2. The inmate fails to return to the contract agency, more than two hours after designated time of return unless the designated time of return has been extended for legitimate reason by the director or his or her designee. The contract agency shall assume the responsibility for determining the legitimacy of the reason for granting an extension.

(b) The inmate who cannot be contacted at the destination to which the inmate has been granted temporary leave shall not be deemed an escapee unless the inmate fails to return to the contract agency at the designated time of return. No two hour "grace period" referred to in (a)2 above may be granted to the inmate under these circumstances. However, if the contract agency receives information that the inmate is leaving or has left the jurisdiction, the regional institution shall be notified immediately.

(c) If the inmate cannot be contacted at the temporary leave site, but does contact the contract agency, the designated time of return may be adjusted by the director of the contract agency or his or her designee, allowing sufficient time for the inmate to return to the contract agency.

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(d) An adjustment in the time of return shall be documented with staff signatures on the sign in/out sheet and the log book. No two hour "grace period" may be granted to the inmate who fails to return to the contract agency by the adjusted designated time of return.

10A:20-4.40 Contract agency staff authorized to report escapes

(a) The contract agency shall be responsible for providing the Bureau of Contract Administration with a current list of agency staff members who are authorized to report escapes.

(b) The Bureau of Contract Administration shall be responsible for providing the list of agency staff members who are authorized to report escapes to the Center Control of the regional institution.

10A:20-4.41 Procedure for reporting an escape

(a) The contract agency staff member who is on duty at the time of the escape is responsible for the immediate notification of the director or his or her designee.

(b) The director or his or her designee shall be responsible for notifying the Center Control of the regional institution of the escape and providing Center Control with all pertinent information that is available at the time.

(c) When additional information becomes available or the inmate returns to the contract agency, the contract agency shall immediately notify the Center Control of the regional institution.

10A:20-4.42 Writing the escape charge

(a) The contract agency staff member who was on duty at the time of the escape shall be responsible for writing the escape charge.

(b) The contract agency shall notify the Bureau of Contract Administration of the escape as soon as possible during regular business hours or on the morning following a weekend or holiday.

10A:20-4.43 Persons authorized to remove inmates from contract agencies

(a) An inmate resident legally residing in a contract agency may be removed from a contract agency only by the following persons:

1. Law enforcement personnel holding a legal warrant or a Writ of Habeas Corpus; or
2. Staff of the regional institution or from the correctional facility assigned to transfer the inmate.

(b) Advance notice of the impending removal of an inmate shall be provided to the contract agency by the concerned correctional facility except in cases where such notification could lead to the inmate absconding.

(c) Upon arrival, official identification must be presented to the contract agency by the person(s) authorized to remove an inmate from the contract agency.

10A:20-4.44 Non-disciplinary administrative returns

(a) Situations warranting an administrative return of an inmate to the correctional facility may include, but are not limited to:

1. An inmate needing medical treatment which is required to be obtained at the correctional facility;
2. An inmate failing to make a satisfactory adjustment although the inmate has not committed a major infraction;
3. An inmate desiring to return to the correctional facility;
4. An inmate displaying signs of becoming a potential escape risk; and/or
5. The correctional facility receiving a detainer which requires a change in the inmate's minimum custody status.

(b) In cases when an inmate is being returned to the correctional facility for administrative reasons, the director or his or her designee shall prepare a report which indicates the reason(s) for the return.

(c) A copy of the report shall be given to the correction officer(s) who is transporting the inmate, and a copy shall be forwarded to the Bureau of Contract Administration. The report shall include the following information:

1. The detailed reasons for the return of the inmate; and
2. A summary of the inmate's overall attitude and adjustment while in the Residential Community Release Agreement Program.

10A:20-4.45 Disciplinary returns

(a) When an inmate violates a prohibited act(s) that is listed in N.J.A.C. 10A:20-4.21(d), the inmate shall be returned to the correctional facility in accordance with N.J.A.C. 10A:20-4.20.

LABOR

(b) Copies of reports, notices and other documents related to an inmate's return from a contract agency shall be forwarded by the Bureau of Contract Administration to:

1. The appropriate regional institution;
2. The parent correctional facility; and
3. The Bureau of Parole personnel.

10A:20-4.46 Forms

(a) The following forms related to Residential Community Release Agreement Programs shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 172-I CONTINUITY OF EVIDENCE-URINE SPECIMEN;
2. 684-VI REQUEST FOR INVESTIGATION OF FURLOUGH DESTINATION;
3. 686-I RESIDENTIAL COMMUNITY RELEASE AGREEMENT PROGRAM APPLICATION;
4. 686-II MEDICAL EVALUATION;
5. 686-III WAIVER OF RIGHT TO RECEIVE MEDICAL TREATMENT PROVIDED BY THE DEPARTMENT OF CORRECTIONS;
6. 686-IV TREATMENT INFORMATION; and
7. 686-V RELEASE OF INFORMATION.

INSURANCE

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Unfair Claims Settlement Practices Payment of PIP Claims

Adopted Amendment: N.J.A.C. 11:2-17.7

Proposed: September 16, 1991 at 23 N.J.R. 2830(a).

Adopted: January 24, 1992 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 24, 1992 as R.1992 d.93, **without change**.

Authority: N.J.S.A. 39:6A-5b (as amended by P.L. 1990, c.8 section 8), 17:1-8.1, 17:1C-6(e), 17:29B-1 et seq.

Effective Date: February 18, 1992.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

11:2-17.7 Rules for prompt investigation and settlement of claims

(a) (No change.)

(b) The maximum payment period for all personal injury protection (PIP) claims shall be 60 calendar days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same; provided, however, that an insurer may secure a 45-day extension in accordance with N.J.S.A. 39:6A-5.

(c) Unless a clear justification exists, or unless otherwise provided by law, the maximum payment periods for property/liability claims shall be as follows:

1. For all first party claims other than personal injury protection (PIP) and auto physical damage (see N.J.A.C. 11:3-10.5(a)), 30 calendar days from receipt by the insurer of properly executed proofs of loss.

2.-3. (No change.)

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

(e) If the insurer is unable to settle the claim within the time periods specified in (c) and (d) above, the insurer must send the claimant written notice by the end of the payment periods specified in (c) and (d) above. The written notice must state the reasons additional time is needed, and must include the address of the office responsible for handling the claim and the insured's policy number and claim number. This notice shall also include a telephone number

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which is toll free, or which can be called collect, or which is within the claimant's area code. This number shall provide direct access to the responsible claims office or shall enable the claimant to gain such access at no greater expense than the cost of a telephone call within his or her area code. An updated written notice setting forth the reasons additional time is needed shall be sent within 45 days after the initial notice and within every 45 days thereafter until all elements of the claim are either honored or rejected. This subsection shall not apply after a claimant has filed a lawsuit pursuant to his or her claim.

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

(g) Where there is a reasonable basis supported by specific information available for review by the Department of Insurance that the first party claimant has fraudulently caused or contributed to the loss by arson, or other fraudulent schemes, the insurer shall be relieved from the requirements of (c), (d) and (e) above. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS

Prevailing Wages for Public Works Inspection of Records

Adopted Amendments: N.J.A.C. 12:60-2.1 and 6.1

Proposed: October 7, 1991, at 23 N.J.R. 2945(a).

Adopted: January 24, 1992, by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: January 24, 1992 as R.1992 d.94, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:11-56.25 et seq., specifically 34:11-56.31, 34:11-56.34(a), and 34:11-56.43.

Effective Date: February 18, 1992.

Operative Date: March 1, 1992.

Expiration Date: March 21, 1993.

The Department of Labor, Division of Workplace Standards, afforded all interested parties an opportunity to comment on the proposed amendments to its rules found at N.J.A.C. 12:60-2.1 and 6.1. Notice of the opportunity to respond to the proposal appeared in the New Jersey Register on Monday, October 7, 1991 at 23 N.J.R. 2945(a) and announcements were also forwarded to other interested parties and professional associations. The official comment period ended on November 6, 1991. The full record of this opportunity to be heard can be inspected by contacting the Department of Labor, Division of Workplace Standards, CN 058, Trenton, New Jersey 08625.

The Department received 24 comments during the 30-day period prescribed in the original notice on the proposal; one comment was received after the expiration of the official comment period. The comments were very helpful in clarifying and improving the proposed amendments.

Summary of Public Comments and Agency Responses:

The following public bodies, public officers and officials, and organizations commented on the proposal:

Borough of Allendale
Borough of Fort Lee
Borough of Freehold
Borough of Glen Rock
Borough of Lincoln Park
Borough of Saddle River
Borough of Washington
Borough of Westwood
Borough of Woodstown
Brown's Roofing, Inc.
Building Contractors Association of New Jersey
City of Clifton
City of Lambertville

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City of Vineland
The Honorable Jack Collins
Construction and General Laborers' Union
County of Morris
Government Finance Officers' Association of New Jersey
Governmental Purchasing Association of New Jersey
Project Build
The Roofing Contractors Association/Industry Fund
Tax Collectors and Treasurers Association of New Jersey
Township of Union
Township of Wyckoff
Bernadette Tuttle, Chief Financial Officer, Borough of
Washington

These comments and the Department's responses are synopsized below:

COMMENT: The proposed amendments shift the State's responsibility for the enforcement of the Prevailing Wage Law to the municipalities which are already operating under financial constraints, especially with the spending cap imposed on local governments' budgets, and whose staffs lack the expertise and training to monitor wage payments. The proposed amendments merely shift the additional workload for a State-mandated program to local government units.

RESPONSE: The Commissioner of Labor is authorized to adopt rules and regulations necessary to enforce the Prevailing Wage Law. The Commissioner has determined that submission by the contractor/public works employer of certified payroll records to the public body best provides a deterrent against non-compliance as well as facilitating the Department's ability to monitor compliance with the State's mandate. Accordingly, the Commissioner has promulgated these amendments for the effective enforcement of the Prevailing Wage Law.

However, the Commissioner appreciates the constraints which may be imposed by the proposed amendments and is, therefore, modifying the amendments to ameliorate the responsibilities of public bodies. N.J.A.C. 12:60-6.1(d) is deleted to eliminate the need for the fiscal or financial officer to review the certified payroll records which must hereinafter be submitted pursuant to N.J.A.C. 12:60-6.1(c). Instead, the Commissioner has determined that the public bodies are only required to receive, file, catalogue and make available for inspection the certified payroll records submitted by the public works employers. It should be here noted, however, that the deletion of N.J.A.C. 12:60-6.1(d) affects only the new requirements associated with the submission of the certified payroll records and in no way affects the statutory responsibilities which are otherwise imposed upon the fiscal or financial officer, public body or lessor under N.J.S.A. 34:11-56.34(a); only the State Legislature may amend the statutory requirements.

It also follows that under the amendment as modified, there is no need for staff trained or having the expertise necessary to make a determination regarding compliance with the Prevailing Wage Law. The amendment has also been changed to permit the public body to determine where to maintain the required records and to simply advise the Department's Division of Workplace Standards accordingly. It should also be noted that the costs associated with implementation of the amendments may be eligible for consideration under the exceptions to the spending cap law, N.J.S.A. 40A:4-45.1 et seq., and as such may be exempt from the cap imposed upon local government spending. Although there may be some additional costs imposed upon the public bodies to implement these amendments, the modifications made in response to the expressed concerns are designed to keep the additional costs to a minimum.

COMMENT: The Prevailing Wage Act requires that the prevailing wage be paid on all public works contracts in excess of \$2,000. The threshold should be increased to \$75,000 or \$100,000 to assist the small contractor who is unable to secure work in the public sector.

RESPONSE: While the Department appreciates the suggestion, the dollar threshold is set by statute. Accordingly, only the Legislature has the authority to increase the minimum threshold level.

COMMENT: The definition of "payroll record" goes far afield of any proper purpose of the proposal and any commonly understood concept of that term.

RESPONSE: Pursuant to N.J.S.A. 34:11-56.31, the Commissioner or his or her authorized representative may require from a public works employer any information pertaining to the workmen and their employment as he or she deems necessary to enforce the Prevailing Wage Law. The information requested in the payroll record is necessary for the Commissioner to execute his or her responsibilities under the statute.

LABOR

Accordingly, for the limited purpose of this regulation, the Commissioner finds that the definition of payroll record is appropriate.

COMMENT: The amendments give no hint as to the evils which the amendments are intended to correct.

RESPONSE: As indicated in the Social Impact statement accompanying the proposal, these amendments are intended to increase the number of contractors paying the prevailing wage to workers engaged in public works projects. The amendments are also designed to foster an environment for a fair competitive bidding process among contractors. Making the certified payroll records available for inspection will increase the number of employers who are in compliance with the Prevailing Wage Law. Contractors, knowing that their records are available for inspection, will have a greater incentive to abide by the Prevailing Wage Law.

COMMENT: Proposed N.J.A.C. 12:60-6.1(d) should be replaced with a provision requiring any person, firm or corporation performing a public works project to submit an affidavit certifying that it will pay the prevailing wage.

RESPONSE: The Department has reviewed the suggestion but has decided, instead, to delete N.J.A.C. 12:60-6.1(d).

COMMENT: Public entities should report on a standard log all ongoing public works jobs and, based upon these, the Commissioner should then randomly sample those payroll records to test for compliance with the law.

RESPONSE: The Department appreciates the suggestion. However, the Department believes the system reflected in the amendments encourages greater compliance with the Prevailing Wage Law. Since the certified payroll records are available for inspection, contractors will be more likely to comply with the law.

COMMENT: What is wrong with the current procedure that leads the Department to conclude that individual municipalities can do a better job than the Office of Wage and Hour Compliance.

RESPONSE: It is not the Department's position that the municipalities can do a better job than the Office of Wage and Hour Compliance for that Office will still carry out the investigation of alleged violations. The function of the public bodies and lessors which contract for public works projects is to receive the certified payroll records and make them readily available for inspection during normal business hours.

COMMENTS: Your analysis does not address the issue of how one would evaluate a private payroll record and to what it should be compared.

RESPONSE: The amendments require the public works employers to submit to the public body or lessor which contracted for the public works project a certified payroll record in a form satisfactory to the Commissioner. To facilitate compliance, the requisite form has been made a part of these rules as chapter Appendix A, added upon adoption.

COMMENT: The rules should be amended to allow a contractor to withhold payment from a subcontractor who either fails to file its affidavit or pay prevailing wages.

RESPONSE: Pursuant to N.J.S.A. 34:11-56.33(b), only the public body, at the direction of the Commissioner, may withhold payment of funds for failure of any contractor to pay prevailing wages.

COMMENT: A finance officer should not be charged with the responsibility of "keeping contractors honest." Affirmative action statements are filed with contracts, but the State agency, not the local government office, reviews the form to determine whether there is compliance. A similar program would be much more effective for monitoring prevailing wage compliance.

RESPONSE: The change to the rules now only requires that the public body receive, file and make available for inspection the certified payroll records.

COMMENT: Since this is a State mandated activity, will the municipalities be exempted from the 4.5 percent budget "CAP?"

RESPONSE: As noted in the first response to these comments, the costs incurred in complying with these amendments may be exempt under the spending cap law since they may qualify as State-mandated services. In addition, it should be noted that the spending law also excepts expenditures for funding a free public library. Consequently, should a public body elect to store the certified payroll records in the public library, this exception to the spending limitation may apply. The Division of Local Government Service within the Department of Community Affairs should be contacted to determine whether these exceptions are applicable.

COMMENT: What is the liability of the Chief Financial Officer if he or she errs in making a determination? Will the State provide legal counsel?

RESPONSE: While it is generally believed that no liability would be imposed upon the Chief Financial Officer, the concern is now moot since N.J.A.C. 12:60-6.1(d) has been deleted, the provision setting forth the Chief Financial Officer's responsibilities under the rule.

COMMENT: We believe that requiring public works contractors to provide certified payroll records for each pay period will encourage more compliance with the Act without creating an additional economic burden for legitimate contractors who will simply continue to use existing record keeping procedures in accordance with past state agency practice.

RESPONSE: The Department appreciates the comment.

Summary of Agency-Initiated Changes:

Upon further review of N.J.A.C. 12:60-6.1(c), the Department has decided to provide a form satisfactory to the Commissioner in the rules to facilitate the submission of payroll records. Therefore, reference is made to Appendix A where such form may be found. In addition, N.J.A.C. 12:60-6.1(c)1ii was added to better clarify the public body's role with regard to receipt of certified payroll records.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

12:60-2.1 Definitions

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

...
 "Certified payroll record" means a payroll record which is attested to by the employer, or the owner of the company doing business as the employer, or a corporate officer of such company, or an authorized agent of the employer.

...
 "Payroll record" means a form satisfactory to the Commissioner, wherein is shown employee information such as name, address, social security number, craft or trade, together with actual hourly rate of pay, actual daily, overtime and weekly hours worked in each craft or trade, gross pay, itemized deductions, and net pay paid to the employee; such record shall also include:

1. Any fringe benefits paid to approved plans, funds or programs on behalf of the employee; and
2. Fringe benefits paid in cash to the employee.

...
 "Public work" means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program. "Public work" shall also mean construction, reconstruction, demolition, alteration, or repair work, done on any property or premises, whether or not the work is paid for from public funds, if, at the time of the entering into of the contract:

1. Not less than 55 percent of the property or premises is leased by a public body, or is subject to an agreement to be subsequently leased by the public body; and
2. The portion of the property or premises that is leased or subject to an agreement to be subsequently leased by the public body measures more than 20,000 square feet.

12:60-6.1 Inspections

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

(c) The public works employers shall submit to the public body or lessor which contracted for the public works project the following in a form satisfactory to the Commissioner ***(see Appendix A, incorporated herein by reference)***.

1. A certified payroll record on each public works project.
 - i. Such record shall be submitted each payroll period within 10 days of the payment of wages.

ii. The public body shall receive, file, store and make available for inspection during normal business hours the certified payroll records. In its discretion, it may store these records at any depository, such as a public library or other public building, so long as such documents are available for inspection during normal business hours.

[(d) The fiscal or financial officer of any public body or lessor having public work performed under which any workman shall have been paid less than the prevailing wage shall forthwith notify the Commissioner in writing of the name of the person or firm failing to pay the prevailing wages.]

***APPENDIX A**

**FORM TO FACILITATE THE
SUBMISSION OF PAYROLL RECORDS**

Editor's Note: N.J.A.C. 12:60, Appendix A, is not reproduced in the New Jersey Administrative Code. A copy may be obtained by contacting the Office of Administrative Law, CN 049, Trenton, New Jersey 08625, or the Department of Labor, Division of Workplace Standards.*

**COMMERCE AND ECONOMIC
DEVELOPMENT**

(a)

**NEW JERSEY DEVELOPMENT AUTHORITY FOR
SMALL BUSINESSES, MINORITIES' AND
WOMEN'S ENTERPRISES**

Direct Loan Program

Adopted Amendments: N.J.A.C. 12A:31-1

Adopted Repeal: N.J.A.C. 12A:31-3

Proposed: September 3, 1991 at 23 N.J.R. 2626(a).

Adopted: January 13, 1992 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Arthur Powell, Acting Chairman.

Filed: January 22, 1992 as R.1992 d.82, **without change**.

Authority: N.J.S.A. 34:1B-47 et seq., specifically N.J.S.A. 34:1B-50(t).

Effective Date: February 18, 1992.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

SUBCHAPTER 1. DIRECT LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

(b) This program provides for the Authority to provide loans to eligible businesses.

(c) (No change.)

12A:31-1.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a direct loan.

...
 "Eligible business" means a small business, minority business or women business determined to be eligible to receive assistance and participate in programs of the Authority.

...
 "Loan recipient" means an eligible business which has been approved to receive or has received a direct loan.

...
 "Direct loan" means a loan or line of credit, or other non-grant financing instrument or structure approved by the Board and ad-

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vanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

...

12A:31-1.3 Application for a direct loan

(a) Each application for a direct loan shall be accompanied by a non-refundable application fee of \$250.00.

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire financing similar to that sought from the Authority.

(c) Each application for a direct loan shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) An application for a direct loan from a business which has been operating for a period of more than one year may include financial projections of net income and cash flow for at least one year, provided in a format as determined by the Authority. An eligible business may apply for a direct loan under this section no more than one time.

(e) Each application for a direct loan shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and current personal financial statements of the principals of the applicant.

5.-6. (No change.)

12A:31-1.4 Allocation of direct loan assistance

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

(c) The Authority may provide direct loans to an eligible business for the purpose of fixed asset acquisition, working capital, or contract financing at Authority designated rates. The terms of the direct loan shall not exceed 15 years. The maximum amount of the loan shall not exceed \$1,000,000.

(d) The Authority may provide one direct loan to an eligible business which applies to the Authority pursuant to N.J.A.C. 12A:31-1.3(d) for the purpose of fixed asset acquisition, working capital, or contract financing at Authority designated rates. The terms of the direct loan shall not exceed six months. The maximum amount of the loan shall not exceed \$20,000.

12A:31-1.5 Time of application for a direct loan

An applicant may apply to the Authority at any time for a direct loan. However, the Authority may establish deadlines for receipt and approval of applications, as it deems necessary.

12A:31-1.6 Evaluation of applications for direct loans

(a) The Executive Director shall evaluate each application for a direct loan considering the following factors:

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;

3. The likelihood that the applicant will not default on the direct loan;

4. The length of time that the applicant has been in existence as well as the success and growth potential of the applicant; and

5. For eligible businesses which apply pursuant to N.J.A.C. 12A:31-1.3(d) the quality of the collateral offered such that the value of collateral is a minimum of 150 percent of the amount of the direct loan.

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

(e) No direct loan approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the direct loan which has been approved by the Board or \$100.00, whichever is greater, and a closing fee of one-half of one percent of the total amount of the direct loan which has been approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.

12A:31-1.7 Reporting and compliance

(a) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit a report to the Authority every year which shall include the following:

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1.-4. (No change.)

(b) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit an annual financial statement prepared on a reviewed basis by a certified public accountant or a public accountant, except that recipients of a direct loan of \$500,000 or more shall be required to submit audited financial statements prepared by a certified public accountant or a public accountant utilizing GAAP every third year after closing of the direct loan. Reviewed statements will be required at other times.

(c) Upon receipt of a direct loan, the direct loan recipient shall inform the Authority of any contemplated substantive changes in the business.

12A:31-1.8 Rescission of a direct loan

(a) The Authority may, at its discretion, rescind all or part of a direct loan commitment prior to closing when it has become reasonably evident that:

1. Other commitments of financial resources to the loan recipient have been withdrawn or have been amended in such a manner as to undermine the ability of the loan recipient to repay the direct loan.

2. The loan recipient is no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has supplied false or incorrect information, or has misrepresented information of a material matter, whether oral or written, upon which the Authority relied when approving the direct loan; or

4. The loan recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a direct loan shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Loan Guarantee Program Financial Statements

Adopted Amendments: N.J.A.C. 12A:31-2.3 and 2.7

Proposed: September 3, 1991 at 23 N.J.R. 2627(a).

Adopted: January 13, 1992 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Arthur Powell, Acting Chairman.

Filed: January 22, 1992 as R.1992 d.81, **without change**.

Authority: N.J.S.A. 34:1B-47 et seq., specifically N.J.S.A. 34:1B-50(t).

Effective Date: February 18, 1992.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

SUBCHAPTER 2. LOAN GUARANTEES

12A:31-2.3 Applications for loan guarantee

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

(d) Each application for a loan guarantee shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and current personal financial statements for the principals of the applicant.

12A:31-2.7 Reporting and compliance

(a) (No change.)

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual financial statement prepared on a reviewed basis by a certified public accountant or a public accountant if the loan guarantee is less than \$500,000. Recipients of a loan guarantee of more than \$500,000 shall be required to submit audited financial statements prepared by a certified public accountant or a public accountant utilizing GAAP every third year after closing of the loan guarantee. Reviewed statements will be required at other times.

(c) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

Professional Practice Structure

Professional Fees and Investments, Prohibition of Kickbacks

Adopted Repeal: N.J.A.C. 13:35-6.4

Adopted New Rules: N.J.A.C. 13:35-6.16 and 6.17

Proposed: January 22, 1991 at 23 N.J.R. 161(a).

Adopted: January 8, 1992 by the Board of Medical Examiners, Sanford Lewis, M.D., President.

Filed: January 17, 1992 as R.1992 d.75, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2, P.L. 1989, c.19.

Operative Date: April 15, 1992 except as noted within the rules for provisions to be effective at a later date.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed repeal and new rules relating to professional practice. The official comment period ended initially on February 21, 1991 but was extended until May 29, 1991 when a public hearing was held. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 22, 1991 at 23 N.J.R. 161(a) and on April 15, 1991 at 23 N.J.R. 1063(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Asbury Park Press, the Medical Society of New Jersey, the New Jersey Department of Health, the Federation of State Medical Boards and to various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, 28 West State Street, Room 602, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

The following individuals submitted written comments regarding the proposal and/or spoke at the public hearing:

Aetna Life Insurance Company

American College of Surgeons, New Jersey Chapter, William H.

Hardesty, M.D.

American Managed Care & Review Association, Charles W. Stellar, Executive Vice President

American Physical Therapy Association, New Jersey Chapter, Dennis Krencicki, MA, PT, Bonnie Teschendorf, President

Bayne, Kenneth T., PT

Bergen-Passaic Cataract Surgery & Laser Center, Inc., Harvey Dobrow, M.D.

Bernstein, Robert M., M.D.

Blue Cross and Blue Shield of New Jersey, Richard W. Lloyd, Director, Government Affairs

Brauner, Gary J., M.D.

Brower, Todd C., Esq.

Central Park Physical Therapy, Alex Ivashenko, PT

Coalition of Opticians, Pamela Mandel, Esq.

Cumberland Orthopedic Professional Association, Gerald S. Packman, M.D.

David, Susan E., PT

deBrueys, Glenn A.

Department of Health & Human Services (U.S.), Thomas S. Crane, Attorney, Inspector General Division

Donoghue, Michael, P.T.

Eastern Surgical Associates, P.A., Roberta A. Strauchler, M.D.

Elgort, Victor S., Esq., Mesrobian, John L., Esq., Norris, McLaughlin & Marcus

Essex County Medical Society, Mark T. Olesnick, M.D.

Eye Care & Surgery Center, Ivan H. Jacobs, M.D.

Foster, Howard, D.O.

Gail's Optical Shoppe, Gail M. Peer

Gallant, Mark H., Esq.

Goldberg, Charles, P.T.

Harrison, Michael, Esq.

Health Insurance Association of America, Jane Majcher, Legislative Director

Hudson County Medical Society, Yale C. Shulman, M.D., President

Hudson Heights Physical Therapy, Inc., Michael Maykish, PT, Louis F.

DiGiovine, PT, Kelly McGinnis, PT, Thomas F. Lalley, PTA, Gwen Davis, PTA

Kirsch, Nancy R., PT

Laico, Catherine, PT

Ludwig, Linda, PT

Martin, Daniel E., Optician

Medical Society of New Jersey, Vincent A. Maressa, Executive Director, Joseph Riggs, M.D., Douglas M. Costabile, M.D.

Monmouth County Medical Society, Walter J. Kahn, M.D., President

MRI of Northern New Jersey, Michael Azzara, president of the general partner

Neurology Group of Bergen County, Hugo Lijtmaer, M.D.

Newman, Jeffrey, Esq. (telephone call, March 8, 1991)

New Jersey Academy of Ophthalmology & Otolaryngology, Marshall Klein, Executive Director, John D. Fanburg, Esq.

New Jersey Association of Osteopathic Physicians and Surgeons, Albert A. Talone, D.O.

New Jersey Chiropractic Society, Robert E. McCutcheon, D.C., Secretary

New Jersey Diagnostic Associates Ltd., Om P. Soni, President of

Diagnostic Imaging Centers of America, the general partner

New Jersey Guild of Hearing Aid Dispensers, George T. Dougherty, Esq.

New Jersey HMO Association, Dale J. Florio

New Jersey Optometric Association, David F. Grimm, Executive Director

New Jersey Pharmaceutical Association, Leon R. Langley, Pharmacist, Director of Government Affairs

New Jersey State Nurses Association, Dorothy D. Flemming, MSN, RN, Executive Director

Optician form letters: Neil Febowitz, Susan R. Auer, Michael Higgins,

Sam Morgenstern, Josephine Smith, Paul Mainieri, Sandra Wooster,

John L. Keating, John L. Brown, Paul Blacker, Raymond A. Strong

Optimum Physical Therapy & Fitness Lab, Ellen L. Herr, PT and

Charlotte Carey, LPT

Orthopaedic Surgery Associates, P.A., Robert J. Weierman, M.D.

Physical Therapy Rehabilitation Associates, John Basti, PT

Picillo Bros. Opticians, William J. Picillo

Radiological Society of New Jersey, John D. Fanburg, Esq.

Raritan Valley Physical Therapy Associates, Alex Ivashenko, PT

Riley, James B., Esq.

Siwoff, Ronald, O.D.

South Jersey Eye Physicians, P.A., James G. Nachbar, M.D.

Society of Dispensing Opticians of New Jersey, Joseph D. Grodman, President

State Board of Chiropractic Examiners

State Board of Ophthalmic Dispensers & Ophthalmic Technicians,

Stanley Radin, Board member

Steinberg, Richard, Esq. (telephone call, April 5, 1991)

Tamborlane, Theodosia A., Esq.

Thomas, A. and Rocca, Marisa

Thompson, Elaine C., Ph.D., PT

Union County Medical Society, John A. Kline, M.D.

Urology Society of New Jersey, Louis L. Kessler, M.D.

U.S. Healthcare, David F. Simon, Esq., Senior Vice President

VanBrunt, David, PT

Warren Physical Therapy, Inc., Cathleen Ryan, PT

Wayne Physical Therapy Center, Barry G. Inglett, PT

Weiner, Bill, consumer (2 letters)

Zalkin, Steven O., Esq.

Rulemaking on the subjects of these two new rules was necessitated by disciplinary investigations over the years and by repeated inquiries received from physicians, attorneys, consumers and entrepreneurs. In addition, the Board was directed by P.L. 1989, c.19 to adopt rules to carry out the purposes of the Mandatory Disclosure Law. Publication of the proposals was announced by the Attorney General at a special news conference. A public hearing was conducted on May 29, 1991, a date delayed to accommodate the participation request of the Medical Society of New Jersey. On July 1, 1991 the New Jersey Legislature enacted the Health Care Cost Reduction Act, P.L. 1991, c.187 (herein, HCCRA). The law amended the Mandatory Disclosure Law by deleting some of its provisions and imposing new restrictions on physician ownership and referral; the provisions pertinent to these rules became effective July 31, 1991. For example, Section 46 now requires a physician who dispenses drugs or medicines to do so at a fee which is at or below cost plus an administrative fee not to exceed 10 percent of the item cost. The same section prohibits a physician from dispensing more than a seven day supply of drugs or medicines to any patient, with specified exceptions. Sections 47 and 83 now prohibit any referral by a practitioner to a health care service in which the practitioner has any financial interest, with specified exceptions. Finally, on July 29, 1991 the Office of Inspector General enacted rules regarding "Safe Harbor" arrangements which would be deemed not to violate Medicare anti-kickback laws. Although the Federal rules explicitly do not preempt State requirements, the Board of Medical Examiners has modified some of its rule provisions to avoid or minimize conflict or confusion among licensees attempting to comply with requirements of the various regulatory agencies.

Some 91 comments, written or oral, were received by the close of the public hearing May 29, 1991. Some letters had several signatories, and many pre-printed form letters were received. A number of letter-writers expressed disapproval of the rule and demanded a public hearing, but failed to specify their criticism. A number of professional organizations submitted detailed and thoughtful analyses of various aspects of the two rules, presenting useful viewpoints and suggestions. Of special interest because of their extensiveness were submissions by the New Jersey Optometric Association, the New Jersey Academy of Ophthalmology and Otolaryngology, the Radiology Society of New Jersey, the New Jersey Pharmaceutical Association, the American Managed Care and Review Association, among others. Many of the concerns expressed by the commenters have been addressed directly by the Legislature in the HCCRA, thus superseding the proposed rule sections and not requiring additional presentation or discussion here. As similar issues were raised in many of the comments received on specific topics of continuing concern, they will be presented, where appropriate, in a summarized form with a summarized response.

As noted above, the 1989 State Legislation required the Board to enact rules implementing limitations on "interested" physician referral. However, many persons commenting on this rule seemed unaware of the law and therefore misconstrued the Board's rule proposals as a Board initiative seeking to encourage physician investment and referral. Such commenters suggested, without explanation, that the rules would force private physical therapists, clinical laboratories and optometry practices into bankruptcy. They also contended that the rules would encourage greediness and discourage ethical practice. Some physical therapists predicted that treatment costs inevitably rise when a physician is permitted to refer to an owned entity. They also contended that the rules would do nothing to improve quality of care or access to service or cost containment. They referred to "parasitic, opportunistic individuals" who exploit those who trust in them. One commenter claimed that Medicare legislation forbids self-interested referrals (apparently referring to clinical laboratories), and this Board should also.

The public hearing was conducted May 29, 1991 by designated hearing officer Robert J. Campanelli. His report, submitted to the Board on December 16, 1991, summarizes testimony presented and offers an analysis of issues raised. He proposed certain modifications to the proposed form of the rules. A copy of his report is available for inspection at the Board office. His suggested findings and modifications are incorporated herein and have been adopted by the Board. The modifications are as set forth in this Summary of Public Comments and Agency Responses. In addition, other changes, which the Board has deemed appropriate, have been made at N.J.A.C. 13:35-6.16(e) and 6.17(e), (f) and (h).

The Board is required to adopt rules interpreting the two State self-referral laws in accordance with the purposes manifest in them. To the extent that the new laws limit or authorize certain conduct which the commenters oppose, their remedy lies solely in the State Legislative process. However, some commenters appear to have overlooked the extensive provisions required by N.J.A.C. 13:35-6.16 designed to encourage ethical and responsible practice including establishment of quality assurance policies and review mechanisms, posting of fees, and clear disclosure of ownership interests, to the extent such ownership complies with the HCCRA-approved "grandfathering" of interests held prior to July 31, 1991 and survives the HCCRA limitations on new interests. N.J.A.C. 13:35-6.16 and 6.17 address areas of both potential and actual abuse, providing guidance in many areas of contemporary medical practice. The urgings of some commenters that the Board should ban any self-interested referral, originally beyond the Board's contemplation, are now addressed by the new and superseding prohibitory provisions of the HCCRA. The board notes apparent misunderstanding by the commenter who contended that Medicare has prohibited ownership of self-interested referral by doctors to owned entities; in fact, the many exceptions to the Medicare Clinical Laboratories Act appear to result in opportunities and restrictions rather similar to the provisions of the current HCCRA in this State and these rules.

The topics addressed herein continue to be of enormous national concern, as discussed most recently December 19, 1991 in *The New England Journal of Medicine* ("Efforts to Address the Problem of Physician Self-Referral," J.K. Inglehart, *N Engl J Med* 1991; 325:1820-24) and investigation by the Federal authorities of self-referral in Florida reportedly accompanied by vastly higher frequency and cost in comparison with referrals to independent entities.

COMMENT: N.J.A.C. 13:35-6.16(a). This section stated certain requirements for legal eligibility to practice in this State and required "truth-in-labeling" of the nature of the practice and its participants. The section also pointed out that the offering of professional opinions, including testimony and professional review organization service, is subsumed within the term "professional practice" whether or not the offeror of the opinion has provided direct patient care, where the holding of a professional board license is a significant component or foundation for the offering of the professional opinion. A representative of Blue Cross/Blue Shield (BC/BS) sought to confirm that this means licensees can offer such opinions, and to confirm that the section does not prevent BC/BS or subsidiaries or other business entities from engaging in peer review activities or operations of what were described as IPAs.

A representative of the American Managed Care and Review Association suggested that peer and utilization review organizations may be general business corporations, not eligible for licensure as physicians, and would be prevented by this rule from offering medical opinions. He suggested that the rule would also prevent nurses, physician assistants and out-of-State doctors from doing peer and utilization review.

One ophthalmologist suggested that rules on practice structure are unnecessary; he believes that there is no evidence of patient harm or exploitation from any form of enterprise.

RESPONSE: The section does require that where the appropriateness or quality of medical care is under consideration, ultimate medical opinions shall be rendered solely by licensed physicians. (This is to be contrasted with initial in-house or outside subcontracted screening and provisional assessments by other health care professionals or clerical staff.) However, the physicians offering those ultimate opinions need not necessarily be licensed in New Jersey, if they meet the exemption criteria of N.J.S.A. 45:9-21(c). It is possible that, after a particularized inquiry, a peer reviewer having significant and regular localized presence/impact determinative of the medical care of New Jersey residents may be found to need New Jersey licensure. However, the cautionary portions of this section apply solely to persons licensed by the New Jersey State Board of Medical Examiners and the text has been clarified to confirm that intent.

A peer review service composed of New Jersey licensees would be expected to be a professional service corporation if its personnel are offering ultimate medical opinions. The Board would not expect a physician to conduct any form of medical practice, including the offering of medical diagnoses and opinions on proper treatment, in the format of a general business corporation. Physicians must at all times be accountable for their medical judgment. The Board rule already exempts entities licensed by the State Department of Health, even though they may be general business corporations, and entities in the other circumstances listed in N.J.A.C. 13:35-6.16(f), on the assumption that the other re-

gulatory frameworks or special settings will provide minimum adequate oversight of the employed physician. The Board finds in the course of disciplinary inquiries that rules on practice structure have become necessary in today's financial climate, and that earlier uninformed styles of professional practice have resulted in actual or potential harm to patients.

COMMENT: N.J.A.C. 13:35-6.16(b). This subsection describes permissible forms of professional practice structure and requires the licensee to establish policies and procedures for the proper functioning of the practice, including periodic audit of patient records and professional services to assure quality professional care. One commenter asked how such audit is to be done if a doctor is a sole practitioner. A related comment from a radiological group practice (MRI) having 100 investor-doctors inquired how each investor could meet the quality control requirements of this subsection and of N.J.A.C. 13:35-6.16(d).

The New Jersey Pharmaceutical Association suggested that the Board should require notice of all office locations where its licensees are practicing and should inspect the offices for cleanliness.

The New Jersey Optometric Association remarked that a physician might be a minority shareholder in a professional association composed of physicians, dentists, podiatrists and optometrists (on the somewhat questionable proposition that they are all "closely allied" professions) and would have no legal authority or jurisdiction over the other kinds of licensees. The representative stated this Board cannot mandate "physician supremacy" and therefore urged the Board to delete what he described as a personal responsibility for the conduct of the joint practices.

RESPONSE: The Board often receives consumer complaints regarding billing, including bills which appear excessive in the circumstances, or are for services not rendered, or which make references to abbreviations not defined on the bill. On inquiry, some licensees claim that they leave all billing matters "to staff"; the licensee claims unfamiliarity with the abbreviations used in his or her own office or claims not to have participated in the decision on what diagnoses or other essential entries should be listed to justify a bill. Some licensees employ other licensees to render treatment, and then claim ignorance of seriously inadequate or inappropriate treatment or of documentation on a patient chart produced by the employee or of recurrent practice deficiencies by that person.

This section is intended to assure that a licensee who conducts a medical practice, and who is presumably receiving the financial rewards of such practice, takes reasonable measures to "assure that" policies and procedures are in place (that is, not necessarily to personally carry them out) to require that truthful, explainable and competent professional service is being provided whether personally or delegated through employees. That task, to personally assure oneself of the existence and implementation of appropriate policies and procedures, should not be unduly burdensome, and is appropriately placed on a physician licensee in the public interest.

As for Board notice of office locations, this information will be requested on new biennial registration forms. The Board does not at present have the resources to check routinely for cleanliness, but responds promptly to consumer complaints.

Regarding establishment of a professional association composed of practitioners who are not only of different license categories but who are regulated by different boards, the Medical Board has traditionally been concerned as to its professional propriety and has not been confident that all such combinations meet the unelaborated statutory definition of "closely allied." However, N.J.A.C. 13:35-6.16(f)3 does propose permitting such new groupings, with their practical safety to be determined in the future. N.J.A.C. 13:35-6.16(b) does not attempt to establish physician "supremacy" over other kinds of professionals; N.J.A.C. 13:35-6.16(e) makes clear the basis and extent of physician responsibility to this Board.

COMMENT: N.J.A.C. 13:35-6.16(d). This subsection, as originally proposed, approved the employment of a licensed physician as medical director of a professional entity to carry out policies and procedures. One commenter for an MRI group asked how a large number of individual physician-investors could each meet their personal responsibilities at an entity where they do not practice. Another commenter complained that a licensee who is a limited partner in a health care service and not involved in day-to-day management should not be held responsible for services provided; this person contended that the rule would "kill" physician investment. Some commenters objected to the proposed requirement that a Board licensee must be on the premises

whenever medical services are rendered; they suggested that a registered nurse or an x-ray technician would often be sufficient. One commenter pointed out that teleradiology allows a radiological or other diagnostic test to be transmitted via telephone to an off-site radiologist; that commenter agreed, however, that a physician should be present for invasive procedures. Another commenter suggested that the director need not be a physician if otherwise authorized to perform the services.

RESPONSE: The director might on occasion be the sole practitioner owning the office. However, where the service offered is not the plenary practice of medicine, the Board has concluded that the entity director could be a non-physician, so long as that person was a health care professional licensed to perform all duties at that office. A director will be invaluable for rule compliance purposes when investor-licensees do not regularly practice on the premises. The section permits the owners to determine or to approve appropriate policies and procedures for the running of the office, which the director can carry out. The rule recognizes the need for owners to be able to make a reasonable delegation of authority on a day-to-day basis, with confirmation available on periodic visits and shareholder meetings, etc. With regard to a physician presence during all treatment, the Board agrees with the comments, and has modified the subsection to require that a physician need not be personally present so long as there is on the premises at least one other licensed health care professional authorized to render the medical services in question without direct supervision (for example, a registered nurse or an x-ray technician in appropriate matters).

COMMENT: N.J.A.C. 13:35-6.16(e). This subsection requires, in part, that an owner of a health care facility who is a licensee of the Medical Board shall be responsible to this Board for requiring maintenance of professional practice standards, including where the ownership is absentee. The subsection utilized the definition of health care service as given in N.J.A.C. 13:35-6.17(a) and would have required that the service must be owned solely by one or more licensed health care professionals. One commenter pointed out that the definition of health care service (incorporated by reference and drawn directly from N.J.S.A. 45:9-22.4) includes nursing homes and other entities not traditionally owned exclusively by licensed persons and asked if this must change.

One commenter asserted that this section attempted to mandate physician "supremacy" over other kinds of practitioners. Another commenter asked if a limited partnership providing diagnostic equipment and non-professional services to a radiology practice must be composed solely of licensees; if not, he suggests that this subsection conflicts with N.J.A.C. 13:35-6.16(f)5 which allows a general business corporation to contract with physicians to provide equipment. Another commenter contended that restrictions on physician investment will prohibit useful or innocuous business arrangements, and asserted that physicians have in the past provided capital for development of important medical technology. He believes that restrictions will prevent development of improvements and will result in higher costs. He decried costs "both real and psychic," and suggested that any potential for abuse is virtually removed by mandatory disclosure.

One commenter wrote on behalf of some independent practice associations (IPA), urging that they be permitted to incorporate not only as a professional association but alternatively as a general business corporation. He claimed that all health care plans require a doctor to buy stock in them or pay a fee in order to become a member in order to be deemed eligible to become an independent contractor to the entity. He suggested that a physicians' organization within such a group is adequate to assure quality control and to negotiate other aspects of the practice. He stated that only physicians and allied health care professionals can be shareholders and added "Nor do these structures or contractual relationships necessarily interfere with the conduct or operation" of the doctor's own form of practice or the exercise of professional judgment (emphasis added).

One commenter representing a general business corporation "clinic" owned in part by non-licensed persons contended that if the entity is certified by Medicare, this should make both aspects permissible; otherwise investment is discouraged. Another commenter suggested that these requirements conflict with the Federal Safe Harbor (then) proposed rules implementing 42 U.S.C. 1320a-7b(b). Those rules require that a percentage of investors be composed of persons who are not in a position to make referrals; the commenter assumed that means they are not licensees. Some commenters objected to the requirement that every licensee referring patients to an owned entity must assure that there is documented professional justification for the referred service.

A physical therapist commented that physicians should not be allowed to do physical therapy, and that if physical therapists are employed by

physicians, the therapists should be able to work independently without a physician on the premises. Another physical therapist stated, without citation, that a physician is prohibited from owning a pharmacy, and also warned that the section wording would endanger patients by letting a physician send unlicensed staff to do physical therapy in a home setting (both contentions are erroneous). The same commenter urged that actual providers of service and their license numbers be listed on a bill.

RESPONSE: The Board deems the specific kinds of responsibility listed in the subsection to be critical to the physician-patient relationship, and to accountability to the public. Without licensee ownership, there is no method of assuring honesty and quality assurance in a health care facility which is unlicensed by any State agency. The section wording specifically states that the Board is requiring no more than that whenever its own licensee participates in a professional practice along with other licensed practitioners, its licensee is responsible to this Board for requiring maintenance of the professional practice standards and control which are listed; if the licensee finds that the entity is being conducted in an improper or unsafe manner, the Board licensee must sever the relationship. The Board finds this to be a professionally responsible stance.

The Board appreciates the comment regarding definition of health care service incorporated in this section, and agrees that the definition of health care service, used in the statute for mandatory disclosure purposes, was too broad for this rule's section on permitted investment in such entities. The subsection has been modified to state that the service must be owned solely by one or more licensed health care professionals where such service is not licensed by the Department of Health or another State agency. This interpretation is consistent with the permitted traditional corporate employer noted in N.J.A.C. 13:35-6.16(f).

However, the statutory definition refers to a business entity which "provides" testing, diagnosis, treatment, etc. This definition can be read to apply to the business entity of licensed personnel who "provide" these services—as contrasted with mere provision of equipment. Thus, it appears unnecessary to read the definition to apply to a leasing agreement which places equipment into the hands of licensees, since the equipment lessor is not billing the patient and the cost to the physician of leasing the equipment is part of office overhead. This is different from a physician referring a patient for provision of services which shall be billed by a nominally different vendor. The definition of "health care service" originally given in N.J.A.C. 13:35-6.17(a) has been revised to delete any reference to the business of mere provision of diagnostic or treatment equipment or supplies, and the two rule sections are now consistent. Thus, an equipment supply business, including that of radiology equipment, may be owned by non-licensees or jointly with licensees, if this is not prohibited by other applicable State or Federal law. These changes should satisfy the criticism that any restrictions will discourage physicians from investing in medical technology. Moreover, the Board points out that no form of investment is prohibited; the new HCCRA now merely prohibits (except in specified circumstances) referrals to those investments. Any untoward effects from those restrictions must be addressed by the Legislature, not the Board.

With regard to the comments referring to Safe Harbor proposals, the Federal rules were adopted in final form July 29, 1991. They explicitly eschew any intention to preempt State law. Moreover, even with regard to the section therein requiring that a percentage of investors must not be in a position to refer, the explanatory material makes clear that this criterion can be met through variations in practice specialty, geographic location, or even simply by contractual agreement. The Board addresses elsewhere in this adoption document the issue of Medicare-approved entities with regard to special billing arrangements. However, the Board finds insufficient benefit to the public interest to be gained from a licensee-plus-nonlicensee ownership of a medical entity unlicensed by the Department of Health, where the professional work would not be readily subject to regulation by any State agency. Further, in reviewing the concepts and caselaw and Attorney General opinions from New Jersey and other states, the Board finds adequate historical support for its consistent position that a "corporation" cannot ordinarily offer services which require licensure. It was in large part for that reason that the Professional Service Corporation Act was enacted. Nevertheless, certain entities have traditionally been exempted from that requirement such as hospitals, nursing homes, laboratories, and certain ambulatory surgery facilities. The primary common threads among the exemptions are that each has an overwhelming need for continuity of a specific type and level of service despite change of ownership, and that each is therefore already regulated and inspected by an entity operating under another arm of the State's police power: the State Department of Health,

thus providing some of the public protection otherwise provided by the Medical Board.

Regarding the comment of the physical therapist, State law continues to recognize that a plenary licensed physician is exempt from the proprietary restrictions of the Physical Therapy Act and may fully practice physical therapy, subject to Medical Board oversight for compliance with appropriate practice standards. The new HCCRA will prevent the establishment of new physician-owned physical therapy centers to which patients are referred (other than by the highly restricted exception for on-premises, directly billed service). But for "grandfathered" ownership interests, the Medical Board will continue to hold the physician owner responsible for requiring proper practice at the site. That in no way lessens the independent professional responsibility of the licensed physical therapist employed there. The Board agrees that the licensure identity of an employed provider of services should be listed on a bill, and has incorporated that requirement in a clarification to N.J.A.C. 13:35-6.16(j) and to N.J.A.C. 13:35-6.17(c)3.

Regarding the IPA comments, the Board notes that N.J.A.C. 13:35-6.16(f)5 already permits a limited partnership arrangement with a general business corporation, provided that the corporation handles solely administrative and non-professional matters. N.J.A.C. 13:35-6.16(h) specifically recognizes IPAs and PPOs as extant forms of managed health care. However, the Board believes that the loose arrangement among physicians described by the commenter, where each solo practice is seemingly unrelated to the other practices in the group and the sole connection is through a policy-making non-licensed entity, appears not to be consistent with expectations of responsible practice and independent medical judgment on behalf of each patient. There is no apparent reason why the central component of the IPA-type entity cannot be a professional association, accountable to a licensing agency. At such time as IPAs in the different form proposed by the commenter, or other proposed organizational structures, are regulated by a State agency which does review professional judgment, the Board will review this portion of the rule again to see if modifications will provide adequate protection to the public.

Thus, although the language of this subsection has been clarified, the substance is unchanged in light of the Legislative expansion of the phrase "significant beneficial interest" to include any financial interest, the Legislature's heightened concern with the potential for abuse in self-referrals, and the laws generally prohibiting corporate practice of medicine.

The Board made one additional clarification to the proposed wording of this subsection, which had emphasized the professional responsibility of certain owners, partners or shareholders for compliance with professional practice standards. The Board substituted reference to "directors" for the earlier "shareholders." Since owners are already shareholders, the two terms were duplicative. But a health care service may have a Board licensee as director, who is not necessarily an owner or a partner but yet has major responsibility for the proper provision of health care.

COMMENT: N.J.A.C. 13:35-6.16(f). This subsection addresses accepted forms of practice structure (a typographical error in the New Jersey Register listed "acceptance" practice forms). Once such form is that of a professional practice which is set up as a limited partner to a general business corporation ("gbc"). The gbc, in turn, may have a contractual agreement with the professional service entity to provide exclusively non-professional assistance such as office management. A commenter suggested it would be unfair to require a physician who is a limited partner in a health care service and not present on a day-to-day basis to be responsible for the services provided. A businessman who described himself as a principal in an ambulatory surgery center objected to the requirement that such an entity be owned solely by licensed professionals; he contended there must be lay business owners in order to have capital formation. He also suggested there is no ethical problem when a doctor-investor refers his or her patient to the entity because the patient "knows" surgery is really needed.

A representative of the New Jersey Academy of Ophthalmology and Otolaryngology supported this section, and sought to confirm that this section does not prevent an ophthalmologist from employing an ophthalmic dispenser.

The State Board of Chiropractic Examiners objected to N.J.A.C. 13:35-6.16(f)3i because it would prevent a chiropractor and an M.D./D.O. from establishing an associational relationship to operate radiological diagnostic facilities where the incorporators do not themselves work on the premises but hire a radiologist. The D.C. Board contended that no independent judgment is compromised and no

professional risks are involved since the M.D./D.O. would still be responsible to his or her own licensing board, and that the proposal indicates "bias" against chiropractors. A representative of the New Jersey Chiropractic Society submitted similar comments although agreeing that a licensed person should not be employed by an unlicensed person. A representative of the New Jersey State Nurse's Association suggested that this provision would prevent mixed professional associations. She further appeared to contend that physicians could not form an association with a nurse or a physical therapist because it would be "outside the scope of practice" for a physician to render these services because, in her opinion, physicians do not have an all-inclusive license.

The New Jersey Optometric Association queried whether an optometrist could employ a chiropractor, or a chiropractor a psychologist, or an optometrist a podiatrist. The representative suggested deleting any mention of chiropractors since they are no longer licensed by this Board. He posited a professional association whose variety of limited license shareholders hold 99 percent of the stock with a medical doctor owning one percent. He asked if physicians could pay management fees to a for-profit general business corporation by percentage of gross or net revenue or by flat fee.

Some concern has been raised regarding whether health insurance carriers, which are general business corporations, could employ licensed physicians to conduct peer review/quality assurance on claims submitted.

RESPONSE: With regard to the comment of the Board of Chiropractic Examiners and the Society and some other commenters, the Medical Board respectfully responds that no bias whatsoever is intended; the limitation is applicable to all manner of limited licensees, and for the same reason. This subsection will formally recognize, for the first time, the permissibility of a very liberal interpretation of the "closely allied" concept in establishing a "mixed" professional association; that is, where the shareholders are not only of different categories of licensure but may even be licensed by different boards. The subsection has been clarified by giving examples of such permissible relationships. Disciplinary inquiries may well be rendered far more difficult in such circumstances. The underlying concept for the subsection limitation is that, in the absence of a routine inspection mechanism of all professional offices (which does not at present exist), this Board will remain unaware of problems until they become so flagrant that a lay consumer recognizes a need to complain about inappropriate/negligent service. Such risks may be especially likely in a practice conducted with absentee ownership. Even if the owners were present, however, the Board finds that a licensee with a more limited scope of practice—however competent within the scope of license—cannot professionally supervise the quality of work of a plenary licensee: to identify negligent or incompetent quality of work or equipment. That risks is lessened somewhat when only the individual practitioners of different licensures are the sole shareholders and each is responsible for his or her own work. While the problem admittedly does not lend itself to a simple analysis and resolution, the Board believes that, during this first experimental and new interpretation of the Professional Service Corporation Act, the public will be better protected by limiting the risk of inadequate supervision of employees. The rule can be amended later, when more experience is gained in the efficacy and safety of a compound or double compound P.A.

The Board confirms that this section does not preclude an ophthalmologist from employing an ophthalmic dispenser or technician. However, if work is done not by an employee but subcontracted out to a (licensed) dispenser or technician, and an eyewear cost is itemized on the patient's bill, then the ophthalmologist must comply with N.J.A.C. 13:35-6.17(e)2, truth-in-billing.

As the Board does not license optometrists, chiropractors or psychologists, it would be inappropriate to speculate on the wisdom of regarding any of them as "closely allied" professions as among themselves or on how the public safety is protected by allowing them to employ each other. The Board's rule subsection addresses solely employment relationships involving its own licensees; the Board, therefore, applies the rationale presented above. With regard to a mixed professional group, the Board continues to find that it would be inappropriate for a limited licensee to be in a position to supervise or direct a plenary licensee because of the disparity in training needed to protect the patient.

With regard to payment mechanisms, N.J.A.C. 13:35-6.16(f)5 addresses one permissible variety of relationship between a licensed practice and a general business corporation. The individual contract terms between them are not, at present, deemed necessary for Board review so long as the basic characteristics of the physician-patient relationship are undis-

turbed, but in an egregious case individual scrutiny might be appropriate and will ensue.

The Board respectfully disagrees with the suggestion of the State Nurse's Association that physicians are not permitted to perform nursing or physical therapy services; each statute of limited health care practice specifically excludes from its regulatory sweep the practice of physicians and surgeons. A physician may not, however, hold himself or herself out to the public as a registered nurse or a physical therapist, as those are proprietary titles reserved to those licensed professionals.

The Board agrees that an additional clarification should be added for physicians employed to do peer review by insurance carriers. The exemption at N.J.A.C. 13:35-6.16(f)4v has been added, based in part on the same theory as existing N.J.A.C. 13:35-6.16(f)4; in that the employer is licensed and regulated by a State agency. The professional quality of the licensee's work remains subject to Board jurisdiction.

COMMENT: N.J.A.C. 13:35-6.16(g). This subsection describes when a professional affiliation must be terminated because of lack of quality assurance provisions in the entity. The New Jersey Optometric Association suggested that it will be ineffective unless the Board makes clear that failure to report such a situation could lead to disciplinary action. The representative asks what the Board could do with such reports, since the offending entity might be a general business corporation beyond Board jurisdiction. Finally, he urged the board to address the civil liability potential for such reporting licensees.

RESPONSE: Specific information on sanctions is unnecessary since the Uniform Enforcement Act at N.J.S.A. 45:1-21(h) already authorizes disciplinary action for failure to comply with a rule. When such a severance report is received, the usual investigative process would commence, taking into account many factors including the licensure (or lack thereof) status of the various participants, the nature of the perceived problem, whether it has implications for criminal justice inquiry, and whether a Superior Court injunction should be sought on any appropriate grounds. The common law already confers qualified immunity on a Board licensee reporting information in good faith to the appropriate governmental entity. Further, N.J.S.A. 45:9-19.1 to 19.3 explicitly confers immunity in the specified circumstances. Wording of the section has been clarified regarding when the duty to report arises.

The Board also determined to change the reference "equity interest" to "significant beneficial interest", as the adopted form of the section is intended to utilize the definition of significant beneficial interest provided in the statutory amendment of N.J.S.A. 45:9-22.4.

COMMENT: N.J.A.C. 13:35-6.16(h). This subsection addresses permissible practice in the form of an organized managed health care plan. One representative of HMO groups asserted that HMOs have sophisticated remuneration arrangements and that they provide quality care at reasonable price. She wished the Board to make clear that HMOs retain flexibility to decide when they will pay for out-of-network services.

The New Jersey Optometric Association claimed this subsection to be a "frontal assault" on HMOs which are regulated by other agencies, and noted that the Governor's Management Review Commission recommended transferring HMO regulation to a new Department of Regulated Commerce. The representative contended the rule subsection is anti-competitive and could be costly to a plan or enrollee if the doctor refers the patient to a non-plan doctor. He stated that a DOH rule requires an HMO plan to have optometrists as well as ophthalmologists and that unless the primary care physician determines that referral to an ophthalmologist is medically required and outside the scope of optometry, the enrollee may choose to receive care from the optometrist. He urged deletion of any reference to managed care in this subsection. He also suggested substituting health care "provider" in part of the section instead of "licensee."

Other comments received applied both to this subsection and to its companion, N.J.A.C. 13:35-6.17(f). Please see summary of comments there, as well.

RESPONSE: The Board is aware of the Management Review Commission report recommendation for transfer of HMOs, but notes that no such action has been taken to date and, in any event, a transfer would not be expected to confer on a non-medical entity the jurisdiction to determine appropriate professional conduct of a physician. That is a responsibility which remains under the Medical Board. The Board sees no conflict whatever between its rule and the example cited by the NJOA wherein enrollees have the opportunity to receive care from an optometrist in the absence of a condition needing the training of an ophthalmologist. It is apparent that prior to any such referral, the primary care doctor (gatekeeper) must document sufficient clinical or other indicia to warrant the referral.

The Board agrees with some of the comments and this subsection has been clarified to call attention to the built-in screening mechanism of such plans which typically require advance approval of a patient's hospital admission or referral to a specialist, and also to recognize that referrals are sometimes made to health care providers who may not necessarily be required to be licensed.

Although one commenter feared higher costs to HMOs, in fact the rule makes no reference at all to the HMO-organizational prerogative to decide when it will or will not pay for out-of-network services; it is well understood that one principle of an HMO plan is that a limited total financial resource must cover an entire pool of members, and that some treatment services may be refused because they are believed by the medical administration to be unnecessary and others may be refused because of insufficiency of funds within the program. Such issues are not within Board jurisdiction.

Concerning N.J.A.C. 13:35-6.16(i), which pertains to quality assurance mechanisms and referral conduct of laboratory services, no comments were received. However, this subsection has been clarified to remind licensees who own an off-site lab and those who accept referrals from non-investing physicians of the truth-in-billing law and of the prohibitions of HCCRA. The ownership disclosure requirement has been modified so that media advertisements need not list all owners. In the event that full listing of investors becomes unrealistic due to space limitations on bills, petition for exemption may be made for good cause shown.

COMMENT: N.J.A.C. 13:35-6.16(j). This subsection pertains to quality assurance mechanisms and referral conduct regarding physical therapy. Numerous comments were received from physical therapists, some contending that all physician referral to an owned entity should be prohibited because the therapists believed that: some physicians permit treatment to be given by unlicensed personnel; some physicians keep patients in treatment longer than necessary; some physicians may actually harm patients by giving ignorant treatment. Some therapists suggested that permitting physicians to own physical therapy entities would drive independent therapists into bankruptcy.

RESPONSE: This subsection has been clarified to remind licensees who own an off-site physical therapy entity of the prohibitions of HCCRA. That statute may adequately address some of the concerns voiced by the commenters. With regard to the others: N.J.S.A. 45:9-22.10 and 45:5-11 now prohibit the use of unlicensed employees to administer most forms of physical modalities. Wording has been added, at the request of commenters to aid in enforcement of that law, clarify that a bill for services shall identify the provider of service by name and degree, when those services were rendered by licensed professionals authorized to provide services without medical supervision. Any violation of those laws, or any good faith belief that a physician is practicing negligently, incompetently, or fraudulently, should be brought to the attention of the Board for investigation. However, the Board does not have jurisdiction to forbid ownership of physical therapy facilities by physicians and the HCCRA appears, both directly and indirectly, to accept such ownership provided that the stated protections to patients are observed. The ownership disclosure requirement has been modified so that media advertisements need not list all owners. In the event that full listing of investors becomes unrealistic due to space limitations on bills, petition for exemption may be made for good cause shown.

COMMENT: N.J.A.C. 13:35-6.16(k). A commenter inquired how to handle billing where the treating physician takes an x-ray but sends it out for interpretation by a specialist. The New Jersey Society of Osteopathic Physicians and Surgeons praised the bulk of the rule proposals but contended that this subsection, requiring an annual summary report by physician-investors in radiology services, would duplicate filings already required by the Department of State, Tax and Treasury. A representative of the Radiological Society of New Jersey asked why a large number of licensees owning but not practicing at a radiological facility need to have their names listed at the premises and on the bill; he also asked why "leasing company" investors or landlords would have to be identified as owners of the practice.

RESPONSE: This subsection has been clarified to note that where reading of film is done by an outside consultant, billing should be handled as provided in N.J.A.C. 13:35-6.17(c)3; that is, the treating doctor may bill for the entire professional/technical service but must identify on the bill the name and address of the actual provider of the subcontracted service and the cost of it as billed to the treating doctor. This interpretation is consistent with the "truth-in-billing" requirement of N.J.S.A. 45:1-10 pertaining to referred laboratory services.

The subsection has also been clarified to remind licensees who own an off-site radiology entity of the prohibitions of HCCRA and its specific

exceptions. The requirement to list owners (all licensees, whether direct investors in the practice or licensee lessors/landlords) is to aid in compliance with the "grandfathering" of certain investors-referrers, and the prohibition on new referrals. Although the commenter suggested that some such entities may have a large number of investors-referrers, it would appear that such names could be placed in appropriate size type somewhere on a bill, perhaps on the reverse side or an additional page. Moreover, many medical offices now utilize a computer-generated billing form, thus rendering occasional changes in investor identification simple to update. The Board has, however, incorporated an exception to allow limited name disclosure in media advertising as permitted in N.J.A.C. 13:35-6.10(l). In the event that an adequate showing of hardship is demonstrated with respect to this requirement, the Board will consider a revision of this item.

The Board has determined to delete N.J.A.C. 13:35-6.16(k)3 because a specific reporting requirement might be unduly burdensome to licensees at this time, and because some of the information will now be available from other sources.

COMMENT: N.J.A.C. 13:35-6.16(l), ophthalmology billing and referrals. An ophthalmologist who identified himself as president of a county medical society but did not indicate if he was writing individually or on behalf of the society, seemed to object to the restriction requiring billing to be done in such manner as to clearly identify the ophthalmologist as biller, and to establish quality control provisions at any owned location other than the physician's regular office. He appeared to suggest that he both prescribes and sells only to prevent hardship, inconvenience, and possible risk to the health of his patient's eyes if they are "forced" to take their prescriptions elsewhere. He contended that the quality of advertised services in shopping centers is "debatable." He thought the Board rule adds "bureaucratic restrictions and hassles," and that the rule limiting fees puts a physician at an economic disadvantage with regard to providers of ophthalmic appliances (for example, optometrists, opticians) who are not at present so constrained. He likened the Board to the "Soviet Union."

The New Jersey Academy of Ophthalmology and Otolaryngology (NJOAO) supported paragraph (l)1, requiring billing to be done in the name of the physician or office. The group opposed in part paragraph (l)2, which would have required the physician having a "financial interest" (as defined in the proposal) in a service entity to establish quality control provisions there. The NJOAO noted that ophthalmologists often lease office space to an optician who sells ocular products; the group felt a physician-landlord should not be responsible for a tenant's office policies, appropriate professional staff or equipment. The group felt disclosure of the monetary interest by the landlord in the lessee should be sufficient.

The New Jersey Optometric Association urged insertion of a definition in the subsection's reference to a physician, to limit prescribing to doctors skilled in treatment of diseases of the eye in order to prevent proctologists, ob/gyns, etc., from providing eye care. The representative inquired whether the names of doctors having an ownership interest in a practice entity must be included on media ads and on the building premises, or only on stationery and business cards.

RESPONSE: This subsection was clarified to remind licensees of the referral prohibitions of HCCRA, which may now address some of the concerns expressed by the commenters. The Board appreciates the NJOAO suggestion regarding investor identification. This has now been limited, for media ads, to the lesser requirements of N.J.A.C. 13:35-6.10(l). Identification of all practitioners must, however, appear on the building premises and on all stationery and business cards and, normally, on bills. However, as noted above, petition for waiver of owner listings on bills may be made for good cause shown. The section has also been clarified to indicate that a bill for services shall identify the provider of service by name and degree, when those services were rendered by licensed professionals authorized to provide the services without medical supervision.

The Board does not agree with the suggestion of the NJOAO to limit what kinds of physicians may provide eye care, because present law does not provide a specialty license limited to eye care; rather, a plenary license is issued. As a practical matter, the Board is unaware of physicians untrained in ophthalmology providing such services. Further, the rule itself requires quality assurance mechanisms and another rule of the Board specifies minimum content of an eye examination. Any complaint of impropriety or negligence will be handled on a case-by-case basis.

However, the Board agrees with the concerns raised regarding landlord responsibility, and has deleted the rent reference from the primary definition of "financial interest," leaving this topic to be addressed by

the statutory definition of "significant beneficial interest" which excludes a straight lease agreement at fair market value. Please see Response to N.J.A.C. 13:35-6.17(a).

The fact that some other licensing boards have not yet found it appropriate or necessary to address truth-in-billing issues may be ascribable to many reasons, including, but not limited to, the difference in practice emphasis on professional service versus selling/dispensing of eyewear by limited licensees. But none of the possible reasons preclude this Board from addressing issues regularly brought to its attention by consumer-complainants regarding excessive fees or poor workmanship or rude treatment or harassment if the patient requests the eyewear prescription and desires to have it filled at another location.

COMMENT: N.J.A.C. 13:35-6.16(m), operative date of rule. No comments were received, but the Division of Consumer Affairs has suggested a date of April 15, 1992.

RESPONSE: This section was modified to delete reference to N.J.A.C. 13:35-6.16(k)3 which has been deleted, and to make the operative date April 15, 1992 except as otherwise specified.

COMMENT: N.J.A.C. 13:35-6.17(a). This subsection provides definitions, including a proposed one for "health care service" and for "financial interest." Comments were received, sometimes specific to a particular specialty such as ophthalmology, objecting to inclusion of "rent" where that would impose on the physician-landlord any responsibility for the conduct of the separate licensed practice of the lessee. Commenters also objected to inclusion within "health care service" of a business which merely provides medical equipment or supplies but not treatment.

RESPONSE: The Board agrees with the recommendation to delete reference to the business of provision of diagnostic or treatment equipment and supplies from the definition of "health care service." That topic is addressed in more detail in the discussion of N.J.A.C. 13:35-6.17(e), and the protection against inappropriate billing has been moved to N.J.A.C. 13:35-6.17(h) along with real estate arrangements.

This subsection was clarified to show that, for the regulatory purposes of these rules, the term "financial interest" refers only to monetary interests of any amount held by the practitioner in a health care service to which the practitioner's patients are referred. Thus, a physician is not barred from investing in an entity geographically distant from the physician's office and thus unlikely to receive referrals from the investor, or from investing in a type of health care service totally unrelated to the investor's practice, or from investing in a health care service where the contractual documents explicitly prohibit the investor from referring any patients. This interpretation is intended to be consistent with the limitations in the Federal "Safe Harbor" rules, section 1001.952, as construed by Office of the Inspector General, and consistent with the apparent intent of the HCCRA. In addition, the Board agrees that the definition of financial interest was unnecessarily broad in light of the wording of section 83 of HCCRA as amended. The definition of "financial interest" in N.J.A.C. 13:35-6.17(a) is therefore revised to exclude reference to rent. Instead, the effects of an interest in rent are addressed in the HCCRA definition of "significant beneficial interest" if other than a fair, straight lease agreement. Thus, the position of landlord imposes no additional professional responsibilities on a tenant provided that the space is leased, in writing, to a person at the prevailing rate under a straight lease agreement (fixed fee for a fixed term).

The subsection also now deletes any reference to a five percent or \$5,000 financial interest as a trigger point for disclosure to patients, since those terms were deleted by HCCRA; the Board restates the permitted exceptions to the new statutory definition of significant beneficial interest. It is believed that these provisions also are substantially consistent with the Safe Harbor rules.

COMMENT: N.J.A.C. 13:35-6.17(b). The subsection implements the directive in the Mandatory Disclosure Law interpreting how the disclosure shall be made when referring a patient. A commenter representing independent practice organizations (IPA) urged that its members be exempted from making disclosure because the terms of the IPA plan require referral only to plan participants and labs "except" where the doctor's "medical judgment otherwise dictates." He notes that the fee provisionally withheld by the plan for provider payment exceeds \$5,000/year and may influence the doctor's judgment in making a referral.

The New Jersey Optometric Association noted the limited HMO exclusion from referral limitations, and suggested broadening the wording because the Governor's Management Review Commission has proposed transferring HMOs to a new Division in the Department of Health.

RESPONSE: The Board appreciates the suggestion of the NJOA but declines to broaden the HMO exclusion at this time. The Board is unaware of any Executive Department changes thus far, and notes that the original mandatory disclosure bill excluded no managed health care plan except for the specific State-sponsored one. The Board has, therefore, utilized the same language. If circumstances change, the rule can be timely amended.

The subsection has been modified to incorporate the cut-off date of the new law for commencement of new financial interests, as defined, and the exceptions thereto. Proposals for "non-grandfathered" IPAs and other plans which require provider investment as well as intra-plan referral for covered care will need to determine whether they can comply with HCCRA. The Board notes that the original mandatory disclosure law exempted from disclosure only those health care services operating on a prepaid capitated contract with the Department of Human Services; no legislative change was made to the law expanding that exemption. Thus, it would appear that other physicians in other HMOs and in other forms of managed health care participants do have to disclose their financial interest in the plan, however obvious it may seem to their plan patients.

Moreover, in light of the "grandfathering" provision, in order to avoid a simple subversion of the mandatory disclosure requirement, the Board has modified the wording to indicate that a licensee who becomes affiliated with a "grandfather" must also disclose the financial interest.

There is an exception in the new law at Section 47 permitting new investment and referral to the investor-physician's patients at a health care service provided at the practitioner's medical office and for which the patient is billed directly by the practitioner. The Board interprets this to mean that the billing must be in the practitioner's name. Thus, if the physician sets up a separate professional service corporation (which might have a trade name, for example, Newark Radiology, P.A.) to handle some aspects of the medical practice, but which is provided at the same medical office, the physician's name must appear on all written representations of the billing along with the P.A.'s trade name, if any. Thus, neither patients nor insurance carriers will be misled into thinking the referred service is provided by an unrelated entity.

COMMENT: N.J.A.C. 13:35-6.17(c). This subsection addresses various types of prohibited kickbacks or other inappropriate monetary arrangements. The New Jersey Optometric Association asserted that ophthalmologists have routinely "stolen" optometric patients who were referred for eye care services beyond the scope of an optometrist. The representative suggested that the rule require a specialist to "return" the patient and to "prohibit" the specialist from retaining the patient. He also asked if the rule prohibits receipt or utilization of equipment or space by an ophthalmologist from an optical dispensary, without any lease or charge therefor, or at below-market-rates, where there is a formal or informal agreement that the physician will refer patients to the adjoining optical dispensary. He also suggested that the billing statement for professional services include the identity of an employed optometrist. He asserted that mandated disclosure of the true cost of eyewear by an ophthalmologist will have the effect of dramatically lowering the cost of goods since, he stated, markup is typically two to three times the wholesale cost. He cautioned that the salutary effects of the rule might be evaded if the physician can send the patient to another corporate entity, perhaps on the same premises, so that billing for prescribed/technical services is done under another name; he proposed tightening language.

The Medical Society of New Jersey asked if the ban on kickbacks would include a physician testing a medical device pursuant to FDA permit. The Society also provided a copy of the Office of the Inspector General memorandum calling attention to apparent illegal extortion methods proposed by some hospitals in this country in exchange for exclusive contracts, and the Society suggested that the Board is somehow allowing kickbacks to be paid by physicians when they receive exclusive contracts from hospitals. Similar comments were submitted by the Radiological Society of New Jersey, asserting that some hospitals require radiology groups to make "charitable contributions" in exchange for exclusive contract arrangements, or to purchase expensive equipment for the hospital radiology department even though the hospital itself bills for the equipment use. The commenter asked the Board to adopt a rule prohibiting such tactics to prevent some radiologists from feeling coerced into "succumbing," as this may indeed be a form of kickback.

Some commenters noted that Medicare presently pays, in addition to the professional fee, a "facility fee" for certain medical procedures for which accepted standards of medical practice require a setting more specialized than a physician's private office but yet do not actually require

the resources of a full hospital setting. Those commenters objected to wording in this section which would forbid a licensee from receiving or giving any form of compensation to a health care entity in connection with a referral or space leasing. They explained that surgeons may refer their patients to a facility constructed to permit performance of surgeries by physicians who cannot do the procedures in their private offices but do not need full hospital facilities. When the special procedures are done in the separate facility on qualified Medicare patients, the facility itself is authorized to bill Medicare for a "facility fee" so long as specified criteria are met. (The State Department of Health, while not regulating such facilities, contracts with Medicare to inspect and report about them; however, the Department of Health appears to have no independent authority to close down any facility for failure to meet Federal criteria.) Commonly, the referring physicians also have an ownership interest in the facility; thus, they both refer and may receive a profit from the revenues of the facility for each procedure they refer to be done there. The rule, as drafted, would forbid charging a facility fee. Another commenter inquired whether this section permitted a licensee to pay a per-patient referral fee to a non-licensee who solicits business for the licensee.

Another commenter protested that the mere prescribing and selling of an item is now made suspect by the law, especially where the doctor has a financial interest in the sale, even though the doctor may have a legitimate reason for the prescribing.

The NJAOO objected to a physician having to disclose to the patient the cost of eyeglass fabrication, contending that this would inhibit the physician's ability to be economically competitive since optometrists and opticians are not presently required to disclose.

RESPONSE: The Board does not contemplate the term "kickback" to include implementation of a legal FDA investigational permit, and the text has been clarified to allay any concern in this regard. Nor does the Board understand the accusation that its rule would encourage payment of kickbacks to hospitals by physicians seeking exclusive contracts. Such conduct is clearly illegal and should be reported. However, the Board does not regard the negotiation for or awarding of an exclusive contract to be *per se* improper. There has been extensive analysis of the utility to a hospital in having such contracts in certain specialties in order to promote the likelihood of service available at all required times. The Board is concerned about the allegation of certain (unnamed) hospitals coercing from radiologists what may be inappropriate payments in exchange for contracts. However, the Board notes that the Office of Inspector General has issued a memorandum offering an interpretation of Federal law, 42 U.S.C. 1128B of the Social Security Act, directing HCFA to notify doctors and hospitals about improprieties and encouraging referral of appropriate cases for prosecution. Thus, the issue may already be adequately addressed by Federal law. Alternatively, this subsection (c) of the rule prohibits the making of any form of compensation in circumstances where it would be understood by a reasonable person to be in exchange for, or in appreciation for, or to promote conduct by a licensee including space leasing (for example, in the hospital) or the referral of patients (through the exclusive contract) for professional services. Thus, the Board finds no reason to address that subject further at this time in the rule.

On the issue of facility fee billing, the Board proposal initially treated any physical facility other than one licensed by the State Department of Health as a private physician's office. Thus, any costs associated with providing medical services there, including surgeries of the type which do not require performance in a Health-licensed facility, were treated as office overhead. Consistent with that interpretation, in individual disciplinary inquiries the Board has forbidden licensees to make a separate billing to patients for a "facility fee" or "operating room" or "sterile tray," etc. If the medical services are provided in a separate location, the Board has treated that as equivalent to a branch private office. The New Jersey State Department of Health licenses hospitals and some ambulatory surgical facilities meeting Certificate of Need criteria, but there is apparently no State regulation for an intermediate level above that of a private office, comparable to the Medicare standard for ambulatory surgery centers (set forth in Part 416 of the Federal Medicare rules, Ambulatory Surgical Services), which is either required or acknowledged by the State to warrant separate facility payment. Upon review of the comments, however, the Board has determined that the Medicare certification requirements are likely to be sufficiently stringent that, assuming Department of Health inspection and Federal enforcement, it is reasonable to permit such Medicare-approved facilities to bill in accordance with Medicare rules. The modification to the Board rule applies only to such Medicare-certified facilities, and those entities will

still be expected to comply with the remainder of this rule which limits ownership to licensed personnel. In this manner, the supervisory and corrective effects of licensee-ownership should suffice to fill any potential breaches of quality assurances which might otherwise result from lack of licensure accountability, or from infrequent State inspection or from shortage or delay in Federal enforcement.

The wording of this subsection has also been clarified to demonstrate Board intent that a licensee shall not pay anyone, whether licensed or not, to refer patients, except as permitted in N.J.A.C. 13:35-16.17(c)1i.

Paragraph (c)2 clarifies for the information of paying patients or third party carriers that when a licensee provides medical services through the use of licensed staff, bills should be in the name of the employing licensee (for overall professional responsibility), but should indicate the name and degree of the professional who actually rendered the professional service being billed, where such person is independently authorized to render medical services without physician supervision. This should aid, for example, in enforcement of N.J.S.A. 45:9-22.10 which prohibits a physician from using an employee to administer specified physical modalities to patients unless the employee is a licensed health care provider. Similarly, a psychiatrist employing other physicians, psychologists or social workers to provide mental health services would have to identify the provider, rather than having a "stable" of unidentified persons provide what might otherwise be unlicensed and unprofessional quality services for which the employing physician was billing full fee to unknowledgeable payors.

Paragraph (c)3 has been modified to list radiologic and EKG consultation as additional examples of prescribed professional/technical services which might be ordered and billed by the prescribing physician. For example, a radiologist may contract with a general practitioner to interpret x-rays taken by the latter. But the radiologist must provide identifying information to the prescriber sufficient to identify name, address and cost on the prescriber's overall bill so that the patient shall be informed of the true cost of the outside services ordered by the prescriber.

Thus, the same response is made to the objecting NJAOO. The Board interprets their statement that they would not be "economically competitive" with optometrists and opticians to mean that in order to compete for the sale of eyewear the physicians might be inclined to reduce their fees for those prescribed items, when they do not issue a global bill for all aspects of professional service but instead "break out" an itemized fee for the eyewear. However, the Board believes it is unlikely that a patient is unaware of the additional skill of a physician in an ocular pathology context. If there is nothing unusual about the visual impairment, then there would appear to be no reason to inhibit the effects of routine competition for sale of routine eyewear. The difference in fee should be found in the professional component of the service, not in the goods. The information required in this section is consistent with the truth-in-billing requirement of N.J.S.A. 45:1-10 regarding labwork referrals, and is analogous to the truthful billing required of attorneys who make disbursements on behalf of clients.

With regard to the comments of the NJOA, the Board finds inappropriate the suggestion that specialists must be required to "return" "stolen" patients. A patient always retains the right to make an informed choice of provider. Where the patient has had a medical problem of sufficient magnitude to require care by an ophthalmologist, there is nothing inherently irrational about a choice by the patient which takes into account the prior or concurrent medical condition and results in a decision to continue follow-up or other aspects of eye care with the physician. Given that premise, there is nothing unethical in a physician agreeing to provide care if requested to do so.

However, the Board agrees that it would indeed be improper for a physician to receive free or below-cost services of any sort in tacit exchange for referrals. Reports of any such conduct will be promptly investigated. The Board appreciates and has adopted the suggestion that licensed employed personnel providing services for which they could independently bill, shall be identified on the bill. If disclosure of true costs of eyewear aids in providing consumers with the ability to distinguish their best sources for optical goods, for optometric services, and for medical services when needed, the rule will be of benefit. The Board hopes that the HCCRA ban on interested referrals will reduce the likelihood of the billing abuse surmised by the NJOA so that no additional wording is needed at this time; reports of improper conduct will be investigated.

COMMENT: N.J.A.C. 13:35-6.17(e). This subsection addresses fees which may be charged by a licensee prescribing and then selling to a patient medications, vitamins and food supplements, and medical goods

and devices. A licensee may charge an overall "global" comprehensive fee which includes both professional services and the items. If the licensee elects to break down the bill, any charge listed for other than professional services must now be an accurate charge.

Many commenters addressed this requirement. Some stated that it would be too difficult to determine a unit cost, because the practitioner wishes to include therein the cost of office overhead, staff salaries, security, insurance, utilities, etc. Others objected that without any profit to be made from the sale, physicians would no longer have any incentive to provide medications and devices at the office, thus requiring patients to delay commencement of therapy until the prescription for drugs or devices could be filled.

The New Jersey Optometric Association stated that some ophthalmologists who own an optical dispensary charge a separate "dispensing fee" in addition to the exam fee and the cost of goods sold. The NJOA representative urged the Board to prohibit charging a supplemental or additional fee for the purpose of dispensing (or fitting) prescribed goods. He thought further clarification of the billing requirement was needed and suggested use of "net" unit cost to recognize discounts. He urged clarification to explain what was meant by the obligation to provide follow-up care, since the patient may not know enough to ask, especially since such care is critical for contact lenses.

The Medical Society of New Jersey objected to the Board regulating any aspect of the "business" of the practice of medicine, and contended that it was unfair to ban profit on sale of goods/devices specified and provided by the prescriber without also banning profit when those goods/devices have come from a hospital or other source.

The Urology Society of New Jersey, the Medical Society of New Jersey, and an individual urologist asserted that physicians will not provide certain goods if a profit cannot be made. The example given was that of some urologists who currently prescribe and sell penile implants for the benefit of their impotent patients in order to spare them embarrassment at filling the prescription at a drugstore. These doctors asserted that, if forbidden to sell for profit, they would cease to provide those items anymore, and will also cease to stock certain kinds of medicines or vaccines. The Society contended that pharmacists, who are not required to disclose unit costs, charge more than physicians for items.

An orthopedic surgeon stated that he stocks large numbers of wrist and ankle splints, slings, supports and other devices to give prompt relief to his patients; he must order them in advance and in a range of sizes, and provide storage in the office with inventory and shelf-stocking tasks. He remarked that his devices are sometimes "superior" to those available elsewhere, and that sometimes the bills for his services are not fully paid. Although he realized that price gouging is improper, he would not be satisfied to merely recoup his costs and stated that if he cannot make a profit on these sales, he would not stock the goods.

An ophthalmologist expressed the unique view that these rules are intended to promote doctor dispensing and therefore questioned why any limitations were placed on fees. He also opined that ophthalmologists who dispense have their eyewear "better fabricated to specifications and probably cheaper" than what is available from commercial optical retail outlets. He contended that limiting cost of the goods to frame and lenses would make dispensing "impossible" because that cost does not include rent for the dispensing area, optician salaries, breakage, rejects, refunds, and many other aspects of a professional office. He thinks it is "rare" for an ophthalmologist to charge excessive fees for dispensed eyewear.

An optometrist (whose practice is not regulated by this Board) opined that some manufacturers of optical devices offer kickbacks to referring ophthalmologists and optometrists, and he urged that the ban on charging for profit be amended to exclude charges for eyeglasses, contact lenses and other optical devices but gave no reason for this proposal.

The NJAOC suggested that a ban on profit on sale of eyewear would be anti-competitive, would eliminate physicians as sellers of such items, and would encourage a costly monopoly for optometrists and opticians. The Academy supported N.J.A.C. 13:35-6.17(e)3 which requires the ophthalmologist to provide, if requested to do so, appropriate follow-up on the appropriateness and/or fit of prescribed eyewear even if the patient makes the economic choice to fill the prescription elsewhere.

The Union County Medical Society reported it had no objection to a prohibition of sale of goods for profit. The Society does, however, wish physicians to be able to charge a reasonable fee for storage and handling of the goods.

The Hudson County Medical Society commented that everyone recognizes that physicians who dispense medications will make a profit, and suggests that physicians will charge less than pharmacists (whose business is dispensing). The Society noted the availability of special

products for incontinence and impotence from manufacturers or medical surgical supply houses, and contended that it was unfair for a physician-seller to disclose cost or profit if a manufacturer/distributor need not do so. The Society also stated that if patients know the wholesale costs and profits from the markup which the physician-seller makes, this will "interfere and likely destroy the doctor-patient relationship. After hearing such disclosure, the patient will wonder if he is sitting before his physician who cares for his health or before a salesman who cares for the patient's money." The Society concluded that the patient would lose confidence in and respect for his physician.

A commenter on behalf of the New Jersey Guild of Hearing Aid Dispensers requested that such licensees of the Board be excluded from the limitations since, unlike the other Board licensees, the sale of hearing aids is a primary part of their licensed work and is already regulated.

RESPONSE: The Board agrees that hearing aid dispensers, licensed under N.J.S.A. 45:9A-1 et seq., should be excluded from the billing limitation, as the nature of their practice is substantially different in significant respects from that of other licensees of the Medical Board and the sale of hearing aid devices is a statutorily recognized integral part of their work. Their billing is regulated by implementing rules N.J.A.C. 13:35, whose formerly broader reach had been affirmed in *N.J. Guild of Hearing Aid Dispensers v. Long*, 145 N.J. Super. 580 (App. Div. 1976), *aff'd* 75 N.J. 544 (1978). The current version of N.J.A.C. 13:35-8.14 requires an itemization of services and equipment on a bill to the "customer," indicating various services to be performed, in addition to "the cost" of the earmold and "the cost" of the hearing aid. At present, the "cost" disclosed is not the wholesale cost but a retail cost including markup. Thus, while the Board approves exempting hearing aid dispensers from the limitation of charging true cost plus 10 percent, to assure that customers are not misled by the term "cost" on the bill, those items shall be clarified by listing each as "retail price." See N.J.S.A. 45:9A-17(c)(1).

The Board receives consumer complaints contending that some licensees prescribe medical goods or devices (for example, eyewear) and then refuse to provide further professional service to the patient if the goods are purchased elsewhere. Other complaints regard exorbitant billing. The Board already has authority to sanction a licensee for professional misconduct pursuant to its Excessive Fee Rule, including when the licensee charges a global fee believed to be excessive. However, the new rule is deemed salutary and cautionary because the Board has also considered many consumer complaints alleging that a licensee divided the bill to separate professional fees from the purported technical or mechanical component. The later component was often extremely high, and was falsely represented or implied by the licensee to be the cost of a device or medication. Reported abusive practices by some ophthalmologists were among the earliest precipitants of this rule, and the Board finds that the limitation on billing for goods will properly distinguish the primary professional aspect of medical practice, including ophthalmology, from the technical product sale. With regard to the inquiries of the NJAO: a physician providing eye examination and prescription is expected to advise the patient of the extent of follow-up care needed and to be available to perform it. However, unless the prescriber has indicated a flat fee for the comprehensive service, the Board does not at this time find it necessarily inappropriate for a separate visit fee to be charged for follow-up, whether or not the eyewear has been purchased from the prescriber. If abusive practices are brought to the attention of the Board, appropriate inquiry will be made. As noted earlier, the billing section has been clarified to require identification of the actual licensed provider of the service.

The Board appreciates the support of the Union County Medical Society to prohibit sale of goods for profit.

The Board disagrees with the position of "unfairness" postulated by the Medical Society of New Jersey. At the outset, it is known that the Board has no jurisdiction over hospitals or the rates they are permitted by the State Department of Health to charge. Further, the Board finds that when goods are prescribed by a physician at a hospital (whose expenses are closely regulated by the Department of Health), the amount of cost is not under the control of the prescribing physician and the range of available medications and devices is likely to be large. A hospital prescriber setting is not comparable to the choices—and opportunities for exploitation—available to a physician in private practice who may prescribe what happens to be in the limited office inventory at the time, and who is in a position of authority over a psychologically vulnerable patient at the time the patient is told by the physician that a medication or device is needed immediately.

The Board has reported the claim by some individual commenters and organized medicine that some physicians—who contend they have hitherto sold prescribed items to save their patients from severe embarrassment at a pharmacy—would now lose the sense of empathy and concern they have represented and would expose those patients to predicted embarrassment, simply because the physicians could not make a profit over and above their unit cost expenses plus 10 percent. The Board trusts that the compassion these physicians have manifested to date will continue. If any significant disruption in availability of necessary goods and devices becomes apparent after this rule is in effect, the Board will reconsider the provision provided that any alternative appears consistent with professional responsibility and the public interest.

The Board appreciated the suggestion on defining cost more closely, and has clarified the method of computing "cost" to conform with the definition utilized in the Federal Safe Harbor provisions, thus passing on to the consumer the benefit of any discounts received by the practitioner. The clarification also includes the Federal interpretation excluding computation of the value of certain common arrangements offered by pharmaceutical companies, provided that the licensee does not accept from the seller rebates of cash, coupons other than as defined, or other kinds of free goods or services.

The Board agrees, indirectly, with some comments of the Hudson County Medical Society: selling by a physician of prescribed items for profit may well make patients wonder if the prescribing was truly for their medical benefit. However, the fact that manufacturers of drugs or devices need not disclose markup is irrelevant to the responsibilities of a health care professional licensed by this Board. That distinction was emphasized by the Legislature when, during the pendency of this proposal, the HCCRA was enacted. The law forbade the making of a profit in selling medications but allowed out-of-pocket cost plus an administrative cost not to exceed 10 percent thereof. The administrative fee, now set by law, must presumably include the cost of storage, handling, inventory control, security, etc. That fee limitation, effective by law July 31, 1991, was incorporated into this rule as a reasonable and practical interpretation of the term "cost," and was also deemed by the Board equally applicable to all kinds of products sold from a licensee's office. In addition to limiting the fee, however, the new law forbids any sale of more than a seven-day supply of medications except in certain specified situations. The Board rule does not address that time prohibition. But for the specified exemptions when prescribing/selling by private practitioners is allowed to continue beyond the seven days, the same billing limitation will apply; that is, true cost plus 10 percent administrative cost if the bill specifies a separate cost.

As for the seeming "suspect" nature of prescribing and selling, while the Board recognizes and indeed trusts that most such matters involve the good faith exercise of medical judgment, the blatant nature of vendor solicitation of physicians—proclaiming that one's revenue will quadruple in a year if a (limited) variety of medications is sold from the office, coupled with the decision by the Legislature that the risk of conflict of interest is intolerable—has resulted in a statute totally forbidding the sale of drugs from the office except in certain circumstances.

For those who believed it would be too difficult to ascertain a unit cost of the sold product because of the desire to add office overhead to the goods price instead of to the general cost of running a medical office, the revisions (patterned on the HCCRA specification of a flat 10 percent administrative cost added to the vendor's voucher) will now simplify that task. Any indirect costs not met by the 10 percent add-on should be considered part of professional office overhead, to be met by the professional component of the fee.

The Board has determined to reserve further consideration of paragraph (e)2 pending review of the public comment suggesting that the original proposed alternative of "global" billing might have the unintended consequence of providing less usable information to consumers.

COMMENT: N.J.A.C. 13:35-6.17(f). This subsection, as proposed, forbade a managed health care plan from utilizing, as a structural risk factor, an economic disincentive to the exercise of responsible professional judgment by the licensee on behalf of the patient. The purpose was to assure that legitimate treatment interests of patients should not be jeopardized by a financial incentive to the primary care physician which actively and directly promotes refusal to inform a patient about specialist care, when that information or referral would have been proper and fully medically justified.

Comments were submitted by companies owning HMOs and other forms of managed health care, or organizations representing HMOs or managed health care plans. The American Managed Care and Review

Association, which states it represents a large number of HMOs, PPOs, IPAs, and other managed health care entities and utilization review companies, submitted many thoughtful comments. Its representative remarked on the surge in health care costs and the need to curtail them through managed health care. The representative asserted that this rule is "dangerous," because he believes studies have not identified systematic or isolated quality problems in [the variety of] current risk allocation, and he believes that the "... position is the best judge of the appropriate use of services," and that other plan physicians properly serve as gatekeepers and care managers of referral and hospital services. He speculated that the prohibition in subsection (f) might apply to other types of incentive factors, thus endangering the whole concept of managed health care. He suggested it is sufficient to require that physician-incentive plans must have a quality assurance process, and recommended wording from the 1990 OBRA regarding Medicare (P.L. 101-508, section 4204, 4731). AMCR also recommended that plan contract standards be regulated by a private organization of such plans, or by the Federal Office of Prepaid Health Care. Some plan commenters suggested that this section is in conflict with current law/rules of the State Department of Health and the State Department of Insurance.

Other commenters suggested that the essence of such plans is to place the physician at financial risk by penalizing any presumptively casual and unnecessary specialist referral in order to keep down treatment costs. They suggested that better care is provided because of the "dual incentive/utilization review systems," and pointed out that fee-for-service contains its own form of economic incentives for abuse, which resulted in imposition of the DRG program. A commenter contended that a 1988 GAO study of Medicare patients found "little agreement in the health care field" on the effect financial incentives have on quality of care, but said other studies have suggested that employer-managed plans provided care as good or better than fee-for-service. (No information was provided as to whether any of the reviewed plans contained economic disincentives of the sole type which would have been prohibited by this rule.)

A representative of U.S. Health Care, Inc. and HMO of New Jersey suggested that any restrictions by this Board on physician practice are unwarranted because N.J.S.A. 26:2J-1 et seq. provides a framework for State Department of Health and Department of Insurance supervision of HMOs. Provider contracts are reviewed, and a quality assurance program must be established. He suggested that an HMO would have to utilize its reserve funds if risk is shifted to providers, and he claimed the section directly conflicts with DOH/DOI authority to regulate HMOs. He also contended that the section is pre-empted by Federal law and conflicts with 42 C.F.R. 417.107(b)(4) which approves the concept of risk-sharing arrangements by HMOs with physicians, citing also 42 U.S.C. 300(e). He contended that Federal rules require an HMO to have effective procedures to monitor and control costs and that this can include risk-sharing, financial incentives or other provisions agreed to by the providers, citing also 42 C.F.R. 417.103(b). He did not object to a prohibition on incentive payments given as direct cash bonuses to individual doctors to withhold a specific service from a specific patient or to discharge a specific person from a hospital. He suggested that a physician incentive arrangement could be coupled with approved methods for monitoring quality of care, and then contended that such plans are already in place. He recognized, however, that the Board rule would not have prohibited all economic disincentives, but only those which affect "responsible professional judgment."

A representative of the New Jersey State Nurse's Association commended the Board for attempting to improve disclosure to patients of monetary interests, but questioned how the Board will distinguish between health care plans structured to have economic or professional disincentives from plans which lower costs by reducing medically unnecessary health care practices.

The Union County Medical Society commented that the section would require doctors to be "policemen" for HMOs and PPOs to assure proper practice; the Society suggested that the Board should deal directly with the Department of Health to ask it to promulgate rules on the subject. The Medical Society of New Jersey suggested that only the sponsor of a managed care plan should be responsible for quality assurance and independent judgment of the affiliated practitioners.

Some commenters suggested that it would improve health care for a plan to be able to give physicians "bonuses" for what the plan determines is good work, good records, good service, etc. Another commenter noted that some physicians contract to provide medical services to participants in managed health care plans but also have a regular fee-for-service practice, and the rule as drafted would have prevented payment from any source but the managed health care entity.

A consumer-patient of an HMO recounted experiences of both himself and his wife pointing up the problems addressed by this section. The wife was reported to have been undergoing a high-risk pregnancy, but was being treated at the HMO by a non-specialist. She reportedly requested on several occasions consultation with a specialist but the primary care physician refused. The consumer reports that when he questioned this on several occasions, the HMO staff candidly responded that the primary care doctor "lost money" each time he makes a referral. The consumer-husband had a personal example as well. He asserted that he had presented symptoms of chronic extreme fatigue which the HMO primary care physician reportedly insisted warranted no medical intervention and denied the patient's request that he be referred for specialist examination. Reportedly, the physician resisted but was ultimately persuaded to do so, at which point the patient was found to be suffering from sleep apnea. Appropriate treatment by the specialist ensued, improving the patient's condition.

RESPONSE: The Board appreciates the extensive comments by AMCRA and U.S. Health Care and other representatives of managed care plans, but believes they have misconstrued or exaggerated the specific wording and effects of the very limited prohibitions which Board licensees must observe. The ability to communicate a full and fair medical judgment to a patient is of the essence of the medical profession, and is inherent in the New Jersey and national caselaw defining the elements of informed patient consent. The Board finds no reason to impose a gag rule on a physician simply because the physician and patient have chosen to receive basic and some specialty health care through a managed health care plan. At worst, the limitations of this rule will require additional explanation on the part of those recommending treatment and those deciding whether or not to provide it; it should not and is unlikely to result in a destruction of the fiscal premises of a rational managed health care program. Moreover, as there is at present no Federal licensure of medical practitioners, the Board finds insufficient public protection in the suggestion that "national utilization review" standards be used by physicians instead of accountability to their licensing agency, or that such decisions should be abdicated to a Federal Office of Prepaid Health Care to evaluate the need or propriety of any given patient's medical care. The Board notes that the Office of Prepaid Health Care in the Federal Department of Health and Human Services reviews the content of HMO provider contracts only to "insure the delivery of quality health care services and sound fiscal management." 42 U.S.C. 300(e)(C). The HMO is directed to control referrals so that it does not violate the requirement that all basic health care services be provided through the HMO. 42 U.S.C. 300(e)(3)(A). The Board construes the various Federal statute and rule provisions **permitting** discussion and effectuation of risk-sharing with physicians to be a form of immunity from conduct which might otherwise have been regarded as antitrust activity. The Board, therefore, agrees with the Hearing Officer that these statutes are legally insufficient to preclude this State Board to exercise its police power to assure that physicians are not actively encouraged to abdicate their professional roles because of an open economic inducement to do so.

The Board also disagrees with the contention by some commenters that HMO utilization management is already reviewed by the State Department of Health and the Department of Insurance sufficient to curb the abuses of concern here. N.J.S.A. 26:2J-4(2)(a) merely requires the State Department of Health and of Insurance to see that the HMO has the potential ability to assure availability and accessibility of adequate personnel and facilities. This provision cannot be equated with a professional board concern that an HMO doctor not be precluded from advising an individual patient that an unusual medical condition might benefit from a non-plan provider, so long as the patient is clearly informed that the treatment would be at the patient's private cost. That clear disclosure, already specified in the rule, will not result in patient "confusion" as to who is paying, and such occasional referrals should not jeopardize the HMO solvency. The Board also notes that no adverse comment has been received from either the Department of Health or the Department of Insurance. The Board does, however, agree that a plan could certainly require that such notice of non-plan coverage be given to the patient in writing.

The Board understands the views of the Union County Medical Society, but points out that the HMO laws and rules under the Department of Health address primarily minimum methods of HMO funding and provision of personnel and availability of grievance procedures for plan members; they do not address ethical standards of physicians, and do not deal with PPOs or other forms of managed care plans at all.

The Board is aware of the applicable Federal law and rules regarding HMOs and does not find their provisions to preempt the field insofar as this Board exercises the historical police power role to regulate individuals who are granted licenses to practice medicine and surgery in this State. For example, the subsection does not impose a requirement which would prohibit the HMO from complying with the requirements of 42 U.S.C. 300e(10). Rules of the Health Care Financing Administration, such as 42 C.F.R. 417.107, recognize that an HMO may make arrangements with physicians or other health professionals and institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians. Section 417.103 requires HMOs to have "effective" procedures to monitor utilization and to control costs of basic and supplemental health services and to achieve utilization goals, which "may" include mechanisms such as risk sharing, financial incentives or other provisions agreed to by providers. None of this or related material addresses or contains an inherent approval or requirement that economic **disincentives**, having a direct and immediate adverse impact on a patient, be part of the scheme. Indeed, current Federal law has already disclosed that Congress has significant concerns about the unstated implications of some plan arrangements and has requested that further study be done.

Nevertheless, although the Board agrees with the Hearing Officer that the Board probably has the authority to regulate on this topic with specific regard to its own licensees, the Board is also mindful of the current strong State legislative and executive branch interest in developing new forms of health care delivery service founded on managed health care plans. Such development should not be inadvertently hampered by the Board in advance of an opportunity to fine-tune the systems. The Board also recognizes the validity of the comments submitted by the State's Nurse's Association suggesting that it may be difficult for licensees to analyze the wording of various managed health care contracts in order to distinguish impermissible economic disincentives from permissible incentives. For these reasons, the Board has determined to delete, for the present, reference to the economic disincentives portion of the proposal, leaving only identifiable positive attributes of managed health care plans which will not be deemed of kickback or other impropriety.

Notwithstanding the decision to delete this aspect of the proposed rule at present, the Board appreciates the participation of the consumer-patient of an HMO in this rule making process. While the Board makes no findings on anecdotal accounts of medical problems reported in this forum, the consumer's account clearly demonstrates the need for disciplinary action in individual licensee situations; the Board encourages consumers to report detailed information on such problems so that appropriate investigation. Complaints or inquiries from consumers or physicians will be carefully reviewed on a case-by-case basis, with complete exploration of the issues and disciplinary action against individual physicians where deemed appropriate.

COMMENT: N.J.A.C. 13:35-6.17(g). This subsection required that remuneration be paid only on the basis of return on monetary investment. It was intended to prevent kickbacks or payment in forms which would induce referrals unjustified by medical reasons. The section permitted issuance of shares in exchange for rendition of personal professional services, or licensing of patents. Commenters noted that investment also may come in the form of provision of equipment or realty. Another commenter urged that practitioners should be permitted to pay a percentage of income as "rent," allegedly because different kinds of practitioners working in one building constitute an *ipso facto* "joint practice." One commenter claimed that the provision restricts "free enterprise" by limiting remuneration to return on investment, and thought a doctor could not be paid for management or other services. One commenter asked if all investments have to be equal, and if a partnership agreement could have different classes of partners and priority of returns on or of capital; he suggested that details of such an interpretation would be very complex and the whole subsection should be deleted.

RESPONSE: The Board finds a limitation to return on investment consistent with the current analyses of all rules enacted to prevent fraud and exploitation, including the Safe Harbor rules. However, the Board sees no need at this time to become involved in the intra-plan arrangement and contractual relationships of classes of investors, so long as they are consistent with other applicable law.

The Board agrees with the need to recognize provision of equipment or realty as another reasonable form of equity warranting "return on investment," and clarification has been made. The Board disagrees that practitioners merely renting space from another licensee constitute a

"joint practice," and believes that percentage-of-income rentals pose a significant abuse potential for inappropriate referrals. This analysis is consistent with the requirement in section 83 of the HCCRA that only a straight lease at fair market value is excluded from the definition of "significant beneficial interest." See also the Safe Harbor rules on this subject. Abuse will also be found where, for example, the operator of a van containing vascular testing equipment pays a podiatrist for use of the "space" for each patient referred by the podiatrist. The rule already contains leeway for a low initial rental to encourage development of practice by a young practitioner, with the opportunity to raise the rent in subsequent lease renewals as negotiated between the parties, and the wording is believed to be substantially consistent with Safe Harbor requirements.

The Board notes misunderstanding by the commenter who thought a doctor could not be paid for management or other services; the rule addresses only remuneration for the investment. A doctor could be paid a salary as an employee for provision of services.

COMMENT: N.J.A.C. 13:35-6.17(h). This subsection originally addressed only real estate arrangements intended to avoid exploitive referrals. One commenter noted that some licensees may own a "professional" building renting to tenants who are professionals not involved in a health care service, for example, accountants. In such circumstances, it may be unreasonable to interpret the present law to prohibit referrals to such tenants. Another commenter complained of the ban on rental of premises for an "hourly basis," suggesting that a doctor might wish to rent ambulatory care facilities (medical equipment in a van? Or operating room time in a surgery facility?) for certain periods of time. The New Jersey Optometric Association suggested that the Board was inconsistent in imposing flat-fee leasing arrangements between health care professionals while permitted unrestricted lease provisions with regular commercial entities. Its representative warned that some landlord licensees might evade the restrictions by creating a corporate shell.

RESPONSE: Clarifying language has been added making reference to the significant beneficial interest as referenced in the Mandatory Disclosure Law, as amended. To address the situation of a facility set up by investors for surgeries, such as cataracts or other procedures, the rule now repeats the general prohibition on charging of a "facility fee" except by a licensee who is a registered Medicare provider of surgical services billing pursuant to criteria of the Federal agency.

Although this subsection originally referred only to real estate, similar problems were noted regarding transactions involving medical equipment. To take into account the concerns of doctor investors in medical equipment, balanced against certain abuse potentials coming to the attention of the Board, reference to medical equipment was moved here from its original location at N.J.A.C. 13:35-6.17(a). A clarification of space rental fees, coupled with equipment rental fees, has therefore been added for substantial consistency with the new Safe Harbor rules to point out that a Board licensee may lease space or medical equipment from another licensed health care professional to whom patients are referred, only where the rent is fixed, at fair market value or less, and is set in advance for a regular term. The Board believes that these provisions are likely to prevent most abuses, while not unduly hampering the availability of leased equipment or the establishment of a medical office in (for example) a shopping mall where commercial leases are often uniform and do not make special provision for licensed lessors. In any event, the subsection provides opportunity for petition to the Board in unusual circumstances.

In conclusion, the Board appreciates the considerable attention given to the proposed rules by many thoughtful individuals, professional organizations, and business interests, and has given careful consideration to the criticisms made and the suggestions submitted. The Board believes that the resulting version provides adequate accommodation of the public and private interests presented, and will improve the ethical and professional climate in which the "business" of medicine is conducted.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

13:35-6.4 (Reserved)

13:35-6.16 Professional practice structure

(a) A licensee of the Board of Medical Examiners ***[may]* *shall*** engage in professional practice in this State only when in possession of a current ***biennial*** registration issued by the Board. ***[The name of the professional practice entity shall be composed of the actual**

last names of one or more of the owning licensees, partners or shareholders or composed of a phrase or words reasonably descriptive of the type of professional practice.]*

1. The term "professional practice" is deemed to include the offering ***by a Medical Board licensee*** of opinions on matters of professional practice (including testimony and professional review organization service), whether or not the offeror has provided direct patient care, where the holding of a professional board license is a significant component or foundation for the offering of the professional opinion.

2. The name of the professional practice entity shall be composed of the actual last names of one or more of the owning licensees, partners or shareholders or composed of a phrase or words reasonably descriptive of the type of professional practice.

(b) The practice shall be conducted in a business form consistent with the principles set forth in this rule and, where so noted, only in accordance with the designated special conditions pertaining to that form. There shall be policies and procedures with respect to professionally licensed personnel. These topics shall include, but not be limited to, the following:

1. Responsibility of a licensed practitioner for review and approval of hiring professional staff and timely demand for and verification of current licensing credentials and any other educational credentials required by law or pertinent agency rule (for example, recertifications, continuing professional education, cardiopulmonary resuscitation, etc.);

2. Medical policies at the office or place where services shall be rendered;

3. Cleanliness of premises;

4. Maintenance, registration and inspection of professional equipment as necessary;

5. Standards for recordkeeping as to patient medical records, billing records, and such other records as may be required by law or rule including Controlled Dangerous Substance inventories, as applicable;

6. Security, including drug storage, prescription pad control, confidentiality of patient records;

7. Periodic audit of patient records and of professional services to assure quality professional care on the premises;

8. Responsibility for the professional propriety of billing and of advertising or other representations including disclosure of financial interest in health care services offered to the public; and

9. Preparation and maintenance of a written list of current fees for standard services, which list shall be available to patients on request.

(c) The licensee shall post a conspicuous notice in the waiting room stating: "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

(d) A licensee, alone or with the other investing licensees, may employ a ***[licensee of the Board of Medical Examiners]* *licensed health care professional*** as director of the professional entity to carry out those policies and procedures designated by the licensee(s). The director must be licensed to conduct all services offered at the premises. Either the director, one of the investing licensees, or another ***[licensee]* *licensed health care professional*** authorized to render ***[the]* *those medical*** services ***without direct supervision***, must be on the premises at all times when patients or clients are receiving professional services, except as specified herein or otherwise permitted by rule of the Board. With regard to health care entities whose services are performed away from the primary office address (for example, entities providing house calls, mobile medical services, or provision and management of services relating to durable medical equipment, etc.), the director need not be present at all times, provided that patients or clients are receiving professional services from an investing or employed professional who is a licensee of a professional health care board of this State, except as may be limited by law or by another rule of this Board.

(e) A licensee may invest in a health care service as defined in N.J.A.C. 13:35-6.17(a). Said service shall be owned solely by one or more licensed health care professionals ***except as otherwise permitted by licensure granted by another State agency***. Whether

or not any or all of the owners, partners or ***[shareholders]* *directors*** all regularly practice on the premises or within the entity, each such person who is a licensee of this Board shall be responsible to the Board for requiring maintenance of all professional practice standards and control set forth in this rule, except as excused by (g) below. A licensee who has invested in a health care service ***in which he or she has a significant beneficial interest as defined in N.J.A.C. 13:35-6.17(a)5,*** to which he or she refers patients*, shall assure that professional justification for the referred service is documented in the patient record maintained at that entity. Referred services include but are not limited to prescriptions for devices such as hearing aids, eyeglasses, intraocular lenses, requests for radiologic studies, etc. ***Referral of patients is now limited to the exceptions set forth in N.J.S.A. 45:9-22.4 as amended.***

(f) ***[Acceptance]* *Acceptable*** professional practice forms are as follows:

1. Solo: A practitioner may practice solo and/or may employ or otherwise remunerate other licensed practitioners to render professional services within the scope of practice of each employee's license, but which scope shall not exceed that of the employer's license. The practitioner may employ ancillary non-licensed staff in accordance with Board rules, if any, and accepted standards of practice.

2. Partnership or professional association: A practitioner may practice in a partnership or professional association, but such entity shall be composed solely of licensed health care professionals. The professional services offered by each practitioner, whether a partner or shareholder, shall be the same or in a closely allied medical or professional health care field. ***For the purpose of this rule, closely allied fields, pursuant to the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., shall be deemed to include the health care professions licensed by the State Professional Boards under the Division of Consumer Affairs, for example, chiropractic, dentistry, nursing, nurse midwifery, optometry, physical therapy, podiatry, psychology, social work, etc.*** If the scope of practice authorized by law for each such person differs, any document used in connection with professional practice including but not limited to professional stationery, business cards, advertisements or listings and bills, shall designate the field to which such person's practice is limited. Prescriptions shall list only those practitioners authorized by law to prescribe; shall designate the practice of each listed prescriber as required by N.J.A.C. 13:35-6.1; and shall comply with the data requirements of N.J.A.C. 13:35-6.6.

3. Associational relationship with other practitioner or professional entity: For the purpose of this rule, the term "employment" shall include an ongoing associational relationship between a licensee and professional practitioner(s) or entity on the professional practice premises for the provision of professional services, whether the licensee is denominated as an employee or independent contractor, for any form of remuneration.

i. A practitioner may be employed, as so defined, within the scope of the practitioner's licensed practice and in circumstances where quality control of the employee's professional practice can be and is lawfully supervised and evaluated by the employing practitioner. Thus, a practitioner with a plenary license shall not be employed by a practitioner with a limited scope of license, nor shall a practitioner with a limited license be employed by a practitioner with a more limited form of limited license. By way of example, a physician with a plenary license may be employed by another plenary licensed physician, but an M.D. or D.O. may not be employed by a podiatrist (D.P.M.) or chiropractor (D.C.) or midwife or certified nurse midwife (R.M., C.N.M.)*[, nor may a podiatrist]*. **A podiatrist may not*** employ a chiropractor. This section shall not preclude any licensee from employing licensed personnel such as nurses, x-ray technologists, physical therapists, ophthalmic dispensers and ophthalmic technicians, etc., as appropriate to the primary practice of the employer.

4. Shareholder or employee of a general business corporation: A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated medical director licensed in this State who is regularly on the premises and

who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure credentialing and provision of medical services.

i. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of health care facility or health care provider ***such as a diagnostic imaging facility***. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed physicians.

ii. The corporation is not in the business of offering treatment services but maintains a medical clinic for the purpose of providing first aid to customers or employees and/or for monitoring the health environment of employees. The provisions of N.J.A.C. 13:35-6.5 regarding preparation, maintenance and release of treatment and health monitoring records shall apply to persons receiving care or evaluation in this setting.

iii. The corporation is a non-profit corporation sponsored by a union, social or religious or fraternal-type organization providing health care services to members only.

iv. The corporation is an accredited educational institution which maintains a medical clinic for health care service to students and faculty.

v. The corporation is licensed by the State Department of Insurance as an insurance carrier offering coverage for medical treatment and the licensee is employed to perform quality assurance services for the insurance carrier.

5. A licensee may also have an equity or employment interest in a professional practice (including a professional service corporation) which is a limited partner to a general business corporation which, in turn, has a contractual agreement with the professional service entity, in the following circumstances only. The general business corporation may contract to provide the professional practice with services exclusively of a non-professional nature such as but not limited to routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The licensee shall nevertheless be responsible, at all times except as excused by (g) below, to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in (b) and (c) above, including retention of sole discretion regarding establishment of patient fees and modification or waiver thereof in an individual case. The licensee shall assure, as a condition of such contractual arrangement, that the general business corporation makes no representations to the public of offering, under its own corporate name, health care services which require licensure.

(g) A licensee employed or having ***[an equity]* *a significant beneficial*** interest in any of the practice forms listed in (f) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe ***[any of]* the quality control*assurance*** mechanisms listed in (b) and (c) above and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation ***as described in (f)4 above*** for reasons required by this section shall so notify the Board.

(h) In addition to the practice forms set forth above, a licensee may participate in organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical services. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations, or other similar designations. Such plans typically cover certain types of health care services but only when the services are rendered by licensees who are provider-members of the plan; or the patient has been referred to a specialist ***or admitted to a hospital*** by a provider-member and has secured the ***advance*** approval of the plan administration. Such plans usually permit coverage for referrals in situations of emergency or other special conditions. A licensee may participate in any such plan which complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each patient.

2. The licensee retains authority at all times to inform the patient of appropriate referrals to any other health care ***[licensees]* *providers***:

i. Whether or not those persons are provider-members of the plan; and

ii. Whether or not the plan covers the cost of service by such non-member providers to the patient.

3. Plan patients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member-provider within the plan, or for treatment not having the approval of the plan administration.

4. Provisions for remuneration to the licensee shall not be inconsistent with the principles listed in N.J.A.C. 13:35-6.17(f).

(i) The following pertain to laboratory service:

1. A Board-licensed physician having a financial interest in a laboratory for the performance of bioanalytical tests may prescribe and/or perform such tests on the physician's primary medical office premises solely for the patients of the prescribing licensee. The licensee is responsible for establishing and maintaining a protocol for quality and cost control and for compliance with the provisions of the Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq. Billing shall be done only in the name of the practitioner's medical office ***and in compliance with N.J.S.A. 45:1-10***.

2. A Board-licensed physician having a financial interest in a laboratory offering services only to patients of the owning licensee(s) but conducted at a site other than the office premises of the owners shall assure that such laboratory has a director and that the laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act. The physician shall assure compliance with ***[P.L. 1989, c.19]* *N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4 as amended,*** and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s) ***except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991***.

3. A Board licensee having a financial interest in a laboratory which accepts referrals from physicians who are not owners/investors shall assure that such laboratory is licensed under the New Jersey Clinical Laboratory Improvement Act and is directed by a bioanalytical laboratory director licensed pursuant to N.J.S.A. 45:9-42 et seq. who shall establish and maintain quality and cost control. The physician shall assure compliance with ***[P.L. 1989, c.19]* *N.J.S.A. 45:1-10 and with N.J.S.A. 45:9-22.4, as amended,*** and the name of the laboratory shall be accompanied at all times by the name(s) of the owning licensee(s) ***except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991***.

(j) The following pertain to physical therapy:

1. A physician may perform and/or prescribe physical therapy to be administered in the physician's office. Billing shall be done only in the name used by the physician's office. ***A bill for services of a physician's employees, which were rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree.***

2. A physician having a financial interest in a physical therapy entity at a location other than the physician's office, whether conducted under the physician's name or under another name, shall establish quality control ***[assurance]*** provisions as required by (b) and (c) above. The physician shall assure compliance with ***[P.L. 1989, c. 19]* *service provider identification in (j)1 above, and with N.J.S.A. 45:9-22.4, as amended,*** and the name of the entity shall be accompanied at all times by the name(s) of the owning licensee(s) ***except as authorized for media advertising pursuant to N.J.A.C.**

13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991*.

(k) The following pertain to radiology:

1. A physician may prescribe and/or perform radiologic services on the physician's office premises. Billing shall be done only in the name of the prescriber or office. ***Where reading of film is done by an outside consultant, see N.J.A.C. 13:35-6.17(c)3.***

2. A physician having a financial interest in a radiologic service facility at a location other than the physician's fixed office premises, whether conducted under the physician's name or under another name, shall establish quality control ***[assurance]*** provisions as required by (b) and (c) above. The physician shall assure compliance with ***[P.L. 1989, c. 19]* *N.J.S.A. 45:9-22.4, as amended,*** and the name of the facility shall be accompanied at all times by the name(s) of the ***[owning]*** licensee(s) ***except as authorized for media advertising by N.J.A.C. 13:35-6.10(l). Petition may be made for exemption on billing forms for good cause shown. Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991, or by a licensee having a financial interest in a facility offering radiation therapy pursuant to an oncological protocol*.**

***[3. The physician-investor (or representative, such as the medical director) shall file an annual report with the Medical Board as of December 31 of each year, providing the following information:**

- i. The identity of the medical director, who must be a physician licensed and practicing in this State, specializing in radiology;
- ii. The identity of investor-doctors;
- iii. The number of studies performed during the calendar year, grouped by major category of procedure;
- iv. The fees for each usual type of procedure; and
- v. A statement of the basis on which dividends are paid (dollar amounts need not be disclosed).]

(l) The following pertain to ophthalmology:

1. A physician may prescribe eyeglasses or external contact lenses and may offer to sell the devices. Billing shall be done only in the name of the physician or office. ***A bill for services of a physician's employees, which were rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree.***

2. A physician having a financial interest in a service entity for the selling of eyewear at a location other than the physician's office, conducted under the physician's name or another name, shall establish quality control ***[assurance]*** provisions as required by (b) and (c) above. The physician shall assure compliance with ***[P.L. 1989, c. 19]* *service provider identification in (l)1 above, and with N.J.S.A. 45:9-22.4, as amended,*** and the name of the entity shall be accompanied at all times by the name(s) of the owning licensee(s) ***except as authorized for media advertising pursuant to N.J.A.C. 13:35-6.10(l). Patient referral may be made only by a licensee holding such financial interest prior to July 31, 1991*.**

(m) The provisions of this rule shall be ***[effective upon promulgation]* *operative on April 15, 1992***, except that the requirements of managed health care plans in (h) above, ***and requirements of a director of* laboratory in (i)2 and 3 above***, and radiology in (k)3] shall be ***[effective one year after the date of adoption]* *operative April 15, 1993***. Licensees who have been providing professional services in a business format which does not comply with the present codification of Board interpretation of permissible practice formats shall complete a transfer to an acceptable format as soon as possible but no later than ***[the sixth month after adoption of the rule]* *October 15, 1992*.**

13:35-6.17 Professional fees and investments, prohibition of kickbacks

(a) For the purposes of this rule, the following words and terms shall have the following meanings:

1. "Health care service" means a business entity which provides on an in-patient or out-patient basis: testing for or diagnosis or treatment of human disease or dysfunction or dispensing of drugs or medical devices for the treatment of human disease or dysfunction. Health care service includes, but is not limited to, a bioanalytical

laboratory, pharmacy, home health care agency, rehabilitation facility, nursing home, hospital, or a facility which provides radiologic or other diagnostic *[imagery]* ***imaging*** services, physical therapy, ambulatory surgery, or ophthalmic services. *[Health care service includes the business of provision by a Medical Board licensee, individually or as a member or shareholder of a business entity, of diagnostic or treatment equipment and supplies.]*

2. "Financial interest" means a monetary interest of any amount held by a practitioner personally or through immediate family, as defined herein, in a health care service owned in whole or in part*, **and to which the practitioner's patients are referred***. It includes the offer or receipt, directly or indirectly, by the practitioner or immediate family of anything of more than negligible value as a result of a patient's purchase of a prescribed service, goods or device from the person or entity providing this. *[It includes rent from a building or component thereof (for example, condominium) owned, in whole or in part, by the practitioner or immediate family, and rent in any form for the use of professional medical equipment or supplies.]* "Financial interest" includes a licensee's financial interest in a contractual arrangement with a health care facility (such as a hospital, nursing home or clinic, etc.), whereby the licensee agrees to provide health care services on referral, for example, cardiac or radiologic diagnostic testing, to patients including those receiving Emergency Room care or admitted to the health care facility. *[The extent of the financial interest shall be measured by the monies the facility agrees to pay the licensee, estimated on an annualized basis, or by the monies paid by patients for service from the contracted referrals which are estimated to result from the contract on an annualized basis, whichever is greater.]* "Financial interest" does not include a straight salary.

3. "Immediate family" means the practitioner's spouse and children, the practitioner's siblings and parents, the practitioner's spouse's siblings and parents, and the spouses of the practitioner's children.

4. "Practitioner" means a physician, podiatrist, bioanalytical laboratory director or specialty laboratory director, acupuncturist, midwife, certified nurse midwife, and all other categories of licensees now or henceforth under the jurisdiction of the State Board of Medical Examiners.

5. "Significant beneficial interest" means any financial interest *[comprising: five or more percent of the whole, or \$5,000, whichever is less. This interest does not include ownership of a building or component thereof wherein the space is leased to a person at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in securities publicly traded in the United States. A significant beneficial interest shall be deemed to include an interest *[involving]* ***including*** an equity or ownership interest in a practice or in a commercial entity *[or any investment or similar interest of a financial nature in a practice or commercial entity.]* ***holding itself out as offering health care services as defined in (a)1 above. This interest does not, however, include ownership of a building or component thereof wherein the space is leased, in writing, to a person or entity at the prevailing rate under a straight lease agreement (that is, a fixed fee for a fixed term), or any interest held in securities publicly traded in the United States.***

(b) A practitioner shall not refer a patient or direct an employee of the practitioner to refer a patient to a health care service in which the practitioner or the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family, has a significant beneficial interest, unless the practitioner ***held the interest prior to July 31, 1991 and*** discloses that interest to the patient as required herein. ***A licensee professionally affiliated with a practitioner required to disclose a significant beneficial interest shall disclose that practitioner's interest.*** Disclosure shall be made by the practitioner in ways appropriate to the professional circumstances including conspicuous posting of a written disclosure form prepared as set forth below, at least 8½ by 11 inches in size, in the practitioner's waiting room in all office locations. The patient shall also be provided with a personal copy of the notice. The notice format shall be as follows:

Public law/rule of the State of New Jersey/Board of Medical Examiners mandates that a physician, podiatrist and all other licensees of the Board of Medical Examiners inform patients of any significant financial interest held in a health care service.

Accordingly, take notice that ***[the]*** practitioners in this office do have a financial interest in the following health care service(s) to which patients are referred:

(LIST APPLICABLE HEALTH CARE SERVICES)

You may, of course, seek treatment at a health care service provider of your own choice. A listing of alternative health care service providers can be found in the classified section of your telephone directory under the appropriate heading.

1. In any inquiry regarding the applicability of the financial disclosure provisions of this rule, including the holding of a significant beneficial interest or exemption therefrom, the Board may require a Board licensee to submit financial and familial information sufficient to determine the financial interest in an investment.

2. With regard to durable medical equipment, a physician having a significant beneficial interest as defined in (a) above, who prescribes and refers a patient to a source for said product, shall provide the personal notice copy to a patient in any setting, including the practitioner's office and prior to the time of patient discharge from a hospital, nursing home or free standing health care facility (for example, urgent care offices or ambulatory surgery centers).

3. The disclosure requirements of this rule do not apply in the case of a practitioner providing health care services pursuant to a prepaid capitated contract with the Division of Medical Assistance and Health Services in the Department of Human Services. In addition, disclosure is not required of practitioners having a significant beneficial interest in the provision of services pursuant to a hospital contract to inpatients or patients receiving hospital Emergency Room services, notwithstanding that the practitioner has made the referral for the service, provided that a designated committee of the hospital reviews and confirms the medical justification and the reasonableness of the fee for each such referred service of the practitioner. Disclosure is mandatory for all other inpatient settings and situations.

***4. The restrictions on referral of patients established in this subsection shall not apply to:**

i. A health care service that is provided at the practitioner's medical office for which the patient is billed directly by and in the practitioner's name; or

ii. Radiation therapy pursuant to an oncological protocol, or lithotripsy or renal dialysis treatment, provided that there is disclosure of the financial interest.*

(c) The following pertain to miscellaneous monetary arrangements:

1. A licensee shall not, directly or indirectly, give to or receive from any ***licensed or unlicensed*** source a gift of more than nominal (negligible) value, or any fee, commission, rebate or bonus or other compensation however denominated, which a reasonable person would recognize as having been given or received in appreciation for or to promote conduct by a licensee including: purchasing a medical product, ordering or promoting the sale or lease of a device or appliance or other prescribed item, prescribing any type of item or product for patient use, or making or receiving a referral to or from another for professional services. For example, a licensee who refers a patient to a health care service (such as a cardiac rehabilitation service or a provider of durable medical equipment or a provider of testing services) shall not accept from nor give to the health care service a fee directly or indirectly in connection with the referral, whether denominated as a referral or prescription fee or consulting or supervision fee or space leasing in which to render the services (other than as permitted in (h) below), or by any other name, whether or not the licensee has a financial interest as defined in (a) above.

i. The charging of a "facility fee," as described in (h)1 below, is forbidden, except by a registered Medicare provider of surgical services who is billing pursuant to criteria for such fee established by rules of the United States Department of Health and Human Services.

[i.]**ii. This section shall be construed broadly to effectuate its remedial intent. It shall not, however, prohibit a flat-fee payment by a licensee for regular advertising services (including placement on a commercially-sponsored "referral list" of licensed health care providers) nor shall it prohibit receipt of reasonable payment for bona fide participation as a speaker at a professional workshop or seminar, nor prohibit receipt of normal, commercially reasonable discounts for volume purchases from vendors, nor prohibit compensation for the sale of medical equipment by a licensee of the Board, in the disclosed capacity of a salesman, to another licensed health care professional. ***It shall not prohibit a licensee's participation by permit in an FDA-approved research project.***

2. A laboratory director licensee may bill either the patient or the prescribing physician who submits the specimen, as permitted by ***[P.L. 1977, c.323, section 1,]*** ***N.J.S.A. 45:1-10.***

3. All other ***categories of*** licensees who bill for professional services shall submit the bill directly or via a named designee entity to the patient or patient representative if for treatment services, or to the recipient of the professional services in a non-patient capacity, as applicable. ***[Services provided by any staff employed by the licensee shall be billed only in the name of the licensee.]***

4. A bill for services of a physician's employees, which have been rendered by licensed professionals authorized to provide services without medical supervision, shall identify the provider of service by name and degree.

[3.]**5. A licensee may bill for prescribed professional/technical services (including, for example, laboratory services, ***radiologic and EKG consultation,*** fabrication of eyeglasses, orthotics, etc.) ordered by or through the licensee, with the patient's consent, provided that the name and address of the provider of the professional/technical services and the cost as billed to the licensee, are disclosed to the patient. ***A licensee may contract with and provide professional/technical services to the prescribing licensee, supplying the information necessary for incorporation in the bill prepared by the prescribing licensee to the patient.***

(d) A licensee shall not charge for "free samples" or other similar items obtained by the licensee from any source.

(e) Acting within the scope of lawful practice, a licensee may offer to and provide to a patient medications, including a prescription drug or an over-the-counter preparation or vitamin or food supplement, but only in accordance with the requirements of ***P.L. 1991, c.187, sec. 46 (N.J.S.A. 45:9-22.11) and* N.J.A.C. 13:35-6.6.** A licensee may also offer to and provide to a patient medical goods and devices under certain circumstances, as set forth in this rule and defined as follows: medical goods and devices include, but are not limited to, such items as hearing aids, eyeglasses, contact lenses, prosthetic devices, orthotics, etc.

1. A Board licensee shall derive his or her net professional income from the rendering of professional service. The practitioner may recoup the ***net discounted*** cost of ***providing*** those goods and devices which are ancillary to the primary professional services, ***plus an administrative cost not to exceed 10 percent of the cost of the item.*** ***[but]*** ***The licensee*** shall not charge for those items a fee intended to generate a profit.

***i. A discount is a reduction in the amount a seller charges for a good or service to the licensee who has bought (either directly or through a wholesaler or a group purchasing organization) based on an arms-length transaction.**

ii. For the purpose of this rule, the practitioner need not calculate or disclose the value of a rebate check, credit or coupon directly redeemable from the seller to the extent that such reductions in price are attributable to the original good or service that was purchased or furnished, and is to be utilized only as credit toward future purchase from the same vendor; the price of the later goods/services will reflect that discount.

iii. A practitioner shall not accept from the seller discounts which include rebates of cash, coupons other than as defined above, or other kinds of free goods or services.*

2. ***[When the practitioner bills the patient separately for a prescribed item, the following shall be observed. The practitioner shall assure that written information is given to the patient regarding the alternative availability of the medical goods or device, as required**

in (b) above. The practitioner shall disclose to the patient in advance of purchase and again on the bill the unit acquisition cost of the goods, device, etc., to the practitioner. This section applies, for example, to an ophthalmologist providing eyeglasses or external contact lenses which have been purchased by the physician from a supplier or fabricator; to an ophthalmologist providing an intraocular lens; to an orthopedist supplying and implanting an artificial hip or other prosthetic service; to a cardiologist supplying and implanting a pacemaker; to a physician providing a cervical collar, girdle, or prescribed shoe support; etc. This section would not apply to a licensed health care facility providing and billing for the medical device. This section also does not apply to x-rays ordered, taken and interpreted by the prescribing licensee; the fee to be charged for such service, if itemized separately, shall be reasonable.]* *** (Reserved)***

3. Where items are prescribed by a licensee, and the consumer elects to fill the prescription elsewhere, the prescriber's obligation to the patient shall include, if requested by the patient, follow-up to ascertain that the item prescribed is appropriate and/or the fit is acceptable (for example, as in the prescribing of eyeglasses or external contact lenses), and that the result of the prescribed service is properly evaluated and integrated into the treatment plan for the patient.

4. The requirement to charge no more than true cost plus 10 percent for an item prescribed and sold shall not apply to a hearing aid dispenser licensed pursuant to N.J.S.A. 45:9A-1 et seq. However, the customer receipt required by N.J.A.C. 13:35-8.14 shall clarify "cost" of earmold and of hearing aid by designating it as the "retail price" of each.

(f) As addressed in N.J.A.C. 13:35-6.16(h), a licensee may participate in and receive remuneration from organized managed health care plans including, but not limited to, those involving wholly or partially pre-paid medical service. By way of example, this includes plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical plans, individual practice associations or other similar organizations*, provided that the remuneration to the licensee is entirely and exclusively derived from plan-member payments and/or co-payments, and that the licensee's remuneration is not scheduled for reduction by the licensee's exercise of medical discretion in referring a patient to another category of health care providers. For example, a licensee shall not participate in a plan agreement that establishes by its structure an economic disincentive to the exercise of responsible professional judgment by the licensee on behalf of the patient. A prohibited disincentive includes a plan agreement whereby the per capita fee for service by a primary care provider is expected to be reduced by virtue of a referral to another health care provider such as a specialist or a hospital; or a plan agreement whereby a monetary benefit above the agreed per capita service fee—whether denominated as a "bonus" or other terminology—is promised if the licensee refrains from referring the patient to another health care provider such as a specialist or a hospital]*.

1. ***[These restrictions do not preclude a licensee]*** ***A licensee is not precluded*** from entering into a plan agreement which provides interim remuneration to licensees by making provisional allocation of percentages of plan-member fees, whether denominated as reserves, pools, withholds, holdbacks, etc., for the purpose of funding all portions of the health care services plan.

2. A licensee may participate in a managed health care services plan which requires a purchase of shares for the purpose of providing start-up funds, provided that any profits of the plan are paid solely in accordance with the principles listed in (g) below.

(g) No licensee shall invest in an entity, including a managed health care plan, offering health care services or devices or durable medical equipment where the dividends or any other forms of remuneration are paid on any basis other than return on monetary investment. This prohibition does not preclude the issuance of shares in exchange for ***provision of equipment or realty or*** rendition of personal professional services at the entity premises, or licensing of patents in lieu of financial investment, provided that the investor's return is based on his/her capital interest.

(h) The following pertain to real estate ***and medical equipment*** arrangements:

1. A Board licensee may be an owner/investor in real estate ***or medical equipment*** utilized for the conduct of a professional ***health care*** practice, provided that rent, dividends or any other forms of remuneration are received solely on the basis of the investment or fair market value, as applicable to the circumstances.

2. A Board licensee may lease professional space from a commercial ***(non-professional)*** entity on any arrangements consistent with standard business practice in the community, provided that the arrangement does not affect the licensee's professional discretion in matters including choice of patients, professional services offered, or fees.

3. A Board licensee may lease space ***or medical equipment*** to or from another licensed health care professional ***to whom patients are referred,*** only where rent is a fixed fee ***set in advance and*** determined by the fair market value, or less, and is for a regular term and not for sporadic use of the space ***or equipment*.**

4. Any monetary arrangement other than as set forth above shall require Board approval for good cause shown.

5. A licensee who owns or practices in premises used for the performance of personal medical services including, but not limited to, ambulatory surgery services but not holding a Certificate of Need from the State Department of Health, shall not charge, or permit or condone a charge or "facility fee" separate from the fee for professional services. A facility fee may, however, be charged by a licensee who is a registered Medicare provider of surgical services, who is billing pursuant to criteria for such fee established by rules of the United States Department of Health and Human Services.

(i) A Board licensee may be an owner/investor or a lessee of medical equipment utilized in the conduct of a professional practice. Irrespective of the financial arrangements for the transaction, the lessee shall be at all times responsible to assure that an appropriate licensed health care professional determines and carries out all services and medical care policies set forth in N.J.A.C. 13:35-6.16(b) and (c), including retention of sole discretion regarding medical indications for use of the equipment, and establishment of patient fees and modification or waiver thereof in an individual case. (See also (b) above regarding mandatory disclosure to referred patients, as applicable.)

(j) A licensee having a significant beneficial interest, as defined in (a) above, in a health care service including a professional service corporation or a general business corporation (see N.J.A.C. 13:35-6.16(f)) shall notify the Board of such interest no later than ***[one year after the date of adoption of this rule]* *February 18, 1993*.** Notice is not required for a practice conducted under the practitioner's own name.

(k) This rule shall be operative April 15, 1992.

(a)

BOARD OF CHIROPRACTIC EXAMINERS

Scope of Practice

Adopted New Rule: N.J.A.C. 13:44E-1.1

Proposed: July 15, 1991 at 23 N.J.R. 2100(a).

Adopted: November 21, 1991 by the Board of Chiropractic Examiners, Anthony DeMarco, D.C., President.

Filed: January 15, 1992 as R.1992 d.70, **without change.**

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: February 18, 1992.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44E-1.1, relating to scope of practice. The official comment period ended on August 14, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 15, 1991, at 23 N.J.R. 2100(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Council of New Jersey Chiropractors, the New Jersey Chiropractic Society, the New

Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the Southern New Jersey Chiropractic Society, the State Board of Medical Examiners, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Post Office Box 45004, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Twenty-one letters regarding the proposed new rule were received during the 30-day comment period. A list of the commenters together with a summary of the issues raised and the Board's responses follows.

List of Commenters

Blue Cross and Blue Shield of New Jersey.

New Jersey Podiatric Medical Society.

Council on Neurology of the American Chiropractic Association, Inc.

Michael B. McNeil, D.C.

Blase J. Toto, D.C.

George Pappas, D.C.

Robert Sellari, D.C.

Paul B. Bindell, D.C.

Francis J. Holt, D.C.

Dale J. Buchberger, D.C.

Council of New Jersey Chiropractors.

Brian Atkisson, D.C.

Gerald H. Baker, Esq.

Patrick Gentempo, Jr., D.C.

Howard J. Weigel, D.C.

New Jersey Chapter, American Physical Therapy Association.

Board of Physical Therapy.

Board of Medical Examiners.

Health Insurance Association of America.

Medical Society of New Jersey.

Christopher Kent, D.C.

COMMENT: Several commenters suggested that it should be within the scope of practice for a chiropractor not only to order an MRI (magnetic resonance imaging), but also to perform these diagnostic tests.

RESPONSE: At this point in time there are no significant training programs at chiropractic colleges in the performance of MRI studies to justify permitting their performance by chiropractors in their practices. However, it is certainly appropriate for a chiropractor to order MRI studies where the indicating criteria exist.

COMMENT: The Council of New Jersey Chiropractors recommended that the word "drugless" be inserted in the first paragraph of the definition of the practice of chiropractic.

RESPONSE: The Board did not feel that it was necessary to make this clarification. The definition of the scope of practice in the proposed rule is quite comprehensive. In addition, the purpose of the rule is to provide specific guidance to licensees who obviously are aware that medication is not a permissible treatment within the practice of chiropractic.

COMMENT: Several individual practitioners objected to the prohibition in the proposal on the sale and dispensing of nutritional supplements. They argued that licensees have access to supplements which are not readily available in health stores and that chiropractors are generally more knowledgeable about such nutritional supplements.

RESPONSE: The rule provides that a licensee may offer general nutritional advice to a patient when such advice is incidental to the chiropractic care being provided. The Board believes that to permit the sale and dispensing of nutritional supplements would create circumstances subject to much abuse. In the first place, it could create a conflict of interest for the licensee in that he or she would have a financial incentive to sell supplements. Furthermore, the Board is concerned that the sale and dispensing of supplements could create a shift of focus for the practice of chiropractic. It is preferable that nutritional advice be incidental to the chiropractic care.

COMMENT: Two commenters requested that the Board expand the scope of practice to include all joints and bones of the body and specify the ability of a chiropractor to order and utilize supports and other ancillary equipment.

RESPONSE: The Board of Chiropractic Examiners may promulgate rules only to the extent authorized by statute. The enabling legislation limits the practice of chiropractic to the spinal column. Accordingly, the requested expansion of scope of practice would be beyond the delegated authority of the Board to implement.

COMMENT: The ordering and performance of physical modalities should be permitted without the necessity of a spinal adjustment in accordance with a chiropractor's professional judgment.

RESPONSE: Physical modalities should be supportive of and in preparation for spinal adjustments. Subsection (e) changed the wording from the prior scope of practice regulation as adopted by the Board of Medical Examiners in order to indicate that the physical modality need not be administered immediately prior to an adjustment. In other words, a particular case may require the administration of one or more physical modalities on more than one occasion prior to the commencement of spinal adjustments and a physical modality also may be appropriate immediately after a spinal adjustment in order to improve tissue response.

COMMENT: Two licensees suggested that X-rays should not be limited to the osseous system but should be expanded to include other parts of the body in order to assist the chiropractor to make a definitive diagnosis.

RESPONSE: Once again, the Board does not believe that there is statutory authority to expand the scope of practice to include X-rays of other parts of the body. Such an expansion would not be consistent with prior practice. The Board believes that it is more appropriate for the licensee to order X-rays of other biological systems where indicated and appropriate.

COMMENT: Several commenters suggested that the first sentence of the proposal which defines the scope of practice to include the spine and related structures was too vague and that "related structures" should be more specifically defined.

RESPONSE: The Board believes that the rule does not require further clarification in that it is consistent with prior practice and has been understood and interpreted in the past to naturally include the biomechanic and neurologic systems which impact on the spine.

COMMENT: One commenter suggested that subsection (e) was too broad and should be more specific in regard to the delegation of physical modalities to unlicensed assistants.

RESPONSE: The purpose of this rule is to set forth the parameters of acceptable conduct of a licensed chiropractor. Clearly, it is within the scope of practice of a chiropractor to order and/or administer physical modalities in conjunction with a spinal adjustment. The issue concerning delegation of physical modalities which are not prohibited by Assembly Bill No. A-546 will be the subject of a separate rule. This "scope of practice" proposal concerns practices personally performed by the chiropractor.

COMMENT: One commenter recommended identifying which "bioanalytical laboratory tests" are consistent with chiropractic practice and which diagnostic tests are permissibly performed and/or ordered by a chiropractor.

RESPONSE: The Board weighed this option at the time of drafting the rule and determined that in view of the huge number of laboratory tests which are currently consistent with chiropractic practice and the quickly changing technology in this area, it would be too burdensome to provide a "laundry list" of acceptable tests. The Board felt that sufficient safeguards existed because these tests are not performed by chiropractors but are referred to appropriate testing facilities. In like manner, although the Board specifically identified several diagnostic tests which may be permissibly ordered and/or performed by a chiropractor, a complete list would be unwieldy and ever-changing. It was hoped that the example set forth would provide guidance to practitioners as to the type of tests which the Board perceived to fall into the two categories.

COMMENT: Several commenters objected to the inclusion of the last sentence in subsection (a) which states "Chiropractic analysis which identifies the existence of a subluxation may be the basis for chiropractic care even in the absence of a subjective complaint or other objective findings." These commenters felt that this sentence as well as the provision which permits a licensee to render concurrent and/or supportive chiropractic care to any patient who has been referred to another appropriate health care provider would permit and encourage overutilization of chiropractic services and permit procedures that are not clinically justified. Some of these commenters also believed that the rule would cause an escalation in the cost of health benefits as a result of overutilization.

RESPONSE: The purpose of this proposal is to set forth the parameters of acceptable conduct of a licensed chiropractor and to set forth with some specificity those practices which may be personally performed by the chiropractor. The proposal does not address the issue of whether patients must be reimbursed by insurance carriers of specific chiropractic treatments. It may very well be that care which is within

the scope of practice may not be covered by a particular insurance health care contract. The Board is persuaded that the reference to concurrent care is absolutely appropriate in cases where both medical and chiropractic care are indicated and necessary. Finally, the enabling legislation for the Board of Chiropractic Examiners specifically permits the treatment of chiropractic subluxation even in the absence of a subjective complaint or other objective findings at N.J.S.A. 45:9-41.27.

COMMENT: Several commenters disagreed with the diagnostic procedures which are permitted to be performed by a chiropractor in that they did not relate specifically to chiropractic subluxation.

RESPONSE: Although the therapeutic approach of a chiropractor may be different from that of a medical doctor, the diagnostic principles are the same. A chiropractor certainly would be remiss in the treatment of a patient if a proper diagnosis was not made.

COMMENT: One commenter suggested that the rule should specify under what circumstances chiropractic care is appropriate for children under the age of 12.

RESPONSE: The Board did not include such a provision since chiropractic care is appropriate for children of all ages.

COMMENT: One commenter recommended that all lab tests be prohibited since they are not related to chiropractic care.

RESPONSE: Since 1973 the legislature has specifically permitted chiropractors to order laboratory tests pursuant to N.J.S.A. 45:1-10.

COMMENT: One commenter suggested that chiropractors be permitted to perform invasive EMG tests.

RESPONSE: The Board believes that invasive EMG is prohibited by statute in that N.J.S.A. 45:9-14.5 specifically prohibits the use of endoscopic instruments.

Full text of the adoption follows.

CHAPTER 44E

STATE BOARD OF CHIROPRACTIC EXAMINERS

SUBCHAPTER 1. SCOPE OF PRACTICE

13:44E-1.1 Scope of practice

(a) The practice of chiropractic is that patient health care discipline whose methodology is the adjustment and/or manipulation of the articulations of the spine and related structures. During the initial consultation and before commencing chiropractic care, a licensee shall identify a clinical condition warranting chiropractic treatment. Nothing herein contained shall be deemed to prohibit a licensee from caring for chiropractic subluxation as determined by chiropractic analytical procedures. Chiropractic analysis which identifies the existence of a subluxation may be the basis for chiropractic care even in the absence of a subjective complaint or other objective findings.

(b) A chiropractic diagnosis or analysis shall be based upon a chiropractic examination appropriate to the presenting patient. Should the evaluation indicate abnormality not generally recognized as amenable to chiropractic treatment, a licensee shall refer the patient to an appropriate health care provider. Nothing herein contained shall preclude a licensee from rendering concurrent and/or supportive chiropractic care to any patient so referred.

(c) The following diagnostic and analytical procedures are within the scope of practice of a licensee:

1. The taking and ordering of X-rays limited to the osseous system;
2. The ordering, but not performing, of bioanalytical laboratory tests consistent with chiropractic practice;
3. The ordering or performing of reagent strip tests (dipstick urinalysis);
4. The ordering, but not performing, of such other diagnostic or analytical tests consistent with chiropractic practice including, by way of example and not by way of limitation, computerized axial tomography (CT), magnetic resonance imaging (MRI), bone scan and invasive electromyography (EMG); and
5. The ordering or performing of such other diagnostic or analytical tests consistent with chiropractic practice including, by way of example and not by way of limitation, neurocalometer, thermography, and non-invasive muscle testing.

(d) A licensee may offer general nutritional advice to a patient when such advice is incidental to the chiropractic care being provided. A licensee shall not offer nutritional advice as treatment

for a specific disease, defect, or deformity. A licensee shall not, incidental to chiropractic care, sell, dispense or derive any financial benefit from the sale of vitamins, food products or nutritional supplements. A licensee shall not represent himself or herself as a nutritional consultant.

(e) A licensee may order and/or administer physical modalities, where indicated, in conjunction with a spinal adjustment.

(a)

DIVISION OF STATE POLICE

Motor Carrier Safety Regulations

Readoption with Amendments: N.J.A.C. 13:60

Proposed: December 16, 1991 at 23 N.J.R. 3725(a).

Adopted: January 16, 1992 by Colonel Justin J. Dintino,
Superintendent, Division of State Police.

Filed: January 16, 1992 as R.1992 d.71, with technical changes
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:5B-32.

Effective Date: January 16, 1992, Readoption;
February 18, 1992, Amendments.

Expiration Date: January 16, 1997.

Summary of Public Comments and Agency Responses:

No comments received.

Four technical corrections, pursuant to N.J.A.C. 1:30-4.3, have been made to correct typographic and grammatical errors and clarify references in the proposal.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 13:60.

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]***).

13:60-1.1 Purpose

This chapter establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles, which substantially conforms to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982", Pub. L. 97-424 (49 App. U.S.C. §§2301-2304) by adopting the "Federal Motor Carrier Safety Regulations" as adopted at 49 C.F.R., Parts 390 through 397.

13:60-1.3 General requirements

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

(d) This chapter may be amended from time to time by the Superintendent of State Police. The "Federal Motor Carrier Safety Regulations" referenced herein are those adopted by the Secretary of Transportation as of October 1, 1989. The Superintendent of State Police intends to amend these regulations as new Federal publications become available.

(e) (No change.)

13:60-1.4 Penalty for violation

(a) The penalties for violation of these regulations including the Federal regulations incorporated by reference in N.J.A.C. ***[16:30-2]*** ***13:60-2*** and herein shall be enforced under the provisions of P.L. 1985, c.415, Sec. 5, (N.J.S.A. 39:5B-29).

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

13:60-1.5 Document availability

(a) Copies of the "Federal Motor Carrier Safety Regulations", Title 49 Code of Federal Regulations, Parts 390 through 397, revised

as of October 1, 1989, and referenced herein, may be purchased from the sources listed below.

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
(202) 264-3238

U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, N.Y. 10278-0081
(212) 264-3825

U.S. Government Printing Office Bookstore
Room 1214, Federal Building
600 Arch Street
Philadelphia, Pa. 19106
(215) 597-0677

(b) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1989, are also available for review at the following public libraries:

New Jersey State Library
185 West State Street
Trenton, N.J. 08625
(609) 292-6220

Newark Public Library
5 Washington Street
Newark, N.J. 07101
(201) 733-7882

Jersey City Public Library
U.S. Government Documents Section
472 Jersey Avenue
Jersey City, N.J. 07304
(201) 547-4517

New Brunswick Public Library
60 Livingston Avenue
New Brunswick, N.J. 08901
(908) 745-5108

Trenton Public Library
120 Academy Street
Trenton, N.J. 08608
(609) 392-7188

Camden County Public Library
Laurel Road
Voorhees, N.J. 08043
(609) 772-1636

Cherry Hill Public Library
1100 Kings Highway, North
Cherry Hill, N.J. 08034
(609) 667-0300

(c) Copies of Title 49, Code of Federal Regulations, Parts 390 through 397, revised as of October 1, 1989, are further available for review at the Division of State Police, Office of Hazardous Materials Transportation, Compliance and Enforcement, River Road, P.O. Box 7068, West Trenton, New Jersey 08625. Regular business hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. The telephone number is (609) 882-2000, extension 2581 or 2582.

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATION, BY REFERENCE

13:60-2.1 Parts adopted by reference

The Superintendent of the Division of State Police, pursuant to P.L. 1985, c.415, (N.J.S.A. 39:5B-32), hereby incorporates, by reference, the following portions of the Code of Federal Regulations, Title 49—Transportation, Subchapter B—The Federal Motor Carrier Safety Regulations, Parts 390 through 397, inclusive, (excluding Sections 391.69, 393.81 and 397.3) revised as of October 1, 1989. 49 C.F.R., Parts 390 through 397, inclusive. The parts adopted by reference are found in Chapter III, referred to as "Federal Highway Administration, Department of Transportation", Subchapter B—

ADOPTIONS

Federal Motor Carrier Safety Regulations. These parts are detailed in the Appendix to the Regulations regarding the Motor Carrier Safety Regulations. The portions adopted are summarized below.

1. Part 390, Federal Motor Carrier Safety Regulations: General.
2. Part 391, Qualifications of Drivers. (Section 391.69 is omitted. Modifications are made to Sections 391.49(a) and 391.71.)
3. Part 392, Driving of Motor Vehicles.
4. Part 393, Parts and Accessories Necessary for Safe Operation. (Section 393.81 is omitted.)
5. Part 394, Notification and Reporting of Accidents.
6. Part 395, Hours of Service of Drivers.
7. Part 396, Inspection, Repair, and Maintenance.
8. Part 397, Transportation of Hazardous Materials: Driving and Parking Rules. (Section 397.3 is omitted.)

APPENDIX TO THE REGULATIONS REGARDING THE MOTOR CARRIER SAFETY REGULATIONS

This Appendix to the regulations regarding the Motor Carrier Safety Regulations details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION DEPARTMENT OF TRANSPORTATION SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart A—General Applicability and Definitions

- | | |
|---------------|------------------------|
| Section 390.1 | Purpose. |
| Section 390.3 | General Applicability. |
| Section 390.5 | Definitions. |
| Section 390.7 | Rules of Construction. |

Subpart B—General Requirements and Information

- | | |
|----------------|---|
| Section 390.9 | State and local law, effect on. |
| Section 390.11 | Motor carrier to require observance of driver regulations. |
| Section 390.13 | Aiding or abetting violations. |
| Section 390.19 | Additional equipment and accessories. |
| Section 390.21 | Marking of motor vehicles. |
| Section 390.23 | Relief from hours-of-service regulations—disasters. |
| Section 390.27 | Locations of regional motor carrier safety offices. |
| Section 390.31 | Copies of records or documents. |
| Section 390.33 | Vehicles used for purposes other than defined. |
| Section 390.35 | Certificates, reports, and records: falsification, reproduction, or alteration. |
| Section 390.37 | Violation and penalty. |

PART 391 QUALIFICATIONS OF DRIVERS

Subpart A—General

- | | |
|---------------|--|
| Section 391.1 | Scope of the rules in this part; additional qualifications; duties of carrier-drivers. |
| Section 391.2 | General exemptions. |

Subpart B—Qualifications and Disqualifications of Drivers

- | | |
|----------------|------------------------------|
| Section 391.11 | Qualifications of drivers. |
| Section 391.15 | Disqualification of drivers. |

Subparts C and D. (No change.)

Subpart E—Physical Qualifications and Examinations

- | | |
|----------------|--|
| Section 391.41 | Physical qualifications for drivers. |
| Section 391.43 | Medical examination; certificate of physical examinations. |
| Section 391.45 | Persons who must be medically examined and certified. |
| Section 391.47 | Resolution of conflicts of medical evaluation. |
| Section 391.49 | Waiver of certain physical defects. |
- (Section 391.49(a) is revised to state the following:)

LAW AND PUBLIC SAFETY

(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to Title 49, Code of Federal Regulations, Section 391.49.

Subpart F—Files and Records

- | | |
|----------------|-----------------------------|
| Section 391.51 | Driver qualification files. |
|----------------|-----------------------------|

Subpart G—Limited Exemptions

- | | |
|----------------|--|
| Section 391.61 | Drivers who were regularly employed before January 1, 1971. |
| Section 391.62 | (Reserved). |
| Section 391.63 | Intermittent, casual, or occasional drivers. |
| Section 391.65 | Drivers furnished by other motor carriers. |
| Section 391.67 | Drivers of articulated (combination) farm vehicles. |
| Section 391.71 | Intrastate drivers of vehicles transporting combustible liquids. |

(Section 391.71(a) and (b) are revised to state the following:)

(a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of *the* *this* subchapter) as of January 1, 1991, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids (as defined in Title 49, Code of Federal Regulations, Section 173.115), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, a person who has been a regularly employed driver *(*as defined in Section 390.5 *of this subchapter*)* as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) *of this subchapter* and who is otherwise qualified under N.J.S.A. 39:3-10 to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver license issued prior to January 1, 1991, and continues to be a regularly employed driver of that motor carrier and drives a vehicle that:

(1) Is a truck (as defined in Section 390.5 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids (as defined in Title 49, Code of Federal Regulations, Section 173.115), and

(4) Is operated in intrastate commerce.

Subpart H—Controlled Substances Testing

- | | |
|-----------------|---|
| Section 391.81 | Purpose and scope. |
| Section 391.83 | Applicability. |
| Section 391.85 | Definitions. |
| Section 391.87 | Notification of test results and recordkeeping. |
| Section 391.93 | Implementation schedule. |
| Section 391.95 | Drug use prohibitions. |
| Section 391.97 | Prescribed drugs. |
| Section 391.99 | Reasonable cause testing requirements. |
| Section 391.101 | Reasonable cause testing procedures. |
| Section 391.103 | Pre-employment testing requirements. |
| Section 391.105 | Biennial testing requirements. |
| Section 391.107 | Pre-employment and Biennial testing procedures. |
| Section 391.109 | Random testing requirements. |
| Section 391.111 | Random testing procedures. |
| Section 391.113 | Post-accident testing requirements. |
| Section 391.115 | Post-accident testing procedures. |
| Section 391.117 | Disqualifications. |
| Section 391.119 | Employee Assistance Program (EAP). |
| Section 391.121 | EAP training program. |
| Section 391.123 | After-care monitoring. |

LAW AND PUBLIC SAFETY

ADOPTIONS

PART 392 DRIVING OF MOTOR VEHICLES

Subpart A—General

- Section 392.1 Scope of the rules in this part.
- Section 392.2 Applicable operating rules.
- Section 392.3 Ill or fatigued operator.
- Section 392.4 Drugs and other substances.
- Section 392.5 Intoxicating beverage.
- Section 392.6 Schedules to conform with speed limits.
- Section 392.7 Equipment, inspection and use.
- Section 392.8 Emergency equipment, inspection and use.
- Section 392.9 Safe loading.
- Section 392.9a Corrective lenses to be worn.
- Section 392.9b Hearing aid to be worn.

Subparts B-G (No change.)

PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Subpart A—General

- Section 393.1 Scope of the rules in this part.
- Section 393.3 Additional equipment and accessories.
- Section 393.5 Definitions.

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

- Section 393.9 Lamps operable.
- Section 393.11 Lighting devices and reflectors.
- Section 393.19 Requirements for turn signaling system.
- Section 393.20 Clearance lamps to indicate extreme width and height.
- Section 393.22 Combination of lighting devices and reflectors.
- Section 393.23 Lighting devices to be electric.
- Section 393.24 Requirements for headlamps and auxiliary road lighting lamps.
- Section 393.25 Requirements for lamps other than headlamps.
- Section 393.26 Requirements for reflectors.
- Section 393.27 Wiring specifications.
- Section 393.28 Wiring to be protected.
- Section 393.29 Grounds.
- Section 393.30 Battery installation.
- Section 393.31 Overload protective devices.
- Section 393.32 Detachable electrical connections.
- Section 393.33 Wiring, installation.

Subparts C-I (No change.)

Subpart J—Frames, Cab and Body Components, Wheels, Steering, and Suspension Systems

- Section 393.201 Frames.
- Section 393.203 Cab and body components.
- Section 393.205 Wheels.
- Section 393.207 Suspension systems.
- Section 393.209 Steering wheel systems.

PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS

- Section 394.1 Scope of the rules in this part.
- Section 394.3 Definition of "reportable accident".
- Section 394.5 (Reserved).
- Section 394.7 Immediate notification of fatal accidents.
- Section 394.9 Reporting of accidents.
- Section 394.11 Notice of death after filing report.
- Section 394.15 Assistance in investigations and special studies.
- Section 394.20 Instructions for preparing accident reports.

PART 395 HOURS OF SERVICE OF DRIVERS

- Section 395.1 (Reserved).
- Section 395.2 Definitions.
- Section 395.3 Maximum driving and on-duty time.
- Section 395.7 Travel time.
- Section 395.8 Driver's record of duty status.

- Section 395.10 Adverse driving conditions.
- Section 395.11 Emergency conditions.
- Section 395.12 Relief from regulations.
- Section 395.13 Drivers declared out-of-service.
- Section 395.15 Automatic on-board recording devices.

PART 396 INSPECTION, REPAIR AND MAINTENANCE

- Section 396.1 Scope.
- Section 396.3 Inspection, repair and maintenance.
- Section 396.5 Lubrication.
- Section 396.7 Unsafe operations forbidden.
- Section 396.9 Inspection of motor vehicles in operation.
- Section 396.11 Driver vehicle inspection report(s).
- Section 396.13 Driver inspection.
- Section 396.15 Driveaway-towaway operations, inspections.
- Section 396.17 Periodic inspections.
- Section 396.19 Inspector qualifications.
- Section 396.21 Periodic inspection recordkeeping requirements.
- Section 396.23 Equivalent to periodic inspection.
- Appendix G to Subchapter B—Minimum Periodic Inspection Standards

PART 397 TRANSPORTATION OF HAZARDOUS MATERIALS: DRIVING AND PARKING RULES

- Section 397.1 Application of the rules in this part.
- Section 397.2 Compliance with Federal motor carrier safety regulations.
- Section 397.5 Attendance and surveillance of motor vehicles.
- Section 397.7 Parking.
- Section 397.9 Routes.
- Section 397.11 Fires.
- Section 397.13 Smoking.
- Section 397.15 Fueling.
- Section 397.17 Tires.
- Section 397.19 Instructions and documents.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Authority of Executive Director

Adopted Amendment: N.J.A.C. 13:70-1.3

Proposed: November 18, 1991 at 23 N.J.R. 3431(a).

Adopted: January 16, 1992 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: January 23, 1992 as R.1992 d.87, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 18, 1992.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

13:70-1.3 Scope; authority of Executive Director

(a) The rules, regulations and conditions under which all horse racing shall be conducted in the State of New Jersey are prescribed by the racing law (N.J.S.A. 5:5-22 et seq.) and by the New Jersey Racing Commission.

(b) The Executive Director or his or her designee shall possess the same authority of the Racing Commission stewards and judges with respect to all provisions contained in the Administrative Code governing racing in New Jersey.

ADOPTIONS

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Daily Double; Field Horses

Adopted Amendment: N.J.A.C. 13:70-29.48

Proposed: November 18, 1991 at 23 N.J.R. 3431(b).

Adopted: January 16, 1992 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: January 23, 1992 as R.1992 d.86, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 18, 1992.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-29.48 Daily double

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

Recodify existing (e)-(r) as (d)-(q) (No change in text.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Authority of Executive Director

Adopted Amendment: N.J.A.C. 13:71-1.1

Proposed: November 18, 1991 at 23 N.J.R. 3432(a).

Adopted: January 16, 1992 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: January 23, 1992 as R.1992 d.88, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 18, 1992.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-1.1 General provisions

(a) The rules, regulations and conditions under which all horse racing shall be conducted in the State of New Jersey are prescribed by the racing law and by the New Jersey Racing Commission.

(b) If at any time there is a conflict between the rules of the New Jersey Racing Commission and the rules of the United States Trotting Association, the rules of the Commission shall govern.

(c) The Executive Director or his or her designee shall possess the same authority of the Racing Commission stewards and judges with respect to all provisions contained in the Administrative Code governing racing in New Jersey.

(c)

NEW JERSEY RACING COMMISSION

Harness Rules

Daily Double; Field Horses

Adopted Amendment: N.J.A.C. 13:71-27.47

Proposed: November 18, 1991 at 23 N.J.R. 3432(b).

Adopted: January 16, 1992 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: January 23, 1992 as R.1992 d.85, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 18, 1992.

Expiration Date: January 25, 1995.

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Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-27.47 Daily double

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

Recodify existing (e)-(r) as (d)-(q) (No change in text.)

TRANSPORTATION

(d)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 1 and 9 (Truck) in Hudson County

Adopted Amendment: N.J.A.C. 16:28A-1.106

Proposed: December 2, 1991 at 23 N.J.R. 3645(b).

Adopted: January 3, 1992 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: January 17, 1992 as R.1992 d.76, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198.

Effective Date: February 18, 1992.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28A-1.106 Truck Route U.S. 1 and 9

(a) The certain parts of State highway Truck Route U.S. 1 and 9, which runs from milepost 51 to milepost 54.5 (approximately 4.14 miles), below the Pulaski Skyway, which are described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times for the entire length, including all ramps and connections under the jurisdiction of the Commissioner of Transportation:

1. Within the corporate limits of:

- i. The Town of Kearny, Hudson County; and
- ii. The City of Jersey City, Hudson County.

OTHER AGENCIES

(e)

DELAWARE RIVER BASIN COMMISSION

Comprehensive Plan and Water Code of the Delaware River Basin: Retail Water Pricing to Encourage Conservation

Adopted: February 22, 1992 by the Delaware River Basin Commission, Alan J. Farling, Chairman pro tem.

Filed: January 27, 1992 as R.1992 d.95.

Effective Date: January 22, 1992.

Full text of the adoption follows:

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to retail water pricing to encourage conservation.

WHEREAS, water conservation pricing offers significant potential for reducing both average and peak water use; and

WHEREAS, the Delaware River Basin Commission (Commission), through its Water Conservation Advisory Committee (Committee) has sought the advice of numerous experts in the field

OTHER AGENCIES

of water rates and pricing structures, including representatives of the Delaware Public Service Commission, New Jersey Board of Public Utilities, New York Public Service Commission, and Pennsylvania Public Utilities Commission; and

WHEREAS, the Commission and the New York City Water Board jointly sponsored a seminar on November 1, 1990 in Princeton, New Jersey to gain an improved understanding of conservation pricing; the seminar, entitled "Promoting Water Conservation Through Innovative Rate Design," was attended by 175 people; and

WHEREAS, the Committee recommended on April 3, 1991 that the Commission consider its proposed policy concerning retail water pricing to encourage conservation; and

WHEREAS, the Commission held a public hearing on August 14, 1991 regarding this proposed policy and received and considered testimony from water users and other interested parties; and

WHEREAS, the Water Conservation Advisory Committee met on September 12, 1991 and October 10, 1991 to review the comments and testimony received; and

WHEREAS, the Committee recommended that the proposed policy be coordinated with the preparation of water conservation plans by individual purveyors; and

WHEREAS, the Commission held a second public hearing on December 11, 1991 regarding this revised proposal and has considered testimony and comments from interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are hereby amended by the addition of a new Subsection 2.1.2.C and a new Section 2.1.7 to read as follows:

2.1.2 New and Existing Users

C. Owners of water supply systems serving the public (purveyors) seeking approval under Section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application, a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

(1) The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

- a. Source metering (Resolution No. 86-12);
- b. Service metering (Resolution No. 87-7 Revised);
- c. Leak Detection and Repair (Resolution No. 87-6 Revised); and
- d. Water Conservation Performance Standards for Plumbing Fixtures and Fittings (Resolution No. 88-2 Revision No. 2).

(2) All applications submitted after June 30, 1992 for a new or expanded water withdrawal that results in a total withdrawal equaling or exceeding an average of one million gallons of water per day shall include the following in the water conservation plan:

- a. An evaluation of the feasibility of implementing a water conservation pricing structure and billing program as required in Section 2.1.7; and
- b. Provision of information on the availability of water-conserving devices and procedures (Resolution No. 81-9).

(3) The water conservation plan shall be subject to review and approval by the designated agency in the state where the system is located. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection and Energy; New York Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) The Executive Director shall enter into administrative agreements with each of the designated agencies to administer and enforce the provisions of this regulation. In the absence of an administrative agreement, the Commission shall administer and enforce the regulation.

(5) This regulation shall be effective immediately.

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourages conservation.

ADOPTIONS

B. Definitions.

1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

- a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and
- b. Timely billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

- c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);
- d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or
- e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

- a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);
- b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);
- c. Pricing that does not reflect the full cost of providing services; or
- d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria.

1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under Section 3.8 of the Compact for a new or expanded water withdrawal and whose proposed total withdrawal equals or exceeds an average of one million gallons of water per day shall include in its water conservation plan submitted as part of the application, an evaluation of the feasibility of implementing a water conserving pricing structure and billing program. A purveyor may limit the evaluation to less than its entire system upon application and a determination that a review of its entire system is not necessary. The evaluation shall, at a minimum, consider:

- a. The potential change in the quantity of water demanded for customer classes and their end uses of water during both peak and non-peak periods stemming from alternative water conservation pricing structures;
- b. The potential revenue effects of the alternative pricing structures;
- c. Any legal or institutional changes necessary or desirable to implement a water conservation pricing structure; and
- d. How conservation pricing could be coordinated with other conservation programs and measures to reduce both average and peak water use.

3. The requirement set forth in (2) shall be waived if the purveyor either documents it has adopted a water conserving pricing structure or is in the process of implementing such a pricing structure in accordance with a Commission schedule or a schedule established by the appropriate state public utility commission.

4. The Executive Director, on or before June 30, 1993 and annually thereafter, shall review the effectiveness of the retail water pricing activities hereunder to determine their adequacy in promoting and supporting water pricing that encourages water conservation. The results of such review and recommendations, if any, shall be submitted to the Commission for its consideration.

5. This resolution shall be effective immediately.

(a)

CASINO CONTROL COMMISSION**Accounting and Internal Controls
Personnel Assigned to the Operation and Conduct
of Low Limit Table Games****Adopted New Rule: N.J.A.C. 19:45-1.12A**

Proposed: November 4, 1991 at 23 N.J.R. 3250(a).

Adopted: January 22, 1992 by the Casino Control Commission,
Steven P. Perskie, Chairman.Filed: January 24, 1992 as R.1992 d.89, **without change**.

Authority: N.J.S.A. 5:12-63, 5:12-69, 5:12-70(j) and 5:12-99.

Effective Date: February 18, 1992.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Both the Division of Gaming Enforcement (Division) and the Casino Association of New Jersey (CANJ) stated their support for the proposal. The Division commented that the new rule will encourage casino licensees to offer low limit table games, and thus should result in renewed interest and participation in casino gaming by low stakes players.

RESPONSE: The Commission agrees, as evidenced by the adoption herein.

COMMENT: CANJ also requested that the Commission promulgate amendments to the existing staffing rules in N.J.A.C. 19:45-1.12.

RESPONSE: Although this comment does not pertain directly to the proposal under consideration, the Commission would note that it has recently published proposed amendments to N.J.A.C. 19:45-1.12 (see 24 N.J.R. 56(a)).

Full text of the adoption follows:**19:45-1.12A Personnel assigned to the operation and conduct of
low limit table games**

(a) Notwithstanding the provisions of N.J.A.C. 19:45-1.12 or any other Commission rule to the contrary, a casino licensee may offer table games which do not meet the minimum staffing requirements of N.J.A.C. 19:45-1.12 provided that:

1. The maximum wager permitted on such table games shall be \$25.00;

2. Any minimum wager required on such table games shall be no higher than \$5.00; and

3. The casino licensee has received Commission approval of its low limit table games submission in accordance with (b) below.

(b) Each casino licensee may request Commission approval to operate low limit table games pursuant to this section by filing a submission at least 30 days before the operation of such table games is to commence or before changes in a previous submission are to become effective, unless otherwise permitted by the Commission. Each such submission shall contain, without limitation, the following information:

1. A floor plan of the casino showing the type, location and configuration of all low limit table games proposed by the casino licensee and all other table games located within the same pit as a low limit table game;

2. The minimum staffing requirements proposed by the casino licensee for the low limit table games, the pits within which they are located and an explanation of any differences between the proposal and the requirements of N.J.A.C. 19:45-1.12; and

3. Any proposed amendments to the casino licensee's accounting and internal control submission which are necessary to enable the casino licensee to comply with the requirements of the regulations as a result of a reduction in the number of supervisory personnel or dealers involved in the operation of low limit table games.

(c) In explaining why a reduced staffing requirement is sufficient for its low limit table games, a casino licensee may justify its proposal in any way it deems appropriate including, without limitation, the elimination of the availability of casino credit at such tables.

(b)

CASINO CONTROL COMMISSION**Notice of Administrative Correction
Accounting and Internal Controls; Gaming
Equipment****Progressive Jackpots****Progressive Slot Machines****N.J.A.C. 19:45-1.39**

Take notice that the Casino Control Commission has discovered an error in the amended version of N.J.A.C. 19:45-1.39(f)4 published in the February 3, 1992 New Jersey Register at 24 N.J.R. 487(a). The reference in that paragraph to subsection (j) should instead be a reference to subsection (k), which is the adopted recodification of subsection (j). This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:45-1.39 Progressive slot machines

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

(f) No progressive meter(s) shall be turned back to a lesser amount unless:

1.-3. (No change.)

4. The change is necessitated by a slot machine or meter(s) malfunction, in which case an explanation must be entered on the Progressive Slot Summary required in [(j)](k) below and the Commission inspector must preapprove the resetting in writing.

(g)-(l) (No change.)

(c)

CASINO CONTROL COMMISSION**Gaming Equipment****Slot Machine Denominations****Adopted Amendment: N.J.A.C. 19:46-1.27**

Proposed: November 4, 1991 at 23 N.J.R. 3252(a).

Adopted: January 22, 1992 by the Casino Control Commission,
Steven P. Perskie, Chairman.Filed: January 24, 1992 as R.1992 d.90, **without change**.

Authority: N.J.S.A. 5:12-69(a), 70(f).

Effective Date: February 18, 1992.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from Harrah's Casino Hotel, the Sands Hotel, Casino and Country Club, the Showboat Casino Hotel, and TropWorld Casino and Entertainment Resort in general support of the proposed amendment. The Division of Gaming Enforcement stated that it had no objection to the proposal. In addition, the following comments were submitted by the Casino Association of New Jersey (CANJ) in support of the proposed amendment.

COMMENT: CANJ commented that each casino licensee should be given the discretion to determine the denomination of its slot machines based upon market demand and the individual market each casino seeks to carve out for itself.

RESPONSE: As stated in the Notice of Proposal, 23 N.J.R. 3252(a), the Commission agrees that the gaming public should determine the variety and denomination of slot machines offered by casino licensees through their power to choose to patronize, or not to patronize, slot machines at various casinos.

COMMENT: CANJ noted that the costs of maintaining nickel slot machines is the same as those of higher denomination slot machines, yet the incremental win of a nickel slot machine is approximately one-half of that of the 25-cent machine. CANJ thus projected an increase in casino gross revenue, and a corresponding increase in gross revenue tax, resulting from the replacement of five cent slot machines with quarter slot machines. CANJ does believe, however, that a demand for

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nickel slots will continue to exist, and that certain casinos will continue to offer nickel slots for that market.

RESPONSE: The adopted amendment recognizes that casino management should be allowed the discretion to exercise sound business judgment in determining its slot denominations in response to these and other types of industry variables.

Full text of the adoption follows:

ADOPTIONS

19:46-1.27 Aisles, grating; electrical outlets; denominations; density; floor space; arrangement; floor plan; slot stools
(a)-(c) (No change.)
Recodify existing (e)-(k) as (d)-(j) (No change in text.)

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only

New Eligibility Computation Amounts

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:71-4.8, 5.4, 5.5, 5.6 and 5.9

Emergency Amendments Adopted and Concurrent Proposed Amendments Authorized: January 10, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): January 17, 1992.

Emergency Amendment Filed: January 22, 1992 as R.1992 d.84. Authority: N.J.S.A. 30:4D-3i(7); a, b, and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

Concurrent Proposal Number: PRN 1992-88.

Emergency Amendment Effective Date: January 22, 1992.

Emergency Amendment Operative Date: January 1, 1992.

Emergency Amendment Expiration Date: March 22, 1992.

Submit written comments by March 19, 1992 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services
CN-712

Trenton, New Jersey 08625-0712

This amendment was 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 this emergency amendment 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 rule becomes effective upon the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency expiration date.

The agency emergency adoption and concurrent proposal follow:

Summary

The amendments to N.J.A.C. 10:71 increase the Medicaid Only eligibility computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The amendments align Medicaid Only eligibility for the aged, blind, and disabled with those of the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only eligibility be determined using the same criteria as applies in the SSI program. The revised income eligibility and computation amounts reflect the 3.7 percent Federal cost-of-living increase in the SSI payment levels effective January 1, 1992. The Medicaid "cap," the income standard applicable for persons in Title XIX long term care facilities, is set at 300 percent of the Federal SSI benefit (not including any State supplement amount) for an individual, the maximum level authorized by the Social Security Act. The amendments must be implemented effective January 1, 1992 to maintain compliance with Federal law.

Amendments are being made at N.J.A.C. 10:71-4.8 to reflect a Federally required change in the figures used to determine how much of a couple's resources are protected for the community spouse when one member of the couple requires long term care. Using the new Federal figures which are effective January 1, 1992, the community spouse's share of resources is the greater of \$13,740 or one-half of the couples countable resources not to exceed \$68,700.

Social Impact

The increase in the standard and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experiences with increases

in the Medicaid "cap," little, if any, increase in the Medicaid caseload because of this amendment is anticipated.

The Medicaid "cap" income eligibility standard is used to determine eligibility for the Community Care Program for the Elderly and Disabled and other home and community-based waiver programs, as well as for persons in Title XIX long term care facilities. The increase in the "cap" standard will help preserve the eligibility of persons who are receiving a 3.7 percent cost-of-living increase in their Social Security benefits also scheduled for January 1, 1992.

Economic Impact

Past experience with similar increases in these income standards has demonstrated that there will be an insignificant economic impact on the public, the State and county agencies administering the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

The Department is unable to estimate the fiscal impact of increasing the amount of resources that may be protected for the community spouse because it lacks information concerning the resources of persons who are in long term care. The amendment will affect only those married persons when the couple's resources are less than \$27,480 or in excess of \$137,400. Some portion of the affected population will attain Medicaid eligibility one month earlier than they would have under the current rules. (It should be noted that Medicaid eligibility for long term care is limited to individuals with a gross income of less than \$1,266.)

Regulatory Flexibility Statement

The increase in these income standards affects only the eligibility of individuals for Medicaid. Because program eligibility is determined by the State and county governments, these rules impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the Department concludes that no regulatory flexibility analysis is necessary.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$[62,580]**68,700** unless authorized in 4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

i. \$[12,516]**13,740**; or

ii. One half of the couple's combined countable resources.

2.-9. (No change.)

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an

HUMAN SERVICES

individual of his or her needs for food, clothing, and shelter at no cost or reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

\$[155.67]**160.67** for an individual

\$[223.33]**231.00** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

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

(g) A table for deeming computations amount follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child	\$[203.00] 211.00	
2. Remaining income amount	Head of Household \$[203.00] 211.00	Receiving Support and Maintenance \$[135.33] 140.66
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility	\$[1,095.05] 1,125.36	
b. Eligible individual living alone with ineligible spouse	\$[839.36] 869.36	
c. Living alone or with others	\$[641.25] 664.25	
d. Living in the household of another	\$[499.76] 515.09	
4. Parental Allowance—Deeming to Children		
Remaining income is: 1 Parent		Parent & Spouse of Parent
a. Earned only	\$[814.00] 844.00	\$[1,220.00] 1,266.00
b. Unearned only	\$[407.00] 422.00	\$[610.00] 633.00
c. Both earned and unearned	\$[407.00] 422.00	\$[610.00] 633.00

10:71-5.6 Income eligibility standards

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

(c) Non-institutional living arrangements

1.-4. (No change.)

5. Table B follows:

EMERGENCY ADOPTION

TABLE B

Variations in Living Arrangement	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$[557.05] 572.05	\$[1,095.36] 1,125.36
II. Living Alone or with Others	\$[438.25] 453.25	\$[635.36] 658.36
III. Living alone with Ineligible Spouse	\$[635.36] 658.36	
IV. Living in the Household of Another	\$[315.65] 325.65	\$[499.76] 515.09
V. Title XIX		
Approved Facility:	\$[1,221.00] 1,266.00 †	
Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation (ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.		

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap."

(d) (No change.)

10:71-[5.7]**5.9** Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$[407.00]**422.00** for the sponsor, \$[610.50]**633.00** for the sponsor if living with his or her spouse, \$[814.00]**844.00** for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$[203.50]**211.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

PUBLIC NOTICES

EDUCATION

(a)

BUREAU OF BUDGET, ACCOUNTING AND CONTRACTS

Notice of Availability of 1991-92 Directory of Federal and State Programs

Take notice that the New Jersey Department of Education has available for the general public the 1991-92 edition of the Directory of Federal and State Programs which gives information regarding the availability of the Federal and State grant funds pursuant to P.L.1987, c.7, supplementing Title 52 of the Revised Statutes. A copy of this directory has been given to each Local Education Agency and County Office of Education. Copies may be obtained by writing to:

Bureau of Budget, Accounting and Contracts
N.J. State of Department of Education
CN 500
Trenton, New Jersey 08625

(b)

DIVISION OF EXECUTIVE SERVICES

Notice of Receipt of Petition for Rulemaking

N.J.A.C. 6:8-9

Petitioner: Board of Education of the School District of South Orange and Maplewood.

Take notice that on January 10, 1992, the Department of Education (the Department) received a petition for rulemaking concerning N.J.A.C. 6:8-9, to afford local school districts the option of utilizing alternatives to class instruction during summer session in Approved Public Elementary and Secondary School Summer Sessions.

The petitioner asserts that class instruction time is clearly the primary recognized means by which a pupil may obtain course credit toward graduation, as set forth in N.J.A.C. 6:8-7.1(d)1i(4). At subparagraph (d)1i(4)(A) of this rule, credit shall be assigned as one credit per class period of instruction meeting one time per week for a minimum of 40 minutes, and a credit year is awarded for a class period of instruction meeting daily for the school year, equaling five credits. Subparagraph (d)1i(4)(C) does, however, recognize the awarding of a limited number of credits based upon cooperative education programs. Thus, it is apparent that this State has recognized that course credit may be awarded in circumstances not specifically limited to class instruction.

The rules pertaining to summer sessions, however, do not appear to indicate the availability of course credit for work other than class instruction. As defined in N.J.A.C. 6:8-9.1(b)1, a "remedial course" is any course or subject which is review of a course or subject previously taken for which credit or placement may be awarded upon successful completion of the course. This provision indicates that in order to obtain credit for a course in which a pupil obtained a deficient grade during the school year, the pupil must successfully complete the course over the summer. N.J.A.C. 6:8-9.4(e) provides that the amount of time in which a pupil has spent "receiving class instruction" shall become part of his or her permanent record and shall be included whenever the record is transferred to another school. This clearly indicates that credit and grade placement are contingent upon a pupil's having received class instruction. The Board of Education of the School District of South Orange and Maplewood hereby petitions the State Department of Education for an amendment of N.J.A.C. 6:8-9.4 pursuant to N.J.S.A. 52:14B-4(f).

New language could be inserted in the existing rules as a new N.J.A.C. 6:8-9.4, whereby the existing provisions at that citation could be recodified as N.J.A.C. 6:8-9.5 with an amendment to subsection (e). Specifically, the new language, entitled "Remedial Course Program Options," would offer local school districts the option of implementing alternative means by which pupils may obtain credit for what is typically referred to as summer session remedial instruction. The new language would eliminate the rigid requirement of a fixed number of hours of class instruction in order to obtain credit for successful completion of

a remedial course reviewing a course previously taken. The individual pupil may be able to derive greater educational benefit from utilization of audio or video tapes, a one-to-one tutor, independent study or community cooperative endeavors (that is, work-study programs, career role model interaction, etc.). At the conclusion of the individual pupil's alternative summer program, a proficiency examination must be successfully completed in order to obtain credit.

The petitioner asserts that in light of this State's recognition of the need for proficiency standards (N.J.A.C. 6:8-6 and N.J.A.C. 6:8-7), it necessarily follows that proficiency testing be required for pupils' remediation during the summer months. As the existing proficiency examinations seek to determine what an individual pupil has learned, such an assessment would seem appropriate following implementation of the summer session program alternatives. Moreover, as a pupil's performance during the regular academic year may have been affected by any number of factors, affording pupils alternative methods to obtain credit for deficient performance, including proficiency testing, may better serve the needs of the pupil than solely in-class instruction.

Prior to the implementation of any alternative program options for summer session remedial instruction, the local school district and the pupil would be required to develop a continual learning plan to identify the learning experiences and expected outcomes necessary for satisfactory credit for the remediation. The plan must be signed by the parent or guardian.

Specifically, the petitioner proposes that the existing provisions set forth at N.J.A.C. 6:8-9.4 be recodified as N.J.A.C. 6:8-9.5, and that the proposed N.J.A.C. 6:8-9.4 provide the following:

Remedial Course Program Options

(a) The local school district may provide remedial course instruction during the summer session pursuant to one or more of the following program options, dependent upon the needs of the individual pupil:

1. Class instruction;
2. Utilization of audio and/or video taped instruction;
3. Tutoring;
4. Independent study;
5. Community cooperative endeavors including, but not limited to, work study programs and career role model interaction.

(b) In situations utilizing an alternative to class instruction, pupils must successfully pass a proficiency examination. The proficiency examination must be approved by the district chief school administrator and must be administered by a certified staff member.

(c) Prior to implementation of a program option other than that option set forth at section (a)1 above, the school district must develop with the pupil a continual learning plan which must identify the learning experiences and expected outcomes necessary for satisfactory credit for the remedial course summer session. The minor pupil's parent or guardian must sign the listing of expected outcomes and the standards for successful completion in order for the district to make such options available.

The petitioner also proposes that subsection (e) of the recodified N.J.A.C. 6:8-9.5, Credit and grade placement, be amended as follows:

(e) The amount of time devoted to class instruction, or the type of program option(s) to which the pupil had been assigned, as well as the result of the proficiency examination, will be indicated on the pupil's permanent record.

(c)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

March 18, 1992

Take notice that the following agenda items are scheduled for Notice of Proposal in the March 16, 1992, New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, March 18, 1992 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, March 13, 1992.

Rule Proposal: N.J.A.C. 6:21, School bus and small vehicle standards.
Please note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the February 5, 1992 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

Notice of Public Meetings

Working Paper on Sewer Ban and Treatment Works Approval Programs

Take notice that the Department of Environmental Protection and Energy (Department) will hold two public meetings on its "Working Paper on Sewer Ban and Treatment Works Approval Program." The Department has undertaken a thorough review of these programs giving foremost consideration to the primary objective of protecting and enhancing the State's water resources. As a result of this review, various options for modification to the Sewer Ban and Treatment Works Approval Programs have been identified and are included in this report.

Public meetings on the Working Paper will be held starting at 10:00 A.M. on:

Thursday, March 12, 1992
 Stockton State College
 Multi-purpose Room
 Pomona, New Jersey
 Tuesday, March 24, 1992
 Rutgers University—Cook College
 Labor Education Center
 Ryder Lane and Clifton Avenue
 New Brunswick, New Jersey

Written comments on the report are welcome and should be submitted by April 10, 1992 to:

Narinder Ahuja, P.E., Chief
 Bureau of Construction and Connection Permits
 Wastewater Facilities Regulation Program
 Department of Environmental Protection and Energy
 CN 029
 Trenton, New Jersey 08625

Copies of the report are available from the Department's Wastewater Facilities Regulation Program's Bureau of Construction and Connection Permits. Interested persons may contact the Bureau at (609) 984-4429.

(b)

GREEN ACRES PROGRAM

Notice of Public Hearing

Proposed Easement on Lands

Comprising Part of Greenwood Lake State Park

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, Green Acres Program will hold a public hearing to seek comments on the proposed eight inch sewer easement on the following State-owned land in order to provide a sewer outfall pipe for the West Milford Municipal Utilities Authority's, Awosting Sewer Plant.

All of that certain land located at Greenwood Lake State Park identified as a proposed permanent easement containing .133 acres and a temporary construction easement containing .133 acres designated as a portion of Block 3802, Lot 2 on the current tax map of the Township of West Milford, County of Passaic.

The value of these easements has been appraised at \$1,000.

The proposed sewer outfall pipe is necessitated by the upgrading of the Awosting Sewage Plant under Administrative Consent Order with the Department of Environmental Protection and Energy.

The easement documents will be available for review at the Ringwood State Park office during regular office hours, Monday through Friday.

The land affected by the proposed easement and adjacent State-owned lands serve as a buffer between privately-owned and State-owned lands.

The easement will not interfere with or affect the use and enjoyment of State-owned lands.

The public hearing will be held on:

Friday, March 20, 1992 at 11:00 A.M. at the
 Ringwood State Park, Skylands Carriage House
 Sloatsburg Road
 Ringwood, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until March 19, 1992 to:

Thomas Wells, Administrator
 Green Acres Program
 Department of Environmental Protection and Energy
 CN 412
 Trenton, New Jersey 08625

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Lower Delaware Water Quality Management (WQM) Plan. This amendment, which was proposed by the Upper Pittsgrove Township Board of Education, would identify an on-site relocation and expansion of the existing ground water discharge from the Upper Pittsgrove Township Elementary School located at Block 38, Lot 9, in Upper Pittsgrove Township, Salem County to serve a proposed 47,700 square foot building addition. The proposed school expansion will bring the total school population to 600 students and staff.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Delaware WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Ed Frankel of the Office of Regulatory Policy, at the NJDEPE address cited above. A copy of the comments should be sent to Mr. J. Michael Fralinger, P.E., Albert A. Fralinger, Jr., P.A., West Park Executive Campus, 629 Shiloh Pike, P.O. Box 477, Bridgeton, N.J. 08302. All comments must be submitted within 10 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(a)

OFFICE OF REGULATORY POLICY**Amendment to the Tri-County Water Quality Management Plan****Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comments on an amendment to the Tri-County Water Quality Management (WQM) Plan proposed by Keystone Cogeneration Systems, Inc. This amendment would identify a new zero discharge wastewater treatment facility (WTF) with a design capacity of 1.44 million gallons per day to serve the proposed Keystone Cogeneration Systems, Inc. coal-fired cogeneration facility to be located at Block 1, Lot 2 of Logan Township, Gloucester County. The proposed WTF would collect cooling tower and boiler blowdown, process wastewater, coal pile runoff, treated sanitary wastewater and stormwater runoff in a wastewater holdup basin. The wastewater from this basin would then be treated and reused within the cogeneration facility. This system will not discharge any water back to the Delaware River other than stormwater runoff.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Ed Frankel, at the NJDEPE address cited above with a copy sent to Mr. Robert V. Ciliberti, Keystone Cogeneration Systems, Inc., P.O. Box 1589, Philadelphia, PA 19105-1589. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF REGULATORY POLICY**Amendment to the Tri-County Water Quality Management Plan****Public Notice**

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comments on an amendment to the Tri-County Water Quality Management (WQM) Plan proposed by the Winslow Township Board of Education. This amendment would update the Winslow Township Wastewater Management Plan by identifying an expansion to the sewer service area of the Winslow Township Wastewater Treatment Facility in Sicklerville, which is owned and operated by the Camden County Municipal Utilities Authority, to serve the proposed Winslow Township School No. 6. The proposed school is to be located on former Green Acres land at Block 1203, Lots 1 and 2, Block 1204, Lots 1, 2, 4 through 10, and portions of lots 3 and 11, and Block 2206, portions of Lots 1, 9, 10, 11, 11.01, 11.02, 12, and 14 of Winslow Township, Camden County. The 86,550 square foot school would house a student and staff population of 900 and has a projected wastewater flow of 13,500 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between

8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the proposed amendment to Mr. Ed Frankel, at the NJDEPE address cited above with a copy sent to Mr. John Helbig, Adams, Rehmann, and Heggan, 850 White Horse Pike, P.O. Box 579, Hammonton, NJ 08037. All comments must be submitted within 10 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested persons may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 days of this public notice to Mr. Frankel at the NJDEPE address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HEALTH

(c)

**DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION AND ENERGY
BUREAU OF HAZARDOUS SUBSTANCE INFORMATION**

LABOR

**DIVISION OF WORKPLACE STANDARDS, AND
OFFICE OF COMPTROLLER, FINANCE AND ACCOUNTING**

RIGHT TO KNOW ADVISORY COUNCIL**Worker and Community Right to Know Act****Notice of Public Hearing**

Take notice that pursuant to the "Worker and Community Right to Know Act," N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection and Energy and Department of Labor, in conjunction with the Right to Know Advisory Council, will hold a **public hearing** to receive information, advice, testimony, and recommendations from the public concerning the implementation of the Act, as follows:

Friday, March 27, 1992
10:00 A.M. to 5:00 P.M.
Department of Health
First floor auditorium
John Fitch Plaza
Market and Warren Streets
Trenton, New Jersey 08625

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act by the State, the effects of the Community Right to Know provisions of SARA—Title III, the problems employers and employees are having concerning compliance with the Right to Know law, and positive actions that have occurred as a result of the law.

The Departments of Health and Environmental Protection and Energy would like to hear suggestions regarding substances which should be added to or deleted from the Right to Know Hazardous Substance List and the Environmental Hazardous Substance List. Any suggested revisions to the lists should be based on and accompanied by documented scientific evidence.

Persons who wish to testify should call Eva McGovern at (609) 984-2202. The record will be kept open for 15 days beyond March 27, 1992 for the receipt of **written comments**, which should be sent to:

Richard Willinger, Program Manager
Right to Know Program
New Jersey Department of Health
CN 368
Trenton, New Jersey 08625-0368

HUMAN SERVICES**(a)****OFFICE OF THE COMMISSIONER****Notice of Keys Amendment Certification**

Take notice that the Keys Amendment to the Federal Social Security Act requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Social Security Income (SSI) recipients reside. The publication of a summary of standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey. Each department maintains standards and enforces its own regulations.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing a significant number of SSI recipients.

The Division of Developmental Disabilities licenses group homes, family care homes, skill development homes and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and B, or by contacting the following office:

New Jersey Department of Human Services
Division of Developmental Disabilities
Bureau of Operations
CN 726
Trenton, New Jersey 08625

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include: foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

New Jersey Department of Human Services
Division of Youth and Family Services
Bureau of Licensing and Inspections
CN 717
Trenton, New Jersey 08625

The Division of Mental Health and Hospitals licenses residential services which include group homes, family care homes, and supervised apartment programs for mentally ill adults and children. Comprehensive standards have been developed and codified as N.J.A.C. 10:39. A copy of the standards may be obtained by contacting the following office:

New Jersey Department of Human Services
Division of Mental Health and Hospitals
Bureau of Standards and Inspections
CN 727
Trenton, New Jersey 08625

In all three Divisions, the standards are enforced through site visits conducted at least annually, time-limited corrective-action plans, and facility closure in the event of non-compliance.

The Department of Community Affairs licenses Rooming Houses (Class A) and Class B, C, D, and E Boarding Homes. The Bureau of Rooming and Boarding House Standards has a legitimate mandate to annually evaluate the physical and social conditions of all rooming and boarding houses as defined under N.J.S.A. 55:13B-1.16, the Rooming and Boarding House Act of 1979. Full text of the standards can be found in N.J.A.C. 5:27, or by contacting:

New Jersey Department of Community Affairs
Bureau of Rooming and Boarding House Standards
South Broad and Front Streets
CN 800
Trenton, New Jersey 08625

The Department of Health licenses Residential Health Care Facilities and enforces standards through annual inspections. Full text of the standards can be found in N.J.A.C. 8:43. The rules govern the physical plant and operation of such facilities. Full text of the standards can be obtained by contacting:

New Jersey Department of Health
Division of Health Facilities Evaluation
John Fitch Way
CN 360
Trenton, New Jersey 08625

(b)**OFFICE OF EDUCATION****Notice of Availability of State Funds****Educational Related Services for Fiscal Year 1993****Title of Funding Source: State Facilities Education Act, P.L.1979, c.207.**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Education hereby announces the availability of the following State funds:

A. Name of program: Educational Related Services for fiscal year 1993.

B. Purpose: To provide the delivery of audiological services; physical, occupational, speech/language therapy and rehabilitative engineering services in State-operated/Office of Education facilities located throughout New Jersey. These facilities provide special education programs to severely handicapped children, ages three to 21.

C. Amount of money in the program: Approximately \$5,000,000.

D. Organizations which may apply for funding under the program: Individuals, agencies, hospitals, clinics, and any other interested third-party providers.

E. Qualifications needed by an applicant to be considered for funding: Audiologists must be licensed and school certified. Physical therapists must be licensed and school certified. Speech/language therapists must be licensed and school certified. Occupational therapists must be registered and school certified. All therapists must carry malpractice insurance. The rehabilitation engineer must possess a minimum of a Bachelor's degree in human factors, electrical, mechanical and/or biomedical engineering.

F. Procedure for eligible organizations to apply: All interested applicants should write to the address listed below or call 609-588-3164 for a Request for Proposal (RFP) package.

G. Address to which application must be submitted:

Dr. Patricia Holliday, Director
Department of Human Services
Office of Education
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

H. Deadline by which applications must be submitted: April 3, 1992.

I. Date by which applicant shall be notified of approval or disapproval: May 15, 1992.

INSURANCE**(c)****THE COMMISSIONER****Public Notice****List of Municipalities Requiring Payment of Liens by Companies Writing Fire Insurance**

Take notice that Samuel F. Fortunato, Commissioner of Insurance, in accordance with the provisions of N.J.S.A. 17:36-9, announces the publication of New Jersey municipalities that have adopted ordinances pursuant to the aforementioned statute. Those municipalities, if any, which have adopted said ordinances since the previous date of publication shall be designated by asterisk.

LIST OF MUNICIPALITIES REQUIRING PAYMENT OF LIENS BY COMPANIES WRITING FIRE INSURANCE

The following is a list of municipalities that have passed an ordinance requiring companies writing fire insurance on risks located in that municipality to pay unpaid liens out of any claimed payments in excess of \$2,500.

Aberdeen, Township of 07747 (Monmouth County)
Absecon, City of 08201 (Atlantic County)
Alloway, Township of 08079 (Salem County)
Asbury Park, City of 07712 (Monmouth County)

Date Filed with
the Department
of Insurance

September 8, 1980
July 5, 1983
December 20, 1984
May 25, 1979

PUBLIC NOTICES

Atlantic City, City of 08401 (Atlantic County) March 19, 1979
 Barrington, Borough of 08007 (Camden County) September 17, 1982
 Bayonne, City of 07002 (Hudson County) March 12, 1979
 Belmar, Borough of 07719 (Monmouth County) March 5, 1982
 Berkeley, Township of 08721 (Ocean County) May 22, 1979
 Berlin, Borough of 08009 (Camden County) October 18, 1979
 Berlin, Township of 08091 (Camden County) March 20, 1980
 Bloomfield, Town of 07003 (Essex County) March 26, 1979
 Brick, Township of 08723 (Ocean County) May 2, 1980
 Bridgeton, City of 08302 (Cumberland County) April 30, 1979
 Brigantine, City of 08203 (Atlantic County) October 14, 1982
 Buena, Borough of 08341 (Atlantic County) November 1, 1982
 Burlington, City of 08016 (Burlington County) December 9, 1986
 Butler, Borough of 07405 (Morris County) November 14, 1980
 Byram, Township of 07860 (Sussex County) October 9, 1980
 Camden, City of 08101 (Camden County) May 4, 1979
 Cape May, City of 08204 (Cape May County) May 22, 1979
 Carneys Point, Township of 08069 (Salem County) July 2, 1979
 Cedar Grove, Township of 07009 (Essex County) August 10, 1979
 Chatham, Township of 07928 (Morris County) June 4, 1986
 Cinnaminson, Township of 08077 (Burlington County) August 30, 1979
 Clinton, Township of 08801 (Hunterdon County) December 10, 1981
 Delran, Township of 08075 (Burlington County) August 30, 1979
 Dover, Town of 07801 (Morris County) April 16, 1980
 Dover, Township of 08753 (Ocean County) September 26, 1979
 East Orange, City of 07019 (Essex County) February 20, 1979
 East Windsor, Township of 08520 (Mercer County)* December 23, 1991
 Eatontown, Borough of 07724 (Monmouth County) March 23, 1979
 Edgewater Park, Township of 08010 (Burlington County) July 24, 1979
 Elmer, Borough of 08318 (Salem County)* November 19, 1991
 Egg Harbor, Township of 08221 (Atlantic County) September 24, 1979
 Egg Harbor, City of 08215 (Atlantic County) May 21, 1981
 Elizabeth, City of 07201 (Union County) April 30, 1979
 Ewing, Township of 08618 (Mercer County) November 10, 1981
 Fairfield, Township of 07006 (Essex County) August 21, 1980
 Fair View, Borough of 07022 (Bergen County) September 5, 1979
 Fanwood, Borough of 07023 (Union County) June 29, 1979
 Farmingdale, Borough of 07727 (Union County) May 18, 1981
 Florham Park, Borough of 07932 (Morris County) April 25, 1979
 Fort Lee, Borough of 07024 (Bergen County) August 27, 1979
 Franklin, Township of 07826 (Somerset County) June 20, 1980
 Gloucester, City of 08030 (Camden County) January 24, 1989
 Fredon, Township of 07860 (Sussex County) October 28, 1980
 Green, Township of 07821 (Sussex County) July 20, 1982
 Hackensack, City of 07602 (Bergen County) April 22, 1980
 Hamilton, Township of 08330 (Atlantic County) November 18, 1982
 Hammonton, Town of 08037 (Atlantic County) August 3, 1979
 Hanover, Township of 07981 (Morris County) January 7, 1986
 Hightstown, Borough of 08520 (Mercer County) September 3, 1980
 Hillside, Township of 07205 (Union County) June 4, 1979
 Hoboken, City of 07030 (Hudson County) October 15, 1979
 Holmdel, Township of 07733 (Monmouth County) October 20, 1987

INSURANCE

Hopewell, Township of 08302 (Cumberland County) September 26, 1979
 Howell, Township of 07731 (Monmouth County) March 23, 1979
 Irvington, Town of 07111 (Essex County) March 20, 1979
 Irvington, Township of 07111 (Essex County) July 1, 1985
 Jackson, Township of 08257 (Ocean County) March 7, 1979
 Jamesburg, Borough of 08831 (Middlesex County) March 2, 1983
 Jefferson, Township of 07981 (Morris County) April 19, 1983
 Jersey City, City of 07302 (Hudson County) February 23, 1979
 Keansburg, Township of 07734 (Monmouth County) April 5, 1984
 Kearny, Town of 07032 (Hudson County) August 26, 1980
 Keyport, Borough of 07735 (Monmouth County) August 15, 1979
 Kinnelon, Borough of 07405 (Morris County) June 4, 1986
 Lacey, Township of 08731 (Ocean County) August 18, 1981
 Lavallette, Borough of 08735 (Ocean County) December 11, 1979
 Lawrence, Township of 08648 (Mercer County) April 24, 1979
 Little Silver, Borough of 07739 (Monmouth County) April 5, 1984
 Logan, Township of 08096 (Gloucester County) January 2, 1990
 Long Branch, City of 07740 (Monmouth County) December 4, 1987
 Lopatcong, Township of 08865 (Warren County) August 30, 1979
 Lower, Township of 08024 (Cape May County) June 5, 1979
 Manchester, Township of 08733 (Ocean County) September 21, 1982
 Mannington, Township of 08079 (Salem County) May 17, 1979
 Maple Shade, Township of 08052 (Burlington County) July 18, 1980
 Maplewood, Township of 07040 (Essex County) April 4, 1979
 Matawan, Borough of 07747 (Monmouth County) June 19, 1981
 Maurice River, Township of 08332 (Cumberland County) September 26, 1980
 Mendham, Township of 07949 (Morris County) January 16, 1985
 Millburn, Township of 07041 (Essex County) May 19, 1981
 Millville, City of 08332 (Cumberland County) April 10, 1979
 Millstone, Township of 07726 (Monmouth County) January 14, 1988
 Montclair, Town of 07042 (Essex County) April 5, 1979
 Mount Holly, Township of 08060 (Burlington County) January 29, 1980
 Mount Laurel, Township of 08054 (Burlington County) May 27, 1980
 Neptune, Township of 07753 (Monmouth County) January 4, 1982
 Neptune City, Borough of 07712 (Monmouth County) December 2, 1982
 Newark, City of 07102 (Essex County) March 16, 1979
 New Brunswick, City of 08903 (Middlesex County) January 30, 1986
 North Plainfield, Borough of 07060 (Somerset County) July 1, 1985
 North Wildwood, City of 08260 (Cape May County) August 24, 1979
 Ocean, Township of 07755 (Monmouth County) November 27, 1979
 Ocean, Township of 08758 (Ocean County) May 29, 1985
 Orange, City of 07050 (Essex County) July 2, 1979
 Passaic, City of 07055 (Passaic County) September 4, 1980
 Paterson, City of 07050 (Passaic County) February 16, 1979
 Paulsboro, Borough of 08066 (Gloucester County) May 7, 1981

INSURANCE

Penns Grove, Borough of 08069 (Salem County) July 9, 1979
 Phillipsburg, Town of 08865 (Warren County) July 13, 1979
 Pine Hill, Borough of 08021 (Camden County) March 2, 1982
 Piscataway, Township of 08854 (Middlesex County) March 20, 1981
 Plainfield, City of 07061 (Union County) April 5, 1979
 Pleasantville, City of 08232 (Atlantic County) December 27, 1979
 Pohatcong, Township of 08865 (Warren County) July 20, 1979
 Princeton, Borough of 08540 (Mercer County) July 16, 1980
 Princeton, Township of 08540 (Mercer County) September 25, 1980
 Rahway, City of 07065 (Union County) December 18, 1979
 Randolph, Township of 07801 (Morris County) May 10, 1979
 Readington, Township of 08889 (Hunterdon County) June 23, 1980
 Red Bank, Borough of 07701 (Monmouth County) September 9, 1980
 Riverside, Township of 08075 (Burlington County) May 10, 1979
 Roselle, Borough of 07203 (Union County) August 8, 1979
 Roselle Park, Borough of 07204 (Union County) March 5, 1981
 Runnemede, Borough of 08078 (Camden County) May 6, 1982
 Salem, City of 08079 (Salem County) June 20, 1979
 Sayreville, Borough of 08872 (Middlesex County) September 19, 1979
 Scotch Plains, Township of 07076 (Union County) August 22, 1979
 Sea Bright, Borough of 07760 (Monmouth County) April 10, 1979
 Sea Girt, Borough of 07762 (Monmouth County) March 12, 1991
 Seaside Heights, Borough of 08751 (Ocean County) June 21, 1991
 Secaucus, Town of 07094 (Hudson County) March 5, 1980
 Somerdale, Borough of 08083 (Camden County) July 28, 1982
 Somerville, Borough of 08876 (Somerset County) March 23, 1979
 South Amboy, City of 08879 (Middlesex County) July 12, 1984
 South Harrison, Township of 08039 (Gloucester County) December 29, 1988
 South Orange Village, Township of 07079 (Essex County) August 19, 1980
 South Plainfield, Borough of 07080 (Middlesex County) September 26, 1980
 South River, Borough of 08882 (Middlesex County) March 16, 1979
 Spotswood, Borough of 08884 (Middlesex County) June 19, 1981
 Stafford, Township of 08050 (Ocean County) May 2, 1985
 Sussex, Borough of 07461 (Sussex County) October 24, 1979
 Tenaflly, Borough of 07670 (Bergen County) June 17, 1980
 Tinton Falls, Township of 07724 (Monmouth County) June 20, 1980
 Trenton, City of 08608 (Mercer County) June 12, 1980
 Tuckerton, Borough of 08087 (Ocean County) February 2, 1989
 Union City, City of 07087 (Hudson County) April 23, 1979
 Upper Deerfield, Township of 08302 (Cumberland County) May 19, 1989
 Upper Pittsgrove, Township of 08318 (Salem County) October 15, 1979
 Ventnor City, City of 08401 (Atlantic County) March 30, 1982
 Verona, Borough of, Township of 07044 (Essex County) February 23, 1984

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Victory Gardens, Borough of 07801 (Morris County) August 15, 1979
 Vineland, City of 08360 (Cumberland County) July 6, 1979
 Washington, Borough of 07882 (Warren County) June 24, 1986
 Washington, Township of 08214 (Burlington County) March 12, 1979
 Washington, Township of 07853 (Morris County) May 30, 1979
 Waterford, Township of 08004 (Camden County) July 9, 1984
 Wayne, Township of 07470 (Passaic County) October 6, 1986
 Weehawken, Township of 07087 (Hudson County) August 14, 1986
 Wenonah, Borough of 08090 (Gloucester County) July 1, 1985
 West Deptford, Township of 08086 (Gloucester County) November 14, 1988
 Westhampton, Township of 08060 (Burlington County) June 4, 1979
 West New York, Town of 07093 (Hudson County) March 16, 1979
 Westville, Borough of 08093 (Gloucester County) March 18, 1988
 West Orange, Town of 07052 (Essex County) February 26, 1979
 Westwood, Borough of 07675 (Bergen County)* November 28, 1991
 Wildwood, City of 08260 (Cape May County) December 5, 1984
 Willingboro, Township of 08046 (Burlington County) April 17, 1980
 Winslow, Township of 08037 (Camden County) November 13, 1980
 Woodbury, City of 08086 (Gloucester County) January 7, 1986
 Woodlynne, Borough of 08107 (Camden County) June 7, 1982
 Woodridge, Borough of 07075 (Bergen County) July 9, 1984
 Woodstown, Borough of 08079 (Salem County) September 8, 1983

(a)

DIVISION OF ACTUARIAL SERVICES/PROPERTY AND CASUALTY

Notice of Action on Petition for Rulemaking

Petitioners: Auto Watch International, Inc. and/or Secur Etch, Inc.

Authority: N.J.S.A. 17:1-8; 17:1c-6(c) and 17:33B-44.

Take notice that on December 6, 1991, petitioners filed two petitions with the New Jersey Department of Insurance (Department). A Notice of Receipt of the Petition for Rulemaking was published in the January 21, 1992 issue of the New Jersey Register at 24 N.J.R. 305(a). The petitions were given due consideration in accordance with law and the Department hereby gives notice of its action in accordance with N.J.A.C. 1:30-3 and 11:1-15.

The first petition requests that the Department promulgate a rule which amends the provisions of N.J.A.C. 11:3-39.5(c)11, to define "a specific, identifiable set of numbers" as the VIN (vehicle identification number) as established by the manufacturer of the vehicle. Petitioner states that the purpose of the proposed amendment is to provide local police officers with the ability to determine if a specific vehicle has been stolen through immediate computer interfacing with the National Crime Information Center.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15.3, and after a thorough review of the petition, the Department is denying petitioner's request. N.J.A.C. 11:3-39.5(c)11 currently states that the window etching vehicle identification system must be designed so that a specific identifiable set of numbers is permanently etched into all primary window glass areas and that the set of numbers is traceable to the automobile's registered owner. The current rule does not prohibit the use of VIN numbers as established by the manufacturer. Instead, the rule provides

for flexibility and competition among the developers of such systems. The determination as to which "specific, identifiable set of numbers" are to be used is left to the businesses engaged in offering such qualified window etching vehicle identification systems. While the Department recognizes the efficacy of using the VIN, the Department has determined that it is undesirable to amend N.J.A.C. 11:3-39.5(c)11 and thus limit the provider's discretion in developing its system.

The second petition requests that the Department promulgate a rule which amends the provisions of N.J.A.C. 11:3-39.4 and N.J.A.C. 11:3-39.5(c)11, to reflect a separate applicable automobile insurance base rate discount for vehicles etched by a chemical process than for vehicles etched by an abrasive (sandblast) process. Specifically, the petitioner proposes that the automobile insurance base rate discount applicable to the abrasive window etching process exceed the automobile insurance base rate discount applicable to the chemical window etching process. The purpose of the proposed amendment, according to petitioner, is to recognize, by a separate automobile insurance base rate reduction, that the abrasive window etching process is more difficult to alter, obscure or eliminate, through polishing processes or other means, than the chemical window etching process.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15.3 and after a thorough review of the petition, the Department is denying the petitioner's request. N.J.A.C. 11:3-39.4 sets forth reductions in rates for each category of anti-theft or vehicle recovery devices. N.J.A.C. 11:3-39.5(c)11 states that a window etching vehicle identification system qualifies as a Category III anti-theft vehicle recovery device if a warning label announces the presence of the system, and the system is designed so that a specific identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process. Therefore, the Department has established two qualified processes for window etching (that is, sandblasting or a chemical process).

The Department has opted to create just one category for window etching vehicle identification systems. The determination as to whether the abrasive (sandblast) window etching process is or is not more difficult to alter, obscure or eliminate, through polishing processes or other means, than the chemical window etching process will be left to the various market forces and the consuming public. In doing so, the Department notes that its current rule establishes minimum discounts. Should the sandblasting process be proved clearly superior, as petitioner contends, insurers may offer a greater discount than that required by the rule. Finally, the Department believes that creating separate or additional categories of discounts based upon the process by which the identifying number is affixed to the automobile would be confusing to the public and difficult to administer. Therefore, the Department has determined that it is unnecessary to amend either N.J.A.C. 11:3-39.4 and N.J.A.C. 11:3-39.5(c)11 to comply with the petitioner's request.

(a)

DIVISION OF CONSUMER AFFAIRS

Notice of Action on Petition for Rulemaking

Petitioner: Standard Guaranty Insurance Company.

Authority: N.J.S.A. 17:1C-6, 17:1-8.1, P.L. 1987 c.293 (N.J.S.A. 17:22A-1 et seq.).

Take notice that on December 16, 1991 the New Jersey Department of Insurance ("Department") received a petition for rulemaking from Standard Guaranty Insurance Company, a New Jersey-admitted insurer, through its General Counsel and Senior Vice President, Jerome Atkinson, Esq. The Department published notice of receipt of the petition in the January 21, 1992 issue of the New Jersey Register at 24 N.J.R. 305(b).

The petition requests that the Department act upon a proposed amendment to N.J.A.C. 11:17-1.2 which would permit credit involuntary unemployment insurance to be marketed through a limited credit property/casualty insurance representative. The New Jersey Legislature favorably reviewed the sale of credit involuntary unemployment insurance in conjunction with some forms of consumer debt by passing P.L. 1991, c.118, effective April 24, 1991, authorizing the sale of credit involuntary unemployment insurance in connection with second mortgages, consumer loans and installment loans. As a result of this statutory change, companies in New Jersey are now interested in offering group credit involuntary unemployment coverage, which has been approved by the Department.

However, the rules adopted pursuant to the New Jersey Insurance Producer Licensing Act, N.J.S.A. 17:22A-1 et seq., governing "limited insurance representatives" do not currently reference involuntary unemployment insurance. Unless credit involuntary unemployment insurance is permitted by those rules to be marketed by limited insurance representatives, persons who wish to market it would have to obtain an insurance producer license with property/casualty authority.

N.J.A.C. 11:17A-1.2 defines a limited insurance representative as "a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license." The Department has determined that the following kinds of insurance may be marketed through limited insurance representatives at N.J.A.C. 11:17-2.10(a):

1. Bail bonds;
2. Credit life;
3. Credit health;
4. Credit property/casualty;
5. Ticket life;
6. Ticket accident;
7. Ticket property/casualty
8. Group mortgage cancellation;
9. Mortgage guaranty;
10. Legal insurance.

In the petition for rulemaking, the petitioner argued that since credit involuntary unemployment insurance is a type of credit insurance which is similar to credit life and credit health insurance, the Department should permit the sale of credit involuntary unemployment insurance by limited insurance representatives. Therefore, adoption of this amendment would enable credit involuntary unemployment insurance to be offered to debtors in furtherance of the legislative intent evinced by the recent passage of P.L. 1991, c.118. The petition requests that the Department amend the definition of "credit property/casualty insurance" set forth at N.J.A.C. 11:17-1.2 to include involuntary unemployment insurance.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15.3 and after a thorough review of the petition, the Department has concluded that the petition is reasonable and that the suggested amendment should be proposed. N.J.S.A. 17:22A-16(a) provides that "the commissioner shall establish, by rule or regulation, the kind or kinds of insurance that may be marketed through limited insurance representatives." Credit involuntary unemployment insurance is similar to the types of coverage which have traditionally been sold by limited insurance representatives. The Commissioner has already established credit life, credit health, and credit property/casualty insurance (as presently defined) as appropriate for limited insurance representatives to market pursuant to N.J.A.C. 11:17-2.10(a). Credit involuntary unemployment insurance is to be marketed to the public in the same or similar manner as those types of insurance currently permitted to be offered by limited insurance representatives. Further, credit involuntary unemployment insurance is not complex in nature and is usually marketed in connection with loan transactions in the same manner as other credit insurance or sold under other very limited circumstances. As such the rulemaking requested in the petition is appropriate.

The Department is presently preparing proposed amendments to N.J.A.C. 11:17-1, 11:17-2 and 11:17-3 to make a number of minor, technical changes to the producer licensing rules. The Department believes it is appropriate to address petitioner's proposed amendment together with these others as a group rather than separately. Therefore, the Department will incorporate this proposed amendment with other proposed changes to the definition section of N.J.A.C. 11:17-1.2. A Departmental proposal incorporating this proposed rule amendment will be made within the next few months.

(a)

DIVISION OF CONSUMER AFFAIRS

Notice Of Receipt Of Petition For Rulemaking
Producer Licensing: General Provisions

N.J.A.C. 11:17-1.2

Petitioner: Standard Guaranty Insurance Company.

Authority: N.J.S.A. 17:1c-6, 17:1-8.1, P.L. 1987 c.293 (N.J.S.A. 17:22A-1 et seq.)

Take notice that on December 16, 1991 the Department of Insurance (Department) received a petition for rulemaking from the Standard Guaranty Insurance Company, a New Jersey-licensed underwriter, through its General Counsel and Senior Vice President, Jerome Atkinson, Esq.

The petition requests that the Department act upon a proposed amendment to N.J.A.C. 11:17-1.2 which would permit credit involuntary unemployment insurance to be solicited by a limited credit property and casualty insurance representative. N.J.S.A. 17:22A-16 provides the statutory authorization for limited insurance representatives and states that the Commissioner of the Department of Insurance "shall establish, by rule or regulation, the kind or kinds of insurance that may be marketed through limited insurance representatives."

Petitioner states that the New Jersey Legislature favorably reviewed the sale of credit involuntary unemployment insurance in conjunction with some forms of consumer debt by passing P.L. 1991, c.118, effective April 24, 1991, authorizing the sale of credit involuntary unemployment insurance in connection with second mortgages, consumer loans and installment loans. As a result of this statutory change, finance companies in New Jersey are now interested in offering group credit involuntary unemployment coverage, which has been approved by the Department.

Petitioner alleges that, unless limited insurance representative status is granted to agents offering credit involuntary unemployment coverage, agents who wish to solicit for credit involuntary unemployment insurance would have to obtain an insurance producer license with property/casualty authority, which requires a 150-hour study course and a written examination and that such a requirement would hamper or frustrate the intent of the Legislature.

N.J.A.C. 11:17A-1.2 defines a limited insurance representative as "a person who is authorized to solicit, negotiate or effect contracts for a particular line of insurance as an agent for an insurance company authorized to write that line in this State which by nature of the line of business and the manner by which it is marketed to the public does not require the professional competency demanded for an insurance producer license." The petitioner states that the Department has determined that credit life, credit health and credit property and casualty insurance may be solicited by a limited insurance representative pursuant to N.J.A.C. 11:17-2.10.

Petitioner argues that since credit involuntary unemployment is a type of credit insurance which is similar to credit life and credit health insurance, the Department should permit the sale of credit involuntary unemployment insurance by limited insurance representatives.

Petitioner further states that adoption of this amendment would enable financial institutions to offer credit involuntary unemployment insurance to debtors in furtherance of the legislative intent evinced by the recent

passage of P.L. 1991, c.118. Specifically, petitioner requests that the Department promulgate a rule which expands the definition of credit property/casualty insurance in N.J.A.C. 11:17-1.2(b) to include credit involuntary unemployment insurance by adding the following provisions:

"Credit property/casualty insurance" means property insurance coverage solely for the lender's interest against loss of or damage to personal property serving as security on a specific loan or credit transaction, and credit involuntary unemployment insurance, **which means casualty insurance on a debtor to provide indemnity for payments becoming due on a specific loan or credit transaction while the debtor is involuntarily unemployed.** NOTE: Proposed amendment is in boldface.

The Department will take appropriate action on the Petition pursuant to N.J.A.C. 11:1-15.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Sanitary Landfill Taxes

Notice of 1992 Tax Rate Changes

Take notice that the owners and operators of all sanitary landfill facilities in New Jersey that accept solid waste for disposal are required to file Consolidated Sanitary Landfill Tax Returns (Form SLT-5) on a monthly basis. The five sanitary landfill taxes—the Solid Waste Recycling Tax, the Landfill Closure and Contingency Tax, the Solid Waste Services Tax, the Resource Recovery Investment Tax, and the Solid Waste Importation Tax—are reportable on this consolidated return.

This notice is to advise sanitary landfill taxpayers of the tax rate changes provided for by law effective January 1, 1992 for the sanitary landfill taxes.

Please take notice that effective January 1, 1992:

1. The Solid Waste Services Tax increases from \$.80 per ton or \$.24 per cubic yard to \$.85 per ton or \$.255 per cubic yard;
2. The Solid Waste Importation Tax increases from \$10.00 per ton or \$3.00 per cubic yard to \$12.00 per ton or \$3.60 per cubic yard;
3. The Landfill Closure and Contingency Tax remains unchanged at \$.50 per ton or \$.15 per cubic yard;
4. The Solid Waste Recycling Tax remains unchanged at \$1.50 per ton or \$.45 per cubic yard; and
5. The Resource Recovery Investment Tax remains unchanged at \$4.00 per ton or \$1.20 per cubic yard.

The tax rates for all solid waste in liquid form, reportable in gallons, remain the same for all sanitary landfill taxes. Any taxpayer who fails to comply with the new rates will be assessed tax, penalty and interest on any calculated balance of tax due.

Return packages containing the 1992 Consolidated Sanitary Landfill Tax Returns (Form SLT-5) with accompanying schedules and Instructions (Form SLT-5A) will be mailed to all taxpayers prior to January 1, 1992. **Any inquiries** regarding the Sanitary Landfill Taxes may be directed to: Special Audit Section, Division of Taxation, 50 Barrack Street, Trenton, NJ 08646, Telephone (609) 292-5300.

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 January 6, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 16, 1991

NEXT UPDATE: SUPPLEMENT JANUARY 21, 1992

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
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991	23 N.J.R. 3193 and 3402	November 4, 1991
23 N.J.R. 1227 and 1482	May 6, 1991	23 N.J.R. 3403 and 3548	November 18, 1991
23 N.J.R. 1483 and 1722	May 20, 1991	23 N.J.R. 3549 and 3678	December 2, 1991
23 N.J.R. 1723 and 1854	June 3, 1991	23 N.J.R. 3679 and 3840	December 16, 1991
23 N.J.R. 1855 and 1980	June 17, 1991	24 N.J.R. 1 and 164	January 6, 1992
23 N.J.R. 1981 and 2071	July 1, 1991	24 N.J.R. 165 and 318	January 21, 1992
23 N.J.R. 2079 and 2204	July 15, 1991	24 N.J.R. 319 and 508	February 3, 1992
23 N.J.R. 2205 and 2446	August 5, 1991	24 N.J.R. 509 and 672	February 18, 1992
23 N.J.R. 2447 and 2560	August 19, 1991		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1	Uniform administrative procedure
1:1-18.1	Initial decision in contested cases
1:6, 1:7, 1:10, 1:10A, 1:11, 1:13, 1:20, 1:21	Special hearing rules
1:13A-18.2	Lemon Law hearings: exception to initial decision
1:31	Organization of OAL
1:31-3	Discipline of administrative law judges
1:31-3	Discipline of administrative law judges: extension of comment period

PROPOSAL NOTICE (N.J.R. CITATION)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

24 N.J.R. 321(a)		
23 N.J.R. 3406(a)	R.1992 d.46	24 N.J.R. 404(a)
24 N.J.R. 321(a)		
23 N.J.R. 3682(a)		
24 N.J.R. 321(a)		
23 N.J.R. 2901(a)	R.1992 d.17	24 N.J.R. 87(a)
23 N.J.R. 3179(a)		

Most recent update to Title 1: TRANSMITTAL 1991-6 (supplement December 16, 1991)

AGRICULTURE—TITLE 2

Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)

BANKING—TITLE 3

3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-16	Mortgage processing rules: extension of comment period	24 N.J.R. 3(a)		
3:1-19	Consumer checking accounts	23 N.J.R. 3682(b)		
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)	R.1992 d.73	24 N.J.R. 580(a)
3:6-4.5, 4.6	Banks and savings banks: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)	R.1992 d.40	24 N.J.R. 229(a)
3:13	Bank holding companies and interstate acquisitions: extension of comment period	23 N.J.R. 3686(a)		
3:21	Credit unions	23 N.J.R. 3686(b)	R.1992 d.92	24 N.J.R. 580(b)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)	R.1992 d.74	24 N.J.R. 580(c)
3:21-1	Low-income credit unions: correction to comment period deadline	23 N.J.R. 3196(a)		
3:21-1	Low-income credit unions: extension of comment period	24 N.J.R. 3(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)	R.1992 d.73	24 N.J.R. 580(a)
3:26-3.1, 3.2	Savings and loan associations: extension of comment period regarding reporting of crimes	24 N.J.R. 3(a)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees	23 N.J.R. 3406(b)		
3:38-1.1, 1.9, 4.1, 5	Mortgage financing activities and real estate licensees: extension of comment period	23 N.J.R. 3686(c)		

Most recent update to Title 3: TRANSMITTAL 1991-9 (supplement December 16, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

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4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)	R.1992 d.41	24 N.J.R. 229(b)
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		
4A:6-1.6	Sick Leave Injury (SLI): withdrawal of proposal	23 N.J.R. 3093(a)		

Most recent update to Title 4A: TRANSMITTAL 1991-3 (supplement October 21, 1991)

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5:12-2.1	Homelessness Prevention Program: eligibility	23 N.J.R. 3439(a)		
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5:18-1.1, 1.5, 2.4A, 2.6, 2.9, 4.1, 4.7, 4.11, 4.17	Uniform Fire Code: compliance and enforcement	23 N.J.R. 3552(a)		
5:18-2.4A, 2.4B, 2.7	Uniform Fire Code: life hazard uses; permits	23 N.J.R. 2999(a)		
5:18-2.8, 2.20, 3.2, 4.3, 4.19	Uniform Fire Code: smoke detector compliance in one and two-family dwellings	23 N.J.R. 3064(a)	R.1992 d.11	24 N.J.R. 88(a)
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)	R.1992 d.5	24 N.J.R. 89(a)
5:18-3	State Fire Prevention Code	23 N.J.R. 3554(a)		
5:18A-2.6	Fire Code Enforcement: collection of fees	23 N.J.R. 3552(a)		
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:19-2.12, 9.3	Continuing care retirement communities: civil penalties for violations of Financial Disclosure Act	24 N.J.R. 3(b)		
5:23-1.1, 3.4, 3.11, 3.20, 3.20A	Uniform Construction Code: indoor air quality	24 N.J.R. 167(a)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)		
5:23-2.23, 3.4, 3.11, 4.24, 12.4, 12.5, 12.6	Elevator Safety Subcode: exempt structures	24 N.J.R. 170(a)		
5:23-3.8A, 3.15	Uniform Construction Code: sale of nonconforming toilets	23 N.J.R. 3602(a)	R.1992 d.67	24 N.J.R. 404(b)
5:23-3.21	UCC: one and two family dwelling subcode	23 N.J.R. 3444(b)		
5:23-4.5	Municipal enforcing agencies: UCC standardized forms	24 N.J.R. 168(a)		
5:23-4.5, 4.19	Uniform Construction Code: electronic reporting by municipal enforcing agencies	23 N.J.R. 3440(a)	R.1992 d.47	24 N.J.R. 405(a)
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-4.17	Municipal construction officials: annual budget report	24 N.J.R. 169(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.25	Uniform Construction Code: revocation of licenses and alternative sanctions; review committees	23 N.J.R. 3441(a)	R.1992 d.68	24 N.J.R. 406(a)
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)	R.1992 d.33	24 N.J.R. 229(c)
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:25-1.3	New home warranties: "major structural defect"	23 N.J.R. 3603(a)		
5:25A	Fire retardant treated (FRT) plywood roof sheathing failures: alternative claim procedures	23 N.J.R. 3603(a)		
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)	R.1992 d.50	24 N.J.R. 407(a)
5:80-30	Housing and Mortgage Finance Agency: residual receipts	23 N.J.R. 3733(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)	R.1992 d.51	24 N.J.R. 407(b)
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:91-15	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)	R.1992 d.45	24 N.J.R. 235(a)
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: public hearing and extension of comment period regarding municipal development fees	23 N.J.R. 3132(a)		
5:92-1.6	Council on Affordable Housing: interim substantive certification	23 N.J.R. 3253(a)	R.1992 d.53	24 N.J.R. 408(a)

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5A:3	Military service medals	23 N.J.R. 1490(a)	R.1992 d.56	24 N.J.R. 409(a)
5A:3-1, 2	Military service medals: reopening of comment period	23 N.J.R. 3409(a)		

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5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)	R.1992 d.57	24 N.J.R. 410(a)
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery: reopening of comment period	23 N.J.R. 3254(a)		
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6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)	R.1992 d.22	24 N.J.R. 90(b)
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-4.1	Tuition for private schools for handicapped: administrative correction			24 N.J.R. 245(a)
6:79-1	Child nutrition programs (recodify to 6:20-9)	24 N.J.R. 324(a)		
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7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)		
7:1-2	Third-party appeals of permit decisions	23 N.J.R. 3278(a)		
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1E-5.3	Discharges of petroleum and other hazardous substances: administrative correction			24 N.J.R. 581(a)
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		
7:1K	Pollution prevention program requirements: preproposed new rules	24 N.J.R. 178(b)		
7:2-11.3–11.9, 11.12–11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)	R.1992 d.77	24 N.J.R. 581(b)
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7-4.5, 4.6	Coastal Permit Program: public hearings; final review of applications	23 N.J.R. 3280(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)		
7:9A-3.2, 3.16	Individual subsurface sewage disposal systems	24 N.J.R. 202(a)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs System	23 N.J.R. 3686(d)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System	23 N.J.R. 3688(a)		
7:11-4.3, 4.4, 4.9, 4.13	Sale of water from Manasquan Reservoir Water Supply System: change of public hearing and extension of comment period	24 N.J.R. 344(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of East Ditch in Pequannock Township, Morris County	24 N.J.R. 203(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)		
7:22	Financial assistance programs for wastewater treatment facilities	23 N.J.R. 3282(a)	R.1992 d.42	24 N.J.R. 246(a)
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.5, 18.12	Weakfish management program	24 N.J.R. 4(c)		
7:25-18.5	Haul seining and fyke netting regulation	24 N.J.R. 207(a)		

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7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-4.3(b)	Thermal destruction facilities: operative date of new annual compliance monitoring fees	_____	_____	24 N.J.R. 584(a)
7:26-4.6	Solid waste program fees	23 N.J.R. 3690(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)	R.1992 d.65	24 N.J.R. 412(a)
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)	R.1992 d.78	24 N.J.R. 584(b)
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)		
7:26-8.2	Hazardous waste exclusions: used chlorofluorocarbon refrigerants	23 N.J.R. 3692(a)		
7:26-8.16	Hazardous constituents in waste streams	23 N.J.R. 3093(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3-17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
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7:27B-3.1, 3.2, 3.4-3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)	R.1992 d.52	24 N.J.R. 416(a)
7:50-2.11, 4.61-4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:60-1	Low-level radioactive waste disposal facility: assessment of generators for cost of siting and developing	23 N.J.R. 3410(b)		
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8:20-1.2	Birth Defects Registry: reporting requirements	24 N.J.R. 171(a)		
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8:31B	Hospital rate setting	23 N.J.R. 3097(a)	R.1992 d.62	24 N.J.R. 425(a)
8:31B-3.73	Hospital rate setting: correction to proposed amendment and extension of comment period	23 N.J.R. 3442(a)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups	23 N.J.R. 3114(a)	R.1992 d.43	24 N.J.R. 452(a)
8:31C-1	Residential alcoholism treatment facilities: cost accounting and rate evaluation	23 N.J.R. 3609(a)		
8:33-5.1	Certificate of Need moratorium: exceptions	24 N.J.R. 173(a)		
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:39-4.1, 9.1, 9.5, 11.2, 13.4, 35.2	Long-term care facilities: patient advance directives	23 N.J.R. 3611(a)		
8:39-9.2	Long-term care facilities: mandatory administration policies and procedures	23 N.J.R. 3613(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)	R.1992 d.16	24 N.J.R. 119(a)
8:41-8	Mobile intensive care units: administration of medications	23 N.J.R. 3734(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)	R.1992 d.63	24 N.J.R. 585(a)
8:42-1.1, 6.1, 6.2, 11.2	Home health agency standards: patient advance directives	23 N.J.R. 3254(b)		

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8:43-4.7, 4.15, 4.16, 7.2	Residential health care facilities: patient advance directives	23 N.J.R. 3616(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: liaison participation and discharge planning	23 N.J.R. 3128(a)	R.1992 d.64	24 N.J.R. 465(a)
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4-18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17, 30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2	Hospital licensing standards	23 N.J.R. 2590(a)	R.1992 d.72	24 N.J.R. 590(a)
8:43G-5.1, 5.2, 5.9, 15.2	Hospital licensing standards: patient advance directives	23 N.J.R. 3256(a)		
8:43H-3.4, 5.3, 5.4, 17.2, 19.3, 19.5	Rehabilitation hospitals: patient advance directives	23 N.J.R. 3614(a)		
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)	R.1992 d.24	24 N.J.R. 144(a)
8:57-2.1, 2.2, 2.3	AIDS prevention and control: reporting requirements	23 N.J.R. 3735(a)		
8:57-2.1, 2.2, 2.3	AIDS prevention and control: clarification of proposal summary regarding reporting of HIV infection	24 N.J.R. 59(a)		
8:65-2.5	Controlled Dangerous Substances: physical security controls	24 N.J.R. 174(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-7.5, 7.10	Controlled dangerous substances: partial filling of prescriptions for Schedule II substances	23 N.J.R. 3618(a)		
8:71	Interchangeable drug products	23 N.J.R. 1509(a)	R.1992 d.26	24 N.J.R. 145(a)
8:71	Interchangeable drug products	23 N.J.R. 2610(a)	R.1992 d.25	24 N.J.R. 144(b)
8:71	Interchangeable drug products	23 N.J.R. 3258(a)	R.1992 d.27	24 N.J.R. 145(b)
8:71	Interchangeable drug products	24 N.J.R. 59(b)		
8:71	Interchangeable drug products	24 N.J.R. 61(a)		
8:80	HealthStart Plus: eligibility criteria	24 N.J.R. 62(a)		

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9:4-1.12	Capital projects at county colleges	23 N.J.R. 3196(b)		
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-9.1, 9.2, 9.4, 9.8	Paul Douglas Teacher Scholarship Program	24 N.J.R. 8(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

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10:2	State and County Human Services Advisory Councils	23 N.J.R. 3259(a)	R.1992 d.28	24 N.J.R. 95(a)
10:7	Role of county adjuster	23 N.J.R. 2953(a)	R.1992 d.31	24 N.J.R. 278(a)
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)	R.1992 d.37	24 N.J.R. 287(a)
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	23 N.J.R. 3417(a)		
10:35	County psychiatric facilities	24 N.J.R. 208(a)		

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10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:49-10	Prepaid health care services for Medicaid eligibles	24 N.J.R. 64(a)		
10:50	Transportation Services Manual	23 N.J.R. 3619(a)	R.1992 d. 83	24 N.J.R. 610(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 1.7, 3.2	Ambulatory surgical center reimbursement	23 N.J.R. 3265(a)	R.1992 d.69	24 N.J.R. 465(b)
10:69B-4.8	Lifeline Programs: submission date for utility assistance eligibility applications	23 N.J.R. 3267(a)	R.1992 d.48	24 N.J.R. 466(a)
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only eligibility computation amounts and income standards	Emergency (expires 3-22-92)	R.1992 d.84	24 N.J.R. 651(a)
10:72-6.1-6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)	R.1992 d.10	24 N.J.R. 100(a)
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)	R.1992 d.36	24 N.J.R. 287(b)
10:81-8.2	Securing information from Social Security Administration: administrative correction	_____	_____	24 N.J.R. 466(b)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)	R.1992 d.1	24 N.J.R. 101(a)
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 3420(a)		
10:82-5.3	Assistance Standards Handbook: child care rates	24 N.J.R. 213(a)		
10:83-1.11	Supplemental Security Income payment levels	Emergency (expires 2-24-92)	R.1992 d.39	24 N.J.R. 300(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)	R.1992 d.2	24 N.J.R. 103(a)
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:89-2.3, 3.3, 3.5, 3.6, 4.1	Home Energy Assistance Program	Emergency (expires 2-24-92)	R.1992 d.38	24 N.J.R. 300(b)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)		
10:122-2.1, 2.8	Child care centers: licensing fees	24 N.J.R. 71(a)		
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)		
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)		
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)		
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)		
10:123-3.4	Personal needs allowance for SSI and general assistance recipients in residential health care facilities and boarding houses	24 N.J.R. 330(a)		
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)		
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)		
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)		
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)		

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10A:6-1.3, 2.5	Inmate access to courts: legal material and documents	23 N.J.R. 3268(a)	R.1992 d.60	24 N.J.R. 467(a)
10A:9	Inmate classification process	23 N.J.R. 3721(a)	R.1992 d.79	24 N.J.R. 612(a)
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)	R.1992 d.23	24 N.J.R. 104(a)
10A:17	Inmate social services	23 N.J.R. 3065(a)	R.1992 d.49	24 N.J.R. 468(a)
10A:17-7	Inmate marriage	23 N.J.R. 3422(a)	R.1992 d.55	24 N.J.R. 469(a)
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)	R.1992 d.3	24 N.J.R. 107(a)
10A:20-4	Residential Community Release Agreement Programs for adult inmates	23 N.J.R. 3624(a)	R.1992 d.80	24 N.J.R. 616(a)
10A:22-2.6	Availability of medical information to inmates	23 N.J.R. 3424(a)	R.1992 d.54	24 N.J.R. 471(a)

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