

# NEW JERSEY REGISTER



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(Includes adopted rules filed through August 27, 1993)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 19, 1993**

See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT AUGUST 16, 1993**

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# INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 20, 1993**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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## NEW JERSEY REGISTER

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

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# RULE PROPOSALS

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF FIRE SAFETY

#### Uniform Fire Code; Fire Code Enhancement; High Level Alarms; Fire Service Training and Certification

**Proposed Amendments: N.J.A.C. 5:18-1.4, 1.5, 2.1, 2.3, 2.5, 2.6, 2.11, 2.14, 4.1 and 4.3; 5:18A-1.4, 2.2, 2.3, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 3.3, 3.4, 3.6, 4.2, 4.3, 4.4, 4.5, 4.6, 4.9 and 4.10; and 5:18B-2.8; 5:18C-1.4, 1.5, 1.7, 1.8, 1.9 and 2.3**

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-25d, 52:27D-198 and 52:27D-219.

Proposal Number: PRN 1993-507.

Submit written comments by October 20, 1993 to:

Michael L. Ticktin, Esq.  
Chief, Legislative Analysis  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625  
FAX No. (609) 633-6729

The agency proposal follows:

#### Summary

On August 1, 1993, Governor Florio signed P.L. 1993, c.218, which reconstituted the Bureau of Fire Safety as the Division of Fire Safety. N.J.A.C. 5:18, 5:18A, 5:18B and 5:18C are amended to make reference, as appropriate, to the new Division. Other changes of an editorial nature are made as well.

#### Social Impact

The only social impact of these amendments will be to avoid possible confusion over the identity of the State agency having enforcement responsibility.

#### Economic Impact

These amendments will have no economic impact.

#### Regulatory Flexibility Statement

These amendments will have no effect, differential or otherwise, on "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They implement a statutory name change in a Department element and make editorial changes resulting in no changes in requirements imposed.

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

#### 5:18-1.4 Applicability

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

(h) Any requirement in this chapter that is applicable to a building shall also be applicable to the exterior portion of the premises in which the building is located, or to a premises that does not include a building, if the [Bureau] **Division** or the fire official finds compliance with such requirement in such exterior area or premises to be necessary for the protection of the safety of persons upon the premises, firefighters or the general public.

#### 5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

["Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.

"Chief" means the chief of the Bureau of Fire Safety.]

...

"Director" means the Director of the Division of Fire Safety.

"Division" means the Division of Fire Safety of the Department of Community Affairs.

...

#### 5:18-2.1 Enforcement authority

(a) It shall be the duty and responsibility of the fire official to enforce the provisions of this Code as set forth herein.

1. Where no local enforcing agency has been created by the local governing body having jurisdiction then it shall be the duty and responsibility of the [Bureau] **Division** of Fire Safety in the Department of Community Affairs (hereinafter cited as the [Bureau] **Division**), to enforce the provisions of this Code as herein set forth for life hazard uses or whenever conditions which constitute an imminent hazard are found to exist.

i. The [Bureau] **Division** shall publish quarterly a roster of enforcing agencies which shall list the enforcing agency having general jurisdiction and the enforcing agency having jurisdiction for life hazard uses in each municipality, fire district and fire department area in the State. The listing shall determine the agency that has jurisdiction.

2. (No change.)

3. The [Bureau] **Division** shall enforce the provisions of this Code, as herein set forth, for all facilities owned by the State or any board, commission or authority thereof, and shall have concurrent jurisdiction with the local enforcing agency or the county fire marshal for all facilities owned or leased by State, county and local governments and any instrumentality thereof.

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

#### 5:18-2.3 Variances

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

(d) Copies of all variance applications and records of the action taken on them shall be maintained as permanent public records by the fire official.

1. A local fire official shall promptly provide the [Bureau] **Division** with copies of all decisions granting or denying variances after they have been rendered.

(e) (No change.)

#### 5:18-2.5 Required inspections

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

(c) Within 30 days following each annual and every other quarterly inspection of a life hazard use, the owner shall file an application for a certificate of inspection on forms provided by the local enforcing agency. Forms shall be provided either before or at the time of inspection. The form shall request, and the owner shall provide, the information specified below, or where applicable, certify that it remains as stated on the registration survey. The form shall be returned to the local enforcing agency, which shall review it and forward it to the [Bureau] **Division**.

1.-5. (No change.)

(d) (No change.)

(e) In addition to inspecting life hazard uses, a local enforcing agency may, by giving notice to the [Bureau] **Division** of Fire Safety, accept responsibility for cyclical inspection and enforcement of the Uniform Fire Code in hotels and multiple dwellings that are not life hazard uses. A local enforcing agency that accepts this responsibility shall inspect each multiple dwelling that is not a life hazard use and each hotel that is not a life hazard use at a frequency not less than that currently provided for in the rules for the Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10.

1. (No change.)

(f) If a building is a multiple dwelling or a hotel, as defined in N.J.S.A. 55:13A-3, or a rooming house or boarding house, as defined

in N.J.S.A. 55:13B-3, the local enforcing agency shall send a copy of the certificate of inspection to the [Bureau] **Division** of Fire Safety at the time of issuance of the certificate.

#### 5:18-2.6 Registration of buildings and uses

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

(i) The owner of a life hazard use shall pay the annual fee within 30 days of the day on which it is demanded by the Department. If [he] **the owner** fails to do so, the Department may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon [his] **the record** of docketed judgments the name of the owner and of the Department, a designation of the statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgment in the office of the clerk, but without prejudice to the owner's right of appeal.

1. Upon application by a local enforcing agency and approval by the [Bureau] **Division**, the certificate obtained pursuant to this subsection shall be assigned to the local enforcing agency in which the life hazard use is located. The local enforcing agency shall pursue collection and forward any fees collected to the [Bureau] **Division**, in accordance with N.J.A.C. 5:18A-2.6(a)4.

#### 5:18-2.11 Appeals

(a) The person aggrieved may appeal any enforcement action, including rulings, orders and notices, by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or [his] **an authorized agent of the owner**, may be a person aggrieved.

1. (No change.)

2. If from the act of the Department serving as the local enforcing agency, the request shall be made to the Hearing Coordinator, [Division of Housing and Development,] Department of Community Affairs, CN [804] **802**, Trenton, New Jersey 08625. The hearing shall be conducted by the Office of Administrative Law, with the Commissioner or his **or her** designee issuing the final decision.

3. (No change.)

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

#### 5:18-2.14 Imminent hazards

(a) (No change.)

(b) The enforcing agency shall reinspect the building, structure or premises within 48 hours of receiving written notice from the owner of a building, structure or premises **that has been** vacated or closed, or ordered to be vacated or closed, stating that the violation has been terminated. If, upon reinspection, the enforcing agency determines that the violation has been terminated, it shall rescind the order requiring the vacation of the building, structure or premises and occupancy may be resumed immediately; provided that, if the reinspection is not made by the local enforcing agency within 48 hours of the receipt of the notice, the owner may apply to the [Chief, Bureau] **Director, Division** of Fire Safety in the Department of Community Affairs for a reinspection.

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

#### 5:18-4.1 Code adopted; scope

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

(c) A comprehensive facility fire protection plan may be submitted for facilities located within the jurisdiction of more than one local enforcing agency [which] **that** are under single facilities management, ownership and operational control.

1. The plan shall be submitted to the [Bureau] **Division** of Fire Safety for approval and shall include an original and one copy plus a copy for each local enforcing agency **having jurisdiction in the areas** in which the subject facilities are located. The plan shall include the following:

i.-iii. (No change.)

2. The [Bureau] **Division** shall consult with the fire official in each local enforcing agency **having jurisdiction in the areas** in which facilities included on the plan are located before taking any final action on a plan.

3. Within 60 days after receiving the facility fire protection plan, the [Bureau] **Division** of Fire Safety shall approve or disapprove of the plan submitted in writing. If the plan is disapproved, then the written statement shall include the reason(s) for such disapproval.

i. A plan [which] **that** is not approved within 60 days shall be deemed to have been disapproved unless the 60 day period is extended by mutual agreement of the [Bureau] **Division** and the applicant;

ii. (No change.)

iii. No owner shall be required to retrofit a facility pending approval or disapproval of the plans by the [Bureau] **Division**.

4. The original approved plan [will] **shall** be maintained on file by the [Bureau] **Division** of Fire Safety. One copy of the approved plan [will] **shall** be returned to the applicant and one copy [will] **shall** be supplied to the fire official in each local enforcing agency **having jurisdiction in the areas** in which facilities included on the plan are located.

5. Any deviation from the plan as approved must be submitted to the [Bureau] **Division** for approval in accordance with the procedure established herein for the submission and approval of plans.

6. (No change.)

#### 5:18-4.3 Relation to Uniform Construction Code and other Codes

(a) (No change.)

(b) A building in full compliance with the current fire safety requirements of the New Jersey Uniform Construction Code (N.J.A.C. 5:23), as determined by the construction official with the concurrence of the fire subcode official and in consultation with the fire official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a New Jersey Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the [Bureau of] Construction Code [Enforcement] **Element** after consultation with the [Bureau] **Division** of Fire Safety and with the fire official and with the concurrence of the Director, Division of Housing and Development.

2.-3. (No change.)

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

#### 5:18A-1.4 Definitions

(a) As used in this chapter:

...  
 ["Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.]

...  
 "Division" means the Division of Fire Safety of the Department of Community Affairs.

#### 5:18A-2.2 Matters covered; jurisdictions; exceptions

(a) (No change.)

(b) Jurisdictional responsibilities for enforcing the Code are as follows:

1. A local enforcing agency, where established, shall be responsible for enforcement of the Code within its jurisdictional area for:

i.-iv. (No change.)

v. All buildings leased, in whole or **in part**, by the State of New Jersey or any [part] of its boards, commissions, agencies or authorities, provided that the jurisdiction of the local enforcing agency in such buildings shall be concurrent with that of the [Bureau] **Division**.

2. (No change.)

3. The [Bureau] **Division** shall be responsible for enforcing the Code:

i.-iii. (No change.)

4. (No change.)

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

5:18A-2.3 Local enforcing agencies; establishment

(a) Creation of a local enforcing agency shall be subject to the following:

1.-2. (No change.)

3. The governing body shall designate a county enforcing agency or local enforcing agency, other than the [Bureau] Division, to enforce the Code within the limits of a fire department or district if requested by the proper department or district authority.

4.-5. (No change.)

6. If [neither] the fire department [nor] or district chooses **neither** to enforce the Code [or] **nor** to designate an existing county fire marshal, or if the fire marshal declines designation, the municipality may create its own local enforcing agency subject to (a)7 below. If no agency is created or designated, the [Bureau] Division will assume jurisdiction in accordance with N.J.A.C. 5:18A-2.2.

7. (No change.)

(b) (No change.)

(c) [Effective] **The effective date of the establishment of an enforcing agency shall be determined** as follows:

1. (No change.)

2. If no local enforcing agency [has been] **was** established by August 18, 1985, or a local enforcing agency [has been] **was** established but no election [has been] **was** made by that date to enforce the Code in life hazard uses, the [Bureau] Division shall enforce the Code in life hazard uses within the municipality, or within such portion of the municipality as is not served by a local enforcing agency [which] **that** enforces the Code in life hazard uses.

3. When, at any time after August 18, 1985, a municipality adopts an ordinance creating a local enforcing agency authorized to enforce the Code in life hazard uses, or the municipality or county, as the case may be, adopts an ordinance or resolution authorizing an existing local enforcing agency to enforce the Code in life hazard uses, and a copy of the ordinance or resolution, as the case may be, has been filed with the [Bureau] Division, the effective date of the assumption by the local enforcing agency of enforcement responsibility in life hazard uses shall be the date of the next quarterly publication of the Registry of Enforcing Agencies.

4. If the [Bureau] Division determines that a local enforcing agency is not properly enforcing the Code in life hazard uses, and, also, with regard to imminent hazard, the [Bureau] Division may assume responsibility for enforcing the Code in life hazard uses with regard to imminent hazards within the territorial jurisdiction of the local enforcing agency. In any such case, the effective date shall be as established by the [Bureau] Division in its notice of findings.

5. (No change.)

6. When the [Bureau] Division assumes responsibility pursuant to N.J.A.C. 5:18A-4.3(c), then the effective date shall be the 61st day after the vacancy occurs unless the [Bureau] Division grants a 30 day extension, as provided in N.J.A.C. 5:18A-4.3(c).

(d) If a fire district designated as a separate local enforcing agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution, to assume the local enforcing agency responsibilities. If the fire department does not exercise [the] **this** option, it shall pass to another district within the municipality[,] and, if not exercised by a district, shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

1. (No change.)

2. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body [which] **that** enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the [Bureau] Division.

3. The local enabling ordinance governing the [Local Enforcing Agency] **local enforcing agency** shall be modified if necessary and promptly filed with the [Bureau] Division. The new local enforcing agency shall promptly assume LEA responsibilities and notify the [Bureau] Division.

4. If, within 60 days of dissolution, the [Bureau] Division has not received proper written notice of the assumption of a dissolved district's obligations, the [Bureau] Division shall assume responsibility.

(e) (No change.)

5:18A-2.5 State enforcing agency; establishment

(a) The [Bureau] Division of Fire Safety in the [Division of Housing and Development] **Department of Community Affairs** is constituted as the State enforcing agency for the purpose of administering and enforcing the Code (N.J.A.C. 5:18, 5:18A, and 5:18B) in those areas where a local enforcing agency has not been established for the inspection of life hazard uses and that responsibility has not been delegated to a county fire marshal.

(b) The [Bureau] Division of Fire Safety shall also carry out any other responsibility of the Department under the Code or these regulations.

5:18A-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. The [Bureau] Division shall annually bill for, and take such steps as may be necessary to collect or provide for the collection of, the annual registration fees provided for by the Code.

2. The [Bureau] Division shall remit 65 percent of the amount collected to the local enforcing agency established for the inspection of life hazard uses. This payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.

3. (No change.)

4. Where a local enforcing agency has been assigned a certificate of judgment in accordance with N.J.A.C. 5:18-2.6(i)1, it shall remit 35 percent of the amount collected to the [Bureau] Division by the end of the quarter next succeeding the one in which the fees were collected.

i. (No change.)

(b) (No change.)

(c) All revenues collected by the [Bureau] Division shall be deposited in the Fire Safety Revolving Fund created by the Treasurer of the State of New Jersey. Expenditures may be made from the fund to carry out any of the responsibilities of the [Bureau] Division of Fire Safety.

(d) (No change.)

(e) The [Bureau] Division shall have no obligation to a local enforcing agency in respect of fees due but not collected in any given quarter.

5:18A-2.7 Registry of agencies

(a) Each municipality [which] **that** passes an ordinance establishing a local enforcing agency shall file a copy of same with the [Bureau] Division of Fire Safety within two weeks of final adoption. Each county [which] **that** passes an ordinance or resolution establishing a county enforcing agency shall file a copy of same with the [Bureau] Division of Fire Safety within two weeks of adoption. Any municipality or county [which] **that** later amends a resolution or an ordinance [which] **that** established an enforcing agency shall file a copy of the amendments with the [Bureau] Division of Fire Safety within two weeks of adoption. A municipality or county [which] **that** does not file an ordinance shall be deemed not to have passed one. The [Bureau] Division of Fire Safety shall enforce the Code in those jurisdictions.

(b) The [Bureau] Division of Fire Safety shall compile those ordinances and shall [quarterly] issue **quarterly** a Registry of Enforcing Agencies. The Registry shall be made available to the general public and shall show what agency is responsible to enforce the Code and what agency is responsible to inspect life hazard uses in every Fire Code jurisdictional area of the State.

(c) (No change.)

5:18A-2.8 Amendments to the Code

(a) (No change.)

(b) Any amendments adopted to the State Fire Code shall be filed with the [Bureau] Division of Fire Safety. Failure to file shall not affect the validity of the amendment.

(c) (No change.)

## 5:18A-2.9 Conflict of interest

(a) No person employed by an enforcing agency, as a fire official or fire inspector, shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she or a member of his or her immediate family has an economic interest.

1. Where an inspection or enforcement procedure is necessary or required in any such property or business, then the fire official shall arrange for the inspection or enforcement to be carried out by the county enforcing agency or the [Bureau] **Division** of Fire Safety.

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

## 5:18A-2.10 Departmental monitoring

(a) The [Bureau] **Division** of Fire Safety shall institute a regular program of monitoring local enforcing agencies to ensure that the Code is being properly enforced. This monitoring program shall provide for a regular schedule of random field visits, as well as monitoring visits in response to complaints.

(b) When making a monitoring visit, the [bureau] **Division** shall determine:

1.-9. (No change.)

(c) If the [Bureau] **Division** determines that a local enforcing agency has failed to [properly] enforce the Code **properly**, then the [Bureau] **Division** shall notify the local enforcing agency of this determination and direct corrective action as needed.

(d) The local enforcing agency shall have 15 days in which to contest the [Bureau's] **Division's** findings by filing exceptions in writing with the [Bureau] **Division**. The [Bureau] **Division** shall consider any such exceptions and issue a final finding.

(e) Where the local enforcing agency shall fail to take corrective action, or where the failure to enforce the Code is pervasive and substantial, then the [Bureau] **Division** shall notify the local enforcing agency of its determination or final finding and shall thereafter assume responsibility for all inspection and enforcement with respect to life hazard uses within the jurisdiction of the local enforcing agency. All fees and penalties associated with the enforcement in life hazard uses shall, from that date forward, be paid to the [Bureau] **Division**.

(f) Where the [Bureau] **Division** has assumed responsibility due to the failure of a local agency to [properly] enforce the Code **properly**, the local agency may petition the Commissioner to return jurisdiction. The petition shall set forth the corrective action the local enforcing agency has taken, or will take, to ensure proper enforcement of the Code. The Commissioner may return jurisdiction if he or she finds that the Code will be properly and fully enforced.

## 5:18A-2.11 Right of appeal

Any person or agency aggrieved by a notice, order, action or decision of the [Bureau] **Division** pursuant to this subchapter shall be entitled to a hearing before the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq., provided that a request for a hearing is submitted to the [Division of Housing and Development] **Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, New Jersey 08625** within 15 days of the person or agency's receipt of the notice or order complained of.

## 5:18A-3.3 Duties of fire officials and fire inspectors

(a) The fire official shall enforce the code and the regulations and shall:

1. Maintain certification with the [Bureau] **Division** pursuant to N.J.A.C. 5:18A-4;

2.-7. (No change.)

8. Assist the [Bureau] **Division**, when requested, with any registration survey;

9.-15. (No change.)

16. File such reports as the [Bureau] **Division** may from time to time require;

17.-25. (No change.)

(b) Whenever a fire death occurs within the jurisdiction of a local enforcing agency, the fire official shall notify the [Bureau] **Division** of Fire Safety via telephone within 48 hours of the death. A Fire

Incident and Casualty report shall be forwarded to the [Bureau] **Division** of Fire Safety within 30 days.

(c) The fire inspector shall enforce the Code and the regulations under the direction of the fire official and shall:

1. Maintain certification with the [Bureau] **Division** pursuant to N.J.A.C. 5:18A-4;

2.-8. (No change.)

## 5:18A-3.4 Records

(a) The local enforcing agency shall maintain a central file system for each property, building or use [which] **that** requires a periodic inspection or a permit.

1. The files shall contain all information, including inspection reports, correspondence, notices and orders, and so forth, relevant to each property, building or use.

2. The files shall contain, or indicate the storage location of, all plans and reports too bulky for inclusion in the central file.

3. The files and records of the local enforcing agency shall be open to [Bureau] **Division** review and audit and public inspection at reasonable times.

4. File copies of all documents shall be retained in the official records as provided by law.

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

## 5:18A-3.6 Coordination for State-licensed facilities

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

(d) Any State agency [which] **that** enforces the Fire Code as a part of any licensing standard and any fire official shall consult with the other before any variance to the Fire Code is granted.

1. The concurrence of both shall be required before the variance shall be granted.

2. A copy of any variance granted shall be filed with the [Bureau] **Division**.

(e) Wherever a difference [of] in interpretation [pertaining to] of the Code arises between the fire official and a State agency having licensing jurisdiction, then [either] the official, the agency or the owner may apply to the [Bureau] **Division** for a final interpretation and ruling, which shall be requested and furnished in writing.

## 5:18A-4.2 Authority; hearings

(a) The following rules concern Office of Fire Code Enforcement certification:

1. There is hereby established in the [Bureau] **Division** of Fire Safety[, Division of Housing and Development,] an Office of Fire Code Enforcement Certification. The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient [operation] **implementation** of this subchapter.

2. The **responsibilities of the Division** [Bureau] of Fire Safety [responsibilities], in addition to all others provided in this subchapter, [are as follows] **shall include the following**:

i.-iii. (No change.)

(b) The following rules concern hearings:

1. Any person aggrieved by any notice, action, ruling or order of the [Bureau] **Division**, with respect to this subchapter, shall have a right to a hearing before the Office of Administrative Law. The final decision in any such case shall be issued by the Commissioner.

2. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be mailed to the Hearing Coordinator, [Division of Housing and Development,] Department of Community Affairs, CN [804] **802**, Trenton, New Jersey 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

## 5:18A-4.3 Certification required

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

(c) When a local enforcing agency[, which] **that** enforces the Code in life hazard uses has a vacancy that leaves the agency without a certified fire official, then the appointing authority shall appoint a certified person to the position within 45 days of the vacancy having occurred. The appointing authority may request an extension of 30 days in which to make the appointment. Such requests shall be made within the initial 45 day period, by the appointing authority or [his]

designee, to the [Bureau] **Division**, Attention: LEA Supervisor, shall set forth the reasons why additional time is necessary and shall indicate if any inspection or enforcement matters require [Bureau] **Division** assistance in the interest of public health, safety or welfare. Within seven business days from receipt of an extension request, the [Bureau] **Division** shall send a written determination either granting or denying the request.

1. Fire officials appointed to fill vacancies shall so notify the [Bureau] **Division** in writing, on the local enforcing agency letterhead, within five days of the appointment.

2. (No change.)

3. The appointing authority or [his] designee shall notify the [Bureau] **Division**, Attention: LEA Supervisor, in writing within five days of the date that the fire official vacates [his] the office.

4. The [Bureau] **Division** shall be notified in writing by either the appointing authority or the fire official at least 10 days in advance of any leaves of absence by the fire official in excess of 30 days, which notification shall include the provisions [which] that have been made to enforce the Code during the period of absence.

5. If no fire official is appointed within the applicable time, the [Bureau] **Division** shall assume responsibility for enforcement and modify the Registry accordingly. Registration fees collected for the period during which the [Bureau] **Division** is responsible, as well as for the preceding period of the fire official's vacancy, shall enure to the [Bureau] **Division**.

(d) The following shall be deemed [a] to be violations of the Uniform Fire Safety Act subject to a penalty of not more than \$500.00 for each offense:

1.-2. (No change.)

3. To fail to notify the [Bureau] **Division** of Fire Safety concerning a vacancy, as required by this [subsection] section.

#### 5:18A-4.4 Requirements for certification

(a) Any candidate for certification in Fire Code enforcement pursuant to this subchapter shall submit an application to the Office of Fire Code Enforcement Certification in the [Bureau] **Division** of Fire Safety, accompanied by the required fee established at N.J.A.C. 5:18A-4.7. The application shall include such information and documentation as the [Bureau] **Division** may require.

(b) Certification as a "fire inspector" shall be issued to any applicant who has successfully completed an educational program approved by the [Bureau] **Division** pursuant to N.J.A.C. 5:18A-4.9.

(c) Certification as a "fire official" shall be issued to any applicant who holds a valid certification as a fire inspector issued by the [Bureau] **Division** pursuant to [N.J.A.C. 5:18A-4.4] this section and has successfully completed an educational program approved by the [Bureau] **Division** pursuant to N.J.A.C. 5:18A-4.9.

(d) The [Bureau] **Division** shall determine, by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted, whether an applicant is qualified for certification for which the application has been made. If the application is satisfactory, the [Bureau] **Division** shall issue a certification to the applicant upon payment of the required fee. This certification [will] shall show that the person has met the established requirements and is entitled to be employed in the State in accordance with the provisions of these regulations. The [Bureau] **Division** may deny, or refuse to issue, a certification to an applicant upon proof that there has been any act or omission [which] that would constitute grounds for revocation under [this Subchapter] N.J.A.C. 5:18A-4.6.

#### 5:18A-4.5 Renewal of certification

(a) Every two years, any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Office of Fire Code Enforcement Certification that the applicant has met such continuing educational requirements as may be established by the Commissioner. The [Bureau] **Division** shall renew, for a term of two years, the certification previously issued. The expiration date of the certification shall be January 31 or July 31.

(b) The [Bureau] **Division** shall issue, upon application, a duplicate certification of the appropriate type and specialty upon

a finding that the certification has been issued and the applicant is entitled to such certification to replace the one [which] that has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

(c) Continuing education requirements, as follows, must be met for renewal of certification. The requirements are based upon the type(s) of certification(s) held and not upon employment position held. Continuing education units (CEU's) shall be approved by the [Bureau] **Division** for technical and administrative courses (one CEU equals 10 contact hours).

1.-2. (No change.)

(d) (No change.)

(e) After revocation of a certification upon any of the grounds set forth in [these regulations] N.J.A.C. 5:18A-4.6, the [Bureau] **Division** may not renew or reinstate such certification; however, a person may file a new application for a certification with the [Bureau] **Division**. When it can be shown that all loss caused by the act or omission for which the certification was revoked has been fully satisfied, that the applicant has been legally rehabilitated and that all conditions imposed by the decision of revocation have been complied with, the [Bureau] **Division** may issue a new certification. No new certification shall be issued if the cause for revocation was conviction of a crime of any degree which crime was in connection with Fire Code enforcement.

#### 5:18A-4.6 Revocation of certifications and alternative sanctions

(a) The [Bureau] **Division** may suspend and/or revoke a certification, and/or assess a civil penalty of not more than \$500.00, if the Department determines that the holder:

1.-11. (No change.)

(b) The [Bureau] **Division**, in addition, or as an alternative, to revoking or suspending a certification, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct that, in the judgment of the [Bureau] **Division**, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

(c) The Commissioner shall appoint a review committee to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons holding certifications who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committee.

1.-5. (No change.)

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the [Assistant] Director, **Division** of Fire Safety within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the [Assistant] Director, Fire Safety]. Failure of the review committee to submit a timely recommendation shall be deemed to be [in concurrent] concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the person holding certification.

7. (No change.)

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

#### 5:18A-4.9 Organizational, administrative, and operational functions of the Fire Code enforcement educational programs

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

(d) An organization or institution shall assure that:

1. (No change.)

2. It is the responsibility of the institution to maintain an adequate system of student personnel accounting, including a permanent cumulative record of each student enrolled. To facilitate ready interpretation by the [Bureau] **Division**, the graduate is entitled to an intelligible and adequate transcript of record, including a statement of the course title.

(e)-(g) (No change.)

#### 5:18A-4.10 Procedure for applying for approval of educational programs

(a) (No change.)

(b) Each application shall be submitted in the name of the institution or organization by a person authorized to do so. It shall contain, **at a minimum**, the following [minimum] information:

1.-6. (No change.)

7. A statement that the institution or organization [will] **shall** notify the [Bureau] **Division** if the program is withdrawn or changed at any time;

8.-9. (No change.)

(c) The [Bureau reserves] **Division shall have** the right to undertake such reviews as may be necessary to verify the accuracy of an application or its conformity with [these regulations] **this subchapter**. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) Upon verification that the program or course will satisfy the educational program requirements, the [Bureau will] **Division shall**:

1. (No change.)

2. Place the name of the institution and the course on the [Bureau's] **Division's** list of approved courses. That list [will] **shall** be made available to the public.

i. (No change.)

(e) Whenever a course or program has been approved by the [Bureau] **Division**, the institution or organization offering the course may include the statement "This course is approved for credit toward a certification issued by the Department of Community Affairs pursuant to the Uniform Fire Safety Act" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(f) The [Bureau] **Division** may revoke its approval, after notice and the opportunity to be heard, whenever it ascertains that a course has lapsed or is no longer in conformity with the requirements of [these regulations,] **this subchapter** and/or the terms of the [Bureau's] **Division's** approval. Whenever approval has been revoked or a course has been withdrawn by an institution or organization, a new application and approval shall be required before the course may again be offered as [provided] **providing** credit toward a certification.

(g) (No change.)

#### 5:18B-2.8 Applicants' right of appeal; procedure

(a) Whenever the Department shall deny an application for an installation, fail to act upon an application for an installation, refuse to grant a variation, or [to] make any other decision pursuant or related to [these regulations] **this chapter**, including the assessment of any monetary penalties, an owner may **file an appeal for an administrative hearing** [to the Division of Housing and Development, Department of Community Affairs]. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act, [(see] N.J.S.A. 52:14B-1 et seq. [and 52:14F-1 et seq.], as implemented by N.J.A.C. 1:1[)].

(b) (No change.)

(c) The application for appeal shall be in writing, filed with the **Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, NJ 08625** [Division of Housing and Development] and **shall** briefly [setting] set forth the appellant's position. Such application shall state the name and address of the appellant and the address of the terminal in question, and shall reference specific sections of the regulations and the extent and nature of the appellant's reliance on them. The appellant may append to [his] **the** written application any **relevant** data or information [he may deem appropriate to his cause].

#### 5:18C-1.4 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise:

["Bureau" means the Bureau of Fire Safety in the Division of Housing and Development of the Department of Community Affairs.]

...

**"Division" means the Division of Fire Safety of the Department of Community Affairs.**

...

#### 5:18C-1.5 Office established; hearings

(a) There is hereby established in the [Bureau] **Division** of Fire Safety[, Division of Housing and Development,] an Office of Training and Certification. The office shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this chapter.

(b) (No change.)

(c) Any person aggrieved by any notice, action, ruling or order of the Commissioner, with respect to this [subchapter] **chapter**, shall have a right to a hearing before the Office of Administrative Law, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The final decision in any such case shall be issued by the Commissioner.

1. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being contested. The request shall be made to the Hearing Coordinator, [Division of Housing and Development,] Department of Community Affairs, CN 802, Trenton, NJ 08625. The request for hearing shall raise all issues that will be set forth at the hearing.

#### 5:18C-1.7 Requirements for certification

(a) Any candidate for certification in any of the fire service areas pursuant to this chapter shall submit an application to the Office of Training and Certification in the [Bureau] **Division** of Fire Safety, accompanied by the required fee established at N.J.A.C. 5:18C-1.10. The application shall include such information and documentation as the Office may require.

(b) (No change.)

#### 5:18C-1.8 [Renewal of certification] **Replacement of certificate; reinstatement**

(a) The [Bureau] **Division** shall issue, upon application, a duplicate certificate of any type and specialty upon a finding that the certification has been issued and the applicant is entitled to such certification to replace the one which has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner shall be required.

(b) After revocation of a certification upon any of the grounds set forth in this chapter, the [Bureau] **Division** may not renew or reinstate such certification; however, a person may file a new application for a certification with the [Bureau] **Division**. When it can be shown that all loss caused by the act or omission for which the certification was revoked has been fully satisfied, that the applicant has been legally rehabilitated and that all conditions imposed by the decision of revocation have been complied with, the [Bureau] **Division** may issue a new certification.

(c) (No change.)

#### 5:18C-1.9 Revocation of certifications and alternative sanctions

(a) The [Bureau] **Division** may suspend and/or revoke a certification of a firefighter if the Department has determined that the holder:

1.-7. (No change.)

(b) The [Bureau] **Division** may suspend or revoke a certification of an Instructor Level 1, Instructor Level 2 or any special Instructor Certificate if the Department has determined that the holder:

1.-7. (No change.)

(c) The [Bureau] **Division**, in addition or as an alternative, as the case may be, to revoking or suspending a certification, or assessing a penalty, may issue a letter [or] of warning, reprimand, or censure with regard to any conduct [which] **that**, in the judgment of the Department, warrants a letter of warning, reprimand, or censure. Such letter, in addition to any other filing requirements, shall be made a part of the certification file of the individual.

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

#### 5:18C-2.3 Procedure for approving educational programs

(a) Any eligible institution or organization may submit to the Office of Training and Certification any course or module required

by this chapter for approval. The application shall be submitted on a form prescribed by the [Bureau] **Division** at least 60 days prior to the first class session of the course and shall contain all the information specified in this section.

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

(d) Upon verification that the program or course will satisfy the educational program requirements, the Office of Training and Certification shall:

1. (No change.)

2. Place the name of the institution and the course on the [Bureau's] **Division's** list of approved courses. The list [will] **shall** be made available to the public.

i. (No change.)

(e) Whenever a course or program has been approved by the [Bureau] **Division**, the institution or organization offering the course may include the statement "This course is approved for credit toward a certification issued by the Department of Community Affairs" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(f) The Office of Training and Certification may revoke its approval, after due notice and the opportunity to be heard, whenever it ascertains that a course has lapsed, is no longer in conformity with the requirements of [these regulations] **this chapter** or the terms of the [Bureau's] **Division's** approval or for other good cause. Whenever approval has been revoked or a course or module has been withdrawn by an institution or organization, a new application and approval shall be required before the course or module may again be offered as providing credit toward a certification.

(g) (No change.)

**(a)**

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Housing Affordability Control  
Determination and Referral of Eligible Households;  
Request for Applicant Social Security Number**

**Proposed Amendment: N.J.A.C. 5:80-26.19**

Authorized By: New Jersey Housing and Mortgage Finance

Agency, Christiana Foglio, Executive Director/Secretary.

Authority: N.J.S.A. 52:37D-321 and 324.

Proposal Number: PRN 1993-523.

Submit comments by October 20, 1993 to:

Anthony W. Tozzi

New Jersey Housing and Mortgage Finance Agency

3625 Quakerbridge Road

CN 18550

Trenton, New Jersey 08650-2085

The agency proposal follows:

**Summary**

Under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), the New Jersey Housing and Mortgage Finance Agency (the Agency) is responsible for assisting communities in meeting their obligation to provide low and moderate income housing. The general types of assistance the Agency will provide include the making of grants or loans for the purchase of owner-occupied housing and for the construction of multi-family rental housing. The Fair Housing Act authorizes the Agency to establish controls to ensure that such housing remains affordable as low and moderate income housing. The Act also authorizes the Agency to administer affordability controls for municipalities developing such housing without financial assistance from the Agency. The rules are designated to ensure that housing assisted by the Agency remains affordable as low and moderate income housing and to establish procedures for the Agency to administer affordability controls for municipalities developing housing without the financial assistance of the Agency. The proposed amendment provides that the Agency may request

applicants for such housing to provide their social security numbers. The receipt of social security numbers will enable the Agency to better qualify applicants for housing assisted under the Fair Housing Act.

**Social Impact**

The rules impact on low and moderate income households in New Jersey by providing them with opportunities to obtain affordable housing that will be constructed under the Fair Housing Act. Applicants for such housing must demonstrate that they are financially able to qualify for the housing. The proposed amendments will assist the Agency with the evaluation of an applicant's financial qualifications, as an applicant's social security number will enable the Agency to run a credit check on the applicant.

**Economic Impact**

The affordability controls established by the subchapter result in the sale or rental of housing at rates which are affordable to low and moderate income households. This provides an economic benefit to initial occupants of such housing, but also to subsequent owners and renters who will occupy the housing during affordability control periods. Owners of rental property for low and moderate income households are constrained in the amounts of rent and rent increases they may charge, as such must be approved by the Agency or an appropriate municipal entity. Additionally, the financing of such housing by the Agency stimulates the housing construction industry throughout the State.

**Regulatory Flexibility Statement**

The proposed amendment advises low and moderate income housing applicant household members that the Agency may request their social security numbers for credit check purposes. No requirements are imposed on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required.

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

5:80-26.19 Determination and referral of eligible households

(a) As units become available, the Agency will notify applicant households who satisfy the income criteria for an available unit who will then be scheduled for an interview to determine if they qualify as an eligible household. At the interview, the household will be requested to document all income. This determination process shall also include a credit background report. Every household member 18 years of age or older who will live in the affordable unit and who receives income shall be required to provide the required information, where applicable, identified at (a)1 below. All applicant households meeting the criteria shall be deemed an eligible household.

1. (No change.)

2. **The Agency may also request the social security number of each applicant household member as set forth in (a) above. The request shall indicate that the submission of the social security number is voluntary and that it would be used to do credit checks on applicants. The request shall also include the privacy notice requirements of applicable federal and/or state law.**

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

**EDUCATION**

**(b)**

**CODE REVIEW AD HOC COMMITTEE**

**Notice of Opportunity for Public Comment on Title 6 of the New Jersey Administrative Code**

**Take notice** that the Commissioner of Education's Code Review Ad Hoc Committee is seeking public comment on the rules and their provisions contained in Title 6 of the New Jersey Administrative Codes.

**This notice** is being given to inform the public of the overall review of the education administrative regulations and the State Board of Education rulemaking process which is currently taking place. It is intended that the information gained from this review will aid the

## ENVIRONMENTAL PROTECTION

## PROPOSALS

Department of Education in highlighting specific rules and areas of the regulatory process which may require refinement.

**Interested persons** may submit written comments identifying specific regulations contained in N.J.A.C. 6 which are perceived as problematic, for example, inefficient, duplicative, unnecessary and/or inconsistent, and in need of improvement. Public comments are also being accepted on ways of improving the manner in which the public is included in the State Board administrative rulemaking process.

Submit written comments by October 20, 1993 to:

Elise E. Greene-Smith, Administrative Practice Officer  
New Jersey State Department of Education  
225 East State Street, CN 500  
Trenton, New Jersey 08625-0500

Please follow the format below when submitting comments:

New Jersey Administrative Code Citation/Topic:

N.J.A.C. 6: \_\_\_\_\_

Specific Problem:

Rationale:

Recommendation(s): \_\_\_\_\_

## ENVIRONMENTAL PROTECTION AND ENERGY

(a)

### ENGINEERING AND CONSTRUCTION ELEMENT Flood Plain Redelineation of the Delaware River, Pohatcong Township, Warren County

#### Proposed Amendment: N.J.A.C. 7:13-1

Authorized By: Jeanne M. Fox, Acting Commissioner,  
Department of Environmental Protection and Energy.  
Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 51093-08/151.

Proposal Number: PRN 1993-528.

A **public hearing** concerning this proposal will be held on Wednesday, October 6, 1993 at 11:00 A.M. at:

Department of Environmental Protection  
and Energy  
Engineering and Construction Element  
5 Station Plaza, Second Floor  
501 East State Street  
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by October 20, 1993, to:

Janis E. Hoagland, Esq.  
Office of Legal Affairs  
Department of Environmental Protection  
and Energy  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

#### Summary

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits, flood plain delineations and flood profiles of the Delaware River from approximately 1,250 feet downstream of the intersection of Synders Road and Carpentersville Road (also known as River Road) near Old Sow Island, upstream 13,300 feet to a point approximately 5,000 feet upstream of Whippoorwill Island, in Pohatcong Township, Warren County.

This proposed redelineation of the aforementioned portion of the Delaware River optimizes the present floodway limits for that portion of the river and is based on existing field conditions, U.S. Army Corps of Engineers topography and an updated hydraulic analysis. The updated hydraulic analysis was performed by the Department. The hydraulic analysis determines flood levels and floodway limits.

Review of the proposed flood plain delineation maps indicate that the floodway and New Jersey Flood Hazard Area limits are closer to the Delaware River in the vicinity of Whippoorwill Island. The proposed 100-year and New Jersey Flood Hazard Area Design Flood profiles are approximately one foot lower. Furthermore, the proposed profiles and the flood limits, as shown on the proposed maps, reflect existing field conditions and more accurate topography. The proposed flood plain maps and flood profiles may be viewed at the Office of Administrative Law and the Department as indicated in the Agency Note below.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood plain delineation maps is required.

#### Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood-carrying capacity of the waterway and the surroundings, thereby minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will reduce the total area regulated by those rules, in the Township of Pohatcong, Warren County.

#### Economic Impact

This proposed redelineation will result in a positive economic impact for certain property owners along the portion of the Delaware River where the floodway and the New Jersey Flood Hazard Area are reduced. The proposed redelineation is the result of a reanalysis of the existing hydraulics and U.S. Army Corps of Engineers topography. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Non-wetland property located outside of the floodway will have the potential to be developed.

#### Environmental Impact

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard area, based on a reanalysis of the hydraulic modelling for a portion of the Delaware River in Pohatcong Township. The scope of permissible development is restricted within the delineated area to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary applications are obtained. This proposed amendment is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this rule would not impose compliance, reporting or recordkeeping requirements on small businesses. Therefore, a regulatory flexibility analysis is not required. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the Pohatcong Township Clerk and the Warren County engineer.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey  
Department of Environmental Protection  
Division of Water Resources  
Delineation of Floodway and Flood Hazard Area  
**Delaware River**  
Mile 177.28 to Mile 181.65  
Sheets Nos. 24, 25 & 26 and Profile Sheet O3P

(a)

## ENGINEERING AND CONSTRUCTION ELEMENT

### Flood Plain Redelineation of Overpeck Creek, City of Englewood, Bergen County

#### Proposed Amendment: N.J.A.C. 7:13-7.1

Authorized By: Jeanne M. Fox, Acting Commissioner,  
Department of Environmental Protection and Energy.  
Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 50-93-08/289.

Proposal Number: PRN 1993-529.

A public hearing concerning this proposal will be held on Wednesday, October 6, 1993 at 1:30 P.M. at:

Department of Environmental Protection  
and Energy  
Engineering and Construction Element  
5 Station Plaza, Second Floor  
501 East State Street  
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by October 20, 1993, to:

Janis E. Hoagland, Esq.  
Office of Legal Affairs  
Department of Environmental Protection  
and Energy  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

#### Summary

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits, flood plain delineations and flood profiles of Overpeck Creek from the Route 95 bridge near the confluence with French Brook upstream 11,860 feet to Hamilton Street in the City of Englewood, Bergen County.

The proposed redelineation of the aforementioned portion of Overpeck Creek is based on the completion of channel improvements, funded by the Department, Bergen County, the City of Englewood and The Real Estate Equity Company/Palisades Court Associates (TREECO). The proposed redelineation in the vicinity of each project results from separate reanalyses of the existing drainage basin characteristics, revised hydraulics, current field-surveyed cross sections, more detailed topographic mapping and proposed channel improvements. The results of the analyses are shown on the proposed state mapping.

The first reach, between Route 95 and Route 4, consists of an 80-foot-wide rectangular flume, a dike and a pumping station. The 100-year flood is contained within the channel of the flood control project. The 100-year flood plain within Englewood is eliminated within this portion of the stream. There is no change in the 100-year flood boundary in the golf course in Teaneck. The golf course will still flood during a 100-year flood event. The flood walls would be overtopped by the New Jersey Flood Hazard Area Design Flood. The proposed floodway in the first reach is more narrow and is located at the walls of the channel. There is no change of the existing flood levels within the first reach. The flood control project is operational and almost complete. The revision of the first reach reflects the plans approved under Stream Encroachment Application Number 15,129. The construction of the first reach is funded by Bergen County and the Department's Flood Bond Grant Program.

The second channel improvement is located between First Avenue and the first footbridge in McKay Park in the City of Englewood. Construction is scheduled to begin in the early fall of 1993. The proposed channel improvement consists of a 25-foot-wide concrete flume, 400 feet long. The flume has the capacity to carry the 100-year flood; however, due to the inadequate flood walls upstream of the footbridge and downstream of First Avenue, floodwater will inundate the overbanks. The channelization was proposed by the City of Englewood under Stream Encroachment Application Number 0215-92-0001.1. Michael Disko Associates performed new hydraulics for the flume. Review of the hydraulic model indicates that the 100-year flood level, at a location approximately 100 feet upstream of the First Avenue bridge, will be 0.5 feet lower. The

proposed 100-year flood level for the reach will range between 0.0 and 0.5 feet lower than the present 100-year flood level. There are no floodway or flood boundary changes proposed along this section of stream.

The third channel improvement along Overpeck Creek is located between Palisades Avenue and Tallman Place, Stream Encroachment Application Number 0215-90-0005.1. New replacement culverts were constructed by TREECO as part of a redevelopment of a downtown shopping area in the vicinity of Tallman Place, North Van Brunt Street, Palisades Avenue, James Street and West Street. The original culvert under a corner of a supermarket was relocated outside of the footprint of the building just upstream of West Street. Review of the flood profiles, submitted by John Mancinelli of Vollmer Associates on behalf of TREECO, indicates that the 100-year flood levels will range from 0.0 to 4.5 feet lower and the New Jersey Flood Hazard Area Design Flood will range from 0.0 to 3.0 feet lower. The greatest reduction in flood levels occurs immediately upstream of the Demerest Avenue culvert. The proposed 100-year and New Jersey Flood Hazard Area flood plain boundaries are located closer to the stream, therefore reducing the flood plain areas. The City of Englewood provided 2-foot contour interval topography for this area to more accurately define the flood plain areas.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation maps is required. It should be noted that the proposed changes reflects the completed projects in the upper and lower reaches of the stream and the proposed construction in McKay Park as indicated in the aforementioned paragraphs.

#### Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood-carrying capacity of the waterway and their surroundings, thereby minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13. The proposed redelineation will reduce the total area regulated by those rules in the City of Englewood, Bergen County.

#### Economic Impact

The proposed redelineation is the result of a reanalysis of the existing drainage basin characteristics, hydraulics, current field surveyed cross sections, more detailed topographic mapping and proposed channel improvements. A positive economic impact will result in favor of the property owners along the portion of Overpeck Creek from the proposed Amendment since a more narrow floodway and lower flood levels along the stream would enhance conditions for development. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Non-wetland property located outside of the floodway will have the potential to be developed.

#### Environmental Impact

The purpose of this proposed redelineation is to update the maps and stream profiles by accurately defining the floodway limits and flood hazard area, based on a reanalysis of the hydraulic modelling with the channel improvements for a portion of Overpeck Creek in the City of Englewood and the Township of Teaneck. The scope of permissible development is restricted within the delineated area to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary applications are obtained. This proposed amendment is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. Therefore, a regulatory flexibility analysis is not required. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton

Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the clerks and engineers of the City of Englewood and Township of Teaneck and the Bergen County Engineer.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey  
 Department of Environmental Protection  
 Division of Water Resources  
 Delineation of Floodway and Flood Hazard Area  
**Overpeck Creek and Trib. No. 1 to Overpeck Creek**  
 Plate Nos. OC-4 and OC-5  
**Overpeck Creek**  
 Plate No. OC-6

**(a)**

**ENGINEERING AND CONSTRUCTION ELEMENT  
 Flood Plain Redelineation of Poplar Brook, Borough  
 of Deal, Monmouth County**

**Proposed Amendment: N.J.A.C. 7:13-7.1**

Authorized By: Jeanne M. Fox, Acting Commissioner,  
 Department of Environmental Protection and Energy.  
 Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et  
 seq.  
 DEPE Docket Number: 49-93-08/290.  
 Proposal Number: PRN 1993-530.

A **public hearing** concerning this proposal will be held on Wednesday,  
 October 6, 1993 at 10:00 A.M. at:

Department of Environmental Protection  
 and Energy  
 Engineering and Construction Element  
 5 Station Plaza, Second Floor  
 501 East State Street  
 Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given  
 above, by October 20, 1993, to:

Janis E. Hoagland, Esq.  
 Office of Legal Affairs  
 Department of Environmental Protection  
 and Energy  
 CN 402  
 Trenton, New Jersey 08625-0402

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits and flood delineations of Poplar Brook from approximately 670 feet upstream of Ocean Avenue at stream station 1570, upstream 950 feet to a location 50 feet upstream of Almyr Avenue at stream station 2520. This proposal to redelineate the aforementioned portion of Poplar Brook is based on a reanalysis of the original HEC2 computerized river hydraulic modelling with additional field-surveyed cross sections inserted into the existing computer model. The floodway was optimized along a portion of Poplar Brook. The reanalysis was performed by Mr. Bahram Farzaneh, P.E., P.P. of Schoor & DePalma, Inc., on behalf of Mr. Joseph Nakash. The HEC2 river hydraulic modelling determines water elevations and flood profiles for various flooding events as well as floodway limits. The addition of field-surveyed cross sections in the model better defines the stream channel and overbanks, therefore making the redelineation more accurate than the original delineation. Review of the redelineation maps indicate that the 100-year flood profile remains unchanged within the redelineated reach of stream. There is no change in the floodway limits along the south side of the stream or right bank looking downstream from Almyr Avenue. On the north side of the stream or left bank looking downstream, the floodway is closer to the stream on Mr. Nakash's

property. The floodway limits and flood profile levels downstream of Mr. Nakash's property and upstream of Almyr Avenue are not being changed as part of this proposal.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation maps is required. It should be noted that the proposed changes reflect what is constructed and the present condition of the stream.

**Social Impact**

Regulation of delineated flood hazard areas is intended to preserve the flood-carrying capacity of the waterway and the surroundings, thereby minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7.13.

**Economic Impact**

This proposed redelineation is the result of a reanalysis of the existing hydraulics with additional current field-surveyed cross sections. There will be no economic impact resulting from this proposed amendment since the floodway was optimized to allow for Mr. Nakash's expansion of his home and construction of a deck. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Non-wetland property located outside of the revised floodway will have the potential to be developed.

**Environmental Impact**

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard area, based on a reanalysis of the hydraulic modelling for a portion of Poplar Brook within Deal Borough, Monmouth County. The scope of permissible development is restricted within the delineated area, to prevent and minimize potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary permits and applications are obtained. This proposal is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment would not impose compliance, reporting or recordkeeping requirements on small businesses. Therefore, a regulatory flexibility analysis is not required. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to clerk and engineer of Deal Borough and the Monmouth County Engineer.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified:

State of New Jersey  
 Department of Environmental Protection  
 Supplemental Flood Hazard Studies & Mapping  
**Poplar Brook**  
 Plate: 25

## HEALTH

### (a)

#### DIVISION OF EPIDEMIOLOGY, OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

#### Definitions and Standards of Identity for Designated Fluid Milk Products, and Sanitary Requirements for the Production and Processing of Milk and Fluid Milk Products

#### Proposed Amendments: N.J.A.C. 8:21-10.1, 10.2, 10.4, 10.6 and 10.12

Authorized By: Bruce Siegel, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 24:10-57.10, 24:10-57.23 and 24:10-57.24b.

Proposal Number: PRN 1993-537.

A public hearing regarding this proposal will be held on Tuesday, October 19, 1993, 10:00 A.M., at:

New Jersey Department of Health  
Health and Agriculture Building  
Room 106 (Auditorium)  
John Fitch Plaza  
Trenton, New Jersey

Submit written comments by November 3, 1993 to:

Kenneth Kolano  
Program Manager  
New Jersey Department of Health  
Food and Milk Program  
CN 369  
Trenton, NJ 08625-0369

The agency proposal follows:

#### Summary

On November 24, 1992, N.J.S.A. 24:10-57.23 was amended to grant milk plants the latitude to establish shelf-life expiration dates for all fluid milk products. Previously, the Department of Health was required to establish by regulation the maximum number of days allowed for the sale of whole milk, lowfat and skim milk and similar fluid milk products sold in the State regardless of a milk plant's internal quality control procedures. The enabling legislation was amended to permit the Department to recognize the differences in pasteurization methods, new technology and improved quality control procedures and thus allow each milk plant to establish the shelf-life expiration date for their products based upon these factors. The Department is proposing to amend N.J.A.C. 8:21-10.12 to reflect this legislative change.

In addition, the Department proposes to update other rules relating to the production, handling and processing of milk and fluid milk products to bring them into conformance with the latest changes in the Pasteurized Milk Ordinance (PMO) of the United States Food and Drug Administration as revised at the 1991 meeting of the National Conference on Interstate Milk Shipments (NCIMS).

N.J.A.C. 8:21-10.1 establishes standards of identity and the definition of certain terms used in the rules. The Department proposes to make minor editorial changes in this section to correct capitalization and punctuation errors made in previous publication of the rules.

In addition, a change is being made to reference the date of the latest revision of the Pasteurized Milk Ordinance (PMO) in the definitions of "certified industry inspector," "item" and in other areas of the rules where the 1978 edition of the PMO is cited.

Also, a definition for "drug" has been added to the rules to reflect the new testing requirements for drug residues in the milk supply. The term "drug" replaces the term "antibiotics" wherever that term appears in the rules.

N.J.A.C. 8:21-10.2 establishes requirements for the proper labeling of containers of milk as well as over the road milk transport tankers. A change to this section is proposed which would require that all tankers which are transporting raw milk and fluid milk products must be identified and each shipment must be accompanied by a shipping statement. This proposed change would apply to all milk tankers including those operating strictly within State borders.

N.J.A.C. 8:21-10.4 establishes sampling frequencies and types of analyses to be performed on raw milk and finished product. These rules

also include enforcement procedures to be taken when violations result. The Department proposes to specify that the sampling of raw milk at the milk plant will be performed by the Department. The Department has always performed this sampling, but this change would formally make New Jersey's rules consistent with the latest revision of the PMO. In addition, it is proposed that individual producer samples be examined for the presence of drug residues at least four times in any consecutive six month period. This change would require that the individual producer's (farmer) milk be examined rather than be sampled as part of a commingled lot.

In conjunction with this proposed change, the Department is proposing to adopt, by reference, Appendix N of the PMO. Appendix N of the PMO was developed and accepted at the 1991 meeting of the NCIMS as a means of dealing with potential drug residues in the milk supply. Prior to the development of Appendix N, milk supplies were periodically examined for the presence of antibiotics. Appendix N is designed to increase the frequency of milk testing to every load of incoming raw milk and provides for the expansion of analyses to drug residues including, but no longer limited to, antibiotics. Appendix N also includes new enforcement procedures when violations are encountered.

Previously, producers (farmers) who were identified as having drug residues in their milk were suspended from shipping milk for two days. Appendix N still provides for a two day suspension, but, as an alternative, the producer could be assessed a monetary penalty at least equivalent to the loss of income from two days production of milk. In addition, a formal written protocol with a veterinarian who would oversee the administration of drugs to the milk producing animals would now be required. Suspensions and/or penalties are increased for second offenses. Producers who are identified with drug residues in their milk a third time within a 12 month period would be subject to penalties and revocation of their permit to ship milk until such time as they can provide assurances to the Department that their animal treatment program will not produce drug residues in the milk.

N.J.A.C. 8:21-10.6 establishes the parameters for the test procedures required by the rules. It also sets forth the construction, sanitation and operation requirements for dairy farms and milk plants. Under N.J.A.C. 8:21-10.6(c), the agency proposes to replace the term "antibiotics" with the term "drugs" and expand the testing procedures for drug residues by adopting, by reference, Appendix N of the PMO. Previously, the *Bacillus Stearothermophilus* disc assay method was the only acceptable regulatory test to detect the presence of antibiotics in raw milk. Appendix N of the PMO allows for the acceptance of other testing methods and provides for the expansion of testing to include drugs other than the category "antibiotics."

The rules provide for a standard for somatic cell count, which is an indication of the health of the herd. The membership at the 1991 meeting of the NCIMS voted to lower the acceptable somatic cell count for cow's milk from 1.0 million per milliliter (ml) to 750,000 per ml., effective July 1, 1993. The Department proposes to adopt the same requirement. The current somatic cell count standard of 1.0 million per ml. for goat's milk would remain unchanged.

The NCIMS voted to accept the Fluorometric Procedure as an alternative to the Scharer Rapid Method for examination of milk for phosphatase. Phosphatase testing shows the presence of raw milk in pasteurized milk products and is therefore used as an indicator of the completion of the pasteurization process. Based upon the evaluation and recommendation of the NCIMS, the Department proposes to adopt the Fluorometric Procedure as an alternative test to the Scharer.

Under N.J.A.C. 8:21-10.6(d), the membrane filter DNA method for determining somatic cell counts is being added to the list of accepted methods. In addition, pyronine Y-methyl green stain is being included as the confirmatory test method for somatic cell counts in goat's milk.

The adoption of a reduced somatic cell count standard would make the utilization of several of the test methods obsolete as screening tests for cow's milk, since its degree of reliability would be unacceptable at the proposed level of 750,000 per ml. The Department is proposing to delete the use of these test methods for cow's milk, effective July 1, 1993, when the revised somatic cell count takes effect, but retain their use for goat's milk as long as the somatic cell count for goat's milk remains at 1.0 million cells per ml.

The Department is proposing to allow plate coolers, milk pumps and other equipment which have been evaluated and accepted by the United States Food and Drug Administration (FDA) to be stored in the milking

barn or parlor. This would bring New Jersey's rules into conformance with the latest revisions of the PMO concerning the sanitary storage of cleaned equipment.

N.J.A.C. 8:21-10.12 establishes the requirements for the shelf-life expiration date for milk and fluid milk products. The Department is proposing to revise this rule in order to conform with recent amendments to N.J.S.A. 24:10-57.23 which now allows milk plants the latitude to establish their own shelf-life expiration date for fluid milk products based upon appropriate shelf-life studies. The Department retains the right to review the shelf-life studies which were utilized to set the expiration date and to adjust that date when the shelf-life studies do not justify the date on the container.

#### Social Impact

This proposal provides for the amendment of New Jersey's fluid milk rules by updating the present requirements to conform to the latest revisions of the Pasteurized Milk Ordinance (PMO) of the United States Food and Drug Administration (FDA) as agreed to by the National Conference on Interstate Shipments (NCIMS). The NCIMS is an organization of milk industry representatives, academia and milk regulatory officials, who meet every two years to discuss problems, potential solutions and revise the PMO. The PMO is then utilized as the standard for evaluating dairy farms and milk plants nationwide.

The purpose of the NCIMS is to provide the best possible milk supply for consumers. The periodic changes which the members of the NCIMS recommend to the FDA for inclusion in the PMO are the current guidance and recommended practices which the membership believes should be the uniform requirements, nationwide. These requirements address the main areas of testing, quality control and sanitary conditions which would accomplish the purpose of the NCIMS. Thus every two years the public receives the benefits of the latest technological advances of the industry as well as new and/or revised public health control measures to protect the milk supply from contaminants.

The major revisions to the PMO, and thus these requirements, were in the area of protecting the consuming public from the possible adulteration of the milk supply with drugs utilized to treat dairy animals for disease. This was accomplished by increasing the frequency of testing for the presence of animal drugs and the approval of new rapid testing methods. In addition, methodologies were put in place to more closely monitor drug usage by veterinarians and producers and more easily change the sampling procedures to identify new drugs which could be misused and enter the milk supply.

Since individuals can suffer severe allergic reactions to drug residues, it is vitally important that therapeutic drugs be kept out of the milk supply and out of the diet of unsuspecting consumers. The proposed changes to the rules will help to accomplish this purpose.

#### Economic Impact

The amended rules as proposed will impact upon all licensed milk plants and producers operating in the State. Failure by the Department to amend its milk production and processing rules could result in a severe economic impact to New Jersey consumers. In the absence of the revised rules, the Department believes that producers and milk plants could manufacture and market milk products which are adulterated with harmful drug residues, contaminated with disease causing microorganisms or fail to meet the standards of identity established for milk products.

Milk plants and producers which fail to abide by the provisions of the PMO or are not under a routine regulatory program based upon the procedures of the NCIMS are not permitted to engage in the interstate commerce of milk and fluid milk products.

Individuals who are allergic to drugs or become ill from contaminated milk products are temporarily lost to the work force resulting in lost wages and family stress. In addition, it places an unnecessary added burden on the health care system in this State. Health care dollars which could be utilized elsewhere would have to be spent to treat drug allergic patients or individuals afflicted with milk-borne illness, both of which are conditions which can be prevented by appropriate rules and adequate enforcement.

All milk plants in the State will be required to screen incoming raw milk supplies for the presence of drug residues using a test kit which is acceptable to the Department. The expense of the test kit will depend upon the number of tests which must be performed on a daily or weekly basis and the level of sophistication which the individual milk plant desires to achieve in its purchase of a test kit. The benefit of this requirement clearly outweighs the cost of compliance.

The economic impact on dairy producers (farmers) could be severe if they fail to manage their herd treatment program in accordance with accepted public health and veterinary practices. All incoming raw milk supplies will be screened for the presence of drugs and producers with poor treatment practices will be identified and penalized for violations of the drug residue rules. Since contaminated milk cannot be safely reconditioned at this time, large quantities of drug adulterated milk would have to be destroyed. The producers who directly led to the contamination of this milk would bear the economic impact of their actions.

#### Regulatory Flexibility Analysis

The major area of economic impact on small milk processing plants in this State would be in the area of screening milk for drug residues. This rule revision will require the purchase of test kits and the reporting of positive test results to the Department so that the agency can identify the offending producer (farmer) for further enforcement action.

Currently there are nine small milk plants in the State, six of which are receiving raw milk from the dairy farm which would be required to be tested for drug residues.

The milk plant makes the choice of a test kit from a list of acceptable methods. The cost to each milk plant will vary depending upon the number of raw milk shipments which they receive and the level of sophistication of the test kit which they choose to purchase. The more technical the kit, the greater the degree of expertise which is needed to perform the analysis and consequently the higher the operating costs.

As an alternative to direct purchase of a test kit, small businesses can opt to purchase their raw milk supply from larger milk processing plants which have already conducted the required test for the presence of drugs and are willing to provide a record of the test to the receiving plant.

The public health importance of screening all raw milk supplies for the presence of drug residues far outweighs any economic impact on the small milk processing plants. Individuals who are allergic to drugs must be afforded protection from consuming such drugs in their milk.

The proposed reduction of the somatic cell count standard from one million to 750,000 could have an adverse impact on small-scale producers (farmers) who do not currently exercise good herd management techniques. Producers who consistently fail to meet the new standard would no longer be eligible to ship their milk to a fluid milk processing plant. Instead, they would need to find a market for their milk at either a cheese or frozen desserts processing facility. Generally, such operations pay less for manufacturing milk than do fluid milk plants since the milk is of lower quality.

The importance of maintaining a high quality supply of milk for drinking purposes outweighs the possible loss of revenue to producers who choose not to maintain the health of their dairy herd and/or exercise good milking practices on their farms.

The regulatory change concerning the shelf-life dating of milk and milk products could be advantageous to the small milk processing plant. Since the milk plants are no longer locked into a set number of days for fluid milk, the shelf-life dating of milk can become a marketing tool for all of the milk industry. Firms who are willing to spend more money for equipment to obtain a longer shelf-life may do so and use this to promote their products. Other plants have approached the issue by reducing or maintaining the shelf-life expiration date on their milk and are promoting the "freshness" of their goods. These industry practices are consistent with the purpose and intent of the 1992 statute revision which allows latitude in establishing shelf-life expiration dates under specified conditions.

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

#### 8:21-10.1 Definitions and product standards

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. The following standards of identity conform to the Code of Federal Regulations for milk and cream (21 CFR 131).

"Acidified Sour Cream":

1. (No change.)

2. Optional ingredients.

i.-v. (No change.)

[vi.](1) Fruit and fruit juice, including concentrated fruit and fruit juice.

[vii.](2) Safe and suitable natural and artificial food flavoring.

3.-5. (No change.)

...  
 "Certified industry inspector" means an individual certified by the Department to conduct dairy farm inspections of producers shipping to New Jersey permit holders. Such certification shall be in accordance with the procedures established by the Department pursuant to the provisions of the Grade A Pasteurized Milk Ordinance ([1978] 1989) (PHS-FDA Publication 229).

...  
 "Concentrated milk and/or fluid milk products" means and includes the fluid milk products resulting from the removal of a considerable portion of the water from the milk and/or fluid milk products[,] which, when combined with potable water in accordance with instructions printed on the container, conform with the definitions of the corresponding product as defined.

...  
 "Cultured milk":

1.-3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract[.]; dried malt extract; malt sirup[.]; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-ix. (No change.)

5.-7. (No change.)

...

"Drug" means:

1. Articles recognized in the official United States Pharmacopeia, official Hemeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

2. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

3. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

4. Articles intended for use as a component of any articles specified in 1, 2 or 3 above, but does not include devices or their components, parts or accessories.

"Eggnog" means:

1.-3. (No change.)

4. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

5.-8. (No change.)

...

"Half-and-Half":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients [specified in paragraph (b) of this section] shall be declared on the label as required by the applicable sections of 21 CFR 101.

...

"Heavy cream":

1-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients [specified in 2. above.] shall be declared on the label as required by the applicable sections of 21 CFR 101.

...

"Item" as listed in N.J.A.C. 8:21-10.6(d) and (e) means the Grade "A" Pasteurized Milk Ordinance ([1983] 1989 Revision) (PHS/FDA Publication No. 229). The letter "r" refers to raw milk; the letter "p" refers to pasteurized milk.

...

"Light cream":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients [specified in 2. above] shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Light Whipping Cream":

1.-4. (No change.)

5. Label declaration. When used in the food, each of the ingredients [specified in 2. above] shall be declared on the label as required by the applicable sections of 21 CFR 101.

"Lowfat Milk":

1.-2. (No change.)

3. Optional ingredients. The following safe and suitable ingredients may be used:

i.-iii. (No change.)

iv. Characterizing flavoring ingredients (with or without coloring, nutritive sweetener, emulsifiers, and stabilizers) as follows:

(1)-(2) (No change.)

4.-6. (No change.)

"Lowfat yogurt" means:

1. (No change.)

2. Vitamin addition (optional).

i. (No change.)

ii. If added, vitamin D shall be present in such quantity that each 946 milliliters (quart) of the food contains 400 International Units (10 µg) thereof, within limits of good manufacturing practice.

3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)

5.-7. (No change.)

...

"Nonfat yogurt" means:

1.-3. (No change.)

4. Other optional ingredients:

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)

5.-7. (No change.)

...

"Skim milk":

1.-2. (No change.)

3. Optional ingredients. The following safe and suitable optional ingredients may be used:

i. (No change.)

ii. Concentrated skim milk, nonfat dry milk, or other milk derived ingredients to increase the nonfat solids content of the food; Provided, that the ratio of protein to total nonfat solids of the food, and the protein efficiency ratio of all protein present, shall not be decreased as a result of adding such ingredients.

iii.-iv. (No change.)

4.-6. (No change.)

...

"Whipped cream" means the product defined in 21 CFR 131.150 or 131.157 into which air or gas has been incorporated. If nitrous oxide is used as the propellant in whipped cream, a permit is required from the State Department of Health[, Drug Control Program] pursuant to N.J.S.A. 24:6B.

...

"Yogurt" means:

1.-3. (No change.)

4. Other optional ingredients.

i. (No change.)

ii. Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup; dried maltose sirup; malt extract; dried malt extract; malt sirup; dried malt sirup; honey; maple sugar; or any of the sweeteners listed in 21 CFR 168, except table sirup.

iii.-v. (No change.)

5.-7. (No change.)

#### 8:21-10.2 Labeling

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

(c) Tanks transporting raw milk and fluid milk products to a milk plant [from sources of supply not under the routine supervision of the health authority] are required to be marked with the name and address of the milk plant or hauler and shall be sealed. For each such shipment, a shipping statement shall be prepared containing at least the following information:

1.-11. (No change.)

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

#### 8:21-10.4 Examination of milk and fluid milk products

(a) (No change.)

(b) During any consecutive six months, at least four samples of raw milk for pasteurization shall be collected in at least four separate months from each producer and at least four samples of raw milk for pasteurization, ultra-pasteurization or aseptic processing, shall be collected in at least four separate months by the regulatory agency, from each milk plant after receipt of the milk by the milk plant and prior to pasteurization, ultra-pasteurization or aseptic processing. During any consecutive six months, at least four samples of heat-treated milk products, from plants offering such products for sale, shall be collected in at least four separate months. During any consecutive six months, at least four samples of pasteurized milk, flavored milk, flavored lowfat milk, flavored skim milk, each fat level of lowfat milk and at least four samples of defined fluid milk product except aseptically processed, shall be collected in at least four separate months from every milk plant. Samples of milk and fluid milk products shall be taken while in the possession of the producer or distributor at any time prior to delivery to the store or consumer. Samples of milk and fluid milk products from dairy retail stores, food service establishments, grocery stores, and other places where milk and fluid milk products are sold shall be examined periodically as determined by the health authority; and the results of such examination shall be used to determine compliance with standards, labeling and cooling requirements. Proprietors of such establishments shall furnish the health authority, upon request, with the names of all distributors from whom milk or fluid milk products are obtained.

(c) Required bacterial counts, somatic cell counts, and cooling temperature checks shall be performed on raw milk for pasteurization. In addition, [antibiotic] drug tests on each producer's milk [or on commingled raw milk] shall be conducted at least four times during any consecutive six months. [When commingled milk is tested, all producers shall be represented in the sample. All individual sources of milk shall be tested when test results on the commingled milk are positive.] Required bacterial counts, [antibiotic] drug tests, coliform determinations, phosphatase, and cooling temperature checks shall be performed on pasteurized milk and fluid milk products.

(d) Whenever two of the last four consecutive bacteria counts (except those for aseptically processed milk and milk products), somatic cell counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk and/or milk products, the health authority or a representative so designated shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. [Any] An additional sample shall be taken within 21 days of the sending of

such notice, but not before the lapse of three days. Immediate suspension of permit and/or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, cooling temperatures, or somatic cell counts. The Department shall offer to the person concerned a hearing pursuant to N.J.S.A. 24:10-57.8. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) (No change.)

(f) Whenever [an antibiotic or] a pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for [antibiotic or] pesticide residues and no milk shall be offered for sale until it is shown by a subsequent sample to be free of [antibiotic or] pesticide residues or below the actionable levels established for such residues.

(g) Whenever a [test indicates that milk from a producer is unsafe due to an antibiotic, the permit holder or Department shall immediately notify and suspend the producer for two days] **drug residue test is positive, an investigation shall be made to determine the cause and the cause shall be corrected in accordance with Appendix N of the Grade "A" Pasteurized Milk Ordinance (1989 Revision) (PHS/FDA Publication No. 229) which is incorporated herein by reference.** The Department shall offer to the producer concerned a hearing pursuant to N.J.S.A. 24:10-57.8. [A test shall be made of the subsequent milking after suspension, and it must be free of antibiotic before offering that milk for sale.] The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

#### 8:21-10.6 Standards for milk and fluid milk products

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

(c) The chemical, bacteriological, and temperature standards for milk and fluid milk products are as follows:

1. Raw milk for pasteurization, ultra-pasteurization or aseptic processing.

i.-iii. (No change.)

iv. [Antibiotics—] **Drugs:**

(1) No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method[.] or

(2) **No positive results on drug residue detection methods as referenced in Appendix N of the Grade "A" Pasteurized Milk Ordinance (1989 Revision) (PHS/FDA Publication No. 229) which is incorporated herein by reference.**

v. Somatic Cell Count—Individual producer milk not to exceed [1,000,000] **750,000 per ml. for cow's milk or 1,000,000 per ml. for goat's milk.**

2. Pasteurized milk and fluid milk products.

i.-iii. (No change.)

iv. Phosphatase (not applicable to bulk shipped, heat-treated milk products)—Less than 1 ug phenol per ml. by Scharer Rapid Method or **less than 500 milliunits per L. by the Fluorometric Procedure** (or equivalent by other means).

v. [Antibiotics] **Drugs**—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method or **no positive results on drug residue detection methods acceptable to the Food and Drug Administration and the Department.**

3. Aseptically processed milk and fluid milk products.

i.-ii. (No change.)

iii. [Antibiotics] **Drugs**—No zone equal to or greater than 16 mm with *Bacillus Stearothermophilus* disc assay method or **no positive results on drug residue detection methods acceptable to the Food and Drug Administration and the Department.**

4. Pasteurized mixes for frozen desserts.

i.-iii. (No change.)

iv. Phosphatase—Less than 1 ug phenol per ml. by Scharer Rapid Method or **less than 500 milliunits per L. by the Fluorometric Procedure** (or equivalent by other means).

(d) Sanitation requirements for raw milk for pasteurization, ultra-pasteurization or aseptic processing are as follows:

1. Item 1r.—Abnormal Milk: Cows which show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment, and the milk shall be discarded. Cows treated with, or cows which have consumed chemical, medicinal or radioactive agents which are capable of being secreted in the milk and which, in the judgement of the health authority, may be deleterious to human health, shall be milked last or with separate equipment, and the milk disposed of as the health authority may direct.

i. (No change.)

ii. Whenever a herd milk sample exceeds any of the following screening test results, a confirmatory count, using a Direct Microscopic, Electronic, Membrane Filter DNA or Optical Somatic Cell counting technique, shall be made on that sample and the results of this count shall be the official result[.]. **Pyronine Y-methyl green stain shall be used in the confirmatory test for direct microscopic somatic cell counts in goat's milk.**

(1) California mastitis test-1 **applicable to goat's milk only;**

[(2) Modified Whiteside test 1+;]

[(3)](2) Wisconsin mastitis test—18 mm. **applicable to goat's milk only.**

iii. Whenever the confirmatory count indicates the presence of greater than **750,000 somatic cells per ml. on cow's milk or 1,000,000 somatic cells per ml. on goat's milk**, the following procedure shall be followed:

(1) (No change.)

(2) Whenever two of the last four consecutive somatic cell counts exceed **750,000 cells per ml. on cow's milk or 1,000,000 cells per ml. on goat's milk**, written notice thereof shall be sent to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed **750,000 cells per ml. on cow's milk or 1,000,000 somatic cells per ml. on goat's milk**. In addition to the written notice, an inspection should be made by certified personnel. This inspection should be made at milking time to be the most effective.

(3) An additional milk sample shall be taken within 21 days of the written notice and inspection required above, but not before the lapse of three days. If three of the last five samples within any consecutive six months indicate a confirmatory count greater than **750,000 cells per ml. on cow's milk or 1,000,000 somatic cells per ml. on goat's milk**, the receipt of milk from the producer shall be discontinued for a period of at least two days or until such time as additional samples show correction of the condition.

2. Item 2r.—Milking Barn, Stable, or Parlor Construction: A milking barn, stable or parlor shall be provided on all dairy farms in which the cows being milked shall be housed during milking operations. The areas used for milking purposes shall:

i. Have floors constructed of concrete or equally impervious material; provided, convalescent (maternity) pens located in milking areas of stanchion-type barns may be used when they comply with the guidelines specified in Appendix B.V. of the Grade A Pasteurized Milk Ordinance ([1978] 1989) (United States Public Health Service—FDA Publication 229);

ii.-vii. (No change.)

3.-11. (No change.)

12. Item 12r.—Utensils and Equipment Storage: All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and shall be protected from contamination prior to use; provided, that milk pipelines and pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers and milk pumps and tubular coolers, **plate coolers and milk pumps which are designed for mechanical cleaning and other equipment, as accepted by the U.S. Food and Drug Administration, which meets these criteria** may be stored in the milking barn or parlor provided this equipment is designed, installed and operated to protect the product and solution contact surfaces from contamination at all times.

13.-21. (No change.)

(e) (No change.)

8:21-10.12 Dating of milk and fluid milk products

[(a) All packages or containers of:

1. White whole milk, Vitamin D milk, homogenized milk, lowfat milk, protein fortified lowfat milk, skim milk, protein fortified skim milk, nonfat milk and protein fortified nonfat milk shall be legibly marked with a "shelf-life expiration date", which shall be no later than ten days following the date of pasteurization; except, when the above products are ultra-pasteurized the dating shall comply with (a)2 below.]

[2.](a) Fluid milk products as defined in N.J.S.A. 24:10-57.1 [other than those enumerated in (a)1 above] and all types and varieties of cottage and soft cheeses designated by the Department, intended for direct sale to consumers, shall be legibly marked with a "shelf-life expiration date." This date shall be determined and applied on the final consumer package or container by the initial processor or manufacturer. Prior to determining this date, each processor or manufacturer shall notify the Department of the intended date selected by him for each fluid milk product. All data and material used by the processor or manufacturer in his determination of this date shall be made available to the Commissioner upon request. If the data and material submitted does not, in the opinion of the Commissioner, justify the "shelf-life expiration date," the Commissioner shall prohibit the sale of the product until such time as satisfactory data is supplied or until a new "shelf-life expiration date" consistent with the data is applied to the product.

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

(a)

**DRUG UTILIZATION REVIEW COUNCIL  
List of Interchangeable Drug Products  
Reproposed Readoption: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council,  
Henry T. Kozek, Secretary.  
Authority: N.J.S.A. 24:6E-1(a).  
Proposal Number: PRN 1993-545.

Submit written comments by October 20, 1993 to:  
Mark A. Strollo, R.Ph., M.S.  
Drug Utilization Review Council, Room 501  
New Jersey Department of Health  
CN 360  
Trenton, New Jersey 08625-0360  
609-292-4029

The agency proposal follows:

**Summary**

The proposed readoption of N.J.A.C. 8:71 published at 25 N.J.R. 2802(a) inadvertently did not include a deadline and address for the submission of public comments. Due to this deficiency in the Register notice, the Drug Utilization Review Council herein reproposes the readoption of its rules at N.J.A.C. 8:71.

In 1977, N.J.S.A. 24:6E-6 et seq. directed the establishment of the Drug Utilization Review Council (Council), whose duty it was to prepare a list of generic drug products which could be safely substituted for brand name prescription products, thus saving money for consumers.

N.J.S.A. 24:6E-1(a) authorized the Council to prepare a list of interchangeable drug products. The list was to contain the names of drug manufacturers whose products were judged by the Council to be therapeutically equivalent to brand name prescription drugs.

The intent of the legislation was to dictate circumstances under which one of the therapeutically equivalent generic products would be substituted for the brand name drug which a prescriber had ordered, thus saving money for the consumers. N.J.A.C. 8:71 lists all of the branded medications which are also substituted for, under specified conditions, and also lists all of the acceptable generic manufacturers. Without the list, implementation of N.J.S.A. 24:6E-1 et seq. would be impossible.

The List of Interchangeable Drug Products has been effective in saving money for consumers as outlined under the Economic Impact statement below.

The Drug Utilization Review Council (the Council), in the Department of Health, proposes to readopt N.J.A.C. 8:71 without change. The Council has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Public comment is invited so that the Council can make a fully informed decision as to whether these rules should be readopted before their expiration date, pursuant to Executive Order No.66(1978) on February 17, 1994.

#### Social Impact

The Council believes that this readoption will continue the positive social impact that these rules have had in the past; the elderly, those persons with limited incomes, and any interested citizen will continue to be assured of reasonably priced generic substitutes for brand name drugs.

Health Department studies have shown that, although over 40 percent of prescribers disallow generic substitution, fewer than five percent of consumers disallow such substitution, thus demonstrating consumer acceptance.

An increased impact of generic substitution is expected in the future based on three factors; an increased number of elderly, who use a disproportionate number of medicines, in the population; more brand name drugs coming out from under patent protection; and an increased emphasis on reducing the cost of health care without affecting quality.

In the last five years, generic substitution has increased, from approximately five million New Jersey prescriptions substituted in 1984, to an estimated 10 million in 1992. If the List of Interchangeable Drug Products were not readopted, generic substitution would falter, resulting in lessened access to generic medicines for all New Jersey consumers.

#### Economic Impact

The Council believes that readoption of the List of Interchangeable Drug Products will serve to continue to exert a positive economic impact, not only on these groups mentioned under the Social Impact Statement above, but on several State programs that pay for medications, such as the PAAD Program, the Medicaid Program, and the prescription insurance program available to State employees.

A 1992 Drug Utilization Review Council survey of 10,000 prescriptions from 100 randomly-selected pharmacies has estimated that the Statewide total of all savings due to the use of generic substitutes approximates at least \$100 million annually, based on a savings averaging \$10.00 each for an estimated 10 million substituted prescriptions.

#### Regulatory Flexibility Analysis

The readopted List of Interchangeable Drug Products will continue to impact several dozen generic drug manufacturers which employ fewer than 100 employees. However, their limited record-keeping requirements or other paperwork to be completed under these rules are more than offset by expanded sales made possible thereunder. Therefore, the Department will not exempt any business from compliance with these rules.

Full text of the repropoed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:71.

## HUMAN SERVICES

### (a)

#### DIVISION OF DEVELOPMENTAL DISABILITIES Manual of Standards for Licensed Community Residences for the Developmentally Disabled

#### Proposed Readoption: N.J.A.C. 10:44A

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq.

Proposal Number: PRN 1993-541.

Submit comments by October 20, 1993 to:

James M. Enochko  
Administrative Practice Officer  
Division of Developmental Disabilities  
CN 726  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The rules proposed for readoption constitute the general physical and program requirements for community residences, also known as group homes or supervised apartments, which are licensed by the Division to serve the developmentally disabled. The purpose of the rules is to protect the health, welfare and human rights of the approximately 2,400 individuals who reside in these facilities, and to allow such individuals to develop their fullest potential while residing in an environment which is as normal as possible. The rules provide for the individualized delivery of services to the residents, to assist them in maximizing their potential.

Rules governing group homes and supervised apartments were initially adopted by the Division in 1978. The rules were readopted in 1983 and 1988, with amendments. In accordance with the provisions of Executive Order No. 66(1978), a review of the chapter was undertaken by the Division, and major revisions were developed. Some of the significant changes included a simplification of the inspection process and the addition of opportunities for consumer input into the inspection process.

The task force which performed the review, composed of several provider agencies and staff from the Division's Office of Licensing and Inspections, has not yet completed the draft of the new rules, nor have provider agencies or consumers had opportunity for input. The Division has distributed the first three subchapters of the new rules to the agencies for informal comment, and will continue to work with the regulated public in the development of the new rules. However, this task will not be accomplished in time to avert the expiration of the current rules. For that reason, the Division is proposing the readoption, without change, of the current rules in order to avoid any gap in the ability of the Division to enforce the current requirements. The Division expects to propose the new rules within the next year.

The rules proposed for readoption are summarized as follows:

Subchapter 1 includes a description of the purpose and scope of the chapter, definitions of words and terms used in the rules, a delineation of the procedures for application for a license, for inspection and renewal, as well as the sanctions which may be imposed for noncompliance.

Subchapter 2 addresses general organization and administration requirements; staff qualifications and personnel standards, including the training required and the staffing minimums; policy and procedure manuals; and records and reporting requirements for incidents, general programming and financial matters. The subchapter also includes a delineation of the grievance process which may be utilized by any individual residing in a facility, and a requirement for the participation of all residents in house meetings.

Subchapter 3 includes standards for access by and for the individual residents to advocacy services of their own choosing, and a specification of the rights guaranteed such residents.

Subchapter 4 addresses habilitation, including admission to services, transfers between services and discharges from service, as well as Individual Habilitation Plan and day program requirements for the residents.

Subchapter 5, Health Services, includes the general medical and health standards, requirements regarding the storage and administration of prescribed medication and over the counter preparations, and the health services requirements for the discharge of a resident.

Subchapter 6, Physical Environment, contains the standards related to the occupancy of the building used as a community residence for the developmentally disabled, including safety and maintenance requirements.

Subchapter 7, Social Living Environment, includes the standards for food, clothing, transportation, the use of rooms by the residents, and special requirements for those community residences which serve non-ambulatory individuals.

Subchapter 8, Supervised Apartments, contains requirements specific to supervised apartments, including supervision to be provided, physical plant and safety, accommodations, and maintenance and sanitation.

The requirements of the rules proposed for readoption are supplemented by any additional contractual requirements specified between the provider and the Division.

#### Social Impact

There are approximately 18,000 individuals currently receiving services of some kind from the Department's Division of Developmental Disabilities.

The rules proposed for readoption have an impact on the approximately 2,400 developmentally disabled individuals (primarily adults) who live in the community residential facilities currently licensed by the Department. The term "developmental disability" can include such conditions

as mental retardation, autism, cerebral palsy, epilepsy, neurological impairment, traumatic brain injury and spina bifida. There are 81 agencies which operate approximately 300 community residential facilities in New Jersey. Without rules governing such facilities, each individual, or advocate of that individual, would be placed in the position of having to evaluate the service independently. Uniform standards provide a fair and equitable basis upon which the Department, and the public, may rely when evaluating the merits of community residences seeking licensure to serve the developmentally disabled. The rules, as delineated in the Summary, provide assurance to the public of a level of service appropriate to the individuals being served, while preserving their health, safety and welfare in the least restrictive environment possible.

The Department anticipates that there will be general support for the continuation of these rules. The proposal seeks to extend the requirements which have been in effect for the past five years, and to assure that the protection offered by the rules will continue until they are replaced with the new rules currently under development.

#### Economic Impact

The rules proposed for readoption impose no economic burden on the individuals who live in the community residences, or on their families. The rules do impose an economic burden on the providers of such services; however, compliance with the rules does not require specific fees or costs for application for licensure. Almost all of the requirements of the rules impose some cost on the regulated public. Costs of construction and maintenance of the facility, as well as provision of staff and services, are based upon such factors as salaries for employees, costs of materials, costs of required insurance, and general administrative costs. The providers are not responsible for the daytime programming of the residents, who are provided with appropriate services out of their homes. When the current rules were adopted, in 1988, the appropriation for these facilities totalled \$70 million. In Fiscal Year 1994, the appropriation totals approximately \$126 million. The average annual cost of maintaining an individual in the regulated facilities is \$40,000. This figure is higher in some facilities which serve individuals requiring more assistance, and less in those facilities serving the more independent individual.

The rules, since they are not being amended at this time, will provide no change in economic impact.

#### Regulatory Flexibility Analysis

The rules have an impact on approximately 81 agencies, of which approximately 80 percent may be considered small businesses as the term is described in the Regulatory Flexibility Act; that is, they have less than 100 employees. The reporting, recordkeeping and other requirements, which are delineated more specifically in the Summary and the Economic Impact statements, cannot provide any differentiation which is based upon business size, since the overriding concern must be for the health, safety and welfare of the individuals living in the community residences. The performance and design standards embodied in the rules can be met by varying levels of provider expenditures, and waivers can be sought in accordance with the provisions of N.J.A.C. 10:44A-1.11. No professional services are required by the rules, although any provider may utilize them, if they so choose. While staff are required to be trained, and any salary expense would be the responsibility of the facility, the actual training is provided free of charge by the Division.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:44A.

### (a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Independent Clinic Services

#### Proposed Repeal and New Rules: 10:66

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-7, 7a, b, and c; 30:4D-12; 42 CFR 405.2401(b); 42 CFR 440.40(b); 42 CFR 440.90; 42 CFR 441 Subpart B; 42 CFR 441.20; 42 CFR 491 and 493; 1902(a)(9) of the Social Security Act, 42 U.S.C. 1396a; 1902(a)(13)(E) of the Social Security Act, 42 U.S.C. 1396a; 1902(a)(55) of the Social Security Act, 42 U.S.C. 1396a;

1905(a)(2)(C) of the Social Security Act, 42 U.S.C. 1396d; 1905(a)(4)(C) of the Social Security Act, 42 U.S.C. 1396d; N.J.A.C. 13:35; N.J.A.C. 13:39A  
Proposal Number: PRN 1993-519.

Submit comments by October 20, 1993 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
Mail Code #26  
CN 712  
Trenton, New Jersey 08625-0712

A copy of the proposed changes are available for review at the county welfare agencies/boards of social services or at the Medicaid District Offices.

The agency proposal follows:

#### Summary

N.J.A.C. 10:66 became effective on December 15, 1988, for a period of five years which expires on December 15, 1993. For the sake of clarity, the Department of Human Services, Division of Medical Assistance and Health Services (the Division) proposes that N.J.A.C. 10:66 be repealed and new rules adopted in order to incorporate policy changes and numerous revisions in language, format and organization of the material.

The Division has conducted an administrative review and found that independent clinic services need to be continued as part of the New Jersey Medicaid (Title XIX) program because they provide necessary medical care and services in an ambulatory care setting. However, the existing rules are not being continued because there have been multiple program changes since the last readoption.

N.J.A.C. 10:66, the New Jersey Medicaid program's Independent Clinic Services chapter, sets forth the Program's rules (policies and procedures) pertaining to the provision of, and reimbursement for, Medicaid-covered services in an independent clinic setting.

N.J.A.C. 10:66-1 contains the chapter's scope, definitions, provisions for provider participation, prior authorization, basis for reimbursement and recordkeeping requirements.

N.J.A.C. 10:66-2 contains policies and procedures pertaining to specific Medicaid-covered services provided in an independent clinic setting. The current text of N.J.A.C. 10:66-2, entitled "Billing Procedures," is being repealed.

N.J.A.C. 10:66-3 contains information about HealthStart, a program for pregnant women and children. The current notation regarding HCPCS (Health Care Financing Administration's Common Procedure Coding System) that appears at N.J.A.C. 10:66-3 is deleted because HCPCS appears, in these proposed new rules, at N.J.A.C. 10:66-6.

N.J.A.C. 10:66-4 contains information about Federally qualified health centers, including, in N.J.A.C. 10:66-4.1, the rules governing the provision of services. N.J.A.C. 10:66-4 Appendix contains the Medicaid cost report used by Federally qualified health centers to determine Medicaid reimbursement amounts and instructions for the proper completion of the forms contained in the cost report.

N.J.A.C. 10:66-5 contains information about ambulatory surgical centers (ASCs), including covered services, anesthesia, medical justification, facility services, and medical records.

N.J.A.C. 10:66-6 pertains to the Health Care Financing Administration's Common Procedure Coding System (HCPCS), currently identified as N.J.A.C. 10:66-3. The HCPCS procedure code system contains procedure codes, maximum fee allowances, and qualifiers, corresponding to Medicaid-reimbursable services.

N.J.A.C. 10:66—Appendix pertains to the Fiscal Agent Billing Supplement. The Fiscal Agent Billing Supplement contains billing instructions and samples of forms (claim forms, prior authorization forms, and consent forms) used in the billing process.

The following summary highlights the substantive provisions of the respective subchapters, with an emphasis on revisions:

#### N.J.A.C. 10:66-1.1 Scope of service

An overview of the structure of the Independent Clinic Services chapter (formerly "manual") is provided. The basic concept of the chapter remains the same. The Division's intent is to provide medically necessary Medicaid-covered services in an independent clinic setting.

This proposed new rule indicates that clinic services, in conformity with Federal Medicaid law (42 CFR 440.90), include such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

The scope of service also provides an outline of the chapter's six subchapters.

#### **N.J.A.C. 10:66-1.2 Definitions**

This section is updated and revised to include new definitions such as "ambulatory care/family planning/surgical facility" and "Federally qualified health center". Ambulatory care/family planning/surgical facilities and Federally qualified health centers are explained in more detail in their respective subchapters.

Definitions that are no longer applicable or that appear in other locations in the New Jersey Administrative Code are not included in N.J.A.C. 10:66-1.2. For example, the definition of a medical day care center is no longer applicable to the Independent Clinic Services chapter because it appears at N.J.A.C. 10:65-1.2 in the Medical Day Care Services rules.

The definitions of "ambulatory surgical center facility services" and "Covered ambulatory surgical center procedures" are deleted from N.J.A.C. 10:66-1.2 because their substance and meaning are addressed in the proposed new rules at N.J.A.C. 10:66-5.

The definition of "bundled drug service" is deleted from N.J.A.C. 10:66-1.2 because this service is described at N.J.A.C. 10:51-1.22.

The definitions of "occupational therapist," "physical therapist" and "speech-language pathologist or audiologist" are likewise deleted from N.J.A.C. 10:66-1.2 because their substance and meaning are incorporated into the proposed new rules at N.J.A.C. 10:66-2.6(d), (c) and (e), respectively.

#### **N.J.A.C. 10:66-1.3 Provisions for provider participation**

The purpose of this section is to outline the requirements of the New Jersey Medicaid program for the enrollment of independent clinics.

N.J.A.C. 10:66-1.3(a)1 indicates that a clinic's medical staff shall enroll in the Program, as indicated at N.J.A.C. 10:49-3.4, in order to obtain an individual Medicaid Provider Services Number to be used when the clinic submits a claim to the Division's fiscal agent. This is a new requirement with this rule.

N.J.A.C. 10:66-1.3(b)1 indicates that a facility shall provide only those services for which it is licensed or authorized to provide by the New Jersey State Department of Health. For example, an ambulatory surgical center shall be licensed, if required, by the New Jersey State Department of Health as an ambulatory surgical center.

N.J.A.C. 10:66-1.3(b)2 indicates that a photocopy of the license shall be included with a provider's application package and upon the license's annual renewal. This is a new requirement.

N.J.A.C. 10:66-1.3(c)1 revises Medicaid policy to allow the enrollment of an ambulatory surgical center (ASC) even if it is not licensed by the New Jersey State Department of Health. Previously, the New Jersey Medicaid program required participation in the Medicare program and licensure by the New Jersey State Department of Health as an ASC in order to enroll in the Medicaid program. However, there are instances when the ASC may be participating in the Medicare program as an ASC, but due to the limited number of operating suites (size) of the facility, the New Jersey State Department of Health does not require licensure in order for the facility to provide services in New Jersey. This proposed revision therefore provides consistency with Medicaid and the New Jersey State Department of Health policy in this area.

Proposed N.J.A.C. 10:66-1.3(f) through (j) outline the supervision requirements by those individuals directly affiliated with an independent clinic for the care of a clinic's Medicaid recipients, pursuant to 42 CFR 440.90, and policy guidance provided by the Health Care Financing Administration.

Text is deleted from the current N.J.A.C. 10:66-1.3(b)4, (c) and (d) because it unnecessarily duplicates requirements located in the Administration chapter at N.J.A.C. 10:49-3.2(a) through (d), "Enrollment process."

Information is included that informs out-of-State clinics that enrollment requirements are located in the Administration chapter at N.J.A.C. 10:49-3.2(c), "Enrollment process." The existing text of N.J.A.C. 10:66-1.4 regarding out-of-State clinics is revised.

#### **N.J.A.C. 10:66-1.4 Prior authorization**

Requirements for prior authorization in this proposed new rule are revised, expanded, and moved from their current location at N.J.A.C. 10:66-1.5.

This section outlines the New Jersey Medicaid program's prior authorization requirements for dental, mental health, rehabilitative, and vision care services. Text in this proposed new section also informs providers of the procedures for obtaining prior authorization. Text in

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this section does not pertain to prior authorization requirements of the Garden State Health Plan/Managed Care program.

Text concerning the authorization of personal care assistant (PCA) services is deleted from N.J.A.C. 10:66-1.5(c)6, consistent with a proposal that appeared in the New Jersey Register at 25 N.J.R. 3058(a) on July 19, 1993.

At N.J.A.C. 10:66-1.4(c), for mental health services, the prior authorization threshold is revised from \$800.00 to \$6,000 in any 12-month period. This revision increases the dollar amount (threshold) for prior authorization and the duration of time that may elapse before a provider of mental health services must obtain prior authorization.

Text in this proposed new rule increases the maximum period of authorization for partial care services from six months, as currently required at N.J.A.C. 10:66-1.5(c)3, to "up to 12 months for all mental health services."

Text concerning prior authorization is expanded in this proposed new rule. The rule clarifies procedures for requesting prior authorization or to request changes in approved prior authorization requests. This change is intended to reduce provider paperwork by providing them with more complete information regarding what information should be included in a prior authorization request and when a provider needs to request a change in an approved prior authorization request.

N.J.A.C. 10:66-1.5(d) provides clarification of prior authorization requirements for rehabilitative services. This revision is intended to reduce provider paperwork by providing them with guidance on the information that should be included with a prior authorization request.

Providers of mental health and rehabilitation services are referred to their Fiscal Agent Billing Supplements for instructions concerning the completion of their respective prior authorization forms. Providers of dental services and vision care services are referred to their respective provider chapters for specific prior authorization information.

#### **N.J.A.C. 10:66-1.5 Basis for reimbursement**

The basis for reimbursement in this proposed new rule includes text that is currently located at N.J.A.C. 10:66-1.7. This section is designed to provide both an overview of clinic reimbursement in general, with more specific information provided at N.J.A.C. 10:66-6, and the specific basis for reimbursement of services provided in an ambulatory surgical center, a Federally qualified health center, and an ambulatory care/family planning/surgical facility.

Text that currently appears at N.J.A.C. 10:66-1.7(b) concerning "Specialist-Non Specialist" is revised in this proposed new rule, and reference is made to the Fiscal Agent Billing Supplement, N.J.A.C. 10:66—Appendix.

N.J.A.C. 10:66-1.5(e), Federally qualified health center (FQHC); introduces the New Jersey Medicaid program's requirements for the reimbursement of services provided by an FQHC. Text in this proposed new rule includes interim encounter rates, cost reports, outstationing of county welfare agency employees, actual encounter rates, appeals, and reconciliations, as well as changes in billing scheduled to be implemented January 1, 1994.

N.J.A.C. 10:66-1.5(f), Ambulatory care/family planning/surgical facility, includes the change in reimbursement methodology proposed in the New Jersey Register at 25 N.J.R. 2683(a) on June 21, 1993, which implements the New Jersey Medicaid program's requirements for the reimbursement of services provided by an ambulatory care/family planning/surgical facility. The facility reimbursement rate equals 70 percent of the applicable ambulatory surgical center rate for the procedures, in accordance with the proposed N.J.A.C. 10:66-1.5(d), formerly N.J.A.C. 10:66-1.7(c)2iii.

#### **N.J.A.C. 10:66-1.6 Recordkeeping**

This proposed new rule is similar to the rule that currently appears at N.J.A.C. 10:66-1.9. In this proposed new rule the specific requirements concerning medical records in an ambulatory surgical center (ASC) are recodified without change at N.J.A.C. 10:66-5.

#### **N.J.A.C. 10:66-2.1 Introduction**

This subchapter describes the New Jersey Medicaid program's policies and procedures for the provision of Medicaid-covered services in an independent clinic setting. This proposed new rule revises text, as indicated below, that currently appears at N.J.A.C. 10:66-1.6, Scope of service.

#### **N.J.A.C. 10:66-2.2 Early and periodic screening, diagnosis, and treatment (EPSDT)**

Text in this section reflects current Medicaid program policy which is being codified at this time. The components of an EPSDT screening

are outlined and a screening schedule, based upon the age of the child, is provided.

In accordance with 42 CFR 441 Subpart B, EPSDT includes: screening services; vision services; dental services; hearing services; other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects; and physical and mental illnesses and conditions discovered by the screening services.

#### **N.J.A.C. 10:66-2.3 Family planning**

This proposed new rule includes information about family planning, a Federally mandated service pursuant to 42 CFR 441.20, including the Norplant System (NPS) and sterilization.

Text at N.J.A.C. 10:66-2.3(b) concerning the Norplant System does not currently appear in the New Jersey Administrative Code. This new text sets forth the New Jersey Medicaid program's policy and limitations related to the Norplant System.

Limitations regarding reimbursement for a clinic visit relating only to the insertion or removal of the NPS is addressed in this proposed new rule at N.J.A.C. 10:66-2.3(b)4.

In addition, as indicated at N.J.A.C. 10:66-2.3(b)5, only two insertions and two removals of the NPS per recipient will be reimbursed by the New Jersey Medicaid program during a five year continuous period.

Sterilization rules are moved to N.J.A.C. 10:66-2.3(c) from their current location at N.J.A.C. 10:66-1.8(a) with no change in text.

#### **N.J.A.C. 10:66-2.4 Laboratory**

Text in this proposed new rule provides information about the Clinical Laboratory Improvement Amendments of 1988 (CLIA), referenced at 42 CFR 493. This is an important new requirement that is Federally mandated, as follows:

Under N.J.A.C. 10:66-2.4(a), all facilities or entities that perform clinical laboratory testing shall have their CLIA identification number on file with the New Jersey Medicaid program.

Under N.J.A.C. 10:66-2.4(c), laboratory procedures are reimbursable when performed in accordance with the applicable CLIA-mandated certificate of registration, certificate of waiver, or certificate of physician-performed microscopy procedures.

With the exception of the preceding CLIA information, text in this proposed new rule contains no substantive change in the text that currently appears at N.J.A.C. 10:66-1.6(g).

#### **N.J.A.C. 10:66-2.5 Mental health**

This section pertains to mental health services rendered in a clinic setting. Text in this proposed new rule revises text that currently appears at N.J.A.C. 10:66-1.6(i), as follows:

At N.J.A.C. 10:66-2.5(a), the following services are added to the list of mental health services that currently appears at N.J.A.C. 10:66-1.6(i)1: comprehensive intake evaluation; off-site crisis intervention; family therapy; family conference; psychological testing; and medication management. The additional services reflect current Medicaid program policy which is being codified at this time, consistent with N.J.A.C. 10:66-6 (HCPCS).

At N.J.A.C. 10:66-2.5(b), medication management may be reimbursed when provided to a Medicaid recipient in addition to one of the following mental health services: individual psychotherapy, group psychotherapy, family therapy, and family conference. This proposed new rule differs from the current provision, N.J.A.C. 10:66-1.6(i)2, that permits only one type of mental health service per patient on a given day.

At N.J.A.C. 10:66-2.5(e), (f), (g), and (h), new requirements are included, reflecting HCFA policy guidance, in the areas of intake evaluation, evaluation team, plan of care, documentation, and periodic review, respectively.

Information pertaining to partial care program services is deleted from N.J.A.C. 10:66-1.6(i)1iii because it duplicates text that currently appears at N.J.A.C. 10:66-6 (HCPCS).

Information pertaining to retroactive authorization is deleted from N.J.A.C. 10:66-1.6(i)4i because it duplicates text that currently appears in the Administration chapter at N.J.A.C. 10:49-6.1.

#### **N.J.A.C. 10:66-2.6 Rehabilitation**

Text at N.J.A.C. 10:66-2.6(h) clarifies the rule that currently appears at N.J.A.C. 10:66-1.6(n)3. The clarifying text pertains to the reimbursement of rehabilitative services performed on a Medicaid recipient more than once on a given day.

When the same type of rehabilitative service is performed on a Medicaid recipient more than once on the same day, for example, two

physical therapy services, reimbursement shall be made for one service only.

Definitions of "physical therapist," "occupational therapist" and "speech-language pathologist or audiologist" are moved from their current location, N.J.A.C. 10:66-1.2, to N.J.A.C. 10:66-2.6(c), (d), and (e), respectively.

Information pertaining to prior authorization is moved from its current location, N.J.A.C. 10:66-1.6(n)6, to the prior authorization section of this proposed new rule, N.J.A.C. 10:66-1.4(d).

Information pertaining to therapy treatments is moved from its current location at N.J.A.C. 10:66-1.6(n)2 and 3, to N.J.A.C. 10:66-2.6(g) and (h), respectively. Information currently appearing at N.J.A.C. 10:66-1.6(n)5 appears at N.J.A.C. 10:66-1.6(a).

Text is deleted from N.J.A.C. 10:66-1.2 pertaining to obsolete requirements for a physical therapist. The requirements, including State licensure, are located in this proposed new rule at N.J.A.C. 10:66-2.6(c)1 and 2.

Text that currently appears at N.J.A.C. 10:66-1.2 pertaining to the definition of a "speech-language pathologist or audiologist" is revised and moved, in this proposed new rule, to N.J.A.C. 10:66-2.6(e).

#### **N.J.A.C. 10:66-2.7 Transportation**

N.J.A.C. 10:66-2.7(a)3 revises text currently codified at N.J.A.C. 10:66-1.6(p)4. In this proposed new rule, the purpose for the provision of transportation service is identified. The purpose of the provision of transportation service is to enable a Medicaid recipient to obtain a Medicaid-covered service at the clinic. In addition, policy is being revised to allow reimbursement for transportation service when the service is provided either (a) by the clinic, in a clinic owned or leased vehicle; or (b) by a transportation company under contract to the clinic.

#### **N.J.A.C. 10:66-2.8 Miscellaneous**

Proposed N.J.A.C. 10:66-2.8(a) through (k) describes the New Jersey Medicaid program's policies and procedures for the provision of dental, drug treatment, hospital visit, obstetrics, podiatry, pharmaceuticals, radiology, renal dialysis, termination of pregnancy, vision care, personal care assistant, and "other" services, respectively. Some of the text has been extrapolated from N.J.A.C. 10:66-1.6.

##### **N.J.A.C. 10:66-2.8(a) Dental**

This proposed new subsection contains no substantive revisions in the New Jersey Medicaid program's policies and procedures for the provision of dental services. Only non-substantive revisions are included in the text that currently appears at N.J.A.C. 10:66-1.6(c).

##### **N.J.A.C. 10:66-2.8(b) Drug treatment**

N.J.A.C. 10:66-2.8(b)1 contains no substantive revisions in the New Jersey Medicaid program's policies and procedures for the provision of drug treatment center services. Only non-substantive revisions are included in the text that currently appears at N.J.A.C. 10:66-1.6(d).

N.J.A.C. 10:66-2.8(b)2 specifies that only one type of mental health service per recipient is reimbursable to a drug treatment center on a given day, except for medication management as indicated at N.J.A.C. 10:66-2.5(b). This proposed new provision is consistent with text that appears at N.J.A.C. 10:66-2.5(b) concerning mental health services.

N.J.A.C. 10:66-2.8(b)3 indicates that certain services may be provided to individuals in the home, for purposes of the AIDS Community Care Alternative Program only. The reader is directed to N.J.A.C. 10:66-6.2(m) for the applicable services.

##### **N.J.A.C. 10:66-2.8(c) Hospital visit**

Text that currently appears at N.J.A.C. 10:66-1.6(p)2 is revised to indicate that an inpatient hospital visit is reimbursable when performed by a clinic physician for a person who is a registered patient of a Federally qualified health center.

A distinction is made in this proposed new subsection between reimbursement for a salaried physician in a Federally qualified health center and a physician under contract with a Federally qualified health center. For a salaried physician in a Federally qualified health center (FQHC), a hospital (inpatient) visit may be billed by the FQHC as a medical encounter.

##### **N.J.A.C. 10:66-2.8(d) Obstetrics**

Text in this proposed new rule contains no substantive change in the text that currently appears at N.J.A.C. 10:66-1.6(k).

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### N.J.A.C. 10:66-2.8(e) Podiatry

This section currently appears at N.J.A.C. 10:66-1.6(l) and is recodified without significant revision.

### N.J.A.C. 10:66-2.8(f) Pharmaceuticals

Text in this proposed new subsection references the New Jersey Medicaid program's Pharmaceutical Services chapter, N.J.A.C. 10:51, for rules concerning covered pharmaceutical services.

A reference is also provided for bundled drug services, N.J.A.C. 10:51-1.22. As a result, text concerning bundled drug services is deleted from its current location at N.J.A.C. 10:66-1.10.

### N.J.A.C. 10:66-2.8(g) Radiology

The text that currently appears at N.J.A.C. 10:66-1.6(m)1 remains.

The text that currently appears at N.J.A.C. 10:66-1.6(m)2 is moved, without revision, to N.J.A.C. 10:66-1.3(d), because it pertains to provisions for provider participation.

### N.J.A.C. 10:66-2.8(h) Renal dialysis

Text in this proposed new subsection permits reimbursement for renal dialysis service for end-stage renal disease under certain specified conditions. Text concerning reimbursement of renal dialysis service by an independent clinic does not currently appear in the New Jersey Administrative Code.

### N.J.A.C. 10:66-2.8(i) Termination of pregnancy

Text that currently appears at N.J.A.C. 10:66-1.6(p)1ii(1) and (2) is deleted because it duplicates text that is located at N.J.A.C. 13:35-4.2, New Jersey Board of Medical Examiners; it is unnecessary to repeat the text in this proposed new rule.

Additional text is included in this proposed new subsection indicating that termination of pregnancy is a Medicaid-covered service if performed in an ambulatory surgical center and an ambulatory care/family planning/surgical facility licensed and authorized by the New Jersey State Department of Health to perform abortions with specific approval of the New Jersey Medicaid program.

Note: A proposal concerning ambulatory care/family planning/surgical facilities appeared in the New Jersey Register on June 21, 1993, at 25 N.J.R. 2683(a).

### N.J.A.C. 10:66-2.8(j) Vision care

In this proposed new subsection, text concerning the reimbursement of vision care services is relocated, without substantive change, from its current location at N.J.A.C. 10:66-1.6(o). For additional information, providers are referred to the New Jersey Medicaid program's Vision Care Services chapter, N.J.A.C. 10:62.

### N.J.A.C. 10:66-2.8(k) Personal care assistant

In this proposed new subsection, text concerning the reimbursement of personal care assistant services is relocated from its current location at N.J.A.C. 10:66-1.6(p)5, and revised for consistency with a proposal that appeared in the New Jersey Register at 25 N.J.R. 3058(a) on July 19, 1993.

### N.J.A.C. 10:66-2.8(l) Other

In this proposed new subsection, text is clarified which allows continued reimbursement of other services, such as evaluation and management, minor surgery, and other medical procedures.

### N.J.A.C. 10:66-3 HealthStart—Comprehensive Maternity Care Services

Text concerning HealthStart was previously located in the Administration chapter at N.J.A.C. 10:49-3, prior to the re adoption of N.J.A.C. 10:49 as R.1992 d.317, effective August 17, 1992. The current version of the Administration chapter contains only a brief reference to HealthStart at N.J.A.C. 10:49-1.4.

In this proposed new subchapter, text concerning HealthStart is reproduced in its entirety at N.J.A.C. 10:66-3, as it existed at N.J.A.C. 10:49-3 prior to the August 17, 1992 re adoption. All references to the previous version of N.J.A.C. 10:49 are codified as N.J.A.C. 10:66-3 in this proposed new rule. For example, the section entitled "Purpose" that previously appeared at N.J.A.C. 10:49-3.1, appeared at N.J.A.C. 10:66-3.1 in this proposed new rule.

The following summary highlights the revisions in the respective subchapters:

At N.J.A.C. 10:66-3.4(b), additional text is included concerning a provider's right to request a hearing and the time-limited nature of a HealthStart Provider Certificate.

## PROPOSALS

The third sentence is deleted from its previous location at N.J.A.C. 10:49-3.2(a) because it does not pertain to this proposed new rule.

Text is deleted from its previous location at N.J.A.C. 10:49-3.3(d)2 and (d)3 because it deals with requirements for hospital outpatient departments that are not applicable to this proposed new rule.

Text is deleted from its previous location at N.J.A.C. 10:49-3.6 because it deals with standards for physicians or nurse midwives in private practice that are not applicable to this proposed new rule.

Sections are deleted from their previous locations at N.J.A.C. 10:49-3.18, 3.19 and 3.20, because they pertain to reimbursement issues and HCPCS procedure codes. These deleted sections are addressed in these proposed new rules at N.J.A.C. 10:66-6, and are summarized below.

As noted previously, the section entitled "Standards for the HealthStart Maternity Care Certificate for Physicians or Nurse Midwives in Private Practice" is deleted from its previous location at N.J.A.C. 10:49-3.6. As a result, the remaining sections of N.J.A.C. 10:66-3 are recodified accordingly.

### N.J.A.C. 10:66-4 Federally qualified health center (FQHC)

N.J.A.C. 10:66-4.1 introduces the New Jersey Medicaid program's requirements for the provision of services in a Federally qualified health center. Included are the New Jersey Medicaid program's requirements concerning medical encounters, psychiatric encounters, dental encounters, and the outstationing of county welfare agency employees referenced at 1902(a)(55) of the Social Security Act, 42 U.S.C. 1396a.

N.J.A.C. 10:66-4 Appendix includes: (a) the Medicaid cost report containing the forms used by Federally qualified health centers to determine Medicaid reimbursement amounts; and (b) instructions for the proper completion of the forms contained in the cost report.

### N.J.A.C. 10:66-5 Ambulatory Surgical Center (ASC)

This subchapter contains text that is currently located at N.J.A.C. 10:66-1.6(j), except that N.J.A.C. 10:66-1.6(j)6 is being deleted because it has no relevance to the proposed new rule and procedure codes located at N.J.A.C. 10:66-6 (HCPCS).

### N.J.A.C. 10:66-6 Health Care Financing Administration's Common Procedure Coding System (HCPCS)

N.J.A.C. 10:66-6 pertains to the Health Care Financing Administration's Common Procedure Coding System (HCPCS), currently identified as N.J.A.C. 10:66-3. The HCPCS coding system is not currently published in the New Jersey Administrative Code.

N.J.A.C. 10:66-6.1 contains an introduction to HCPCS, including the basis for HCPCS, specific elements of HCPCS codes which require the attention of a provider, and policies and procedures regarding the use of HCPCS.

N.J.A.C. 10:66-6.2 contains HCPCS code numbers and maximum fee schedule for the following clinic services: evaluation and management and other procedures, dental, family planning, laboratory, minor surgery, mental health, obstetrical, podiatry, radiology, rehabilitation, vision care, transportation, drug treatment center, Federally qualified health center, and miscellaneous.

N.J.A.C. 10:66-6.3 contains codes and narrative not found in CPT-4 (Level II and Level III codes).

N.J.A.C. 10:66-6.4 contains qualifiers relating to independent clinic HCPCS codes.

N.J.A.C. 10:66-6.5 contains HCPCS codes, narratives, and the maximum fee schedule for HealthStart.

### N.J.A.C. 10:66—Appendix

N.J.A.C. 10:66—Appendix (following N.J.A.C. 10:66-6) pertains to the Fiscal Agent Billing Supplement. The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages shall be distributed to providers and copies shall be filed with the Office of Administrative Law.

Copies of the Fiscal Agent Billing Supplement are available from the Division's fiscal agent and from the Office of Administrative Law.

### Social Impact

The social impact on both Medicaid recipients and Medicaid providers is minimal and expected to be positive. The proposed new rules contain changes in the delivery and availability of independent clinic services which allow the Medicaid program to provide reimbursement to additional clinic providers and for additional services provided by clinics. Medicaid recipients will be able to secure medically necessary services from additional providers.

With respect to Medicaid providers, the social impact is expected to be positive. The proposed new rule provides for additional clinic providers to be reimbursed by the Medicaid program. Other clinic providers, such as ambulatory surgical centers and Federally qualified health centers, have been, and will continue to be, providers in the New Jersey Medicaid program.

With respect to the provider type classified as ambulatory care/family planning/surgical facility, this is being addressed by a proposal that appeared in the New Jersey Register at 25 N.J.R. 1683(a) on June 21, 1993. The inclusion in this proposal is to ensure textual consistency.

There are provisions that are new requirements for clinical providers. One is related to clinics that perform their own laboratory testing. All providers must meet the requirements of Federal law and regulations known as the Clinical Laboratory Improvement Amendments of 1988 (CLIA). (Reference is made to Section 1902(a)(9) of the Social Security Act, 42 U.S.C. 1396a and 42 CFR 493.) However, the New Jersey Medicaid program does not require that clinics do their own laboratory testing.

There is another provision applicable to clinics related to physician direction requirements. This provision was added based on policy guidance provided by the Health Care Financing Administration and, when implemented, will assist in assuring that clinic services meet Federal guidelines for Medicaid reimbursement and will assist in assuring the quality of the clinic services.

Another provision relates to the provision and documentation of mental health services. This provision was also added based on policy guidance provided by the Health Care Financing Administration and, when implemented, will assist in assuring continued Title XIX (Medicaid) funding for these services.

**Economic Impact**

There is no economic affect on Medicaid recipients as a result of the proposed new rules because there is no cost to Medicaid recipients for independent clinic services.

Medicaid providers of independent clinic services will continue to be reimbursed for providing Medicaid-covered services to Medicaid recipients.

Several provisions in the proposed rules may have an economic impact on providers or the Division. N.J.A.C. 10:66-1.3(f) through (j), related to physician direction, may require additional physician direction by a clinic's medical director. To the extent that this provision requires additional physician involvement in the administration of the provision of services, clinic providers may incur additional costs.

N.J.A.C. 10:66-2.5(e) through (h) provide for additional physician psychiatric involvement and requires additional documentation for the provision of mental health services to a greater extent than previously required by the Medicaid program. There should be no economic impact on mental health clinics that are already meeting these requirements. For those providers who have to arrange for additional staff to meet these new requirements, additional costs may be incurred. However, this provision is necessary to assure continued Federal funding for these services.

N.J.A.C. 10:66-1.3(c) allows the Medicaid program to enroll additional providers of ambulatory surgical center (ASC) services. To the extent that the Medicaid program will be reimbursing these new providers of ASC services, the program will incur additional costs. However, these additional expenditures will be offset by an incurred savings if these services were otherwise provided in more expensive settings, such as outpatient departments of hospitals.

The overall Medicaid reimbursement methodology for independent clinic services is not changed and, therefore, this proposed new rule should neither significantly increase nor decrease total reimbursement amounts to this provider type. The total expenditures for independent clinic services in State Fiscal Year 1993 were approximately \$31,000,000 (Federal-State share combined).

**Regulatory Flexibility Analysis**

The proposed new rules do impose some additional reporting, recordkeeping or other compliance requirements on certain independent clinic providers, which may be considered to be small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

All Medicaid providers are required (see N.J.S.A. 30:4D-12) to record the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service rendered, and any additional information as required by regulation. The requirements apply equally to all independent clinic providers regardless of size. All clinics must employ sufficient professional staff, including physicians.

Providers are required to submit a claim form in order to be reimbursed on a fee-for-service basis. This paperwork requirement is designed to facilitate payment to clinic providers.

Clinic providers, and their medical staff, are required to enroll in the New Jersey Medicaid program. The Division is also requiring providers to submit a photocopy of the license with the provider's application package and also upon renewal. The Division wants to assure that clinic providers are duly licensed and that their medical staff participate in the Medicaid program.

There are some additional reporting, recordkeeping and compliance requirements for clinics that do laboratory testing. These clinics must meet CLIA requirements as indicated in the social impact statement above. These requirements are mandatory and apply equally to all clinic providers rendering laboratory services. The Division tried to minimize any additional paperwork by requiring providers to furnish a copy of their approval from the Health Care Financing Administration.

With respect to Federally qualified health centers, they are required to complete cost reports so they can be reimbursed on a cost-related basis. This requirement is based upon Federal law (reference is made to 1902(a)(13)(E) of the Social Security Act; 42 U.S.C. 1396a) and applies equally to all providers.

With respect to providers of mental health services, there are some additional Health Care Financing Administration requirements in the areas of intake evaluation, plan of care, documentation, and periodic review, and prior authorization requests.

There should be less paperwork because there should be fewer requests for prior authorization now that the dollar limit is being increased. In addition, the clarification of the information required for a prior authorization request should ultimately reduce the amount of provider paperwork because the provider will not have to resubmit the prior authorization request multiple times due to insufficient data.

Mental health providers will also be required to notify the Division whenever a patient's condition changes so that the approved prior authorization request can be reviewed by the Division and adjusted if necessary.

Prior authorization requirements are clarified for the provision of rehabilitative services which should reduce the amount of provider paperwork because the provider will not have to resubmit the prior authorization request multiple times due to insufficient data.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:66.

**Full text** of the proposed new rules follows:

**CHAPTER 66  
INDEPENDENT CLINIC SERVICES**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**10:66-1.1 Scope of service**

(a) This chapter (N.J.A.C. 10:66) describes the policies and procedures of the New Jersey Medicaid program pertaining to the provision of, and reimbursement for, medically necessary Medicaid-covered services in an independent clinic setting. An independent clinic setting includes, but is not limited to, clinic types such as an ambulatory care facility, ambulatory surgical center, ambulatory care/family planning/surgical facility, and a Federally qualified health center.

(b) Medically necessary services provided in an independent clinic setting shall meet all applicable State and Federal Medicaid laws, and all applicable policies, rules and regulations as specified in the appropriate provider services manual of the New Jersey Medicaid program.

(c) Independent clinic services are preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are provided by a facility (freestanding) that is not part of a hospital but is organized and operated to provide medical care to outpatients, including such services provided outside the clinic by clinic personnel to any Medicaid recipient who does not reside in a permanent dwelling or does not have a fixed home or mailing address. Clinic services do not include services provided by hospitals to outpatients.

(d) The chapter is divided into six subchapters, as follows:

1. N.J.A.C. 10:66-1 contains scope of service, definitions, provisions for provider participation, prior authorization, basis for reimbursement, and recordkeeping requirements.

2. N.J.A.C. 10:66-2 contains policies and procedures pertaining to specific Medicaid-covered services provided in an independent clinic setting. Where unique characteristics or requirements exist concerning a particular Medicaid-covered service, the service is separately identified and discussed.

3. N.J.A.C. 10:66-3 contains information about HealthStart, a program for pregnant women and children.

4. N.J.A.C. 10:66-4 and its Appendix contain information about Federally qualified health centers, including (a) rules governing the provision of services; (b) the Medicaid cost report containing the forms used by Federally qualified health centers to determine Medicaid reimbursement amounts; and (c) instructions for the proper completion of the forms contained in the cost report.

5. N.J.A.C. 10:66-5 contains information about ambulatory surgical centers, including covered services, anesthesia, medical justification, facility services, and medical records.

6. N.J.A.C. 10:66-6 pertains to the Health Care Financing Administration's Common Procedure Coding System (HCPCS). The HCPCS procedure code system contains procedure codes and maximum fee allowances corresponding to Medicaid-reimbursable services.

(e) The Appendix following N.J.A.C. 10:66-6 pertains to the Fiscal Agent Billing Supplement. The Fiscal Agent Billing Supplement contains billing instructions and samples of forms (claim forms, prior authorization forms, and consent forms) used in the billing process.

#### 10:66-1.2 Definitions

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

"Ambulatory care facility" means a health care facility or a distinct part of a health care facility, licensed by the New Jersey State Department of Health, which provides preventive, diagnostic, and treatment services to persons who come to the facility to receive services and depart from the facility on the same day.

"Ambulatory care/family planning/surgical facility" means a health care facility or a distinct part of a health care facility, licensed by the New Jersey State Department of Health to provide specified surgical procedures.

"Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization; has an agreement with the Health Care Financing Administration (HCFA) under Medicare to participate as an ambulatory surgical center; is licensed as an ambulatory surgical center, if required, by the New Jersey State Department of Health; and meets the enrollment requirements as indicated in the Administration chapter at N.J.A.C. 10:49-3.2, process, and at N.J.A.C. 10:66-1.3, Provisions for provider participation.

"Dental clinic" means a freestanding independent facility, or a distinct component of a multi-service ambulatory care facility, which meets the standards for dental clinics established by the New Jersey State Board of Dentistry.

"Drug treatment center" means a facility or a distinct part of a facility which is licensed or approved by the New Jersey State Department of Health to provide health care for the prevention and treatment of drug addiction and drug abuse, as indicated in the Manual of Standards for Licensure of Drug Treatment Facilities, N.J.A.C. 8:42B.

"Federally qualified health center" means an entity that is receiving a grant under Section 329, 330, or 340 of the Public Health Service Act; or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under Section 329, 330, or 340 of the Public Health Service Act; or based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; or was treated by the Secretary, for purposes of Medicare Part B, as a Federally Funded Health Center as of January 1, 1990.

"Freestanding facility" means a facility which is not located in a hospital but may, or may not, be under its auspices.

"Independent clinic" means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients.

"Mental health clinic" means a freestanding independent community facility or distinct component of a multi-service ambulatory care facility, which meets the minimum standards established by the Community Mental Health Services Act implementing rules at N.J.A.C. 10:37.

"Personal care assistant" means a person who has:

1. Successfully completed a minimum 40 hours training program in personal care services approved by the New Jersey Medicaid program. The individual is assigned and supervised by a registered professional nurse of a Medicaid-approved personal care provider agency.

i. The individual is primarily involved in the treatment and care of mentally handicapped and developmentally disabled patients in community settings, and is employed by a State agency or by an agency under contract with a State agency.

"Satellite" means an affiliate of a separately enrolled independent clinic. A satellite is located at a site distinct from that of the separately enrolled independent clinic but shares the same governing authority.

"Specialist" means a fully licensed physician who:

1. Is a diplomate of a specialty board approved by the American Board of Medical Specialties or the Advisory Board of the American Osteopathic Association;

2. Is a fellow of the appropriate American specialty college or a member of an osteopathic specialty college;

3. Is currently admissible to take the examination administered by a specialty board approved by the American Board of Medical Specialties or the Advisory Board of the American Osteopathic Association, or has evidence of completion of an appropriate qualifying residency approved by the American Medical Association or American Osteopathic Association;

4. Holds an active staff appointment with specialty privileges in a voluntary or governmental hospital which is approved for training in the specialty in which the physician has privileges; or

5. Is recognized in the community as a specialist by his or her peers.

"Specialist in dentistry" means an individual who is licensed to practice dentistry in the state in which treatment is provided, and whose practice is limited solely to his or her specialty, which is recognized by the American Dental Association. Additional conditions regarding the qualifications for a dental specialist for the New Jersey Medicaid program are located in the New Jersey Medicaid program's Dental Services chapter, N.J.A.C. 10:56.

"Specialist in podiatry" means an individual who is licensed to practice podiatry in the state in which treatment is provided, and who is a Diplomate of the appropriate American Podiatry Association-recognized board or has been notified of admissibility to examination by the appropriate American Podiatry Association-recognized board.

"Specialist in psychology" means an individual who is licensed to practice psychology in the state in which treatment is provided, and who is a Diplomate of the American Board of Professional Psychology (Diplomate Qualified) or has been notified of admissibility to the examination by the American Board of Professional Psychology (Diplomate Eligible).

#### 10:66-1.3 Provisions for provider participation

(a) Each independent clinic, including each satellite, shall be individually approved by the New Jersey Medicaid program in conjunction with the Program's fiscal agent, for each service provided. If a clinic wishes to add a service(s), approval from the New Jersey Medicaid program shall be obtained before reimbursement for the service(s) may be claimed. For additional details, see the Administration chapter, N.J.A.C. 10:49-3.2, Enrollment process, and N.J.A.C. 10:49-3.3, Providers with multi-locations.

1. A clinic's medical staff, including physicians, dentists, and other practitioners, shall enroll in the New Jersey Medicaid program, as indicated in the Administration chapter at N.J.A.C. 10:49-3.4, in order to obtain an individual Medicaid Provider Services Number to be used when the clinic submits a claim to the Division's fiscal agent.

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(b) Each independent clinic seeking enrollment in the New Jersey Medicaid program shall possess a certificate of need and/or license, if required, from the New Jersey State Department of Health.

1. The facility shall provide only those services for which it is licensed or authorized to provide by the New Jersey State Department of Health.

2. A photocopy of the license shall be forwarded to the New Jersey Medicaid program as an attachment to a clinic's initial application for enrollment and when the license is renewed on an annual basis.

(c) In addition to N.J.A.C. 10:66-1.3(a) and (b) above, each independent clinic shall obtain approval from the relevant Federal and State agency(ies), if required. For example:

1. For an ambulatory surgical center, an agreement with the Health Care Financing Administration (HCFA) under Medicare to participate as an ambulatory surgical center and licensure as an ambulatory surgical center, if required, by the New Jersey State Department of Health;

2. For a Federally qualified health center, approval by the Health Care Financing Administration as a Federally qualified health center and licensure by the New Jersey State Department of Health as an ambulatory care facility;

3. For an ambulatory care/family planning/surgical facility, licensure as an ambulatory care/family planning/surgical facility by the New Jersey State Department of Health;

4. For a dental clinic, approval by the New Jersey State Board of Dentistry and the Bureau of Dental Services, Division of Medical Assistance and Health Services (DMAHS) of the New Jersey Department of Human Services;

5. For a mental health clinic, approval by the Division of Mental Health and Hospitals (DMH&H) of the New Jersey Department of Human Services; and

6. For child health conferences, approval by the New Jersey State Department of Health as indicated at N.J.A.C. 10:66-3.3.

(d) Requests for approval to perform radiological services, with Medicaid reimbursement, shall be submitted to the New Jersey Medicaid program and shall include:

1. The radiologist's name(s) and copy(ies) of the license(s); and

2. Documentation from the New Jersey State Department of Health relating to the installation and safety of X-ray equipment.

(e) Each out-of-State clinic seeking reimbursement for services provided to New Jersey Medicaid recipients shall enroll, if the clinic is approved by Title XIX (Medicaid) in its own state, in the New Jersey Medicaid program as indicated in the Administration chapter at N.J.A.C. 10:49-3.2(c). Services are reimbursable under the following circumstances:

1. If the services are provided to Division of Youth and Family Services children residing out-of-State; or

2. If the services are provided in an emergency.

(f) Each Medicaid recipient's care in an independent clinic shall be under the supervision of a physician directly affiliated with the clinic. The physician shall assume professional responsibility for the services provided and thus assure that the services are medically appropriate.

(g) A physician affiliated with a clinic shall spend as much time in the facility as is necessary to assure that Medicaid recipients are receiving services in a safe and efficient manner in accordance with accepted standards of medical and dental practice.

(h) For a physician to be affiliated with a clinic, there shall be a contractual agreement or some other type of formal, written arrangement on file at the facility between the physician and the facility by which the physician is obligated to supervise the care provided to the clinic's Medicaid recipients.

1. The contractual agreement or formal, written arrangement shall indicate the physician's responsibilities and compensation.

(i) The size of the clinic and the type of services it provides determines the number of physicians that must be affiliated with the clinic.

(j) The clinic's medical staff, including physicians, dentists, and other practitioners, shall be appropriately licensed in order to provide the medical care delivered to Medicaid recipients.

### 10:66-1.4 Prior authorization

(a) In addition to N.J.A.C. 10:49-6.1, this section outlines prior authorization requirements for dental, mental health, rehabilitative, and vision care services, in (b), (c), (d) and (e) below, respectively. Prior authorization requirements by the Physician Case Manager for persons participating in the Garden State Health Plan or other managed health care programs are located at N.J.A.C. 10:49-20.5(a)3.

(b) Dental services require prior authorization as indicated in the New Jersey Medicaid program's Dental Services chapter, N.J.A.C. 10:56.

(c) Mental health services provided to each Medicaid recipient require prior authorization when payment to an independent clinic exceeds \$6,000 for that Medicaid recipient in any 12-month period, commencing with the recipient's initial visit.

1. The maximum period of authorization is up to 12 months for all mental health services. Additional authorizations may be requested.

2. When requesting prior authorization, Form FD-07, Request for Authorization of Mental Health Services, shall be completed and forwarded to: Mental Health Consultant, Division of Medical Assistance and Health Services, Mail Code #18, CN-712, Trenton, New Jersey 08625-0712. See the Fiscal Agent Billing Supplement, N.J.A.C. 10:66—Appendix, for instructions on the completion of the prior authorization form.

3. The "Brief Clinical History" and "Present Clinical Status" sections of the prior authorization form are particularly important and must provide sufficient medical information to justify and support the proposed treatment request. Failure to comply may result in a reduction or denial of requested services.

4. A departure from the plan of care requires a new request for prior authorization when a change in the recipient's clinical condition necessitates an increase in the frequency and intensity of services, or change in the type of services which exceeds the cost of the services authorized.

5. Similarly, a new request for authorization is required for a medical/remedial therapy session or encounter that departs from the plan of care in terms of increased need, scheduling, frequency, or duration of services furnished (for example, unscheduled emergency services furnished during an acute psychotic episode).

6. If the request for prior authorization is approved, the Division's fiscal agent shall notify the provider in writing regarding the Division's decision; authorized date or time frame; and activation of the prior authorization number. If the request is modified, denied, or if the Division requires additional information, the provider is so notified in writing by the fiscal agent.

(d) Rehabilitative services require prior authorization from the appropriate Medicaid District Office (MDO) after the initial evaluation visit.

1. When requesting prior authorization or reauthorization, Form FD-06, Request for Prior Authorization for Rehabilitative Services, shall be completed and forwarded to the recipient's respective MDO. See the Fiscal Agent Billing Supplement for instructions on the completion of the prior authorization form.

2. Authorization shall be considered only when the request includes a written prescription from a licensed physician.

3. The prescription shall substantiate the need, type of treatment, objective of treatment, and an estimate of the number of treatment days.

4. The prescription shall be definitive as to type and scope. A prescription for "Physical therapy three times a week" is not acceptable.

5. The maximum period of authorization is 60 days.

i. Reauthorizations for periods not exceeding 60 days may be approved by the MDO when the request is supported by:

(1) The physician's written prescription;

(2) A statement of the anticipated number of treatments required; and

(3) A progress report of the recipient's condition.

6. If the request for prior authorization is approved, the Division's fiscal agent shall notify the provider in writing regarding the Division's decision; authorized date or time frame; and activation

of the prior authorization number. If the request is modified, denied, or if the Division requires additional information, the provider is so notified in writing by the fiscal agent.

(e) Vision care services require prior authorization as indicated in the New Jersey Medicaid program's Vision Care Services chapter, N.J.A.C. 10:62.

10:66-1.5 Basis for reimbursement

(a) Except as indicated at (c) through (f) below, reimbursement to independent clinics is in accordance with the maximum fee schedule indicated at N.J.A.C. 10:66-6.2 and is based on the same fees, conditions, and definitions for corresponding services governing the reimbursement of Medicaid-participating practitioners in "private" (independent) practice. Reimbursement is made directly to the clinic.

1. An independent clinic shall make a charge for services to all patients, except as provided by legislation, with the proviso that no charge will be made directly to the Medicaid patient, and the charge to the New Jersey Medicaid program may not exceed the charge by the clinic for identical services to other groups or individuals in the community.

(b) The HCPCS procedure code system, N.J.A.C. 10:66-6, contains procedure codes and maximum fee allowances corresponding to Medicaid-reimbursable services. An independent clinic may claim reimbursement for only those HCPCS procedure codes that correspond to the allowable services included in the clinic's provider enrollment approval letter, as indicated at N.J.A.C. 10:66-1.3(a).

1. If the HCPCS procedure code(s), approved for use by a specific clinic, is assigned both a specialist and non-specialist maximum fee allowance, the amount of the reimbursement will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service. To identify this practitioner, enter the Medicaid Provider Services Number in the appropriate section of the claim, as indicated in the Fiscal Agent Billing Supplement, N.J.A.C. 10:66—Appendix.

(c) The basis for reimbursement of services provided in an ambulatory surgical center (ASC) is as follows:

1. Reimbursement shall be made for services rendered by both the ASC facility and the attending physician, if the physician is not reimbursed for surgical/medical services by the facility.

2. For facility reimbursement, surgical procedures performed in an ASC are separated into an eight-group classification system as designated at 42 CFR 416.65(c), the Federal regulations governing ASC services.

i. A single payment is made to an ASC which encompasses all facility services furnished by the ASC in connection with a covered procedure performed on a patient in a single operative session.

ii. If more than one covered surgical procedure is performed on a patient during a single operative session, payment is limited to two procedures, provided that the two procedures are performed at separate operative body sites.

(1) Full payment shall be made for the procedure with the highest Medicaid reimbursement allowance. Payment for the other procedure shall be at 50 percent of the applicable reimbursement allowance for that procedure. Total reimbursement may not exceed 150 percent of the primary procedure allowance.

iii. The ASC facility payment for all procedures in each group is established at a single rate, as follows:

Group	Maximum Fee Allowance
1	\$195.00
2	\$261.00
3	\$300.00
4	\$369.00
5	\$421.00
6	\$541.00
7	\$585.00
8	\$627.00

**Note:** Should the Health Care Financing Administration (HCFA) amend the group designation for any procedure(s), the maximum fee allowance for the newly designated group shall apply and shall

not be construed as a fee increase/decrease to the affected procedure(s).

3. Physician reimbursement shall be in accordance with the New Jersey Medicaid Program's Physician Maximum Fee Allowance for specialist and non-specialist, N.J.A.C. 10:54, and the following:

i. When submitting a claim, the physician performing the surgical procedure shall use the applicable claim form, billing the New Jersey Medicaid program either as an individual provider or as a member of a physician's group.

ii. A physician on salary for administrative duties (such as a medical director) shall be permitted to submit claims for surgical/medical services performed if outside his or her administrative duties and not billed by the facility. Administrative duties shall be considered a direct cost of the facility and shall be included in the clinic payment.

(d) The basis for reimbursement of services provided in a Federally qualified health center (FQHC) is as follows:

1. For cost reporting periods beginning prior to January 1, 1994, FQHC reimbursement shall be made at an interim encounter rate as described in (d)3 below. The interim encounter rate includes an add-on for the cost expended by a FQHC for the outstationing of county welfare agency staff to determine Medicaid eligibility. An FQHC's financial responsibility for outstationing activities is equivalent to the non-Federal share (currently 50 percent) of estimated CWA costs for the calendar year.

i. Estimated outstationing charges for each FQHC shall be used to determine the amount to be withheld from Medicaid payments and disbursed to CWAs each calendar quarter.

ii. Withholdings (see (d)1i above) shall be made at the beginning of each calendar quarter in an amount equal to one-fourth of the estimated annual outstation charge for each FQHC.

2. For cost reporting periods beginning on and after January 1, 1994, FQHC reimbursement shall be based on the same HCPCS procedure code fees, conditions and definitions for corresponding services governing the reimbursement of Medicaid-participating practitioners in "private" (independent) practice, in accordance with N.J.A.C. 10:54-4 and 10:56-3.

i. FQHC reimbursement shall include an interim encounter rate as described in (d)3 below to be billed once for each FQHC visit. The interim encounter rate shall be based upon all reasonable costs not reimbursed by the HCPCS procedure code fees, and shall include an add-on for the cost expended by a FQHC for the outstationing of county welfare agency staff to determine Medicaid eligibility. An FQHC's financial responsibility for outstationing activities is equivalent to the non-Federal share (currently 50 percent) of estimated CWA costs for the calendar year.

ii. Estimated outstationing charges for each FQHC shall be used to determine the amount to be withheld from Medicaid payments and disbursed to CWAs each calendar quarter.

iii. Withholdings (see (d)2ii above) shall be made at the beginning of each calendar quarter in an amount equal to one fourth of the estimated annual outstation charge for each FQHC.

The interim encounter rate shall be determined as follows:

i. For cost reporting periods beginning prior to January 1, 1992:

(1) For those FQHCs that have filed a Medicare cost report, the interim encounter rate shall be the current Medicare interim encounter rate.

(2) For those FQHCs that have not filed a Medicare cost report, the interim encounter rate shall be an average of the interim encounter rates described in (d)3i(1) above.

ii. For cost reporting periods beginning on and after January 1, 1992:

(1) The interim encounter rate shall be the prior year's actual encounter rate as calculated from the Medicaid cost report which shall be incremented by the medical care component of the Consumer Price Index. The interim encounter rate may be adjusted to approximate the reimbursable cost the FQHC is currently incurring to provide covered services to Medicaid recipients.

(2) If there is no prior year actual encounter rate available, the interim encounter rate shall be the Medicare state limit for FQHCs. In this case, the Medicare state limit may be adjusted for Medicaid-only costs which are not included in the Medicare state limit.

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iii. For cost reporting period beginning on and after January 1, 1994:

(1) For those FQHCs that have filed a Medicaid cost report, the interim encounter rate shall be calculated from data on prior years' cost reports.

(2) For those FQHCs that have not filed a Medicaid cost report, the interim encounter rate shall be an average of the interim encounter rates of all FQHCs that have filed a Medicaid cost report.

iv. For cost reporting periods beginning on and after January 1, 1995:

(1) For those FQHCs that have filed a Medicaid cost report, the interim encounter rate shall be the prior year's actual encounter rate as calculated from the Medicaid cost report which shall be incremented by the medical care component of the Consumer Price Index. The interim encounter rate may be adjusted to approximate the reimbursable cost the FQHC is currently incurring in providing covered services to Medicaid recipients.

(2) The FQHC's that have not filed a Medicaid cost report, the interim encounter rate shall be an average of the interim encounter rates described in (d)3iv(1) above.

v. The interim encounter rate shall approximate the reimbursable cost the FQHC is currently incurring in furnishing covered services to Medicaid recipients.

vi. The interim encounter rate may be adjusted during an accounting period. Such adjustment may be made either upon request of the facility, or if there is evidence available to the Medicaid program showing that actual costs will be significantly higher or lower than the computed rate. When a facility requests an adjustment of the interim encounter rate, the request shall be supported by a schedule showing that actual costs incurred to date plus estimated costs to be incurred will be significantly higher or lower than the computed rate.

4. The actual encounter rate shall be calculated from the facility's Medicaid cost report, in accordance with N.J.A.C. 10:66-4.2.

i. The actual encounter rate shall be calculated based upon reasonable costs of Medicaid services provided to Medicaid recipients.

ii. FQHCs are subject to guidelines to test the reasonableness of the productivity of the staff employed by an FQHC, as follows:

(1) At least 2.1 encounters per hour, per physician;

(2) At least 1.1 encounters per hour, per nurse practitioner or nurse midwife; and

(3) At least 1.25 encounters per hour, per dentist or dental hygienist.

iii. The actual encounter rate shall be subject to adjustment based upon any audits of the Medicaid cost report.

5. If a provider wishes to appeal the final rate determination, a written request shall be filed with the Assistant Director, Office of Budget, Fiscal and Informational Systems, Division of Medical Assistance and Health Services, Mail Code #23, CN 712, Trenton, New Jersey 08625-0712, or the Assistant Director's designee, no later than the 180th day following the date of the provider's receipt of the Notification of Final Settlement. See N.J.A.C. 10:49-10.

i. The appeal shall identify the specific items of disagreement and the amount(s) in question, and provide reasons and documentation to support the provider's position.

6. The total reimbursement amount due is compared with total payments made to the FQHC for the reporting period, and the difference constitutes the amount of the reconciliation.

i. If the reconciliation results in an underpayment, a lump sum payment shall be made to the FQHC.

ii. If the reconciliation results in an overpayment made to the FQHC, Medicaid shall arrange repayment from the FQHC through a lump-sum refund or through an offset against subsequent payments, or a combination of both. The FQHC shall be charged the maximum legal rate of interest on the overpayment as of the date of the notice of Medicaid reimbursement.

7. A Medicaid cost report shall be submitted to the Assistant Director, Office of Budget, Fiscal and Informational Systems, Division of Medical Assistance and Health Services, Mail Code, #23, CN 712, Trenton, New Jersey 08625-0712, or the Assistant Director's

designee. The cost report shall be legible and complete in order to be considered acceptable. See N.J.A.C. 10:66-4 Appendix, incorporated herein by reference.

i. The Medicaid cost report shall be filed following the close of a provider's reporting period. Cost reports are due on or before the last day of the third month following the close of the period covered by the report.

ii. A 30-day extension of the due date of a cost report may, for good cause, be granted by the New Jersey Medicaid program. Good cause means a valid reason or justifiable purpose in seeking an extension; it is one that supplies a substantial reason, affords a legal excuse for delay, or is the result of an intervening action beyond one's control.

iii. To be granted this extension the provider must submit a written request to, and obtain written approval from, Assistant Director, Office of Budget, Fiscal and Informational Systems, Division of Medical Assistance and Health Services, Mail Code, #23, CN 712, Trenton, New Jersey 08625-0712, or the Assistant Director's designee.

iv. A request for an extension must be received by the Assistant Director, Office of Budget, Fiscal and Informational Systems, Division of Medical Assistance and Health Services or the Assistant Director's designee, at least 30 days before the due date of the Medicaid cost report.

v. If a provider's agreement to participate in the Medicaid program terminates or the provider experiences a change of ownership, the cost report is due no later than 45 days following the effective date of the termination of the provider agreement or change of ownership. An extension of the cost report due date cannot be granted when the provider agreement is terminated or a change in ownership occurs.

vi. Failure to submit an acceptable cost report on a timely basis may result in suspension of interim payments. Payments for claims received on or after the date of suspension may be withheld until an acceptable cost report is received.

(e) The basis for reimbursement of services provided in an ambulatory care/family planning/surgical facility is as follows:

1. Reimbursement for the services of an ambulatory care/family planning/surgical facility shall be made for services rendered by both the facility and the attending physician, if the physician is not reimbursed for surgical/medical services by the facility.

2. The facility reimbursement rate shall equal 70 percent of the applicable ambulatory surgical center rate for the procedures, in accordance with reimbursement rates, N.J.A.C. 10:66-1.5(c).

3. Physician reimbursement shall be in accordance with the New Jersey Medicaid program's Physician Maximum Fee Allowance for specialist and non-specialist, N.J.A.C. 10:54, and the following:

i. When submitting a claim, the physician performing the surgical procedure shall use the applicable claim form, billing the New Jersey Medicaid program either as an individual provider or as a member of a physician's group.

ii. A physician on salary for administrative duties (such as a medical director shall be permitted to submit claims for surgical/medical services performed if outside his or her administrative duties and not billed by the facility. Administrative duties shall be considered a direct cost of the facility and shall be included in the clinic payment.

### 10:66-1.6 Recordkeeping

(a) An individual record shall be prepared and retained by an independent clinic that fully discloses the kind and extent of the service provided to a Medicaid recipient, as well as the medical necessity for the service.

(b) At a minimum, a clinic shall include a progress note in the Medicaid recipient's medical/health record for each visit which supports the procedure code(s) billed, except where specified otherwise. The progress note shall include a description of signs and symptoms, treatment and/or medication(s) given, the recipient's response, and any changes in physical or emotional condition.

(c) Additional requirements governing medical records in an ambulatory surgical center are located in N.J.A.C. 10:66-5.

(d) The information described in this subsection shall be made available to the New Jersey Medicaid program or its agents upon request.

## SUBCHAPTER 2. PROVISION OF SERVICES

### 10:66-2.1 Introduction

This subchapter describes the New Jersey Medicaid program's policies and procedures for the provision of Medicaid-covered services in an independent clinic setting. Services are separately identified and discussed only where unique characteristics or requirements exist. Unless indicated otherwise, reimbursement issues are located in N.J.A.C. 10:66-1.5, Basis for reimbursement.

### 10:66-2.2 Early and periodic screening, diagnosis, and treatment (EPSDT)

(a) Early and periodic screening, diagnosis and treatment (EPSDT) is a Federally mandated comprehensive child health program for Medicaid recipients from birth through 20 years of age. (See 42 CFR 441 Subpart B.)

(b) EPSDT includes screening services; vision services; dental services; hearing services; and other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services.

1. An expanded program for Medicaid recipients up to the age of two is known as HealthStart. For additional information, including provider enrollment requirements, see N.J.A.C. 10:66-3.

(c) Components of an EPSDT screening are as follows:

1. A comprehensive health and developmental history including assessment of both physical and mental health development;
2. A comprehensive unclothed physical exam including vision and hearing screening, dental inspection, and nutritional assessment;
3. Appropriate immunizations according to age and health history;
4. Appropriate laboratory tests, including:
  - i. Hemoglobin/hematocrit;
  - ii. Urinalysis;
  - iii. Tuberculin test;
  - iv. Lead blood level assessment, appropriate to age and risk, which shall be performed annually for children between six months and six years of age; and

v. Other appropriate medically-necessary procedures;

5. Health education, including anticipatory guidance; and

6. Referral for further diagnosis and treatment or follow up of all correctable abnormalities, uncovered or suspected. Referral may be to the provider conducting the screening examination, or to another provider, as appropriate.

(d) EPSDT screening services (unless modified as follows in (e), (f) and (g) below) shall be provided periodically according to the following schedule which reflects the age of the child:

1. Under six weeks;
2. Two months;
3. Four months;
4. Six months;
5. Nine months;
6. 12 months;
7. 15 months;
8. 18 months;
9. 24 months; and
10. Annually through age 20.

(e) Vision screening includes:

1. A newborn examination including general inspection of the eyes, visualization of the red reflex, and evaluation of ocular motility;
2. An appropriate medical and family history;
3. An evaluation, by age six months, of eye fixation preference, muscle imbalance, and pupillary light reflex; and
4. A second examination with visual acuity testing by age three or four years.
5. Periodicity testing for school aged children is as follows:
  - i. Kindergarten or first grade (five or six years);
  - ii. Second grade (seven years);
  - iii. Fifth grade (10/11 years);

iv. Eighth grade (13/14 years); and

v. Tenth or eleventh grades (15/17 years).

6. Children should be referred for vision screening if they:

i. Cannot read the majority of the 20/40 line before their fifth birthday;

ii. Have a two-line difference of visual acuity between the eyes;

iii. Have suspected strabismus; or

iv. Have an abnormal light or red reflex.

(f) The following apply to dental screening:

1. Intraoral examination is an integral part of a general physical examination.

2. A formal referral to a dentist is recommended at one year of age. It is mandatory for children three years of age and older.

3. Dental inspection and prophylaxis should be carried out every six months until 17 years of age, then annually.

(g) The following apply to hearing screening:

1. An individual hearing screening should be administered annually to all children through age eight and to all children at risk of hearing impairment.

2. After age eight, children should be screened every other year.

### 10:66-2.3 Family planning

(a) Family planning services include medical history and physical examination (including pelvic and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continued medical supervision, and continuity of care, including services related to infertility.

(b) The Norplant System (NPS) is a Medicaid-covered service when provided as follows:

1. The NPS is used only in reproductive age women with established regular menstrual cycles;

2. The Food and Drug Administration-approved physician prescribing information is followed; and

3. Patient education and counseling are provided relating to the NPS, including pre and post insertion instructions, indications, contraindications, benefits, risks, side effects, and other contraceptive modalities.

4. A clinic visit relating only to the insertion or removal of the Norplant System (NPS) is not reimbursable on the day of the insertion or removal.

5. Only two insertions and two removals of the NPS per recipient are permitted during a five year continuous period.

6. The clinic shall not be reimbursed for the NPS in conjunction with other forms of contraception, for example, intra-uterine device.

(c) Sterilization is any medical procedure, treatment, or operation performed for the purpose of rendering an individual permanently incapable of reproducing.

1. The individual to be sterilized shall be at least 21 years of age at the time the sterilization consent form is signed by the individual to be sterilized.

2. The individual to be sterilized shall not be mentally incompetent or institutionalized.

i. A mentally incompetent individual is an individual who has been declared mentally incompetent by a Federal, State, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

ii. An institutionalized individual is an individual who is:

(1) Involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or

(2) Confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness.

3. The individual to be sterilized shall have voluntarily given informed consent in accordance with all the requirements prescribed in 42 CFR 441.257 through 441.258.

4. At least 30 days, but not more than 180 days, shall have passed between the date of informed consent and the date of the sterilization, except in the case of premature delivery or emergency abdominal surgery. An individual may consent to be sterilized at the

time of premature delivery or emergency abdominal surgery, if at least 72 hours have passed since he or she gave informed consent for the sterilization.

i. In the case of premature delivery, the informed consent shall have been given at least 30 days before the expected date of delivery.

ii. If an individual desires to be sterilized at the time of delivery, the consent form should be signed by the individual no earlier than the fifth month of pregnancy to minimize the possibility of exceeding the 180 day limit.

5. Informed consent is considered to be given only if:

i. The person who obtained consent for the sterilization procedure offered to answer any questions the individual may have concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:

(1) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might otherwise be entitled;

(2) A description of available alternative methods of family planning and birth control;

(3) Advice that the sterilization procedure is considered to be irreversible;

(4) A thorough explanation of the specific sterilization procedure to be performed;

(5) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of type and possible effects of any anesthetic to be used;

(6) A full description of the benefits or advantages that may be expected as a result of the sterilization; and

(7) Advice that the sterilization shall not be performed for at least 30 days, except under the circumstances specified in (c)4 above.

ii. Suitable arrangements were made to insure that the information specified in (c)5i above was effectively communicated to any individual who is blind, deaf, or otherwise handicapped;

iii. An interpreter was provided if the individual to be sterilized did not understand the language used on the consent form or the language used by the person obtaining consent;

iv. The individual to be sterilized was permitted to have a witness of his or her choice present when consent was obtained;

v. The consent form requirements of 42 CFR 441.258 were met; and

vi. Any additional requirement of state or local law for obtaining consent, except a requirement for spousal consent, was followed.

6. Informed consent may not be obtained while the individual to be sterilized is:

i. In labor or childbirth;

ii. Seeking to obtain or obtaining an abortion; or

iii. Under the influence of alcohol or other substances that affect the individual's state of awareness.

7. The consent form shall be an exact replica of the Federal form.

i. The consent form shall be signed and dated by the individual to be sterilized; the interpreter, if one was provided; the person who obtained the consent; and the physician who performed the sterilization procedure. A copy of the consent form shall be given to the individual.

ii. The Fiscal Agent Billing Supplement, N.J.A.C. 10:66—Appendix, contains additional information and instructions for the consent form's proper completion.

8. Claims for sterilization services are hard-copy restricted; electronic billing is not permitted.

#### 10:66-2.4 Laboratory

(a) As required by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), referenced at 42 CFR 493, all facilities or entities that perform clinical laboratory testing shall have their CLIA identification number on file with the New Jersey Medicaid program.

(b) A clinic shall only claim reimbursement for those laboratory services that have been performed by them on their premises, for their patients, and for which they have received approval by the New Jersey State Department of Health.

(c) Laboratory procedures are reimbursable only when performed in accordance with the applicable CLIA-mandated certificate of registration, certificate of waiver, or certificate of physician-performed microscopy procedures.

(d) Specific laboratory procedures are reimbursable when performed in conjunction with an EPSDT screening, if the requirements of (a), (b) and (c) above are met.

#### 10:66-2.5 Mental health

(a) Mental health services include: comprehensive intake evaluation, individual psychotherapy, off-site crisis intervention, family therapy, family conference, group psychotherapy, psychological testing, partial care, and medication management.

(b) Only one type of mental health service per recipient is reimbursable to an independent clinic on a given day. Exception: Medication management may be reimbursed when provided to a Medicaid recipient in addition to one of the following mental health services: individual psychotherapy, group psychotherapy, family therapy, and family conference.

(c) Mental health clinics shall provide mental health services by, or under the direction of, a psychiatrist.

(d) For purposes of partial care, full day means five or more hours of participation in active programming exclusive of meals; half day means at least three hours but less than five hours of participation in active programming exclusive of meals. Additional details are located at N.J.A.C. 10:66-6.

(e) An intake evaluation shall be performed within 14 days of the first encounter or by the third clinic visit, whichever is later, for each recipient being considered for continued treatment. This evaluation shall consist of a written assessment that:

1. Evaluates the recipient's mental condition;

2. Determines whether treatment in the program is appropriate, based on the recipient's diagnosis;

3. Includes certification (signed statement) by the evaluation team that the program is appropriate to meet the recipient's treatment needs; and

4. Is made part of the recipient's records.

5. The evaluation for the intake process shall include a physician and an individual experienced in diagnosis and treatment of mental illness. Both criteria may be satisfied by the same individual, if appropriately qualified.

(f) A written, individualized plan of care shall be developed for each recipient who receives continued treatment. The plan of care shall be designed to improve the recipient's condition to the point where continued participation in the program (beyond occasional maintenance visits) is no longer necessary. The plan of care shall be included in the recipient's records and shall consist of:

1. A written description of the treatment objectives including both the treatment regimen and the specific medical/remedial services, therapies, and activities that shall be used to meet the objectives;

2. A projected schedule for service delivery which includes the frequency and duration of each type of planned therapeutic session or encounter;

3. The type of personnel that will be furnishing the services; and

4. A projected schedule for completing reevaluations of the recipient's condition and updating the plan of care.

(g) The mental health clinic shall develop and maintain written documentation to support each medical/remedial therapy service, activity, or session for which billing is made.

1. This documentation, at a minimum, shall consist of:

i. The specific services rendered, such as individual psychotherapy, group psychotherapy, family therapy, etc., and a description of the encounter itself (that is, statement of patient progress noted, significant observations noted, etc.);

ii. The date and time that services were rendered;

iii. The duration of services provided (one hour, ½ hour, etc.);

iv. The signature of the practitioner or provider who rendered the services;

v. The setting in which services were rendered; and

vi. A notation of unusual occurrences or significant deviations from the treatment described in the plan of care.

2. Clinical progress, complications and treatment which affect prognosis and/or progress shall be documented in the recipient's medical record at least once a week, as well as any other information important to the clinical picture, therapy, and prognosis.

3. The individual services under partial care shall be documented on a daily basis. More substantive documentation, including progress notes and any other information important to the clinical picture, are required at least once a week.

(h) Periodic review of the recipient's plan of care shall take place on a regular basis (at least every 90 days during the first year and every six months thereafter).

1. The periodic review shall determine:

- i. The recipient's progress toward the treatment objectives;
- ii. The appropriateness of the services being furnished; and
- iii. The need for the recipient's continued participation in the program.

2. Periodic reviews shall be documented in detail in the recipient's records and made available upon request to the New Jersey Medicaid program or its agents.

#### 10:66-2.6 Rehabilitation

(a) Rehabilitative services include physical therapy, occupational therapy, and speech-language pathology and audiology, including the use of such supplies and equipment as are necessary in the provision of such services. Rehabilitative services and other restorative services are provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of a Medicaid recipient to his or her best functional level. Rehabilitative services shall be made available to Medicaid recipients as an integral part of a comprehensive medical program.

(b) Rehabilitative services shall be provided by or under the direction of a physical therapist, occupational therapist, speech-language pathologist or audiologist employed by or under contract to the clinic. These therapy services are discussed at (c), (d), and (e) below, respectively.

1. All treatments shall be individual and shall consist of a minimum of 30 minutes.

2. A plan of treatment shall be completed during the Medicaid recipient's initial evaluation visit and retained on file.

i. The plan of treatment shall be definitive as to the type, amount, frequency, and duration of the rehabilitative services that are to be furnished and shall include the recipient's diagnosis and the anticipated goal(s) of the treatment.

(c) Physical therapy is a service prescribed by a physician and provided to a Medicaid recipient by or under the direction of a qualified physical therapist. Physical therapy does not include therapy which is purely palliative, such as the application of heat in any form; massage; routine calisthenics; group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a licensed physical therapist.

1. A physical therapist is an individual who is:

- i. Licensed by the State of New Jersey as a physical therapist in accordance with N.J.A.C. 13:39A; and
- ii. A graduate of a program of physical therapy approved by both the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Physical Therapy Association or its equivalent.

2. If treatment or services are provided in a state other than New Jersey, the physical therapist shall meet the requirements of that state, including licensure if applicable, and all applicable Federal requirements.

(d) Occupational therapy is a service prescribed by a physician and provided to a Medicaid recipient by or under the direction of a qualified occupational therapist.

1. An occupational therapist is an individual who is:

- i. Registered by the American Occupational Therapy Association; or
- ii. A graduate of a program in occupational therapy approved by the Committee on Allied Health Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

2. If treatment or services are provided in a state other than New Jersey, the occupational therapist shall meet the requirements of that state, including licensure if applicable, and all applicable Federal requirements.

(e) Speech-language pathology services and audiology services are diagnostic, screening, preventive, or corrective services prescribed by a physician and provided to a Medicaid recipient by or under the direction of a speech-language pathologist or audiologist.

1. A speech-language pathologist or audiologist is an individual who is licensed by the State of New Jersey as a speech-language pathologist or audiologist, in accordance with N.J.A.C. 13:44C, and meets all applicable Federal requirements including:

i. A Certificate of Clinical Competence in Speech-Language Pathology or Audiology from the American Speech-Language-Hearing Association;

ii. Completion of the equivalent educational requirements and work experience necessary for the certificate(s); or

iii. Completion of the academic program and in the process of acquiring supervised work experience in order to qualify for the certificate(s).

2. If treatment or services are provided in a state other than New Jersey, the speech-language pathologist or audiologist shall meet the requirements of that state, including licensure if applicable, and all applicable Federal requirements.

(f) No portion of the time spent on therapy treatments may be considered as part of the time parameters of a clinic visit. Clinic visits billed during the same day shall clearly and separately meet the time and other parameters described in the applicable HCPCS procedure codes, N.J.A.C. 10:66-6.

(g) When prior authorized, reimbursement to a clinic may be made for more than one type of rehabilitative service performed on a Medicaid recipient on the same day, for example, physical therapy and speech-language pathology.

(h) When the same type of rehabilitative service is performed on a Medicaid recipient more than once on the same day, for example, two physical therapy services, reimbursement shall be made for one service only. Likewise, when the treatment performed on a Medicaid recipient is merely a different modality within the same type of rehabilitative service, reimbursement shall be made for only one service per recipient per day.

#### 10:66-2.7 Transportation

(a) Transportation service is Medicaid covered when the following conditions are met:

1. The clinic is approved to provide transportation service by the New Jersey Medicaid program.

i. Approval by the New Jersey Medicaid program shall not be granted for the provision of ambulance or invalid coach service.

2. Transportation service is provided either:

- i. By the clinic, in a clinic owned or leased vehicle; or
- ii. By a transportation company under contract to the clinic.

3. The purpose of providing transportation, one way or round trip, is to enable a Medicaid recipient to obtain a Medicaid-covered service at the clinic.

4. A Medicaid recipient is transported:

- i. To the clinic, from the recipient's residence or a designated central point; or
- ii. From the clinic, to the recipient's residence or a designated central point.

#### 10:66-2.8 Miscellaneous

(a) The following applies to the provision of dental services:

1. All diagnostic, preventive or corrective dental procedures shall be administered by, or under, the direct supervision of a dentist enrolled in the New Jersey Medicaid program.

2. Dental services provided in an independent clinic shall follow the policies and procedures outlined in the New Jersey Medicaid program's Dental Services chapter, N.J.A.C. 10:56.

3. The New Jersey Medicaid program's Dental Services chapter, N.J.A.C. 10:56-3 (HCPCS), contains dental procedure codes and maximum fee allowances.

(b) The following applies to the provision of drug treatment services:

1. Medicaid-covered services delivered to Medicaid recipients in a drug treatment center are only those services that are:
  - i. Prescribed by a physician;
  - ii. Eligible for Federal financial participation under Title XIX of the Social Security Act; and
  - iii. Included in the facility's Medicaid approval letter.
2. Only one type of mental health service per recipient is reimbursable to a drug treatment center on a given day. See N.J.A.C. 10:66-2.5(b) for the exception concerning medication management.
3. For the purposes of the AIDS Community Care Alternatives Program (ACCAP) only, certain services as indicated at N.J.A.C. 10:66-6.2(m) may be provided to ACCAP-eligible individuals in the home.

(c) The following applies to hospital visits:

1. An inpatient hospital visit performed by a clinic physician for a registered patient of a Federally qualified health center shall be reimbursed only if the clinic is specifically approved to provide this service by the Program.
  - i. For a salaried physician in a Federally qualified health center (FQHC), an inpatient hospital visit shall be billed by the FQHC as a medical encounter.
  - ii. For a physician under contract with a Federally qualified health center (FQHC), the physician may receive reimbursement as an individual provider as long as the clinic is not also billing for the same service. The only contracted physician's cost that may be reported in the FQHC's Medicaid cost report are for visits that are billed by the FQHC.

(d) Obstetrical services, which may include obstetrical delivery, may be reimbursed when performed by a licensed physician and/or certified nurse-midwife in a licensed ambulatory care facility which is specifically approved to perform such services by the New Jersey Medicaid program.

(e) Podiatric services that are medically necessary are Medicaid reimbursable when performed by a licensed podiatrist in an independent clinic which is specifically approved to perform such services by the New Jersey Medicaid program. See the New Jersey Medicaid program's Podiatry Services chapter, N.J.A.C. 10:57, for additional information.

(f) For covered pharmaceutical services, see the New Jersey Medicaid program's Pharmaceutical Services chapter, N.J.A.C. 10:51. See N.J.A.C. 10:51-1.22 for bundled drug services.

(g) Specified radiological services may be reimbursed when provided in a clinic that is specifically approved to provide such services by the New Jersey Medicaid program, and performed by a physician who is recognized as a specialist in radiology by the New Jersey Medicaid program. See the New Jersey Medicaid program's Physician's Services chapter, N.J.A.C. 10:54, for additional information.

(h) An independent clinic providing renal dialysis service for end-stage renal disease (ESRD) shall comply with all applicable Federal regulations and State regulations as indicated at N.J.A.C. 8:43A.

(i) Termination of pregnancy is a Medicaid-covered service when the following conditions are present:

1. If performed in an appropriately licensed ambulatory care facility, an ambulatory surgical center, or an ambulatory care/family planning/surgical facility licensed and authorized by the New Jersey State of Health to perform abortions with specific approval of the New Jersey Medicaid program;
2. If performed in accordance with the requirements of the New Jersey Board of Medical Examiners, N.J.A.C. 13:35;
3. If performed by a physician licensed to practice medicine and surgery in the State of New Jersey; and
4. If medically necessary. A physician may take the following factors into consideration in determining whether a termination of pregnancy is medically necessary:
  - i. Physical, emotional, and psychological factors;
  - ii. Family reasons; and
  - iii. Age.

5. Claims for termination of pregnancy services are hard-copy restricted; electronic billing is not permitted.

6. A Physician Certification (Form FD-179) must be attached to any Medicaid claim form relating to termination of pregnancy services.

i. The Fiscal Agent Billing Supplement contains a sample Physician Certification (Form FD-179) and item-by-item instructions for the form's proper completion.

(j) Vision care services are reimbursable when administered by a licensed ophthalmologist or optometrist as indicated in the New Jersey Medicaid program's Vision Care Services chapter, N.J.A.C. 10:62. See the New Jersey Medicaid program's Vision Care Services chapter, N.J.A.C. 10:62-3 (HCPCS), for procedure codes and maximum fee allowance for reimbursement of both professional services and optical appliances and services.

(k) The following applies to the provision of personal care assistant services:

1. Personal care assistant services (mental health) are health related tasks performed by a qualified individual in a recipient's home under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care.

i. Each personal care provider employing personal care assistants shall be individually approved by the New Jersey Medicaid program before it will be reimbursed for services rendered to Medicaid recipients. The Division of Medical Assistance and Health Services will recognize upon approval, agencies under contract to the Division of Mental Health and Hospitals.

(1) For information and rules pertaining to personal care assistant services provided by a home health or homemaker agency, refer to N.J.A.C. 10:60-1.7 in the New Jersey Medicaid program's Home Care Services chapter.

2. Personal care assistant services provided by a family member are not covered services.

3. Personal care assistant services shall be provided only in instances where a family support system or other informal care giver is unavailable, inaccessible or inappropriate.

4. The registered professional nurse, in accordance with the physician's plan of care, prepares written instructions for the personal care assistant to include the amount and kind of supervision needed, the specific needs of the patient and the resources of the patient, the family and other interested persons.

5. Supervision of the personal care assistant shall be provided by a registered nurse at a minimum of one visit every 60 days to assess the patient's health condition, as well as the quality of personal care assistant services received.

6. An initial nursing assessment visit must be made to evaluate the need for personal care assistant service. Following the initial visit, a nursing reassessment visit may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care.

7. The personal care assistant shall enter progress notes on a weekly basis in the recipient's record, including the recipient's progress toward goals. These progress notes shall be signed and dated by the personal care assistant.

(e) Other services, such as evaluation and management, minor surgery, etc. are reimbursable when billed by an independent clinic individually approved to provide the service(s) as indicated in N.J.A.C. 10:66-1.3, Provisions for provider participation. See N.J.A.C. 10:66-6 (HCPCS) for the procedure codes and maximum fee allowances corresponding to the Medicaid-reimbursable service(s).

**SUBCHAPTER 3. HEALTHSTART**

**10:66-3.1 Purpose**

(a) The purpose of HealthStart is to provide for comprehensive maternity care services to pregnant Medicaid recipients, including those determined to be presumptively eligible, and preventative child health care services for Medicaid recipients up to the age of two.

1. Pediatric HealthStart services are an expansion of the EPSDT program as described at N.J.A.C. 10:66-2.2.

10:66-3.2 Scope of services

(a) HealthStart maternity care services provided by a HealthStart-certified provider are obstetrical care services and a program of health support services provided in accordance with the recommendations of the American College of Obstetricians and Gynecologists. HealthStart pediatric care services include up to nine preventive visits, as recommended by the American Academy of Pediatrics, provided by a HealthStart-certified provider who assumes the primary responsibility for coordination and continuity of care.

(b) HealthStart comprehensive maternity care includes both medical maternity care services and health support services, which are described below in (b)1 and 2, respectively.

1. Medical maternity care services include:
  - i. Ambulatory prenatal services;
  - ii. Admission arrangements for delivery;
  - iii. Obstetrical delivery services; and
  - iv. Postpartum medical services.
2. Health support services include:
  - i. Case coordination services;
  - ii. Health education assessment and counseling services;
  - iii. Nutrition assessment and counseling services;
  - iv. Social-psychological assessment and counseling services;
  - v. Home visitation; and
  - vi. Outreach, referral and follow-up services.

(c) HealthStart comprehensive pediatric care includes nine preventive child health visits; all the recommended immunizations; case coordination and continuity of care including, but not limited to, the provision or arrangement for sick care, 24 hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:66-3.3 HealthStart provider participation criteria

(a) The following Medicaid-enrolled provider types are eligible to participate as HealthStart providers: independent clinics, hospital outpatient departments, local health departments meeting the New Jersey State Department of Health's Improved Pregnancy Outcome criteria and/or approved as Child Health Conferences, physicians and physician groups, and certified nurse midwives.

(b) In addition to New Jersey Medicaid program rules applicable to provider participation, HealthStart providers shall:

1. Sign an Addendum to the New Jersey Medicaid program's Provider Agreement;
2. Have a valid HealthStart Provider Certificate for HealthStart Maternity Care Service, HealthStart Medical Maternity Service, HealthStart Health Support Service, or HealthStart Pediatric Care Service; and
3. Provide maternity care and/or pediatric care services in accordance with the requirements for issuance of a HealthStart Provider Certificate and in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers and HealthStart Pediatric Care Providers.

(c) In addition to (a) and (b) above, a HealthStart maternity care provider with more than one care site or more than one maternity clinic at the same site that uses different staff, shall apply for a separate HealthStart Provider Certificate for each separate clinic. Only those sites which hold a HealthStart Provider Certificate shall be reimbursed for HealthStart services. Such sites:

1. Shall participate in program evaluation and training activities, including, but not limited to, site monitoring, agency and patient record review, and submission of required summary information on each patient according to the New Jersey State Department of Health's Guidelines for HealthStart Providers; and
2. May determine presumptive eligibility for the New Jersey Medicaid program if approved by the Division of Medical Assistance and Health Services.

(d) In addition to (a) and (b) above, a HealthStart pediatric care provider shall participate in program evaluation and training activities including, but not limited to, documentation of outreach and follow-up activities in the patient's record.

(e) A site review may be required to ascertain an applicant's ability to meet the standards for a HealthStart Provider Certificate

and to provide services in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Providers in the appropriate area.

(f) A HealthStart Provider Certificate shall be reviewed by the New Jersey State Department of Health at least every 18 months from the date of issuance.

(g) An application for a HealthStart Provider Certificate is available from:

HealthStart Program  
New Jersey State Department of Health  
CN 364  
Trenton, NJ 08625-0364

- (h) A HealthStart Program Provider Agreement is available from:  
Chief, Provider Enrollment Unit  
Division of Medical Assistance and Health Services  
Mail Code #9  
CN 712  
Trenton, N.J. 08625-0712

10:66-3.4 Termination of HealthStart Provider Certificate

(a) The New Jersey State Department of Health shall be responsible for enforcement of its requirements for HealthStart Provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart Providers.

(b) Failure to comply with HealthStart standards shall be cause for termination of the HealthStart Provider Certificate by the New Jersey State Department of Health.

1. Termination of the HealthStart Provider Certificate shall result in the termination of the HealthStart Provider Agreement with the New Jersey Medicaid program. Providers who are terminated by the New Jersey Medicaid program have the right to request a hearing as indicated in the Administration chapter in N.J.A.C. 10:49-10.3, Opportunity for fair hearing.

2. A HealthStart Provider Certificate is time limited. Failure to complete the recertification process shall result in termination of the provider's HealthStart provider status by the New Jersey State Department of Health.

10:66-3.5 Standards for a HealthStart Comprehensive Maternity Care Provider Certificate

(a) Comprehensive maternity care services must be integrated and coordinated.

(b) HealthStart maternity care providers, excluding physicians and nurse midwives who are in private practice, shall provide comprehensive maternity care services within the following organizational requirements:

1. The provider shall provide directly or through an approved agreement, at one contiguous site, the following services: ambulatory prenatal and postpartum care, case coordination services; nutrition assessment, guidance and counseling services; health education assessment and instruction; social-psychological assessment, guidance and counseling;
2. The provider shall provide or arrange for the admission of the patient to the appropriate level of care facility for obstetrical delivery services;
3. The provider shall provide or arrange for all necessary laboratory services;
4. The provider shall provide one or more prenatal home visits for each high risk patient;
5. The provider shall provide at least one postpartum home visit for each high risk patient;
6. The provider shall adopt procedures and policies which assure the delivery of coordinated, integrated and comprehensive care; and
7. The provider shall provide referral and follow-up services, which must include, but not be limited to: referral for specialized evaluation, counseling and treatment for extensive social, psychological, nutritional and medical needs.

(c) The provider shall be responsible for linking the mother and newborn infant to a pediatric care provider; if feasible, the linkage should be with a HealthStart pediatric care provider.

## PROPOSALS

Interested Persons see Inside Front Cover

## HUMAN SERVICES

(d) An independent clinic may provide the HealthStart health support services component alone upon entering into a written agreement with a private practitioner(s) who shall provide the HealthStart medical care services component. This agreement shall delineate which party is to take primary responsibility for provision of all HealthStart services.

### 10:66-3.6 Access to service

(a) All HealthStart services shall be accessible to patients.

(b) HealthStart maternity care providers shall facilitate patient access to services by scheduling an initial medical visit appointment within two weeks of the patient's first request for services.

(c) HealthStart maternity care providers shall provide or arrange for 24 hour access to case coordination and medical services for emergency situations.

(d) HealthStart maternity care providers shall arrange for language translation and/or interpretation services.

(e) HealthStart maternity care providers may implement a presumptive eligibility processing if so approved by the Division of Medical Assistance and Health Services.

(f) HealthStart maternity care providers shall undertake community outreach activities to encourage women to seek early prenatal care and increase awareness of the availability of maternity care services.

### 10:66-3.7 Care plan

(a) A care plan shall be developed and maintained by the case coordinator for each patient.

(b) A care plan shall be based on the medical, nutritional, social-psychological and health education assessments.

(c) A care plan shall include, but not be limited to: identification of risk conditions and/or problems, prioritization of needs, outcome objectives, planned interventions, time frames, referrals and follow-up activities, and identification of staff persons responsible for the services.

(d) The care plan shall be developed and revised in consultation with the patient and staff providing services to the patient.

(e) The initial care plan shall be completed after a case conference and no later than one month after the initial registration visit.

### 10:66-3.8 Maternity medical care services

(a) Maternity medical care services include antepartum, intrapartum and postpartum care provided by the obstetrical care practitioner(s) in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers.

(b) Prenatal services are as follows:

1. Frequency of prenatal visits for an uncomplicated pregnancy shall be every four weeks during the first 28 weeks, then every two weeks until 36 weeks, and weekly thereafter. Prenatal visits for complications should be scheduled as needed.

2. Initial prenatal visit content shall include, but not be limited to:

- i. History;
- ii. Review of systems;
- iii. Comprehensive physical examination;
- iv. Risk assessment;
- v. Patient counseling;
- vi. Routine laboratory tests;
- vii. Development of the care plan; and
- viii. Special tests and/or procedures as medically indicated.

3. Subsequent prenatal visit content shall include, but not be limited to:

- i. Review and revision of the patient care plan;
- ii. Interim history;
- iii. Physical examination;
- iv. Patient counseling and treatment;
- v. Laboratory tests;
- vi. Special tests and/or procedures which are medically indicated;
- vii. Identification of new or developing problems; and
- viii. Management, including transfer, of any new or persistent problems.

4. Transfer of the prenatal records to the hospital of delivery shall occur no later than 34 weeks gestation.

(c) Obstetrical delivery services shall include, but not be limited to:

1. Determination of and arrangements for delivery site;
2. Attendance at or provision for obstetrical delivery by a qualified physician or certified nurse midwife; and
3. Medical care during the entire period of confinement.

(d) A postpartum visit shall be provided by the 60th day after delivery, and shall include, but not be limited to:

1. History;
2. Review of the prenatal, labor and delivery record;
3. Physical examination;
4. Patient counseling and treatment;
5. Patient/infant assessment;
6. Referral/consultation, as indicated; and
7. Procedures/tests, as indicated.

(e) All HealthStart maternity care providers shall have policies and protocols which are consistent with national standards regarding consultation, and/or transfer of medically high risk patients to tertiary-level maternity care facilities or specialists, and to genetic counseling and testing facilities.

### 10:66-3.9 Health support services

(a) Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers as follows:

1. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart enrollment visit.

2. Prenatal case coordination activities shall include, but not be limited to:

- i. Orienting the patient to all services;
- ii. Developing, maintaining and coordinating the care plan in consultation with the patient;
- iii. Coordinating and monitoring the delivery of all services and referrals;
- iv. Monitoring and facilitating the patient's entry into and continuation with maternity services;
- v. Facilitating and providing advocacy for obtaining referral services;
- vi. Reinforcing health teachings and providing support;
- vii. Providing vigorous follow up for missed appointments and referrals;
- viii. Arranging home visits;
- ix. Meeting with the patient and coordinating patient care conferences; and
- x. Reviewing, monitoring and updating the patient's complete record.

3. Postpartum care coordination activities shall include, but not be limited to:

- i. Arranging and coordinating the postpartum visit and any home visit;
- ii. Arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record information no later than two weeks after delivery;
- iii. Linking the patient to appropriate service agencies including: the Special Supplemental Food Program for Women, Infants and Children (WIC), pediatric care (preferably with a HealthStart pediatric care provider), future family planning, Special Child Health Services County Case Management Unit, and other health and social agencies, if needed;
- iv. Arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;
- v. Coordinating referrals and following up on missed appointments and referrals; and
- vi. Reinforcing health instructions for mother and baby.

(b) Nutrition assessment and basic guidance services must be provided to orient and educate all patients to nutritional needs during pregnancy and educate the patient to good dietary practices in accordance with the New Jersey State Department of Health's

Guidelines for HealthStart Maternity Care Providers. Specialized nutrition assessment and counseling must be provided to those women with additional needs. Services shall be provided as follows:

1. Initial assessment services, which shall include, but not be limited to:

- i. Review of the patient's chart;
  - ii. Identification of dental problems which may interfere with nutrition;
  - iii. Nutritional history;
  - iv. Current nutritional status;
  - v. Determination of participation in WIC or other food supplement programs; and
  - vi. Identification of need for specialized nutritional counseling;
2. Subsequent nutritional assessment, which shall include, but not be limited to:

- i. Monitoring of weight gain/loss;
- ii. Identification of special dietary needs; and
- iii. Identification of need for specialized nutritional counseling services;

3. Prenatal nutritional guidance, which shall include, but not be limited to:

- i. Basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;
- ii. Review and reinforcement of other nutritional and dietary counseling services the patient may be receiving;
- iii. Instruction on food purchase, storage and preparation;
- iv. Instruction on food substitutions, as indicated;
- v. Discussion of infant feeding and nutritional needs; and
- vi. Referral to food supplementation programs through the case coordinator;

4. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs;

5. Referral for extensive specialized nutritional services which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider in coordination with the case coordinator; and

6. Postpartum nutritional assessment and basic guidance services which shall include, but not be limited to:

- i. Review and reinforcement of good dietary practices;
- ii. Review of instruction on dietary requirement changes; and
- iii. Instruction on breast feeding and/or formula preparation and feeding.

(c) Social-psychological assessment and basic guidance services shall be provided to all patients to assist the patient in resolving social-psychological needs, in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers. Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

1. Initial social-psychological assessment services which shall include, but not be limited to:

- i. Determining financial resources and living conditions;
- ii. Determining the patient's personal support system;
- iii. Determining the patient's attitudes and concerns regarding the pregnancy;
- iv. Ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;
- v. Ascertaining educational and/or employment status and needs; and
- vi. Identification of the need for specialized social-psychological and/or mental health evaluation and counseling services;

2. Subsequent social-psychological assessment services which shall include, but not be limited to:

- i. Determination of patient's reaction to pregnancy;
- ii. Ascertaining the reaction of family, friends and actual support person to the pregnancy;
- iii. Identification of the need for social service interventions and advocacy; and
- iv. Identification of the need for specialized social-psychological and/or mental health evaluation and counseling;

3. Basic social-psychological guidance, which shall include, but not be limited to:

- i. Orientation and information on available community resources;
- ii. Orientation regarding stress and stress reduction during pregnancy; and
- iii. Assistance with arrangements for transportation, child care and financial needs;

4. Specialized, short-term social-psychological counseling, which shall be provided to women who are identified through assessment or basic counseling as having need for more intense service;

5. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator; and

6. Postpartum social-psychological assessment and guidance which shall include, but not be limited to:

- i. Review of prenatal, labor, delivery and postpartum course;
- ii. Assessment of the patient's current social-psychological status, including mother and infant bonding and the acceptance of the infant by the father and/or family, as applicable;
- iii. Identification of the need for additional social-psychological services;

iv. Review of available community resources for mother and infant, as applicable;

v. Counseling regarding fetal loss or infant death, if applicable; and

vi. Counseling regarding school/employment planning.

(d) Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers. Services shall be provided as follows:

1. Initial assessment of health educational needs, which shall include, but not be limited to:

- i. Identification of general educational background;
- ii. Patient's health education needs; and
- iii. Previous education and experience concerning pregnancy, birth and infant care;

2. Health education instruction, which shall be provided for all patients based on their identified health education needs, shall include at least the following:

- i. Normal course of pregnancy;
- ii. Fetal growth and development;
- iii. Warning signs, such as signs of pre-term labor, and identification of emergency situations;
- iv. Personal hygiene;
- v. Exercise and activity;
- vi. Childbirth preparation, including management of labor and delivery;
- vii. Preparation for hospital admission;
- viii. Substance, occupational and environmental hazards;
- ix. Need for continuing medical and dental care;
- x. Future family planning;
- xi. Parenting, basic infant care and development;
- xii. Availability of pediatric and family medical care in the community; and
- xiii. Normal postpartum physical and emotional changes;

3. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care; and

4. Postpartum assessment of health education needs shall be conducted.

(e) One face-to-face preventive health care contact must be provided or arranged for during the time after hospital discharge and prior to the required medical postpartum visit. This requirement is in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers, as follows:

1. This contact shall include, but not be limited to:

- i. Review of the mother's health status;
- ii. Review of the infant's health status;
- iii. Review of mother/infant interaction;

- iv. Revision of the care plan; and
  - v. Provision of additional services, as indicated; and
2. The provider shall provide or arrange for one or more home visits for each high risk patient in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers.

(f) HealthStart maternity care providers shall utilize existing community services to enhance the maternity care services.

(g) HealthStart maternity care providers shall have written procedures which identify specific agencies or practitioners and criteria for referral of patients requiring services which are extensive, complex or expected to extend beyond the pregnancy. These procedures shall include but are not limited to: nutritional and food supplementation services, substance abuse treatment facilities, mental health services, county/local social and welfare agencies, parenting and child care educational programs, future family planning services, fetal alcohol syndrome and AIDS counseling services.

#### 10:66-3.10 Professional staff requirements for HealthStart comprehensive maternity care services

(a) All HealthStart comprehensive maternity care services shall be delivered through a team approach by qualified professionals.

(b) Physicians and/or certified nurse midwives shall be Medicaid providers and have obstetrical admitting privileges at a licensed maternity care facility.

(c) Case coordinators shall have as a minimum a license as a registered nurse; or a bachelor's degree in social work, health or behavioral science.

(d) Health professionals shall have a valid license to practice their professions as required by the State of New Jersey.

(e) All other professionals, for whom no license to practice is required, shall meet generally accepted professional standards for qualification.

(f) Paraprofessionals shall be familiar with the local community, have knowledge and/or skills in maternal and child health services and be supervised by a health professional.

(g) Prenatal, delivery, and postpartum medical services shall be delivered by a physician and/or a certified nurse midwife.

(h) Nutritional, social-psychological and health education assessment and development of the care plan shall be provided by the appropriate professional in each of the specialty areas or the case coordinator or medical care professional. If the nutritional or social-psychological assessment portion of the care plan are provided by the case coordinator or medical care professional, then they shall be reviewed by the nutritionist or social worker, respectively.

(i) Nutritional and social-psychological basic counseling shall be provided by a case coordinator with at least one year of experience in providing services to maternity patients or by the appropriate specialist in each of the areas or by a registered nurse or obstetrical care provider.

(j) Short term specialized social-psychological and nutritional counseling services shall be provided by a social worker and nutritionist respectively. The social worker and nutritionist shall be available on site during patient visits.

(k) There shall be adequate professional, paraprofessional and clerical staff to provide, in a timely manner, maternity care services as described herein which meet the needs of the patients.

#### 10:66-3.11 Records: documentation, confidentiality and informed consent for HealthStart comprehensive maternity care providers

(a) Healthstart maternity care providers shall have policies which protect patient confidentiality, provide for informed consent, and document prenatal, labor, delivery and postpartum services in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Maternity Care Providers.

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings, assessment,

a care plan, treatment services, laboratory reports, counseling and health instructions provided, and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart services.

#### 10:66-3.12 Standards for HealthStart pediatric care certificate

(a) Pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart pediatric care providers shall:

1. Directly provide preventive child health care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutritional services, and follow-up of referrals and sick care;

2. Directly provide or arrange for non emergency room-based, 24-hour physician telephone access to eligible patients; and

3. Directly provide or arrange for sick care and emergency care.

#### 10:66-3.13 Professional requirements for HealthStart pediatric care providers

(a) All HealthStart pediatric care providers shall be pediatricians or have a physician on staff who possesses a knowledge of pediatrics. This may be demonstrated by eligibility for board certification by the American Academy of Pediatrics and/or by hospital admitting privileges in pediatrics.

#### 10:66-3.14 Preventive care services by HealthStart pediatric care providers

(a) HealthStart pediatric care providers shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and the New Jersey State Department of Health Guidelines for HealthStart Pediatric Care. The schedule shall include a two to four week visit, a two month visit, a four month visit, a six month visit, a nine month visit, a 12 month visit, a 15 month visit, an 18 month visit and a 23-24 month visit. Each visit shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations and immunizations. Referrals shall be made as appropriate.

(b) Each provider shall provide or arrange for sick care and 24 hour telephone physician access during non-office hours. If not directly provided by the HealthStart provider, sick care and 24 hour telephone access shall be provided for each child by a single designated provider via a documented agreement. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff is not permitted. Referral to the emergency room should occur only for emergency medical care or urgent care.

(c) Case coordination, outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referral is not completed, a letter or phone call to the child's parent or guardian and/or to the referred agency shall be sent or made. All of the activity shall be recorded on the patient's chart.

#### 10:66-3.15 Referral services by HealthStart pediatric care providers

(a) All HealthStart pediatric care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutritional services.

1. This may include, but is not limited to: the Special Supplemental Food Program for Women, Infants and Children (WIC); Division of Youth and Family Services, Special Child Health Services Case Management Units and Child Evaluation Centers; early intervention programs; county welfare agencies/boards of social services; certified home health agencies; community mental health centers; and local and county health departments.

10:66-3.16 Records: documentation, confidentiality and informed consent for HealthStart pediatric care providers

(a) HealthStart pediatric care providers shall have policies which protect patient confidentiality, provide for informed consent and document comprehensive care services in accordance with the New Jersey State Department of Health's Guidelines for HealthStart Pediatric Care Providers.

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, care plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart pediatric services.

**SUBCHAPTER 4. FEDERALLY QUALIFIED HEALTH CENTER (FQHC)**

10:66-4.1 Federally qualified health center services

(a) Federally qualified health center (FQHC) services are services provided by physicians, physician assistants, nurse practitioners, nurse midwives, psychologists, dentists, clinical social workers, and services and supplies incident to such services as would otherwise be covered if furnished by a physician or as an incident to a physician's services.

(b) FQHC rules are as follows:

1. FQHCs shall accommodate an outstationed county welfare agency (CWA) employee(s) for the purpose of determining Medicaid eligibility, pursuant to 1902 (a)(55) of the Social Security Act, 42 U.S.C. 1396a.

2. Each visit by an individual seeking services at a FQHC is called an encounter, which may be medical, psychiatric, or dental.

3. A medical encounter is a face-to-face contact between a recipient and a physician or other licensed practitioner acting within his or her respective scope of practice, including a podiatrist, optometrist, chiropractor, nurse practitioner, or nurse midwife.

i. Normally, only one medical encounter is covered per recipient, per day. More than one medical encounter is covered, however, when the recipient is seen by more than one licensed practitioner for the prevention, treatment or diagnosis of different injuries or illnesses, and practitioners of appropriate different specialties are involved.

ii. More than one medical encounter is also allowed if a recipient leaves the center after having been seen by a practitioner, then returns to the center and is seen by another practitioner on the same day.

iii. More than two medical encounters during a week for a recipient requires clear documentation in the recipient's medical record demonstrating the medical necessity of the encounter(s).

iv. Interpretation of results of tests or procedures not requiring face-to-face contact between a recipient and a practitioner, and referrals to specialists, do not constitute a medical encounter.

4. A psychiatric encounter is a face-to-face contact between a recipient and a licensed mental health professional in which a covered mental health clinic service is provided.

5. A dental encounter is a face-to-face contact between a recipient and a dentist or a licensed dental professional in which a covered dental procedure is provided. All procedures shall be administered by or under the direct supervision of a dentist.

**APPENDIX**

**Cost Report**

(a) Each Federally qualified health center (FQHC) participating as an independent clinic provider in the Medicaid program shall complete a cost report, as indicated at N.J.A.C. 10:66-1.5(e). This requirement is necessary to determine the amount of reimbursement to be paid to the FQHC for services provided to a Medicaid recipient.

(b) All Worksheets, Statistical Information, and a Certification Page must be completed as appropriate. Additional documentation in the form of sub-worksheets, etc. may be provided by a FQHC

to support a particular cost or reclassification, adjustment to expenses, or other item(s). Calculations requiring a percentage shall be carried to five places.

(c) The completion of a cost report serves as the basis for an FQHC's interim reimbursement rate and the total Medicaid reimbursement due to an FQHC for services provided to Medicaid recipients.

(d) The following pages contain the cost report forms and instructions for their proper completion.

**(See pages 4400 through 4402 for copy of Federally Qualified Health Center Medicaid Cost Reporting Forms)**

**FQHC-93-01 (Certification) (i)(ii) COMPLETION INSTRUCTIONS**

**Field Explanation**

1. Enter the Federally qualified health center mailing address;
2. Enter the Medicaid Provider Number assigned to the FQHC;
3. Enter the fiscal period of the FQHC being reported;
4. Circle the category of control most representative of the FQHC.
5. List each owner possessing an amount of ownership in the FQHC, regardless of the level.
6. All other Federally qualified health centers, providers of service, or suppliers and other entities related to the center through common ownership or control must be listed here. The use of a sub-schedule is permitted as necessary.
7. All grants received by the FQHC are to be listed here. The name, number and source of the grant (i.e., State of New Jersey Grant #XXXXX, Public Health Service Grant #XXXXX, etc.,) duration of the grant and the total grant dollars under each grant are to be listed. This information is purely for informational purposes. If additional space is required attach a supporting sub-schedule listing.
8. The names and Medicaid Physician Billing numbers of physicians furnishing services at the center are to be entered here. As appropriate a sub-schedule may be used.
9. Enter the name and number of hours worked by the supervisory physician(s) during the reporting period. Sub-schedules may be used as necessary.

**Certification statement:**

Enter the full name of the FQHC and the reporting period covered by the report. Note: Enter the signature of the officer/owner of the FQHC and his/her title and date after the completion of the cost report.

**(See pages 4403 through 4405 for copy of Federally Qualified Health Center Supporting Documentation forms)**

**FQHC-93-01 (Reclassification and Adjustment of Trial Balance of Expenses)—(Worksheet 1)—(iii)(iv)(v)**

**COMPLETION INSTRUCTIONS:**

Worksheet 1 is used to record the trial balance of expense accounts from the books and records of the center for the year being reported. (For budgeted reports an estimated trial balance should be utilized). This worksheet provides for any adjustments or reclassification to the center's cost centers that may be required.

The order of the cost centers is designed to flow to subsequent worksheets, where applicable, to aid in the cost report preparation. It is recognized that not all of the cost centers will apply to every center. For example, not every facility will offer dental services. Where a cost center is listed that doesn't apply, leave that center blank.

Blank lines for use by the center are provided wherein a unique cost center or situation may exist. If these are used, the center must identify what specific cost (center/service) are included.

**Columns 1 and 2—Compensation and Fringe Benefits:**

The compensation and fringe benefit expenses recorded on the books of the center, for the period of the cost report, are to be

entered on the appropriate cost center lines. These expenses come directly from the trial balance of the center without adjustment. Any needed reclassification or adjustment must be recorded in columns 5 and 7, as appropriate.

**Column 3—Other:**

Enter the expenses of the various cost centers that are not compensation or fringe benefits. These expenses come directly from the trial balance of the center without adjustment. Any needed reclassification or adjustment must be recorded in columns 5 and 7, as appropriate.

**Column 4—Sub-Totals:**

The sum of columns 1, 2 and 3, for each line is entered here.

**Column 5—Expense Reclassifications:**

Enter any reclassification among cost centers in column 4 which are necessary to effect proper cost recognition and allocation. Reclassifications are to be used when the expenses of a particular cost center are applicable to more than one of the cost centers listed on the worksheet, and are maintained in a single cost center on the books and records of the center. For example, where a physician performs certain administrative duties, the appropriate portion of his/her compensation and fringe would need to be reclassified from the "Physician" cost center to "Administrative Costs Staff—Administration" cost center. Thus, his/her administrative time (cost) would be properly recognized.

**Introduction to Column 6:**

All reclassifications shall be specifically identified via supporting schedules to the cost report as prepared by the center. The supporting schedules must provide an appropriate explanation to each of the affected cost centers. Any reduction of expense is to be shown in < > brackets. The net total of the supporting schedule and column must equal zero.

Worksheet 1, Support Schedule A is to be used for all reclassifications. See instructions for specifics of this schedule.

**Column 6—Reclassified Trial Balance:**

This column is the total of column 4, plus or minus column 5. The total of column 6, all pages, as found on Worksheet 1, line 108, Total Center Costs, must equal that of column 4, line 108, Total Center Costs.

**Column 7—Adjustments (Decreases) Increases:**

Enter the amount of any adjustment to the center's reclassified trial balance expenses. Adjustments are required to adjust (increase or <decrease>) actual expenses in accordance with Medicaid rules on allowable cost. An example of a situation in which adjustment to expense would be required is where the clinic receives an allocation from a central (home) office, has a practitioner assigned by the National Health Service Corps, or the identification of pneumococcal vaccine administration costs.

All adjustments reflected in column 7 shall be detailed on a supporting schedule prepared by the clinic. The schedule shall provide an explanation or rationale for the adjustment, whether the adjustment basis is cost or amount received and the identification of any and all cost centers affected.

Worksheet 1, Support Schedule B is to be used to document and detail the adjustments contained in column 7. See instructions for specifics of this schedule.

**Column 8—Adjusted Net Expenses:**

This column is used to combine the reclassified trial balance amounts in column 6 with the adjustment amounts found in column 7 by individual cost center. The amounts resulting in column 8 will be used in later schedules in the determination of reimbursement of cost for services rendered to Medicaid recipients.

(See page 4406 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 1—Support Schedule A—Reclassifications—(vi)**

**COMPLETION INSTRUCTION:**

This supporting schedule is designed to document any reclassification of cost performed on the Trial Balance of Expenses, column 4. A full explanation of the reclassification must accompany each reclassification. A letter code (A), (B), (C), etc., should be used to identify each reclassification shown. This will enable identification of reclassifications should this be necessary. An example of a reclassification would be the identification of the administration and the pharmaceutical expenses for pneumococcal vaccine. Cost could be reclassified from pharmacy and the physician assistant cost centers to the pneumococcal vaccine services cost center.

For every cost amount reclassified a specific cost center (columns 3 or 6) and line (columns 4 & 7) must be recorded. Increases are to be identified in columns 3, 4, & 5, with decreases shown in columns 6, 7, & 8. The totals of column 5 and column 8 must equal.

(See page 4407 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 1—Support Schedule B—Adjustments to Expense Detail—(vii)**

**COMPLETION INSTRUCTIONS:**

This supporting schedule is used to provide the necessary detail for all adjustments, either (decreases) or increases, effecting cost centers on Worksheet 1, Pages 1, 2, & 3.

A full explanation of the adjustment is to be entered in column 1. In column 2 an alpha identifier of either C (cost) or R (revenue) should be entered. This designates the amount of the adjustment as either a revenue (received) offset or an actual cost offset.

An example of a revenue offset would be the revenues received from the operation of a vending machine in the center. The revenue received should be offset against the cost of providing the service. An actual expense offset would be made where the cost could actually be determined, such as when an adjustment to depreciation is necessary due to an independent audit firm finding.

The total of column 3 must agree to the total found on Worksheet 1, line 108, column 7.

(See page 4408 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 2—ENCOUNTERS—(viii)**

**COMPLETION INSTRUCTIONS:**

**General:**

Worksheet 2, is used by the center to summarize the total encounters actually occurring during the cost reporting period. The form is divided into two primary sections, that of core services, and that of other ambulatory services. Space has been provided in the other specialized service area for a service that may be unique to a center and not specifically identified.

It should be noted, that some services are specifically identified under the specialized services category, yet they would be provided by a physician, such as Norplant, and would be considered physician services. However, for purposes of reporting and to uniquely track these expenses for rate establishment, they are to be identified separately and the encounter associated with these services shown under their specific category. (Note: A time allocation and/or other reclassification may be necessary on Worksheet A using Support Schedule A.)

While care has been taken to account for the variety of services provided in a center and establish a corresponding service line, blank lines have been provided for reporting of additional special service centers and associated cost. Refer to N.J.A.C. 10:66-4.1(b) for the appropriate definition of a medical encounter.

**Column 1 & 4:**—Enter the total number of Medicaid encounters for the period according to their respective core service area and place of encounter (on site or off site).

**Column 2 & 5:**—Enter the total number of Medicaid encounters for the period according to their respective service area and place of encounter (on site or off site).

**Column 3 & 6:**—Enter other third party or non-payer encounters and place of encounter.

**Line 7—All Columns:**—Enter the sum of lines 1 through 6, Core Services—all columns.

**Line 26—Columns 2, 3, 5, 6 & 7:**—Enter the sum of lines 10 through 25 for each column as appropriate.

**Line 28—All Columns:**—Enter the sum of lines 7 and 26. Cross foot all columns to column 7.

(See page 4409 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 3—PRODUCTIVITY SCREENING—(ix)**

**COMPLETION INSTRUCTIONS:**

This Worksheet is used to determine if the productivity screens of the various core and other services are being met. It develops the various visits that will be used in the determination of an encounter rate for each core and specialized service. Additionally, it reflects the numbers of staff assigned to each of the areas.

**Column 1—Number of FTE's:**—Staffing is to be reported on the basis of full time equivalents. The total number of hours per specialty or position listed on Worksheet 3 is determined from the center's time records. The total hours actually worked is then divided by the number of hours the clinic considers to be full-time for that position. (Example 40 hours per week times 52 weeks = 2080 hours = 1 FTE). The resultant rounded to the nearest two decimal places is the full time equivalent for the position. If the cost report is for less than a full reporting period (i.e., less than 52 weeks) then the numbers of weeks in the reporting period multiplied by the weekly hours 40 should be used as the standard required (FTE) hours. Partial weeks should be rounded up to a full week. Note: The lines for the Pneumococcal Vaccine, line 16, column 1, is to be left blank. The physician(s) (FTEs) involved in the center is/are to be reported in line 1.

**Column 1a—Number of On Site Hours:**—The total on site hours worked by all FTE's in a cost center category, as recorded and taken from the center's records, are entered here.

**Column 2—Total Visits:**—The total number of visits taken from the center's patient log for the reporting period is entered by cost center category. A visit should be recorded in **one category only** on the worksheet. (Refer to N.J.A.C. 10:66 for the definition of an encounter). For Norplant Services, line 15, the number of Norplant insertions/removals are to be recorded. The actual visit should not be included in the Physician Cost Center, line 1, column 2.

For Pneumococcal Vaccine Services, line 16, the number of injections given are to be shown in this column. The actual encounter would be recorded in one of the other service categories, as appropriate.

**Column 4—Minimum Visits:**—The result of multiplying column 1a by column 3 for all service lines is to be entered here. The resultant is the minimum visit requirement for the appropriate center (Productivity Screen).

**Column 5:**—Enter here the greater of column 2 or column 4 for all services. This will reflect the productivity standard application where applicable and the resultant will be used for development of the actual per encounter rate on subsequent worksheets.

(See page 4410 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 4—Encounter Rate Calculation—(x)**

**COMPLETION INSTRUCTIONS:**

**General:** This worksheet is used to determine the per visit encounter rate by specific service category that is to be used in the Medicaid reconciliation process on Worksheet 5.

**Part I—Item (A)** reflects the total actual facility direct health service cost derived from taking Worksheet 1, line 36 column 8 **plus** the sum of Worksheet 1, lines 52 & 56, column 8.

**Part I: Item (B)** reflects the total facility overhead costs associated with providing services during the period as derived from taking Worksheet 1, line 71, column 8 and Worksheet 1, line 105, column 8.

**Part II—Specialized Services**

**Column 1—Direct Cost:**

Transfer to the appropriate line the total cost of each specialized service area as found on Worksheet 1, Page 1, column 8. Note: The total expense of the dentist/dental hygienist is the sum of worksheet 1, lines 17 & 18, column 8.

**Column 2—Ratio of Special Service Center to Total Direct Health Services:**

Enter here the resultant of column 1 of this section divided by the total facility direct health service cost (Worksheet 4, Part I, Item (A)). The percentage derived will be the percentage of each of the special service centers direct cost to total cost. Remember to carry all decimal figures to 5 places.

**Column 3—Facility Overhead Applicable To the Special Service Center:**

Enter here the percentage shown in column 2 of this section multiplied by Worksheet 4, Page 1-2, Part I, Item (B). The amount derived is the percentage of total facility overhead attributed to the individual special service cost center.

**Column 4—Total Cost of Special Service Cost:**

Enter the sum of column 1 and 3 of this section for each special service cost center. This amount reflects the total calculated cost for each of the special service cost centers.

**Column 5—Productivity Screening Visits:**

Enter the productivity screening visit from Worksheet 3, Page 1, column 5 for each special service cost center. Amount shown as Total should agree to Worksheet 3, Page 1-1, column 5, line 26. [Note: The visits for Norplant are the actual Norplant Implant Procedures done and the Pneumococcal Vaccine line will reflect the actual number of injections given as shown on Worksheet 3, Page 1-1, line 15 and 16, column 2. Dental/Dental Hygienist visits are the sum of Worksheet 3, line 10 and line 11, column 5.]

**Column 6—Computed Per Visit Encounter Rate:**

Divide column 4 by column 5 and enter the answer here. This is your computer per visit rate for each specialized service to include direct and facility overhead costs.

(See page 4411 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 4—Encounter Rate Calculation—(xi)**

**COMPLETION INSTRUCTIONS:**

**Part III—Core Services:** The function of this Part of Worksheet 4 is to isolate the cost of direct core and other health service costs and to allocate overhead based on the ratio of these costs to total direct health care service costs. This amount is then divided by the total number of Core Service encounters to arrive at an average Per Encounter Rate for the facility.

**Line 15:**—The amount from Worksheet 4, Page 1-2, Part I, Item (A) is transferred to this line.

**Line 16:**—The total direct cost of specialized services is transferred to this line from Worksheet 4, page 1-2, Part II, line 14, column 1.

**Line 17:**—The non-reimbursable cost centers expenses, as found on Worksheet 1—Trial Balance of Expense, line 56, column 8, is transferred to this line.

**Line 18:**—Add amounts appearing on line 16 and line 17 and place resulting figure here.

**Line 19:**—Subtract line 18 from line 15 and enter remainder here.

**Line 20:**—Divide line 19 by line 15 to determine percentage of direct core and other health service cost to total health service cost.

**Line 21:**—Enter the total facility overhead from Worksheet 4, Page 1-2, Part I, Item (B).

**Line 22:**—To determine the amount of total facility overhead applicable to direct Core and other health services multiply line 20 by line 21. Enter the resultant here.

**Line 23:**—Enter the sum of line 19 plus line 22. This is the total direct and allocated core and other health services reimbursable cost.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

**Line 24:**—Enter the total core service encounters from Worksheet 3, Page 1, line 8, column 5 on this line.

**Line 25:**—Divide line 23 by line 24 to obtain the average cost per encounter for core services.

(See page 4412 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 5—Reconciliation Determination—(xii)**

**COMPLETION INSTRUCTIONS:**

**General:**—This worksheet will determine the actual total reimbursable cost for all Medicaid encounters covered during the cost reporting period and the final reconciliation amount either due to or <from> a facility.

**All Services—Lines 1 through 14:**

**Column 1:**—For each of the line items, enter the Medicaid covered Encounters from Worksheet 2, Page 1-1, column 2 plus column 5, as appropriate. These amounts should agree to the facility's State produced summary report for the same period as that of the cost report.

**Line 1:**—Enter the figure from Worksheet 2, Page 1-1, line 8, column 2 plus column 5.

**Lines 2-14:**—Enter the figures from appropriate line item on Worksheet 2, Page 1-1, column 2 plus column 5.

**Column 2:**—Enter the computed per visit encounter rate for each applicable line item from Worksheet 4, Page 1-2, column 6, (Specialized Services) or Worksheet 4, Page 2-2, line 25, (Core Services).

**Column 3:**—To determine the Medicaid Reimbursable cost for each type of service, multiply the amounts found in column 1 by column 2. Enter the result here.

**Line 15:**—For columns 1 and 3, enter the sum of lines 1 through 13. Column 3, line 15, is the total reimbursable Medicaid cost for all Medicaid services provided by the facility for the period covered by the cost report.

**Line 16:**—Enter the total amount of interim payments received by the facility for Medicaid services it rendered during the period of the cost report. Please note, that this figure is arrived at using the

accrual method of accounting and not a cash or modified cash etc., basis. This amount must agree to the summary report issued by the State for the respective period of the cost report. The figure should include all payments regardless of payment methodology. That is to say fee for service, as well as per encounter interim payments, should be reflected.

**Line 17:**—Subtract line 16 from line 15 and enter the amount here. If line 16 is less than the amount shown on line 15, the resulting figure is the amount owed to the facility based on the cost contained in the cost report. If the amount on line 16 is greater than the amount shown on line 15, the resultant figure is the amount the facility has been overpaid during the period of the cost report for Medicaid services rendered. This amount <negative> should be placed in parenthesis. If the figure on line 17 reflects an overpayment, the facility should expect the State Agency to adjust current interim payments until the recoupment/repayment of the entire amount has been accomplished. Any and all amounts recouped must be treated as payments to the facility for the subsequent cost reporting period.

(See page 4413 for copy of FQHC-93-01)

**FQHC-93-01 Worksheet 6—AVERAGE PER ENCOUNTER INTERIM RATE CALCULATION—(xiii)**

**COMPLETION INSTRUCTIONS:**

**General:**—This worksheet will enable the facility to determine an average per encounter interim reimbursement rate for the succeeding cost report period based on the file report. In certain instances, such as for new facilities or when major financial or patient population changes occur during the year, the facility may wish to prepare an interim cost report to determine the effect on their Medicaid interim rate. In this manner they may avoid large under or over payment situations, as well as provide a needed management tool for managing the facility. The completion of this worksheet will identify what the rate should be for the given cost contained on the report and the patient activity. Note that major changes in services provided or numbers of encounters, as well as the type of population served, (referred to as payer mix) will impact the development of the interim payment rate.

STATE OF NEW JERSEY  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF MEDICAL ASSISTANCE & HEALTH SERVICES  
**FEDERALLY QUALIFIED HEALTH CENTER  
MEDICAID COST REPORTING FORM**

This report is produced under the Authority of the State of New Jersey  
Department of Human Services - Division of Medical Assistance

**For Medicaid Use Only**  
Date Received: / /

1. Center Name and Address:

2. Medicaid Provider #:

3. Reporting Period:

From: To:

4. Type of Control (Circle One)

A. Voluntary Non-Profit

B. Proprietary:

C. Government:

Corporation

Individual County Corporation

Federal State County City

Other (specify)

Other (specify)

Other (specify)

5. Federally Qualified Health Center Owned By:

Name and Address

6. Other Federally Qualified Health Centers, Providers Of Services, (Hospitals, Skilled Nursing Homes, Home Health Agencies, Suppliers, Or Other Entities That Are Owned Or Related Through Common Ownership Or Control To The Individual(s) Or Entity Listed In Item 5.

Name

Location

Medicaid Provider #

7. List All Grants Regardless of Source:

Name

Number

Source

Grant Duration

Grant Amount

8. Names of Physicians Furnishing Services At the Federally Qualified Health Center Or Under Arrangements (As described in Instructions) and Medicaid Billing Numbers (if necessary attach additional listing)

Name

Start Date

Termination Date

Medicaid Provider #

9. Supervisory Physicians: (if necessary attach additional listing)

Name

Medicaid Provider #

Number of Hours of Supervision For The Reporting Period

Certification By Officer Or Owner Of The FQHC

Intentional Misrepresentation Or Falsification Of Any Information Contained in These Worksheets May Be Punished By Fine And/Or Imprisonment Under State Law.

I, Hereby Certify That I Have Read The Above Statement and That I Have Examined The Accompanying Worksheets Prepared

By

(Center Name)

For The Reporting Period Beginning \_\_\_\_\_ And Ending \_\_\_\_\_ And To The

Best Of My Knowledge And Belief It Is A True, Correct And Complete Statement Prepared From The Books And Records Of

The FQHC In Accordance With Applicable Instructions Except As Noted.

Signature:

Title

Date



<b>FEDERALLY QUALIFIED HEALTH CENTER MEDICAID COST REPORTING FORMS</b>	Medicaid Provider #:	Certification Page 2-2
Reporting Period: From: _____ To: _____		
<b>8. Names of Physicians Furnishing Services At the Federally Qualified Health Center Or Under Arrangements (As described in Instructions) and Medicaid Provider Numbers (if necessary attach additional listing)</b>		
Name	Start Date	Termination Date
<b>9. Supervisory Physicians: (if necessary attach additional listing)</b>		
Name	Medicaid Provider #	Number of Hours of Supervision For The Reporting Period
Certification By Officer Or Owner Of The FQHC		
<p>Intentional Misrepresentation Or Falsification Of Any Information Contained in These Worksheets May Be Punished By Fine And/Or Imprisonment Under State Law.</p> <p>I, Hereby Certify That I Have Read The Above Statement and That I Have Examined The Accompanying Worksheets Prepared</p> <p>By _____  <span style="margin-left: 400px;">(Center Name)</span></p> <p>For The Reporting Period Beginning _____ And Ending _____ And To The</p> <p>Best Of My Knowledge And Belief It Is A True, Correct And Complete Statement Prepared From The Books And Records Of</p> <p>The FQHC In Accordance With Applicable Instructions Except As Noted.</p>		
Signature:	Title:	Date
FQHC-93-01 (CERTIFICATION)		(ii)

Reclassification and Adjustment of Trial Balance of Expenses		Medicaid Provider #:		Reporting Period				Worksheet 1 Page 1 - 3
Cost Center	Compensation (1)	Fringe Benefits (2)	Other (3)	Sub-Totals (Columns 1 + 2 + 3) (4)	Expense Reclass- ifications (5)	Reclass. Trial Balance (Col. 4(+ -)5) (6)	Adjustments (Decreases) Increases (7)	Adjusted Net Expenses (Col. 6(+ -)7) (8)
				<b>1</b> Core Services Staff Cost -				
<b>2</b> Physician								
<b>3</b> Nurse Practitioner								
<b>4</b> Nurse Midwife								
<b>5</b> Clinical Psychologist								
<b>6</b> Clinical Social Worker								
<b>7</b> Physician Svs. - Under Arrangement								
<b>8</b>								
<b>9</b>								
<b>10</b>								
<b>11</b>								
<b>12</b>								
<b>13</b>								
<b>14</b>								
<b>15</b> Total Core Svs. Staff Costs (Lines 2-7)								
<b>16</b> Other Specialized Services								
<b>17</b> Dentist								
<b>18</b> Dental Hygienist								
<b>19</b> Obstetrics/Gynecology - With Delivery								
<b>20</b> Obstetrics/Gynecology - Delivery Only								
<b>21</b> Home Care Services								
<b>22</b> Norplant								
<b>23</b> Pneumococcal Vaccine Services								
<b>24</b> Podiatry								
<b>25</b> Eye Care Program								
<b>26</b> Chiropractic Services								
<b>27</b> Family Planning								
<b>28</b> EPSDT Services								
<b>29</b> Other (Specify)								
<b>30</b> Total Other Spec. Ser. (Lines 17-29)								
<b>31</b> Physician Assistant								
<b>32</b> Nursing								
<b>33</b> Laboratory (CLIA # )								
<b>34</b> Radiology								
<b>35</b> Total PA, Nur, Lab & Rad (Lines 31-34)								
<b>36</b> Page Totals (Sum Lines 15, 30, & 35)								

Reclassification and Adjustment of Trial Balance of Expenses		Medicaid Provider #:			Reporting Period				Worksheet 1 Page 2-3
Cost Center	Compensation (1)	Fringe Benefits (2)	Other (3)	Sub-Totals (Columns 1 + 2 + 3) (4)	Expense Reclass- ifications (5)	Reclass. Trial Balance (Col. 4(+ -)5) (6)	Adjustments (Decreases) Increases (7)	Adjusted Net Expenses (Col. 6(+ -)7) (8)	
				<b>37 Other Services Cost - Cost Centers</b>					
38 Pharmacy - Legend Drugs									
39 Pharmacy - Non-Legend Drugs									
40 Medical Supplies									
41 Nutrition									
42 Durable Medical Equipment (DME)									
43 OutReach - Program									
44 Outstationed/Eligibility Workers									
45 Clinical Social Worker - Case Mgmt.									
46 Community Service									
47 Patient Transportation									
48 Health Education (Specify)									
49									
50									
51									
52 Total Other Svs. Cost (Lines 38 - 51)									
<b>53 Non Reimbursable Cost Centers</b>									
54									
55									
56 Total Non Reimb. Cost (Lines 54 & 55)									
<b>57 Administrative Costs -</b>									
58 Administration									
59 Medical records									
60 Marketing									
61 Legal									
62 Accounting									
63 Data Processing									
64 Housekeeping - Maintenance									
65 Security									
66									
67									
68									
69									
70									
71 Total Admin Cost - (Lines 58-70)									
72 Tot. Page (Sum Lines 52, 56, & 71)									

Reclassification and Adjustment of Trial Balance of Expenses		Medicaid Provider #:		Reporting Period				Worksheet 1 Page 3-3
Cost Center	Compensation (1)	Fringe Benefits (2)	Other (3)	Sub-Totals (Columns 1 + 2 + 3) (4)	Expense Reclassifications (5)	Reclass. Trial Balance (Col. 4(+ -)5) (6)	Adjustments (Decreases) Increases (7)	Adjusted Net Expenses (Col. 6(+ -)7) (8)
73	Administrative Cost - Other							
74	Telephone							
75	Utilities							
76	Postage							
77	Transportation Costs - Staff							
78	Insurance - Professional Serv.							
79	Insurance - Malpractice							
80	Insurance - Other							
81	Office Supplies							
82	Interest Expense - Other							
83	Dues & Subscriptions							
84	Travel							
85								
86								
87								
88								
89	Total Admin. - Other (Lines 74-88)							
90	Building - Equipment -							
91	Rent/Lease - Building							
92	Depreciation - Building							
93	Mortgage Interest							
94	Insurance - Building							
95	Other - Building							
96	Depreciation - Moveable Equipment							
97	Rent/Lease - Moveable Equipment							
98	Vehicle -							
99	Depreciation - Auto/Truck							
100	Maintenance - Auto/Truck							
101	Insurance - Auto/Truck							
102	Lease Cost - Auto/Truck							
103	Tot. Bldg - Equip - Vehic(Lines 91 - 102)							
104								
105	Totals, Page 3-3, Lines 89 & 103							
106	Totals, Page 1-3, Line 36							
107	Totals, Page 2-3, Line 72							
108	Total Costs (Lines 105+106+107)							

Federally Qualified Health Center Supporting Documentation				Medicaid Provider #:			Worksheet 1 Support Schedule A	
Reporting Period:							Detail of Expense Reclass- ification	
Reclassifications								
Explanation of Reclassification	Code (a)	INCREASE			DECREASE			
		Cost Center	Line No.	Amount (b)	Cost Center	Line No.	Amount (b)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
26	FQHC-93-01 (WORKSHEET 1 SUPPORT SCHEDULE A)							(vi)

(a) A letter code [A - B - C - etc] must be entered on each line to identify each reclassification entry  
(b) Transfer to Worksheet 1, Page 1, 2, or 3, Column 5 as appropriate.

Federally Qualified Health Center Supporting Documentation			Medicaid Provider #:	Worksheet 1 Support Schedule B	
Adjustments to Expenses			Reporting Period:		
Adjustments to Expenses				Adjustments To Expense Detail	
	Description	Basis For Adjust ment(s)*	Amount	Cost Center	Worksheet 1 Line Number
	(1)	(2)	(3)	(4)	(5)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26	Total (Sum of Lines 1 through 25)				(vii)
FQHC-93-01 (WORKSHEET 1 SUPPORT SCHEDULE B)					

\* Basis for adjustment: [C = Actual Cost] [R = Amount Received] (see instructions)

Federally Qualified Health Center ENCOUNTERS		Medicaid Provider #:		Reporting Period			Worksheet 2	
		From:		To:			Page 1-1	
		On-Site			Off-Site			Total FQHC Encounters (cols 1-6) (7)
		Medicare Encounters	Medicaid Encounters	Other	Medicare Encounters	Medicaid Encounters	Other	
		(1)	(2)	(3)	(4)	(5)	(6)	
1	<b>Core Services</b>							
2	Physician							
3	Nurse Practitioner							
4	Nurse - Mid - Wife							
5	Clinical Psychologist							
6	Clinical Social Worker							
7	Physician Services Under Arr.							
8	<b>Total Core Service Encounter (Lines 2-7)</b>							
9								
10	<b>Other Specialized Services</b>							
11	Dentist							
12	Dental Hygienist							
13	Obstetrics/Gynecology - With Delivery							
14	Obstetrics/Gynecology - Delivery ONLY							
15	Home Care Services							
16	Norplant							
17	Pneumococcal Vaccine Injections							
18	Podiatry							
19	Eye Care Program							
20	Chiropractic Services							
21	Family Planning							
22	EPSDT Services							
23								
24								
25								
26								
27	<b>Total Other Specialized Svs. (Line 11-26)</b>							
28	<b>Total Federally Qualified Health Cntr.</b>							
29	<b>Encounters (Sum Line 8 + Line 27)</b>							

Federally Qualified Health Center PRODUCTIVITY SCREENING					Medicaid Provider #:	Worksheet 3 Page 1-1
Productivity Screening		Reporting Period:				Greater of Column 2 OR Column 4 (5)
	Number of FTE's (1)	Number OnSite Hours (1a)	Total Visits (see instr.) (2)	Productivity Standard (as applic.) (3)	Minimum Visits (Col 1a X 3) (4)	
<b>1</b>	<b>Core Services</b>					
<b>2</b>	Physician			2.10		
<b>3</b>	Nurse Practitioner			1.10		
<b>4</b>	Nurse - Mid-Wife			1.10		
<b>5</b>	Clinical Psychologist					
<b>6</b>	Clinical Social Worker					
<b>7</b>	Physician Services Under Arr.					
<b>8</b>	Total Core Service Encounter (Lines 2-7)					
<b>9</b>						
<b>10</b>	<b>Other Specialized Services</b>					
<b>11</b>	Dentist			1.25		
<b>12</b>	Dental Hygienist			1.25		
<b>13</b>	Obstetrics/Gynecology - With Delivery					
<b>14</b>	Obstetrics/Gynecology - Delivery Only					
<b>15</b>	Home Care Services					
<b>16</b>	Norplant					
<b>17</b>	Pneumococcal Vaccine Injections					
<b>18</b>	Podiatry					
<b>19</b>	Eye Care Program					
<b>20</b>	Chiropractic Services					
<b>21</b>	Family Planning					
<b>22</b>	EPSDT Services					
<b>23</b>	Other (Specify)					
<b>24</b>	Physician Assistant					
<b>25</b>	Laboratory					
<b>26</b>	Radiology					
<b>27</b>	Total Other Specialized Svcs. (Line 11-26)					
<b>28</b>	Total Federally Qualified Health Cntr.					
<b>29</b>	Productivity (Sum Lines 8 + Line 27)					
<b>30</b>	<b>Other Center Staffing</b>					
<b>31</b>	Administrative					
<b>32</b>	Other (specify)					
<b>33</b>	Total Federally Qualified Health Cntr.					
<b>34</b>	Staffing (Sum Line 29 + 31 + 32)					

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(WORKSHEET 3)

(ix)

Federally Qualified Health Center Encounter Rate Calculation				Medicaid Provider #:		Worksheet 4 Page 1 - 2	
Reporting Period:							
Part I							
(A) - Total Facility Direct Health Service Cost (Sum of W/S 1, Page 1, Line 36, Column 8 plus W/S 1, Page 2, Lines 52 & 56, column 8)						_____ (A)	
(B) - Total Facility OverHead Cost (Sum of W/S 1, Page 2, Line 71, Column 8, & W/S 1 Page 3, Line 105, Column 8)						_____ (B)	
Part II							
	<b>Direct Cost</b>	<b>Spec. Svs Ctr to Total Direct Health Svs Ratio</b>	<b>Facility Overhead Applic. to Spec. Svs Ctr</b>	<b>Total Cost of Spec. Svs Cost Ctr</b>	<b>Total Productivity Screening Encounters</b>	<b>Encounter Rate</b>	
	Spec. Svs. From W/S 1, Page 1-3 Column 8	Col. 1 Divided By Part I Item (A) above	Col. 2 Multiplied By Part I Item (B) above	Column 1 Plus Column 3	W/S 3 Page 1 Column (5)	Column 4 Divided By Column 5	
	(1)	(2)	(3)	(4)	(5)	(6)	
<b>Specialized Services</b>							
1	Dentist/Dental Hygienist						
2	Obstetrics/Gyn. - With Delivery						
3	Obstetrics/Gyn. Delivery Only						
4	Home Care Services						
5	Norplant						
6	Pneumococcal Vaccine Service						
7	Podiatry						
8	Eye Care Program						
9	Chiropratic Services						
10	Family Planning						
11	EPSDT Services						
12	Other (Specify)						
13							
14	Total - (Sum Lines 1 - 13)						
FQHC-93-01				(WORKSHEET 4)		(x)	

Federally Qualified Health Center Encounter Rate Calculation		Medicaid Provider #:	Worksheet 4 Page 2 - 2
		Reporting Period:	
Part III			
Core Services			Amount
15	Total Direct Health Care Service Cost - (Worksheet 4, Page 1-2, Part I, Item (A))		
16	Special Services Total Direct Cost (Worksheet 4, Page 1-2, Part II, Line 14, Column 1)	(a)	
17	Non Reimbursable Cost (From Worksheet 1, Page 2-3, Line 56, Column 8)	(b)	
18	Sum of Lines 16 & 17 [(a) + (b)]		
19	Direct Core and Other Health Service Cost (Line 15 minus Line 18)		
20	Percentage of Direct Core and Other Health Services to Total Health Services (Line 19 divided by Line 15)		
21	Total Facility Overhead (Worksheet 4, Page 1-2, Part I, Item (B))		
22	Overhead Allocation - Direct Core/Other Health Services (Line 20 multiplied by Line 21)		
23	Total Core/Other Services Reimbursable Cost (Line 19 plus Line 22)		
24	Total Core Service Encounters (W/S 3, Page 1, Line 8, Column 5)		
25	Per Visit Encounter Rate Core Services - (Line 23 divided by Line 24)		
FQHC - 93 - 01		(WORKSHEET 4)	(xi)

Federally Qualified Health Center Reconciliation Determination		Medicaid Provider #:	Worksheet 5 Page 1 - 1
<b>FINAL RECONCILIATION</b>		Reporting Period:	
Reconciliation Of Interim and Final Payments Federally Qualified Health Clinic Services			
<b>Medicaid FQHC Services - Reimbursement</b>		Medicaid Encounters From W/S 2 Page 1-1 Column 2 Plus Column 5	Computed Visit Rate From W/S 4 Page 1-2 Column 6
		(1)	(2)
			Medicaid Reimbursable Costs (Column 1 x 2)
			(3)
1	Core Services (*)		
2	Dentist/Dental Hygienist		
3	Obstetric/Gynecology - With Delivery		
4	Obstetric/Gynecology - Delivery Only		
5	Home Care Service		
6	Norplant		
7	Pneumococcal Vaccine Service		
8	Podiatry		
9	Eye Care Program		
10	Chiropractic Services		
11	Family Planning		
12	EPSDT Services		
13	Other (Specify)		
14			
15	Total Reimbursable Cost - All Services Medicaid (Sum Lines 1-14)		
16	Less: Interim Payments Received For Medicaid FQHC Services		
17	Net Due to or (From) Center (Line 15 minus Line 16)		
FQHC-93-01		(WORKSHEET 5)	(xii)

(\*) [NOTE: The figure for column 2 for this line comes from Worksheet 4, Page 2-2 Line 25]

Federally Qualified Health Center		Medicaid Provider #:	Worksheet 6 Page 1 - 1
AVERAGE PER ENCOUNTER INTERIM RATE CALCULATION		Reporting Period:	
Interim Rate Calculation			
			Amount
1	Total Reimbursable Cost - All Medicaid Services (Worksheet 5, Page 1-1, Line 15, Column 3)		
2	Total Medicaid Encounters for the Fiscal Period (Worksheet 5, Page 1-1, Line 15, Less Line 7, Column 1 (*))		
3	FQHC Interim Rate - Average Per Encounter Rate All Services (Line 1 divided by Line 2)		
4	Total Facility Costs Current Period (Worksheet 1, Page 3-3, Line 108, Column 8)		
5	Known Cost Increase + or Decrease < > in Succeeding Fiscal Period		
6	Total Projected Cost For Succeeding Fiscal Period (Line 4 plus Line 5)		
7	Projected Encounters All Payors For Succeeding Period		
8	Percentage of Medicaid Encounters To Total Encounters - Current Period		
9	(Line 2 divided by W/S 3 Page 1-1, Line 29, Less Line 16, Column 5(*))		
10	Medicaid Encounters For Succeeding Period (Line 7 multiplied by Line 9)		
11	Percentage of Medicaid Cost To Total Current Period Costs (Line 1 divided by Line 4)		
12	Projected Medicaid Cost For Succeeding Period (Line 11 multiplied by Line 6)		
13	Medicaid Average Per Encounter Rate For Interim Reimbursement -		
14	- Succeeding Period (Line 12 divided by Line 10)		
FQHC-93-01		(WORKSHEET 6)	(xiii)

(\*) [NOTE: The Medicaid Encounters to be Used Are Net of Pneumococcal Vaccine Service Activity]

SUBCHAPTER 5. AMBULATORY SURGICAL CENTER (ASC)

10:66-5.1 Covered services

(a) Medicaid-covered procedures in an ambulatory surgical center (ASC) are those surgical and medical procedures which appear at 42 CFR 416.65(c), the Federal regulations governing ASC services. Surgical procedures performed in an ASC are separated into an eight-group classification system.

1. A request by an ASC to add additional surgical procedures not specifically included in one of the eight Medicare payment groups must be reviewed and evaluated by the Division of Medical Assistance and Health Services (New Jersey Medicaid program).

i. If additional surgical procedures are approved, each procedure will be assigned to one of the existing eight Medicare payment groups.

(b) Medicaid-covered surgical procedures include, but are not limited to, those procedures that:

1. Are commonly performed in a hospital, but may be safely performed in an ASC;
  - i. Are not commonly or safely performed in a physician's office;
  2. Require a dedicated operating room or suite, and require a postoperative recovery room or short-term (not overnight) convalescent room;
  3. Do not exceed a total of 90 minutes operating time and four hours recovery or convalescent time; and
  4. Are not emergent or life threatening in nature, for example:
    - i. Do not generally result in extensive blood loss;
    - ii. Do not require major or prolonged invasion of body cavities;
- or
- iii. Do not directly involve major blood vessels.

10:66-5.2 Anesthesia

(a) If a cover surgical procedure requires anesthesia, the anesthesia shall be of:

1. Local or regional anesthesia; or
2. General anesthesia of 90 minutes or less duration.

10:66-5.3 Facility services

(a) Facility services include, but are not limited to:

1. Nursing services, services of technical personnel, and other related services;
2. The use by the patient of the ASC's facilities;
3. Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment commonly furnished in connection with a surgical procedure. Drugs and biologicals are limited to those which cannot be self administered;
4. Diagnostic or therapeutic items and services furnished by ASC staff in connection with a covered surgical procedure, for example, simple tests such as urinalysis, blood hemoglobin, or hematocrit, administered in conjunction with the surgical procedure;
5. Administrative, recordkeeping and housekeeping items and services;
6. Blood, blood plasma, platelets, etc.; and
7. Material for anesthesia.

(b) ASC facility services do not include medical or other health services for which payment could be made under other provisions of the Medicaid program such as laboratory, x-ray, or diagnostic procedures (other than those directly related to performance of the surgical procedure). Examples of items or services that are not ASC facility services include:

1. Physicians' services;
2. The sale, lease, or rental of durable medical equipment to ASC patients for use in their homes;
3. Prosthetic devices (including artificial legs and arms);
4. Transportation services;
5. Leg, arm, back, and neck braces;
6. Artificial eyes; and
7. Services furnished by an independent clinical laboratory.

10:66-5.4 Medical records

(a) In addition to the requirements set forth at 42 CFR 416.47, medical records in an ASC shall include, but are not limited to:

1. Patient identification;
2. Significant medical history and results of physical examination;
3. Pre-operative diagnostic studies (entered before surgery), if performed;
4. Findings and techniques of the operation, including a pathologist's report on all tissues removed during surgery, except those exempted by the governing body.
5. Any allergies and abnormal drug reactions;
6. Entries related to anesthesia administration;
7. Documentation of properly executed informed consent; and
8. Discharge diagnosis.

SUBCHAPTER 6. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:66-6.1 Introduction

(a) The New Jersey Medicaid program utilizes the Health Care Financing Administration's (HCFA) Common Procedure Code System (HCPCS). HCPCS follows the American Medical Association's Physicians' Current Procedure Terminology—4th Edition (CPT-4) architecture, employing a five-position code and as many as two 2-position modifiers. Unlike the CPT-4 numeric design, the HCFA-assigned codes and modifiers contain alphabetic characters. HCPCS was developed as a three-level coding system.

1. Level I codes (narratives found in CPT-4): These codes are adapted from CPT-4 for utilization primarily by physicians, podiatrists, optometrists, certified nurse-midwives, independent clinics and independent laboratories. CPT-4 is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians. Copyright restrictions make it impossible to print excerpts from CPT-4 procedure narratives for Level I codes. Thus, in order to determine those narratives it is necessary to refer to CPT-4, which is incorporated herein by reference, as amended and supplemented.

2. Level II codes (narratives found at N.J.A.C. 10:66-6.3): These codes are assigned by HCFA for physician and non-physician services which are not in CPT-4.

3. Level III codes (narratives found at N.J.A.C. 10:66-6.3): These codes are assigned by the Division to be used for those services not identified by CPT-4 codes or HCFA-assigned codes. Level III codes identify services unique to New Jersey.

(b) Regarding specific elements of HCPCS codes which require the attention of providers, the lists of HCPCS code numbers for independent clinic services are arranged in tabular form with specific information for a code given under columns with titles such as: "IND", "HCPCS CODE", "MOD", "DESCRIPTION", "FOLLOW-UP DAYS" and "MAXIMUM FEE ALLOWANCE". The information given under each column is summarized below:

COLUMN TITLE	Description
IND	(Indicator-Qualifier) lists alphabetic symbols used to refer the provider to information concerning the New Jersey Medicaid program's qualifications and requirements when a procedure or service code is used.  An explanation of the indicators and qualifiers used in this column are located below and in paragraph 1, "Alphabetic and numeric symbols", as follows:  "L" preceding any procedure code indicates that the complete narrative for the code is located at N.J.A.C. 10:66-6.3.  "N" preceding any procedure code means that qualifiers are applicable to that code. These qualifiers are listed by procedure code number at N.J.A.C. 10:66-6.4.

HCPCS CODE	HCPCS procedure code numbers.
MOD	Alphabetic and numeric symbols: Services and procedures may be modified under certain circum-

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stances. When applicable, the modifying circumstances are identified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid program's recognized modifier codes for independent clinic services are as follows:

MODIFIER CODE	DESCRIPTION
22	Unusual services: When the service provided is greater than that usually required for the listed procedure, it may be identified by adding modifier "22" to the usual procedure number.
50	Bilateral procedures: Unless otherwise identified in the listings, bilateral procedures requiring a separate incision that are performed at the same operative session should be identified by the appropriate five-digit code describing the first procedure. The second (bilateral) procedure is identified by adding modifier "50" to the procedure number.
52	Reduced services: Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier "52", signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the identification of the basic service.  NOTE: Providers billing for the injection only should use the modifier "52" (reduced service) with the appropriate HCPCS procedure code on the claim form when billing for any immunizations. The provider will be reimbursed \$2.50 for an injection. Do not use HCPCS procedure code 90799 when billing for immunizations with free vaccine.
WF	Family planning: To identify procedures performed for the sole purpose of family planning, add the modifier "WF" to only those procedure codes so indicated at N.J.A.C. 10:66-6.2.
WM	Certified nurse-midwife: To identify procedures performed by a certified nurse-midwife, add the modifier "WM" to only those procedure codes so indicated at N.J.A.C. 10:66-6.2.
WY	Only applies to billing by an ambulatory surgical center: To identify the trimester (1st trimester) of an abortion procedure, add the modifier "WY" to the procedure code.
WZ	Only applies to billing by an ambulatory surgical center: To identify the trimester (2nd trimester) of an abortion procedure, add the modifier "WZ" to the procedure code.
YR	Routine foot care podiatry: To identify routine foot care provided by a podiatrist, add the modifier "YR" to only those procedure codes so indicated at N.J.A.C. 10:66-6.2(h).
ZI	Independent clinic: To identify certain mental health services provided by independent clinic providers, add the modifier "ZI" to only those procedure codes so indicated at N.J.A.C. 10:66-6.2(f) and 10:66-6.2(o).
DESCRIPTION	Code narrative: Narratives for Level I codes are found in CPT-4. Narratives for Level II and III codes are found at N.J.A.C. 10:66-6.3.

**FOLLOW-UP DAYS** Number of days for follow-up care.

**MAXIMUM FEE ALLOWANCE** New Jersey Medicaid program's maximum reimbursement allowance for specialist and non-specialist: If the symbols "B.R." (By Report) are listed instead of a dollar amount, it means that additional information will be required in order to properly evaluate the service. Attach a copy of the report to the claim form.

1. Alphabetic and numeric symbols under "IND" & "MOD": These symbols, when listed under the "IND" and "MOD" columns, are elements of the HCPCS coding system used as qualifiers or indicators ("IND" column) and as modifiers ("MOD" column). They assist the provider in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

i. These symbols and/or letters must not be ignored because they reflect requirements, in addition to the narrative which accompanies the CPT/HCPCS procedure code as written in the CPT-4, for which the provider is liable. These additional requirements must be fulfilled before reimbursement is requested.

ii. If there is no identifying symbol listed, the CPT/HCPCS procedure code narrative prevails.

(c) Listed below are both general and specific policies of the New Jersey Medicaid program that pertain to HCPCS. Specific information concerning the responsibilities of an independent clinic provider when rendering Medicaid-covered services and requesting reimbursement are located at N.J.A.C. 10:66—Subchapters 1 through 5, and 10:66—Appendix.

1. General requirements are as follows:  
i. When filing a claim, the appropriate HCPCS procedure codes must be used in conjunction with modifiers when applicable.

ii. The use of a procedure code will be interpreted by the New Jersey Medicaid program as evidence that the provider personally furnished, as a minimum, the services for which it stands.

iii. When billing, the provider must enter onto the claim form a CPT/HCPCS procedure code as listed in CPT-4 or in this subchapter (N.J.A.C. 10:66-6). If an appropriate code is not listed, place a "N/A" (not applicable) in the procedure code column and submit a narrative description of the service. If possible, insert a CPT code closest to the narrative description you have written.

iv. Date(s) of service(s) must be indicated on the claim form and in the provider's own record for each service billed.

v. The "MAXIMUM ALLOWANCE" as noted with these procedure codes, "S" for specialist and "NS" for non-specialist, represents the maximum payment for the given procedure. When submitting a claim, the clinic must always use its usual and customary fee.

(1) Listed values for all surgical procedures include the surgery and the follow-up care for the period indicated in days in the column titled "Follow-Up Days."

(2) All references to time parameters shall mean the practitioner's personal time in reference to the service rendered unless it is otherwise indicated.

vi. Written records in substantiation of the use of a given procedure code must be available for review and/or inspection if requested by the New Jersey Medicaid program.

vii. All references to performance of any or all parts of a history or physical examination shall mean that for reimbursement purposes these services were personally performed by a physician, dentist, podiatrist, optometrist, certified nurse midwife, psychologist, and other program recognized mental health professionals in a mental health clinic, whichever is applicable. (Exception: Procedure Code W9820, EPSDT, permits the services of a pediatric nurse practitioner under the direct supervision of a physician.)

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2. Specific requirements concerning medicine are as follows:  
 i. To qualify as documentation that the service was rendered by the practitioner during an inpatient stay, the medical record must contain the practitioner's notes indicating that he or she personally:  
 (1) Reviewed the patient's medical history with the patient and/ or his or her family, depending upon the medical situation;  
 (2) Performed an examination as appropriate;  
 (3) Confirmed or revised the diagnosis; and  
 (4) Visited and examined the patient on the days for which a claim for reimbursement is made.

iii. The practitioner's involvement must be clearly demonstrated in notes reflecting his or her personal involvement with the service rendered. This refers to those occasions when these notes are written into the medical record by interns, residents, other house staff members, or nurses. A counter-signature alone is not sufficient.

3. Specific requirements concerning surgery are as follows:  
 i. Certain of the listed procedures are commonly carried out as an integral part of a total service and, as such, do not warrant a separate charge. When such a procedure is carried out as a separate entity not immediately related to other services, the indicated value for "separate procedure" is applicable.

4. Specific requirements concerning radiology are as follows:  
 i. Values include usual contrast media, equipment and materials.  
 ii. Values include consultation and written report to the referring physician.

iii. S&I (Supervision and Interpretation) only for the procedure given. This code is used only when a procedure is performed by more than one physician. Values include consultation and written report.

iv. All films taken of an area which is to be subject to a contrast study will, for reimbursement purposes, be considered part of the contrast study unless stated otherwise.

v. The fee listed represents the combined technical and professional component of the reimbursement for the procedure code notwithstanding any statement to the contrary in the narrative. It will be paid only to one provider and will not be broken down into its component parts.

10:66-6.2 HCPCS procedure code numbers and maximum fee allowance schedule

(a) Evaluation and management and other procedures

\*An asterisk preceding any procedure code may be performed in a drug treatment center.

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$	Anes. Basic Units
*N	36415			1.80	1.80	
	90701			16.34	16.34	
	90701	52		2.50	2.50	
	90702			3.29	3.29	
	90702	52		2.50	2.50	
	90703			3.40	3.40	
	90703	52		2.50	2.50	
	90704			23.60	23.60	
	90704	52		2.50	2.50	
	90705			18.39	18.39	
	90705	52		2.50	2.50	
	90706			22.04	22.04	
	90706	52		2.50	2.50	
	90707			39.87	39.87	
	90707	52		2.50	2.50	
	90712			14.44	14.44	
	90712	52		2.50	2.50	
	90713			22.80	22.80	
	90713	52		2.50	2.50	
	90714			3.03	3.03	
	90714	52		2.50	2.50	
	90717			3.03	3.03	

90717	52	2.50	2.50
90718		3.35	3.35
90718	52	2.50	2.50
90724		6.97	6.97
90724	52	2.50	2.50
90732		14.35	14.35
90732	52	2.50	2.50
90733		17.48	17.48
90733	52	2.50	2.50
90737		25.79	25.79
90737	52	2.50	2.50
90741		Prior authorization required	
90742		Prior authorization required	
N 90799		2.50	2.50
N 90801		37.00	26.00
93000		16.00	16.00
N 99150		45.00	40.00
		Per Hour	Per Hour
N 99151		45.00	40.00
		Per Hour	Per Hour
N *99201		16.00	14.00
N *99202		16.00	14.00
N *99203		22.00	17.00
N *99204		22.00	17.00
N *99205		22.00	17.00
N *99211		16.00	14.00
N 99211	WM	NA	11.20
N *99212		16.00	14.00
N 99212	WM	NA	11.20
N *99213		16.00	14.00
N 99213	WM	NA	11.20
N *99214		16.00	14.00
N 99214	WM	NA	11.20
N *99215		16.00	14.00
N 99215	WM	NA	11.20
N 99241		44.00	NA
N 99242		44.00	NA
N 99243		44.00	NA
N 99244		62.00	NA
N 99245		62.00	NA
N 99251		44.00	NA
N 99252		44.00	NA
N 99253		44.00	NA
N 99254		62.00	NA
N 99255		62.00	NA
N 99261		16.00	14.00
N 99262		16.00	14.00
N 99263		16.00	14.00
N 99271		44.00	NA
N 99272		44.00	NA
N 99273		44.00	NA
N 99274		62.00	NA
N 99274	YY	50.00	NA
N 99274	ZZ	50.00	NA
N 99275		62.00	NA
N 99291		45.00	40.00
N 99292		22.50	20.00
N 99382		22.00	17.00
N 99383		22.00	17.00
N 99384		22.00	17.00
N 99385		22.00	17.00
N 99386		22.00	17.00
N 99387		22.00	17.00
N 99391		16.00	14.00
N 99392		22.00	17.00
N 99393		22.00	17.00
N 99394		22.00	17.00
N 99395		22.00	17.00
N 99396		22.00	17.00
N 99397		22.00	17.00

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LN	J2790		20.40	20.40
LN	J2790	22	72.07	72.07
L	W9050		27.00	NA
L	W9055		27.00	23.00
L	W9060	WT	23.00	18.00
L	W9061	WT	23.00	18.00
L	W9062	WT	23.00	18.00
L	W9063	WT	23.00	18.00
L	W9064	WT	23.00	18.00
L	W9065	WT	23.00	18.00
L	W9066	WT	23.00	18.00
L	W9067	WT	23.00	18.00
L	W9068	WT	23.00	18.00
L	W9096		17.46	17.46
L	W9096	52	2.50	2.50
L	W9096	22	32.79	32.79
L	W9096	2252	2.50	2.50
L	W9097		17.46	17.46
L	W9097	52	2.50	2.50
L	W9098		32.79	32.79
L	W9098	52	2.50	2.50
L	W9099		63.57	63.57
L	W9099	52	2.50	2.50
L	W9333		27.88	27.88
L	W9333	52	2.50	2.50
L	W9334		27.88	27.88
L	W9334	52	2.50	2.50
L	W9335		62.09	62.09
L	W9335	52	2.50	2.50
L	W9338		30.27	30.27
L	W9338	52	2.50	2.50
LN	W9820		23.00	18.00

(b) Dental services (See N.J.A.C. 10:56-3).

(c) Family planning services:

Ind	HCPSCS Code	Mod	Follow Up Days	Maximum \$	Fee Allowance \$ NS	Anes. Basic Units
N	11975	22	30	Direct package price plus 100.00	85.00	
N	11976		90	100.00	85.00	
N	11977	22	90	Direct package price plus 200.00	170.00	
N	55250		30	90.00	79.00	3
N	55450		30	42.00	37.00	3
N	57451		45	182.00	158.00	6
	58301			16.40	16.40	
	58301	WM		NA	16.40	
N	58600		45	211.00	184.00	6
N	58605		45	151.00	131.00	6
N	58982		45	182.00	158.00	6
N	58983		45	182.00	158.00	6
N	88150			6.00	6.00	
N	88151			6.00	6.00	
N	88155			6.00	6.00	
N	99201	WF		45.00	45.00	
N	99201	WFWM		NA	31.50	
N	99202	WF		45.00	45.00	
N	99202	WFWM		NA	31.50	
N	99203	WF		45.00	45.00	
N	99203	WFWM		NA	31.50	
N	99204	WF		45.00	45.00	
N	99204	WFWM		NA	31.50	
N	99205	WF		45.00	45.00	
N	99205	WFWM		NA	31.50	
N	99211	WF		7.60	7.60	
N	99211	WFWM		NA	5.35	
N	99212	WF		7.60	7.60	
N	99212	WFWM		NA	5.35	
N	99213	WF		7.60	7.60	
N	99213	WFWM		NA	5.35	

N	99214	WF		23.00	23.00
N	99214	WFWM		NA	16.40
N	99215	WF		23.00	23.00
N	99215	WFWM		NA	16.40
N	99395	WF		45.00	45.00
N	99395	WFWM		NA	31.50
N	W0001	WF		188.00	188.00
N	W0001	WFWM		NA	177.00
N	W0002	WF		123.00	123.00
N	W0002	WFWM		NA	112.00
N	W0004	WF		204.00	204.00
N	W0004	WFWM		NA	188.00
N	W0008	WF		139.00	139.00
N	W0008	WFWM		NA	123.00

(d) Laboratory services (See N.J.A.C. 10:61-3).

(e) Minor surgery:

\*An asterisk preceding any procedure code may also be performed by a podiatrist.

Ind	HCPSCS Code	Mod	Follow Up Days	Maximum \$	Fee Allowance \$ NS	Anes. Basic Units
N	10040			18.00	16.00	
*	10060			13.00	11.00	
*	10061		30	48.00	42.00	
	10080			30.00	26.00	
*	10120			18.00	16.00	
*	10121		30	34.00	29.00	
*	10140			18.00	16.00	
*	10160			13.00	11.00	
*	11000			13.00	11.00	
*	11001			6.00	5.00	
*	11040			13.00	11.00	
*	11041			13.00	11.00	
*	11042			16.00	14.00	
*	11043			16.00	14.00	
*	11100		7	13.00	11.00	
*	11400		15	18.00	16.00	
*	11401		15	22.00	20.00	
*	11402		15	27.00	24.00	
*	11403		15	32.00	27.00	
*	11404		15	32.00	27.00	
*	11406		15	32.00	27.00	
*	11420		15	18.00	16.00	
*	11421		15	22.00	20.00	
*	11422		15	27.00	24.00	
*	11423		15	32.00	27.00	
*	11424		15	32.00	27.00	
*	11426		15	32.00	27.00	
	11440		15	18.00	16.00	
	11441		15	22.00	20.00	
	11442		15	27.00	24.00	
	11443		15	32.00	27.00	
	11444		15	32.00	27.00	
	11446		15	32.00	27.00	
*	11600		90	37.00	32.00	
*	11601		90	47.00	42.00	
*	11602		90	61.00	53.00	
*	11620		90	61.00	53.00	
*	11621		90	90.00	79.00	
*	11622		90	121.00	105.00	
	11640		90	90.00	79.00	
	11641		90	121.00	105.00	
	11642		90	150.00	131.00	
*	11700			13.00	11.00	
*	11701			6.00	6.00	
*	11710			13.00	11.00	
*	11711			6.00	6.00	
*	11730			10.00	10.00	
*	11750		30	42.00	37.00	

**HUMAN SERVICES**

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*	12001		18.00	16.00			
*	12002		24.00	21.00			
*	12004		30.00	26.00			
	12005	7	46.00	39.00			
	12006	7	57.00	48.00			
	12007	7	82.50	70.00			
	12011		18.00	16.00			
	12013		24.00	21.00			
	12014	7	30.00	26.00			
	12031	30	30.00	26.00			
	12032	30	48.00	42.00			
*	12041	30	30.00	26.00			
*	12042	30	67.00	59.00			
	12051	30	38.00	33.00			
	12052	30	67.00	59.00			
	13100	30	34.00	29.00			
	13101	30	68.00	63.00			
	13120	30	48.00	42.00			
	13121	30	106.00	92.00			
*	13131	30	67.00	59.00			
*	13132	30	145.00	126.00			
	13150	30	38.00	33.00			
	13151	30	82.00	71.00			
	13152	30	193.00	168.00			
*	17000		16.00	14.00			
*	17010		42.00	36.00			
*	17100		18.00	15.00			
*	17105		100.00	85.00			
*	17110		16.00	14.00			
*	17200		16.00	14.00			
*	17304		100.00	85.00			
L*	W1650		24.00	21.00			
L*	W1650	22	37.00	32.00			

(f) Mental health services

Ind	HCPCS Code	Mod	Follow Up Days	Maximum \$	Fee \$	Allowance NS	Anes. Basic Units
N	90801	ZI		45.00		45.00	
N	90843	ZI		13.00		13.00	
N	90844	ZI		26.00		26.00	
N	90847	ZI		26.00		26.00	
N	90847	ZI22		32.00		32.00	
	90862	ZI		4.50		4.50	
N	90887	ZI		13.00		13.00	
LN	H5025	ZI		8.00		8.00	
L	Z0100			22.50		22.50	
L	Z0130			25.00		25.00	
L	Z0150			8.00		8.00	
L	Z0160			15.50		15.50	
L	Z0170			46.00		46.00	
L	Z0180			77.00		77.00	

(g) Obstetrical services (maternity)

Ind	HCPCS Code	Mod	Follow Up Days	Maximum \$	Fee \$	Allowance NS	Anes. Basic Units
N	59400		60	468.00		403.00	4
N	59400	WM	60	NA		328.00	4
N	59410		60	320.00		272.00	4
N	59420			16.00		14.00	
N	59420	WM		NA		11.20	
N	59420	22		22.00		17.00	
N	59420	WM22		NA		15.40	
N	59410	WM	60	NA		224.00	4
N	59430		0	20.00		18.00	0
N	59430	WM	0	NA		14.00	0
	59510		45	598.00		516.00	7
	59515		45	450.00		385.00	7

	59525		45	362.00		308.00	8
	59812		45	105.00		91.00	3
L	Z0250	WM		NA		40.00	

(h) Podiatry Services

Ind	HCPCS Code	Mod	Follow Up Days	Maximum \$	Fee \$	Allowance NS	Anes. Basic Units
	29580			18.00		16.00	3
N	99211	YR		16.00		14.00	
N	99212	YR		16.00		14.00	
N	99213	YR		16.00		14.00	
N	99214	YR		16.00		14.00	
N	99215	YR		16.00		14.00	
L	W2650			21.00		21.00	
L	W2655			5.00		5.00	

NOTE: See N.J.A.C. 10:66-6.2(f), Surgery, for additional procedures.

(i) Radiology services:

Ind	HCPCS Code	Mod	Follow Up Days	Maximum \$	Fee \$	Allowance NS	Anes. Basic Units
	70030					15.00	
	70100					15.00	
	70110					20.00	
	70120					15.00	
	70130					20.00	
	70140					15.00	
	70150					20.00	
	70160					15.00	
	70170					20.00	
	70190					15.00	
	70200					25.00	
	70210					20.00	
	70220					25.00	
	70240					15.00	
	70250					15.00	
	70260					25.00	
	70300					5.00	
	70310					10.00	
	70320					15.00	
	70328					13.00	
	70330					20.00	
	70350					8.00	
	70360					10.00	
	70370					20.00	
	70380					15.00	
	70390					15.00	
	70551					300.00	
MN	71010					10.00	
MN	71020					15.00	
MN	71030					20.00	
MN	71034					20.00	
	71100					15.00	
	71110					20.00	
	71120					15.00	
	71130					20.00	
	72010					40.00	
	72040					15.00	
	72050					20.00	
	72052					25.00	
	72070					15.00	
	72080					15.00	
	72100					20.00	
	72110					25.00	
	72114					20.00	
N	72170					15.00	
	72190					20.00	
	72200					20.00	
	72220					15.00	

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	73000	10.00
	73010	15.00
	73020	15.00
	73030	15.00
	73040	15.00
	73050	18.00
	73060	15.00
	73070	15.00
	73080	15.00
	73085	15.00
	73090	10.00
	73092	20.00
	73100	10.00
	73110	15.00
	73115	15.00
	73120	10.00
	73130	15.00
	73140	5.00
N	73500	18.00
N	73510	20.00
	73520	25.00
	73525	15.00
	73530	30.00
	73540	15.00
	73550	15.00
	73560	15.00
	73562	15.00
	73580	15.00
	73590	15.00
	73592	20.00
	73600	10.00
	73610	13.00
	73615	15.00
	73620	10.00
	73630	13.00
	73650	10.00
	73660	5.00
	74000	10.00
	74010	15.00
	74020	15.00
N	74220	20.00
N	74240	40.00
N	74241	45.00
N	74245	50.00
N	74250	30.00
	74270	30.00
	74280	40.00
	74290	35.00
	74305	25.00
	74400	35.00
	74405	50.00
	74420	35.00
	74430	15.00
	74450	20.00
	74455	20.00
	74470	20.00
N	74710	25.00
	74740	20.00
	76000	45.00
	76020	15.00
	76040	20.00
	76061	35.00
	76062	90.00
	76080	15.00
	76090	26.00
	76091	36.00
	76100	35.00
	76100	50.00
	76805	55.00
	76815	25.00
	76816	25.00

(j) Rehabilitation services:

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$	NS	Anes. Basic Units
N	92507			7.00		7.00	
N	92552			11.00		11.00	
N	92553			14.00		14.00	
N	92557			19.00		19.00	
	92562			3.00		NA	
	92563			3.00		NA	
	92564			4.00		NA	
N	92567			5.00		NA	
N	92568			5.00		NA	
N	92572			20.00		NA	
N	92576			30.00		NA	
N	92582			14.00		14.00	
	92585			45.00		NA	
N	92589			10.00		NA	
	92590			40.00		NA	
	92591			40.00		NA	
N	97799			7.00		7.00	
L	H5300			7.00		7.00	
L	Z0270			7.00		7.00	
L	Z0280			7.00		7.00	
L	Z0300			7.00		7.00	
L	Z0310			45.00		45.00	

(k) Vision care services (See N.J.A.C. 10:62-4).

(l) Transportation services:

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$	NS	Anes. Basic Units
LN	Z0330			4.50		4.50	
LN	Z0335			9.00		9.00	

(m) Drug treatment center services:

\*An asterisk preceding any procedure code indicates that the procedure may only be provided to ACCAP-eligible individuals in the home.

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$	NS	Anes. Basic Units
*LN	Z1830			3.50		3.50	
*LN	Z1831			4.50		4.50	
*LN	Z1832			24.00		24.00	
*LN	Z1833			12.00		12.00	
*LN	Z1834			30.00		30.00	
*LN	Z1835			22.50		22.50	
LN	Z2000			22.50		22.50	
LN	Z2001			15.00		15.00	
LN	Z2002			4.50		4.50	
LN	Z2003			16.00		16.00	
LN	Z2004			8.00		8.00	
LN	Z2005			15.00		15.00	
LN	Z2006			2.50		2.50	
LN	Z2007			8.00		8.00	
LN	Z2010			4.50		4.50	

NOTE: See N.J.A.C. 10:66-6.2(a), Evaluation and management and other procedures, for additional procedures preceded by an asterisk.

(n) Federally qualified health care services:

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Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$ NS	Anes. Basic Units
	90844	22		150.00	150.00	
L	W9840			150.00	150.00	
L	Y3333			150.00	150.00	

(o) Personal care assistant services:

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$ NS	Anes. Basic Units
Z	1600	ZI		13.02	13.02	
Z	1605	ZI		10.23	10.23	
Z	1610	ZI		35.00	35.00	
Z	1611	ZI		6.51	6.51	

Z	1612	ZI	5.12	5.12
Z	1613	ZI	35.00	35.00

(p) Miscellaneous services:

Ind	HCPCS Code	Mod	Follow Up Days	Maximum Fee \$	Allowance \$ NS	Anes. Basic Units
	57820		15	72.00	63.00	
	58120		15	72.00	63.00	
N	59840		45	79.00	68.00	
N	59841		45	79.00	68.00	

10:66-6.3 HCPCS procedure codes and maximum fee allowance schedule for Level II & Level III codes and narratives (not located in CPT-4)

(a) Evaluation and Management and other procedures:

Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$ NS
	J2790		RhoGAM, Rho (D) Immune Globulin (Human); single dose—Micro-Dose		20.40	20.40
	J2790	22	RhoGAM, Rho (D) Immune Globulin (Human); single dose—Full dose		72.07	72.07
	W9060	WT	Under six weeks			
	W9061	WT	Six weeks to three months			
	W9062	WT	Three months to five months			
	W9063	WT	Five months to eight months			
	W9064	WT	Eight months to 11 months			
	W9065	WT	11 months to 14 months			
	W9066	WT	14 months to 17 months			
	W9067	WT	17 months to 20 months			
	W9068	WT	20 months to 24 months			

1. History including behavior and environmental factors;

2. Developmental assessment; and

3. Complete, unclothed physical examination by a physician or a nurse practitioner under the personal supervision of a physician, to include:

(a) Measurements: height, weight and head circumference;

(b) Vision and hearing screening; and

(c) Nutritional assessment.

4. Assessment and administration of immunizations (see appropriate HCPCS procedure codes for reimbursement amounts);

5. Anticipatory guidance;

6. Arrangement for diagnosis and treatment of medical problems uncovered during the visit. This includes self-referrals and/or referrals to other providers as medically indicated;

7. Appropriate laboratory procedures performed, or referred, in accordance with HealthStart Pediatric Care Guidelines.

(a) Sickle cell, PKU screening, as appropriate;

(b) Hemoglobin or hematocrit twice: at six to nine months and 20 to 24 months of age. (When done in conjunction with lead screening, this test is not reimbursable as a separate procedure.);

(c) Urinalysis, twice: at six to nine months and 20 to 24 months of age;

(d) Tuberculin test, twice: at 12 to 14 months and 20 to 24 months; and

(e) Lead screening (EP) at 12 to 14 months and 20 to 24 months.

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8. Case coordination: referral for nutritional, psychological, social and other community services, as appropriate; and provision or arrangement for 24-hour telephone physician access and sick care; and outreach and follow-up activities in accordance with the HealthStart Pediatric Care Guidelines.

**NOTE:** Laboratory procedures performed by a physician in his or her office are not reimbursable to the physician; if such procedures are performed by an outside laboratory, the laboratory shall submit a separate claim.

	W9096		Hepatitis B immunoprophylaxis with Recombivax HB, 0.25 ml dose. This code applies only to newborns of HBsAg negative mothers.	17.46 17.46
	W9096	22	Hepatitis B immunoprophylaxis with Recombivax HB, 0.5 ml dose. This code applies only to newborns of HBsAg negative mothers.	32.79 32.79
	W9097		Hepatitis B immunoprophylaxis with Recombivax HB, 0.25 ml dose. This code applies only to high risk recipients under 11 years of age (exclusive of newborns).	17.46 17.46
	W9098		Hepatitis B immunoprophylaxis with Recombivax HB, 0.5 ml dose. This code applies only to high risk recipients 11 to 19 years of age.	32.79 32.79
	W9099		Hepatitis B immunoprophylaxis with Recombivax HB, 1.0 ml dose. This code applies only to high risk recipients over 19 years of age.	63.57 63.57
	W9333		Hepatitis B immunoprophylaxis with Engerix-B, 0.5 ml dose. This code applies only when immunizing newborns.	27.88 27.88
	W9334		Hepatitis B immunoprophylaxis with Engerix-B, 0.5 ml dose. This code applies only to high risk recipients under 11 years of age (exclusive of newborns).	27.88 27.88
	W9335		Hepatitis B immunoprophylaxis with Engerix-B, 1.0 ml dose. This code applies only to high risk recipients over 11 years of age.	62.09 62.09
	W9338		Tetramune. This code is used when administering the primary immunization series to infants and toddlers. It eliminates the need for two separate injections of DTP and Haemophilus b Conjugate Vaccine.	30.27 30.27
N	W9820		Early and Periodic Screening, Diagnosis and Treatment (EPSDT) through age 20. <b>NOTE:</b> If performed by outside independent laboratories, the laboratory must submit the claim. Blood sample for lead screening test should be sent to the New Jersey State Department of Health. <b>NOTE:</b> Procedure code W9820 shall be used only once for the same patient during any 12-month period by the same physician, group, shared health care facility, or practitioner(s) sharing a common record.	23.00 18.00

Reimbursement for code W9820 is contingent upon the submission of both a Completed Report and Claim For EPSDT/HealthStart Screening and Related Procedures (MC-19) and the appropriate claim form within 30 days of the date of service. In the absence of a completed MC-19 form, reimbursement will be reduced to the level of an annual health maintenance examination, that is, \$22.00-\$17.00

(b) Dental services (See N.J.A.C. 10:56-3).

(c) Family planning services:

Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$	NS
	W0001	WF	Supplying and inserting the intrauterine device "Paragard" by a physician including the post-insertion visit.		188.00		188.00
	W0001	WMWF	Supplying and inserting the intrauterine device "Paragard" by a certified nurse-midwife including the post-insertion visit.		NA		177.00
	W0002	WF	Supplying and inserting the intrauterine device "Progestasert" by a physician including the post-insertion visit.		123.00		123.00
	W0002	WMWF	Supplying and inserting the intrauterine device "Progestasert" by a certified nurse-midwife including the post-insertion visit.		NA		112.00
	W0004	WF	Removal of an IUD by a physician followed at the same visit by the insertion of the IUD "Paragard" and including the post-insertion visit.		204.00		204.00
	W0004	WMWF	Removal of an IUD by a certified nurse-midwife followed at the same visit by the insertion of the IUD "Paragard" and including the post-insertion visit.		NA		188.00
	W0008	WF	Removal of an IUD by a physician followed at the same visit by the insertion of the IUD "Progestasert" and including the post-insertion visit.		139.00		139.00
	W0008	WMWF	Removal of an IUD by a certified nurse-midwife followed at the same visit by the insertion of the IUD "Progestasert" and including the post-insertion visit.		NA		123.00

(d) Laboratory services (See N.J.A.C. 10:61-3).

(e) Minor surgery:

Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$	NS
	W1650		Excision of plantar verruca, single site unilateral		24.00		21.00
	W1650	22	Excision of plantar verruca, multiple sites, unilateral		37.00		32.00

(f) Mental health services:

Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$	NS
	H5025	ZI	Group therapy: Verbal or other therapy methods provided by one or more psychiatrists, or professional counsellors under the direction of a psychiatrist, in a personal involvement with two or more patients, with a maximum of eight patients. A minimum session of 1½ hours is required. This includes preparation time in addition to the 1½ hours session time.		8.00		8.00

Z0100

Off-Site Crisis Intervention—An emergency procedure by personnel of a mental health clinic to an outpatient individual at locations other than the grounds or buildings of the clinic. Request for this service shall be initiated by the patient or other interested individual to meet the immediate needs of the patient, who is unable to present himself at the clinic.

22.50

22.50

The procedure includes rapid intervention, written evaluation and a treatment plan. Use of procedure is limited to twice in six months for any one patient. This procedure is not applicable to institutionalized patients.

Z0130

Psychological testing: Maximum of five hours of psychometric and/or projective tests with a written report.

25.00  
Per Hour

25.00  
Per Hour

Partial Care: A mental health service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. It is directed toward the acute and chronically disabled individual. Partial Care programs shall provide, as listed below, a full system of services necessary to meet the comprehensive needs of the individual client. Services shall be provided or arranged for, to meet the individual needs of participating clients. These services shall include:

- Assessment and evaluation;
- Service procurement;
- Therapy;
- Information and referral;
- Counseling;
- Daily living education;
- Community organization;
- Pre-vocational therapy;
- Recreational therapy; and
- Health related services.

Partial Care programs shall be available daily for five days a week, with additional planned activities each week during evening and/or weekend hours as needed. Individual clients need not attend every day but as needed.

Partial Care programs specifically developed for children may be available four days a week, with one evening and/or weekend activity(ies).

The staff of the Partial Care program should include a Director who shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field with training and/or experience in direct service provision and administration.

A qualified psychiatrist shall be available to the Partial Care program on a regularly scheduled basis, for consultation. Other staff deemed necessary to implement a Partial Care program which meets the requirement of this section should include qualified mental health professionals, paraprofessionals and volunteers.

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In order to qualify as an approved Partial Care program the Program must be certified by the Department.

Z0170	Partial Care, half day*	46.00	46.00
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\*At least three hours but less than five hours of participation in active programming exclusive of meals.

Z0180	Partial Care, full day*	77.00	77.00
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\*Five or more hours of participation in active programming exclusive of meals.

**NOTE:** Except for transportation these rates reflect full payments with a prohibition against multiple billing for more than one service to a Medicaid patient in a given day.

(g) Obstetrical services (maternity):

Ind	HCPCS	Mod	Description	Follow Up Days	Maximum Fee Allowance		
	Code				S	\$	NS
	Z0250	WM	Home Delivery Pack. All drugs and supplies, etc., necessary for delivery in this setting.		NA		40.00

(h) Podiatry services:

Ind	HCPCS	Mod	Description	Follow Up Days	Maximum Fee Allowance		
	Code				S	\$	NS
	W2650		Casting for molded shoes Prior authorization is required.		21.00		21.00
	W2655		Casting for arch support Prior authorization is required.		5.00		5.00

(i) Radiology services:

Ind	HCPCS	Mod	Description	Follow Up Days	Maximum Fee Allowance		
	Code				S	\$	NS
	W7200		Foot, complete (incl. special or calcis views)		20.00		20.00
	W7250		Colon, barium enema, with or without K.U.B. air contrast only (with fluoroscopy by the radiologist).		30.00		30.00

(j) Rehabilitation services:

Ind	HCPCS	Mod	Description	Follow Up Days	Maximum Fee Allowance		
	Code				S	\$	NS
	H5300		Occupational therapy		7.00		7.00
	Z0270		Physical therapy—initial visit, per individual, per provider		7.00		7.00
	Z0280		Occupational therapy—initial visit, per individual, per provider		7.00		7.00
	Z0300		Speech-language therapy—initial visit, per individual, per provider		7.00		7.00

(k) Vision care services (See N.J.A.C. 10:62-4).

(l) Transportation services:

Ind	HCPCS	Mod	Description	Follow Up Days	Maximum Fee Allowance		
	Code				S	\$	NS
	Z0330		Transportation, one way.		4.50		4.50
	Z0335		Transportation, round trip.		9.00		9.00

(m) Drug treatment center services:

\*An asterisk preceding any procedure code indicates that the procedure may only be provided to ACCAP-eligible individuals in the home.

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Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$	NS
	*Z1830		Methadone treatment rendered by a drug treatment center at home, per visit.		3.50		3.50
	*Z1831		Urinalysis for drug addiction at home, per visit.		4.50		4.50
	*Z1832		Psychotherapy rendered by a drug treatment center at home—full session, per visit.		24.00		24.00
	*Z1833		Psychotherapy rendered by a drug treatment center at home—half session, per visit.		12.00		12.00
	*Z1834		Family therapy rendered by a drug treatment center at home, per visit.		30.00		30.00
	*Z1835		Family conference rendered by a drug treatment center at home, per visit.		22.50		22.50
	Z2000		Family therapy rendered in a drug treatment center.		22.50		22.50
	Z2001		Family conference rendered in a drug treatment center.		15.00		15.00
	Z2002		Prescription visit rendered in a drug treatment center.		4.50		4.50
	Z2003		Psychotherapy rendered in a drug treatment center—full session.		16.00		16.00
	Z2004		Group therapy rendered in a drug treatment center, per person.		8.00		8.00
	Z2005		Psychological testing rendered in a drug treatment center, per hour; maximum of five hours.		15.00		15.00
	Z2006		Methadone treatment rendered in a drug treatment center.		2.50		2.50
	Z2007		Psychotherapy rendered in a drug treatment center—half session.		8.00		8.00
	Z2010		Urinalysis for drug addiction.		4.50		4.50

(n) Federally qualified health center services:

Ind	HCPCS Code	Mod	Description	Follow Up Days	Maximum Fee \$	Allowance \$	NS
	W9840		Medical encounter		150.00		150.00
	Y3333		Dental encounter		150.00		150.00
	90844	22	Medical psychotherapy		150.00		150.00

10:66-6.4 HCPCS procedure codes—qualifiers

- (a) Evaluation and management and other procedures:
  - 2. Drawing of blood: 36415.
    - i. Once per visit, per patient. (Not applicable if laboratory study, in any part, is performed by the clinic.)
  - 2. Injection (intra-dermal, subcutaneous, or intra-arterial): 90799.
    - i. Reimbursement for the above injections are on a flat-fee basis and are all inclusive for the cost of the service as well as the materials. Be advised of the following:
      - (1) A visit for the sole purpose of an injection is reimbursable only as an injection and not as a clinic visit and injection. However, if the criteria of a clinic visit is met, an injection may, if medically indicated, be considered as an add-on to the visit. The drug administered shall be consistent with the diagnosis and shall conform to accepted medical and pharmacological principles with respect to dosage, frequency and route of administration.
      - (2) Intravenous and intraarterial injections are reimbursable only when performed by the physician.
      - (3) No reimbursement will be made for vitamins, liver or iron injections or combinations thereof except in laboratory proven deficiency states requiring parenteral therapy.
      - (4) No reimbursement will be made for placebos or any injections containing amphetamines or derivatives thereof.
      - (5) No reimbursement will be made for injections given for the treatment of obesity.
      - (6) No reimbursement will be made for an injection given as a pre-operative medication or as a pre-operative local anesthetic which

- is part of an operative or surgical procedure since this injection would normally be included in the listed fee for such a procedure.
- (7) Insert procedure code 90799 as a separate item on the claim, followed by the name, dose of drug, and route of administration. The complete diagnosis, for which the injection was given, shall be indicated on the claim.
- 3. General clinical psychiatric diagnostic or evaluative interview procedures: 90801.
  - i. This code requires for reimbursement purposes a minimum of 50 minutes of direct personal clinical involvement with the patient or family member. The CPT narrative otherwise remains applicable.
  - ii. No more than one claim for the code 90801 is reimbursable per the same recipient, per the same physician, per year.
- 4. Prolonged detention: 99150 and 99151.
  - i. Prolonged detention with or without critical care will be covered under CPT 99150 and 99151, but the service shall be consistent with the following narrative in order to be reimbursed:
    - (1) The patient's situation requires constant physician attendance which is given by the physician to the exclusion of other patients and duties. This must be verified by the applicable records as defined by the setting.
    - (2) Records shall show in the physician's handwriting the time of onset and time of completion of the service.
  - ii. This code may not be used simultaneously with procedure codes that pay a reimbursement for the same time or type of service.
  - iii. The basis for this type of claim should be apparent on the claim form. The listed fees of \$37.00 for specialist and \$32.00 for non-specialist are per hour.

5. Evaluation and management—new patient (excludes preventive health care for patients through 20 years of age): 99201, 99201WF, 99201WFWM, 99202, 99202WF, 99202WFWM, 99203, 99203WF, 99203WFWM, 99204, 99204WF, 99204WFWM, 99205, 99205WF, 99205WFWM and 99432.

i. When reference is made in the CPT manual to "Office—New Patient," the intent of the Medicaid program is to consider this service as the initial visit.

ii. Reimbursement for an initial clinic visit will be disallowed, if a preventive medicine service, EPSDT examination or clinic consultation were billed within a twelve month period by a clinic.

iii. It is also to be understood that in order to receive reimbursement for an initial visit, the following minimal documentation must be on the record regardless of the setting where the examination was performed. For example:

- (1) Chief complaint(s);
- (2) Complete history of the present illness and related systemic review, including recordings of pertinent negative findings;
- (3) Pertinent past medical history;
- (4) Pertinent family history;
- (5) A full physical examination pertaining to but not limited to the history of the present illness and includes recording of pertinent negative findings; and
- (6) Working diagnoses and treatment plan including ancillary services and drugs ordered.

6. Evaluation and management services—established patient (excludes preventive health care for patients through 20 years of age): 99211, 99211WM, 99211WF, 99211WFWM, 99212, 99212WF, 99212WFWM, 99212WM, 99213, 99213WF, 99213WFWM, 99213WM, 99214, 99214WF, 99214WFWM, 99214WM, 99215, 99215WF, 99215WFWM, and 99215WM.

i. Routine visit or follow-up care visit is defined for purposes of Medicaid reimbursement as the care and treatment by a physician or certified nurse-midwife, as appropriate, which includes those procedures ordinarily performed during a health care visit, which are dependent upon the setting and the physician's discipline.

ii. In order to document the record for reimbursement purposes, a progress note for the noted visits should include the following:

- (1) Purpose of visit;
- (2) Pertinent history obtained;
- (3) Pertinent physical findings including pertinent negative findings based on the above;
- (4) Procedures, if any, with results;
- (5) Lab, X-ray, EKG, etc., ordered with results; and
- (6) Diagnosis.

7. Consultations: A consultation is recognized for reimbursement only when performed by a specialist recognized as such by this Program and the request has been made by or through the patient's attending physician and the need for such a request would be consistent with good medical practice.

i. Comprehensive consultation: 99244, 99245, 99254, 99255, 99274 and 99275.

(1) In order to receive reimbursement for these HCPCS codes, the performance of a total systems evaluation by history and physical examination, including a total systems review and total system physical examination are required.

(2) An alternative to (a)7i(1) above would be the utilization of one or more hours of the consulting physician's personal time in the performance of the consultation.

(3) Reimbursement for HCPCS codes 99244, 99245, 99254, 99255, 99274 and 99275 (Comprehensive Consultation) requires the following applicable statements, or language essentially similar to those statements, to be inserted in the "remarks section" of the claim form. The form is to be signed by the provider who performed the consultation.

(A) I personally performed a total (all) systems evaluation by history and physical examination; or

(B) This consultation utilized 60 or more minutes of my personal time.

(4) The following rules regarding consultations shall also be recognized.

(A) If a consultation is performed and the patient is then transferred to the consultant's service during the course of that illness, the provider may not, in addition, bill for an Initial Visit if he or she has or intends to bill for the consultation.

(B) If there is no referring physician, then an Initial Visit code should be used instead of a consultation code.

(C) If the patient is seen for the same illness on repeated visits, by the same consultant, then these visits are considered as routine visits or follow-up care visits and not as consultations.

(D) Consultation codes will be declined in a clinic setting if the consultation has been requested by or between members of the same group, shared health care facility or physicians sharing common records. A routine visit code is applicable under these circumstances.

(E) If a prior claim for comprehensive consultation visit has been made within the preceding 12 months, then a repeat claim for this code will be denied if made by the clinic except in those instances where the consultation required the utilization of one hour or more of the physician's personal time. Otherwise, applicable codes would be limited consultation code if their criteria are met.

ii. Limited consultation: 99241, 99242, 99243, 99251, 99252, 99253, 99271, 99272, and 99273.

(1) The area being covered for reimbursement purposes is "limited" in the sense that it requires less than the requirements designated as "comprehensive" as noted above.

iii. Second opinion program consultation: 99274YY.

(1) A consultation to satisfy the requirements of the mandated "Second Opinion" program will be reimbursed only if the requirements of that program are met and the consultation has been performed by the appropriate board certified specialist who has signed a separate provider agreement and whose selection has been through the Second Opinion Referral Service (1-800-676-6562).

iv. Third opinion consultation: 99274ZZ.

(1) In the event that a patient receives two different points of view relative to a "Second Opinion" procedure, he or she may, if unable to reach a decision, request a third opinion.

(2) A third opinion consultation must be at the patient's request and under the circumstances described.

8. Critical care services: 99291 and 99292.

i. Critical care is reimbursable under codes 99291 and 99292 if the service is consistent with the following:

(1) The patient's situation requires constant physician attendance which is given by the physician to the exclusion of his or her other patients and duties and, therefore, represents what is beyond the usual service. This must be verified by the applicable records as defined by the setting and which records must show in the physician's handwriting the time of onset and time of completion of the service.

(2) All settings are applicable, such as clinic and hospital.

(3) These codes may not be used simultaneously with procedure codes that pay a reimbursement for the same time or type of service.

(b) Dental services (See N.J.A.C. 10:56-3).

(c) Family planning services:

1. Norplant—insertion, implantable contraceptive capsules: 1197522.

i. The maximum fee allowance includes the cost of the NPS kit, the insertion of the "Norplant System" (six levonorgestrel implants), and the post-insertion visit.

ii. Modifier "22" indicates that the billing includes the cost of the kit.

2. Norplant—removal, implantable contraceptive capsules: 11976.

i. The maximum fee allowance includes the removal of the "Norplant System" (six levonorgestrel implants) and the post-removal visit.

3. Norplant—removal with reinsertion, implantable contraceptive capsules: 1197722.

i. The maximum fee allowance includes the removal/insertion of the "Norplant System" (six levonorgestrel implants) and post-removal/reinsertion visit.

4. Sterilization (male): 55250 and 55450.

i. Primary sterilization (family planning) procedure.

ii. A completed consent form shall be attached to the claim form, in accordance with N.J.A.C. 10:66-2.3.

- 5. Sterilization (female): 58600, 58605, 58982, and 58983.
  - i. These procedures are always considered a sterilization procedure. Therefore, a completed consent form shall be attached to the claim form, in accordance with N.J.A.C. 10:66-2.3.
  - ii. 57451: If the procedure is performed for sterilization purposes, a completed consent form shall be attached to the claim form, in accordance with N.J.A.C. 10:66-2.3.
- 6. Initial medical visit: 99201WF, 99201WFWM, 99202WF, 99202WFWM, 99203WF, 99203WFWM, 99204WF, 99204WFWM, 99205WF, and 99205WFWM.
  - i. Family planning to include each of the following:
    - (1) Medical, social, obstetrical history
    - (2) Complete pelvic examination—including visual inspection of the cervix
    - (3) Breast examination
    - (4) Papanicolaou smear (excludes cytology study)
    - (5) Contraceptive counseling with referral as indicated.
  - ii. Includes the cost of birth control drugs dispensed. A prescription cannot be substituted.
  - iii. These procedure codes (initial medical visit) will be disallowed if procedure codes 99201, 99201WF, 99201WFWM, 99202, 99202WF, 99202WFWM, 99203, 99203WF, 99203WFWM, 99204, 99204WF, 99204WFWM, 99205, 99205WF, 99205WFWM and 99432 have been performed during the prior 12 months by the same provider.
- 7. Routine or follow-up visit—brief: 99211WF, 99211WFWM, 99212WF, 99212WFWM, 99213WF, and 99213WFWM.
  - i. May include pelvic examination, changes in method or physician's or certified nurse-midwife's instructions at a minimum average time of five minutes, or a visit solely for a refill supply of birth control drugs for which a prescription cannot be substituted and professional contact is not necessary.
- 8. Medical revisit—family planning: 99214WF and 99214WFWM.
  - i. May include pelvic examination or changes in method or physician's or certified nurse-midwife's instructions. This code includes the cost of birth control drugs dispensed. A prescription cannot be substituted.
- 9. Routine or follow-up visit—prolonged: 99215WF and 99215WFWM.
  - i. May include pelvic examination or changes in method or physician's or certified nurse-midwife's instructions. Involves 20 or more minutes of personal time in patient contact, including documentation of time as well as adequate significant progress notes on the clinic record. This procedure code includes the cost of birth control drugs dispensed. A prescription cannot be substituted.
  - 10. Annual medical revisit: 99395WF and 99395WFWM.
    - (1) Updating medical, social, obstetrical history;
    - (2) Complete pelvic examination including visual inspection of cervix;
    - (3) Breast examination; and
    - (4) Papanicolaou smear (excludes cytology study) with referral when indicated.
  - ii. This code includes the cost of birth control drugs dispensed. A prescription cannot be substituted.
  - iii. Procedure code 99395WF will be disallowed if procedure codes 99201, 99201WF, 99201WFWM, 99202, 99202WF, 99202WFWM, 99203, 99203WF, 99203WFWM, 99204, 99204WF, 99204WFWM, 99205, 99205WF, 99205WFWM and 99432 have been performed during the prior 12 months by the same provider.
  - (d) Laboratory services (See N.J.A.C. 10:61-3).
  - (e) Minor surgery:
    - 1. Acne surgery (for example, marsupialization, opening or removal of multiple milia, comedones, cysts, pustules): 10040.
      - i. Excision must involve the use of a scalpel and an expressor, but not an expressor alone. This code is limited to severe acne. For less than severe acne, utilize the procedure codes for routine office visits.
    - (f) Mental health services:
      - 1. Comprehensive intake evaluation: 90801ZI.
        - i. An initial procedure performed at a mental health clinic to assess a new patient and recommend an appropriate treatment plan

- or additional diagnostic studies. The procedure includes initial interviews with the patient and other involved individuals, conferences with referral sources, examination of written material provided by the patient or others, staff conferences and written evaluation and treatment plan including recommendations for further consultations, studies or additional information.
  - ii. Although this procedure may be performed by a single individual, it is expected that it should be a team approach and of one and one-half hours duration. Use of procedure is limited to once per year for any one patient.
- 2. Individual psychotherapy—25 minute session: 90843ZI.
  - i. This code requires, for reimbursement purposes, a minimum of 25 minutes of direct personal clinical involvement with the patient and/or family member.
- 3. Individual psychotherapy—50 minute session: 90844ZI.
  - i. This code requires, for reimbursement purposes, a minimum of 50 minutes of direct personal clinical involvement with the patient and/or family member.
- 4. Family therapy: 90847ZI.
  - i. This code requires, for reimbursement purposes, a minimum of 50 minutes of direct personal clinical involvement with the patient and/or family member. The CPT narrative otherwise remains applicable.
- 5. Family therapy: 90847ZI22.
  - i. This code requires, for reimbursement purposes, a minimum of 80 minutes of direct personal clinical involvement with the patient and/or family member. The CPT narrative otherwise remains applicable.
- 6. Family conference: 90887ZI.
  - i. This code requires, for reimbursement purposes, a minimum of 25 minutes of direct personal clinical involvement with patient, family member or caretaker. The CPT narrative otherwise remains applicable.
- 7. Group psychotherapy: H5025ZI.
  - i. This code requires, for reimbursement purposes, a minimum of 90 minutes of direct clinical involvement with the patient as a member of a group of which 10 minutes can be used for documentation. The maximum number of the group is eight and the reimbursement is per person, per group session.
- (g) Obstetrical services (maternity):
  - 1. Total obstetrical care: 59400.
    - i. Antepartum care consisting of initial antepartum visits and seven subsequent antepartum visits. Specific date of all visits are to be listed on the claim form.
      - (1) Reimbursement will be decreased by the fee for the initial antepartum visit (5942022) if not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent antepartum visit (59420) which is less than seven.
      - (2) If medical necessity dictates, corroborated by the record, additional visits above seven antepartum may be reimbursed under the procedure codes for routine or follow-up clinic visit. The claim form shall clearly indicate the reason for the medical necessity and date for each listed.
    - ii. Obstetrical delivery with in-hospital postpartum care (with or without low forceps and/or episiotomy or a vaginal delivery full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours).
      - (1) This shall also include one visit between the 15th and 60th day postpartum day following delivery and out of hospital. Include name of hospital and delivery date on the claim.
  - 2. Vaginal delivery: 59410.
    - i. Vaginal delivery full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours.
    - ii. This shall also include one visit between the 15th and 60th postpartum day following delivery and out of hospital. Include name of hospital and delivery date on the claim.
  - 3. Subsequent antepartum visit: 59420.
    - i. Subsequent antepartum visit (separate procedure). Indicate specific dates of service.
  - 4. Initial antepartum visit: 5942022.
    - i. Initial antepartum visit (separate procedure).

5. Postpartum care: 59430.
- i. Postpartum care (other than delivery physician).
  - ii. This shall also include one visit between 15th and 60th postpartum day following delivery and out of hospital. Include name of hospital and delivery date on the claim.
6. Total obstetrical care by a certified nurse-midwife: 59400WM.
- i. Total obstetrical care when given by a certified nurse-midwife, including:
    - (1) Antepartum care consisting of initial antepartum visit and seven subsequent antepartum visits. Specific dates of all visits are to be listed on the claim form.
    - (2) Reimbursement will be decreased by the fee for the initial antepartum visit (code 5942022WM) if patient not seen for this visit. The total fee will also be decreased by the reimbursement sum for each subsequent antepartum visit (code 59420WM) which is less than seven.
    - (3) If medical necessity dictates, corroborated by the record, additional visits above seven antepartum may be reimbursed under the procedure codes for routine or follow-up visit. The claim shall clearly indicate the reason for the medical necessity and date for each code listed.
      - ii. Obstetrical delivery per vagina with or without episiotomy include postpartum care when provided by the certified nurse-midwife in the home, birthing center or in the hospital (inpatient setting).
        - (1) This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours.
        - (2) This shall also include one visit between the 15th and 42 postpartum day following delivery and out of the hospital. Include delivery date on the claim form.
  7. Vaginal delivery by a certified nurse-midwife: 59410WM.
    - i. Obstetrical delivery per vagina with or without episiotomy including postpartum care when provided by the certified nurse-midwife in the home, birthing center or in the hospital (inpatient setting).
      - (1) This applies to a vaginal delivery at full term or premature following completion of at least 28 weeks of gestation or if baby lives over 24 hours.
      - (2) This shall also include one visit between the 15th and 42nd post-partum day following delivery and out of hospital. Include delivery date on the claim form.
  8. Subsequent antepartum visit provided by a certified nurse-midwife: 59420WM.
    - i. Indicate specific date of service.
  9. Initial antepartum visit provided by a certified nurse-midwife: 59420WM22.
    - i. Initial antepartum visit provided by a certified nurse-midwife (separate procedure).
  10. Postpartum care provided by a certified nurse-midwife: 59430WM.
    - i. Postpartum care provided by a certified nurse-midwife who is other than the individual who performed the delivery and who is not related to this individual by any financial or contractual arrangement, e.g. group, clinic, employee, etc.
      - ii. One visit between the 15th and 60th postpartum day following delivery. Include delivery date on the claim (separate procedure).
    - (h) Podiatry service:
      1. Routine or follow-up clinic visit: 99211YR, 99212YR, 999213YR, 99214YR, and 999215YR.
        - i. Routine or follow-up clinic visit. A podiatry service consisting of routine care and treatment by the podiatrist.
        - ii. Include significant written progress notes and office records which demonstrate positive findings and treatment changes.
      2. See N.J.A.C. 10:66-6.4(f), Surgery, for additional procedures.
        - (i) Radiology services:
          1. Chest: 71010, 71020, 71030, and 71034.
            - i. Routine chest X-rays without medical necessity in an office (clinic) are not reimbursable under Program guidelines.
          2. Pelvis: 72170.
            - i. Pelvis X-ray is not eligible for separate payment when performed in conjunction with Complete Lumbosacral Spine X-rays (72110).
      3. Hip: 73500 and 73510.
        - i. Procedure 73520 should be used for bilateral hip X-rays when both hips are X-rayed instead of billing separately for each hip (73500 and 73510).
      4. Esophagus (with fluoroscopy by the radiologist): 74220.
        - i. Not eligible for separate payment when performed in conjunction with a GI or Small Bowel Series (74240, 74241, 74245, and 74250).
      5. Pelvimetry: 74710.
        - i. Use of the code for pelvimetry requires written evidence of medical necessity to accompany the claim.
      - (j) Rehabilitation services:
        1. Speech therapy: 92507.
          - ii. Minimum time, 30 minutes. Prior authorization required.
        2. Audiometric tests: 92552, 92553, 92557, 92567, 92568, 92572, 92576, 92582, and 92589.
          - i. May be reimbursed when prescribed by a physician and performed by an audiologist.
          - ii. Tympanometry (92567) and acoustic reflex testing (92568) are reimbursable only to a specialist.
          - iii. Acoustic reflex testing, 92568, shall include at least two frequencies per ear. Brief reflex screening at one frequency per ear is not reimbursable. Documentation of these tests shall appear in the patient's record.
      3. Physical therapy: 97799.
        - i. Individual treatment session—minimum time, 30 minutes. No more than three patients can be treated simultaneously.
        - ii. Prior authorization required. Consists of any one or a combination of the following modalities, prescribed by a licensed physician, performed by a qualified physical therapist and related to the patient's active treatment regimen.
          - (1) Appropriate use of accepted mechanical device (such as parallel bar, weights, pulley system, friction wheels, steps, etc.).
          - (2) Graduated range of motion exercises.
          - (3) Therapeutic ultrasound, only when included as part of other forms of accepted therapy.
          - (4) Therapeutic use of physical agents (other than drugs) including heat, light, water, electricity and radiation.
          - (5) Instructions to responsible persons for follow-up procedures between therapy visits.
      4. Occupational therapy: H5300.
        - i. Minimum time, 30 minutes. Prior authorization required.
        - ii. Prescribed by a licensed physician, performed by a qualified occupational therapist.
      - (k) Vision care services (See N.J.A.C. 10:62-4).
        - (l) Transportation services:
          1. Transportation, one way: Z0330.
            - i. Applicable when the clinic transports a recipient either to or from the clinic in any one day.
            - ii. Reimbursement is limited to two trips per day for the same recipient by the same clinic.
          2. Transportation, round trip: Z0335.
            - i. Applicable when the clinic transports a recipient on a round trip basis to/from the clinic in any one day.
            - ii. Reimbursement is limited to one round trip per day for the same recipient by the same clinic.
        - (m) Drug treatment center services:
          1. Methadone treatment rendered by a drug treatment center for an ACCAP-eligible individual at home, per visit: Z1830.
            - i. A per diem payment based on the number of days a recipient is supplied methadone during the billing period. This rate includes the cost of the drug, packaging, nursing time, and administrative costs.
          2. Urinalysis for drug addiction for an ACCAP-eligible individual at home, per visit: Z1831.

i. To be used only when the drug treatment center is approved for this service; to determine what level if any, a drug is present in the urine.

3. Psychotherapy rendered by a drug treatment center for an ACCAP-eligible individual at home—full session, per visit: Z1832.

i. Verbal, drug augmented, or other therapy methods provided by a physician, or a professional counsellor under the direction of a physician, in a personal involvement with one patient to the exclusion of other patients and/or duties.

ii. A minimum of 50 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

4. Psychotherapy rendered by a drug treatment center for an ACCAP-eligible individual at home—half session, per visit: Z1833.

i. Verbal, drug augmented, or other therapy methods provided by a physician, or a professional counsellor under the direction of a physician in a personal involvement with one patient to the exclusion of other patients and/or duties.

ii. A minimum of 25 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

5. Family therapy rendered by a drug treatment center for an ACCAP-eligible individual at home, per visit: Z1834.

i. Therapy with the patient and with one or more family members present. Verbal or other therapy methods are provided by a physician, or a professional counsellor under the direction of a physician, in personal involvement with the patient and the family to the exclusion of other patients and/or duties.

ii. A minimum session of one and one half hours is required with a minimum of 80 minutes personal involvement with the patient and the family and up to 10 minutes for the recording of data.

iii. The clinic may bill only for the patient and not for other family members.

6. Family conference rendered by a drug treatment center for an ACCAP-eligible individual at home, per visit: Z1835.

i. Meeting with the family or other significant persons to interpret or explain medical, psychiatric or psychological examinations and procedures, other accumulated data and/or advice to the family or other significant persons on how to assist the patient.

ii. A minimum of 50 minutes of personal involvement with the family is required. The clinic may bill only for the patient and not for other family members.

7. Family therapy rendered in a drug treatment center: Z2000.

i. Therapy with the patient and with one or more family members present. Verbal or other therapy methods are provided by a physician, or a professional counsellor under the direction of a physician, in personal involvement with the patient and the family to the exclusion of other patients and/or duties.

ii. A minimum session of one and one half hours is required with a minimum of 80 minutes personal involvement with the patient and the family and up to 10 minutes for the recording of data.

iii. The clinic may bill only for the patient and not for other family members.

8. Family conference rendered in a drug treatment center: Z2001.

i. Meeting with the family or other significant persons to interpret or explain medical, psychiatric or psychological examinations and procedures, other accumulated data and/or advice to the family or other significant persons on how to assist the patient.

ii. A minimum of 50 minutes of personal involvement with the family is required. The clinic may bill only for the patient and not for other family members.

9. Prescription visit rendered in a drug treatment center: Z2002.

i. A visit with a physician for review and evaluation of the medication history of the patient and the writing, or renewal of prescription, as necessary.

10. Psychotherapy rendered in a drug treatment center—full session: Z2003.

i. Verbal, drug augmented, or other therapy methods provided by a physician, or a professional counsellor under the direction of

a physician, in a personal involvement with one patient to the exclusion of other patients and/or duties.

ii. A minimum of 50 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

11. Group therapy rendered in a drug treatment center, per person: Z2004.

i. Verbal or other therapy methods provided by one or more physicians, or professional counsellors under the direction of physician, in a personal involvement with two or more patients, with a maximum of eight patients.

ii. A minimum session of one and one half hours is required. This includes preparation time in addition to the one and one half hours session time.

12. Psychological testing rendered in a drug treatment center, per hour; maximum of five hours: Z2005.

i. Psychometric and/or projective tests with a written report.

13. Methadone treatment rendered in a drug treatment center: Z2006.

i. A per diem payment based on the number of days a recipient is supplied methadone during the billing period. This rate includes the cost of the drug, packaging, nursing time, and administrative costs.

14. Psychotherapy rendered in a drug treatment center—half session: Z2007.

i. Verbal, drug augmented, or other therapy methods provided by a physician, or a professional counsellor under the direction of a physician in a personal involvement with one patient to the exclusion of other patients and/or duties.

ii. A minimum of 25 minutes personal involvement with the patient is required. This includes a prescription visit when necessary.

15. Urinalysis for drug addiction: Z2010.

i. To determine what level, if any, a drug is present in the urine.

ii. To be used only by a drug treatment center specifically approved by the Program to provide this service.

16. Drawing of blood; see CPT-4 for narrative: 36415.

i. Once per visit per patient. Not applicable if lab study, in any part, is to be performed by the clinic.

(n) Miscellaneous services:

1. Abortion: 59840 and 59841.

2. See N.J.A.C. 10:66-2.8; FD-179 form shall be attached to the claim form.

3. For claims submitted by ambulatory surgical centers only, the trimester of pregnancy shall be identified on the claim form by using modifier "WY" for first trimester or "WZ" for second trimester.

**10:66-6.5 HealthStart**

(a) HealthStart Maternity Care code requirements are as follows:

1. Separate reimbursement shall be available for Maternity Medical Care Services and Maternity Health Support Services.

2. Maternity Medical Care Services shall be billed as a total obstetrical package when feasible, but may also be billed as separate services.

3. The enhanced reimbursement (that is, HealthStart procedure codes) for delivery and postpartum care shall be claimed only for a patient who received at least one antepartum HealthStart Maternity Medical or Health Support Service.

4. The modifier "WM" in the HCPCS lists of codes refers to those services provided by certified nurse midwives; include the modifier at the end of each code.

5. Laboratory, other diagnostic procedures, and all necessary medical consultations are eligible for separate reimbursement.

i. Laboratory procedures performed by an outside laboratory shall be reimbursed to the laboratory. The clinic may submit a claim for a venipuncture using procedure code 36415 when necessary to collect blood specimens.

6. HealthStart Maternity Medical Care Services codes are as follows:

HUMAN SERVICES

PROPOSALS

HCPCS Code	Mod	Procedure Description	Maximum Fee Allowance		WM
			S	NS	
W9025		HealthStart Initial Antepartum Maternity Medical Care Visit	72.00	69.00	
W9025	WM	HealthStart Initial Antepartum Maternity Medical Care Visit by Certified Nurse Midwife 1. History, including system review 2. Complete physical examination 3. Risk assessment 4. Initial care plan 5. Patient counseling and treatment 6. Routine and special laboratory tests on site, or by referral, as appropriate 7. Referral for other medical consultations, as appropriate (including dental) 8. Coordination with the HealthStart Health Support Services provider, as applicable.			67.00
W9026		HealthStart Subsequent Antepartum Maternity Medical Care Visit	22.00	21.00	
W9026	WM	HealthStart Subsequent Antepartum Maternity Medical Care Visit by Certified Nurse Midwife 1. Interim history 2. Physical examination 3. Risk assessment 4. Review of plan of care 5. Patient counseling and treatment 6. Laboratory services on site or by referral, as appropriate 7. Referrals for other medical consultations, as appropriate 8. Coordination with HealthStart case coordinator. <b>NOTE:</b> This code may be billed only for the 2nd through 15th antepartum visit. <b>NOTE:</b> If medical necessity dictates, corroborated by the record, additional visits above the fifteenth visit may be reimbursed under procedure code, that is, 99211, 99211WM, 99212, 99212WM, 99213, 99213WM, 99214, 99214WM, 99215, and 99215WM. The date and place of service shall be included on each claim detail line on the 1500 N.J. claim form. The claim form should clearly indicate the reason for the medical necessity and date for each additional visit.			19.00
W9027		HealthStart Regular Delivery	465.00	418.00	
W9027	WM	HealthStart Regular Delivery by Certified Nurse Midwife 1. Admission history 2. Complete physical examination 3. Vaginal delivery with or without episiotomy and/or forceps 4. Inpatient postpartum care 5. Referral to postpartum follow-up care provider including: (a) Mother's hospital discharge summary and the (b) Infant's discharge summary, as appropriate			371.00

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

**NOTE:** Obstetrical delivery applies to a full term or premature vaginal delivery and includes care in the home, birthing center or in the hospital (inpatient setting). Include the delivery date on the 1500 N.J. claim form in Item 24A.

W9028		HealthStart Postpartum Care Visit	22.00	21.00	
W9028	WM	HealthStart Postpartum Care Visit by Certified Nurse Midwife			19.00
		1. Outpatient postpartum care by the 60th day after the vaginal or caesarean section delivery			
		(a) Review of prenatal, labor and delivery course			
		(b) Interim history, including information on feeding and care of the newborn			
		(c) Physical examination			
		(d) Referral for laboratory services, as appropriate			
		(e) Referral for ongoing medical care when appropriate			
		(f) Patient counseling and treatment			
		<b>NOTE:</b> The postpartum visit shall be made by the 60th postpartum day. Include the delivery date on the 1500 N.J. claim form in Item 24A.			
W9029		HealthStart Regular Delivery and Postpartum	487.00	439.00	
W9029	WM	HealthStart Regular Delivery and Postpartum by Certified Nurse Midwife includes:			390.00
		1. Admission history			
		2. Complete physical examination			
		3. Vaginal delivery with or without episiotomy and/or forceps			
		4. Inpatient postpartum care			
		5. Referral to postpartum follow-up care provider including:			
		(a) Mother's hospital discharge summary			
		(b) Infant's discharge summary, as appropriate			
		6. Outpatient postpartum care by the 60th day after the delivery			
		(a) Review of prenatal, labor and delivery course			
		(b) Interim history, including information on feeding and care of the newborn			
		(c) Physical examination			
		(d) Referral for laboratory services, as appropriate			
		(e) Referral for ongoing medical care when appropriate			
		(f) Patient counseling and treatment			
		<b>NOTE:</b> This code applies to a full term or premature vaginal delivery and includes care in the home, birthing center or in the hospital (inpatient setting). Include delivery date on the 1500 N.J. claim form in Item 24A.			
W9030		HealthStart Total Obstetrical Care	867.00	802.00	
W9030	WM	HealthStart Total Obstetrical Care by Certified Nurse Midwife			723.00
		Total obstetrical care consists of:			
		1. Initial antepartum visit and 14 subsequent antepartum visits. Specific dates are to be listed on the claim form.			

**NOTE:** Reimbursement will be denied if the services delivered do not meet the criteria for the visits.

The elements of the visits shall include the following:

- a. History (initial or review), including system review
- b. Complete physical examination
- c. Risk assessment
- d. Initial and ongoing care plan
- e. Patient counseling and treatment
- f. Routine and special laboratory tests on site, or by referral, as appropriate
- g. Referral for other medical consultations, as appropriate (including dental)
- h. Coordination with the HealthStart Health Support Services provider, as applicable.

2. Regular vaginal delivery by certified nurse midwife:

The elements of the care shall include the following:

- a. Admission History
- b. Complete physical examination
- c. Vaginal delivery with or without episiotomy and/or forceps
- d. Inpatient postpartum care

**NOTE:** Include the delivery date on the 1500 N.J. claim form in Item 24.

3. Postpartum care visit by certified nurse midwife: Outpatient postpartum care by the 60th day after the vaginal delivery (full term or premature):

- a. Review of prenatal, labor and delivery course
- b. Interim history, including information on feeding and care of the newborn
- c. Physical examination
- d. Referral for laboratory services, as appropriate
- e. Referral for ongoing medical care when appropriate
- f. Patient counseling and treatment

W9031

HealthStart Cesarean Section Delivery

595.00

531.00

- 1. Admission history
- 2. Complete physical examination
- 3. Cesarean section delivery
- 4. Inpatient postpartum care
- 5. Referral to postpartum follow-up care provider, including:
  - a. Mother's hospital discharge summary
  - b. Infant's discharge summary, as appropriate

**NOTE:** Include the delivery date on the claim form.

W9040

HealthStart enrollment process

30.00

- 1. Assistance with the presumptive eligibility determination for Maternity Care recipients, when and if applicable
- 2. Patient registration and scheduling of the initial appointments
- 3. Counseling and referral for WIC, food stamps, and other community-based services
- 4. Assignment of HealthStart case coordinator
- 5. Outreach and follow-up on missed appointments

**NOTE:** This code may be billed only once during pregnancy by the same provider.

W9041 HealthStart Development of Maternity Plan of Care 120.00  
 1. Case coordination services  
 2. Initial assessments  
     a. nutrition  
     b. health education  
     c. social/psychological  
 3. Case conference with Maternity Medical Care provider  
 4. Initial plan of care developed by the HealthStart case coordinator  
 5. Basic guidance and health education services  
 6. Referral for other needed services including follow-up with County Boards of Social Services  
 7. Outreach, referral and follow-up activities including phone calls and letters.

**NOTE:** This code may be billed only once during the pregnancy by the same provider.

W9042 HealthStart Subsequent Maternity Health Support Services Visit 50.00  
 1. Case coordination  
 2. Review and update of care plan  
 3. Coordination with maternity medical care provider  
 4. Health education instruction  
 5. Social/psychological guidance  
 6. Nutrition guidance  
 7. Home visit for high risk clients  
 8. Outreach, referral and follow-up activities including phone calls and letters.

**NOTE:** This code may be billed only once per trimester and not more than twice per pregnancy.

W9043 HealthStart Postpartum Maternity Health Support Services 100.00  
 1. Case coordination services  
 2. Review of the plan of care  
 3. Review of the summary of hospital stay records and current medical status  
 4. Nutrition assessment and counseling  
 5. Social/psychological assessment and counseling  
 6. Health education assessment and instruction  
 7. Home visit(s) as applicable  
 8. Referral, outreach and follow-up services  
 9. Referral for pediatric preventive care and follow-up  
 10. Transfer of pertinent information to pediatric, future family planning and medical care providers  
 11. Completion of the plan of care

(b) HealthStart Pediatric Preventive Care code requirements are as follows:

1. HealthStart Pediatric Care Guidelines provide for up to nine preventive child health visits for a child under two years of age.
  - i. All preventive child health visits shall be billed using the HealthStart Preventive Child Health Visit codes appropriate to the child's age at the time of visit. Each preventive child health visit HCPCS procedure code may be claimed only once per child.

ii. Claims shall be submitted using Form MC-19, EPSDT/HealthStart Screening and Related Procedures.

2. Laboratory, other diagnostic procedures, and all necessary medical consultations shall be eligible for separate reimbursement.

- i. Laboratory procedures performed by an outside laboratory shall be reimbursed to the laboratory. The clinic may submit a claim for a venipuncture using procedure code 36415 when necessary to collect blood specimens.

3. HealthStart Pediatric Preventive Care codes represent visits based on an infant's age according to the following schedule:

HCPCS Code	Mod	Procedure Description	Maximum Fee Allowance				
			S	\$	NS	\$	WM
W9060		Under six weeks	31.00		26.00		
W9061		Six weeks to three months	31.00		26.00		
W9062		Three months to five months	31.00		26.00		
W9063		Five months to eight months	31.00		26.00		
W9064		Eight months to 11 months	31.00		26.00		
W9065		11 months to 14 months	31.00		26.00		
W9066		14 months to 17 months	31.00		26.00		
W9067		17 months to 20 months	31.00		26.00		
W9068		20 months to 24 months	31.00		26.00		

4. A HealthStart Pediatric Preventive Care Visit includes the following elements:

- i. History including behavior and environmental factors;
- ii. Developmental assessment; and
- iii. Complete, unclothed physical examination by a physician or a nurse practitioner under the personal supervision of a physician, to include:
  - (1) Measurements: height, weight and head circumference;
  - (2) Vision and hearing screening; and
  - (3) Nutritional assessment.
- iv. Assessment and administration of immunizations (see appropriate HCPCS procedure codes for reimbursement amounts);
- v. Anticipatory guidance;
- vi. Arrangement for diagnosis and treatment of medical problems uncovered during the visit. This includes self-referrals and/or referrals to other providers, as medically indicated;

vii. Appropriate laboratory procedures performed, or referred, in accordance with HealthStart Pediatric Care Guidelines.

- (1) Sickle cell, PKU screening, as appropriate;
- (2) Hemoglobin or hematocrit twice, at six to nine months and 20 to 24 months of age;
- (3) Urinalysis, twice: at six to nine months and 20 to 24 months of age;
- (4) Tuberculin test, twice: at 12 to 14 months and 20 to 24 months; and
- (5) Lead screening at six to 12 months and annually thereafter, or more often if clinically indicated.

viii. Case coordination: referral for nutritional, psychological, social and other community services, as appropriate; provision or arrangement for 24-hour telephone physician access and sick care; and outreach and follow-up activities in accordance with the HealthStart Pediatric Care Guidelines.

HCPCS Code	Mod	Procedure Description	Maximum Fee Allowance				
			S	\$	NS	\$	WM
W9070		HealthStart Pediatric Continuity of Care This is a service by a certified HealthStart Pediatric Care Services Provider which is a hospital outpatient department where physicians do not bill Medicaid independently for professional services. This code shall include reimbursement for the following service components: —Assignment of a case coordinator responsible for outreach, referral and follow-up activities; —24-hour telephone access for medical consultation outside non-clinic hours; and —Provision or arrangement for sick care. (Referral to the emergency room shall only occur for emergency medical care or urgent care as recommended by the physician responsible for sick care.)  <b>NOTE:</b> This code may be billed only in conjunction with a pediatric preventive health care visit provided in accordance with HealthStart Regulations and Guidelines for HealthStart Providers. Claims shall be submitted using Form MC-19, EPSDT/HealthStart Screening and Related Procedures.	13.00	13.00			

APPENDIX

FISCAL AGENT BILLING SUPPLEMENT

AGENCY NOTE: The Fiscal Agent Billing Supplement is appended as a part of this chapter but is not reproduced in the New

Jersey Administrative Code. When revisions are made to the Fiscal Agent Billing Supplement, replacement pages shall be distributed to providers and copies shall be filed with the Office of Administrative Law.

For a copy of the Fiscal Agent Billing Supplement, write to:  
 Paramax/Unisys Corporation  
 CN-4801  
 Trenton, New Jersey 08650-4801  
 or contact:  
 Office of Administrative Law  
 Quakerbridge Plaza, Bldg. 9  
 CN-049  
 Trenton, New Jersey 08625-0049

**CORRECTIONS**

**(a)**

**THE COMMISSIONER**

**Inmate Discipline**

**Schedule of Sanctions for Prohibited Acts**

**Proposed Amendments: N.J.A.C. 10A:4-5.1, 5.2 and 5.3**

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

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

Proposal Number: PRN 1993-506.

Submit comments by October 20, 1993 to:  
 William H. Fauver, Commissioner  
 Department of Corrections  
 CN 863  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Corrections is proposing several changes at N.J.A.C. 10A:4-5.1, 5.2 and 5.3 regarding sanctions for prohibited acts. Presently, several sanctions are not equitable because sanctions for youth and juvenile inmates are more stringent than those sanctions which may be imposed on adult inmates. Thus, the loss of furlough privileges for up to two months sanction has been added at N.J.A.C. 10A:4-5.1 and 5.2; the extra duty sanction has been amended from two weeks to 14 hours to be performed within a maximum of two weeks and has been added at N.J.A.C. 10A:4-5.2; up to two weeks confinement to room or housing unit has been added at N.J.A.C. 10A:4-5.3; the On-The-Spot Correction sanction has been added at N.J.A.C. 10A:4-5.2; and the assigning of an inmate to a treatment program sanction has been added at N.J.A.C. 10A:5.2 and 5.3. Also, the sanction of forfeiture at N.J.A.C. 10A:4-5.1 has been deleted since confiscation is the sanction utilized. These amendments should help insure that disciplinary sanctions are imposed in an equitable manner.

**Social Impact**

In the day-to-day management of correctional facilities, the disciplinary procedures and sanctions imposed for violations of rules are among the most important tools by which the administration is able to maintain correctional facility stability, safety and order. The proposed amendments give Disciplinary Hearing Officers and Adjustment Committees greater flexibility in the type of sanctions which may be imposed on inmates for violations of prohibited acts. These sanctions will also provide intermediate steps between the relatively lenient sanctions and the sanction of Disciplinary Detention. Amending the sanctions at N.J.A.C. 10A:4-5.1, 5.2 and 5.3 should help insure that fair and equitable sanctions are imposed on juvenile, youth and adult inmates.

**Economic Impact**

Disciplinary sanctions, while requiring no line-item funds, are important from a financial standpoint. Destructive behavior by inmates such as damage to plumbing fixtures, arson or even theft of clothing can lead to unwarranted and unnecessary expenditure of State funds. Hence, disciplinary sanctions assist the correctional facilities in deterring such behavior which is of economic benefit to the Department of Corrections. Other than the economic benefit described above, additional funding is not necessary to implement the proposed amendments.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex, Adult Diagnostic and Treatment Center (ADTC) and Edna Mahan Correctional facility for Women (EMCF)

(a) A finding of guilt for any offense preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

- 1.-4. (No change.)
- 5. [Forfeiture] **Loss of furlough privileges for up to two months;**
- 6.-10. (No change.)

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

- 1.-4. (No change.)
- 5. [Forfeiture] **Loss of furlough privileges for up to two months;**
- 6.-10. (No change.)

(c) (No change.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

- 1.-3. (No change.)
- 4. Up to [two weeks] **14 hours extra duty, to be performed within a maximum of two weeks;**
- 5. **Loss of furlough privileges for up to two months;**
- [5.]6. Confiscation;
- 7. **Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);**

Recodify existing 6.-8. as **8.-10.** (No change in text.)

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions.

- 1.-5. (No change.)
- 6. Up to [two weeks] **14 hours extra duty, to be performed within a maximum of two weeks;**
- 7. **Loss of furlough privileges for up to two months;**
- [7.]8. Confiscation;
- Recodify 8.-9. as **9.-10.** (No change in text.)

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

- 1. (No change.)
- 2. **Assigning to a treatment program;**
- Recodify existing 2.-5. as **3.-6.** (No change in text.)

10A:4-5.3 Schedule of sanctions for prohibited acts committed at the New Jersey Training School for Boys, the Juvenile Medium Security Unit and the Lloyd McCorkle Training School for Boys and Girls

(a) A finding of guilt for prohibited acts preceded by an asterisk (\*) shall render the offender subject to one or more of the following sanctions:

- 1. (No change.)
- 2. **Up to two weeks confinement to room or housing unit;**
- Recodify existing 2.-3. as **3.-4.** (No change in text.)
- [4.]5. Up to 14 hours extra duty, to be [done in one week] **performed within a maximum of two weeks;**
- Recodify existing 5.-7. as **6.-8.** (No change in text.)

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1. (No change.)
2. **Up to two weeks confinement to room or boarding unit;**
- [2.]3. Loss of furlough privileges up to two months;
- [3.]4. Up to 14 hours extra duty, to be [done in one week] **performed within a maximum of two weeks;**

Recodify existing 4.-7. as 5.-8. (No change in text.)

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1. (No change.)
  2. **Assigning to a treatment program;**
- Recodify existing 2.-5. as 3.-6. (No change in text.)

## INSURANCE

### (a)

#### DIVISION OF PROPERTY AND CASUALTY

#### **Automobile Insurance: Rate Filing Requirements for Voluntary Market Private Passenger Automobile Insurance**

#### **Proposed Amendment: N.J.A.C. 11:3-16.10**

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

Authority: N.J.S.A. 17:1C-6(e) and 17:29A-1 et seq.  
Proposal Number: PRN 1993-520.

Submit comments by October 20, 1993 to:

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

The agency proposal follows:

#### **Summary**

This proposed amendment establishes a new standard for determining the historic expense provision reported by personal private passenger automobile insurers ("insurers") in prior approval rate filings as part of the insurers' rate calculations when using the standard ratemaking methodology. Currently, in determining the historic expense provision, insurers are limited to a maximum of the percentage shown in "Best's Aggregates and Averages" ("Best's") for the same period for "comparable" property/casualty insurance companies. Insurers, therefore, are required to compare their expenses to those of companies similarly organized. Thus, stock companies are to use the percentage for stock companies, as other insurers are to use the percentage applicable to companies similarly organized.

The historic expense provision examines expenses for commission and brokerage, for other acquisition expenses and for general expenses on a combined basis. With companies that utilize independent agents or are "agency writers," commission expenses comprise a greater portion of their historic expense provisions than that of insurers that are direct writers. Thus, requiring insurers to use the Best's percentage for companies that are similarly organized provides information of limited comparative value.

The Commissioner of Insurance ("Commissioner") has determined that a better measure is the comparison of Best's percentage for insurers that use similar marketing techniques. The proposed amendment to N.J.A.C. 11:3-16.10(b)6, therefore, requires insurers to use the Best's percentage for insurers which market insurance similarly. Best's only categorizes the information for insurers as either agency writers or direct writers. However, insurers utilize three categories of marketing methods. Insurers' marketing methods are: (1) directly with the public utilizing salaried company employees; (2) through agents that exclusively represent the insurer (notwithstanding an exclusivity agreement with the insurer, these agents may also be certified to place qualified risks in the Personal Automobile Insurance Plan established by N.J.A.C. 11:3-2);

or (3) through independent agents that are not prohibited by their agency contracts with the insurer from placing risks in the voluntary market with other personal private passenger automobile insurers.

Because Best's does not publish information on the historic expense provision in this fashion, the Department shall, as necessary, publish a list (Exhibit H to the Appendix) of the top 20 insurers based on premium volume as reported in their annual statements and into which of the above three categories each such insurer falls. Insurers shall use this list to determine which companies employ similar marketing practices. Insurers shall, at a minimum, use the companies set forth in Exhibit H. Once a determination has been made as to which other insurers have similar marketing practices, then the insurer can obtain the necessary information on historic expense provisions from Best's. Thus, insurers which use salaried employees that deal directly with the public shall use the historic expense percentage for insurers which use salaried employees that deal directly with the public; insurers which use exclusive agents shall use the percentage for insurers which use exclusive agents; and insurers which use independent agents shall use the percentage for insurers which use independent agents.

A concurrent amendment to Exhibit A II in the Appendix is not necessary because item (15), "UNDERWRITING EXPENSE PROVISIONS," indicates the use of a percentage for "comparable company." "Comparable" now refers to an insurer's method of marketing rather than the insurer's form of organization.

#### **Social Impact**

The proposed amendment will affect insurers to the extent that they are now required to compare their historic expense provisions to insurers with similar marketing techniques. The comparison of expenses of such insurers are more likely to correspond to one another.

#### **Economic Impact**

This amendment should not have any appreciable economic impact on insurers in its implementation. Insurers merely need substitute one percentage found in Best's for another percentage. A comparison of historic expenses of insurers with similar marketing may result in the computation of more reasonable rates.

A change in the historic expense provision which may ultimately result in a correction in the computation of rates, would be *de minimus* in nature and unlikely to have an impact on policyholders.

#### **Regulatory Flexibility Statement**

The Department's proposed amendment may apply to "small business" as that term is defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. However, this amendment does not impose any additional recordkeeping, reporting or compliance requirements on insurers. The amendment merely provides for a technical change in the standard comparing companies with regard to private passenger automobile insurance rate filings. Therefore, a regulatory flexibility analysis is not required herein.

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

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) (No change.)

(b) Underwriting expense provisions shall be determined as follows:

1.-5. (No change.)

6. In determining the historic expense provision for commission and brokerage, other acquisition expenses and general expenses on a combined basis, the percentage to premium for each year of experience shall be limited to a maximum of the percentage shown in "Best's Aggregates and Averages" for the same period for [comparable property/casualty insurance companies. If a stock company, the filer shall use the percentage for stock companies; if a mutual company, the filer shall use the percentage for mutual companies; and if a reciprocal company, the filer shall use the percentage for reciprocal companies.] **property/casualty insurance companies which most closely approximate the insurer's method of marketing automobile insurance as set forth in Exhibit H to the Appendix, incorporated herein by reference. If an insurer uses salaried employees which deal directly with the public, the filer shall use the percentage for insurers which use salaried employees which deal directly with the public; if an insurer uses exclusive agents, the filer shall use**

the percentage for insurers which use exclusive agents; and if an insurer uses independent agents, the filer shall use the percentage for insurers which use independent agents.

7.-10. (No change.)

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

**APPENDIX  
EXHIBIT H**

**Marketing Methods for the  
Top 20 Private Passenger Auto Insurers in New Jersey**

**Independent Agents:**

Aetna Casualty and Surety Co.  
Atlantic Employers Insurance Co.  
Camden Fire Insurance Association  
Continental Insurance Co. of New Jersey  
Hanover Insurance Co.  
Harleysville Garden State Insurance Co.  
Liberty Insurance Corp.  
Newark Insurance Co.  
Ohio Casualty Insurance Co.  
Parkway Insurance Co.  
Selective Insurance Co.  
Twin City Fire Insurance Co.  
United States Fidelity & Guaranty Co.

**Captive Agents:**

Allstate Insurance Co.  
Keystone Insurance Co. of New Jersey  
Prudential Property and Casualty Insurance Co. of NJ  
State Farm Mutual Auto Insurance Co.

**Direct Writers:**

Liberty Mutual Fire Insurance Co.  
New Jersey Manufacturers Insurance Co.  
United Services Auto Association

**(a)**

**SMALL EMPLOYER HEALTH BENEFITS PROGRAM  
BOARD**

**Small Employer Health Benefits Program  
Communications with Board; Penalties; Severability;  
Standard Application and Certification Forms;  
Program Compliance; Continuation and  
Conversion of Existing Contracts; Fair Marketing  
Standards; Petitions for Rules**

**Proposed New Rules: N.J.A.C. 11:21-1.3, 1.4 and 1.5,  
and 11:21-6, 7, 7A, 17 and 18 and Appendix  
Exhibits N through T**

Authorized By: New Jersey Small Employer Health Benefits  
Program Board, Maureen Lopes, Chairperson.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by P.L. 1993,  
c.162, Section 16, and N.J.S.A. 52:14B-4(f).

Proposal Number: PRN 1993-525.

Submit written comments by October 5, 1993 to:

Interim Administrator  
New Jersey Small Employer Health Benefits Program  
SEH Box 1  
c/o The Prudential Insurance Co. of America  
P.O. Box 4080  
Iselin, New Jersey 08830

The agency proposal follows:

**Summary**

These rules are being proposed pursuant to the Small Employer Health Benefits Program, P.L. 1992, c.162 enacted November 30, 1992 and amended June 30, 1993, P.L. 1993, c.162 (N.J.S.A. 17B:27A-17 et seq.) ("the Act").

The Small Employer Health Benefits Program ("SEH") Board of Directors ("Board") is promulgating regulations in accordance with the

procedure set forth in P.L. 1993, c.162, Section 16(a)-(f) which sets forth a procedure which the Board may follow to adopt actions, notwithstanding the provisions of P.L. 1968, c.410 (the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.). Section 16 generally provides that prior to the adoption of health benefits plans, the Board shall publish notice of its intended action in three newspapers of general circulation, and mail same to those persons and entities specified in Section 16. The Board is further required to forward the notice of intended action and detailed description to the Office of Administrative Law for publication in the New Jersey Register. The Board is required to provide all interested persons an opportunity to comment in writing on the intended action. The Board has established October 5, 1993 as the date by which all written comments must be received. The Board will take final action on these proposed rules immediately following the close of the public comment period, which shall be effective on the date the rules are submitted to the Office of Administrative Law for publication in the New Jersey Register, or such later date as the Board may establish pursuant to P.L. 1993, c.162, Section 16(e).

In accordance with the Act, insurance companies, health service corporations, hospital service corporations, medical service corporations, health maintenance organizations, and multiple employer arrangements offering to, or providing health benefits plans for, small employers (collectively, "carriers") must offer, as a condition of transacting business in this State, health benefits plans promulgated by the SEH Board. Failure to comply with the requirements of the Act may result in penalty assessments and/or a carrier losing its authority to write any health benefits policies or contracts in New Jersey.

The Board is given broad powers to oversee the program including authority to: define the provisions of small employer health benefits plans in accordance with the Act; promulgate one standard claim form; promulgate program compliance regulations; and assess members for expenses incurred in operating the program. The Board previously has proposed rules to implement certain provisions of the program defining the health benefits plans and policy forms, optional benefit riders, and standard claim forms for the small employer market. See 25 N.J.R. 3599(a).

The rules proposed herein establish standards for offering, issuing and renewing small employer health benefits plans. Additionally, these proposed rules set forth certain administrative functions relevant to the Board and the SEH program, including the address for written communications and the procedures for petitioning the Board for rule-making.

New rules are being proposed in addition to those currently proposed as N.J.A.C. 11:21-1, set forth at 25 N.J.R. 3600.

Proposed N.J.A.C. 11:21-1.3 establishes the address to which written communications may be sent to the SEH Board, via its Interim Administrator.

Proposed N.J.A.C. 11:21-1.4 establishes general penalty provisions for failure to comply with the rules and standards of the Board.

Proposed N.J.A.C. 11:21-1.5 is a severability provision.

Proposed subchapter 6 sets forth the standard employer and employee application forms, small employer certification forms (initial and annual) and the employee waiver form which carriers must use with respect to small employer health benefits plans. It should be noted that while carriers must include the content of the employee application form, they may alter the format for their data systems. Additionally, carriers may make an addendum to the two forms to capture information the carrier may need for administrative purposes only, which otherwise is not already in the application forms. Administrative purposes includes additions and deletions of dependents, name and address changes, information needed for Federal or State statutory continuation requirements, or primary care physicians or health center changes.

Proposed subchapter 7 sets forth the standards carriers must meet in offering, issuing, or renewing small employer health benefits plans on or after January 1, 1994.

Proposed N.J.A.C. 11:21-7.1 sets forth the purpose and scope of the subchapter.

Proposed N.J.A.C. 11:21-7.2 sets forth the additional definitions used in this subchapter not otherwise defined in the chapter.

Proposed N.J.A.C. 11:21-7.3 sets forth the standards for determining employer and employee eligibility.

Proposed N.J.A.C. 11:21-7.4 sets forth the only circumstances under which a carrier may act as an administrator for a small employer's health benefits plan that is self-funded, in whole or in part, and not be in violation of the provisions of the Act.

Proposed N.J.A.C. 11:21-7.5 sets forth restrictions on the purchase of replacement coverage by small employers, where the replacement health benefits plan is either of greater or lesser actuarial value, whether or not the replacement coverage is through the same carrier.

Proposed N.J.A.C. 11:21-7.6 establishes the standard participation requirements for carriers to use in the small employer market, as well as procedures for carriers to obtain approval from the Board for lower participation requirements. It should be noted that carriers must apply participation requirements uniformly for all small employers and all small employer health benefits plans.

Proposed N.J.A.C. 11:21-7.7 establishes the standard employer contribution requirement for the small employer market, and the procedures by which a carrier may obtain approval to use a lower contribution requirement for all small employers.

Proposed N.J.A.C. 11:21-7.8 sets forth preexisting condition standards which apply to the small employer market.

Proposed N.J.A.C. 11:21-7.9 sets forth the standards carriers must comply with in accepting and reviewing small employer applications, and making coverage effective. Additionally, this section allows a small employer to maintain a waiting period prior to coverage becoming effective for its employees. However, the waiting period cannot exceed six months.

Proposed N.J.A.C. 11:21-7.10 sets forth the standard carriers must comply with in providing price quotes to small employers.

Proposed N.J.A.C. 11:21-7.11 prohibits required tie-in sales, whereby the carrier requires the purchase of other insurance products in order for a small employer to purchase a health benefits plan.

Proposed N.J.A.C. 11:21-7.12 sets forth those instances when guaranteed renewal by a carrier is not required.

Proposed N.J.A.C. 11:21-7.13 establishes annual reporting requirements with which carriers must comply. The data reported by carriers will permit the Board to monitor the effectiveness of the program.

Proposed N.J.A.C. 11:21-7.14 establishes standards for the payment of benefits by carriers, setting the maximum allowable charge as the 80th percentile of the Prevailing Healthcare Charges System profile for New Jersey, published by the Health Insurance Association of America.

Proposed subchapter 7A, Continuation and Conversion of Existing Contracts, applies to those health policies and contracts issued to small employers prior to January 1, 1994 and renewed through February 28, 1995.

Proposed subchapter 17 establishes fair marketing standards, including rules concerning marketing and promotional materials disseminated by carriers, and carrier contracts with producers.

Proposed subchapter 18 establishes the procedure to be followed to petition the Board for a rule change or for a new rule.

Subchapters 2 and 8 through 16 are reserved for rules to be promulgated.

Proposed Exhibit N is the standard small employer application form.

Proposed Exhibit O is the initial small employer certification form.

Proposed Exhibit P is the annual small employer certification form.

Proposed Exhibit Q is the employee enrollment form to be used by carriers other than HMOs.

Proposed Exhibit R is the employee enrollment form to be used by HMO carriers.

Proposed Exhibit S is the employee health status form (that is, the medical questionnaire).

Proposed Exhibit T is the form employees would use to waive coverage under a small employer health benefits plan.

#### **Social Impact**

Proposed new subchapters 6, 7, 7A and 17 are intended to further implement the SEH Program under which all carriers writing or having enforce health policies or contracts providing coverage to small employers in New Jersey must offer standard health benefits plans to all New Jersey small employers. These proposed new subchapters are designed to provide standards for the uniform treatment of all small employers, their eligible employees, and dependents of those eligible employees under the market reforms being instituted in 1994, regardless of the size of the small employer, the number of participating eligible employees, the small employer health benefit plan elected, or the carrier or group mechanism through which the small employer obtains coverage under a health benefits plans. The Board believes that the uniform treatment required by these proposed new subchapters is consistent with the intent of the Act, and ultimately is necessary to ensure any success in the SEH Program.

The Board believes that New Jersey small employers will, over time, benefit significantly from the uniform application of carrier practices through the SEH Program. The Board also believes that the requirement that carriers offer only the health benefits plans designed by the SEH Board should enable small employers to readily compare coverage among carriers, and provides assurances that carriers are offering uniform benefits. Carriers in the market are obligated to provide small employer health benefits plans on a guaranteed issue basis.

For carriers, producers and consultants, proposed new subchapters 6, 7, 7A and 17 further flesh out the SEH Program. These proposed new subchapters answer many recurring questions that have arisen since the Act became effective, and the subsequent statutory amendments were enacted. These proposed new subchapters will guide carriers and producers in their efforts to restructure their positions in the small employer market.

The proposed amendments to subchapter 1 and proposed new subchapter 18, while essentially administrative in nature, provide carriers, producers and all other interested persons with mechanisms by which to more readily communicate with the Board directly and through the regulatory process.

#### **Economic Impact**

Proposed new subchapters 6, 7, 7A and 17 may have an economic impact on carriers that offer small employer health benefits plans in this State. Members carriers will be required to bear any costs associated with conforming their present business practices with those set forth in these proposed new subchapters. Such costs will vary among carriers, depending upon the degree to which a carrier's current business practices deviate from those proposed, and the areas in which they deviate.

There will be an economic impact from these proposed new subchapters for small employers, and possibly their employees, including certain part-timers and retirees. Whether the impact will be positive or adverse will depend upon the small employer's current situation, and the conforming decisions a small employer's current carrier may make. For many small employers, the economic impact resulting directly from these proposed new subchapters should be minimal when compared to the overall impact resulting from the Act.

The impact upon carriers and small employers is necessary to implement the comprehensive reforms to the small employer health insurance market set forth in the Act. The variable economic impacts represent the price of these reforms, and the Board believes that the long-term benefits for both carriers and the public will outweigh any adverse impact.

No economic impact is anticipated to result from the proposed amendments to subchapter 1 or proposed new subchapter 18.

#### **Regulatory Flexibility Analysis**

These proposed amendments and new subchapters impose additional recordkeeping, reporting and compliance requirements, as described in the Summary above, for many carriers. The impact will vary among member carriers in accordance with their current practices, but all carriers subject to these proposed new rules will incur additional costs of compliance.

The Board does not believe that any carriers required to comply with these rules are "small businesses" as that term is defined at N.J.S.A. 52:14B-16 et seq. Assuming one or more carriers were small businesses, however, the Board would not be inclined to include any relaxation of these rules, or different compliance requirements, specifically for small businesses. (It should be noted that certain deviations are being permitted for all carriers to accommodate some systems and administrative needs of the carriers, thereby limiting certain compliance costs.) The underlying legislation is intended to establish a limited number of standard health benefits plans for small employers, and to provide a method for regulating small employers health benefits plans in a uniform manner. Different rules for carriers that are small businesses would be inconsistent with the legislative goal of standardization in plan design and treatment of small employers.

**Full text** of the proposed new rules follows:

11:21-1.3 Communications with the Board

All written communications with the SEH Board shall be submitted to the SEH Board at the following address:

Interim Administrator  
 New Jersey Small Employer Health Benefits  
 Program Board  
 SEH 1  
 c/o The Prudential Insurance Company of America  
 P.O. Box 4080  
 Iselin, New Jersey 08830

#### 11:21-1.4 Penalties

Failure of a carrier to comply with any provision of this chapter may result in the carrier losing its authority to write health benefits in New Jersey and imposition of any and all penalties and action available under law.

#### 11:21-1.5 Severability

If any provision of this chapter or the application thereof to any person or circumstance is found to be invalid for any reason, the remainder of the chapter and the application thereof to other persons or circumstances shall not be affected thereby.

### SUBCHAPTER 6. STANDARD EMPLOYER AND EMPLOYEE APPLICATION AND SMALL EMPLOYER CERTIFICATION FORMS

#### 11:21-6.1 Standard application form

(a) All small employer carriers offering small employer health benefits plans with an effective date on or after January 1, 1994, shall use the standard application form approved by the Board and specified in Exhibit N of the Appendix to this chapter incorporated herein by reference.

(b) Small employer carriers shall require any small employer applying for a small employer health benefits plan to be issued by that small employer carrier to complete, as part of the application, the New Jersey Small Employer Certification form approved by the Board and specified in Exhibit O of the Appendix to this chapter incorporated herein by reference. The small employer carrier shall obtain from the small employer concurrent with the certification a copy of its most recent New Jersey and Federal quarterly wage report.

#### 11:21-6.2 Annual Small Employer Certification Form

Small employer carriers shall require each small employer covered by a small employer health benefits plan issued by the small employer carrier to that small employer to complete each year the Annual New Jersey Small Employer Certification form approved by the Board and specified in Exhibit P of the Appendix to this chapter incorporated herein by reference. This form shall be sent to the small employer for completion no earlier than 90 days prior to the renewal of the small employer's health benefits plan. Concurrent with the annual certification, the small employer carrier shall also obtain from the small employer a copy of its most recent New Jersey and Federal quarterly wage report.

#### 11:21-6.3 Enrollment

(a) Small employer carriers shall require each eligible employee electing coverage under the small employer health benefits plan to complete the Enrollment form approved by the Board and specified in Exhibit Q of the Appendix to this chapter incorporated herein by reference, except that carriers can reformat the standard application in any manner necessary to simplify administration for the carrier without modification of the content of the form. At the end of the standard application in an additional section, a carrier may also require periodic updates of the following information: name changes, primary care physician change, health center change, additions or deletions to family coverage, address changes and State and Federal continuation election.

(b) Small employer carriers offering the HMO plan shall require each eligible employee electing coverage under the HMO plan to complete the enrollment form approved by the Board and specified in Exhibit R of the Appendix to this chapter incorporated herein by reference, except that carriers can reformat the standard application in any manner necessary to simplify administration for the carrier without modification of the content of the form. At the end of the standard application in an additional section, a carrier may

also require periodic updates of the following information: name changes, primary care physician change, health center change, additions or deletions to family coverage, address changes and State and Federal continuation election.

(c) Any small employer carrier who elects to utilize an eligible employee's health status in determining premium rates shall require eligible employees to complete the Health Status form approved by the Board and specified in Exhibit S of the Appendix to this chapter incorporated herein by reference.

#### 11:21-6.4 Waiver

Any eligible employee who declines coverage under the small employer health benefits plan shall complete the employee waiver form approved by the Board and specified in Exhibit T of the Appendix to this chapter incorporated herein by reference.

### SUBCHAPTER 7. PROGRAM COMPLIANCE

#### 11:21-7.1 Purpose and scope

This subchapter sets forth the standards all carriers must meet in offering, issuing and renewing all small employer health benefits plans to any small employer, the small employer's eligible employees, and the dependents of those eligible employees on or after January 1, 1994.

#### 11:21-7.2 Definitions

All words and terms used in this subchapter shall have the meanings as set forth in the Act, N.J.A.C. 11:21-1.2 or as further defined below, unless the context clearly indicates otherwise.

"Affiliated company" means any corporation which is a member of a controlled group of corporations; organization under common control with the small employer; organization which is included with the small employer in an affiliated service group; or other entity required to be aggregated with the small employer, all in accordance with sections 414 and 1563 (without regard to sections 1563(a)(4) and (e)(3)(c)), of the Internal Revenue Code of 1986, as amended.

#### 11:21-7.3 Eligibility and issuance

(a) A small employer carrier shall issue a small employer health benefits plan to any small employer which requests it, pays the premiums therefor and meets the contribution and participation requirements, if any, of the small employer carrier. All small employer health benefits plans that are issued or renewed on or after January 1, 1994, shall provide coverage for all eligible employees and their dependents who elect to participate regardless of their health and without exclusionary riders.

1. A small employer carrier shall not refuse to issue coverage, or discriminate in the issuance of coverage, to a small employer based upon the geographic location of the small employer, except that small employer carriers that are HMOs may refuse to issue coverage to a small employer not physically located in the HMO's service area.

2. A small employer carrier shall not refuse to issue coverage, or discriminate in the issuance of coverage, to a small employer based upon the geographic location of the employees of the small employer, except that:

i. The small employer carrier shall refuse to issue coverage to a small employer if the majority of its eligible employees are not residents of New Jersey; or

ii. The small employer carrier may refuse to issue coverage if the participating employees are not physically located within the small employer carrier's service area, if the small employer carrier is an HMO.

3. Every small employer carrier, except small employer carriers that are HMOs, shall, as a condition of transacting business in this State, actively offer to small employers the five small employer health benefits plans, including all riders it writes, except as such riders may be restricted by the Board to specific small employer health benefits plans. Small employer carriers that are HMOs shall, as a condition of transacting business in this State, actively offer to small employers every small employer health benefits plan it writes, including all riders it writes, except as such riders may be restricted by the Board to specific small employer health benefits plans.

4. A small employer carrier shall consider the number of all eligible employees of all affiliated companies of a small employer in determining whether an employer is a small employer.

5. At the time of application, the determination of whether an employer is a small employer shall be based upon the New Jersey and Federal wage reports of the employer established for the completed calendar quarter immediately preceding the calendar quarter in which the application is dated.

i. If an employer qualified as a small employer in the immediately preceding calendar quarter, the employer shall be considered a small employer regardless of the status of the employer on the date of application of the effective date of coverage.

ii. If an employer did not qualify as a small employer in the immediately preceding calendar quarter, the employer shall not be considered a small employer, regardless of the status of the employer on the date of application or the proposed effective date of coverage, if any.

6. If an employer that otherwise does not meet the definition of small employer has fewer than 50 eligible employees, when eligible employees to whom health benefits plan coverage is required pursuant to a union welfare plan are removed from the calculation of the number of eligible employees of the employer, then that employer shall be considered a small employer.

(b) A small employer carrier shall issue only small employer health benefits plans to an association, trust or multiple employer arrangement to provide coverage to member small employers or to two or more eligible employees of a member small employer.

1. No carrier shall issue a small employer health benefits plan to any association, trust or multiple employer arrangement which bases membership criteria of any small employer or employee of the small employer, in whole or in part, upon the health status or claims experience of the employer or employee.

2. Every small employer member of an association, trust or multiple employer arrangement shall be offered coverage under every small employer health benefits plan issued to the association.

(c) In determining an employer's number of eligible employees, a small employer carrier shall consider in the calculation the number of independent contractors that the employer may include on its application for coverage to the extent that each independent contractor:

1. Is performing a service for the employer pursuant to a written contract for monetary or other legal consideration;
2. Is working exclusively for the employer;
3. Works 25 or more hours per week for the employer;
4. Works on other than a temporary or substitute basis; and
5. The independent contractor relationship has been established to serve a substantial business need of the employer and is not intended primarily to obtain insurance coverage.

(d) Employees who enroll within 30 days of first becoming eligible for coverage shall be accepted for coverage by the small employer carrier without any restrictions or limitations on coverage related to their risk characteristics or that of their dependents, except that a small employer carrier may exclude coverage for preexisting conditions consistent with the provisions of N.J.A.C. 11:21-7.8.

(e) Small employer carriers providing coverage to a small employer's employees working fewer than 25 hours per week under a health benefits plan issued prior to January 1, 1994, or renewed upon its anniversary date prior to March 1, 1994 may continue to cover those employees when the carrier converts the small employer to a small employer health benefits plan on the first anniversary date beginning after February 28, 1994.

1. If continuing to cover such employees, the small employer carrier shall offer to continue coverage for all such employees of all such small employers converting to a small employer health benefits plan, and shall do so without regard to the small employer health benefits plan to which the small employer converts.

2. Such covered employees shall not be considered in determining whether an employer is a small employer, nor for determining whether the small employer meets the requisite participation requirements.

(f) Small employer carriers providing coverage to a small employer's retired employees under a health benefits plan issued prior to January 1, 1994, or renewed upon its anniversary date prior to March 1, 1994 may continue to cover those retired employees when the carrier converts the small employer to a small employer health benefits plan on the first anniversary date beginning after February 28, 1994, subject to the requirements of (e)1 and 2 above with respect to such covered retired employees.

(g) Small employer carriers covering retired employees and/or employees not working 25 or more hours a week of an employer that becomes a small employer subsequent to January 1, 1994 may continue to cover such retired employees or noneligible employees under a small employer health benefits plan issued to the small employer by the carrier, subject to the requirements of (e)1 and 2 above.

#### 11:21-7.4 Carriers acting as administrators for small employers

(a) A small employer carrier may act as administrator for a small employer's self-funded plan and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq. if:

1. The small employer's self-funded plan meets the definition of an employee welfare benefit plan at 26 U.S.C. 1002(1) and is not a multiple employer welfare arrangement, in whole or in part, as defined at 26 U.S.C. 1002(40); and

2. The carrier does not issue stop loss or excess risk insurance to the small employer.

(b) A small employer carrier may act as administrator for a self-funded plan for a group of small employers and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq., if:

1. The group of small employers meets the requirements of 26 U.S.C. 1002(4)(B), establishing the criteria of what constitutes a control group single employer for the purposes of the federal Employee Retirement Income Security Act; and

2. The small employer carrier does not issue stop loss or excess risk insurance to the small employer.

#### 11:21-7.5 Restrictions on replacement of health benefits plans

(a) A small employer who purchases a health benefits plan or rider pursuant to the Act shall not be permitted to purchase a health benefits plan or rider with a greater actuarial value until the first anniversary date of the small employer's existing health benefits plan.

(b) When a small employer replaces a health benefits plan or rider with a health benefits plan or rider of greater actuarial value, the small employer shall not be permitted to change the health benefits plan or rider to one of lesser actuarial value until the anniversary date of the small employer's health benefits plan.

(c) A small employer who has purchased a health benefits plan or rider pursuant to the Act may purchase a health benefits plan or rider of lesser actuarial value prior to the anniversary date of the existing health benefits plan or rider, provided that the existing plan or rider was purchased at least 12 months prior to the latest anniversary date of the plan or rider.

(d) In the event that the previous health benefits plan of a small employer group was cancelled for nonpayment of premiums or fraud, a small employer carrier may:

1. Refuse to issue a health benefits plan to the small employer group for one year from the last date of coverage of the previous plan; or

2. Require the small employer group to pay up to six months of premiums in advance of the issuance of a health benefits plan.

#### 11:21-7.6 Participation requirements

(a) A small employer carrier shall require a minimum participation under the small employer's health benefits plan of 75 percent of eligible employees except as set forth in (b) below. This participation requirement shall be applied by the small employer carrier uniformly among all small employer health benefits plans and all small employers. An eligible employee who is not covered under the small employer's health benefits plan because the employee is covered as a dependent under a spouse's health benefits plan, or

is covered under an HMO plan offered by the small employer, shall be counted as covered under the small employer's health benefits plan for the purpose of satisfying participation requirements.

(b) A small employer carrier may, upon approval by the Board, require a minimum participation of less than 75 percent provided that the small employer carrier:

1. Notifies the Board in writing of its minimum requirement;
2. Explains why the lesser requirement is reasonable; and
3. Applies the requirement uniformly to all small employer health benefits plans and to all small employers.

(c) The Board shall notify the small employer carrier in writing within 60 days of the small employer carrier's filing with the Board whether such request is approved.

(d) The small employer carrier shall have a right of appeal if the Board disapproves the small employer carrier's lesser participation requirements, in accordance with procedures established by the Board in its Plan of Operation.

#### 11:21-7.7 Contribution requirements

(a) A small employer carrier shall not require a minimum small employer contribution of more than 10 percent of the annual cost of the small employer's health benefits plan. This contribution requirement shall be applied by the small employer carrier uniformly among all small employer health benefits plans and all small employers.

(b) A small employer carrier may, upon approval of the Board, require a minimum contribution of less than 10 percent provided that the small employer carrier:

1. Notifies the Board in writing of its contribution requirement;
2. Explains why the lesser requirement is reasonable; and
3. Applies the requirement uniformly to all small employer health benefits plans and to all small employers.

(c) The Board shall notify the small employer carrier in writing within 60 days of the small employer carrier's filing with the Board whether such request is approved.

(d) The small employer carrier shall have a right of appeal if the Board disapproves the small employer carrier's lesser contribution requirements, in accordance with procedures established by the Board in its Plan of Operation.

#### 11:21-7.8 Preexisting condition standards

(a) A small employer health benefits plan covering five or fewer eligible employees, as determined on the effective date and each subsequent policy anniversary, shall not deny, exclude or limit benefits, for a covered individual for losses incurred more than 180 days following the effective date of the individual's coverage due to a preexisting condition. A preexisting condition is an illness or injury which manifests itself in the six months before a covered individual's coverage under the small employer health benefits plan becomes effective and for which: the individual received medical care, treatment, or took prescribed drugs; or, an ordinarily prudent person would have sought medical advice, care or treatment in the six months before the individual's coverage starts. A pregnancy which exists on the date an individual's coverage becomes effective is also a preexisting condition.

(b) A small employer carrier shall waive any time period applicable to a preexisting condition limitation period for the period of time an individual was covered under a previous employer's health benefits plan that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than 90 days prior to the effective date of the new coverage. The period of continuous coverage shall not include any waiting period for the effective date of the new coverage applied under the terms of the small employer health benefits plan.

(c) The standards set forth in (a) above shall also apply to a late enrollee under a small employer health benefits plan, unless ten or more late enrollees request enrollment during any 30 day enrollment period.

#### 11:21-7.9 Effective date of coverage

(a) A small employer carrier, prior to issuing a small employer health benefits plan, may require the following:

1. A completed small employer standard application form including the small employer certification form and applicable wage reports in accordance with N.J.A.C. 11:21-6.1(a) and (b);

2. Complete employee enrollment material in accordance with N.J.A.C. 11:21-6.3 and 6.4; and

3. An advance premium payment not to exceed one month's premium, except as provided in N.J.A.C. 11:21-7.5(d)2, which shall be refunded to the employer if the small employer health benefits plan is not issued by the small employer carrier.

(b) A small employer carrier shall provide notice to the employer within 15 days of receipt by the small employer carrier of the information set forth in (a) above whether the small employer carrier approves or disapproves the employer's application for the small employer health benefits plan. If approved, the effective date of coverage under the small employer health benefits plan shall be no later than the first day of the month following the date of notice of such approval by the small employer carrier.

(c) At the option and upon the request of the small employer, a waiting period may be applied by the small employer carrier with respect to employees when they first become eligible for coverage, not to exceed six months. Waiting periods may be applied to these employees by class of employee based upon conditions pertaining to employment.

(d) A small employer carrier may offer an automatic checking withdrawal option to small employer groups for the monthly or quarterly payment of premiums. In the event that a small employer carrier elects to offer an automatic checking withdrawal option, the carrier shall offer the same option to all small employer groups, regardless of the size of the group or the type of health benefits plan.

(e) A small employer carrier may require that its small employer groups make monthly or quarterly premium payments through an automatic checking withdrawal option. In the event that a small employer carrier elects to require that its small employer groups pay premiums through an automatic checking withdrawal option, the small employer carrier shall apply this requirement to every small employer group, regardless of the size of the group or the type of health benefits plan.

#### 11:21-7.10 Price quotes; disclosures

(a) A small employer carrier shall provide a price quote to a small employer, directly or through an authorized producer, within 10 working days of receiving a request for a quote and such information as is reasonable and necessary to provide the quote. A small employer carrier shall notify a small employer, directly or through an authorized producer, within five working days of receiving a request for a price quote of any additional information needed by the small employer carrier to provide the quote.

(b) Each small employer carrier shall make reasonable disclosure in price quotes provided to small employers of the provisions concerning the small employer carrier's right to change premiums and the criteria in the small employer carrier's rate filing which affect changes in premium rates.

#### 11:21-7.11 Tie-ins

A small employer carrier shall not require, as a condition to the offer or sale of a health benefits plan to a small employer, that the small employer purchase or qualify for any other insurance products or services.

#### 11:21-7.12 Guaranteed renewal

(a) All small employer health benefits plans that are issued on or after January 1, 1994, must be guaranteed renewable at the option of the small employer, except for the following reasons:

1. Nonpayment of required premiums;
2. Fraud or misrepresentation with respect to coverage of eligible employees or dependents or status as a small employer;
3. The number of employees covered under the small employer health benefits plan is less than the percentage of eligible employees required by participation requirements under the plan;
4. The small employer is no longer a small employer. The determination as to the small employer's status as a small employer

shall be made at the anniversary date of the small employer's health benefits plan, in accordance with N.J.A.C. 11:21-7.3(a)5;

5. Noncompliance with a small employer carrier's employer contribution requirements;

6. The number of employees covered under the small employer health benefits plan is less than two;

7. A small employer ceases its membership in an association or trust of employers where the small employer health benefits plan was issued in connection with such membership; or

8. The small employer carrier institutes a withdrawal in accordance with N.J.S.A. 17B:27A-23e and rules promulgated thereunder by the Commissioner.

#### 11:21-7.13 Reporting requirements

(a) Effective January 1, 1995, a small employer carrier shall file annually, with the Board, the following information related to small employer health benefits plans issued by the small employer carrier to small employers in New Jersey:

1. The number of small employers, covered employees and dependent units that were issued small employer health benefits plans in the previous calendar year, separated as to newly issued plans and renewals, and by plan design;

2. The number of small employer health benefits plans in force by three digit zip code as of December 31 of the previous calendar year;

3. The number of small employer health benefits plans that were voluntarily cancelled by small employers in the previous calendar year;

4. The number of small employer health benefits plans that were cancelled or non-renewed by the carrier in the previous calendar year, and the reason for such cancellation or non-renewal; and

5. The number of small employer health benefits plans that were issued to small employers that were uninsured for at least the three months prior to issue.

(b) The information described in (a) above shall be filed with the Board no later than March 15 of each year.

#### 11:21-7.14 Paying benefits

(a) In paying benefits for covered services under the terms of the small employer health benefits plans provided by health care providers not subject to capitated or negotiated fee arrangements, small employer carriers shall pay covered charges on a reasonable and customary standard based on the Prevailing Healthcare Charges System profile for New Jersey, incorporated herein by reference published and available from the Health Insurance Association of America, 1025 Connecticut Avenue, NW, Washington, D.C. 20036-3998.

1. The maximum allowable charge shall be based on the 80th percentile of the profile.

2. Carriers shall use the profile effective as of July 1993, and shall update their databases annually beginning January 1995.

### SUBCHAPTER 7A. CONTINUATION AND CONVERSION OF EXISTING CONTRACTS

#### 11:21-7A.1 Purpose and scope

This subchapter sets forth the standards all carriers must meet in renewing or continuing any policy or contract delivered or issued for delivery to a small employer prior to January 1, 1994.

#### 11:21-7A.2 Conversion

(a) A policy or contract covering one or more employees of a small employer issued by a carrier prior to January 1, 1994, shall remain in effect at the small employer's option until the first anniversary date after February 28, 1994, of that policy or contract, unless the carrier institutes a withdrawal in accordance with N.J.S.A. 17B:27A-23e and rules promulgated thereunder by the Commissioner.

(b) A carrier shall notify each small employer at least 60 days prior to the policy or contract anniversary date that the existing policy or contract will be cancelled on its anniversary date. If the carrier is a small employer carrier, it shall give the small employer

an outline of the small employer health benefits plans required to be offered by the small employer carrier and the premium costs for each of the small employer health benefits plans offered.

#### 11:21-7A.3 Continuation

The requirements of N.J.S.A. 17B:27A-27 shall apply, effective January 1, 1994, to every policy or contract issued to a small employer which is continued in accordance with N.J.A.C. 11:21-7A.2 above.

### SUBCHAPTER 17. FAIR MARKETING STANDARDS

#### 11:21-17.1 Plan identification and marketing materials

(a) Each small employer carrier which issues marketing and/or promotional materials in conjunction with the health benefits plans may attach its own name or identification to each of the plans, but shall also identify each of those health benefits plans by the alphabetical designation (A, B, C, D, E, HMO) assigned to it in N.J.A.C. 11:21-3.1. The alphabetical designation shall be clearly identified in the designation of each of the small employer carrier's health benefits plans.

(b) All terms, definitions, and text used in the small employer carrier's marketing and/or promotional material shall be consistent with the Act and this chapter.

(c) Small employer carriers shall not disseminate marketing and/or promotional material specific to the health benefits plans defined at N.J.A.C. 11:21-3 to policyholders or small employers until N.J.A.C. 11:21-3 is effective pursuant to the requirements of P.L. 1993, c.162, Section 16.

#### 11:21-17.2 Retention of marketing and promotional materials

Small employer carriers shall maintain a complete file of all marketing and promotional material specific to the health benefits plans, which it disseminates to consumers, producers, or otherwise publicly disseminates. Small employer carriers shall retain each piece of promotional and marketing materials for a period of three calendar years from the last date the material is publicly disseminated, which shall be deemed its complete file for the purposes of this subchapter. Upon written request of the Board, a small employer carrier shall, within three business days, make available for inspection its complete file of marketing and promotional material to the Board.

#### 11:21-17.3 Certification

(a) Each small employer carrier disseminating marketing and promotional material shall certify that its marketing and promotional material conforms with the requirements of this subchapter. The certification shall be signed by a duly authorized officer of the small employer carrier. Each small employer carrier shall file its initial certification with the Board no later than the first day upon which the small employer carrier disseminates promotional or marketing materials for the health benefits plans to consumers, producers or the public in general.

(b) Small employer carriers shall continue to file a certification as required in (a) above on an annual basis following the filing of its initial certification.

#### 11:21-17.4 Buyers' Guide

Small employer carriers shall set forth in their promotional and/or marketing materials that a Small Employer Health Benefits Buyers' Guide is available and can be obtained upon request, free of charge, by a small employer from the small employer carrier. Small employer carriers shall provide or mail a Buyers' Guide to small employers within three business days of request.

#### 11:21-17.5 Producer contracts

(a) A small employer carrier may select those insurance producers, as defined by N.J.S.A. 17:22A-2j, with whom it chooses to contract. No small employer carrier shall terminate or refuse to renew the contract of its insurance producers because of the health status, claims experience, occupation or geographic location of the small employer groups placed by the insurance producer with the small employer carrier.

(b) No small employer carrier shall, directly or indirectly, enter into any contract, agreement or arrangement with an insurance producer that provides for or results in any consideration provided to an insurance producer for the issuance or renewal of a small employer health benefits plan that varies on account of the health status, claims experience, industry, occupation or geographic location of a small employer covered by a small employer health benefits plan.

#### SUBCHAPTER 18. PETITIONS FOR RULES

##### 11:21-18.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Board, pursuant to N.J.S.A. 52:14B-4(f).

##### 11:21-18.2 Procedure for petitioner

(a) Any person who wishes to petition the Board to promulgate, amend or repeal a rule shall submit to the Board, in writing, the following information:

1. Name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Board to take the requested action.

(b) Within 30 days of its receipt of a petition for rulemaking, the Board shall review the same to ascertain if the submission complies with the requirements of (a) above and, in the event that the Board determines that the submission is not in substantial compliance with (a) above, the Board shall notify the petitioner of such non-compliance and of the particular deficiency or deficiencies in the submission on which the decision of the Board was based. The Board shall also advise the petitioner that any deficiencies may be corrected and the petition may be resubmitted for further consideration.

(c) Any document submitted to the Board which is not in substantial compliance with (a) above shall not be deemed to be a petition

for a rule requiring further Board action pursuant to N.J.S.A. 52:14B-4(f).

##### 11:21-18.3 Procedure of the Board

(a) Upon receipt of a petition in compliance with N.J.A.C. 11:21-18.2 the Board shall file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register. The notice shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving a petition in compliance with N.J.A.C. 11:21-18.2, the Board shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The New Jersey register citation for the notice of petition, if that notice appeared in a previous New Jersey Register;
3. Certification by the Board that the petition was duly considered pursuant to law;
4. The nature or substance of the Board's action upon the petition, and
5. A brief statement of reasons for the Board's action.

(c) Board's action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

EXHIBIT N

[Carrier]

APPLICATION FOR A SMALL GROUP HEALTH BENEFITS POLICY

Please print or type

Policy number: ([Carrier] Use Only)

- New Policy  Change in Policy

Requested Effective Date: \_\_\_\_\_

SECTION I: POLICYHOLDER INFORMATION

- 1. Policyholder (full legal name of company): \_\_\_\_\_
2. Tax Identification Number: \_\_\_\_\_
3. Main Address: \_\_\_\_\_ County: \_\_\_\_\_
Mailing Address: \_\_\_\_\_
4. Name of Correspondent: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_
5. Type of organization:  Corporation  Partnership  Proprietorship
 Other (explain): \_\_\_\_\_
6. Nature of business (specify): \_\_\_\_\_
7. Number of employees in your company: \_\_\_\_\_
8. Number of eligible employees to be insured: \_\_\_\_\_
(Eligible employees are those who work at least 25 hours per week)
9. Class or classes to be included: \_\_\_\_\_
10. Are you subject to the requirements of COBRA?  Yes  No
11. Waiting period before employees become insured: (may not exceed 6 months)
Present employees: \_\_\_\_\_ New Employees \_\_\_\_\_
12. What percentage of the premium will the employer pay? \_\_\_\_\_
13. Deposit \$ \_\_\_\_\_

Premium Paid:  Monthly  Quarterly [ Automatic checking withdrawal]
Premium will be due as of the effective date. The premium for the first month of coverage must be attached.

Affiliates, subsidiaries or branches:

Table with 5 columns: Legal Name & Location, No. of employees in this company, No. of employees to be insured, Type of organization, Nature of business

SECTION II: SPECIFICATIONS FOR COVERAGE

HEALTH BENEFITS

[ Wraparound (Hospital Base Plan \_\_\_\_\_ days)]

Plan:  A  B  C  D  E

[Deductible (Options for plans B, C and D only):  \$250  \$500  \$1,000
Managed Care Delivery System:  PPO  POS  None

PRESCRIPTION DRUG BENEFITS

Program Type:  Card  Mail Order  Card/Mail Order]

SEH-APP-8/93-1

SECTION III: ALL QUESTIONS MUST BE ANSWERED

- 1. Has this firm or any of its affiliates, either under its present name, or under any other name, ever applied for or been insured for group insurance with [Carrier]?  Yes  No  
If "Yes" please furnish year, name of employer and policy number. \_\_\_\_\_
- 2. Is there any insurance plan:
  - a. now inforce and to be continued?  Yes  No
  - b. currently being applied for?  Yes  No
 If "Yes" give a description of the plan and name of insurance carrier(s) \_\_\_\_\_
- 3. Name of present or prior group carrier \_\_\_\_\_  
Cancellation date: \_\_\_\_\_  
Is the coverage applied for in this application replacing other group insurance?  Yes  No  
If "Yes", give reason \_\_\_\_\_
- 4. What forms of insurance are now or were inforce?  Health Benefits or Major Medical  Prescription Drugs (Attach copies of Booklet/Certificate and most recent Billing Statement)
- 5. If present carrier provided health insurance, are extended benefits provided in case of termination of the plan?  Yes  No
- 6. To the best of your knowledge are there any current or former employees or their eligible dependents whose health insurance is being continued?  Yes  No

Please provide the following information for each current/former employee or dependent on health continuations.

Employee/Dependent	Date of Birth	Type of Continuation State/Federal/ Extended Benefits	Reason for Termination Disability/Other	Continuation Dates	
				Start	End

If additional space is needed, attach a separate sheet, signed and dated.

- 7. To the best of your knowledge:
  - a. Are any employees or dependents presently incapacitated?  Yes  No
  - b. Are any dependent children incapable of self-support due to a physical or mental disability?  Yes  No

Additional space to explain if items 1, 2 or 3 were answered "Yes". Refer to the question number, and give details including names, where appropriate.

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SECTION IV: AGENT/PRODUCER INFORMATION

[To be supplied by Carrier]

**SECTION V: SIGNATURE**

It is understood that no individual shall become insured while not actively at work on a full-time basis, and only full-time employees are eligible. A full-time employee is one who regularly works at least 25 hours per week at his employer's place of business. It is further understood that no agent has power on behalf of [Carrier] to make or modify any request or application for insurance or to bind [Carrier] by making any promise or representation or by giving or receiving any information.

It is further understood that no insurance will be effective unless and until the application is accepted in writing by [Carrier]. No contract of insurance is to be implied in any way on the basis of the completion and/or submission of this application.

Any person who knowingly files a statement of claim, application for insurance, or enrollment form, containing any false or misleading information may be subject to criminal and civil penalties.

Dated at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Print name of Officer, Partner or Proprietor

\_\_\_\_\_  
Signature of Officer, Partner or Proprietor

\_\_\_\_\_  
Witness to Signature

**Note:** If there are any modifications to the statements and answers given in this application (i.e. crossed out, whited-out, erased information), the applicant must attest to the modifications) by giving a complete signature in the margin near the modification.

**EXHIBIT N**

**Explanation of Brackets  
Application for a Group Health Benefits Policy**

1. The terms Policyholder and Policy may be replaced with Contractholder or Planholder and Contract or Plan, as appropriate.
2. The reference to Automatic Checking Withdrawal may be deleted if carrier does not offer such option.
3. The Wraparound option may be deleted if a carrier does not offer such option.
4. The text of the Deductible, Managed Care Delivery system and Prescription Drug items may vary, to accommodate the options a Carrier will offer.
5. Agent/Producer Information may be consistent with a Carrier's usual procedures.

EXHIBIT O

NEW JERSEY SMALL EMPLOYER CERTIFICATION

For a policy of Group Health Benefits Insurance

Policyholder Name \_\_\_\_\_ Group Policy No. \_\_\_\_\_

Address \_\_\_\_\_

CERTIFICATION AS A SMALL EMPLOYER IN THE STATE OF NEW JERSEY IN ACCORDANCE WITH NEW JERSEY CH. 162

Group Health Benefits Policy Participation (All Questions Must Be Answered)

An Eligible Employee is one who works on a full-time basis with a normal work week of 25 or more hours. An employee who works less than 25 hours per week or on a temporary or substitute basis is not an eligible employee.

- Total # Eligible Employees \_\_\_\_\_
- Total # Eligible Employees applying for health benefits coverage \_\_\_\_\_
- Total # Eligible Employees waiving health benefits coverage under this policy with coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees waiving health benefits coverage under this policy without coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees with Eligible Dependents \_\_\_\_\_
- Total # Eligible Employees applying for Dependent health benefits coverage \_\_\_\_\_
- Total # Eligible Employees waiving Dependent health benefits coverage under this policy with coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees waiving Dependent health benefits coverage under this policy without coverage elsewhere \_\_\_\_\_

CERTIFICATION

(Please sign and date appropriate section indicating whether or not you meet the definition of a small employer)

A Small Employer is any person, firm, corporation, partnership or association actively engaged in business who during at least fifty percent of its working days in the preceding CALENDAR YEAR/QUARTER, employed NO MORE THAN FORTY-NINE eligible employees and NO LESS THAN TWO eligible employees, the majority of whom were employed in the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

I certify that I qualify as a Small Employer in the State of New Jersey.

I have reviewed the above statements made by me, and they are true and complete.

Signature of Officer, Partner or Proprietor \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

We must have a copy of your most recent State/Federal quarterly wage report

I certify that I am not a Small Employer in the State of New Jersey, as defined above.

Signature of Officer, Partner or Proprietor \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Print Name of Officer, Partner or Proprietor \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT P

ANNUAL NEW JERSEY SMALL EMPLOYER CERTIFICATION

For a policy of Group Health Benefits Insurance

Policyholder Name \_\_\_\_\_ Group Policy No. \_\_\_\_\_

Address \_\_\_\_\_

CERTIFICATION AS A SMALL EMPLOYER IN THE STATE OF NEW JERSEY IN ACCORDANCE WITH NEW JERSEY CH. 162

Group Health Benefits Policy Participation (All Questions Must Be Answered)

An Eligible Employee is one who works on a full-time basis with a normal work week of 25 or more hours. An employee who works less than 25 hours per week or on a temporary or substitute basis is not an eligible employee.

- Total # Eligible Employees \_\_\_\_\_
- Total # Eligible Employees applying for health benefits coverage \_\_\_\_\_
- Total # Eligible Employees waiving health benefits coverage under this policy with coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees waiving health benefits coverage under this policy without coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees with Eligible Dependents \_\_\_\_\_
- Total # Eligible Employees applying for Dependent health benefits coverage \_\_\_\_\_
- Total # Eligible Employees waiving Dependent health benefits coverage under this policy with coverage elsewhere \_\_\_\_\_
- Total # Eligible Employees waiving Dependent health benefits coverage under this policy without coverage elsewhere \_\_\_\_\_

CERTIFICATION

(Please sign and date appropriate section indicating whether or not you meet the definition of a small employer)

A Small Employer is any person, firm, corporation, partnership or association actively engaged in business who during at least fifty percent of its working days in the preceding CALENDAR YEAR/QUARTER, employed NO MORE THAN FORTY-NINE eligible employees and NO LESS THAN TWO eligible employees, the majority of whom were employed in the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

I certify that I qualify as a Small Employer in the State of New Jersey.

I have reviewed the above statements made by me, and they are true and complete.

Signature of Officer, Partner or Proprietor \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

We must have a copy of your most recent State/Federal quarterly wage report

I certify that I am not a Small Employer in the State of New Jersey, as defined above.

Signature of Officer, Partner or Proprietor \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Print Name of Officer, Partner or Proprietor \_\_\_\_\_

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT Q

[CARRIER]

SMALL GROUP HEALTH BENEFITS ENROLLMENT FORM [AND HEALTH STATEMENT]

[Policyholder] (full legal name of company): \_\_\_\_\_ [Policy] No. \_\_\_\_\_

[Policyholder] Address: \_\_\_\_\_  
Street City State Zip Code

SECTION I: EMPLOYEE INFORMATION

Name: \_\_\_\_\_ [Telephone: \_\_\_\_\_]  
Last First Middle Initial

[Home Address:] \_\_\_\_\_  
Street City State Zip Code

Occupation: \_\_\_\_\_ Title: \_\_\_\_\_

Date of Employment: \_\_\_\_\_ Hours worked per week: \_\_\_\_\_

Are you actively at work?  Yes  No If "No", explain \_\_\_\_\_

Marital Status:  Single  Married  Widowed  Divorced

Reason for Enrollment (Please check appropriate boxes)

- I am an employee of an organization which is applying for coverage.
- I am now eligible for coverage and:
  - had no previous coverage during the past 90 days; or
  - had previous coverage during the past 90 days.  
Name of previous carrier \_\_\_\_\_ Plan # \_\_\_\_\_
- I previously refused/waived coverage
- I am applying for coverage during my organization's HMO open enrollment period. Open enrollment date: \_\_\_\_\_
- I am continuing coverage under state or federal law.
- I am adding [deleting] dependent(s)
- other (specify) \_\_\_\_\_

SECTION II: COVERAGE INFORMATION

- 1. Persons to be covered:  Employee Only  Employee & Child(ren)  
 Employee & Spouse  Employee, Spouse & Child(ren)

2. Please provide all information for each person to be covered.

Full Name	Last, First, MI	Sex	Social Security #	Place of Birth	Birthdate	Height	Weight
Employee							
Spouse							
Child							
Child							
Child							
Child							

3. Indicate whether you and/or your spouse, if any, are enrolled under Part A and/or Part B of Medicare

	Plan A	Plan B	Medicare ID. #
Employee	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
Spouse	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

4. PIP Selection Which coverage have you selected to provide benefits under the Personal Injury Protection (PIP) segment of your New Jersey auto insurance?  Auto  Medical

[5. Name(s) of Primary Care Physician(s) \_\_\_\_\_]

**SECTION IV: DECLARATION AND AUTHORIZATION**

I hereby apply for the group coverage for which I am or may become entitled. I authorize deductions from my pay for my share of the cost, if any.

I represent to the best of my knowledge and belief, that the statements and answers given above are true and complete. I understand that the information, [other than the health statement information,] shall form the basis upon which I may be included for coverage under the group plan.

I understand that:

a. the coverage applied for will not take effect unless:

- the first premium has been paid to [Carrier]; and
- I am actively at work for full pay on a full time basis on the date coverage is to take effect.

b. no person, except an officer of [Carrier], has authority to: determine whether any certificate shall be issued on the basis of this Enrollment Form and Health Statement; waive or modify any of the provisions of the Enrollment Form [and Health Statement] or any of [Carrier's] requirements; to bind [Carrier] by any statement or promise pertaining to any certificate signed or to be issued on the basis of this Enrollment [and Health Statement;] or accept any information or representation not contained in the written Enrollment Form [and Health Statement.]

c. the Employer is hereby designated my representative for the purpose of receiving premiums and remitting them to [Carrier].

**Note:** Any person who knowingly files a statement of claim, application for insurance, enrollment form [or health statement], containing any false or misleading information may be subject to criminal and civil penalties.

**AUTHORIZATION**

1. I authorize the sources stated below to give to [Carrier], or any consumer reporting agency acting on its behalf, information about me and my minor children, if applying for insurance. Such information will pertain to employment; other insurance coverage; and medical care, advice, treatment or supplies for any physical or mental condition. Authorized sources are: any physician or medical professional; any hospital, clinic or other medical care institution; any insurer; [the Medical Information Bureau;] any consumer reporting agency; any employer.

2. I understand that I may revoke this authorization at any time. I agree that such revocation will not affect any action which [Carrier] has taken in reliance on the authorization. I understand that this authorization will not be valid after 30 months, if not revoked earlier.

3. I know that I have the right to receive a copy of this authorization if I request one.

4. I agree that a photocopy of this authorization is as valid as the original.

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Signature of Employee)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Signature of Spouse, if giving a statement of health)

\_\_\_\_\_  
(Date Signed)

\_\_\_\_\_  
(Signature of Child Who is age 18 or older, if giving a statement of health)

**["MIB" DISCLOSURE NOTICE (This Notice must be detached and retained by the applicant.)**

Information given in your application may be made available to other insurance companies to which you make application for life or health insurance coverage or to which a claim is submitted.

Information regarding your insurability will be treated as confidential except that [Carrier] may however, make a brief report thereon to the Medical Information Bureau, a non-profit membership organization of life insurance companies which operates an information exchange on behalf of its members. Upon request by another member insurance company to which you have applied for life or health insurance coverage or to which a claim is submitted, the Medical Information Bureau will supply such company with the information it may have in its files.

Upon receipt of a request from you, the Bureau will arrange disclosure of any information it may have in your file. If you question the accuracy of information in the Bureau's file, you may contact the Bureau and seek a correction in accordance with the procedures set forth in the Federal Fair Credit Reporting Act. The address of the Bureau's information office is Post Office Box 105, Essex Station, Boston, Massachusetts 02112, telephone number (617) 426-3660.

[Carrier] may also release information in its file to other life insurance companies to whom you may apply for life or health insurance or to whom a claim for benefits may be submitted.]

SEH-ENROLL-8/93-3

EXHIBIT R

ENROLLMENT APPLICATION AND CHANGE FORM

FOR EMPLOYER'S USE ONLY

COMPANY'S NAME \_\_\_\_\_  
 DATE OF HIRE \_\_\_\_\_ GROUP NO. \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_

BENEFITS ADMINISTRATOR'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

**REASON FOR APPLICATION**

\_\_\_ NEW HIRE \_\_\_ CHANGE(see3 below) \_\_\_ COBRA \_\_\_ OPEN ENROLLMENT \_\_\_ OTHER

Please print in ink all information requested on this application.

1. Eligible Person's to be enrolled— Note: Dependent children may be covered under their parents contract only while unmarried and until they reach age 19 or 23, if full time students. Unmarried, mentally and physically handicapped dependent children can continue beyond the age limits above as long as they remain incapacitated and unmarried.

This next section must be completed in its entirety.

Last Name	First Name	MI	BIRTHDATE				SEX	Social Security Number
			MO	DAY	YR	M or F		
Applicant 1. <input type="checkbox"/> Add <input type="checkbox"/> Remove								- -
Spouse 2. <input type="checkbox"/> Add <input type="checkbox"/> Remove								- -
Child 3. <input type="checkbox"/> Add <input type="checkbox"/> Remove								- -
Child 4. <input type="checkbox"/> Add <input type="checkbox"/> Remove								- -
Child 5. <input type="checkbox"/> Add <input type="checkbox"/> Remove								- -

\* Attach sheet to list additional children. Attach proof if full-time student. Attach proof of disability.

Marital Status: \_\_\_ Single \_\_\_ Married \_\_\_ Divorced

Reason for Enrollment (Please check appropriate response)

- \_\_\_ I am an employee of an organization which is applying for coverage.
- \_\_\_ I am now eligible for coverage and:
  - \_\_\_ had no previous coverage during the past 90 days; or
  - \_\_\_ had previous coverage during the past 90 days.
 Name of previous carrier \_\_\_\_\_ Plan # \_\_\_\_\_
- \_\_\_ I previously refused/waived coverage
- \_\_\_ I am applying for coverage during my organization's HMO open enrollment period. Open enrollment date: \_\_\_\_\_
- \_\_\_ I am continuing coverage under state or federal law.
- \_\_\_ I am adding [deleting] dependent(s)
- \_\_\_ other (specify) \_\_\_\_\_

**DEPENDENT INFORMATION**

Do any of the dependents listed in #1 live at another address? \_\_\_ Yes \_\_\_ No  
 If yes, who and at what address?

Explain the circumstances.

\_\_\_\_\_

If any dependent's last name is different from yours, explain the circumstances.

\_\_\_\_\_

**2. PRIMARY RESIDENCE**

Street Apt. City State Zip County

**TELEPHONE**

Home ( ) - Work ( ) - Best place to call during day: \_\_\_ Home \_\_\_ Work

Are you actively at work? \_\_\_ Yes \_\_\_ No If no explain \_\_\_\_\_

Are you a resident of the state of New Jersey? \_\_\_ Yes \_\_\_ No

Do you maintain a residency in any other state? \_\_\_ Yes \_\_\_ No

If "Yes," (a) Name of state \_\_\_\_\_

(b) How much time do you spend there each year? \_\_\_\_\_

**3. Coverage(Please mark Coverage and Type of Activity)**

\_\_\_ Single \_\_\_ Family \_\_\_ Parent and Child(ren) \_\_\_ Husband/Wife

Type of Activity: \_\_\_ New Subscriber \_\_\_ Change Contract Type From/To \_\_\_\_\_  
\_\_\_ Add/Remove Dependent \_\_\_ Name Change From/To \_\_\_\_\_  
Reason \_\_\_\_\_  
Date of Event \_\_\_\_\_  
\_\_\_ New Telephone Number \_\_\_ Change of [Primary or Gyn] [Health Center]  
(h) \_\_\_\_\_ (w) \_\_\_\_\_ \_\_\_ Withdrawal From Coverage  
Date of Event \_\_\_\_\_  
\_\_\_ New Address

**[4. ADDITIONAL DEPENDENT INFORMATION**

HAVE YOU OR ANY DEPENDENT(S) AS A [CARRIER] HEALTH PLAN MEMBER, RECEIVED CARE AT ANY [CARRIER] HEALTH CARE CENTER? \_\_\_ NO \_\_\_ YES IF YES, PLEASE INDICATE MEDICAL RECORD NUMBER IN THE SPACES BELOW. IF THE NAME OF YOU OR YOUR DEPENDENT(S) WAS DIFFERENT AT THE TIME OF RECEIVING CARE PLEASE INDICATE (Eg: MAIDEN NAME) \_\_\_\_\_

MEDICAL RECORD NUMBER: \_\_\_\_\_

**5. OTHER HEALTH CARE COVERAGE** (Please note that, in some situations, if you are eligible for other health benefits coverage, you are not eligible for this policy.)

Are you eligible for other health benefits coverage? <input type="checkbox"/> Yes <input type="checkbox"/> No (i.e., coverage under your employer's health benefits coverage, Medicare or Medicaid)
If yes, give name and policy no. of other carrier or type of coverage.
Are other family members eligible for coverage? If yes, specify.
Are you replacing existing coverage? <input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, give name and policy no. of other carrier, initial effective date of coverage, date of termination, and specify those covered by policy.

**6. HEALTH STATEMENT**

Note: This information will not be used for any purpose prohibited by law.  
 Answer each question by checking the "Yes" or "No" box as it applies. If "Yes" is checked, provide details below.  
 Have you or any dependent to be covered ever had or been diagnosed as having:

- |  | Yes                      | No                       |
|--|--------------------------|--------------------------|
| 1. a. AIDS or HIV + (positive)   | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Alcoholism, Drug Abuse  | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Arthritis   | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Back or Neck Disorder, Injury or Pain   | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Blood Disorder  | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Cancer or Tumors  | <input type="checkbox"/> | <input type="checkbox"/> |
| g. Diabetes  | <input type="checkbox"/> | <input type="checkbox"/> |
| h. Gastro or Intestinal Disorder   | <input type="checkbox"/> | <input type="checkbox"/> |
| i. Heart Disorder or Condition or Chest Pain   | <input type="checkbox"/> | <input type="checkbox"/> |
| j. High Blood Pressure   | <input type="checkbox"/> | <input type="checkbox"/> |
| k. Kidney or Liver Disorder  | <input type="checkbox"/> | <input type="checkbox"/> |
| l. Lung or Respiratory Disorder  | <input type="checkbox"/> | <input type="checkbox"/> |
| m. Mental or Nervous Disorder  | <input type="checkbox"/> | <input type="checkbox"/> |
| n. Paralysis, Stroke or Epilepsy   | <input type="checkbox"/> | <input type="checkbox"/> |
| o. Does Pregnancy Exist  | <input type="checkbox"/> | <input type="checkbox"/> |
| Expected Due Date: _____   |                          |                          |
| 2. In the past five (5) years, have you or any dependent to be covered:  | Yes                      | No                       |
| a. been examined or treated by a physician or other health care provider for any condition, illness or injury, other than as stated above? | <input type="checkbox"/> | <input type="checkbox"/> |
| b. been advised to have treatment or surgery or testing that has not been done?  | <input type="checkbox"/> | <input type="checkbox"/> |
| c. been admitted to a hospital or other health care facility as an inpatient?  | <input type="checkbox"/> | <input type="checkbox"/> |
| d. taken prescribed medication(s)?   | <input type="checkbox"/> | <input type="checkbox"/> |

Please give details for any "Yes" answers to any parts of questions 1 or 2. Attach a separate sheet if more space is needed for answers. The separate sheet should be signed and dated.

Question # and Letter	Name of Person	Condition	Duration of Symptoms, Treatment Degree of Recovery	Date	Name and Address of Hospitals, Practitioners

**7. PIP SELECTION**

Which coverage have you selected to provide benefits under the Personal Injury Protection (PIP) segment of your New Jersey auto insurance? \_\_\_ Auto \_\_\_ Medical

**8. TERMINATION (Check Reasons)**

\_\_\_ DECEASED \_\_\_ TRANSFERRED TO OTHER COVERAGE \_\_\_ DISSATISFIED WITH BENEFITS \_\_\_ INELIGIBLE \_\_\_ MOVED OUT OF AREA \_\_\_ DISSATISFIED WITH MEDICAL CARE \_\_\_ DISSATISFIED WITH ACCESS \_\_\_

OTHER, PLEASE EXPLAIN \_\_\_\_\_

REMARKS \_\_\_\_\_

**9. HEALTH CARE CENTER SELECTION**

	[HEALTH CARE CENTER	PRIMARY OFFICE NO.	GYN. OFFICE NO.]
Applicant	1.		
Spouse	2.		
Child	3.		
Child	4.		
Child	5.		

**10. AUTHORIZATION AND CERTIFICATION**

I hereby apply to (carrier) for coverage for eligible dependents listed above and myself.

[I understand that for the 6 months following the effective date of this policy, benefits are not provided for health care services received for (a) conditions for which medical advice, diagnosis, care or treatment was recommended or received during the last 6 months, (b) conditions for which during the last 6 months there were symptoms which would cause a prudent person to seek medical advice, diagnosis, care, or treatment, or (c) pregnancy existing on the effective date of this policy. (Note: This limitation may not apply if the eligible person transfers from another health benefits plan.)]

[Unless I request otherwise in writing,] I understand that by signing below when I file a claim, (carrier) may pay the health care benefits directly to the provider instead of to me.]

No person, except an officer of [Carrier], has authority to : determine whether any certification shall be issued on the basis of this Enrollment Application and Change Form; waive or modify any of the provisions of the Enrollment Application and Change Form; or any of the requirements form; to bind [Carrier] by any statement or promise pertaining to any certificate signed or to be issued on the basis of this Enrollment Application and Change Form; or accept any information or representation not contained in the written Enrollment Application and Change Form.

I agree that: (a) any physician, hospital or other provider is authorized to provide to (carrier or assignee) information about any eligible person's history; and (b) any company or person having information concerning other health care coverage in force, or available to, any eligible person may give such information to (carrier or assignee).

I state that: (a) I am a resident of New Jersey/[and I reside within (carrier's) service area] (b) the information given on this application is complete to the best of my knowledge and belief and (c) that (carrier) will rely on this information to determine eligibility. I understand that if I omit or falsify any statement in this application (carrier) can cancel this contract as of the original effective date.

Note: Any person who knowingly files a statement of claim, application for insurance, Enrollment Application and Change Form, containing any false or misleading information may be subject to criminal and civil penalties.

Applicant's Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Note to all applicants:** If we accept your application, a copy of the application will be sent to you. Attach the copy to your certificate. It becomes part of your certificate with us.

(See Exhibit Q on page 4449)

**EXHIBIT Q**

**Explanation of Brackets  
Small Group Health Benefits Enrollment Form and Health Statement**

1. The terms Policyholder and Policy may be replaced with Contractholder or Planholder and Contract or Plan, as appropriate.
2. If carrier does not need to capture the telephone number, such item may be deleted.
3. Home Address may be replaced with Primary Residence Address.
4. Additional lines for Child Data may be included.
5. The space for Names of Primary Care Physicians may be deleted if carrier does not offer plans which rely upon Primary Care Physicians. If the item is included, it may be expanded to request the name of the Primary Care Physician for each person to be covered.
6. If the carrier does not elect to use health information for the purpose of rating, the health statement should not be included.
7. If the carrier does not use MIB information, the reference to MIB in the Authorization may be deleted. The Disclosure may also be deleted.

**EXHIBIT R**

**HEALTH MAINTENANCE ORGANIZATION (HMO) ENROLLMENT APPLICATION [AND CHANGE FORM]  
SMALL EMPLOYER HEALTH BENEFITS PLAN FOR EMPLOYEES AND DEPENDENTS**

**CONDITIONS OF ACCEPTANCE**

On behalf of myself and the dependents listed on the reverse side, I agree to or with the following:

1. Coverage of applicant and of the listed dependents shall depend on acceptance by (carrier) after a review of the application [and receipt of payment].
2. Applicant is applying for coverage for the applicant, applicant's spouse and any eligible unmarried children under nineteen (19) years of age, unmarried children who are mentally or physically incapacitated and who are chiefly dependent upon the applicant or the applicant's spouse for support and maintenance or are unmarried children between the ages of nineteen (19) and twenty-three (23) who are full-time students at an accredited educational institution and receive at least half of their support from applicant and/or applicant's spouse and neither applicant's spouse nor children are eligible for group health benefits coverage.
3. Coverage and benefits are contingent on timely payment of premiums and may be terminated as provided in the Contract.
4. The Contract will determine the rights and responsibilities of [insured(s)] [enrollee(s)] [member(s)] [subscriber(s)] and will govern in the event it conflicts with any benefits comparison, summary or other description of the health benefits plan.
- [5. As a condition to benefits, applicant understands and agrees that (with the exception of emergency procedures as defined in the Contract) all services, in order to be covered by (Carrier), must be performed either by a participating primary care physician or by the participating specialist, hospital or other provider as authorized by prior written referral from the participating primary care physician.]
- [6. Applicant agrees to make payment directly to health care providers such copayments as are provided for in the Contract.]
- [7. Applicant understands that this coverage will remain in effect regardless of the continued availability of a particular [Health Care Center], primary care physician or other health care provider].
- [8. Applicant acknowledges that (carrier's) participating providers, including all participating primary care physicians, are independent contractors and are not agents or employees of (carrier).]

[

**SECTION III: HEALTH STATEMENT**

Note: This information will **not** be used for any purpose prohibited by law.

Answer each question by checking the "Yes" or "No" box, as it applies. If "Yes" is checked, provide details below.

Have you or any dependent to be covered ever had or been diagnosed as having:

	Yes	No
1. a. AIDS or HIV + (positive) .....	<input type="checkbox"/>	<input type="checkbox"/>
b. Alcoholism, Drug Abuse .....	<input type="checkbox"/>	<input type="checkbox"/>
c. Arthritis .....	<input type="checkbox"/>	<input type="checkbox"/>
d. Back or Neck Disorder, Injury or Pain .....	<input type="checkbox"/>	<input type="checkbox"/>
e. Blood Disorder .....	<input type="checkbox"/>	<input type="checkbox"/>
f. Cancer or Tumors .....	<input type="checkbox"/>	<input type="checkbox"/>
g. Diabetes .....	<input type="checkbox"/>	<input type="checkbox"/>
h. Gastro or Intestinal Disorder .....	<input type="checkbox"/>	<input type="checkbox"/>
i. Heart Disorder or Condition or Chest Pains .....	<input type="checkbox"/>	<input type="checkbox"/>
j. High Blood Pressure .....	<input type="checkbox"/>	<input type="checkbox"/>
k. Kidney or Liver Disorder .....	<input type="checkbox"/>	<input type="checkbox"/>
l. Lung or Respiratory Disorder .....	<input type="checkbox"/>	<input type="checkbox"/>
m. Mental or Nervous Disorder .....	<input type="checkbox"/>	<input type="checkbox"/>
n. Paralysis, Stroke or Epilepsy .....	<input type="checkbox"/>	<input type="checkbox"/>
o. Does Pregnancy Exist .....	<input type="checkbox"/>	<input type="checkbox"/>
Expected Due Date: _____		

2. In the past five (5) years, have you or any dependent to be covered:

	Yes	No
a. been examined or treated by a physician or other health care provider for any condition, illness or injury, other than as stated above? .....	<input type="checkbox"/>	<input type="checkbox"/>
b. been advised to have treatment or surgery or testing that has not been done? .....	<input type="checkbox"/>	<input type="checkbox"/>
c. been admitted to a hospital or other health care facility as an inpatient? .....	<input type="checkbox"/>	<input type="checkbox"/>
d. taken prescribed medication(s)? .....	<input type="checkbox"/>	<input type="checkbox"/>

Please give details for any "Yes" answers to any parts of questions 1 or 2. Attach a separate sheet if more space is needed for answers. The separate sheet should be signed and dated.

Question # and Letter	Name of Person	Condition	Duration of Symptoms, Treatment Degree of Recovery	Date	Name and Address of Hospitals, Practitioners

]

EXHIBIT T

[CARRIER]

SMALL GROUP HEALTH BENEFITS WAIVER OF COVERAGE

Group Policy No. \_\_\_\_\_

Policyholder Name: \_\_\_\_\_

Employee Name: \_\_\_\_\_ Social Security # \_\_\_\_\_  
Last First MI

Marital Status:  Single  Married  Widowed  Divorced

Date of Employment: \_\_\_\_\_ Date of Birth \_\_\_\_\_

I was given the opportunity to enroll in this plan of group health benefits offered by my employer and insured by [Carrier]. I refuse the following:

- Employee, Spouse and Child(ren) coverage
- Spouse coverage
- Child(ren) coverage

Reason for Refusal (Please check all appropriate boxes.)

- other group coverage sponsored by my employer
- other group coverage sponsored by my spouse's employer
- other group coverage sponsored by another organization
- other reasons (please explain) \_\_\_\_\_

Please provide name of carrier and policy number: \_\_\_\_\_

I understand that if I later wish to enroll for any of the coverage(s) refused, I will be required to submit an Enrollment Form and Health Statement, and coverage may be subject to a preexisting conditions exclusion.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

(a)

**SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD**

**Notice of Administrative Correction and Extension of Public Comment Period**

**Small Employer Health Benefits Program**

**The Small Group Health Benefits Policy E**

**Proposed New Rule: N.J.A.C. 11:21 Appendix Exhibit E**

Take notice that the Small Employer Health Benefits Program Board has discovered an error in the Co-Insurance portion of proposed N.J.A.C. 11:21 Appendix Exhibit E, as published in the August 16, 1993 New Jersey Register at 25 N.J.R. 3599(a), 3627. The proposal text inadvertently omitted an exception to the 10 percent co-insurance of 25 percent for mental and nervous and substance abuse charges. Such exception does correctly appear in the co-insurance portion of N.J.A.C. 11:21 Appendix Exhibit D. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

As this correction revises proposed text, the Board is extending the public comment period for this corrected portion of N.J.A.C. 11:21 Appendix Exhibit E to October 5, 1993. Submit written comments by that date to:

Interim Administrator  
 New Jersey Small Employer Health Benefits Program Board  
 SEH Box 1  
 c/o The Prudential Insurance Company of America  
 P.O. Box 4080  
 Iselin, New Jersey 08830

Full text of the corrected Exhibit follows (addition indicated in boldface thus):

APPENDIX

...

EXHIBIT E

SCHEDULE OF INSURANCE AND PREMIUM RATES  
 [PLAN E]

...

EMPLOYEE AND DEPENDENT HEALTH BENEFITS

...

Co-Insurance

Co-Insurance is the percentage of a Covered Charge that must be paid by a Covered Person. However, [Carrier] will waive the Co-Insurance requirement once the Co-Insurance Cap has been reached. This Policy's Co-Insurance, as shown below, does not include penalties incurred under this Policy's Utilization Review provisions, or any other Non-Covered Charge.

The Co-Insurance for this Policy is as follows: 10%, except as stated below

**Exception: For Mental and Nervous and Substance Abuse Charges** 25%

Co-Insurance Caps

Per Covered Person per each Calendar Year	\$1,500
Per Covered Family per each Calendar Year	\$3,000 Note: Must be individually satisfied by 2 separate Covered Persons

**LAW AND PUBLIC SAFETY**

(b)

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules**

**Commission Employees/ Appointees; Prohibited Affiliations with Permitted Racetracks**

**Proposed New Rule: N.J.A.C. 13:70-1.31**

Authorized By: New Jersey Racing Commission,  
 Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1993-527.

Submit written comments by October 20, 1993 to:

Michael Vukceovich, Deputy Director  
 c/o New Jersey Racing Commission  
 CN 088  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rule would, by regulation, affirmatively prohibit employees or appointees of the New Jersey Racing Commission ("Racing Commission") from providing any services to a permitted racetrack facility in this State. More particularly, it would prohibit such persons from providing services to permitted racetracks which are not related to their position with the Racing Commission, whether or not those non-related services are subject to compensation. The rule would be applicable to all employees or appointees of the Commission including but not limited to the following positions: Executive Director, Deputy Director, Assistant Director, Investigators, Supervisors of Operations, State and Assistant State Veterinarians, State Stewards, Associate State Stewards, presiding Judges, Associate Judges, Inspector-Animal Health, Supervisor of Mutuels, Monitors, per diem workers and clerical staff. The rule, assuming adoption, would of course be cumulative to any and all other laws or rules to which such persons are subject in their capacity as an employee or appointee of the Racing Commission.

**Social Impact**

The proposed new rule should not adversely affect any social programs or policies. To the contrary, such a rule should foster public confidence in the Racing Commission and the sport of horse racing generally. It will do so through affirmatively prohibiting activities or associations which could result in a conflict of interest situation, or the appearance of such a conflict.

**Economic Impact**

To the extent that any employee or appointee might desire to provide a service to regulated racetracks outside his or her responsibilities to the Racing Commission, assuming arguendo that the provision of such service is not contrary to any existing law or rule governing the conduct of Racing Commission employees or appointees, the rule would have a negative economic impact by consequence of its prohibition of such.

**Regulatory Flexibility Analysis**

The proposed new rule imposes no reporting or recordkeeping requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that any employee or appointee of the Racing Commission participates in authorized outside employment, which may be in the form of a small business, compliance responsibilities may be implicated, as the rule prohibits such employers or appointees from providing any services to a permitted racetrack facility in this State. In that the purpose of this rule is to avoid conflict of interest situations or the appearance of such, uniform application of its requirement is needed to most effectively meet that objective. Therefore, no exemptions from or differentiation in its requirements are provided based on business size.

Full text of the proposed new rule follows:

13:70-1.31 Commission employees/appointees; prohibited affiliations with permitted racetracks

No employee or appointee of the New Jersey Racing Commission shall provide any services to a permitted racetrack facility in this

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**TRANSPORTATION**

State, whether or not for compensation, where those services are outside the scope of his or her duties on behalf of the Commission.

**(a)**

**NEW JERSEY RACING COMMISSION**

**Harness Rules**

**Commission Employees/ Appointees; Prohibited Affiliations with Permitted Racetracks**

**Proposed New Rule: N.J.A.C. 13:71-1.26**

Authorized By: New Jersey Racing Commission,  
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1993-526.

Submit written comments by October 20, 1993 to:  
Michael Vukcevic, Deputy Director  
c/o New Jersey Racing Commission  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rule would, by regulation, affirmatively prohibit employees or appointees of the New Jersey Racing Commission ("Racing Commission") from providing any services to a permitted racetrack facility in this State. More particularly, it would prohibit such persons from providing services to permitted racetracks which are not related to their position with the Racing Commission, whether or not those non-related services are subject to compensation. The rule would be applicable to all employees or appointees of the Commission including, but not limited to, the following positions: Executive Director, Deputy Director, Assistant Director, Investigators, Supervisors of Operations, State and Assistant State Veterinarians, State Stewards, Associate State Stewards, Presiding Judges, Associate Judges, Inspector-Animal Health, Supervisor of Mutuels, Monitors, per diem workers and clerical staff. The rule, assuming adoption, would of course be cumulative to any and all other laws or rules to which such persons are subject in their capacity as an employee or appointee of the Racing Commission.

**Social Impact**

The proposed new rule should not adversely affect any social programs or policies. To the contrary, such a rule should foster public confidence in the Racing Commission and the sport of horse racing generally. It will do so through affirmatively prohibiting activities or associations which could result in a conflict of interest situation, or the appearance of such a conflict.

**Economic Impact**

To the extent that any employee or appointee might desire to provide a service to regulated racetracks outside his or her responsibilities to the Racing Commission, assuming arguendo that the provision of such service is not contrary to any existing law or rule governing the conduct of Racing Commission employees or appointees, the rule would have a negative economic impact by consequence of its prohibition of such.

**Regulatory Flexibility Analysis**

The proposed new rule imposes no reporting or recordkeeping requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that any employee or appointee of the Racing Commission participates in authorized outside employment, which may be in the form of a small business, compliance responsibilities may be implicated, as the rule prohibits such employers or appointees from providing any services to a permitted racetrack facility in this State. In that the purpose of this rule is to avoid conflict of interest situations or the appearance of such, uniform application of its requirement is needed to most effectively meet that objective. Therefore, no exemptions from or differentiation in its requirements are provided based on business size.

Full text of the proposed new rule follows:

13:71-1.26 Commission employees/appointees; prohibited affiliations with permitted racetracks

No employee or appointee of the New Jersey Racing Commission shall provide any services to a permitted racetrack facility in this State, whether or not for compensation, where those services are outside the scope of his or her duties on behalf of the Commission.

**TRANSPORTATION**

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping**

**Routes N.J. 28 in Somerset County and U.S. 206 in Mercer County**

**Proposed Amendments: N.J.A.C. 16:28A-1.19 and 1.57**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-521.

Submit comments by October 20, 1993 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.19 to establish "time limit parking" zones along Route N.J. 28 in the Borough of Bound Brook, Somerset County, and N.J.A.C. 16:28A-1.57 to establish a "handicapped parking space" along Route U.S. 206 in Hamilton Township, Mercer County, at 1804 South Broad Street. The provisions of these amendments will improve the flow of traffic and enhance safety along the highway system.

These amendments are being proposed at the request of two municipalities. The Borough of Bound Brook adopted Resolution No. 93-58, May 11, 1993, requesting time limit parking zones along Route 28. Hamilton Township, by Ordinance No. 93-025 adopted May 12, 1993, requested a handicapped parking space along Route 206. Traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that these traffic restrictions in Somerset County and Mercer County were warranted. Signs are required to notify motorists of the restrictions proposed herein.

**Social Impact**

The proposed amendments will establish "time limit parking" zones along Route 28 in Bound Brook Borough, Somerset County, and a "handicapped parking space" along Route U.S. 206 in Hamilton Township, Mercer County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The local governments will pay the costs for the installation of appropriate parking restriction signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fines in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

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

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

16:28A-1.19 Route 28

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

(e) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times except in the areas designated below. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Time Limit Parking zones:

1.-2. (No change.)

**3. In the Borough of Bound Brook, Somerset County:**

**i. Along the westbound (northerly) side (Union Avenue):**

**(1) Two hours time limit parking, from 8:00 A.M. to 6:00 P.M. daily, except Sundays and Holidays:**

**(A) Beginning at a point 132 feet west of the westerly curb line of Vosseller Avenue to a point 793 feet westerly therefrom.**

**ii. Along the eastbound (southerly) side (Union Avenue):**

**(1) Two hours time limit parking, from 8:00 A.M. to 6:00 P.M. daily, except Sundays and Holidays:**

**(A) Beginning at a point 132 feet west of the westerly curb line of Vosseller Avenue to a point 793 feet westerly therefrom.**

16:28A-1.57 Route U.S. 206

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

(d) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as a "restricted parking space" for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other persons shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces:

1. (No change.)

**2. Restricted parking space in Hamilton Township, Mercer County:**

**i. Along the northbound (easterly) side, in front of 1804 South Broad Street:**

**(1) Beginning at a point 35 feet east of the southerly curb line of Joseph Street and extending 22 feet south therefrom.**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions**

**Route N.J. 12 in Hunterdon County**

**Proposed New Rule: N.J.A.C. 16:31-1.33**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123.5, 39:4-183.6 and 39:4-199.

Proposal Number: PRN 1993-522.

Submit comments by October 20, 1993 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
Bureau of Policy and Legislative Analysis  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:31-1.33, concerning turning movements along Route N.J. 12 in the Borough of Flemington and Raritan Township, Hunterdon County.

The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

This new rule is being proposed at the request of the Borough of Flemington, by Resolution adopted March 22, 1993, prohibiting "U" turns, and the Board of Chosen Freeholders of Hunterdon County, by Resolution adopted April 13, 1993. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the turning movement restrictions along Route N.J. 12 in the Borough of Flemington and the Township of Raritan, Hunterdon County, were warranted. Signs are required to notify motorists of the restrictions proposed herein.

**Social Impact**

The proposed new rule will establish turn restrictions along Route N.J. 12 in Flemington Borough and Raritan Township, Hunterdon County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

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

**Full text** of the proposed new rule follows:

16:31-1.33 Route 12

(a) Turning movements on the certain parts of State highway Route 12 described in this subsection are regulated as follows:

1. No "U" turn:

**i. In Hunterdon County:**

**(1) Borough of Flemington and Township of Raritan:**

**(A) In both directions between the Main Street Circle and the County Road 523 Circle.**

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions**

**Route N.J. 36 in Monmouth County**

**Proposed Amendment: N.J.A.C. 16:31-1.32**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.

Proposal Number: PRN 1993-477.

Submit comments by October 20, 1993 to:  
 Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 Bureau of Policy and Legislative Analysis  
 1035 Parkway Avenue  
 CN 600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.32, Route 36, to prohibit "U" turns in either direction between mileposts 9.20 and 11.50 in Sea Bright Borough, Monmouth County.

This amendment is being proposed at the request of the municipal government, and as part of the Department's on-going review of current conditions. The traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of this turn restriction was warranted. The provision of this amendment will improve the flow of traffic and enhance safety along the highway system. Signs are required to notify motorists of the restrictions proposed herein.

**Social Impact**

The proposed amendment will establish turn restrictions along Route N.J. 36 in Sea Bright Borough, Monmouth County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

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

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

16:31-1.32 Route 36

(a) Turning movements of traffic on certain parts of State highway Route N.J. 36 described in this subsection are regulated as follows:

1. (No change.)
2. No "U" turn in Sea Bright Borough, Monmouth County:
  - i. In both directions between mileposts 9.20 and 11.50.

**TREASURY-GENERAL**

**(a)**

**DIVISION OF PENSIONS AND BENEFITS**

**Teachers' Pension and Annuity Fund**

**Proposed New Rules: N.J.A.C. 17:3**

Authorized By: Teachers' Pension and Annuity Fund, Regina Trauner, Secretary.

Authority: N.J.S.A. 18A:66-56.

Proposal Number: PRN 1993-539.

Submit comments by October 20, 1993 to:

Peter J. Gorman, Esq.  
 Administrative Practice Officer  
 Division of Pensions and Benefits  
 CN 295  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Division of Pensions and Benefits is constantly reviewing the administrative rules within N.J.A.C. 17:3 governing the Teachers' Pension and Annuity Fund (TPAF). When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operation of the TPAF, the administrative rules are reviewed and, if changes therein are mandated, recommendations are forwarded to the TPAF Board of Trustees to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:3, the Board of Trustees of the TPAF is satisfied that they are necessary and needed for the efficient operation of the system.

Under the "sunset" provisions of Executive Order No. 66(1978), N.J.A.C. 17:3 expired on August 15, 1993. In accordance with N.J.A.C. 1:30-4.4(g), the TPAF Board of Trustees proposes to adopt the expired rules as new rules and to establish the expiration date of such rules to be five years from their effective date under the provisions of the Executive Order No. 66(1978).

The rules within N.J.A.C. 17:3 outline the procedures governing the administration, enrollment, insurance and death benefits, membership, purchases and eligible service, retirement and transfers in the Teachers' Pension and Annuity Fund.

**Social Impact**

The proposed rules affect and work to the benefit of the past, present and future persons who are members of the TPAF. The taxpaying public is affected by these rules in the sense that public monies are used to fund the benefits.

**Economic Impact**

While adopting the rules anew will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

**Regulatory Flexibility Statement**

The rules of the Teachers' Pension and Annuity Fund only affect public employers and employees. Thus, the rules do not impose any reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. Therefore, a regulatory flexibility analysis is not required.

**Full text** of the expired rules proposed herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 17:3.

**(b)**

**DIVISION OF BUILDING AND CONSTRUCTION  
 COMMERCE AND ECONOMIC DEVELOPMENT**

**Division of Development for Small Business, and  
 Women and Minority Business**

**Minority and Female Contractor and Subcontractor  
 Participation in State Construction Contracts**

**Proposed Amendments and New Rules: N.J.A.C.  
 12A:10-2 and 17:14**

Authorized By: Barbara McConnell, Commissioner, Department of Commerce and Economic Development and Samuel Crane, State Treasurer.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13 and Executive Order No. 84(1993).

Proposal Number: PRN 1993-531.

Submit comments by October 20, 1993 to:  
 Charles Jones, Director  
 Division of Development for Small Business, and  
 Women and Minority Business  
 Department of Commerce and Economic Development  
 CN 835  
 Trenton, New Jersey 08625-0835  
 and  
 Maureen Adams, Director  
 Division of Building and Construction  
 Department of the Treasury  
 CN 235  
 Trenton, New Jersey 08625-0235

The agency proposal follows:

**Summary**

The purpose of the proposed amendments and new rules is to reflect the provisions for a minority business and female business set-side program pursuant to Executive Order No. 84 (March 5, 1993) and N.J.S.A. 52:32-17 et seq. The identical and jointly promulgated rules of the Treasury Department and the Department of Commerce and Economic Development are effected by this rulemaking and they are currently found at N.J.A.C. 17:14 and N.J.A.C. 12A:10-2 respectively. Apart from the below described amendments and new rules, this proposal includes a recodification of N.J.A.C. 12A:10-2 to a new chapter N.J.A.C. 12A:10A. These rules will apply to every agency and department of the State of New Jersey that is authorized to award construction contracts and construction related professional services contracts. These rules will require that each State contracting agency make a good faith effort to award at least seven percent of its contracts and/or subcontracts to eligible minority-owned businesses and at least three percent of its contracts and/or subcontracts to eligible female-owned businesses. These proposed rules also set forth the Department of Commerce and Economic Development's requirements and refined procedures for minority and female businesses to establish eligibility to compete for State contracting and subcontracting opportunities, including compulsory application for formal certification as a minority or female business within 60 calendar days following award of a State contract or subcontract.

In addition to the textual changes intended to clarify the set-aside program requirements and procedures, these proposed amendments contain a modified definition of a "minority business"; the term now restricts set-aside eligibility to only those minority groups for which documentation of discrimination has been recorded (African-Americans, Latinos or Asian Americans) as contained in the findings of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts.

These proposed amendments also provide that a State contracting agency, when it deems appropriate, may establish non-remedial targets in lieu of or as a supplement to the mandated goals for minority and/or female business participation as subcontractors on particular contracts. Targets may be used when an analysis of the subcontractable segments of a particular contract compared with the projected availability of eligible set-aside businesses indicates that good faith outreach efforts by the prime contractor are likely to produce minority business and/or female business participation levels other than those mandated by these rules. Further, these amended rules provide for more definitive set-aside program planning and reporting by the State contracting agencies.

Summarily and as presented, these proposed amendments and new rules establish the purpose and scope of the rules and then describe the eligibility standards for minority and female contractors; the registration and approval procedures for minority and female businesses; the procedures for challenging a registered business; the procedures for the award of contracts and/or subcontracts to fulfill the remedial set-aside goal requirements; the procedures for setting non-remedial targets on particular contracts; the special circumstances under which a particular contract may be exempted from adherence to these rules; and the reporting requirements by which attainment of the goals can be measured and reviewed.

**Social Impact**

The amendments and new rules proposed are based on the compelling evidence of discrimination against the types of businesses eligible for set-aside contracts as presented in the Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts issued on February 22, 1993 and Executive Order

No. 84(March 5, 1993) which established a narrowly tailored, remedial set-aside program to address the documented discrimination.

This remedial program is intended to eradicate a pattern of prior discrimination and a target program is permitted on specific contracts to ensure that discrimination is not presently occurring on publicly financed construction projects. These rules are expected to have a positive social impact on the affected businesses and on the State as a whole.

**Economic Impact**

The rules affected by this proposal are expected to contribute to the long term economic growth of the State and to the health and vitality of the minority and female businesses' communities which have historically been underutilized in the public and private sectors. The growth potential of the businesses taking part in the set-aside program should be enhanced and thereby create job opportunities and generate additional tax revenue.

**Regulatory Flexibility Analysis**

The proposed amendments and new rules establish additional paperwork requirements for construction firms bidding on State contracts. Many of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Bidders will be required to submit a minimum of two additional forms listing minority and female companies being proposed as subcontractors. Those firms failing to meet the goals or targets will be required to document their outreach efforts detailing their solicitation of price quotes from minority and female subcontractors and/or suppliers. Minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required to complete a simple registration form initially. However, all businesses must be certified in accordance with N.J.A.C. 12A:11 by January 1, 1995 in order to receive consideration after that date or must file all paper necessary to receive certification within 60 calendar days following the award of a contract or subcontract under these rules, whichever comes first.

It is anticipated that the additional time and cost of the paperwork required by non-set-aside bidders will be minimal and that the public benefits of this program will outweigh the cost. The time and cost associated with the certification process may be somewhat more than minimal for some minority and female businesses; however, the need to ensure that only those businesses owned by groups for which a factual finding of discrimination has been documented benefit from the set-aside program outweighs those costs. Therefore, no differing standards based on business size are offered.

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

(OFFICE OF ADMINISTRATIVE LAW NOTE: The references to sections of N.J.A.C. 12A appearing in parentheses below indicate that the amendments shown are made to **both** N.J.A.C. 17:14 and 12A:10-2, recodified in 12A:10A.)

**([SUBCHAPTER 2.] CHAPTER 10A) CHAPTER 14  
 MINORITY AND FEMALE CONTRACTOR AND  
 SUBCONTRACTOR PARTICIPATION IN STATE  
 CONSTRUCTION CONTRACTS**

**SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

**17:14-1.1 (12A:10A-1.1) Purpose and scope**

**(a) The rules in this chapter are jointly promulgated by the Department of Commerce and Economic Development (hereinafter, "Department of Commerce") and the Department of the Treasury to implement N.J.S.A. 52:32-17 et seq. and Executive Order No. 84, dated March 5, 1993, to establish a set-aside program that requires State agencies with contracting authority to make a good faith effort to award seven percent of public construction contracts and subcontracts to eligible minority-owned businesses and three percent of public construction contracts and subcontracts to eligible female-owned businesses.**

**(b) These rules apply only to State construction contracts awarded by any State contracting agency and are not applicable to the award of State contracts for the purchase of goods and services not related to construction contracts.**

(c) Applications and questions regarding eligibility as a minority business or female business should be addressed to:

**Set-Aside and Certification Office**  
**Department of Commerce and Economic Development**  
**20 West State Street, CN 835**  
**Trenton, New Jersey 08625-0835**

17:14-[1.1]1.2 ([12A:10-2.1]12A:10A-1.2) Definitions

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

“**Certification**” means that a minority-owned or woman-owned business has been authenticated as being at least 51 percent owned and controlled either by minorities or females for participation in State programs requiring certification, as judged and determined by the Set-aside and Certification Office of the Department of Commerce and Economic Development.

“**Commissioner**” means the Commissioner of the Department of Commerce[, Energy] and Economic Development or his or her designee.

...  
 “**Contractor**” means any party performing or offering to perform a [prime] construction contract[, or consultant contract, [and any supplier of] or any party providing materials or goods used to perform a construction contract [with] issued by a contracting agency of the State of New Jersey [or any board, commission, committee, authority or agency of the State].

“**Delegated purchasing authority**” means the authority of a State agency to award contracts on its own pursuant to authority delegated to it by the Director, Division of Building and Construction, as established in N.J.S.A. 52:34-7.

“**Division of Building and Construction**” means the State agency within the Department of the Treasury which provides a centralized [purchasing] design and construction contract procurement and administration service for other State agencies pursuant to N.J.S.A. 52:18A-151 [and 162] et seq.

“**Female business**” means a business which [is a sole proprietorship, partnership or corporation] has its principal place of business in the State, is independently owned and operated and is at least 51 percent [of which is] owned and controlled by women.

“**Minority business**” means a business which [is a sole proprietorship, partnership or corporation] has its principal place of business in the State, is independently owned and operated and is at least 51 percent [of which is] owned and controlled by persons who are [Black, Hispanic, Portuguese, Asian American, American Indian or Alaskan native] African Americans, Latinos or Asian Americans, defined as follows:

1. [Black] African American: a person having origins in any of the black racial groups of Africa.
2. [Hispanic American] Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.
3. (No change.)
4. American Indian or Alaskan native: a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.
5. Portuguese: a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.]

“**Non-remedial targets**” means numerical objectives which a State contracting agency may establish in lieu of or as a supplement to the remedial goals to ensure that discrimination is not presently occurring on publicly funded construction projects.

“**Registration**” means the process by which any business can have its eligibility for participation in minority and female set-aside determined.

“**Remedial goals**” mean the statutorily determined percentages of contracts awarded by each State contracting agency to eligible minority and female businesses in order to eradicate the effects of proven past discrimination.

“**Set-aside contract**” means a contract, or subcontractable portion of a contract when that portion is so allocated, specifically des-

igned by a contracting agency as exclusively available for award to either an eligible minority or female business.

“**State contracting agency**” means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make construction contracts and includes the following except where expressly inconsistent with statutory authority:

1. DEPARTMENTS
    - Agriculture
    - Banking
    - Personnel
    - Commerce[, Energy] and Economic Development
    - Community Affairs
    - Corrections
    - [Military and Veterans Affairs]
    - Education
    - Environmental Protection and Energy
    - Health
    - Higher Education
    - Human Services
    - Insurance
    - Labor
    - Law and Public Safety
    - Military and Veterans' Affairs
    - Public Advocate
    - State
    - Transportation
    - Treasury
  2. COLLEGES
    - [Glassboro State College]
    - Jersey City State College
    - Kean College of New Jersey
    - Montclair State College
    - New Jersey Institute of Technology
    - Ramapo College of New Jersey
    - Richard Stockton State College
    - Rowan College of New Jersey
    - Rutgers, The State University
    - Thomas [E] A. Edison College
    - Trenton State College
    - University of Medicine and Dentistry of New Jersey
    - William Paterson College of New Jersey
  3. AUTHORITIES
    - Board of [Public Utilities] Regulatory Commissioners
    - Casino [Redevelopment] Reinvestment Development Authority
    - Development Authority for Small Businesses, Minorities and Women's Enterprises
    - [Expressway Authority]
    - [Health Care Facilities Financing Authority]
    - [Highway Authority]
    - N.J. Building Authority
    - N.J. Economic Development Authority
    - N.J. Educational Facilities Authority
    - N.J. Health Care Facilities Financing Authority
    - N.J. Highway Authority
    - N.J. Housing & Mortgage Finance Agency
    - N.J. Sports and Exposition Authority
    - N.J. Transit [Corp.] Corporation
    - N.J. Turnpike Authority
    - N.J. Water Supply Authority
    - Public Broadcasting Authority
    - South Jersey Transportation Authority
    - [Sports and Exposition Authority]
    - [Turnpike Authority]
    - Urban Development Corporation
  4. COMMISSIONS
    - (No change.)
- “**Subcontractor**” means a third party that is engaged by a contractor to perform [under a subcontract] all or part of the work or to provide supplies, materials or equipment included in a construction-related contract with a State contracting agency.
- ...

[17:14-1.2 (12A:10-2.2) Applicability and scope

(a) The rules in this subchapter are jointly promulgated by the Department of Commerce, Energy and Economic Development (hereinafter, "Department of Commerce") and the Department of Treasury to implement N.J.S.A. 52:32-2 which provides that a publicly bid contract is to be awarded to the responsible bidder whose bid will be most advantageous to the State, price and other factors considered. The statute further provides that any and all bids may be rejected when it is in the public interest to do so. These rules also implement N.J.S.A. 10:5-32 which provides that public works contracts shall provide for equality of opportunity by any contractor engaged in a public works project.

(b) The Treasurer and the Commissioner have determined that a "responsible" bidder does not engage in unlawful race or sex discrimination in its awarding of subcontracts, the purchase of supplies used in construction and does make reasonable efforts to solicit and award subcontracts to minority and female businesses. These rules, therefore, presume that contractors who have attained or exceeded specified target levels for minority and female subcontractor participation on particular State construction contracts are not currently engaging in unlawful race or sex discrimination and have engaged in reasonable outreach efforts. A contractor who is unable to attain or exceed such target levels may have its subcontracting practices examined by the Department of the Treasury to determine if it is engaging in unlawful race or sex discrimination in its selection of subcontractors or has failed to engage in reasonable outreach efforts. These rules are designed to assure that bidders receiving State construction contracts are not engaging in such unlawful discrimination and make reasonable outreach efforts.

(c) These rules apply only to State construction contracts and are not applicable to the award of State contracts for the purchase of goods and services not related to construction contracts.

(d) Applications and questions regarding eligibility as a minority business and/or female business should be addressed to:

Certification and Approvals Unit  
 Department of Commerce,  
 Energy and Economic Development  
 20 West State Street  
 CN 823  
 Trenton, New Jersey 08625

Questions regarding eligibility under this subchapter of minority businesses should be directed to:

Office of Minority Business Enterprise  
 Department of Commerce,  
 Energy and Economic Development  
 20 West State Street  
 CN 823  
 Trenton, New Jersey 08625

Questions concerning eligibility under this subchapter of female businesses should be directed to:

Office of Women Business Enterprise  
 Department of Commerce,  
 Energy and Economic Development  
 20 West State Street  
 CN 823  
 Trenton, New Jersey 08625]

**SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS FOR MINORITY AND FEMALE BUSINESSES**

17:14-[1.3]2.1 ([12A:10-2.3]12A:10A-2.1) Standards of eligibility for minority businesses and female businesses

(a) (No change.)

(b) In order to be eligible as a minority [business] or [a] female business, a business must [be independently owned and operated] **satisfy all of the following criteria:**

[1. For purposes of these rules, a business shall be deemed independently owned and operated, if its management is responsible for both its daily and its long term operation, and if its management owns at least 51 percent interest in the business.

(c) In order to be eligible as a minority business, a business must satisfy the definition of minority business in 17:14-1.1 (12A:10-2.1.)]

1. The principal place of business must be in the State;

2. At least 51 percent of the ownership of the business must be by minority or female persons; and

3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(c) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

**17:14-2.2 (12A:10A-2.2) Obligation to provide information and penalties for failure to provide complete and accurate information**

(a) Applicants shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a contract or subcontract on a State construction contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq;

2. In addition, assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved; and

3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

**SUBCHAPTER 3. CERTIFICATION AND REGISTRATION**

17:14-[1.4]3.1 ([12A:10-2.4]12A:10A-3.1) Certification and [Registration] registration procedures for minority businesses and female businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Business awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of contract, or by January 1, 1995 when certification will be required for all businesses seeking set-aside contracts or subcontracts, whichever date comes first.

(b) Registration procedures established by the Department of Commerce are as follows:

[(a)]1. Any business which seeks to register as a minority business and/or female business must apply to the Department of Commerce and pay any applicable fees. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce[, the Division of Purchase and Property] and the State[']s other] contracting agencies.

[(b)] As part of its application to the Department of Commerce, a business shall reasonably document its independent status, and, as appropriate, the number of its employees and the character of its ownership. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action

reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.]

[1.]i. If an applicant fails to complete fully the Vendor Registration Form, [or to document its application, the application] **registration** may be delayed or [rejected] **denied**.

[2. If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules.

(c) In order to be registered under these rules, a business must also comply with any preapprovals or other eligibility requirements legitimately established by the contracting agency for whose contracts the business intends to bid.]

[17:14-1.5 (12A:10-2.5) Approval as a minority business or female business]

[(a)]2. When [a business] **an application for registration as a female or minority business** is approved by the Department of Commerce [as a minority business or female business], the **Department will issue the newly registered** business [will be] **an approval notice and** [added by the Department of Commerce, on] **add it to the Department's female or minority vendors [lists] list** [which shall be used in determining whether bidders for State construction contracts have complied with N.J.A.C. 17:14-1.9 (12A:10-2.9)].

[(b) There shall be no limit to the number of businesses on the female and minority vendors lists. Every qualified applicant will be placed on that list or those lists for which it is qualified.]

**3. State agencies awarding contracts will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.**

17:14-[1.6]3.2 ([12A:10-2.6]12A:10A-3.2) Time for application to register as a minority business or female business

(a) (No change.)

(b) If a business is to be considered as a minority [business] or female business **contractor** or subcontractor on a specific contract for purposes of these rules, it must [have applied] **apply** to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency [except as noted in (c) below].

[(c) If a business is to be considered as a minority business or female business subcontractor on a contract funded by the "Correctional Facilities Construction Bond Act of 1987" for purposes of these regulations, it must meet the pre-qualification requirements of N.J.S.A. 52:32-2.3(b)(2) in addition to having applied to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the Division of Building and Construction.]

17:14-[1.7]3.3 ([12A:10-2.7]12A:10A-3.3) Procedures for challenging a business registered as a minority business or female business

(a) The qualification under these rules of a business on a vendors list as a minority business or female business may be challenged by any other business on that State vendors list or by any of the State [departments, agencies, boards, commissions, committees, and authorities covered under] **contracting agencies subject** to these rules.

1. A registration challenge shall be made in writing to the **Set-Aside and Certification Office of the Department of Commerce, setting forth the factual basis for the challenge. The Department shall provide a copy of the challenge and a notice granting the opportunity for a hearing** [with copies] to the challenged business [and to the appropriate contracting agency where a specific contract is at issue]. **Where a particular contract is at issue, the Department shall also provide a copy of the challenge to the contracting agency.**

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a

minority business or female business. Any challenge to a business' qualifications to perform a contract shall be referred to the appropriate **State** contracting agency.

(b) When the Department of Commerce receives a challenge, upon request of the business whose [designation] **registration** is at issue, the Department shall conduct a hearing on the matter as follows:

1. The Department shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the Department may use its own resources to ascertain the validity of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the Commissioner of the Department of Commerce. This designee will issue a written report to the Commissioner within four working days [of] **following** the close of the hearing.

4. [Where time permits] **At the discretion of the Commissioner's designee**, participants at the hearing [will] **may** be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a vendor's eligibility shall not stay the contract award process.

[17:14-1.8 (12A:10-2.8) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible female business or minority business on the basis of false information knowingly supplied by the business and the business has been awarded a subcontract on a State construction contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1. Assess the business a penalty in the amount of not more than 10 percent of the amount of the contract involved; and

2. Order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies.

17:14-1.9 (12A:10-2.9) Subcontracting targets

(a) The Division of Building and Construction or other State contracting agency consistent with its statutory authority, in consultation with the Department of Commerce, shall set target levels for the participation of minority businesses and female businesses as subcontractors for each construction contract awarded through the public bidding process. These target levels shall be set on an individual basis for each construction contract and shall be based on an individual basis for each construction contract and shall be based upon the number of registered minority and female businesses qualified to participate as subcontractors for such contracts.

(b) If the target levels are satisfied by a bidder, the bidder will be presumed not to be engaging in unlawful race and sex discrimination in the selection of subcontractors and will be presumed to have engaged in reasonable outreach efforts.

(c) If the target levels are not satisfied by the bidder, the Department of the Treasury or other State contracting agency consistent with its statutory authority shall review the subcontracting practices

of the bidder to determine if it has engaged in reasonable outreach efforts or if it has engaged in unlawful race or sex discrimination in the selection of subcontractors.

1. If said review indicates that the bidder has engaged in reasonable outreach efforts and has not engaged in unlawful race and sex discrimination, the bidder will be in compliance with the requirements of these rules.

2. If said review indicates that the bidder has failed to engage in reasonable outreach efforts or has engaged in unlawful race and sex discrimination, the bidder shall be deemed not responsible under these rules.

(d) In determining whether a bidder has satisfied the target levels, the award of a subcontract may count toward only one target. For example, the award of a subcontract to a business owned by a black woman may be counted either toward the minority business or the female business target.

#### 17:14-1.10 (12A:10-2.10) Submission of subcontracting information

Each contractor submitting a bid for a construction contract shall include bid information, in a format determined by the Department of the Treasury, as to the number of subcontracts whose price quotes have been incorporated into the prime contractors' bid as having been committed to minority and female businesses and the identity of such businesses. The bid shall include such other information as the Department of the Treasury deems necessary to comply with this chapter.

#### 17:14-1.11 (12A:10-2.11) Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

#### 17:14-1.12 (12A:10-2.12) Review

The operation of the construction subcontract target level program contained in this subchapter and the need for its continuation shall be reviewed by the Treasurer and the Commissioner on an annual basis.]

### SUBCHAPTER 4. STATE AGENCY SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAMS

#### 17:14-4.11 (12A:10-4.1) Remedial set-aside program goals and procedures

(a) Any State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least seven percent of its contracts to be awarded to eligible minority businesses and at least three percent of its contracts to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts awarded by the State agency in comparison to the total dollar value of all contracts awarded by the agency within a fiscal year.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals. Contracts executed under delegated purchasing authority shall be subject to set-aside provisions established by the delegating agency in its formal delegation procedures. Consistent with the requirements of N.J.S.A. 52:32-17 et seq., the procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts or subcontracts will be offered as set-aside contracts.

i. A contract or subcontract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified construction work or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When an agency has made a determination that a contract in its entirety is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either minority businesses or to female businesses, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

i. The agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.

4. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include a notice to prospective bidders that set-aside goals must be met by any contractor receiving an award.

2. The bid documents shall contain a detailed notice to bidders advising the following:

i. The bidding packet includes a set-aside form or forms considered a material and mandatory requirement and which must be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.

iii. The set-aside form(s) completed by the bidder shall convey information in sufficient detail to permit the contracting agency to effectively assess the bidder's plan for attaining the specified set-aside goal or documenting the bidder's good faith effort to meet the set-aside goal.

iv. The Department of Commerce's lists of eligible minority and female businesses will be available from the State contracting agencies.

3. The award of any contract or subcontract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine effort to meet the set-aside goals.

#### 17:14-4.2 (12A:10A-4.2) Non-remedial subcontracting target program and procedures

(a) When it deems appropriate, any State contracting agency, consistent with its contracting authority, may establish and administer a non-remedial target program in lieu of or as a supplement to the remedial set-aside program. This non-remedial program shall be designed to ensure that discrimination is not presently occurring on publicly funded construction projects, as evidenced by a bidder's good faith efforts to solicit price quotes from or enter into contracts with eligible businesses.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report subcontracts awarded pursuant to this program. The procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which

upcoming contracts are suitable for the subcontracting target program.

i. Factors to be considered when making the determination that a particular contract is suitable for inclusion in this program include, but are not limited to: the total dollar amount of the project, the use of a general construction contractor for the completion of the entire project and the number of available eligible businesses in geographical proximity to the project site.

ii. The designation of a particular contract as part of the non-remedial target program shall be made prior to the public advertisement for bids.

(c) The State contracting agency shall set separate target levels, to be no less than the remedial target levels, for the participation of minority and female business subcontractors for each construction contract awarded pursuant to this program. The target levels shall be set according to the following procedures:

1. The State contracting agency shall make a determination of the subcontractable elements of the contract based upon the agency's breakdown of projected trade disciplines or work components of the contract and the estimated costs of those individual elements.

2. For each subcontractable element, the State contracting agency shall review the appropriate vendor list of the Department of Commerce to determine the number of eligible minority businesses and the number of eligible female businesses which may reasonably be expected to participate in the project, giving consideration to the geographic location of the project and the estimated dollar value of the subcontract.

3. The subcontractable elements where there are fewer than three minority businesses or three female businesses reasonably expected to participate in the contract will be eliminated from consideration for inclusion in the target.

4. Those subcontractable elements having the greatest availability of minority or female businesses will be considered for inclusion in the target.

5. The total dollar value of the subcontractable elements with the greatest likelihood of participation by minority businesses shall be combined. The percentage of the total dollar value of the contract that this combined amount represents shall be used by the State contracting agency to set a reasonable target for overall minority business participation in subcontracted elements of the contract.

6. This same procedure shall be followed for setting a reasonable target for female business participation in the contract.

(d) Nothing in these rules shall be construed as requiring or permitting a State contracting agency to depart from its statutory restrictions or documented policies governing the percentage of a contract which may be subcontracted.

(e) The public advertisement shall include a notice to prospective bidders disclosing the target levels for the contract.

(f) The bid documents shall contain a detailed notice to bidders advising of the following:

1. The bidding package includes a minority and female business utilization form or forms considered a material and mandatory requirement which must be completed and included as part of the bidder's proposal.

2. Failure to complete and submit the form or forms shall be sufficient basis to deem the proposal non-responsive and thus subject to mandatory rejection.

3. The minority and female business utilization plan will be used by the State contracting agency to determine, prior to award, whether the bidder's proposal is reasonably designed to meet the targets.

(g) A bidder's proposal identifying contracts for minority and female businesses, the combined cost estimates of which meet the targets, will be deemed to have non-discriminatory subcontracting practices.

(h) A bidder's proposal failing to identify contracts for minority and female businesses with a combined cost estimate meeting the targets shall include documentation of the bidder's good faith efforts to meet the targets. Documentation must include a record of the bidder's attempts to contract with eligible businesses and the reasons for failure to meet the targets.

1. The State contracting agency shall review this documentation in order to determine whether the bidder made reasonable efforts to solicit and award contracts to eligible minority and female businesses.

i. In order to make the required determinations, the State contracting agency will review the method by which subcontractors were selected to ensure uniformity in approach and to ensure that no disparate treatment has occurred. The State contracting agency will consider the bidders actions taken pursuant to N.J.A.C. 17:14-4.3 (12A:10A-4.3) in determining whether reasonable efforts were made by the bidder to solicit and award subcontracts to eligible minority and female businesses.

(i) The award of any contract pursuant to this program shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine good faith effort to meet the targets.

#### 17:14-4.3 (12A:10A-4.3) Reasonable efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a reasonable effort to solicit and award subcontracts to eligible minority and female businesses:

1. The bidder shall attempt to locate qualified potential minority and/or female business subcontractors;

2. The bidder shall request a listing of minority and/or female businesses from the State contracting agency if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall contact all potential subcontractors on the same day and use similar methods to contact them;

5. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

6. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their efforts.

#### 17:14-4.4 (12A:10A-4.4) Exemptions from set-aside programs

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed herein, the State contracting agency may follow the Federal procedures notwithstanding the provisions of these rules, provided that the State contracting agency issues a written declaration that such Federal laws are in effect.

### SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

#### 17:14-5.1 (12A:10A-5.1) Planning

(a) Within 60 calendar days of the finalization of the capital budget for each State contracting agency, that agency shall submit to the Commissioner of the Department of Commerce a plan for complying with the remedial and/or non-remedial programs as established by these rules. The Department of Commerce will assist any State contracting agency in the development of its plan, upon request. This plan shall include the following:

1. A list of all construction contracts scheduled and funded for that year, identifying the estimated cost of each project;

2. Identification of those contracts which the State contracting agency intends to include in its remedial goal program; and

3. Identification of those contracts which the State contracting agency intends to include in its non-remedial target program.

(b) The Department of Commerce shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding seven percent of its total contracting dollars to minority businesses and three percent of its total contracting dollars to female businesses.

#### 17:14-5.2 (12A:10A-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department

of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts were advertised and awarded as minority or female business set-aside contracts;

2. The total number and dollar value of all contracts advertised and awarded subject to the remedial subcontract set-aside program, setting forth the number and dollar value of subcontracts awarded to minority and female businesses, respectively.

3. The total number and dollar value of all contracts advertised and awarded subject to the non-remedial target program, setting forth the number and dollar value of subcontracts awarded to minority and female businesses, respectively; and

4. A description of efforts made by the State contracting agency to conduct outreach and educational programs for potentially eligible minority and female businesses and any efforts made to assist the business community in achieving the objectives of these programs.

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the Department of Commerce in a format prescribed by the Department an analysis of actual contracting dollars paid to all contractors and pursuant to the set-aside, the remedial subcontracting and the remedial target programs.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A. 47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the Department of Commerce.

#### 17:14-5.3 (12A:10A-5.3) Annual review

The Commissioner of the Department of Commerce and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and continued need for the minority and female business set-aside programs contained in this chapter. This review shall be based upon the reports submitted to the Department and any other information deemed appropriate.

## OTHER AGENCIES

### (a)

#### NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

#### Hazardous Discharge Site Remediation Fund

#### Proposed New Rules: N.J.A.C. 19:31-8

Authorized By: New Jersey Economic Development Authority,

Richard L. Timmons, Assistant Deputy Director.

Authority: N.J.S.A. 34:1B et seq., specifically N.J.S.A. 34:1B-5(1).

Proposal Number: PRN 1993-532.

Submit comments by October 20, 1993 to:

Richard L. Timmons, Assistant Deputy Director

New Jersey Economic Development Authority

CN 990

Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed new rules at N.J.A.C. 19:31-8 describe the operation of the Hazardous Discharge Site Remediation Fund, within the New Jersey Economic Development Authority ("Authority"). This fund has been established, pursuant to P.L. 1993, c.139 ("Act"), in order to: (1) provide financial assistance in the form of loans and guarantees to persons who have a statutory obligation to remediate a contaminated site but who cannot obtain private financing for the remediation; (2) provide financial assistance to persons remediating a contaminated site under the Department of Environmental Protection and Energy's ("DEPE") Voluntary Cleanup Program; (3) provide partial grants to innocent parties; (4) provide grants to municipalities for conducting preliminary assessments and site investigations of properties within their

boundaries which are either abandoned, or upon which the municipality is considering foreclosure; and (5) provide loans to municipalities which choose to fully remediate a contaminated site.

A person seeking financing from the fund will be required to submit certain information to DEPE in order that DEPE may determine eligibility pursuant to the Act. Once a proposal is determined to be eligible, the applicant will be required to submit certain information to the Authority to enable the Authority to make a determination of the applicant's ability to repay a loan.

The rules identify the standards of eligibility, the application requirements and the review and approval process conducted by the Authority.

#### Social Impact

The social impact of the Hazardous Discharge Remediation Site Fund is to provide financial resources to remediate property upon which there has been or is suspected to be a discharge of a hazardous substance or hazardous waste. The remediation of these sites is intended to protect the public health, safety and the environment. Funding will be available to persons participating in the voluntary cleanup program, to local governmental entities and innocent parties, who are not able to secure the funding through conventional means. Therefore the remediation activities will be able to proceed much sooner than may otherwise be possible.

#### Economic Impact

The proposed new rules will economically benefit individuals, businesses and municipalities by establishing the process for the provision of grants, loans and loan guarantees for contaminated site remediation. Applicants for such financial assistance or grants will incur the administrative cost of preparing and filing an application. If the application is approved, the Authority must also be provided with a copy of an executed contract for the site remediation for which the assistance or grant is sought. Financial assistance applicants will be required to pay fees in accordance with N.J.A.C. 19:30-6 which vary based upon the type of assistance sought. Grant applicants will be subject to a \$500.00 fee.

The Hazardous Discharge Site Remediation Fund will provide financing at below market rates. It is anticipated that at least \$55 million of financing will be provided initially which will provide a stimulus to the economy of New Jersey. Additional loans will be made from the principal and interest repayments of the original loans thereby providing more economic activity.

The availability of funding will allow many sites to be remediated to the extent that they are once again usable which will provide additional tax ratables to the various municipalities and increase the resources available to them.

#### Regulatory Flexibility Analysis

Small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may apply for financial assistance or grants from the Fund for contaminated site remediation. In doing so, they would incur the administrative costs necessary to prepare and file an application for assistance or grant with the Authority, which costs would include the cost of any accounting services which may be needed to provide the financial statements, current interim statement and projections required. These administrative costs will vary depending on the applicant's staff resources and the charges for the accounting services, if any are used. Financial assistance applicants are also required to pay the varying fees established under N.J.A.C. 19:30-6; the fee to accompany a Fund grant application is \$500.00. After receipt of a notice of approval of financial assistance or grant, the applicant must submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Attendant administrative and legal costs of such contracts will be incurred.

No lesser requirements or exemptions are provided for small businesses under these rules. These rules serve an economically beneficial purpose: to establish a process to provide financial aid to those undertaking the remediation of contaminated sites. The requirements of these rules are in line with those which a financial lending institution would impose, and are necessary to provide the minimum lending standards needed for the Authority to properly maintain the financial viability of the Fund.

Full text of the proposed new rules follows:

## SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

### 19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

### 19:31-8.2 Definitions

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

"Act" means P.L. 1993, c.139.

"Authority" means the New Jersey Economic Development Authority.

"Applicant" means a corporation, partnership, individual or municipal governmental entity which has been determined by the Department to be eligible for financial assistance or a grant.

"Department" means the Department of Environmental Protection and Energy.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" means a person who acquired the property prior to December 31, 1983, who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by the person, or any person with operational control, and who can demonstrate that he or any person with operational control at that site, and that person certifies that he, or any person with operational control, did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

### 19:31-8.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment;

2. Persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L. 1976, c.141 (N.J.S.A. 58:10-23.11 et seq.);

3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the Department's voluntary cleanup program, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to section 27b(3) of the Act; or

4. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste pursuant to section 27c of the Act.

(b) No person, other than a municipal governmental entity, or a person engaged in a voluntary remediation, shall be eligible for Financial Assistance from the Remediation Fund to the extent that person is capable of establishing a remediation funding source.

(c) Grants from the fund may be made to:

1. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. These grants may be utilized to perform preliminary assessments and site investigations on these properties; and

2. Persons other than governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of the Act.

(d) The determination of eligibility will be made by the Department in accordance with sections 28 through 31 of the Act.

(e) No financial assistance or grant from the Remediation Fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

(f) An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities or financial assistance to persons remediating a site under the Department's voluntary cleanup program.

### 19:31-8.4 Terms of financial assistance

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Interest on loans from the Fund shall be equal to the lower of the Federal Discount Rate at the time of approval (see N.J.A.C. 19:31-8.10) or at the time of the loan closing, with a minimum of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable.

### 19:31-8.5 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable Remediation Costs, except that the cumulative maximum amount of financial assistance and grants to a person other than a municipal governmental entity in any calendar year, for one or more properties, shall be \$1,000,000.

(b) Financial assistance and grants to any one municipal governmental entity shall not exceed \$2,000,000 in any calendar year.

(c) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.

(d) The amount of financial assistance or grant shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

### 19:31-8.6 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule.

1. Availability of sufficient moneys in the Fund will be determined in accordance with the allocation method required by section 28(a) of the Act.

2. The Executive Director of the Authority and the Commissioner of the Department, or their designees, shall, from time to time, review the allocation of moneys in the Fund and the requirements of applicants for money from the fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

(b) Notwithstanding (a) above, top priority for financial assistance or grants will be given to persons or municipal governmental entities

for remediation activities at sites which involve an imminent and significant threat of a discharge of a hazardous substance or hazardous waste and the discharge or threatened discharge poses an imminent and significant threat to a public water source, to human health or to a sensitive and significant ecological area as determined by the Department in accordance with section 28(a)3 of the Act.

#### 19:31-8.7 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The Authority will send an application to the applicant indicating what information is required.

(c) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.

(e) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(f) A completed application shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the application.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. The applicant has no right to have its application presented to the Members.

#### 19:31-8.8 Application for grants

Grants shall be conditioned on an agreement with the municipal governmental entity or the innocent party that the grant will be repaid to the Fund at the time of disposition of the property.

#### 19:31-8.9 Evaluation process for financial assistance

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members for approval.

#### 19:31-8.10 Approval process for financial assistance

(a) Only the Members can approve a direct loan.

(b) When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance or grant, is issued to the applicant.

1. The notice of approval will contain all terms, conditions and collateral required by the Authority and will include, among other things, that:

i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee; and

ii. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) Within 90 days for a private entity, or within 180 days for a municipal governmental entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing shall be scheduled and the funds made available to the applicant subject to approval by the Department.

#### 19:31-8.11 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from

the contractor or consultant that the requested moneys have been spent in accordance within a Department approved scope of work.

(b) The recipient of the financial assistance or grant must provide access at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a municipal governmental entity is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

19:31-8.12 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-8.13 Fees

(a) Fees for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

(b) A non-refundable application fee of \$500.00 shall accompany every application for a grant.

19:31-8.14 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

**(a)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls**

**Gaming Equipment**

**Slot Machines and Bill Changers; Identification;**

**Signs; Meters; Other Devices**

**Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs**

**Proposed Amendments: N.J.A.C. 19:45-1.1, 1.16, 1.33, 1.36, 1.37, 1.42, 1.44, 1.46 and 1.46A; N.J.A.C. 19:46-1.26**

**Proposed New Rule: N.J.A.C. 19:45-1.46B**

Authorized By: Casino Control Commission, Steve P. Perskie, Chairman.

Authority: N.J.S.A. 5:12-69(a) and (e), 70(l), 99(a)8 and 10, 100(c) and 102(m)3

Proposal Number: PRN 1993-533.

Submit written comments by October 20, 1993 to:

Seth H. Brilliant  
 Assistant Counsel  
 Casino Control Commission  
 Arcade Building  
 Tennessee Avenue and the Boardwalk  
 Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

Many casino licensees now use "bill changers" in conjunction with their slot machine operations. Such a device, which is mechanically or electronically interconnected with a slot machine, dispenses coin or slot tokens from the slot machine's hopper in an amount equal to the amount of currency inserted into the bill changer. See N.J.A.C. 19:45-1.1. Compare the definition of "bill changer" with that of "change machine," also in N.J.A.C. 19:45-1.1, and which performs essentially the same function but operates independently of the slot machine.

Boardwalk Regency Corporation (Caesars) has petitioned for various regulatory amendments which would enable a bill changer to accept coupons as well as currency. Such coupons are now redeemed manually or at separate automated coupon redemption machines. See N.J.A.C. 19:45-1.46A.

These proposed amendments and new rule would permit bill changers to accept and redeem coupons issued pursuant to N.J.A.C. 19:45-1.46. To implement this concept, the definitions of "bill changer" and "slot machine drop" in N.J.A.C. 19:45-1.1 would be amended to include references to coupons; the concept would also be cross-referenced in N.J.A.C. 19:45-1.46(j)3. The specific requirements for this particular type of coupon are listed in proposed new rule N.J.A.C. 19:45-1.46B(b).

N.J.A.C. 19:45-1.37(e) would require a slot machine equipped with such a changer to have "coupon meters" that would count the total number of coupons accepted by the bill changer, as well as the total dollar amount of coupons accepted. The meters could be located within the slot machine or in the bill changer. See N.J.A.C. 19:45-1.46B(d) and 19:46-1.26(d). N.J.A.C. 19:45-1.42(e) would require these coupon meters to be read at least once a week; whenever there is a variance of \$25.00 or more between the change meter reading and the total amount of cash and coupons removed from the slot cash storage box, the bill meter and value coupon meter would have to be read, the matter would have to be investigated, and an incident report would have to be filed with the casino's controller, the Commission and the Division. See N.J.A.C. 19:45-1.42(g). N.J.A.C. 19:45-1.44(b)8 would permit a computerized slot monitoring system to perform the same function in lieu of such meters.

The procedures for opening, counting and recording the contents of slot cash storage boxes, which collect and store the currency inserted into a bill changer, would also be amended to include the use of coupons. See N.J.A.C. 19:45-1.16, 1.33 and 1.36. Coupons could be sorted manually or by automatic coupon sorting and counting machines approved by the Commission, see N.J.A.C. 19:45-1.33(h)4. The coupons would have to be cancelled either upon acceptance by the bill changer, or in the count room prior to the conclusion of the count. N.J.A.C. 19:45-1.46B(f) and 1.33(h)7.

In a related matter, N.J.A.C. 19:45-1.38, which provides procedures for removing slot machines from the casino floor, would be recodified and amended to include procedures for the removal of bill changers from the casino floor as well.

**Social Impact**

These amendments and new rule may streamline the coupon redemption process, making it simpler, easier and quicker for patrons to redeem promotional coupons issued for slot machine play.

**Economic Impact**

These amendments and new rule may reduce or possibly eliminate the need for separate coupon redemption machines and personnel, thus simplifying the entire coupon redemption process. Such efficiencies may result in some economies of operation, once the expenses of purchasing and installing the new coupon redemption equipment are recovered. However, the ultimate economic impact of this proposal upon casino licensees is unknown at this time. These amendments should have no economic impact upon the Commission, the Division or the general public.

**Regulatory Flexibility Statement**

These amendments and new rule would affect New Jersey casino licensees, none of which is a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, no regulatory flexibility analysis is required.

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

19:45-1.1 Definitions

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

...  
 "Bill changer" means any mechanical, electrical, or other device, contrivance or machine designed to interface mechanically, electrically or electronically with a slot machine for the purpose of dispensing an amount of coins or slot tokens from the slot machine hopper equal to the amount of currency or the **demonstration of a coupon** inserted into the bill changer [system].  
 ...

“Slot machine drop” means the amount of coins and slot tokens in a slot drop bucket and the amount of cash and coupons in a slot cash storage box[, if applicable].

19:45-1.16 Drop boxes and slot cash storage boxes

(a) (No change.)

(b) Each bill changer in a casino shall have contained in it a secure metal container known as a “slot cash storage box” in which shall be deposited all cash and coupons inserted into the bill changer. Each slot cash storage box shall:

1. (No change.)

2. Have a slot opening through which currency and coupons can be inserted into the slot cash storage box;

3. Have a mechanical arrangement or device that prohibits removal of currency and coupons from the slot opening [at any time that] whenever the slot cash storage box is removed from the bill changer;

4.-5. (No change.)

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

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes

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

(h) Procedures and requirements for conducting the count shall be [the following] as follows:

1.-3. (No change.)

4. The contents of each drop box or slot cash storage box shall be segregated by a count team member into separate stacks on the count table by each denomination of coin, currency and coupon, and by type of form, record or document, except that the Commission may permit the utilization of a machine to [automatically] sort currency or coupons automatically by denomination;

5. (No change.)

6. Any coupon [placed] deposited in a drop box or a slot cash storage box shall be counted and included as gross revenue[,] pursuant to N.J.S.A. 5:12-24, without regard to the validity of the coupon.

7.-10. (No change.)

11. As the contents of each slot cash storage box are counted, one count team member shall record on the Slot Cash Storage Box Report or supporting documentation the following information:

i.-iii. (No change.)

iv. The total amount of currency counted for each slot machine denomination; [and]

v. The total dollar amount of each denomination of coupon;

vi. The total dollar amount of all denominations of coupons; and Recodify existing [v.] as vii. (No change in text.)

12. Notwithstanding the requirements of (h)8 [and (h)9], 9 and 11 above, if the casino licensee’s system of internal controls provides for the count team functions to be comprised only if counting and recording currency, coin and coupons, accounting department employees [with no incompatible functions] shall perform all other counting, recording and comparing duties required by this section.

13. (No change.)

(i) At the conclusion of the count:

1.-2. (No change.)

3. The Slot Cash Storage Box Report, after signing, and any coupons removed from the slot cash storage boxes shall be transported directly to the accounting department and shall not be available to any cashiers’ cage personnel. The Accounting Department shall record the figures from the Slot Cash Storage Box Report on the Slot Win Report and calculate the total drop for that gaming day. All coupons shall be received and processed by the accounting department in the manner set forth in N.J.A.C. 19:45-1.46(l).

4. (No change.)

(j) (No change.)

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage box compartments; keys

(a) Each slot machine located in a casino shall have the following coin or slot token containers:

1.-2. (No change.)

3. On those slot machine [where] to which a bill changer is attached, a container known as a slot cash storage box, in which currency and coupons accepted by the bill changer [is] are retained.

(b)-(i) (No change.)

19:45-1.37 Slot machines and bill changers; identification; signs; meters

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

(e) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with [the following] mechanical, electrical or electronic devices as follows:

1. A [mechanical, electrical, or electronic device, to be known as a] “change meter,” that continuously and automatically counts the number of coins or slot tokens vended from the slot machine’s hopper to make change[; and], whether for currency or coupons;

2. A number of [mechanical, electrical or electronic devices, to be known as] “bill meters,” that continuously, automatically and separately count, for each denomination of currency accepted by the bill changer, the actual number of bills [for each denomination of currency accepted into] accepted by the bill changer[.]; and

3. If the attached bill changer can accept coupons but does not contain the coupon meters identified in N.J.A.C. 19:45-1.46B:

i. A “numercial coupon meter” that continuously, automatically and separately counts the total number of all coupons accepted by the bill changer; and

ii. A “value coupon meter” that continuously, automatically and separately counts the total dollar value of all coupons accepted by the bill changer.

(f)-(i) (No change.)

19:45-1.38 Slot machines and bill changers; location; movements

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

(d) Prior to removing a slot machine from the gaming floor, the slot drop bucket shall be removed and transported to the count room and all meters shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42. Any coins or tokens in the payout reserve container and the corresponding hopper storage area shall be removed, transported, and counted with the slot drop bucket contents[; however,]. Notwithstanding the foregoing, a slot machine may be removed from the casino with coins or tokens contained therein when removal of such coins is precluded by mechanical or electrical difficulty. If coins or tokens remain in a slot machine when it is removed from the casino, this fact and the date and time that such coins or tokens are removed from the slot machine and transported to the count room shall be recorded in the machine movement log. [Immediately upon opening the slot machine, the] The removal and transportation to the count room of such coins or tokens must be completed immediately after the slot machine is opened.

(e) Prior to removing a bill changer from the gaming floor, the slot cash storage box shall be removed and transported to the count room and all meters except the cash box meter shall be read and recorded in conformity with the procedures set forth in N.J.A.C. 19:45-1.42. A bill changer may be removed from the casino with currency or coupons contained therein when removal of the slot cash storage box is precluded by mechanical or electrical difficulty. If currency or coupons remain in a bill changer when it is removed from the casino, this fact and the date and time that the slot cash storage box or, if necessary, currency or coupons are removed from the bill changer and transported to the count room shall be recorded in the machine movement log.

[(f) Whenever a slot machine is removed from the casino with coins contained therein conformity with (d) above, the fact that coins remain in the slot machine and the date and time such coins are removed from the slot machine and transported to, and counted in, the count room, shall be recorded in the machine movement log.]

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; meter readings

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

(e) Accounting department employees [with no incompatible functions] shall, at least once a week, read and record on a Slot

Meter Sheet the numbers on the in-meter, drop meter, jackpot meter, manual jackpot meter [and], change meter **and coupon meters**. Accounting department employees shall periodically read and record on a Slot Meter Sheet the numbers on the bill meters in accordance with a schedule established by the casino licensee and approved by the Commission, but in no event shall the casino licensee be required to read and record the bill meters more than once a week. These procedures shall be performed in conjunction with the removal and replacement of the slot drop buckets or slot cash storage boxes prior to opening the slot machines for patron play.

(f) (No change.)

(g) Whenever there is a variance of \$25.00 or more between the meter reading taken from the change meter and recorded on the Slot Meter Sheet pursuant to (f) above, and the total amount of cash **and coupons** removed from the bill changer's slot cash storage box, the casino licensee's accounting department shall, as expeditiously as possible, read and record on a Slot Meter Sheet the bill meters **and value coupon meter**, and shall remove the slot cash storage box and count the contents in accordance with N.J.A.C. 19:45-1.33. The meter readings from the bill meters **and value coupon meter** shall be compared to the total amount of cash **and coupons** removed from the slot cash storage box for the period from the last date the bill meters **and value coupon meter** were read to verify the variance. The casino licensee shall be required to file an incident report with the casino controller, Commissioner and Division whenever a variance between the meter readings from the change meter and the cash **and coupons** removed from the slot cash storage box is \$25.00 or more. The incident report shall include, at a minimum, the following:

1.-5. (No change.)

6. An indication as to whether the bill meters **and value coupon meter** confirmed the variance; and

7. (No change.)

19:45-1.44 Computer recordation and monitoring of slot machines

(a) (No change.)

(b) The computer permitted by (a) above shall be designed and operated to automatically perform the function relating to slot machine meters in the casino as follows:

1.-6. (No change.)

7. Record the total value of each denomination of currency accepted and stored in the slot cash storage box;

**8. Record the total number and total dollar amount of all coupons accepted and stored in the slot cash storage box; and**

Recodify existing [8.] as 9. (No change in text.)

(c) (No change.)

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(j) Coupons shall be redeemed in the following manner:

1.-2. (No change.)

3. Notwithstanding the above, an automated coupon redemption machine **or bill changer** may be utilized to accept coupons[,] provided that the acceptance of coupons by:

i. [an] **An automated coupon redemption machine** complies with [the procedures and requirements established by] this section and N.J.A.C. 19:45-1.46A; **or**

ii. **A bill changer complies with this section and N.J.A.C. 19:45-1.46B.**

4. (No change.)

(k) (No change.)

(l) All documentation, unused coupons, voided coupons and redeemed coupons maintained in conformity with (g), (h), (i) and (j) above shall be forwarded on a daily basis to the accounting department, where they shall be:

1. (No change.)

2. Recounted and examined for proper calculation, summarization and recording on documentation, including, without limitation, the Master Game Report **and the Slot Cash Storage Box Report;**

3.-5. (No change.)

(m)-(o) (No change.)

19:45-1.46A Procedures and requirements for [the use of] an automated coupon redemption machine

(a)-(k) (No change.)

(l) [All coupons] **Any coupon** accepted by an automated coupon redemption machine shall be cancelled by [such] **the** machine immediately upon exchange [in such a manner that it can be visually ascertained], **in a manner approved by the Commission**, so that [they are] **the coupon** is not redeemable in accordance with N.J.A.C. 19:45-1.34(a) or acceptable by another automated coupon redemption machine **or a bill changer**.

(m)-(p) (No change.)

19:45-1.46B Procedures and requirements for a bill changer which can accept coupons

(a) **Each bill changer which can accept coupons shall be able to establish the dollar value and validity of each coupon inserted therein by interpreting the coded information which must be contained on the coupon pursuant to (b) below.**

(b) **In addition to complying with the requirements of N.J.A.C. 19:45-1.46, each coupon which can be accepted by a bill changer shall contain encoded data that identifies the dollar value of the coupon and such other information as the Commission may require. Each coupon shall also contain a unique code or other security measure, which can be interpreted only by the bill changer, to ensure that the coupon is valid.**

(c) **The methods by which a bill changer and each coupon which can be accepted therein will comply with the requirements of (a) and (b) above shall be submitted to and approved by the Commission before any such bill changer or coupon may be used by a casino licensee.**

(d) **Unless the slot machine to which the bill changer is attached contains the coupon meters identified in N.J.A.C. 19:45-1.37(e)3 and 19:46-1.26(d)3, a bill changer which can accept coupons shall be equipped with mechanical, electrical or electronic devices as follows:**

1. A "numerical coupon meter" that continuously, automatically and separately counts the total number of all coupons accepted by the bill changer; and

2. A "value coupon meter" that continuously, automatically and separately counts the total dollar value of all coupons accepted by the bill changer.

(e) **Each coupon accepted by a bill changer shall be deposited and stored in the bill changer's slot cash storage box. Each such coupon shall be counted as part of the slot cash storage box drop in accordance with the count procedures in N.J.A.C. 19:45-1.33.**

(f) **Each coupon accepted by a bill changer shall be cancelled in a manner approved by the Commission which shall prevent the acceptance of the cancelled coupon by any bill changer, any automated coupon redemption machine or any other form of authorized redemption. The coupon shall be cancelled by the bill changer immediately upon acceptance, or pursuant to N.J.A.C. 19:45-1.33(h)7, in the count room prior to the conclusion of the count.**

(g) **Unless otherwise authorized by the Commission, any coupon which can be accepted by a bill changer shall be accounted for and controlled pursuant to N.J.A.C. 19:45-1.46.**

19:46-1.26 Slot machines and bill changers; identification; signs; meters; other devices

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each bill changer shall have the following identifying features:

1. (No change.)

2. A display on the front of the bill changer that clearly [represents] **indicates** the denomination of the currency **or coupon** inserted therein;

3. A display on the front of the bill changer that clearly [represents] **indicates** the amount of coins dispensed by the slot machine hopper **after currency or a coupon has been inserted and accepted;** and

4. (No change.)

(c) (No change.)

(d) Unless otherwise authorized by the Commission, each slot machine that has an attached bill changer shall also be equipped with [the following] **mechanical, electrical, or electronic devices as follows:**

1. A [mechanical, electrical, or electronic device, to be known as a] "change meter[.]" that continuously and automatically counts the number of coins or slot tokens vended from the slot machine's hopper to make change **whether for currency or coupons;** [and]

2. A number of [mechanical, electrical or electronic devices, to be known as] "bill meters[.]" that continuously, automatically and separately count, **for each denomination of currency accepted by the bill changer, the actual number of bills** [for each denomination of currency accepted into] **accepted by the bill changer[.]; and**

3. **If the attached bill changer can accept coupons but does not contain the coupon meters identified in N.J.A.C. 19:45-1.46B:**

i. A "numerical coupon meter" that continuously, automatically and separately counts the total number of all coupons accepted by the bill changer; and

ii. A "value coupon meter" that continuously, automatically and separately counts the total dollar value of all coupons accepted by the bill changer.

(e)-(i) (No change.)

(a)

## CASINO CONTROL COMMISSION

### Accounting and Internal Controls

#### Procedure for filling Payout Reserve Containers of Slot Machines and Hopper Storage Areas

#### Proposed Amendment: N.J.A.C. 19:45-1.41

Authorized By: Casino Control Commission, Steven P. Perskie, Chairman.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l), and 99(4) and (10)  
Proposal Number: PRN 1993-536.

Submit written comments by October 20, 1993 to:

Seth H. Brilliant  
Assistant Counsel  
Casino Control Commission  
Arcade Building  
Tennessee Avenue and the Boardwalk  
Atlantic City, NJ 08401

The agency proposal follows:

#### Summary

This proposal consists of two technical amendments to N.J.A.C. 19:45-1.41, which provides the procedure for refilling the hoppers of slot machines, a process known as "hopper fills."

The first amendment would update N.J.A.C. 19:45-1.41(b)2, which now provides that slot booth cashiers must "prepare" a hopper fill slip when a hopper fill is requested. Although this slip was originally prepared manually (and still can be if desired or necessary), an increasing number of casino licensees now utilize a computer to "prepare" the hopper fill slip, a process that is usually activated by a slot attendant or slot mechanic. Such technology has made the existing regulatory language obsolete.

Accordingly, instead of focusing on which person or device "prepares" the slip, the amended paragraph would simply require that a "properly completed" slip, signed by a slot booth cashier, must be obtained by slot personnel before the coin or tokens needed for the hopper fill could be released from the slot booth.

The second amendment would revise N.J.A.C. 19:45-1.41(b)5vii, which presently requires that the signature or ID code of the person requesting the hopper fill must appear on the original and both copies of the hopper fill slip. In practice, however, when the hopper fill slip is prepared manually, only the preparer's signature appears on all three copies. Once the original and duplicate slips have been prepared and removed from the slip dispenser for use by other slot personnel, the subsequent signature of the person requesting the hopper fill, as well as those of the security guard and slot mechanic who participate in the hopper fill,

would not appear on the triplicate, which must remain in the locked dispenser. This amendment would codify this arrangement by eliminating the requirement that the requestor's signature appear on the triplicate copy.

#### Social Impact

These amendments are technical corrections which update and clarify certain procedures that casino licensees are required to use for slot machine hopper fills. These amendments should have no social impact upon the general public. However, they should help to clarify hopper fill procedures for casino licensees and their employees.

#### Economic Impact

These amendments are technical corrections which update and clarify certain procedures that casino licensees are required to use for slot machine hopper fills. These amendments should not have any economic impact upon casino licensees, their employees or patrons.

#### Regulatory Flexibility Statement

The proposed amendments would affect only casino licensees, none of which qualifies as a "small business" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.41 Procedure for filling payout reserve containers of slot machines and hopper storage areas

(a) (No change.)

(b) The filling of a hopper or a hopper storage area by means of a Hopper Fill Slip shall be accomplished as follows:

1. Whenever a slot supervisor, attendant or mechanic requests coins or tokens to fill a payout reserve container ("Hopper" or a hopper storage area of a slot machine, [a slot booth cashier ("Slot Cashier") shall prepare a Hopper Fill Slip ("Hopper Fills")] **he or she shall obtain a properly completed and signed Hopper Fill Slip ("Hopper Fills") from a slot booth cashier ("Slot Cashier").**

2.-4. (No change.)

5. On originals, duplicates and triplicates, or in stored data, the preparer shall record, at a minimum, the following information:

i.-vi. (No change.)

vii. The signature or identification code of the person requesting coins to fill the hopper **(on the original and the duplicate only);** and

viii. (No change.)

6.-11. (No change.)

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

(b)

## CASINO CONTROL COMMISSION

### Gaming Equipment

### Rules of the Games

#### Baccarat and Minibaccarat Tables; Physical Characteristics

#### Wagers

#### Payout Odds; Vigorish

#### Proposed Amendments: N.J.A.C. 19:46-1.12 and 19:47-7.2 and 7.3.

Authorized By: Casino Control Commission, Steven P. Perskie, Chairman.

Authority: N.J.S.A. 5:12-69(a) and (c), 99(a) and 100(e).  
Proposal Number: PRN 1993-534.

Submit written comments by October 20, 1993 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**

The proposed amendments to N.J.A.C. 19:46-1.12 and 19:47-7.2 and 7.3 would permit casino licensees to use an alternative method for charging a commission, also known as vigorish, at the game of minibaccarat.

Currently, N.J.A.C. 19:47-7.3(c) provides that a commission of four or five percent shall be extracted from the amount won after a winning wager on the banker's hand. Under the alternative method, a commission equal to 25 percent of the participant's wager on the banker's hand would be extracted if the round of play ends in a tie and the remaining 75 percent of the wager would be returned to the participant. Only one method of charging a commission could be used at a particular minibaccarat table at any given time and the vigorish would have to be applied consistently to all players at the same table.

A casino would be required to provide one-half hour notice prior to changing the method by which a commission is charged.

**Social Impact**

The proposed amendments will impact on those players who currently participate in the game of minibaccarat. Trump Plaza, the casino licensee which suggested the rule change, believes that the proposed rule change will appeal to minibaccarat players, and therefore, generate more interest among players. However, it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the alternative commission method. The current method of extracting a commission will in all probability continue to be offered by other casino licensees for those minibaccarat players who prefer this method.

**Economic Impact**

The true odds, the payout odds and the house advantage for the player's hand or tie wagers will be identical to those for standard minibaccarat. The house advantage for the banker's hand will be reduced from 1.19 percent to 1.17 percent. This slight reduction in house advantage will not affect the economic viability of minibaccarat and may, in fact, be offset by increased play if more interest in minibaccarat is generated because of the alternative commission method. Casino licensees will incur some costs in training employees and purchasing new minibaccarat layouts.

**Regulatory Flexibility Statement**

No regulatory flexibility analysis is required because the proposed amendments will only affect the operation of New Jersey casino licensees, none of which is a "small business" as defined in 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)-(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.-2. (No change.)

3. The following inscriptions shall appear on the cloth covering of the minibaccarat table:

i. Tie bets pay 8 to 1;

ii. Numbered [boxes] areas that correspond to the seat numbers for the purpose of marking vigorish **unless the casino licensee only charges vigorish in accordance with the provisions of N.J.A.C. 19:47-7.3(d), in which case the numbered areas are not required;** and

iii. (No change.)

4.-6. (No change.)

19:47-7.2 Wagers

(a) The following wagers shall be permitted to be made by a participant at the game of minibaccarat:

1. A wager on the "Banker's Hand" which shall:

i.-ii. (No change.)

iii. [Be] **Either be void or, if the casino licensee charges vigorish in accordance with the provisions of N.J.A.C. 19:47-7.3(d), be charged a vigorish equal to 25 percent of the wager, if the Point Count of the "Banker's Hand" and the "Player's Hand" are equal.**

2.-3. (No change.)

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

19:47-7.3 Payout odds; vigorish

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

(c) A winning wager made on the "Banker's Hand" shall be paid off by a casino licensee at odds of 1 to 1[, except that]. **Except as otherwise provided in (d) below,** the casino licensee shall extract a commission known as "vigorish" from the winning player in an amount equal to, in the casino licensee's discretion, either four or five percent of the amount won; provided, however, that when collecting the vigorish, the casino licensee may round off the vigorish to five cents or the next highest multiple of five cents. A casino licensee may collect the vigorish from a player at the time the winning payout is made or may defer it to a later time; provided, however, that all outstanding vigorish shall be collected prior to reshuffling the cards in a shoe. The amount of any vigorish not collected at the time of the winning payouts shall be evidenced by the placing of a coin or marker button containing the amount of the vigorish owed in a rectangular space in front of the dealer on the layout imprinted with the number of the player owing such vigorish.

(d) **A casino licensee may, in its discretion, charge every player at a minibaccarat table a vigorish equal to 25 percent of the player's wager on the "Banker's Hand" if the Point Counts of the "Banker's Hand" and the "Player's Hand" are equal. The vigorish authorized by this subsection shall be collected at the end of the round of play and prior to any cards being dealt for the next round of play. If a casino licensee elects to charge the vigorish authorized by this subsection, the vigorish otherwise required by (c) above shall not be collected.**

[(d)](e) Each casino licensee shall provide notice of any **change in the type of vigorish being charged** or increase in the percentage of vigorish being charged at each minibaccarat table, in accordance with N.J.A.C. 19:47-8.3. **The type and percentage of vigorish charged at a minibaccarat table shall apply to all players at that table.**

(a)

**CASINO CONTROL COMMISSION**

**Taxes**

**Computation of Tax**

**Proposed Amendment: N.J.A.C. 19:54-1.6**

Authorized By: Casino Control Commission, Steven P. Perskie, Chairman.

Authority: N.J.S.A. 5:12-24, 63c, 69a, 70e, 99 and 144.

Proposal Number: PRN 1993-535.

Submit written comments by October 20, 1993 to:

Mary S. LaMantia, Counsel  
Casino Control Commission  
Tennessee and Boardwalk  
Atlantic City, New Jersey 08401

The agency proposal follows:

**Summary**

The Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq., imposes upon each casino operator an annual tax of eight percent of gross revenue. N.J.S.A. 5:12-144. In defining "gross revenue," the Act allows a deduction for uncollectible gaming receivables. Such deductible may not exceed the lesser of a "reasonable provision" for uncollectible patron checks or four percent of the total of all sums received from gaming operations including checks, whether collected or not, less amounts paid out as winnings. N.J.S.A. 5:12-24.

Casino Control Commission ("Commissioner") rules require that the provision for uncollectible patron checks be maintained in accordance with generally accepted accounting principles. N.J.A.C. 19:54-1.6(a)2. The proposed amendments would provide additional guidelines for calculating a "reasonable provision" pursuant to section 24 of the Act. Under the amendment, any methodology used to determine the amount of the provision must consider historical data related to uncollectible checks, derived from the casino operator's statistics or from casino industry

statistics maintained by the casino operator or provided by the Commission. The amendment further allows a casino operator the discretion to focus on uncollectible casino checks as a percentage of credit issued, a percentage of casino receivables or as multiple percentages applied to an aging of accounts receivable. The amendment includes a description of industry statistics that the Commission will provide annually to each casino operator. The casino operator's methodology may also consider current and projected business circumstances that could affect the casino's future collection, for example, a change in collections policy or a change in the character of casino receivables. However, the amended rule requires that any resultant departure from the historical data must be contemporaneously documented.

The methodology used to determine the amount of the provision must, under the amendment, be delineated in each casino operator's accounting and internal controls submission (required by N.J.S.A. 5:12-99). The casino operator would be required to obtain Commission approval within 90 days of the effective date of the proposed amendment.

#### Social Impact

The Act permits casino operators to deduct a reasonable provision for uncollectible patron checks for purposes of determining the eight percent tax on gross revenue. N.J.S.A. 5:12-24, 144. But neither the Act nor Commission regulations thereunder define a "reasonable" provision, leaving this broad standard open to varying interpretations by the casino industry and the regulators. Thus, the proposed amendment should benefit both casino operators and the regulatory agencies by specifying guidelines for the methodology to be used in calculating a reasonable provision for uncollectible checks.

#### Economic Impact

The proposed amendment will provide guidance to casino operators in calculating a deduction from gross revenue for uncollectible gaming receivables pursuant to N.J.S.A. 5:12-24. The amendment should benefit the casino industry and the regulatory agencies by introducing greater certainty to the process of determining proper payment of the gross revenue tax imposed by section 144 of the Act. N.J.S.A. 5:12-144. As such, the amendment should significantly reduce the latitude of interpretation allowed by the Act and current regulations, facilitating consensus and thereby saving time and expenses for both the industry and the regulators.

#### Regulatory Flexibility Statement

The proposed amendment affects only the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is thus not required.

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

19:54-1.6 Computation of tax

(a) (No change.)

(b) **The methodology used to determine the amount of the "Provision for Uncollectible Checks" shall be delineated in the casino operator's accounting and internal controls submission required by section 99 of the Act and N.J.A.C. 19:45-1.3.**

**1. The methodology shall include the consideration of historical data related to uncollectible checks. The data shall be derived from:**

- i. The casino operator's statistics;**
- ii. New Jersey casino industry statistics maintained by the casino operator; or**
- iii. New Jersey casino industry statistics provided to the casino operator by the Commission.**

**2. The methodology shall, at the discretion of the casino operator, focus on uncollectible casino checks as:**

- i. A percentage of credit issued;**
- ii. A percentage of casino receivables; or**
- iii. Multiple percentages applied to an aging of accounts receivable.**

**3. The methodology may consider other factors considered relevant by the casino operator provided that any resultant departures from the historical data are contemporaneously documented. The correlation between the other factors and the adjusted amount shall be included in the documentation. Such other factors may, without limitation, include:**

- i. Information related to specific obligors or groups of obligors;**

- ii. An appraisal of current economic conditions;**
- iii. A change in the character of the casino receivables;**
- iv. The experience of the collection manager, chief financial officer, or other expert; and**
- v. A change in collections policy.**

**4. On an annual basis, the Commission shall provide to the accounting department of each casino operator New Jersey casino industry statistics on uncollectible checks. The statistics will be based upon calendar year data and shall cover the most recent five year period. The following New Jersey casino industry statistics shall be provided for each of the five years and for the five year cumulative period:**

- i. Uncollectible checks as a percentage of credit issued;**
- ii. Uncollectible checks as a percentage of undeposited checks; and**
- iii. Uncollectible checks as a percentage of returned checks.**

**5. Each casino operator shall submit and obtain approval of the internal controls required by this section within 90 days of the effective date of this regulation.**

Recodify existing [(b)] as (c) (No change in text.)

(a)

## CASINO REINVESTMENT DEVELOPMENT AUTHORITY

### Hotel Development Project Eligibility and Conditions Corridor Project Eligibility and Conditions Project Application and Review

**Proposed Amendments: N.J.A.C. 19:65-1.2, 2.2, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 6.1 and 6.2**

**Proposed Repeal: N.J.A.C. 19:65-5**

Authorized By: Casino Reinvestment Development Authority,  
Nicholas R. Amato, Executive Director.

Authority: N.J.S.A. 5:12-144.1; and N.J.S.A. 5:12-161(f); P.L.  
1993, c.159.

Proposal Number: PRN 1993-548.

Submit comments by October 20, 1993 to:

Nicholas R. Amato  
Executive Director  
Casino Reinvestment Development Authority  
1014 Atlantic Avenue  
Atlantic City, New Jersey 08401

The agency proposal follows:

#### Summary

On June 29, 1993, P.L. 1993, c.159 was signed into law by Governor James J. Florio. The provisions of P.L. 1993, c.159 impact directly on the operations of the Casino Reinvestment Development Authority (the "Authority"). These rule amendments are being proposed for adoption in order to implement the provisions of P.L. 1993, c.159.

The first way in which P.L. 1993, c.159 impacts on the Authority's operations is the statutory requirement that commencing on July 1, 1993, a daily charge is imposed in the City of Atlantic City, on motor vehicles which are parked, garaged or stored in parking facilities owned or operated by a casino licensee, or by another person acting on behalf of such licensee. The daily parking charge is fixed at a minimum of \$2.00; of that amount \$1.50 is denominated a fee, which is to be turned over to the State Treasurer, and held in a special fund available exclusively for use by the Authority for eligible projects in the "corridor region of Atlantic City" as defined by the Authority (the "Parking Fee Revenue Fund"). The monies so dedicated may be used for highways, roads and infrastructure improvements in the corridor region as well as other economic development projects which fall within the Authority's purposes.

In addition to the direct expenditure of parking fee revenue, P.L. 1993, c.159 also provides that the Authority is empowered to issue public debt for corridor projects, which are to be payable in whole or part from the revenues in the Parking Fee Revenue Fund. This indebtedness may also be supported by other public or private guarantees, pledges, credits or other instruments.

The proposed new definitions at N.J.A.C. 19:65-1.2 indicate that the Authority will define "Corridor Region" by resolution, as an area within Atlantic City defined by specific geographic boundaries, and "corridor project" is defined as one which is financed by the proceeds of the parking assessment within the Corridor Region. As indicated by the Legislature, in enacting P.L. 1993, c.159, those projects may encompass any undertaking by the Authority to meet its broad purposes, N.J.S.A. 5:12-161, N.J.A.C. 19:65-12.

The second way in which P.L. 1993, c.159 impacts on the Authority is in its creation, in section 8 of the Act, of a \$100,000,000 fund to be set aside "for investment on hotel projects in Atlantic City" to be undertaken by licensee casino hotels. Projects involving the construction, reconstruction of hotel rooms are permitted to be funded by the Authority. Ordinarily, monies available to the Authority, pursuant to N.J.S.A. 5:12-144.1, may not be invested in projects which primarily benefit or enhance the value of property of a casino licensee. N.J.S.A. 5:2-178. However, in this instance the Legislature provided an exemption to the otherwise applicable legislative prohibition, thereby permitting these monies to be used for expansion of casino hotels.

On August 30, 1993, the Authority put in place emergency amendments and a new rule concerning administration of this \$100,000,000 hotel expansion fund. Those emergency and amendments and rule, which are being published and concurrently proposed for re-adoption elsewhere in this issue of the New Jersey Register, provide the framework of the application process, define what Authority monies are to be made available for the hotel expansion project, indicate how credits are to be taken, delineate project eligibility and conditions to be imposed on project approvals.

Thus, pursuant to the emergency amendments to N.J.A.C. 19:65-1.2, a "hotel development project" is defined as one which includes the creation of at least 200 hotel units. The hotel units, which are eligible for financing out of the \$100,000,000, may not include among their number any unit in existence and available for use as of July 1, 1993, the effective date of P.L. 1993, c.159. See N.J.A.C. 19:65-2.5(d)3. Since one of the objects of P.L. 1993, c.159 was to expand hotel rooms in Atlantic City, and to utilize monies that would not otherwise be available to casino licensees to accomplish that purpose, the determination of the Authority is that the monies thus made available should not be used to renovate existing space, since that does not add to the inventory of hotel rooms. Similarly, while the Legislature has indicated that the \$100,000,000 fund could be used for "appurtenant facilities" to hotels, the Authority has defined that term so as to exclude casino floor space and related facilities. Obviously, this type of facility does not expand available hotel room inventory, the legislative object, and use of the \$100,000,000 fund for these facilities would not further attainment of this legislative object.

In enacting P.L. 1993, c.159 the Legislature also evidenced a purpose that the newly created hotel units would be in service at or about the time of the opening of the new Atlantic City service at or about the time of the opening of the new Atlantic City Convention Center, now being constructed by the New Jersey Exposition and Sports Authority. The Convention Center is scheduled to open in the early part of 1997. To accomplish this legislative goal, the Authority has provided for an accelerated application process and for strict deadlines for project approvals and construction activities. Pursuant to emergency amendments provided to N.J.A.C. 19:65-2.6, the Authority will give priority to applications for hotel projects for which it has received either a fully completed application, N.J.A.C. 19:65-1.2 or a written notice of intent to proceed, giving project details, such as size, estimated cost, and financial terms, not later than September 1, 1993.

In addition, the Authority has further provided that only hotel development projects which have all financing in place to cover costs in excess of the Authority's allocable investment amount for each project, and which have otherwise received all required approvals from the Authority by September 1, 1994, shall be eligible for funding N.J.A.C. 19:65-2.4 and 2.6.

In N.J.A.C. 19:65-2.10, the Authority adopted an emergency rule which deals with the allocation of investment credits for hotel projects out of the \$100,000,000, if applications for credits by casino licensees exceed the amount of the fund. N.J.A.C. 19:65-2.10(a) provides for an allocation formula pursuant to which funds would be apportioned among eligible projects in the event the demands for funding exceed the amount of money available. N.J.A.C. 19:65-2.10(b) provides for a reallocation of monies from a failed project to otherwise eligible projects. N.J.A.C. 19:65-2.10(c) defines the circumstances in which projects may receive

funding notwithstanding the fact that neither applications or notices of intent to proceed with same were given to the Authority by September 1, 1994. Also, due to the limited amount of monies available, the Authority has also adopted limits on funding for any particular project. As fixed by P.L. 1993, c.159, the upper limit of Authority investment in any hotel development project is 35 percent of approved project cost, N.J.A.C. 19:65-2.4(b)5ii. The Authority will not approve an investment of Authority funds in project of an amount which exceeds \$52,500 per hotel unit on the basis of overall project costs. *Id.* Nor will the Authority finance the costs of constructing appurtenant facilities to hotel units which are not of "a scope and size reasonable for use for the total units so constructed, reconstructed or rehabilitated. N.J.A.C. 19:65-2.5(d)2.

The amendments being proposed through this notice complete the project eligibility and condition requirements as well as the administrative details of the program. Thus, in furtherance of the legislative goal that the casino hotel expansions complement the new convention center, the Authority has provided that, as a condition of funding of a hotel development project, the applicant must agree to make the units then created available for use by visitors to the Convention Center. The Authority's reasoning is that if rooms are created, but not made available for use by conventioners, the legislative goal will be frustrated. Thus pursuant to N.J.A.C. 19:65-2.5(d)4, the Authority has required that the applicant agree that the units financed by the Authority first be made available for convention booking by the designated agent of the New Jersey Sports and Exposition Authority before they are made available for booking by casino patrons. Failure to honor such booking commitments shall be grounds for reversal of any investment credit given by the Authority to a casino licensee.

The rules further provide that the casino licensee must provide cost certifications for its actual project costs, and that the Authority is permitted to retain accountants, engineers, architects or other consultants, at the cost of the hotel development applicant. N.J.A.C. 19:65-2.11. This is in furtherance of the funding limitations imposed by the Authority in its emergency rules and concurrent proposal.

The emergency rules also provided for the source of the \$100,000,000 fund. It is to be drawn from its present and future investment obligations under N.J.S.A. 5:12-144.1 of those casino licensees who proceed with hotel development projects. Pursuant to proposed N.J.A.C. 19:65-2.10(d), casino licensees are to be permitted to transfer credits. Under N.J.A.C. 19:65-2.4(b)5(v), the casino licensee is to receive investment credit for a hotel project "at the times that the licensee's investment alternative tax obligation becomes due", but in no event shall the investment credit, in any given year, "exceed 75 percent" of that portion of the licensee's Atlantic City non-housing obligation. Since each licensee's investment obligations will differ, exact numbers are not possible to define until all applications are received and reviewed. However, the Authority's goal is to draw only from investment obligation allocable to Atlantic City for non-housing purposes, and from South Jersey investment obligations and to do so on the basis of a ratio of 70 percent, Atlantic City non-housing obligations and 30 percent South Jersey obligations. Proposed N.J.A.C. 19:65-2.10(e) sets forth that intention.

In addition, proposed N.J.A.C. 19:65-2.4(a) through (c) make the Authority's existing application review and approval procedures applicable to corridor projects and hotel development projects. At N.J.A.C. 19:65-2.5 the Authority proposes that corridor projects will only be approved if they "are consistent with the development of the corridor area" as set forth in a study or studies commissioned by the Authority. Proposed amendments to N.J.A.C. 19:65-2.7 apply the Authority's existing public hearing procedures to corridor projects and hotel development projects. Proposed amendments to N.J.A.C. 19:65-2.8 and 2.9 make clear that rules set forth in those sections governing direct investment and donations do not apply to hotel development projects. The Authority's fee for hotel development projects is proposed to be fixed at one percent of the amount of the investment by N.J.A.C. 19:65-6.2(a)4.

Finally, N.J.A.C. 19:65-5 is proposed for repeal. That subchapter provided that, as to investments made by casino licensees prior to the date of the Act creating the Authority, the Authority would follow the preexisting rules of the Casino Control Commission in determining the validity of those investments for tax credit. These rules were set out of N.J.A.C. 19:54-2.1 through 2.37. However, the Casino Control Commission recently has allowed N.J.A.C. 19:54-2.1 through 2.37 to sunset and lapse. Since the rules which this section is incorporated no longer exist and since the investments to which it was addressed have long since

been made (the Authority was created in 1985), the Authority has determined that the subchapter no longer serves any purpose and should be repealed.

#### Social Impact

The proposed amendments are anticipated to have little social impact directly, although the investment decisions they portend will go far to revitalize Atlantic City and provide an impetus for economic growth throughout South Jersey. These rules provide the manner in which the Authority will use the revenue from the Atlantic City parking fee assessment, already in effect pursuant to P.L. 1993, c.159, to develop the corridor region in by the Legislature to develop thousands of new hotel rooms in Atlantic City by casino licensees in time to coincide with the opening of the new Atlantic City Convention Center now scheduled for the early part of 1997. Any social value reflected in the determination to go forward with these development projects is reflective of legislative judgment to authorize such activities as opposed to the rules themselves. The Authority believes that amendments will enable it to carry out its legislative mandate and effectively redevelop the "corridor region" and other areas of Atlantic City and South Jersey.

#### Economic Impact

Although casino licensees may incur some initial costs in implementing the application procedures provided for in the proposed amendments, it is anticipated that these costs will be more than offset by the ability of casino licensees to make use of development programs which have been legislatively authorized. The costs for preparing and filing applications for project funding should be reasonably modest. With respect to approved hotel development projects, an initial application fee equal to one percent of the amount of the investment will be charged.

The economic benefits of the projects will be substantial both to the licensees and the community. The new hotel space will generate additional revenue for casinos, as well as encourage utilization of the new Atlantic City Convention Center by large groups. The increase in visitors, both conventioners and hotel guests, will also serve to stimulate the local economy of the City.

It is not anticipated that the proposed amendments will have any significant economic impact on the Authority.

#### Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendments will only affect the operation of New Jersey casino licensees, none of which qualifies 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]):

#### 19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

...  
**"Corridor project"** shall mean a project (other than for the purposes set forth in paragraph 2 of the definition thereof) to be located in the Corridor Region and financed with the proceeds of Parking Assessment Bonds.

**"Corridor Region"** shall mean an area within the City of Atlantic City the specific geographic boundaries of which will be set forth by the Authority by resolution.

...  
**"New Jersey Sports and Exposition Authority"** or **"Sports Authority"** shall mean the public body created by P.L. 1971, c.137, §4 (N.J.S.A. 5:10-4) and empowered pursuant to P.L.1991, c.375, §3 (N.J.S.A. 5:10-6 as amended and supplemented) to develop and operate a convention center project in Atlantic City, consisting, *inter alia*, of the existing convention hall and a new convention hall or center, or its designee.

**"Parking Assessment Bonds"** shall mean bonds or notes issued pursuant to section 6 of P.L. 1993, c.159 (C. \_\_\_\_\_), and shall not include, or be included as, Bonds.

...

#### 19:65-2.1 Applications generally

(a) The Authority will act upon applications which involve projects, corridor projects and hotel development projects that meet

the requirements of the Act, these rules and the specific goals of the Authority as determined from time to time by the Authority.

(b) From time to time the Authority may issue guidelines outlining, among other things, the nature of the projects, **corridor projects and hotel development projects** it intends to fund or approve and the approximate amounts available to fund such projects, **corridor projects and hotel development projects**.

#### 19:65-2.2 Time for application

(a) Except as otherwise provided in these rules or in the Act, an applicant shall apply to the Authority for a determination of eligibility of its proposed project, **corridor project or hotel development project** at any time before the commencement of the **respective project, corridor project or hotel development project**.

(b) (No change.)

(c) With respect to a project to be commenced after the effective date of these rules or a **corridor project or hotel development project**, an applicant shall apply to the Authority in accordance with the procedures set forth in these rules for a determination of eligibility before commencing such project, **corridor project or hotel development project**, and shall not commence the project, **corridor project or hotel development project** until the Authority makes a determination of eligibility.

(d) For purposes of this section, commencement of a project, **corridor project or hotel development project** shall not be deemed to have occurred by mere acquisition of land or real property or by engagement of an architect, engineer or other consultant to draw plans or to determine feasibility, legality, costs or other such factors, or by negotiations with prospective sellers, contractors and investors, or by execution of agreements or contracts which are expressly conditioned upon a determination of eligibility by the Authority.

(e) (No change.)

#### 19:65-2.4 Application review and project approval

(a) The preliminary review of a project application and the determination of eligibility of **projects, corridor projects and hotel development projects** for Authority funds shall be [conducted] **conducted** as follows:

1. The Executive Director shall review the application for completeness and, **if applicable**, prepare a summary as to potential eligibility of the project, **corridor project or hotel development project** and forward the application and summary to the Authority.

2. The Authority shall, by resolution, preliminarily determine whether the project, **corridor project or hotel development project** is of the character and type which is eligible to be an approved project, **corridor project or hotel development project**. In the event the Authority has so determined, the applicant shall thereafter submit such other information as the Authority from time to time may request in accordance with the provisions set forth herein.

3. A preliminary determination of eligibility by the Authority pursuant to this Section shall in no event constitute a determination by the Authority that the project, **corridor project or hotel development project** is an approved project, **corridor project or hotel development project**.

4. After the Authority has made a preliminary determination of eligibility, the Authority shall conduct a public hearing in accordance with N.J.A.C. 19:65-2.7. Notwithstanding anything to the contrary herein, no further action under this Section shall be taken until after such public hearing has been held.

(b) [Project approval] **Approval** and reservation of funds for [an approved] a project, **corridor project or hotel development project** shall occur as follows:

1. After the public hearing has been held [and the Authority has received an application that has been determined to be complete], the Authority, in accordance with the provisions of the Act and these rules shall, by resolution, determine whether the project, **corridor project or hotel development project** is an approved project, **corridor project or hotel development project** and shall reserve funds for such approved project, **corridor project or hotel development project** in an amount necessary to complete the approved project, **corridor project or hotel development project**, subject to any limitations described in these rules or in the Act.

2. In addition to considering information provided by the applicant, the Authority may utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency, or any other person, entity, group or association which has an interest in the project, **corridor project or hotel development project** and which desires to provide such information to the Authority. Further, the Authority may approve a project, **corridor project or hotel development project** with such modification and conditions as it deems necessary and appropriate.

3. The reservation of funds for an approved project shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate; provided, that any such reservation of funds shall be subject to the following:

i.-ii. (No change.)

**4. The reservation of funds for an approved corridor project shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate, including the adoption of a bond resolution by the authority authorizing the issuance of Parking Assessment Bonds.**

(Agency Note: Paragraph (b)5 below adopted as emergency rule effective August 30, 1993.)

5. The reservation of funds for an approved hotel development project shall be subject to such terms and conditions as the authority shall deem necessary and appropriate, provided, that such reservation of funds shall be subject to the following:

i. The approval of the execution of an agreement between the authority and a licensee setting forth the terms and provisions by which investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) is to be calculated;

ii. The amount of the reservation cannot exceed the lesser of the amount of investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) to which a licensee is entitled or 35 percent of the costs of the hotel development project; provided, that, in no event shall the amount reserved exceed \$52,500 per unit;

iii. The receipt of financing or other commitments by September 1, 1994 for the costs of the hotel development project in excess of those set forth in (a)5ii above; and

iv. The establishment of a schedule of the stages of development of and incurrence of the costs in connection with the hotel development project to provide for the completion of the hotel development project on or before December 31, 1996 (or such later date as extended by the Authority upon a good faith showing of special circumstances or unforeseen occurrences).

v. Agreement by the casino licensee that the investment in the hotel development project shall be credited at the times that the licensee's investment alternative tax obligation becomes due as set forth in section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1), provided that, in the case of the licensee's Atlantic City investment obligation, in no event shall the investment credit exceed 75 percent of that portion of the licensee's Atlantic City obligation that is available for purposes other than the construction, rehabilitation or reconstruction of facilities for low and moderate income housing for any year.

[iii.]6. The reservation of funds shall be for such length of time not exceeding six months as the Authority shall determine in its discretion (which may be extended by the Authority, in its discretion, for an additional period or additional periods of not to exceed six months), during which time the conditions set forth above shall be satisfied.

(c) The procedure for final approval of an approved project is as follows:

1. Final approval of an approved project, **corridor project or hotel development project** for investment shall occur within the time period prescribed in accordance with [(b)3iii](b)6 above. Final approval shall be granted through the adoption of a bond resolution and resolution relating to the authorization for execution of any agreements or contracts in connection with the loan or other use of the proceeds of the bonds or the approval for execution of an agreement for credit with the licensee, as applicable, or in accordance with the provisions of the Act and these rules.

19:65-2.5 Approval criteria

(a) The Authority shall approve projects, **corridor projects and hotel development projects** in accordance with the guidelines and criteria set forth in the Act.

(b) The Authority shall require that the applicant establish, among other things, **with respect to projects**, the following:

1.-4. (No change.)

(c) **The Authority shall require with respect to corridor projects that the corridor project will be consistent with the development of the corridor area as has been set forth in a study or studies commissioned by or on behalf of the Authority for such purpose.**

(Agency Note: Paragraphs (d)1-3 below adopted as emergency amendments effective August 30, 1993.)

(d) The Authority shall require that the applicant establish, among other things, with respect to hotel development projects, the following:

1. The construction, reconstruction or rehabilitation of the units is to be accomplished pursuant to a schedule of development so as to be completed on or before December 31, 1996;

2. The cost of the construction, reconstruction or rehabilitation of appurtenant facilities shall be an amount commensurate with appurtenant facilities of a scope and size reasonable for use for the total number of units so constructed, reconstructed or rehabilitated; [and]

3. The project does not include the construction, reconstruction or rehabilitation of any unit which was in existence and used or available for use as a hotel unit as of July 1, 1993[.]; and

**4. The agreement of the applicant that the units to be constructed, renovated or rehabilitated will be reserved for use by the New Jersey Sports and Exposition Authority or its designee on the following terms and conditions:**

**i. The Sports Authority may book units for trade shows, meetings, conventions, or other business in any of its convention facilities or for tour packages as follows:**

**(1) All of the units shall be available for booking by the Sports Authority up to two years in advance.**

**(2) Fifty percent of the units shall be available for booking by the Sports Authority up to one year in advance.**

**(3) Twenty-five percent of the units shall be available for booking by the Sports Authority up to six months in advance.**

**(4) The casino licensee will make units available to the Sports Authority for booking at unit rates which are at the same level as those charged by the licensee for in-house conventions; the rates shall not be changed except on one years' written notice to the Sports Authority.**

**(5) The Sports Authority may agree in writing to released reserved units at any time, for any reason.**

**ii. Failure on the part of the licensee to comply with its obligations under this paragraph shall constitute a default and entitle the Authority to reverse any investment credits for the approved hotel development project.**

19:65-2.6 Priorities

(a) In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1.-2. (No change.)

3. As to [any] a project, the Authority will give consideration to the fact that the project utilizes sources of financial assistance in addition to assistance provided by the Authority.

(Agency Note: Paragraphs (a)4 and 5 below adopted as emergency amendments effective August 30, 1993.)

4. As to a hotel development project, the Authority will give priority to those hotel development projects for which the Authority by September 1, 1993 has either received a fully complete application, as determined by the Authority, or for which the Authority has received a notice in writing from a casino licensee indicating the licensee's intent to proceed with such project, a description of the project, the number of units involved and the estimated cost of the project and the investment credit sought. No other hotel development projects shall receive consideration, unless, after giving

## OTHER AGENCIES

consideration to projects for which application or notices of intent are received by September 1, 1993, amounts are available after the process described in N.J.A.C. 19:65-2.10.

5. Only those hotel development projects which shall have received all approvals from the Authority and have financing or other commitments in place to cover costs in excess of the Authority's allocable investment amount for a hotel development project by September 1, 1994, or such later date as may be fixed by the Authority, shall receive financing from the Authority.

### 19:65-2.7 Public hearing

(a) In considering whether a particular project, **corridor project or hotel development project** shall be an approved project, **corridor project or hotel development project**, the Authority shall conduct in the jurisdiction of the local government unit in which the project, **corridor project or hotel development project** is located such hearings as may be necessary or appropriate to determine whether the project, **corridor project or hotel development project** satisfies the standards, criteria and guidelines set forth in the Act and these rules. The Authority may conduct such hearings directly or the Chairman may designate one member of the Authority, the Executive Director or any Authority employee to preside at the hearing. Unless required by law, such hearings shall be conducted as non-adversarial, informational proceedings and shall not be considered "contested cases" within the meaning of P.L. 1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.). The fees and costs of such hearings, including the cost of any transcript, shall be borne by the applicant.

(b) The Authority shall give notice of any hearing at least 15 days before the date of the hearing by publication in a newspaper of general circulation in the municipality in which the project, **corridor project or hotel development project** will be located, by posting a notice at the Authority's office and by delivering a copy of the notice to the clerk of the municipality in which the project, **corridor project or hotel development project** will be located, the applicant and any other interested party. The notice shall include the time and place of the hearing, the names and addresses of the parties involved in the project, **corridor project or hotel development project** and a brief description of the project, **corridor project or hotel development project**. The Authority shall not be obligated to provide notice of any adjournment or adjournments of any scheduled hearing so long as it gives notice, as provided by these rules, of the new hearing date.

### 19:65-2.8 Approval of projects which constitute equivalent investments

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

(i) **The provisions of this section shall not apply to hotel development projects.**

### 19:65-2.9 Approval of projects which constitute donation of money or realty

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

(d) **The provisions of this section shall not apply to hotel development projects.**

### 19:65-2.10 Approval of hotel development projects and allocation of investment credit

(Agency Note: Subsections (a) through (c) below adopted as emergency amendments effective August 30, 1993.)

(a) With respect to approved hotel development projects for which, on or prior to September 1, 1993, the Authority received either a fully complete application, or a notice by the casino licensee of its intent to proceed as set forth in N.J.A.C. 19:65-2.6(a)4, the Authority shall determine the estimated cost of each approved hotel development project and the amount of investment credit available to each licensee based upon the estimated costs of each approved hotel development project and proceed as follows:

1. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is equal to or less than \$100,000,000, the Authority shall allocate the full amount of invest-

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ment credit available for hotel development projects to the respective licensee for each approved hotel development project; and

2. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is in excess of \$100,000,000, the Authority shall allocate the full amount of the investment credit available for hotel development projects proportionately among the licensees for the approved hotel development projects based upon a formula pursuant to which the amount of investment credit allocated to each licensee bears the same relationship to \$100,000,000 as the estimated amount of investment credit available to such licensee for such licensee's approved hotel development project, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, bears to the estimated aggregate amount in investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof.

(b) If an approved hotel development project does not receive all Authority approvals or financing or other commitments are not received on or prior to September 1, 1994 or such later date as may be fixed by the Authority or is otherwise abandoned or terminated, the Authority shall recapture the investment credit with respect to such hotel development project and allocate such amount first in accordance with the provisions of (a) above and second in accordance with the provisions of (c) below.

(c) With respect to approved hotel development projects not described in (a) above, the Authority shall allocate any investment credit available pursuant to (a)1 above or any other unused investment credit not otherwise used to such hotel development project.

(d) **Notwithstanding the limitations on investment credit set forth in this section, a licensee may transfer to any other licensee on terms and conditions acceptable to the licensees the ability to apply costs of a hotel development project for the transferee licensee to the investment credit available to the transferor licensee and the Authority shall treat the transfer licensee as having such additional available investment credit for purposes of making allocations pursuant to this section.**

(e) **The \$100,000,000 fund, made available for hotel development projects pursuant to section 8 of P.L. 1993, c.159, shall be comprised of the aggregate investment credit available to licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, from the licensees' existing and future investment obligations allocable to Atlantic City that is available for purposes other than the construction, rehabilitation or reconstruction of facilities for low and moderate income housing and existing and future investment obligations allocable to South Jersey, provided the Authority's goal shall be that in the aggregate for all licensees, the \$100,000,000 fund shall be comprised of approximately 70 percent Atlantic City investment obligations and 30 percent South Jersey investment obligations.**

### 19:65-2.11 Cost certification

All applicants shall be required to provide the Authority with information sufficient for the Authority to make a determination of the amount of costs actually incurred, including a certification of such costs by a certified public accountant, licensed engineer or architect or other person or firm in a similar capacity independent of the applicant and acceptable to the Authority. **The Authority shall have the right to retain the services of its own certified public accountant, licensed engineer or architect or other consultant at the cost and expense of the applicant, whenever it deems it necessary to do so to appropriately discharge its legal obligations.**

## SUBCHAPTER 5. [INVESTMENT BY LICENSEES PURSUANT TO N.J.S.A. 5:12-144] (RESERVED)

### [19:65-5.1 New Jersey Casino Control Commission rules

Eligibility of investments or contributions by licensees which were commenced or made prior to the effective date of the Act and the determination of which were pending before the New Jersey Casino

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Control Commission, shall be determined by the Authority by reference to the rules of the New Jersey Casino Control Commission set forth at N.J.A.C. 19:54-2.1 through and including N.J.A.C. 19:54-2.37, to the extent not inconsistent with the Act. All references in such rules to the "Commission" shall, except where the context clearly indicates otherwise, be deemed to refer to the "Authority". Nothing herein shall be construed to alter or disturb final determinations by the New Jersey Casino Control Commission as to matters within its jurisdiction prior to the effective date of these rules nor to permit licensees to seek determinations from the Authority as to matters which were not brought in a timely fashion before the New Jersey Casino Control Commission.]

**19:65-6.1 Application fees**

An initial non-refundable payment of \$500.00 shall accompany every application **for a project, corridor project or hotel development project.** Upon favorable preliminary review of an application pursuant to N.J.A.C. 19:65-2.4, an additional non-refundable application fee of \$1,000 shall be payable by an applicant before the

hearing required by N.J.A.C. 19:65-2.7, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

**19:65-6.2 Administrative fees**

**(a) Initial Fees.**

1. With respect to approved projects **or corridor projects** for which the Authority will make a loan or loans to a participant, the Authority will charge an initial fee equal to two percent of the initial amount of the loan.

2. With respect to approved projects **or corridor projects** in which the Authority is a participant (alone or with other participants), the Authority will charge an initial fee equal to two percent of the sum of the total costs of the project and administrative and other expenses related to the project.

3. (No change.)

4. **With respect to approved hotel development projects, the Authority will charge an initial fee equal to one percent of the amount of the investment.**

(b) (No change.)

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF HOUSING AND DEVELOPMENT

#### Maintenance of Hotels and Multiple Dwellings

#### Readoption: N.J.A.C. 5:10

**Adopted Amendments: N.J.A.C. 5:10-1.3, 1.6, 1.10, 1.11, 1.12, 2.2, 4.2, 5.1, 5.3, 5.4, 5.8, 7.7, 9.3, 10.1, 12.1, 12.2, 12.4, 13.1, 13.3, 14.3, 16.3, 17.1, 19.2 and 22.1**

**Adopted Repeals: N.J.A.C. 5:10-7.6, 13.5, 14.6 and 17.5**

Proposed: June 21, 1993 at 25 N.J.R. 2627(a).

Adopted: August 23, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: August 26, 1993 as R.1993 d.464, **with technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13A-6(e) and 55:13A-7 et seq.

Effective Date: August 26, 1993, Readoption

September 20, 1993, Amendments and Repeals

Expiration Date: August 26, 1998.

#### Summary of Hearing Officer's Recommendations and Agency Responses:

Michael L. Tickin, Esq., Chief of Legislative Analysis of the Department of Community Affairs, served as hearing officer at the public hearing held on July 12, 1993. No comments were received at the hearing and, consequently, no recommendations were issued by the hearing officer.

#### Summary of Public Comments and Agency Responses:

Written comments were received from Michael B. Quinn, Frank Quinn, Richard De Franco and Kenneth G. Mayer, P.E.

COMMENT: The regulations should not be readopted because they impose an unfair financial burden on owners.

RESPONSE: State requirements governing the maintenance of multiple dwellings have been in place ever since the enactment of the Tenement House Act in 1904. The successor legislation to that act, the Hotel and Multiple Dwelling Law, requires the Department to adopt implementing regulations. If these rules were not readopted, there would, for the first time since 1904, be no State multiple dwelling maintenance standards in effect. This would clearly be contrary to the will of the Legislature and the established public policy of this State, as stated in N.J.S.A. 55:13A-2, of requiring all units in multiple dwellings and hotels to be "decent, safe and standard."

COMMENT: The inspection program, if it is so beneficial to the public, should be supported by tax dollars and not by fees.

RESPONSE: In 1970, and again in 1991, the Legislature decided that the program should be fully supported by the revenue that it takes in. The fees are a matter of statutory law and are not within the scope of the rules.

COMMENT: Local inspectors should not be used to enforce the Hotel and Multiple Dwelling Law for the Bureau of Housing Inspection because they are subject to local political pressure against certain owners.

RESPONSE: N.J.S.A. 55:13A-21 specifically provides for local enforcement of the Hotel and Multiple Dwelling Law, subject to the supervision and control of the Department of Community Affairs. The State-Local Cooperative Housing Inspection Program has enabled the Bureau of Housing Inspection to operate more efficiently by making use of existing municipal inspection personnel instead of hiring additional State inspectors. If an owner is cited for any violations in a report prepared by any inspector, whether a local employee or a State employee, he or she may contact the Bureau to discuss the matter or to apply for an exception or an administrative hearing. If any evidence is provided that an inspector has acted improperly, the Bureau will investigate and

take such action as may be appropriate. In the Department's judgment, the benefits of the cooperative inspection program far outweigh any possible detrimental effects.

COMMENT: The Department can increase fees and personnel as desired.

RESPONSE: Since 1991, the Department has had authority to increase fees by rule not more than once every three years. However, the fees can only be raised to the extent necessary to cover costs. Those costs, including personnel costs, can only be incurred if they are authorized by the Legislature in the annual appropriations act. In any event, the issue is beyond the scope of these rules.

COMMENT: Tenants who damage a property can report the owner for the damage that the tenant has done.

RESPONSE: N.J.A.C. 5:10-5 makes clear the obligation of a tenant to comply with all applicable rules and to maintain his or her unit properly. Tenants are responsible for violations caused by their willful acts, gross negligence, neglect or abuse of the property and penalties may be assessed against them too. Indeed, the rules can be used by owners to prove their tenants whom they are trying to evict have maintained the property in a manner that violates the law.

COMMENT: The amendment to N.J.A.C. 5:10-1.11(f), which requires an in-county agent, is "totally unfair and socialized in nature" because "a landlord must follow a bad tenant to various counties to try to collect for back rents and damage yet an owner must keep an in-county agent." "Perhaps," the commentator suggests, "a tenant should also have a registered agent in county."

RESPONSE: The in-county agent requirement is statutory. As explained in the rule summary, this amendment to the rules is being made only in order to avoid inconsistency. The commentator's proposal to require tenants to have registered agents who might receive service of process for them if they leave the county is beyond the scope of the Department's rulemaking power and could only be acted upon by the Legislature.

COMMENT: Requiring landlords to provide screens and keep them in good repair is "nonsense" because there are landlords who are constantly replacing screens that are torn by careless tenants. "The law should place more of the responsibility on the tenant for maintaining a landlord's property."

RESPONSE: As has been indicated, the rules do place a clear obligation on tenants to maintain their units and not be destructive. Landlords have a legal right to evict destructive tenants and to recover from them the cost of repairing damage that they cause. If they can show that the destruction is willful, they can file criminal charges in municipal court. However, the fact that some tenants may be destructive does not relieve owners of the obligation to keep screens in good repair and otherwise comply with the rules.

COMMENT: The State should provide funding that will enable landlords to do the repairs and improvements that these rules require.

RESPONSE: Any establishment of a funding source for this purpose is up to the Legislature and is beyond the scope of these rules.

COMMENT: The Bureau should be required to give all owners notice of inspections so that they may be present and failure to give this notice should invalidate the inspection report.

RESPONSE: Inspectors must be given access to a unit by someone authorized to do so, be it the owner, an agent or the occupant. The inspector's job is to inspect the unit. Given the number of units that must be inspected, a requirement to schedule all inspections so as to accommodate the various owners would create excessive delays for inspectors and greatly reduce the overall efficiency of the inspection program.

COMMENT: The rules are "a prime contributing factor in homelessness."

RESPONSE: Under the eviction statute, persons who are evicted because the landlord cannot comply with housing code requirements without removing them, or is taking the property out of residential use rather than comply with code requirements, are entitled to relocation assistance, both in the form of financial aid and help in locating alternative housing. There are many causes for homelessness; to characterize enforcement of these rules, or even housing code enforcement in general, as a "prime contributing factor" is, at best, a gross exaggeration. Even if it were to be shown, rather than simply asserted, that there were some displacement, without replacement housing, as a result of the abandon-

ment of the very worst housing, that would hardly justify the State's giving up all efforts to require proper maintenance of the rest of the multi-family housing stock.

COMMENT: The Bureau takes months to send out inspection reports and the office staff is "uncaring and unresponsive."

RESPONSE: This comment is beyond the scope of the readoption. However, the Department wishes to note that Bureau inspectors are now using hand-held computers which allow their reports to be issued within three weeks. Turn-around time for inspections done by most local inspectors is now six to eight weeks, but this would be reduced substantially at such time as they too start using the hand-held computers. Bureau office staff members are expected to be civil and professional in their dealings with the public and it is the belief of the Department that they regularly meet this expectation. If there are specific problems that arise, they should be brought to the attention of supervisors rather than being made the focus of a generalized complaint.

COMMENT: Mirrors should not be required in elevators that are designed so that the entire interior is visible to a person waiting on the landing.

RESPONSE: The requirement that mirrors be installed in all elevators is not new. It is contained in subsection (g) of N.J.A.C. 5:10-12.4. Since the rest of the section is being deleted to avoid conflict with the elevator safety subcode of the State Uniform Construction Code, the title of the section is being changed to "Mirrors" because that is now the sole subject matter. Changing the requirement concerning installation of mirrors is not possible on adoption, since no change was proposed and the change would be a substantive one in which some people might have reason to object. In any event, an owner who believes that installation of a mirror is unnecessary and unreasonable under the circumstances has the right to apply for an exception.

COMMENT: The new requirement that any pressure relief valve on a heating unit be connected to a pipe that discharges vertically toward the floor to a maximum distance of 20 inches from the floor surface is in conflict with the plumbing subcode of the Uniform Construction Code, which provides that a relief valve must discharge into a plumbing fixture, floor drain, sump pit, standpipe receptor or other approved point of discharge. The plumbing subcode also allows discharge outside of the enclosure containing the relief valve and requires that the discharge piping terminate within six inches of the point of discharge. Moreover, this requirement is invalid because it is retroactive and therefore in conflict with the State Uniform Construction Code Act.

RESPONSE: Aside from the rule governing unsafe structures and the elevator safety subcode, the State Uniform Construction Code is not a retroactive code. The Hotel and Multiple Dwelling rules, however, establish standards of maintenance that are quite definitely retroactive. While the Hotel and Multiple Dwelling rules cannot be used to make a building constructed under the State Uniform Construction Code exceed the requirements of that code, that issue is not likely to arise very often since the requirements of the Hotel and Multiple Dwelling rules are less restrictive than those of the State Uniform Construction Code. The issue raised by the commenter, that of the relief valve discharge requirement, provides a good example of such differing requirements. The purpose of the proposed amendment is to prevent discharges of steam or hot water in directions in which they can injure people. In the case of new construction or alteration of an existing building, the more restrictive requirements of the plumbing subcode must be met. However, requiring that an existing heating unit be modified to direct the flow downward is still an improvement over continuing to allow the horizontal or unchanneled discharge of steam or hot water. The amendment is being revised, however, to make it clear that modification of the heating unit so that it discharges in a manner that conforms to the requirements of the plumbing subcode will be acceptable.

The amendments have been revised upon adoption in order to reflect the fact that the Bureau of Fire Safety is now the Division of Fire Safety as a result of the enactment of P.L. 1993, c.218 on August 1, 1993.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:10.

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]\***):

#### 5:10-1.3 Administration and enforcement

(a) (No change.)

(b) Each municipality and county of this State may be authorized by the Commissioner to enforce the provisions of this chapter within the corporate limits thereof, subject to the control and supervision of the Commissioner. Any such authorization shall be in accordance with the following terms and conditions:

1.-4. (No change.)

5. The municipality or county shall inspect, in each State fiscal year, one-fifth of all the multiple dwellings and hotels and units of dwellings space therein.

6.-28. (No change.)

(c) (No change.)

(d) The local enforcing agency, as the term is defined in N.J.A.C. 5:18-1.5, authorized to enforce the Uniform Fire Code in each municipality is hereby designated as the agent of the Bureau for the purpose of inspecting existing buildings in order to enforce all provisions of the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the Uniform Fire Code, N.J.A.C. 5:18, applicable to hotels and multiple dwellings; provided, however, that such provisions shall continue to be enforced by the Bureau in multiple dwellings and hotels that are not life hazard uses, as defined in N.J.A.C. 5:18-2.4A or 2.4B, until such time as the Bureau has been advised by the **\*[Bureau]\* \*Division\*** of Fire Safety that the local enforcing agency has agreed to accept responsibility for periodic fire safety inspections in such buildings.

#### 5:10-1.6 Maintenance requirements

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

(d) A nonprofit corporation owning or controlling buildings of three stories or less in a retirement community, which are excluded from the definition of "multiple dwelling" pursuant to P.L. 1983, c.154, shall maintain all such buildings in compliance with the Uniform Fire Code, N.J.A.C. 5:18.

(e) All buildings in compliance with the Uniform Fire Code shall be deemed to be in compliance with the Act insofar as issues of fire safety are concerned.

(f) (No change.)

#### 5:10-1.10 Bureau inspections

(a) (No change.)

(b) The Bureau of Housing Inspection shall cause inspections to be made periodically of completed buildings. Each multiple dwelling and each hotel shall be inspected once in every five years.

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

(f) Upon reasonable request of the Bureau, the owner of any hotel or multiple dwelling in which any major structural deficiency constituting a violation of this chapter has been found to exist, and the correction of which would require the issuance of a building permit by the construction official having jurisdiction, shall provide to the Bureau, at the sole cost and expense of such owner, an analysis and report, prepared by a licensed professional engineer or registered architect, which specifies the work necessary to correct such violation and the manner in which it should be accomplished, and certification by a licensed professional engineer or registered architect that such violation has been properly corrected and that any hazard that may have been created by such violation has been eliminated.

(g) If, in the course of inspecting any hotel or multiple dwelling, any inspector performing inspections for the Bureau shall find a condition which is, or appears to be, in violation of the Uniform Fire Code, N.J.A.C. 5:18, the inspector shall give prompt notice of that condition to the Bureau, which shall promptly notify the **\*[Bureau]\* \*Division\*** of Fire Safety.

#### 5:10-1.11 Certificate of registration

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

(f) The owner of each hotel, retreat lodging facility or multiple dwelling shall appoint an agent for the purpose of receiving service of process and such orders or notices as may be issued by the Bureau of Housing Inspection pursuant to the Act. Each such agent so appointed shall be a resident of the county in which the hotel or

multiple dwelling is located or shall have an office in the county. If the agent is a corporation, it shall be licensed to do business in this State.

(g)-(k) (No change.)

5:10-1.12 Certificate of inspection

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

(e) The following relate to Uniform Fire Code inspections:

1. No certificate of inspection shall be issued for any hotel, retreat lodging facility or multiple dwelling subject to inspection, pursuant to the Uniform Fire Safety Act, by a local enforcing agency or by the \*[Bureau]\* \*Division\* of Fire Safety, either as a life hazard use or pursuant to a notice given by the local enforcing agency to the [Bureau]\* \*Division\* of Fire Safety, unless and until the Bureau shall have received from the local enforcing agency or from the \*[Bureau]\* \*Division\* of Fire Safety a certification that the building does not have any outstanding violations of the Uniform Fire Code, N.J.A.C. 5:18\*,\* or the Bureau's representative has, while at the premises, examined a current certificate of inspection issued pursuant to the \*Uniform\* Fire Safety Act.

(f) A certificate of occupancy issued by the local construction official for a newly-constructed building, pursuant to N.J.A.C. 5:23, shall be equivalent to a certificate of inspection. A certificate of inspection, and the fees therefor, shall not be required until five years after the date of issuance of the certificate of occupancy.

(g) An owner shall have the option, in accordance with the provisions of this subsection, of paying an annual fee in lieu of the inspection fee otherwise payable as a condition of the issuance of a certificate of inspection for the hotel or multiple dwelling.

1. The annual fee shall be in the amount of 20 percent of the current inspection fee chargeable for the hotel or multiple dwelling.

2. The annual fee shall be payable every year for five years on the anniversary date of the last previous inspection; provided, however, that the first annual fee paid for a hotel or multiple dwelling shall be in an amount equal to 20 percent of the current inspection fee times the number of years that shall have elapsed since the last previous inspection, but not more than five years. If, at the time of an inspection, there have been paid fewer than five annual fees, or the equivalent paid in a first annual fee, the balance shall be paid at the rate of 20 percent of the current inspection fee for each unpaid annual fee.

3. The total amount of the annual fees required to be paid for a hotel or multiple dwelling shall in no case exceed the amount of the inspection fee that would be required if the annual fee option had not been chosen. In the event that the amount of the inspection fee chargeable for the hotel or multiple dwelling is increased by rule during the period between inspections, the increase shall not be retroactive to annual fees already paid.

5:10-2.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise; provided, however, that in the event of any disparity between a definition set forth in this section and a cross-referenced statutory definition, the statutory definition shall govern.

... "Architect" means a person registered to practice the profession of architecture under the laws of the State of New Jersey.

... "Board" means the Hotel and Multiple Dwelling Health and Safety Board.

Cross reference  
See N.J.S.A. 55:13A-3(c).

... "Bureau" means the Bureau of Housing Inspection.

Cross reference  
See N.J.S.A. 55:13A-3(d).

... "Condominium" means the form of ownership of real property under a master deed providing for ownership by one or more owners of units, together with an undivided interest in common elements appurtenant to each such unit.

Cross references  
See N.J.S.A. 46:8B-3 and 55:13A-3(q).

... "Construction class (group)" means the category in which a building or space is classified based on the fire-resistance ratings of its construction elements as set forth in the current edition of the BOCA National Building Code.

"Cooperative" means a housing corporation or association which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by said corporation or association, or to lease or purchase a dwelling constructed or to be constructed by said corporation or association.

Cross reference  
See N.J.S.A. 55:13A-3(r).

... "Director" means the Director of the Division of Housing and Development.

... "Dwelling unit" means a room or rooms, or suite or apartment, that is occupied or intended to be occupied for sleeping or dwelling purposes by one or more persons.

Cross reference  
See N.J.S.A. 55:13A-3(h).

... "Fire separation wall" means a fire resistance rated assembly of materials having protected openings which is designed to restrict the spread of fire.

... "Hotel" means any building, including but not limited to any related structure, accessory building and land appurtenant thereto, and any part thereof, which contains ten or more dwelling units or has sleeping facilities for 25 or more persons and is kept, used, maintained, advertised as, or held out to be, a place where sleeping or dwelling accommodations are available to guests. "Hotel" also means any facility that is commonly regarded as a hotel, motor hotel, motel or established guesthouse in the community in which it is located. "Hotel" does not include those facilities that are excluded by statute.

Cross-reference  
See N.J.S.A. 55:13A-3(j).

... "Law" or "Act" means N.J.S.A. 55:13A-1 et seq., the Hotel and Multiple Dwelling Law.

... "Minor" means any person who is under the age of 18.

Cross-reference  
See "Emancipated minor" and "Unemancipated minor" of this section.

"Multiple dwelling" means any building or structure and any land appurtenant thereto, and any portion thereof, in which three or more dwelling units are occupied or intended to be occupied by three or more persons living independently of each other. "Multiple dwelling" also means any group of ten or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two dwelling units are occupied or intended to be occupied by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. "Multiple dwelling" does not include those buildings and structures that are excluded by statute.

Cross-reference  
See N.J.S.A. 55:13A-3(k).

... "Mutual housing corporation" means a not-for-profit corporation incorporated under the laws of the State of New Jersey on a mutual or cooperative basis within the scope of the "Lanham War Housing Act," 42 U.S.C. Sect. 1501 et seq., which acquired a National Defense Housing Project pursuant to said act.

Cross-reference  
See N.J.S.A. 55:13A-3(p).

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“Owner” means any person who owns, purports to own, or exercises control of any hotel, multiple dwelling or retreat lodging facility.

Cross reference  
See N.J.S.A. 55:13A-3(1).

...  
“Person” means any individual, corporation, association, or other entity.

Cross-references  
See N.J.S.A. 1:1-2 and 55:13A-3(m).

...  
“Project” means a group of buildings subject to the Act that:  
1. Are or are represented to be under common or substantially common ownership;  
2. Are on a single lot or contiguous lots, and  
3. Are named, designated or advertised as a common entity. Lots shall be considered to be contiguous even if they are separated by a public right-of-way.

Cross-reference  
See N.J.S.A. 55:13A-3(o).

“Protective equipment” means any equipment, device, system or apparatus required or permitted to be constructed or installed in any hotel or multiple dwelling for the protection of occupants, intended occupants or the general public.

Cross-reference  
See N.J.S.A. 55:13A-3(i)

...  
“Regulations” means the rules contained in this chapter.

...  
“Retreat lodging facility” means a building or structure, including but not limited to any related structure, accessory building, and land appurtenant thereto, and any part thereof, owned by a nonprofit corporation or association which has tax-exempt charitable status under the Federal Internal Revenue Code and which has sleeping facilities used exclusively on a transient basis by persons participating in programs of a religious, cultural or educational nature, conducted under the sole auspices of one or more corporations or associations having tax-exempt charitable status under the Federal Internal Revenue Code, which are made available without any mandatory charge to such participants.

Cross-reference  
See N.J.S.A. 55:13A-3(s).

...  
“Unit of dwelling space”, See “Dwelling unit” of this section.  
Cross-reference  
See N.J.S.A. 55:13A-3(h).

### 5:10-4.2 Discontinuation of services

(a) No person shall intentionally cause any service, facility, equipment or utility which is required to be supplied under this chapter to be removed, shut off or discontinued, or knowingly allow such condition to continue, when the condition affects any occupied unit of dwelling space.

1. This section shall not be applicable to such temporary interruption as may be necessary when actual repairs or alterations are in process or during temporary emergencies when discontinuance of services is caused by any public utility or public agency or is approved by the bureau.

(b) In the event of any discontinuation of services, repairs shall be performed expeditiously to minimize inconvenience to occupants and, to the greatest extent possible, temporary or alternate service shall be provided until permanent service can be restored.

### 5:10-5.1 Responsibility of occupants

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

(d) All items stored by occupants in any area provided for common storage by occupants of more than one unit of dwelling space shall bear the name and dwelling unit number of the occupant storing the said item or items. It shall be the responsibility of the

occupant to label each item and maintain it labeled. Materials stored in such areas shall be secured against becoming sources of infestation and shall not be placed so as to create a hazard.

### 5:10-5.3 Prohibited acts

(a) No occupant or other person shall:

1. Create or maintain any condition constituting a violation of the Uniform Fire Code, N.J.A.C. 5:18;

2. Take down, obscure, alter, destroy, or in any way deface any notice, certificate or sign required by this chapter to be displayed; or

3. Destroy or damage protective equipment.

### 5:10-5.4 Unsafe and unsanitary conditions

(a) (No change.)

(b) Occupants of each unit of dwelling space shall be responsible to the extent of their own use and activities for keeping the interior thereof safe and sanitary. Occupants shall prevent any accumulation of garbage or waste matter which may become a source of infestation.

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

(f) No occupant shall cause excessive grease, soot or other foreign matter to accumulate on side walls, ceilings or other exposed room surfaces by improper use of heating or cooking equipment. Cooking equipment shall be kept clean, free of garbage, food particles and grease.

### 5:10-5.8 Storage

No occupant shall utilize any area outside of his dwelling space for storage purposes except in an area designated for such use in accordance with N.J.A.C. 5:10-5.1(d).

### 5:10-7.7 Railings

(a) (No change.)

(b) Guard rails shall be provided on exterior corridors, balconies, landings or porches having more than a three-foot drop to the adjoining level and on the exposed side of any interior or exterior stairway. The height of the guard rail shall not be less than 30 inches.

1.-2. (No change.)

### 5:10-9.3 Dumbwaiters

(a) (No change.)

(b) Every existing device shall be maintained and inspected in accordance with N.J.A.C. 5:23-12.1 et seq.

### 5:10-10.1 Screens

(a) Screens suited to protect the interior of the building against mosquitoes, flies and other undesirable insects shall be provided and kept in good repair for each exterior door (except as otherwise provided in exception 2 below) and each openable window in habitable and occupiable rooms and common areas. Screens shall be installed and maintained by the owner on all such doors and windows at least from May 1 to October 1 of each year. All screens required pursuant hereto shall be affixed either to the window frame or to the upper sash and the window frame. Fixed windows need not be provided with screens.

1. (No change.)

2. Exception 2: Exterior doors which do not provide any portion of the minimum ventilation area of at least four percent of the floor area of the room or space ventilated.

3.-5. (No change.)

### 5:10-12.1 Standard of maintenance

(a) All elevators shall be so maintained as to meet the standards established and set forth in N.J.A.C. 5:23-12.1 et seq. The elevator doors, flooring, safety devices and operating mechanisms shall be maintained in good working order and free of hazards.

(b) The owner or the agent of the owner of a building containing one or more elevators shall have, and shall provide for inspection by the Bureau's representative, a current certificate of compliance, issued pursuant to N.J.A.C. 5:23-2.23(j), for each such elevator.

## COMMUNITY AFFAIRS

## 5:10-12.2 Preventive maintenance

All elevators and elevator equipment and accessory devices shall be provided with preventive maintenance and inspections as required by N.J.A.C. 5:23-12.1 et seq.

## 5:10-12.4 Mirrors

In all hotels and multiple dwellings in which there are one or more self-service elevators, there shall be affixed and maintained in each elevator a mirror that will enable persons, prior to entering into such elevator, to view the inside thereof to determine whether any person is in such elevator.

## 5:10-13.1 Electrical service

(a) (No change.)

(b) The following electrical installations shall be provided and hereafter properly maintained in all hotels and multiple dwellings:

1.-4. (No change.)

5. Heating equipment requiring electrical energy for operation or control shall be provided with an individual circuit.

6.-7. (No change.)

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

## 5:10-13.3 Artificial lighting

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

(Redesignate (f)-(g) as (e)-(f).)

## 5:10-14.3 Standards of maintenance

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

(e) Any pressure relief valve on any type of heating unit shall be connected to a pipe that discharges **\*either\*** vertically toward the floor to a maximum distance of **\*[twenty]\* \*20\*** inches from that floor surface **\*or in a manner conforming to the plumbing subcode of the Uniform Construction Code\***.

## 5:10-16.3 Mechanical ventilation

(a) Where the required natural ventilation is not provided, there shall be ventilation by mechanical means, conforming to the following requirements:

1. Kitchens and kitchenettes shall be ventilated by mechanical means so as to exhaust at least two cubic feet of air per minute per square foot of floor area directly to the outdoors or by means of a properly installed and maintained electrically-powered non-ducted range hood equipped with an activated charcoal filter for the elimination of cooking odors;

(Renummer 3. as 2.)

3. Bathrooms and toilet rooms containing only one water closet or urinal shall be mechanically vented by an exhaust system that exhausts at least 50 cubic feet of air per minute. Means shall be provided for air ingress by louvers in the door, by undercutting the door or by transfer ducts, grilles or other openings.

4. Bathrooms and toilet rooms containing more than one water closet or urinal shall be mechanically vented by an independent exhaust system that exhausts at least 40 cubic feet of air per minute per water closet or urinal.

## 5:10-17.1 Storage of occupants' property

(a) Any storage area available to or used by occupants in common areas shall have each space within the area separately designated for each unit of dwelling space and a list identifying each such space shall be retained by the person in charge of the premises or, if the space is used in common by occupants of more than one unit of dwelling space, then all items so stored shall bear the identification of the occupant storing the item or items.

(Redesignate (c)-(d) as (b)-(c).)

## 5:10-19.2 Multiple dwellings

(a) The following provisions apply to multiple dwellings.

1.-2. (No change.)

3. All exterior entrance doors to common basement, cellar or storage areas shall be self-closing and lockable.

4.-11. (No change.)

## 5:10-22.1 Basements and cellars

(a) Basements and cellars may be used for dwelling space provided that:

1. The entire area constituting the dwelling unit must comply with all requirements set forth in this chapter applicable to habitable rooms or areas and to all requirements set forth in N.J.A.C. 5:18 applicable to dwelling units in basements or stories below grade; and

2. The floors, ceiling and walls of each unit of dwelling space must be free of moisture.

## ENVIRONMENTAL PROTECTION AND ENERGY

(a)

### DIVISION OF RESPONSIBLE PARTY SITE REMEDICATION

#### New Jersey Pollutant Discharge Elimination System Fees

##### Adopted Amendment: N.J.A.C. 7:14A-1.8

Proposed: April 5, 1993 at 25 N.J.R. 1358(a).

Adopted: August 27, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: August 27, 1993 as R.1993 d.477, **without change**.

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

DEPE Docket Number: 15-93-03.

Effective Date: September 20, 1993.

Expiration Date: June 2, 1994.

#### Summary of Hearing Officer Recommendations and Agency Responses:

On April 5, 1993 the Department of Environmental Protection and Energy (Department) proposed amendments at N.J.A.C. 7:14A-1.8. The Department held a public hearing concerning the rule amendment on April 30, 1993 in Trenton, New Jersey. The Department accepted written comments through May 5, 1993.

Arnold Schiffman, Assistant Director in the Division of Publicly Funded Site Remediation, served as hearing officer for the NJPDES fee rule proposal at the April 30, 1993 public hearing. Assistant Director Schiffman recommended that the Department adopt the rule as proposed. The Department agrees with the recommendation.

The Department received written and verbal comments from 11 commenters during the public comment period on the proposal ending May 5, 1993. The following is a list of people who made either oral or written comments directly related to the proposed rule:

Air Products And Chemicals, Inc.

Aqualon Company

Butler International, Inc.

Chemical Industry Council of New Jersey

Chevron U.S.A. Inc.

Department of Commerce and Economic Development/Div. of Economic Dev.

E.I. Dupont De Nemours

Mobil Oil Corporation

New Jersey Health Products Council

Safety Kleen Company

New Jersey Petroleum Council

#### Summary of Public Comments and Agency Responses:

##### Comments In Support Of Proposed Rule

COMMENT 1: E.I. Dupont De Nemours encouraged the Department to use Memoranda of Agreement as the procedure of choice in remediating contaminated sites.

RESPONSE: The Department utilizes Memoranda of Agreement at any nonpriority sites. This class of sites makes up the majority of contaminated sites needing to be remediated.

COMMENT 2: Aqualon Company expressed support of the Department's proposal to assess NJPDES fees based on a cost-recovery method.

COMMENT 3: E.I. Dupont De Nemours expressed support of the establishment of a uniform system of administering contaminated sites.

RESPONSE: The Department appreciates the favorable comments on the rule.

**General Comments**

COMMENT 4: E.I. Dupont De Nemours noted that they made comments on oversight cost reimbursement to rules proposed at 24 N.J.R. 1281 (April 6, 1992) that are applicable to this rule proposal.

RESPONSE: The Department refers E.I. Dupont De Nemours to the Department's responses to comments on the Oversight Rules, N.J.A.C. 7:26C, at 25 N.J.R. 2002.

COMMENT 5: The New Jersey Health Products Council commented that although the Legislature intended for the Department to collect administrative fees, the "direct billing" mechanism in the proposed fee rules is inconsistent with the intent of the New Jersey Water Pollution Control Act.

RESPONSE: The Department believes that direct billing for Department costs associated with the oversight of New Jersey Pollutant Discharge Elimination System (NJPDES) permits is fully consistent with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. N.J.S.A. 58:10A-9 states that "[t]he commissioner shall, in accordance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." Direct billing for actual Department costs is consistent with the Water Pollution Control Act because it is directly based on the Department's expenses in processing, maintaining and administering the NJPDES-Discharge to Ground Water ("DGW") permitting program. In fact, the Appellate Division expressly found that a direct billing fee program is one option available to the Department pursuant to N.J.S.A. 58:10A-9 through which the Department can apportion its operating expenses among all NJPDES permittees. *Public Serv. Elec. and Gas v. Dept. of Env. Prot.*, 193 N.J. Super. 676, 681 (App. Div. 1984) *aff'd* 101 N.J. 95 (1985).

COMMENT 6: Mobil Oil Corporation and New Jersey Petroleum Council recommended that the proposed fee rules be delayed until final promulgation of the Cleanup Standards, 24 N.J.R. 373, Procedures for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, because an adequate assessment of the proposed fee structure is not possible without an understanding of what will be required of responsible parties once these rule proposals are finalized.

RESPONSE: The proposed fee structure for NJPDES Discharge to Ground Water permits for discharges necessary due to the remediation of contaminated sites is not dependent upon the adoption of the three rule proposals referenced by the commentators. A permittee's obligations are governed by the existing rules for NJPDES permits found at N.J.A.C. 7:14A, specifically N.J.A.C. 7:14A-5, Additional Requirements For Underground Injection Control Program, and N.J.A.C. 7:14A-6, Additional Requirements For Discharges To Ground Water. In addition, the Ground Water Quality Standards, N.J.A.C. 7:9-6, provide guidance to permittees for evaluating discharges to ground water and remediating contaminated ground water. The Department notes that the Procedures for Department Oversight of the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and Technical Requirements for Site Remediation, N.J.A.C. 7:26E, have been adopted.

COMMENT 7: The Chemical Industry Council of New Jersey noted that many other states do not impose fees similar to those proposed in this rule on businesses, and that in many states, a portion of the costs related to environmental compliance are in fact paid for with general treasury funds. The Chemical Industry Council of New Jersey predicted that promulgation of this direct-billing fee rule will result in a loss of businesses in New Jersey and a consequent reduction in generated fees to New Jersey.

RESPONSE: The decision to fund the total cost of the NJPDES program with fees rather than from the General Treasury is the decision of the New Jersey Legislature. See N.J.S.A. 58:10A-9, quoted above. The legislative process takes issues such as the impact on business into account when enacting legislation. Although other states may have permit fee programs supplemented by state general funds, there are also some states such as Louisiana, that rely on fees in a manner similar to New Jersey.

These amendments to N.J.A.C. 7:14A-1.8 do not necessarily impose higher fees on businesses in New Jersey in comparison to the previous NJPDES fee schedules, but merely establish a more equitable method for calculating the fees among New Jersey businesses so that each permittee pays its fair share of the Department's cost in administering the NJPDES-DGW program. Thus, the Department does not believe that this rule will result in loss of businesses to New Jersey.

COMMENT 8: The New Jersey Petroleum Council commented that in light of the Department's stated intent in the rule Summary to these amendments to utilize Memoranda of Agreement and Administrative Consent orders rather than NJPDES-DGW permits for remediation of contaminated sites, the Department should provide responses regarding the following: what criteria or procedure will be used to determine which permits will be modified or terminated and when; whether the permittees will have any input in this decision; and if a permit is terminated after the annual fee has been paid, will a prorated fee portion of the fee be refunded.

RESPONSE: The Department intends to propose rules governing the termination of certain categories of NJPDES-DGW permits such as detection monitoring in the near future. That rule proposal will contain the criteria and the procedure which the Department will use to determine which permits will be modified or terminated. In general, the Department intends to propose that permits currently requiring the study of contaminated sites and actual remediation be terminated in favor of other Department oversight documents such as Memoranda of Agreement or Administrative Consent Orders. In accordance with current NJPDES regulations, N.J.A.C. 7:14A-8, permittees will be able to comment on and to contest any actions on a permit including termination. Furthermore, N.J.A.C. 7:14A-8 also provides for the prorating of fees for permits that are terminated during a fee year. The Department does not intend to significantly modify these provisions.

COMMENT 9: Air Products and Chemicals commented that they are uncertain, upon review of the proposed fee rule, whether the Department intends to renew its permit or use a Memorandum of Agreement for one of its sites.

RESPONSE: Decisions on individual permit actions are not the subject of and are beyond the scope of this rulemaking procedure. However, as stated in the Department's response to Comment 8 above, the Department does not intend to use NJPDES Discharge to Ground Water permits to require remedial investigations or remedial action at contaminated sites.

COMMENT 10: The Chemical Industry Council of New Jersey noted that \$10,812,620 in Clean Water Enforcement Act penalties were collected by the Department in calendar year 1992, and that the Department should utilize the money from these penalties in its administration of the NJPDES program. The Chemical Industry Council questioned why these penalties are not being applied toward the reduction of fees to NJPDES permittees.

RESPONSE: As provided at N.J.S.A. 58:10A-14.4, unless otherwise provided, all monies from penalties, fines or recoveries of costs or improper economic benefits collected by the Department pursuant to N.J.S.A. 58:10A-10 shall be deposited in a special, non-lapsing fund known as the Clean Water Enforcement Fund. Monies in this fund shall be utilized exclusively by the Department for enforcement and implementation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Any unobligated money at the end of the fiscal year, or monies not required for enforcement purposes for the next fiscal year, are transferred to the Waste Water Treatment Fund.

Nearly all of the penalties collected by the Department under the Clean Water Enforcement Act were collected from operational facilities discharging to surface waters. Consequently, for State Fiscal Year 1993, the Department offset NJPDES permit program costs by about \$9.8 million in penalty monies from the Clean Water Enforcement Fund for discharges to surface and ground waters from operational facilities (see "New Jersey Pollutant Discharge Elimination System 1992-1993 Annual Fee Report and Assessment of Fees"). However, the Department did not offset the programmatic costs of the Site Remediation Program NJPDES-DGW permits because most existing Site Remediation Program NJPDES-DGW permits are currently for Detection Monitoring or the monitoring of ground water to detect possible ground water pollution. This category of NJPDES-DGW permit does not usually result in significant violations, and, thus, does not result in the assessment or collection of significant penalties. Therefore, there are no significant penalty dollars resulting from violation of NJPDES-DGW permits for site remediation to offset the NJPDES-DGW permit program costs for remediation of contaminated sites. However, future offsets will be considered based on circumstances at the time.

COMMENT 11: E.I. Dupont De Nemours disagreed with the Department's contention in the Social Impact statement that contaminated sites impact on everyone in the State, either directly (due to proximity of the site causing potential environmental and human health risks) or indirectly (due to cost to taxpayers of remediating these sites). Since

not all contaminated sites pose a health risk to proximate residents, and not all sites will require remediation that will affect taxpayers, E.I. Dupont De Nemours believes that the Social Impact has been overstated in the rule proposal.

**RESPONSE:** The Department does not agree that it has overstated the social impacts of contaminated sites. The Legislature has expressly found that pollution of the ground waters of New Jersey limit the domestic, municipal, recreational, industrial, agricultural and other uses of water, N.J.S.A. 58:10A-2. Furthermore, in the Spill Compensation and Control Act, the Legislature found that the discharge of petroleum products and other hazardous substances within or outside the jurisdiction of this State constitutes a threat to the economy and environment of this State, N.J.S.A. 58:10-23.11a. The Department has records of thousands of contaminated sites throughout the State. Although each individual contaminated site may not have a direct impact on every person living near the site, in most cases, there is some degree of direct impact either through health risks or diminished real estate values and decreased tax revenues. In the aggregate, these thousands of sites do impact most people in the State indirectly through higher taxes or through the higher costs of consumer goods due, in some part, to the regulated community charging higher prices for products and services in order to pay for the remediation.

**COMMENT 12:** The New Jersey Health Products Council stated that the proposed fee system is inconsistent with the Department's purpose which is to serve the people, and that the fee system could, in effect, create a monopoly of environmental compliance and remedial response, in which the State has no competitor to challenge in its methods or approach.

**RESPONSE:** Pursuant to N.J.S.A. 13:1D-1 et seq., the Department is charged with the implementation and enforcement of environmental laws, rules and regulations. In carrying out its statutory responsibilities, the Department has the authority to determine compliance with environmental laws, such as the Water Pollution Control Act, pursuant to which NJPDES-DGW permits are issued. In this sense, the Department is the only entity that can establish requirements for environmental compliance/remedial response and does not have any "competitors" for review and approval of compliance with regulatory requirements. However, the regulated community is entitled to challenge individual Department decisions made pursuant to law and regulation in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Court Rules. The rulemaking process, whereby the Department provides public notice of rules proposed, allows persons, such as the New Jersey Health Products Council, to comment on the rule proposal and allows for public input in the development of regulations by the people the Department serves. Therefore, the Department disagrees with this comment and believes that a fee schedule developed pursuant to these procedures which more closely reflects how business is conducted in the private sector, that is, each person paying his direct share of services received, is in the best interest of the citizens of this State.

**COMMENT 13:** The New Jersey Health Products Council contends that the proposed fee formula at N.J.A.C. 7:14A-1.8(k) does not provide the Department with an economic incentive to manage cases efficiently.

**COMMENT 14:** Butler International, Inc. contends that the proposed fee regulations will subject businesses in New Jersey to open-ended, uncontrolled costs, fees, and expenses with no incentive for the Department to be cost-effective and will serve to encourage a "runaway bureaucracy."

**RESPONSE:** The incentive for the Department to be efficient and make cost effective use of its limited resources lies in the policy of the Department to cleanup as many sites as possible as quickly as possible. For the Department to encourage employees to spend as much time overseeing a project because reimbursement is available as the commenter implies would be counter productive to the Department's cleanup goals. The more efficiently the Department operates, the more quickly the Department will accomplish its site remediation goals. Unlike a private entity, profit is not a goal of the Department. The Department benefits from operating efficiently for a number of reasons: (1) the less hours spent per site allows the Department to oversee more cleanups; (2) the less likely fees will be challenged; and (3) the more likely a responsible party will pay promptly. Further, the more cleanups that can be accomplished voluntarily by a responsible party, the less cleanups that will have to be performed by the Department with public funds.

In addition, the Department disagrees that the fee formula will encourage a runaway bureaucracy as the permit fee system is subject to

the discipline of the state budget process. Permit fees are authorized by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-9, which states that "[permit] fees shall be deposited to the credit of the State and be deemed as part of the General State Fund," and that "the Legislature shall annually appropriate an amount equivalent to the amount anticipated to be collected as fees charged under this section in support of the NJPDES program." This legislative oversight helps guard against any "runaway bureaucracy."

**COMMENT 15:** Chevron U.S.A. Inc. stated that the proposed "time and material mechanism" at N.J.A.C. 7:14A-1.8(k) will prove a disincentive for the Department to be cost effective during its involvement in a case and eliminates public participation from determining the appropriate level of regulatory oversight. Chevron U.S.A. Inc. further stated that the traditional submittal based fee structure does not present these problems.

**RESPONSE:** As stated in the previous response, the Department has incentives to make cost effective decisions, and its budget is subject to control through the state budget process. In addition, these fee amendments will not eliminate or modify public participation in the permitting process. The NJPDES-DGW permitting process still provides for public notice, comment, and public hearings, where issues such as the appropriateness of issuing a permit or permit conditions can be raised.

**COMMENT 16:** Air Products and Chemicals, Inc. noted that the amount of a fee can impact cleanup costs at a contaminated site, and suggested that the Department fully defined the impact of these amendments or phase in these amendments to allow facilities to appropriately react.

**RESPONSE:** As stated in the Summary of the rule proposal, the Department will use Memoranda of Agreements or Administrative Consent Orders for remediation of contaminated sites and not issue NJPDES-DGW permits to require site evaluation or cleanup. The NJPDES-DGW permit will be utilized where a permit is necessary to reinject or recharge ground water as part of the remedial action required by a Memoranda of Agreement or Administrative Consent Order. The Economic Impact section of the rule proposal shows that the anticipated minimum permit fee for corrective action or compliance monitoring under this rule proposal is about \$6,000. This is in contrast to current fees which can range from \$1,500 to up to 10 percent of the budget. Thus, for some permittees, the fees could increase by approximately \$4,500. However, for other permittees, the fees could decrease dramatically. In addition, where a NJPDES-DGW permit is necessary for remediation of a contaminated site, the permit will be needed prior to design of a remedial action and any impact of the fee will be known.

A phase in of this rule would be disruptive to fee payers as two different fee assessment systems would be in use during the same fiscal year. Keeping the existing fee structure in place could cause the fee to substantially impact cleanup costs as a maximum fee could be 10 percent of the 1994 NJPDES-DGW permit budget.

**COMMENT 17:** The New Jersey Health Products Council noted that the proposed fees will make it very difficult for the regulated community to predict, before the arrival of the actual bill, what the fees will be since the regulated community would not be billed until after the Department's work is complete. Safety-Kleen Corporation noted that the proposed fee is not simple or predictable.

**COMMENT 18:** E.I. Dupont De Nemours commented that in the proposal, the Department stated that a simple and predictable permit fee system will facilitate cleanups by allowing private parties to better plan for cleanup expenditures. However, facilities cannot budget for cleanup oversight expenditures without an estimate of projected costs from the Department. The Department should therefore propose a method by which it can provide cost estimates for upcoming work. These estimates should be submitted to facilities on a quarterly, or at most yearly basis, to give facilities the opportunity to incorporate the estimated fees into their budget.

**COMMENT 19:** Air Products and Chemicals, Inc., suggested that there should be a periodic review of costs and tasks being performed by New Jersey prior to billing so that the permittee can understand cost issues before they happen and where possible reduce costs. This review prior to work being performed would keep costs down for the permitted party as well as keeping New Jersey from getting into contested permit fee discussions. Air Products and Chemicals, Inc. and Chevron U.S.A. Inc. noted that estimates of review times for permit-related document submittals would be useful to the regulated community in assessing how the proposed rule will affect permit fees.

## ADOPTIONS

RESPONSE: Individual case type, duration and complexity preclude the Department from providing a reliable or predictable estimate or budget for individual permit costs. For example, effluent limitations for discharges often depend on details of site hydrogeology and whether or not a pump and treat system hydraulically controls a contaminant plume. Details of monitor well construction and location are also unique to a specific site.

In addition, the level of effort to respond to public comments on a permit cannot be readily predicted. Therefore, the Department cannot estimate its own oversight costs or review times with any degree of reliability due to the dynamic nature and ever changing scope of any permit related to cleanup of a contaminated site. However, some degree of predictability will be provided by billing more frequently than once a year as this will provide the permittee with an opportunity to consult with Department staff as to project charges. Furthermore, the proposed fee system, based on actual costs to process an individual permit, is simpler than the current complex system based on the degree of risk to public health and the environment.

COMMENT 20: Chevron U.S.A. Inc. and Butler International, Inc. commented that the regulations should impose upper limits on the permit fees that may be assessed using the cost recovery method. These commenters expressed concern that, in the absence of an upper limit or cost cap, the Department will have no incentive to perform efficient and timely oversight of remediation activities. Chevron U.S.A. Inc. further noted that the private sector has built in market safeguards to maximize efficiency and minimize waste, while the proposed regulations do not include any provisions to ensure efficiency in Department reviews of submitted documents. In addition, Chevron U.S.A. Inc. noted that the Department can reduce its costs due to incomplete submittals by using its enforcement authority.

COMMENT 21: Air Products and Chemicals, Inc. commented that a better description of what the range of Department review times is needed. Air Products and Chemicals, Inc. stated that although the examples given in the proposal showed minimum review times, no clear maximum was shown.

RESPONSE: The Department has determined that to ensure that the State of New Jersey is reimbursed fully for the resources expended in the oversight of the remediation of a contaminated site (including any necessary ground water discharge permits), as required by N.J.S.A. 58:10A-9, an hour for hour reimbursement program is appropriate. A maximum fee may not cover all costs and a minimum fee may overcompensate for the work performed. Based on past experience, a per document fee schedule can result in costs for individual documents that are disproportionate to the actual cost to the Department to review that document. The fee formula will provide an incentive for the responsible party to submit high quality, complete documents requiring the least review time possible. As there is no reliable way for either the permittee or the Department to predict the scope of the cleanup until it gets underway, there would be no basis to formulate a flat fee structure. A flat fee results in some permittees paying too much, others too little. The Department is trying to be fair by having everyone pay their own costs. As stated in response to Comments 13 and 14 above, the Department does have incentives to perform efficiently. Furthermore, as stated in the Department's response to Comments 17 to 19 above, maximum review times are not readily predictable. In addition, although the Department will use its enforcement authority to encourage compliance with terms and conditions of a permit, an enforcement action and any penalties collected from such an action are not a substitute for charges needed to administer their permit programs.

COMMENT 22: Chevron U.S.A. Inc., and E.I. Dupont De Nemours expressed concern that the proposed fees will be excessive and burdensome for the regulated community. Butler International stated that the uncontrolled cost of permits suggested by the proposed fee structure will contribute significantly to the already high costs of conducting business in New Jersey (compliance with tough environmental laws, high medical health costs, etc.)

RESPONSE: The Department disagrees that the fees will be excessive and burdensome as a permittee will pay their fair share of the costs of the NJPDES program. Nor does the Department agree that the fees will contribute significantly to the cost of conducting business in New Jersey. As stated in the Economic Impact section of the rule proposal, the fee rules will not increase or decrease the revenue generated through the NJPDES fee assessment program and will likely decrease the overall cost of the NJPDES-DGW program by decreasing administrative costs. The fee regulations are intended to require permittees to pay their fair

## ENVIRONMENTAL PROTECTION

share of NJPDES fees by providing that the permittee pays their exact cost of administering the permit. In fact, a fee system that requires each permittee to bear its own burden in paying for the permit fee should encourage business in New Jersey as no business will pay a disproportionate share in permit fees to cover the cost of another business.

COMMENT 23: Aqualon Company suggested that the Department develop a process for continuing improvement in management and containment of project costs. Aqualon Company urged the Department to provide the permittees with financial data and accountability similar to that provided by the private sector, including budget estimates, accounting of expenditures, ability to audit, ability to utilize alternate providers, and project schedules with milestones for task completion.

COMMENT 24: The New Jersey Health Products Council urged that the Department institute cost control measures which would include mechanisms to deal with changing resource needs, technical deficiencies and learning curves, overbilling, timeliness, and limitation of the multiplier costs to actual review costs.

COMMENT 25: E.I. Dupont De Nemours suggested that the Department develop Best Management Practices for reasonable and appropriate charges before implementing the new fee assessment system by examining fees charged by contractors for comparable services, and by employing a comprehensive project tracking system. The Department should be able to demonstrate that its charges are reasonable and that personnel charges are justifiable for the project. E.I. Dupont De Nemours feels that this is especially necessary because of the lack of outside oversight to audit the work performed for the charges incurred. E.I. Dupont De Nemours also suggested the Department track projects more comprehensively and provide quarterly or annual cost projections to demonstrate accountability for its oversight of a project.

RESPONSE: One purpose of the Department's cost accounting system is to provide data necessary to review tasks and associated costs. Permittees will be provided a detailed breakdown of costs from the accounting system when billed. The Department will use this information as part of a continuous process to evaluate changing resource needs, staff performance, timeliness, and cost trends. The Department will consider using contractors to perform tasks otherwise done by Department staff in order to reduce costs. In addition, the NJPDES permit program is routinely audited by state auditors and the Department is required to report each year to the Legislature on the status of the NJPDES permit program and NJPDES fees (N.J.S.A. 13:1D-9.2, 13:1D-109, 13:1D-115). To the extent practicable, and consistent with applicable law and regulation, the Department will provide permittees with all information necessary for a permittee to evaluate the appropriateness of their permit fees. The Department fundamentally agrees with the commenters as to the need to accurately track all costs associated with the processing and administering an individual permit and perform these activities in an efficient manner. The Department does not agree with E.I. Dupont De Nemours that it needs to develop a Best Management Practice before implementing these amendments because the Department believes that it has established Best Management Practices for reasonable charges through its cost accounting system, program audits, requirements for permit issuance specified in regulation (N.J.A.C. 7:14A) and comparisons with fees charged by outside contractors (see response to Comments 39 and 42).

COMMENT 26: Chevron U.S.A. Inc. commented that because the Department does not have the authority to issue NJPDES permits for remediations conducted pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), N.J.A.C. 7:14A-1.8(k) should be deleted. Chevron U.S.A. Inc. suggested that specific requirements including application requirements, conditions and statutory authority must be promulgated under N.J.A.C. 7:14A to authorize remedial activities conducted pursuant to N.J.A.C. 7:26E under a NJPDES permit.

RESPONSE: The Department disagrees with Chevron U.S.A. Inc.'s interpretation of N.J.A.C. 7:14A-1.8(k). N.J.A.C. 7:14A-1.8(k) does not require that a NJPDES-DGW permit be issued for remediations conducted pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E. N.J.A.C. 7:14A-1.8(k) simply references N.J.A.C. 7:26E to incorporate that rule's definition of the term "remediation."

Remediations conducted pursuant to a NJPDES-DGW permit are conducted pursuant to the NJPDES Rules, N.J.A.C. 7:14A. The Department does have the authority to require a person to obtain a NJPDES-DGW permit to conduct remediation of a contaminated site. The New Jersey Water Pollution Control Act regulates discharges to surface and ground waters of the State, and N.J.A.C. 7:14A-6 in particular sets forth the requirements for remediation of contaminated sites pursuant to a

permit issued under the New Jersey Water Pollution Control Act. As stated in the Summary to the rule proposal and in the Department's response to Comment 8 above, however, the Department does not intend to use NJPDES ground water discharge permits as the oversight document for conducting remediation of contaminated sites. Instead, the Department plans on executing oversight documents, such as Memorandum of Agreements or Administrative Consent Orders, in which persons responsible for remediating the site will agree to conduct remediation activities at the site, including the remediation of ground water contamination. Any permits issued would be for direct discharges to ground waters by, for example, well injection and infiltration basins. Such permits are required by State and Federal law pursuant to N.J.S.A. 58:10A and 42 U.S.C. 1251 et seq.

**N.J.A.C. 7:14A-1.8(a)6**

**COMMENT 27:** Safety-Kleen Corporation commented that under the Department's proposal at N.J.A.C. 7:14A-1.8(a)6, the only element of the fee formula that could be challenged realistically is that the number of hours attributed to the project included hours that should have been allocated to some other project. Yet, the facts concerning the hours worked on the project will be almost exclusively, except for joint meetings between the Department and the permittee, within the knowledge and control of the Department. This provision, for all practical purposes, insulates permit fee assessments from any meaningful challenge and review.

**RESPONSE:** As Safety-Kleen accurately points out, most of the factors included in the new direct cost fee assessment formula are static and will not vary from permit to permit. These static factors include such things as the fringe benefit rate, the indirect cost rate, the salary additive rate, and for a given staff individual, the hourly salary. Other than the occasional contractor costs or sampling costs, the one important variable in the assessment equation will be the number of staff hours coded to a particular permit. Such a billing structure is typical of many contractual arrangements in the private sector, such as an attorney billing a permittee for an appeal of a final permit. The factors remain the same and, thus, the variable that most significantly influences the amount of the bill is the "hours billed."

The Department recognizes, however, that an important element in the successful implementation of a direct billing fee structure is the open exchange of information concerning the Department staff hours worked on a permit. In the fee assessment, the Department will provide the permittee with direct labor and contractor costs and other information on expenses directly attributable to a particular permit. The permittee may then review and question the basis of that assessment.

Then, if after meeting informally with Department representatives, the permittee still objects to the assessment, the Department will provide additional information as appropriate. If a factual dispute involving a fee imposed pursuant to N.J.A.C. 7:14A-1.8(k) cannot be resolved in this manner, the permittee may request that the Department identify the matter as a contested case for an adjudicatory hearing before the Office of Administrative Law. Within the context of that adjudicatory hearing, the permittee will be entitled to discovery from the Department. Furthermore, the Commissioner's order which follows an Administrative Law Judge's decision is subject to judicial review in the Appellate Division of the Superior Court.

The Department believes that these procedures will provide permittees with a meaningful opportunity to challenge and review a fee assessment. The Department further believes that a permittees due process rights will be adequately protected by this review process.

**COMMENT 28:** E.I. Dupont De Nemours suggested that the proposed N.J.A.C. 7:14A-1.8(a)6i be amended to allow a permit fee to be challenged "based on all factors available to the Party under the law."

**COMMENT 29:** Safety-Kleen Corporation commented that to limit the grounds on which a fee assessment may be challenged at N.J.A.C. 7:14A-1.8(a)6 is unwarranted, unreasonable, contrary to law and arbitrary.

**COMMENT 30:** The Chemical Industry Council of New Jersey commented that the permittee should be able to contest a fee whenever the Department has acted in an arbitrary and capricious manner.

**RESPONSE:** The Department believes the N.J.A.C. 7:14A-1.8(a)6i as proposed reflects "all factors available to the Party under law" for a permittee to contest a NJPDES/DGW permit fee. The Department, therefore, disagrees with Safety-Kleen's unsupported assertion that this regulatory scheme is "contrary to law." If the Department determines in a particular matter that the fee challenge does not constitute a

contested case, the permittee may challenge the alleged "arbitrary and capricious" Department action as final agency action before the Appellate Division of the Superior Court of New Jersey. It is in the Appellate Division that the standard of review of the Department's action is whether the final agency action was arbitrary or capricious.

The Department believes that the detailed procedures set forth at N.J.A.C. 7:14A-1.8 will provide permittees with a meaningful opportunity to challenge and review a fee assessment. The Department further believes that a permittee's due process rights will be adequately protected by this review process.

**COMMENT 31:** E.I. Dupont De Nemours commented that improper calculation of fees be included as a basis for contesting a fee since N.J.S.A. 58:10A-9 does not authorize the Department to obtain fees in excess of costs actually incurred on a specific permit.

**RESPONSE:** The Department does not agree with DuPont that it is necessary to add a new provision to the rule that would specify that the improper calculation of fees is a basis for contesting a fee. Any allegation of the Department's improper calculation of a fee already fits within the criteria set forth at N.J.A.C. 7:14A-1.8(a)6i for contesting a fee. The Department further disagrees with E.I. Dupont De Nemours' interpretation of N.J.S.A. 58:10A-9. The Department is authorized pursuant to this provision to assess fees without a direct relationship to the costs actually incurred on a specific permit. In fact, pursuant to the previous permit fee system for these permits, the Department assessed fees based upon the degree of risk to public health and the environment. This resulted in fees that were substantially greater or substantially less than the Department's costs for an individual permit. This fee system was specifically upheld on appeal, *Public Service Electric and Gas v. N.J. Dept. of Environmental Protection*, 101 N.J. 95 (1985). In contrast, to this previous scheme, however, the new direct billing fee system will provide that the Department will collect only those Site Remediation Program costs related to an individual permit.

**COMMENT 32:** Chevron U.S.A. Inc. suggested that a new provision be added to allow a permit fee to be contested based on unwarranted or unnecessary oversight costs.

**RESPONSE:** The Department does not believe that the addition of the new provision suggested by Chevron U.S.A. Inc. is appropriate. The Department has the statutory obligation to insure the proper remediation of contaminated sites. To carry out this statutory obligation, the Department must be able to determine how much oversight a particular case should receive. As is further discussed in the Department's response to Comments 33 and 34 below, challenges to Department management decisions regarding the need for particular costs will substantially hinder the goal of effective and efficient site remediation.

**COMMENT 33:** Safety-Kleen Corporation commented that precluding any challenge to a fee assessment based on the resources allocated by the Department to a particular case at N.J.A.C. 7:14A-1.8(a)6ii is inappropriate. If the Department has assigned unnecessarily excessive resources to a project, the permittee should not be forced to pay an increased fee assessment to compensate for those excesses.

**COMMENT 34:** Air Products and Chemicals, Inc., and Chevron U.S.A. Inc., take issue with the inability to challenge costs based on management decisions (that is, assignment of excessive resources to a project) that will be afforded by the proposed rule. Chevron U.S.A. Inc. stated that permittees should not have to absorb oversight costs associated with mismanagement and should be allowed to contest the Department's management decisions, and proposed deletion of N.J.A.C. 7:14A-1.8(a)6ii(3).

**RESPONSE:** The comments concern N.J.A.C. 7:14A-1.8(a)6ii, which provides that a challenge to a fee cannot be based upon any of three listed types of issues. As the commenters note, one of these three types of issues is "Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review."

Based on consultation with the Attorney General's office, the Department has concluded that a challenge based upon any of these three types of issues would not constitute a "contested case" under the Administrative Procedure Act; the challenge would not raise factual issues that could be resolved in an adjudicatory hearing in the Office of Administrative Law. Accordingly, the Department has listed these types of issues in the rule in order to provide guidance to permittees seeking an adjudicatory hearing to contest a fee. Based on this guidance, a permittee can avoid going through the exercise of requesting a hearing that is certain to be denied.

## ADOPTIONS

An adjudicatory hearing to debate the wisdom of the Department's management decisions will consume substantial resources of the permittee and the Department, but almost certainly will result in no change in the fee. Management decisions such as the staff to assign to a permit are discretionary decisions of the Department. As a regulatory agency the Department must apply its expertise to allocate resources to a permit case in a manner consistent with technical complexities, the public interest and relevant priorities at a given time, in order to protect public health and the environment. In light of the great deference that the law gives these decisions regarding deployment of resources, and the extreme difficulty of attempting to evaluate those decisions after the fact, the Department does not believe that an adjudicatory hearing on this issue could produce a meaningful review. See, for example, *State Farm Mut. Auto. v. Public Advocate*, 118 N.J. 336, 358 (1990).

The Department recognizes that if a permittee is legally entitled to a hearing under the Administrative Procedure Act, that right could not be limited in a rule. A person who believes that the hearing rights under N.J.A.C. 7:14A-1.8(a)6 are more limited than those required under the Administrative Procedure Act could certainly contest the rule in the Appellate Division. However, as noted above, based on consultation with the Attorney General's office the Department believes that the hearing rights under N.J.A.C. 7:14A-1.8(a)6 are consistent with the Administrative Procedure Act.

The Department is also concerned that if every management decision could potentially be the subject of an adjudicatory hearing, there would be a substantial risk that efficient and effective site remediation would be compromised in an effort to protect against that potential litigation. Furthermore, litigation over the wisdom of management decisions would divert scarce Department resources away from the remediation of contaminated sites and delay remediation as a result.

The scarcity of resources available to the Department is already a substantial incentive to make management decisions that control costs and avoid using excess resources for any particular permit. The cost oversight mechanisms discussed in responses to other comments provide an additional incentive. Adding a threat of litigation is therefore unnecessary and is likely to produce the undesirable side effects discussed above.

COMMENT 35: Safety-Kleen Corporation commented that a permittee will be penalized and discouraged from raising legitimate disputes with the Department, because resolution of those disputes will necessarily insure greater permit fees.

RESPONSE: The Department recognizes that this new fee system may have the unintended effect of discouraging permittees from contacting the Department, because such contact will result in a higher fee. The Department notes however, that the direct billing fee system is similar to billing procedures used in the private sector. It is not unusual, for example, for a client to be billed for the time its environmental consultant or attorney spends on a case. Similar to the new fee formula, any client contact with its consultant would result in a larger bill for the client.

In amending the NJPDES fee rules the Department is establishing a fee structure whereby each permittee will pay its fair share of the Department's costs in processing, monitoring and administering its permit. Despite a potential decrease in communication from permittees, the Department believes this new fee structure is equitable and appropriate. Finally, the Department is committed to working with all permittees directly and efficiently so that any disputes which may arise can be appropriately addressed while at the same time minimizing the costs to all involved.

COMMENT 36: The New Jersey Health Products Council noted that challenges to fees based on increased fees due to such factors as staff training and turnover and inclusion of rule development in the multiplier are not allowed, and that the new fee structure will become a form of hidden taxation.

RESPONSE: Staff training, turnover and rule development are all indirect costs to the NJPDES program, and in order to administer the NJPDES program, the Department must be able to recover these expenses. The Department is required to recover all costs, including indirect costs associated with support of the NJPDES program pursuant to N.J.S.A. 58:10A-9. In accordance with this statutory provision, the Department deposits permit fees to the credit of the State and they are deemed part of the General State fund. The Legislature then appropriates to the Department an amount equivalent to the fees collected. The inclusion of staff training, turnover and rule development in the multiplier applies equally to all permittees. Therefore, it would not be appropriate for the Department to litigate that same issue with each

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permittee separately. Instead, the multiplier can be debated in the appropriations process, and could also be subject to judicial review rather than review in an Office of Administrative Law hearing.

The new fee structure will not become a form of hidden taxation as the New Jersey Health Products Council suggested. The fees imposed pursuant to N.J.A.C. 7:14A-1.8(k) are authorized by the Legislature. N.J.S.A. 58:10A-9. Therefore, such fees are not an "open ended grant of power to tax, but rather a well-circumscribed regulatory measure designed to defray the expenses of a particular governmental operation." *State Farm Mut. Auto. v. Public Advocate*, 118 N.J. 336, 348 (1990).

COMMENT 37: E.I. Dupont De Nemours stated that they reserve their right to challenge the cost recovery formula in the proposed rule if they determine that the permit fee for one of their sites is excessive and unjustified.

RESPONSE: The Department acknowledges that E.I. Dupont De Nemours has reserved whatever rights it may have to challenge the Department direct billing formula at N.J.A.C. 7:14A-1.8(k).

### N.J.A.C. 7:14A-1.8(k)1

COMMENT 38: Safety-Kleen Corporation and E.I. Dupont De Nemours stated that the Department's proposed formula for NJPDES fee assessment, which multiplies each factor (direct cost rate by fringe benefit factor by salary additive factor), is inappropriate and suggested an alternative formula. These commenters stated that a more appropriate approach would be to apply the salary additive rate and the fringe benefit rate separately to the base salary and to apply the indirect cost rate to the base salary increased only by the fringe benefit rate. The commenters rationale was that the salary additive is designed to account for Department "down time" yet although that down time gives rise to additional costs to the Department, that increase does not give rise to a corresponding increase in fringe benefits and indirect costs. This would result in an overall multiplier that is significantly lower than the multiplier resulting from the Department's proposed fee formula.

RESPONSE: The Department's method of calculating the direct permit fees is accomplished correctly by multiplying each additive rate by the base which results in a cumulative multiplier factor. For Fiscal Year 1993 the total multiplier was 3.6965 ( $1.22 \times 1.2935 \times 2.3424$ ). This total multiplier has been reduced now that the indirect rate for the Site Remediation Program has been revised (see the Department's response to Comments 39-42, below). The total multiplier for Fiscal Year 1994 is 3.085 ( $1.22 \times 1.2935 \times 1.9548$ ). The commenters mistakenly believe that an increase in cost due to compensation for down time does not result in a concomitant increase in fringe benefits and indirect costs—it does. Down time is compensable time that is not available to be billed to any project at the hourly rate, yet must be compensated for not only in base salary, but also in the cost of fringe benefits and indirect costs. Therefore, it is correct to multiply the base salary by each additive.

COMMENT 39: The New Jersey Health Products Council commented that the multiplier of 3.7 that results from multiplying the factors in the proposal seems excessive when compared with current consulting firms multipliers of 2.5 to 3.0, which includes a profit margin. The commenter further stated that the Department should not be in the business of making profits, especially when it cannot issue or review permit applications in a timely manner. The difference between this proposed fee system and a consultant's services is that a consultant develops a proposal with a cost estimate based on a scope of work. The client negotiates and agrees to the costs prior to awarding the contract.

COMMENT 40: Chevron U.S.A., Inc. commented that the Department's proposed multiplier of 3.70 over base salary is too high, and even exceeds the multipliers used in the private sector. Chevron U.S.A. surveyed nine of its environmental consulting contractors in the summer of 1992 to evaluate their base salary multipliers. The nine firms have multipliers ranging from 2.35 to 3.50. The private sector multiplier, moreover, includes profits. Inasmuch as government is a nonprofit organization, it would be expected to have a substantially lower multiplier than the private sector. The private sector should not have to bear the financial burden of government inefficiency and extravagant overhead costs.

COMMENT 41: Aqualon Company stated that the multipliers for benefits, fringe benefits and indirect costs increase base salary by 370 percent. Based on a limited survey of consulting and architect and engineer costs, this factor is comparable to that of a highly expert consulting firm, including allowances for profit, marketing, taxes and insurance. Considering the nature of the technical services provided and that a public agency is involved, the overall multiplier should be in the

range of 200 percent to 300 percent. The Department should subject the basis for the factors to further review in order to validate that data and determine if costs for services benefiting the general public have been appropriately separated. Payment of \$74.00 per hour for a \$20.00 per hour technical person is not indicative of regulatory efficiency or of a regulatory program that assures a clean environment while preserving public sector jobs.

COMMENT 42: E.I. Dupont De Nemours noted that the Department's calculated multiplier of 3.696 is similar to the multiplier used by many consulting firms providing services similar to those the Department will provide, but since the Department does not incur many of the indirect expenses assumed by consulting firms (errors and omissions insurance, marketing costs, taxes, profit, readiness to service) the multiplier is suspect. The multiplier should be appreciably lower than those applied by consulting firms. E.I. Dupont De Nemours stated it would expect a multiplier more typical of architecture and engineering firms, in the range of 2.2 to 2.7. The 3.696 multiplier calculated by the Department is higher than the American Society of Civil Engineers standard of 3.325. Finally, the Department utilization rate should be 90 percent or greater.

RESPONSE: After the Department proposed these rule amendments to the NJPDES fees, the Department revised the indirect rate used in the direct billing fee formula at N.J.A.C. 7:14A-1.8(k). As a result of more staff time being billed to specific cases during Fiscal Year 1993, the Department's Site Remediation Program reduced its indirect rate for Fiscal Year 1994 from 134.24% to 95.48%. The Department provided public notice of this revised rate in the August 2, 1993 New Jersey Register at 25 N.J.R. 3561(b). When the Fiscal Year 1994 indirect rate is incorporated into the NJPDES fee formula, the total multiplier is reduced from 3.6965 ( $1.22 \times 1.2935 \times 2.3424$ ) to 3.085 ( $1.22 \times 1.2935 \times 1.9548$ ). Thus, the total multiplier to be used in calculating NJPDES fees pursuant to N.J.A.C. 7:14A-1.8(k) has been reduced since these rule amendments were proposed.

The Department's total multiplier of 3.085 is reasonable as compared to private sector consulting firms. Chevron's survey of nine of their environmental consultants showed a top multiplier of 3.5. E.I. Dupont De Nemours noted in their comments that the American Society of Civil Engineers (ASCE) developed a standard multiplier of 3.325 as reported in 1986.

Chevron U.S.A., Inc. and E.I. Dupont De Nemours noted that although the Department's multiplier was within range of multipliers used by the private sector, the private sector multiplier includes a profit margin which the Department's formula should not factor. Although the private sector incurs costs that the Department does not incur, the Department has costs that the private sector does not have. As a government regulatory agency, the Department is required to spend substantial effort on public communications (for example, hearings, response to requests for information), rule development, adjudications and costs inherent to serving and being responsive to the Executive and Legislative branches of government. As stated in the proposed rule, the Department will recalculate the indirect rate for each year. The Department is committed to performing its duties in as efficient and effective manner as possible and periodically reviews its internal operations for opportunities to increase its utilization rate and for savings and reductions in indirect costs.

COMMENT 43: Safety-Kleen Corporation stated that the proposal does not provide sufficient information to justify the multipliers used in the fee formula, making it impossible for the regulated community to evaluate whether these multipliers are reasonable or excessive.

COMMENT 44: E.I. Dupont De Nemours stated that insufficient information has been provided to enable an evaluation of the propriety of the salary additive rate, fringe benefit rate, and indirect cost rate factors.

COMMENT 45: The Chemical Industry Council of New Jersey requests clarification of the definition of "indirect costs" provided in the proposed regulations.

RESPONSE: The Department believes that the rule Summary provided sufficient detail for persons to effectively comment on the factors used in the permit fee formula as evidenced by the detailed comments received on these factors. The Department defined key factors in the fee formula and provided a detailed example of how it derived the rates including the indirect cost rate. The above responses to all the comments received on the proposed rule amendments provide additional information and clarification of the factors used in the fee formula. The commenters did not specify what additional information

was needed in order to formulate a better informed opinion of the merits of the formula. Therefore, the Department cannot respond to these specific comments in more detail.

#### N.J.A.C. 7:14A-1.8(k)ii

COMMENT 46: E.I. Dupont De Nemours suggested that the Department's proposed case tracking system, consisting of a three-digit Project Activity Code (PAC), is inadequate to account for the large number of cases in New Jersey. E.I. Dupont De Nemours also noted that the proposed method of potentially assigning several PACs to one case to track distinct tasks during the project further reduces administrative efficiency and fails to provide a mechanism to enable distinction of specific charges to a project performed by Department staff. E.I. Dupont De Nemours recommends that the Department employ a project tracking system similar to the system utilized by most consulting firms.

RESPONSE: The Department has devised a time accounting system that provides for an employee's hour-for-hour accounting of work performed on a specific project which can be further broken down into an hour-for-hour accounting of work performed on a specific aspect of a specific project. The referenced Project Activity Code, which the Department is no longer using, is a three character alpha-numeric code with over 46,000 combinations and not a three digit numerical code. However, the Department, consistent with a new State financial tracking system, has changed to an eight character case-specific project code with a separate four character activity code to track distinct tasks. This system will better enable the Department to track distinct tasks and charges for any individual permit. For example, every facility will have an eight character alpha-numeric code or job number and the Department currently has about 1,800 four character codes to describe distinct tasks for each facility.

#### N.J.A.C. 7:14A-1.8(k)iii

COMMENT 47: The Chemical Industry Council of New Jersey and E.I. Dupont De Nemours requested clarification in the rule as to how the "hourly rate" for an employee is determined. The commenters suggested that the number of working hours in each year be defined. E.I. Dupont De Nemours questioned whether an hourly rate represents a "blended rate" (the average or median rate of all individuals involved in permit administration), or reflects the actual hourly salary of the persons involved in the specific project.

RESPONSE: The hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year. For example, an employee whose work week consists of 40 hours would have an hourly rate of his salary divided by 2,080 hours (40 hours per week times 52 weeks in year). The hourly rate used in the fee formula is the actual hourly rate for individuals involved in a specific permit and is not a "blended rate." Salary rates are available through the New Jersey Department of Personnel.

#### N.J.A.C. 7:14A-1.8(k)iiii

COMMENT 48: Safety-Kleen Corporation commented that the Department purports to multiply the base amount by the salary additive of 1.22. This "salary additive" reportedly represents "the employees' benefit time, such as vacation, sick leave, administrative leave, and holidays." To the extent that the hourly rate incorporates the full base salary, there is no additional extra pay to which a staffer is entitled because of this "downtime." The "downtime" merely affects the total number of hours at employee is available to work annually. Presumably, this "downtime" is already in the appropriate hourly rate. Furthermore, there is no basis on which to evaluate the statement that the additive "is based on the average number of sick, vacation, administrative and other benefit time taken by employees as coded in the Job Cost system."

COMMENT 49: E.I. Dupont De Nemours commented that to the extent that the hourly rate incorporates the full base salary, there should be no additional extra pay to which a staff is entitled because of such down time. For example, permittees should not be required to pay for training courses; the State should be responsible for payment of costs that assure their employees are competent. There are likely other down times that should not accrue to the owner/operator but rather it should accrue to the State.

COMMENT 50: The Chemical Industry Council of New Jersey commented that it is unreasonable to require any owner or operator to pay for the Department's employee's "down time" by use of a salary additive rate.

COMMENT 51: The New Jersey Department of Commerce and Economic Development commented that the salary additive rate is ex-

cessive and charges for time not spent on processing permits. They state that 22 percent of a 260 day work year amounts to 57 benefit days or 25 vacation days, 15 sick days, three administrative leave days, and 14 holidays.

**RESPONSE:** As stated in the Department's response to Comment 47 above, the hourly rate is calculated by dividing an employee's salary by the total number of hours to be worked in a calendar year. An average of the Department's reimbursable salary leave was calculated by the Department to be 22.0 percent. Therefore, an employee whose work week is 40 hours per week, or 2,080 hours per year, incurs 22.0 percent of 2,080 hours as reimbursable salary that will not actually be worked by the employee and therefore unavailable to be directly billed to a permittee. This employee then can only directly bill 1,622 hours, while using 458 hours in non-billable leave time (that is, down time). However, the Department must still pay for the employee's leave of 458 hours, and, therefore, incorporates this cost as part of the salary additive rate. This is appropriate and reasonable because the Department must recover all of its costs for the NJPDES permit program.

The commenters mistakenly assume that compensation for down time is already calculated into the hourly rate and that the hourly rate incorporates the full base salary. It does not. The down time not only affects the number of hours an employee is available to work annually but also his hourly rate. An alternative to utilizing a salary additive would be to calculate an hourly rate by dividing salary by the actual number of hours worked by an employee (excluding time off for vacation, sick days, holidays and other paid leave), which would simply result in a higher hourly rate, thus eliminating the need for a salary additive. Other paid leave includes training necessary to make employees more proficient at their duties, mandatory health and safety training and time for evaluation of work progress and performance through staff meetings and evaluation of individual employee performance. Thus the 57 benefit days estimated by one commenter is not limited to vacation, sick days and holidays. The Department has chosen to use an average flat salary additive as employees are entitled to varying paid leave time. The actual additive rate can only be calculated at the end of a fiscal year when all the necessary information is available. Since the Department requires operating capital, billing cannot be delayed an entire year, thus for any given fiscal year, the rate used is that calculated from the previous year's figures.

#### N.J.A.C. 7:14A-1.8(k)1iv

**COMMENT 52:** The Chemical Industry Council of New Jersey stated that it is unreasonable for the regulated parties to pay for the Department's employees' fringe benefits when it is difficult at this time for many private employers to afford health benefits such as prescription drug and dental care programs for their own employees.

**RESPONSE:** The New Jersey Water Pollution Control Act, at N.J.S.A. 58:10A-9, requires the Department to obtain all of its costs associated with the NJPDES permit program from the permittee. These regulations provide that a permittee be charged for the Department's cost of administering the permit. As the Department must pay for an employee's fringe benefits, this cost must be passed on to the permittee. Fringe benefit costs have been consistently charged to permittees since the inception of the NJPDES permit fee system in March, 1981.

#### N.J.A.C. 7:14A-1.8(k)1v

**COMMENT 53:** Safety-Kleen Corporation stated that the Department's proposed indirect cost rate of 134.24 percent is over four times the indirect rate of 30.84 percent for fiscal 1993 negotiated between the Department and the USEPA's Office of Cost Policy and Rate Negotiation (OCPRN), and memorialized in OMB Circular A-87 (published June 30, 1992). This is inconsistent with the Department's stated intent to utilize the indirect cost rate negotiated between the Department and OCPRN.

**RESPONSE:** As stated in the rule proposal, the Site Remediation Program's indirect rate used in the fee formula was developed in accordance with the State's Office of Management and Budget Circular Letter 86-17 and the Federal Office of Management and Budget Circular A-87. The Fiscal Year 1993 indirect cost rate of 134.24 percent is consistent with the guidelines set forth in these two circulars. The Federal Office of Management and Budget Circular A-87 sets forth the principles for determining reimbursable costs which are applicable to grants and contracts with the federal government. However, the indirect rate of 30.85 percent for Fiscal Year 1993 negotiated between the Department and OCPRN does not include overhead costs the Department incurs for each direct labor hour because the Federal Grants Program provides

direct funding for administrative salaries and overhead operating costs. Therefore, these costs are not included in the indirect cost pool of Office of Management and Budget Circular A-87 but must be included in the Department's fees to cover all of our costs. This accounts for the differences in the rates.

**COMMENT 54:** The New Jersey Health Products Council and the Chemical Industry Council of New Jersey objected to the inclusion of indirect costs in the NJPDES fee formula. The New Jersey Health Products Council expressed concern that the Department's participation in such activities as legislation, seminars, and attendance at hearings could lead to charges for case review even if these activities are unrelated to the case. The Chemical Industry Council objected to permittees' sharing in the costs associated with the offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services, and the Division of Personnel, since these offices operate for the benefit of the entire State.

**RESPONSE:** The fee formula reflects the total costs actually incurred by the Site Remediation Program, recognizing of course that the cost to the Site Remediation Program for every employee includes not only base salary, but also the added expense of fringe benefits, compensable down time and indirect costs such as the Department's overhead costs which are incurred for a common purpose. Therefore, the Department seeks reimbursement for the total costs expended on a project.

The Department's determination to have permit fees pay for the total costs of the NJPDES program is required by N.J.S.A. 58:10A-9 of the Water Pollution Control Act. Even though many of the activities covered in the indirect rate operate, at least in part, for the benefit of the entire State, all are necessary for the ultimate administration of the NJPDES permit program. There are no other State funds appropriated for the NJPDES permit program including for indirect costs.

#### N.J.A.C. 7:14A-1.8(k)2

**COMMENT 55:** Safety-Kleen Corporation commented that N.J.A.C. 7:14A-1.8(k)2 indicates that, in the future, the Department will develop the multipliers for the formula and simply publish notice of what they are in the New Jersey Register without subjecting the multipliers to public notice or comment.

**RESPONSE:** Changes to the various rates used in the fee formula at N.J.A.C. 7:14A-1.8(k) will be noticed in the New Jersey Register and will not be part of a separate rulemaking process. These notices will include the facts upon which the rates are based. However, these rates are based upon publicly available numbers that the Department does not have the discretion to adjust unilaterally. As a result, the Department would not solicit public comment because it would have no ability to change the rates in response to any such comment. Furthermore, as stated in the Department's response to Comment 36, above, the NJPDES-DGW fees are part of the appropriation process. Comments regarding certain rates used by the Department, therefore, can be raised during the appropriation process.

#### N.J.A.C. 7:14A-1.8(k)3

**COMMENT 56:** Chevron U.S.A. Inc. recommended that the regulations be revised to include a schedule of fees at N.J.A.C. 7:14A-1.8(k)3 for all responsible party actions rather than reimbursement for oversight costs. A set fee could be charged by the Department for various document submittals.

**RESPONSE:** The Department has determined that to insure that the State of New Jersey is reimbursed fully for the resources expended in the oversight of the remediation of a contaminated site (including any necessary ground water discharge permits), an hour for hour reimbursement program is appropriate. Based on past experience in implementing other statutory programs such as the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq., renamed the Industrial Site Recovery Act, (P.L. 1993, c.139), a per document schedule of fees can result in costs for individual documents that are disproportionate to the actual cost to the Department for review of that document. The Department generally receives permit applications that vary in degree of completeness and degree of complexity. Therefore, a flat or fixed fee structure would not ensure that all permit processing costs incurred by the Department would be recovered, thus creating a potential budgetary problem. The Department agrees, however, that where a permit activity requires a reasonably consistent level of effort from the Department, a fixed fee is appropriate. Therefore, these fee amendments at N.J.A.C. 7:14A-1.8(k)3 establish a fixed fee for permit applications and emergency permits.

COMMENT 57: The New Jersey Department of Commerce and Economic Development commented that rounding up the estimates of the fixed fees for emergency permits for ease of bookkeeping at N.J.A.C. 7:14A-1.8(k)3 exceeded estimated costs by five percent and is not authorized by statute.

RESPONSE: The Department believes its cost estimates for emergency permits and permit applications is reasonable and authorized by law. The fixed fees are estimates and were established for ease of administration and do not change with increases in Department costs. For example, the cost estimates made at the time of rule proposal will have increased by over five percent on rule adoption due to negotiated salary increases and normal performance increments in salary.

**N.J.A.C. 7:14A-1.8(k)4**

COMMENT 58: The Chemical Industry Council of New Jersey recommended that the rule specify at N.J.A.C. 7:14A-1.8(k)4 that the permittee be billed at regular intervals (that is, every six months).

RESPONSE: The Department intends to bill permittees on a quarterly basis but does not believe the exact billing frequency should be codified inasmuch as this is a new billing procedure for the Department, and the Department may need flexibility in order to respond to unforeseen circumstances in administering these fees. For example, the exact frequency of billing depends on a balance of billing costs versus necessary cash flow for program operations. The Department notes, however, that at a minimum, pursuant to N.J.S.A. 58:10A-9, it must bill annually.

COMMENT 59: E.I. Dupont De Nemours stated that an itemized statement of costs for sampling and contractor assistance should be provided. Aqualon Company stated that costs for sampling and contractor assistance should not include any markup.

RESPONSE: An itemized statement will be provided with the fee assessment and there is no separate markup taken by the Department.

Full text of the adoption follows:

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

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. Except as provided by (k) below, the Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or submit a NJPDES application.

2.-5. (No change.)

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

i. A permittee may only contest a fee imposed pursuant to (k) below based on the following:

(1) The Department has no factual basis to sustain the charges assessed in the fee;

(2) The activities for which the fee was imposed did not occur;

(3) The charges are false or duplicative; or

(4) The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

ii. A permittee may not contest a fee imposed pursuant to (k) below if the challenge is based on the following:

(1) An employee's hourly salary rate;

(2) The Department's salary additive rate, indirect rate, or fringe benefit rate; or

(3) Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

iii. A permittee objecting to a fee imposed pursuant to (k) below shall include the following in a request for a fee review:

(1) A copy of the bill;

(2) Payment of all uncontested charges, if not previously paid;

(3) A list of the specific fee charges contested;

(4) The factual questions at issue in each of the contested charges;

(5) The name, mailing address and telephone number of the person making the request;

(6) Information supporting the request or other written documents relied upon to support the request.

(7) (No change.)

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

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

i.-ii. (No change.)

10. (No change.)

11. If a factual dispute involving a fee imposed pursuant to (k) below cannot be resolved informally, a permittee may request an adjudicatory hearing on the matter pursuant to N.J.A.C. 7:14A-8.9.

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

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

1.-2. (No change.)

(e) (No change.)

(f) Except as provided by (k) below, the annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. (No change.)

(g) (No change.)

(h) Except as provided by (k) below, minimum fees are as follows:

1.-8. (No change.)

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

(k) The fee for discharges to ground water required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites is calculated by using the following formula:

1. Fee = A + B, where:

A = (Number of coded hours × Hourly Salary Rate) × Salary Additive Rate × Fringe Benefit Rate × Indirect Cost Rate.

B = any contractual costs or sampling costs of the Department directly attributable to a specific permittee.

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all staff members including without limitation managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The NJDEPE salary additive rate represents the prorated percentage of charges attributable to employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours × hourly salary rate) are multiplied by the calculated

percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

(2) The indirect rate includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30. The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Sampling costs and contractor expenses represent non-salary direct, site specific costs. These costs are billed directly as an add on to the formula.

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate for the fiscal year in the New Jersey Register. These rates are developed on an annual basis after the close of the fiscal year.

3. The Department will charge fixed and non-refundable fees for the following categories of activities:

i. The fee for an emergency permit is \$700.00 and is due and payable upon issuance.

ii. The fee for a permit application is \$350.00 and is due and payable with the application.

4. The Department will bill permittees at regular intervals throughout the life of the permit based on the formula in (k)1 above. The permittee shall submit the fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours worked by the staff member(s) and staff members' hourly salary rate.

Tables I and II (No change.)

(a)

## DIVISION OF FISH, GAME AND WILDLIFE

### Notice of Administrative Correction

#### Marine Fisheries

#### Size and Possession Limits

#### N.J.A.C. 7:25-18.1

**Take notice** that the Department of Environmental Protection and Energy has discovered an error in the current text of N.J.A.C. 7:25-18.1(a). The reference in that subsection to weakfish was deleted effective March 16, 1992 (see 24 N.J.R. 4(c) and 1113(a)), but was not deleted from the Code. Through this notice, published in accordance with N.J.A.C. 1:30-2.7, the error is corrected.

**Full text** of the corrected rule follows (deletion indicated in brackets [thus]):

7:25-18.1 Size and possession limits

(a) A person shall not purchase, sell, offer for sale, or expose for sale any codfish measuring less than 12 inches in length, bluefish [or weakfish] measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel, or porgy measuring less than seven inches in length.

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

## HEALTH

(b)

## DRUG UTILIZATION REVIEW COUNCIL

### List of Interchangeable Drug Products

#### Adopted Amendments: N.J.A.C. 8:71

Proposed: July 6, 1993 at 25 N.J.R. 2802(b).

Adopted: August 10, 1993 by the Drug Utilization Review Council, Henry T. Kozek, Secretary.

Filed: August 26, 1993 as R.1993 d.465, **with portions of the proposal not adopted but still pending.**

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

Effective Date: September 20, 1993.

Operative Date for Alprazolam tabs 0.5 mg Lederle: October 19, 1993.

Expiration Date: February 17, 1994.

#### Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: In opposition to Lederle's alprazolam tablets, The Upjohn Company informed the Council that Lederle received a "tentative FDA approval" for its alprazolam product and contends that there will be confusion if action is taken on Lederle's products before the effective date of the FDA approval.

In addition, Upjohn pointed out that the brand name Xanax 2 mg tablets are uniquely tri-scored to deliver doses of 0.5 mg or 1 mg that meet USP content uniformity and dissolution standards to the respective strengths of tablets. Upjohn suggests that Lederle's alprazolam 2 mg tablets do not duplicate the scoring of the Xanax tablets which could cause confusion in the marketplace.

Upjohn also requested an explanation on the incidence of GI side effects reported in Lederle's bioequivalency study.

RESPONSE: The Council confirmed that Lederle has received tentative FDA approval for its alprazolam product pending the expiration of the patent on October 19, 1993.

The Council also verified that Lederle's alprazolam 2 mg tablet is tri-scored to deliver 0.5 mg or 1 mg dosages.

In addition, Lederle addressed the incidence of GI side effects in subjects enrolled in its bioequivalency data. Lederle responded that the occurrence of these side effects were reported 40 hours after drug administration, isolated to Period 1 of the study, and added that it was unlikely the observations were related to the formulation since a commonly used excipient is the only difference from the brand. Given the

subjects living arrangements it is possible that the occurrence was due to a viral infection or disagreeable food. Therefore, the occurrence of the GI disturbances do not effect the bioequivalency conclusion of the biostudy nor substantiate a formulation problem.

Based on the bioequivalency data and additional information, the Council approved Lederle's alprazolam tablets to be operative on October 19, 1993.

COMMENT: In opposition to Watson's levodopa/carbidopa tablets, Dupont Merck Pharmaceutical Company provided information concerning the narrowing therapeutic window for treating Parkinson's disease over time and the potential problem of dyskinesias with small changes of levodopa dosage.

In addition, Dupont submitted a clinician's viewpoint on generic substitution for patients taking the brand, Sinemet.

RESPONSE: The Council deferred taking action on this product pending FDA approval.

#### Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on July 26, 1993. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. One person attended the hearing. Two comments were received as summarized above. The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Albuterol sulfate syrup 2mg/5ml	Watson
Alprazolam tabs 0.5mg	Lederle
Benzonatate caps 100 mg	Scherer
Clindamycin phosphate topical soln 1%	Copley
Cyclobenzaprine tabs 10 mg	West Point
Desipramine HCL tabs 25mg, 50mg, 75mg, 100mg	Eon
Fluphenazine decanoate injection 25mg/ml	Lymphomed
Fluphenazine HCL elixir 0.5mg/ml	Copley
Fluphenazine HCL injection 2.5mg/ml	Lymphomed
Indapamide tabs 2.5mg	Arcola
Indomethacin caps 25mg, 50mg	West Point
Indomethacin ER caps 75mg	West Point
Isoxsuprine HCL tabs 10mg, 20mg	Eon
Lidocaine HCL jelly 2%	Copley
Medroxyprogesterone acetate tabs 2.5mg, 5mg, 10mg	ESI-Ayerst
Medroxyprogesterone acetate tabs 2.5mg, 5mg, 10mg	Greenstone
Meprobamate tabs 200 mg	Eon
Novahistine DH elixir substitute	Barre-Nat'l
Nystatin cream 100,000u/gm	Taro
Robitussin AC syrup substitute	Barre-Nat'l
Sulindac tabs 150 mg, 200 mg	West Point
Sulindac tabs 150 mg, 200 mg	Mylan
Tolmetin sodium capsules 400 mg	Mylan

The following drugs were **not adopted but are still pending**:

Alprazolam tabs 0.25mg, 0.5mg, 1mg	Geneva
Atenolol tabs 50 mg, 100 mg	Genpharm
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Watson
Desipramine HCL tabs 25mg, 50mg, 75mg, 100mg	Eon
Hydroxyzine pamoate caps 25mg, 50mg	Eon
Imipramine HCL tabs 10mg, 25mg, 50mg	Eon
Levothyroxine sodium tabs 25mcg, 50mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 75mcg, 100mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 125mcg, 150mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 175mcg, 200mcg	Rhone-Poulenc Rorer
Levothyroxine sodium tabs 300mcg	Rhone-Poulenc Rorer
Metoprolol tartrate tabs 50mg, 100mg	Danbury
Naproxen tabs 250mg, 375mg, 500mg	Copley
Naproxen tabs 500mg	Genpharm
Naproxen tabs 500mg	Mutual
Pergonal injection substitute 75IU, 150IU	Lederle
Tetracycline HCL caps 250mg	Eon

### (a)

#### DRUG UTILIZATION REVIEW COUNCIL

##### List of Interchangeable Drug Products

##### Adopted Amendments: N.J.A.C. 8:71

Proposed: May 3, 1993 at 25 N.J.R. 1814(b).

Adopted: August 10, 1993 by the Drug Utilization Review Council, Henry T. Kozek, Secretary.

Filed: August 26, 1993 as R.1993 d.466, with portions of the proposal not adopted but still pending.

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

Effective Date: September 20, 1993.

Operative Date for Alprazolam tabs 0.25mg, 1mg, 2mg Lederle: October 19, 1993.

Expiration Date: February 17, 1994.

#### Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received **no comments pertaining to the products affected by this adoption**. See notice of adoption published elsewhere in this issue of the New Jersey Register for portions of products proposed at 25 N.J.R. 2802(b) for explanation of operative date for Lederle alprazolam products.

#### Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on May 24, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Five persons attended the hearing. No comments were offered. The hearing officer recommended that the decisions be made based upon available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Alprazolam tabs 0.25mg, 1 mg, 2 mg	Lederle
Tussi-organidin DM liq substitute	Mova

The following drugs were **not adopted but are still pending**:

Cyclobenzaprine tabs 10 mg	Duramed
Diltiazem tabs 30mg, 60mg, 90mg, 120mg	Mutual
Gemfibrozil tabs 600 mg	Lederle
Methocarbamol tabs 500 mg	Mutual
Minoxidil tabs 2.5 mg, 10 mg	Mutual
Naproxen sodium tabs 275 mg, 550 mg	Mutual
Naproxen sodium tabs 275 mg, 550 mg	Teva
Naproxen sodium tabs 275 mg, 550 mg	Purepac
Naproxen tabs 250 mg, 375 mg	Mutual
Naproxen tabs 250 mg, 375 mg, 500 mg	Teva
Naproxen tabs 250 mg, 375 mg, 500 mg	Lederle
Propoxyphene napsylate/APAP 50/325, 100/650	Mutual
Trazodone tabs 150 mg	Mutual

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 25 N.J.R. 2881(a).

### (b)

#### DRUG UTILIZATION REVIEW COUNCIL

##### List of Interchangeable Drug Products

##### Adopted Amendments: N.J.A.C. 8:71

Proposed: January 4, 1993 at 25 N.J.R. 55(a).

Adopted: August 10, 1993 by the Drug Utilization Review Council, Henry T. Kozek, Secretary.

Filed: August 26, 1993 as R.1993 d.467, with portions of the proposal not adopted but still pending.

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

Effective Date: September 20, 1993.

Expiration Date: February 17, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments were received regarding the adopted products.**

**Summary of Hearing Officer's Recommendations and Agency Responses:**

A public hearing on the proposed additions to the list of interchangeable drug products was held on February 1, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. Two comments were offered, as summarized in a previous issue of the New Jersey Register (see 25 N.J.R. 1221(a)). The hearing officer recommended that the decisions made be based upon the available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Theo-Organidin elixir substitute	Barre-Nat'l
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The following products were **not adopted but are still pending**:

Aminophylline tabs 100mg, 200mg	West-ward
Atenolol/chlorthalidone 50/25, 100/25	Mylan
Cortisone acetate tabs 25mg	West-ward
Entex LA tabs substitute	Trinity
Histalet Forte substitute tabs	Trinity
Hydrocortisone tabs 20mg	West-ward
Ibuprofen tabs 400mg, 600mg, 800mg	Invamed
Metoclopramide oral solution 5mg/5ml	Silarex
Nadolol tabs 20mg, 40mg, 80mg, 120mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Mylan
Naproxen tabs 250mg, 375mg, 500mg	Purepac
Nortriptyline caps 10, 25, 50, 75mg	Mylan
Oxtriphylline/guaifenesin elixir 100/50 per 5ml	Barre-Nat'l
Phenytoin suspension 125mg/5ml	Barre-Nat'l
Pindolol tabs 5mg, 10mg	Novopharm
Piroxicam caps 10mg, 20mg	Purepac
Prednisone tabs 5mg, 10mg, 20mg	West-ward
Rynatuss tabs substitute	Trinity
Singlet LA caps substitute	Trinity
Triazolam tabs 0.125mg, 0.25mg	Mylan

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 25 N.J.R. 1221(a), 1969(c) and 2882(a).

**(a)**

**DRUG UTILIZATION REVIEW COUNCIL**

**List of Interchangeable Drug Products**

**Adopted Amendments: N.J.A.C. 8:71**

Proposed: November 2, 1992 at 24 N.J.R. 4009(a).  
 Adopted: August 10, 1993 by the Drug Utilization Review Council, Henry T. Kozek, Secretary.  
 Filed: August 26, 1993 as R.1993 d.468, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).  
 Effective Date: September 20, 1993.  
 Expiration Date: February 17, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments were received regarding the adopted product.**

**Summary of Hearing Officer's Recommendations and Agency Responses:**

A public hearing on the proposed additions to the list of interchangeable drug products was held on November 23, 1992. Mark A. Strollo, R.Ph., M.S., served as the hearing officer. Seven persons attended the hearing. Six comments were offered, as summarized in a previous issue of the New Jersey Register (see 25 N.J.R. 580(b)). The hearing officer recommended that the decisions be made based upon the available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Timolol maleate tabs 5mg, 10mg, 20mg	Novopharm
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The following products were **not adopted but are still pending**:

Amoxapine tablets 25mg, 50mg, 100mg, 150mg	Danbury
Atenolol tablets 25mg	Danbury
Bromocriptine mesylate tabs 2.5mg	Danbury
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Purepac
Clorazepate dipotassium tablets 15 mg	Danbury
Clorazepate dipotassium tablets 3.75mg	Danbury
Clorazepate dipotassium tablets 7.5mg	Danbury
Desipramine HCl tabs 10mg, 25mg, 50mg	Danbury
Desipramine HCl tabs 75mg, 100mg, 150mg	Danbury
Entex PSE tablets substitute	Trinity
Fiorinal tablet substitute	Danbury
Fluphenazine HCl tabs 1mg, 2.5mg, 5mg, 10mg	Danbury
Gemfibrozil capsules 300mg	Danbury
Guaifenesin LA tablets 600mg	Trinity
Ibuprofen tablets 300mg	Danbury
Isosorbide dinitrate tablets 20mg, 30mg, 40mg	Danbury
Leucovorin calcium tablets 5mg, 25mg	Danbury
Levothyroxine sodium tabs 125mcg, 150mcg	Mova
Levothyroxine sodium tabs 200mcg, 300mcg	Mova
Levothyroxine sodium tabs 25mcg, 50mcg	Mova
Levothyroxine sodium tabs 75mcg, 100mcg	Mova
Loperamide capsules 2mg	Danbury
Loxapine succinate caps 5mg, 10mg, 25mg, 50mg	Danbury
Methylprednisolone tablets 4mg, 16mg	Danbury
Metoclopramide HCl tabs 5mg	Danbury
Metoprolol tabs 50mg, 100mg	Mutual
Minocycline HCl tablets 50mg, 100mg	Danbury
Nadolol tablets 40mg, 80mg, 120mg	Danbury
Pindolol tabs 5mg, 10mg	Lemmon
Pindolol tabs 5mg, 10mg	Mutual
Piroxicam caps 10mg, 20mg	Novopharm
Propranolol Br tablets 15mg	Danbury
Propoxyphene napsylate/APAP tablets 100/650	Danbury
Spironolactone tablets 25mg, 50mg, 100mg	Danbury
Spironolactone/HCTZ tablets 50/50	Danbury
Tolmetin sodium capsules 400mg	Danbury
Tolmetin sodium tablets 200mg	Danbury
Trazodone HCl tablets 150mg	Danbury

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 25 N.J.R. 580(b) and 2883(a).

**(b)**

**DRUG UTILIZATION REVIEW COUNCIL**

**List of Interchangeable Drug Products**

**Adopted Amendments: N.J.A.C. 8:71**

Proposed: March 1, 1993 at 25 N.J.R. 875(a).  
 Adopted: August 10, 1993 by the Drug Utilization Review Council, Henry T. Kozek, Secretary.  
 Filed: August 26, 1993 as R.1993 d.469, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).  
 Effective Date: September 20, 1993.  
 Expiration Date: February 17, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments were received.**

**Summary of Hearing Officer's Recommendations and Agency Responses:**

A public hearing on the proposed additions to the list of interchangeable drug products was held on March 29, 1993. Mark A. Strollo, R.Ph., M.S., served as hearing officer. One person attended the hearing. No comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," declined to adopt the products specified as "not adopted," and referred the products identified as "pending" for further study.

**HUMAN SERVICES**

**ADOPTIONS**

The following products and their manufacturers were **adopted**:

Alprazolam tabs 0.25mg, 0.5mg, 1mg, 2mg	Greenstone
Indomethacin supp. 50mg	G&W
Methazolamide tabs 25mg, 50mg	Geneva
Pindolol tabs 5mg, 10mg	Purepac
Triazolam tabs 0.125mg, 0.25mg	Greenstone
Tussi-Organidin DM liquid substitute	Bio-Pharm

The following products were **not adopted but are still pending**:

Benzoyl peroxide gel 5%, 10%	Glades/Stiefel
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Geneva
Diflunisal tabs 250mg, 500mg	Purepac
Guaifenesin SR tabs 600mg	Theraids
Guanabenz acetate tabs 4mg, 8mg	Zenith
Ketoprofen caps 50mg, 75mg	Geneva
Metoprolol tabs 50mg, 100mg	Geneva
Naproxen sodium tabs 275mg, 550mg	Geneva
Naproxen tabs 250mg, 375mg, 500mg	Geneva
Oxazepam caps 10mg, 15mg, 30mg	Geneva
Piroxicam caps 10mg, 20mg	Zenith
Procainamide HCl SR tabs 500mg, 750mg	Copley

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 25 N.J.R. 1970(c) and 2881(b).

**HUMAN SERVICES**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Independent Clinic Services**

**Independent Mental Health Clinics Participating in the Personal Care Assistant Program Under Contract to the Department of Human Services, Division of Mental Health and Hospitals**

**Adopted Amendments: N.J.A.C. 10:66-1.5, 1.6 and 3**

Proposed: July 19, 1993 at 25 N.J.R. 3058(a).  
Adopted: August 26, 1993 by William Waldman, Commissioner, Department of Human Services.  
Filed: August 27, 1993 as R.1993 d.475, **without change**.  
Authority: N.J.S.A. 30:4D-6b(3)(17); 30:4D-7, 7a, b, c; 30:4D-12; and 42 CFR 440.90 and 440.170(f).  
Effective Date: September 20, 1993.  
Expiration Date: December 15, 1993.

**Summary of Public Comments and Agency Responses:**  
**No public comments were received.**

**Full text** of the adoption follows:

- 10:66-1.5 Prior authorization
  - (a)-(b) (No change.)
  - (c) Prior authorization for services rendered by independent clinics is required as follows:
    - 1.-5. (No change.)
- 10:66-1.6 Scope of service
  - (a)-(o) (No change.)
  - (p) Other service rules are as follows.
    - 1.-4. (No change.)
    - 5. Personal care assistant services are health related tasks performed by a qualified individual in a recipient's home under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care.
      - i. (No change.)
      - ii. Personal care assistant services provided by a family member are not covered services.

iii. Personal care assistant services shall be provided only in instances where a family support system or other informal care giver is unavailable, inaccessible or inappropriate.

iv.-v. (No change.)

vi. An initial nursing assessment visit must be made to evaluate the need for personal care assistant service. Following the initial visit, a nursing reassessment visit may be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care. (See N.J.A.C. 10:66-3.3(n).)

vii. The personal care assistant shall enter progress notes on a weekly basis in the recipient's record, including the recipient's progress toward goals. These progress notes shall be signed and dated by the personal care assistant.

10:66-3 HCFA Common Procedure Coding System (HCPCS)

HCPCS CODE	DESCRIPTION	MAXIMUM FEE ALLOWANCE
Z1600 ZI	Individual Reimbursement Rate, P/Hour	13.02
Z1605 ZI	Group Reimbursement Rate, P/Hour	10.23
Z1610 ZI	Initial Nursing Assessment Visit, P/Visit	35.00
Z1611 ZI	Individual Reimbursement Rate, P/Half Hour	6.51
Z1612 ZI	Group Reimbursement Rate, P/Half Hour	5.12
Z1613 ZI	Nursing Reassessment Visit, P/Visit	35.00

**LABOR**

**(b)**

**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

**Occupational Safety and Health Review Commission Rules or Procedure**

**Readoption: N.J.A.C. 12:112**

Proposed: July 19, 1993 at 25 N.J.R. 3059(a).  
Adopted: August 27, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.  
Filed: August 27, 1993 as R.1993 d.474, **without change**.  
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-32 and 34:6A-42(c).

Effective Date: August 27, 1993.  
Expiration Date: August 27, 1998.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:112.

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF CONSUMER AFFAIRS STATE BOARD OF SHORTHAND REPORTING

##### State Board of Shorthand Reporting Rules

##### Readoption with Amendments: N.J.A.C. 13:43

##### Adopted Repeal: N.J.A.C. 13:43-2

Proposed: July 19, 1993 at 25 N.J.R. 3079(a).

Adopted: August 24, 1993 by the State Board of Shorthand Reporting, Charles Tramer, Jr., Chairman.

Filed: August 26, 1993 as R.1993 d.471, **without change**.

Authority: N.J.S.A. 45:15B-1.

Effective Date: August 26, 1993, Readoption

September 20, 1993, Amendments and Repeal

Expiration Date: August 26, 1998.

##### Summary of Public Comments and Agency Responses:

**No comments were received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:43.

**Full text** of the adopted amendments follows:

##### 13:43-1.1 State Board of Shorthand Reporting; description

(a) The Board of Shorthand Reporting created in the Division of Consumer Affairs of the Department of Law and Safety, pursuant to N.J.S.A. 45:15B-1 et seq., consists of six members appointed by the Governor, three of whom are certified shorthand reporters, two of whom are appointed by the Governor as public members, and the sixth being a member of the executive branch of government.

(b) The State Board of Shorthand Reporting is charged with the responsibility to license certified shorthand reporters and to punish persons violating provisions of the Shorthand Reporting Act, N.J.S.A. 45:15B-1 et seq., pursuant to the provisions of the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.

##### 13:43-1.2 Methods of operation

(a) The State Board of Shorthand Reporting elects, from its number, a chairman and a secretary/treasurer to preside over its activities and to assume those duties normally associated with those offices.

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

##### 13:43-3.1 Certification; examination

(a) Rules concerning examination and certification are:

1. (No change.)

2. An applicant for initial examination shall make written application under oath on the form furnished by the board. Such application must be filed with the board not less than three weeks before the announced date of examination and must be accompanied by a certified check or money order made payable to "State of New Jersey, Board of Shorthand Reporting", and a certification from the school of shorthand reporting attended of having passed a qualifying test of four-voice dictation at 225 words per minute, together with test papers and stenographic notes. If the board determines that an applicant is not qualified to take the examination it shall notify the applicant of that fact. Note: Fees are not refundable.

3.-4. (No change.)

5. Examinations shall be held at least once each year at such times and places as may be necessary in the opinion of the board, providing sufficient applications are on file with the board. The time and place of holding an examination shall be advertised by the board at least 30 days prior to the date of such examination.

i. Candidates shall be required to take an examination in shorthand reporting in the form prescribed by the board and shall be required to write shorthand from dictation, of such matter as may be selected by the board, under simulated reporting conditions at speeds ranging from 180 to 225 words a minute. Candidates may write shorthand with either pen, pencil or stenotype machine.

ii. Candidates shall be required to transcribe the dictated matter. Such transcription shall be done by each candidate on a typewriter furnished by the candidate or in such other manner as may be approved by the Board.

iii. Candidates may be required to read aloud such part of the dictated matter as the board may require upon prior notice to the candidates.

iv.-vi. (No change.)

6. Grading:

i. The board shall grade each candidate's examination paper on the basis of the candidate's ability to accurately transcribe notes, the time occupied in the transcription, accuracy relating to terminology, spelling and punctuation, and the general style of the transcript.

ii.-iii. (No change.)

##### 13:43-3.4 Conditional credit rule

(a) (No change.)

(b) In the event that a candidate fails to receive a passing grade in the one remaining section for six examinations immediately following the examination at which conditional credit was earned, the candidate shall forfeit the conditional credit and shall revert to the status of a new applicant, unless the candidate can demonstrate good cause why he or she should be given an additional opportunity to pass the remaining section.

##### 13:43-3.5 Change of address

A licensee of the Board of Shorthand Reporting shall notify the Board in writing of any change of name or address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address.

##### 13:43-3.6 Licensure without examination

An applicant for licensure who presents proof of having earned the National Certificate of Merit awarded by the National Court Reporters Association shall be deemed to have satisfied the examination requirement set forth in N.J.A.C. 13:43-3.1(a)5.

##### 13:43-3.7 Hearing to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

##### 13:43-3.8 Validity of rules if any portion declared invalid

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

### (b)

#### STATE ATHLETIC CONTROL BOARD

##### Gifts, Outside Activities, Lodging, Work Space

##### Adopted Repeal: N.J.A.C. 13:46-23.5

##### Adopted New Rules: N.J.A.C. 13:46-23A

Proposed: December 21, 1992 at 24 N.J.R. 4489(a).

Adopted: August 8, 1993 by the State Athletic Control Board,

Gerard Gormley, Chairman.

Filed: August 20, 1993 as R.1993 d.460, **without change**.

Authority: N.J.S.A. 5:2A-6(a); 5:2A-6.1; and 5:2A-7(c).

Effective Date: September 20, 1993.

Expiration Date: September 4, 1995.

##### Summary of Public Comments and Agency Responses:

The Executive Commission on Ethical Standards ("ECES") filed comments in response to this proposal.

COMMENT: The ECES commented that it is concerned that the proposed rules do not adequately address and meet the stated purpose

of "clarify[ing] the standards of ethical conduct imposed by N.J.S.A. 5:2A-6(a), the Department of Law and Public Safety Code of Ethics and N.J.S.A. 5:2A-6.1 on [State Athletic Control] Board ("Board") employees and appointees" (see 24 N.J.R. 4489). The ECES commented that more specifically, in the areas of official seating at regulated events, purchases of tickets to regulated events and disclosure of direct payments from licensed promoters to Board appointees, the proposed rules do not set or clarify standards of ethical conduct.

RESPONSE: The Board appreciates and shares the concerns of the ECES as evinced by its adoption of this subchapter. The Board respectfully rejects the ECES' comment, however, and maintains that the Board's adoption of this subchapter clarifies the ethical standards of conduct to which the Board must adhere. Moreover, the Board contends that its voluntary formulation of the new rules of this subchapter evinces a collective character and demonstrates a commitment to the mandate that the Board will "[p]romote the public confidence and trust in the regulatory process and the conduct of boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests" held in New Jersey (see N.J.S.A. 5:2A-2(b)).

Furthermore, as the ECES is aware, Governor Florio submitted an Executive Reorganization Plan with respect to the Department of Law and Public Safety which Plan became effective on January 31, 1993. As part of that Plan, the investigative, enforcement and appointed authority of the New Jersey Athletic Control board was transferred to the Attorney General to be exercised through the Division of Gaming Enforcement. One of the benefits which inured to the Board from this Plan was the appointment of full time Counsel. The Board and its Counsel have established and is committed to continue to maintain a candid dialogue on all issues concerning the regulation of combative sporting events held in New Jersey, including those issues which impact upon the conduct and duties of the Board. Therefore, the concerns of the ECES may be assuaged by the Board's adoption of this subchapter and the results of the Executive Reorganization Plan.

COMMENT: The ECES commented that there should be a regulation dealing with official seating at regulated events which regulation should ensure that proper seating is provided to Board members, employees and appointees by the promoter(s) of a regulated event while safeguarding against providing official seating to unauthorized persons. The ECES provided language of a rule to this end.

RESPONSE: The Board respectfully rejects the ECES' comment. The Board has provided and continues to provide to promoters of regulated events a list identifying designated Board officials who are assigned to perform duties for said regulated events. Not all of these board officials assigned to these regulated events, however, require seating. Additionally, all Board officials assigned to a particular event are properly and visibly credentialed. The Board officials who are seated in the immediate ringside areas have had and will continue to have immediate official duties in the supervision of that event. The safeguard against providing official seating to unauthorized persons is ensured by the Director of the Division of Gaming Enforcement's review and approval of the list of Board officials assigned to perform duties at a regulated event prior to the forwarding of said list to the promoter(s). Such a safeguard, therefore, need not be codified by regulation.

COMMENT: The ECES commented that the Board's regulations should include specific rules for the purchase of tickets for regulated events by Board members, employees and appointees and their immediate family members. The ECES provided language of a regulation to this end.

RESPONSE: The Board respectfully rejects the ECES' comment. The Board's new rule, N.J.A.C. 13:46-23A.2, as adopted, requires that "[a]ll Board members, employees, and appointees are subject to Department of Law and Public Safety Code of Ethics." That Code was revised on February 24, 1993, to require, in pertinent part, as follows:

G. For the purposes of this section, the term "regulated event" means an event, exhibition or activity to which admission is charged (a) which is licensed or otherwise regulated by an officer's or employee's agency or (b) the participants in which are licensed or otherwise regulated as participants by an officer's or employee's agency.

1. An officer or employee who (a) attends a regulated event for purposes other than to perform official duties or (b) obtains tickets for the attendance of others must purchase tickets to the regulated event under the same conditions and at the same prices that are available to the general public. If the officer or employee receives tickets from any other source for his or her own attendance or for the attendance of others, such officer or employee shall, within five business days of the

receipt of the ticket, disclose to the Department Ethics Officer the following information in writing: (a) the date, the location, and the nature of the event for which each ticket was received, and (b) the source from which each ticket was received.

2. No officer or employee subject to this section shall, directly or indirectly,

(a) accept cost-free seating at a regulated event unless in attendance to perform official duties or

(b) provide cost-free seating at a regulated event to any individual who is not an officer employee of the agency unless that individual will be in attendance for an official business purpose which requires the individual to be seated during the regulated event and the attendance of the individual has been approved, after consultation with the Department Ethics Officer, in writing by the Division Director or Agency Head prior to the individual's attendance at the regulated event. The above cited requirement is neither mandated by statute nor by ECES regulations. Accordingly, any additional requirements far exceed the necessity for State regulation and become unduly burdensome and discriminatory.

COMMENT: The ECES commented that N.J.A.C. 13:46-23A.5 should include additional language requiring that Board appointees disclose any direct payment received from a promoter licensed by the Board for any function or service performed for that promoter outside the State of New Jersey. The ECES provided language of a regulation to this end. The ECES further comments that such a disclosure requirement would provide a safeguard against the appearance of a conflict on the part of a Board appointee who is assigned to a regulated event but who has received a direct payment for a service or function from a promoter licensed for that event.

RESPONSE: The Board respectfully rejects the ECES' comment. The issues concerning disclosure of payments to appointees from promoters for events in other jurisdictions no longer involve the Board. The various referees and other officials previously appointed by the Board are now appointed by the Office of the Attorney General through the Division of Gaming Enforcement. Moreover, pursuant to N.J.A.C. 13:46-9.17(c), promoters are prohibited from making payments of compensation directly to inspectors assigned to regulated events. The foregoing ensures the safeguard recommended by the ECES without warranting regulatory codification.

Full text of the adoption follows:

13:46-23.5 (Reserved)

#### SUBCHAPTER 23A. GIFTS, OUTSIDE ACTIVITIES, LODGING, WORKSPACE

##### 13:46-23A.1 Definitions

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

"Agent" means any person appointed by the State Athletic Control Board pursuant to N.J.S.A. 5:2A-5(b).

"Board" means the State Athletic Control Board.

"Employee" means the Commissioner, Deputy Commissioners, Chief Inspector, inspectors, and any other person holding full or part-time office or employment with the Board who is compensated for his or her services by the State of New Jersey.

"Appointee" means a referee, judge, timekeeper, or physician or any other individual who is compensated for services performed on behalf of the Board by means of disbursements by the Board from funds provided to it by a check issued by the promoter to the State of New Jersey and who receives no other compensation from the State of New Jersey.

"Licensee" means a promoter, matchmaker, manager, second, boxer, wrestler, kick boxer or other athletic sports combatant, an announcer, doorman, box office employee, and any club, corporation, organization or association licensed by the Board.

"Non-New Jersey state athletic regulatory agency" means a state agency having the authority to regulate an "out-of-State athletic event" as defined in this section.

"Out-of-State athletic event" means any event which, if held in New Jersey, would be a "regulated event" as defined herein.

"Regulated event" means any public boxing, wrestling, kick boxing and combative sports exhibition or any other event subject to regula-

## ADOPTIONS

## LAW AND PUBLIC SAFETY

tion by the Boxing, Wrestling and Combative Sports Act, N.J.S.A. 5:2A-1 et seq.

### 13:46-23A.2 Department Code of Ethics

All Board members, employees, and appointees are subject to Department of Law and Public Safety Code of Ethics.

### 13:46-23A.3 Acceptance of gift, favor, service or other thing of value by Board member or employee

(a) No Board member or employee shall solicit, receive or agree to receive, whether directly or indirectly, any gift, favor, service or other thing of value whatsoever, including, but not limited to, tickets, travel expenses, meals, the use of hotel rooms or other gratuities, from:

1. Any licensee of, or applicant for licensure by, the Board;
2. Any licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq.; or
3. The owner of any premises at which a regulated event is held.

(b) Any offer of a gift, favor, service or any other thing of value as defined in (a) above must be reported, in writing, within 48 hours of the offer, to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the gift, favor, service or other thing of value may be accepted.

(c) No Board member or employee shall accept, receive or use a casino meal ticket under any circumstances associated with a regulated event.

### 13:46-23A.4 Acceptance of gift, favor, service or other thing of value by appointee

(a) No appointee shall solicit, receive or agree to receive, whether directly or indirectly, any gift, favor, service or other thing of value whatsoever, including, but not limited to, tickets, travel expenses, meals, the use of hotel rooms, or other gratuities, from any licensee of, or applicant for licensure by, the Board, any licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq., or the owner of any premises at which a regulated event is held:

1. In connection with a regulated event to which the appointee has been assigned; or
2. Under circumstances from which it might be reasonably inferred that the gift, favor, service or other thing of value was given or offered or solicited for the purposes of influencing or rewarding the appointee's performance of his or her duties or was given, offered or solicited because of the appointee's status as an official of the Board.

(b) Any offer of a gift, favor, service or other thing of value as defined in (a) above must be reported, in writing, within 48 hours to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the gift, favor, service or other thing of value may be accepted.

### 13:46-23A.5 Outside activity related to sanctioning bodies, licensees, non-New Jersey state regulatory agencies

(a) No Board member, employee or agent, including the Commissioner, shall hold an office or position in any body, organization, association or federation which is established for the purpose of sanctioning boxing, wrestling, kick boxing, and combative sports exhibitions, events, performances and contests in this State or other states. See N.J.S.A. 5:2A-6.1.

(b) Any employee who is requested to serve in any compensated or uncompensated role on behalf of a sanctioning body that is not otherwise prohibited by (a) above, such as a supervisor in connection with an out-of-State athletic event or as a speaker at an event sponsored by a sanctioning body, or is requested to serve in any compensated or uncompensated role whatsoever on behalf of a licensee of, or applicant for licensure by, the Board or on behalf of a non-New Jersey state athletic regulatory agency, or on behalf of a licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq., or on behalf of

the owner of any premises at which a regulated event is held, shall obtain the approval of the Board prior to performing any such role. Requests for approval of such activity shall be submitted in writing to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the activity may be permitted and shall advise the Board accordingly.

(c) Any Board member who is requested to serve in any role as described by (b) above shall advise the other members of the Board and obtain any advisory opinion from the Department of Law and Public Safety Ethics Officer as to the propriety of such service.

(d) Nothing in this section is intended to require appointees to obtain the Board's approval to officiate or to provide medical services on behalf of a sanctioning body or non-New Jersey state athletic regulatory agency in connection with an athletic event outside the State of New Jersey.

### 13:46-23A.6 Work space, lodging for employees, judges and referees

(a) Notwithstanding any prohibition imposed by N.J.A.C. 13:46-23A.3 or 23A.4, where the Board determines it is necessary for the efficient performance of duties by the Board or any of its employees assigned to a particular regulated event, the Board may require the promoter:

1. To ensure that an appropriate work space, acceptable to the Commissioner, is provided on the premises where the regulated event is held; and/or

2. To provide sleeping quarters, on the premises, or at a reasonable distance therefrom, for Board members attending in their official capacity and employees who have been assigned to the regulated event and whose names are identified by the Board on a list provided to the promoter prior to the event. The Board shall maintain a record of the names of the employees and Board members provided with sleeping quarters, the location of the rooms to which they have been assigned, and the dates the rooms were used.

(b) Notwithstanding any prohibition imposed by N.J.A.C. 13:46-23A.3 or 23A.4, where the Board determines it is necessary for the efficient performance of duties by judges and referees assigned to a particular regulated event, it may permit the promoter:

1. To pay the reasonable travel costs of judges and referees recommended by the sanctioning body and assigned by the Commissioner to officiate the regulated event and who must travel from outside the State of New Jersey to officiate the regulated event; and/or

2. To provide all judges and referees assigned to the regulated event by the Commissioner with meals and sleeping quarters on the premises or at a reasonable distance therefrom.

(c) Prior to the regulated event, the Board shall provide a list to the promoter of the judges and referees for whom expenses, rooms, or meals are permitted under (b) above. The Board shall maintain a record of the names of the judges and referees, the meals provided, and the location of the rooms to which the judges and referees have been assigned, and the dates on which the rooms were used.

## (a)

### DIVISION OF STATE POLICE

#### Motor Carrier Safety Regulations

#### Readoption with Amendments: N.J.A.C. 13:60

Proposed: July 19, 1993 at 25 N.J.R. 3091(a).

Adopted: August 26, 1993 by Colonel Justin J. Dintino,

Superintendent, Division of State Police.

Filed: August 26, 1993 as R.1993 d.472, **without change.**

Authority: N.J.S.A. 39:5B-32.

Effective Date: August 26, 1993, Readoption  
September 20, 1993, Amendments  
Expiration Date: January 16, 1997.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**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:

**13:60-1.1 Purpose**

This chapter and appendix establishes rules and regulations concerning the qualifications of motor carrier operators and vehicles engaged in interstate or intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone, which substantially conform to the requirements established pursuant to sections 401 to 404 of the "Surface Transportation Assistance Act of 1982," Pub. L. 97-424 (49 U.S.C. App. §§2301-2304) and the Federal "Motor Carrier Safety Act," Pub. L. 98-554 (49 U.S.C. App. §2501 et seq.), by adopting the "Federal Motor Carrier Safety Regulations" as adopted at Title 49, Code of Federal Regulations, Parts 390 through 397 (49 C.F.R. Parts 390 through 397) and Appendices D, E, F, and G to Subchapter B—Federal Motor Carrier Safety Regulations at Title 49, Code of Federal Regulations, Chapter III (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G).

**13:60-1.2 Application**

(a) The provisions of this chapter and appendix are applicable to every motor carrier and every person, including drivers, agents, employees and representatives, involved or in any manner related to:

1. The transportation in a commercial motor vehicle of any cargo in interstate or intrastate commerce;
2. The operation of a commercial motor vehicle, with or without a cargo, in interstate or intrastate commerce or wholly within a municipality or a municipality's commercial zone;
3. The transportation in any motor vehicle in intrastate commerce of materials determined by the Secretary of the United States Department of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and which materials are transported in a quantity requiring hazardous material(s) placarding under Federal Hazardous Materials Regulations (49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, and 180);
4. The operation of a commercial motor vehicle, with or without a cargo, displaying hazardous material(s) placarding in intrastate commerce or wholly within a municipality or a municipality's commercial zone;
5. The transportation in a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, subsections a, b, c, and d, in intrastate commerce of any non-hazardous material(s) cargo;
6. Subject to any prevailing requirements of paragraph 3. of this subsection, the operation of a commercial motor vehicle, as defined at N.J.S.A. 39:3-10.11, subsections a, b, c, and d, in intrastate commerce or wholly within a municipality or a municipality's commercial zone.

(b) All officers, agents, representatives, drivers and employees of motor carriers involved or concerned with the management, maintenance, operation or driving of any motor vehicle or vehicles, subject to these regulations, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter and appendix.

(c) The provisions of this chapter and appendix shall not apply to a farm vehicle registered in this State pursuant to the provisions of N.J.S.A. 39:3-24 and 39:3-25, provided the farm vehicle is operating:

1. In intrastate commerce;
2. Is used or operated wholly within a municipality or a municipality's commercial zone;
3. Is not transporting hazardous material(s) in a quantity requiring hazardous material(s) placarding; and
4. Is not displaying hazardous material(s) placarding.

**13:60-1.3 Definitions and general requirements**

(a) For the purposes of this chapter and appendix, and unless another definition is specified, the terms set forth below are defined as follows:

"Hazardous material(s)" shall mean materials determined by the Secretary of the United States Department of Transportation to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.) and are transported in a quantity requiring hazardous material(s) placarding under Federal Hazardous Materials Regulations as adopted by the Commissioner of Transportation at N.J.A.C. 16:49.

"Interstate commerce" shall mean trade, traffic, or transportation in the United States which is between a place in this State and a place outside of this State (including a place outside of the United States) or is between any two other places (including a place outside of the United States) passing through this State.

"Intrastate commerce" shall mean trade, traffic, or transportation in this State which is not "interstate commerce".

(b) Throughout this chapter and appendix there are references to rules and regulations adopted by the Secretary of Transportation of the United States of America or the Commissioner of Transportation of the State of New Jersey. For convenience, those rules and regulations may be cited in this chapter and appendix in one or all of the following forms:

1. "Federal Motor Carrier Safety Regulations":
  - i. Code of Federal Regulations, Parts 390 through 397, Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49;
  - ii. 49 C.F.R. Parts 390 through 397 (inclusive);
  - iii. 49 C.F.R. Part(s), Section(s), §, or §§; or
  - iv. Federal Motor Carrier Safety Regulations;
2. "Appendix or Appendices to Federal Motor Carrier Safety Regulations":
  - i. Code of Federal Regulations, Appendix or Appendices to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49, or
  - ii. 49 C.F.R. Ch. III, Subch. B, App.;
  - iii. Appendix to Subchapter B;
  - iv. Appendix or Appendices to Federal Motor Carrier Safety Regulations;
3. "Hazardous Materials Regulations":
  - i. Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, 180, Subchapter C—Hazardous Materials Regulations, Chapter I—Research and Special Programs Administration, U.S. Department of Transportation, Title 49;
  - ii. 49 C.F.R. Parts 171, 172, 173, 174, 177, 178, 179, 180; or
  - iii. Hazardous Materials Regulations.

(c) This chapter establishes minimum standards of compliance concerning the qualifications of motor carrier operators and vehicles, operating in this State in interstate or intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone. Therefore, in the event of a conflict between this chapter and appendix and any other State regulation, except as otherwise provided by statute or law, the stricter, more stringent standard shall apply and govern.

(d) Whenever the term "interstate" is used in the Federal regulations adopted herein it shall, for the purpose of these regulations, mean or include both "interstate" and "intrastate" transportation in commerce and those vehicles used or operated wholly within a municipality or a municipality's commercial zone except where stated otherwise.

(e) If any section, subsection, clause or provision of this chapter and appendix shall be adjudged unconstitutional or to be ineffective or invalid in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective or is not invalid, it shall be valid and effective and no other section, subsection, clause or provision of this chapter and appendix shall, on account thereof, be deemed unconstitutional, invalid or ineffective, and the inapplicability or invalidity of any section, subsection, clause or provision of this chapter and appendix in any one or more instances or under any

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one or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstance. To this end, the provisions of this regulation are declared to be severable.

(f) As new Federal publications reflecting amendments to 49 C.F.R. Parts 390-397 or 49 C.F.R. Ch. III, Subch. B, App. D, E, F, or G become available, this chapter and appendix may be amended by the Superintendent of State Police, in consultation with the Division of Motor Vehicles and the Department of Transportation pursuant to the provisions of N.J.S.A. 39:5B-32b.

(g) The provisions and requirements of these regulations as well as the Federal regulations adopted herein by reference, and made a part hereof as if set forth in full, are applicable to all motor vehicles, as defined in this chapter and appendix, engaged in transportation in interstate and intrastate commerce or operating in interstate and intrastate commerce or used or operated wholly within a municipality or a municipality's commercial zone as well as all motor vehicles engaged in transportation of hazardous material(s) in a quantity requiring hazardous material(s) placarding unless specifically stated otherwise.

### 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. 13:60-2 and herein, shall be enforced under the provisions of 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" (49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G), revised as of October 1, 1992, and referenced and adopted herein, may be purchased from the sources listed below.

Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402  
(202) 783-3238

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 "Federal Motor Carrier Safety Regulations" (49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G), revised as of October 1, 1992, and referenced and adopted herein are 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 "Federal Motor Carrier Safety Regulations" (49 C.F.R. Parts 390-397) and "Appendices to Federal Motor Carrier Safety Regulations" (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G), revised as of October 1, 1992, and referenced and adopted herein are available for review, during regular business hours, at:

Division of State Police  
Division Headquarters  
Office of Hazardous Materials Transportation,  
Compliance and Enforcement  
River Road, P.O. Box 7068  
West Trenton, New Jersey 08628-0068

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 2582 or 2586.

### 13:60-1.6 Assistance

For general assistance and procedural questions in matters related to the "Federal Motor Carrier Safety Regulations" and "Appendices to Federal Motor Carrier Safety Regulations", as adopted herein, contact:

Bureau of Motor Carrier Safety  
Federal Highway Administration  
U.S. Department of Transportation  
25 Scotch Road, Second Floor  
Trenton, N.J. 08625  
(609) 989-2276

For assistance in matters related to enforcement of the regulations adopted herein, contact:

Office of Hazardous Materials Transportation  
Compliance and Enforcement  
New Jersey Division of State Police  
Division Headquarters  
River Road, P.O. Box 7068  
West Trenton, N.J. 08628-0068  
(609) 882-2000, extension 2582 or 2586

Note, however, statements or opinions provided by the Division of State Police do not constitute legal advice.

### 13:60-2.1 Code of Federal Regulations, Parts and Appendices adopted by reference

(a) The Superintendent of the Division of State Police, pursuant to N.J.S.A. 39:5B-32, hereby incorporates, by reference, the following portions of the Code of Federal Regulations: Parts 390 through 397, Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, inclusive, (excluding Sections 391.69, 393.81 and 397.3) revised as of October 1, 1992, (49 C.F.R., Parts 390 through 397, inclusive); and Appendices D, E, F, and G to Subchapter B—Federal Motor Carrier Safety Regulations, Chapter III—Federal Highway Administration, Department of Transportation, Title 49—Transportation, revised as of October 1, 1992, (49 C.F.R. Ch. III, Subch. B, App. D, E, F, and G). These Parts and Appendices are detailed in the Appendix to the within Regulations regarding Motor Carrier Safety Regulations.

(b) The Parts and Appendices adopted are summarized below.  
1. Part 390, Federal Motor Carrier Safety Regulations: General. (A revision is made to Section 390.5; and modifications are made to Sections 390.21 and 390.23.)

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2. Part 391, Qualifications of Drivers. (Section 391.69 is omitted; revisions are made to Sections 391.49(a), 391.71(a) and (b), and 391.85; and modifications are made to Sections 391.11, 391.21, 391.23, 391.31, 391.35, 391.41, 391.61 and 391.93.)

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. (A modification is made to this Part.)

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; and new Subparts are included.)

9. Appendix D to Subchapter B—Table of Disqualifying Drugs and Other Substances, Schedule I.

10. Appendix E to Subchapter B—Tables of Disqualifying Drugs and Other Substances, Schedules II through V.

11. Appendix F to Subchapter B—Commercial Zones, Sections 1, 6, 11, 12, 43, and 44.

12. Appendix G to Subchapter B—Minimum Periodic Inspection Standards.

#### APPENDIX TO THE REGULATIONS REGARDING MOTOR CARRIER SAFETY REGULATIONS

This Appendix to the regulations regarding Motor Carrier Safety Regulations details the adopted portions of Title 49, Code of Federal Regulations, by Part, Subpart, Section, or Appendix. All Parts, Subparts, Sections, or Appendices are listed by letter or number and by title to identify content for the reader. Exceptions, revisions, or modifications are stated within the appropriate Parts, Sections, or Appendices. Omitted sections are identified with the notation "(This Section intentionally omitted.)"

#### 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 390.5 is revised to state the following:)

"Commercial Motor Vehicle—Intrastate Commerce" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate commerce:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 390.7 Rules of Construction.

##### Subpart B—General Requirements and Information

Section 390.9 State and local laws, effect on.

Section 390.11 Motor carrier to require observance of driver regulations.

Section 390.13 Aiding or abetting violations.

Section 390.15-390.17 (Reserved)

Section 390.19 Additional equipment and accessories.

Section 390.21 Marking of commercial motor vehicles.

(Section 390.21 is modified to state the following:)

A commercial motor vehicle operated in intrastate commerce shall be subject to the provisions of N.J.S.A. 39:4-46.

Section 390.23 Relief from regulations.

(Section 390.23 is modified to state the following:)

The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey.

(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Regulatory Commissioners; or

(b) Commercial motor vehicles which are owned, operated or leased by a public, quasi-public or private entity in this State and which are or will be operated under a contract to the State of New Jersey or a governmental or quasi-governmental entity thereof.

Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.)

Section 390.25 Extension of relief from regulations—emergencies.

Section 390.27 Locations of regional motor carrier safety offices.

Section 390.29 (Reserved)

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.

Section 391.3 (Reserved)

Section 391.5 (Reserved)

Section 391.7 (Reserved)

##### Subpart B—Qualifications and Disqualifications of Drivers

Section 391.11 Qualifications of drivers.

(Section 391.11 is modified to state the following:)

The provisions of Section 391.11(b)(1) do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.15 Disqualification of drivers.

##### Subpart C—Background and Character

Section 391.21 Application for employment.

(Section 391.21 is modified to state the following:)

The provisions of Section 391.21 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.23 Investigation and inquiries.

(Section 391.23 is modified to state the following:)

The provisions of Section 391.23 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does

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not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.25 Annual review of driving record.

Section 391.27 Record of violations.

### Subpart D—Examinations and Tests

Section 391.31 Road test.

(Section 391.31 is modified to state the following:)

The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.33 Equivalent of road test.

Section 391.35 Written examination.

(Section 391.35 is modified to state the following:)

The provisions of Section 391.35 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.37 Equivalent of written examinations.

### Subpart E—Physical Qualifications and Examinations

Section 391.41 Physical qualifications for drivers.

(Section 391.41 is modified to state the following:)

A driver engaged in intrastate commerce, excluding the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard, who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, but who is not physically qualified to drive under Section 391.41(b) of this Subchapter may continue to drive a motor vehicle.

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 is revised to state the following:)

(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 this section, (49 C.F.R. §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 391.61 is modified to state the following:)

The provisions of Section 391.61 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, and does not transport hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. 172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

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.

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Section 391.69 Drivers operating in Hawaii. (This Section intentionally omitted.)

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 these regulations as of January 1, 1991, and who possesses a valid New Jersey commercial driver's license (CDL), 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 the Hazardous Materials Regulations (49 C.F.R. §173.120(b)), 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 these regulations as of January 1, 1991, but who is not physically qualified to drive under Section 391.41(b) of these regulations and who is otherwise qualified under N.J.S.A. 39:3-10.9 et seq. to drive a motor vehicle, may continue to drive a motor vehicle provided that person is in possession of a valid New Jersey driver's 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 these regulations), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids as defined in the Hazardous Materials Regulations (49 C.F.R. §173.120(b)), 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 391.85 is revised to state the following:)

Intrastate Commerce—"Commercial Motor Vehicle" or "CMV" means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(c) If the vehicle is designed to transport 16 or more passengers including the driver;

(d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or

(e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.87 Notification of test results and record keeping.

Section 391.89 Access to individual test results of test findings.

Section 391.93 Implementation schedule.

(Section 391.93 is modified to state the following:)

Motor carriers engaged in intrastate commerce, excluding motor carriers transporting hazardous material(s) requiring hazardous material(s) placarding, are required: (1) to implement a controlled substance testing program for "drivers subject to testing" which meets the requirements of this Subpart no later than July 1, 1994;

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(2) A random and "non-suspicious based post-accident testing" pursuant to subsection d. of this section no later than December 31, 1994.

- Section 391.95-391.115 (No change.)
- Section 391.117 Disqualification.
- Sections 391.119-391.123 (No change.)

**PART 392 DRIVING OF MOTOR VEHICLES**

Subparts A-C (No change.)

Subpart D—Use of Lighted Lamps and Reflectors

- Section 392.30 Lighted lamps; moving vehicles.
- Section 392.31 Lighted lamps; stopped or parked vehicles.
- Section 392.32 Upper and lower head-lamp beams.
- Section 392.33 Obscured lamps or reflectors.

Subparts E-G (No change.)

**PART 393 PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION**

Subpart A (No change.)

Subpart B—Lighting Devices, Reflectors, and Electrical Equipment

- Section 393.9 Lamps operable.
- Section 393.11 Lighting devices and reflectors.
- Section 393.17 Lamps and reflectors—combinations in drive-away-towaway operation.
- Sections 393.19-393.33 (No change.)

Subparts C-F (No change.)

Subpart G—Miscellaneous Parts and Accessories

- Sections 393.75-393.80 (No change.)
- Section 393.81 Horn. (This Section intentionally omitted.)
- Section 393.82 Speedometer.
- Section 393.83 Exhausts system.
- Section 393.84 Floors.
- Section 393.85 (Reserved)
- Sections 393.86-393.94 (No change.)

Subparts H-J (No change.)

**PART 394 NOTIFICATION AND REPORTING OF ACCIDENTS**

(The Sections in the Part are modified by the following:)

The provisions of Part 394 do not apply to motor carrier(s) engaged in intrastate commerce, except as otherwise provided herein. Motor carrier(s) engaged in the transportation of hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), are subject to, and required to comply with, the provisions of Part 394.

- Sections 394.1-394.20 (No change.)

**PART 395 HOURS OF SERVICE OF DRIVERS**

- Section 395.1 Scope of rules in this part.
- Section 395.2 Definitions
- Section 395.3 Maximum driving and on-duty time.
- Section 395.7 (Reserved)
- Section 395.8 Driver's record of duty status.
- Section 395.10 (Reserved)
- Section 395.11 (Reserved)
- Section 395.12 (Reserved)
- Section 395.13 Drivers declared out-of-service.
- Section 395.15 Automatic on-board recording devices.

**PART 396 INSPECTION, REPAIR AND MAINTENANCE**

- Sections 396.1-396.13 (No change.)
- Section 396.15 Driveaway-towaway operations and inspections.
- Section 396.17 Periodic inspection.
- Section 396.19 Inspector qualifications.
- Section 396.21 Periodic inspection record keeping requirements.
- Section 396.23 Equivalent to periodic inspection.
- Section 396.25 Qualifications of brake inspectors.

**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 397.3 State and local laws, ordinances, and regulations. (This Section intentionally omitted.)
- Sections 397.5-397.19 (No change.)

Subparts B-C (Reserved)

Subpart D—Routing of Class 7 (Radioactive) Materials

- Section 397.101 Requirements for motor carriers and drivers.
- Section 397.103 Requirements for State routing designations.

Subpart E—Preemption Procedures

- Section 397.201 Purpose and scope of the procedures.
- Section 397.203 Standards for determining preemption.
- Section 397.205 Preemption application.
- Section 397.207 Preemption notice.
- Section 397.209 Preemption processing.
- Section 397.211 Preemption determination.
- Section 397.213 Waiver of preemption application.
- Section 397.215 Waiver notice.
- Section 397.217 Waiver processing.
- Section 397.219 Waiver determination and order.
- Section 397.221 Timeliness.
- Section 397.223 Petition for reconsideration.
- Section 397.225 Judicial review.

**APPENDIX D TO SUBCHAPTER B—TABLE OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULE I.****APPENDIX E TO SUBCHAPTER B—TABLES OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULES II THROUGH V.****APPENDIX F TO SUBCHAPTER B—COMMERCIAL ZONES**

- Section 1 New York, N.Y.
- Section 6 Philadelphia, Pa.
- Section 11 Commercial zones of municipalities in New Jersey within 5 miles of New York, N.Y.
- Section 12 Commercial zones of municipalities in Westchester and Nassau Counties, N.Y.
- Section 43 Definitions.
- Section 44 Commercial zones determined generally, with exceptions.

**APPENDIX G TO SUBCHAPTER B—MINIMUM PERIODIC INSPECTION STANDARDS.**

## TRANSPORTATION

(a)

### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

#### Speed Limits

#### Route N.J. 41 in Gloucester, Camden and Burlington Counties

#### Adopted Amendment: N.J.A.C. 16:28-1.33

Proposed: July 6, 1993 at 25 N.J.R. 2833(a).

Adopted: August 6, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: August 19, 1993 as R.1993 d.456, **without change**.

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

Effective Date: September 20, 1993.

Expiration Date: May 7, 1998.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows:

16:28-1.33 Route 41

(a) The rate of speed designated for State highway Route 41 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Gloucester County:

(1) Deptford Township:

(A) Zone 1: 50 miles per hour between Egg Harbor Road (County Road 630)—Delsea Drive (Route N.J. 47) and County House Road (County Road 621) (approximate mileposts 0.00 to 1.56); thence

(B) Zone 2: 45 miles per hour between County House Road and Clements Bridge Road (County Road 544) (approximate mileposts 1.56 to 3.86); thence

(C) Zone 3: 35 miles per hour between Clements Bridge Road and the Borough of Runnemede, Township of Gloucester-Township of Deptford corporate line (approximate mileposts 3.86 to 4.12).

ii. In Camden County:

(1) Borough of Runnemede-Gloucester Township:

(A) Zone 1: 35 miles per hour between the Township of Deptford-Borough of Runnemede, Gloucester Township corporate line and Read Avenue (approximate mileposts 4.12 to 4.70); thence

(B) Zone 2: 30 miles per hour between Read Avenue and Route N.J. 168 (Black Horse Pike) (approximate mileposts 4.70 to 4.95) (Note: The roadway between Route N.J. 168 and Route N.J. 70 in Cherry Hill Township is under county jurisdiction; however, the roadway is signed Temporary Route N.J. 41 (approximate mileposts 4.95 to 10.74); thence

(2) Cherry Hill Township:

(A) Zone 1: 45 miles per hour from the roadway between the Borough of Haddonfield-Township of Cherry Hill corporate line and Route 70 (Marlton Pike) under county jurisdiction; however, the roadway is signed as Temporary Route N.J. 41 (approximate mileposts 9.75 to 10.74); thence

(B) Zone 2: 45 miles per hour between Route N.J. 70 (Marlton Turnpike) and the Maple Shade Township-Cherry Hill Township corporate line (approximate mileposts 10.74 to 13.10).

iii. In Burlington County:

(1) Maple Shade Township:

(A) 45 miles per hour between the Cherry Hill Township-Maple Shade Township corporate line and the northerly terminus of Route N.J. 41 at Kings Highway (County Road 611) (approximate mileposts 13.10 to 13.98).

(b)

### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

#### Speed Limits

#### Route N.J. 169 in Hudson County

#### Adopted Amendment: N.J.A.C. 16:28-1.92

Proposed: July 6, 1993 at 25 N.J.R. 2834(a).

Adopted: August 6, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: August 19, 1993 as R.1993 d.457, **without change**.

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

Effective Date: September 20, 1993.

Expiration Date: May 7, 1998.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows:

16:28-1.92 Route 169

(a) The rate of speed designated for the certain parts of State highway Route 169 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in the City of Bayonne, and the City of Jersey City, Hudson County;

i. Zone 1: 50 miles per hour between the New York and New Jersey Port Authority-New Jersey Department of Transportation jurisdiction line and Hook Road (approximate milepost 0.00 to 2.25); thence

ii. Zone 2: 40 miles per hour between Hook Road and 500 feet north of Prospect Avenue (approximate mileposts 2.25 to 3.30); thence

iii. Zone 3: 45 miles per hour between 500 feet north of Prospect Avenue and Pulaski Street (approximate mileposts 3.30 to 4.00); thence

iv. Zone 4: 35 miles per hour between Pulaski Street and 500 feet north of the New Jersey Turnpike Overpass (approximate mileposts 4.00 to 4.65); thence

v. Zone 5: 50 miles per hour between 500 feet north of the New Jersey Turnpike Overpass and the junction of Route N.J. 169-Route N.J. 440 (approximate mileposts 4.65 to 5.73).

(c)

### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

#### Restricted Parking and Stopping

#### Route N.J. 57 in Warren County

#### Adopted Amendment: N.J.A.C. 16:28A-1.36

Proposed: July 6, 1993 at 25 N.J.R. 2834(b).

Adopted: August 6, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: August 19, 1993 as R.1993 d.458, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-198 and 39:4-199.

Effective Date: September 20, 1993.

Expiration Date: May 7, 1998.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows:

**TREASURY-GENERAL**

**ADOPTIONS**

16:28A-1.36 Route 57

(a) The certain parts of State highway Route 57 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1.-2. (No change.)

3. No stopping or standing in Washington Borough, Warren County;

i.-ii. (No change.)

iii. Along the northerly side:

(1) (No change.)

(2) From a point 150 feet east of the easterly curb line of Flower Avenue to a point 150 feet west of the westerly curb line of Flower Avenue.

4.-6. (No change.)

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

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions**

**Routes U.S. 30 in Camden County; N.J. 36 in Monmouth County; N.J. 73 in Camden County; and U.S. 130 in Burlington and Mercer Counties**

**Adopted Amendments: N.J.A.C. 16:31-1.10, 1.17 and 1.22**

**Adopted New Rule: N.J.A.C. 16:31-1.32**

Proposed: July 6, 1993 at 25 N.J.R. 2835(a).

Adopted: August 6, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: August 19, 1993 as R.1993 d.459, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-123 and 39:4-183.6 and 39:4-199.1.

Effective Date: September 20, 1993.

Expiration Date: May 7, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows:

16:31-1.10 Route U.S. 30

(a) Turning movements of traffic on the certain parts of State highway Route U.S. 30 described in this subsection are regulated as follows:

1. No left turns:

i. In the City of Absecon, Atlantic County:

(1) From east on Route U.S. 30 to north on Station Avenue;

(2) From west on Route U.S. 30 to south on Illinois Avenue.

ii. In the Township of Waterford, Camden County:

(1) From east on Route U.S. 30 to north into the driveways of Block 202, Lot 2, located approximately 480 feet west of the centerline of Leitz Lane (approximate mile post 18.54).

16:31-1.17 Route 73

(a) Turning movements of traffic on the certain parts of State highway Route 73 described in this subsection are regulated as follows:

1. No left turn in Camden County:

i. In Winslow Township:

(1) (No change.)

(2) From northbound on Route N.J. 73 to northwest bound on New Brooklyn-Cedarbrook Road (County Road 536) at the most southerly intersection only (approximate milepost 10.4).

2.-3. (No change.)

16:31-1.22 Route U.S. 130

(a) Turning movements of traffic on certain parts of State highway Route U.S. 130 described in this subsection are regulated as follows:

1.-3. (No change.)

4. No "U" turns for trucks over four tons registered gross weight:

i. In Bordentown Township, Burlington County; and

ii. In Hamilton and Washington Townships, Mercer County:

(1) Along Route U.S. 130 northbound from milepost 56.6 to milepost 64.0.

(2) Along Route U.S. 130 southbound from milepost 64.0 to milepost 56.6.

16:31-1.32 Route 36

(a) Turning movements of traffic on certain parts of State highway Route N.J. 36 described in this subsection are regulated as follows:

1. No left turn:

i. In Sea Bright Borough, Monmouth County:

(1) From Route N.J. 36 southbound into the entrance to Gateway National Park.

**TREASURY-GENERAL**

**(b)**

**DIVISION OF PENSIONS AND BENEFITS**

**State Health Benefits Commission**

**Readoption: N.J.A.C. 17:9**

Proposed: June 21, 1993 at 25 N.J.R. 2651(b).

Adopted: August 11, 1993 by the State Health Benefits Commission, Patricia Chiacchio, Acting Secretary.

Filed: August 23, 1993 as R.1993 d.463, **without change**.

Authority: N.J.S.A. 52:14-17.27.

Effective Date: August 23, 1993.

Expiration Date: August 23, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:9.

**OTHER AGENCIES**

**(c)**

**CASINO CONTROL COMMISSION**

**Gaming Equipment**

**Rules of the Game**

**Blackjack Table; Physical Characteristics**

**Surrender**

**Splitting Pair**

**Irregularities**

**Multiple Action Blackjack Rule**

**Adopted Amendments: N.J.A.C. 19:46-1.10;**

**19:47-2.8, 2.11 and 2.15**

**Adopted New Rule: N.J.A.C. 19:47-2.18**

Proposed: June 7, 1993 at 25 N.J.R. 2234(a).

Adopted: August 18, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: August 20, 1993 as R.1993 d.461, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and N.J.A.C. 19:47-2.15(m) Alternative A not being adopted.**

Authority: N.J.S.A. 5:12-70(f) and 100(e).

## ADOPTIONS

## OTHER AGENCIES

Effective Date: September 20, 1993.

Expiration Date: April 15, 1998, N.J.A.C. 19:46  
April 15, 1996, N.J.A.C. 19:47

### Summary of Agency-Initiated Changes:

Proposed N.J.A.C. 19:47-2.18(a) has been revised to clarify that every player is required to make either two or three separate wagers. Read in this context, N.J.A.C. 19:47-2.18(f)2 has been revised to clarify that if a wager remained on either the second or third spot, the game would continue. These are minor revisions not requiring additional public comment.

N.J.A.C. 19:46-1.10(h)3 and 4 have been changed for the purpose of clarifying that double down and split pair wagers should be placed in separate designated areas of the layout. This is a minor change that does not require additional public comment.

The remainder of the revisions made to the rules as proposed were minor non-substantive changes that do not require additional public notice and comment.

### Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the new rule and amendments as published. Further, the Division indicates that it supports Alternative A, which would require the remaining hand(s) to be called dead in the event that the dealer inadvertently picks up his or her original face-up card and places it in the discard rack prior to completion of the second or third hand. The Division finds this alternative less confusing to the public.

RESPONSE: The regulations require the cards to be picked up in order so that the hand can be reconstructed in case of a question or dispute. Since the casinos are required to be able to reconstruct a hand, there is no reason not to permit them to use this procedure to resolve a mistake. Reconstruction of the hand to determine the dealer's original face-up card, as outlined in Alternative B, should not be cause for confusion. Alternative A is less desirable because it may cause player dissatisfaction if a second or third hand cannot be played out. Further, a dealer may deliberately discard his or her face-up card for a patron who has a poor hand. These situations are avoided with the adoption of Alternative B.

COMMENT: Sands Hotel and Casino (Sands) supports the new rule and amendments, inclusive of Alternative B, as published.

RESPONSE: Accepted.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

19:46-1.10 Blackjack table; card reader device; physical characteristics; inspections

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

(h) Notwithstanding the requirements of (b) above, if a casino licensee offers multiple action blackjack in accordance with the requirements of N.J.A.C. 19:47-2.18, the cloth covering the blackjack table shall be approved by the Commission and shall contain, at a minimum, the following:

1. Three separate designated betting areas for each player **\*position\*** at the table with each separate **\*betting\*** area being numbered one through three~~].~~ **\*The\* \* , provided, however, that the\* number of [players] \*player positions\* at each table shall not exceed six;**

2. A separate **\*[designation]\* \*designated area\*** on the layout, for each player **\*position\***, for the placement of insurance wagers;

3. A separate **\*[designation]\* \*designated area\*** on the layout, for each player **\*position\***, for the placement of double down **\*[and split pair]\* wagers; \*[and]\***

**\*4. A separate designated area on the layout for each player position, for the placement of split pair wagers; and\***

**\*[4.]\*5. Three separate areas designated for ~~the~~ placement of the dealer's original face up card with each **\*separate\*** area being numbered one through three.**

19:47-2.8 Surrender

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

(c) Each casino licensee may, at its discretion, offer its patrons the surrender option authorized in this section, except that when a casino licensee offers the rule variation multiple action blackjack

pursuant to N.J.A.C. 19:47-2.18, the surrender option shall not be available. A casino licensee shall not initiate or terminate the use of the surrender option at a table unless the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3.

19:47-2.11 Splitting pairs

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

(e) Notwithstanding the provisions of (c)1 above, a casino licensee may, at its discretion, permit a player to split pairs up to three times (a total of four hands) at a blackjack table with up to six player boxes or twice (a total of three hands) at a blackjack table with seven player boxes if notice of the option is provided as set forth in N.J.A.C. 19:47-8.3, except that this option shall not be available in games in which the rule variation multiple action blackjack is available pursuant to N.J.A.C. 19:47-2.18. If a casino licensee elects to offer the option of splitting pairs more than once, it may, at its discretion, prohibit a player from splitting a pair of aces more than once (a total of two hands) if notice is provided as set forth in N.J.A.C. 19:47-8.3. All other requirements of this section shall apply to each hand which is formed as a result of splitting pairs more than once.

19:47-2.15 Irregularities

(a)-(k) (No change.)

(l) If the dealer fails to move his or her original face up card to the area of the layout designated for the second or third hand of the round in accordance with N.J.A.C. 19:47-2.18, the round shall continue as if the original face up card was moved to the appropriate area of the layout.

**\*[Alternative A**

(m) If the dealer inadvertently picks up his or her original face up card and places it in the discard rack prior to completion of the second or third hand of multiple action blackjack, the dealer shall call all wagers on the remaining hand(s) dead.

**Alternative B]\***

(m) If the dealer inadvertently picks up his or her original face up card and places it in the discard rack prior to the completion of the second or third hand of multiple action blackjack, the dealer shall immediately notify a casino supervisor assigned to that table. The casino supervisor shall remove the appropriate cards from the discard rack and reconstruct the last hand of play so as to determine the dealer's original face up card. The original face up card shall be placed in the appropriate **\*[box]\* \*area\*** on the layout, and the remaining cards shall be returned to the discard rack. Play shall resume in accordance with the rules of this chapter.

19:47-2.18 Multiple action blackjack rule

(a) A casino licensee may, in its discretion, offer to **\*[all players]\* \*every player\*** at a blackjack table the option to make **\*[up to]\* \*either two or\* three separate wagers on the outcome of the **\*[players' original]\* \*player's\* hand against **\*either two or three separate hands of the dealer which shall be formed with\* the dealer's original face up card **\*[which is used to complete three separate hands]\*, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3 prior to withdrawing the offer of this option.********

(b) Prior to the first card being dealt for the first of the three rounds of play, each player shall be required to make two or three wagers against the dealer as required by N.J.A.C. 19:47-2.3(a) and (d) **\*by placing the wagers in the designated betting areas on the layout\*. **\*[Any rules regarding the]\* \*A casino licensee may, in its discretion, require every player to place a wager against all three of the dealer's hands. The minimum\* number of wagers required and **\*the\* minimum and maximum limits for **\*[the three wagers]\* \*each wager\* shall be posted at the table in accordance with N.J.A.C. 19:47-8.3.********

(c) After all wagers have been placed, the dealer shall deal the cards in accordance with N.J.A.C. 19:47-2.6(e). As each player's point total is announced, the player shall indicate whether he wishes to double down, split pairs, stand or draw as provided for by this **\*[chapter]\* \*subchapter\***, except that, a decision to double down

or split pairs shall **\*[include]\* \*require\*** an additional wager for each wager placed by the player in accordance with (b) above.

(d) Any player may elect to make an insurance wager pursuant to N.J.A.C. 19:47-2.9 on any or all of his or her wagers made in accordance with (b) above. Such wager or wagers shall be decided individually based on the **\*[dealer's]\* second card \*[for]\* \*dealt to\*** each of **\*[his or her]\* \*the dealer's\*** hands.

(e) After the decisions of all players have been implemented and all additional cards have been dealt **\*[to them]\***, the dealer shall deal a second card to his or her original face up card **\*in accordance with N.J.A.C. 19:47-2.6(h)\*** and any additional cards **\*[in accordance with N.J.A.C. 19:47-2.6(h) and 2.12(b)]\* \*required by N.J.A.C. 19:47-2.12(b)\***.

(f) Once all wagers on the dealer's first hand have been decided, the dealer shall collect all losing wagers and pay off all winning wagers **\*[for the wager(s)]\* \*based on wagers\*** placed in the first spot of each player's betting area, except that all of a player's wagers shall be collected along with his or her cards when that player's hand exceeds a hard total of 21. The dealer shall collect all of his or her cards and place them face down in the discard rack in accordance with one of the following:

1. If **\*[hands of all players]\* \*the hand of each player\*** at the table **\*[have]\* \*has\*** exceeded a hard total of 21, the dealer shall draw no additional cards pursuant to N.J.A.C. 19:47-2.12 and the dealer shall collect all of his or her cards including his or her original face up card; or

2. If a wager remains on the second **\*[and]\* \*or\*** third **\*[spots]\* \*spot\*** of a player's betting area, the dealer shall then collect all of his or her cards except his or her original face up card.

(g) If the dealer's cards have been collected **\*and discarded\*** in accordance with (f)2 above, the dealer shall move his or her original face up card to the area of the layout designated for the dealer's second hand and shall deal a second card to his or her original face up card **\*in accordance with N.J.A.C. 19:47-2.6(h)\*** and any additional cards **\*[in accordance with (e) above]\* \*required by N.J.A.C. 19:47-2.12(b)\***.

(h) Once all wagers on the dealer's second hand have been decided, the dealer shall collect all losing wagers and pay off all winning wagers **\*[for the wager(s)]\* \*based on wagers\*** placed in the second spot of each player's betting area. The dealer shall then collect all of his or her cards except his or her original face up card and place them face down in the discard rack. The dealer shall then move his or her original face up card to the area of the layout designated for the dealer's third hand and shall deal a second card to his or her original face up card **\*in accordance with N.J.A.C. 19:47-2.6(h)\*** and any additional cards **\*[in accordance with (e) above]\* \*required by N.J.A.C. 19:47-2.12(b)\***, except that if no player has made a third wager the round shall be concluded in accordance with (j) below.

(i) Once all wagers on the dealer's third hand have been decided, the dealer shall collect all losing wagers and pay off all winning wagers **\*[for the wager(s)]\* \*based on wagers\*** placed in the third spot of each player's betting area.

(j) At the conclusion of the third hand, all cards still remaining on the layout shall be picked up in accordance with N.J.A.C. 19:47-2.6(i).

(a)

**CASINO CONTROL COMMISSION****Exclusion of Persons****Readoption: N.J.A.C. 19:48**

Proposed: June 21, 1993 at 25 N.J.R. 2661(a).

Adopted: August 18, 1993 by the Casino Control Commission,  
Steven P. Perskie, Chairman.

Filed: August 20, 1993 as R.1993 d.462, **without change**.

Authority: N.J.S.A. 5:12-63c, 69a and 71.

Effective Date: August 20, 1993.

Expiration Date: August 15, 1998.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:48.

(b)

**CASINO CONTROL COMMISSION****Notice of Temporary Adoption of Amendments and New Rule****Accounting and Internal Controls****Slot Machines and Bill Changers; Identification;****Signs; Meters; Other Devices****Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs****Procedures and Requirements for A Bill Changer Which Can Accept Coupons**

Authority: N.J.S.A. 5:12-69(e), 70(l), 99(a)8 and 10, 100(c) and 102(m)3.

**Take notice** that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments to its regulations, which would permit bill changers to accept coupons, should be adopted on a permanent basis. The experiment will be conducted in accordance with temporary rules, which will be posted in each casino participating in this experiment, and which will also be available from the Commission upon request.

**Specifically**, this test would allow any casino licensee which wishes to participate in the experiment, and which meets all the terms and conditions established by the Commission, to accept coupons in its bill changers, beginning on September 27, 1993. This experiment could continue for a maximum of 180 days from that date, unless otherwise terminated by the Commission or any of the participating casino licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for final adoption, in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30.

# EMERGENCY ADOPTIONS

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF CRIMINAL JUSTICE

#### Safe and Secure Communities Program

#### Emergency Adopted New Rules and Concurrent Proposed New Rules: N.J.A.C. 13:79

Emergency New Rules Adopted and Concurrent Proposed New Rules Authorized: August 26, 1993 by Frederick P. DeVesa, Acting Attorney General  
Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 26, 1993.

Emergency New Rules Filed: August 27, 1993 as R.1993 d.476.  
Authority: N.J.S.A. 52:17B-169.

Concurrent Proposal Number: PRN 1993-542.  
Emergency New Rules Effective Date: August 27, 1993.  
Emergency Rules Expiration Date: October 26, 1993.

Submit written comments by October 20, 1993 to:  
Dennis O'Hara, Chief  
Law Enforcement Coordination and Planning Section  
Division of Criminal Justice  
CN-085  
Trenton, New Jersey 08625

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted new rules become effective upon the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency adoption and concurrent proposal follows:

#### Summary

The Safe and Secure Communities Act, P.L. 1993, c.220 (N.J.S.A. 52:17B-159 et seq.) was enacted on August 2, 1993. The Program established by the Act is intended to: combine Federal, State and municipal resources for hiring additional municipal police officers and other law enforcement personnel; provide funding for law enforcement equipment; create a further funding source by imposing additional penalties on lawbreakers; allocate these officers and equipment in a community-oriented manner; and initiate other programs to assist the municipalities to combat crime.

The Act requires the Attorney General to "... promulgate guidelines for the receipt of program funds, procedures to ensure grantee accountability, and any other rules and regulations necessary to carry out the purposes of this Act."

These proposed new rules are intended to implement the provisions of the Act by providing the methodology and procedures for awarding funds to qualifying municipalities, thereby enabling them to employ personnel and purchase equipment to combat crime.

Subchapter 1 states the purpose of this chapter; sets forth the scope of these rules; and defines the terms employed in this chapter.

Subchapter 2 sets forth the objectives of the Safe and Secure Communities Program for certain law enforcement projects for which funds will be provided, explains the fund use and limitations, contains a provision for the notification and award of funds, and describes the method of applying for grants and the components of the application. This subchapter also specifies that the application and supporting documentation are confidential and are not public records.

Subchapter 3 describes the law enforcement personnel and law enforcement equipment grants, sets forth the grant selection criteria and processes, and contains a provision for reconsideration of denied applications.

Subchapter 4 contains the accountability requirements for a municipality which is awarded a grant, including programmatic and fiscal reporting standards.

Subchapter 5 sets forth the responsibility of the Division of Criminal Justice to provide technical and operational assistance to grantees.

#### Social Impact

The emergency adopted new rules and concurrent proposed new rules are intended to implement the Safe and Secure Communities Act which funds the employment of 2,000 municipal police officers and other law enforcement personnel and the purchase of law enforcement equipment. Those municipalities which qualify for grants will benefit from them by better enabling communities to combat crime and improve the quality of life.

#### Economic Impact

The Safe and Secure Communities Act creates in the Department of the Treasury a nonlapsing fund, entitled the "Safe Neighborhoods Services Fund," to provide monies for the law enforcement personnel and law enforcement equipment grants. The Act appropriates \$15,000,000 to this fund. It appropriates an additional \$150,000 to the Department of Personnel to administer and score police officer examinations in Title 11A jurisdictions. The Act allocates up to \$375,000 of the fund to the Division of Criminal Justice to provide technical and operational assistance to grant recipients. To establish a continual source of funding for the Program, the Act imposes additional penalties on persons convicted of crimes, disorderly persons offenses, and drunk driving. As a condition of receiving a grant for the payment of the salaries of police officers or other law enforcement personnel, a municipality is required to pay the fringe benefits for those persons hired, which is considered the local cash match, and further to agree not to reduce its regular complement of police officers and other law enforcement personnel during the grant period. A cash match of 25 percent is required of a municipality awarded a grant for the purchase of law enforcement equipment.

#### Regulatory Flexibility Statement

These emergency new rules and concurrent proposed new rules apply to funding for the initial salaries of municipal police officers and other law enforcement personnel and for the purchase of law enforcement equipment and not to small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required.

Full text of the emergency adopted and concurrent proposed new rules follows:

#### CHAPTER 79

#### SAFE AND SECURE COMMUNITIES PROGRAM

#### SUCHAPTER 1. PURPOSE, SCOPE, DEFINITIONS

##### 13:79-1.1 Purpose

This chapter describes the grants available from the Safe Neighborhoods Services Fund pursuant to the Safe and Secure Communities Act and establishes guidelines for the receipt of program funds and procedures to ensure grantee accountability.

##### 13:79-1.2 Scope

The rules contained in this chapter shall govern the award of law enforcement personnel grants and law enforcement equipment grants from the Safe Neighborhoods Services Fund pursuant to the Safe and Secure Communities Act.

##### 13:79-1.3 Definitions

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

"Act" means the Safe and Secure Communities Act, P.L. 1993, c.220 (N.J.S.A. 52:17B-159 et seq.).

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Director" means the Director of the Division of Criminal Justice.

"Eligible municipality" means a municipality, which has a police department or force, in which the number of violent and nonviolent crimes per police officer exceeds 70 percent of the Statewide average of municipalities with a municipal police department or force, as reported in the 1991 Uniform Crime Report published by the Division of State Police.

"Fringe benefits" means payments made by the employer for an employee's retirement, social security, health and dental insurance, workers compensation, and unemployment, disability and survivor's insurance.

"Fund" means the Safe Neighborhoods Services Fund.

"Law enforcement equipment" or "equipment" means that equipment required for the provision of law enforcement services including, but not limited to, police cars, computers and peripheral equipment, police radios and other communications gear, weapons and body armor.

"Law enforcement project" or "project" means a project employing police officers for which a grant is awarded pursuant to this program.

"Other law enforcement personnel" means non-police employees who enhance a project's law enforcement capacity by performing paperwork and related support services, thereby allowing police officers to devote more time to direct community policing duties.

"Program" means the "Safe and Secure Communities Program."

## SUBCHAPTER 2. THE SAFE AND SECURE COMMUNITIES PROGRAM

### 13:79-2.1 Program objectives

(a) The Safe and Secure Communities Program is designed to provide assistance to municipalities for programs which accomplish the following objectives, as warranted by the needs of the community:

1. Policing in a community-oriented manner through an emphasis on the use of foot patrols, personal interaction between police officers and residents, and participation in community crime prevention programs;

2. Targeting law enforcement activities toward the specific needs of persons who live or work in a particular neighborhood, such as children, senior citizens, or merchants;

3. Encouraging resident involvement in activities that contribute to crime prevention, including citizen patrols, safe houses, neighborhood watch groups, and crime prevention educational programs;

4. Reducing the incidence of criminal behavior, such as drug trafficking or youth gang activity, that disrupts the normal functioning of a community;

5. Implementing the Violent Offenders Removal Program (VORP) to identify and expeditiously apprehend violent criminals who operate within a targeted area; and

6. Developing other innovative strategies which hold promise for preventing or reducing crime within a defined neighborhood or with respect to a particular demographic group within the municipality.

### 13:79-2.2 Fund use and limitations

(a) Of the monies deposited in the fund, 75 percent shall be available for approved law enforcement projects and 25 percent shall be available for the purchase of law enforcement equipment, exclusive of the allocation to the Attorney General to enable the Division of Criminal Justice to provide technical and operational assistance to grantees.

(b) No more than 50 percent of the total dollar amount of grants awarded from the fund shall be allocated to municipalities eligible to receive State aid pursuant to P.L. 1985, c.170 (N.J.S.A. 52:27D-118.11a, b, and c; Safe and Clean Neighborhood Fund).

(c) Notwithstanding any law or regulation to the contrary, a municipality may expend grant moneys in the local budget year in which they are received.

### 13:79-2.3 Notification and award of funds

(a) Program grants shall be awarded in two annual cycles.

1. Applicant municipalities with a fiscal year starting January 1 shall be notified of grant approval or denial no later than October 30. These grants shall be awarded on January 1.

2. Applicant municipalities with a fiscal year starting July 1 shall be notified of grant approval or denial no later than April 30. These grants shall be awarded on July 1.

### 13:79-2.4 Application for funds

All municipalities applying for funds for both law enforcement personnel grants and law enforcement equipment grants must submit separate proposals to the Division of Criminal Justice by the deadline dates specified in the program request for proposals available from the Division of Criminal Justice.

### 13:79-2.5 Application components for initial program grants

(a) Problem Statement: Applications for program grants shall include a narrative description of the need for grant funding and how the funding will be used to further the program objectives.

1. Law enforcement personnel grant application shall clearly describe the problem the project will address. In addition, law enforcement personnel grant applications shall:

i. Include such statistics as municipal arrest rates, reported crimes, juvenile offenses, and other data relevant to the project;

ii. Provide a brief description of current municipal efforts and activities that deal with crime that are being planned or implemented;

iii. Provide a brief synopsis of the ability of the municipal police department to implement the program, including information that describes the target area, defines whether a neighborhood or entire municipality is included in the project, specifies how the officers will be deployed, including their work schedules and hours and shifts that will be affected, and outlines the policing strategies that will be employed; and

iv. Include indicators by which progress in achieving program objectives and the project's purpose will be measured.

2. Law enforcement equipment grant applications shall include information on the type, amount, and estimated cost of the equipment requested. The application shall also indicate how the equipment will be deployed, its benefit to the community, and any other relevant information.

(b) Objectives: Applications for program grants shall include objectives and an explanation of how the objectives will facilitate accomplishments consistent with program goals.

(c) Program description and activities: Applications for program grants shall provide examples of actual program activities, describing how police officers will be utilized and/or how equipment will enhance program activities.

(d) Program evaluation: Applications for program grants shall describe implementation of a system to collect information necessary to evaluate success in achieving program objectives.

(e) Applications for program grants shall also include any other information deemed necessary by the Division of Criminal Justice to effectively evaluate an application for funds.

### 13:79-2.6 Confidentiality

An application for a grant under this program and any supporting documentation are not public records for purposes of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.). These documents are confidential and shall not be released except to law enforcement personnel in connection with their official duties.

## SUBCHAPTER 3. PROGRAM GRANTS

### 13:79-3.1 Project grants

(a) An eligible municipality may apply to the Division of Criminal Justice for a grant from the fund to be used exclusively to pay the initial salaries of police officers and other law enforcement personnel deployed in a law enforcement project which is designed to meet the objectives of the program.

(b) A municipality which receives a grant for a law enforcement project shall be responsible for paying the fringe benefits of all police

## EMERGENCY ADOPTIONS

officers or other law enforcement personnel hired, which shall be deemed the local cash match. Requests for overtime funds will not be considered.

(c) A municipality shall agree, as a condition of a grant awarded pursuant to this Act, not to reduce its regular complement of police officers and other law enforcement personnel during any grant period.

(d) No municipality shall receive a grant exceeding \$200,000 in any program year for an approved law enforcement project. If any funds remain after all approved projects and law enforcement equipment grants have been funded in any program year, funding in excess of the limitation may be awarded to selected grantees pursuant to the program selection criteria contained in N.J.A.C. 13:79-3.6.

### 13:79-3.2 Initial project grants

Initial grants for law enforcement projects shall be awarded only during the first two program years following the effective date of the Act.

### 13:79-3.3 Project continuation grants

(a) A municipality which receives an initial grant for a law enforcement project may request from the Division of Criminal Justice continuation funding in subsequent years to continue that project, subject to availability of funds. Such request shall include information which demonstrates that the project is effectively meeting the objectives of the program to justify continued funding.

(b) Approval of a continuation grant for a law enforcement project is contingent upon certification by the Attorney General that the project is effectively meeting the objectives of the program.

(c) A municipality that is eligible to receive an initial grant under the Act is eligible to receive continuation funding. An application for such funding shall be in a form prescribed by the Division of Criminal Justice.

### 13:79-3.4 Equipment grants

(a) Any municipality which has a police department or force may apply to the Division of Criminal Justice for a grant from the fund to be used exclusively to purchase law enforcement equipment.

(b) A municipality which receives a grant for the purchase of law enforcement equipment shall contribute a cash match of no less than 25 percent of the grant amount.

(c) No municipality shall receive a grant exceeding \$50,000 in any program year for the purchase of law enforcement equipment. If any funds remain after all approved projects and law enforcement equipment grants have been funded in any program year, funding in excess of the limitation may be awarded to selected grantees pursuant to the program selection criteria contained in N.J.A.C. 13:79-3.6.

### 13:79-3.5 Initial equipment grants

Initial grants for the purchase of law enforcement equipment shall be awarded throughout the program, subject to availability of funds. Continuation funding is not available for the purchase of law enforcement equipment.

### 13:79-3.6 Selection criteria

(a) The Director shall evaluate and rank program grant applications on the basis of the municipality's realistic opportunity to achieve the specified objectives of the program.

(b) The Director shall give additional weight to applications which:

1. Propose cooperative policing agreements between two or more municipalities pursuant to P.L. 1973, c.208 (N.J.S.A. 40:8A-1 et seq.) or P.L. 1952, c.72 (N.J.S.A. 40:48B-1 et seq.);

2. Provide evidence of a project planning process which has involved residents of the proposed project areas and institutions and groups active in these areas;

3. Provide for the re-employment of police officers who have been laid off by the municipality for budgetary reasons prior to March 1, 1993;

4. Clearly delineate project outcome goals that are both time-lined and measurable;

5. Maximize the use of funding and resources other than those provided by the program;

## LAW AND PUBLIC SAFETY

6. Provide for the mobilization of residents as volunteer participants;

7. Where practicable, provide for the employment of related law enforcement personnel to perform paperwork and related support services in order to free up police officers for community policing duties; and

8. Provide for maximum program accountability.

### 13:79-3.7 Grant selection process

(a) The selection process for initial grants is as follows:

1. The Director, on or before September 1 and March 1 of each year, shall be provided with initial grant applications.

2. The Attorney General and the Commissioner shall announce the selection of initial grant recipients on or before October 30 and April 30 of each year.

(b) The selection process for project continuation grants is as follows:

1. The Director, on or before September 1 and March 1 of each year, shall forward to the Attorney General recommendations for the award of project continuation grants.

2. The Attorney General shall review requests for project continuation funding, the recommendations of the Director, and shall select as project continuation grant recipients those municipalities whose projects are effectively meeting the objectives of the program.

### 13:79-3.8 Reconsideration

Within 10 days after receipt of notification of grant denial, a municipality may submit additional grant application information to the Division of Criminal Justice and may request reconsideration of the grant application.

## SUBCHAPTER 4. GRANTEE ACCOUNTABILITY

### 13:79-4.1 Certification

(a) A municipality selected as a grant recipient under this program shall certify that all grant funds shall be used exclusively for the purposes specified in the grant award.

(b) A municipality selected as a law enforcement personnel grant recipient shall certify that it shall not reduce its regular complement of police officers and other law enforcement personnel during any grant period.

### 13:79-4.2 Agreement prerequisites

(a) Prior to entering into an agreement with the Division of Criminal Justice to receive grant funds, a municipality selected as a grant recipient under this program shall provide:

1. An application authorization form signed by the mayor or other chief administrative or executive officer of the municipality and a resolution by the municipal governing body authorizing the municipality to enter into an agreement with the Division of Criminal Justice for the funds;

2. For law enforcement personnel grant recipients, authorization by the governing body for the provision of fringe benefit expenses; and

3. For law enforcement equipment grant recipients, authorization by the governing body for the 25 percent cash match.

### 13:79-4.3 Reporting

(a) A municipality selected as a grant recipient under this program will be required to meet the Division of Criminal Justice programmatic and fiscal reporting standards, including:

1. Submission of quarterly narrative and statistical reports to the Division of Criminal Justice describing program activities and progress for the award period;

2. Submission of monthly fiscal reports to the Division of Criminal Justice;

3. Maintenance of a bookkeeping system, records, and separate grant files to account for all grant monies spent and all matching funds contributed to the program; and

4. Maintenance of a separate account for all grant monies and all matching funds contributed to the program.

SUBCHAPTER 5. ASSISTANCE FOR GRANTEES

13:79-5.1 Technical and operational assistance

(a) The Division of Criminal Justice shall provide technical and operational assistance to grantees, which shall include:

1. Assistance in implementing an effective community policing program, including training and development of operational plans, schedules, and strategies; and
2. Coordination of and assistance with violent offender removal programs (VORP).

**OTHER AGENCIES**

**(a)**

**CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

**Hotel Development Project Eligibility and Conditions Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 19:65-1.2, 2.4, 2.5, 2.6, and 2.10**

**Adopted Emergency New Rule and Concurrent Proposed New Rule: N.J.A.C. 19:65-2.10**

Emergency Amendments and New Rule Adopted and Concurrent Proposed Amendments and New Rule Authorized: August 17, 1993 by the Casino Reinvestment Development Authority, Nicholas R. Amato, Executive Director.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 23, 1993.

Emergency Amendments and New Rule Filed: August 30, 1993 as R.1993 d.478.

Authority: N.J.S.A. 5:12-144.1; N.J.S.A. 5:12-161(f); P.L. 1993, c.159.

Concurrent Proposal Number: PRN 1993-547.

Emergency Amendments and New Rule Effective Date: August 30, 1993.

Emergency Amendments and New Rule Expiration Date: October 29, 1993.

Submit written comments by October 20, 1993 to:  
Nicholas R. Amato  
Executive Director  
Casino Reinvestment Development Authority  
1014 Atlantic Avenue  
Atlantic City, New Jersey 08401

These amendments and new rule were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of these emergency amendments and new rule are being proposed for re adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments and new rule become effective upon the acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the emergency expiration date.

The agency emergency amendments and new rule and concurrent proposal follows:

**Summary**

On June 29, 1993, P.L. 1993, c.159 was signed into law by Governor James J. Florio. The provisions of P.L. 1993, c.159, §8 requires that the Casino Reinvestment Development Authority (the "Authority") set aside \$100,000,000 "for investment on hotel projects in Atlantic City" to be undertaken by casino hotel licensees. Projects involving the construction, reconstruction or rehabilitation of hotel rooms are permitted to be funded by the Authority. Ordinarily, monies available to the Authority, pursuant to N.J.S.A. 5:12-144.1, may not be invested in projects which primarily benefit or enhance the value of property of a casino licensee. N.J.S.A. 5:2-178. However, in this instance the Legislature has provided

an exemption to the otherwise applicable legislative prohibition, thereby permitting these monies to be used for expansion of casino hotels.

The Legislature has required that the Authority should adopt by regulation "standards for determining the extent of construction, reconstruction or rehabilitation of hotel rooms or appurtenant facilities required in order to qualify for Authority investments . . ." P.L. 1993, c.159, §8. However, the Legislature has mandated that only those projects which can be completed by December 31, 1996 shall be eligible for funding. *Id.*, §8. While the Authority has the power to relax that deadline in specific cases where a time extension is "warranted by special circumstances or unforeseen occurrences," *Id.*, §8, it is clear that the Legislature expected the Authority to approve only those projects which have a realistic expectancy of meeting the statutory deadline.

The Authority has determined that it cannot administer the program so as to achieve the legislative object if it must defer acting on hotel development project applications until it has adopted implementing rules in the ordinary course of rulemaking. In order for casino hotel applicants to have sufficient time to obtain Authority and other State and local regulatory approvals, obtain financing commitments, and design and construct their projects by December 31, 1996, the Authority must begin to process those applications now. To do that it must put in place immediately the basic framework of its program. For example, one of the key issues for applicants in determining project eligibility is how much money will be made available for their project. In order to reasonably make that determination the Authority has to set deadlines for applications or notices of application by other applicants, as well as to set priorities. The Governor, as required by N.J.S.A. 52:14B-4(c), has concurred in writing in the Authority's determination that an imminent peril exists, justifying emergency rulemaking procedures. Concurrently, the provisions of these emergency amendments and new rule are being proposed for re adoption in accordance with the normal procedures of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The emergency amendments and new rule implement the Authority's administration of this \$100,000,000 hotel expansion fund. The rules provide the framework of the application process, define what Authority monies are to be made available for the hotel expansion project, and delineate project eligibility and conditions to be imposed on project approvals.

Thus, pursuant to the emergency amendments to N.J.A.C. 19:65-1.2, a "hotel development project" is defined as one which includes the creation of at least 200 hotel units. The hotel units, which are eligible for financing out of the \$100,000,000, may not include among their number any unit in existence and available for use as of July 1, 1993, the effective date of P.L. 1993, c.159. See N.J.A.C. 19:65-2.5(d)3. Since one of the the objects of P.L. 1993, c.159 was to expand hotel rooms in Atlantic City, and to utilize monies that would not otherwise be available to casino licensees to accomplish that purpose, the determination of the Authority is that the monies thus made available should not be used to renovate existing space, since that does not add to the inventory of hotel rooms. Similarly, while the Legislature has indicated that the \$100,000,000 fund could be used for "appurtenant facilities" to hotels, the Authority has defined that term so as to exclude casino floor space and related facilities. Obviously, this type of facility does not expand available hotel room inventory, the legislative object, and use of the \$100,000,000 fund for these facilities would not further attainment of this legislative object.

In enacting P.L. 1993, c.159 the Legislature also evidenced a purpose that the newly created hotel units would be in service at or about the time of the opening of the new Atlantic City Convention Center, now being constructed by the New Jersey Sports and Exposition Authority. The Convention Center is scheduled to open in the early part of 1997. To accomplish this legislative goal, the Authority has provided for an accelerated application process and for strict deadlines for project approvals and construction activities. Pursuant to amendments provided to N.J.A.C. 19:65-2.6, the Authority will give priority to applications for hotel projects for which it has received either a fully completed application, or a written notice of intent to proceed, giving project details, such as size, estimated cost, and financial terms, not later than September 1, 1993. Since many casino licensees have already filed applications with the Authority or provided these details, the short time frame should not be a problem.

In addition, the Authority has further provided that only hotel development projects which have all financing in place to cover costs in excess of the Authority's allocable investment amount for each project, and

which have other received all required approvals from the Authority by September 1, 1994, shall be eligible for funding. N.J.A.C. 19:65-2.4 and 2.6.

In N.J.A.C. 19:65-2.10, the Authority adopts a rule which deals with the allocation of investment credits for hotel projects out of the \$100,000,000, if applications for credits by casino licensees exceed the amount of the fund. N.J.A.C. 19:65-2.10(a) provides for an allocation formula pursuant to which funds would be apportioned among eligible projects in the event the demands for funding exceed the amount of money available. N.J.A.C. 19:65-2.10(b) provides for a reallocation of monies from a failed project to otherwise eligible projects. Lastly, N.J.A.C. 19:65-2.10(c) defines the circumstances in which projects may receive funding notwithstanding the fact that neither applications nor notices of intent to proceed with same were given to the Authority by September 1, 1994.

The rules also reiterate the legislative dictate that hotel development projects are eligible for funding only if they are completed by December 31, 1996, P.L. 1993, c.159, upon the expected opening of the new Convention Center, unless such time is otherwise extended by the Authority for good cause. N.J.A.C. 19:65-2.4(b)5iv.

Due to the limited amount of monies available, the Authority has also placed limits on funding for any particular project. As fixed by P.L. 1993, c.159, the upper limit of Authority investment in any hotel development project is 35 percent of approved project cost, N.J.A.C. 19:65-2.4(b)5ii. The Authority will not approve an investment of Authority funds in a project of an amount which exceeds \$52,500 per hotel unit on the basis of overall project costs. *Id.* Nor will the Authority finance the costs of constructing appurtenant facilities to hotel units which are not of "a scope and size reasonable for use for the total units so constructed, reconstructed or rehabilitated." N.J.A.C. 19:65-2.5(d)2.

Pursuant to the amendment to N.J.A.C. 19:65-2.4(b)5v, the casino licensee is to receive investment credit for a hotel project "at the times that the licensee's investment alternative tax obligation becomes due", but in no event shall the investment credit, in any given year, "exceed 75 percent" of that portion of the licensee's Atlantic City non-housing obligation.

#### Social Impact

The emergency amendments and new rule and concurrent proposed amendments and new rule are anticipated to have little social impact directly, although the investment decisions they portend will go far to revitalize Atlantic City and provide an impetus for economic growth throughout South Jersey. These amendments create the regulatory framework for the implementation of hotel development projects by casino licensees out of the \$100,000,000 fund set aside by the Legislature to develop thousands of new hotel rooms in Atlantic City by casino licensees in time to coincide with the opening of the new Atlantic City Convention Center now scheduled for the early part of 1997. Any social value reflected in the determination to go forward with these development projects is reflective of legislative judgment to authorize such activities as opposed to the rules themselves. The Authority believes that amendments will enable it to carry out its legislative mandate and effectively redevelop the "corridor region" and other areas of Atlantic City and South Jersey.

#### Economic Impact

Although casino licensees may incur some initial costs in implementing the application procedures provided for in the emergency amendment and new rule and concurrent proposed amendments and new rule, it is anticipated that these costs will be more than offset by the ability of casino licensees to make use of development programs which have been legislatively authorized. The costs of preparing and filing applications for project funding should be reasonably modest.

The economic benefits of the projects will be substantial both to the licensees and the community. The new hotel space will generate additional revenue for casinos, as well as encourage utilization of the new Atlantic City Convention Center by large groups. The increase in visitors to Atlantic City, both conventioners and hotel guests, will also serve to stimulate the local economy of the city.

It is not anticipated that the amendments will have any significant economic impact on the Authority.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the amendments and new rule will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the emergency adopted and concurrent proposed amendments and new rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

...

"Appurtenant facilities" shall mean facilities which are necessary or convenient to facilities with units for overnight visitors, including, but not limited to, parking facilities and recreational and park facilities to the extent reasonably commensurate in size for use by the overnight visitors of such units. In no event shall appurtenant facilities include casino space or facilities related thereto.

...

"Hotel Development project" shall mean the construction of a facility in the City of Atlantic City to provide at least 200 units for overnight visitors or the reconstruction or rehabilitation of at least 200 units for overnight visitors (together with ancillary reconstruction or rehabilitation) of an existing facility in the City of Atlantic City, which are operated as part of a licensed facility of the licensee or in a facility otherwise approved by the Authority, and by the construction, reconstruction or rehabilitation of appurtenant facilities.

...

#### 19:65-2.4 Application review and approval

(a) (No change.)

(b) Project approval and the reservation of funds for an approval project shall occur as follows:

1.-3. (No change.)

4. (Reserved)

5. The reservation of funds for an approved hotel development project shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate, provided, that such reservation of funds shall be subject to the following:

i. The approval of the execution of an agreement between the Authority and a licensee setting forth the terms and provisions by which investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) is to be calculated;

ii. The amount of the reservation cannot exceed the lesser of the amount of investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) to which a licensee is entitled or 35 percent of the costs of the hotel development project; provided, that in no event shall the amount reserved exceed \$52,500 per unit;

iii. The receipt of financing or other commitments by September 1, 1994 for the costs of the hotel development project in excess of those set forth in (a)5ii above; and

iv. The establishment of a schedule of the stages of development of and incurrence of the costs in connection with the hotel development project to provide for the completion of the hotel development project on or before December 31, 1996 (or such later date as extended by the Authority upon a good faith showing of special circumstances or unforeseen occurrences).

v. Agreement by the casino licensee that the investment in the hotel development project shall be credited at the times that the licensee's investment alternative tax obligation becomes due as set forth in section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1), provided that, in the case of the licensee's Atlantic City investment obligation, in no event shall the investment credit exceed 75 percent of that portion of the licensee's Atlantic City obligation that is available for purposes other than the construction, rehabilitation or reconstruction of facilities for low and moderate income housing for any year.

(c) (No change.)

#### 19:65-2.5 Approval criteria

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

(c) (Reserved)

(d) The Authority shall require that the applicant establish, among other things, with respect to hotel development projects, the following:

1. The construction, reconstruction or rehabilitation of the units is to be accomplished pursuant to a schedule of development so as to be completed on or before December 31, 1996;

2. The cost of the construction, reconstruction or rehabilitation of appurtenant facilities shall be an amount commensurate with appurtenant facilities of a scope and size reasonable for use for the total number of units so constructed, reconstructed or rehabilitated; and

3. The project does not include the construction, reconstruction or rehabilitation of any unit which was in existence and used or available for use as a hotel unit as of July 1, 1993.

19:65-2.6 Priorities

(a) In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1.-3. (No change.)

4. As to a hotel development project, the Authority will give priority to those hotel development projects for which the Authority, by September 1, 1993, has either received a fully complete application, as determined by the Authority, or for which the Authority has received a notice in writing from a casino licensee indicating the licensee's intent to proceed with such project, a description of the project, the number of units involved and the estimated cost of the project and the investment credit sought. No other hotel development projects shall receive consideration, unless, after giving consideration to projects for which application or notices of intent are received by September 1, 1993, amounts are available after the process described in N.J.A.C. 19:65-2.10.

5. Only those hotel development projects which shall have received all approvals from the Authority and have financing or other commitments in place to cover costs in excess of the Authority's allocable investment amount for a hotel development project by September 1, 1994, or such later date as may be fixed by the Authority, shall receive financing from the Authority.

19:65-2.10 Approval of hotel development projects and allocation of investment credit

(a) With respect to approved hotel development projects for which, on or prior to September 1, 1993, the Authority received either a fully complete application, or a notice by the casino licensee of its intent to proceed as set forth in N.J.A.C. 19:65-2.6(a)4, the

Authority shall determine the estimated cost of each approved hotel development project and the amount of investment credit available to each licensee based upon the estimated costs of each approved hotel development project and proceed as follows:

1. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is equal to or less than \$100,000,000, the Authority shall allocate the full amount of investment credit available for hotel development projects to the respective licensee for each approved hotel development project; and

2. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is in excess of \$100,000,000, the Authority shall allocate the full amount of the investment credit available for hotel development projects proportionately among the licensees for the approved hotel development projects based upon a formula pursuant to which the amount of investment credit allocated to each licensee bears the same relationship to \$100,000,000 as the estimated amount of investment credit available to such licensee for such licensee's approved hotel development project, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, bears to the estimated aggregate amount in investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof.

(b) If an approved hotel development project does not receive all Authority approvals or financing or other commitments are not received on or prior to September 1, 1994 or such later date as may be fixed by the Authority or is otherwise abandoned or terminated, the Authority shall recapture the investment credit with respect to such hotel development project and allocate such amount first in accordance with the provisions of (a) above and second in accordance with the provisions of (c) below.

(c) With respect to approved hotel development projects not described in (a) above, the Authority shall allocate any investment credit available pursuant to (a)1 above or any other unused investment credit not otherwise used to such hotel development project.

19:65-[2.10]2.11 (No change in text.)

# PUBLIC NOTICES

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Notice of Public Testimony Session October 19, 1993

Take notice that the following agenda item is scheduled for Notice of Proposal in the October 4, 1993 New Jersey Register and is, 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 Tuesday, October 19, 1993 from 3:00 P.M. to 6:00 P.M. in the 8th floor Training Room, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Thursday, October 14, 1993.

#### Rule Proposal:

N.J.A.C. 6:2, Appeals

**Please Note:** Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the September 1, 1993 monthly public meeting.

## CORRECTIONS

(b)

### THE COMMISSIONER

#### Notice of Receipt of Petition for Rulemaking N.J.A.C. 10A:4-9.15(c)

Petitioner: George R. Jacques, New Jersey State Prison

Take notice that on August 12, 1993, the Department of Corrections received a petition for rulemaking at N.J.A.C. 10A:4-9.15, the Department's rules concerning Inmate Discipline—Evidence Required.

The petitioner requests that the Department amend N.J.A.C. 10A:4-9.15 by adding a subsection (c) which states that when an inmate is charged with a disciplinary infraction and the inmate is under the care or being treated by a psychologist or psychiatrist or the inmate has been placed in an observation cell as a result of alleged misconduct that the treating physician must make a judgment and report to the Disciplinary Hearing Officer/Adjustment Committee as to:

1. Whether the inmate's current mental status precludes participation in the disciplinary process;
2. Whether the inmate's mental status contributed to the alleged disciplinary offense; and
3. Whether the inmate's mental status contraindicates any particular form of punishment.

The petitioner further requests that if the disciplinary Hearing Officer/Adjustment Committee finds that the alleged misbehavior was caused by mental illness, the disciplinary report be dismissed and the inmate referred to the correction facility psychologist or psychiatrist for appropriate treatment, or transfer to a more appropriate mental health facility.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a Notice of Action on the Petition.

## ENVIRONMENTAL PROTECTION AND ENERGY

(c)

### OPEN LANDS MANAGEMENT PROGRAM

#### Notice of Availability of Grants

#### Open Lands Management Program

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Environmental Protection and Energy hereby announces the availability of the following State grant funds:

**A. Name of program:** Open Lands Management Program. Authority: Open Lands Management Act, P.L. 1983, c.560 (N.J.S.A. 13:1B-15.133 et seq.), and Open Lands Management rules, N.J.A.C. 7:5B.

**B. Purpose:** The purpose of the Open Lands Management Program is to provide financial assistance and in-kind services for the development and maintenance of privately owned land for public recreational purposes. If an application for funding is approved, and landowner and the State sign an agreement known as an access covenant, which guarantees public access for a specified period of time, for specified recreational purposes, to a specific parcel of private land.

**C. Amount of money in the program:** The Department anticipates that \$48,000 will be available for funding Open Lands Management projects in FY 1994 which ends on June 30, 1994.

**D. Individuals or organizations who may apply for funding under this program:** Any person, including, but not necessarily limited to, individuals, corporations, clubs, associations and non-profit organizations, who owns real property in fee simple, may apply for financial assistance under this program.

**E. Qualifications needed by an applicant to be considered for the program:** To be eligible for financial assistance under this program, the applicant must meet the following criteria in accordance with the provisions of N.J.A.C. 7:5B-1.4 through 7:5B-1.6:

1. The applicant must have a fee simple interest in real property; the property must include open space which is not dominated by buildings, structures or other manmade facilities; the property must be free of any known public health hazards; and the property must be free of liens or other clouds against title which would tend to interfere with the use and enjoyment of the property.

2. The applicant must specify a project to be funded. Eligible projects include:
  - a. Installation, repair or replacement of protective structures, such as fencing, water bars, berms or stiles;
  - b. Installation, repair or replacement of any facility which provides or improves public recreational access to privately-owned land, such as parking area, access roads, trails, interpretive signs, picnic areas, rest areas, portable sanitary facilities, boat or canoe launch areas, and signs stating ownership, and use;
  - c. Planting, restoration or maintenance of trees or shrubs for the purpose of screening or increasing the value of scenic areas;
  - d. Repair or restoration of any vandalized crops or improvements located on, or adjacent to agricultural and which is subject to an access covenant provided that the damage occurred as a result of the public use;
  - e. Installation, repair, replacement and maintenance of litter and trash control facilities;
  - f. Installation, repair or replacement of facilities which provide or improve recreational access for the handicapped;
  - g. Purchase of additional liability insurance up to 50 percent of the costs or \$3,000, whichever is less, made necessary because of use of the property by the public;
  - h. Filing fees for access covenant and associated legal fees;
  - i. Professional fees for design, survey and construction of project in accordance with the approved application; and
  - j. Installation of permanent utilities up to 50 percent of the costs or \$3,000, whichever is less.

3. The applicant must make the eligible real property available to the public for passive recreational activities. Such activities may include: trail use, water related activities, and other outdoor recreational use.

**F. Procedure for application and review:** The landowner, or landowner's agent designated by a properly executed power of attorney, shall submit an application for financial assistance on a form provided by the Department. During its review, the Department may meet with the applicant to discuss the proposed projects, inspect the property and recommend any change it deems necessary. Within 30 days of receipt of the application the Department will either deny the application citing the reasons for denial or grant preliminary approval.

Final approval shall be contingent primarily upon receipt of all permits required to implement the proposed project; execution of an agreement which states the terms and conditions by which financial assistance will be disbursed; and execution of an access covenant in accordance with the provisions of N.J.A.C. 7:5B-1.10 which assures public access for a specified time period.

**G. Address of the division, office or official receiving the application:** Applications for Open Lands Management grants may be requested from, and completed and submitted to:

Celeste Tracy  
Open Lands Management Program  
Office of Natural Lands Management  
Division of Parks and Forestry  
New Jersey Department of Environmental Protection  
and Energy  
CN 404  
Trenton, New Jersey 08625-0404  
(609) 984-1339

**H. Dates application will be accepted:** Applications for funding during FY 1994 must be submitted by February 18, 1994.

**I. Date by which applicant shall be notified of preliminary approval or disapproval:** Within 30 days of receipt, the Department shall evaluate applications for funding under this program and either disapprove or grant preliminary approval of the application.

(a)

## THE DIRECTOR OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS

### Notice of Availability of State Grant Funds Matching Grants Program for Local Environmental Agencies

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Environmental Protection and Energy hereby announces the availability of State grant funds, as follows:

**A. Name of program:** Matching Grants Program for Local Environmental Agencies.

**B. Purpose:** The purpose of this matching grants program is to assist local environmental agencies in inventorying and documenting environmental resources; preparing policy recommendations to protect those resources; and preparing and disseminating information to the public concerning the ways in which the public can participate in protecting the environment.

**C. Amount of money in the program:** Approximately \$200,000 will probably be available for this program, but the exact amount is not known at this time. The maximum grant will be \$2,500. Applicants must agree to fund at least 50 percent of the cost of the eligible project.

**D. Organizations which may apply for funding under this program:** Any municipal environmental commission, joint environmental commission established by two or more municipalities, county environmental commission or soil conservation district.

**E. Qualifications needed by an applicant to be considered for the program:** Applicant must be a "local environmental agency" as defined in N.J.S.A. 13:H-1 et seq. Applicant must use funds for a project having the purposes described in section B above. Detailed specifications of eligible projects and costs will be provided with the Application, as defined below.

**F. Procedure for eligible organizations to apply:** Request a copy of the Matching Grants Program Guide and Application Form ("Application") from:

New Jersey Department of Environmental Protection  
and Energy  
Office of Environmental Services  
CN-402, 401 East State Street, 7th Floor  
Trenton, New Jersey 08625  
(609) 984-0828

Complete the application.

**G. Address for application to be submitted:** Completed application should be submitted to the address listed directly above.

**H. Deadline by which completed application must be submitted:** Applications must be delivered to the Office of Environmental Services or postmarked by December 1, 1993.

**I. Date by which applicants shall be notified of approval or disapproval:** On or about March 1, 1994.

(b)

## OFFICE OF LAND AND WATER PLANNING Amendment to the Ocean County Water Quality Management Plan Public Notice

**Take notice** that on July 30, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. This amendment designates the site of Plumsted Township Middle School (Block 41, Lot 11.03) as the service area for an on-site treatment facility with ground water discharge less than 20,000 gallons per day (gpd). The amendment allows construction of a new Plumsted Township Middle School with a functional capacity of 500 students and 60 professional staff. The project will be designed to meet all current water quality discharge regulations through pretreatment and discharge to ground water in accordance with the New Jersey Pollution Discharge Elimination System (NJPDES) rules and regulations. The Board of Education will abandon their existing package treatment plant NJPDES/Discharge to Surface Water (#NJ0021407) at the existing Plumsted Township Elementary School on Block 14, Lot 7 and connect via force main to the treatment plant at the Plumsted Township Middle School for treatment and discharge via ground water. Currently the combined Plumsted Township Elementary/Middle School generates a flow of approximately 3,000 gpd on an average school day (functional capacity of 825 students and 75 professional staff). The Plumsted Township Middle School treatment plan will accommodate 10,000 gpd.

The amendment proposal was noticed in the New Jersey Register on June 7, 1993 at 25 N.J.R. 2595(c). Comment on this amendment was received during the public comment period and is summarized below with the DEPE's response.

**COMMENT:** The Tri-County Water Quality Management Board has no objection to this specific project. However, they have concerns about inadequate operation and maintenance of small on-site sewage treatment facilities which can lead to an increased incidence of failed systems and pose a risk to water supplies.

**RESPONSE:** The Ocean County Planning Board and Department recognize the concerns regarding small treatment plants [long term operation]. However, this portion of Ocean County was to be served by the Northern Burlington Regional Sewerage Authority which is now dissolved. Therefore, the Plumsted Township Middle School has no alternative wastewater treatment option. This amendment permits the abandonment of an older treatment plant located at the original Plumsted Township Elementary/Middle School (Block 14, Lot 7) which discharges directly to Crosswicks Creek.

(a)

**ENFORCEMENT  
OFFICE OF LOCAL ENVIRONMENTAL  
MANAGEMENT**

**Notice of Availability of Grants  
County Environmental Health Act Activities**

**Take notice** that the Department of Environmental Protection and Energy, in accordance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, hereby publishes notice of the availability of the following grant for calendar year 1994:

**Name of grant program:** County Environmental Health Act Program.

**Purpose for which the grant program funds will be used:** To support environmental health services undertaken by certified local health agencies on behalf of the Department of Environmental Protection and Energy pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.

**Amount of money in the grant program:** There is \$1,000,000 from a State appropriation available for grants. In addition, receipts from fines and penalties collected in excess of those anticipated from certain programs specified at P.L. 1993, c.155 are available for grants. Contact the person identified in this notice to receive further information.

**Eligible applicants must comply with the following requirements:**

1. Applicant must be a certified local health agency pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.
2. General and specific grant compliance requirements issued by the granting agency.

**Procedures for eligible applicants to apply for grant funds:** Completion of the County Environmental Health Act 1994 Grant Application which is available through the program office.

**For information contact:**

Deborah Pinto  
NJDEPE, Enforcement  
Office of Local Environmental Management  
401 East State Street, CN 422  
Trenton, New Jersey 08625-0422  
(609) 292-1305

**Deadline by which applications must be submitted:** Applications must be submitted by December 1, 1993.

**Date by which applicants shall be notified:** Applicants will be notified by April 1, 1994.

(b)

**OFFICE OF AIR QUALITY MANAGEMENT**

**Notice of Revisions to the State Implementation Plan  
for Ozone**

DEPE Docket Number: 52-93-08

**Take notice** that the New Jersey Department of Environmental Protection and Energy (the Department) is developing a revision to New Jersey's State Implementation Plan (SIP) for the attainment, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS) for ozone. This revision is required pursuant to the Federal Clean Air Act, 42 U.S.C.A. §7401 et seq., as amended November 15, 1990 (Act). The Act requires that this revision to the SIP be submitted by the State to the United States Environmental Protection Agency (USEPA) by November 15, 1993. The Department is seeking comment from the public on this proposed revision prior to its submittal to the USEPA.

This revision describes specific actions the Department will take to make "reasonable further progress" towards attainment of the NAAQS for ozone within the State. This is the second SIP revision for ozone required by the Act. The first revision, submitted to USEPA on November 15, 1992, implemented specific ozone control measures mandated by the Act. The second revision, being announced herein, includes a "rate-of-progress plan" which states the measures to be taken to achieve, by November 15, 1996, a 15 percent reduction in volatile organic compound (VOC) emissions from the 1990 air emission baseline. The third revision, due by November 15, 1994, will include a "post-1996 rate-of-progress plan" that will result in Statewide attainment of the NAAQS for ozone.

This revision will contain an executive summary; a summary of the relevant Act requirements; a statement regarding marginal area attainment; the 1990 air emission baseline emission inventory; a projected air emissions inventory for 1996; a rate-of-progress plan to achieve the required 15 percent reduction of VOCs from 1990 baseline emissions by 1996; a commitment to submit an attainment demonstration for the Atlantic City Metropolitan Statistical Area (MSA) by November 15, 1994; contingency measures to be implemented if the plan's contemplated reductions are not met by 1996; a commitment to implement a photochemical assessment monitoring system (PAMS) network, phased in over a five year period; and a statement outlining the steps taken to comply with Federal notification and hearing requirements for SIP revisions.

In fulfillment of outstanding requirements and commitments made to USEPA in the November 15, 1992 SIP, the Department will include as attachments to this revision a SIP revision for the Enhanced Inspection and Maintenance Program, a SIP revision for the Employer Trip Reduction Rule, a SIP revision for Transportation Control Measures to offset growth in emissions due to growth in vehicle miles travelled or vehicle trips, and reasonably available control techniques (RACT) requirements for both VOCs and oxides of nitrogen (NO<sub>x</sub>). A commitment to submit a full SIP revision for conformity rules/procedures upon promulgation of federal conformity regulations will also be included in this SIP revision.

**Any person who wishes to receive a copy of the draft SIP revision may request it from:**

Draft Ozone SIP Revision Request  
Bureau of Air Quality Planning  
New Jersey Department of Environmental  
Protection and Energy  
CN 418  
Trenton, New Jersey 08625-0418  
(Fax number: 609-633-6198)

To provide information to the public, the Department has scheduled a **workshop** as follows:

Tuesday, October 5, 1993  
10:00 A.M. to 4:00 P.M.  
Cook Student Center—Multi-Purpose Room B  
Cook College, Rutgers University  
Biel Road and Dudley Road  
New Brunswick, New Jersey

All persons are invited to attend this workshop. The purpose of the workshop is to present the contents of the draft SIP revision to the public and make Department staff available in an informal setting to answer questions pertaining to the SIP revision. The workshop is an opportunity for information and discussion only. It is not a public hearing.

**A public hearing** on the draft SIP revision will be held as follows:

Thursday, October 14, 1993  
1:00 P.M. to 5:00 P.M.  
6:00 P.M. to 8:00 P.M.  
New Jersey Transit Board Room  
One Penn Plaza East, 9th Floor  
Raymond Avenue  
Newark, New Jersey

All persons are invited to attend this public hearing. Any person who wishes to submit verbal public comment will be asked to indicate their desire to do so when they register at the door of the public hearing. As an aid to the Hearing Officer, the Department requests that persons who prepare their comments in advance of the hearing bring written copies of their comments to provide to the Hearing Officer.

In addition, any person may **submit written comments** directly to the Department. Such written comments, identified by the docket number given above, must be submitted by 5:00 P.M. Wednesday, October 20, 1993 to:

Janis E. Hoagland, Esq.  
Office of Legal Affairs  
New Jersey Department of Environmental  
Protection and Energy  
CN 402  
Trenton, New Jersey 08625-0402

Although the public hearing announced herein constitutes the formal opportunity for the public to comment on this SIP revision, the Department has previously afforded the public several opportunities to provide comment on components of this revision. On April 14, 1993, the Department held a public workshop on "New Jersey's 1990 Base Year and 1996 Projection Emission Inventories." On April 20, 1993, the Department

held a public workshop on "Developing New Jersey's 1996 Reasonable Further Progress Plan." On September 9, 1993 the Department held a public hearing on the rule proposal for reasonably available control technology (RACT) requirements for categories of sources which emit VOCs. On September 17, 1993 the Department held a public hearing on the proposed enhanced inspection/maintenance rule. In addition, the New Jersey Department of Transportation held three public hearings on the proposed rule for Employee Trip Reduction (Employee Commute Option). These hearings were held August 3, 5, and 12, 1993.

## (a)

**SITE REMEDIATION PROGRAM****Notice of Availability of Dispute Resolution Guidelines for the Site Remediation Program**

Take notice that the Site Remediation Program has available guidelines establishing a procedure through which a person conducting a remediation of a contaminated site may dispute a Department decision concerning the remediation. These guidelines have been established pursuant to, and within the timeframe established by, Section 41 of P.L. 1993, c.139.

Any person wishing a copy of these guidelines may contact their case manager or the Division of Responsible Party Site Remediation at (609) 633-7141.

**HEALTH**

## (b)

**THE COMMISSIONER****Notice of Call for Certificate of Need Applications**

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Bruce Siegel, M.D., M.P.H., Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities in accordance with the provisions of N.J.A.C. 8:33, 8:33A, 8:33C, 8:33E, 8:33F, 8:33I, 8:33N, 8:33R, and 8:33S, and N.J.S.A. 26:2H-1 et seq., as amended, including:

1. Capital expenditures for acute care general hospital services subject to the 1993 Statewide capital allowance of \$225 million including:

a. Construction, renovation, modernization, and expansion of medical/surgical units, adult ICU/CCU units, obstetric units, neonatal units, acute psychiatric units, surgical services, existing cardiac catheterization services, emergency departments, non-tertiary hospital-based diagnostic and treatment services, and ancillary and administrative functions.

Certificate of need applications for constructions, renovation, modernization, and expansion affecting pediatric or cardiac surgery services will not be accepted for processing at this time.

b. The following changes in bed categories:

Addition or conversion of medical/surgical, adult ICU/CCU, obstetric, and acute psychiatric beds to other acute care bed categories.

Certificate of need applications for the addition of pediatric beds will not be accepted for processing at this time.

c. Mobile intensive care services for the southern part of Warren County to complete the Statewide advanced life support system.

d. Acute renal dialysis services.

e. The expansion of existing cardiac catheterization services. Certificate of need applications for the initiation or expansion of any other health care service involving major moveable equipment will not be accepted for processing at this time. Certificate of need applications for the initiation or expansion of cardiac surgical services will not be accepted for processing at this time.

2. Upgrade of cobalt units to linear accelerators by existing providers of radiation therapy.

Replacement of low energy linear accelerators with medium/high energy linear accelerators are subject to the provisions of N.J.A.C. 8:33-6.1(b) and may be exempt from the certificate of need requirement.

3. Establishment of and changes in surgical services by all providers.

In accordance with N.J.A.C. 8:33-1.2(d), certificate of need applications shall be reviewed for conformance with the rules in effect on the date the application is deemed complete for processing. Therefore, this call is subject to amendments to rules currently in the regulatory

process providing the amendments are adopted on or before December 1, 1993. If the amendments are not adopted on or before December 1, 1993, action on all certificate of need applications affected by the applicable rule will be deferred until such time that the amendments are adopted. Amendments are currently in the regulatory process affecting the Hospital Policy Manual (N.J.A.C. 8:33A), Cardiac Facilities (N.J.A.C. 8:33E), and Surgical Facilities (N.J.A.C. 8:33S).

**Geographic area to be served:** Statewide with the exception of mobile intensive care services as noted above.

**Date application is due:** October 1, 1993.

**Date completeness review decision issued:** December 1, 1993.

**Date Local Advisory Boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board:** On or before January 15, 1994.

**Date State Health Planning Board will review the applications and submit recommendations to the Commissioner:** On or before March 1, 1994.

**Applications may be requested from and must be filed with:**

Certificate of Need Program  
New Jersey State Department of Health  
CN 360  
Trenton, NJ 08625-0360  
609-292-6552

Copies of the applicable rules are available from the State Health Planning Program (609-292-5960). There is a fee for duplication and mailing.

**Applications must also be filed with:** Local Advisory Board(s) serving the region of the proposed service.

**HUMAN SERVICES**

## (c)

**OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES****Notice of Available Grant Funds Advanced Research Fellowship Program (FY '95)**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services anticipates the following availability of funds.

**A. Name of the grant program that has funds available:** Advanced Research Fellowship Program (FY95).

**B. Purpose for which the grant program funds shall be used:** The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD), anticipates the availability of funds to encourage and stimulate cooperative programs of research among State governmental departments and agencies, universities and private agencies. The purpose of the Advanced Research Fellowship Program is to attract and retain in New Jersey talented scientists who wish to pursue a career in research related to the prevention of mental retardation and other developmental disabilities. Fields of possible research include, but are not limited to, genetics, embryology, biochemistry, immunology, endocrinology, teratology, epidemiology, morphology, environmental, or other areas related to the causes of developmental disabilities.

**C. Amount of money in the grant program:** A maximum of four fellowships in the amount of \$25,000 per fellowship will be awarded. These funds can be used for stipend support only. Research costs for experimentation, data collection, fieldwork, computer searches, and analyses, and equipment cannot be supported by these fellowships. Candidates must be prepared to begin their research on July 1, 1994 and to end on June 30, 1995.

**D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:** Candidates must be residents of New Jersey and must be prepared to conduct their research in New Jersey-based institutions of higher learning or other non-profit or public research entities.

**E. Qualifications needed by an applicant to be considered for the grant program:** Candidates must have been awarded their doctorate or medical degree or a master's degree in a related field such as public

health. Candidates must demonstrate established institutional relationships and support for the proposed research within the application process.

**F. Procedure for eligible entities to apply for fellowships:** Proposal packages may be requested from:

Deborah E. Cohen, Director  
Office for Prevention of Mental Retardation  
and Developmental Disabilities  
Department of Human Services  
222 South Warren Street, CN 700  
Trenton, New Jersey 08625  
609-984-3351

**G. Address of division, office or official receiving application:** Same as in F above.

**H. Deadline by which applications must be submitted to the office:** Proposals must be submitted by February 4, 1994.

**I. Date by which applicants shall be notified whether they will receive funds under the grant program:** Applicants shall receive notice of approval or disapproval by May 2, 1994.

**(a)**

**OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**Notice of Available Grant Funds  
New Jersey Coalition for Prevention of Developmental Disabilities**

**Take notice that,** in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services anticipates the following availability of funds:

**A. Name of the grant program that has funds available:** New Jersey Coalition for Prevention of Developmental Disabilities.

**B. Purpose for which the grant program funds shall be used:** The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD), anticipates the availability of State funds specific to the goal of administering a Statewide coalition that works to educate and inform the public about ways in which developmental disabilities may be prevented. The New Jersey Coalition for Prevention of Developmental Disabilities consists of over 200 organizations that engage in prevention activities. The administering agency will be responsible for coordinating these activities, publishing a quarterly newsletter, sponsoring an annual, Statewide conference, and providing technical assistance to local communities, school systems, and other agencies in designing and implementing prevention programs.

**C. Amount of money in the grant program:** Approximately \$95,000 will be available to support the activities of the New Jersey Coalition for Prevention of Developmental Disabilities. This contract may be awarded for a period of three years. Contract renewals will be dependent upon the availability of funds and the contractor's performance. Annual contract increases will be commensurate with the rates given other Department of Human Services provider agencies, given the availability of funding.

The proposal should provide detailed goals, objectives, work plans, evaluation systems and outcome measures for the three year period of July 1, 1994 through June 30, 1997.

**D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:** Agencies must be New Jersey based organizations, or corporate bodies; non-profit or public entities, which have demonstrated the capacity to carry out the proposed project.

**E. Qualifications needed by applicant to be considered for the grant program:** Agencies must have demonstrated experience in designing and implementing public education prevention projects. They should demonstrate the capability of coordinating large groups of individuals and organizations. They must be well-versed in the causes of developmental disabilities and the techniques used to educate diverse groups about prevention.

**F. Procedure for eligible organizations to apply for grant funds:** Proposal packages may be requested from:

Deborah E. Cohen, Director  
Office for Prevention of Mental Retardation  
and Developmental Disabilities  
Department of Human Services  
222 South Warren Street, CN 700  
Trenton, New Jersey 08625  
609-984-3351

**G. Address of division, office or official receiving application:** Same as in F above.

**H. Deadline by which applications must be submitted to the office:** Proposals must be submitted by February 11, 1994.

**I. Date by which applicants shall be notified whether they will receive funds under the grant program:** Applicants shall receive notice of approval or disapproval by April 29, 1994.

**(b)**

**OFFICE FOR PREVENTION OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES**

**Notice of Available Grant Funds  
OPMRDD Public Information Project (FY95)**

**Take notice that,** in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services anticipates the following availability of funds:

**A. Name of the grant program that has funds available:** OPMRDD Public Information Project (FY95).

**B. Purpose for which the grant program funds shall be used:** The Department of Human Services, Office for Prevention of Mental Retardation and Developmental Disabilities (OPMRDD), anticipates the availability of State funds specific to the goal of public information relative to prevention of mental retardation and other developmental disabilities. The intent of this program is to increase the public and professional awareness of the preventability of many forms of disabilities, and to modify conditions of life, professional practices, or personal behaviors in such a way as to reduce the risk, and hence the incidence, of various kinds of mental and physical disabilities originating in early life.

**C. Amount of money in the grant program:** Approximately 15 grants will be awarded between the amounts of \$5,000 and \$25,000. The grants will be planned for initiation and completion between July 1, 1994 and June 30, 1995.

**D. Groups or entities (citizens, counties, municipalities of a certain class, etc.) which may apply for the grant program:** Agencies must be New Jersey based organizations, or corporate bodies; non-profit or public entities, which have demonstrated the capacity to carry out the proposed project.

**E. Qualifications needed by an applicant to be considered for the grant program:** Agencies must have demonstrated experience in designing and implementing public education prevention projects.

**F. Procedure for eligible organizations to apply for grant funds:** Proposal packages may be requested from:

Deborah E. Cohen, Director  
Office for Prevention of Mental Retardation  
and Developmental Disabilities  
Department of Human Services  
222 South Warren Street, CN 700  
Trenton, New Jersey 08625  
609-984-3351

**G. Address of division, office or official receiving application:** Same as in F above.

**H. Deadline by which applications must be submitted to the office:** Proposals must be submitted by February 18, 1994.

**I. Date by which applicants shall be notified whether they will receive funds under the grant program:** Applicants shall receive notice of approval or disapproval by April 29, 1994.

## (a)

**DIVISION OF YOUTH AND FAMILY SERVICES****Notice of Availability of Grant Funds for the Recruitment of Adoptive Home for African-American Children**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

**A. Name of grant program:** Recruitment of Adoptive Homes for African-American Children.

**B. Purpose for which the grant program funds shall be used:** This program is intended to recruit adoptive homes in Morris, Hudson, Bergen, Passaic, Sussex, Warren, Essex, Union and Middlesex counties, for 20 African-American children, under DYFS supervision, awaiting adoption.

**C. Amount of money in the grant program:** Funding in the amount of \$125,000 in State Aid Grant Funds is available for this program in the first year.

**D. Organizations which may apply for funding under this program:** Non-profit, private agencies or organizations may apply for these funds.

**E. Qualifications needed by an applicant to be considered for funding:** Agencies interested in providing recruitment services must be reputable private or non-profit agencies.

**F. Procedure for eligible organizations to apply:** Agencies interested in applying for these funds may obtain a copy of the Request for Proposal from:

Elizabeth A. McGinnis  
New Jersey Division of Youth and Family Services  
CN 717  
Trenton, N.J. 08625  
or by calling 609-984-2382.

**A bidders conference** will be held on **Tuesday, October 12, 1993** at the Adoption Resource Center North at 22 Mill Street, 1st floor, Paterson, N.J. 07501 (phone 201-742-0063) at 11:00 A.M. Agencies interested in applying for these funds may also obtain a copy of the Request for Proposal by attending the bidders conference.

**G. Address to which application must be submitted:** Agencies interested in applying for these funds should submit one signed original and 10 copies of the completed Request for Proposal and all required supporting materials and copies to:

Rose Zeltser  
Division of Youth and Family Services  
CN 717  
Trenton, N.J. 08625

**H. Deadline by which applications must be submitted:** The completed application and all required supporting materials and copies must be postmarked by October 26, 1993, 5:00 P.M. and/or hand delivered by that same date and time at the Division of Youth and Family Services, CN 717, Trenton, N.J. 08625.

**I. Date by which applicants shall be notified of acceptance or rejection:** November 29, 1993.

## (b)

**DIVISION OF FAMILY DEVELOPMENT****Notice of Availability of Grant Funds  
Expansion of Essex County Family Development  
Program and Case Management and Lead Child  
Care Functions**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services under the authority of Public Law 1991, c.523, announces the availability of the following grant funds:

**A. Name of program:** Aid to Families With Dependent Children (AFDC) Family Development Program Expansion of Case Management and Lead Child Care Services.

**B. Purpose:** To expand the case management and child care services of the Family Development Program (FDP) in the County of Essex. The funds are available to create additional case management entities in a Family Resource Center environment to serve AFDC families in the city of Newark and the balance of Essex County. Services provided shall

include: case management; assessment; counselling; educational and employment-directed activities; referral to child care services; and the issuance of supportive service payments for participation in FDP activities or employment. Additionally, monies are available to establish an additional child care service registration and referral entity to link AFDC-FDP families with necessary child care services for participation in the FDP program or employment.

**C. Amount of available funding for program:** \$1,140,000 in funding will be provided for the reasonable costs associated with the administration of the case management function and program services; and \$400,000 in funding will be provided for the reasonable costs associated with the administration of the child care function and for child care services delivered.

**D. Organizations which may apply for funding under this program:** Private-for-profit or not-for-profit agencies that can provide trained personnel to accomplish the aforementioned services of the AFDC-FDP in the County of Essex with the AFDC population in the City of Newark and the balance of Essex County. Agency proposals must serve this population for the entire geographic area specified. The service components of the case management include, but are not limited to:

1. Case management;
2. Individual client/family assessments;
3. Job development;
4. Co-location of program components;
5. Program employability planning and the completion of Family Plans;
6. Referral services or direct delivery of services as follows: training; educational programs; community work experience; job search; social or rehabilitative services, as appropriate; other employment-oriented activities; referral to child care services and the provision of other supportive services of the FDP; and
7. Linkages with other community programs to secure and coordinate resources in the community.

The service components of the child care include, but are not limited to:

1. Registry of available child care providers to include center-based care, camps, after-school care, and registered home providers of care for all ages of children, including special-needs care, as appropriate;
2. Referral to child care providers; and
3. Ability to conduct home inspections on client-selected providers who may be family, neighbors, or friends of the AFDC family chosen as an "approved home provider" in accordance with Department of Human Services procedures.

**E. Procedure for eligible organizations to apply:** Request for proposal (RFP) packages will be available on September 20, 1993. Interested applicants may request an RFP, in writing, from:

Department of Human Services  
Division of Family Development  
Office of the Acting Deputy Director  
CN 716  
Trenton, New Jersey 08625  
Or, by telephone: (609) 588-2241

Additional information and technical assistance will be provided to interested applicants at a **Bidders Conference** to be held at the Division of Family Development, Quakerbridge Plaza, Building #9, Third-Floor Conference Room, Trenton, New Jersey, on Wednesday, September 22, 1993 at 10:00 A.M.

Request for proposal packages will be available, upon request, at the Bidders Conference.

**F. Address to which applications must be submitted:** Applicants should submit one signed original and seven copies of the completed Request for Proposal document and all support materials to:

Department of Human Services  
Division of Family Development  
Office of the Director  
CN 716  
Trenton, New Jersey 08625

**G. Deadline by which applications must be submitted:** The completed RFP document and all required supporting material must be received by the Office of the Director, at the above address, by 4:00 P.M. on October 18, 1993.

**E. Date the applicant is to be notified of acceptance or rejection of submitted proposal:** November 1, 1993.

**INSURANCE****(a)****DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS****Notice of Receipt of and Action on Petition for Rulemaking  
Rate Filing Requirements for Voluntary Market  
Private Passenger Automobile Insurance  
N.J.A.C. 11:3-16.10(b)(1)**

Petitioner: Professional Insurance Agents of New Jersey  
Authority: N.J.S.A. 17:1-8; 17:1C-6; and 17:29A-36.2

**Take notice** that on July 16, 1993, petitioner filed a petition with the Department of Insurance ("Department") requesting an amendment to N.J.A.C. 11:3-16.10(b)1 concerning the commission expense levels used in private passenger automobile insurance rate filings.

Specifically, petitioner is requesting an amendment to the present rule which requires insurers to compare their expenses, including expenses for commission and brokerage, to companies which are similarly organized. Petitioner seeks to have the Department amend N.J.A.C. 11:3-16.10(b)1 to require insurers to compare their expenses to those of companies which utilize similar marketing methodologies in setting the appropriate commission expense level to be included in private passenger automobile rate filings.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15 and after a thorough review of the petition, the Department has determined to grant the petitioner's request insofar as the Department will propose an amendment to N.J.A.C. 11:3-16.10(b). However, the Department has concluded N.J.A.C. 11:3-16.10(b)1 is not the proper section to be amended in order to accomplish the petitioner's objectives. Instead N.J.A.C. 11:3-16.10(b)6 should be amended. N.J.A.C. 11:3-16.10(b)6 specifically relates to the calculation of the historic expense provision for, among other things, commission and brokerage expenses. Therefore, an amendment to this provision directly addresses the petitioner's concerns. A notice of proposal for such an amendment is published elsewhere in this issue of the New Jersey Register.

**(b)****DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION****Notice of Receipt of Petition for Rulemaking and  
Action Thereon  
Activities for which Licensure as an Insurance  
Producer is not Required  
N.J.A.C. 11:17A-1.2 and 1.5(a)**

Petitioner: Professional Insurance Agents of New Jersey.  
Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15.1 et seq.

**Take notice** that petitioner, Professional Insurance Agents of New Jersey, filed with the Department a petition to amend paragraph 18 of the definition of "clerical duties" which appears at N.J.A.C. 11:17A-1.2. The petition was received on July 16, 1993.

The petitioner requests that the clerical duty appearing at paragraph 18 of N.J.A.C. 11:17A-1.2, which is an activity for which licensure is not required pursuant to N.J.A.C. 11:17A-1.5(a), be amended so as to apply to underwriters employed by licensed insurance producers as well as to underwriters employed by insurers. Petitioner proposes to amend paragraph 18 in the following manner (proposed addition indicated in boldface thus):

18. As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information under paragraph 15 above, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer's underwriting criteria, and mailing the policy to the policyholder or the producer.

The petitioner is motivated by the understanding that these rules were not intended to differentiate between the licensing requirements for employees of insurers and employees of insurance producers. Therefore, activities of an employee of an insurer which do not require licensure under the rules should also be stated as not requiring licensure of an employee of a licensed producer.

The Commissioner certifies that the petition was duly considered pursuant to law.

Upon due deliberation, the Department has determined to grant the petitioner's request and, accordingly, will propose the suggested amendment to paragraph 18 of the definition of "clerical duties" at N.J.A.C. 11:17A-1.2 at such time as other amendments to Chapter 17A are proposed.

The Department notes that paragraphs 1 through 18 in the definition of "clerical duties" at N.J.A.C. 11:17A-1.2 are preceded by the words, "including, but not limited to, the following" and are therefore not exclusive. Consequently, one may reasonably conclude that persons employed by insurance producers to perform the functions of "underwriter" as provided in paragraph 18 will also be exempt from the insurance producer licensing requirements even without the need for the proposed additional language.

**(c)****NEW JERSEY REAL ESTATE COMMISSION****Notice of Receipt of Petition for Rulemaking  
N.J.A.C. 11:5-1.16****Contracts of Sale, Leases and Listing Agreements**

Petitioner: Laura Trawinski, Clifton, New Jersey.

**Take notice** that on July 22, 1993, the Real Estate Commission received a petition for rulemaking concerning N.J.A.C. 11:5-1.16, the Commission's rules on contracts of sale, leases and listing agreements. Petitioner is an aggrieved homeowner who signed a listing agreement with a broker.

Petitioner requests that the Commission amend N.J.A.C. 11:5-1.16 to explicitly provide for a mandatory attorney review period for listing agreements. Petitioner also requests that the Commission require licensees who intend their listing agreements to be non-cancellable to clearly advise homeowners of that fact before having them sign the agreement.

In accordance with the provisions of N.J.A.C. 11:5-3.3, the Commission shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

**LAW AND PUBLIC SAFETY****(d)****DIVISION OF HIGHWAY TRAFFIC SAFETY****Notice of Grant Availability to State and Local  
Governments for Projects Implementing Highway  
Traffic Safety Programs**

**Take notice** that the State and Community Highway Safety Grant Project was established under the Federal Highway Safety Act of 1966, 23 U.S.C. 402. The Act requires each state to have a highway safety program approved by the Secretary of Transportation designed to reduce deaths, injuries and property damage resulting from traffic accidents.

The Governor is responsible for the administration of the State's Highway Safety Program through the New Jersey Division of Highway Traffic Safety in accordance with N.J.S.A. 52:17B. The Division of Highway Traffic Safety prepares a Highway Safety Plan, which identifies the State's traffic safety problems and describes the programs and projects to address those problems, and coordinates the funding for local and State projects. Activities under the 402 program area are centered predominantly on efforts to control the drinking driver, increase traffic law enforcement, improve the quality of emergency medical services through additional training of State and local personnel, and improve the collection and analysis of traffic accident data.

Approximately \$3,000,000 will be available on a Statewide basis, during Federal Fiscal Year 1994, to units of government to address the Federal

priority areas, which are: Alcohol and Other Drug Countermeasures, Police Traffic Services, Occupant Protection, Emergency Medical Services, Traffic Records, Motorcycle Safety, Pedestrian Safety/Bicycle Safety and Roadway Safety.

Federal law requires that 40 percent of the funds be expended through grants to local governments. This notice solicits applications from government units that are interested in developing and implementing projects under this program.

A copy of the Highway Safety Plan and the Application for Highway Safety Project Grants are available by writing to: New Jersey Division of Highway Traffic Safety, CN-048, Trenton, New Jersey 08625 or telephone (609) 633-9300.

Grant applications will be accepted throughout the 1993-94 Federal Fiscal Year. The Division contemplates that application decisions will be rendered within 30 days of receipt.

## PUBLIC UTILITIES

### (a)

#### BOARD OF REGULATORY COMMISSIONERS

##### Notice of Consideration of Certain Policy Issues Pursuant to Section 712 of the Energy Policy Act of 1992

##### BRC Docket Number: EX93080310

**Take notice** that on August 20, 1993, the Board of Regulatory Commissioners (BRC) initiated a proceeding to consider the policy issues listed below. These issues are being considered as required by the Section 712 of the Energy Policy Act of 1992.

**This notice** is being given to inform the public that the BRC is accepting comments on the following:

(i) The potential for increases or decreases in the costs of capital for such utilities, and any resulting increases or decreases in the retail rates paid by electric consumers, that may result from purchases of long-term wholesale power supplies in lieu of the construction of new generation facilities by such utilities;

(ii) Whether the use by exempt wholesale generators (as defined in section 32 of the Public Utility Holding Company Act of 1935) of capital structures which employ proportionally greater amounts of debt than the capital structures of such utilities threatens reliability or provides an unfair advantage for exempt wholesale generators over such utilities;

(iii) Whether to implement procedures for the advance approval or disapproval of the purchase of a particular long-term wholesale power supply; and

(iv) Whether to require as a condition for the approval of the purchase of power that there be reasonable assurances of fuel supply adequacy.

**Interested persons** may submit comments to:

Irene Johnson, Secretary  
New Jersey Board of Regulatory Commissioners  
CN 350  
Trenton, New Jersey 08625

**All comments must be submitted by October 20, 1993 and should reference Docket No. EX93080310.** A service list of all commenters will be prepared and mailed to all that submit comments. Commenters will be required to provide copies of their comments to all persons on the service list. Commenters will have 15 days from receipt of the comments to reply to other comments. Subsequent to receipt of replies, a written decision and order will be issued by the BRC or further proceedings may be conducted as the BRC deems appropriate. Any questions regarding this matter should be directed to the BRC's Division of Electric at (201) 648-3717.

## OTHER AGENCIES

### (b)

#### ELECTION LAW ENFORCEMENT COMMISSION

##### Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1993, Ending June 30, 1993

**Take notice** that Frederick M. Herrmann, Executive Director of the Election Law Enforcement Commission, in compliance with N.J.S.A. 52:13C-23, hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the second quarter of 1993, accompanied by a Summary of the Quarterly Report.

At the conclusion of the second quarter of 1993, the Notices of Representation filed with this office reflect that 566 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation and regulation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter.

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all Quarterly Reports filed by Legislative Agents for the second calendar quarter of 1993, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Election Law Enforcement Commission, the Office of Legislative Services, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

The names of registered Agents, their registration numbers, their business addresses and whom they represent.

A list of Agents who have filed Quarterly Reports by statutory and compilation deadlines for this quarter.

A list of Agents whose Quarterly Reports were not received by the compilation deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the second calendar quarter of 1993:

- No. 50-4 John Maxwell representing American Petroleum Institute
- No. 864-1 Richard Woolston representing South Jersey Transportation Authority
- No. 864-2 Michael J. Voll representing South Jersey Authority
- No. 865-1 David Schwartz representing Affordable Housing Services of NJ, Inc.
- No. 800-2 Vic Trzesniowski, Independent Lobbyist
- No. 602-7 Andrei Kodjak representing Public Interest Research Group of New Jersey Citizen Lobby
- No. 870-1 Bill Mathesius representing Honeywell, Inc.
- No. 784-4 Bruce Lubitz representing Jetro Cash and Carry Enterprises, Inc.
- No. 551-10 Colleen McCann representing MWW/Strategic Communications, Inc.
- No. 866-1 Paula Hayes representing NJ Head Injury Association
- No. 747-4 Cheryl Wolf representing HIP/Rutgers
- No. 869-1 Mary Spear representing PFL Life Insurance Co.
- No. 75-5 John Indyk representing The Marcus Group, Inc.
- No. 867-1 James Burnte representing National Federation of Independent Business
- No. 868-1 Cynthia Povich representing Independent Energy Producers of NJ
- No. 868-2 Steven Some representing The Coastal Corp. and US Generating Company
- No. 871-1 Joseph Ackourey representing Pfizer, Inc.
- No. 872-1 Janet Marie Wengler representing L & F Products
- No. 747-5 George Strumpf representing Health Insurance Plan of Greater New York
- No. 873-1 Alan Ashkinaze representing Governmental Affairs Management Group
- No. 45-8 Ann Glass Bucciero representing New Jersey Savings League
- No. 874-1 Kyle Zimmer representing Advocates for Highway and Auto Safety
- No. 773-1 Seth Grodofsky representing Non-Profit Affordable Housing Network of NJ

**PUBLIC NOTICES**

- No. 875-1 Phyllis M. Forsyth representing First Trenton Indemnity Co.
  - No. 876-1 Joseph L. Bocchini representing Unisys Corporation
  - No. 878-1 Richard Clement representing Tropworld Casino & Entertainment Resort
  - No. 877-1 Joanna Gregory, Independent Lobbyist
  - No. 877-1 Edward Collins representing Allstate Insurance Co.
  - No. 879-1 William Salemme representing Allstate Insurance Co.
- Following is a listing of all Legislative Agents who have filed Notices of Termination during the second calendar quarter of 1993:

<b>Legislative Agent</b>	<b>Registration Number</b>
Alan Ashkinaze	26-6

**OTHER AGENCIES**

Ruth Ann Burns	822-1
Alexander Ellwood	49-2
Phyllis Forsyth	526-1
Laura Giannotta	147-1
Robert Healy	769-1
James Hedden	201-1
Kyra Lindemann	596-1
George Miles	822-2
Christine O'Brien	551-2
Cynthia Povich	737-1
Steven Some	685-1
Richard Wolf	22-6

For further information, contact the staff of the Commission at (609) 292-8700.

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# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 2, 1993 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

**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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 19, 1993**

**NEXT UPDATE: SUPPLEMENT AUGUST 16, 1993**

**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
24 N.J.R. 3203 and 3454	September 21, 1992	25 N.J.R. 1309 and 1620	April 5, 1993
24 N.J.R. 3455 and 3578	October 5, 1992	25 N.J.R. 1621 and 1796	April 19, 1993
24 N.J.R. 3579 and 3784	October 19, 1992	25 N.J.R. 1797 and 1912	May 3, 1993
24 N.J.R. 3785 and 4144	November 2, 1992	25 N.J.R. 1913 and 2150	May 17, 1993
24 N.J.R. 4145 and 4306	November 16, 1992	25 N.J.R. 2151 and 2620	June 7, 1993
24 N.J.R. 4307 and 4454	December 7, 1992	25 N.J.R. 2621 and 2794	June 21, 1993
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993	25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 389 and 616	February 1, 1993	25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 619 and 736	February 16, 1993	25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 1031 and 1308	March 15, 1993		

## N.J.A.C. CITATION

### ADMINISTRATIVE LAW—TITLE 1

1:10-1.1, 9.1, 9.2, Family Development hearings  
14.1, 14.2, 14.3, 18.1  
1:13A-1.1, 14.2, 14.4, Lemon Law hearings  
18.1, 18.3

## PROPOSAL NOTICE (N.J.R. CITATION)

25 N.J.R. 3888(a)

## DOCUMENT NUMBER

R.1993 d.422

## ADOPTION NOTICE (N.J.R. CITATION)

25 N.J.R. 4063(a)

**Most recent update to Title 1: TRANSMITTAL 1993-1 (supplement June 21, 1993)**

### AGRICULTURE—TITLE 2

2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:68	Commercial feeding stuffs	25 N.J.R. 3889(a)		
2:69-1.11	Commercial values of primary plant nutrients	25 N.J.R. 3585(a)		
2:71	Grades and standards	25 N.J.R. 1801(a)	R.1993 d.379	25 N.J.R. 3453(a)
2:71-2.26	Grades and standards: administrative correction			25 N.J.R. 3453(b)
2:72	Bonding requirement of commission merchants, dealers, brokers, agents	25 N.J.R. 1802(a)	R.1993 d.378	25 N.J.R. 3453(c)
2:74	Controlled atmosphere storage apples	25 N.J.R. 1803(a)	R.1993 d.377	25 N.J.R. 3453(d)
2:76-5.1-5.4	Soil and water conservation project cost-sharing	25 N.J.R. 3279(a)		
2:76-6.2-6.11, 6.13, 6.16, 6.17	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 1804(a)	R.1993 d.392	25 N.J.R. 3453(e)
2:76-6.11	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 3890(a)		
2:76-10	Farmland Appraisal Handbook Standards	25 N.J.R. 1811(a)	R.1993 d.391	25 N.J.R. 3461(a)

**Most recent update to Title 2: TRANSMITTAL 1993-4 (supplement June 21, 1993)**

### BANKING—TITLE 3

3:1-13.2	Mortgage loans: fire insurance amount	25 N.J.R. 3585(b)		
3:1-16.2, 16.3	Fees; mortgage banker non-servicing	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:4-2	Payment of stock options to directors, officers and employees of State depositories	25 N.J.R. 3586(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:28-4.7, 4.12	Repair and improvement loans	25 N.J.R. 3587(a)		
3:31	Repeal (see 3:28-4.7, 4.12)	25 N.J.R. 3587(a)		
3:32	Conversion of associations and savings banks	25 N.J.R. 2799(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:38-1.3, 4.1	Mortgage banker—mortgage banker non-servicing conversion; fees	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		

**Most recent update to Title 3: TRANSMITTAL 1993-6 (supplement July 19, 1993)**

### CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>PERSONNEL—TITLE 4A</b>				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:3	Classification, services and compensation	25 N.J.R. 1916(a)	R.1993 d.424	25 N.J.R. 4064(a)
<b>Most recent update to Title 4A: TRANSMITTAL 1993-4 (supplement June 21, 1993)</b>				
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:3	Department records	25 N.J.R. 2157(a)	R.1993 d.419	25 N.J.R. 4071(a)
5:5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA))	25 N.J.R. 1315(a)	R.1993 d.373	25 N.J.R. 3509(a)
5:10	Maintenance of hotels and multiple dwellings	25 N.J.R. 2627(a)	R.1993 d.464	25 N.J.R. 4482(a)
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18C-4.2, 5.2, 5.3, 5.4	Fire service training and certification	25 N.J.R. 1846(a)	R.1993 d.440	25 N.J.R. 4071(b)
5:23-1.4, 2.7, 2.17A	Uniform Construction Code: minor work; ordinary repairs	25 N.J.R. 3692(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)	R.1993 d.420	25 N.J.R. 4072(a)
5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14-3.18, 3.20, 3.20A, 3.21, 4.3A, 4A.8, 4A.11, 12.2	Uniform Construction Code: subcodes	25 N.J.R. 3891(a)		
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)		
5:23-2.23	Uniform Construction Code: ventilation system requirements in Class I and II business and education buildings	25 N.J.R. 2161(a)	R.1993 d.421	25 N.J.R. 4073(a)
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.5	Uniform Construction Code: "Notice of Elevator Device Sealed Out of Operation"	25 N.J.R. 3693(a)		
5:26-8.2	Meetings of community associations	25 N.J.R. 3693(b)		
5:50	State Review Process for intergovernmental review of applications for Federal financial assistance and direct development activities	25 N.J.R. 3281(a)		
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)	R.1993 d.436	25 N.J.R. 4074(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)	R.1993 d.437	25 N.J.R. 4075(a)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:91-14	Council on Affordable Housing: interim procedures	25 N.J.R. 1118(a)	R.1993 d.407	25 N.J.R. 3753(a)
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
<b>Most recent update to Title 5: TRANSMITTAL 1993-7 (supplement July 19, 1993)</b>				
<b>MILITARY AND VETERANS' AFFAIRS—TITLE 5A</b>				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		
<b>Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)</b>				
<b>EDUCATION—TITLE 6</b>				
6:3-9	School Ethics Commission	25 N.J.R. 1924(a)	R.1993 d.394	25 N.J.R. 3511(a)
6:22A	School facility lease purchase agreements	25 N.J.R. 3588(a)		
6:28-1.1, 1.3, 2.3, 2.6, 2.7, 3.2, 3.7, 4.1-4.4, 7.5, 8.4, 9.2, 10.1, 10.2, 11.2, 11.4, 11.9	Special education	25 N.J.R. 1318(a)	R.1993 d.393	25 N.J.R. 3515(a)
6:78	Marie H. Katzenbach School for the Deaf	25 N.J.R. 3592(a)		
<b>Most recent update to Title 6: TRANSMITTAL 1993-5 (supplement June 21, 1993)</b>				
<b>ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7</b>				
7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1F-2.2, App. A	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)	R.1993 d.408	25 N.J.R. 3754(a)
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-1.2, 6.1-6.11, 6.13-6.16	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)	R.1993 d.386	25 N.J.R. 3537(a)
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.5, 4.14, 4.15	Surface water quality standards	25 N.J.R. 405(a)	R.1993 d.415	25 N.J.R. 3755(a)
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-4.15	Water surface quality standards: Walkkill River	25 N.J.R. 3755(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)	R.1993 d.477	25 N.J.R. 4486(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1-3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)		
7:22-9.1, 9.2, 9.4, 9.11-9.15, 10.1, 10.2, 10.4, 10.5, 10.6	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)	R.1993 d.409	25 N.J.R. 3760(a)
7:22A-1.4, 1.5, 1.7, 1.12, 1.15, 1.16, 2.4, 2.5, 2.6, 2.8, 3.4, 4.2, 4.5, 4.8, 4.11, 6.1-6.9, 6.11, 6.12, 6.14, 6.15, 7	Sewage Infrastructure Improvement Act grants: interconnection and cross-connection abatement	25 N.J.R. 1643(a)	R.1993 d.409	25 N.J.R. 3760(a)
7:25-5	1993-94 Game Code	25 N.J.R. 1930(a)	R.1993 d.390	25 N.J.R. 3519(a)
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)		

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7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-18.1	Marine fisheries: administrative correction			25 N.J.R. 4495(a)
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)		
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)	R.1993 d.428	25 N.J.R. 4075(b)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties	25 N.J.R. 3339(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures	25 N.J.R. 3339(a)		
7:27B-4.1, 4.5-4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:36	Green Acres Grant Program	25 N.J.R. 3405(a)		
7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)	R.1993 d.385	25 N.J.R. 3534(a)
<b>Most recent update to Title 7: TRANSMITTAL 1993-7 (supplement July 19, 1993)</b>				
<b>HEALTH—TITLE 8</b>				
8:2	Creation of birth record	24 N.J.R. 4325(a)	R.1993 d.397	25 N.J.R. 3771(a)
8:2	Creation of birth record: reopening of comment period	25 N.J.R. 660(a)		
8:2A-1	Access to death records	25 N.J.R. 3115(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	25 N.J.R. 2169(a)	R.1993 d.438	25 N.J.R. 4128(a)
8:21-3.13	Repeal (see 8:21-3A)	24 N.J.R. 3100(a)		
8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:31B	Hospital financing: correction to proposal	25 N.J.R. 3566(a)		
8:31B-1.1	Hospital financing	25 N.J.R. 3117(a)		

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8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimbursement: uncompensated care	25 N.J.R. 3125(a)		
8:31B-4.41-4.41N	Hospital reimbursement: charity care audit functions	25 N.J.R. 3707(a)		
8:33	Certificate of Need: application and review process	25 N.J.R. 2171(a)	R.1993 d.442	25 N.J.R. 4129(a)
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33A-1.10, 1.16, 1.29	Hospital Policy Manual: capital cap and review process	25 N.J.R. 3710(a)		
8:33E	Cardiac diagnostic facilities and surgery centers: certificate of need	25 N.J.R. 3712(a)		
8:33H	Long-term care services: certificate of need policy	25 N.J.R. 3719(a)		
8:33S	Surgical facilities: certificate of need	25 N.J.R. 2790(a)		
8:34	Nursing home administrators: standards for licensing	25 N.J.R. 3727(a)		
8:36	Assisted living residences and comprehensive personal care homes: standards for licensure	25 N.J.R. 3734(a)		
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and ambulance services: licensure; street EMS	25 N.J.R. 2663(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)	R.1993 d.443	25 N.J.R. 4140(a)
8:44	Operation of clinical laboratories	25 N.J.R. 3904(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
8:59-1, 2, 5, 6, 9, 11, 12	Worker and Community Right to Know Act rules	25 N.J.R. 864(a)	R.1993 d.384	25 N.J.R. 3543(a)
8:59-3.1, 3.2, 3.3, 3.5-3.9, 3.11, 3.13-3.17	Worker and Community Right to Know Act: trade secrets and definitions	25 N.J.R. 858(a)	R.1993 d.386	25 N.J.R. 3537(a)
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a))	25 N.J.R. 55(a)	R.1993 d.467	25 N.J.R. 4496(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b))	25 N.J.R. 875(a)	R.1993 d.469	25 N.J.R. 4497(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a))	25 N.J.R. 1814(b)	R.1993 d.466	25 N.J.R. 4496(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products	25 N.J.R. 2802(b)	R.1993 d.465	25 N.J.R. 4495(b)
8:71	Interchangeable drug products	25 N.J.R. 3906(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		
8:100	State Health Plan: invalidation of rules			25 N.J.R. 3772(a)

**Most recent update to Title 8: TRANSMITTAL 1993-6 (supplement July 19, 1993)**

**HIGHER EDUCATION—TITLE 9**

9:1	Licensing and degree approval standards	25 N.J.R. 3057(a)		
9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		

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9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-2.6	Student assistance programs: independent student status	25 N.J.R. 1945(a)	R.1993 d.388	25 N.J.R. 3464(a)
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)		
9:9	NJHEAA student loan programs	25 N.J.R. 2187(a)	R.1993 d.441	25 N.J.R. 4079(a)
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)		
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)		

**Most recent update to Title 9: TRANSMITTAL 1993-4 (supplement May 17, 1993)**

**HUMAN SERVICES—TITLE 10**

10:3	Contract administration	25 N.J.R. 3694(b)		
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:15-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15A-1.2	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15B-1.2, 2.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:15C-1.1	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)	R.1993 d.396	25 N.J.R. 3772(b)
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)		
10:37-5.37-5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37-6.62-6.72, 6.92-6.98, 9, 10	Community mental health programs: quality assurance standards, site review and certification	25 N.J.R. 2193(a)	R.1993 d.412	25 N.J.R. 3782(a)
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41-2.3, 2.8, 2.9	Division of Developmental Disabilities: access to client records and record confidentiality	25 N.J.R. 432(a)	R.1993 d.381	25 N.J.R. 3465(a)
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)	R.1993 d.434	25 N.J.R. 4082(a)
10:51-5.6	Pharmaceutical services: income eligibility limits	25 N.J.R. 3407(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1-1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)		
10:62	Vision care services	25 N.J.R. 3907(a)		
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)	R.1993 d.444	25 N.J.R. 4104(a)
10:66-1.5, 1.6, 3	Independent mental health clinics: personal care assistant services	25 N.J.R. 3058(a)	R.1993 d.475	25 N.J.R. 4498(a)
10:69-5.1	HAAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69A-1.2, 6.2	PAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69B	Lifeline Programs	25 N.J.R. 3701(a)		
10:69B-4.2	Lifeline programs: income eligibility limits	25 N.J.R. 3407(a)		
10:71-4.8, 5.4, 5.5, 5.6, 5.9	Medicaid Only: eligibility computation amounts	25 N.J.R. 1818(a)	R.1993 d.402	25 N.J.R. 3786(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)		
10:81-10.7, 10.8	Refugee Resettlement Program: eligibility limitations	25 N.J.R. 3919(a)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)		
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:85-1.1, 3.1, 3.2, 4.2, 7.2	Eligibility for employable GA recipients	25 N.J.R. 1714(a)	R.1993 d.382	25 N.J.R. 3466(a)
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:121A-5.10	Requirements for adoption agencies: searches	25 N.J.R. 3415(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)		
10:126	Family day care registration: manual of requirements	25 N.J.R. 3703(a)		
10:127	Residential child care facilities: manual of requirements	25 N.J.R. 1716(a)	R.1993 d.403	25 N.J.R. 3787(a)
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)		
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)		
10:133D-4	DYFS case management: in-person visits with clients and substitute care providers	25 N.J.R. 2210(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		

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10A:1-1.2, 2.7	Rulemaking petitions; rule exemptions: administrative changes	_____	_____	25 N.J.R. 4105(a)
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)	R.1993 d.435	25 N.J.R. 4105(b)
10A:4-4.1	Inmate discipline: sexual assault	25 N.J.R. 3416(a)		
10A:16-9.1	Blood donation by inmates: autologous donations	25 N.J.R. 3920(a)		
10A:71-3.2, 3.21	State Parole Board: calculation of parole eligibility terms	25 N.J.R. 1665(a)	R.1993 d.399	25 N.J.R. 3826(a)
10A:71-3.47	Inmate parole hearings: victim testimony process	24 N.J.R. 4483(a)	R.1993 d.410	25 N.J.R. 3826(b)
10A:71-6.4, 7.3	State Parole Board: conditions of parole	25 N.J.R. 435(a)	R.1993 d.398	25 N.J.R. 3829(a)
10A:71-7.16	State Parole Board: general conditions of parole and future eligibility upon revocation	25 N.J.R. 3597(a)		

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#### INSURANCE—TITLE 11

11:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1327(a)		
11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4	Automobile insurance: limited assignment distribution servicing carriers	24 N.J.R. 519(a)	R.1992 d.371	24 N.J.R. 3414(a)
11:1-32.4, 35	Insurance holding company systems	Emergency (expires 10-15-93)	R.1993 d.445	25 N.J.R. 4275(a)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:1-36	Examination of insurers	Emergency (expires 10-15-93)	R.1993 d.446	25 N.J.R. 4284(a)
11:2-17.11	Payment of third-party claims: written notice by insurer to claimant	25 N.J.R. 3921(a)		
11:2-27	Determination of insurers in a hazardous financial condition	Emergency (expires 10-15-93)	R.1993 d.447	25 N.J.R. 4286(a)
11:2-28	Credit for reinsurance	Emergency (expires 10-15-93)	R.1993 d.448	25 N.J.R. 4289(a)
11:2-33.4	Workers' compensation self-insurance: administrative correction	_____	_____	25 N.J.R. 4179(a)
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(a)		
11:2-36	Risk retention groups and purchasing groups	Emergency (expires 10-15-93)	R.1993 d.449	25 N.J.R. 4298(a)
11:2-37	Producer-controlled insurers	Emergency (expires 10-15-93)	R.1993 d.450	25 N.J.R. 4304(a)
11:2-38	Increase in property and casualty capital and surplus requirements	Emergency (expires 10-15-93)	R.1993 d.451	25 N.J.R. 4306(a)
11:2-39	Increase in capital and surplus requirements for life and health insurers	Emergency (expires 10-15-93)	R.1993 d.452	25 N.J.R. 4309(a)
11:2-40	Life, health and annuity reinsurance agreements	Emergency (expires 10-15-93)	R.1993 d.453	25 N.J.R. 4314(a)
11:3-2.2, 2.4, 2.5, 2.6, 2.11, 2.12	Personal Automobile Insurance Plan	25 N.J.R. 2212(a)		
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)		
11:3-28.1, 28.2, 28.4, 28.6, 28.10-28.13, App. A, B	Reimbursement of excess medical expense benefits paid by automobile insurers	25 N.J.R. 2636(b)		
11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)	R.1993 d.395	25 N.J.R. 3466(b)
11:3-29.6	Automobile PIP coverage: physical therapy services	24 N.J.R. 2998(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:5	Real Estate Commission rules	25 N.J.R. 3597(b)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.38	Real Estate Commission: pre-proposal regarding buyer-brokers	24 N.J.R. 3488(b)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:13-8	Commercial lines: prospective loss costs filing procedures	25 N.J.R. 1047(a)	R.1993 d.411	25 N.J.R. 3829(b)
11:17-1.2, 2.3-2.15, 5.1-5.6	Insurance producer licensing	24 N.J.R. 3216(a)		
11:17-6	Managing general agents	Emergency (expires 10-15-93)	R.1993 d.454	25 N.J.R. 4318(a)
11:17-7	Reinsurance intermediaries	Emergency (expires 10-15-93)	R.1993 d.455	25 N.J.R. 4323(a)
11:17A-1.5	Activities for which licensure as insurance producer not required: administrative correction	_____	_____	25 N.J.R. 4179(b)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20	Individual Health Coverage Program	25 N.J.R. 2945(a)	R.1993 d.439	25 N.J.R. 4180(a)
11:21	Small Employer Health Benefits Program	25 N.J.R. 3599(a)		

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**LABOR—TITLE 12**

12:5	Department audit resolution procedures	25 N.J.R. 3417(a)		
12:6	Petitions for rulemaking	25 N.J.R. 3682(a)		
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)		
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment Compensation and Temporary Disability: 1994 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	25 N.J.R. 3922(a)		
12:17-11.2	Offset of unemployment benefits by retirement and pension income	25 N.J.R. 3923(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:112	Occupational Safety and Health Review Commission	25 N.J.R. 3059(a)	R.1993 d.474	25 N.J.R. 4498(b)

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12:195-2.1, 3.22, 6.1, 7	Carnival and amusement rides: bungee jumping	25 N.J.R. 2128(a)	R.1993 d.374	25 N.J.R. 3500(a)
12:235-1.6	Workers' Compensation: 1994 maximum benefit rate	25 N.J.R. 3925(a)		

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12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:120	Urban Enterprise Zone Program and business certification	25 N.J.R. 2645(b)	R.1993 d.416	25 N.J.R. 3837(a)

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13:1-7.2	Police Training Commission rules: administrative correction			25 N.J.R. 4106(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:19-1.1, 1.7	Driver Control Service: administrative hearings applicability	25 N.J.R. 893(a)	R.1993 d.389	25 N.J.R. 3503(a)
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)		
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-38	Dimensional standards for automobile transporters	25 N.J.R. 1342(a)	R.1993 d.380	25 N.J.R. 3504(a)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)	R.1993 d.418	25 N.J.R. 4106(b)
13:27-5.8	Board of Architects: examination fees	25 N.J.R. 3704(a)		
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.1	Board of Dentistry: fee schedules	25 N.J.R. 3927(a)		
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)		
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)		
13:30-8.18	Continuing dental education	25 N.J.R. 1344(a)	R.1993 d.413	25 N.J.R. 3837(b)
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fee schedule	25 N.J.R. 3928(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-1.3	Board of Pharmacy: fee schedule	25 N.J.R. 1666(a)	R.1993 d.414	25 N.J.R. 3839(a)
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39A-2.5	Board of Physical Therapy: referral of patients from chiropractors	25 N.J.R. 3938(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)		
13:42	Board of Psychological Examiners rules	25 N.J.R. 3062(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)		
13:43	State Board of Shorthand Reporting rules	25 N.J.R. 3079(a)	R.1993 d.471	25 N.J.R. 4499(a)
13:44-1.2, 1.3, 1.4, 2.9	Board of Veterinary Medical Examiners: examinations	25 N.J.R. 3930(a)		

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
13:44C	Audio and Speech-Language Pathology Advisory Committee rules	25 N.J.R. 1668(a)	R.1993 d.383	25 N.J.R. 3504(b)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late renewal and reinstatement fee timeframes	25 N.J.R. 3931(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)		
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)		
13:44G-1-5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)	R.1993 d.460	25 N.J.R. 4499(b)
13:60	Motor carrier safety	25 N.J.R. 3091(a)	R.1993 d.472	25 N.J.R. 4501(a)
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)		
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.53	Thoroughbred racing: trifecta	25 N.J.R. 3103(a)		
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)		
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)		
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		
13:71-23.3B, 23.3C	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 3427(a)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-27.50	Harness racing: trifecta	25 N.J.R. 3106(a)		
13:71-27.56	Harness racing: the Pick (N)	25 N.J.R. 3705(a)		
13:79	Safe and Secure Communities Program	Emergency (expires 10-26-93)	R.1993 d.476	25 N.J.R. 4511(a)

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14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:3-7.15	Discontinuance of services to customers: notification of municipalities and others	24 N.J.R. 3023(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)		
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)		
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)	R.1993 d.361	25 N.J.R. 4106(c)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

**Most recent update to Title 14: TRANSMITTAL 1993-4 (supplement July 19, 1993)**

**ENERGY—TITLE 14A**

**Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>STATE—TITLE 15</b>				
15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		
<b>Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)</b>				
<b>PUBLIC ADVOCATE—TITLE 15A</b>				
<b>Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)</b>				
<b>TRANSPORTATION—TITLE 16</b>				
16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:25	Utility accommodation	25 N.J.R. 2217(a)	R.1993 d.433	25 N.J.R. 4111(a)
16:28-1.6, 1.56, 1.111	Speed limit zones along U.S. 40, U.S. 40 and 322, and Route 87 in Atlantic County	25 N.J.R. 3942(a)		
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)	R.1993 d.456	25 N.J.R. 4507(a)
16:28-1.48, 1.93	Speed rates along Route 167 in Port Republic and Route 44 in Greenwich and West Deptford	25 N.J.R. 2225(a)	R.1993 d.400	25 N.J.R. 3841(a)
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)	R.1993 d.457	25 N.J.R. 4507(b)
16:28-1.125	Speed limits along Route 67 in Fort Lee	25 N.J.R. 3442(a)		
16:28A-1.1, 1.7, 1.17, 1.23, 1.32, 1.36	Restricted parking and stopping along U.S. 1 Business in Mercer County, U.S. 9 in Ocean and Monmouth counties, Routes 26 and 33 in Middlesex County, U.S. 46 in Warren and Morris counties, and Route 57 in Warren County	25 N.J.R. 2226(a)	R.1993 d.401	25 N.J.R. 3841(b)
16:28A-1.2, 1.31, 1.36, 1.44	Parking restrictions along U.S. 1 and 9 in Elizabeth, Route 45 in Woodbury, Route 57 in Washington Borough, Route 88 in Lakewood and Brick Township	25 N.J.R. 3443(a)		
16:28A-1.6, 1.7, 1.33, 1.41, 1.52, 1.57	Restricted parking and stopping on Route 7 in Nutley, U.S. 9 in Galloway Township, Route 47 in Vineland, Route 77 in Bridgeton, Route 173 in Bethlehem, and U.S. 206 in Lawrence Township	25 N.J.R. 2649(a)	R.1993 d.426	25 N.J.R. 4118(a)
16:28A-1.19	Parking restrictions along Route 28 in Bound Brook	25 N.J.R. 3943(a)		
16:28A-1.20, 1.25, 1.31, 1.41	Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton	25 N.J.R. 3127(a)		
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)	R.1993 d.458	25 N.J.R. 4507(c)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.41	Restricted parking along Route 77 in Bridgeton	25 N.J.R. 3944(b)		
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)	R.1993 d.427	25 N.J.R. 4117(a)
16:30-6.1	Weight limit on Edison Bridge along U.S. 9 over Raritan River	Emergency (expires 9-27-93)	R.1993 d.417	25 N.J.R. 3863(a)
16:30-10.15	Midblock crosswalk along Route 27 in Franklin Township and North Brunswick	25 N.J.R. 3128(a)		
16:30-10.16	Midblock crosswalk on Route 71 in Belmar	25 N.J.R. 3683(a)		
16:31-1.10	Left turn prohibition along U.S. 30 in Magnolia Borough	25 N.J.R. 3445(a)		
16:31-1.10, 1.17, 1.22, 1.32	Turn restrictions along U.S. 30 in Waterford Township, Route 73 in Winslow Township, U.S. 130 in Mercer County, and Route 36 in Sea Bright	25 N.J.R. 2835(a)	R.1993 d.459	25 N.J.R. 4508(a)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:47-1.1, 4.1, 4.3-4.6, 4.13, 4.32, 4.35, App. B	State Highway Access Management Code	25 N.J.R. 3129(a)		
16:47-8.5	State Highway Access Management Code: access classifications	25 N.J.R. 3945(a)		
16:50	Employer Trip Reduction Program (ETRP)	25 N.J.R. 3132(a)		
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16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	25 N.J.R. 3142(a)		
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	25 N.J.R. 3144(a)		

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16:85	NJ TRANSIT: contracting policies and procedures	25 N.J.R. 3450(a)		

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17:6	Consolidated Police and Firemen's Pension Fund	25 N.J.R. 3946(a)		
17:9	State Health Benefits Program	25 N.J.R. 2651(b)	R.1993 d.463	25 N.J.R. 4508(b)
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