

JERSEY REGISTER

6100000
EDUCATION, DEPARTMENT OF
CITY LIBRARY, ARCHIVES & HISTORY
01022
TOWNSHIP INTER-OFFICE

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 20

October 21, 1991 Indexed 23 N.J.R. 3061-3192

(Includes adopted rules filed through September 27, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 19, 1991

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 16, 1991

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDER

OFFICE OF THE GOVERNOR

Executive Order No. 42(1991): Continuance of Governor's
School Board of Overseers; Membership 3063(a)

RULE PROPOSALS

Interested persons comment deadline 3062

ADMINISTRATIVE LAW

Discipline of administrative law judges: extension of
comment period 3179(a)

PERSONNEL

Sick Leave Injury (SLI): withdrawal of proposal 3093(a)

COMMUNITY AFFAIRS

Uniform Fire Code: smoke detector compliance in one
and two-family dwellings 3064(a)

Council on Affordable Housing: public hearing and
extension of comment period regarding municipal
development fees 3132(a)

ENVIRONMENTAL PROTECTION AND ENERGY

Hazardous constituents in waste streams 3093(b)

HEALTH

Hospital rate setting 3097(a)

Hospital reimbursement: Diagnosis Related Groups 3114(a)

Adult closed acute psychiatric beds: liaison participation
and discharge planning 3128(a)

CORRECTIONS

Inmate social services 3065(a)

INSURANCE

BASIC Health Care Coverage 3066(a)

TRANSPORTATION

Speed limit zone along Route 57 in Hackettstown 3128(a)

Bus stop zones along Route 7 in Nutley, Route 166 in
Dover Township, and U.S. 206 in Bordentown 3129(a)

No passing zones along Route 50 in Atlantic County,

Route 41 in Gloucester County, and Route 143
in Camden County 3130(a)

Prohibited pedestrian use of Barnegat Bay bridges in
Dover Township 3131(a)

ELECTION LAW ENFORCEMENT COMMISSION

Lobbyists and legislative agents 3077(a)

CASINO CONTROL COMMISSION

Underage gaming violations; affirmative defenses 3084(a)

Master coin bank and coin vaults 3085(a)

Casino checks issued to patrons 3087(a)

Casino hotel alcoholic beverage control 3087(b)

Casino entertainment 3092(a)

RULE ADOPTIONS

ADMINISTRATIVE LAW

Return of contested cases: failure of party to
appear at hearing 3133(a)

BANKING

Closing of branch offices 3133(b)

Department records designated nonpublic 3133(c)

Licensure of mortgage lenders 3134(a)

ENVIRONMENTAL PROTECTION AND ENERGY

Stormwater management: Water Pollution Control
Act compliance 3134(b)

Waste management: administrative corrections to
N.J.A.C. 7:26-3A.17 and 5.4 3138(a)

HEALTH

Reporting of HIV infection with identifiers 3138(b)

HIGHER EDUCATION

County community colleges 3143(a)

New Jersey College Loans to Assist State Students
(NJCLASS) Program: repayment of loan 3143(b)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 20, 1991**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

HUMAN SERVICES		Green Acres Program: public hearing regarding proposed sewer easement in Greenwood Lake State Park	3180(b)
Medicaid eligibility: pregnant women and children	3144(a)	Swimming River Natural Area management plan	3180(c)
AFDC Emergency Assistance	3144(b)	HIGHER EDUCATION	
General Assistance Program	3155(a)	New Jersey College Loans to Assist State Students (NJCLASS): loan interest rates	3180(c)
Commission for Blind and Visually Impaired:		HUMAN SERVICES	
Business Enterprise Program	3161(a)	Charity Racing Days for Developmentally Disabled: grant program	3181(a)
INSURANCE		LABOR	
Relief from insurer obligations under FAIR Act	3166(a)	Prevailing wages for public works: petition to amend N.J.A.C. 12:60-3.2 regarding telephone workers	3181(b)
Legal services insurance	3170(a)	EXECUTIVE COMMISSION ON ETHICAL STANDARDS	
LAW AND PUBLIC SAFETY		Petition to amend N.J.A.C. 19:61-5.5 regarding procedure for rulemaking petitions	3181(c)
Violent crimes compensation: transportation costs	3170(b)	INDEX OF RULE PROPOSALS AND ADOPTIONS	
PUBLIC UTILITIES			3182
Purchased water and sewerage treatment adjustment clauses	3171(a)	Filing Deadlines	
TRANSPORTATION		November 18 issue:	
Time limit parking zones along Route 45 in Harrison Township, and no stopping or standing zones along U.S. 202 in Morris Plains	3176(a)	Adoptions	October 24
TREASURY-TAXATION		December 2 issue:	
Property tax appeals: extension of time to file due to late tax bills	3177(a)	Proposals	October 29
PUBLIC NOTICES		Adoptions	November 6
ADMINISTRATIVE LAW		December 16 issue:	
Discipline of administrative law judges: extension of comment period	3179(a)	Proposals	November 13
ENVIRONMENTAL PROTECTION AND ENERGY		Adoptions	November 20
Matching Grants Program for Local Environmental Agencies	3179(b)	January 6, 1992 issue:	
Northeast water quality management: Pequannock, Lincoln Park, and Fairfield Sewerage Authority	3179(c)	Proposals	December 4
Tri-County water quality management: Mansfield Township	3180(a)	Adoptions	December 11

NEW JERSEY REGISTER

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

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

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

Copyright 1991 New Jersey Office of Administrative Law

(CITE 23 N.J.R. 3062)

NEW JERSEY REGISTER, MONDAY, OCTOBER 21, 1991

EXECUTIVE ORDER**(a)****OFFICE OF THE GOVERNOR****Governor Jim Florio****Executive Order No. 42(1991)****Continuance of Governor's School Board of Overseers; Membership**

Issued: September 26, 1991.

Effective: September 26, 1991.

Expiration: Indefinite.

WHEREAS, the New Jersey Governor's School Program (hereinafter referred to as the "Governor's School Program") has been a successful effort to help foster excellence in education for rising high school seniors during its nine years in existence; and

WHEREAS, the New Jersey Governor's School Board of Overseers (hereinafter referred to as the "Board") was created by Executive Order No. 129 on February 20th, 1986 to provide a central entity authorized to advise the Governor regarding the Governor's School Program and coordinate its activities, enhance the quality of the educational programs, supervise fundraising and expansion plans, and monitor the Governor's Schools and their expenditures of funds; and

WHEREAS, the Board has been helpful in assuring the involvement of the State's Scholars from diverse geographic, economic, and social backgrounds;

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

1. The Governor's School Board of Overseers shall continue in existence concurrently with the operation of the Schools.

2. The Board shall be composed of: The Commissioner of Education, or his designee; the Chancellor of the Department of Higher Education, or his designee; a representative of the Governor's Office; and the Presidents of the institutions of higher learning at which the Governor's Schools are located, and twenty-one public members to be appointed by the Governor, who shall represent organizations and foundations committed to excellence in education, members of the private sector knowledgeable of the current academic needs of today's business market, and individuals who have personally demonstrated a willingness to provide future and present lay scholars with an environment in which they may be intellectually challenged.

3. Four of the twenty-one public members shall be members of the New Jersey Legislature and shall be appointed as follows:

a. two members of the Senate, to be appointed by the Governor, each a member of a different political party, and who shall serve concurrently with their terms of office; and

b. two members of the General Assembly, to be appointed by the Governor, each a member of a different political party, and who shall serve concurrently with their terms of office; and

4. In the case of the initial appointments of the remaining public members, 6 shall be for terms expiring one year from the date of appointment, 6 shall be for terms expiring two years from the date of appointment, and 5 shall be for terms expiring three years from the date of appointment. Thereafter, the terms of office of the remaining public members shall be for three years. Each public member shall serve until a successor shall have been appointed and vacancies shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

5. Except as expressly provided herein, Executive Order No. 129 (Kean) shall remain in full force and effect.

6. This Order shall take effect immediately.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Certificate of Smoke Detector Compliance

Proposed Amendments: N.J.A.C. 5:18-2.8, 3.2 and 4.3

Proposed New Rules: N.J.A.C. 5:18-2.20 and 4.19

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

Authority: P.L. 1991, c.92.

Proposal Number: PRN 1991-517.

Submit written comments by November 20, 1991 to:

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

Summary

P.L. 1991, c.92, signed by Governor Florio on April 9, 1991, requires the Commissioner of Community Affairs to promulgate rules requiring the installation of smoke-sensitive alarm devices in one- and two-family dwellings whenever a change of tenancy or ownership occurs. The smoke sensitive devices are to be located in accordance with the National Fire Protection Association Standard No. 74, 1984 edition, and must be tested and listed by a product certification agency approved by the Bureau of Fire Safety in the Department of Community Affairs. The proposed amendments and new rules provide standards for the enforcement of P.L. 1991 c.92, including requirements for certification of compliance.

The enforcement of the act is only to occur upon change of occupancy, and requires the issuance of a certification that the devices have been installed and are operational. Additionally, in any municipality where there is an existing change of occupancy requirement, no such certificate can be issued until compliance with this law is verified.

According to Department of Labor statistics, there are approximately 1.5 million one-family, and 100,000 two-family, owner-occupied dwellings in the State. It is estimated that the average turnover is every seven years, or about 240,000 units a year. Additionally, approximately 60,000 rental units change tenants each year. Accordingly, this law requires over 300,000 inspections per year. In order to assure that the law is carried out, an alternative that would permit the local fire official to accept a certification of installation is permitted, along with the acceptance of existing municipal ordinances.

Social Impact

The installation of smoke sensitive alarm devices in one- and two-family dwellings will be a positive step towards reducing fire deaths in residential dwellings. Recent statistics indicate that 58 percent of fire deaths in New Jersey occur in one and two-family dwellings in which smoke detectors were either not present or failed to operate.

Economic Impact

The proposed amendment to N.J.A.C. 5:18-2.8(d) includes an application fee of \$20.00, although a different fee may be adopted by ordinance by the local enforcing agency based on actual enforcement costs. The purchase cost of the battery-powered smoke detectors will range between \$20.00 and \$75.00 depending on the size of the structure and the number of detectors consequently required. As the devices are only required on resale or change in tenancy, the impact on individual homeowners and enforcing agencies will be minor.

Regulatory Flexibility Analysis

The amended and new rules apply to one- and two-family dwelling owners without any distinction between those owners that are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and those, mainly individuals, who are not. The amendments and new rules require the installation of smoke-

sensitive alarm devices in one and two-family dwellings whenever a change of tenancy or ownership occurs. The installation of smoke alarms is a positive step towards reducing fire deaths in residential dwellings. No distinction benefitting small businesses has been made in the statute P.L. 1991, c.92 that this proposed rule is intended to implement and, therefore, no distinction in the rules would be appropriate, for this and for safety reasons.

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

5:18-2.8 Fees[.]; registration, **certificate of smoke detector compliance** and permit

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

(d) **The application fee for a certificate of smoke detector compliance, as required by N.J.A.C. 5:18-2.20, shall be \$20.00.**

[(d)](e) A municipality having a local enforcing agency may establish by ordinance a different permit **and certificate of smoke detector compliance** fee schedule based on the actual cost anticipated or incurred for the enforcement of [this] **these Code provisions.**

5:18-2.20 **Certificate of smoke detector compliance**

(a) **Before any Use Group R-3 structure is sold, leased, or otherwise subject to a change of occupancy for residential purposes, the owner shall obtain a certificate of smoke detector compliance (CSDC), evidencing compliance with N.J.A.C. 5:18-4.19, from the appropriate enforcing agency.**

1. **Where a municipality has existing inspection or approval requirements under a property maintenance or other municipal code, the agency responsible for the enforcement of that code shall not issue any certificate of inspection or occupancy or other approval under such municipal code until it has determined, in accordance with (d) below, that the dwelling complies with the requirements of N.J.A.C. 5:18-4.19.**

2. **Where no municipal inspection or approval requirement exists, the agency responsible for enforcement of the Uniform Fire Safety Act shall be responsible for the issuance of the CSDC.**

(b) **The owner, or the authorized agent of the owner, shall apply for a CSDC on a form provided by the enforcing agency. The application shall be accompanied by the appropriate fee as set forth in N.J.A.C. 5:18-2.8.**

(c) **A CSDC shall not be transferable. If the change of occupancy specified in the application for a CSDC does not occur within six months, a new application shall be required.**

1. **The enforcing agency may issue a CSDC for a seasonal rental unit for a period of up to 12 months, regardless of the number or frequency of changes in tenancy.**

(d) **No CSDC shall be issued until inspection of the structure indicates compliance with N.J.A.C. 5:18-4.19.**

1. **The local enforcing agency may accept, in lieu of inspection, a certification that one or more smoke detectors, as applicable, have been installed and tested in accordance with N.J.A.C. 5:18-4.19. Such certification shall be upon forms provided by the enforcing agency.**

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1.-33. (No change.)

34. Appendix A (Referenced Standards) A.N.S.I. (American National Standards Institute, Inc.) is amended as follows:

i. Add Standard Reference Number UL 217, Single and Multiple Station Smoke Detectors, referenced in N.J.A.C. 5:18-4.19(c).

[34.]35. (No change in text.)

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

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to the more restrictive requirements established by this subchapter.

1. **Exception: The requirements of N.J.A.C. 5:18-4.19 shall apply to all Use Group R-3 structures, regardless of their state of compliance with the Uniform Construction Code or any other code.**

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

(d) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of the Uniform Fire Code, shall remain valid, subject to the following conditions:

1. (No change.)

[2.] (e) Notwithstanding the provisions of [this section contained] (a) through (d) above, nothing shall prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.14 or the construction official from making a finding of unsafe building pursuant to N.J.A.C. 5:23-2.23 and requiring correction of such hazard or unsafe condition in accordance with those regulations.

5:18-4.19 Smoke detectors for one- and two-family dwellings

(a) In all Use Group R-3 dwellings subject to the requirements of N.J.A.C. 5:18-2.20, smoke detectors shall be installed as follows:

- 1. On each level of the premises; and
- 2. Outside of each separate sleeping area.

(b) The smoke detectors required in (a) above shall be located in accordance with NFPA 74 and maintained in working order.

1. The detectors shall not be required to be interconnected.

(c) Smoke detectors may be battery-powered and shall be listed in accordance with ANSI/UL 217.

1. A/C-powered smoke detectors shall be accepted as meeting the requirements of this section.

CORRECTIONS

(a)

THE COMMISSIONER

Social Services

Proposed Readoption with Amendments: N.J.A.C. 10A:17

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

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

Proposal Number: PRN 1991-512.

Submit comments by November 20, 1991 to:

Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10A:17, Social Services, expires on December 15, 1991. The Department of Corrections has reviewed these rules and, with the exception of amendments in subchapters 2 and 5, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated and is, therefore, proposing them for readoption at this time.

Subchapters 1, 4 and 7 are reserved.

Subchapter 2 provides the policies and procedures for selecting, orienting, supervising and evaluating volunteers who provide various services to inmates in correctional facilities. Proposed amendments in this subchapter will remove all references to the Coordinator of Volunteer Services and require the forwarding of certain documents to the Office of the Deputy Commissioner for review. These amendments are being proposed because of the elimination of the title of Coordinator of Volunteer Services. A proposed amendment of N.J.A.C. 10A:17-2.6(d) will remove "An ex-offender may participate in the Volunteer Service Program . . ." and replace it with "A person with an arrest history may participate in the Voluntary Service Program . . ." This amendment is being proposed to clarify the intent of this rule.

Subchapter 3 provides the policies and procedures for selecting, orienting, supervising and evaluating volunteers who assist Bureau of Parole personnel in district offices.

Subchapter 5 provides rules for the administration of religious activities within in correctional facilities within the Department of Corrections. A proposed amendment to N.J.A.C. 10A:17-5.9 specifies the type of meals which must be provided to inmates who, for religious reasons, abstain from consuming food items served to the general population. A proposed new section N.J.A.C. 10A:17-5.10 has been added which provides the procedures by which an inmate may be placed on the vegetarian diet.

Subchapter 6 provides the policies and procedures for recruiting and selecting chaplains who coordinate religious activities within correctional facilities.

Subchapter 8 provides the rules which govern the recreation and leisure time activities of inmates within correctional facilities.

Subchapter 9 provides the procedures for referring handicapped children to the Office of Educational Services, Department of Corrections, for educational services.

Social Impact

The rules within this chapter have been in effect for some time. These social services permit an inmate to receive religious counselling and/or practice his or her religious faith, receive services provided by volunteers which may not ordinarily be available because of budgetary constraints and provide activities which assist an inmate in utilizing his or her leisure time constructively. These services serve to relieve the tensions experienced by inmates while they are incarcerated, and contribute to the orderly operation of a correctional facility. The proposed amendments, providing the procedures to be used when an inmate wants to be added or removed from the vegetarian diet list, will more clearly specify the process for placement on or removal from the vegetarian diet. The provision of the vegetarian diet contributes to reduced conflict between staff and inmates and a reduction in the amount of litigation initiated by inmates on issues related to the substitution of certain food items because of religious considerations.

Economic Impact

The proposed readoption in the amendments of N.J.A.C. 10A:17 will not have an economic impact because additional financial resources are not required to implement or maintain these rules. The financial resources to provide these social services are obtained by the Department of Corrections through the established State budgetary process.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10A:17.

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

10A:17-2.1 Definitions

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

...
["Coordinator of Volunteer Services" means the Central Office staff person, within the Office of the deputy commissioner, who is responsible for coordinating the administration of Volunteer Service Programs within the Department of Corrections.]
...

10A:17-2.2 [Coordinator of Volunteer Services] (Reserved)

[(a) The Coordinator of Volunteer Services shall provide consultation, support and coordination to all administrative units on matters related to the Volunteer Service Program.

(b) The Coordinator of Volunteer Services shall monitor and evaluate Volunteer Service program activities.]

10A:17-2.4 Selecting the Supervisor of Volunteer Services

(a) When a vacancy in the position of full time Supervisor of Volunteer Services occurs or when a new position becomes available, the Superintendent [or his or her designee shall notify the Coordinator of Volunteer Services] shall select the applicant to fill the position in accordance with procedures established by the New Jersey Department of Personnel and notify the Office of the Deputy Commissioner when the position has been filled.

(b) The Superintendent shall select the applicant to fill the position of supervisor of Volunteer Services in accordance with procedures established by the Department of Personnel after consultation with the Coordinator of Volunteer Services.]

10A:17-2.5 Recruiting volunteers

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

(c) Assistance in recruiting volunteers may be provided by the Coordinator of Volunteer Services.]

10A:17-2.6 Eligibility for Volunteer Service Program

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

(d) [An ex-offender] A person with an arrest history may participate in the Volunteer Service Program if his or her volunteer application is approved by the Supervisor of Volunteer Services, the Superintendent and the Office of the Deputy Commissioner.

10A:17-2.9 Volunteer Handbook

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

(d) Prior to publishing or republishing the Volunteer Handbook, the final draft shall be submitted to the [Coordinator of Volunteer Services] Office of the Deputy Commissioner for review and written approval.

(e) When the approved Volunteer Handbook has been printed, the [institution] correctional facility shall submit a copy to the [Coordinator of Volunteer Services] Office of the Deputy Commissioner and to the appropriate Assistant Commissioner's office to be maintained on file.

(f) (No change.)

10A:17-2.20 Volunteer Service Program in community residential facilities

(a) (No change.)

(b) The policies and procedures outlined in (a) above shall be revised when necessary, and submitted to the [Coordinator of Volunteer Services] Office of the Deputy Commissioner and the appropriate Assistant Commissioner's office for review and written approval on or before September 30 of each year.

10A:17-2.23 Reporting responsibilities

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

(c) The supervisor of Volunteer Services shall submit copies of his or her monthly and annual reports to the Superintendent and the [Coordinator of Volunteer Services] Office of the Deputy Commissioner.

10A:17-2.24 Procedures and post orders

(a) (No change.)

(b) Each [institution] correctional facility shall submit a copy of the written procedures governing the Volunteer Service Program to the [Coordinator of Volunteer Services] Office of the Deputy Commissioner for review and approval on or before September 30 of each year.

10A:17-5.9 Religious diets

(a) Inmates may abstain from eating food items, served to the general population, which are prohibited by the inmate's religion. In such instances, [an alternate food item shall be provided]. upon approval by the Chaplaincy Department (see N.J.A.C. 10A:17-5.10, nutritionally balanced vegetarian meals shall be provided to all inmates who, due to religious beliefs, do not wish to eat meat. Such vegetarian meals shall be made available to inmates as an alternative to the "principal meal" which is provided to the rest of the inmate population.

(b) The vegetarian entree shall be provided at each of the three meals of the day (breakfast, lunch and dinner), seven days per week, except on those occasions when the principal meal being served does

not contain any meat (for example, a breakfast of juice and cereal, etc.). In such instances, all inmates will receive the same meal.

(c) All vegetarian diets, unless otherwise indicated, will be served as a complete meal and not in supplement to, or as a choice between, dietary meals and regular meals.

(d) Vegetarian diets shall be provided to inmates only when requests for such diets have been reviewed and approved by the Chaplaincy Department.

10A:17-5.10 Placement on the religious vegetarian diet

(a) In order to be considered for placement on the list of inmates approved for vegetarian diets, the inmate must complete Sections I and II of Form 370-I Religious Vegetarian Diet, which may be obtained on request from the housing unit Social Worker.

(b) The inmate shall forward Form 370-I Religious Vegetarian Diet, with sections I and II completed, to the Chaplaincy Department for review.

(c) The Chaplaincy Department may interview an inmate who has requested placement on the list of inmates approved for vegetarian diets if it is deemed necessary. In no case shall the interview be used to proselytize the inmate.

(d) If the inmate's request for placement on the list of inmates approved for vegetarian diets is approved, the Chaplain shall forward the completed Form 370-I Religious Vegetarian Diet to the Institutional Classification Committee (I.C.C.).

(e) The Institutional Classification Committee shall submit the name of an inmate who has been approved for placement on a vegetarian diet to the Food Service Department.

(f) If the inmate's request for placement on a vegetarian diet is disapproved, the Chaplain shall notify the inmate and file Form 370-I Religious Vegetarian Diet in the inmate's Classification folder. The Chaplain's decision is final and is not subject to being overruled by the Institutional Classification Committee (I.C.C.).

(g) Any inmate who wishes to be added or deleted from the list of inmates approved for vegetarian diets shall provide 30 days written notice to the Chaplaincy Department using Form 370-I Religious Vegetarian Diet.

Recodify existing 10A:17-5.10 through 5.20 as 10A:17-5.11 through 5.21 (No change in text.)

INSURANCE

(a)

ACTUARIAL SERVICES

Basic Health Care Coverage Authorized by P.L. 1991, c.187

Proposed New Rules: N.J.A.C. 11:4-36

Proposed Amendments: N.J.A.C. 11:4-14.1, 15.1, 16.2, 19.2, 28.3

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

Authority: N.J.S.A. 17:1-8.1, 17:1C-6, P.L. 1991, c.187 §§49-59.

Proposal Number: PRN 1991-527.

Submit comments by November 20, 1991 to:

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

The agency proposal follows:

Summary

The Health Care Cost Reduction Act ("HCCRA"), P.L. 1991, c.187, was enacted on July 1, 1991. The primary goal of the HCCRA is to reduce the cost of purchasing and delivering health care in New Jersey. Secondary goals of the HCCRA include increasing the number of New Jersey citizens covered by private insurance by making health care

coverage more affordable and more accessible, with an emphasis on preventive care coverage, rather than catastrophic coverage.

Sections 49 through 59 of the HCCRA require that private insurers, health, hospital and medical service corporations ("service corporations") and health maintenance organizations ("HMOs") offer individual and group basic health care coverage having specified benefits ("BASIC"). The Department of Insurance is required by the HCCRA to provide schedules for the policy benefits, specify loss ratios, and set forth other standards for the HCCRA policies.

In fulfilling its statutory mandate, the Department of Insurance ("Department") is interpreting the HCCRA to be pursuing the following objectives: (1) promotion of policies designed primarily for individuals and groups that are basically healthy but unable to afford the standard benefit policies currently available in the marketplace, in order to reduce the uncompensated care burden; (2) development of a rating system which increases the spreading of risks among as wide a population as reasonably possible without promoting unfair discrimination, in order to enhance affordability and pricing stability; (3) development of policies which will provide coverage opportunities to all members of a family, and to as many families as possible, in order to reduce the uncompensated care burden; (4) development of coverage not subject to mandated benefits, mandated physician compensation, and not subject necessarily to current rating practices or policy standards, but which otherwise must meet current standards established for policies or contracts delivered or issued for delivery in this State by private insurers, service corporations or HMOs ("carriers"); (5) development of coverage which will be attractive to groups, but which will not prompt groups currently covered under standard policies to engage in wholesale abandonment of that coverage in order to obtain less expensive (and less comprehensive) coverage; and (6) development of a data-gathering mechanism to evaluate the effectiveness of sections 49 through 59 of the HCCRA and rules promulgated thereunder, and suggest recommendations for improving upon both the accessibility and affordability of health care coverage in New Jersey.

These proposed new rules, N.J.A.C. 11:4-36, and rule amendments, N.J.A.C. 11:4-14.1, 15.1, 16.2, 19.2 and 28.3, represent the Department's effort to effectuate these objectives. In preparing these proposed new rules the Department has made additional interpretations and assumptions based in part upon the language of the HCCRA, and in part upon current Department policy, specifically with respect to mandated health care benefits, alternative benefits, managed care and coverage to be provided by hospital and medical service corporations. An explanation of the Department's opinion on these issues is set forth in the following paragraphs.

As used in the HCCRA, the Department interprets the term "benefit" to refer only to services and supplies. Thus, mandated health care benefits means statutorily specified services and supplies or general services and supplies for treatment of specified conditions, illness or disease(s). The Department does not believe that mandated health care benefits should be interpreted to refer to persons to whom benefits must be offered, or optional or additional policy/contract provisions which a specific carrier's enabling statute may require, unless such specifications are clearly inconsistent with the HCCRA. The Department believes that any limitation on persons to be covered, as opposed to benefits to be provided, would violate the intent of the HCCRA, and public policy of this State. Thus, while alcoholism treatment benefits are not required in BASIC policies, newborn coverage is.

The Department interprets the HCCRA such that no benefits alternative to those specified by statute may be provided in a BASIC policy until the alternative benefit is affirmatively approved by the Commissioner. Furthermore, it is the Department's position that such approval may not be deemed by any statutory provision, nor is otherwise subject to hearings or such other proceedings which usually are required for form filings.

At this time, the Department is not taking a strict view of the term "alternative," which would typically mean, with respect to benefits, choices among benefits of approximate equal value. Rather, the Department is interpreting the concept of alternative benefits as including additional optional benefits for additional premiums, or optional lesser benefits for lower premiums, as well as trading one benefit for another for approximately equivalent premiums. However, the Department is not interpreting "alternative benefit" to include reference to higher deductibles and/or copayments for BASIC benefits, or optional deductibles or copayments with respect to maternity benefits or physical examinations, because such interpretations would be inconsistent with the intent and plain language of the HCCRA.

Carriers are encouraged to submit alternative benefit proposals to the Commissioner for review. Carriers may propose alternative benefits for all covered persons or for classes of covered persons. Additionally, carriers may propose alternative benefits for individual policies and group policies separately. Carriers are cautioned, however, that the Department will be on the alert for proposals which essentially are standard policies that otherwise do not comply with minimum statutory and regulatory requirements of this State, including mandated benefits, as well as alternative benefit proposals which promote unfairly discriminatory practices in violation of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq.

It is the Department's interpretation that no managed care or managed care system may be utilized by any carrier for BASIC policies until such managed care or managed care system is affirmatively approved by the Commissioner, unless the carrier is authorized by other statutes to specifically utilize managed care (such as HMOs, pursuant to N.J.S.A. 26:2J-1 et seq.). Furthermore, it is the Department's opinion that approval may not be deemed by any statutory provision, nor is otherwise subject to hearings or such other proceedings which usually are required for form filings.

Carriers are encouraged to propose varied managed care methods for varied policies and varied benefits. Carriers will, however, be required to provide detailed explanations of whatever system they propose, ensuring that the system does not promote unfairly discriminatory practices which would violate the Trade Practices Act at N.J.S.A. 17B:30-1 et seq., and ensuring that the system provides adequate services and accessibility for all covered persons.

With respect to BASIC policies to be provided by hospital and medical service corporations, it is the Department's view that such service corporations should provide only those HCCRA benefits relevant to their pre-July 1, 1991 statutory enabling provisions. That is, hospital service corporations should provide only basic hospital expense coverage and maternity benefits, and medical service corporations should provide only basic medical-surgical benefits, physical exam benefits and physician-related maternity expenses. The Department believes such truncated BASIC policies may be offered without violating the HCCRA because these service corporations are ill-equipped to provide underwriting or rating for the remainder of the HCCRA benefits. The Department will not entertain alternative benefit proposals submitted from such service corporations which include the remainder of the HCCRA benefits, but will consider such proposals from other carriers which intend their proposals to complement a hospital service or medical service corporation BASIC policy.

N.J.A.C. 11:4-14.1 and 15.1 are proposed for amendment to clarify that BASIC policies are not subject to any statutorily mandated benefit requirements, or rules promulgated thereunder. N.J.A.C. 11:4-14 sets standards for home health care, and N.J.A.C. 11:4-15 sets standards for the provision of alcoholism treatment benefits.

N.J.A.C. 11:4-16 sets forth minimum standards and minimum benefits for a variety of individual policies delivered or issued for delivery in this State. N.J.A.C. 11:4-16.2 is proposed for amendment to clarify that the standards for BASIC individual policies are not contained in N.J.A.C. 11:4-16, but are set forth by proposed new rules at N.J.A.C. 11:4-36.

N.J.A.C. 11:4-19 sets standards for optional childbirth benefits. N.J.A.C. 11:4-19.2 is proposed for amendment because maternity benefits are required for BASIC policies.

N.J.A.C. 11:4-28.3 is proposed for amendment to specify that the rules for coordination of benefits are not permissive with respect to group BASIC policies. Rather, group BASIC policies must contain coordination of benefit provisions, and may not elect to be always primary. Group BASIC policies, as well as all other BASIC policies, must comply also with N.J.A.C. 11:3-37.

The proposed new rules at N.J.A.C. 11:4-36 provide the standards specific to BASIC policies authorized by the HCCRA.

N.J.A.C. 11:4-36.1 sets forth the purpose of the proposed new rules, which is to establish standards for BASIC policies.

N.J.A.C. 11:4-36.2 sets forth the scope and applicability of the proposed new rules. All policies meant to comply with the HCCRA must also comply with these proposed new rules. Additionally, all carriers authorized to transact the business of health insurance in New Jersey are subject to these proposed new rules.

N.J.A.C. 11:4-36.3 sets forth definitions for purposes of the proposed new rules.

N.J.A.C. 11:4-36.4 sets forth which entities subject to these proposed new rules must provide BASIC policies and whether they must provide

group or individual policies or both. Carriers providing group BASIC policies must also provide BASIC conversion policies.

N.J.A.C. 11:4-36.5 sets forth the requirements for submitting forms and rates for filing by the Commissioner, including rate revisions. All forms and rates must be submitted for filing, subject to a 60-day deemer provision.

N.J.A.C. 11:4-36.6 sets forth loss ratio standards and rate submission requirements. Experience rating of BASIC policies is prohibited. The Department will allow substandard rating within certain parameters. Group policy forms submitted for filing which are intended for issue in 1992 and 1993 will be deemed by the Department to meet the loss ratio requirements of the proposed new rules if the policies are priced such that the average charge per covered person is \$1,500 per year (and the average charge for dependent coverage is consistent with this amount), and the expected loss ratio over the life of the policy is at least 80 percent. However, carriers are cautioned that if such policies do not report an incurred/earned loss ratio of at least 75 percent within 24 months of the date the policy form is filed, the Commissioner may require a reduction in or refund of premiums so that the 75 percent loss ratio may be met.

N.J.A.C. 11:4-36.7 sets forth the benefits for all BASIC policies. With respect to the provision of basic medical-surgical benefits, the rules provide that in-hospital physician visits are limited to 21 days per covered person per period of confinement. Additionally, benefit levels for basic medical-surgical are to be based on the "Resource-Based Relative Value Scale for Medicare Part B" prepared by the Health Care Financing Administration of the United States Department of Health and Human Services.

N.J.A.C. 11:4-36.8 sets forth minimum standards for BASIC policies. Individual BASIC policies and BASIC conversion policies must be guaranteed renewable, while group BASIC policies must be guaranteed renewable for at least five years.

N.J.A.C. 11:4-36.9 specifies to whom BASIC policies shall and shall not be offered. Defined small groups must be provided coverage, although no group may be issued coverage if the group had a policy or contract for health coverage in effect during the previous 12 months. BASIC policies may not be offered to persons eligible for Medicare.

N.J.A.C. 11:4-36.10 sets forth prohibited policy provisions. Waiting periods may not exceed 30 days after the effective date of a BASIC policy, and group BASIC policies may not contain waivers for preexisting disease, condition or extra hazardous activity. Additionally, preexisting condition exclusion provisions cannot exceed 12 months.

N.J.A.C. 11:4-36.11 sets forth policy definitions for specified terms commonly used in policies for health care coverage.

N.J.A.C. 11:4-36.12 sets forth group conversion privileges and standards. No waiting period may apply on conversion policies and any preexisting condition exclusion satisfied, in whole or in part, under the group BASIC policy must be credited against such a provision in a conversion policy.

N.J.A.C. 11:4-36.13 sets forth certain standards for family coverage, including coverage of newborns and rights of spouses and dependents.

N.J.A.C. 11:4-36.14 establishes disclosure standards for BASIC policies. No outline of coverage is required at this time, but carriers are required to issue an informational pamphlet on BASIC policies. This pamphlet is to be prepared by the Department. Carriers are advised that the pamphlet is not currently available. Notice via a Bulletin or Order will be provided to carriers when this pamphlet is available, if it does not become available prior to the date of adoption of these proposed new rules.

N.J.A.C. 11:4-36.15 establishes standards for BASIC policy application forms. These standards are in accord with current rules and Department policy. However, carriers are being required to incorporate certain additional questions on all application forms, information from which must be reported to the Department annually on March 1.

N.J.A.C. 11:4-36.16 sets certain standards for alternative benefits. No alternative benefits currently are being proposed by these new rules. Carriers may propose alternative benefits to the Department.

N.J.A.C. 11:4-36.17 sets certain standards for managed care utilization, including which carriers may use managed care at this time with respect to BASIC policies.

N.J.A.C. 11:4-36.18 establishes the criteria for and information to be included in the statutorily required annual reports. The Department will prepare for the Legislature a report with recommendations, as appropriate, based upon an analysis of the information received from carriers.

N.J.A.C. 11:4-36.19 provides that carriers and BASIC policies must comply with all other State laws not inconsistent with the HCCRA in providing coverage and benefits.

N.J.A.C. 11:4-36.20 is a penalty provision.

N.J.A.C. 11:4-36.21 is a severability provision.

Social Impact

It is the intent of these proposed new rules and rule amendments to effectuate and make possible the objectives of sections 49 through 59 of the HCCRA. BASIC policies should be available at a lower cost than the standard policies currently available in the marketplace, and thus should be affordable for larger portions of the population than is true of most standard policies. The Department anticipates that BASIC policies will be attractive to small groups which either have been unable to obtain coverage, or have not been able to maintain coverage because of ever-increasing premiums. The Department expects that marketing and purchasing of BASIC policies will be concentrated among small groups initially, in part because these are the groups which have experienced the most difficulty in obtaining and maintaining coverage, and in part because larger groups still have an array of coverage options available to them before they decide to turn to BASIC policies.

If larger numbers of people are able to obtain coverage via BASIC policies, the burden on the uncompensated care system should be eased to some extent. If managed care can be successfully introduced among BASIC policies there should be an additional favorable impact upon the uncompensated care system. Reductions in the cost of uncompensated care should translate into reduced costs for hospital care in general, benefiting the State as a whole.

Economic Impact

BASIC policies should be available at a lower cost to consumers than are standard policies (that is, policies which comply with all current non-HCCRA statutory requirements), allowing a larger portion of consumers to purchase health care coverage. As more people are able to obtain some level of insurance, the costs inherent to maintaining an uncompensated care system should be reduced. Reductions in uncompensated care costs would provide a positive impact upon consumers, and carriers, given the current methodology used to recover the costs of uncompensated care in New Jersey.

Carriers should incur some positive economic impact from BASIC policies, although how positive an impact any specific carrier can expect will be based in large part upon the carrier's presence in the marketplace, marketing strategies, underwriting expertise and overall efficiency. Carriers which come into the BASIC policy market with a positive attitude and real commitment are likely to obtain greater economic satisfaction overall than other carriers.

Carriers will incur costs, of course, in complying with the HCCRA and the proposed new rules. Such costs are to be expected with any new product. However, some of the additional costs will result directly from reporting and recordkeeping requirements imposed by HCCRA and these proposed new rules. The costs associated with the recordkeeping and reporting undoubtedly will vary from one carrier to another, and be highly dependent upon the types of data carriers currently gather on their applicants. Carriers which currently are involved heavily with market analysis may incur only minimal additional expense, while for other carriers, the initial expense may be more than minimal.

The Department expects to incur costs in reviewing new BASIC policy forms, rates, rate revisions, alternative benefit proposals, managed care proposals, informational pamphlets, and analysis of annual reports, as well as inquiries and complaints from carriers and consumers which are certain to come. It is unclear whether current staffing levels are and will continue to be adequate to assure thoughtful and efficient function with respect to these policies. Obviously, the Department will function to the best of its ability within current resource levels.

Regulatory Flexibility Analysis

These proposed new rules and rule amendments do impose additional recordkeeping, reporting and compliance requirements, as described in the Summary above, for many carriers, although the degree of imposition is likely to be variable among carriers in accordance with their current practice. Some carriers will have all or most of the information requested already available in-house. Other carriers may have little of the information requested currently available and may have to institute new systems to capture and record the information for annual retrieval. The Department anticipates that the majority of carriers will incur only minimal additional costs, but acknowledges that for some carriers, the cost may be more than "minimal." The possible range of cost is unknown. The

Department notes, however, that the annual report is a statutory requirement. The Department is requesting information in addition to what is mandated by the statute in order to provide the Legislature with a clearer analysis of what the statutorily requested numbers may mean. Anecdotal evidence abounds; hard data is more difficult to obtain.

The Department does not believe that any of the carriers required to comply with these proposed new rules and rule amendments are "small businesses" as that term is defined at N.J.S.A. 52:14B-16 et seq. Assuming such were the case, however, the Department would not be inclined to include any relaxation of the recordkeeping, reporting or compliance requirements, because the HCCRA does not provide any exceptions in this regard. Furthermore, information from both large and small companies is equally valuable, and may suggest trends which would otherwise not be documented.

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

SUBCHAPTER 14. HOME HEALTH CARE INSURANCE COVERAGE

11:4-14.1 Scope

[These rules apply] (a) **This subchapter applies** to individual and group health insurance policies which provide coverage for the costs of daily room and board while confined in a hospital or skilled nursing facility. [They do] **This subchapter does** not apply to:

1. [hospital] **Hospital** indemnity policies which provide additional income while the insured is hospitalized. These rules also do not apply to;
2. Medicare complement policies since Medicare provides home health care; or
3. **BASIC Health Care Coverage policies in compliance with N.J.A.C. 11:4-36.**

SUBCHAPTER 15. ALCOHOLISM BENEFITS

11:4-15.1 Scope

(a) This subchapter applies to all individual and group health insurance policies providing hospital-medical expense benefits issued or renewed in this State. "Renewed" is defined as any date the insurer has the option to change the level of premium rates.

1. This subchapter does not apply to policies which provide only limited hospital or medical expense coverage, such as:
 - i. Medicare complement policies[.];
 - ii. [hospital] **Hospital** income policies[.];
 - iii. [student] **Student** accident, trip or accident only policies[.];
 - iv. PIP coverage[.];
 - v. [cancer] **Cancer** or dread disease policies[, or];
 - vi. [surgical] **Surgical** expense policies[.]; or
 - vii. **BASIC Health Care Coverage which meets the requirements of N.J.A.C. 11:4-36; or**
2. [to] **To** policies issued prior to June 2, 1977, where the premium is guaranteed at issue and the insurer cannot increase the premium.

SUBCHAPTER 16. MINIMUM STANDARDS FOR INDIVIDUAL HEALTH INSURANCE

11:4-16.2 Applicability and scope

(a) This [regulation] **subchapter** shall apply to all individual health insurance policies delivered or issued for delivery in this State on or after the effective date hereof, except that it shall not apply to:

1. [conversion] **Conversion** policies issued pursuant to a contractual conversion privilege [or to];
2. [credit] **Credit** health insurance; or
3. **BASIC Health Care Coverage policies which meet the requirements of N.J.A.C. 11:4-36.**

(b) As used herein, policy means the entire contract between the insurer and the insured including all policies, certificates, riders, applications and endorsements which are required to be filed pursuant to N.J.S.A. 17B:26-1 and N.J.S.A. 17:44A-21. The requirements contained in this [regulation] **subchapter** shall be in addition to any other applicable [regulations] **rules** previously adopted. Nothing in this [regulation] **subchapter** shall be construed to limit the [commissioner's] **Commissioner's** authority to disapprove policies

pursuant to N.J.S.A. 17B:26-1h, which, in the opinion of the [commissioner] **Commissioner**, contain provisions that are unjust, unfair, inequitable, misleading or contrary to law or public policy of this State.

SUBCHAPTER 19. OPTIONAL COVERAGE FOR PREGNANCY AND CHILDBIRTH BENEFITS

11:4-19.2 Scope

This subchapter shall apply to all group and individual health insurance policies as well as hospital and medical service corporation contracts delivered or issued for delivery in this State. [This], **except that this subchapter shall not apply to Basic Health Care Coverage policies or contracts which meet the requirements of N.J.A.C. 11:4-36 or to health service corporation contracts.**

SUBCHAPTER 28. GROUP COORDINATION OF BENEFITS

11:4-28.3 Coordination permissive

(a) The use of COB provisions in group contracts providing health care benefits shall be permissive[.]; that is, any plan may elect to be always "primary", **except with respect to BASIC health care contracts meeting the requirements of N.J.A.C. 11:4-36.** Where COB is used, it shall be included in group contracts providing health care benefits subject to the following conditions:

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

SUBCHAPTER 36. STANDARDS FOR BASIC HEALTH CARE COVERAGE AUTHORIZED BY P.L. 1991, c.187

11:4-36.1 Purpose

The purpose of this subchapter is to set forth standards for all **BASIC Health Care Coverage policies delivered or issued for delivery in New Jersey.**

11:4-36.2 Scope and applicability

(a) **This subchapter applies to all individual and group policies delivered or issued for delivery in this State providing basic health care coverage in accordance with P.L. 1991, c.187.**

(b) **This subchapter applies to all insurers authorized to transact the business of health insurance in this State, all hospital, medical and health service corporations, all health maintenance organizations and such other similar corporations or organizations.**

11:4-36.3 Definitions

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

"Aggregate loss ratio" means the ratio of the accumulated value of past benefits (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future benefits to the accumulated value of past premiums (from the original effective date of the form to the date as of which the ratio is determined) and the present value of future premiums. **Benefits shall not be increased nor premiums reduced by actual or anticipated dividends, and interest shall be included in the accumulated and present values on the same basis as in the present values of the anticipated loss ratio.**

"Anesthesia services" means the administration of general anesthesia and related procedures provided in connection with a covered surgical service.

"Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premium, not reduced by dividends, over the entire period for which rates are computed to provide coverage. **Present values must incorporate realistic rates of interest which are determined before federal taxes but after investment expenses.**

"BASIC" means **BASIC Health Care Coverage.**

"Benefit period" means a consecutive 12 calendar month duration.

"Carrier" means any person authorized to transact the business of health insurance in this State, including insurers, fraternal benefit societies, hospital, medical and health service corporations and health maintenance organizations.

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

"Daily hospital room and board" means charges for semi-private hospital accommodations, costs for general nursing care and any special diets.

"Department" means the New Jersey Department of Insurance.

"Experience rated" means rating as defined at N.J.S.A. 17B:30-14c, that is, readjustment of the rate of premium for a policy based on the loss or expense experience thereunder at the end of the first or any subsequent policy year, which may be made retroactive only for such policy year.

"Group" means an employer group, a trustee group established on behalf of one or more employers, a labor union, a trustee group established on behalf of one or more labor unions, a trustee group established on behalf of one or more employers and one or more labor unions, or an employee association formed for purposes not solely related to obtaining a group health policy.

"Guaranteed renewable" means:

1. In the case of BASIC individual policies, including conversion policies, that the covered person has the right to continue the policy in force by the timely payment of premiums until age 65, during which time the carrier may not make any change in any provision of the policy without the covered person's consent, except such changes as may be required by law, and changes in premium rates by classes.

2. In the case of BASIC group policies, that the policyholder has the right to continue the policy in force by the timely payment of premiums for at least five years following the original effective date of the policy, during which time the carrier may not make any change in any provision without the policyholder's consent, except such changes as may be required by law, and changes in premium rates by classes.

"Hospital outpatient services" means services rendered at a hospital on an outpatient basis, limited to: hospital services provided on the day surgery is performed; hospital services provided within 72 hours after an injury; and x-ray and laboratory tests, to the extent that such services are covered benefits if provided on an inpatient basis.

"Hospital" means a health care facility licensed by the State of New Jersey, or which meets the requirements for licensure by the State of New Jersey, if the health care facility is located out of State.

"Incurred/earned loss ratio" means the ratio of incurred claims to earned premiums.

"In-hospital physician services" means physician services provided to a covered person who is hospital confined for treatment of injury or sickness not otherwise requiring surgical services.

"Maternity expenses" means reasonable and necessary expenses for obstetrical and prenatal services, delivery services, pediatric nursery services, and postnatal and postpartum services for at least 31 days following the date of birth, including services for complications of pregnancy. Such services shall include at least one physical examination every four weeks for the first 28 weeks, one physical examination every two weeks for the next six weeks, one physical examination every week thereafter immediately prior to delivery, and two physical examinations following delivery; counseling on prenatal health and nutrition management; reasonable laboratory tests and diagnostic services; reasonable physician or midwife services for delivery, and costs of medicines prescribed specifically for obstetrical or prenatal care.

"Medicare" means Title XVIII of the United States Social Security Act, as amended or superceded.

"One period of confinement" means consecutive days of in-hospital service rendered as an inpatient, or successive confinements due to the same or related causes, when discharge and readmission to a hospital occurs within a period of time not exceeding 90 days.

"Physical examinations" means examinations provided by a physician, or with respect to maternity benefits a midwife, provided on

an out-of-hospital or outpatient basis, which may include reasonable diagnostic tests and x-rays, including, but not necessarily limited to: dipstick urinalysis for hematuria, bacteriuria and proteinuria; fecal occult blood test and/or digital rectal examination; pap smear and manual breast examination; mammogram; and serum cholesterol. Frequency of provision of any diagnostic test or x-ray shall be as medically appropriate, but in no instance less often than once every five years.

"Policy" or "policy form" means any policy, contract, subscriber certificate or agreement of health coverage delivered or issued for delivery in this State by any carrier subject to this subchapter, including any certificate, or evidence of coverage or member or enrollee booklet issued pursuant to a group policy delivered or issued for delivery in this State.

"Small group" means a group comprised of no less than two persons, not including spouses or dependents, nor more than 25 persons, not including spouses or dependents. A carrier may define a small group no more restrictively than as a group meeting the definition of small group provided herein on at least 180 non-consecutive days of the most recently expired calendar year.

"Surgical services" means hospital and physician services provided in connection with a covered surgery, other than anesthesia services.

11:4-36.4 Requirement to offer BASIC policies

(a) Hospital service corporations, medical service corporations, health service corporation and health maintenance organizations shall offer for delivery in New Jersey individual BASIC policies, including coverage for dependents, and group BASIC policies, including coverage for dependents. Health service corporations shall maintain a continuous open enrollment period as required by N.J.S.A. 17:48E-3d, providing BASIC coverage to persons otherwise unable to obtain such coverage.

(b) Insurers and fraternal benefit societies which have delivered or issued for delivery or which will deliver or issue for delivery in New Jersey individual policies providing health insurance on or after January 1, 1991 shall offer for delivery in this State individual BASIC policies, including coverage for dependents.

(c) Insurers and fraternal benefit societies which have delivered, issued for delivery or renewed, or which will deliver, issue for delivery or renew in New Jersey group policies providing health insurance on or after January 1, 1991 shall offer for delivery in this State group BASIC policies, including coverage for dependents.

(d) Insurers and fraternal benefit societies delivering, issuing for delivery or renewing (with respect to group policies) in this State individual or group policies solely for the purpose of providing the types of coverage set forth below, and which offer no other forms of policies for health coverage in this State, are not required to comply with this subchapter;

1. Disability income protection coverage;
2. Hospital confinement indemnity coverage;
3. Accident only coverage;
4. Medicare supplement coverage;
5. Credit health coverage; or
6. Long-term care coverage.

(e) All carriers subject to this subchapter in accordance with (a) and (c) above shall offer for delivery in this State individual BASIC conversion policies to covered persons leaving a group which has in effect a group BASIC policy, and to the individuals of a group that has a group BASIC policy which is not renewed by either the group policyholder or the carrier, and which is not replaced by another group policy, BASIC or otherwise.

(f) Health maintenance organizations which are Federally qualified health maintenance organizations pursuant to 42 U.S.C. 300e et seq. shall not be required to comply with this subchapter.

(g) Carriers delivering policies or issuing policies for delivery in this State which are not required, or believe they are not required, to offer individual or group BASIC policies in accordance with this subchapter shall submit to the Department a statement to that effect, indicating the reason compliance is not required. Such statements shall be directed to the Department as set forth at N.J.A.C. 11:4-36.5.

11:4-36.5 Filing of forms and rates

(a) No policy, written application, rider, waiver, endorsement, certificate or any other form for use with a BASIC policy shall be delivered or issued for delivery in this State until the form thereof has been submitted to and filed by the Commissioner. No form shall be filed by the Commissioner until the classification of risks and rates pertaining to such form have been submitted to the Commissioner.

(b) No carrier shall use or revise rates for a BASIC policy until the rates and methodology and all supporting documentation have been submitted to and filed by the Commissioner.

(c) Policy forms or rates submitted which are not affirmatively approved or disapproved by the Commissioner prior to the expiration of 60 days following the date of submission shall be deemed filed.

(d) No policy form, rate or rate amendment disapproved for filing shall be delivered or issued for delivery or otherwise utilized until such disapproval is withdrawn. Any policy form, rate or rate amendment filed or deemed filed by the Commissioner may be delivered, issued for delivery or otherwise used until it is withdrawn from filing by the Commissioner, subject to a hearing held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

(e) All forms and rate submissions for filing by the Commissioner shall be submitted to the Division of Life and Health Actuarial Services, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625-0325, directed to specific bureaus as follows:

1. Health Care Plan Bureau, for submissions from health maintenance organizations;
2. Service Corporations Bureau, for submissions from health, hospital and medical service corporations; and
3. Statutory Compliance Bureau-Health, for submissions from all other carriers.

11:4-36.6 Loss ratios and rate submission requirements

(a) Each submission of rates for filing shall include all rates to be charged, including substandard rates, or a formula for such rates to be charged in sufficient detail to allow the Department to replicate the rate for any individual or group with specified rating characteristics.

(b) Each insurer shall include with each submission of new or revised rates the following information and material:

1. An actuarial memorandum which shall include the following:
 - i. The anticipated loss ratio;
 - ii. The specific formulas and methodology used in calculating gross premiums;
 - iii. An explanation and documentation supporting the premium assumptions;
 - iv. The objective basis for rate differentials; and
 - v. A certification signed by the company's actuary that the information given in the actuarial memorandum is appropriate and that the benefits provided are reasonable in relation to the premiums charged.

2. In connection with rate revisions only, the aggregate loss ratio, a statement of the reason for the revision, and an estimate of the expected average increase or decrease in premium both in dollars and percent.

(c) Except as (d) below applies, for new forms, the benefits provided are presumed reasonable in relation to the premiums charged if the anticipated loss ratio meets the following standards:

1. For individual BASIC policies, other than conversion policies, the ratio is at least 65 percent;
2. For BASIC conversion policies, the ratio is at least 80 percent; and
3. For group BASIC policies the ratio is at least 80 percent.

(d) For group policies which are intended to be issued in 1992 and 1993, the premium shall be deemed reasonable in relation to benefits when policy forms and rates are submitted for filing if the average charge per covered person is \$1,500 per benefit period, and the average charge for dependent coverage is consistent with this amount.

1. No further loss ratio demonstration shall be required at the time of submission for filing of these policy forms; however, these

policy forms shall attain a loss ratio of at least 80 percent over the life of the policy.

2. If the incurred/earned loss ratio for policies with premiums deemed reasonable pursuant to (d) above is not at least 75 percent within 24 months of the date the policy form was filed, the carrier shall reduce or refund charges as required by the Commissioner so that the incurred/earned loss ratio may be met.

(e) With respect to filings of rate revisions for previously approved policy forms, benefits shall be deemed reasonable in relation to premiums if both the anticipated loss ratio and the aggregate loss ratio satisfy the loss ratio standards, specified in (c)1 and 2 above.

(f) BASIC policies shall not be experience rated. The premium rate for any policyholder may not be based solely on the loss or expense experience of that policyholder.

(g) For group policies in which individuals are underwritten, the insurer may charge a rate for a substandard or uninsurable individual which is no greater than 35 percent higher than the rate of a standard individual with the same rating characteristics.

(h) The rate charged by a health service corporation for individuals provided BASIC coverage through open enrollment may be no more than 35 percent higher than the rate applicable to individuals covered under BASIC policies which are underwritten. Health service corporation individual BASIC policies shall be community rated, and all other provisions of N.J.S.A. 17:48E-1 et seq. regarding health service corporation rates shall be applicable to BASIC policies, (c) above notwithstanding.

(i) An actuarial certification shall be included with each submission of rates for filing, certifying that:

1. With respect to demographic rating (such as by age, gender or territory), the rates are not unfairly discriminatory between rating class, that is, the expected loss ratio for any rating class shall not differ by more than 10 percent from the expected loss ratio for all rating classes, except with respect to that portion of the rate specific to the provision of benefits for maternity expenses required by this subchapter.

2. With respect to demographic and community rating, the cost of providing benefits for maternity expenses required by this subchapter is distributed equally among all adult risk classifications in proportion to the expected nonmaternity claim costs for those classifications, and the constant percentage of each such claim cost attributable to the charge (including claim administrative expenses) for maternity expenses benefits shall be indicated.

(j) Carriers shall maintain records of premiums, claims and reserves for each BASIC policy form currently on file in this State.

1. Carriers shall submit to the Department annually on or before June 30 a completed report for each BASIC policy form regarding premiums, claims and incurred/earned loss ratios. Reports shall include the accumulated experience for all previous calendar years, up to and including December 31 of the calendar year most recently completed. Reports shall also include experience on a calendar year basis for each calendar year in which the policy has been issued, and shall show separately, within each calendar year, the experience of policies in their first year, second year, and all later years. Premiums shall be reported on an earned and written or paid basis. Claims shall be reported on both an incurred and paid basis.

2. If the incurred/earned loss ratios for a specific BASIC policy form, based on a significant volume of reasonably mature business, do not meet the standards set forth at (c) above, the carrier shall provide an explanation why the premiums should not be regarded as unreasonably high in relation to the benefits provided, and additional information as the Department may request.

3. If, after consideration of any explanation and materials provided in accordance with (h)2 above, the Commissioner determines that the premiums are not reasonably related to benefits provided, the carrier shall reduce premiums within 90 days of notice of the determination, so that the requirements of (c) above may be met.

11:4-36.7 BASIC benefits

(a) Except as (b) and (c) below may apply, a BASIC policy, including a BASIC conversion policy, shall provide benefits only for the following:

1. Hospital expenses consisting of:
 - i. Daily hospital room and board for 21 days for one period of confinement for each covered person;
 - ii. Miscellaneous hospital services for 21 days for one period of confinement for each covered person; and
 - iii. Hospital outpatient services;
2. Medical-surgical expenses consisting of:
 - i. Surgical services;
 - ii. Anesthesia services; and
 - iii. In-hospital physician services for 21 days for one period of confinement for each covered person;
3. Maternity expenses; and
4. Expenses for out-of-hospital physical examinations as follows:
 - i. For covered persons less than two years of age, up to six examinations, but no less than four examinations during the first two years of life;
 - ii. For covered persons two years old and older, but less than 19 years of age, one physical examination at age three, six, nine, 12, 15 and 18 years.
 - iii. For covered persons 19 years old and older, but less than 40 years of age, one physical examination every five years;
 - iv. For covered persons 40 years old and older, but less than 60 years of age, one physical examination every three years; and
 - v. For covered persons 60 years old and older, one physical examination every year.

(b) Hospital service corporations shall not provide a BASIC Health Care Coverage policy in accordance with (a) above, but shall provide only benefits for the following:

1. Hospital expenses consisting of:
 - i. Daily hospital room and board for 21 days for one period of confinement for each covered person;
 - ii. Miscellaneous hospital services for 21 days for one period of confinement for each covered person;
 - iii. Hospital outpatient services; and
2. Maternity expenses.

(c) Medical service corporations shall not provide a BASIC Health Care Coverage policy in accordance with (a) above but shall provide only benefits for the following:

1. Medical-surgical expenses consisting of:
 - i. Surgical services;
 - ii. Anesthesia services; and
 - iii. In-hospital physician services for 21 days for one period of confinement for each covered person; and
2. Maternity expenses other than those of a hospital.
3. Out-of-hospital physical examinations as follows:
 - i. For covered persons less than two years of age, up to six examinations, but no less than four examinations during the first two years of life;
 - ii. For covered persons two years old and older, but less than 19 years of age, one physical examination at age three, six, nine, 12, 15 and 18 years;
 - iii. For covered persons 19 years old and older, but less than 40 years of age, one physical examination every five years;
 - iv. For covered persons 40 years old and older, but less than 60 years of age, one physical examination every three years; and
 - v. For covered persons 60 years old and older, one physical examination every year.

(d) Carriers may require satisfaction per benefit period of a deductible amount for covered benefits up to an aggregate deductible per individual BASIC policy or group certificate not greater than \$250.00. The benefits for maternity and physical examinations shall not be subject to any deductible.

(e) Carriers may require satisfaction of coinsurance amounts for covered benefits up to an aggregate per individual BASIC policy or group certificate per benefit period total of no more than \$500.00. The benefits for maternity and physical examinations shall not be subject to any coinsurance requirements under the policy.

(f) Benefits shall be provided with respect to the basic medical-surgical expense coverage in accordance with the "Resource-Based Relative Value Scale for Medicare Part B," prepared by the Health Care Financing Administration, using the dollar multiplier specified by the Health Care Financing Administration, modified by the geographic factor indicated for New Jersey, or the appropriate region of New Jersey, as medically necessary. Information regarding the "Resource-Based Relative Value Scale for Medicare Part B", incorporated herein by reference, may be obtained by writing to:

Health Care Financing Administration
 United States Department of Health and Human Services
 6325 Security Boulevard
 Baltimore, MD 21207

11:4-36.8 Minimum standards for benefits

(a) All BASIC policies shall provide that the covered person shall have the right to return the policy within 30 days of the date of delivery and to have whatever premium was paid therefor refunded if, after examination of the policy, the covered person is not satisfied for any reason.

(b) All individual BASIC policies, including BASIC conversion policies, shall be guaranteed renewable. A guaranteed renewable policy shall not provide for termination of coverage for a spouse solely because of the occurrence of an event specified for termination of coverage of the other spouse, except for nonpayment of premium.

(c) All group BASIC policies shall be guaranteed renewable for at least five years from the original effective date of the policy except that a group BASIC policy may be nonrenewed if the number of persons covered under the policy upon the annual anniversary of the policy effective date totals less than two. A group BASIC policy shall not be terminated by a carrier during that five year period except for nonpayment of premiums.

(d) In a policy covering both husband and wife, the age of the younger spouse shall be used as the basis for meeting age and durational requirements. However, a carrier shall not be prevented from terminating coverage of the older spouse upon attainment of age 65, so long as the policy may continue in force as to the younger spouse to the age of 65.

(e) If a BASIC policy contains a status type military service exclusion or a provision which suspends coverage during military service, the policy shall provide, upon receipt of written request, for a refund of premiums as applicable to such person(s), on a pro rata basis.

(f) Maternity benefits shall be provided if conception occurs after the effective date of coverage, or after a waiting period of not more than 30 days after the effective date of coverage, except that no waiting period shall apply on BASIC conversion policies. If a carrier cancels or nonrenews a group BASIC policy, benefits for maternity shall be extended beyond the final date of coverage with respect to a pregnancy commencing while the policy was in force and which otherwise was or would have been covered under the policy.

(g) Termination of a BASIC policy shall be without prejudice to any claim for continuous loss which commenced while the policy was in force; however, the payment of benefits after the termination date may be predicated upon the continuous disability of the covered person, limited to the duration of the benefit period or payment of the maximum benefits.

(h) If disability is a criterion for payment of benefits under a policy, the policy must include a definition of disability.

(i) BASIC policies shall not provide mandatory health care benefits unless such benefits are approved by the Commissioner as an alternative benefit. For purposes of this subchapter, "mandatory health care benefits" means specific services or supplies required by statute, or treatment of specific conditions, illness or injury as required by statute, including the following:

1. Treatment of alcoholism;
2. Treatment of hemophilia;
3. Treatment of Wilm's Tumor;
4. Reconstructive breast surgery;
5. Home health care services;

6. Second surgical opinion; and

7. Mammograms (except as a mammogram may be determined to be a medically necessary diagnostic test or x-ray provided in conjunction with benefits for physical examinations in accordance with N.J.A.C. 11:4-36.7).

(j) BASIC policies are not required to provide benefits for services rendered by providers of health care services as otherwise required by law.

(k) A group BASIC policy shall provide that covered persons whose coverage under the policy would otherwise terminate because of termination of employment due to total disability shall be entitled to continue coverage under the group policy, including dependent coverage, subject to all of the terms and conditions of the group policy, and the following:

1. Continuation shall be available only to covered persons who were continuously covered under the group policy for the three month period ending with the date of termination of group membership.

2. Continuation of benefits shall include all of the benefits and benefit levels applicable to the group BASIC policy.

3. The covered person electing continuation shall pay to the group policyholder or the employer, if different, on a monthly basis, in advance, the amount of contribution required by the policyholder or employer, which amount shall not exceed 100 percent of the group rate for that covered person and the covered person's dependents, if applicable. The covered person's written election for continuation, together with the first contribution shall be given to the policyholder or employer within 31 days of the date the covered person's coverage under the BASIC policy would otherwise terminate.

4. Continuation of coverage under the group policy for any covered person shall terminate at the first to occur:

i. Failure of the covered person to make timely payment of a required contribution. Termination shall occur at the end of the period for which contributions were made.

ii. The date the covered person becomes employed and eligible for benefits under another group policy, BASIC or otherwise, or becomes eligible for Medicare.

iii. The date on which the group BASIC policy is terminated, provided that if termination occurs at the request of the policyholder or employer, the covered person(s) shall have the right to become covered under any new group policy, BASIC or otherwise, contracted for by the policyholder or employer, under the same conditions specified herein, but the prior group BASIC policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits, as if the replacement had not occurred.

(l) All group BASIC policies shall contain a coordination of benefit provision in accordance with the requirements of N.J.A.C. 11:4-28 and N.J.A.C. 11:3-37.

11:4-36.9 To whom policies shall or shall not be offered

(a) Carriers offering group BASIC policies shall issue coverage to all small groups which apply for coverage under a group BASIC policy. Coverage shall be made available to all members of a small group and to all spouses or dependents of members electing dependent coverage, except as (d) below may apply.

(b) No carrier shall deliver or issue for delivery any group BASIC policy to any group policyholder for coverage of a group having one or more group health policies in effect during the 12 month period ending on the date of application for coverage under a group BASIC policy issued by the carrier.

(c) For purposes of complying with (b) above, "group health policy" does not include:

1. Disability income protection coverage;
2. Hospital confinement indemnity coverage;
3. Accident only coverage;
4. Limited benefit coverage;
5. Short-term nonrenewable coverage;
6. Long-term care coverage; or
7. BASIC health care coverage meeting the requirements of this subchapter.

(d) Carriers shall not offer BASIC policies or certificates to persons eligible for Medicare, and no person eligible for Medicare

shall be eligible for coverage under a BASIC policy or certificate. A group BASIC policy shall provide for termination of coverage for covered persons who become eligible for Medicare.

11:4-36.10 Prohibited policy revisions

(a) No BASIC policy shall provide coverage for specified disease(s) or procedures or treatments which are limited to specified diseases, nor shall coverage be provided solely for specifically identified kind(s) of accident(s).

(b) No BASIC policy shall limit or exclude coverage by type of illness, accident, treatment or medical condition, other than:

1. Preexisting conditions;
2. Mental or emotional disorders and drug addiction;
3. Illness, treatment or medical conditions arising from:
 - i. War or act of war (whether declared or undeclared), participation in a riot or insurrection, or service in the armed forces or units auxiliary thereto;
 - ii. Suicide (while sane or insane), attempted suicide or intentionally self-inflicted injury; or
 - iii. Aviation, other than as a fare paying passenger on a regularly scheduled airline;
4. Cosmetic surgery, except that cosmetic surgery shall not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved parts, or reconstructive surgery required because of a congenital disease or anomaly of a covered newborn dependent child which has resulted in a functional defect;
5. Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet;
6. Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion or subluxation in the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment or subluxation of or in the vertebral column;
7. Treatment provided in a government hospital, benefits provided under Medicare or other governmental program (except Medicaid), any state or Federal workers' compensation, employers' liability or occupational disease law; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;
8. Dental care or treatment;
9. Eye glasses, hearing aids and examination for the prescription or fitting thereof;
10. Rest cures, custodial care and transportation; or
11. Territorial limitations.

(c) No BASIC policy shall include a provision which reduces, limits or excludes benefits solely on the basis of gender or marital status of the covered person.

(d) No BASIC policy or certificate shall exclude or limit loss due to a preexisting condition not otherwise specifically excluded by the terms of the policy for a period greater than 12 months following the effective date of coverage, subject to the requirement that any preexisting condition exclusion under a group BASIC policy satisfied in whole or in part shall be credited to the extent satisfied against the preexisting condition exclusion existing under a BASIC conversion policy, and subject to the further requirement that benefits under a group BASIC policy shall not be denied for a preexisting condition for any person becoming a covered person if the covered person was covered under another group policy issued by the carrier, BASIC or otherwise, in the time period immediately prior to coverage under the current BASIC policy, and the carrier paid benefits for the condition under the group policy by which the person was previously covered.

(e) No BASIC policy or certificate shall contain a provision establishing a probationary or waiting period exceeding 30 days following the effective date of coverage. There shall be no probationary or waiting period applicable to newborn children. No waiting period shall apply to a BASIC conversion policy.

(f) No individual BASIC policy shall include a provision which gives the carrier an unconditional right of nonrenewal.

(g) No group BASIC policy, BASIC conversion policy or individual BASIC policy issued in accordance with N.J.S.A. 17:48E-3d shall contain any waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting disease, physical condition or extra hazardous activity as a condition of issuance, renewal or reinstatement of a BASIC policy. Where such waivers are required as a condition of issuance, renewal or reinstatement of an individual BASIC policy, signed acceptance by the covered person is required.

(h) No BASIC policy shall be experience rated. The premium rate for any policyholder may not be based solely on the loss or expense experience of that policyholder.

11:4-36.11 Policy definitions

(a) The following shall apply to definitions of policy terms:

1. "Accident," "accidental injury," or "accidental means," shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characteristics.

2. "Benefit period" shall be defined in accordance with the subchapter definition for benefit period provided at N.J.A.C. 11:4-36.3.

3. "Convalescent nursing home," "extended care facility" or "skilled nursing facility" shall be defined in relation to its status, facilities and available services.

4. "Guaranteed renewable" shall be defined in accordance with the subchapter definition for guaranteed renewable provided at N.J.A.C. 11:4-36.3.

5. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.

i. The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

(1) Be an institution operated pursuant to law; and

(2) Be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

(3) Provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

ii. The definition of the term "hospital" may state that such term shall not be inclusive of:

(1) Convalescent homes, convalescent, rest or nursing facilities;

(2) Facilities primarily affording custodial, educational or rehabilitative care;

(3) Facilities for the aged, drug addicts, or alcoholics; or

(4) Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

6. "Injury" shall not be defined more restrictively than accidental bodily injury sustained by the covered person which is the direct cause of the loss, independent of disease, bodily infirmity or other cause, and which occurs while the coverage is in force. Such definition may provide that injuries shall not include injuries for which benefits are provided under workers' compensation, employer's liability or similar law, or injuries occurring while the covered person is engaged in any activity pertaining to any trade, business, employment or occupation for wage or profit.

7. "Medicare eligible person" shall be defined to include any person who is eligible for benefits under Title XVIII of the United States Social Security Act, as amended or superceded.

8. "Mental or nervous disorders" shall not be defined more broadly than a definition including neurosis, psychoneurosis,

psychopathy, psychosis or mental or emotional disease or disorder of any kind.

9. "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse," "trained nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the carrier to recognize the services of any individual who qualifies under such terminology in accordance with the applicable statutes or administrative rules of the Board of Nursing or any other registry board of the State.

10. "One period of confinement" shall be defined in accordance with the subchapter definition for one period of confinement provided at N.J.A.C. 11:4-36.3.

11. "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician." The use of such terms requires a carrier to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

12. "Preexisting condition" shall not be defined to be more restrictive than as a condition for which medical advice or treatment was recommended by and/or received from a physician within a one year period preceding the effective date of the BASIC coverage.

13. "Sickness" shall not be defined more restrictively than a sickness or disease which causes loss commencing while the policy is in force and which is not excluded under a preexisting condition limitation. A definition may provide for a probationary period which will not exceed 30 days from the effective date of the coverage of a covered person. Such probationary period shall not apply to newly-born children. The definition may also be modified to exclude sickness or disease for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

14. "Total disability" shall be defined to exist only while the covered person is not engaged in any gainful occupation and is completely unable, due to sickness or injury, or both, to engage in any and every gainful occupation for which the person is reasonably suited by education, training or experience.

15. "Usual," "customary" and "reasonable" when used to define the payment of benefits, shall not be defined more restrictively than as:

i. "Usual" means the fee ordinarily charged by the provider for a specific service or supply.

ii. "Customary" means the range of usual fees charged by providers for the same service or supply under like circumstances within the same geographical or socio-economic area. The range of usual fees charged by physicians shall consider training and experience.

iii. "Reasonable" means a fee above usual and customary which may be justified by unusual complexity of the treatment required.

11:4-36.12 Conversion

(a) All group BASIC certificates shall contain a provision setting forth the right of conversion for covered persons who become ineligible for group coverage, or whose group coverage is terminated by either the group policyholder or the carrier, and which is not replaced by another group policy, BASIC or otherwise.

(b) The provision setting forth the right of conversion shall specify the manner and time period for making the election. The time period shall be no less than 31 days following the termination date of the covered person's coverage under the group BASIC policy. No more than 90 days of premium, inclusive of the 31 day election period, may be required in order to effectuate the election.

(c) No waiting period shall apply to a conversion policy, and any preexisting condition exclusion provision satisfied, in whole or in part, under the group BASIC policy, shall be credited, to the extent satisfied, against any preexisting condition exclusion provision which may apply under the conversion policy.

(d) Conversion policies shall include dependent coverage, and shall meet all of the requirements for individual BASIC policies under this subchapter, unless specified otherwise.

11:4-36.13 Family coverage

(a) All BASIC policies and certificates shall include an option to cover the spouse and dependents of the covered person, at the election of the covered person. For purposes of this subchapter a covered spouse or dependent shall also be a covered person.

(b) The term dependent shall include a covered person's spouse and minor children, including stepchildren, adopted children and children for whom the covered person or covered person's spouse is or becomes the legal guardian. The term dependent may include other persons within a family relationship as the carrier may determine and set forth in the policy and certificate.

(c) Spouses and dependents shall be eligible to exercise continuation and conversion privileges.

1. Subject to the payment of appropriate premiums, coverage for a spouse and dependents shall be continued for at least 180 days after the death of the covered person, subject to policy provisions for termination of coverage for spouses or dependents for reasons other than the death of a covered person.

2. During a period of no less than 31 days following the occurrence of a qualifying event, a spouse and dependents shall have the right to apply for a BASIC conversion policy (in the case of group BASIC policies), or a separate individual BASIC policy (in the case of individual BASIC and BASIC conversion policies).

i. Qualifying events shall include:

(1) Death of a covered person, or in the case of continued coverage required following the death of a covered person, the end of the continuation period;

(2) Divorce;

(3) Legal separation; and

(4) Attainment of an age specified under a policy for terminating eligibility, other than attainment of age 65.

ii. No new evidence of insurability shall be required in connection with the application for coverage, but any preexisting condition exclusion, waiting period or other limitation not satisfied by the former spouse and dependents under the former policy may apply on the new policy, to the extent that such exclusion, period or limitation remains unsatisfied, except that no waiting period shall apply on a conversion BASIC policy.

iii. The effective date of the new coverage shall be the day following the date on which the coverage under the prior policy terminated with respect to the former spouse and dependents.

(d) BASIC policies may provide for termination of coverage of dependent children upon attainment of the age of 19, or upon marriage of the child prior to attainment of the age of 19. Any dependent child incapable of self-sustaining employment by reason of mental retardation or physical handicap, who became so incapacitated prior to attainment of age 19 and who is chiefly dependent upon the covered person or covered person's spouse for support and maintenance, shall not be terminated while the policy remains in force and the dependent remains in that condition, if, within 31 days following the dependent's attainment of age 19, the covered person presents proof of the dependent's incapacity.

(e) BASIC policies shall provide coverage to newly-born children of a covered person or a covered person's spouse for at least 31 days after the moment of birth of the child. Coverage shall be for injury or sickness including the necessary care and treatment of medically diagnosed congenital abnormalities. Carriers may provide that continued coverage of a newly-born child beyond the 31 day period is contingent upon notification of birth, application for coverage if the BASIC policy is not currently family-type, and submission of appropriate premiums or contribution, if any, to effect coverage. No evidence of insurability shall be required with regard to a newborn child.

11:4-36.14 Disclosure provisions

(a) Each BASIC policy shall include a renewal provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited,

of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the carrier effectuates a request made in writing by the policyholder or covered person, all riders or endorsements added after the date of issue, or at reinstatement or renewal, which reduce or eliminate benefits or coverage under the BASIC policy shall require signed acceptance by the covered person, or policyholder in the case of group policies. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term, shall be agreed to in writing by the covered person, or policyholder in the case of group policies, except if the increased benefit or coverage is required by law.

(c) Where riders or endorsements which reduce or eliminate coverage or benefits are attached to the policy at issue, the policy shall contain on the first page or specification page either a prominent warning or the full text of the rider or endorsement.

(d) Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(e) In a policy or certificate which provides for payment of benefits based on standards specified as "usual and customary," "reasonable and customary" or "usual, customary and reasonable," such standards shall be defined in the policy and certificate.

(f) If a policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph in the policy and certificate and shall be labelled as "Preexisting Condition Limitations."

(g) If age is to be used as a determining factor for reducing the benefits available in the policy, such fact must be set forth prominently in the policy and certificate.

(h) All policies shall have a notice prominently printed on the first page of the policy, or attached thereto, stating in substance that covered persons shall have the right to return the policy within 30 days of delivery and to have the premium(s) refunded, if after examination of the policy, the covered person is not satisfied for any reason.

(i) All policies and certificates shall contain a provision explaining dependent coverage. The provision shall specify how to maintain coverage for a newborn child past the first 31 days of life, and how to maintain coverage for a dependent child upon attainment of age 19. The provision shall explain dependent coverage upon the death of the covered person.

(j) The conversion privilege shall appear as a separate paragraph under the caption "Conversion Privilege" in policies and certificates. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person who may exercise the conversion privilege. The provision shall specify the benefits to be provided on conversion, or may state that the converted coverage will be as provided on a policy form being used by the carrier for conversion purposes.

(k) Carriers shall provide an informational pamphlet to each policyholder and certificateholder free of charge no later than the date of delivery of the BASIC policy or certificate issued under a BASIC policy. The booklet shall be prepared by the New Jersey Department of Insurance, Division of Public Affairs. Carriers may obtain copies of the pamphlet or information pertaining to the printing of this pamphlet by contacting:

BASIC Health Care Coverage Pamphlet

Division of Public Affairs

New Jersey Department of Insurance

CN 325

Trenton, New Jersey 08625-0325

(l) The continuation privilege shall appear as a separate paragraph under the caption "Continuation Privilege" in policies and certificates. The provision shall indicate the persons eligible for continuation, the circumstances applicable to the continuation privilege, including any limitations on the privilege, and the person(s) who may exercise the continuation privilege. The provision shall specify the benefits to be provided on continuation.

(m) All BASIC policies, certificates, riders, waivers or endorsements, or other such similar material used to inform or correspond with consumers, covered persons or the Department shall be entitled or otherwise labelled as "BASIC Health Care Coverage," and may be referred to as "BASIC" or "BHCC" within the body of documents so entitled or otherwise labelled. No policy, nor any documents pertaining to any policy delivered or issued for delivery in this State on or after the effective date of this subchapter shall be referred to or described as "BASIC Health Care Coverage" "basic health care coverage" or use the terms "BASIC" or "BHCC" unless the policy meets the requirements of this subchapter and has been filed or deemed filed by the Commissioner.

(n) All group BASIC policies and certificates shall contain a coordination of benefits section consistent with the requirements of N.J.A.C. 11:4-28 and the Appendix to that subchapter.

11:4-36.15 Application forms

(a) Application forms shall not include provisions, statements or questions that:

1. Pertain to race, creed, color, national origin or ancestry of the proposed covered person;
2. Change the terms of policy to which it is attached;
3. State that the applicant has not withheld any information or concealed any facts; or
4. Require the applicant to agree that an untrue or false answer material to the risk shall render the contract void.

(b) If the carrier makes any changes or amendments to the application, signed acceptance by the applicant is required.

(c) Questions used to ascertain the past and present health of a proposed covered person shall be factual. Questions which are subjective, unfairly discriminatory, overly technical, or which ask for the applicant's opinion shall not be used. All questions shall be stated to be to the best of the applicant's knowledge and belief.

(d) Questions concerning alcohol and drug abuse shall be based on specific criteria such as treatment, driving records, work attendance records, etc. Questions such as "Do you use alcohol or drugs to excess" shall not be used.

(e) Application forms shall include a means for identifying the coverage or policy for which application is made.

(f) Application forms shall contain questions designed to provide certain information for the annual reports required to be filed March 1 by all carriers, as set forth at N.J.A.C. 11:4-36.18. Such questions may be indicated by the carrier to be for the purpose of complying with New Jersey regulations. These questions shall not be used for underwriting purposes, or determination as to appropriateness of issue of the policy, except with respect to groups which indicate the existence of group coverage within the 12 month period ending on the date of the application or individuals eligible for Medicare. These questions shall be designed to elicit the following information:

1. The type of entity providing previous or current coverage, such as health service corporation (Blue Cross and Blue Shield), health maintenance organizations, fraternal benefit society;

2. The type of policy the applicant previously or currently has, such as major medical, limited benefit, disability, Medicare, Medicaid, accident-only;

3. The type of coverage the applicant previously or currently had, or is permitted with respect to group policies, such as individual, husband-wife, parent-child, family;

4. The date when previous or current coverage was or will be terminated or nonrenewed; and

5. Whether termination of nonrenewal was at the election of the applicant, and if so, the primary reason for the termination or nonrenewal, such as cost of premium, level of deductibles and coinsurance, benefits offered, preexisting condition requirements, other coverage limitations or exclusions.

11:4-36.16 Alternative benefits

(a) Carriers may submit to the Department alternative benefit or service forms, including all underwriting guidelines and rates directly connected with the alternative benefit(s) or service(s), and a brief explanation as to the manner in which the proposed alterna-

tive benefit or service is within the intent of the Health Care Cost Reduction Act, P.L. 1991, c.187. No alternative benefit or service form may be used without the prior affirmative approval of the Commissioner.

(b) Alternative benefits or services shall not include deductibles or coinsurance amounts in excess of those amounts authorized by statute.

(c) Submissions proposing alternative benefits should be directed to the Department as set forth at N.J.A.C. 11:4-36.5. Filed policy forms which the submission is proposed to amend shall be clearly indicated.

11:4-35.17 Managed care

(a) Carriers shall not utilize any managed care system(s) for coverages required to be offered in accordance with this subchapter until utilization of the managed care system(s) by carriers is approved by the Commissioner, except to the extent that a class of carriers is authorized to utilize managed care or managed care systems pursuant to N.J.S.A. 26:2J-1 et seq. or N.J.S.A. 17:48E-1 et seq.

(b) Carriers proposing to utilize managed care or managed care systems other than or in addition to that currently authorized for the specific carrier or class of carriers shall submit a detailed explanation of the managed care system to be utilized for review and approval by the Commissioner. A detailed explanation shall include, but not necessarily be limited to:

1. A description of the managed care system and any contractual arrangements which may be required between the carrier and the managed care system provider(s);

2. A list of the coverages to which the managed care system will be applied;

3. A clear indication of the geographic limitations to the managed care system, if any, and the method by which the carrier intends to avoid inequity based on geographic limitations, specifically with respect to group BASIC and conversion policies;

4. Rates applicable to utilization of the proposed managed care system, demonstrating that benefits are reasonably related to premiums, and that the loss ratio requirements of this subchapter will be met;

5. A demonstration that utilization of a managed care system, particularly one having geographic limitations, coverages limitations, or benefit differentials, may be accomplished without violating the Trade Practices Act, N.J.S.A. 17B:30-1 et seq.; and

6. The policy forms, riders, waivers and applications to be made a part of the policy, if any, and all information to be provided to covered persons regarding the policy, benefits and utilization of the managed care system, with a clear description of procedures to be used by covered persons, and the impact upon benefits for covered persons who do not follow the established procedures.

(c) In addition to the BASIC benefits set forth at N.J.A.C. 11:4-36.7, BASIC policies using managed care systems may provide benefits for expenses due to out of hospital physician services, that is: office visits, to the extent that such services are essential to the control of costs under the managed care system.

(d) The terms "managed care" and "managed care system" shall include, but are not limited to:

1. Preferred provider networks and arrangements; and

2. Case management systems.

(e) Proposals for utilization of managed care systems shall be directed to the Department as set forth at N.J.A.C. 11:4-36.5.

11:4-36.18 Annual informational reports

(a) Every carrier subject to the requirements of this subchapter shall submit a report to the Department annually on or before March 1 containing the information specified below with respect to January 1 through December 31 of the immediately preceding calendar year, inclusive of those dates:

1. The total number of individual BASIC policies delivered or issued for delivery, and the total number of persons covered by the aggregate number of such policies delivered or issued for delivery;

2. The total number of group BASIC policies and conversion BASIC policies delivered or issued for delivery, and the total number

of persons covered by the aggregate number of such policies delivered or issued for delivery;

3. The total known number of persons covered under individual BASIC policies continued, renewed or reinstated;

4. The total known number of persons covered under group BASIC policies or conversion BASIC policies continued, renewed or reinstated;

5. The total number of applicants completing application form questions designed pursuant to N.J.A.C. 11:4-36.15(e) by:

i. Entity type, including categories "other" and "nonapplicable";
ii. Policy type, including categories "other" and "nonapplicable";
iii. Coverage type, including categories "other" and "nonapplicable";

iv. Number of months since previous coverage was terminated, disregarding any category "nonapplicable" responses, and disregarding group applicant responses of less than 12 months; and
v. Number of responses to the following primary reasons for voluntary termination or nonrenewal:

- (1) Cost of premium;
 - (2) Level of deductibles and coinsurance;
 - (3) Benefits offered;
 - (4) Preexisting condition requirements; and
 - (5) Other coverage limitations or exclusions;
- (b) Annual reports shall be filed with:

Assistant Commissioner
Division of Life and Health Actuarial Services
NJ Department of Insurance
CN 325
Trenton, NJ 08625-0325

11:4-36.19 Compliance with other laws

All laws of this State not inconsistent with P.L. 1991, c.187 or this subchapter shall be applicable to BASIC health care coverage.

11:4-36.20 Penalties

Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties available in accordance with the laws of this State.

11:4-36.21 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held to be invalid for any reason, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Lobbyists and Legislative Agents

Proposed Amendments: N.J.A.C. 19:25-20

Proposed New Rules: N.J.A.C. 19:25-20.4, 20.5, 20.6, 20.7, 20.8 and 20.19

Proposed Repeals: N.J.A.C. 13:1A and N.J.A.C. 19:25-20.5 and 20.15

Authorized By: Election Law Enforcement Commission,
Frederick M. Herrmann, Ph.D., Executive Director.

Authority: P.L.1991, c.244, §12 and N.J.S.A. 52:13C-22.3.

Proposal Number: PRN 1991-523.

A public hearing concerning this proposal will be conducted on Wednesday, November 20, 1991 at 10:00 A.M. at:

Election Law Enforcement Commission
28 West State Street, 12th floor
Trenton, New Jersey

Submit written comments by November 20, 1991 to:

Gregory E. Nagy, Legal Director
Election Law Enforcement Commission
CN 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, the Commission) proposes new rules, amendments, and repeals concerning registration of and reporting by lobbyists and legislative agents influencing legislation or regulations in New Jersey. This proposal implements statutory changes made by Chapters 243 and 244 of the Laws of 1991, to be effective January 1, 1992, amending the provisions of the "Legislative Activities Disclosure Act of 1971," N.J.S.A. 52:13C-18 et seq. (hereafter, "the Act"). The proposed effective date of these changes is anticipated to be January 1, 1992, the same date upon which the statutory amendments become effective.

Among the principal changes are:

1. The Commission will assume responsibility for administration over the registration of and quarterly reporting by legislative agents, a responsibility previously under the jurisdiction of the Attorney General. Therefore, rules promulgated by the Attorney General at N.J.A.C. 13:1A are proposed for repeal, and new rules have been proposed as follows: N.J.A.C. 19:25-20.4, Legislative agent notice of representation; N.J.A.C. 19:25-20.5, Legislative agent quarterly report; N.J.A.C. 19:25-20.6, Name tags; N.J.A.C. 19:25-20.7, Notice of termination; and N.J.A.C. 19:25-20.8, Voluntary statements.

2. Attempts to influence the rulemaking process of administrative agencies will become subject to reporting. Lobbyists and legislative agents will have to include information about rulemaking influence on their annual financial reports (see N.J.A.C. 19:25-20.9), and legislative agents must include rulemaking activity on behalf of clients on their notices of representation and quarterly reports (see N.J.A.C. 19:25-20.4 and 19:25-20.5). Section 4 of Chapter 243 of the Laws of 1991 specifically amended N.J.S.A. 52:13C-21 concerning notices of representation to require legislative agents to report information pertinent to regulatory lobbying, but there was no corresponding amendment to N.J.S.A. 52:13C-22 requiring this information on quarterly reports. The Commission believes the statutory omission was a legislative oversight because the statutory structure of the Act contemplates that quarterly reports serve as periodic updates of the information on the original notice of representation, see N.J.S.A. 52:13C-22(c)(2); and the legislative history of Chapter 243 of the Laws of 1991 does not suggest any deliberate intention to disturb the update purpose of quarterly reporting. Therefore, N.J.A.C. 19:25-20.5 proposes that regulatory activity must be included in legislative agent quarterly reports.

3. Expenditures by lobbyists and legislative agents to communicate with a lawmaker or rulemaker will become subject to financial disclosure irrespective of whether the communication is made "expressly" for the purpose of influencing a bill or regulation. Therefore, expenditures made by lobbyists or legislative agents to establish "good will" among legislators or regulators must be reported even in the absence of an accompanying communication concerning a legislative or regulatory objective. These statutory amendments are implemented by proposed amendments to N.J.A.C. 19:25-20.9, Annual Report; N.J.A.C. 19:25-20.10, Receipts; N.J.A.C. 19:25-20.11, Expenditures; N.J.A.C. 19:25-20.13, Contents of Annual Report; and N.J.A.C. 19:25-20.2, Definitions.

4. A membership organization or corporation whose name or occupation (that is, field of endeavor) does not clearly reveal its primary specific economic, social, political or other interest will be required by Section 4(b) of P.L. 1991, c.243, to provide further information for the legislative agent's notice of representation, and the text of this new statutory requirement is proposed as N.J.A.C. 19:25-20.4(d).

5. In regard to the reporting of expenditures by a legislative agent that result in benefits being passed to a legislator or regulator, the Commission proposes an exception to reporting if the recipient is a household member or relative as defined in these rules of the legislative agent, and if the expenditure were made from personal funds of the legislative agent, see N.J.A.C. 19:25-20.11(d).

6. The new statutory requirement for disclosure of certain public offices held by legislative agents (see Section 7 of P.L. 1991, c.243) is proposed at N.J.A.C. 19:25-20.13(d).

7. The term "violation" is defined as the failure to report timely or in the manner prescribed by law any event or transaction required to be reported under the Act or regulations. Similarly, the failure to make or maintain a record required to be made by the Act or regulations constitutes a violation; see N.J.A.C. 19:25-20.17.

8. A name tag will be issued only to a legislative agent who is an individual, which is currently the practice employed by the Attorney

General; see N.J.A.C. 19:25-20.6. The name tag shall be effective from August 1 to the following July 31. The August 1 date has been selected rather than the current July 1 date, for reasons of administrative and fiscal efficiency. Although not formally proposed, the Commission intends to extend the June 30, 1992 expiration date of legislative agents currently holding name tags to July 31, 1992. Name tags will be issued only if a legislative agent has paid the annual fee for the following year provided in N.J.A.C. 19:25-20.19, and has filed all required notices of representation and quarterly reports for the prior 12-month period.

9. A record of a single lobbying expenditure in an amount of \$25.00 or less does not have to be made or obtained, but a record of an expenditure above \$25.00 must be made or obtained and kept for three years. Under the prior regulation, there was no \$25.00 threshold for recordkeeping. The Commission believes that de minimus expenditures should be exempted from onerous recordkeeping requirements.

Social Impact

The proposed new rules and amendments will affect lobbyist organizations and legislative agents, and are intended to implement amendments to the Act that become effective January 1, 1992. The legislative amendments and the proposed amendments and new rules are intended to improve legislative agent registration, and to enhance disclosure of the financing of lobbying activity in New Jersey. Since the amendments and new rules for the most part implement amendments to the Legislative Activities Disclosure Act, the Commission anticipates that they will not generate undue controversy in the lobbying community, or in the general public.

A significant legislative change reflected in the proposed amendments and new rules is the inclusion of reporting for "good will" lobbying expenditures. Prior to the legislative amendments, expenditures made by lobbyists or legislative agents that were not "expressly" linked to a specific communication on legislation escaped disclosure even if they resulted in benefits being passed to lawmakers, or their staffs. The Commission and the press therefore frequently characterized lobbying disclosure as containing a "loophole," and the Commission has advocated that any expenditure passing a benefit from a lobbyist or legislative agent to a legislator or regulator must be subject to public disclosure even in the absence of an accompanying communication expressly linked to a specific legislative or regulatory action. The amendment and these implementing amendments and new rules will overcome that "loophole," and the Commission therefore anticipates greater public confidence in the reliability and value of lobbying reporting.

The Commission is proposing an exception to disclosure if the legislative agent is passing a benefit out of personal funds to a legislator or regulator who is a relative or household member. Under the circumstances where a family relationship exists, the implicit motive in benefit passing to influence legislation or regulation is not necessarily present and, therefore, public disclosure is not compelling.

Another significant change is the inclusion of lobbying activities directed towards the rulemaking activity of the Executive Branch. Again, the proposed amendments and new rules implement legislative amendments to include regulatory lobbying within the disclosure requirements of the Act. The Commission believes that in order to implement a comprehensive and effective registration of legislative agents influencing regulations, their quarterly reports must include identification of clients or employers who have retained the legislative agents to influence regulations. Therefore, an amendment to N.J.A.C. 19:25-20.4, Legislative agent notice of representation, requiring information on regulatory activity has been proposed notwithstanding that Chapter 231 did not specifically amend N.J.S.A. 52:13C-22 to that effect.

The proposed amendments and new rules, which implement the legislative amendments, will serve to make the protections afforded by lobbying registration and reporting more meaningful and, therefore, more useful in promoting the State's democratic institutions of government.

Economic Impact

The Commission does not anticipate any significant economic impact on lobbyists or legislative agents other than some additional costs for recordkeeping and reporting of activities that previously were not covered by the Legislative Activities Disclosure Act. Specifically, the legislative amendments require reporting of "goodwill" lobbying expenditures, of regulatory lobbying activity, and of additional information on legislative agent registration statements concerning membership organizations or corporations who are lobbying clients and whose names or occupations (that is, fields of endeavor) do not clearly reveal the

primary specific economic, social, political or other interest of the client membership organization or corporation.

The annual fee proposed for legislative agents (that is, \$100.00) is the same as the annual fee currently charged by the Attorney General.

Regulatory Flexibility Analysis

Some lobbyists and legislative agents that are affected by the proposed amendments and new rules may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The statutory amendments and the implementing changes in these amendments and new rules increase the burden of lobbying reporting and registration, principally by extending the scope of those requirements to the lobbying of Executive Branch agencies in regard to their rulemaking activity. Therefore, a lobbyist that is expending funds to influence rulemaking by an Executive Branch agency, or a legislative agent that receives fees for that purpose, may acquire reporting or registration requirements under the new law and these proposed amendments to the Commission's regulations. In regard to lobbying reporting, records must be obtained or made and maintained by lobbyist organizations and legislative agents for all lobbying expenditures or receipts, and an annual report of the expenditures or receipts must be filed. In regard to registration, legislative agents must register with the Commission, must file an initial Notice of Representation and subsequent quarterly reports disclosing their clients, and must pay an annual fee of \$100.00. These requirements previously existed only for activity related to influencing legislation.

Lobbyists that spend less than \$2,500 in a calendar year to influence legislation or regulation are exempted from the annual reporting requirement. A person who receive \$100.00 or less in a three-month period as compensation for influencing legislation or regulation is not required to register as a legislative agent. These thresholds have the effect of eliminating many small businesses from the scope of the reporting or registration requirements.

The Commission believes that the salutary public purposes of reporting and registration do not justify any further differentiation between large and small businesses. In regard to lobbyist reporting, there is a clear public interest in uniform disclosure of lobbying receipts and expenditures. The administrative burden of recordkeeping and reporting appears reasonably within the means of a business expending more than \$2,500 in a calendar year for lobbying. Similarly, in regard to registration of legislative agents, there is also a clear public interest in the disclosure of clients, and in the identification of legislative agents by means of the name tag that the Commission provides to each agent. The Commission believes that the costs and administrative burdens of registering are not so prohibitive as to be beyond the means of a person or business enterprise receiving more than \$100.00 in a three-month period as compensation for conducting lobbying activity. The Commission notes that an organization exempt from sales and use tax pursuant to N.J.S.A. 54:32-9(b) is exempt from payment of the legislative agent annual fee; see N.J.A.C. 19:25-20.19(e).

Full text of N.J.A.C. 13:1A proposed herein for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:1A.

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

SUBCHAPTER 20. [FINANCIAL DISCLOSURE BY] LOBBYISTS AND LEGISLATIVE AGENTS

19:25-20.1 Authority

The provisions of this subchapter, [covering the financial disclosure obligations of certain lobbyists and legislative agents] are promulgated pursuant to the Legislative Activities Disclosure Act (P.L. 1971, c.183), as amended, N.J.S.A. 52:13C-20, and following ("the Act").

19:25-20.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless a different meaning clearly appears from the context.

"Act" shall mean the Legislative Activities Disclosure Act, as amended, N.J.S.A. 52:13C-20 et seq.

"Commission" shall mean[s] the New Jersey Election Law Enforcement Commission.

["Communication to the Legislature" or "to the Governor or his staff"] "Communication with a member of the Legislature", "with legislative staff", "with the Governor", "with the Governor's staff", or "with an officer or staff member of the Executive Branch" shall mean any communication, oral or in writing or any other medium, addressed, delivered, distributed or disseminated, respectively, to a member of the Legislature [or], to legislative staff, to the Governor [or his], to the Governor's staff [or to any part thereof], or to an officer or staff member of the Executive Branch, as distinguished from communication to the general public, including, but not limited to, a member of the Legislature [or], legislative staff, the Governor [or his], the Governor's staff, or an officer or staff member of the Executive Branch. If any person shall obtain, reproduce or excerpt any communication or part thereof which in its original form was not a communication [to the Legislature or the Governor or his staff] under this definition and shall cause such excerpt or reproduction to be addressed, delivered, distributed or disseminated to a member of the Legislature [or], to legislative staff, to the Governor [or his], to the Governor's staff [or any part thereof or member thereof], or to an officer or staff member of the Executive Branch, such communication, reproduction or excerpt shall be deemed a communication [to] with the member of the Legislature [or], with legislative staff, with the Governor [or his], with the Governor's staff, or with an officer or staff member of the Executive Branch by such person.

... ["Direct, express and intentional communication with legislators or the Governor or his staff undertaken for the specific purpose of affecting legislation" (hereinafter sometimes referred to as "Direct Communication") shall mean any oral or written communication initiated by a legislative agent to the Legislature or the Governor or his staff (including telephone, correspondence, radio, advertising or use of other communications media), regardless of whether the communication is in person or through an agent, having the effect of transmitting information, opinions or ideas which reasonably can be said to be intended to influence legislation.]

... "Expenditures providing a benefit" or "expenditures providing benefits" means any expenditures for entertainment, food and beverage, travel and lodging, honoraria, loans, gifts or any other thing of value, except for:

1. Any money or thing of value paid for past, present, or future services in regular employment, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense, or any combination thereof; or

2. Any dividends or other income paid on investments, trusts, and estates.

["Governor or his staff"] "Governor" includes the Governor or the Acting Governor, the members of the Governor's Cabinet, the Secretary to the Governor, the Counsel to the Governor, and all other employees of the Chief Executive's Office].

"Governor's staff" includes the members of the Governor's Cabinet, the Secretary to the Governor, the Counsel to the Governor and all professional employees in the office of the Counsel to the Governor, and all other employees of the Office of the Governor.

"Influence legislation" shall mean to make any attempt, whether successful or not, to secure or prevent the initiation of any legislation or to secure or prevent the passage, defeat, amendment or modification thereof by the Legislature, including efforts to influence the preparation, drafting, content, introduction and consideration of any bill, resolution, amendment, report or nomination or the approval, amendment or disapproval thereof by the Governor in accordance with his constitutional authority. [Rulemaking is not covered under this definition except to the extent that such rules come before the Legislature as part of the legislative review process.]

"Influence regulation" means to make any attempt, whether successful or not, to secure or prevent the proposal of any regulation or to secure or prevent the consideration, amendment, issuance, promulgation, adoption or rejection thereof by an officer or any authority, board, commission or other agency or instrumentality in

or of a principal department of the Executive Branch of State Government empowered by law to issue, promulgate or adopt administrative rules and regulations.

["Its" and "his," used interchangeably throughout this subchapter, apply to lobbyists or legislative agents of either gender, unless a different meaning clearly appears from the context.]

... "Legislative agent" shall mean any person who receives or agrees to receive, directly or indirectly, compensation, in money or anything of value (including reimbursement of his or her expenses where such reimbursement exceeds \$100.00 in any three-month period), to influence legislation or to influence regulation, or both, by direct or indirect communication[,] with [personally or through any intermediary], or by making or authorizing, or causing to be made or authorized, any expenditures providing a benefit to, a member of the Legislature [or], legislative staff, the Governor [or his], the Governor's staff, or any officer or staff member of the Executive Branch, or who holds himself or herself out as engaging in the business of influencing legislation or regulation by such means, or who incident to his or her regular employment engages in influencing legislation or regulation by such means; provided, however, that]. However, a person shall not be deemed a legislative agent who, in relation to the duties or interests of his or her employment or at the request or suggestion of his or her employer, communicates [to] with a member of the Legislature [or], with legislative staff, with the Governor [or his], with the Governor's staff, or with an officer or staff member of the Executive Branch concerning any legislation or regulation, if such communication is an isolated, exceptional or infrequent activity in relation to the usual duties of his or her employment. For the purposes of this definition, activities to influence legislation, or influence regulation, shall be deemed "isolated, exceptional or infrequent" if they constitute less than 20 hours, or less than one percent of the time an employee spends working at his or her employment, whichever is less, during a calendar year.

[1. Except as hereinafter provided below, for the purposes of the definition of "legislative agent" and of reporting under the Act, a person's communication or communications shall not be deemed to be "isolated, exceptional or infrequent activity" if, in relation to the usual duties of his employment, he spends, over the course of a reporting year, a total of 10 percent of his time or 180 hours, whichever is less, in such activity on behalf of his employer.

2. Notwithstanding the above, and solely for the purpose of determining whether the employer of such employee is a lobbyist as defined below, if the employee of any organization which has receipts or expenditures of the kind described in N.J.A.C. 19:25-20.6 and 20.7 exceeding \$2,500 in any calendar year, makes a Direct Communication in such calendar year, regardless of the amount of time spent, then such employee shall be deemed to be a legislative agent.

Example: ABC Corporation expends, over the course of the calendar year, \$20,000 for direct lobbying on legislators (including expenditures on mailings to legislators, food, beverage and football tickets for legislators, and a video presentation to the Legislature). ABC did not hire an outside contract lobbyist, nor did any of its employees who participated in direct lobbying activity expend 180 hours or 10 percent of their time on such activity. One of these employees, Smith, its vice-president, communicated directly with Senators X and Y, urging the passage of certain legislation of interest to ABC Corporation. This direct communication by Smith, when combined with any other direct lobbying activity engaged in by him over the course of the year on behalf of ABC Corporation did not, however, exceed 180 hours or 10 percent of his employment time. Under these circumstances, ABC Corporation is a lobbyist with an annual reporting obligation and Smith is its legislative agent for such purpose. ABC Corporation must list Smith as its legislative agent on its annual report, but no accounting and valuation of Smith's time is required since he did not meet the 180 hours/10 percent of time threshold.]

"Legislative staff" includes all staff, assistants and employees of the Legislature or any of its members in the member's official capacity, whether or not they receive compensation from the State of New Jersey.

"Legislature" includes the Senate and General Assembly of the State of New Jersey, the members and members-elect thereof and each of them, and all committees and commissions established by the Legislature or by either House [and all members of any such committee or commission, and all staff assistants and employees of the legislature whether or not they receive compensation from the State of New Jersey] thereof.

"Lobbyist" shall mean any person, partnership, committee, association, corporation, labor union, or any other organization that employs, retains, designates, engages or otherwise uses the services of any legislative agent to influence legislation or regulation.

"Member of the Legislature" includes any member or member-elect of, or any person who shall have been selected to fill a vacancy in, the Senate or General Assembly, and any other person who is a member or member-designate of any committee or commission established by the Legislature or by either House thereof.

"Officer or staff member of the Executive Branch" means any assistant or deputy head of a principal department in the Executive Branch of State Government, including all assistant and deputy commissioners; the members and chief executive officer of any authority, board, commission or other agency or instrumentality in or of such a principal department; and any officer of the Executive Branch of State Government other than the Governor who is not included among the foregoing or among the Governor's staff, but who is empowered by law to issue, promulgate or adopt administrative rules and regulations, and any person employed in the office of such an officer who is involved with the development, issuance, promulgation or adoption of such rules and regulations in the regular course of employment.

"Person" includes [any] an individual, partnership, committee, association, corporation, and any other organization or group of persons.

"Regulation" includes any administrative rule or regulation affecting the rights, privileges, benefits, duties, obligations, or liabilities of any one or more persons subject by law to regulation as a class, but does not include an administrative action:

1. To issue, renew or deny, or, in an adjudicative action, to suspend or revoke, a license, order, permit or waiver under any law or administrative rule or regulation;
2. To impose a penalty; or
3. To effectuate an administrative reorganization within a single principal department of the Executive Branch of State Government.

19:25-20.3 Exemptions from the Act

(a) The provisions of the Act regarding attempts to influence legislation or attempts to influence regulation shall not apply to the following activities:

1. The acts of the government of the United States or of the State of New Jersey or of any other state or of any of the political subdivisions or authorities or commission of any of the foregoing, or any interstate authority or commission, or any official, employee, counsel or agent of any of the above when acting in his or her official capacity.
2. The publication or dissemination, in the ordinary course of business, of news items, advertising, editorials or other comments by a newspaper, book publisher, regularly published periodical, or radio or television station or similar media, including an owner, editor or employee thereof, nor the acts of a recognized school or institution of higher education, public or private, in conducting, sponsoring or subsidizing any classes, seminars, forums, discussions or other events, in the normal course of its business in which political information or discussion thereof or comment thereon is an integral part.
3. The acts of bona fide religious groups acting solely for the purpose of protecting the public right to practice the doctrine of such religious group.
4. The acts of a duly operated national, state or local committee of a political party.
5. The acts of a person in testifying before a legislative committee or commission, at a public hearing duly called by the Governor on legislative proposals or on legislation passed and pending his or

her approval, or before any officer or body empowered by law to issue, promulgate or adopt administrative rules and regulations in behalf of a nonprofit organization incorporated as such in this State, who receives no compensation therefor beyond the reimbursement of necessary and actual expenses, and who makes no other communication with a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch in connection with the subject of his or her testimony.

6. The acts of a person in communicating with or providing benefits to a member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch if such communication or provision of benefits is undertaken by him or her as a personal expression and not incident to his or her employment, even if it is upon a matter relevant to the interests of a person by whom or which he or she is employed, and if he or she receives no additional compensation or reward, in money or otherwise, for or as a result of such communication or provision of benefits.

19:25-20.4 Legislative agent notice of representation

(a) Each legislative agent shall file with the Commission a signed notice of representation on a form prescribed by the Commission, and containing the information required by N.J.S.A. 52:13C-21.

(b) The notice of representation shall be filed prior to making any communication with, or the making of any expenditures providing a benefit to, a member of the Legislature, with legislative staff, with the Governor, with the Governor's staff, or with an officer or staff member of the Executive Branch, or shall be filed within 30 days of employment, retainer or engagement as a legislative agent, whichever occurs earlier.

(c) Each legislative agent must notify the Commission in writing of any material change in the information supplied in the notice of representation within 15 days of the effective date of such change, or not later than the filing date of the subsequent quarterly report, whichever occurs earlier.

(d) If a legislative agent identifies a membership organization or corporation as the lobbyist or person from whom he or she receives compensation for acting as a legislative agent, and the name or occupation so identified does not, either explicitly or by virtue of the nature of the principal business in which the organization or its members, or the corporation or its shareholders, is commonly known to be engaged, clearly reveal the primary specific economic, social, political, or other interest which the organization or corporation may reasonably be understood to seek to advance or protect through its employment, retainer, or engagement of the legislative agent, a description of that primary economic, social, political, or other interest and a list of the persons having organizational or financial control of the organization or corporation, including the names, mailing addresses and occupations of those persons, shall be included in the notice of representation of the legislative agent.

19:25-20.5 Legislative agent quarterly report

(a) Each legislative agent shall file with the Commission a quarterly report containing the information required by N.J.S.A. 52:13C-22 and signed by the legislative agent.

(b) If there has been no activity in the calendar year quarter to influence legislation or influence regulation, the report shall so state.

(c) Such report shall be filed on a form prescribed by the Commission no later than the tenth day following the end of the calendar year quarter during which activities influencing legislation or influencing regulation occurred.

(d) Calendar year quarters end on March 31, June 30, September 30 and December 31.

19:25-20.6 Name tags

(a) Each legislative agent who is an individual shall wear visibly a name tag bearing the full name of the individual at all times when such individual is in the State House, the State House Annex, or any other State building or other location when and where an authorized meeting of a legislative committee is being held for the purpose of influencing legislation or influencing regulation.

(b) Effective August 1, 1992, and each August 1 thereafter, the Commission shall issue a name tag to a legislative agent who is an individual, which name tag shall be effective for a 12-month period commencing on August 1 and ending on July 31.

(c) Name tags will be issued by the Commission only to a legislative agent who has paid the annual fee provided for in N.J.A.C. 19:25-20.19, and has filed all required notices of representation and quarterly reports for the prior 12-month period.

(d) The Commission may terminate the active status of a legislative agent who fails to renew his or her name tag on or prior to the expiration date provided in (b) above.

19:25-20.7 Notice of termination

(a) Each legislative agent shall file with the Commission a notice of termination within 30 days after his or her activities influencing legislation or influencing regulation cease.

(b) Any person who has engaged a legislative agent shall file a notice of termination after that agent ceases to represent such person.

(c) The notice of termination shall be filed on a form prescribed by the Commission. The completed form shall include:

1. The effective date of termination;
2. The name of the person from whom service was terminated.
3. The name and signature of the legislative agent; and
4. The date of the notice.

19:25-20.8 Voluntary statements

(a) Legislative agents filing pursuant to N.J.S.A. 52:13C-35 a voluntary notice of representation, a voluntary quarterly report, or a voluntary notice of termination shall utilize the forms prescribed by the Commission.

(b) Such statements shall be marked by the legislative agent as "voluntary filing."

(c) Voluntary filings pursuant to this section are subject to the fees provided in N.J.A.C. 19:25-20.19.

19:25-[20.4 Reporting threshold] 20.9 Annual report

(a) Any lobbyist or legislative agent who or which receives receipts of more than \$2,500 or makes expenditures of more than \$2,500 in any calendar year for the purpose of [direct, express and intentional] communication with [legislators, or the Governor or his staff, undertaken for the specific purpose of affecting legislation,] or providing benefits to any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall file with the Commission, not later than February 15th of each year, an annual report of receipts and expenditures for the previous calendar year pursuant to N.J.A.C. 19:25-[20.9]20.13 on forms supplied by the Commission. [; however, the initial reports required by the Act for the calendar year 1981 shall be filed not later than February 1, 1982. In calculating its reporting threshold hereunder, the lobbyist or legislative agent shall include the receipts and expenditures set forth in N.J.A.C. 19:25-20.5.]

(b) A legislative agent retained by or representing more than one lobbyist shall, for purposes of determining aggregate threshold expenditure figures pursuant to this section, include receipts and expenditures made on behalf of all of the lobbyists by whom [it] the legislative agent is employed.

[19:25-20.5 Reporting calculation

In calculating its reporting threshold hereunder, and for the purposes of reporting under N.J.A.C. 19:25-20.9, the lobbyist or legislative agent shall include all receipts or expenditures related to direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of affecting legislation.]

19:25-[20.6 Calculation of annual report receipts] 20.10 Receipts

(a) [The above calculation shall include, without limitation, the following receipts which relate to direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of affecting legislation:] The following receipts of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative

staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be included in the annual report:

1. Fees, salary, allowance or other compensation [in full, or that pro rata share related to Direct Communication received by] paid to a legislative agent. Receipts required to be reported pursuant to [(a)1 of this section] this paragraph shall be detailed as to amount, from whom received and for what purpose. A law firm, advertising agency, from whom received and for what purpose. A law firm, advertising agency, public relations firm, accounting firm or similar organization which spends only a portion of its time in legislative or regulatory activity on behalf of a lobbyist shall be required to report only that portion of its fees as are related to [Direct Communication] influencing legislation or influencing regulation.

2. Contributions, loans (except for loans [from financial institutions] made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons) or membership fees or dues received by a lobbyist. Such contributions, loans, fees or dues received by a lobbyist are [may be] reportable[, depending upon whether such contributions, loans, fees or dues] if they are made to a lobbyist whose major purpose is to [engage in such communication] influence legislation, or influence regulation. For purposes of [(a)2 of this section] this paragraph, a lobbyist shall be deemed to [engage in Direct Communication] be engaged in influencing legislation, or influencing regulation, as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. If, under the above test, it is not the major purpose of the lobbyist to [engage in Direct Communication] influence legislation, or influence regulation, the contributions, loans, fees and dues received by the lobbyist are not reportable by such organization, unless made to the lobbyist [for the express purpose of Direct Communication] with the specific intent that the contributions, loans, fees or dues be employed to influence legislation, or influence regulation, (in which case they are reportable as outlined below). If the major purpose of the lobbyist is to engage in [Direct Communication] influencing legislation, or influencing regulation, the contributions, loans, membership fees or dues received by the lobbyist shall be reported hereunder in the aggregate in the same proportion as the activities of the lobbyist are related to [Direct Communication] influencing legislation, or influencing regulation, along with the name and address of the contributor(s) whose contribution(s), allocated as outlined above, aggregate more than \$100.00 during the calendar year.

Example: Trade Association XYZ engages in a wide range of activities including trade shows, public relations, newsletters to its members, etc., and [lobbying] influencing legislation. This [lobbying] activity is done through a paid contract [lobbyist] legislative agent in Trenton as well as by [direct] communications by employees of the Trade Association. XYZ expends over \$2,500 during the course of the calendar year on this [direct] lobbying activity, although this expense constitutes less than [10] 50 percent of its total expenditures for all purposes for that year. Trade Association XYZ is a lobbyist required to file an annual report. However, it need not report its contributions [at all].

Trade Association EFG has the same fact situation as above, except that Trade Association EFG's [direct] lobbying expenses constitute more than 50 percent (e.g., 80 percent) of its expenditures for all purposes for the year. EFG must file an annual report as a lobbyist, including therein an aggregate allocated figure for lobbying contributions made to it (80 percent of each contribution must be allocated to lobbying for reporting purposes; the aggregate is then reported[.]). EFG must also report the name and address of all those contributors whose contributions, after being allocated to lobbying, exceed \$100.00.

19:25-[20.7 Calculation of expenditures] 20.11 Expenditures

(a) [The reporting calculation shall also include, without limitation, the following expenditures which relate or direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of affecting legislation:] The following

expenditures of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be reported in the annual report, and shall be listed in the aggregate by category:

1. Fees, allowances, retainers, salary or other compensation [in full, or that pro rata related to Direct Communication] paid by a lobbyist to a legislative agent. Compensation required to be reported pursuant to this subparagraph shall be detailed as to amount, to whom paid and for what purpose and shall include consulting, legal or other fees, for services performed or to be performed, as well as expenses incurred in rendering such services. In the case of a volunteer, the above calculation shall not include any calculation of the value of the time for such volunteer, but shall include only that amount reimbursed to the volunteer for expenditures related to [Direct Communication] activities to influence legislation, or influence regulation, on behalf of the lobbyist.

2. Pro rata share of salary or other compensation paid to an employee of any organization whose activities on behalf of that organization qualify him or her as a legislative agent.

Example: Jones engages in lobbying activity in New Jersey and Pennsylvania for ABC Corporation. He spends one-half of his time in [direct] lobbying activity in New Jersey. Jones' total salary, as reported in his W-2 form, is \$30,000 per year. Since [180 hours or 10] more than one percent of his time is spent on [direct] lobbying in New Jersey, Jones is a legislative agent for ABC Corporation and one-half of his salary, \$15,000, is allocable to [direct] lobbying. ABC Corporation is a reporting lobbyist and must include this amount as an expense.

Smith, another ABC Corporation employee, has spent [only 5] less than one percent of his time on direct lobbying on behalf of his employer[. Since he has spent than 180 hours or 10 percent of his time on such activity], and therefore [a pro rata share] none of his salary is [not] reportable by ABC Corporation.

3. Contributions or membership fees or dues paid by the lobbyist, except that such contributions or fees shall not be deemed to be related to [Direct Communication] influencing legislation, or influencing regulation, for the purpose of reporting under the Act and this subchapter unless made to a [lobbyist or] legislative agent [expressly for such purpose] with the specific intent to influence legislation or influence regulation, or unless made to a lobbyist [or legislative agent] whose major purpose is to engage in [such communication] influencing legislation, or influencing regulation. For the purpose of [(a)3 of this section] this paragraph, a lobbyist [or legislative agent] shall be deemed to [engage in Direct Communication] be engaged in influencing legislation, or influencing regulation, as its major purpose for any calendar year in which expenditures related to such activity constitute more than 50 percent of its total expenditures for all purposes. Such contributions, fees and dues (other than those made [expressly for the purpose of Direct Communication] with the specific intent to influence legislation, or influence regulation) made by a lobbyist to an organization, association or union, shall be reportable hereunder in the same proportion as the activities of the organization, association or union are related to [Direct Communication] influencing legislation, or influencing regulation. Contributions, fees or dues made [expressly for the purpose of Direct Communication] with the specific intent of influence legislation, influence regulation, or both, shall be reported in full. Contributions, fees or dues required to be reported pursuant to this paragraph shall be reported in the aggregate, along with the name of any organization, association or union to whom the lobbyist made a contribution in excess of \$100.00 for the calendar year (when allocated as set forth above) as well as the date of each contribution, fee or dues.

4. Costs of preparation and distribution of material by a lobbyist or legislative agent, including all disbursements for preparation and distribution of printed materials, correspondence, flyers, publications, films, slides, audio and video recordings and video tapes.

5. Travel and lodging for the legislative agent.

6. Allocated cost of support personnel for the lobbyist or legislative agent. The allocated cost of any support personnel for

the lobbyist or legislative agent shall be included hereunder if, in relation to the usual duties of their employment, such personnel, individually, spend, over the course of the reporting year, a total of 25 percent of their time or 450 hours, whichever is less, in activity supporting the [Direct Communication] activity of the lobbyist or legislative agent in influencing legislation, or influencing regulation.

Example: Smith is in the government affairs department of ABC Corporation, a reporting lobbyist, and spends all of her time engaged in activity related to [direct] lobbying. Brown, her secretary, spends his time doing work supporting Smith's activities. Jones, an analyst in the financial department at ABC Corporation, spends 50 percent of his time analyzing legislation for Smith and preparing memoranda to be used in Smith's lobbying activity. King, an attorney in ABC's legal department, occasionally does some drafting of proposed legislation for Smith. Over the course of the year, however, this accounts for [only about 10 percent] less than one percent of his time at work. ABC Corporation, in its annual report, must include Smith's full salary (under (a)2 above), as well as Brown's full salary and one-half of Jones' salary, as the cost of support personnel. None of King's salary will have to be included on ABC's report.

[(b) The following expenditures by a lobbyist or legislative agent shall be deemed to be related to direct, express and intentional communication with legislators or the Governor or his staff for the specific purpose of affecting legislation if the communication is made within the same reporting year as the expenditure is made. It shall be evidence that such expenditures are not related to Direct Communication if the cost of such expenditure is not reimbursed by or to the lobbyist or legislative agent or if such cost is not deducted as a business expense on any state or Federal tax return of the lobbyist or legislative agent.]

(b) The following expenditures of a lobbyist or legislative agent which relate to communication with, or providing benefits to, any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch shall be reported in the Annual Report and shall be listed in the aggregate by category, except that if the aggregate expenditures on behalf of any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch exceed \$25.00 per day, or exceed \$200.00 per calendar year, the expenditures, together with the name of the intended recipient of the benefit, shall be stated in detail and shall include the date and type of each expenditure, amount of each expenditure and the name of the person to whom it was paid.

1. Entertainment, including, but not limited to, disbursements for sporting, theatrical and musical events provided to [legislators or the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, and paid for by a lobbyist or legislative agent, as well as the cost of entertainment for a legislative agent when in the company of [the legislator] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch.

2. Food and beverages provided to [legislators or the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, paid for by a lobbyist or legislative agent. This shall include food and beverages for the legislative agent when in the company of [the legislator or the Governor or his staff, but only if the lobbyist or legislative agent pays for the legislator or the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch. Also included are payments by lobbyists or legislative agents for food or beverages for [legislators or the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch at conferences, conventions, banquets or other similar functions.

3. Travel and lodging expenses paid for by a lobbyist or legislative agent on behalf of [a legislator or the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Gov-

ernor's staff, or an officer or staff member of the Executive Branch.

4. Honoraria paid to [a legislator or to the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch by a lobbyist or legislative agent.

5. Loans to [a legislator or to the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch from a lobbyist or legislative agent except for loans from financial institutions made in the ordinary course of business on substantially the same terms as those prevailing for comparable transactions with other persons.

6. Gifts to [a legislator or to the Governor or his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch including, but not limited to, material goods or other things of value.

[7.](c) For purposes of reporting under the Act or this subchapter, when an expenditure included in (b) above is made to a member of the immediate family of [a legislator or of the Governor or member of his staff] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, such expenditure shall be deemed to be made on behalf of [the legislator or the Governor or member of his staff] the member of the Legislature, legislative staff, the Governor, the Governor's staff, or the officer or staff member of the Executive Branch whose family member received it.

(d) For purposes of reporting under the Act or this subchapter, when an expenditure included in (b) above is made by a legislative agent from personal funds and is not reimbursed or refunded by a lobbyist, and the recipient of the benefit is a member of the household or a relative of the legislative agent, the expenditure shall not be construed as providing a benefit subject to reporting. For the purposes of this subsection, the term "member of household" shall mean a spouse residing in the same domicile as the legislative agent and any dependent children. The term "relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, greatgrandfather, greatgrandmother, brother, sister, nephew, niece, uncle or aunt. Relatives by adoption, half-blood, marriage or remarriage shall be treated as relatives of the whole kinship.

19:25-[20.8]20.12 Valuation of contributions and expenditures

Where a contribution of goods or services is made to a lobbyist or legislative agent [for the purposes of direct, express and intentional communications with legislators or the Governor or his staff for the specific purpose of affecting legislation] to influence legislation, or to influence regulation, the value of such receipt shall be its reasonable commercial value to the lobbyist or legislative agent receiving it. Where an expenditure of goods or services, including travel, is made by a lobbyist or legislative agent to [a legislator] any member of the Legislature, legislative staff, the Governor, the Governor's staff, or an officer or staff member of the Executive Branch, the value of the expenditure shall be its reasonable commercial value to the [legislator] member of the Legislature, legislative staff, the Governor, the Governor's staff, or officer or staff member of the Executive Branch receiving it.

19:25-[20.9 Annual report] 20.13 Contents of annual report

(a) The annual report shall contain the following:

1. Name, business address, telephone number of the reporting lobbyist or legislative agent;

2. Name, address and occupation or business of legislative agent(s) engaged by reporting lobbyist, or name, address and occupation or business of lobbyist(s) engaging the reporting legislative agent, whichever is applicable;

3. The particular items of legislation or regulation and any general category or type of legislation or regulation regarding which the legislative agent or lobbyist [engaged in Direct Communication] influenced legislation or influenced regulation during the calendar year [and any particular items or general types of legislation which the legislative agent or lobbyist actively promoted or opposed during

such year], except that a legislative agent who has provided this information in his or her notice of representation and quarterly reports may satisfy this requirement by so indicating on the annual report;

4. Receipts received by the legislative agent or lobbyist as set forth in N.J.A.C. 19:25-[20.6]20.10;

5. Expenditures made by the lobbyist or legislative agent, as set forth in N.J.A.C. 19:25-[20.7(a)]20.11.

[(b) Expenditures required to be reported pursuant to N.J.A.C. 19:25-20.7(a) shall be listed in the aggregate by category.

(c) Expenditures required to be reported pursuant to N.J.A.C. 19:25-20.7(b) shall be listed in the aggregate by category, and shall be detailed as set forth below.

1. Where expenditures required to be reported pursuant to N.J.A.C. 19:25-20.7(b) in the aggregate on behalf of a legislator or Governor or his staff exceed \$25.00 per day, they shall be detailed separately as to name of legislator or Governor, date and type of expenditure, amount of expenditure, and to whom paid.

2. Where expenditures required to be reported pursuant to N.J.A.C. 19:25-20.7(b) in the aggregate on behalf of any one legislator or Governor or one of his staff members exceed \$200.00 per year, such expenditures, together with the name of such legislator or Governor, shall also be detailed in the same manner as in (c)1 above.]

[3.](b) With respect to any specific event, such as a reception, where expenditures required to be reported pursuant to N.J.A.C. 19:25-[20.7(b)]20.11(b) in the aggregate exceed \$100.00, the report shall include the date, type of expenditure, amount of expenditure and to whom paid. The costs of any specific event need not be allocated among the [legislators or Governor or his staff] members of the Legislature, legislative staff, the Governor, members of the Governor's staff, or officers or staff members of the Executive Branch present at the event for inclusion in the daily or annual calculations under [(c)1 and 2 above] N.J.A.C. 19:25-20.11(b).

[4. For the purposes of calculation for (c)1 and 2 above, such expenditures made on behalf of staff and assistants assigned to a legislator or the Governor and his staff shall also be counted toward the aggregate of such expenditure for such legislator or the Governor.]

[(d)](c) A legislative agent retained by or representing more than one lobbyist shall include in [its] his or her annual report receipts received from and expenditures made on behalf of all lobbyists by whom it is employed.

(d) An individual who is a legislative agent and who serves as a member of any independent State authority, county improvement authority, or municipal utilities authority, or as a member from New Jersey on an interstate or bi-state authority, or as a member of any board or commission established by statute or resolution or by executive order of the Governor or by the Legislature or by any agency, department or other instrumentality of the State shall disclose such service, including the name of the authority, board or commission, and the date upon which his or her term as a member thereof expires, in the legislative agent's annual report.

19:25-[20.10]20.14 Audit by Commission; recordkeeping

(a) All annual reports of lobbyists or legislative agents required to be filed pursuant to the Act and [these Regulations] this subchapter shall be subject to review and audit by the Commission.

(b) [Every] Each lobbyist and legislative agent subject to reporting under [this] the Act shall make or obtain and maintain for a period of three years all records and documents relating to its activity in influencing legislation [in New Jersey], or influencing regulation, including, but not limited to, checks, bank statements, contracts and receipts, so as to provide evidence to support statements in reports filed with the Commission and to permit an adequate basis for auditing by the Commission, except that a record or document of any single expenditure in an amount of \$25.00 or less may be excluded from this requirement.

19:25-[20.11]20.15 Responsibilities for filing annual reports; certification

(a) The lobbyist and the legislative agent shall have the responsibility of filing annual reports.

(b) [Every] Each organization which itself has a filing obligation as a lobbyist pursuant to this subchapter is not relieved of that obligation by virtue of the fact that a legislative agent engaged, designated or employed by it has a filing obligation; except that a lobbyist required to file [a] an annual report pursuant to the Act may designate a legislative agent in its employ or otherwise engaged or used by it to file [a] the annual report on its behalf, provided such designation is made in writing by the lobbyist on a form prescribed by the Commission, is acknowledged in writing by the designated legislative agent and is filed with the Commission on or before the date on which the annual report of the lobbyist is due for filing, and further provided that any violation of the Act shall subject both the lobbyist and the designated legislative agent to the penalties provided by the Act and this subchapter.

(c) [Every] Each legislative agent which has a filing obligation pursuant to this subchapter is not relieved of that obligation by virtue of the fact that the organization engaging, retaining or employing it has or may have a filing obligation as a lobbyist or that the legislative agent has been designated by which organization to file [a] an annual report for it; except that any lobbyist organization required to file a report pursuant to the Act which employs or otherwise engages or uses a legislative agent or agents whose only reportable lobbying activity is on behalf of such organization, may file a single annual report required under N.J.A.C. 19:25-[20.9]20.13 on behalf of its own lobbying activity and the activities of such legislative agent or agents, provided that any violation of the [act] Act shall subject the lobbyist alone to the penalties provided by [this] the Act and this [subchapter] subchapter.

(d) [Every] Each report filed with the Commission by a lobbyist or legislative agent shall be certified as to the correctness of the report by the legislative agent or, in the case of a lobbyist, by a legislative agent employed by the lobbyist or a responsible financial or government affairs officer of the lobbyist.

19:25-[20.12]20.16 Advisory opinions

The Commission may render advisory opinions as to the applicability of the Act and this subchapter to a given specific set of facts and circumstances.

19:25-[20.13]20.17 Complaint proceedings; investigations; penalties

(a) The term "violation" shall mean the failure to report timely or in the manner prescribed by the Act and this subchapter, or the failure to make and maintain a record as prescribed by the Act and this subchapter, any event or transaction required to be reported or recorded by the Act or this subchapter.

[(a)](b) Upon receiving evidence of any violation of the Act or this subchapter, the Commission shall have the power to make investigations and bring complaint proceedings, to issue subpoenas for the production of witnesses and documents and to hold or cause to be held, by the Office of Administrative Law, hearings upon such complaint.

[(b)](c) In addition to any other penalty provided by law, any person who is found to have [violated] committed a violation of the Act or this subchapter shall be liable for civil penalty of up to \$1,000 for that violation, which penalty may be collected in a summary proceeding pursuant to N.J.S.A. 2A:58-1 et seq.

19:25-[20.14]20.18 Nonresident legislative agents or lobbyists

Any legislative agent or lobbyist not a resident of this State, or not a corporation of this State or authorized to do business in this State, shall file with the [Election Law Enforcement] Commission, before attempting to influence legislation, or influence regulation, its consent to service of process at an address within this State, or by regular mail at an address outside this State.

[19:25-20.15 Severability clause

If any regulation or sentence, paragraph or section of these regulations, 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 regulation shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of this subchapter.]

19:25-20.19 Annual fee

(a) Effective August 1, 1992, and each August 1 thereafter, each legislative agent who is an individual and whose activities during any part of a 12-month period commencing on August 1 and ending on the following July 31 are subject to the Act shall pay an annual fee of \$100.00.

(b) In the event that the legislative agent is a partnership, committee, association, corporation, or other organization or group of persons, the annual fee shall be \$100.00 for each individual from the partnership, committee, association, corporation, or other organization or group of persons, who is required to wear a name tag pursuant to N.J.A.C. 19:25-20.6.

(c) Payment of the annual fee set forth in (a) and (b) above shall be by check or money order payable to "State of New Jersey, Election Law Enforcement Commission," and shall be due on August 1, 1992, and each August 1 thereafter.

(d) In the case of a legislative agent who files an initial notice of representation, the annual fee shall be due upon the filing of such initial notice of representation, and subsequent annual fees shall be due pursuant to (c) above.

(e) No annual fee shall be required if the legislative agent is an organization that is exempt from sales and use taxes under section 9(b) of chapter 30 of the laws of 1966, as amended (N.J.S.A. 54:32-9(b)).

(a)

CASINO CONTROL COMMISSION

Proceedings Against Licensees Underage Gambling Violations Affirmative Defenses

Proposed New Rules: N.J.A.C. 19:42-5.9 and 5.10

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q) and 119.

Proposal Number: PRN 1991-522.

Submit comments by November 20, 1991, to:

Seth H. Brilliant, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The problems and consequences of underage gaming were recognized by the Legislature when it included section 119 (N.J.S.A. 5:12-119) in the Casino Control Act (the Act). Section 119(a) of the Act generally prohibits underage persons from even entering a licensed casino; section 119(b) of the Act provides that any casino licensee or employee who permits an underage person to remain in a casino, is a disorderly person.

Casino licensees have made vigorous efforts to prevent underage gambling. In 1990, employees at the 12 operating casinos detected and removed a total of 260,526 underage persons who either were in, or were attempting to enter, the casino rooms.

Given the immensity of the problem, as well as several years of experience in hearing underage gambling cases, the Commission has decided to promulgate rules dealing with underage gaming. These rules also codify the Commission's recent ruling in *State v. Showboat* regarding the requirements of the affirmative defense to underage gaming violations contained in section 119(b) of the Act.

1. Underage Gaming. The earliest underage gaming cases simply involved the presence of underage persons on the casino floor, or underage persons gambling with cash. Recent cases have involved much more sophisticated gaming arrangements, where underage gamblers have been "rated" and given complimentary food, alcoholic beverages, entertainment and hotel rooms based upon their length and level of play. Of

even more concern, in at least two matters brought to the Commission's attention, credit was granted to underage persons by casino licensees.

Such activities obviously require that casino employees as well as security personnel deal directly with patrons on an individual basis and obtain personal information. When credit is granted or complimentaries are issued, written records of the transactions are also required to be maintained. Yet, when underage gamblers were rated, issued complimentaries or granted credit, the casino licensees involved and their employees either failed to obtain a date of birth, or failed to verify the date provided, despite ideal opportunities to do so. To underscore the serious nature of such situations, the Commission is proposing that rating underage patrons, issuing complimentaries to them, or allowing them to obtain or use credit, shall be enumerated as separate and distinct violations for the purposes of imposing the sanctions listed in section 129 of the Act. See proposed N.J.A.C. 19:42-5.9(a)4 through 7.

II. Affirmative Defenses. In the recent case of *State v. Atlantic City Showboat, Inc.*, Commission Docket No. 90-216, the Commission expressly addressed the elements of an affirmative defense to underage gaming violations. This defense is found in section 119(b) of the Act, which provides that good faith reliance upon a patron's written representation and appearance, in the reasonable belief that the patron was of lawful age, is a defense to an underage gaming violation. Proposed N.J.A.C. 19:42-5.10 codifies the Commission's *Showboat* ruling, which defined the term "writing" in section 119(b) to include a signed representation, a photographic driver's license, an identification card issued by a county clerk, and the other documents described in the amendments to N.J.S.A. 33:1-77. That statute provides an affirmative defense for sales of alcoholic beverages to underage persons, and is applicable to alcoholic beverage sales in casino hotels, pursuant to section 103(d) of the Act. Thus, this element of the affirmative defense in underage gambling and underage drinking matters in casino hotels will now be identical.

However, it should be noted, as the Commission stated in its *Showboat* ruling, that production of one of these "writings" satisfies only one of the three elements of the affirmative defense contained in section 119(b). In addition to the requisite writing, the underage person must appear to be of lawful age, and the licensee must rely in good faith upon the person's writing and appearance, in the reasonable belief that the person was of lawful age.

Social Impact

The proposed new rules should result in a more vigorous enforcement of the underage gaming provisions of the Act. If, as a result, greater numbers of underage persons are deterred from entering or prevented from gaming in casino hotels, the public policies of this State in preventing underage gaming are advanced. These rules are also expected to have a beneficial impact upon casino licensees, who should now be able to enforce the prohibitions against underage gaming and underage drinking more efficiently and effectively with a uniform system.

Economic Impact

The proposed new rules should have little or no impact on casino licensees, all of which are presently policing their premises to prevent, discourage, and stop underage gaming. The uniform defenses established by these rules, and the uniform standards for proof of age thus created, should not cause these licensees to incur any additional expenses, and may in fact reduce some expenses. Diligent requests for identification that comply with the documents listed in these rules should enable a licensee to successfully raise these affirmative defenses in underage gaming matters, thus avoiding potential monetary fines, suspensions of licenses and other sanctions which would have adverse economic impacts upon the licensee.

Regulatory Flexibility Statement

The proposed new rules will only affect casino licensees, none of which are "small businesses" 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:

19:42-5.9 Underage gaming—violations

(a) No casino licensee or agent or employee thereof, shall allow, permit or suffer any person under the age at which a person is authorized to purchase and consume alcoholic beverages in this State ("underage person") to:

1. Enter a casino, except to pass directly to another room, unless the underage person is licensed under the Act and is acting in the regular course of his or her licensed activities;
2. Remain in a casino, unless the underage person is licensed under the Act and is acting in the regular course of his or her licensed activities;
3. Gamble in a casino;
4. Be rated as a player;
5. Receive complimentary services or items as a result of, or in anticipation of, his or her gaming activity; or
6. Utilize credit.

(b) No casino licensee or agent or employee thereof, shall approve a credit limit for an underage person, pursuant to N.J.A.C. 19:45-1.27(b).

(c) Each violation of any of the provisions of (a) or (b) above as to a single underage person shall be considered a separate and distinct violation for purposes of N.J.S.A. 5:12-129.

(d) Each employee and agent of a casino licensee shall have an affirmative obligation to ensure that no underage persons engage in any of the activities listed in (a) above. Each employee or agent of a casino licensee who violates any provision of this section may be held jointly or severally liable for any such violation.

19:42-5.10 Underage gaming violations—affirmative defenses

(a) No casino licensee or employee or agent thereof shall be held liable for any violation of N.J.S.A. 5:12-119 and N.J.A.C. 19:42-5.9 if such person can establish the affirmative defense authorized by N.J.S.A. 5:12-119(b).

(b) For purposes of establishing an affirmative defense to a violation of N.J.S.A. 5:12-119 and N.J.A.C. 19:42-5.9, the term "writing" in N.J.S.A. 5:12-119(b) shall include the following:

1. A photographic driver's license;
2. A photographic identification card issued pursuant to N.J.S.A. 33:1-81.2, or a similar card issued pursuant to the laws of another state or the Federal government; or
3. A writing which is made and signed by the underage person, and which contains, at a minimum, the following information:
 - i. The name, address, age and date of birth of the person; and
 - ii. A statement that the representation of age is being made to induce the licensee to permit the person to enter, remain or gamble in a casino, to be rated, receive complimentaries, obtain approval of a credit limit, or to utilize credit.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Definitions

Cashiers' Cage; Master Coin Bank; Coin Vaults

Accounting Controls Within the Cashiers' Cage

Slot Booths

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.14, 1.15 and 1.34

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69(a); 70(g), (j) and (l); 99(a)(4) and (9).

Proposal Number: PRN 1991-518.

Submit comments by November 20, 1991, to:

Seth H. Brilliant, Assistant Counsel
 Casino Control Commission
 Arcade Building
 Tennessee Avenue and Boardwalk
 Atlantic City, NJ 08401

The agency proposal follows:

Summary

Casino licensees are required to create and utilize a "cashiers' cage" (cage) for the storage and processing of all currency, slot tokens, gaming chips and plaques used in gaming activity. See N.J.A.C. 19:45-1.14(a).

Casino licensees also maintain a "master coin bank," which specifically deals with the coin, slot tokens, coupons, and other documents and records associated with the operation of the casino's slot machines.

The proposed amendments would permit a casino licensee to create auxiliary locations outside the cage or master coin bank, to be known as "coin vaults," for the storage of additional coin that may be used in its slot machine operations. All coin vaults would be required to have a double-locked door, alarm system, and closed circuit television coverage. These coin vaults would be controlled by the casino accounting department; any addition or removal of coin or slot tokens would have to be properly documented, and the amount of coin and slot tokens in each coin vault would have to be reconciled at the end of each gaming day. See N.J.A.C. 19:45-1.15(f).

Coin vaults would provide casino licensees with additional coin storage locations. The security standards for each coin vault will help to maintain and insure the integrity of casino operations.

The amendments would also revise N.J.A.C. 19:45-1.14(c) and recodify it as N.J.A.C. 19:45-1.15(b). N.J.A.C. 19:45-1.34 would be revised as well to include a reference to coin vaults in slot booth operations.

Social Impact

The coin vaults permitted by these amendments may have a minimal positive social impact since they will provide casino licensees with more flexibility and operational efficiency. Casino licensees may be able to provide patrons with better coin service.

Economic Impact

The economic impact of these amendments upon casino licensees cannot be predicted at this time. However, it is hoped that the cost to casino licensees of constructing any desired coin vaults will be offset by savings resulting from more efficient slot operations, which the coin vaults should provide. There should be no economic impact upon casino patrons, the Commission, or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

The proposed amendments would affect only 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. Therefore, a regulatory flexibility analysis is not required.

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

19:45-1.1 Definitions

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

...
 "Coin vault" is defined in N.J.A.C. 19:45-1.14.
 ...

19:45-1.14 Cashiers' cage; master coin bank; coin vaults

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

[(c) The casino licensee shall have a reserve cash bankroll, in addition to the imprest funds normally maintained by the cage cashiers, on hand in the cashiers' cage or readily available to the cashiers' cage at the opening of every shift in a minimum amount approved by the Commission.]

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

(d) Each master coin bank located outside the cage shall meet all the requirements of (c) above.

(e) Each establishment may have separate areas for the storage of coin and slot tokens ("coin vaults") in locations outside the cage or master coin bank, as approved by the Commission.

(f) Each coin vault shall be designed, constructed and operated to provide maximum security for the materials housed and activities performed therein, and shall include at least the following:

1. A fully enclosed room, located in an area not open to the public;
2. A metal door with two separate locks, the keys to which shall be different from each other. One key shall be maintained and controlled by the casino security department in a secure area within the security department. Access to that key may be gained only by a casino security department supervisor. The other key shall be maintained and controlled by the casino accounting department. Each department shall establish a sign-in and sign-out procedure for removal and replacement of these keys;

3. An alarm device that signals the monitors of the casino licensee's closed circuit television system and the Division's on-site office whenever the door to the coin vault is opened; and

4. Closed circuit television cameras capable of accurate visual monitoring and taping of any activities in the coin vault.

[(e)](g) Each casino licensee shall [place on] file with the Commission and Division the names of all persons authorized to enter the cage [and], the master coin bank [if it is not located within the cage, those who possessing] and any coin vaults; all persons possessing the combination or keys to the locks securing the entrance to the cage [and], master coin bank[, and those who possess] and coin vaults; as well as all persons possessing the ability to operate alarm systems for the cage, master coin bank and coin vaults.

19:45-1.15 Accounting controls [within] for the cashiers' cage, master coin bank, and coin vaults

(a) (No change.)

(b) At the opening of every shift, in addition to the imprest funds normally maintained by the general cashiers, each casino licensee shall have on hand in the cage or readily available thereto, a reserve cash bankroll in a minimum amount approved by the Commission.

[(b)] (c) The cashiers' cage shall be physically segregated by personnel and function as follows:

1.-3. (No change.)

4. Reserve cash ("main bank") cashiers' functions shall be, but are not limited to, the following:

i.-iv. (No change.)

v. Prepare the daily bank deposit for cash and checks; [and]

vi. Receive from general, chip and check bank cashiers, documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage[.]; and
 vii. Be responsible for the reserve cash bankroll.

5. (No change.)

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

(f) Coin vaults authorized pursuant to N.J.A.C. 19:45-1.14(e) shall be under the control of the casino accounting department. The storage of coin or slot tokens in, or the removal of coin or slot tokens from, any coin vaults shall be properly documented, and the amount of coin and slot tokens in each coin vault shall be reconciled at the end of each gaming day.

19:45-1.34 Slot booths

(a) Each establishment may have on, or immediately adjacent to, the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:

1.-11. (No change.)

12. The exchange with the cashiers' cage or master coin bank of any coin, currency, slot tokens, chips, plaques, issuance copies of Slot Counter Checks and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part, serially prenumbered form signed by the cage cashier or master coin bank cashier, slot cashier, and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons, the slot booth shall not be allowed to obtain coin or slot tokens, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage, the master coin bank, or a coin vault approved pursuant to N.J.A.C. 19:45-1.14(e). [Exchanges with the cashiers' cage] Such exchanges must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.

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

(a)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Procedure for Exchange of Checks Submitted by
Gaming Patrons

Proposed Amendment: N.J.A.C. 19:45-1.25

Authorized By: Casino Control Commission, Joseph A. Papp,
 Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(g) and (1),
 5:12-99(a)(13) and 5:12-101(g).

Proposal Number: PRN 1991-521.

Submit comments by November 20, 1991 to:

Seth H. Brilliant, Assistant Counsel
 Casino Control Commission
 Arcade Building
 Tennessee Avenue and Boardwalk
 Atlantic City, NJ 08401

The agency proposal follows:

Summary

N.J.A.C. 19:45-1.25(f) provides that before a casino licensee can accept a casino check from a patron, it must contact the New Jersey casino which issued the check, and must verify, among other things, that the check represents either the return of a patron's deposit money, redemption of the issuing casino's gaming chips, or winnings from slot machine payoffs. N.J.A.C. 19:45-1.25(h) similarly states that any casino issuing a casino check must provide the information required by subsection (f) when so requested.

N.J.A.C. 19:45-1.25(f) was amended in 1990 to include "winnings from slot machine payoffs" as a reason for issuing a casino check. The proposed amendment to N.J.A.C. 19:45-1.25(h) would include "winnings from slot machine payoffs" as another acceptable reason for issuing a casino check, thus bringing it into conformity with subsection (f) as amended.

Social Impact

No social impact is expected as a result of the proposed amendment, which simply brings N.J.A.C. 19:45-1.25(h) into conformity with N.J.A.C. 19:45-1.25(f).

Economic Impact

The proposed change to N.J.A.C. 19:45-1.25 is not expected to have any economic impact, since it simply brings N.J.A.C. 19:45-1.25(h) into conformity with N.J.A.C. 19:45-1.25(f).

Regulatory Flexibility Statement

The proposed amendment will only affect New Jersey casino licensees, none of which are "small businesses" 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]):

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons

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

(h) A general cashier of the New Jersey casino which issued the casino check shall provide such information, as required by (f) above, to the casino licensee accepting such check and shall indicate that verification was requested by notating in a log the following information:

1.-6. (No change.)

7. The reason for the check as either:

- i. The return of a patron's deposit money; [or]
- ii. The redemption of the casino's gaming chips; or
- iii. **The winnings from slot machine payoffs.**

(i)-(p) (No change.)

(b)

CASINO CONTROL COMMISSION
Casino Hotel Alcoholic Beverage Control
Proposed Amendments: N.J.A.C. 19:50

Authorized By: Casino Control Commission, Joseph A. Papp,
 Executive Secretary.

Authority: N.J.S.A. 5:12-69(a), 5:12-70(q), and 5:12-103(e).

Proposal Number: PRN 1991-519.

Submit comments by November 20, 1991 to:

Seth H. Brilliant, Assistant Counsel
 Casino Control Commission
 Arcade Building
 Tennessee Avenue and Boardwalk
 Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Pursuant to section 103(a) of the Casino Control Act, N.J.S.A. 5:12-103(a), the Casino Control Commission has exclusive jurisdiction over alcoholic beverage matters in casino hotels. The Commission has promulgated rules concerning the distribution and consumption of alcoholic beverages on such premises, in accordance with Section 70(q) of the Act. These rules, which originally became effective on January 23, 1978, were readopted in 1983 and 1988.

In connection with their 1988 re-adoption, the rules were revised and recodified. See 20 N.J.R. 770(a) and 1210(a). Those revisions were primarily organizational and technical, rather than substantive in nature. These proposed amendments, which would effect numerous substantive changes, are the result of a complete review of the Commission's casino hotel alcoholic beverage (CHAB) rules and policies, as well as substantial statutory revisions contained in P.L. 1991, c.182.

The proposed amendments would streamline alcoholic beverage regulation by eliminating some requirements and procedures, which 12 years of experience with CHAB regulation have shown to be unnecessary or obsolete. For example, N.J.A.C. 19:50-2.2(d), which requires approval of alterations of "any aspect of the physical structure" of a CHAB location, would be deleted and replaced by proposed N.J.A.C. 19:50-2.2(b). Petitions would now be required only for major changes which create new CHAB locations, expand or decrease the size of existing CHAB locations, or change the type of CHAB authorizations being used therein. These petitions would normally not require consideration by the full Commission, and will be handled expeditiously by the Commission staff pursuant to authority delegated to it. Commission consideration would still be needed for a small number of other alcoholic beverage matters, such as the initial issuance or renewal of CHAB licenses and requests for special rulings under section 103(e) of the Act.

Other examples of streamlining include the proposed elimination of the internal control systems currently required by N.J.A.C. 19:50-2.2(a), removal of signage requirements from N.J.A.C. 19:50-2.1(k), deletion of the prohibition in N.J.A.C. 19:50-3.2(b) against including the cost of a drink in the price of admission to a showroom, and elimination of the requirement that an alcoholic beverage supervisor be on the casino floor, now required by N.J.A.C. 19:50-3.1(f). In accordance with sections 70(q) and 103(d) of the Act, none of these changes would be inconsistent with the privileges and obligations of a liquor licensee under N.J.S.A. 33:1-1 et seq.

As noted above, some of the proposed amendments are necessitated by recent amendments to section 103 of the Act. Under section 103(g) as amended, there are five types of CHAB authorizations instead of seven; one authorization now encompasses the previous three authorizations for showrooms, restaurants and pubs. Accordingly, the proposed amendments to N.J.A.C. 19:50-1.4(a)2 and (b)2 would provide for a new Type II "hotel" authorization to replace the present Type II, III and IV authorizations. N.J.A.C. 19:50-3.2, 3.3 and 3.4 (Conditions of Operation in Type II, III and IV locations) would also be revised to conform with the new statutory scheme. Since section 103(g)(1) of the Act as amended deletes the prohibition against offering food in casino rooms, similar prohibitions in N.J.A.C. 19:50-3.1(a) and (d) would be deleted as well. Lastly, N.J.A.C. 19:50-1.5(c) would be amended to conform with the new reference to "casino service industry" license standards in section 103(h)(2) of the Act (as amended).

Certain amendments would codify prior Commission rulings concerning alcoholic beverage activities on New Year's Eve. In conformance with the policy of the Division of Alcoholic Beverage Control (ABC) (see ABC Bulletin No. 2452, Item 4, page 5 (1988)), the Commission has for several years waived the requirements of N.J.A.C. 19:50-2.1(r)1 (open bar prohibition), 2.1(r)3 (one drink minimum) and 3.2(b) (no inclusion of drink charges in admission charge) for CHAB licensees on New Year's Eve. See Resolution No. 88-268. Proposed revisions to N.J.A.C. 19:50-2.2(e) would incorporate those rulings, making it unnecessary for licensees to apply for individual waivers for such relief. Other amendments would provide CHAB licensees with the same types of marketing and promotional opportunities presently available to Title 33 licensees. See N.J.A.C. 19:50-2.2(d) (combination sales consisting of a drink and a show or meal; New Year's Eve packages and weekend, honeymoon or other specialty packages).

Amendments to N.J.A.C. 19:50-1.2 would clarify the operation and the extent of the CHAB statutory scheme, and how it interrelates with the alcoholic beverage statutory controls in Title 33. In general, the proposed revisions recognize the Legislature's declared objective to require CHAB licensees to comply with the requirements of Title 33 and the regulations and rulings of the ABC, except to the extent that such action would be inconsistent with the requirements of the Act or the Commission's implementing regulations. These amendments also codify Commission rulings concerning the obligations of CHAB licensees conducting alcoholic beverage activities off the premises (see N.J.A.C. 19:50-1.2(c)). The reverse situation, described in N.J.A.C. 19:50-1.2(d), involves certain alcoholic beverage activities conducted in casino hotels by persons who are not CHAB licensees, but who do hold permits from the ABC.

Social Impact

The major social impact of the proposed amendments would involve increased promotional flexibility for casino hotels. As noted above, certain amendments would provide CHAB licensees with marketing and promotional opportunities similar to those available to other Title 33 liquor licensees. It is hoped that such promotional packages would enhance and preserve the hospitality industry in New Jersey and in Atlantic City, see N.J.S.A. 5:12-1(b)(5), and will be useful and of value to casino licensees and patrons alike. No other significant social impact is foreseen.

Economic Impact

The costs to CHAB licensees of administering and complying with the rules amended herein is expected to be reduced as a result of the streamlining and simplification of the Commission's alcoholic beverage control procedures.

The Commission and Division should also experience reduced costs in controlling and monitoring alcoholic beverage operations within the casino industry, because these proposed amendments provide more efficient procedures for implementing the pertinent provisions of the Casino Control Act.

Regulatory Flexibility Statement

The rules apply to all CHAB licensees. These persons are generally casino licensees (12 at present), none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, other CHAB licensees may be small businesses; they include individuals or other organizations that sell alcoholic beverages in a portion of a casino hotel which they occupy pursuant to a lease or license. At the present time, four entities other than casino licensees hold CHAB licenses, and they operate restaurants or nightclubs in casino hotels.

Although some small businesses are affected by these amended rules, as described in the Summary above, the objective of regulation of the sale, service and consumption of alcoholic beverages in casino hotels may be met only by imposing uniform compliance upon all CHAB licensees, and thus no exemption for small businesses has been provided. Additionally, as noted above, the economic impact of these amendments should be favorable to all CHAB licensees.

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

SUBCHAPTER 1. GENERAL PROVISIONS

19:50-1.1 Definitions

(a) For the purposes of [these regulations] **this chapter**, words shall be defined in accordance with the [Casino Control] Act [of

1977], the regulations of the [Casino Control] Commission, Title 33 of the Revised Statutes (N.J.S.A. 33:1-1 et seq.), Title 13 of the New Jersey Administrative Code (N.J.A.C. 13:2) or according to their commonly understood meaning or usage except where such common meaning or usage would be inconsistent with the purpose or intent of the [Casino Control] Act [of 1977]. **Any definition contained herein or incorporated by reference shall apply to any form of the defined word. For example, "sell" means to make a "sale" as defined in N.J.S.A. 33:1-1(w).**

(b) Where definitions set forth in the [act] Act or Commission regulations conflict with those contained in Title 33 of the Revised Statutes or Title 13 of the New Jersey Administrative Code, the definitions contained in the [act] Act or Commission regulations shall govern.

(c) For the purposes of [these regulations] **this chapter**, the following definitions shall apply:

"Alcohol" [means ethyl alcohol, hydrated oxide of ethyl or neutral spirits from whatever source or by whatever process produced] **is defined in N.J.S.A. 33:1-1(a).**

"Alcoholic beverage" [means any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcoholic content of more than one-half of one per centum (1/2 of 1%) by volume, including alcohol, beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same and fruit juices] **is defined in N.J.S.A. 33:1-1(b).**

"Authorized location" means any room or area which is in, on, or about the premises, and which has been approved by the Commission for the service, sale, consumption, or storage of alcoholic beverages pursuant to N.J.S.A. 5:12-103 and this chapter.

"Casino hotel alcoholic beverage (CHAB) licensee" means a person [who is] licensed to serve, sell or store alcoholic beverages pursuant to N.J.S.A. 5:12-103 and this chapter.

"Container" [means any glass, can, bottle, vessel or receptacle of any material whatsoever used for holding alcoholic beverages, which container is covered, corked or sealed in any manner whatsoever] **is defined in N.J.S.A. 33:1-1(e).**

"[Illicit beverage]" means any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, mixed, processed, warehoused, possessed or transported in violation of the law, or on which any Federal tax or tax imposed by the laws of this State has not been paid; and any alcoholic beverage possessed, kept, stored, owned or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport in violation of the provisions of law.]

"Manufacturer" [means any person who, directly or indirectly, personally or through any agency whatsoever, engages in the making or other processing whatsoever of alcoholic beverages] **is defined in N.J.S.A. 33:1-1(m).**

"[Meals]" means any food other than sandwiches, salads, crackers, chips, nuts, or similar snacks.]

"Original container" means any container in which an alcoholic beverage has been delivered to a CHAB licensee.

"Premises" means the premises licensed as an approved hotel pursuant to [N.J.A.C.] N.J.S.A. 5:12-27.

"Retailer" [means any person who sells alcoholic beverages to consumers] **is defined in N.J.S.A. 33:1-1(u).**

"Sale" [means every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries from without this State and deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any CHAB licensee] **is defined in N.J.S.A. 33:1-1(w).**

"[Unlawful alcoholic beverage activity]" means the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying,

mixing, processing, warehousing or transportation of any alcoholic beverage in violation of the law, or the importing, owning, possessing, keeping or storing in this State of alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of the law, or the owning, possessing, keeping or storing in this State of any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of the law, or to aid or abet another in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of the law, or the aiding or abetting of another in any of the foregoing activities.

"Unlawful property" means all illicit beverages and all implements, vehicles, vessels, airplanes, and paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages used in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages or owned, possessed, kept or stored with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages, whether such use be by the person owning, possessing, keeping or storing the same, or by another with the consent of such person; and all alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or inclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept.]

"Wholesaler" means any person who sells an alcoholic beverage for the purpose of resale to a licensed wholesaler, a licensed retailer, or a CHAB licensee.

[(d) Any definition herein contained shall apply to the same word in any form. Thus, "sell" means to make a "sale" as above defined.]

19:50-1.2 [Saving regulations] Applicability of other laws

(a) Title 33 of the Revised Statutes and the rules, regulations and bulletins promulgated thereunder by the Director of the Division of [Alcoholic Beverage] **Alcoholic Beverage Control** shall, except as otherwise provided in section 103 of the Act or [the rules and regulations of the Commission] **this chapter**, apply to any [casino hotel] premises and to any CHAB licensee [licensed under the Act and these regulations].

(b) [Notwithstanding subsection (a), all persons required to obtain casino hotel alcoholic beverage (CHAB) licenses shall make all] **All CHAB licensees that are required to make informational and other filings [required] by Title 33 of the Revised Statutes and Title 13 of the New Jersey Administrative Code shall make all such filings both to the Commission, in accordance with prescribed procedures, and to the Division of Alcoholic Beverage Control.**

[(c) All wholesalers shall make all informational and other filings required by Title 33 of the Revised Statutes and Title 13 of the New Jersey Administrative Code to the Division of Alcoholic Beverage Control.]

(c) **A CHAB licensee engaging in off-premises storage, delivery or sale of alcoholic beverages shall obtain any necessary licenses or permits for such activities from the Division of Alcoholic Beverage Control. If these alcoholic beverage activities are in any way connected with or involve the licensed premises, copies of these licenses or permits shall be submitted to the Commission within three business days of their receipt by the licensee.**

(d) **Any licensed wholesaler or other person who has obtained a merchandising permit from the Division of Alcoholic Beverage Control to offer complimentary samples of alcoholic beverages on a CHAB licensee's premises, need not obtain a CHAB license or permit from the Commission in order to conduct such activity in a CHAB authorized location; provided, however, that a copy of such**

permit shall be submitted to the Commission at least three business days prior to the event, and shall be displayed at the event itself.

19:50-1.3 License and authorization as conditions precedent to operation

(a) No casino licensee, nor any of its lessees, agents or employees, nor any other person [or entity] **except as otherwise provided in this chapter**, shall expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on or about the premises unless such person possesses a CHAB license. [Any CHAB license issued or renewed after July 1, 1986, shall be granted for a term which coincides with the term of the casino license or casino service industry license held by the licensee.]

(b) No CHAB licensee, nor any of its agents[, servants] or employees, shall expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense or otherwise transfer or dispose of alcoholic beverages except in an authorized location.

(c) (No change.)

(d) A CHAB license shall be granted for a term which coincides with the term of the casino license or casino service industry license held by the licensee.

19:50-1.4 Classification of authorized locations

(a) Authorized locations shall be classified as follows:

1. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(1) shall be classified as Type I (casino) locations.

2. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(2) shall be classified as Type II (hotel) locations.

3. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(3) shall be classified as Type III (packaged goods) locations.

4. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(4) shall be classified as Type IV (room service) locations.

5. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(5) shall be classified as Type V (storage) locations.

[6. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(6) shall be classified as Type VI.

7. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(7) shall be classified as Type VII.]

(b) The activities permitted in each type of authorized location, subject to applicable laws, rules, and regulations, are as follows:

1. (No change.)

2. In a Type II location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle for on-premises consumption within [an enclosed room, not in a casino, used primarily for the purpose of providing entertainment, including but not limited to live cabaret, show, revue, performing arts or sports entertainment available to the public, with or without the availability of food] **a casino hotel but not in a casino, or from fixed locations outside a casino hotel, but on a casino hotel premises. Examples of Type II locations include, without limitation, showrooms, cabarets, restaurants, meeting rooms, pubs and lounges.**

3. In a Type III location, a CHAB licensee shall be entitled to sell any alcoholic beverage [by the glass or other open receptacle for on-premises consumption within an enclosed room or a series of enclosed connected rooms, with or without an adjacent outdoor dining area, not in a casino used primarily for the purpose of providing meals to the public.

4. In a Type IV location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle for on-premises consumption within a pub, tavern or similar room, not in a casino, or from one fixed location outside a building or structure containing a casino but on a casino hotel premises; provided, however, that the primary purpose of a Type IV location shall not be for the consumption of meals by customers or for banquets.

5. In a Type V location, a CHAB licensee shall be entitled to sell any alcoholic beverage] in original containers **from an enclosed package goods room, not in a casino, for consumption outside the [Type V] authorized location [from one enclosed room, not in a casino].**

[6.]4. In a Type [VI] IV location, a CHAB licensee shall be entitled to sell any alcoholic beverage from a [fixed] room service location within an enclosed room, not in a casino, for delivery to a guest room or to any other room in the premises authorized by the Commission, other than a Type I, [II,] III, IV or V location.

[7.]5. In a Type [VII] V location, a CHAB licensee shall be entitled to possess or to store in a fixed location on the premises, not in a casino, alcoholic beverages intended but not actually exposed for sale.

(c) Notwithstanding any other provision of this chapter to the contrary, a CHAB licensee shall be entitled to possess or store within any of its authorized locations alcoholic beverages intended but not actually exposed for sale in that authorized location, without obtaining a separate or additional Type [VII] V location authorization.

(d) The Commission may, consistent with the requirements of (b) above, issue two or more [alternative] types of authorizations for the same authorized location, or different types of authorizations for different areas of the same authorized location. This subsection shall not apply to Type I or Type V authorized locations.

19:50-1.5 Standards for qualification

(a) (No change.)

(b) No [Type I authorization] CHAB license which authorizes the sale of alcoholic beverages within a casino shall issue to any applicant who does not hold a casino license issued pursuant to the Act.

(c) No [Type II, III, IV, V, VI or VII authorization] CHAB license which authorizes the possession, sale or storage of alcoholic beverages within any part of the premises, other than a casino, shall issue to any applicant who would not qualify under the standards for licensure of a non-gaming related casino [employee except that such applicant need not be an employee of the casino licensee] service industry pursuant to N.J.S.A. 5:12-92(c).

(d) No Type V authorization shall issue to any applicant who does not hold a Type I, II, III or IV CHAB authorization.

[(d)](e) [Every employee and agent of a CHAB licensee whose employment or agency includes duties in a Type I location shall be licensed or registered in accordance with the Act.] Every employee and agent of a CHAB licensee whose employment or agency includes duties in, on, or about the premises, but not in a Type I authorized location, shall be registered as a casino hotel employee in accordance with section 91 of the Act.

[(e)](e) No Type VII authorization shall issue to any applicant who does not hold a Type I, II, III, IV, V or VI authorization.]

(f) No CHAB licensee shall allow, permit or suffer any wholesaler to sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages to it unless the wholesaler [has:

1. Obtained] possesses a valid license from the New Jersey Division of Alcoholic Beverage Council]; and
2. Complied with all applicable requirements of N.J.S.A. 5:12-92, N.J.S.A. 5:12-104, N.J.A.C. 19:41-11 and N.J.A.C. 19:43].

SUBCHAPTER 2. CONDUCT OF CHAB LICENSEES

Agency Note: N.J.A.C. 19:50-2.1 is proposed for repeal. The full text of this rule is not reproduced herein, but may be found in the New Jersey Administrative Code.

19:50-2.1 Operating conditions of CHAB licensees

CHAB licensees shall comply with N.J.A.C. 33:1-1 et seq., N.J.A.C. 13:2-23 et seq. and all other rulings and bulletins of the Division of Alcoholic Beverage Control regarding the retail sale of alcoholic beverages, except as modified by regulations or rulings of the Commission.

19:50-2.2 Additional operating conditions of CHAB licensees

[(a)](a) No CHAB licensee shall sell, serve, deliver or store alcoholic beverages in, on, or about its authorized location without first submitting and receiving approval of a system of internal controls therefor.

1. Each CHAB licensee shall submit to the Commission a description of its system of internal procedures and administrative and

accounting controls. Such submission shall be made at least 120 days before operations are to commence or 90 days before changes in previously submitted control plans are to become effective, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized, including but not limited to:

- i. Accounting controls, including the standardization of forms and definition of terms to be utilized in the operations;
- ii. Procedures, forms, and, where appropriate, formulas covering the calculation of taxes, revenue, expense and overhead schedules, complimentary services, cash equivalent transactions, salary structure and personnel practices;
- iii. Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;
- iv. Procedures concerning receipts from patrons;
- v. Procedures for the physical security of its authorized location and all alcoholic beverages therein.

2. The Commission shall review each submission and shall determine whether it conforms to the requirements of the Act and to the regulations and whether the system submitted provides adequate and effective controls for the operation of the CHAB licensee submitting it. If the Commission finds any insufficiencies, it shall specify them in writing to the CHAB licensee, who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the CHAB licensee. No CHAB licensee shall commence operations, or alter in fact its internal controls, unless and until such system of controls is approved by the Commission.]

[(b)](a) No employees or agents of a CHAB licensee, except those [which have been] approved by the Commission, shall consume alcoholic beverages during their hours of employment or agency by a CHAB licensee, including overtime.

[(c)](c) No CHAB licensee shall store or allow, permit or suffer the storage of any alcoholic beverages in, on, or about the premises except at a Type VII authorized location or any other authorized location pursuant to N.J.A.C. 19:50-1.4(c).

(d) No CHAB licensee shall alter any aspect of the physical structure of its authorized location without first submitting a description of such proposed alteration to the Commission and receiving written permission therefor.]

(b) No CHAB licensee shall create, expand or decrease in size, close or change the name or type of a CHAB location without notifying the Commission and the Division in writing, as follows:

1. Creation, expansion or decrease in size, or change in type of CHAB authorization: A petition for approval must be submitted at least 10 business days prior to construction or use of the CHAB location, and shall include the name of the location, the floor of the premises where it is located, the type or types of CHAB authorizations, and a floor plan of the location.

2. Permanent closure of a CHAB location: Notification must be filed within five business days after closure.

3. Change in name of a CHAB location: Notification must be filed within five business days after change.

(c) The holder of any CHAB license authorizing the sale of alcoholic beverages for consumption may transfer wine from an original tax paid barrel, cask, keg or other container to another barrel, cask, keg, decanter, bottle or similar container for purposes of interim storage and serve such wine therefrom; provided, however, that each barrel, cask, keg, decanter, bottle or other interim storage container shall have affixed thereto at all times a gummed label clearly identifying the contents thereof; and provided further, however, that nothing herein shall be deemed to prohibit the transfer of wine from original containers or interim storage containers to unlabeled carafes, glasses or similar open receptacles for immediate service to patrons for consumption. The prescribed label shall contain the following information:

This tax paid _____ contains

 (type of container)
 wine, received from

 (type and brand) (name and address)

 on

 of seller) (date of receipt)

 (signature)

[(e)](d) Combination sales of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited, except [that a] for:

1. A combination sale consisting of a meal and [an] one alcoholic beverage [is permitted] or a show and one alcoholic beverage, provided that:

[1.]i. The alcoholic beverage shall not be advertised as "free," but may be advertised as "included" or "complimentary";

[2. The container in which the alcoholic beverage is served shall be limited to a single unit, although the size of the container is not limited.]

ii. The alcoholic beverage shall be limited to the glass from which the patron will drink, or a bottle of champagne or wine in its original container (not exceeding 187 milliliters (ml.) for one person or 750 ml. for two persons); and

iii. A complimentary non-alcoholic beverage is available and offered as an alternative to the complimentary alcoholic beverage;

2. A combination sale which includes a complimentary bottle of champagne or wine in its original container (not exceeding 187 ml. for one person or 750 ml. for two patrons) as part of a weekend, honeymoon, or other specialty promotional package for hotel guests; or

3. A combination sale consisting of a show and a bottle of champagne in its original container (not exceeding 187 ml. for one person or 750 ml. for two persons) as part of a New Year's Eve promotional package.

(e) No CHAB licensee shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers to the public at large unlimited availability of any alcoholic beverage for a set price, except on New Year's Eve;

2. Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except branded or unique glassware or souvenirs in connection with a single purchase; or

3. Requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry into its premises or its authorized location, or as a requirement for service or entertainment therein; provided, however that on New Year's Eve a patron may prepurchase no more than two drinks at a time.

(f) No CHAB licensee shall sell or offer to sell alcoholic beverages at a price below "cost," as defined by the Division of Alcoholic Beverage Control, except that CHAB licensees may serve complimentary alcoholic beverages:

1. In Type I (casino) authorized locations, at a patron's request, pursuant to section 103(g)(1) of the Act;

2. In Type II (hotel), Type III (package goods) or Type IV (room service) authorized locations, pursuant to sections 99 and 102 of the Act and the Commission's rules concerning complimentary;

3. In conjunction with certain combination sales, pursuant to (d) above; or

4. Using free drink coupons, distributed to the general public pursuant to Bulletin 2452 (1988) of the Division of Alcoholic Beverage Control.

SUBCHAPTER 3. CONDITIONS OF OPERATION IN AUTHORIZED LOCATIONS

19:50-3.1 Conditions of operation in Type I (casino) locations

(a) No [food or] alcoholic beverage[, other than nonalcoholic beverages or garnishments used in the preparation of alcoholic beverages for consumption by the glass,] shall be sold, given or be

available for consumption, offered, delivered or otherwise brought to a patron within a casino room unless so requested by the patron.

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

(d) No alcoholic beverage [or food] shall be displayed in a Type I location except incidental to delivery or consumption by a patron.

(e) Alcoholic beverages [shall] may be served in a Type I location only when the casino room is open for [business] gaming activity as provided in section 97(a) of the Act, but [not] shall not be served later than 15 minutes prior to the closing of the casino room.

[(f) Every CHAB licensee authorized to sell alcoholic beverages in a Type I location shall have on duty at all times when alcoholic beverage service is available at least one person whose duties shall include supervision of all alcoholic beverage service provided pursuant to that Type I authorization.]

19:50-3.2 Conditions of operation in Type II (hotel) locations

[(a) A CHAB licensee may sell alcoholic beverages and meals for consumption in a Type II location only as an adjunct to entertainment within the authorized location.

(b) No CHAB licensee shall include any alcoholic beverage charges within the price charged for admission, nor shall any admission charge entitle the patron to any alcoholic beverage in a Type II location.

(c) No CHAB licensee shall serve any alcoholic beverage in a Type II location except by the glass or other open receptacle for on-premises consumption within the authorized location.]

(Reserved)

19:50-3.3 Conditions of operation in Type III (package goods) locations

[(a) A CHAB licensee may sell alcoholic beverages in a Type III location only as an adjunct to meals for consumption within the authorized location.

(b) A CHAB licensee may sell alcoholic beverages in a Type III location only on the following basis:

1. During the preparation, consumption and to the completion of meals; and

2. In the dining area.

(c) No CHAB licensee shall serve any alcoholic beverage in a Type III location except by the glass or other open receptacle for on-premises consumption within the authorized location.

(d) Every CHAB licensee shall prepare a menu which shall be posted adjacent to the entrance of each of its Type III locations, except when the authorized location is being used for a prearranged banquet or convention.]

(a) No CHAB licensee shall, in a Type III location, sell any alcoholic beverage for delivery to any other area in, on or about the premises.

(b) No CHAB licensee shall, in a Type III location, sell any alcoholic beverage in other than original sealed containers or for consumption within the Type III authorized location.

(c) Sale of alcoholic beverages may include the retail sale of distillers' and vintners' packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice and non-alcoholic beverages as accessory beverages to alcoholic beverages and novelty wearing apparel identified with the name or the trade name(s) of the CHAB licensee.

(d) No CHAB licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon a Type III location, nor shall any CHAB licensee possess or allow, permit or suffer any open containers of alcoholic beverages in or upon its Type III location; provided, however, that opened bottles of alcoholic beverages returned by a customer as allegedly defective may be so possessed pending return to the manufacturer or wholesaler; and further provided that the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

19:50-3.4 Conditions of operation in Type IV (room service) locations

[(a) No CHAB licensee shall provide meals for consumption to the public in a Type IV location.

(b) No CHAB licensee shall sell any alcoholic beverage in a Type IV location except by the glass or other open receptacle for on-premises consumption within the authorized location.]

(Reserved)

19:50-3.5 Conditions of operation in Type V (storage) locations

(a) No CHAB licensee shall, in a Type V location, sell any alcoholic beverage for delivery to any other area in, on or about the premises.

(b) No CHAB licensee shall, in a Type V location, sell any alcoholic beverage in other than original containers or for consumption within the Type V authorized location.

(c) Sale of alcoholic beverages may include the retail sale of distillers' and vintners' packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, novelty wearing apparel identified with the name or the trade name(s) of the CHAB licensee, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks, ice and non-alcoholic beverages as accessory beverages to alcoholic beverages.

(d) No CHAB licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon a Type V location, nor shall any CHAB licensee possess or allow, permit or suffer any open containers of alcoholic beverages in or upon its Type V location; provided, however, that opened bottles of alcoholic beverages returned by a customer as allegedly defective may be so possessed pending return to the manufacturer or wholesaler; and further provided that the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

(e) No Type V location shall be used for any purpose other than that for which it is authorized.]

(a) A CHAB licensee may, in a Type V location, store alcoholic beverages intended for sale at other authorized locations in, on, or about the premises.

(b) A CHAB licensee shall transfer or deliver such alcoholic beverages from a Type V location only to authorized locations in, on or about the premises.

(c) A CHAB licensee shall not allow, permit or suffer access to or from a Type V authorized location, except to the extent that such access is necessary in the normal course of business to employees or agents of the CHAB licensee or to licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes, Title 13 of the New Jersey Administrative Code, the Act and the regulations of the Commission.

(d) All Type V locations shall be fixed, enclosed areas within the premises, not in a casino, and not otherwise authorized for the sale, service or consumption of alcoholic beverages.

(e) No alcoholic beverage shall be sold, served or consumed in a Type V location.

(f) A CHAB licensee shall maintain its Type V locations in a secure manner.

19:50-3.6 Conditions of operation in Type VI locations

(a) A Type VI location shall not have direct access to or from a casino.]

19:50-3.7 Conditions of operation in Type VII locations

(a) A CHAB licensee may, in a Type VII location store alcoholic beverages intended for sale at other authorized locations in, on, or about the premises.

(b) A CHAB licensee shall transfer or deliver such alcoholic beverages from a Type VII location only to authorized locations in, on or about the premises.

(c) A CHAB licensee shall not allow, permit or suffer access to or from a Type VII authorized location, except to the extent that such access is necessary in the normal course of business to employees or agents of the CHAB licensee or to licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes, Title 13 of the New Jersey Administrative Code, the Act and the regulations of the Commission.

(d) All Type VII locations shall be fixed, enclosed areas within the premises, not in a casino, and not otherwise authorized for the sale, service or consumption of alcoholic beverages.

(e) No alcoholic beverage shall be sold, served or consumed in a Type VII location.

(f) A CHAB licensee shall maintain its Type VII locations at an appropriate temperature and in a secure manner.]

SUBCHAPTER 4. DISCIPLINARY PROCEEDINGS

19:50-4.1 (No change.)

(a)

CASINO CONTROL COMMISSION

Entertainment

Prohibited Entertainment Activities; Entertainment Within the Casino Room

Proposed New Rules: N.J.A.C. 19:52-1.1 and 1.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69(a).

Proposal Number: PRN 1991-520.

Submit written comments by November 20, 1991 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission has reviewed N.J.A.C. 19:52, Entertainment, and has determined that, with the exceptions noted below, the chapter should be allowed to expire on September 25, 1991, pursuant to Executive Order 66 (1978). Chapter 52 was originally promulgated to implement the statutory mandate that the Commission promulgate regulations governing casino licensees' entertainment "in accordance with the prevailing community standards." N.J.S.A. 5:12-70(p). Recent legislation, however, deleted subsection 70p from the Casino Control Act, N.J.S.A. 5:12-1 et seq.

Although the regulation of casino entertainment is no longer mandatory, the Commission, in its discretion, has determined that several provisions currently set forth in chapter 52 should be retained through reproposal. Proposed new rule N.J.A.C. 19:52-1.1 recodifies certain proscribed entertainment practices previously codified at N.J.A.C. 19:52-1.4(a) and (b).

In addition, the Commission has in the past required that a casino licensee file a formal petition for Commission approval at least 30 days prior to commencing any entertainment on the casino floor (see N.J.A.C. 19:52-1.4(c) and (d)). Proposed new rule N.J.A.C. 19:52-1.2 recodifies and amends this approval process, to instead require that casino licensees file a written submission with the Commission and Division at least five days prior to the date on which such entertainment will begin. In addition to the date, time, location, number of persons involved, and a description of the entertainment, the requisite submission would include a description of any additional security measures implemented, and the certification of the licensee's security and surveillance departments that the entertainment will not adversely affect the security and integrity of gaming operations. Submissions will be deemed approved unless the casino is notified to the contrary within five days of filing.

Social Impact

Proposed new rule N.J.A.C. 19:52-1.2 should benefit casino licensees by simplifying and expediting the approval process for entertainment on the casino floor. Proposed new rule N.J.A.C. 19:52-1.1 continues to protect the gaming public from the lewd and obscene entertainment practices which have always been proscribed by the Commission's rules.

Economic Impact

The revised procedures in N.J.A.C. 19:52-1.2 eliminate the need for a formal petition and expedite Commission review and approval, and thus should reduce the time and expense incurred by casino licensees seeking approval of entertainment within the casino room. Proposed N.J.A.C. 19:52-1.1 is not expected to have any significant economic impact.

Regulatory Flexibility Statement

The proposed new rules affect only the operations of casino licensees, none of which qualify as a small business as defined by 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 proposed new rules follows:

19:52-1.1 Prohibited entertainment activities

(a) No motion picture shall be exhibited within any casino hotel complex either by direct projection or by closed circuit television which would be classified as obscene material pursuant to the definition contained in N.J.S.A. 2C:34-2.

(b) No live entertainment shall be permitted within a casino hotel complex which includes:

1. The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
2. The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals; or
3. The actual or simulated display of the pubic hair, vulva, genitals, anus, female nipple or female areola.

19:52-1.2 Entertainment within the casino room

(a) No entertainment shall be offered within the the casino room itself, unless the casino licensee receives approval from the Commission to provide such entertainment. The casino licensee shall file a written submission with the Commission and the Division at least five days prior to the commencement of such entertainment, which submission shall include, at a minimum, the following information:

1. The date and time of the scheduled entertainment;
2. A detailed description of the type of entertainment to be offered;
3. The number of persons involved in the entertainment;
4. The exact location of the entertainment on the casino floor;
5. A description of any additional security measures that will be implemented as a result of the entertainment; and
6. A certification from the supervisors of the casino licensee's security and surveillance departments that the proposed entertainment will not adversely affect the security and integrity of gaming operations.

(b) The submission in (a) above shall be deemed approved by the Commission unless the casino is notified in writing to the contrary within three days of filing.

(c) The Commission may at any time after the granting of approval require the licensee to immediately cease any entertainment offered within the casino room if the entertainment provided is in any material manner different from the description contained in the submission filed pursuant to (a) above, or in any way compromises the integrity of gaming operations.

(d) In reviewing the suitability of an entertainment proposal, the Commission shall consider the extent to which the entertainment proposal:

1. May unduly interfere with efficient casino operations;
2. May unduly interfere with the security of the casino room or any of the games therein or any restricted casino area; or
3. May unduly interfere with surveillance operations.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Withdrawal of Rule Proposal and Cancellation of Public Hearing Sick Leave Injury (SLI) Requirements: State Service Proposed Amendment: N.J.A.C. 4A:6-1.6

Take notice that the Merit System Board, at its meeting on October 1, 1991, decided to withdraw the proposed amendments to N.J.A.C. 4A:6-1.6. Sick Leave Injury (SLI) Requirements: State service, which

were published in the October 7, 1991 New Jersey Register at 23 N.J.R. 2907(b). The public hearing scheduled for October 23, 1991 will be held to receive comments on other proposals published in the October 7, 1991 New Jersey Register. This action was taken to allow time for the receipt and review of information requested from the Commissioners of Health and Labor concerning the occurrence of carpal tunnel syndrome among State employees.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

ENVIRONMENTAL REGULATION—HAZARDOUS WASTE REGULATION ELEMENT Hazardous Waste Criteria, Identification, and Listing Proposed Amendment: N.J.A.C. 7:26-8.16

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

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 037-91-09.

Proposal Number: PRN 1991-514.

Submit written comments, identified by the Docket Number above, by November 20, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend the list of hazardous constituents at N.J.A.C. 7:26-8.16(a). The proposed amendments will add chemical synonyms used by the Federal regulations, which are presently not listed in the State regulations. The proposed amendments will also add Chemical Abstracts Service (CAS) Registry Numbers to the hazardous constituents list. The amendments correct previous typographical errors and a numbering error; C380 will now be numbered C102, because these substances are identical. The amendments will add alternative names for substances in conformance with United States Environmental Protection Agency (EPA) nomenclature and will provide a definitive identification in the form of CAS Registry Numbers in order to facilitate the identification of hazardous waste streams by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7. The proposed chemical names were chosen, from among numerous synonyms, to correspond to those presently used by the State and the EPA. The addition of CAS Numbers will maintain the equivalency of the State list with the list maintained by the EPA at 40 C.F.R. Part 261, Appendix VIII. The EPA codified its listings incorporating corrections and CAS Registry Number additions at 40 C.F.R. §261.33 and 40 C.F.R. Part 261, Appendix VIII (see 51 Fed. Reg. 28,296, August 6, 1986 and 53 Fed. Reg. 13,382, April 22, 1988).

Social Impact

The proposed amendments will have a positive social impact by facilitating hazardous constituent identification by the regulated community.

Economic Impact

The Department anticipates no adverse economic impact from the proposed amendments, because they provide technical corrections and clarification only, and impose no additional requirements.

Environmental Impact

The proposed amendments will have a positive environmental impact in that they will facilitate identification, reporting, and management of hazardous constituent waste streams.

Regulatory Flexibility Statement

The proposed amendments will have no impact on small business, because they involve technical corrections and clarifications only. The

ENVIRONMENTAL PROTECTION

PROPOSALS

amendments do not impose additional reporting, recordkeeping, professional services, or costs.

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

7:26-8.16 Hazardous constituents

(a) Waste streams containing the hazardous constituents listed below, classified as hazardous waste by the generator or the Department pursuant to N.J.A.C. 7:26-8.6 and 8.7, shall be manifested with the corresponding waste code numbers. Test methods approved by the Department shall be used in determining whether the waste in question contains a given hazardous constituent. (NOTE: The abbreviation N.O.S. signifies those members of the general class "not otherwise specified" by name in this listing). These wastes and their corresponding Hazardous Waste Numbers and Chemical Abstracts Service (CAS) Registry Numbers are:

AGENCY NOTE: The list of hazardous constituents is proposed for repeal, but is not published in the proposal. The Department is proposing to replace the current list with the following list.

NJ Waste Number	Substance	Chemical Abstracts Number
C102	(Acetato) phenylmercury	62-38-4
C103	Acetonitrile	75-05-8
C463	Acetophenone	98-86-2
C105	2-Acetylaminofluorene	53-96-3
C106	Acetyl chloride	75-36-5
C107	1-Acetyl-2-thiourea	591-08-2
C108	Acrolein	107-02-8
C109	Acrylamide	79-06-1
C110	Acrylonitrile	107-13-1
C111	Aflatoxins	1402-68-2*
C324	Aldicarb	116-06-3
C112	Aldrin	309-00-2
C113	Allyl alcohol	107-18-5
C497	Allyl chloride	107-05-1
C114	Aluminum phosphide	20859-73-8
C115	4-Aminobiphenyl	92-67-1
C116	6-Amino-1,1a,2,8,8a,8b-hexa hydro-8-(hydroxy-methyl)-8a-methoxy]-5-methylcarbamate azirino-(2,3,3,4)pyrrolo (1,2-a)indole-4,7-dione (ester)	50-07-7
C117	5-(Aminomethyl) 3-isoxazolol	2763-96-4
C118	4-Aminopyridine	504-24-5
C119	Amitrole	61-82-5
C457	Ammonium Vanadate	7803-55-6
C120	Aniline	62-53-3
C121	Antimony and compounds, N.O.S.	7440-36-0*
C122	Aramite	140-57-8
C123	Arsenic and compounds, N.O.S.	7440-38-2*
C124	Arsenic acid	7778-39-2*
C125	Arsenic pentoxide	1303-28-2
C126	Arsenic trioxide	1327-53-3
C127	Auramine	492-80-8
C128	Azaserine	115-02-6
C129	Barium and compounds, N.O.S.	7440-39-3*
C130	Barium cyanide	542-62-1
C131	Benz[c]acridine	25-51-4
C464	Benzal chloride	98-87-3
C132	Benz[a]anthracene	56-55-3
C133	Benzene	71-43-2
C464	Benzene, (dichloromethyl)	98-87-3
C500	Benzene, 2-amino-1-1 methyl	95-53-4
C501	Benzene, 4-amino-1 methyl	
C134	Benzenearsonic acid	98-05-5
C135	Benzenethiol	108-98-5
C136	Benzydine	92-87-5
C138	Benzo[b]fluoranthene	205-99-2
C139	Benzo[j]fluoranthene	205-82-3

C140	Benzo[a]pyrene	50-32-8
C519	p-Benzoquinone	106-51-4
C141	Benzotrithloride	98-07-7
C142	Benzyl chloride	100-44-7
C143	Beryllium and compounds, N.O.S.	7440-41-7*
C144	Bis(2-chloroethoxy) Methane	111-91-1
C145	Bis(2-chloroethyl) ether	111-44-4
C146	N,N'-Bis(2-chloroethyl)-2-naphthylamine	494-03-1
C147	Bis(2-chloroisopropyl) ether	108-60-1
C148	Bis(chloromethyl) ether	542-88-1
C149	Bis(2-ethylhexyl) phthalate	117-81-7
C150	Bromoacetone	598-31-2
C438	Bromoform	75-25-2
C151	Bromomethane	74-83-9
C152	4-Bromophenyl phenyl ether	101-55-3
C153	Brucine	357-57-3
C154	2-Butanone peroxide	1338-23-4
C465	Butyl benzyl phthalate	85-68-7
C156	2-sec-Butyl-4,6-dinitrophenol	88-85-7
C476	Cacodylic acid	75-60-5
C157	Cadmium and compounds, N.O.S.	7440-43-9*
C158	Calcium chromate	13765-19-0
C159	Calcium cyanide	592-01-8
C160	Carbon disulfide	75-15-0
C466	Carbon oxyfluoride chloral	353-50-4
C416	Carbon tetrachloride	56-23-5
C508	Chloral	75-87-6
C161	Chlorambucil	305-03-3
C162	Chlordane and alpha and gamma isomers	57-74-9*
C163	Chlorinated benzenes, N.O.S.	**
C164	Chlorinated ethane, N.O.S.	**
C467	Chlorinated fluorocarbons, N.O.S.	**
C165	Chlorinated naphthalene, N.O.S.	**
C166	Chlorinated phenol, N.O.S.	**
C146	Chlornaphazine	494-03-1
C167	Chloroacetaldehyde	107-20-0
C168	Chloroalkyl ethers, N.O.S.	**
C169	p-Chloroaniline	106-47-8
C170	Chlorobenzene	108-90-7
C171	Chlorobenzilate	510-15-6
C172	2-Chloro-1,3-butadiene	126-99-8
C173	p-Chloro-m-cresol	59-50-7
C174	1-Chloro-2,3-epoxybutane	106-89-8
C175	2-Chloroethyl vinyl ether	110-75-8
C176	Chloroform	67-66-3
C177	Chloromethane	74-87-3
C178	Chloromethyl methyl ether	107-30-2
C179	2-Chloronaphthalene	91-58-7
C179	beta-chloronaphthalene	91-58-7
C180	2-Chlorophenol	95-57-8
C180	0-chloronaphthalene	95-57-8
C181	1-(o-Chlorophenyl)thiourea	5344-82-1
C172	Chloroprene	126-99-8
C497	3-Chloropropene	107-05-1
C182	3-Chloropropionitrile	542-76-7
C497	3-Chloropropene	107-05-1
C183	Chlorotoluene, N.O.S.	**
C184	Chromium and compounds, N.O.S.	7440-47-3*
C185	Chrysene	218-01-9
C186	Citrus red No. 2	6358-53-8
C509	Coal tars	8007-45-2
C509	Coal Tar Creosote	8007-45-2
C187	Copper cyanide	544-92-3
C188	Creosote, coal tar	8001-58-9
C468	Cresol	1319-77-3
C468	Cresylic acid	1319-77-3
C189	Crotonaldehyde	4170-30-3
C190	Cyanides (soluble salts and complexes), N.O.S.	**

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

C191	Cyanogen	460-19-5	C242	Diisopropyl fluorophosphate	55-91-4
C192	Cyanogen bromide	506-68-3	C243	Dimethoate	60-51-5
C193	Cyanogen chloride	506-77-4	C244	3,3'-Dimethoxybenzidine	119-90-4
C194	Cycasin	14901-08-7	C245	p-Dimethylaminoazobenzene	60-11-7
C195	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	C246	7,12-Dimethylbenz[a]anthracene	57-97-6
C196	Cyclophosphamide	50-18-0	C247	3,3'-Dimethylbenzidine	119-93-7
C223	2,4-D, and salts and esters	94-75-7*	C248	Dimethylcarbonyl chloride	79-44-7
C197	Daunomycin	20830-81-3	C249	1,1-Dimethylhydrazine	57-14-7
C198	DDD	72-54-8	C250	1,2-Dimethylhydrazine	540-73-8
C199	DDE	72-55-9	C251	3,3-Dimethyl-1-(methylthio)- 2-butanone 0-	39196-18-4
C200	DDT	50-29-3		(methylamino)carbonyl oxime	
C242	DFP	55-91-4		alpha,alpha-Dimethylphenethylamine	122-09-8
C201	Diallate	2303-16-4	C253	2,4-Dimethylphenol	105-67-9
C202	Dibenz[a,b]acridine	226-36-8	C254	Dimethyl phthalate	131-11-3
C203	Dibenz[a,j]acridine	224-42-0	C255	Dimethyl sulfate	77-78-1
C204	Dibenz[a,h]anthracene	53-70-3	C256	Dinitrobenzene, N.O.S.	25154-54-5
C205	7H-Dibenzo[c,g]carbazole	194-59-2	C257	4,6-Dinitro-o-cresol and salts	534-52-1*
C206	Dibenzo[a,e]pyrene	192-65-4	C258	2,4-Dinitrophenol	51-28-5
C207	Dibenzo[a,h]pyrene	189-64-0	C259	2,4-Dinitrotoluene	121-14-2
C208	Dibenzo[a,i]pyrene	189-55-9	C260	2,6-Dinitrotoluene	606-20-2
C209	1,2-Dibromo-3-chloropropane	96-12-8	C261	Dinoseb	88-85-7
C210	1,2-Dibromoethane	106-93-4	C156	Di-n-octyl phthalate	117-84-0
C211	Dibromomethane	74-95-3	C262	1,4-Dioxane	123-91-1
C212	Di-n-butyl phthalate	84-74-2	C263	Diphenylamine	122-39-4
C493	m-Dichlorobenzene	541-73-1	C510	1,2-Diphenylhydrazine	122-66-7
C492	o-Dichlorobenzene	95-50-1	C265	Di-n-propylnitrosamine	621-64-7
C494	p-Dichlorobenzene	106-46-7	C266	Disulfoton	298-04-4
C213	Dichlorobenzene, N.O.S.	25321-22-6	C267	Dithiobiuret	541-53-7
C214	3,3'-Dichlorobenzidine	91-94-1	C268	DNBP	88-85-7
C469	1,4-Dichloro-2-butene	764-41-0	C156	Endosulfan	115-29-7
C470	Dichlorodifluoromethane	75-71-8	C269	Endothall	145-73-3
C215	1,1-Dichloroethane	75-34-3	C370	Endrin and metabolites	72-20-8*
C216	1,2-Dichloroethane	107-06-2	C270	Epichlorohydrin	106-89-8
C217	trans-1,2-Dichloroethene	156-60-5	C174	Epinephrine	51-43-4
C145	Dichloroethyl ether	111-44-4	C241	Ethanol, 2-ethoxy	110-80-5
C219	1,1-Dichloroethylene	75-35-4	C506	Ethyl Carbamate	51-79-6
C217	1,2-Dichloroethylene	156-60-5	C272	Ethyl methacrylate	97-63-2
C218	Dichloroethylene, N.O.S.	25323-30-2	C472	Ethyl methanesulfonate	62-50-0
C147	Dichloroisopropyl ether	108-60-1	C278	Ethyl cyanide	107-12-0
C144	Dichloromethoxy ethane	111-91-1	C272	Ethylene dibromide	106-93-4
C148	Dichloromethyl ether	542-88-1	C210	Ethylene dichloride	75-34-3
C220	Dichloromethane	75-09-2	C215	Ethylene glycol monoethyl ether	110-80-5
C221	2,4-Dichlorophenol	120-83-2	C506	Ethylenebisdithiocarbamic acid, salts and esters	111-54-6*
C222	2,6-Dichlorophenol	87-65-0	C274	Ethyleneimine	151-56-4
C223	2,4-Dichlorophenoxyacetic acid, salts and esters	94-75-7*	C275	Ethylene oxide	75-21-8
C225	Dichlorophenylarsine	696-28-6	C276	Ethylenethiourea	96-45-7
C226	1,2-Dichloropropane	78-87-5	C277	Ethylidene dichloride	75-34-3
C224	Dichloropropane, N.O.S.	26638-19-7	C215	Famphur	52-85-7
C227	Dichloropropanol, N.O.S.	26545-73-3	C498	Fluoranthene	206-44-0
C228	Dichloropropene, N.O.S.	26952-23-8	C279	Fluorine	7782-41-4
C229	1,3-Dichloropropene	542-75-6	C280	Fluoroacetamide	640-19-7
C230	Dieldrin	60-57-1	C281	Fluoroacetic acid, sodium salt	62-74-8
C471	Diepoxybutane	1464-53-5	C282	Formaldehyde	50-00-0
C232	Diethylarsine	692-42-2	C283	Fulminic acid, mercury(2') salt	628-86-4
C263	1,4-Diethyleneoxide	123-91-1	C479	Formic acid	64-18-6
C149	Diethylhexyl phthalate	117-81-7	C473	Glycidaldehyde	765-34-4
C234	1,2-Diethylhydrazine	1615-80-1	C284	Halomethane, N.O.S.	**
C234	N,N-Diethylhydrazine	1615-80-1	C285	Heptachlor	76-44-8
C235	0,0-Diethy-s-methylester phosphorodithioic acid	3288-58-2	C286	Heptachlor epoxide (alpha, beta, and gamma isomers)	1024-57-3*
C235	0,0-Diethyl S-methyl phosphorodithioate	3288-58-2	C287	Hexachlorobenzene	118-74-1
C236	Diethyl-p-nitrophenyl phosphate	311-45-5	C288	Hexachlorobutadiene	87-68-3
C237	Diethyl phthalate	84-66-2	C289	Hexachlorocyclohexane (all isomers)	58-89-9*
C238	0,0-Diethyl-o-(2-pyrazinyl) phosphorothioate	297-97-2	C290	Hexachlorocyclopentadiene	77-47-4
C239	Diethylstilbestrol	56-53-1	C291	Hexachlorodibenzo-p-dioxins	**
C240	Dihydrosafrole	94-58-6	C474	Hexachlorodibenzofurans	**
C241	3,4-Dihydroxy-alpha-[(methylamino)-methyl] benzyl alcohol	51-43-4	C475	Hexachloroethane	67-72-1
			C292		

ENVIRONMENTAL PROTECTION

PROPOSALS

C293	1,2,3,4,10,19-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene	465-73-6	C335	Nickel carbonyl (T-4)	13463-39-3
C294	Hexachlorophene	70-30-4	C336	Nickel cyanide	557-19-7
C295	Hexachloropropene	1888-71-7	C337	Nicotine and salts	54-11-5*
C296	Hexaethyl tetraphosphate	757-58-4	C338	Nitric oxide	10102-43-9
C297	Hydrazine	302-01-2	C339	p-Nitroaniline	100-01-6
C298	Hydrocyanic acid	74-90-8	C340	Nitrobenzene	98-95-3
C298	Hydrogen cyanide	74-90-8	C341	Nitrogen dioxide	10102-44-0
C511	Hydrogen fluoride	7664-39-3	C342	Nitrogen mustard and hydrochloride salt	51-75-2*
C299	Hydrogen sulfide	7783-06-4	C343	Nitrogen mustard N-oxide and hydrochloride salt	126-85-2*
C476	Hydroxydimethylarsine oxide	75-60-5	C346	Nitroglycerine	55-63-0
C300	Indeno(1,2,3-cd)pyrene	193-39-5	C347	4-Nitrophenol	100-02-7
C301	Iodomethane	74-88-4	C507	2-Nitropropane	79-46-9
C477	Isobutyl alcohol	78-83-1	C348	4-Nitroquinoline,1-oxide	56-57-5
C302	Isocyanic acid, methyl ester	624-83-9	C349	Nitrosamine, N.O.S.	35576-91-1
C293	Isodrin	465-73-6	C350	N-Nitrosodi-n-butylamine	924-16-3
C303	Isosafrole	120-58-1	C351	N-Nitrosodiethanolamine	1116-54-7
C304	Kepon	143-50-0	C352	N-Nitrosodiethylamine	55-18-5
C305	Lasiocarpine	303-34-4	C353	N-Nitrosodimethylamine	62-75-9
C307	Lead acetate	301-04-2	C356	N-Nitroso-N-ethylurea	759-73-9
C306	Lead and compounds, N.O.S.	7439-92-1*	C357	N-Nitrosomethylethylamine	10595-95-6
C308	Lead phosphate	7446-27-7	C358	N-Nitroso-N-methylurea	684-93-5
C309	Lead subacetate	1335-32-6	C359	N-Nitroso-N-methylurethane	615-53-2
C290	Lindane	58-89-9	C360	N-Nitrosomethylvinylamine	4549-40-0
C310	Maleic anhydride	108-31-6	C361	N-Nitrosomorpholine	59-89-2
C478	Maleic hydrazide	123-33-1	C362	N-Nitrosornicotine	16543-55-8
C311	Malononitrile	109-77-3	C363	N-Nitrosopiperidine	100-75-4
C319	MEK	78-93-3	C482	N-Nitrosopyrrolidine	930-55-2
C312	Melphalan	148-82-3	C365	N-Nitrososarcosine	13256-22-9
C313	Mercury and compounds, N.O.S.	7439-97-6*	C366	5-Nitro-o-toluidine	99-55-8
C479	Mercury fulminate	628-86-4	C367	Octamethylpyrophosphoramidate	152-16-9
C480	Methacrylonitrile	126-98-7	C369	Osmium tetroxide (T-4)-	20816-12-0
C314	Methapyrilene	91-80-5	C370	7-Oxabicyclo heptane-2,3-dicarboxylic acid	145-73-3
C315	Methomyl	16752-77-5	C483	Paraldehyde	123-63-7
C513	Methoxychlor	72-43-5	C371	Parathion	56-38-2
C316	2-Methylaziridine	75-55-8	C374	PCNB	82-68-8
C151	Methyl bromide	74-83-9	C372	Pentachlorobenzene	608-93-5
C177	Methyl chloride	74-87-3	C484	Pentachlorodibenzo-p-dioxins	**
C481	Methyl chlorocarbonate	79-22-1	C485	Pentachlorodibenzofurans	**
C440	Methyl chloroform	71-55-6	C373	Pentachloroethane	76-01-7
C317	3-Methylcholanthrene	56-49-5	C374	Pentachloronitrobenzene	82-68-8
C318	4,4'-Methylene-bis-(2-chloroaniline)	101-14-4	C375	Pentachlorophenol	87-86-5
C211	Methylene bromide	74-95-3	C376	Phenacetin	62-44-2
C220	Methylene chloride	75-09-2	C377	Phenol	108-95-2
C319	Methyl ethyl ketone	78-93-3	C514	Phenylenediamine	25265-76-3
C319	Methyl ethyl ketone Peroxide	78-93-3	C102	Phenylmercury acetate	62-38-4
C320	Methyl hydrazine	60-34-4	C381	Phenylthiourea	103-85-5
C301	Methyl iodide	74-88-4	C381	N-Phenylthiourea	103-85-5
C302	Methyl isocyanate	624-83-9	C384	Phorate	298-02-2
C321	2-Methylactonitrile	75-86-5	C382	Phosgene	75-44-5
C322	Methyl methacrylate	80-62-6	C383	Phosphine	7803-51-2
C323	Methyl methanesulfonate	66-27-3	C498	Phosphorothioic acid, 0,0-dimethyl ester, 0-ester with p-hydroxy-N,N-dimethyl benzene sulfonamide	52-85-7
C324	2-Methyl-2-(methylthio)	116-06-3	C385	Phthalic acid esters, N.O.S.	**
C325	N-Methyl-N'-nitro-N-nitrosoguanidine	70-25-7	C386	Phthalic anhydride	85-44-9
C326	Methyl parathion	298-00-0	C517	2-Picoline	109-06-8
C327	Methylthiouracil	56-04-2	C387	Polychlorinated biphenyl, N.O.S.	**
C116	Mitomycin C	50-07-7	C388	Potassium cyanide	151-50-8
C325	MNNG	70-25-7	C389	Potassium silver cyanide	506-61-6
C328	Mustard gas	505-60-2	C390	Pronamide	23950-58-5
C239	Naphthalene	91-20-3	C507	Propane, 2-nitro	79-46-9
C330	1,4-Naphthoquinone	130-15-4	C392	1,3 Propane Sultone	1120-71-4
C331	1-Naphthylamine	134-32-7	C449	Propane, 1,2,3-trichloro-n-Propylamine	96-18-4
C331	alpha-Naphthylamine	134-32-7	C486	Propylene dichloride	107-10-8
C332	2-Naphthylamine	91-59-8	C226	Propylene dichloride	78-87-5
C332	beta-Naphthylamine	91-59-8	C316	1,2-Propylenimine	75-55-8
C333	1-Naphthyl-2-thiourea	86-88-4	C394	Propylthiouracil	51-52-5
C333	alpha-Naphthylthiourea	86-88-4			
C334	Nickel and compounds, N.O.S.	7440-02-0*			

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

C395	2-Propyn-1-ol	107-19-7
C396	Pyridine	110-86-1
C397	Reserpine	50-55-5
C518	Resorcinol	108-46-3
C398	Saccharin and salts	81-07-2*
C399	Safrole	94-59-7
C400	Selenious acid	7783-00-8
C401	Selenium and compounds, N.O.S.	7782-49-2*
C400	Selenium dioxide	7783-00-8
C402	Selenium sulfide	7488-56-4
C403	Selenourea	630-10-4
C404	Silver and compounds, N.O.S.	7440-22-4*
C405	Silver cyanide	506-64-9
C447	Silvex	93-72-1
C406	Sodium cyanide	143-33-9
C407	Streptozotocin	18883-66-4
C409	Strychnine and salts	57-24-9*
C446	2,4,5-T	93-76-5
C441	TCCD	1746-01-6
C447	2,4,5-TP	93-72-1
C410	1,2,4,5-Tetrachlorobenzene	95-94-3
C411	2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
C487	Tetrachlorodibenzo-p-dioxins	**
C488	Tetrachlorodibenzofurans	**
C412	Tetrachloroethane, N.O.S.	25322-20-7
C413	1,1,1,2-Tetrachloroethane	630-20-6
C414	1,1,2,2-Tetrachloroethane	79-34-5
C415	Tetrachloroethene	127-18-4
C415	Tetrachloroethylene	127-18-4
C416	Tetrachloromethane	56-23-5
C417	2,3,4,6-Tetrachlorophenol	58-90-2
C418	Tetraethylidithiopyrophosphate	3689-24-5
C419	Tetraethyl lead	78-00-2
C420	Tetraethyl pyrophosphate	107-49-3
C489	Tetranitromethane	509-14-8
C422	Thallic oxide	1314-32-5
C423	Thallium(I) acetate	563-68-8
C421	Thallium and compounds, N.O.S.	7440-28-0*
C424	Thallium(I) carbonate	6533-73-9
C425	Thallium(I) chloride	7791-12-0
C426	Thallium(I) nitrate	10102-45-1
C427	Thallium selenite	12039-52-0
C428	Thallium(I) sulfate	7446-18-6
C429	Thioacetamide	62-55-5
C251	Thiofanox	39196-18-4
C520	Thiomethanol	74-93-1
C135	Thiophenol	108-98-5
C430	Thiosemicarbazide	79-19-6
C431	Thiourea	62-56-6
C432	Thiram	137-26-8
C433	Toluene	108-88-3
C502	2,4-Toluenediamine	95-80-7
C503	2,6-Toluenediamine	823-40-5
C504	3,4-Toluenediamine	496-72-0
C505	Toluenediamine, N.O.S.	25376-45-8
C436	Toluene diisocyanate	26471-62-5
C500	o-Toluidine	95-53-4
C435	o-Toluidine hydrochloride	636-21-5
C501	p-Toluidine	106-49-0
C437	Toxophene	8001-35-2
C438	Tribromomethane	75-25-2
C439	1,2,4-Trichlorobenzene	120-82-1
C440	1,1,1-Trichloroethane	71-55-6
C441	1,1,2-Trichloroethane	79-00-5
C442	Trichloroethene	79-01-6
C442	Trichloroethylene	79-01-6
C443	Trichloromethanethiol	75-70-7
C490	Trichloromonofluoromethane	75-69-4
C444	2,4,5-Trichlorophenol	95-95-4
C445	2,4,6-Trichlorophenol	88-06-2

C446	2,4,5-Trichlorophenoxyacetic acid	93-76-5
C447	2,4,5-Trichlorophenoxypropionic acid	93-72-1
C448	Trichloropropane, N.O.S.	25735-29-9
C449	1,2,3-Trichloropropane	96-18-4
C450	0,0,0-Triethyl phosphorothioate	126-68-1
C451	Trinitrobenzene	99-35-4
C452	Tris(1-aziridinyl)phosphine sulfide	52-24-4
C453	Tris(2,3-dibromopropyl)phosphate	126-72-7
C491	Trypan blue	72-57-1
C455	Uracil mustard	66-75-1
C456	Urethane	51-79-6
C457	Vanadic acid, ammonium salt	7803-55-6
C458	Vanadium pentoxide and dust	1314-62-1
C459	Vinyl chloride	75-01-4
C104	Warfarin and salts	81-81-2*
C461	Zinc cyanide	557-21-1
C462	Zinc phosphide	1314-84-7

*CAS Number is given for the parent compound only.

**More than one CAS Number applies.

(b) (No change.)

7:26-8.19 Incorporation by reference

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

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Hospital Reporting of Uniform Bill—Patient Summaries (Inpatient)

Procedural and Methodological Regulations Financial Elements and Reporting

Proposed Amendments: N.J.A.C. 8:31B

Authorized By: Frances J. Dunston, M.D., M.P.H.,
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and
26:2H-18d.

Proposal Number: PRN 1991-524.

Submit written comments by November 20, 1991 to:

Beatrice E. Manning, Ph.D., Director
Reimbursement Systems Development,
Evaluation and Research
Room 602, CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

These proposed amendments continue the earlier initiatives designed to make the Chapter 83 system more predictable, prospective, and standard-driven and to better align patient bills with the costs associated with that patient. Standard payment will increase and, to the extent possible, retrospective adjustments will be eliminated from the system.

The all-inclusive rate will encompass both overhead and direct patient care costs, so those two sections of the rules (N.J.A.C. 8:31B-3.23 and 3.24) are now merged. Overhead costs, with the exception of outside collection costs, capital costs, utilization review costs, costs associated with allied health and nursing education, and physician costs not related to research or medical education, are assigned to the using cost centers and thus included in the calculation of DRG rates. Final reconciliation will be simplified because of this considerable progress toward an all inclusive rate. All costs included in the rate no longer need to be reconciled.

The Department, consistent with the recommendation of the Governor's Commission, proposes that the reimbursement system move toward a higher percent of standard in the rates. Therefore, it is recommended that the percentage be increased as follows: after the DRG rate

is calculated using the current approach, the percent of standard in each DRG rate should be increased by 30 percent in 1992; 40 percent in 1993; and 50 percent in 1994. This will result in raising the amount of standard in the rate of 10 percent in 1992, 20 percent in 1993, and 30 percent in 1994.

A proposed new rule at N.J.A.C. 8:31B-3.24 will allow the Commissioner of Health to authorize demonstration projects for hospital-affiliated off-site facilities providing needed primary care.

An amendment to N.J.A.C. 8:31B-3.11 will allow reporting regarding Same Day Surgery programs to be submitted on April 30, rather than November 15, thus allowing approximately six more months.

The factors used to calculate hospitals' teaching payments will include two technical changes, both intended to make the factor appropriately reflect the fact that indirect costs related to teaching are included in the DRG rates. The number of residents in programs, as opposed to the number of programs, will be used in determining the teaching factors. Also, the methodology to reimburse hospitals for teaching costs in the two ancillary specialties will be changed; pathology will be considered a specialty related to general surgery in calculation of its teaching factor, and radiology will be considered a specialty related to internal medicine. Teaching peer groups will no longer be used to establish payment rates.

Medicare cost shift amounts will be calculated prospectively, based on the most current data and payment methodologies available. If the percentage of Medicare cases in relation to total cases increases or decreases by 10 percent or more, or the number of Medicare cases in relation to all other cases increases or decreases by 250 or more, an adjustment will be made to rates in a subsequent year through a prospective percentage add-on to the DRG rate. No reconciliation will occur. Any additional Medicare funds resulting from improved collection during the rate year will be retained by the hospital. Initial calculations of this cost-shift will be circulated to hospitals before final rates are determined.

The proposed changes in labor market area calculations describe the procedure to be followed if the number of hospitals in any labor market area drops below four. If that happens, the equalization factors for that labor market area will be recalculated; if the change in the factor is one percent or greater, that labor market will be merged with the contiguous area having the most similar average hourly wage rate. Factors for all hospitals will be recalculated to reflect this change in the following rate year.

The proposed amendments also include payment in 1992 for CN-approved psychiatric short-term care facility beds; CN-approved child/adolescent psychiatric units; educational costs of sickle cell disease; regional perinatal services; trauma units; and the Poison Information and Education System. In addition, the amendments include payment rates for selected DRGs for which base year experience or data is limited: liver, heart, and bone marrow transplants; cochlear implants; and neonate care.

Data elements have been specified for the existing outpatient reporting requirements, and provision is also made for the Department to collect related financial data. The data collection period has been limited to eight weeks in 1992. Clarifying language has also been added to the guidelines for submitting patient billing and abstract forms to the Department of Health. It is expected that this data will be submitted for a two month period for all hospitals in 1992.

Another change specifies that Patient UB Data submitted to the Department of Health must not be different from the data which determined the DRG assignment resulting in the bill paid by the patient.

As opposed to the present proxy approach, the economic factor will be determined by a panel of three health economics experts appointed by the Commissioner of Health. Information to be considered by this panel is detailed in the amended rules. The factor, once determined, will not be changed, regardless of actual inflation.

Social Impact

An all-inclusive rate will make the Chapter 83 system more predictable because payment will be known when rates are issued. Thus budgeting and planning will be simpler and more accurate for hospitals, payers, and the Department. A single DRG rate, incorporating both direct and indirect costs, will more accurately reflect patient resources used. With fewer adjustments needed, final reconciliation will become a more timely and routine process.

The primary care linkages demonstration project will enhance services to people who do not receive them or receive them in hospital emergency rooms and other settings in which continuity of care may be difficult and preventative care unavailable. This change, combined with the re-

quirement that some patient data elements be submitted to the Department for outpatients, will provide valuable information to the Department that can be used to assess need, access, and cost. Ultimately, these data can be used in devising outpatient payments to hospitals and other facilities.

The changes being made in the methodology used to pay hospitals for teaching costs will serve to allocate teaching costs more precisely, and reflect the fact that indirect cost centers related to teaching are now fully included in the DRG rate. Changing the way in which pathology and radiology are incorporated into the teaching factors will better reflect the interactions between specialties, for example, pathology and surgery, and radiology and internal medicine. The methodologies for calculating costs in the primary care specialties of family practice, obstetrics, and pediatrics assured that all hospitals with residency programs in these areas would receive payment, thus encouraging the training of specialists in these needed areas of care.

An increase in the amount of standard will reward efficient and well-utilized hospitals, and encourage higher cost hospitals to institute efficiencies so that their costs will be closer to their payment.

The proposed Medicare cost-shift methodology will compensate hospitals for shortfalls in Medicare payments, while also providing a financial incentive to maximize these payments. It will also serve to increase prospectivity and standardized payment. There will be no reconciliation. However, significant changes in the Medicare percent or number of cases will be adjusted in future rates, so there will be no disincentive to accept Medicare patients. Furthermore, hospitals will receive preliminary numbers for this adjustment, thus providing an opportunity for them to inform the Department of any calculation errors, if they exist, before the rates are issued in final form.

The labor market area change defines the process to be employed in case the number of hospitals in an area decreases to fewer than four. Because hospitals will know in advance the process to be employed if the number of hospitals in a labor market area drops below four, there will be less uncertainty surrounding the changes.

Special services for which hospitals received payment in 1991 will be supported by Chapter 83 in 1992 as well: payment for CN-approved psychiatric short-term care facility beds, CN-approved child/adolescent psychiatric units, and educational costs of sickle cell disease. Other services for which adjustments will be made in 1992 are regional perinatal services, trauma care, and the Statewide Poison Information and Education System. Also certain transplant and implant costs not adequately captured in the base year will be included in Chapter 83, with specified payment rates for 1992. Payments for all of these services will help to assure that patient care is not adversely affected, and that the system continue moving toward greater prospectivity.

The new language regarding patient billing and abstract form submission to the Department will help insure that the bill paid by the patient is the bill to which the hospital is reconciled. Resubmission of bills will be minimized, with a corresponding saving in administrative time and effort.

The revisions to the prompt pay discount and the treatment of interest authorized by the Health Care Reform Act of 1991 will set up proper incentives for speedy resolution of hospital bills. This will ensure that hospitals have the proper incentives to collect money due them and that insurers have significant incentives for prompt payment.

Limitation of data collection for outpatient services to eight weeks in 1992 will minimize the administrative burden to hospitals and payers, while still allowing the Department to begin collecting baseline data needed the costs of those services.

The change in allocation statistics for Physician, Education and Research, and Resident cost centers will cause fewer costs to be allocated to outpatient cost centers.

Determination of economic factor by a panel of experts will offer greater flexibility because the panel will not be bound by already-published data, or specified data sources. Specifying certain data and materials to be considered by the panel will help assure that all interested parties are able to make suggestions to the panel, and that the factor they establish will reflect a broad-based range of related costs.

The institution of corridors will serve to assure hospitals of predictable payments in 1992. Regardless of the impact of these new regulations, hospitals should be able to provide in 1992 the same spectrum of services they provided in 1991; thus, patient care should not suffer as a result of these proposed changes.

Economic Impact

The all-inclusive rate and increase in the amount of standard in the rate are not designed either to increase or to decrease total hospital payments Statewide. The increase in standard will provide more dollars to efficient hospitals. The all-inclusiveness of the rate will more appropriately allocate indirect costs to the various cost centers and, as a result, to the DRG's. Further, having essentially all costs in the rate will eliminate the need for much of the final reconciliation process.

This increased prospectivity will save all parties money. Less interest will be paid because the reconciliation process will involve a much smaller amount of money and potentially occur in a shorter timeframe. For most indirect costs there will be no need to adjust for volume and case-mix changes which in the past have led to over and undercollections of indirect costs.

Hospitals will receive a prospective rate designed to cover 100 percent of payment shortfalls due to differences in Medicare and Chapter 83 rates. Because the amount of a hospital's Medicare cost shift is determined prospectively there is incentive for hospitals to pursue receipt of the full amount of Medicare revenue to which they are entitled. Significant changes in Medicare volume in relation to total volume will be accounted for in the methodology, so significant increases in numbers of Medicare patients should not cause financial harm to hospitals.

The proposed amendment concerning labor market areas will have no economic impact unless the number of hospitals in a labor market area drops below four, and the difference in previous and current equalization and unequalization factors in that area is greater than one percent. If these conditions are met, there will be a change in hospital factors, but the Statewide effect will be budget-neutral.

Payments will be provided in 1992 for CN-approved psychiatric short-term care facility beds, CN-approved child/adolescent psychiatric units, educational costs of sickle cell disease, regional perinatal services, trauma centers, cochlear implants, and the Poison Information and Education System. For several of these services, the payment will represent no change from 1991 payment levels except in adjustment for inflation, and the Commission-approved methodologies used in the past to calculate these payment rates will continue to be used for 1992. For others, a methodology will be developed and, where appropriate, Commission approval obtained prior to implementation. Rates for certain transplant and implant services are now specified by rule, and also the data source for neonate rates. Knowing their rates in advance will assist hospitals in their financial planning and budgeting.

The payment for graduate medical education will be substantially budget-neutral. The single exception is family practice programs. To assure that every hospital with a family practice program receives payment, approximately \$300,000 was added to the system for three institutions that would otherwise have not received payment for their family practice programs.

New York Version 8.0 of the GROUPER will replace New York Version 7.0. This change will more appropriately allocate costs to DRGs, for example, in hemophilia factor cases.

Additional outpatient data can be used in determining payment rates for outpatient services. By limiting data collection to eight weeks in 1992, the hospitals and payers are assured that the financial burden will be as minimal as possible, consistent with the need to establish a data base in this area. The additional language concerning patient bill submission will help to make bills paid by patients correspond to bills to which the hospitals are reconciled.

The economic impact of the prompt pay discount and interest amendments are threefold. First, insurers are given a significant incentive to pay within 60 days of the filing of a claim. These incentives include a substantial discount in the first 60 days along with interest payments after the first 60 days. Hospitals should see speedier payment because of this, thus improving their cash flow. Hospitals will also be able to keep half of the interest that they collect as a result of the changes in the Health Care Reform Act. The other half of the interest will be offset against outside collection costs. Finally, this change has an impact on persons who pay between 60 and 120 days. As they will no longer be eligible for a prompt pay discount for those days, they will be liable for increased payments.

The change in allocation statistics for the three cost centers, Resident, Physician, and Education and Research, will reduce the costs allocated to outpatient centers, thus giving hospitals more flexibility in setting charges for those services.

The economic factor panel will not be limited by specified data sources or proxies, so as a result, can be more sensitive to recent changes in

costs of goods and services. A broad-based factor, not driven by specific New Jersey hospital industry policy decisions, can be expected to be more predictable and stable, absent fluctuations due to specific circumstances, and its use will be consistent with other efforts to move to standard-based payment. Elimination of reconciliation will save time and administrative costs for hospitals, payers, and the Department.

It is the intent of the two percent corridor neither to add payment to the system, nor to remove payment from it. Therefore no economic impact is anticipated statewide.

Regulatory Flexibility Statement

The proposed amendments apply only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore does not fall into the category of small business as the term is defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act.

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

8:31B-1.2 Definitions

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

...
 "Preliminary Cost Base" means the [reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for projected economic factors and Capital Facilities Allowance (see N.J.A.C. 8:31B-3.20).] **estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate (see N.J.A.C. 8:31B-3.23 and 3.27).**
 ...

8:31B-2.2 Implementation

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

(c) The revisions to N.J.A.C. 8:31B-2 provide for the submission of sufficient patient information for reconciliation of payments consistent with N.J.A.C. 8:31B-3.71 through 3.86.

1. (No change.)

2. Outpatient Data [(Reserved)] shall consist of two data sets:
 i. **Patient classification data, which will include, but not be limited to, the following: hospital provider number, patient control number, medical record number, date of treatment, patient's date of birth, patient's gender, Current Procedural Terminology (CPT) codes, and current International Classification of Disease (ICD) codes. The Department will require submission of patient classification data as needed to obtain a representative sample of patients, including same day medical patients. The data collection period will not exceed eight weeks in 1992.**

ii. **Institution-level data, which will include cost, revenue, and service statistics, sufficient to permit assignment of costs of patient records and determine payment for outpatient services.**

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

8:31B-2.4 Guidelines for completion of the patient billing and abstract form

(a) (No change.)

(b) Billing timelines requirements are as follows:

1. (No change.)

2. Where claims administration and cash flow considerations would dictate a more current billing than the 30 day requirement, a preliminary version of the UB-82 containing only those items required in (a) above for the particular payer need be utilized at the time of billing and such information is sufficient to adjudicate a claim for prompt payment discount. In interim billing cases, it is necessary that the completed patient billing and abstract information noted in N.J.A.C. 8:31B-2.2(c) must be submitted to the appropriate Date Intermediary in compliance with the Data Intermediary time limits and the Department of Health Data Requirements (see N.J.A.C. 8:31B-2.5(g)). **Data items affecting DRG assignment, and reported to the data intermediary for transmission to the Depart-**

ment of Health, shall not differ from data upon which payment was based.

8:31B-3.2 Derivation of [Preliminary Cost Base] Schedule of Rates

(a) For a group of hospitals, the Commissioner, on or before January 31 of the rate year, shall propose to the Commission a [Preliminary Cost Base/Certified Revenue Base (PCB/CRB)] Schedule of Rates for the initial rate period. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year shall be the year the fiscal year begins; for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year shall be the year the fiscal year ends. A [PCB/CRB] Schedule of Rates for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year. The proposed [Preliminary Cost Base for each hospital] Schedule of Rates shall include:

1. [The reasonable direct patient care costs] DRG rates and other percentage adjustments as defined in N.J.A.C. 8:31B-3.23;
2. the reasonable indirect patient care costs calculated according to N.J.A.C. 8:31B-3.24;

Recodify 3.-7. as 2.-6. (No change in text.)

8:31B-3.3 Uniform Reporting: Current costs

(a) (No change.)

(b) Late submission of current cost data, as defined in N.J.A.C. 8:31B-4.6(c), including Audited Financial Statements, [may] will result in a penalty[, payable to the Commission,] of [up to] \$200.00 per working day past the appropriate submission date. The penalty shall be [levied at the discretion of the Commission] reflected in the following year's rates.

8:31B-3.4 Costs per case

The current cost base shall include both direct and indirect patient care costs[. These non-physician direct patient care costs will be] allocated to the Diagnosis Related Groups and to ambulatory services to determine cost per visit for each hospital, and for each patient within the hospital. This cost finding process is described in N.J.A.C. 8:31B-3.16 through 3.19. The Diagnosis Related Groups are listed in the DRG List Regulations (N.J.A.C. 8:31B-5).

8:31B-3.11 Same Day Surgery

(a) (No change.)

(b) Hospitals shall report to the Commissioner in writing the existence, removal or other change in status of same day surgery programs and a description of the type of procedures performed and a list of the affected DRGs no later than [November 15 of the year] April 30 prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order.

8:31B-3.18 Identification of direct and indirect costs related to patient care

(a) Costs related to patient care as adjusted for price level depreciation as reported to the New Jersey State Department of Health are classified as follows:

1. (No change.)
2. [Mixed direct and indirect costs:
 - i.] Patient care general service costs.
3. (No change.)

(b) [Mixed, or patient] Patient care general service and indirect costs (except as noted below) are then distributed to direct [and indirect] cost centers based on allocation statistics reported to the New Jersey State Department of Health on the following basis:

Patient Care	Allocation Basis
General Services	
CSS: Central Supply Services	Costed Requisitions
DTY: Dietary	Patient Meals
HKP: Housekeeping	Hours of Services
L&L: Laundry and Linen	Pounds of Laundry
MRD: Medical Records	Percentage of Time Spent
PHM: Pharmacy	Cost of Drugs

EDR: Education and Research
(not including Schools of
Nursing and Allied Health)

Percentage of Time Spent

RSD: Residents

Accumulated Costs in Patient
Care Cost Centers
Patient Days

PHY: Physicians Coverage
(related to research and
medical education)

A&G: Administration and General

Accumulated Cost

FIS: Fiscal

Accumulated Cost

PCC: Patient Care Coordination

Percentage of Time Spent

PLT: Plant (less capitalized
interest and depreciation)

Square Feet

UTC: Utilities Cost

Square Feet

MAL: Malpractice Insurance

Accumulated Cost

OGS: Other General Services

Accumulated Cost

(c) A Report of [Direct and Indirect] Costs [Related to Patient Care] shall be produced, identifying for each cost center: patient care, physician compensation, cost center costs, and costs allocated from each [patient care costs: general service] cost center as shown on Appendix I.

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

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

(c) Cost per case allocation:

1. The Direct Patient Care Costs of each center (after the allocation of patient care general services and indirect costs as noted in N.J.A.C. 8:31B-3.18) are separated between inpatient, outpatient, and SNF costs which are then excluded from the [PCB] Schedule of Rates based on gross revenue reported to the New Jersey State Department of Health. The costs are then divided by the hospital's corresponding total measures of resource use to compute a cost to measure ratio, cost-to-change, or cost-per-patient day ratio for each center. Each ratio is then multiplied by the corresponding cost center's measures of resource use of each DRG and outpatient case type to calculate costs per cost center for the hospital's case-mix. Dividing by number of cases (including outpatient visits), cost per case and outpatient cost per visit are calculated, by cost center and in total.

2. (No change.)

3. The calculation of hospitals' non-acute care exclusion (SNF) days will be based on the difference between the acute-care rate for those days, less 10 percent, and the current average Medicare SNF rate.

8:31B-3.20 Preliminary Cost Base

The proposed Preliminary Cost Base as defined in N.J.A.C. 8:31B-1.2 is the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for update factors and the Capital Facilities Allowance and as modified or approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

8:31B-3.22 Standard costs per case

(a) The standard to be used in the calculation of the proposed PCB for each inpatient DRG is determined as the mean non-physician [direct patient care costs] cost per case in all hospitals whose costs are included in the data base, adjusted for labor market differentials and amount and type of Graduate Medical Education. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

[(b) Classification of Teaching (Major or Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1. Major teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all the following requirements:

i. Four or more residencies approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA), of which at least two are in the following five clinical services:

- (1) Internal Medicine;
- (2) General Surgery;

- (3) Family Practice;
- (4) Pediatrics;
- (5) Obstetrics and Gynecology.
- ii. A minimum of 45 full-time equivalent residents in all approved residencies combined;
- iii. Twenty-five full-time equivalent residents must be in the five clinical services listed in (b)1i(1) through (5) above, and half of these residents (at least 12.5 full-time equivalents) must be in Internal Medicine, Family Practice and/or Pediatrics. The hospital must have the principal residencies for these core areas and not just rotating residencies.

2. Minor teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all of the following requirements:

i. Two or more residencies approved by the ACGME or AOA, of which at least one occurs in the following five clinical services:

- (1) Internal Medicine;
- (2) Family/General Practice;
- (3) Pediatrics;
- (4) Obstetrics and Gynecology;
- (5) Surgery.

ii. A minimum of 15 full-time equivalent residents in all approved residencies combined;

iii. Nine full-time equivalent residents in the six clinical services listed above with at least five FTEs in Internal Medicine and/or Family Practice.

3. However, a hospital may also qualify as a minor teaching hospital if all 15 residents are in at least one ACGME/AOA approved residency program in a primary care field (Family Practice or Internal Medicine).

4. Hospitals may include flexible first year or rotating internships in the total number of full-time equivalent residents. These residents are not to be counted in the core programs of Internal Medicine, Surgery, Family Practice, Pediatrics, and Obstetrics and Gynecology.

5. Hospitals, because of their specialized acute nature, having a majority of active medical staff in specialties which have an ACGME approved residency may apply to the Commissioner for teaching status pursuant to N.J.A.C. 8:31B-3.51 through 3.62.]

(b) For determination of teaching costs, the following criteria will be followed:

[6.]1. All residents initially employed as first year residents (PGY1) by hospitals on July 1, 1987 or later must meet either criteria [(b)6i and ii, or criteria (b)6i and iii] in (b)1i and ii, or (b)1i and iii listed below, in order to be included among those residents [used to determine teaching categories described in (b)1 and 2 above] on which payment is based. To be similarly included, second-year residents (PGY2) must meet these same minimum requirements by July 1, 1988; third-year residents (PGY3), by July 1, 1989; fourth-year residents (PGY4), by July 1, 1990; fifth year residents (PGY5), by July 1, 1991; and all residents by July 1, 1992.

i.-iii. (No change.)

[7.]2. For all graduate medical education programs which are subject to accreditation by the [LCGME] Accreditation Council for Graduate Medical Education (ACGME), [or] The American Osteopathic Association (AOA), or, in the case of dental residents, the American Dental Association (ADA), or, in the case of podiatric residents, the Council on Podiatric Medical Education (CPME), accreditation must be maintained for residents in these programs to be used in determining the [teaching categories described in (b)1 and 2 above] hospital's payment. Residents in unaccredited programs will not be recognized in the teaching methodology for determining direct and indirect patient care costs (see Appendix XI).

[8. Hospitals not meeting the criteria for major teaching or minor teaching status will be considered non-teaching for purposes of indirect reimbursement.]

[9.]3. (No change in text.)

[10.]4. [An addition of resident positions by transfer may not result in a change to higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group.] The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

[11.]5. Beginning in rate year 1992, the changes in number of residents and associated costs due to transfers shall be reflected in each hospital's rates for the following rate year if the Department is so advised on or before April 15.

(c) Methodology for determining hospital-specific [direct] patient care rate adjustments for graduate medical education (GME) shall be as follows:

1. (No change.)

2. For all programs which have maintained the appropriate accreditation, and have a minimum number of residents equal to the years in that program necessary for it to receive accreditation, direct and indirect patient care costs associated with Graduate Medical Education will be calculated for each inpatient DRG as [described in (c)2ii to vi below and] follows:

i. All DRGs will be assigned to one of four mutually-exclusive residency categories: Medicine, Surgery, Pediatrics and OB/GYN. Assignment will be determined by the specialty of the resident who would, in most New Jersey teaching hospitals, have principal responsibility for care of a patient in a given DRG. Appendix XI, which is hereby incorporated by reference, lists these DRG assignments, and details the methodology for calculating GME factors. [The Family Practice residency category will be related to all DRGs.

ii. For Medicine DRGs, rates will be increased using the methodology described in Appendix XI C.I.

iii. For Surgery DRGs, rates will be increased using the methodology described in Appendix XI C.II.

iv. For Pediatrics and OB/GYN DRGs, rates will be increased using the methodology described in Appendix XI C.III.

v. The rates for all DRGs in hospitals with Family Practice Residency programs will be increased using the methodology described in Appendix XI C.VI.]

ii. Regarding medicine, the following shall apply:

(1) For teaching reimbursement purposes, a medical teaching hospital is defined as having an accredited program, with at least one F.T.E. resident per year of the program, in Internal Medicine; Transitional/Flexible First Year; a medical specialty/subspecialty; and/or Radiology.

(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.I.

iii. Regarding Surgery, the following shall apply:

(1) For teaching reimbursement, a surgical teaching hospital is defined as having an accredited program, with at least one F.T.E. resident per year of the program, in General Surgery; surgical specialty or subspecialty; Anesthesiology; and/or Pathology.

(2) Reimbursement will be based on an increase in rates using the methodology described in Appendix XI B.II.

iv. Regarding Obstetrics/Gynecology, the following shall apply:

(1) For teaching reimbursement, an Obstetrics/Gynecology teaching hospital is defined as having an Obstetrics/Gynecology program with at least one F.T.E. resident per year of the program.

(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.III.

v. Regarding Pediatrics, the following shall apply:

(1) For teaching reimbursement, a pediatric teaching hospital is defined as having an accredited pediatric program, with at least one F.T.E. resident per year of the program.

(2) Reimbursement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.IV.

vi. Regarding Family Practice, the following shall apply:

(1) For teaching reimbursement, a Family Practice hospital is defined as having an accredited Family Practice program, with at least one resident per year of the program. Family Practice teaching will not be considered in neutralizing costs for standard setting.

(2) For payment purposes, a Family Practice supplement will be based on an increase in rates using the methodology described in N.J.A.C. Appendix XI B.V.

vii. A teaching adjustment factor will be applied in calculating the rates for hospitals experiencing changes in accreditation status or changes in number of residents since the base year, and to reflect any differences between actual and cap resident counts.

3. Direct and indirect costs, including resident salaries and other educationally related costs, will be recognized in rates in accordance with the GME reimbursement methodology which neutralizes the costs of teaching within medical, surgical, OB/GYN and pediatric DRG categories and deneutralizes these costs for setting payment rates.

4. For purposes of payment, all deneutralization factors will be considered to be equal to 1 or greater.

(d) Determination of labor equalization factor to calculate Statewide standard costs per case shall be as follows:

1.-4. (No change.)

5. Labor costs shall be adjusted to [statewide] Statewide averages by first grouping all non-physician direct patient care labor costs (after fringe benefit costs have been distributed) into eight labor categories as follows:

i.-vii. (No change.)

viii. Administrative and Clerical: Includes non-physician salaries reported in the MRD, A&G/FIS, PLT, and PCC cost [center] centers.

6.-7. (No change.)

8. Whenever the number of hospitals in a given labor market area decreases to a number less than four, the Department will calculate and compare the mean equalization factors of the labor market area, both before and after the decrease. If they differ by plus or minus one percent or more, that labor market area will be merged with the geographically contiguous labor market area having the most similar hourly wage rate, averaged for all salaried employees and based on the most recent data available; the factors of all labor market areas will be recalculated, and effective in the following rate year.

(e) (No change.)

8:31B-3.23 Reasonable [direct] cost per case

(a) Inpatient [direct] cost per case is determined as follows:

1. The reasonable [Direct] Cost Per Case (DRG) [of the Preliminary Cost Base for those hospitals receiving rates in accordance with this subchapter determined] for all hospitals, for every DRG with greater than five merged patients and shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

(degree of confidence × labor market standard, calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases) × the amount and type of Graduate Medical Education plus

(1—degree of confidence) × hospital current non-physician direct cost per case

plus

hospital current physician patient service cost per case

i. Where the degree of confidence of a DRG is ((1 minus the DRG's coefficient of variation) + 0.3). In 1993 the 0.3 will be increased to 0.4, and in 1994 and forward, it will be increased to 0.5. If the resulting amount is greater than one, then the degree of confidence will be one.

ii.-iv. (No change.)

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

(f) Payment for Personnel Health Allowances will be calculated and implemented as follows:

1. Total allowances in the base year shall be divided by the net acute care patient revenue. The result shall be subtracted from one, and this result then divided into one to produce the personnel health allowance factor. All rates will be increased by this factor.

2. This factor will not change, except as a result of full rate review, calculation errors, rebasing, or recalibration of rates, and no final reconciliation will occur.

(g) Payment for Outside Collection Costs will be calculated and implemented as follows:

1. Outside collection costs are the reasonable costs of collecting Chapter 83 bad debts after the hospital has completed all the credit and collection steps required pursuant to N.J.A.C. 8:31B-4.40. These costs include payments to collection agencies, attorneys and other outside vendors. These costs may not include any management fees or payments to the hospital or its affiliate from collection agencies,

attorneys and other outside vendors. Collection costs paid to affiliated collection agencies, attorneys and other vendors will be reviewed for propriety and reasonableness pursuant to N.J.A.C. 8:31B-4.25.

2. These costs will be reconciled to actual expenditures at final reconciliation.

(h) Payment for costs associated with Schools of Nursing and Allied Health will be calculated and implemented as follows:

1. Base year costs related to certified Schools of Nursing and Allied Health, net of tuition costs, will be added to the rates of hospitals incurring these costs.

2. These costs will not be adjusted at final reconciliation.

(i) Physician costs not associated with education, that is, house physicians, will be screened at 110 percent of the median and added to the rates.

1. Screens for the physician salary portion will be based on physician FTEs;

2. Screens for non-physician salaries and other costs will be based on non-physician FTEs;

3. Screens for those hospitals with no non-physician salary costs will be based on physician FTEs.

[8:31B-3.24 Reasonable indirect patient care costs]

Recodify existing (a)-(b) as (j)-(k) (No change in text.)

[(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching CRB Related Centers, according to N.J.A.C. 8:31B-3.22. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base/Certified Revenue Base spread to all rates through the use of the overhead mark-up factor.

1. The following indirect costs shall be equalized and then totaled by peer group: Administrative and General/Fiscal (A&G/FIS), Plant (PLT), and Patient Care Coordination/non-physician (PCC/non-physician). The inpatient portion of this peer group total equalized cost shall be divided by the total patient days to yield a peer group per diem amount. For each DRG, a peer group average length of stay shall be calculated. The peer group per diem shall be unequalized by the hospital unequalization factor and multiplied by the DRG specific peer group average length of stay to derive a DRG-specific payment rate.

2. The Utilities (UTC) indirect costs are totaled (but not equalized) by peer group, and the inpatient portion of these costs divided by the total patient days to derive a peer group standard per diem by DRG. The peer group standard per diem shall be multiplied by the peer group average length of stay by DRG to create a DRG-specific payment rate.

3. The costs used to calculate peer groups indirect per diem standards shall be the actual base-year costs. The inpatient portion is determined by total actual indirect costs divided by adjusted admissions multiplied by admissions. The DRG-specific average length of stay shall be calculated from base-year length of stay data. Standards so developed shall remain unaffected during the rate period, and no adjustments, modifications, or changes to the standards shall be made during a rate period, unless so ordered by the Commission.

4. If a change in graduate medical education would result in a hospital's reclassification into a different peer group, that change shall be implemented in the rate year following the change.

5. Inpatient indirect costs are volume variable with the exception of those cost centers described in this subsection. These costs shall be reconciled as described in N.J.A.C. 8:31B-3.73. Projected total indirect costs will be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs will remain fixed except for same-day surgery patients. Outpatient indirect costs are calculated by multiplying the hospital unit by the outpatient equipment cost, defined as the difference between adjusted admissions and admissions. Same day surgery indirect costs will be

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same day surgery in the base year.

i. As part of an entire reimbursement reform package, the Department will recognize an operating margin for hospitals. When full standard reimbursement is in effect, then the phase-in of an operating margin will begin.

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(RSD) Residents Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1]
Education & Research (PHY)	teaching non-reaching	PHY	

8:31B-3.24 Off-site primary care

The Commissioner may establish, and the Commission approve, rates for demonstration projects involving hospital-affiliated off-site outpatient facilities providing primary care under an agreement with the Department of Health. For hospitals selected to participate in such programs, rates may include start-up and other costs that are deemed necessary in order to provide comprehensive primary care services.

8:31B-3.25 Net income from other sources

(a) The net gain (loss) from Other Operating and Non-Operating Revenues (as defined in N.J.A.C. 8:31B-4.61 through 4.67), and expenses of the reporting period which are items considered as recoveries of or increases to the Costs Related to Patient Care (see N.J.A.C. 8:31B-4.61 through 4.67) as reported to the New Jersey State Department of Health [is] are subtracted from (added to) [indirect] costs of the Preliminary [Costs] Cost Base/Certified Revenue Base.

(b) Such revenue for PCBs/CRBs established using data from the Uniform Cost Reporting Regulation shall include all Other Operating and Non-Operating Revenues and Expenses reported per SHARE cost center costs and "expense recoveries" as Case B (see N.J.A.C. 8:31B-4.61 through 4.67), and all other items reported per the Uniform Cost Reporting Regulation as to their Case specified in N.J.A.C. 8:31B-4.61 through 4.67.

8:31B-3.26 Update factors

(a) Economic Factor: An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. [It is to be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.

1. The cost components and proxies of the economic factor are shown in Appendix II.

i. The Statewide proportion of contracted services labor costs in the Labor 1 component will be increased by the percentage change in the cost of contracted services as measured by actual data and projected forward. The proportion of contracted services to total Labor 1 costs will be capped at six percent. Should the actual rate

(d) Non-Physician salaries will be equalized based upon the labor market areas as defined in N.J.A.C. 8:31B-3.22 for the purpose of grouping the following indirect cost centers in the peer group standard calculations:

1. A&G/FIS;
2. PLT; and
3. PCC (Non-phy).

(e) Cost centers subject to screening shall be as follows:

year Statewide proportion of contracted services to total labor costs be lower than six percent, future labor proxies will be adjusted downward to reflect this lower proportion in accordance with N.J.A.C. 8:31B-3.72(a)1.

ii. The remaining proportion of the Labor 1 component will be multiplied by the percent of change in the Average Hourly Earnings for Nonsupervisory Hospital Workers (Northeast) as reported by the Bureau of Labor Statistics.]

1. The economic factor shall be determined prior to the beginning of each rate year by a panel of three health economic experts appointed by the Commissioner of Health.

2. The economic factor determined by this panel shall be used to adjust hospital rates prospectively, and it shall not be changed.

3. Among the factors the panel will consider must be the most current measure of inflation/deflation. In order to avoid a self-generating economic factor, the panel will use sources other than those driven significantly by policy decisions of the New Jersey hospital industry, such as actual increases in negotiated salary or contract costs. The economic factor will reflect changes in fixed market basket of goods. The panel should not take into account changes in technology or disease entities as these are adjusted through the technology factor. The panel will review written materials from all interested parties submitted in concert with panel-determined guidelines.

4. The Department shall provide appropriate staff to this panel. (b)-(d) (No change.)

(e) Resident Adjustment Factor: This factor will account for three graduate medical education adjustments in addition to a hospital's teaching factor:

i. Costs associated with residents in excess of the hospital cap, as defined in N.J.A.C. 8:31B-3.31(b);

ii. Changes in the number of residents occurring after the base year; and

iii. Loss of program accreditation.

[(e)](f) For 1991 and 1992 only, payment for CN-approved psychiatric short-term care facility beds shall be in accordance with the Hospital Rate Setting Commission approved methodology for 1990 based on FTE cost per closed bed. The amounts shall be [inflated] adjusted by the appropriate economic factor as described in (a) above.

[(f)](g) For 1991 and 1992 only, payment for patients in CN-approved child/adolescent psychiatric units shall be based on average costs for the hospitals reporting rates in base year 1988, [inflated]

adjusted by the appropriate economic factor as described in (a) above, and resulting in an appropriate DRG adjustment.

[(g)](h) For 1991 and 1992 only, educational costs related to sickle cell disease shall be based on 1990 annualized Commission-approved [adjustments inflated] amounts, adjusted by the economic factor as described in (a) above.

(i) For 1992 only, payment for regional perinatal services shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

(j) For 1992 only, payment for start-up costs associated with trauma centers shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor as described in (a) above.

1. For 1992 only, the Department shall apply a trauma adjustment factor. The trauma adjustment factor will be developed as follows:

1. For trauma hospitals, the adjustment factor to be multiplied by the Statewide standard is the ratio of costs in trauma-related DRGs, in CN-approved trauma-designated hospitals, compared to the costs in these DRGs for non-trauma hospitals. The following trauma-related DRGs are included: 2, 27, 28, 210, 217, 533, 730, 731, 732, and 733.

ii. For non-trauma hospitals, the adjustment factor to be multiplied by the Statewide standard will be based on the ratio of the average cost by trauma-related DRG for non-trauma hospitals to the average cost by trauma-related DRG for all hospitals.

(k) The Department shall establish payment rates or methodologies for those DRGs for which experience in the base year was insufficient to set rates. Sources to be used in determining these rates will include, but not be limited to, cost, charge, and statistical data from New Jersey and/or other states. Rates so determined, with the exception of neonate rates, will apply to all patients in these DRGs, regardless of inlier/outlier status. Payment in 1992 will be as follows:

1. Liver Transplants: payment for DRG 480 will be \$72,139 in 1988 dollars.

2. Heart Transplants: payment for DRG 103 will be \$72,438 in 1988 dollars.

3. Cochlear Implants: payment for DRG 759 will be \$21,608 in 1988 dollars.

4. Bone Marrow Transplants: payment for DRG 481 will be \$46,599 in 1988 dollars.

5. Neonate rates, DRGs 600 through 630, will be based on 1989 actual New Jersey cost data.

(l) For 1992 only, payment for the Poison Information and Education System shall be based on the Commission-approved methodology, adjusted by the appropriate economic factor described in (a) above.

Recodify (h)-(i) as (m)-(n) (No change in text.)

8:31B-3.31 Commission adjustments and approvals

(a) Any modifications including [any] statutory or regulatory changes or changes in patient care physician compensation arrangements, made to the Preliminary Cost Base by the Commission shall be [classified as direct or indirect and as to the financial elements affected and each element adjusted proportionately] added to hospitals' rates in the following rate year unless such a delay would result in a threat to provision of needed patient care service provision by an efficient institution providing effective and high quality services, or the Commission approves a later payment schedule.

(b) Prior to the issuance of rates each year, the Department shall also determine prospective adjustments to hospitals' Schedule of Rates for 1988 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6 or participating in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7. Similar adjustments shall be made for any costs associated with residents in excess of the total number of FTE residents approved by the Commission for payment for the period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission; and for any costs associated with

previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. These costs shall [include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies.] be removed in accordance with the methodology described in N.J.A.C. 8:31B-3.22(c)3. In the case of a transfer of residents between hospitals, the procedures described in N.J.A.C. 8:31B-3.22 shall apply.

8:31B-3.34 Medicare cost shift

(a) A hospital-specific cost shift per Medicare case shall be calculated prior to the beginning of the rate year, based on the average payment difference between Chapter 83 rates and Medicare rates. Expected Medicare payments shall be obtained from the fiscal intermediary, and shall include deductibles, coinsurance, and all other PPS rate elements.

(b) Payment shall be based on each hospital's cost shift per case and each hospital shall collect its Medicare cost shift amount through a percentage add-on to its schedule of rates.

1. The amount collected shall not be subject to reconciliation. However, changes in a hospital's number of Medicare patients shall be recognized if either of the following conditions is met:

i. The percent of Medicare patients changes by 10 percent or more relative to the percentage at the time the rate adjustment was calculated.

ii. The difference between the number of non-Medicare patients and number of Medicare patients changes by 250 or more discharges compared to the year at the time the adjustment was calculated.

2. Payment for changes in Medicare population will occur in the year following receipt of hospitals' actual cost data.

3. Any generic mid-year or fourth quarter changes made by Medicare will be recognized in calculating the cost shift for the following rate year.

4. An initial calculation will be issued to hospitals for their review before the rate year calculation is finalized.

8:31B-[3.34] 3.35-8:31B-3.36 (Reserved)

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

[3. An operating margin shall be calculated and added to hospital rate as follows:

1. The standard amount in each DRG shall be multiplied by 1.01 in rate years 1989, 1990 and 1991. For 1991 and subsequent rate years, the 1 percent operating margin shall be replaced by the 2 percent prospective operating adjustment as described in N.J.A.C. 8:31B-3.26(c). For 1991 only, the 1 percent operating margin that is included in direct standard costs shall be netted from the 2 percent prospective operating adjustment. After that time, the 1 percent operating margin shall be removed from direct standard costs and shall no longer be netted from the prospective operating adjustment. The 1 percent operating margin shall be removed from indirect standards for 1991, and shall therefore not be netted from the prospective operating adjustment for 1991 or beyond.]

(b) Revenue requirements: Definition and calculation:

1. (No change.)

2. Appendix IV shall be produced for each hospital at the time the Schedule of Rates is issued by the [Commission] Commissioner, detailing the relationship of Commission approved gross to net revenue requirements. All approved deductions from revenue shall be shown on Appendix IV at Current Cost Base levels. Hospitals may project increases or decreases in these levels (except for increases in prompt payment discounts) subject to the Commissioner's review.

3. (No change.)

4. In the event that a hospital is self-insured for employee health benefits, the PBC/CRB will be increased by the percentage of personnel health allowance [will be applied to financial elements to allow for the collection of revenue from payors for such costs. Uncompensated] as calculated using base year data. This percentage will not change except as the result of audit adjustments, full rate

review, rebasing, or recalibration of rates. Financial elements shall be increased by the amount of uncompensated care percentages calculated pursuant to N.J.A.C. 8:31B-3.41 [will be applied to financial elements]. Pursuant to N.J.A.C. 8:31B-3.39 any [payor] payer differential determined by the Commission will be applied as a factor which was calculated based on the percentage of gross charges by [payor] payer class subject to [payor] payer differentials. A working capital factor will be applied to all gross charges related to Patient Care and hospitals will report in the actual cost filing for the rate year gross charges and a deduction from revenue for prompt payment discounts pursuant to N.J.A.C. 8:31B-4.15.

(c) [Basic Rate Order shall be as follows:

1.] Each hospital shall receive from the [Commission] Commissioner a [rate order detailing the] Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE
[DIRECT] COSTS RELATED TO PATIENT CARE	
DRG 1	\$ _____
DRG 2	\$ _____
DRG 3	\$ _____
CLINIC PATIENTS	\$ _____ *
HOME HEALTH PATIENTS	\$ _____ *
EMERGENCY SERVICE OUTPATIENTS	\$ _____ *
AMBULATORY SURGERY	\$ _____ *
SAME-DAY-PSYCHIATRY	\$ _____ *
INDIRECT FINANCIAL ELEMENTS	
	AMOUNT
[INDIRECT COSTS RELATED TO PATIENT CARE	\$ _____]
NET INCOME FROM OTHER SOURCES	\$ _____
CAPITAL FACILITIES ALLOWANCE	\$ _____
[COMMISSION APPROVED WORKING CASH INFUSION	\$ _____]
[GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	\$ _____]
[ESTIMATED] NET UNCOMPENSATED CARE	_____ %
[ESTIMATED] PERSONNEL HEALTH PROGRAM	_____ %

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and [___ percent for payor] specific payer differentials as specified by the Commission. [Payor Class A shall pay ___ percent of this Schedule of Rates. Payor Class B shall pay ___ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.] Payers in each designated Payer Class shall pay the Commission-approved percentages of the Schedule of Rates; all other classes shall pay 100 percent.

*Patients receiving these services will be billed at controlled charges; however this rate per visit will be used for purposes of reconciliation.

Recodify existing 2 and 3 as 1 and 2 (No change in text.)

(d) (No change.)

(e) A hospital's schedule of rates in 1992 will be adjusted to eliminate significant fluctuations from its 1991 schedule of rates. Changes in excess of two percent will be treated as significant.

8:31B-3.40 Changes in working capital

(a) The Schedule of Rates and all charges set in accordance with N.J.A.C. 8:31B-3.38 and 3.39 are increased by dividing by 95 percent to allow for [payor] payer discounts for prompt payment as set forth in N.J.A.C. 8:31B-4.46.

(b) [Payors] Payers making periodic intermittent payments to hospitals at volumes projected by the hospital, reconciled periodically by the [payor] payer to the actual payment rates of the Schedule of Rates of the [payor(s)] payer(s) or paying by other means such as teleprocessing which will approximate payment for services to the [payor's(s')] payer's(s') patients at the time the hospital must pay employees and vendors for such services ([i.e.] that is, no increase

in working capital needs) or the patient or other responsible party making payment on or before the date of discharge will receive a five percent discount from the amount due for both inpatient and ambulatory services related to patient care.

(c) The exact prompt payment discount to which the [payor] payer is entitled will be calculated on an individual claim basis. Any [payor] payer making partial payment will be entitled to a discount for that portion and only that portion of the amount due. The discount will apply to all patient care related charges (with the exception of blood replacement charges) including deductible and coinsurance amounts. The time period for the calculation of the discount will begin on the date that the appropriate [payor] payer receives the bill.

(d) [Payors] Payers (including self-paying patients) making payment to hospitals from [1] one to 15 days of receipt of bill for inpatient services related to patient care shall pay 96 percent of payment due.

(e) [Payors] Payers (including self-paying patients) making payment to hospitals within 30 days of receipt of bill for inpatient services related to patient care shall pay 97 percent of payment due.

(f) [Payors] Payers (including self-paying patients) making payment to hospitals within 60 days of receipt of bill for inpatient services related to patient care shall pay 98 percent of payment due.

[(g) Payors (including self-paying patients) making payment to hospitals within 90 days of receipt of bill for inpatient services related to patient care shall pay 99 percent of payment due.]

[(h)](g) [Payors] Payers (including self-paying patients) making payment to hospitals after [90] 60 days of receipt of bill for inpatient services related to patient care shall pay 100 percent of payment due.

[(i)](h) [Payors] Payers (including self-paying patients) making payment to hospitals within 30 days of receipt of bill for ambulatory services related to patient care shall pay 97 percent of payment due.

[(j)](i) Any patient who willfully withholds insurance information from the hospital will be liable for the amount due and will remain so even following disclosure of available coverage. In such cases, the discount will be calculated based on the date of receipt of the bill by the patient.

[(k)](j) Until such time as the Rules on Hospital Reporting of Uniform Bill-Patient Summaries (UB-PS) become effective, [payors] payers will be deemed to be in receipt of a bill only after the hospital has provided the [payor] payer with all information required by the current reimbursement practices of each [payor] payer. [Payors] Payers will be deemed in receipt of the bill only after all items specified in the UB-PS regulation as being related to claims for the [payor] payer are completed by a hospital.

8:31B-3.45 Uniform bill—case mix determination—financial reports

(a) Hospitals shall submit to the Department through the UB-PS Intermediary(ies) and within 90 days of the end of the calendar quarter, information on all inpatients discharged for the quarter containing final diagnoses and such other patient specific information as set forth in the Rule on Hospital Reporting of Uniform Bill-Patient Summaries. The net cost to the hospital of any information provided to the Department by a UB-PS intermediary for a hospital under a memorandum of understanding developed under N.J.A.C. 8:31B-2.1 of the rule on Hospital reporting of Uniform Bill-Patient Summaries shall be considered by the Commission in the Preliminary Cost Base established for the hospital. Beginning on or before the first quarter of 1990 hospitals shall also submit Uniform Bill-Patient Summaries [on all outpatients containing final diagnosis or reason for visit (as defined by the Department)] containing the information specified in N.J.A.C. 8:31B-2.2 for outpatients. Included with such reporting shall be a statement of gross revenue by revenue center for patients discharged in the quarter (including in-house accounts of the previous period but excluding in-house accounts of the current quarter) for inpatient and outpatients, including, but not limited to, emergency service, clinic, home health, outpatient dialysis, ambulatory surgery, same day psychiatry, and private referred patients. UB-PS records not received by the Department within the time frames specified [may] shall not be included in the hospital's Final Reconciliation [unless the hospital pays to the Commission a fine

as specified in the Uniform Bill-Patient Summary (inpatient) Regulation, section IV-E. This decision will be at the discretion of the Commission].

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

8:31B-3.51 Rate notification, approval, and implementation

(a) Within 30 days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify in writing both the Commissioner and the Commission, of their decision to:

1. Implement rates as [initially] issued;

i. (No change.)

ii. Hospitals electing implementation of rates as [initially] issued shall have added to their rates a rate year technology factor and a prospective operating adjustment of two percent, calculated and implemented as described in N.J.A.C. 8:31B-3.26. Also added shall be 0.5 percent in lieu of [statewide] clinical and legal adjustments.

iii. Implementation of rates precludes a full rate review (as defined in N.J.A.C. 8:31B-3.52), unless initiated by the Department.

iv. Within 30 days of hospitals' notification of intent to implement [initial] rates, the Commission shall take action on the [initial] rates.

2. Undergo a full rate review and not implement rates as [initially] issued;

i. If a hospital elects not to implement its [initial] rates, it shall not receive [neither] the technology factor, the prospective operating adjustment, the 0.5 percent adjustment in lieu of [statewide] clinical and legal adjustments as described in N.J.A.C. 8:31B-3.26(b)[-] through (d), [nor, for rate years 1992 and subsequently,] the economic factor, or the economic factor portion of Commission-approved adjustments listed in N.J.A.C. 8:31B-3.26(e) through (k).

ii.-iv. (No change.)

(b) (No change.)

(c) If the Department initiates a full rate review as described in N.J.A.C. 8:31B-3.52, implementation of the rates will be subject to (a)2 above.

8:31B-3.52 Full rate review

(a) A full rate review may be initiated by a hospital, within 30 days of receipt of its proposed schedule of rates, or by the Department of Health, [within] prior to 10 working days [of a hospital's notification to the Department concerning implementation of its rates] after the hospitals' required notification date concerning implementation of its rates. The Department may also institute a full rate review in response to a request for rate adjustments under N.J.A.C. 8:31B-3.64.

(b) The Department of Health shall initiate a full rate review when such action may be necessary to support the legislative mandate for hospital services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. The hospital must provide the required documentation within 30 days of notification that the Department has initiated a full rate review.

[(b)](c) A hospital which believes that the proposed rates are inadequate to support operation of an efficient and needed institution may request a full rate review as defined in N.J.A.C. 8:31B-3.51. A hospital must submit a request for a full rate review, together with all information required in [(d)] (e) below, within 30 days of receipt of the proposed Schedule of Rates. The hospital shall submit two copies to the Department of Health, and one to the Hospital Rate Setting Commission.

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

8:31B-3.65 Schedule of Rates Adjustments

(a) [For 1991 rates] Rates issued pursuant to these rules, except as modified, shall be effective as of January 1 of the rate year, except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. Unless a substantial danger to the ability of a needed hospital to provide adequate care shall result, adjustments or modifications which may be approved during the rate period shall be implemented through an appropriate adjustment to the Schedule of Rates for a given hospital, group of hospitals, DRG or group of DRGs, and shall take effect at the beginning of the

following rate year. At the direction of the Commission, the Commissioner shall make an appropriate adjustment to the Schedule of Rates for affected Diagnosis Related Group(s), indirect costs, revenue, or payer adjustments. The hospital(s) shall make an appropriate adjustment to its charge master(s), and third party payers shall make appropriate adjustments to their case-mix adjusted periodic intermittent payment. However, where appropriate, the Commission may order lump sum, pro rata, automatic, periodic or deferred adjustments. All adjustments shall be made prospectively. (See also N.J.A.C. 8:31B-3.42).

(b) (No change.)

8:31B-3.71 Reconciliation and adjustments

(a) Certain [automatic] reconciliations and adjustments [are necessary] will be calculated to insure that [hospitals'] each hospital's net revenue collections align with the Commission approved Schedule of Rates [especially with regard to the inclusion of both direct (variable) financial elements and indirect (variable and fixed) financial elements as indicated in N.J.A.C. 8:31B-3.24, and other financial elements], and that charges are in a consistent ratio with cost by revenue center. [Further, the Schedule of Rates must be periodically adjusted to reflect changes in inflation and the recalculation of certain indirect and other financial elements.]

[(b) Periodic adjustments are not dependent upon receipt of reports for a reporting period, and therefore, will be applied to the Schedule of Rates when and as appropriate.]

[(c) Reconciliation of the Schedule of Rates shall take place pending calculation of actual experiences for a reporting period. Reports will be required from hospitals to monitor such reconciliations on a current basis and adjustments will be made on an annual basis culminating in a flow of reports back to hospitals and a compliance adjustment to the Rate Order determined by the Commissioner.]

(c) Revenue resulting from the all-inclusive rate will not be subject to final reconciliation and will be retained by the hospital pending audit. Payment for Personnel Health shall be based on base year data, added to rates as a percentage add-on, and not reconciled. Add-ons to the rate for Capital Facilities, described in N.J.A.C. 8:31B-3.27, and other elements requiring rate year experience shall be reconciled, pending audit. The elements requiring rate year experience are outside collection costs; economic factor exclusive of the labor proxy; lower of aggregate charges or approved revenue; excess cross-subsidized revenue; medical denials; patient bill appeals; uncompensated care; and taxes. Hospitals shall submit any information necessary to substantiate rate-year experience for elements listed above, in time frames specified by the Department. Any rate year adjustment approved by the Commission on or after January 1, 1992, will be paid through the Schedule of Rates as a percentage add-on with no further reconciliation. Payment for such adjustments shall occur in the year following approval by the Commission.

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but shall affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments shall be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, and shall become effective in the subsequent rate year, unless a substantial inequity shall result.

1. Economic factor: [The final economic factor shall be calculated for each year as soon as the necessary data are available. However, the labor component of the economic factor is to be prospective and final. If calculation of the final economic factor for the rate year shows a misprojection of the labor component including the proportion of contracted services the rate year labor component shall not be changed. Instead an equal and offsetting adjustment is to be made to the projected economic factor when the projected

economic factor for the upcoming rate year is calculated. The projected economic factor shall be developed for the following year using as much actual data as is compatible with the timely issuance of hospital payment rates for that year.] The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26 shall be [based on each hospital's reported expenses of the current cost base by classification for the applicable rate period] **the responsibility of the appointed panel.**

2. (No change.)

3. [Application of periodic] **Periodic** adjustments to Schedule of Rates: Pursuant to N.J.A.C. 8:31B-3.42 through 3.45, on January 1 of each year (staggered as appropriate for hospitals with other than a calendar year reporting period), direct and indirect patient care costs (as offset by the previous year's net income from other sources) shall be adjusted as appropriate, for the new projection of the update factors and other adjustments. The Capital Facilities Allowance portion of the Schedule of Rates is also adjusted accordingly, and a compliance adjustment to the Rate Order determined by the Commissioner and implemented by the hospitals and payers.

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient), as described in N.J.A.C. 8:31B-2, or N.J.A.C. 8:31A-8.1, whichever is appropriate: determination of actual case-mix as determined by the same GROUPEE used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. [Variable financial] **Financial** elements:

i. Except as specified above, reconciliation for [direct] patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. **Effective with the 1992 rate year, the Department shall not reconcile each hospital's all-inclusive rate per N.J.A.C. 8:31B-3.23 and 3.26. A hospital shall retain its rate year collected revenues, subject to audit procedures described in N.J.A.C. 8:31B-3.17. There will not be a Schedule of Rates Variance on the volume variable financial elements, but there will be a comparison of aggregate charges to approved revenue.** Hospitals shall be reconciled to the lower of aggregate charges or approved revenue for the rate year, utilizing cost and billing data submitted pursuant to N.J.A.C. 8:31B-2.5. The Department shall provide 30 days' notice of its intent to close the data base. This notice shall be given no earlier than **60 days following** the end of the [second] **first** quarter following the rate year. No additional cases shall be added after the closing of the data base. The Schedule of Rates so developed and approved, adjusted to actual measure economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation. **The Department will adjust a hospital's schedule of rates in the year following Commission action, to include any variances associated with excess cross-subsidized revenue (a comparison of rate year revenue versus bill year costs); medical denials; outside collection costs; patient bill appeals; and taxes. The Department will also adjust rates for any decreases in approved revenue that are due to the hospital's failure to set charges in correspondence with approved revenue. Adjustments to rates resulting from this regulation will be implemented as a percent of the PCB added to the Schedule of Rates. This adjustment will be made to the Schedule of Rates for the rate year following Commission action. No further reconciliation of this amount will occur.**

[ii. Reconciliation for volume indirect costs, adjusted for actual measured inflation, will be based on the payment rates described in N.J.A.C. 8:31B-3.24(c)1 and 2 and the hospital's actual inpatient and same day surgery volume for the rate year. All inpatient costs are volume variable.

iii. At reconciliation, base year costs must be adjusted to take account of inflation in the period between the base year and the rate year. Each component of Non-Labor costs shall be adjusted

using the final economic factor values for each proxy developed in the period between the base year and the rate year. Labor components shall be adjusted using the value for each proxy which was applied in calculating the hospital's PCB in that rate year.]

[iv.]iii. (No change in text.)

[v. The technology adjustments defined in N.J.A.C. 8:31B-3.26(b) and 3.51 will be reconciled to actual rate year case-mix and volume for direct patient care rates and actual volume for indirect volume variable rates.]

[2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined shall remain fixed during the rate period except as modified for actual inflation for those components of indirect costs not included in (a)iii above. Any under or overcollection of indirect patient care revenue from revenue centers which are not volume variable as indicated in N.J.A.C. 8:31B-3.24 shall be compensated by a Schedule of Rates Variance as described below.]

ii. The Hospital Rate Setting Commission may limit rate adjustments if a hospital has not demonstrated good faith effort to obtain from Medicare the appropriate level of reimbursement.]

(b) Any adjustment due to the reconciliation described in (a) above will be implemented as a percentage add-on to the hospital's rates, and no further reconciliation will occur. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health, unless a different collection period is specified by the Commission.

8:31B-3.75 Schedule of [rates] Rates reconciliation

[a] Except for adjustments among payers and required bad debt reconciliation which may be made approximately on a lump sum or prospective basis, all other adjustments which may be required as a result of appeals implemented on an interim basis, under or over collection, audit, or other reconciliation procedures here required shall be made prospectively through an appropriate adjustment. The reconciliation adjustment shall be calculated so as to compensate for the required amount over a specified period approved by the Hospital Rate Setting Commission.

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base/Certified Revenue Base, an adjustment to the current year PCB/CRB will be calculated. A compliance adjustment to the Rate Order will then be issued to include this adjustment and adjustments for actual uncompensated care and payer differentials, and net income from other sources in order to align gross revenue and payers payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for economic factors and other adjustments issued by the Commission during the year, will be calculated for the hospital's actual discharges and patient visits for a reported period. Reasonable direct patient care costs per case will be multiplied by the number of cases in each DRG, to determine reasonable direct patient care costs for patients assigned to a DRG. Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, and Same Day Psychiatry will be determined from the Uniform Cost Reporting Regulations. Outlier cases will be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-3.38.]

(a) Effective with the 1992 rate year, the Department will not reconcile the hospital's volume variable, all inclusive rate to collected revenue. Hospitals shall retain the portion of rate year revenue that is included in the DRG rate, subject to audit procedures described in N.J.A.C. 8:31B-3.17. Any adjustments made as a result of N.J.A.C. 8:31B-3.71 and 3.73 shall include interest, shall be collected as a percentage add-on to rates, and shall not be subject to further reconciliation. Payment shall occur in the year following hospitals' submission of actual cost data to the Department of Health.

[2.](b) (No change in text.)

[3. Schedule of Rates Variance: The hospital's actual Net Revenue Related to Patient Care plus excess subsidized revenue shall be subtracted from the Commission approved net revenue and the difference (positive or negative) shall be termed the Schedule of Rates Variance and shall, if negative, be added or, if positive, be subtracted prospectively from the next year's Schedule of Rates.

4. Application of reconciliation to Schedule of Rates shall be as follows:

i. The Schedule of Rates variance computed plus interest thereon (18 months if reconciliation is completed six months after the close of the reporting period) is added as an indirect financial element of the Schedule of Rates until as the following year's reconciliation.

ii. Net income from other sources for the current reporting period replaces the amount from the previous reporting period remains in the adjusted Rate Order.

iii. The uncompensated care factor included in the Schedule of Rates shall be replaced with the actual factor for the current reporting year. The new prospective year's amount replaces the uncompensated care percentage amount from the previous reporting period in the adjusted Rate Order.

iv. The payer discount calculation for each differential in N.J.A.C. 8:31B-3.39 and 3.40 shall be repeated for the actual gross Revenues Related to Patient Care of payers or payer classes receiving and not receiving differentials. The percentage point discount and mark up to the Schedule of Rates so determined shall be increased or decreased for the percentage difference from the prospective discount and mark up determined in N.J.A.C. 8:31B-3.39. Any adjustments to payer differentials approved by the Commission subsequent to those included in the initial Schedule of Rates shall also be included in the payer discount reconciliation.

v. A compliance adjustment to the Rate Order as shown in Appendix VIII is determined by the Commissioner and implemented by hospitals and payers.]

8:31B-4.15 Revenues and deductions from revenue

(a) [In many instances, the] **If a hospital receives less than its full charges for the services it renders. This necessitates the reporting of], it shall report to the Department both the gross revenue and revenue "adjustments" resulting from failure to collect full charges for services provided. These revenue adjustments are called Deductions from Gross Revenue. The specific deductions required for reporting Revenue Related to Patient Care, as defined in N.J.A.C. 8:31B-4.32 are defined in (a)1[-] through 11 [of this section] below. Any individual allowance must be reported in only one of the 10 deduction categories and three contra categories (although individual transactions may be distributed among several if appropriate):**

1.-7. (No change.)

8. Charity care: These deductions represent [the difference between charges and the reimbursement anticipated from indigent patients. (See N.J.A.C. 8:31B-4.38)] **charges for patients determined to be eligible for charity care pursuant to N.J.A.C. 8:31B-4.37.**

9. (No change.)

10. Bad debt provision:

i. (No change.)

ii. The bad debt provision explicitly excludes deductions for contractual allowances, indigent patients, courtesy care, medical denials, **finance charges or other non-medical service costs such as late fees and patient convenience items**, and nursing home placement medical denial cases. Estimates of the bad debts incurred for the reporting period are to be reconciled to actual bad debts incurred for the reporting period and reconciled in the next reporting period's bad debt provision.

11. (No change.)

(b) (No change.)

8:31B-4.46 Reasonable working capital

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

(d) Subject to change with significant changes in interest rates [(i.e.) that is, so long as interest rates are between six percent and 20 percent per annum), the cost of working capital required is defined as one percentage of patient services billings per month for

the approximate period of time between the final billing services and the payment therefore. To encourage prompt timely payments and to minimize potential late payment "penalties," Hospitals' Schedule of Rates shall include a provision for working capital requirements of five percent of Gross Revenue Related to Patient Care in [addition to] **addition to all other approved financial elements** subject to the determination by the Commission of quantifiable economic benefits for prompt payment by [payors] **payors.**

8:31B-4.67 Non-operating revenues (net of expenses)

(a) (No change.)

(b) Income or Investment, net of transaction expense, of Operating Fund [and/or interest income from financial charges on delinquent accounts receivable] are to be applied as offsets against Costs Related to Patient Care and treated as Case B.

(c)-(i) (No change.)

(j) **Interest income from financial charges on delinquent accounts receivable shall not be included in Costs Related to Patient Care. One-half shall be treated as a Case C item, and one-half shall be offset against Outside Collection Costs.**

[APPENDIX II COST COMPONENTS AND PROXIES FOR THE ECONOMIC FACTOR

LABOR 1.

COST COMPONENT: Non-physician Salaries. Physician's Salaries and Fees

SHARE COST CENTER: All Cost Centers for which employee salaries are reported; contracted services in MSA, OBS, PED, PSA, ICU, CCU, NNI, EMR, CLN, DEL, ORR and OHS Cost centers; physicians' salaries and fees for all Cost Centers except RSD; and physicians' fees for RSD Cost Center.

PROXIES: BLS, Average Hourly Earnings for Nonsupervisory Hospital Workers, Northeast (97 percent in 1987, and no less than 94 percent beginning in 1988).

Percentage change in New Jersey contracted services hourly wage three percent in 1987, six percent beginning in 1988. Labor proxies of future years will be adjusted downward to reflect the actual rate year Statewide proportion of contracted services if the actual proportion of contracted services is less than six percent.

SOURCE: Bureau of Labor Statistics (BLS), Employment Cost Index New Jersey Department of Health survey of contracted services labor costs.

LABOR 2.

COST COMPONENT: Interns, Residents and Fellows

SHARE COST CENTER: Physicians' salaries in RSD Cost Center
PROXIES: Percentage change in average stipend for house staff, Northeast Region, by number of residents per post-graduate year for New Jersey hospitals.

SOURCE: Council of Teaching Hospitals and New Jersey Department of Higher Education

LABOR 3.

COST COMPONENT: Fringe Benefits

SHARE COST CENTER: Other Expense reported in PFB, LFB, and PEN Cost Centers

CATEGORY 1: FICA

PROXY: Percentage change in Social Security Tax Rate compounded by changes in salaries (95%). Percentage change in Social Security Tax Rate compounded by change in Rate Base (5%).

SOURCE: U.S. Department of Health, Education and Welfare, Social Security Bulletin and BLS, Average Hourly Wages-Hospital Workers (U.S.).

CATEGORY 2: Workman's Compensation

PROXY: Percentage change in Manual Rate compounded by percentage change in salaries

SOURCE: New Jersey Compensation Rating and Inspection Bureau and BLS, Employment Cost Index

CATEGORY 3: Unemployment Insurance

PROXY: Percentage change in Disability Insurance Rate compounded by Rate Base (90%) Percentage change in Disability Insurance Rate Compounded by Rate Base and salary changes (10%).

PROPOSALS**Interested Persons see Inside Front Cover****HEALTH**

SOURCE: New Jersey Department of Labor and Industry and BLS, Average Hourly Wages-Hospital Workers (U.S.)

CATEGORY 4: Disability Insurance

PROXY: Percentage change in Disability Insurance Rate compounded by Rate Base (90%) Percentage change in Disability Insurance Rate compounded by rate Base and salary changes (10%)

SOURCE: New Jersey Department of Labor and Industry and BLS, Average Hourly Wages-Hospital Workers (U.S.)

CATEGORY 5: Medical Insurance

PROXY: Percentage change in New Jersey Hospital Association group rate for Blue Cross/Blue Shield basic hospital and group major medical premium rates.

SOURCE: New Jersey Hospital Association

CATEGORY 6: Life Insurance

PROXY: Percentage change for New Jersey Hospital Association group life insurance premium rates

SOURCE: New Jersey Hospital Association

CATEGORY 7: Pensions

PROXY: ECI, Northeast

SOURCE: BLS, Employment Cost Index

CATEGORY 8: Other Policy Fringe Benefits

PROXY: ECI, Northeast

SOURCE: BLS, Employment Cost Index

SUPPLIES 1.

COST COMPONENT: Office Supplies

SHARE COST CENTER: Supply costs reported in PHY, RSD, A & G, FIS, PCC, EDR, and MRD Cost Centers

PROXIES: Producer Price Index: (PPI): 0915-06 Office Supplies and Accessories (33%)

PPI: 0913-0131.09 Paper, Unwatermarked Bond, No. 4 (67%)

SOURCE: BLS, Producer Price Index

SUPPLIES 2.

COST COMPONENT: Raw Food

SHARE COST CENTER: Proportion of Supply Costs reported in DTY Cost Center

PROXIES: Consumer Price Index (CPI): Food at home (50%) PPI: 02 less 029,0261 and 0262 Processed food less feeds, less alcoholic and non-alcoholic beverages (50%)

SOURCE: BLS, Consumer Price Index and Producer Price Index

SUPPLIES 3.

COST COMPONENT: Other Dietary Supplies

SHARE COST CENTER: Proportion of Supply costs reported in DTY Cost Center

PROXIES: PPI: 0915-0333.03 Paper Goods, Hot Cups (24.07%)

PPI: 0722 Unsupported Plastic Film and Sheeting (12.03%)

PPI: 1261 Dinnerware (35.98%)

PPI: 0671 Soap and Synthetic Detergent (27.92%)

SOURCE: BLS, Producer Price Index

SUPPLIES 4.

COST COMPONENT: Housekeeping Supplies

SHARE COST CENTER: Supply costs reported in HKP Cost Center

PROXIES: PPI: 0915-01 Sanitary Paper and Health Products (30%)

PPI: 0722 Unsupported Plastic Film and Sheeting (30%)

PPI: 1671 Soap and Synthetic Detergent (40%)

SOURCE: BLS, Producer Price Index

SUPPLIES 5.

COST COMPONENT: Laundry and Linen Supplies

SHARE COST CENTER: Supply costs reported in L&L Cost Center

PROXIES: PPI: 0671 Soap and Synthetic Detergents (60%) CPI: Textile House Furnishings (40%)

SOURCE: BLS, Producer Price Index and Consumer Price Index

SUPPLIES 6.

COST COMPONENT: Drugs

SHARE COST CENTER: Supply costs reported in PHM and DRU Cost Centers

PROXIES: PPI: 0635 Ethical (Prescription) Drugs (70%)

0636 Proprietary (over the counter) Drugs (30%)

SOURCE: BLS, Producer Price Index

SUPPLIES 7.

COST COMPONENT: Laboratory Supplies

SHARE COST CENTER: Supply costs reported in LAB and BBK Cost Center

PROXIES: PPI: 138 Glass Containers (40%)

PPI: 061 Industrial Chemicals (60%)

SOURCE: BLS, Producer Price Index

SUPPLIES 8.

COST COMPONENT: Radiology Supplies

SHARE COST CENTER: Supply cost reported in RAD Cost Center

PROXIES: PPI 1542 Photographic Supplies

SOURCE: BLS, Producer Price Index

SUPPLIES 9.

COST COMPONENT: Medical/Surgical Supplies

SHARE COST CENTER: Supply costs reported in MSA, OBS, PED, PSY, ICU, CCU, NNI, NBN, EMR, CLN, OHS, ANS, CSS, DEL, DIA, EDG, MSS, NMD, ORR, OPM, PHT, RSP, THR, and CCA Cost Centers

PROXIES: CPI: Non-Prescription Medical Equipment and Supplies

SOURCE: BLS, Consumer Price Index

SUPPLIES 10.

COST COMPONENT: Repairs and Maintenance Supplies

SHARE COST CENTER: Supply costs reported in OGS and PLT Cost Centers

PROXIES: CPI: Maintenance and Repairs, Services

SOURCE: BLS, Consumer Price Index

OTHER 2.

COST COMPONENT: Contracted Laundry and Linen

SHARE COST CENTER: Contracted service costs reported in L&L Cost Center

PROXIES: CPI: Laundry and dry cleaning other than coin operated (80%)

CPI: Textile House Furnishings (20%)

SOURCE: BLS, Consumer Price Index

OTHER 3.

COST COMPONENT: Malpractice Insurance

COST CENTER: Other expenses reported in MAL Cost Center

PROXY: Percentage change in New Jersey Health Care Insurance Exchange group rates

SOURCE: New Jersey Hospital Association

OTHER 4.

COST COMPONENT: Utilities

COST CENTER: Proportion of other expense reported in UTC Cost Center

CATEGORY 1: Electricity

PROXIES: PPI: 0543, 1204.01 Industrial Power, 500 KW Demand, Mid-Atlantic

SOURCE: BLS, Producer Price Index

CATEGORY 2: Gas

PROXY: Percentage change in gas utility industry average price per MMBTU

SOURCE: American Gas Association

CATEGORY 3: Oil

PROXY: Percentage change in price of Fuel Oil No. 2 to Commercial/Institutional users For New Jersey (50%) Percentage change in price of Fuel Oil No. 4 to End Users for Petroleum Administration for

Defense (PAD) District 1 (East Coast) (50%)

SOURCE: U.S. Department of Energy, Petroleum Marketing Monthly

CATEGORY 4: Water and Sewage

PROXY: CPI: Water and Sewage Maintenance

SOURCE: BLS, Consumer Price Index

OTHER 5.

COST COMPONENT: Major Moveable Equipment

CATEGORY 1: Beds and Nursing Equipment

COST CENTER: Equipment costs reported in MSA, PED, OBS, PSA,

ICU, CCU, NNI, NBN, Cost Centers

PROXY: Percentage change in the hospital equipment cost index

SOURCE: Hospital Equipment Cost Index, Marshall Valuation Service, Marshall and Swift Publication Co.

CATEGORY 2: General Services Equipment

COST CENTER: Equipment costs reported in DTY, HKP, L&L, and PLT Cost Centers

PROXY: PPI: 1161 Food Products Machinery (41.18%)

PPI: 1241.01 Laundry Equipment (23.53%)

PPI: 113 less 113.4 and less 113.6 Metal Working Machinery and Equipment less Industrial Process Furnaces and less Abrasive

Products (35.29%)

SOURCE: BLS, Producer Price Index

CATEGORY 3: Business Service Equipment

HEALTH

PROPOSALS

COST CENTER: Equipment costs reported in PHY, RSD, A&G, FIS, MRD, OCG, PCC, and EDR Cost Centers
 PROXY: PPI: 1193 less 1193.06 Office and Store Machines and Equipment less Coin-Operated Vending Equipment PPI: 122 Commercial Furniture
 SOURCE: BLS, Producer Price Index, weighted by Relative Importance
 CATEGORY 4: Diagnostic and Therapeutic Equipment
 COST CENTER: EMR, CLN, OHS and all Ancillary Cost Centers
 PROXY: Percentage change in hospital equipment cost index
 SOURCE: Hospital Equipment Cost Index, Marshall Valuation Service, Marshall and Swift Publication Co.

OTHER 6.
 COST COMPONENT: Other Services
 SHARE COST CENTER: Other expenses reported in all cost centers except INT, PLT, OGS, MAL, UTC, LFT, PFB, and PEN; other expenses in A&G Cost Center not classified above; contracted service costs in Ancillaries (exclusive of DEL, ORR) DTY, HKP, MRD, PCC, EDR, A&G and FIS Cost Centers.
 PROXIES: Service less rent and medical care
 SOURCE: BLS, Consumer Price Index]

APPENDIX III
 PRELIMINARY COST BASE REPORT

ITEM	I CURRENT COSTS	II INCENTIVE/ DISINCENTIVE/ CHALLENGE	III ECONOMIC FACTOR AND DEBT SVCE ADJUSTMENT	IV COMMISSION ADJUSTMENTS	V REASONABLE FINANCIAL ELEMENTS (at current cost year volume)
A.-C. (No change.)					
D. CAPITAL [CASH REQUIREMENTS] FACILITIES ALLOWANCE					
[E. CAPITAL FACILITIES FORMULA ALLOWANCE					
F. COMMISSION APPROVED INITIAL WORKING CASH INFUSION					
G. GRANTS ON BEHALF OF THE MEDICALLY INDIGENT					
H.[E. TOTAL PRELIMINARY COST BASE PERCENTAGES OF PCB WHICH ARE ATTRIBUTABLE TO: 1.-2. (No change.)					

APPENDIX V
 REVENUE BUDGET WORKSHEET/SUBMITTED BUDGET
 SUPPLIED BY NJDOH—COMPLETED BY HOSPITAL

	(1) [1980] REASONABLE DIRECT COSTS (at [1978] base year volumes)	(2) HOSPITAL PROJECTED CHANGES IN PATIENT VOLUMES*	(3) REASONABLE DIRECT COSTS AT HOSPITAL PROJECTED VOLUME (Col. 2 × Col. 1)	(4) [1980] PROJECTED GROSS REVENUE AT HOSPITALS' PROJECTED VOLUME (Col. 3 × E.5. of Col. 3)
A.-D. (No change.)				
E. [1980] Rate Year Revenue Requirements	Exhibit 4, Line J1	//////		(Line D., above)
1. Direct	Exhibit 4, Line J[.][2].]	//////		Exhibit 4, Line J2
Reasonable Cost per Case				
[2. Indirect	Exhibit 4, Line J3	//////]		
[3.]2. Total PCB				
[4.]3. Gross Revenue Requirements		//////		
(E.3 × Exhibit 4, Line G)		//////		
[5.]4. Charge to direct cost mark-up (E.4 - E.1.)				
1(No change.)				

APPENDIX VII
 PRELIMINARY COST BASE
 RECONCILIATION TO NET REVENUE
 RELATED TO PATIENT CARE

	<u>Source</u>	<u>Amount</u>
A. Financial Elements [—before Working Capital Increases]		
1. [Direct Patient Care] Reasonable Exhibit 7 Costs per case		_____
[2. Indirect Patient Care Costs	Schedule of Rates	_____]
[3.]2. [Net Income From Other Sources] Outside Collection Costs	Schedule of Rates	(_____)
[4.]3. Capital [Cash Requirements] Facilities Allowance	Financial Elements Report	_____
[5. Capital Facilities Formula Allowance	Schedule of Rates	_____]
[6. Initial Working Cash Infusion	Schedule of Rates	_____
7. Grants on Behalf of the Medically Indigent]	Schedule of Rates	_____
[8.]4. Subtotal	(Lines A.1. through [A.7.] A.3.)	_____
B. Working Capital Increases		
1. Gross Revenue Related to Patient Care	Financial Elements Report	_____
2. Discountable Gross Revenue	Line B.1. × .05	_____
3. Prompt Payment Discounts	Financial Elements Report	_____
4. Discounts Foregone by Payors	Line B.2.-Line B.3	_____
5. Reasonable Working Capital Increase	(Line [A.8] A.4.-Line B.1) × Line B.4	_____
C. Schedule of Rates Variance		
1. Commission Approved Net Revenue	Line [A.8] A.4. + Line B.5	_____
2.-4. (No change.)		

APPENDIX VIII
SCHEDULE OF RATES AS ADJUSTED FOR COMPLIANCE

ITEM	RATE PER CASE	AMOUNT
[DIRECT] COSTS RELATED TO PATIENT CARE		
DRG 1	\$ _____	
DRG 2	\$ _____	
DRG 3	\$ _____	
CLINIC PATIENTS		
HOME HEALTH PATIENTS	\$ _____	
EMERGENCY SERVICE OUTPATIENTS	\$ _____	
OUTPATIENTS		
AMBULATORY SURGERY	\$ _____	
SAME DAY PSYCHIATRY	\$ _____	
[INDIRECT] OTHER FINANCIAL ELEMENTS		
[INDIRECT COSTS RELATED TO PATIENT CARE		\$ _____]
INCOME FROM OTHER SOURCES		\$(_____)
[CAPITAL CASH REQUIREMENTS]		\$ _____]
CAPITAL FACILITIES [FORMULA] ALLOWANCE		
[COMMISSION APPROVED INITIAL WORKING CASH INFUSION		\$ _____]
19 SCHEDULE OF RATES VARIANCE		\$ _____
[GRANTS ON BEHALF OF THE MEDICALLY INDIGENT		\$ _____]
[ESTIMATED] NET UNCOMPENSATED CARE		%
[ESTIMATED] PERSONNEL HEALTH PROGRAM		%

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and [_____ % for payor] specific payer differentials as specified by the Commission. [Payor Class A shall pay _____ % of this Schedule of Rates. Payor Class B shall pay _____ % of this Schedule of Rates and all other Payor Classes shall pay 100% of this Schedule of Rates.] Payers in each designated Payer Class shall pay the Commission-approved percentage of the Schedule of Rates; all other classes shall pay 100 percent.

APPENDIX XI

Reimbursement Methodology for Graduate Medical Education

[A. Certain residency programs that do not involve direct patient care responsibilities are considered ancillary for purposes of direct patient care cost determination. Adjustments made for these programs will apply to all DRGs. Ancillary programs include:

1. Anatomic and Clinical Pathology
2. Blood Banking
3. Chemical Pathology
4. Dermatopathology
5. Forensic Pathology
6. Hematopathology
7. Neuropathology
8. Nuclear Medicine
9. Nuclear Radiology
10. Radiation Oncology
11. Radioisotopic Pathology
12. Radiology, Diagnostic
13. Radiology, Therapeutic]

[B.]A. All DRGs will be assigned to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. The assignments are as follows:

I. Medicine

(a) Included programs:

1. (No change.)
2. **Transitional/Flexible First Year**
3. **Medical Specialties:**
 - [2.]i. (No change in text.)
 - [3.]ii. (No change in text.)
 - iii. **Critical Care Medicine**
 - [4.]iv. (No change in text.)
 - [5.]v. (No change in text.)
 - [6. Flexible First Year/Transitional]
 - [7.]vi. (No change in text.)
 - vii. **Geriatric Medicine**
 - [8.]viii. Hematology [and]/Oncology
Recodify existing 9-19 as ix-xix (No change in text.)
4. **Radiology:**
 - i. **Nuclear Medicine**
 - ii. **Nuclear Radiology**
 - iii. **Radiation Oncology**
 - iv. **Radiology, Diagnostic**
 - v. **Radiation, Therapeutic**

(b) (No change.)

II. Surgery

(a) Included programs:

1. [Anesthesiology] **General Surgery**
2. [Neurological Surgery] **Surgical Specialties:**

- [3. General Surgery]
- [4.]i. (No change in text.)
- [5. Dentistry]
- [6.]ii. (No change in text.)
- [7.]iii. (No change in text.)
- [8.]iv. (No change in text.)
- v. Neurological Surgery
- [9.]vi. (No change in text.)
- [10. Oral/Maxillofacial Surgery]
- Recodify existing 11-20 as vii-xvi (No change in text.)

xvii. Surgical Critical Care

3. Anesthesiology:

- i. Anesthesiology
- ii. Anesthesiology Critical Care Medicine

4. Pathology:

- i. Anatomic and Clinical Pathology
- ii. Blood Banking
- iii. Chemical Pathology
- iv. Dermatopathology
- v. Forensic Pathology
- vi. Hematopathology
- vii. Neuropathology
- viii. Radioisotopic Pathology

5. Dentistry:

- i. General Dentistry
- ii. Oral/Maxillofacial Surgery

6. Podiatric Medicine

- i. Rotating Podiatric Medicine
- ii. Podiatric Orthopedic Medicine
- iii. Podiatric Surgery

(b) (No change.)

III. (No change.)

IV. (No change.)

V. Family Practice

(a) [Applied to all DRGs] **Included Programs:**

- 1. Family Practice
- 2. Family Practice Geriatric Medicine

(b) **Included DRGs:** same as in Internal Medicine

[C.]B. Methodology

I. Medical programs:

(a) A medical residency regression equation is defined to consist of:

1. The dependent variable, defined as the ratio of actual cost per [case] discharge, by DRG, for each [hospital with a] Medical teaching [program] hospital and the Statewide average non-teaching cost per [case] discharge, by DRG, for all [hospitals without teaching programs] **medical non-teaching hospitals;**

2. The first independent variable defined as the number of residents in internal medicine [programs (one or zero)] per 5,000 †case-mix adjusted discharges; the second independent variable defined as the number of [other medical programs] residents in **medical specialty programs** per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates will equal:

[For hospitals with a Medical residency program, including an Internal Medicine program, but with no Ancillary program; the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges.

For hospitals with a Medical residency program without an Internal Medicine program and without an Ancillary program: the Y-intercept plus the slope of the second independent variable times each program per 5,000 †case-mix adjusted discharges.

For hospitals with a Medical residency program with an Internal Medicine program and with an Ancillary program; the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges;

plus

The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN, and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.]

1. For hospitals with an Internal Medicine and/or Transitional residency program: the slope of the first independent variable times the ratio of Internal Medicine and/or Transitional residents per 5,000 †case-mix adjusted discharges in excess of the number of Internal Medicine and/or Transitional residents per 5,000 †case-mix adjusted discharges equaling the value of the Y-intercept, plus the slope of the second independent variable times the ratio of medical specialty residents per 5,000 †case-mix adjusted discharges.

2. For hospitals without an Internal Medicine and/or Transitional residency program: the slope of the second independent variable times the ratio of medical specialty residents per 5,000 †case-mix adjusted discharges in excess of the number of medical specialty residents per 5,000 †case-mix adjusted discharges equaling the value of the Y-intercept.

3. Hospitals with Family Practice programs that would receive no adjustment due to their small number of residents per 5,000 †case-mix adjusted discharges, will receive an adjustment equal to the lowest adjustment given to any hospital in this group.

II. Surgical programs:

(a) A surgical residency regression equation is defined to consist of:

1. The dependent variable, defined as the ratio of actual cost per [case] discharge, by DRG, for each [hospital with a Surgical teaching program] surgical teaching hospital and the Statewide average non-teaching cost per [case] discharge, by DRG, for all surgical non-teaching hospitals [without teaching programs];

2. The independent variable, defined as the number of [programs] residents in surgical specialty, Anesthesia, and Pathology programs per 5,000 †case-mix adjusted discharges, excluding, for hospitals with fewer than the minimum number of General Surgery residents to qualify for a General Surgery program, that number of surgical specialty residents (exceeding to meet) the General Surgery minimum.

(b) The adjustment to the standard portion of the DRG rates will equal:

For hospitals with a Surgical residency program but with no Ancillary program: for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and for additional programs the slope times each program per 5,000 †case-mix adjusted discharges.

For hospitals with a Surgical residency program and with an Ancillary program: for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and the additional programs the slope times each program per 5,000 †case-mix discharges;

plus

The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN and pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.] the Y-intercept plus the slope of the independent variable times the ratio of surgical specialty, anesthesiology, and pathology residents per 5,000 †case-mix adjusted discharges (representing the cost impact of being a surgical teaching hospital, including the presence of general surgery residents); however, for hospitals with fewer than the minimum number of general surgery residents to qualify for a general surgery program, the number of residents in surgical specialty programs will exclude that number needed to meet the general surgery minimum.

III. Obstetrics/Gynecology [and Pediatrics] programs:

[The adjustment to the standard portion of the DRG rates will equal:

For hospitals with Obstetrics/Gynecology and Pediatric programs (but without an Ancillary program:) the ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none, for Obstetrics/Gynecology and Pediatrics, respectively;

For hospitals with Obstetrics/Gynecology and Pediatric programs with an Ancillary program: the ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none, for Obstetrics/Gynecology and Pediatrics, respectively.

plus

The ratio between the costs per DRG adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals with ancillary programs and the costs adjusted for medical, surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.]

(a) An OB/GYN residency regression equation is defined to consist of:

i. The dependent variable, defined as the ratio of actual cost per discharge, by DRG, for each OB/GYN teaching hospital and the

Statewide average non-teaching cost per discharge, by DRG, for all OB/GYN non-teaching hospitals;

ii. The independent variable, defined as the number of residents in OB/GYN programs per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates for OB/GYN will be based on the slope of the independent variable times the ratio of OB/GYN residents per 5,000 †case-mix adjusted discharges in excess of the number of residents equaling the value of the Y-intercept.

(c) Calculation of OB/GYN adjustments will exclude statistical outliers if their inclusion would result in loss of payment for primary care programs.

IV. [Other Adjustments] Pediatrics

[In order to maintain base year budget neutrality for all programs except Family Practice, the difference between actual costs of teaching hospitals and the predicted costs derived by application of the above formulae will be apportioned over the adjustments for each specialty area.]

(a) A Pediatrics residency regression equation is defined to consist of:

i. The dependent variable, defined as the ratio of actual cost per case by DRG, for each pediatric teaching hospital and the Statewide average non-teaching cost per case, by DRG, for all pediatric non-teaching hospitals.

ii. The independent variable is defined as the number of residents in pediatric programs per 5,000 †case-mix adjusted discharges.

(b) The adjustment to the standard portion of the DRG rates for Pediatrics will be based on the slope of the independent variable times the ratio of Pediatric residents per 5,000 †case-mix adjusted discharges in excess of the number of residents equaling the value of the Y-intercept.

(c) Calculation of Pediatrics adjustments will exclude statistical outliers if their inclusion would result in loss of payment for primary care programs.

V. Family Practice

(a) Hospitals with accredited Family Practice residency programs will have their rates in the medical DRGs increased by a Family Practice supplement [calculated as follows:

A ratio consisting of the total number of Family Practice residents in the base year divided by the total number of residents in all accredited GME programs in the same year

times

The Statewide standard costs, adjusted for teaching, of all accredited teaching programs minus the non-teaching standard for all DRGs in teaching hospitals

divided by

The standard direct patient care costs of all DRGs in hospitals with a Family Practice program.

The standard portion of direct patient care rates for all DRGs of hospitals with an accredited Family Practice residency program will be multiplied by the Family Practice supplemental factor plus one.] equal to the standard adjustment for residents in Internal Medicine programs per 5,000 medical †case-mix adjusted discharges.

†Case-mix adjusted discharges = the hospital's number of inlier cases by DRG times the Statewide average cost per case for discharges within the appropriate groupings divided by the Statewide cost per case for inlier discharges in all DRGs times the hospital's actual number of [outlier] total discharges, including both inliers and outliers.

(a)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups

Proposed Amendment: N.J.A.C. 8:31B-5.3

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1991-525.

Submit written comments by November 20, 1991 to:

Beatrice Manning, Ph.D., Director

Reimbursement Systems Development, Evaluation and Research

Room 601, CN 360

Trenton, NJ 08625

The agency proposal follows:

Summary

In response to the concern of the industry to maintain currency of the data collected for prospective reimbursement through the Diagnosis Related Group (DRG) classification system, the Department is proposing amendments to delete the present New York State GROUPER Version 7.0 found at N.J.A.C. 8:31B-5.3 and to replace it with Version 8.0.

The revisions were based on recommendations received by New York State from the Division of Health Care Financing. The incorporation of the changes, following an analysis by New York State, has provided an updated GROUPER, which is referred to as Version 8.0. To provide more standardization between Medicare and non-Medicare DRGs, several DRG numbers have changed while maintaining the same descriptor of classification. In an effort to provide clarity, the New York State GROUPER Version 7.0 at N.J.A.C. 8:31B-5.3(c) is being deleted in its entirety and replaced by the New York State GROUPER Version 8.0. The DRG numbers are sequential; however, many found in Version 7.0 are no longer valid and are no longer reflected on the list.

New DRGs may be found in Major Diagnostic Category (MDC) 15, which contains the neonatal DRGs and should facilitate the transfer process to perinatal centers. Transfers DRGs will now note where the neonate was born.

New DRGs include refinements made in MDC 05 for Diseases and Disorders of the Circulatory System and these DRGs reflect the new technology being utilized.

The DRGs for Liver Transplant (#480), Bone Marrow Transplant (#481) and the Tracheostomies (#482 and #483) are now found in almost all MDCs, to allow more appropriate assignment.

Special DRGs have now been created for Multiple Channel Cochlear Implants (DRG 759) and Hemophilia Factors VIII and IX (DRG 760) to be properly reflective of the resources used.

New DRGs for the pediatric population, as suggested by a national association representing children's hospitals, were incorporated into five MDCs. This is intended to recognize increased costs associated with these cases.

The classification of patients into All Patient-Diagnosis Related Groups (AP-DRGs), as found in the New York State GROUPER Version 8.0, is a constantly evolving process designed to describe the complete cross section of patients seen in acute care hospitals.

The high and low outlier length of stay trim points have been set statistically, as was done for GROUPER Versions 6.0 and 7.0.

Social Impact

New Jersey hospitals have been on the DRG prospective reimbursement system since 1982. The concept of the DRG classification and the associated length of stay for each DRG have been the basis for the payment rate since that time. This proposed amendment is only a further refinement of the DRG classification, to keep it current. Thus, there should be no adverse social impact for the consumer, provider, payer or other interested parties.

Under the proposed amendment, New Jersey hospital rates will be based on the most current grouping of patients. Keeping the system current is a priority of the Department and a commitment made to the hospital industry and payers. Moving to this more current GROUPER will allow New Jersey rates to be established on the better-defined DRGs.

Economic Impact

The Statewide economic impact of the proposed amendment is budget neutral. Individual hospitals, however, may incur an increase or decrease in revenue, depending upon the cases served. Use of the Version 8.0 GROUPER simply assigns patients to the most appropriate diagnostic category, but neither increases nor decreases the total dollars in the reimbursement system. The use of this more current version should result in individual patients receiving a bill which more closely resembles their use of hospital services than does the current version of the GROUPER.

Regulatory Flexibility Statement

This proposed amendment applies to hospitals which have rates established by the Hospital Rate Setting Commission. Each of these

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

hospitals employ more than 100 full time employees and, therefore, are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

8:31B-5.3 Listing of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Groups follows:

Agency Note: The current Diagnosis Related Groups table at N.J.A.C. 8:31B-5.3(c) is proposed for deletion, but is not reproduced in this proposal. The full text of the proposed new table follows:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

OUTLIER TRIM POINT
LOW HIGH

(001)	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	4	57
(002)	CRANIOTOMY FOR TRAUMA AGE >17	3	53
(004)	SPINAL PROCEDURES	3	45
(005)	EXTRACRANIAL VASCULAR PROCEDURES	2	25
(006)	CARPAL TUNNEL RELEASE	1	14
(007)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W CC	3	54
(008)	PERIPH & CRANIAL NERVE & OTHER NERVOUS SYSTEM PROC W/O CC	1	12
(009)	SPINAL DISORDERS & INJURIES	2	26
(010)	NERVOUS SYSTEM NEOPLASMS W CC	3	38
(011)	NERVOUS SYSTEM NEOPLASMS W/O CC	2	21
(012)	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2	36
(013)	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	2	22
(014)	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	3	39
(015)	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	2	20
(016)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W CC	2	29
(017)	NON-SPECIFIC CEREBROVASCULAR DISORDERS W/O CC	2	20
(018)	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	2	26
(019)	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	2	15
(020)	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2	29
(021)	VIRAL MENINGITIS	2	15
(022)	HYPERTENSIVE ENCEPHALOPATHY	2	19
(023)	NON-TRAUMATIC STUPOR & COMA	2	22
(024)	SEIZURE & HEADACHE AGE >17 W CC	2	24
(025)	SEIZURE & HEADACHE AGE >17 W/O CC	2	13
(034)	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2	30
(035)	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	2	17
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(530)	CRANIOTOMY W MAJOR CC	7	101
(531)	NERVOUS SYSTEM PROCEDURES EXCEPT CRANIOTOMY W MAJOR CC	6	99
(532)	TIA, PRECEREBRAL OCCLUSION, SEIZURE & HEADACHE W MAJOR CC	3	40
(533)	OTHER NERVOUS SYSTEM DISORD EXCEPT TIA, SEIZURE & HEADACHE W MAJOR CC	4	61
(737)	VENTRICULAR SHUNT REVISION AGE <18	2	21
(738)	CRANIOTOMY AGE <18 W CC	4	64
(739)	CRANIOTOMY AGE <18 W/O CC	2	37
(761)	TRAUMATIC STUPOR & COMA, COMA >1 HR.	2	23
(762)	CONCUSSION, INTRACRANIAL INJURY W COMA <1 HR. OR NO COMA AGE <18	1	5
(763)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE <18	1	13
(764)	CONCUSSION, INTRACRANIAL INJURY W COMA <1 HR. OR NO COMA AGE >17 W CC	2	22
(765)	CONCUSSION, INTRACRANIAL INJURY W COMA <1 HR. OR NO COMA AGE >17 W/O CC	1	9
(766)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W CC	3	35
(767)	TRAUMATIC STUPOR & COMA, COMA <1 HR. AGE >17 W/O CC	2	20
(768)	SEIZURE & HEADACHE AGE <18 W CC	2	21
(769)	SEIZURE & HEADACHE AGE <18 W/O CC	1	8

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

OUTLIER TRIM POINT
LOW HIGH

(036)	RETINAL PROCEDURES	1	7
(037)	ORBITAL PROCEDURES	2	17
(038)	PRIMARY IRIS PROCEDURES	1	10
(039)	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	1	7

HEALTH

PROPOSALS

(040)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	1	6
(041)	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE <18	1	5
(042)	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	1	8
(043)	HYPHEMA	2	9
(044)	ACUTE MAJOR EYE INFECTIONS	2	14
(045)	NEUROLOGICAL EYE DISORDERS	2	14
(046)	OTHER DISORDERS OF THE EYE AGE >17 W CC	2	27
(047)	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	1	17
(048)	OTHER DISORDERS OF THE EYE AGE <18	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(534)	EYE PROCEDURES W MAJOR CC	2	48
(535)	EYE DISORDERS W MAJOR CC	2	31

MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH, AND THROAT

		OUTLIER TRIM	
		POINT	
		LOW	HIGH
(049)	MAJOR HEAD & NECK PROCEDURES	3	52
(050)	SIALOADENECTOMY	1	9
(051)	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1	7
(052)	CLEFT LIP & PALATE REPAIR	1	7
(053)	SINUS & MASTOID PROCEDURES AGE >17	1	8
(054)	SINUS & MASTOID PROCEDURES AGE <18	1	10
(055)	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	1	6
(056)	RHINOPLASTY	1	4
(057)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE >17	1	8
(058)	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY AGE <18	1	5
(059)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	1	2
(060)	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE <18	1	5
(061)	MYRINGOTOMY W TUBE INSERTION AGE >17	1	11
(062)	MYRINGOTOMY W TUBE INSERTION AGE <18	1	11
(063)	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	2	16
(064)	EAR, NOSE, MOUTH & THROAT MALIGNANCY	2	26
(065)	DYSEQUILIBRIUM	2	13
(066)	EPISTAXIS	2	14
(067)	EPIGLOTTITIS	2	11
(068)	OTITIS MEDIA & URI AGE >17 W CC	2	19
(069)	OTITIS MEDIA & URI AGE >17 W/O CC	2	10
(070)	OTITIS MEDIA & URI AGE <18	2	9
(071)	LARYNGOTRACHEITIS	1	7
(072)	NASAL TRAUMA & DEFORMITY	1	7
(073)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	1	10
(074)	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE <18	1	10
(168)	MOUTH PROCEDURES W CC	2	35
(169)	MOUTH PROCEDURES W/O CC	1	8
(185)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE >17	1	9
(186)	DENTAL & ORAL DISORDERS EXC EXTRACTIONS & RESTORATIONS AGE <18	1	8
(187)	DENTAL EXTRACTIONS & RESTORATIONS	1	2
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(536)	ENT & MOUTH PROCEDURES EXCEPT MAJOR HEAD & NECK W MAJOR CC	2	30
(537)	ENT & MOUTH DISORDERS W MAJOR CC	2	40
(759)	MULTIPLE CHANNEL COCHLEAR IMPLANTS	1	6

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(075) MAJOR CHEST PROCEDURES	3	38
(076) OTHER RESP SYSTEM O.R. PROCEDURES W CC	3	41
(077) OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2	24
(078) PULMONARY EMBOLISM	3	26
(079) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	3	40
(080) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	2	30
(082) RESPIRATORY NEOPLASMS	2	29
(083) MAJOR CHEST TRAUMA W CC	2	24
(084) MAJOR CHEST TRAUMA W/O CC	2	12
(085) PLEURAL EFFUSION W CC	2	27
(086) PLEURAL EFFUSION W/O CC	2	16
(087) PULMONARY EDEMA & RESPIRATORY FAILURE	2	22
(088) CHRONIC OBSTRUCTIVE PULMONARY DISEASE	2	27
(089) SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	2	29
(090) SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	2	16
(092) INTERSTITIAL LUNG DISEASE W CC	2	28
(093) INTERSTITIAL LUNG DISEASE W/O CC	2	17
(094) PNEUMOTHORAX W CC	2	26
(095) PNEUMOTHORAX W/O CC	2	13
(096) BRONCHITIS & ASTHMA AGE >17 W CC	2	22
(097) BRONCHITIS & ASTHMA AGE >17 W/O CC	2	13
(099) RESPIRATORY SIGNS & SYMPTOMS W CC	2	17
(100) RESPIRATORY SIGNS & SYMPTOMS W/O CC	2	10
(101) OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	2	22
(102) OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	2	12
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(475) RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3	44
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480) LIVER TRANSPLANT	1	52
(481) BONE MARROW TRANSPLANT	7	99
(482) TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483) TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(538) MAJOR CHEST PROCEDURES W MAJOR CC	5	54
(539) RESPIRATORY PROCEDURES EXCEPT MAJOR CHEST W MAJOR CC	5	75
(540) RESPIRATORY INFECTIONS INFLAMMATIONS W MAJOR CC	4	59
(541) RESPIRATORY DISORDERS EXCEPT INFECTIONS, BRONCHITIS & ASTHMA W MAJOR CC	3	43
(542) BRONCHITIS & ASTHMA W MAJOR CC	2	30
(631) BPD AND OTHER CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PERIOD	2	19
(740) CYSTIC FIBROSIS	3	23
(770) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18 W CC	2	30
(771) RESPIRATORY INFECTIONS & INFLAMMATIONS AGE <18 W/O CC	2	15
(772) SIMPLE PNEUMONIA & PLEURISY AGE <18 W CC	2	18
(773) SIMPLE PNEUMONIA & PLEURISY AGE <18 W/O CC	2	9
(774) BRONCHITIS & ASTHMA AGE <18 W CC	2	11
(775) BRONCHITIS & ASTHMA AGE <18 W/O CC	2	8

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

	OUTLIER TRIM POINT	
	LOW	HIGH
(103) HEART TRANSPLANT	6	69
(104) CARDIAC VALVE PROCEDURES W CARDIAC CATH	5	57
(105) CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	3	36
(106) CORONARY BYPASS W CARDIAC CATH	4	37
(107) CORONARY BYPASS W/O CARDIAC CATH	3	28
(108) OTHER CARDIOTHORACIC PROCEDURES	3	39
(110) MAJOR CARDIOVASCULAR PROCEDURES W CC	3	38
(111) MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2	20
(112) PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2	16
(113) AMPUTATION FOR CIRC SYSTEM EXCEPT UPPER LIMB & TOE	6	84
(114) UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	4	54
(115) PERM CARDIAC PACEMAKER IMPL W AMI, HEART FAILURE OR SHOCK	4	45
(116) PERM CARDIAC PACEMAKER IMPL W/O AMI, HEART FAILURE OR SHOCK	2	30
(117) CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	2	25

HEALTH

PROPOSALS

(118)	CARDIAC PACEMAKER DEVICE REPLACEMENT	2	22
(119)	VEIN LIGATION & STRIPPING	1	13
(120)	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	4	50
(121)	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	3	30
(122)	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	2	19
(123)	CIRCULATORY DISORDERS W AMI EXPIRED	2	22
(124)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	2	16
(125)	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1	7
(126)	ACUTE & SUBACUTE ENDOCARDITIS	5	56
(127)	HEART FAILURE & SHOCK	2	27
(128)	DEEP VEIN THROMBOPHLEBITIS	2	22
(129)	CARDIAC ARREST, UNEXPLAINED	2	13
(130)	PERIPHERAL VASCULAR DISORDERS W CC	2	27
(131)	PERIPHERAL VASCULAR DISORDERS W/O CC	2	16
(132)	ATHEROSCLEROSIS W CC	2	19
(133)	ATHEROSCLEROSIS W/O CC	2	14
(134)	HYPERTENSION	2	18
(135)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	2	23
(136)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	2	12
(137)	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE <18	2	23
(138)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	2	23
(139)	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	2	13
(140)	ANGINA PECTORIS	2	16
(141)	SYNCOPE & COLLAPSE W CC	2	21
(142)	SYNCOPE & COLLAPSE W/O CC	2	12
(143)	CHEST PAIN	2	10
(144)	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	2	25
(145)	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(478)	OTHER VASCULAR PROCEDURES W CC	3	48
(479)	OTHER VASCULAR PROCEDURES W/O CC	2	18
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(543)	CIRC DISORDERS EXCEPT AMI ENDOCARDITIS, CHF & ARRHYTHMIA W MAJOR CC	3	40
(544)	CHF & CARDIAC ARRHYTHMIA W MAJOR CC	3	44
(545)	CARDIAC VALVE PROCEDURE W MAJOR CC	5	73
(546)	CORONARY BYPASS W MAJOR CC	4	53
(547)	OTHER CARDIOTHORACIC PROCEDURES W MAJOR CC	4	60
(548)	CARDIAC PACEMAKER IMPLANT OR REVISION W MAJOR CC	4	52
(549)	MAJOR CARDIOVASCULAR PROCEDURES W MAJOR CC	5	80
(550)	OTHER VASCULAR PROCEDURES W MAJOR CC	3	54

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(146)	RECTAL RESECTION W CC	4	43
(147)	RECTAL RESECTION W/O CC	2	18
(148)	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	4	44
(149)	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	23
(150)	PERITONEAL ADHESIOLYSIS W CC	3	35
(151)	PERITONEAL ADHESIOLYSIS W/O CC	2	17
(152)	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2	28
(153)	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	2	15
(154)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	4	47
(155)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	2	22
(156)	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE <18	2	21
(157)	ANAL & STOMAL PROCEDURES W CC	2	21
(158)	ANAL & STOMAL PROCEDURES W/O CC	1	9
(159)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	2	22
(160)	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	1	9
(161)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	2	17
(162)	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	1	5
(163)	HERNIA PROCEDURES AGE <18	1	5
(164)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	3	27
(165)	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	2	14

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(166)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2	16
(167)	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	2	7
(170)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	3	50
(171)	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	2	20
(172)	DIGESTIVE MALIGNANCY W CC	2	30
(173)	DIGESTIVE MALIGNANCY W/O CC	1	13
(174)	GASTROINTESTINAL HEMORRHAGE W CC	2	23
(175)	GASTROINTESTINAL HEMORRHAGE W/O CC	2	14
(176)	COMPLICATED PEPTIC ULCER	2	17
(177)	UNCOMPLICATED PEPTIC ULCER W CC	2	21
(178)	UNCOMPLICATED PEPTIC ULCER W/O CC	1	8
(179)	INFLAMMATORY BOWEL DISEASE	2	20
(180)	GASTROINTESTINAL OBSTRUCTION W CC	2	27
(181)	GASTROINTESTINAL OBSTRUCTION W/O CC	2	13
(182)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDER AGE >17 W CC	2	20
(183)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDER AGE >17 W/O CC	1	10
(188)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	2	21
(189)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(551)	ESOPHAGITIS, GASTROENTERITIS & UNCOMPLICATED ULCERS W MAJOR CC	2	36
(552)	DIGESTIVE SYSTEM DISORDER EXCEPT ESOPHAGITIS, GASTROENT & UNCOMPLICATED ULCER W MAJOR CC	3	43
(553)	DIGESTIVE SYSTEM PROCEDURE EXCEPT HERNIA & MAJOR STOMACH OR BOWEL PROCEDURE W MAJOR CC	4	53
(554)	HERNIA PROCEDURES W MAJOR CC	3	47
(585)	MAJOR STOMACH, ESOPHAGEAL, DUODENAL, SMALL & LARGE BOWEL PROCEDURE W MAJOR CC	5	67
(776)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18 W CC	2	12
(777)	ESOPHAGITIS, GASTROENT & MISC DIGESTIVE DISORDERS AGE <18 W/O CC	1	7
(778)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18 W CC	2	22
(779)	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE <18 W/O CC	1	6

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

OUTLIER TRIM POINT

LOW HIGH

(191)	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5	68
(192)	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	3	35
(193)	BILIARY TRACT PROCEDURE EXCEPT ONLY TOTAL CHOLECYST W OR W/O COMMON DUCT EXPLORATION W CC	3	39
(194)	BILIARY TRACT PROCEDURE EXCEPT ONLY TOTAL CHOLECYST W OR W/O COMMON DUCT EXPLORATION W/O CC	2	23
(195)	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	3	31
(196)	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	2	19
(197)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	2	26
(198)	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	2	12
(199)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	4	43
(200)	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2	30
(201)	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3	48
(202)	CIRRHOSIS & ALCOHOLIC HEPATITIS	2	29
(203)	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	2	30
(204)	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	2	21
(205)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W CC	2	27
(206)	DISORDERS OF LIVER EXCEPT MALIG, CIRRHOSIS, ALC HEPATITIS W/O CC	2	13
(207)	DISORDERS OF THE BILIARY TRACT W CC	2	20
(208)	DISORDERS OF THE BILIARY TRACT W/O CC	2	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127

HEALTH

PROPOSALS

(555)	PANCREAS, LIVER & OTHER BILIARY TRACT PROCEDURES EXC LIVER TRANSPLANT W MAJOR CC	5	66
(556)	CHOLECYSTECTOMY AND OTHER HEPATOBILIARY PROCEDURES W MAJOR CC	3	45
(557)	HEPATOBILIARY AND PANCREAS DISORDERS W MAJOR CC	3	41

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES AND DISORDERS OF THE MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

		OUTLIER TRIM POINT	
		LOW	HIGH
(209)	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	3	35
(210)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	4	49
(211)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	3	33
(212)	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE <18	2	30
(213)	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	4	54
(216)	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	3	42
(217)	WOUND DEBRID & SKIN GRAFT EXC. HAND, FOR MUSCULOSKELETAL & CONN TISSUE DISORDERS	3	45
(218)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W CC	3	39
(219)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE >17 W/O CC	2	19
(220)	LOWER EXTREM & HUMER PROC EXC HIP, FOOT, FEMUR AGE <18	2	14
(221)	KNEE PROCEDURES W CC	2	30
(222)	KNEE PROCEDURES W/O CC	1	10
(223)	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	2	18
(224)	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	1	8
(225)	FOOT PROCEDURES	1	14
(226)	SOFT TISSUE PROCEDURES W CC	2	36
(227)	SOFT TISSUE PROCEDURES W/O CC	1	9
(228)	MAJOR THUMB OR JOINT PROC, OR OTHER HAND OR WRIST PROC W CC	1	13
(229)	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	1	8
(230)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES OF HIP & FEMUR	2	16
(231)	LOCAL EXCISION & REMOVAL OF INT FIXATION DEVICES EXCEPT HIP & FEMUR	1	17
(232)	ARTHROSCOPY	1	13
(233)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W CC	3	42
(234)	OTHER MUSCULOSKELETAL SYSTEM & CONN TISSUE O.R. PROC W/O CC	2	16
(235)	FRACTURES OF FEMUR	3	49
(236)	FRACTURES OF HIP & PELVIS	3	34
(237)	SPRAINS, STRAINS & DISLOCATIONS OF HIP, PELVIS & THIGH	2	23
(238)	OSTEOMYELITIS	3	39
(239)	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISSUE MALIGNANCY	3	37
(240)	CONNECTIVE TISSUE DISORDERS W CC	2	28
(241)	CONNECTIVE TISSUE DISORDERS W/O CC	2	17
(242)	SEPTIC ARTHRITIS	2	24
(243)	MEDICAL BACK PROBLEMS	2	17
(244)	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	2	26
(245)	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	2	17
(246)	NON-SPECIFIC ARTHROPATHIES	2	16
(247)	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDER	2	13
(248)	TENDONITIS, MYOSITIS & BURSITIS	2	13
(249)	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1	12
(250)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W CC	2	22
(251)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE >17 W/O CC	1	9
(252)	FX, SPRAIN, STRAIN & DISLOC OF FOREARM, HAND, FOOT AGE <18	1	4
(253)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE >17 W CC	2	29
(254)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE >17 W/O CC	2	14
(255)	FX, SPRAIN, STRAIN & DISLOC OF UPPER ARM, LOWER LEG EXC. FOOT AGE <18	1	10
(256)	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	2	16
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(471)	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	5	68
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(558)	MAJOR MUSCULOSKELETAL PROCEDURES EXC BILATERAL OR MULTIPLE MAJOR JOINT W MAJOR CC	6	77
(559)	NON-MAJOR MUSCULOSKELETAL PROCEDURES W MAJOR CC	4	63
(560)	MUSCULOSKELETAL DISORD EXC OSTEO, SEPTIC ARTH AND CONNECTIVE TISSUE DISORD W MAJOR CC	3	47

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(561)	OSTEOMYELITIS, SEPTIC ARTHRITIS & CONN TISSUE DISORDER W MAJOR CC	4	59
(755)	SPINAL FUSION W CC	3	43
(756)	SPINAL FUSION W/O CC	2	19
(757)	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	3	41
(758)	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	3	20

MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST

		OUTLIER TRIM POINT	
		LOW	HIGH
(257)	TOTAL MASTECTOMY FOR MALIGNANCY W CC	2	18
(258)	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	2	10
(259)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	2	24
(260)	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	1	10
(261)	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1	6
(262)	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	1	8
(263)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W CC	5	74
(264)	SKIN GRAFT &/OR DEBRIDEMENT FOR SKIN ULCER, CELLULITIS W/O CC	3	42
(265)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W CC	2	32
(266)	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER, CELLULITIS W/O CC	2	12
(267)	PERIANAL & PILONIDAL PROCEDURES	1	6
(268)	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1	20
(269)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W CC	2	39
(270)	OTHER SKIN, SUBCUT TISSUE & BREAST PROC W/O CC	1	11
(271)	SKIN ULCERS	3	40
(272)	MAJOR SKIN DISORDERS W CC	2	26
(273)	MAJOR SKIN DISORDERS W/O CC	2	24
(274)	MALIGNANT BREAST DISORDERS W CC	2	29
(275)	MALIGNANT BREAST DISORDERS W/O CC	1	8
(276)	NON-MALIGNANT BREAST DISORDERS	1	8
(277)	CELLULITIS AGE >17 W CC	2	28
(278)	CELLULITIS AGE >17 W/O CC	2	18
(279)	CELLULITIS AGE <18	2	11
(280)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W CC	2	19
(281)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE >17 W/O CC	1	9
(282)	TRAUMA TO THE SKIN, SUBCUTANEOUS TISSUE & BREAST AGE <18	1	7
(283)	MINOR SKIN DISORDERS W CC	2	26
(284)	MINOR SKIN DISORDERS W/O CC	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(562)	MAJOR SKIN & BREAST DISORDERS W MAJOR CC	3	54
(563)	OTHER SKIN DISORDERS W MAJOR CC	3	38
(564)	SKIN & BREAST PROCEDURES W MAJOR CC	5	78

MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL, AND METABOLIC DISEASES AND DISORDERS

		OUTLIER TRIM POINT	
		LOW	HIGH
(285)	AMPUTATION OF LOW LIMB FOR ENDOCRINE, NUTRIT, & METABOLIC DISORDERS	6	77
(286)	ADRENAL & PITUITARY PROCEDURES	3	30
(287)	SKIN GRAFT & WOUND DEBRID FOR ENDOC, NUTRIT & METABOLIC DISORDERS	4	58
(288)	O.R. PROCEDURES FOR OBESITY	2	18
(289)	PARATHYROID PROCEDURES	2	21
(290)	THYROID PROCEDURES	2	11
(291)	THYROGLOSSAL PROCEDURES	1	4
(292)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W CC	4	66
(293)	OTHER ENDOCRINE, NUTRITIONAL & METABOLIC O.R. PROC W/O CC	2	36
(294)	DIABETES AGE >35	2	25
(295)	DIABETES AGE <36	2	17
(296)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	2	33
(297)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	2	22
(298)	NUTRITIONAL & MISC METABOLIC DISORDERS AGE <18	2	15
(299)	INBORN ERRORS OF METABOLISM	1	15
(300)	ENDOCRINE DISORDERS W CC	2	27

HEALTH

PROPOSALS

(301)	ENDOCRINE DISORDERS W/O CC	2	18
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(565)	ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT EATING DISORDER OR CYSTIC FIBROSIS W/O MAJOR CC	6	99
(566)	ENDOCRINE, NUTRITIONAL & METABOLIC DISORDER EXCEPT EATING DISORDER OR CYSTIC FIBROSIS W MAJOR CC	3	46
(740)	CYSTIC FIBROSIS	3	23
(753)	COMPULSIVE NUTRITION DISORDER REHABILITATION	6	85

MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT

		OUTLIER TRIM POINT	
		LOW	HIGH
(302)	KIDNEY TRANSPLANT	4	50
(303)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NEOPLASM	3	36
(304)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W CC	3	35
(305)	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPLASM W/O CC	2	20
(306)	PROSTATECTOMY W CC	3	30
(307)	PROSTATECTOMY W/O CC	2	19
(308)	MINOR BLADDER PROCEDURES W CC	3	38
(309)	MINOR BLADDER PROCEDURES W/O CC	2	17
(310)	TRANSURETHRAL PROCEDURES W CC	2	22
(311)	TRANSURETHRAL PROCEDURES W/O CC	2	10
(312)	URETHRAL PROCEDURES AGE >17 W CC	2	18
(313)	URETHRAL PROCEDURES AGE >17 W/O CC	1	8
(314)	URETHRAL PROCEDURES AGE <18	2	22
(315)	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	3	44
(316)	RENAL FAILURE	2	30
(317)	ADMIT FOR RENAL DIALYSIS	1	13
(318)	KIDNEY & URINARY TRACT NEOPLASMS W CC	2	32
(319)	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1	10
(320)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	2	28
(321)	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	2	17
(322)	KIDNEY & URINARY TRACT INFECTIONS AGE <18	2	11
(323)	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	2	12
(324)	URINARY STONES W/O CC	1	6
(325)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	2	19
(326)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	1	8
(327)	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE <18	1	11
(328)	URETHRAL STRICTURE AGE >17 W CC	1	12
(329)	URETHRAL STRICTURE AGE >17 W/O CC	1	4
(330)	URETHRAL STRICTURE AGE <18	1	2
(331)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	2	22
(332)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	1	11
(333)	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE <18	1	11
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(567)	KIDNEY & URINARY TRACT PROCEDURES EXCEPT KIDNEY TRANSPLANT W MAJOR CC	5	76
(568)	RENAL FAILURE W MAJOR CC	3	47
(569)	KIDNEY & URINARY TRACT DISORDER EXCEPT RENAL FAILURE W MAJOR CC	3	42

MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(334)	MAJOR MALE PELVIC PROCEDURES W CC	3	24
(335)	MAJOR MALE PELVIC PROCEDURES W/O CC	3	20
(336)	TRANSURETHRAL PROSTATECTOMY W CC	2	25

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(337)	TRANSURETHRAL PROSTATECTOMY W/O CC	2	12
(338)	TESTES PROCEDURES, FOR MALIGNANCY	2	22
(339)	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1	11
(340)	TESTES PROCEDURES, NON-MALIGNANCY AGE <18	1	4
(341)	PENIS PROCEDURES	2	15
(342)	CIRCUMCISION AGE >17	1	11
(343)	CIRCUMCISION AGE <18	1	3
(344)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC FOR MALIGNANCY	2	16
(345)	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	2	16
(346)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	2	26
(347)	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1	10
(348)	BENIGN PROSTATIC HYPERTROPHY W CC	2	14
(349)	BENIGN PROSTATIC HYPERTROPHY W/O CC	1	5
(350)	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	2	10
(351)	STERILIZATION, MALE	1	1
(352)	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(570)	MALE REPRODUCTIVE DISORDERS W MAJOR CC	3	36
(571)	MALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	50

MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM

		OUTLIER TRIM POINT	
		LOW	HIGH
(353)	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	3	31
(354)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W CC	2	24
(355)	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIGNANCY W/O CC	2	14
(356)	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	2	11
(357)	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	3	32
(358)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	2	15
(359)	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	2	9
(360)	VAGINA, CERVIX & VULVA PROCEDURES	1	14
(361)	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1	8
(362)	ENDOSCOPIC TUBAL INTERRUPTION	1	4
(363)	D&C CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	2	16
(364)	D&C CONIZATION EXCEPT FOR MALIGNANCY	1	9
(365)	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2	36
(366)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM CC	3	39
(367)	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM, W/O CC	1	12
(368)	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	2	12
(369)	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	1	8
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(572)	FEMALE REPRODUCTIVE DISORDERS W MAJOR CC	2	38
(573)	NON-RADICAL FEMALE REPRODUCTIVE PROCEDURES W MAJOR CC	3	38

MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH, AND THE PUERPERIUM

		OUTLIER TRIM POINT	
		LOW	HIGH
(370)	CESAREAN SECTION W CC	2	12
(371)	CESAREAN SECTION W/O CC	2	8
(372)	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	2	9
(373)	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	1	5
(374)	VAGINAL DELIVERY W STERILIZATION &/OR D&C	2	7
(375)	VAGINAL DELIVERY W O.R. PROC EXCEPT STERILIZATION &/OR D&C	1	7
(376)	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	2	10
(377)	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1	9
(378)	ECTOPIC PREGNANCY	2	8
(379)	THREATENED ABORTION	1	10

HEALTH

PROPOSALS

(380)	ABORTION W/O D&C	1	4
(381)	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	1	5
(382)	FALSE LABOR	1	3
(383)	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	2	11
(384)	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	1	7
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(650)	HIGH RISK CESAREAN SECTION W CC	2	24
(651)	HIGH RISK CESAREAN SECTION W/O CC	2	16
(652)	HIGH RISK VAGINAL DELIVERY W STERILIZATION AND/OR D&C	2	10

MAJOR DIAGNOSTIC CATEGORY 15: NEWBORN AND OTHER NEONATES WITH CONDITIONS ORIGINATING IN THE PERINATAL PERIOD

		OUTLIER TRIM POINT	
		LOW	HIGH
(602)	NEONATE, BIRTH WT <750G, DISCHARGED ALIVE	14	168
(603)	NEONATE, BIRTH WT <750G, DIED	2	59
(604)	NEONATE, BIRTH WT 750-999G, DISCHARGED ALIVE	14	137
(605)	NEONATE, BIRTH WT 750-999G, DIED	4	104
(606)	NEONATE, BIRTH WT 1000-1499G, W SIGNIF O.R. PROC, DISCHARGED ALIVE	13	129
(607)	NEONATE, BIRTH WT 1000-1499G, W/O SIGNIF O.R. PROC, DISCHARGED ALIVE	8	88
(608)	NEONATE, BIRTH WT 1000-1499G, DIED	3	60
(609)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	8	118
(610)	NEONATE, BIRTH WT 1500-1999G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	6	97
(611)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	6	75
(612)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	5	51
(613)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	4	40
(614)	NEONATE, BIRTH WT 1500-1999G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	3	30
(615)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	8	133
(616)	NEONATE, BIRTH WT 2000-2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	4	70
(617)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	4	56
(618)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	3	28
(619)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	21
(620)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W ONLY NORM NEWBORN DIAG.	2	14
(621)	NEONATE, BIRTH WT 2000-2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	18
(622)	NEONATE, BIRTH WT >2499G, W SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	7	116
(623)	NEONATE, BIRTH WT >2499G, W SIGNIF O.R. PROC, W/O MULT MAJOR PROBLEM	2	36
(624)	NEONATE, BIRTH WT >2499G, W MINOR ABDOMINAL PROCEDURE	2	52
(626)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MULT MAJOR PROBLEM	3	53
(627)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MAJOR PROBLEM	2	24
(628)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W MINOR PROBLEM	2	16
(629)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W ONLY NORMAL NEWBORN DIAG.	2	6
(630)	NEONATE, BIRTH WT >2499G, W/O SIGNIF O.R. PROC, W OTHER PROBLEM	2	18
(635)	NEONATAL AFTERCARE FOR WEIGHT GAIN	3	31
(637)	NEONATE, DIED W/IN ONE DAY OF BIRTH, BORN HERE	1	1
(638)	NEONATE, DIED W/IN ONE DAY OF BIRTH, NOT BORN HERE	1	1
(639)	NEONATE, TRANSFERRED <5 DAYS OLD, BORN HERE	1	4
(640)	NEONATE, TRANSFERRED <5 DAYS OLD, NOT BORN HERE	1	4

MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND BLOOD FORMING ORGANS AND IMMUNOLOGICAL DISORDERS

		OUTLIER TRIM POINT	
		LOW	HIGH
(392)	SPLENECTOMY AGE >17	3	38
(393)	SPLENECTOMY AGE <18	2	16
(394)	OTHER O.R. PROCEDURES OF BLOOD AND BLOOD FORMING ORGANS	2	18
(395)	RED BLOOD CELL DISORDERS AGE >17	2	18
(397)	COAGULATION DISORDERS	2	16
(398)	RETICULENDOTHELIAL & IMMUNITY DISORDERS W CC	2	19
(399)	RETICULENDOTHELIAL & IMMUNITY DISORDERS W/O CC	1	12
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38

PROPOSALS

Interested Persons see Inside Front Cover

HEALTH

(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY OTHER THAN FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(574)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL DISORDERS W MAJOR CC	2	33
(575)	BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL PROCEDURES W MAJOR CC	5	69
(760)	HEMOPHILIA FACTORS VIII AND IX	1	9
(784)	ACQUIRED HEMOLYTIC ANEMIA OR SICKLE CELL CRISIS AGE <18	2	16
(785)	OTHER RED BLOOD CELL DISORDERS AGE <18	1	9

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISEASES AND DISORDERS AND POORLY DIFFERENTIATED NEOPLASMS

		OUTLIER TRIM POINT	
		LOW	HIGH
(400)	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	3	39
(401)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3	46
(402)	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. W/O CC	2	17
(403)	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2	36
(404)	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1	16
(406)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W CC	3	40
(407)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W MAJOR O.R. PROC. W/O CC	2	21
(408)	MYELOPROLIF DISORD OR POOR DIFF NEOPL W OTHER O.R. PROC.	2	28
(409)	RADIOTHERAPY	2	35
(410)	CHEMOTHERAPY	1	7
(411)	HISTORY OF MALIGNANCY W/O ENDOSCOPY	1	6
(412)	HISTORY OF MALIGNANCY W ENDOSCOPY	1	2
(413)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W CC	3	37
(414)	OTHER MYELOPROLIF DISORDER OR POORLY DIFF NEOPL DIAG W/O CC	1	17
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(576)	ACUTE LEUKEMIA W MAJOR CC	5	71
(577)	MYELOPROLIF DISORDERS OF POORLY DIFF NEOPLASMS W MAJOR CC	3	51
(578)	LYMPHOMA & NON-ACUTE LEUKEMIA, W MAJOR CC	4	60
(579)	PROCEDURES FOR LYMPHOMA, LEUKEMIA, MYELOPROLIF DISORDERS W MAJOR CC	6	82
(780)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18 W CC	2	28
(781)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE <18 W/O CC	2	12
(782)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17 W CC	3	44
(783)	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17 W/O CC	2	17

MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC OR UNSPECIFIED SITES)

		OUTLIER TRIM POINT	
		LOW	HIGH
(415)	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	4	53
(416)	SEPTICEMIA AGE >17	3	36
(417)	SEPTICEMIA AGE <18	2	17
(418)	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	2	21
(419)	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	2	22
(420)	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	2	16
(421)	VIRAL ILLNESS AGE >17	2	14
(422)	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE <18	2	7
(423)	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	2	22
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(580)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS EXCEPT SEPTICEMIA W MAJOR CC	2	40
(581)	SYSTEMIC INFECTIONS & PARASITIC DISORDERS/PROCEDURES W MAJOR CC	6	96
(584)	SEPTICEMIA W MAJOR CC	3	47

MAJOR DIAGNOSTIC CATEGORY 19: MENTAL DISEASES AND DISORDERS

		OUTLIER TRIM POINT	
		LOW	HIGH
(424)	O.R. PROCEDURE W PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	5	80
(425)	ACUTE ADJUST REACTION & DISTURBANCE OF PSYCHOSOCIAL DYSFUNCTION	2	23

HEALTH**PROPOSALS**

(426)	DEPRESSIVE NEUROSES	2	25
(427)	NEUROSES EXCEPT DEPRESSIVE	2	30
(428)	DISORDERS OF PERSONALITY & IMPULSE CONTROL	2	30
(429)	ORGANIC DISTURBANCES & MENTAL RETARDATION	3	56
(430)	PSYCHOSES	3	40
(431)	CHILDHOOD MENTAL DISORDERS	3	55
(432)	OTHER MENTAL DISORDER DIAGNOSES	2	17
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX AND PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127

**MAJOR DIAGNOSTIC CATEGORY 20: ALCOHOL/DRUG USE AND ALCOHOL/DRUG
INDUCED ORGANIC MENTAL DISORDERS**

		OUTLIER TRIM POINT	
		LOW	HIGH
(743)	OPIOID ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(744)	OPIOID ABUSE OR DEPENDENCE W CC	2	22
(745)	OPIOID ABUSE OR DEPENDENCE W/O CC	2	19
(746)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	11
(747)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W CC	2	23
(748)	COCAINE OR OTHER DRUG ABUSE OR DEPENDENCE W/O CC	2	20
(749)	ALCOHOL ABUSE OR DEPENDENCE, LEFT AGAINST MEDICAL ADVICE	1	9
(750)	ALCOHOL ABUSE OR DEPENDENCE, W CC	2	23
(751)	ALCOHOL ABUSE OR DEPENDENCE, W/O CC	2	18
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127

MAJOR DIAGNOSTIC CATEGORY 21: INJURIES, POISONINGS, AND TOXIC EFFECT OF DRUGS

		OUTLIER TRIM POINT	
		LOW	HIGH
(439)	SKIN GRAFTS FOR INJURIES	2	51
(440)	WOUND DEBRIDEMENTS FOR INJURIES	2	37
(441)	HAND PROCEDURES FOR INJURIES	2	19
(442)	OTHER O.R. PROCEDURES FOR INJURIES W CC	2	36
(443)	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	2	19
(444)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W CC	2	19
(445)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE >17 W/O CC	1	9
(446)	INJURIES TO UNSPECIFIED OR MULTIPLE SITES AGE <18	1	7
(447)	ALLERGIC REACTIONS AGE >17	1	9
(448)	ALLERGIC REACTIONS AGE <18	1	7
(449)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	2	23
(450)	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	1	13
(451)	POISONING & TOXIC EFFECTS OF DRUGS AGE <18	1	10
(452)	COMPLICATION OF TREATMENT W CC	2	20
(453)	COMPLICATION OF TREATMENT W/O CC	1	12
(454)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W CC	2	27
(455)	OTHER INJURY, POISONING & TOXIC EFFECT DIAGNOSIS W/O CC	1	9
(468)	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(582)	INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	2	34
(583)	PROCEDURES FOR INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC	5	74
(752)	LEAD POISONING	2	10

MAJOR DIAGNOSTIC CATEGORY 22: BURNS

	OUTLIER TRIM POINT	
	LOW	HIGH
(456) BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	3	51
(457) EXTENSIVE BURNS W/O O.R. PROCEDURE	2	19
(458) NON-EXTENSIVE BURNS W SKIN GRAFT	4	51
(459) NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROCEDURE	2	30
(460) NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	2	20
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57
(472) EXTENSIVE BURNS W O.R. PROCEDURE	9	110
(476) PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477) NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480) LIVER TRANSPLANT	1	52
(481) BONE MARROW TRANSPLANT	7	99
(482) TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483) TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127

MAJOR DIAGNOSTIC CATEGORY 23: FACTORS INFLUENCING HEALTH STATUS AND OTHER CONTACTS WITH HEALTH SERVICES

	OUTLIER TRIM POINT	
	LOW	HIGH
(461) O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	2	33
(462) REHABILITATION	5	61
(463) SIGNS & SYMPTOMS W CC	2	29
(464) SIGNS & SYMPTOMS W/O CC	1	13
(465) AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	4
(466) AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	1	6
(467) OTHER FACTORS INFLUENCING HEALTH STATUS	1	22
(480) LIVER TRANSPLANT	1	52
(481) BONE MARROW TRANSPLANT	7	99
(482) TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483) TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127
(633) MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	2	29
(634) MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2	8
(636) INFANT AFTERCARE FOR WEIGHT GAIN, AGE >28 DAYS <1 YEAR	3	51
(754) TERTIARY AFTERCARE, AGE ≥1 YEAR	3	47

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IMMUNODEFICIENCY (HIV) INFECTIONS

	OUTLIER TRIM POINT	
	LOW	HIGH
(700) HIV WITH SPECIFIED RELATED CONDITION, AGE <13	2	32
(701) HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W OPIOID USE, AGE >12	5	57
(702) HIV RELATED CENTRAL NERVOUS SYSTEM DISEASE, W/O OPIOID USE, AGE >12	4	66
(704) HIV RELATED MALIGNANCY, W OPIOID USE, AGE >12	4	38
(705) HIV RELATED MALIGNANCY, W/O OPIOID USE, AGE >12	4	55
(707) HIV RELATED INFECTION, W OPIOID USE, AGE >12	3	44
(708) HIV RELATED INFECTION, W/O OPIOID USE, AGE >12	4	55
(710) HIV WITH OTHER RELATED CONDITION, W OPIOID USE, AGE >12	2	25
(711) HIV WITH OTHER RELATED CONDITION, W/O OPIOID USE, AGE >12	2	34
(712) HIV W/O SPECIFIED RELATED CONDITION, AGE <13	1	21
(713) HIV W/O SPECIFIED RELATED CONDITION, W OPIOID USE, AGE >12	3	43
(714) HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE >12	2	36

MAJOR DIAGNOSTIC CATEGORY 25: MULTIPLE SIGNIFICANT TRAUMA

	OUTLIER TRIM POINT	
	LOW	HIGH
(730) CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5	94
(731) HIP, FEMUR OR LIMB PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	6	76
(732) OTHER O.R. PROCEDURE FOR MULTIPLE SIGNIFICANT TRAUMA	4	58
(733) HEAD, CHEST AND LOWER LIMB DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	3	42
(734) OTHER DIAGNOSES OF MULTIPLE SIGNIFICANT TRAUMA	2	33
(468) EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	4	57

(476)	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	5	56
(477)	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2	38
(480)	LIVER TRANSPLANT	1	52
(481)	BONE MARROW TRANSPLANT	7	99
(482)	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4	65
(483)	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	10	127

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Psychiatric Beds Adult Closed Acute Psychiatric Beds

Proposed Amendments: N.J.A.C. 8:43E-3.10 and 3.15

Authorized By: Frances J. Dunston, M.D., M.P.H.,
 Commissioner, Department of Health (with approval of the Health Care administration Board).
 Authority: N.J.S.A. 26:2K-35 et seq., 26:2H-1 et seq. and 27:27-1 et seq.
 Proposal Number: PRN 1991-526.

Submit comments by November 20, 1991 to:
 John J. Gontarski, Chief
 Health Systems Review, Room 604
 New Jersey Department of Health
 CN 360
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

On October 12, 1989, the Department of Health established rules to govern the planning and certificate of need review of adult closed acute psychiatric beds. The Public Advocate challenged these rules on the ground that the rules permit intrusion into patient privacy and violations of the confidentiality of patient information. On April 2, 1991, the Appellate Division of the Superior Court of New Jersey held invalid and unauthorized N.J.A.C. 8:43E-3.10(a)4 and 3.15(a)2, to the extent that they, "authorized community liaison participation in the work of the [short term care facility] treatment team, other than discharge planning." In all other respects, the rules were upheld. The Department is hereby amending the rules to make it clear that liaison participation with the treatment team is limited to discharge planning and does not extend to any work of the treatment team not related to this activity. *In the Matter of the Appeal of the Adoption of N.J.A.C. 8:43E-3.1 et seq., by the New Jersey Department of Health, Dkt. No. A-2330-89T3 (App. Div. April 2, 1991).*

Social Impact

The need for the early initiation of discharge planning is deemed to be crucial for permitting the early discharge of patients from short term care facilities. The Department feels that this need can be met with the following amendatory language, which is in compliance with the decision of the court.

Economic Impact

The proposed rule amendments are not expected to have any impact on existing providers of Intermediate Adult and Special Psychiatric Beds since they pertain to staff of outside agencies.

Regulatory Flexibility Statement

Since only large employers (namely hospitals) having over 100 employees would be qualified for a certificate of need for intermediate and special psychiatric beds, no recordkeeping, reporting, or other compliance requirements are placed upon small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore no Regulatory Flexibility Analysis is required.

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

8:43E-3.10 Liaison services

(a) The proposed affiliation agreement between the STCF and the local mental health liaison agency required as part of a certificate of need application shall provide for the following:

1.-3. (No change.)
 4. Guidelines [for] **limiting** liaison participation in the STCF treatment team meetings [including liaison input regarding] **to discharge planning. Liaison participation shall be focused toward** discharge to the appropriate combination of private and public community services; and

5. (No change.)
 (b) (No change.)

8:43E-3.15 Discharge and transfer planning

(a) The applicant shall describe the discharge planning process in writing. The description shall include provisions for discharge planning to be conducted as an ongoing process, beginning at admission and involving liaison staff. The discharge planning process shall also apply to patients being transferred to another facility. The applicant shall assure that:

1. (No change.)
 2. [A treatment team, made up of representatives]. **Representatives** from the various disciplines **in the treatment team** (listed in N.J.A.C. 8:43E-3.12(b)] **8:43E-3.14(b))**, the liaison, and a member of the patient's natural support system, when appropriate, shall meet as often as necessary to develop an appropriate **discharge plan. Liaison participation shall be limited to the development of the discharge plan;**

3.-4. (No change.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Route N.J. 57 in Warren County

Proposed Amendment: N.J.A.C. 16:28-1.38

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

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

Proposal Number: PRN 1991-509.

Submit comments by November 20, 1991 to:

Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 Bureau of Policy and Legislative Analysis
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 (609) 530-2041

The agency proposal follows:

Summary

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 57 in the Town of Hackettstown, Warren County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The speed limit will be decreased to 40 miles per hour, between the Mansfield Township easterly line and Route N.J. 182.

The Department's Bureau of Traffic Engineering and Safety Programs, as part of a review of current conditions and in the interest of safety, conducted a traffic investigation and resurvey. The investigation and resurvey proved that the establishment of the revised "speed limit" zone along Route N.J. 57 in the Town of Hackettstown, Warren County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.38 based upon the traffic investigation and resurvey.

Social Impact

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 57 in the Town of Hackettstown, Warren County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28-1.38 Route 57

(a) The rate of speed designated for the certain [part] parts of State highway Route N.J. 57 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic in Warren County:
 - i.-vi. (No change).
 - vii. Town of Hackettstown:

[(1) Zone 1: 50 miles per hour between the Mansfield Township easterly line and Lawrence Road (approximate mileposts 20:53 to 20:75); thence

(2) Zone 2: 40 miles per hour between Lawrence Road and Route N.J. 182 (approximate mileposts 20.75 to 21.10.)

(1) Zone 1: 40 miles per hour between the Township of Mansfield easterly line and Route N.J. 182 (approximate mileposts 20.53 to 21.10).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Restricted Parking and Stopping
Routes N.J. 7 in Essex County; N.J. 166 in Ocean County; and U.S. 206 in Burlington County**

Proposed Amendments: N.J.A.C. 16:28A-1.6, 1.50 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 and 39:4-199.
Proposal Number: PRN 1991-516.

Submit oral or written comments by November 20, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 7 in Nutley Township, Essex County; N.J. 166 in Dover

Township, Ocean County; and U.S. 206 in Bordentown Township, Burlington County, for the efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops.

The Department's Bureau of Traffic Engineering and Safety Programs, based upon requests from the local governments, and as part of a review of current safety conditions, conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Routes N.J. 7 in Essex County, N.J. 166 in Ocean County, and U.S. 206 in Burlington County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.6, 1.50 and 1.57 based upon the traffic investigations.

Additionally, the Department has deleted N.J.A.C. 16:28-1.50(b) and added a revised new subsection (b) to provide clarity within the subsection and to indicate restrictions within municipalities by counties. Minor administrative corrections have also been made within the various subsections of the rule.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Route N.J. 7 in Nutley Township, Essex County; N.J. 166 in Dover Township, Ocean County; and U.S. 206 in Bordentown Township, Burlington County, for the efficient flow of traffic, the enhancement of safety, the well-being of the populace, and the safe on/off loading of passengers at established bus stops. 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 bear the costs for "no parking bus stop" zone signs. Motorists who violate the rules will be assessed the appropriate fine as established by the "State of New Jersey 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 amendments primarily affect the motoring public and 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-1.6 Route 7

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

(c) [In accordance with the provisions of N.J.S.A. 39:4-138.1, the] **The** certain parts of State [Highway] **highway** Route 7 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is [hereby] granted to erect appropriate signs at the following established bus stops:

- 1. No parking bus stops in Belleville Township, Essex County:
 - i. (No change.)

[i.]ii. Along Washington Avenue, northbound on the easterly side thereof at:

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

2. No parking bus stops in Nutley Township, Essex County:

i. Along the northbound (easterly) side:

(1) Near side bus stops at:

(A) Hancox Avenue—Beginning at a point 25 feet south of the crosswalk, and extending 95 feet southerly therefrom.

(B) Park Avenue—Beginning at a point 25 feet south of the crosswalk, and extending 95 feet southerly therefrom.

(C) Grant Avenue—Beginning at a point 25 feet south of the crosswalk, and extending 95 feet southerly therefrom.

(D) Rutgers Place—Beginning at a point 25 feet south of the prolongation of the southerly curb line of Rutgers Place, and extending 85 feet southerly therefrom.

(2) Far side bus stops at:

(A) Nutley Avenue—Beginning at a point 35 feet north of the northerly curb line of Nutley Avenue and extending 75 feet northerly therefrom.

(B) **Howe Avenue**—Beginning at a point 35 feet north of the prolongation of the northerly curb line of Howe Avenue, and extending 75 feet northerly therefrom.

ii. Along the southbound (westerly) side:

(1) Near side bus stops at:

(A) **Rutgers Place**—Beginning at a point 35 feet north of the northerly curb line of Rutgers Place, and extending 85 feet northerly therefrom.

(B) **Park Avenue**—Beginning at a point 25 feet north of the crosswalk, and extending 95 feet northerly therefrom.

(2) Far side bus stops at:

(A) **Nutley Avenue**—Beginning at a point 35 feet south of the southerly curb line of Nutley Avenue, and extending 75 feet southerly therefrom.

(B) **Grant Avenue**—Beginning at a point 25 feet south of the crosswalk, and extending 85 feet southerly therefrom.

(C) **Hancox Avenue**—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Hancox Avenue, and extending 75 feet southerly therefrom.

(D) **Howe Avenue**—Beginning at a point 35 feet south of the southerly curb line of Howe Avenue, and extending 75 feet southerly therefrom.

16:28A-1.50 Route 166

(a) The certain parts of State highway Route N.J. 166 described in [(a) of this section] **this subsection** are designated and established as “no [parking] stopping or standing” zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-2. (No change.)

[(b) The certain parts of State highway Route 166 described in (b) of this section shall be and hereby are designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is hereby granted to erect appropriate signs at the following established bus stops:

1. Along the southbound side of Route 166:

i. From a point 275 feet north of the northerly curb line of Presidential Boulevard to a point 410 feet north of the northerly curb line of Presidential Boulevard;

ii. From a point 180 feet south of the southerly curb line of Route 37 to a point 315 feet south of the southerly curb line of Route 37;

iii. From the southerly curb line of Broad Street to a point 100 feet south therefrom.

iv. Mid-block bus stop: Beginning at a point 100 feet south of the southerly curb line of South Dakota Avenue and extending 135 feet southerly therefrom.

2. Along the northbound side of Route 166:

i. From the northerly curb line of Dover Street to a point 100 feet north therefrom;

ii. From a point 155 feet south of the southerly curb line of Route 37 to a point 265 feet south of the southerly curb line of Route 37;

iii. From a point 70 feet south of the southerly curb line of James Street to a point 145 feet south of the southerly curb line of James Street;

iv. Far side bus stop:

(1) Fernwood Drive (120 feet).]

(b) The certain parts of State highway Route N.J. 166 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southbound (westerly) side in Dover Township, Ocean County:

i. Mid-block bus stops at:

(1) **Presidential Boulevard**—From a point 275 feet north of the northerly curb line of Presidential Boulevard to a point 410 feet north of the northerly curb line of Presidential Boulevard.

(2) **Route 37**—From a point 180 feet south of the southerly curb line of Route 37 to a point 315 feet south of the southerly curb line of Route 37.

(3) **South Dakota Avenue**—Beginning at a point 100 feet south of the southerly curb line of South Dakota Avenue and extending 135 feet southerly therefrom.

ii. Far side bus stops at:

(1) **Broad Street**—From the southerly curb line of Broad Street to a point 100 feet southerly therefrom.

(2) **Colonial Road**—Beginning at the prolongation of the southerly curb line of Colonial Road and extending 100 feet southerly therefrom.

iii. Near side bus stop at:

(1) **Winteringham Village**—Beginning 15 feet north of the northerly curb line of Winteringham Village and extending 140 feet northerly therefrom.

2. Along the northbound (easterly) side in Dover Township, Ocean County:

i. Near side bus stops at:

(1) **James Street**—Beginning 50 feet south of the southerly curb line of James Street and extending 125 feet southerly therefrom.

(2) **South Dakota Avenue**—Beginning at the prolongation of the southerly curb line of South Dakota Avenue and extending 105 feet southerly therefrom.

ii. Far side bus stops at:

(1) **Dover Street**—From the northerly curb line of Dover Street to a point 100 feet north thereof.

(2) **Fernwood Drive**—From the northerly curb line of Fernwood Drive to a point 120 feet north thereof.

iii. Mid-block bus stops at:

(1) **Route 37**—From a point 155 feet south of the southerly curb line of Route 37 to a point 265 feet south of the southerly curb line of Route 37.

(2) **James Street**—From a point 70 feet south of the southerly curb line of James Street to a point 145 feet south of the southerly curb line of James Street.

(c) The certain parts of State highway Route N.J. 166 described in [(c) of this section] **this subsection** are designated and established as “no parking” zones.

1. (No change.)

16:28A-1.57 Route U.S. 206

(a) (No change.)

(b) The certain parts of State highway [route] **Route U.S. 206** described in this [section] **subsection** shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-11. (No change.)

12. Along the southbound (westerly) side in Bordentown Township, Burlington County:

i.-ii. (No change.)

iii. Near side bus stops at:

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

(3) **Park Street**—Beginning 45 feet north of the northerly curb line of Park Street and extending 105 feet northerly therefrom.

(c) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

No Passing Zones

Route N.J. 50 in Atlantic County; N.J. 41 in Gloucester County; and N.J. 143 in Camden County

Proposed Amendment: N.J.A.C. 16:29-1.70

Proposed New Rules: N.J.A.C. 16:29-1.71 and 1.72

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-201.1.
 Proposal Number: PRN 1991-510.

Submit comments by November 20, 1991 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 Bureau of Policy and Legislative Analysis
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 (609) 530-2041

The agency proposal follows:

Summary

The proposed amendment and new rules will establish "No Passing" zones along Routes N.J. 50 in the cities of Corbin City, Estelle Manor, and Egg Harbor and the townships of Weymouth, Hamilton and Galloway, Atlantic County; N.J. 41 in Deptford Township, Gloucester County; and N.J. 143 in Winslow Township, Camden County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs, in the interest of safety and as part of a review of current conditions, conducted traffic investigations. The investigations proved that the establishment of "No Passing" zones along Routes N.J. 50 in Atlantic County, N.J. 41 in Gloucester County, and N.J. 143 in Camden County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.70 and add new rules N.J.A.C. 16:29-1.71 and 1.72, based upon the traffic investigations.

Social Impact

The proposed amendment and new rules will establish "No Passing" zones along Routes N.J. 50 in Atlantic County, N.J. 41 in Gloucester County, and N.J. 143 in Camden County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "No passing" zone highway markings. The costs involved in the installation and procurement of highway markings vary, depending upon the material used, length of zones, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment and new rules do not place any 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 and new rules primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:29-1.70 Route 50

(a) The following certain parts of State highway Route 50 shall be designated and established as "No Passing" zones:

1. (No change.)

2. **That part within the Cities of Corbin City, Estelle Manor and Egg Harbor and the Townships of Weymouth, Hamilton and Galloway, Atlantic County, as described in drawing #HNPZ-119, dated May 9, 1991.**

16:29-1.71 Route 41

(a) The following certain parts of State highway Route N.J. 41 shall be designated and established as "No Passing" zones:

1. **That part within the Township of Deptford, Gloucester County, as described in drawing #HNPZ-116, dated May 9, 1991.**

16:29-1.72 Route 143

(a) The following certain parts of State highway Route N.J. 143 shall be designated and established as "No Passing" zones:

1. **That part within the Township of Winslow, Camden County, as described in drawing #HNPZ-118, dated May 9, 1991.**

AGENCY NOTE: The drawings referenced in the proposed amendment and new rules were filed with the Office of Administrative Law as part of this notice of proposal. They may be inspected at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Miscellaneous Traffic Rules
 Drawbridge Usage**

Route N.J. 37 in Ocean County

Proposed Amendment: N.J.A.C. 16:30-9.10

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:7-17.
 Proposal Number: PRN 1991-515.

Submit written comments by November 20, 1991 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 Bureau of Policy and Legislative Analysis
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625
 609-530-2041

The agency proposal follows:

Summary

The proposed amendment will establish restriction of pedestrian movement on the Thomas A. Mathis and J. Stanley Tunney Bridges over Barnegat Bay along Route N.J. 37 in Dover Township, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the Department's Bureau of Maintenance Support in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the restricting of pedestrians from the Thomas A. Mathis Bridge and limiting pedestrian movement across the J. Stanley Tunney Bridge to the sidewalk along the north side of the structure on Route N.J. 37 in Dover Township (Barnegat Bay), Ocean County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-9.10, based upon the request from the Department's Bureau of Maintenance and the traffic investigations.

Social Impact

The proposed amendment will establish restrictions of pedestrian movement on the Thomas A. Mathis and J. Stanley Tunney Bridges over Barnegat Bay along Route N.J. 37 in Dover Township, Ocean County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public and pedestrians who may attempt to use the bridges.

Social Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the advisory signs. The costs involved in the procurement of signs vary based upon material used and size. Persons who violate the rules will be assessed the appropriate fine as established by N.J.S.A. 39, and the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rules 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 amendment primarily affects persons using the bridge, the motoring public, and governmental entities responsible for the enforcement of the restriction.

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

16:30-9.10 Route 37

(a) The certain parts of State highway Route 37 described in this subsection shall have pedestrian restrictions for the purposes described [herein]. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. (No change.)

2. Pedestrians shall be prohibited from walking along both sides of the entire length of the Thomas A. Mathis Bridge over Barnegat Bay in Dover Township, Ocean County.

3. Pedestrians shall be prohibited from walking along the south side of the entire length of the J. Stanley Tunney Bridge over Barnegat Bay in Dover Township, Ocean County.

COMMUNITY AFFAIRS**(a)****NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
Notice of Public Hearing and Extension of Comment
Period****Development Fees**

Proposed Amendments: N.J.A.C. 5:92-1.3, 1.4 and 8.4

Proposed New Rules: N.J.A.C. 5:91-15 and 5:92-18

Take notice that the New Jersey Council on Affordable Housing, in response to a request by the Commissioner, Department of Community Affairs, will conduct a **public hearing** on the proposal concerning development fees published in the September 16, 1991 New Jersey Register at 23 N.J.R. 2813(b).

The **public hearing** will be held on Friday, November 8, 1991 from 10:00 A.M. to 1:00 P.M. at the following location.

New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
Trenton, New Jersey

Persons interested in commenting at the hearing must contact Douglas V. Opalski at (609) 530-6663 at least five days before the hearing, and provide a summary of the comments to be made.

Take further notice that the Council is extending the public comment period for the proposal until the date of the hearing. Submit comments by November 8, 1991 to:

Douglas V. Opalski, Executive Director
New Jersey Council on Affordable Housing
CN 813
Trenton, New Jersey 08625-0813

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules Return of Contested Cases

Adopted Amendment: N.J.A.C. 1:1-3.3

Proposed: June 3, 1991 at 23 N.J.R. 1728(a).

Adopted: September 19, 1991 by Jaynee LaVecchia, Director,
Office of Administrative Law.

Filed: September 20, 1991 as R.1991 d.513, with a substantive
change not requiring additional notice and comment (see
N.J.A.C. 1:30-4.3).

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

Effective Date: October 21, 1991.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

The proposal appeared simultaneously with adopted amendments to the same rule, N.J.A.C. 1:1-3.3 at 23 N.J.R. 1786(a). The adoption provided that if a party fails to appear at an OAL contested case hearing and does not offer an explanation to the judge within one day, the case may be returned to the agency which transmitted the matter to the OAL. A party may then submit an explanation for the nonappearance to the transmitting agency.

At the time of the initial proposal of the adopted rules (23 N.J.R. 639(a)), the Department of Personnel and the Division of Medical Assistance suggested that a timeframe be added to the rule requiring that explanations be submitted to the transmitting agency within a specified period of time. The OAL concurred that a timeframe would be beneficial, but rather than choose either the 13-day or seven-day times suggested by the two commenters, proposed a 10-day timeframe and solicited further suggestions from other transmitting agencies.

The Department of Personnel, which initially suggested the 13-day timeframe, again reiterated its support for the 13-day time pointing out that it is consistent with the comparable procedure for exceptions to initial decisions. The Public Employment Relations Commission Appeal Board did not suggest any time period, but noted that the 10-day time was rather short since it included the time for mailing both the notice and the explanation. The Department of Environmental Protection's Personnel Office suggested a five-day period, particularly in personnel matters, since an individual should be able to explain a nonappearance promptly.

After further review, OAL believes that a 13-day timeframe is appropriate. This takes into account time for mailing both Clerk's notice and the explanation and is easily computed. Moreover, it is consistent with the time for filing exceptions.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

1:1-3.3 Return of transmitted cases

(a) (No change.)

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within *[10]* *13* days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall

advise the parties of the time limit and requirements for explanations as set forth in (b) above.

(d) The agency head may extend the time limit for receiving explanations regarding the failure to appear when good cause is shown.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS

Closing Branch Offices

Adopted Amendment: N.J.A.C. 3:1-2.17

Proposed: August 5, 1991 at 23 N.J.R. 2208(b).

Adopted: September 27, 1991 by Jeff Connor, Commissioner,
Department of Banking.

Filed: September 27, 1991 as R.1991 d.523, without change.

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

Effective Date: October 21, 1991.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

COMMENT: J.R. Silkensen of New Jersey Savings League suggested notification by lobby notice and/or customer mailing in lieu of newspaper publication.

RESPONSE: The Department rejects this because newspaper publication is deemed necessary to reach customers and the community and is not burdensome.

Full text of the adoption follows.

3:1-2.17 Closing of branch offices

(a) (No change.)

(b) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for two successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in this notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing, the location of the depository's nearest branch office, and a statement indicating that all comments to the closing of the branch may be made to the institution and to the Department of Banking, along with the mailing address of the Department and the institution. In addition, for at least 30 days prior to the branch closing, the bank, savings bank or savings and loan association shall conspicuously post notice of the proposed branch closing in the branch to be closed. This notice in the branch shall contain at least the same information required in the newspaper notice.

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

(e) Banks, savings banks and savings and loan associations shall maintain a file in their principal office which is open to the public and which contains a description of any meetings or hearings which occurred pursuant to this section in the past two years.

(c)

DIVISION OF REGULATORY AFFAIRS

Nonpublic Records

Adopted Amendment: N.J.A.C. 3:3-2.1

Proposed: June 17, 1991 at 23 N.J.R. 1858(a).

Adopted: September 27, 1991 by Jeff Connor, Commissioner,
Department of Banking.

Filed: September 27, 1991 as R.1991 d.525, without change.

Authority: N.J.S.A. 17:1-8.1 and 47:1A-2.

Effective Date: October 21, 1991.
Expiration Date: January 11, 1995.

Summary of Public Comments and Agency Responses:

The Department received one comment from James R. Silkensen, Executive Vice President of the New Jersey Savings League, supporting the amendment as striking an appropriate balance of the interests involved.

Full text of the adoption follows.

3:3-2.1 Nonpublic records

(a) Throughout the Department of Banking, the following shall not be deemed to be public records pursuant to the Right to Know Law, N.J.S.A. 47:1A-1 et seq.:

1.-6. (No change.)

7. Information regarding individual institutions obtained pursuant to surveys conducted by the Department;

8. Personnel or pension records of an individual employed by the Department, except that the following shall be deemed public records:

i. An individual's name, title, position, salary, payroll record, length of service in the Department and in the government, date of separation from government service and the reason therefor, and the amount and type of pension he or she is receiving; and

ii. Data contained in information which discloses conformity with specific experimental, educational or medical qualifications required for government employment or for receipt of a public pension, but in no event shall detailed medical or psychological information be released; and

9. Personnel or pension records of an employee, officer, director or other person affiliated with a financial institution, such as the residence address, residence telephone number, salary or social security number, when such information is contained in any report, filing or record held by the Department.

(b) The fact that a document is not listed in (a) above shall not be construed as evidence that the document is a public record for purposes of the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

(a)

OFFICE OF REGULATORY AFFAIRS

License Qualifying Examinations

Adopted Amendments: N.J.A.C. 3:18-10.3 and 3:38-1.3

Proposed: August 5, 1991 at 23 N.J.R. 2210(a).

Adopted: September 27, 1991 by Jeff Connor, Commissioner, Department of Banking.

Filed: September 27, 1991 as R.1991 d.524, **without change**.

Authority: N.J.S.A. 17:11A-54 and 17:11B-13.

Effective Date: October 21, 1991.

Expiration Dates: January 19, 1993, N.J.A.C. 3:18; October 5, 1992, N.J.A.C. 3:38.

Summary of Public Comments and Agency Responses:

The Department received no comments.

Full text of the adoption follows.

3:18-10.3 Examinations

(a) (No change.)

(b) An applicant who fails the examination twice shall be prohibited from taking the examination for six months from the date of the second examination. An applicant who fails the examination a third or subsequent time shall be prohibited from taking the examination for one year from the date of the third or subsequent examination. The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must be re-examined.

(c) (No change.)

3:38-1.3 Examinations

(a) Upon acceptance of an application for an individual, the Department will notify the applicant of the date of the next scheduled examination, which shall not be more than 90 days from the date of acceptance of the application. The failure of an applicant to take or pass the examination within one year of the acceptance of the application shall void the application. Any applicant who passes the exam but does not perfect his license by the posting of a bond within one year from the date of passage of the exam must resubmit to an examination. An applicant who fails the examination twice shall be prohibited from taking the examination for six months from the date of the second examination. An applicant who fails the examination a third or subsequent time shall be prohibited from taking the examination for one year from the date of the third or subsequent examination.

(b) (No change.)

**ENVIRONMENTAL PROTECTION
AND ENERGY**

(b)

OFFICE OF REGULATORY POLICY

Stormwater Management

Adopted Amendments: N.J.A.C. 7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5 and 3.6

Proposed: September 17, 1990 at 22 N.J.R. 2870(a).

Adopted: September 17, 1991 by Scott A. Weiner,

Commissioner, Department of Environmental Protection and Energy.

Filed: September 17, 1991 as R.1991 d.510, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 40:55D-93 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 028-90-08.

Effective Date: October 21, 1991.

Expiration Date: February 5, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection and Energy (Department) is adopting amendments to the New Jersey stormwater management rules at N.J.A.C. 7:8. These amendments were proposed along with the proposed new N.J.A.C. 7:22A-1.7 and 7:22A-4 and along with proposed amendments to N.J.A.C. 7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, Appendix A and N.J.A.C. 7:14-8.1, 8.2 and 8.5, which were adopted effective June 17, 1991 at 23 N.J.R. 1926(a). Two public hearings were held on the proposal, one on October 10, 1990 and one on October 12, 1990. The Department received written comment from six individuals and/or organizations and oral comment from three individuals and/or organizations.

The majority of the comments focused on the Department's proposed change from two to four feet for the distance required between the bottom of a zero runoff detention basin and the seasonal high ground water table. Based on the comments received, the Department is withdrawing this change and retaining the two-foot separation standard. The Department nonetheless still recommends the four-foot distance for infiltration basins to prevent facility failure and reduce the frequency of maintenance efforts.

N.J.A.C. 7:8-1.5 and 3.5 have been revised slightly to reflect organizational changes made subsequent to the proposal.

All other proposed amendments, which amendments clarified enforcement authority, made the rules more consistent with applicable statutes, and eliminated outdated program information, are adopted as proposed.

Also, the published proposal contained a typographical error in N.J.A.C. 7:8-3.4(a)2ii where it stated "¼ inch quality storm." It should read "1¼ inch quality storm", as in the current code text.

The following is a list of those persons or organizations that made either written or oral comments directly related to the proposed rules:

ADOPTIONS

Robert Berg, Normandeau Associates
Alexander M. Churchill, Alexander M. Churchill Associates
David B. Fisher, Leisure Technology
Michael Geller, Wilcox, Gravatt and Vansant
Ellen Gulbinsky, Authorities Association of New Jersey
Wayne Karnell, New Jersey Builders Association
Alan Avery, Ocean County Planning
Joseph Read, Fellows, Read and Associates

GENERAL COMMENTS

1. COMMENT: Leisure Technology and Wilcox, Gravatt and Vansant objected to the revisions to the Stormwater Management Rules (N.J.A.C. 7:8) being proposed simultaneously with the proposed Sewage Infrastructure Improvement Act (SIIA) Final Mapping rules (N.J.A.C. 7:22A). Leisure Technology pointed out the SIIA does not require the Department to specifically address stormwater management issues.

RESPONSE: The requirements of the Stormwater Management Rules (N.J.A.C. 7:8) and the revisions to these rules are independent of the SIIA Final Mapping Rules. The Bureau of Water Quality Planning implements both programs, and it proposed the rules together for expedience and to reduce the administrative work associated with rule proposal, public notices, public hearings and adoption.

2. COMMENT: Leisure Technology did not understand why new development is the focus of regulation rather than existing stormwater outfalls including combined sewer overflows.

RESPONSE: The Stormwater Management Rules (N.J.A.C. 7:8) do primarily focus on curtailing impacts of new development on the quantity and quality of stormwater leaving the site. This is because, as part of the Municipal Land Use Law (N.J.S.A. 40:55D-93), the stormwater management rules are implemented through the site plan and subdivision approval process. The same rules, however, can also be applied where applicable in retrofitting projects. In addition, stormwater quality issues for existing development will also be addressed in the coastal areas under the nonpoint source planning phase of the SIIA (N.J.A.C. 7:22A) to be proposed in early 1992 and under the municipal stormwater permitting program mandated by the U.S. Environmental Protection Agency under Section 402p of the Federal Clean Water Act (33 U.S.C. §1342 (p)) and scheduled to begin in 1993.

3. COMMENT: Leisure Technology indicated that the nature of the proposed changes to the rule should warrant an independent proposal addressing more comprehensive reforms.

RESPONSE: The Department agrees with the commenter that stormwater rules need to be reviewed in a more comprehensive context, and it intends to undertake such a comprehensive review in part as set forth in Response No. 2 above. The current rule changes by the Department under N.J.A.C. 7:8 are intended mainly to clarify and up-date the current regulation.

4. COMMENT: Normandeau Associates suggested that rather than attempting to over-design a stormwater detention basin, the Department should focus its efforts on appropriate types and frequencies of maintenance requirements for existing basins.

RESPONSE: The Department agrees that maintenance is important. Indeed, it has sponsored the development of a Stormwater Management Facilities Maintenance Manual completed in June 1989 which was prepared by the Ocean County Planning and Engineering Departments with assistance from Killam Associates, Consulting Engineers. The manual is intended for use as a reference guide in the design of "minimum maintenance" stormwater management facilities and the implementation of effective and comprehensive maintenance programs. The recommendations regarding the design and construction of stormwater management facilities are intended to address the management needs of both existing and new facilities. This publication has been made available to municipalities by the Department. The Department does not believe that the proposed rules over-design basins; instead, the rules require a design consistent with the purposes of the Stormwater Management Act, N.J.S.A. 40:55D-93 et seq. (the Act).

5. COMMENT: Regarding N.J.A.C. 7:8-2.2, 3.1(a), and 3.6, the New Jersey Builders Association questioned why the Department proposed to delete the condition that requires the preparation of stormwater management plans and ordinances only if funding is provided by the Department. The statute requires the preparation of stormwater plans and ordinances (N.J.S.A. 40:55D-93) "provided that a grant for the preparation of the plan has been made available pursuant to N.J.S.A. 40:55-98 hereof." The commenter felt the Department's proposed language change would remove this grant condition and would require

ENVIRONMENTAL PROTECTION

ordinances to be adopted regardless of whether or not municipalities receive funding. The Department does not have the authority to remove this condition without a statutory change. Also, the commenter requested clarification on whether municipalities that do not adopt stormwater management ordinances are subject to the fines that are set up under the New Jersey Water Pollution Control Act (NJWPCA) (N.J.A.C. 7:14-8).

RESPONSE: The Department's proposed language change renders the rules consistent with the Act's language requiring plans and ordinances "provided that a grant for the preparation of the plan has been made available." Funding for the program was made available to 330 municipalities. Not all of these municipalities accepted funding. Those municipalities who did not apply for or accept funds are not relieved of their responsibility under the Act to prepare stormwater management plans and adopt a stormwater management ordinance. Those municipalities that were offered funding but did not complete a plan and ordinance could be subject to the penalty provisions under NJWPCA (N.J.A.C. 7:14-8).

COMMENTS 6-21:

Several comments addressed the Department's proposed requirement of a four-foot separation between the bottom of a zero runoff detention facility and the seasonal high water table (SHWT) (N.J.A.C. 7:8-3.4(a)2ii). The proposed amendment would have changed the standard from two to four feet. Because of the similarity between many of these comments, the Department chooses to provide an overall response concerning the four-foot standard. Comments concerning this proposal's relationship with other Department programs, however, will be addressed individually, where suitable. The following comments on the issue are arranged to reflect the structure of the proposed rule.

TECHNICAL AND ENVIRONMENTAL IMPACT COMMENTS

6. COMMENT: Normandeau Associates and the New Jersey Builder Association requested that the State identify other states where the four-foot separation is a requirement and the technical basis for those individual requirements. Normandeau Associates elaborated by questioning the Department's statement in the summary section of the proposed rule that "the use of four feet of unsaturated soil to control water pollution is a commonly accepted groundwater management practice."

7. COMMENT: The Authorities Association of New Jersey; Wilcox, Gravatt and Vansant; Alexander M. Churchill Associates; and Normandeau Associates disagreed with equating a stormwater discharge to a sanitary discharge, and the Department's use of that comparison to justify the change from two to four feet. Such an analogy ignores the fact that septic systems and detention basins have different purposes and, thus, different amounts and types of pollutants. Wilcox, Gravatt and Vansant remarked that the rationale given in the proposal that the Department's standards for a four-foot separation distance between disposal field bottom and SHWT for individual subsurface disposal system is poorly founded. Stormwater is not septic liquid and need not be subject to the same treatment standards.

8. COMMENT: Normandeau Associates and the New Jersey Builders Association felt the proposal provided no scientific evidence of the net water quality benefits. More investigation of research and findings available on stormwater management and other techniques to achieve water quality goals is needed before this change is adopted. The Department had failed to document changes in ground water quality that would occur as a result of the adoption of more stringent standards as well as the economic gain to the State which would accrue from the alleged improvement in ground water quality which would result from the adoption of the proposed increased depth requirement to SHWT.

9. COMMENT: Normandeau Associates stated that detention basin emptying is a function of the permeability of the deposited sediment, the degree of saturation of the soil, the permeability of the underlying soil and the hydraulic head which is applied. The increase in depth requirements for the seasonal high water table will not resolve the perceived problem and could increase emptying time.

10. COMMENT: Wilcox, Gravatt and Vansant, as practicing civil engineers, have not experienced functional problems with the standard of the two-foot separation between the bottom of the facility and SHWT.

11. COMMENT: Normandeau Associates noted that applying the proposed rule change in an area of uniform elevation could jeopardize the functioning of the stormwater basin and nearby septic systems. For example, if the SHWT occurs at a depth of two to four feet throughout the site, a septic system could be built with mounding, but a stormwater detention basin could not be built. The stormwater detention basins could

also be located at higher landscape positions than the septic systems, potentially causing the septic systems to fail because of the increase in water table elevation below the septic system. The structure which occupies the highest landscape position in a residential development may, in theory, be the stormwater detention basin which is not logical, or, in many cases, technically feasible.

12. COMMENT: The New Jersey Builders Association and Normandeau Associates believed that the Department failed to document existing cases of ground or surface water contamination that are caused by the design of a stormwater detention basin with only two feet to SHWT that would have been prevented had the design incorporated a four foot depth to SHWT. Specifically, the New Jersey Builders Association wished the Department to identify areas (facilities) in the State that have ground water contamination due to stormwater. At these facilities, the commenter requested that the underlying soil and geological conditions as well as the pollutant responsible for contamination be identified. The commenter believed the primary pollutant is sediment which is filtered out with minimum layer of soil.

13. COMMENT: Normandeau Associates found that the Department failed to provide any technical supporting evidence to support the Department's belief that "The effectiveness of some of these facilities in detaining stormwater may also be improved."

14. COMMENT: Wilcox, Gravatt and Vansant questioned the reduction of maintenance problems that would result in changing the depth to ground water from two to four feet. This reduction was used as an argument in favor of the change by the Department. Similarly, one commenter explained that, although basin draining and subsequent maintenance is improved by the four-foot distance, the Department should be cautious in applying this standard in regulation without more technical supporting data.

15. COMMENT: Normandeau Associates questioned the impact that these rule-caused increased peak flow discharges to surface water will have on surface water quality. Elaborating, the commenter felt the Department failed to document the number of incidents or the impact of increased flooding which will be caused by the increased use of the alternatives to detention basins which are identified in N.J.A.C. 7:8-3.4(a)4.

16. COMMENT: Normandeau Associates felt that the Department failed to provide any technical evidence to quantify the decrease in ground water recharge which will result from the adoption of this proposed rule amendment. Furthermore, the Department failed to consider the impact of this potential recharge reduction on existing or future ground water critical areas.

17. COMMENT: Leisure Technology, Wilcox, Gravatt and Vansant, and Fellows, Read and Associates requested that the State reconsider and withdraw this particular proposed amendment.

18. COMMENT: Normandeau Associates; Leisure Technology; Wilcox, Gravatt and Vansant; and the New Jersey Builders Association suggested that the Department conduct a much more thorough investigation of the research and findings which are available on this topic, and consider changes to the Statewide Stormwater Management Regulations in the context of this review, bearing in mind other types of stormwater management techniques to address the issue of water quality. The proposal did not provide scientific evidence of the net water quality benefits. Normandeau Associates stated that when considering the chemical and physical parameters of concern in residential stormwater, the literature does not support the argument that there should be a required four-foot separation between basin bottom and the seasonal high water table.

SOCIAL AND ECONOMIC/SOCIAL IMPACT COMMENTS

19. COMMENT: Leisure Technology and Alexander M. Churchill Associates remarked that the incorporation of the four-foot separation between the seasonal high water table and stormwater basin bottoms into municipal ordinances will create an unfair coastal bias. In southern New Jersey, where the water table is high, it is difficult to meet the two-foot minimum.

Wilcox, Gravatt and Vansant commented that the Department failed to adequately evaluate the social and economic impacts of this proposal, especially to Ocean County and the other coastal counties, where this requirement would have its most significant impact. Coastal areas are probably the most common area where "zero runoff" stormwater management methods are utilized. They are also the areas of the State most regulated and environmentally constrained for development. Im-

position of the proposed new stormwater management design requirement would constrain development proposals even more severely.

Leisure Technology pointed out that, in the coastal area, the requirement would render many properties undevelopable which in turn would drive-up costs, ultimately affecting the home buyer. The cost to accommodate this stormwater management requirement on developable properties would greatly increase the cost of site development in the future.

20. COMMENT: Alexander M. Churchill Associates; Wilcox, Gravatt and Vansant; the Authorities Association of New Jersey; the New Jersey Builders Association; Normandeau Associates; and Leisure Technology noted that the Department failed to provide any supporting technical or financial evidence to support the Department's belief that the adoption of the proposed rule "... would not necessarily have a significant economic impact upon residential developers and their customers." Specifically, Normandeau Associates suggested that the Department should document the expected number of residential development projects which cannot be approved because of the adoption of more stringent standards as well as the increased costs associated with increased site evaluation and engineering costs which must be incurred because proportionately less acreage in the State will meet these more stringent technical standards. Also, Normandeau Associates questioned what impact the proposed rule change will have on the creation of low income housing.

21. COMMENT: Normandeau Associates; Wilcox, Gravatt and Vansant; and Leisure Technology believed the Department did not consider or quantify the increase in costs which would result from the requirement to use alternatives to detention basins pursuant to N.J.A.C. 7:8-3.4(a)4 in cases where the alternatives are not now necessary because the existing requirement to meet the two-foot depth to SHWT may be met.

Leisure Technology stated that the only alternatives to this four-foot distance below the bottom of the stormwater basin, are measures stated in the Statewide Stormwater Regulations (N.J.A.C. 7:8-3.4(a)4), such as roof-top storage of stormwater, dry wells, and infiltration pits. These techniques, however, are unrealistic, extremely costly to construct and/or difficult to maintain. Furthermore, most local municipalities will discourage, if not prohibit, certain non-structural stormwater measures (such as sheet flow), particularly where curbs are to be eliminated.

OVERALL RESPONSE (COMMENTS 6-21): In response to these comments, the Department has determined not to adopt the proposed four-foot separation distance. Instead, it will retain the two-foot separation distance currently required by N.J.A.C. 7:8-3.4(a)2ii. It does, however, recommend that the four-foot separation distance be utilized for infiltration basins in order to reduce maintenance requirements, the potential for ponding, and the likelihood of facility failure.

The Department agrees that the impact of stormwater on ground water should be investigated and documented further before the four-foot separation standard is required for zero-runoff detention facilities. The proposed four-foot separation standard may not be applicable in some areas of the State, and it may not be sufficient in areas where ground water protection is critical. The Department will pursue developing a more technical methodology to evaluate an appropriate separation distance. Until then, it will require only a two-foot separation distance.

PERCEIVED INCONSISTENCIES OF RULE PROPOSAL WITH EXISTING PROGRAMS

22. COMMENT: Leisure Technology noted that in the coastal area where the four-foot separation to the seasonal high water table may not be met naturally, fill may need to be imported to raise the elevation of the site. Emplacement of such fill would be in conflict with CAFRA vegetation policy (N.J.A.C. 7:7E-8.8) stating "coastal development shall preserve, to the maximum extent practicable, existing vegetation." Also, due to the potential disturbance, other special area and resource policies, such as N.J.A.C. 7:7E-8.9, 8.12, 8.13, and 8.20, may not be met.

RESPONSE: The concerns raised by this comment appear to be allayed by the Department's decision not to impose the four-foot requirement. To the extent they are not so allayed, they are responded to as follows. All CAFRA policies will have to be met by developers regulated under the CAFRA jurisdiction. The Rules on Coastal Resources and Development include a resource policy on stormwater runoff with requirements adapted from standards under the New Jersey Stormwater Management Rules (N.J.A.C. 7:8). If a proposed development does not comply with both sets of rules, it may not proceed.

23. COMMENT: Leisure Technology identified a conflict between the Department's proposal for four-foot separation with the recommendations in the report entitled "Stormwater Management in the New Jersey

ADOPTIONS

Coastal Zone" prepared by Cahill Associates for the Division of Coastal Resources. This report encourages the use of dual purpose detention basins in nontidal areas with a depth to seasonal high water table from 12 inches to 48 inches.

RESPONSE: The concerns raised by this comment appear to be allayed by the Department's decision not to impose the four-foot requirement. To the extent they are not so allayed, they are responded to as follows. The referenced report was prepared for the Division of Coastal Resources under contract by a consultant. Its recommendations are still being studied, and it has not been adopted as Department policy.

24. COMMENT: Leisure Technology believed that the proposed four-foot separation will complicate a nearly consummated inter-agency agreement between the Department and the Department of Agriculture regarding accepted practices for outlets from stormwater basins.

In addition, Normandeau Associates found that the Freshwater Wetlands Protection Act, P.L. 1987, c.156, as administered by the Department's Division of Coastal Resources, typically requires sedimentation basins within 50 to 150 feet of delineated wetlands. In these situations, the proposed four-foot depth to SHWT could almost never be met. The adoption of this proposed rule appears to work at cross-purposes with the existing wetlands rules.

Also, the Department's Clean Lakes Program is currently advocating the retrofitting of detention basins on existing storm water discharges as a means of improving lake water quality. Again, Normandeau Associates felt that clearly the adoption of this rule appears to conflict with this existing Department program.

RESPONSE: The concerns raised by this comment appear to be allayed by the Department's decision not to impose the four-foot requirement. To the extent they are not so allayed, they are responded to as follows. The perceived conflicts between the proposed rule change and the above-referenced programs assume that the proposed four-foot standard would have applied to all stormwater management facilities. The standard was intended to apply only to infiltration basins which, unlike detention basins, sedimentation basins or wet ponds, are designed for zero runoff or discharge to surface waters.

Summary of Hearing Officer Recommendations and Agency Response:

Barry Chalofsky, Chief of the Bureau of Water Quality Planning in the Division of Water Resources (now part of the Department's Office of Regulatory Policy), served as the hearing officer at both the October 10 and the October 12, 1990 public hearings. After reviewing the testimony given at the public hearings, Chief Chalofsky felt that the responses to this testimony and the subsequent changes made to the rules to address the concerns raised by the public should be accepted as written in the adoption package for these rules.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 8 STORMWATER MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.1 Purpose and authority

This chapter implements the provisions of the New Jersey Storm Water Management Act, P.L. 1981, c.32, which amends and supplements the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. These Storm Water Management regulations establish minimum requirements and controls to compensate for the differences in the hydrologic response of the watershed from the undeveloped to the developed condition. Nothing in this chapter shall change the assigned duties of counties and municipalities responsible for approval

ENVIRONMENTAL PROTECTION

of storm water management provisions, submitted as part of site plans, and subdivisions as established by the Municipal Land Use Law.

7:8-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the New Jersey Storm Water Management Act, P.L. 1981, c.32, and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b) (No change.)

7:8-1.5 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the Bureau of Water Quality Planning, *[Division of Water Resources]* *Office of Regulatory Policy*, New Jersey Department of Environmental Protection *and Energy*, CN 029, Trenton, New Jersey 08625.

SUBCHAPTER 2. PROCEDURES FOR PREPARATION OF PLANS AND ORDINANCES

7:8-2.2 Schedule for completion and submission of plans and ordinances

If a grant for 90 percent of the costs for the preparation of the plan has been made available by the Department pursuant to section 6 of the Act (N.J.S.A. 40:55D-98), the storm water management plan shall be completed by the municipality by the next reexamination of the municipality's master plan required pursuant to N.J.S.A. 40:55D-89. The completed storm water management plan shall be an integral part of each municipal master plan as provided by N.J.S.A. 40:55D-28. Each storm water control ordinance or ordinances implementing the storm water management plan shall be adopted by the municipality within one year of the completion of the storm water management plan and shall be revised thereafter as needed. Such a storm water management plan, control ordinance or resolution prepared by counties, municipalities or designated regional agencies shall be prepared in accordance with this chapter.

7:8-2.3 County review process

(a) Each municipality shall submit its completed storm water management plan and implementing ordinance adopted pursuant to this Act to the county agency or county water resources association designated by the freeholders for approval. The implementing ordinance shall not take effect without county approval.

(b) (No change.)

SUBCHAPTER 3. ELEMENTS OF PLAN AND ORDINANCE

7:8-3.1 Planning phases

(a) Planning for storm water management is designed in two phases. The Phase I plan is targeted at preventive measures to be applied to the site plan and subdivision review process. It shall identify existing control requirements and establish plans and ordinances in order to meet the standards in these regulations for at least the short term. The Phase II plan shall provide for the long-term comprehensive planning of alternative preventive storm water management measures in conjunction with remedial storm water management measures.

1. Phase I:

i. (No change.)

ii. Within one year following the completion of the Phase I plan, municipalities shall adopt ordinances which are to be consistent with the policies and principles of the Phase I plan. These ordinances shall be amended, as required, following the adoption of the Phase II plan. Such ordinances must be adopted if the Department has made available a grant pursuant to section 6 of the Act.

2. (No change.)

7:8-3.4 General standards

(a) The following standards are specified for general use as minimums to be applied to major developments. Local plans and ordinances which require a greater degree of control or require retention for a greater period of time, or apply to classes of developments in addition to those specified herein, will be acceptable as

long as the objectives in N.J.A.C. 7:8-2.1 are met. Plans and ordinances expressed in different terms but which are considered by the Department to achieve substantially the same objectives will also be acceptable.

1. (No change.)
2. Water quality control:
 - i. (No change.)
 - ii. Where soils have sufficient permeability, the production of zero runoff from the site under conditions of the 1/4 inch quality storm will be considered sufficient to meet the water quality requirement for residential developments, provided that the seasonal high groundwater does not rise to within ~~four~~ **two** feet of the bottom of the detention facility. For other than residential developments, approvals will be on a case-by-case basis after technical review by the designated authority. The object of this review will be to avoid pollution of groundwater. Other technology may be substituted pursuant to (a)4i below.

3.-9. (No change.)

7:8-3.5 Variance or exemption from the standards

If a municipality grants a variance or exemption from the standards set forth in their storm water management plan and control ordinance, a written report shall be made to the county detailing the nature of the variance, the change(s) requested, and an explanation of the decision. An exemption from the county ordinance or regulations or resolutions shall be reported in the same fashion to the Chief, Bureau of Water Quality Planning, ~~Division of Water Resources~~ **Office of Regulatory Policy**, Department of Environmental Protection **and Energy**.

7:8-3.6 Storm water control ordinance

The storm water control ordinance is required to be adopted by the municipality within one year of the completion of a storm water management plan. It is an implementation document for the plan. The ordinance shall conform with all requirements of this chapter. The Department will supply each municipality with a Model Storm Water Control Ordinance as a guide for municipalities to prepare their own ordinances.

(a)

**DIVISION OF WASTE MANAGEMENT
Notice of Administrative Correction
Waste Management
Regulated Medical Waste; Exemptions
Penalties**

N.J.A.C. 7:26-3A.17 and 5.4

Take notice that the Department of Environmental Protection and Energy has discovered two instances of incorrect cross-referencing in its rules in the New Jersey Administrative Code which require rectification through a notice of administrative correction.

At N.J.A.C. 7:26-3A.17(a), certain medical waste generators are exempted from the requirements of N.J.A.C. 7:26-3A.27(b). However, N.J.A.C. 7:26-3A.27(b) contains no requirements. As indicated in N.J.A.C. 7:26-3A.27(d), the exemption provided by N.J.A.C. 7:26-3A.17(a) is from the requirements of N.J.A.C. 7:26-3A.27(c). N.J.A.C. 7:26-3A.17(a) will be revised to provide this proper cross-reference.

Among the penalties set forth at N.J.A.C. 7:26-5.4(g)7 are those for failure to comply with N.J.A.C. 7:26-7.5(b)3i, ii, iii and iv. While the current N.J.A.C. 7:26-7.5 does not contain a paragraph (b)3, N.J.A.C. 7:26-7.5(b)3 as referred to in the penalty rule was recodified as N.J.A.C. 7:26-7.5(b)2 effective September 4, 1990 (see 22 N.J.R. 1472(a) and 2826(a)). This recodification will now be reflected in N.J.A.C. 7:26-5.4(g)7.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:26-3A.17 Exemptions

(a) Generators of less than three cubic feet of regulated medical waste per month who transport only their own regulated medical waste to another generator for storage or disposal are exempt from the requirements of N.J.A.C. 7:26-3A.16(d) and the requirements of N.J.A.C. 7:26-3A.27[(b)](c) provided they meet the following conditions:

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

7:26-5.4 Civil administrative penalties for violations of rules adopted pursuant to the Act

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

(g) The rule summary in this subsection, which summarizes certain provisions in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, is provided for informational purposes only. In the event that there is a conflict between the rule summary in N.J.A.C. 7:26-5.4(g) and a provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12, then the provision in N.J.A.C. 7:26-7 through N.J.A.C. 7:26-12 shall prevail. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:26.

1.-6. (Reserved)

7. The violations of N.J.A.C. 7:26-7, Labeling, Records and Transportation Requirements, and the civil administrative penalty amounts for each violation, are as set forth in the following table.

<u>Rule</u>	<u>Rule Summary</u>	<u>Base Penalty</u>
7:26-7.5(b)[3i]2i	Failure of hauler to compile list of sites corresponding to each manifested shipment of X700-series hazardous waste	\$1,000
7:26-7.5(b)[3ii]2ii	Failure of hauler to include name, address, quantity, or ID number of manifest on list.	\$300
7:26-7.5(b)[3iii]2iii	Failure of hauler to attach list to copy of manifest and forward to the Department.	\$1,000
7:26-7.5(b)[3iv]2iv	Failure of hauler to obtain a signed receipt from each site at which he accepts X-700 series hazardous waste.	\$1,000

8.-12. (No change.)

HEALTH

(b)

**DIVISION OF AIDS PREVENTION AND CONTROL
State Sanitary Code**

**Acquired Immunodeficiency Syndrome; Reporting of
Acquired Immunodeficiency Syndrome and
Infection with Human Immunodeficiency Virus**

**Adopted Amendments: N.J.A.C. 8:57-2.2, 2.4, 2.6 and
2.7**

Proposed: July 15, 1991 at 23 N.J.R. 2089(a).

Adopted: September 10, 1991 by Public Health Council, Louise Chut, PhD., M.P.H., Chairperson.

Filed: September 26, 1991 as R. 1991 d.516, **without change**.

Authority: N.J.S.A. 26:1A-7 and 26:2-104.

Effective Date: October 21, 1991.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments to N.J.A.C. 8:57-2.2, 2.4, 2.6 and 2.7 appeared in the July 15, 1991 New Jersey Register at 23 N.J.R. 2089(a). In addition, the proposal notice was mailed to all of the grantees of the Division of AIDS Prevention and Control, New Jersey Department of Health, with a request that the recipients of the notice share it with any interested parties. A notice of the Public Hearing was published in three major newspapers in the State of New Jersey, and the hearing was held on August 12, 1991 at the Multipurpose Room, Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey.

Drs. Louise Chut, William Frascella, Lawrence Harte and Milton Prystowsky served as hearing officers, representing the Public Health Council. The hearing officers recommended that all comments be evaluated by the Department's Division of AIDS Prevention and Control and that each comment receive due consideration. The responses to the comments received during the public hearing have been incorporated in the Summary of Comments and Agency Responses which follows in this document. The record of the hearing and copies of the written comments may be reviewed by the public at the office of the Administrative Practice Officer, New Jersey Department of Health, Health and Agriculture Building, Trenton, New Jersey.

At the time of the hearing, the hearing officers were concerned by what they considered to be a small number of oral comments at the hearing and a small number of written comments that had been received by the time of the hearing. Therefore, the hearing officers extended the period for written comments to September 4, 1991. Letters announcing the extension and soliciting comments on the proposed amendments were sent to all the grantees of the Division of AIDS Prevention and Control, the participants in the outside Advisory Committee who had assisted in the development of the Department's AIDS plan, and other interested parties. Again, the recipients of the letters were asked to share the notice with any parties they thought might have an interest in it.

The oral commenters were: Dr. William Ryan, President-Elect, Medical Society of New Jersey; Dr. Dennis Quinlan, Chairperson, Task Force on AIDS, Medical Society of New Jersey; and Ms. Susan Remis Silver, Assistant Deputy Public Advocate, representing the Public Advocate.

The following submitted written comments:

David Faas, John W. Farrell, RoseMarie Fassbender, Joyce Jackson, Frances Rosenfeld; Planned Parenthood Association of the Mercer Area and The New Jersey Women and AIDS Network, represented by Lisa Shelby; FAITH Services (Francisco Health System of New Jersey), represented by Brother Robert J. Reinke, C.F.P.; Planned Parenthood of Greater Northern New Jersey, Inc., represented by Jeff Brand; The City of East Orange, Department of Health, Substance Abuse Program, represented by Debbie A. Hagler; Morristown Memorial Hospital, AIDS AD HOC Committee, represented by Dr. Robert Katz, Dr. Kenneth Adler, Susan Calcara, Mora Coleman, Marcia Foxworthy, Roger Franklin, Donna Grubel, Joan Harding, A. Horan, Sandra Longley, Eunice Pakonis, Dr. John Salaki, Dr. Jan Schwarz-Miller, and Rev. John Weber; New Jersey Department of Human Services, Division of Youth and Family Services, represented by Barbara G. Allen, Esq.; The Personal Liberty Fund, represented by Peter Jewell; National Association of Social Workers, represented by Lynn E. Pistolas and Barry L. Moore; The Public Advocate, represented by Susan Remis Silver; New Jersey State Nurses Association, represented by Dorothy D. Flemming; Hunterdon County AIDS/HIV Task Force, represented by John Beckley; University of Medicine and Dentistry of New Jersey, University Hospital, represented by Marc H. Lory; The Medical Society of New Jersey, represented by Dr. Joseph A. Riggs; Rutgers-The State University of New Jersey, represented by Fern Goodhart and Jeff Gould; Hyacinth Foundation, represented by Michael Fannon; Trenton State College, represented by Joyce B. Cochran; Princeton University-McCosh Health Center, represented by Karen A. Gordon; County of Middlesex, Department of Health, represented by Patrick O. Hanson; and New Jersey Family Planning League, Inc., represented by Christine Reynolds.

The oral and/or written comments and the Department's responses follow:

1. COMMENT: All the commenters who opposed the proposed amendments listed as at least one of their reasons for opposition the belief that requiring reporting of newly diagnosed HIV infection with identifiers would be an impediment to people seeking testing for HIV infection. Some of the commenters simply stated their belief that fewer people would seek HIV testing under the proposed amendments, other cited their own experience with HIV counseling and testing in support of their contention that a smaller number of people would volunteer for HIV testing should the amendments be adopted, and one commenter (the Public Advocate) cited studies in the literature which directly or indirectly suggested that HIV reporting with identifiers would inhibit people from seeking HIV testing. If individuals did not have HIV testing because of the proposed amendments, these individuals would not take advantage of newer therapies for prevention of the consequences of HIV infection, and efforts to control spread of HIV might be impeded. Thus, the proposed amendments might be detrimental to efforts to control the HIV/AIDS epidemic.

RESPONSE: The Department is very much aware of the points raised in these comments and is very concerned about them. This concern was indicated by listing this point as the number one possible negative consequence of the proposed amendments in the Social Impact Statement, which accompanied the proposed amendments. While there is widespread opinion that HIV reporting with identifiers will decrease the number of people seeking HIV testing, there is only a small amount of hard data to support this contention. In some of the studies which purport to show that individuals in certain other states avoid HIV testing because of HIV reporting requirements, there is serious question as to whether or not the reporting requirements are being used as an excuse by people who would still not get tested, regardless of the reporting requirements. There are, however, some more substantial data suggesting that reporting with identifiers may inhibit some individuals from obtaining HIV testing.

The Department feels that despite the possibility that there might be at least a temporary drop in persons seeking HIV testing, the proposed amendments should be adopted because: one, they are necessary to bring Departmental regulations into conformity with State law, and two, the anticipated benefits of the proposed amendments probably outweigh this alleged negative aspect of the proposal. The Department stresses that anonymous HIV testing is still available for individuals who do not wish their identifiers to be reported. The Department will carefully monitor the effect of the proposed amendments, and will propose appropriate changes in law or regulation should there be concrete evidence that the proposed amendments are having an adverse effect on HIV control efforts or on the care of individuals.

2. COMMENT: Many commenters expressed concerns that the confidentiality of information related to HIV-infected persons would be compromised in a way which would result in discriminatory activities against the HIV infected individual.

RESPONSE: The Department currently has records, with identifiers, of many HIV-infected persons, which have come to the Department through the AIDS reporting requirements or through a variety of other sources. The Department has been scrupulous in maintaining the confidentiality of these records. If the proposed amendments are adopted, the Department will continue to maintain this scrupulous attention to confidentiality.

There are many instances that can be cited where discriminatory activities have occurred against HIV-infected persons when confidential information has been improperly released. However, release of confidential information has not occurred from the Department of Health, or as a result of disease reporting to the Department of Health. The fact that others have improperly released confidential information with adverse results to HIV-infected individuals is not a reason against disease reporting to the Department, which has a record of being extremely careful that confidential information does not inadvertently leave its files.

3. COMMENT: Many commenters stated that anonymous HIV testing needs to be available for those who desire it, and that in the absence of anonymous HIV testing, many people will not get tested. Many of the commenters implied that the proposed amendments would diminish the availability of anonymous HIV testing.

RESPONSE: The proposed amendments make no change in the availability of anonymous HIV testing. The issue of anonymous testing is not covered by the proposed amendments except to describe how counseling and testing sites will report HIV-infected clients who come to them anonymously. In such cases, the anonymity of the client is maintained. The Department feels that anonymous HIV testing should be available at the present time, and has not proposed any change in the availability of HIV testing sites providing the option of anonymous testing.

4. COMMENT: Two commenters, the Public Advocate and Hyacinth, stated that the proposed amendments should not be adopted because there are bills pending in the Legislature which could affect the HIV reporting requirements and the proposed amendments.

RESPONSE: Since P.L. 1989, c.303 became law, there have been bills before the Legislature to change the law, and specifically the HIV reporting requirements. The two bills to which the commenters referred are in conflict in regard to the HIV reporting requirements. The Department does not know what, if any, laws may be enacted to change HIV reporting requirements. The only course open to the Department is to have its regulations in conformity with current law, which is accomplished by the proposed amendments. Should the law change, then the Department will make the necessary changes in the rules.

5. COMMENT: Many commenters noted that, as stated in the Social Impact Statement, the Department does not have the resources to carry

out all the medical care, social service, case management, and partner notification activities which it claims would be enhanced by the proposed amendments. In the absence of the resources, the Department should not enact these amendments at this time.

RESPONSE: The Department is very much aware that the resources to accomplish all of the tasks outlined above are not currently available, and that, in this time of both State and Federal fiscal constraints, there is little likelihood that large amounts of financial resources will be available. However, there are resources available to accomplish some of these tasks, and the means for accomplishing them are aided by these proposed amendments. In addition, many of these activities are of high priority, and can be somewhat enhanced by redirection of resources. The Department believes that it is appropriate to enact the proposed amendments now to obtain some of the benefits from them, rather than wait for all the resources to be in place for a complete program.

6. COMMENT: The Public Advocate opposed the proposed amendments on the following grounds:

1. There is pending legislation which will alter the HIV reporting requirements. Therefore, the Department should not adopt these amendments at this time.

2. Many individuals will not seek HIV testing if reporting of HIV infection with identifiers is required, and the Advocate cited several references in the literature to support that contention.

3. New Jersey law does not require the use of name and address in reporting HIV infected individuals to the Department of Health. Specifically, the Public Advocate noted that N.J.S.A. 26:5C-6 requires reporting of HIV infection "along with identifying information," and that N.J.S.A. 26:5C-5 defines "identifying information" to mean "the name, address, Social Security number, or similar information by which the identity of a person who has or is suspected of having AIDS or HIV infection may be determined with reasonable accuracy." In addition, the Advocate noted that N.J.S.A. 26:5C-6 provides that the Commissioner shall determine the individuals required to report and "the manner in which the report shall be made to the Department." The Public Advocate felt that the above provisions do not require that names and addresses be reported, only some unique identifier. The Advocate suggested various coding methods to accomplish this unique identification.

4. Requiring the administrator of an institution to report HIV infected persons to the Department duplicates the reporting process, puts medical matters into the hands of non-medical personnel, and may compromise confidentiality.

5. Federal law does not require the reporting of HIV infection with name and address, but only with sufficient data for the collection of epidemiological statistics.

6. The stated objectives for having HIV infection reported with identifiers (Social Impact Statement) will not be met by this requirement.

RESPONSE: 1. The issue of pending legislation is addressed in the response to Comment 4 above.

2. The issue of individuals not seeking HIV testing because of HIV infection reporting with identifiers is addressed in the response to Comment 1 above.

3. The Department disagrees with the Public Advocate. The Department feels that New Jersey law requires reporting of HIV infection with such information as would identify the individual being reported. The Department does not feel that reporting with a code would be practical, considering the many reporting sources, nor meet the requirements of New Jersey law.

4. Most communicable disease reporting from institutions is not done by physicians, but by designated individuals, often the infection control practitioner. In the case of HIV/AIDS, some larger institutions have a specific HIV/AIDS coordinator who does the reporting. Even though the chief administrative officer of the institution is the official ultimately responsible for reporting, in practice the reporting is usually done by a designated person, often a person who is more sensitive to confidentiality needs than physicians or other personnel in the institution. Institutional disease reporting is part of long time disease reporting requirements in New Jersey, and is not unique to these proposed amendments. In addition, some of the institutions, such as HIV counseling and testing sites, do not have a physician in continual attendance, and therefore reporting must be done by non-physician personnel.

5. The Department never stated that the proposed amendments were in response to Federal law. However, it is Federal policy to encourage states to enact HIV reporting with identifiers.

6. Some of the responses to the issue of whether or not the proposed amendments will meet the stated objectives have been covered in various

comments above. The Department disagrees with the Public Advocate and feels that these objectives, including provision of better services to HIV-infected individuals, better partner notification, and better statistical data about HIV infection in New Jersey, will be met by the proposed amendments.

7. COMMENT: The University of Medicine and Dentistry of New Jersey, University Hospital, supported the proposed amendments, but was concerned that if resources to accomplish all of the advantages and benefits mentioned in the proposal are not available, the Department's expressed goals for the amendments will not be realized.

RESPONSE: This concern has been addressed in the response to Comment 3 above.

8. COMMENT: The Medical Society of New Jersey strongly supported the proposed amendments on the basis that the amendments are designed to protect the public through partner notification resulting from confidential testing and counseling of the HIV infected individuals. The Society felt that with partner notification, more individuals could be tested, counseled and educated on safer sex.

RESPONSE: The Department agrees with the Medical Society.

9. COMMENT: The New Jersey State Nurses Association (NJSNA) supported the proposed amendments, but expressed concern about the negative repercussions if information about an HIV-infected individual were to reach the wrong hands. NJSNA suggested that the proposed amendments should require physicians and institutions to develop policies and procedures to protect the privacy and confidentiality of HIV-infected persons.

RESPONSE: It is beyond the scope of the reporting requirements to require physicians or institutions to develop policies and procedures within their practice or operation. The Department is concerned with this issue and will consider developing policies and rules to improve the maintenance of confidentiality of HIV-related information by various health care providers.

10. COMMENT: Hunterdon County AIDS/HIV Task Force, while, not supporting or opposing the proposed amendments, indicated the amendments should be postponed until necessary resources are available and that performance standards should be developed to measure activities which the proposed amendments are supposed to strengthen, such as partner notification.

RESPONSE: The issue of resources is addressed in the response to Comment 5. The Department is very concerned about monitoring performance, and is in the process of developing performance evaluation methodology for HIV/AIDS activities.

11. COMMENT: David Faas expressed concern that HIV/AIDS reporting with identifiers would discourage those at high risk who would like to remain anonymous from coming forward to be tested. He suggested that anonymous testing be continued in order to avoid discrimination against HIV infected people.

RESPONSE: These issues are addressed in the responses to Comments 1 and 3 above.

12. COMMENT: Planned Parenthood Association of the Mercer Area and the New Jersey Women and AIDS Network jointly opposed the proposed amendments because they felt that non-anonymous HIV testing would discourage persons at high risk from coming forward for testing. The groups claimed that women who had gone to Planned Parenthood for HIV testing and counseling went there because the agency provided anonymous HIV testing in a women-focused environment. They felt that if these proposed amendments are enacted, it would be difficult to connect women to social and health care services, because these women would be afraid that their personal identity is being disclosed to the Department. The groups felt that the bond or trust between the physicians and their women patients would be disrupted if physicians are required to disclose the patients' names and addresses to the Department, due to the negative connotation of sexuality and AIDS. It was also the concern of the groups that non-anonymous testing would lead to further abuse, disenfranchisement and abandonment of women by their male partners. Lack of stronger penalties, the groups believed, would increase the risk of breach of confidentiality of personal records. The groups suggested that resources that would be used for the proposed amendments should be allocated for education and counseling of HIV-infected people, as well as for education of physicians and other health care providers on how to counsel their patients. The groups suggested that: one, severe criminal penalties should be imposed for wrongful disclosure of information; two, family planning clinics should be designated as sites for anonymous HIV testing; and three, education should

ADOPTIONS

HEALTH

be mandated for health care providers on appropriate care and counseling of patients.

RESPONSE: Many of these issues are covered in the responses to Comments 1, 2 and 3 above. The Department is particularly concerned that it not interfere with the care given to HIV-infected women. The Department does not believe that disease reporting is a significant interference in the physician-patient relationship. The Department believes that resources should be spent for education and counseling concerning HIV. Since much of the resources for HIV/AIDS reporting comes from Federal funds designated for AIDS/HIV surveillance, reporting does not take away money that the Department would otherwise spend on other HIV/AIDS control activities. Criminal penalties could not be established by these rules, but must be done by an act of the Legislature. These rules do not designate specific facilities as anonymous testing sites, but give the Commissioner the power to designate the facilities. In addition, mandating education for health care providers is beyond the scope of these amendments.

13. COMMENT: The FAITH Services opposed the proposed amendments because the agency felt they set back progress made in voluntary testing. The agency felt that people come forward for HIV testing because they are going to be tested anonymously. The agency doubted that the proposed amendments would be able to offer the benefits the Department claims. The agency questioned whether the reporting rules would be in conflict with Federal law protecting the confidentiality of information on drug users in treatment.

RESPONSE: Much of the response is covered in the responses to Comments 1, 3 and 5 above. The Department does not believe that the proposed amendments are in conflict with Federal law. HIV infection is reportable with identifiers in about half of the states, and no conflict with Federal law has been noted.

14. COMMENT: Joyce Jackson, from the Division of Alcoholism, Drug Abuse, and Addiction Services, saw no value to the proposed amendments, since AIDS is currently being reported to the Department with identifier. She felt that this new requirement will intimidate the people with criminal histories or those outside the system. She did not think that benefits will derive from the amendments.

RESPONSE: AIDS reporting involves only the end stage of HIV infection. The Department feels that much benefit can result from HIV infection reporting with identifiers, as well as AIDS reporting. Many factors intimidate people with criminal histories or those outside the system from seeking health care. There is no good evidence that disease reporting is a specially intimidating factor.

15. COMMENT: The City of East Orange, Department of Health/Substance Abuse Program supported the proposed amendments in theory, but felt that reporting of HIV infection with identifiers would drive people away from testing and services.

RESPONSE: This issue is covered in Comment 1 above.

16. COMMENT: The Morristown Memorial Hospital AIDS AD HOC Committee is opposed to the proposed amendments because they conduct counseling and case management without the patient's name and they feel that the proposed amendments would compromise that relationship. They feel that the resources are not available for the stated benefits from the amendments, that reporting with identifiers will drive people away from HIV testing, and that epidemiological data and data on therapeutic agents can be obtained without patient identifiers.

RESPONSE: Many of these issues are covered in the responses to Comments 1 and 5 above. The Department feels that there will be better epidemiological data if there is HIV reporting with identifiers than without identifiers, and that useful data can be obtained on the natural history of HIV infection, as well as on therapeutic modalities.

17. COMMENT: The Personal Liberty Fund opposed the proposed amendments because the agency felt that anonymity works better with HIV-infected people and people with AIDS than revealing their personal identify. The agency felt that HIV-infected individuals would be afraid to disclose their identity for the fear of discrimination. The agency felt that, in the absence of anonymity of testing and lack of stronger confidentiality laws, people would not come forward for testing and counseling. The Fund urged continued use of anonymous testing, and the redirection of money from reporting and partner notification to education, and that funds be directed toward drug treatment, AIDS and HIV treatment, and that there be stiff penalties for breaching confidentiality.

RESPONSE: The Department's responses to these issues are covered in the responses to Comments 1, 3, 5 and 12 above.

18. COMMENT: The National Association of Social Workers opposed the proposed amendments because of the lack of resources to provide

the needed services to HIV-infected individuals. Also, the Association was concerned about the possible discrimination which might result if personal information is not safeguarded. The Association felt that mandatory reporting would not result in more effective case management, and that knowing personal identifiers is a poor prevention technique.

RESPONSE: These issues are addressed in the responses to Comments 2 and 5 above.

19. COMMENT: Rutgers-The State University of New Jersey opposed the proposed amendments because the University felt that individuals would be driven further underground if they knew that their personal identity would be revealed to the Department. The University felt that these proposed amendments would drive away the younger population, which is already reluctant to come forward for anonymous testing.

RESPONSE: This issue has been addressed in the response to Comment 1 above.

20. COMMENT: Frances Rosenfeld of the Department of Higher Education opposed the proposed amendments because she felt that the amendments would drive people away from being tested. She also felt that the Department does not have sufficient resources to provide the necessary services for the HIV-infected individuals who would be identified. She suggested that the Department delay adoption of the amendments until the fate of pending relevant legislation has been decided.

RESPONSE: These issues have been addressed in the responses to Comments 1, 4 and 5 above.

21. COMMENT: RoseMarie Fassbender opposed the proposed amendments because she felt that the amendments would result in a decrease in the number of people seeking HIV testing.

RESPONSE: This issue has been addressed in the response to Comment 1 above.

22. COMMENT: Princeton University opposed the proposed amendments on the grounds that the amendments would decrease the number of people coming forward to be tested. Princeton University felt that maintaining confidentiality would become a problem, and that the amendments would interfere with the relationship between the consumer and health care providers.

RESPONSE: These issues are addressed in the responses to Comments 1 and 2 above.

23. COMMENT: Planned Parenthood of Greater Northern New Jersey opposed the proposed amendments on the grounds that the amendments would drive people away from HIV testing.

RESPONSE: This issue has been addressed in the response to Comment 1 above.

24. COMMENT: Trenton State College opposed the proposed amendments on the grounds that people at risk for HIV infection would not be willing to be tested if they knew that their names would be reported to the Department, and that the Department does not have adequate resources to care for the people who may be identified.

RESPONSE: These issues have been addressed in the responses to Comments 1 and 5 above.

25. COMMENT: The New Jersey Family Planning League, Inc. opposed the proposed amendments on the grounds that the resources to obtain the benefits from the amendments are not available, and that the amendments would drive people away from HIV testing. The League felt that the proposed amendments would alter the nature of HIV counseling and testing conducted by the agency, and give the Department too much control over the lives of individuals. The League also objected to the requirement that reporting be done within 24 hours of diagnosis and recommended a reporting time of 30 days.

RESPONSE: Some of the issues raised by the League are covered in the responses to Comments 1 and 5 above. The Department does not feel that these amendments constitute a particular interference in the lives of individuals. Disease reporting has been in effect for many, many years, and has been considered an appropriate public health function. The 24-hour notification requirement is not part of the proposed amendments, although it is part of the original rules. The requirement comes from State law on reportable diseases, and is the same for all reportable disease in New Jersey. The Department considers that the 30-day reporting period suggested by the League is too long to accomplish the expected benefits of the reporting. The Department has addressed the issue of the 24-hour notification time previously, and has stated that no action will be taken if the period between diagnosis and report is slightly longer than 24-hours, but that the 30-day period proposed by the League is unacceptable.

26. COMMENT: The Department of Health, County of Middlesex supported the proposed amendments.

RESPONSE: The Department appreciates the support.

27. COMMENT: John W. Farrell, Acting Assistant Commissioner, Division of Alcoholism, Drug Abuse and Addiction Service, indicated that the research subjects tested by the Newark, Jersey City and Paterson Health Behavior Projects are protected from identification by confidentiality certificates issued by the National Institute on Drug Abuse.

RESPONSE: The Department expects all State agencies and agencies funded through the Department to comply with the reporting requirements. The Federal certificate of confidentiality does not prohibit these projects from meeting the reporting requirements.

28. COMMENT: The Department of Human Services, Division of Youth and Family Services (DYFS), stated that it would have preferred not to have the proposed amendments, but understands the need of the Department of Health to bring its rules into conformity with State law. DYFS requested that greater attention be paid to confidentiality issues on reported information. DYFS asked whether or not the proposed amendments apply to children and whether or not the institutions required to report include the DYFS-operated and/or contracted institutions. If such facilities were required to report, it would require a change in DYFS procedures.

RESPONSE: The Department appreciates the understanding by DYFS that the Department's rules must be in conformity with State law. The Department is very cognizant of the need to maintain the strictest confidentiality of information coming to it on HIV infected individuals, and has always done so. In addition, N.J.S.A. 26:5C-5 et seq. imposes confidentiality requirements concerning HIV-related information on the Department, as well as on others.

The Department does not completely understand the questions posed by DYFS. The proposed amendments only change the information reported on individuals with newly diagnosed HIV infection (reporting with identifiers instead of without identifiers), not who is to report. There are no age qualifiers on reporting HIV infection, so that children under 18 years of age should be reported. Disease reporting has always applied to facilities operated or controlled by the Department of Human Services, and no exception was anticipated in terms of reporting HIV infection. DYFS operated and/or contracted facilities should already be reporting newly diagnosed HIV infection. The proposed amendments, if adopted, will only change the reporting requirements in that newly diagnosed HIV infection will have to be reported with identifiers.

29. COMMENT: The Hyacinth Foundation opposed the proposed amendments for the following reasons:

1. Anonymous testing encourages people to have HIV testing in a safe, non-threatening environment. This will allow more people to be tested and will better bring people into the care and treatment system. Conversely, if there is not anonymous testing, people will refrain from seeking HIV testing. When the possibility of reporting HIV infection with identifiers was first announced two years ago, Hyacinth received many calls requesting the location of anonymous testing sites in New York or Pennsylvania.

2. If new treatments become available, it would not be necessary to contact individuals directly, and there are many methods to disseminate information on new treatments.

3. Partner notification activities will not be enhanced because people will not share the names of their partners, if they know that the partners will be reported by name to the Department.

4. The current system of reporting HIV infection without identifiers provides adequate data for epidemiologic purposes. Requiring reporting of identifiers will not improve the data, as people will give false identifying information.

5. HIV reporting will not give good information on the natural history of HIV-infection, as better data can be obtained by medical researchers working with HIV-positive persons in clinics and hospitals.

6. Hyacinth knows many instances of discrimination that has occurred because of breaches of confidentiality of HIV-infected persons.

7. The resources to accomplish the stated advantages of the proposed amendments are not available and are not likely to become available soon.

8. Seroprevalence data are better for determining the extent of HIV infection in the population than reporting with identifiers.

9. There is currently legislative action that could affect HIV reporting requirements, and the proposed amendments should await the actions of the Legislature.

RESPONSES: The responses to the comments from Hyacinth are as follows, each comment being addressed by the number above:

1. These issues are addressed in the responses to Comments 1 and 3 above.

2. It was not the purpose of the proposed amendments to allow the Department to notify HIV-infected persons about new treatments, but to aid in directing people to care and treatment that would provide newer therapies when they become available.

3. The Department believes that partner notification activities will be enhanced by the proposed amendments, because they will allow the Department to inquire about partner notification on a greater number of HIV-infected persons.

4. The current system of reporting HIV infection does not allow good monitoring of the completeness of reporting nor of duplication of data. The Department believes that the proposed amendments will improve the quality of the data received.

5. There are many ways of learning about the natural history of HIV infection. While one way is by researchers following patients in clinics and hospitals, another way is by researchers analyzing surveillance data collected on a Statewide basis.

6. This issue has been addressed in the response to Comment 2 above.

7. This issue has been addressed in the response to Comment 5 above.

8. The Department agrees that HIV seroprevalence studies are usually better than reporting for determining the extent of HIV infection within the population on whom the seroprevalence studies are done. However, such studies are not done on the entire population, and often miss important groups in the population. HIV reporting is an adjunct to seroprevalence studies in determining the extent of HIV infection in the population.

9. This issue is addressed in the response to Comment 4 above.

Full text of the adoption follows:

8:57-2.2 Reporting HIV infection

Every physician attending a person found to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such a condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall include the name and address of the reporting physician, the name, address, gender, race and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, and such other information as may be required by the State Department of Health. A physician shall not report a person infected with HIV if the physician is aware that the person having control or supervision of an institution named in (b) below is reporting that person as being infected with HIV, or if the physician is aware that the person has previously been reported to the State Department of Health as being infected with HIV.

(b) The person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, penal institution, clinic, blood bank, or facility for HIV counseling and testing in which any person is determined to be infected with HIV shall, within 24 hours of receipt of a laboratory report indicating such condition, report in writing such condition directly to the State Department of Health on forms supplied by the State Department of Health. The report shall state the name, address, gender, race, and birth date of the person found to be infected with HIV, the date the specimen tested for HIV was obtained, the name of the attending physician, the name and address of the institution, and such other information as may be required by the State Department of Health. The person having control or supervision of the institution shall not report a person infected with HIV if it is known that a physician is reporting the person or that the person has previously been reported to the State Department of Health as being infected with HIV. The person having control or supervision of the institution may delegate this reporting activity to a member of the staff, but this delegation does not relieve the controlling or supervising person of the ultimate reporting responsibility.

(c) Every clinical laboratory shall report every three months to the State Department of Health the number of specimens tested for HIV, components of HIV and antibodies to HIV that are sent to the laboratory from physicians' offices in New Jersey or from institutions in New Jersey, as well as the number of such tests indicating infection with HIV and such other information as may

ADOPTIONS

be required by the State Department of Health. The manner of reporting shall be determined by the State Department of Health. The report shall be sent within 30 days of the close of each three-month reporting period.

8:57-2.4 Testing procedures

No physician or institution may direct a person be tested for HIV, a component of HIV, or antibodies to HIV, unless the name and address of the person whose specimen is being tested is known and recorded by the physician or institution, except that the State Commissioner of Health may designate facilities which are permitted to test for antibodies to HIV without obtaining the name and address of the person being tested. The name and address of a person requesting testing without giving his or her name and address at such a designated facility are not required to be reported to the State Department of Health.

8:57-2.6 Access to information

As provided by N.J.S.A. 26:4-2 and 26:5C-5 through 14, the information reported to the Department shall not be subject to public inspection, but shall be subject to access only by the State Department of Health for public health purposes.

8:57-2.7 Failure to comply with Reporting Requirements

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

(c) Laboratory supervisors failing to fulfill the aforementioned reporting obligations may receive written notification of this failure. Supervisors failing to meet these requirements, despite warning, shall be subject to fines as allowed by N.J.S.A. 26:4-129. In addition, those whose failure to report is determined by the State Department of Health to have significantly hindered public health control measures, shall be subject to other actions, including notification to the State Clinical Laboratory Improvement Services.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Policies and Procedures Pertaining Strictly to County Community Colleges for New Jersey

Readoption with Amendments: N.J.A.C. 9:4

Proposed: August 19, 1991 at 23 N.J.R. 2467(a).

Adopted: September 25, 1991 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Filed: September 26, 1991 as R.1991 d.517, **without change**.

Authority: N.J.S.A. 18A:64A-7.

Effective Date: September 26, 1991, Readoption; October 21, 1991, Amendments.

Expiration Date: September 26, 1996.

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. 9:4.

Full text of the adopted amendments follows.

9:4-1.12 Physical facilities

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

(g) Any construction project that involves the renovation, rehabilitation, or alteration of existing facilities, the total project cost of which does not exceed one percent of the net investment of the college's physical plant as reported in the college's current audited financial statements or \$1,000,000, whichever is less, and which is not financed in whole or in part by State funds may proceed with the approval of the college board of trustees.

9:4-3.1 Accounting and finances

(a) The accounting system and reports of a county college shall be maintained in accordance with Chapter 5 of the most recent

HIGHER EDUCATION

edition of College and University Business Administration published by the National Association of College and University Business Officers, One Dupont Circle, Washington, D.C. 20036 and any subsequent revisions thereof except where otherwise specifically required by the regulations. Each college shall adopt a system of accounts consistent with the standards and guidelines of the American Institute of Certified Public Accountants. Costs borne by the State and county on behalf of the college shall not be reflected on the financial statements and related reports of the college.

(b) (No change.)

(c) Not later than November 1, each county college shall file with the Chancellor of Higher Education an audit of the college's accounts and financial transactions for the previous fiscal year, together with a copy of the auditor's management letter as soon as it is available. The management letter shall include, but not be limited to, all material comments, findings, and recommendations resulting from the audit engagement, including those concerning internal controls, administrative controls, and other financial matters. Each college shall also file an audit of student enrollment by such date as the Chancellor shall establish. These audits shall be conducted by a certified public accountant of New Jersey. The audits shall be in accordance with AICPA standards and must include compliance with all county college regulations. A college shall every five years either change certified public accounting firms or within the same firm change account partners and complete auditing staff. For funds allocated under P.L. 1981, c.329 and designated as categorical funding, the auditor shall separately certify that at least a corresponding level of expenditures have been made out of the current operating fund for one or more of the designated purposes outlined in the annual funding formula approved by the Board of Higher Education.

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

(b)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

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

Adopted Amendment: N.J.A.C. 9:9-7.7

Proposed: August 5, 1991 at 23 N.J.R. 2212(a).

Adopted: September 19, 1991 by the New Jersey Higher Education Assistance Authority, Philip W. Koebig, Chairman.

Filed: September 25, 1991 as R.1991 d.515, **without change**.

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

Effective Date: October 21, 1991.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:9-7.7 Repayment of loan

(a) (No change.)

(b) Payment of the interest to lender during the in-school period on a NJCLASS loan must begin within 60 days after the loan is disbursed, unless the borrower chooses the option of capitalizing interest during the in-school period.

(c) Borrowers who choose to capitalize interest during the in-school period shall, in exchange for this option, be required to pay an increased loan interest rate, as established by the Authority pursuant to N.J.A.C. 9:9-7.6(a), over the regular program interest rate in effect at the time of borrowing.

Recodify (c)-(f) as (d)-(g) (No change in text.)

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

New Jersey Care . . . Special Medicaid Programs Manual

Medicaid Eligibility

Pregnant Women and Children

Adopted Concurrent Amendments: N.J.A.C. 10:72-1.1 and 4.1

Proposed: August 19, 1991 at 23 N.J.R. 2543(a).

Adopted: September 27, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: September 30, 1991 as R.1991 d.526, **without change**.

Authority: N.J.S.A. 30:4D-3, 30:4D, 7, 7a, b, and c and 1902(a)(10)(A)(ii)(IX) and 1902 (1)(1)(A), (B), and (2)(A)(i) of the Social Security Act.

Effective Date: October 21, 1991.

Expiration Date: August 27, 1992.

Summary of Public Comments and Agency Responses:

Brenda G. Considine, Coordinator, Education and Family Advocacy Association for Retarded Citizens (ARC) of New Jersey, commented favorably on the proposal. The commenter indicated that ARC fully supports the regulations, as well as the legislation, because it was a positive step to help prevent childhood disability which may result from lack of adequate pre- and peri-natal care.

The commenter did not request any change in the rules.

The agency's response is that the favorable comment was greatly appreciated.

Full text of the adoption follows.

10:72-1.1 Program scope

(a) and (b) (No change.)

(c) Retroactive Medicaid eligibility is available beginning with the third month prior to the month of application for Medicaid for any month during which the applicant meets all eligibility criteria and during which the applicant has unpaid medical expenses for covered services. In order to qualify for retroactive coverage, an individual need not be determined eligible at the time of application for Medicaid benefits. Application for retroactive Medicaid coverage may be made on behalf of a deceased person so long as the person was alive during a portion of the three month period immediately prior to the month of application and he or she has unpaid medical expenses for Medicaid covered services.

i. Retroactive Medicaid coverage is not available under the provisions of this chapter for pregnant women and children up to the age of one whose income exceeds 133 percent of the Federal poverty guideline for any period prior to July 1, 1991.

10:72-4.1 Income eligibility limits

(a) (No change.)

(b) Income limits for children aged one through five years covered under the provisions of this chapter shall be based on the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 133 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(c) Income limits for pregnant women and children under the age of one year covered under the provisions of this chapter shall be based on 185 percent of the poverty income guideline as defined by the Department of Health and Human Services in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation

Act of 1981 (Pub.L. 97-35). The monthly income standard will be one-twelfth of 185 percent of the annual poverty income guideline rounded down to the next whole dollar amount for each household size. The annual revision to the Federal poverty income guideline will be effective for the purposes of this section with the first day of the year for which the poverty guideline is promulgated.

(d) In order to be eligible for Medicaid benefits under the provisions of this chapter, monthly household income (as determined by this chapter) must be equal to or less than the income limit established in (a), (b), or (c) above as applicable.

1. (No change.)

2. With the exception in (d)1 above, income eligibility exists for each month in which the household unit's income is equal to or less than the income limits.

(b)

DIVISION OF ECONOMIC ASSISTANCE

Aid to Families with Dependent Children Program Emergency Assistance

Adopted Amendment: N.J.A.C. 10:82-5.10

Proposed: April 1, 1991 at 23 N.J.R. 967(b).

Adopted: September 27, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: September 27, 1991 as R.1991 d.522, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:10-3.

Effective Date: October 21, 1991.

Operative Date: November 1, 1991.

Expiration Date: August 24, 1994.

Summary of Agency-Initiated Changes:

A clarifying change was made at N.J.A.C. 10:82-5.10(e)1i(2) to identify potential sources in the location of permanent housing, such as realtors or landlords, that are expected to be contacted by EA recipients incident to housing searches. A clarification was also made at N.J.A.C. 10:82-5.10(f)1 to alert county agencies that placements, regardless of the emergency arrangement, must take into consideration the family's particular circumstances.

Summary of Public Comments and Agency Responses:

A list of commenters follows:

Lynn A. Sherlock, Passaic County Board of Social Services

Edward Testa, Bergen County Board of Social Services

Henry D. Dinger, Warren County Welfare Board

Ann Saboe, Burlington County Welfare Board

Robert Fasanello, County Welfare Directors' Association of New Jersey

Andrea K. Rauer, Camden County Board of Social Services

Beverly J. Bearmore, Ocean County Board of Social Services

Louis Armour, Monmouth County Board of Social Services

Nancy Goldhill, Legal Services of New Jersey

Robert Fasanello, Hunterdon County Board of Social Services

Angelica Harrison, County of Hudson, Division of Social Services

Dorothy Argyros, Monmouth County Coalition for the Homeless

Jeffrey M. Daly, County of Sussex, Department of Human Services, Division of Welfare

Mark Schiffer, Passaic County Board of Social Services

Carl Bachmann, Passaic County Board of Social Services

Bill Curcio, Passaic County Board of Social Services

Robert Vermeulen, Passaic County Board of Social Services

Donna M. Wrenn and John Terwilliger, Cumberland Family Shelter

David G. Sciarra, Department of the Public Advocate, Division of Public Interest Advocacy

COMMENTS: SPECIFIC RULE CITATIONS IDENTIFIED BY COMMENTERS

N.J.A.C. 10:82-5.10(a)1

COMMENT: Three commenters indicated that the existing 30-day limit is proper in most situations and opposed elimination of the 30-

ADOPTIONS

day limit stipulation for EA eligibility and indicated that the limit should be retained with provisions for extension on a case-by-case basis only.

RESPONSE: The Department observes that the 30-day limit may be appropriate in a majority of instances. In situations, however, where it is not appropriate, for example, where the family had made its own interim arrangements for shelter that now have deteriorated or becomes unavailable, emergency shelter arrangements are necessary to protect the family, especially the children. The Department found that the 30-day rule acted as a disincentive to those families that attempted to resolve homelessness on their own but were compelled to immediately turn to the CWA for assistance to avoid forfeiting entitlement to EA.

N.J.A.C. 10:82-5.10(b)

COMMENT: One commenter requested that the client's responsibilities be clearly stated, along with the CWA responsibilities to offer supportive services or referral to such services.

RESPONSE: The Department believes that those responsibilities are clearly identified at N.J.A.C. 10:82-5.10(e) of the amended text.

N.J.A.C. 10:82-5.10(b)1

COMMENT: Two commenters noted that a CWA is not in a position to ensure that all available resources and services are effectively utilized.

RESPONSE: The Department agrees with the commenters' observation and has amended language to indicate that CWAs shall attempt to utilize all reasonably available resources and services.

N.J.A.C. 10:82-5.10(c)

COMMENT: Three comments were received indicating that: (1) the rule should stress that the primary responsibility for securing and maintaining housing rests with the client, not the CWA; (2) these rules will result in automatic referrals, in most counties, of all clients not already receiving rental subsidies; (3) families cannot "plan to ensure the availability of uninterrupted housing" if funds to pay for housing are not available.

RESPONSE: The Department agrees that the primary responsibility for securing and maintaining housing rests with the family; however, the CWA has a responsibility to provide help in the prevention of homelessness and assist families to find suitable permanent housing whenever the need arises. While the Department cannot agree with the characterization that the rules will result in automatic referrals of families not already in receipt of EA benefits, prevention of actual homelessness is a key element of the EA response mechanism. Although the Department does not dispute the fact that funding to ensure the availability of uninterrupted housing undergirds any plan for remediation, the language of the amended text unquestionably stresses the fact that effort should be made to minimize the disruption to family life that would be caused by actual homelessness.

N.J.A.C. 10:82-5.10(c)1

COMMENT: One commenter suggested that the rule should provide that a family should be referred to social services personnel when housing costs equal or exceed 80 percent of total recorded income.

RESPONSE: The Department observes that the proposed text provides for a range of "indicators" to guide individual CWAs in their EA prevention activities. CWAs are certainly permitted to refer cases for social services on a more flexible or locally differentiated criteria if they so desire.

N.J.A.C. 10:82-5.10(c)5

COMMENT: One commenter suggested that the words "or a threatened foreclosure" be added at the end of the sentence and included in (c)5i also.

RESPONSE: The Department agrees with the suggestion and the rule has been revised accordingly.

N.J.A.C. 10:82-5.10(c)5i

COMMENT: One commenter noted that the CWA should not be required to intercede in a landlord/tenant dispute.

RESPONSE: The Department agrees with the commenter's observation and the rule has been revised to indicate that CWAs should "assist" families in attempts to preclude actual homelessness. The wording has been altered to indicate that it is the primary responsibility of the recipient to deal with matters of disputes and that the welfare agency, as a governmental entity, stands ready to provide the necessary support services. The term "intercede" suggests a unilateral rather than a shared relationship in dispute matters not initially called for by this rulemaking.

HUMAN SERVICES

N.J.A.C. 10:82-5.10(d)2

COMMENT: Four commenters objected to the provision allowing for a letter from the landlord to be used as documentation of ending eviction. This provides an easy avenue for collusion between landlords and tenants resulting in the AFDC program abuses. In addition, such provision may open CWAs to a flood of landlord initiated requests for back rent payments after only the slightest delinquency in a client's rent payment.

RESPONSE: The Department takes cognizance of the objections raised by the commenters with respect to letters from landlords and has revised the proposed text to allow letters from landlords, subject to CWA verification, in extreme circumstances only when other documentation does not exist.

COMMENT: Two commenters recommended defining and/or eliminating the word "permanent" to ensure that families who make temporary arrangements as a result of an emergent situation and those arrangements subsequently deteriorate are not penalized for such initiative. The same needs to be done at (d)2ii.

RESPONSE: The Department concurs with the commenters' observation and the word "permanent" is being deleted where appropriate to eliminate any possible confusion.

N.J.A.C. 10:82-5.10(d)2iii(2)

COMMENT: Six commenters noted that the proposed language is not clear and permits all manner of interpretations. The rule seems to allow a client to exhaust all his or her funds on such items as a VCR, an answering machine, and so forth and yet qualify for EA. There is no requirement for documentation that the client's statements are correct, and "family emergency" lacks definition.

RESPONSE: In addition to requiring the client to sign a document that funds were spent on items necessary for a decent living, the Department has added language to stipulate that the EA pursuant to this section is granted only as the result of a specific event or circumstance which must also be documented in the case record. An example has also been added to assist CWAs in determining what may be considered a "family emergency," since it would be impossible to comprehensively identify all possible types of family emergencies that may occur. It was not the intent of the Department to have the proposed language construed as permitting an open ended disposal of income and resources on items such as those noted by the commenters but, rather, to predicate such expenditure on unanticipated emergency needs, such as excessive unreimbursed medical expenses.

COMMENT: One commenter suggested that the words "excessive costs for" should be deleted since virtually any unreimbursed medical expense is likely to be unaffordable for a welfare family.

RESPONSE: The Department does not concur with this generalization. Text is merely intended to serve as an example of what may constitute emergency expenditures and determinations would be made on a case-by-case basis. Therefore, no change is being made to the rule.

N.J.A.C. 10:82-5.10(d)2iii(3)

COMMENT: One commenter noted that impairment should be documented by an appropriate medical authority and defined as alcohol addiction or drug addiction, not abuse. CWA staff should not be placed in a liability situation concerning medical judgments.

RESPONSE: The examples provided in the proposed rule are not prescriptive nor necessarily intended to provide a definition of functional incapacity. The Department also observes that no documentation of impairment by CWA staff is required in the case record, although, CWAs are not precluded from obtaining such documentation. The proposed rule, accordingly is not intended to place CWA staff in a position of making medical judgments.

N.J.A.C. 10:82-5.10(d)2iii(3)(A)

COMMENT: One commenter suggested that the designation of protective payees and the making of restricted or vendor payments should prevail only "as long as the incapacity lasts."

RESPONSE: The Department observes that the suggested modification urged by the commenter relates to policy governing income maintenance payments. Accordingly, if the incapacity no longer exists, protective or restricted payments would also cease. The Department has expanded the text cross-reference governing the use of such restricted payments for purposes of clarification.

COMMENT: One commenter observed that requiring a protective payee or restricted payment for clients demonstrating functional incapacity will seriously overburden CWA staff and noted that a method needs to be developed quickly to handle restrictive payments through the

FAMIS computer system. In addition, the commenter believes the term "functional incapacity" may be too broad and open to subjective interpretation, which could cause problems if fair hearings are requested on actions based on functional incapacity.

RESPONSE: The Department notes that the FAMIS computer system is currently being modified to accommodate restrictive payments. Inasmuch as the CWA is at liberty to seek medical documentation in support of a demonstrated indication of functional incapacity, the Department does not agree that the rule would have an impact on the fair hearing process.

COMMENT: Two commenters suggested that the Department delete use of protective payees and provide for the clear use of involuntary restricted payments alone.

RESPONSE: The Department notes that such action would not be permissible under Federal regulations governing the AFDC program. As for the issuance of AFDC/EA benefits as a restricted or vendor payment, that option already exists at N.J.A.C. 10:82-5.10 as well as at N.J.A.C. 10:81-4.5. Clarifying language reiterating the option in EA situations and restrictions governing AFDC payments has been added at N.J.A.C. 10:82-5.10(a).

N.J.A.C. 10:82-5.10(d)3i

COMMENT: One commenter urged that this subparagraph should be deleted inasmuch as temporary living arrangements do not prove or constitute a state of homelessness.

RESPONSE: The Department observes that this section merely serves to further clarify N.J.A.C. 10:82-5.10(d)3 in order to preclude any misapplication of the regulation with respect to victims of domestic violence.

N.J.A.C. 10:82-5.10(e)

COMMENT: One commenter suggests that this subsection should clearly state that CWAs are not responsible for the inactions or actions of others which contribute to a state of homelessness, and which actions/inactions prevent resolution of the matter. The commenter does not agree that there is a "shared responsibility" which assumes a dependency relationship with clients.

RESPONSE: The Department does not agree with the views expressed and observes that while the primary responsibility for securing and maintaining housing rests with the family, the CWA has a responsibility, as a service agency, to help in the prevention of actual homelessness and assist families to find suitable permanent housing.

N.J.A.C. 10:82-5.10(e)1

COMMENT: One commenter requested clarification as to whether this paragraph applies to families receiving temporary rent subsidies as well as families in shorter term arrangements with respect to searching for permanent housing and completing Form PA-70.

RESPONSE: The Department observes that this requirement applies to all families in housing arrangements not affordable without EA benefits.

COMMENT: One commenter noted that the word "requirement" should be replaced with "his or her responsibilities as."

RESPONSE: The Department agrees that "responsibilities" is more appropriate than "requirements" and has amended the proposed text.

N.J.A.C. 10:82-5.10(e)1i(2)

COMMENT: Three commenters questioned the need to specify the exact number of contacts to be made per week. One commenter noted that the number of contacts indicated in the example may be too many while another commenter requested that the number of contacts be doubled. In addition, it was requested that the proposed amendment should be more specific as to what constitutes "reasonable" number of contacts and "good cause."

RESPONSE: The Department notes that the number of contacts indicated in the proposed amendment serves merely as an example. The CWA, in conjunction with the family, will determine, taking into account family circumstances, the number of contacts to be made each week. As to providing text with respect to a more specific delineation of what constitutes "good cause," the Department observes that it will revisit the issue in the future with a view of providing definitional text.

N.J.A.C. 10:82-5.10(e)1ii

COMMENT: One commenter noted that through application of this subparagraph a family can be found ineligible for continued EA for refusal, without good cause, to cooperate and questioned what is to happen to the children if their EA benefits are denied or terminated.

RESPONSE: The Department notes that parents have a primary responsibility for sheltering their children. If the parents do not carry out that responsibility and the family is without shelter, CWAs must make referrals to appropriate child protection agencies or authorities.

COMMENT: One commenter stated that families should not be rendered ineligible for mere failure to sign the eligibility notice. Sanctions should be tied only to the family's cooperation with the search requirement. Sanctioning should stop as soon as the family complies with the housing search requirement. Sanctions resulting in loss of shelter should not be imposed without greater protection for the family (that is, series of notices, warnings, conferences, and assessments) as done for REACH participants (N.J.A.C. 10:81-14.1). The rule should provide that a family's EA benefits cannot be terminated unless the CWA has complied with its shared responsibility to secure housing.

RESPONSE: The Department notes that without the signature requirement, the agency would be unable to ensure that the family's responsibilities have been explained. Thus, this requirement protects the family as well as the CWA. In accordance with N.J.A.C. 10:82-5.10(e)1ii(1), sanctions do stop as soon as the family demonstrates a willingness to cooperate with the CWA. The existing protection afforded families through timely and adequate notice provisions of the AFDC program are considered both adequate and fair.

N.J.A.C. 10:82-5.10(e)1ii(1)

COMMENT: One commenter noted that the proposed amendment does not provide meaningful measures to enforce client responsibilities. The commenter indicates that failure to perform as required, without good cause, should render the client ineligible for EA.

RESPONSE: The Department submits that the proposed amendment does indeed provide for the enforcement of client responsibilities as such relate to housing search requirements.

N.J.A.C. 10:82-5.10(e)2ii

COMMENT: Four commenters questioned if the State will issue the document "EA rights and responsibilities."

RESPONSE: The Department intends to issue that document to CWAs.

N.J.A.C. 10:82-5.10(e)2iii

COMMENT: One commenter indicated that this subparagraph should clarify the kinds of family circumstances which indicate a need for housing alternatives with more intensive services.

RESPONSE: The Department believes that this is a professional social service work determination and must be done on a case-by-case basis.

N.J.A.C. 10:82-5.10(e)2iv

COMMENT: Five commenters indicated that this subparagraph should allow more than five days for the development of a service plan since development of the plan requires a significant amount of work.

RESPONSE: The Department agrees that five working days may not provide sufficient time to develop a service plan and has revised the proposed text to allow 10 working days for its completion.

COMMENT: One commenter questioned if the State will develop the service plan form.

RESPONSE: The Department plans to develop a service plan form in conjunction with the CWAs.

COMMENT: One commenter questioned if the service plan is to be done in all cases.

RESPONSE: The Department observes that completion of a service plan is not necessary in cases receiving payments for back rent, utilities and/or security deposits. Text has been added at N.J.A.C. 10:82-5.10(e)2iv to reflect this.

COMMENT: One commenter requested that language be added to state that the service plan needs to be mutually developed and that the plan is to aim at working toward securing permanent shelter.

RESPONSE: The Department believes that the regulation as currently worded does provide for the development of a mutually conceived plan whose aim is to secure permanent housing.

N.J.A.C. 10:82-5.10(e)2iv(1)

COMMENT: One commenter requested that the word "discuss" be deleted and replaced with "prepare" (the service plan). It was also requested that the plan be prepared at a time and place convenient to both the family and CWA.

RESPONSE: The Department agrees with the commenter's observation with respect to the use of the word "prepare" and has amended

ADOPTIONS

the language accordingly. With respect to the commenter's second suggestion, the Department submits that CWAs, as social service agencies, will make concerted efforts to prepare the plans necessary at a time and place which is mutually convenient to both the family and agency. Unless there are indications to the contrary, it believes that this area should not, at this time, be subjected to rulemaking.

N.J.A.C. 10:82-5.10(e)2iv(2)(B)

COMMENT: One commenter requested that a listing of services that can be provided should be added, such as transportation to the CWA, shelters, service agencies, and counseling sessions.

RESPONSE: The Department observes that those services are listed at N.J.A.C. 10:82-5.10(1) and thus would be duplicative to include them here as well.

N.J.A.C. 10:82-5.10(e)2iv(2)(D)

COMMENT: One commenter suggested language revision with respect to referral to REACH/JOBS.

RESPONSE: The Department concurs with the commenter's suggestion and has revised text accordingly.

N.J.A.C. 10:82-5.10(e)2v

COMMENT: One commenter noted that the provision in this subparagraph is unnecessary since the CWA worker and/or supervisor can determine when reevaluation is appropriate.

RESPONSE: The Department believes that the rule needs to contain this provision even though it is observed that in most situations CWA personnel will initiate reevaluation when deemed necessary.

COMMENT: One commenter requested that a new subparagraph be added to state that the CWA shall document CWA support activities at least once a month.

RESPONSE: The Department believes that such routine documentation is inappropriate and will only serve to burden the CWA with unnecessary paperwork.

N.J.A.C. 10:82-5.10(f)

COMMENT: Two commenters requested deletion of language concerning "customary place of residence" and "reasonable rates." Commenters noted that in some cases shelters may be charging more than a motel.

RESPONSE: The Department maintains that CWAs must attempt to keep families sheltered, whenever possible, in the area of their customary place of residence. The Department is aware that this is not always possible and that placements do have to be made elsewhere in order to keep the family from becoming homeless. With respect to the comment that shelters may be charging more than motels, the rule provides for use of a facility at the most reasonable costs, given a family's situation and assessed need or appropriate services.

COMMENT: One commenter observed that if an additional two months of EA after the initial three months shall be authorized (as opposed to may), then the rule should formalize a five month entitlement to EA services. Another commenter suggested that EA extensions should remain permissive, not mandatory.

RESPONSE: The Department did not intend to establish an automatic five-month entitlement to EA, but rather intended that such extensions beyond three months be individually determined. Language to reflect such discretion on the part of the CWA is altered through retention of existing text and insertion of the word "may." Moreover, language contained at N.J.A.C. 10:82-5.10(f) has been reiterated at N.J.A.C. 10:82-5.10(b) to stipulate exceptions to the maximum five calendar months EA period provisions to address isolated emergency situations as part of the goal of the program.

COMMENT: One commenter suggested that the phrase "... state of homelessness first becomes known to the CWA" be changed to "... application for EA is made".

RESPONSE: The Department, in part, agrees with the commenter's observation and has amended text in order that it reflect the intent of language used at N.J.A.C. 10:82-5.10(a).

N.J.A.C. 10:82-5.10(f)1ii

COMMENT: One commenter noted that if the CWA is responsible for "all costs" of clients placed in motels or shelters, what expectations should be made concerning the full grants clients continue to receive while paying no shelter costs.

RESPONSE: The Department observes that since, in keeping with language provided at N.J.A.C. 10:82-5.10(a), EA is an extra or additional

HUMAN SERVICES

payment, no provision exists for client participation in meeting costs for the federally funded maximum EA benefit. Moreover, the Department notes that Federal regulations preclude the imposition of restrictions on any portion of an AFDC assistance payment unless mismanagement of funds is demonstrated. Such restrictions do not apply in situations where the family elects to voluntarily contribute a portion of its regular assistance grant in meeting an element of an emergency benefit.

N.J.A.C. 10:82-5.10(f)1iii and (f)1iii(3)

COMMENT: One commenter suggested that a limit be placed on the provision of EA extensions beyond the five months for temporary housing when permanent housing has not been secured.

RESPONSE: While the Department notes that such a limit would be inappropriate as it may jeopardize the health and well-being of certain families in emergent situations, it does concur that some alteration of regulatory language is warranted. As a result, the rule has been amended to stipulate conditions and actions necessary to effect such extensions. The modified language now provides that extensions may be available when the EA recipient family has complied with all agency requirements but alternate housing arrangements in spite of concerted efforts by all will still not be available and homelessness will materialize without the infusion of EA benefits.

N.J.A.C. 10:82-5.10(f)1iii(2)

COMMENT: One commenter suggested that language be more specific with respect to a "change in circumstance."

RESPONSE: The Department concurs with the commenter's observation and has amended text to be more specific.

N.J.A.C. 10:82-5.10(f)2

COMMENT: Three commenters stated that DEA approval should not be required to provide retroactive payments to prevent eviction or foreclosure and that there should be a "least costly alternative" provision which allows CWAs discretion in making such payments, with proper documentation. Another commenter suggested that back payment for rental/mortgage expense and back utility payments should be equally restricted to three months inasmuch as provisions have been made for DEA approval to pay for more months.

RESPONSE: The Department believes that the rule is reasonable in unilaterally allowing CWAs to authorize a specified number of months of retroactive payments. However, in order to maintain program integrity and fiscal responsibility, the Department notes that payments in excess of the number specified should be subject to approval by DEA. Since meeting the cost of rental/mortgage arrears is significantly different than meeting utility arrearages, the Department submits that allowing for payment of utility costs in excess of three months may in fact be the "least costly alternative" in the prevention of homelessness. Therefore, the Department concludes that no alteration in text is warranted.

N.J.A.C. 10:82-5.10(f)2i

COMMENT: Two commenters noted that N.J.A.C. 10:82-5.10(f)2i provides payments for more than three calendar months of retroactive rental or mortgage payments or six months of retroactive utility expenses under extraordinary circumstances and questioned what "extraordinary circumstances" would be considered.

RESPONSE: The Department will take the commenters' observations into consideration with a view of exploring the possibility of providing text to embrace a definition of "extraordinary circumstances." However, language to incorporate such definition cannot be accommodated within the realm of the current rulemaking.

COMMENT: One commenter noted that there is no reason for payment of back utility bills beyond the existing three months, especially when other programs such as Home Energy Assistance (HEA) exist to help clients with these expenses. Another commenter suggested that the family should have to demonstrate that it applied for emergency HEA first.

RESPONSE: The Department observes that certain families may not be eligible for benefits under HEA or other related programs. In addition, very often the absence of utility payments do not result in imminent homelessness until a number of months pass without payment, especially during the winter months. Furthermore, since the CWA processes HEA applications, it would, as a matter of course, utilize that program if benefits under HEA are available.

N.J.A.C. 10:82-5.10(f)5

COMMENT: One commenter suggested that terminology throughout the rule should be consistent with respect to temporary rental assistance payments.

RESPONSE: The Department agrees and has amended the text so that the term "temporary rental assistance" is used consistently throughout the rule.

COMMENT: Would "social security" count emergency assistance/rental assistance provided to Supplemental Security Income (SSI) recipients as income-in-kind? If it is counted as income-in-kind such would adversely affect their SSI grant resulting in a reduction of their benefits.

RESPONSE: While the Department is looking into Federal policy that would govern the treatment of in-kind income for SSI purposes, it is noted that the commenter's inquiry is not pertinent to this rulemaking.

COMMENT: Two commenters suggested amending the rule to stipulate that temporary rental assistance benefits, as authorized in accordance with (f)5i and ii, shall be expedited by the CWA to preclude the loss of an existing or potential housing arrangement.

RESPONSE: The Department agrees with the commenters' suggestion and has amended the rule accordingly.

COMMENT: Four commenters observed that the rules fail to provide for families who are unable to secure permanent housing at the end of a year's temporary rental assistance and suggested that language be added to the rule to address such occurrences.

RESPONSE: In light of finite resources available in the funding of many of the program features, the Department is constrained to observe that it is necessary to limit temporary rental assistance to the time frames stipulated in the rule. Therefore, the Department has retained the rule as proposed.

COMMENT: One commenter suggested that the rule be amended to specify that the CWA must ensure that the housing is safe, decent and habitable before approving rental assistance.

RESPONSE: The Department notes that CWA personnel have neither the expertise nor the authority to determine whether or not a structure is safe; that is the responsibility of other governmental agencies and thus is not pertinent to this rule.

COMMENT: One commenter indicated that the method of calculating the 12 month period for temporary rental assistance needs clarification.

RESPONSE: In order to ensure there is no confusion concerning the period of time for which temporary rental assistance may be provided, the Department has altered text in the example already provided as well as provided a second example in order to further clarify the rule.

N.J.A.C. 10:82-5.10(f)5ii-iii

COMMENT: One commenter observed that temporary rental assistance provisions do not provide any incentive for clients to find affordable housing or to be responsible for their money. The commenter suggested that perhaps a 35 percent income retention figure could be allowed as an incentive for working recipients while families receiving only AFDC would be allowed a lower figure.

RESPONSE: The Department notes that rules pertaining to the AFDC program must be applied uniformly to all recipients. Thus, implementing such an inequity would not only jeopardize Federal financial participation but would be deemed unfair to those families unable to secure gainful employment.

COMMENT: One commenter suggested that the rule should address the client's responsibility to pay his or her share of the rent.

RESPONSE: The Department refers to N.J.A.C. 10:82-5.10(f)5iii(4) which addresses that issue with respect to the family's responsibility to contribute to the cost of housing.

N.J.A.C. 10:82-5.10(f)5iii(2)

COMMENT: One commenter questioned why a family in housing which is considered permanent is required to conduct a housing search. The commenter also noted that attempts to apply for Section 8 housing, regardless of the waiting period, should be an eligibility requirement.

RESPONSE: The Department notes that families residing in housing which is not affordable without temporary rental assistance must seek housing which is affordable without the infusion of such emergency benefits. As noted earlier in the proposed amendments, temporary rental assistance is a time-limited benefit and is not intended to supplement a family's income indefinitely. With respect to the commenter's observation concerning referrals for Section 8 housing, the Department refers

to N.J.A.C. 10:82-5.10(e)1i(4) which requires the family to pursue and take advantage of Section 8 housing. For clarification purposes, cross reference to (f)5iii(2) has been added to subparagraph (f)5i.

N.J.A.C. 10:82-5.10(f)5iii(4)

COMMENT: Eight commenters took issue with respect to the 35 percent retention of income by a family when temporary rental assistance is provided. Commenters either indicated that the percentage should be increased or decreased as well as disputed the amount (\$250.00 maximum) that may be authorized when the need for rental assistance is demonstrated.

RESPONSE: It is the Department's belief that the 35 percent retention amount is reasonable to enable families to purchase day to day necessities such as paper and soap products, clothing, and so forth. However, if a situation warrants a family's retention of more than 35 percent of income, that occurrence has been addressed at N.J.A.C. 10:82-5.10(f)5iii(4). Likewise, while the Department believes that the \$250.00 limit for temporary rental assistance is both fiscally supportable and reasonable, circumstances warranting additional funding are recognized and provided for in accordance with N.J.A.C. 10:82-5.10(f)5iii(5).

COMMENT: Four commenters suggested that a formula be developed, based on grant amounts and housing costs in each county, to permit a subsidy payment consistent with real needs. If the amount is not to be changed then exceptions should be granted on a county by county basis.

RESPONSE: The Department observes that the proposed amendments already provide for the granting of exceptions to the \$250.00 temporary rental assistance maximum on a county by county basis. Establishment of a formula as urged by the commenters, however, would require separate rulemaking and will require further exploration of the viability of the issue.

COMMENT: One commenter questioned if Home Energy Assistance (HEA) benefits would be counted as income.

RESPONSE: The Department notes that HEA benefits are not considered as income in the calculation of AFDC or EA benefits.

COMMENT: One commenter questioned how the \$250.00 limit will impact on current contracts the CWA has established to pay landlords in excess of \$250.00.

RESPONSE: The Department acknowledges that some implementation concerns may arise as a result of rule adoption and may require review on a county by county basis. Since the rule merely codifies practice already in operation, the Department observes that no impact on such current contracts should be experienced.

N.J.A.C. 10:82-5.10(f)5iii(6)

COMMENT: One commenter observed that continuation of temporary rental assistance for families losing AFDC eligibility due to receipt of or an increase in earned income will expand the population of eligibles for services. Further, the evaluation process and determination of eligibility can be time consuming and thus result in a decrease in other services, increase in error rate and generally negatively affect the staff involved in the provision of EA benefits and services.

RESPONSE: While the Department anticipates that the number of cases determined eligible for EA benefits under this section would be small, revised language has been added to further limit that number. Consequently, the impact upon CWA staff time is anticipated to be negligible. Moreover, since the revised text also eliminates the maximum period for which back rental and EA rental assistance prior to AFDC ineligibility is counted for purposes of extension, the overall effect of this alteration is expected to be nonsubstantial.

COMMENT: One commenter observed that continuation of rental assistance beyond AFDC eligibility appears to lack any statutory authority. EA is not a separate program; benefits are contingent upon and flow from AFDC eligibility. It is assumed that all administrative costs for this non-AFDC effort would be 100 percent county borne, which is not acceptable. The legal and fiscal questions should be clarified before issuing this rule.

RESPONSE: In response to the commenter the Department initially observes that the presumption of legality is an inherent part of its rulemaking activity. Additionally, the Department points out that it is duty-bound to ensure that certain safety net provisions are regulatory. In any event, as indicated elsewhere, it is the Department's belief that temporary rental assistance extended beyond AFDC eligibility will be limited.

ADOPTIONS

COMMENT: The condition that the subsidy will be discontinued upon termination from AFDC unless the case is closed due to increased income will affect the CWA's ability to contract for 12 month periods with landlords.

RESPONSE: The Department takes note of the accuracy of the comment.

COMMENT: One commenter suggests that similar provisions for post-AFDC EA benefits for families residing in homeless shelters, hotels or motels be developed to encourage the acquisition of employment by members of such families. The commenter has encountered employable AFDC families who are eager to secure employment but unable to do so because the family's homelessness has yet to be resolved, and to take employment is to terminate its EA eligibility.

RESPONSE: The Department does not believe that expanding the continuation of EA benefits to families residing in hotels, motels or shelters would result in a number of such families securing gainful employment which would ultimately lead to the acquisition of housing which is affordable without the provision of benefits by the CWA.

N.J.A.C. 10:82-5.10(f)5iii(6)(A)

COMMENT: One commenter suggested that language should be added to state that "AFDC cases closed due to other AFDC program regulations, for . . ." to clarify the provisions of the rule.

RESPONSE: The Department concurs with the commenter's observation and has amended the proposed language accordingly. The proposed text suggested that AFDC program ineligibility automatically excludes a family from receipt of EA benefits; such is not technically an accurate reflection of criteria governing eligibility for EA since program parameters, such as certain factors of deprivation, are irrelevant to EA.

N.J.A.C. 10:82-5.10(f)6

COMMENT: One commenter observes that the proposed amendment is acceptable as long as the rule remains permissive but cautions about authorizing expenditures which may not have benefit of legal sanction apply here.

RESPONSE: The Department notes the commenter's concerns.

N.J.A.C. 10:82-5.10(g)

COMMENT: Two commenters questioned the provisions concerning the use of protective payees and vendor payments. Specifically, where protective payees are to be located and that the use of vendor payments, while necessary, will add to the workload of CWA personnel, as well as the number of checks required to be printed by the system.

RESPONSE: The Department takes cognizance of the reservations expressed; however, it submits that these measures are necessary to ensure the effective use of EA funds and to eliminate such provisions would be fiscally irresponsible.

COMMENT: One commenter questioned how long a protective payee or restrictive payment restriction is to remain in effect if imposed for a second emergency.

RESPONSE: The Department notes that rule specifies that agencies are to be guided by existing rules on the use of protective payees. However, the Department has expanded the proposed cross-reference to cover the entire rule concerning protective payees located at N.J.A.C. 10:81-4.9 through 4.14.

COMMENT: One commenter questioned under which circumstances does a second emergency exist.

RESPONSE: The Department takes note of the inquiry and will explore the development of a clarifying amendment to address the multiplicity of situations that may come about as a result of the adoption of the instant rulemaking.

COMMENT: One commenter questioned whether the costs of obtaining the services of a protective payee can be billed on a case by case basis to the EA program.

RESPONSE: The Department notes that the question refers to fiscal considerations which are not within the scope of the proposed amendments.

N.J.A.C. 10:82-5.10(h)1

COMMENT: One commenter observes that the 200 percent increase in the emergency food allowance when cooking facilities are available is excessive in light of only a 67 percent increase when cooking facilities are not available.

RESPONSE: The Department observes that the subject amounts were increased by equal dollar amounts and did not alter the previously existing base.

HUMAN SERVICES

N.J.A.C. 10:82-5.10(n)

COMMENT: Two commenters noted that no provisions have been added to transfer EA eligibility periods from county to county and coordinate the delivery of services and stated that it would appear that a client who exhausts EA eligibility in one area can move to another county and start receiving EA benefits again for up to a full year.

RESPONSE: The Department notes that these rules have Statewide applicability and, therefore, a family's movement from one geographic area to another within the State has no impact on the provision of EA benefits to which the client is entitled to receive. It is not the intent of these amendments to regulate inter-county commutation and address the variety of situations that may develop. Computerized procedures are currently in existence to provide for easy data access among the various county agencies.

N.J.A.C. 10:82-5.10(n)1

COMMENT: Two commenters questioned whether the county of origin remains responsible for all aspects of the case, including regular AFDC and Food Stamp benefits, if the client moves into an apartment which is located in another county with a temporary rental payment or security deposit.

RESPONSE: The Department notes that the family in such a case would be considered in receipt of EA benefits from the county of origin and thus the county of origin is responsible for all aspects of the case. The Department is, however, amending the rule for clarification purposes concerning negotiation of ATPs and to permit the new county of residence to voluntarily assume full administrative responsibilities of EA cases relocated from one county to another by the agency. The added text, which provides for transportation services to clients, is part of overall services currently afforded clients under N.J.A.C. 10:82-5.10(1).

N.J.A.C. 10:82-5.10(n)2

COMMENT: Three commenters suggested that when a family voluntarily moves from one county to another, the county of origin should still retain responsibility for payment of expenses incurred due to the transfer.

RESPONSE: The Department observes that implementation of such procedure would create significant administrative problems with respect to servicing those families when the CWA had no control over or input into such moves.

COMMENT: One commenter suggested that this section should be deleted because, if a family voluntarily gave up housing in one county and took up residence in another, then such family would not need EA.

RESPONSE: The Department notes that families may move at any time, whether or not in receipt of EA benefits, to other counties. This does not necessarily negate the family's need for EA.

N.J.A.C. 10:82-5.10(n)3

COMMENT: One commenter observes that the words "pursuant to case transfer provisions" clouds the issue and thus should be deleted.

RESPONSE: The Department believes that the reference to N.J.A.C. 10:81-3.27 is necessary and should be retained.

COMMENT: One commenter noted that the rule needs clarification as to when the new county is responsible for the transferred case.

RESPONSE: The Department concurs with the commenter's observation and has revised the rule accordingly.

COMMENT: One commenter suggested clarification to specify that the proposed amendment applies to non-EA AFDC recipients.

RESPONSE: The Department concurs with the commenter's observation and has revised the rule accordingly.

GENERAL COMMENTS: NO SPECIFIC CITATIONS IDENTIFIED BY COMMENTERS

COMMENT: Five commenters indicated that the proposed amendments will increase the number of EA cases and prolong the length of time that these cases remain in the EA system.

RESPONSE: The Department notes that the proposed amendments represent a reprogramming of funds currently devoted to serving homeless families and that program growth, the concern of the commenters, has to a large extent already taken place. In any event, the Department submits that the proposal provides a more reasonable and humane approach to this universal problem.

COMMENT: Ten commenters observed that these amendments will increase the workload and require a corresponding increase in staff and administrative costs.

RESPONSE: The Department submits that staffing needs should not be substantially influenced since the subject amendments merely place

currently operational program policies into regulatory format. Any impact on staffing needs and administrative costs has already taken place.

COMMENT: Three commenters expressed support for the proposed amendments.

RESPONSE: The Department takes note of the positive comments.

COMMENT: Five commenters suggest that the proposed amendments are a disincentive for client responsibility. They note that if clients continue to be rewarded for not paying their housing costs, they have no incentive to change.

RESPONSE: The Department observes that the aim of the rule is to provide innovative intervention services. Those services are geared to reduce dependency with the proviso that a safety net shelter program will be maintained as long as there is program eligibility and the family participates in housing searches. The amendment does, nevertheless, provide for sanctions for as long as a family's noncooperation persists. Language is added at N.J.A.C. 10:82-5.10(d)2iii to clarify that families are still responsible to manage their funds and maintain their children in a safe living environment.

COMMENT: One commenter believes that the proposed amendments may be in violation of N.J.S.A. 44:10-3, which directs the Commissioner "... to secure for the State of New Jersey the maximum Federal financial participation that is available with respect to a program of Aid to Families with Dependent Children ...".

RESPONSE: The Department observes that it has maximized the amount of FFP available under the EA provisions of Title IV-A of the Social Security Act and will continue to undertake deliberate and sustained efforts to that end.

COMMENT: In opposition to the rules inasmuch as they extend the EA program beyond Federal participation, thereby placing a program and administrative fiscal burden on counties. If money and staff effort are spent on non-Federally match components, then the CWA cannot claim Federal administrative matching, resulting in these expenditures at 100 percent county dollars. In light of the indefinite extension of EA, what is the specific match that will be required of the CWAs? What is the county share during the first emergency, and during the second emergency?

RESPONSE: The Department notes the opposition to the proposed amendment voiced by the commenters. The Department also observes that a majority of the features contained in this rulemaking have been operationally in existence for some time and the fiscal impact on all levels of governmental administration has already been experienced. Therefore, significantly new or added fiscal and administrative burdens are not expected to occur since the proposed amendment is merely a reprogramming and codification of procedures already in place. In any event, the fiscal issues presented by the commenters are beyond this programmatic rulemaking.

COMMENT: Three commenters questioned whether the new EA regulations apply to the SSI population inasmuch as N.J.A.C. 10:83 makes reference to N.J.A.C. 10:82-5.10.

RESPONSE: Amendments to N.J.A.C. 10:83 are currently in the process of development. Until amendments to N.J.A.C. 10:83 concerning the provision of emergency assistance benefits to SSI recipients are implemented, the provisions at N.J.A.C. 10:82-5.10, where appropriate, apply.

COMMENT: One commenter specifically questioned how the 35 percent rule would apply to SSI cases living in boarding homes. Many of these cases have much less than 35 percent of total income available to them; should they be given a subsidy? Many SSI client applicants exhibit functional incapacity. The CWA has no ability to compel the Social Security Administration to assign protective payee or to restrict payments.

RESPONSE: The Department takes cognizance of the comments and will take them into consideration in the development of rules specifically applicable to New Jersey's SSI population.

COMMENT: One commenter believes that the proposed amendment will cause frequent closing and reopening of the subsidy which will overburden the FAMIS system and result in major record-keeping problems.

RESPONSE: The Department believes that such occurrences will be infrequent and submits that the FAMIS system has the capability to process such cases.

COMMENT: Three commenters suggested that definitions would be helpful in describing such terms as "affordable," "permanent," and "imminent," "emergency housing," "temporary housing," "transitional housing" and "permanent housing".

RESPONSE: The Department notes that while it is felt that the terminology utilized in this rule is sufficiently clear, it will evaluate the need to further define the specific terms noted by the commenters for separate rulemaking.

COMMENT: Two commenters believe that the EA rules should contain an appeals process setting out what the CWA must do when denying or terminating EA and what families must do to appeal.

RESPONSE: The Department believes that existing rules at N.J.A.C. 10:81-6 concerning the AFDC appeals process are sufficiently comprehensive and reiteration would not serve a useful purpose.

COMMENT: One commenter noted that the rules are silent concerning referrals to the Division of Youth and Family Services (DYFS), the agency required by law to safeguard the health, welfare and morals of minor children. A referral to and follow-up from DYFS should be required where there is parental impairment, potential or actual neglect of basic needs, refusal or inability to pursue remedies for homelessness, and so forth.

RESPONSE: The Department takes cognizance of the comments presented; however, these pertain to intra-agency regulations that govern the Department's Division of Youth and Family Services and are not within the appropriate scope of these amendments.

COMMENT: One commenter requested that the proposed amendments be withdrawn in order to allow the Department to develop alternative language with the CWAs, thereby exercising the inherent shared responsibility of the State-county partnership for public welfare administration.

RESPONSE: The Department notes that the proposed amendments were developed with active participation by representatives of CWAs, Legal Services of New Jersey and the Department of the Public Advocate.

COMMENT: One commenter suggests that the rule be amended to provide a client penalty for failure to perform or participate in a plan, to include ineligibility.

RESPONSE: The Department notes in accordance with N.J.A.C. 10:82-5.10(e)1 that failure of the family to seek affordable permanent housing will render it ineligible for continued EA benefits.

COMMENT: Two commenters suggest that New Jersey's consolidated flat grant concept be eliminated and replaced with a partially consolidated grant and providing a separate shelter payment.

RESPONSE: The Department takes note of the commenters' suggestion.

COMMENT: A suggestion was made to offer the client a shelter standard, similar to the Heating Utility Allowance or Standard Utility Allowance, used in the Food Stamp Program. The client might have the option of verifying actual shelter costs or accepting the shelter standard. This would provide some administrative simplicity in cases where the client did not wish to verify shelter or shelter changes.

RESPONSE: The Department takes cognizance of the suggestion and will explore its viability for future rulemaking.

COMMENT: Since clients receiving EA out of county can be receiving Food Stamps from the county of origin, consideration should be given to allowing Food Stamp Authorization To Participate (ATP) cards to be cashed at any Food Stamp transaction site, and not limited to sites within the county of ATP issuance.

RESPONSE: The Department takes cognizance of the comment; however, the remedy suggested cannot be addressed by this rulemaking. It is further observed that the issue presented is one that requires consideration under regulations governing the Federally funded Food Stamp program.

COMMENT: One commenter believes that the major cause of homelessness is inadequate grant levels.

RESPONSE: The Department takes note of the observation.

COMMENT: Although the Department has elected to provide EA to SSI recipients, the Department has yet to extend the coverage of the program to similarly situated recipients of Social Security Disability (SSD). Commenter recommends that the EA amendments be revised to include those SSD recipients whose monthly incomes are below the amounts set forth in the standard of need recently published by the Department, or the monthly income recently determined by the Department to be necessary to live a safe and healthy life (23 N.J.R. 285, February 4, 1991).

RESPONSE: The Department takes note of the observations voiced. It is recognized, however, that the course of action urged by the commenter cannot be accomplished through this rulemaking.

ADOPTIONS

COMMENT: One commenter notes that the Department receives 50 percent Federal reimbursement of the costs for up to five months of EA. The Department does not indicate whether Federal reimbursement will be available for EA benefits provided after the initial five months. This is critical in light of the Department of Health and Human Services' (DHHS) proposal to further limit Federal financial participation to 30 days of EA (52 Federal Register 47420-22, December 14, 1987). In light of this, the commenter recommends that the Department file with the DHHS a State plan for EA that ensures Federal financial participation will be available for the full "panoply" of assistance to be available to recipients under the proposed amendments.

RESPONSE: The Department takes note of the concerns expressed; however, it points out that the issues as presented go beyond this rulemaking. By way of information, it is noted that New Jersey is one of the few states having received Federal State Plan approval to operate the Federally-funded Emergency Assistance to Needy Families with Dependent Children program with a maximum five-month time span.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:82-5.10 Emergency assistance

(a) "Emergency Assistance" (EA) is hereby established as any initial, extra or additional payment(s), authorized in accordance with (d) through (n) below during the period of 30 consecutive days immediately following the date the application for EA is made/ approved as a result of the occurrence of an emergency as defined in (d) below. Emergency assistance can be issued to AFDC families in receipt of presumptive eligibility benefits or continuing assistance or to non-AFDC families satisfying AFDC eligibility with the exception of those requirements at (a)1 below. The PA-1J form shall be used to determine eligibility for emergency assistance. Once immediate need is apparent, and the family is otherwise eligible, emergency assistance shall be authorized and/or provided as appropriate. ***Except as noted in (g) below, payments of emergency assistance in AFDC shall be made as vendor payments whenever feasible, or as direct payments to the eligible unit, or as a combination of both.***

1. In addition, these regulations apply to an emergency (as described in (d) below) if the applicant meets all requirements for the AFDC program except for the deprivation, enumeration and evaluation of legally responsible relatives requirements (as defined in N.J.A.C. 10:81-2.7, 10:81-11.3 and 10:81-3.5(b)4i).

i.-ii. (No change.)

(b) The goal of the EA shelter*/housing* program is to prevent homelessness or provide shelter and to coordinate support services, with family participation, at all levels of government and with other appropriate sectors of the human services delivery community. In an effort to preserve the family structure and stable environment, the EA program is a multistage process designed to minimize the incidence of homelessness. This process begins, if possible, with the prevention of actual homelessness through agency intercession, the provision of temporary *[shelter]* *housing* arrangements for up to three calendar months, with extensions for temporary housing for up to two additional calendar months*[,]*. ***In addition, when there is evidence that the joint efforts of the family and the CWA to resolve the emergency have been unsuccessful and no alternative shelter/housing exists,*** *[to]* individualized extensions ***may be provided*** on a month by month basis for temporary *shelter/* housing when the need for each such extension is documented in the case record in accordance with the provisions at (f)1iii below. The EA shelter*/housing* program is thus designed to provide, with reasonable certainty, for the initial and/or continuing emergency shelter*/housing* needs of otherwise eligible AFDC families. It is acknowledged that there is a shared responsibility between the family and the CWA with other governmental/non-governmental entities at the municipal, county, and State levels.

1. CWAs shall *[ensure that]* ***attempt to utilize*** all ***reasonably*** available resources and services offered throughout the community *[are effectively utilized]* to meet specific needs of EA families.

HUMAN SERVICES

(c) In an effort to minimize the incidence of homelessness among New Jersey's AFDC recipient population, the CWAs shall be alert to the following circumstances which may reasonably be assumed to, if not addressed, result in imminent or actual homelessness of the family. Upon identification of any of the indicators identified in (c)1 through 5 below, the agency representative should review the case record to determine if the family should be referred to appropriate social services personnel within the agency to help the family plan to ensure the availability of uninterrupted housing.

1. When shelter costs equal or exceed total recorded income to the AFDC family and the client is unable to document other sources of income, for example, loans from relatives, that enable the family to meet monthly housing/living expenses;

2. When the CWA receives information to the effect that the family's utility bills are in arrearages or utilities have been shut off;

3. When the family's income is reduced as a result of reduction in the amount of AFDC benefits or other available income, for example, loss of the \$50.00 disregarded child support payment, a child in the family loses AFDC eligibility due to age, or a member of the family dies;

4. When the family's rent which had previously been affordable is increased to an amount which makes the family's current housing costs appear to exceed its available income; or

5. When the CWA receives information that the family is involved in a tenant/landlord dispute ***or threatened foreclosure***.

i. When a tenant/landlord dispute ***or threatened foreclosure*** exists, the CWA shall *[intercede on behalf of]* ***assist*** the family in *[order]* ***an attempt*** to preclude the loss of existing permanent *[shelter]* ***housing***, including referral to appropriate legal/service agencies.

(d) Emergency assistance is available in the following circumstances:

1. When there has been substantial loss of *[shelter]* ***housing***, food, clothing, or household furnishings by fire, flood or other similar disaster and the eligible family is in a state of homelessness and the county welfare agency determines that the providing of shelter*/housing* and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in this section.

2. Where there is documentation*[,] subject to CWA verification,]* of a pending eviction or foreclosure, such as *[a letter from the landlord,]* a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior *[permanent shelter]* ***housing*** is no longer available, and the eligible family demonstrates a lack of realistic capacity to plan for substitute housing as defined in *(d)2* iii below, emergency assistance shall be authorized in accordance with *(d)i)* ***d)2i*** and ii below. ***In extreme circumstances of pending eviction or actual eviction, where documentation, as required, does not exist, a letter from a landlord or other person serving in such capacity (relative/friend with whom the family is residing), subject to CWA verification, stating that eviction is imminent or has occurred may be accepted by the CWA.***

i. Payment may be authorized for retroactive rental, mortgage and/or utility payments if it will prevent actual eviction or foreclosure in accordance with (f)2 below.

ii. In situations of homelessness due to actual eviction or foreclosure or when prior *[permanent shelter]* ***housing*** is no longer available, payment shall be authorized for emergency shelter in accordance with (e), (f) and (g) below.

iii. ***Families are expected to manage their funds and maintain their children in a safe living environment.*** Lack of realistic capacity to ***manage funds, maintain safe housing and*** plan for substitute housing exists in the following circumstances:

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

(2) When the family can demonstrate or signs a document, prepared by the CWA, certifying that available funds and resources,

including liquid resources at N.J.A.C. 10:82-3.1(d), were exhausted on items deemed appropriate, necessary or reasonable for decent living ***and such expenditures were made as a result of a significant occurrence or situation, not due to the meeting of day to day living cost items***. ***The specific event(s) or circumstance(s) upon which the granting of EA is based must be documented in the case record.*** In addition to food, clothing and ***[shelter]* *housing***, other appropriate items include, but are not limited to, expenditures for a family emergency*, for example, attending the funeral of a family member,* or excessive costs for unreimbursed medical expenses; or

(3) When the family demonstrates functional incapacity, for example, evidence of alcohol or drug abuse, which would prevent them from planning for or securing substitute housing.

(A) In situations where the family demonstrates functional incapacity, a protective payee shall be assigned or AFDC and EA benefits issued in the form of restricted or vendor payments in accordance with the criteria set forth at N.J.A.C. ***[10:81-4.9]* *10:81-4.5 and 4.9 through 4.14*.**

3. In situations where an applicant or recipient indicates that he or she and his or her children have left their customary residence and the family is in a state of homelessness due to imminent or demonstrated domestic violence which imperils the health and safety of one or more members of the eligible family.

i. Temporary living arrangements during the period between the occurrence of the incidence of domestic violence and the application for EA do not negate the existence of a state of homelessness.

4. In instances where Division of Youth and Family Services, in consultation with the CWA, certifies that placement of the children in foster care is imminent due only to the fact that the family is being subjected to a serious health or life threatening situation because of the lack of adequate ***[shelter]* *housing***, EA shall be provided in accordance with the provisions of this section.

5. If at time of application for EA benefits, or at any time during the receipt of EA benefits, the CWA determines that a family is ineligible for EA, that determination must be documented in the case record, including the specific reason(s) for the denial/termination of benefits. Any adverse action concerning the provision of EA benefits is subject to the notice requirements specified at N.J.A.C. 10:81-7.

(e) There is a shared responsibility between the family and the CWA to minimize the incidence of homelessness, secure emergency housing, address the circumstances that contributed to a family's imminent or actual homelessness, and ultimately obtain affordable permanent housing. In order to resolve a situation of imminent or actual homelessness, the CWA shall advise the family of the conditions of eligibility for the ongoing receipt of EA as delineated in (e)1 below and, in conjunction with the family, develop a service plan to help the family secure and maintain affordable permanent housing as specified in (e)2 below.

1. While receiving EA for temporary ***shelter*/housing**, the family has a continuing responsibility to seek alternative affordable permanent housing. The family shall be issued Form PA-70, Notice of Conditions of Eligibility for the Receipt of Emergency Assistance, a written notice which must be signed by both the CWA representative and the client, which signifies that the family has been made aware of ***[the requirements]* *its responsibilities*** set forth below.

i. The family shall make every effort within its ability to secure affordable permanent housing and to document such efforts in writing. The family shall:

(1) Begin the search for permanent housing no later than the date specified in Form PA-70;

(2) Make a reasonable number of contacts ***with realtors or potential landlords*** each week until permanent housing is secured. The number of weekly contacts to be made shall be determined by the CWA, in conjunction with the family, taking into consideration medical and/or social circumstances. For example, it shall be considered reasonable for a person who is not suffering from physical or mental incapacity to conduct up to 10 contacts per week. Where good cause for non-participation in housing searches exists, Form PA-70 shall reflect the applicable ***[reasons(s)]* *reason(s)*.**

(A) Contacts may be made by personal visit or any other method specified in Form PA-70;

(3) Provide written documentation of all contacts. Such documentation shall consist of the date of the contact, the telephone number (if applicable), the address (location) of the housing site, and the name of the person contacted (landlord or agent);

(4) Pursue and take advantage of Section 8 Housing Certificates, local public housing and/or other housing subsidy programs specified in Form PA-70;

(5) Utilize available community resources and services specified in Form PA-70 which could assist the family in securing permanent housing; and

(6) Notify the CWA immediately upon locating available housing which is both affordable and permanent.

ii. Refusal, without good cause, to cooperate with the provisions specified in or to sign the Notice of Conditions of Eligibility for the Receipt of Emergency Assistance, shall render the family ineligible for continuing EA benefits.

(1) Willingness on the part of the family to sign Form PA-70 and cooperate in the search to secure permanent housing shall establish eligibility for continuing EA benefits, if otherwise eligible.

2. The CWA shall have responsibility to assist the family to resolve the emergency situation and to assist the family to secure a suitable permanent housing arrangement. Upon CWA contact with the EA family, the CWA shall:

i. Assess the emergent situation and initiate appropriate action, for example, intercede in tenant/landlord disputes, arrange for payment of back rent, mortgage or utilities, arrange for the immediate provision of appropriate shelter in situations of actual homelessness, and so forth;

ii. Explain to the family, as well as provide a written copy of, EA rights and responsibilities;

iii. Discuss with the EA family the emergency shelter*/**housing*** arrangement which the CWA determines, in accordance with (f) below, will meet the family's immediate emergency shelter*/**housing*** needs and takes into consideration the family's individual circumstances;

iv. Explain that a written service plan shall be developed, within ***[five]* *10*** working days of the EA authorization date, to provide an individualized plan aimed at addressing those circumstances which contributed to the family's homeless situation and limit its ability to secure and/or maintain permanent housing (for example, insufficient funds, substance abuse, mental illness). ***At the CWA's option, a service plan need not be developed where EA benefits are provided solely for back rent/mortgage and/or utility payments.***

(1) Arrange a meeting with the family to ***[discuss]* *prepare*** the plan which shall be signed by both the client and the CWA representative. The CWA shall retain the original plan and provide a copy to the family.

(2) The individualized service plan may include, (but is not limited to):

(A) Selection of a housing arrangement which takes into consideration the family's individual circumstances, such as mental and/or physical problems;

(B) Provision of services, as set forth at N.J.A.C. 10:82-5.10(1);

(C) Referral to affordable housing (if known) as well as referral to and/or application for other available benefit entitlements or services, for example, Social Security Administration, Department of Community Affairs, Community Mental Health Services, drug and/or alcohol rehabilitation program; or

(D) If appropriate, ***[and in accordance with REACH requirements,]* *referral to REACH/JOBS. If not accepted by REACH/JOBS case management,*** referral to ***[a]* *another*** training or rehabilitation program, such as the Job Training Partnership Act (JTPA) or vocational rehabilitation, likely to result in employment or the securing of a job leading to the maintenance of affordable permanent housing; and

v. As a sound management tool, the CWA shall routinely re-evaluate and/or revise Form PA-70 and the service plan as warranted by changes in the EA family's shelter*/**housing*** needs and/or other pertinent circumstances.

ADOPTIONS

(f) The county welfare agency shall authorize payment of the actual cost of adequate emergency ***shelter/housing** arrangements at the most reasonable rate available, taking into consideration family circumstances and services provided, for three calendar months inclusive of the month in which ***[the state of homelessness first becomes known to the county welfare agency]*** ***EA benefits are first provided***. If at the end of the third month for which EA has been provided permanent housing has not been secured, EA extensions ***[shall]*** ***may*** be authorized, if necessary, for up to two additional months. Such emergency ***shelter/housing**, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, ***shelter/housing** is not available at the most reasonable rate, taking into consideration family circumstances and services provided, within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept ***shelter/housing** which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the family and the agency, permanent living arrangements are unavailable, an extension of emergency assistance ***[shall]*** ***may*** be authorized in accordance with the provisions of (f)1iii below.

1. Placement of the family in a hotel, motel, or shelter shall be at the most reasonable rate, for a temporary period. ***[Such placement shall be used only when no other housing arrangement, as delineated in (f)2 through 6 below, is available.]*** ***The CWA shall determine, after discussion with the EA family, the emergency shelter/housing arrangement which will meet the family's immediate emergency shelter/housing needs and takes into consideration the family's individual circumstances.***

i. The regular grant of assistance (including calculated earned income and exempt income) is not to be counted in the determination of the amount of emergency assistance payments authorized for emergency shelter arrangements, except as noted in (f)5 below.

ii. The CWA shall be responsible for payment of all costs related to the placement of the family in a hotel, motel, or shelter under EA.

iii. If at the end of the fifth month for which EA has been provided permanent housing has not been secured, individualized extensions beyond the five months for temporary ***shelter/housing** may be provided, on a month by month basis, when ***no alternate plan is available and*** the need for such extension(s) is documented in the case record, and is for any of the reasons stipulated in (f)1iii(1) through (3) below. ***At the time the determination of eligibility for the first such extension is made, the CWA shall reevaluate the family's situation, including review of the service plan, possible referral for social services, such as DYFS or CWA social services unit, and/or assignment of a protective payee, if deemed appropriate in accordance with the criteria set forth in N.J.A.C. 10:81-4.9 through 4.14.***

(1) Due to illness or incapacity of the parent or of another person which requires the parent's presence in the home on a substantially continuous basis, the individual(s) is unable to perform activities of daily living including participating in permanent housing searches and/or complying with any of the other provisions in Form PA-70;

(2) Alternate permanent housing is anticipated to be available or a change in circumstance, for example other sources of income, is ***[expected]*** ***identified which will,*** within two months subsequent to the extension month,*** [which will]*** eliminate the need for such ***[shelter]*** extensions; or

(3) ***When no alternate shelter/housing arrangement is available, the family will otherwise be without shelter/housing, and* [The]*** ***the*** EA recipient family has satisfactorily fulfilled its permanent housing search responsibilities or is determined unable to make such permanent housing searches and continues to require additional EA ***shelter/housing*** assistance.

2. Payment may be authorized for up to any three calendar months of retroactive rental or mortgage payments and/or six calendar months of retroactive utility payments if it will prevent actual eviction or foreclosure.

i. Payments for more than three calendar months of retroactive rental or mortgage payments and/or six months of retroactive utility

HUMAN SERVICES

payments may be made only under extraordinary circumstances subject to authorization by DEA.

3. When required to establish the family in a more permanent living arrangement, allowances may be authorized for expenses related to that arrangement including, but not limited to, security deposits for rent and utilities, and one month's advance rent.

4. Payment may be authorized for moving expenses, including furniture storage, incident to the emergency and when required to establish the family in a more permanent living arrangement.

5. ***[Supplemental]*** ***Temporary*** rental assistance may be authorized in order to resolve imminent or actual homelessness by enabling families to meet temporary ***[shelter]*** ***housing*** costs ***and shall be expedited by the CWA to preclude the loss of an existing or potential housing arrangement (see (f)5i and ii below)***. Temporary rental assistance may be authorized by the CWA upon initial authorization of EA or at any time during the receipt of EA as follows:

i. In addition to back rent/utility payments, temporary rental assistance may also be issued in accordance with (f)5iii below, when the family is facing pending eviction from permanent housing which had previously been affordable, for reasons such as, but not limited to, loss of employment, temporary unemployment or under-employment, and it is anticipated that such permanent housing will become affordable;***** or when it is determined that maintaining the family in its current housing arrangement is both the least costly alternative and serves to preserve the family structure and stable environment ***and the family continues to search for affordable housing in accordance with (f)5iii(2) below*.**

(1) ***Temporary* [Rental]*** ***rental*** assistance may be provided for that period of time necessary to resolve potential homelessness, but shall not exceed 12 months when computed in combination with the number of months of back rent provided ***immediately prior to the issuance of temporary rental assistance***, if any.

(A) Example: If EA back rent payments are authorized to cover a period of three months ***immediately prior to the issuance of temporary rental assistance***, a maximum of nine months of rental assistance may be provided.

[B] Example: If EA back rent payments are provided and no additional EA benefits are required to resolve that emergency and the family subsequently reapplies for EA, temporary rental assistance may be provided for up to 12 months.

ii. Temporary rental assistance may be authorized, on a case by case basis based on a review of the family's circumstances, for a period of up to 12 calendar months for families who have experienced an actual state of homelessness and the family is able to locate a housing arrangement or can be accommodated in a housing arrangement in lieu of a temporary ***[shelter]*** ***housing*** arrangement. Temporary rental assistance ***[is also available]*** ***may also be authorized*** for a period of up to 12 calendar months to EA families temporarily residing in hotels, motels, or shelters and can ***now*** be accommodated in a more permanent living arrangement.

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

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

(2) The determination of the CWA to authorize and/or continue temporary rental assistance shall be contingent upon the family's cooperation to comply with the eligibility requirement to conduct or continue to conduct permanent housing searches to find an affordable housing arrangement as delineated in (e)1 above.

(3) The amount of the authorized temporary rental assistance shall take into account all ***[shelter]*** ***housing*** costs including basic utilities.

(4) CWAs shall authorize temporary rental assistance of up to \$250.00 per month to supplement an EA family's regular AFDC grant and/or earned income. CWAs shall ensure, however, that the recipient retains 35 percent of the family's monthly income including any SSI benefits or other income received by a family member residing in the household. Amounts in excess of 35 percent may be retained by the family when it is determined that the family has

special needs which must be documented in the case record. The portion of the family's regular grant identified as its share of rental costs issued in accordance with N.J.A.C. 10:81-4.5(c) as well as any other available income shall represent the family's contribution towards the monthly *[shelter]* ***housing*** costs.

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

(5)**(6) Temporary rental assistance may be continued for EA families who lose ongoing AFDC eligibility due to the receipt of or an increase in earned income ***only under extraordinary circumstances subject to authorization by DEA***. Such ***[cases]* *requests*** shall be evaluated on an individual basis to determine whether or not temporary rental assistance will be continued and at what level. ***[In making such determinations of eligibility, the CWA shall take into consideration the family's total income, resources, expenses and ability to be ultimately self-sufficient.]*** Such rental assistance may be ***[continued]* *authorized*** only for that period of time necessary to facilitate the family's transition to housing which is affordable without the provision of EA benefits*, **but in no event longer than three calendar months***. ***[In no event shall such transitional rental assistance exceed a total of 12 months when computed in combination with the number of months of back rent and EA rental assistance provided prior to AFDC financial ineligibility. For example, if the EA family has received three months of back rent and six months of EA rental assistance, a maximum of three calendar months of transitional rental assistance may be provided, if it is determined necessary to enable the family to maintain permanent housing without further assistance from the CWA.]***

(A) AFDC cases closed due to ***other*** AFDC program ***[ineligibility]* *regulations***, for example, no eligible child in the home, and so forth, shall not be eligible for continued temporary rental assistance.

(6) Requests for temporary rental assistance in amounts in excess of \$250.00 must be approved by DEA prior to issuance.]

6. Counties may be authorized to operate approved EA programs in order to serve specific population target groups such as those families who are dysfunctional as a result of suffering from substance abuse, and/or other debilitating conditions. Such special initiatives will be implemented through the submission and approval of plans designed to address locally suited alternatives to homelessness. Plans shall have prior written approval from DEA before funding can be authorized and shall:

i. Include the goal of reducing the use of motels/hotels for emergency placements as well as facilitate a more humane response to EA families in need of support services beyond simply shelter ***[housing]* requirements**;

ii. Describe the target group, the number of individuals to be served by the program components, type of services to be provided, cost estimates, cost effectiveness and procedures for monitoring/evaluation of the local initiatives; and

iii. Include a coordinated involvement of non-profit organizations as well as signify local collaborative efforts undertaken through the Human Services Advisory Council (HSAC) and Comprehensive Emergency Assistance System (CEAS).

(g) When an application for EA shelter***[housing]*** has been filed, the need for appointment of a protective payee or issuance of AFDC and EA benefits in the form of a restricted or vendor payment ***[(using the criteria established for protective payee status)]*** shall be evaluated ***[issued]*** in accordance with the criteria set forth at N.J.A.C. ***[10:81-4.9]* *10:81-4.5 and 4.9 through 4.14***. At time of application, the family shall be advised that, if a second or subsequent application for EA shelter***[housing]*** benefits is approved within a 12 consecutive month period, the CWA shall assign a protective payee before payment is issued or AFDC and EA benefits shall be issued in the form of a restricted or vendor payment. The CWA shall appoint a protective payee or issue AFDC and EA benefits in the form of restricted or vendor payment for a second or subsequent shelter***[housing]*** emergency within a 12 month period unless extenuating circumstances, documented in the case record, warrant issuance of unrestricted payment(s) to the family.

(h) Emergency food allowance: When food is not available from any other source, an amount of \$4.50 per day per person shall be authorized and allowed until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps).

1. When it is necessary to provide temporary living arrangements for a family by utilizing emergency shelter***[housing]*** in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the county welfare agency to be inadequate, payments for restaurant meals, not to exceed \$7.50 per person per day, shall be authorized and allowed until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps).

(i) Emergency clothing allowance: Funds from the regular assistance grant or funds considered in developing the amount of that grant are not to be considered in computing the amount of payment for replacement of clothing lost or destroyed in the incident or occurrence giving rise to the emergency. When necessary, payments to enable members of the eligible unit to purchase minimum essential clothing for physical health and safety may be granted, not to exceed the amounts stated below:

Recodify existing i.-iv. as 1.-4. (No change in text.)

Recodify 4. through 6. as (j) through (l) (No change in text.)

(m) Return of child from foster care provisions are as follows:

1. The CWA may authorize emergency assistance to a family on behalf of a child for the purpose of facilitating the return of a child from foster care placement when the appropriate District Office Manager (DOM) of the Division of Youth and Family Services (DYFS) has approved a specific plan for the return of a child from a foster care placement and all of the following conditions exist:

1.-iv. (No change.)

v. Upon return of the child, AFDC eligibility will exist.

2. Payments of emergency assistance as identified in this section shall be authorized during the 30 day period immediately prior to the expected return date. If the child has not been returned by the date indicated, or within 10 working days thereafter, such grants as have not been expended shall be returned to the CWA.

3. Allowances:

i. ***[Shelter]* *Housing***: Allowances may be made for the cost of change in permanent ***[shelter]* *housing*** arrangement including moving costs, security and utility deposits and/or advance rent, when necessary or cost of improvement of existing ***[shelter]* *housing*** based on the most reasonable cost available.

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

(3) Where an allowance is needed for security and utility deposits, and/or advance rent the CWA shall establish such deposits on behalf of the eligible unit.

(4) (No change.)

ii. Food: An allowance for food may be provided in accordance with (h) above.

iii. Clothing: An allowance for clothing for the child to be returned from foster care placement may be provided in accordance with (i) above.

iv. Home furnishings: An allowance for the child for house furnishings necessary to facilitate the return of the child from foster care placement may be made in accordance with (j) above.

4.-6. (No change.)

(n) Whenever a family requiring the provision of EA benefits moves from one county to another, the following provisions shall apply:

1. Where the county of origin (county where the emergency occurred) places the family in out-of-county emergency housing, that county shall retain financial responsibility for shelter payments, regular assistance payments and issuance of food stamp benefits, as well as other functions of case management until the homelessness is resolved and permanent housing obtained. ***The county of origin shall provide transportation to assist the family in negotiating their ATP.*** Such out-of-county placements may occur as a result of emergency housing shortages or prohibitive in-county temporary housing rental costs. ***If mutually agreed upon by the parties in-**

involved, the new county of residence may assume full responsibility for administration of the case.*

2. When an EA recipient family residing in one county voluntarily takes up residence in another county, without CWA intercession, the new county of residence shall assume responsibility for EA payments, as well as all other case management functions, pursuant to case transfer provisions at N.J.A.C. 10:81-3.27. (Note: If the family has been receiving food stamp benefits, the food stamp case shall be closed in the county of origin and the family advised that they must apply for food stamp benefits in their new county of residence.)

3. When *[an]* *a non-EA* AFDC recipient family voluntarily moves from one county to another county, with or without CWA intercession, into what is intended to be a permanent housing arrangement and a subsequent change in circumstances results in the need for EA, the new county of residence shall *immediately* assume responsibility for EA payments, as well as all other case management functions, pursuant to case transfer provisions at N.J.A.C. 10:81-3.27.

4. The family's right to uninterrupted assistance shall not be jeopardized because of interagency disputes concerning case management responsibilities.

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual

State Funding, Chargeback, Penalty Periods, LRRs, Evaluation, Fiscal Procedures, Posting of a Sign, Recovery of Overpayments, Match Reports

Adopted Amendments: N.J.A.C. 10:85-1.1, 1.2, 2.1, 2.2, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1, 6.3 through 6.8, 7.2 and 9.4

Adopted New Rules: N.J.A.C. 10:85-6.9, 12.1 and 12.2
Adopted Repeal and New Rule: N.J.A.C. 10:85-1.3 and 6.2

Adopted Repeal: N.J.A.C. 10:85-2.5

Proposed: June 3, 1991 at 23 N.J.R. 1741(a).

Adopted: September 27, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: September 27, 1991 as R.1991 d.521, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 44:111(d), P.L. 1990 c.66.

Effective Date: October 21, 1991.

Operative Date: November 1, 1991.

Expiration Date: December 20, 1994.

Summary of Agency-Initiated Changes:

For clarification purposes, the word "be" was added at N.J.A.C. 10:85-6.3(a)4i(2)(B).

Summary of Public Comments and Agency Responses:

A list of commenters follows:

Bettsey Arnold, Clerk for the Borough of Seaside Heights

Joan M. Bogert, Township of Neptune Municipal Welfare Department

Nancy A. Ernst, Township of Dover Municipal Welfare Department

Bernice A. May, Borough of Fair Lawn, Municipal Welfare Department

Raul A. Mattei, Jersey City Municipal Welfare Department

Diane Goetz Stutesman, Township of Brick Municipal Welfare Department

Leighton Holness, Legal Services of New Jersey

COMMENT: Several commenters stated that the servicing town should not be responsible for payment of bills for all GA nursing home clients residing in their municipality. Such should be the responsibility of the municipality the client resided prior to entering the nursing home. Exception and/or arrangement can be made for those rare occasions when the MWD is inconvenienced due to any extraordinary long distance situations. They also noted that elimination of municipal responsibility/

chargeback may result in significant increases in both caseload and administrative costs. The influx of welfare clients from one municipality to another will produce an unfair fiscal impact on some municipalities.

RESPONSE: The amendments eliminating "chargeback" responsibilities are not expected to have a significant negative fiscal/administrative impact on any particular municipality since they do not address the intermunicipal movement of program eligible persons. Slightly increased case activity may be experienced by those few municipalities which, through mutual agreements of understanding, had elected to assume servicing and payment functions in spite of the fact that the municipality in which the residential medical treatment facility was located would otherwise have had the responsibility for only the servicing aspects of the case. In any event, it is further observed that the above mentioned agreements between municipalities are not necessarily precluded by this rulemaking. Moreover, it is noted that a dominant number of municipal representatives participating in the initial drafting of this rulemaking expressed their belief that making the servicing municipality responsible for total case administration would not add a significantly increased burden due to assumption of the "payment responsibility."

COMMENT: Recommendation was made to allow, as an exception for municipalities in which shelters are located, a chargeback solely for administrative costs to municipalities of origin.

RESPONSE: The Department initially notes that unless the shelters to which the commenter makes reference are classified as facilities providing residential therapeutic medical care, the instant rulemaking has no applicability to such housing arrangements. In any event, the commenter's recommendation that there be a chargeback for administrative costs is not a possible rulemaking alternative without legislative action.

COMMENT: Commenter observes that N.J.A.C. 10:85-1.1(g)2 is not clear as to whether the 90 day penalty period will run concurrently or additionally "if the client's fraud is precipitated from an anticipated sanction."

RESPONSE: Sanctions imposed under these provisions are for additional rather than concurrent periods of ineligibility. For purposes of clarity, text has been amended to that effect.

COMMENT: The proposed amendment at N.J.A.C. 10:85-3.2(b)3, which provides a 90-day disqualification period when an applicant voluntarily ceases employment within 90 days prior to application, may require legislative action.

RESPONSE: While it is the Department's belief that it has sufficient authority to regulate the 90-day disqualification period, in light of the commenter's concern it has elected not to adopt the proposed amendment at N.J.A.C. 10:85-3.2(b)3i through (b)3i(3). In the meantime, the Department will determine whether specific legislative authority such as that provided at N.J.S.A. 44:8-114 for active cases may be an appropriate course of action to reinforce its regulatory power in this area.

COMMENT: The proposed amendment at N.J.A.C. 10:85-3.2(b)3 should state that the disqualification only applies "if the condition of insufficient income is the result of the applicant having voluntarily left a job within 90 days of the date of application without good cause," thus aligning the proposal with the Aid to Families with Dependent Children rules as the Summary indicates. In order to make it clear that a disqualification period for voluntarily ceasing employment cannot affect the right of any needy person to immediate public assistance, the following provisions of N.J.S.A. 44:8-120 should be added at N.J.A.C. 10:85-3.2(b)3: "Immediate public assistance shall be rendered promptly to any needy person by the director of the municipality where the person is found at the time of the application." Provision should also be made for continuing benefits while any assertion that the applicant left employment voluntarily and without good cause is being adjudicated.

Additionally, the proposed amendment at N.J.A.C. 10:85-3.2(b)3 should provide that no disqualification period will apply if the individual would be exempt from the work requirement under N.J.A.C. 10:85-3.2(g)3. The phrase "cessation of employment due to inappropriate work habits" at N.J.A.C. 10:85-3.2(b)3i should be deleted since it is vague and is an open invitation to arbitrary interpretation. The proposed amendment at N.J.A.C. 10:85-3.2(b)3i(2) does not provide a detailed definition of "good cause" but merely provides a reference to provisions governing the verification of "good cause." Inasmuch as "good cause" is already defined in the GA program, the amended rule should simply include a reference to N.J.A.C. 10:85-3.2(g)6 which sets out the circumstances under which the failure to retain employment for good cause is established under the General Assistance Employment Program.

RESPONSE: In light of the detailed observations voiced by this commenter, and concerns expressed elsewhere, the Department has decided not to adopt the provisions at N.J.A.C. 10:85-3.2(b)3i through (b)3i(3).

COMMENT: Clarification is requested as to how the MWD is to provide a client with a portion of a direct benefit amount in the form of cash/check for incidental expenses (N.J.A.C. 10:85-4.3(c)) if an alcohol and drug rehabilitation center does not permit client access to cash.

RESPONSE: The intent of the proposed amendment is to provide the client with funds for incidental expenses. The Department is not in a position to regulate facilities such as those mentioned by the commenter. It is observed that, if it is the policy of such facilities not to permit its residents to be in personal possession of unrestricted funds while residing there, then it would be the recipient's choice as to whether to forego immediate access to such money in order to enter the facility.

COMMENT: Since neither client identity nor residence (other than residence in the State) are eligibility factors, the proposed amendment at N.J.A.C. 10:85-3.2(e), which requires verification of these facts, has nothing to do with eligibility and should not be adopted.

RESPONSE: The proposed amendment is certainly not intended to preclude eligibility but is designed to identify certain factors that must ultimately be substantiated. The proposed amendment serves as a further illustration of some of the elements present in current rules, such as at N.J.A.C. 10:85-3.2(c)5, requiring that, as a matter of identity, the Social Security number of each client be recorded on the application. N.J.A.C. 10:85-3.2(f) already provides a definition of what constitutes a "resident" and the proposed amendment does not alter that definition. Thus, the proposed provision here does not constitute a departure from the existing regulatory scheme.

COMMENT: Since the only residential eligibility requirement is residence in the State, requiring an applicant to provide reasons for the applicant's intention to remain in a particular municipality will simply deter applicants who are entitled to GA benefits. Recommendation is made not to adopt this change at N.J.A.C. 10:85-3.2(f).

RESPONSE: While the Department does not concur that the proposed amendment will necessarily deter the making of application for GA benefits, since members of the general population seek relocation to a particular locality for reasons such as those set forth in the proposed text, it has nevertheless decided not to adopt, subject to further review, that part of the proposed amendment at N.J.A.C. 10:85-3.2(f) which lists reasons an applicant may cite to support his or her intention to remain in a particular municipality.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:85-1.1 Purpose of the General Assistance program

(a) (No change.)

(b) Each municipality in New Jersey is required by law (Chapter 1 of Title 44, Revised Statutes) to provide financial assistance and medical care to all eligible persons residing in the community at the time of application and not otherwise provided for under the laws of this State and to such other persons who may be in the municipality and require emergency assistance. (See N.J.A.C. 10:85-3.2(f) for definition of resident and N.J.A.C. 10:85-4.6 for emergency assistance.)

1. The General Assistance Manual is a compilation of rules based on State law (Chapter 8 of Title 44, Revised Statutes) which govern the provision of assistance to needy persons by all municipalities and authorize 100 percent State funding for non-administrative costs incurred by those municipalities in the administration of the General Assistance program.

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

(g) Financial assistance for maintenance requirements or other needs, including medical assistance, shall not be authorized through General Assistance when, during the same period, such needs are actually being provided by any other source.

1. (No change.)

2. Receipt of duplicate assistance from more than one MWD in any one month shall render the client ineligible for General Assistance benefits for a period of 90 days beginning with the month subsequent to the month in which the benefit infraction was identified. ***General Assistance benefits received from any MWD during**

any sanction period, such as set forth at N.J.A.C. 10:85-3.2(g)7, shall be viewed as having received duplicative assistance within the meaning of the penalty provisions stipulated herein. Sanctions imposed are for additional/cumulative periods of ineligibility for each infraction.*

i. Client payment records from the various MWDs shall provide the necessary documentation to initiate the 90 day penalty.

10:85-1.2 Administration of municipal welfare

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

(e) Municipalities shall administer General Assistance in conformance with standards, policies, procedures and rules developed by the Division of Economic Assistance. This requirement shall include adherence to additional policy directives as distributed by official letters signed by the Director of the Division of Economic Assistance, as well as to the rules set forth in this manual.

10:85-1.3 Funding of the program

Municipalities shall be provided 100 percent State funding for non-administrative costs expended in compliance with State standards in the administration of the General Assistance program.

10:85-2.1 Statutory obligation to provide assistance

(a) It is the basic obligation of every municipality in the State to provide financial assistance and medical care to the extent established by State regulations for all persons living in that community who are in need. This essential obligation is embodied in N.J.S.A. chapter 1 of Title 44.

10:85-2.2 Establishment of local assistance board

(a) Statutory requirements: The law stipulates that each municipality shall appoint a local assistance board (LAB); specifies the composition of the board and the terms of office; empowers the LAB to appoint a director of welfare; and authorizes the municipality to appoint any other necessary employees. These requirements are mandatory upon every municipality. Where the establishment of a LAB is not a requirement under a Faulkner Act municipality, the entity or official designated to serve instead of the LAB shall be so recognized. Therefore, the designated alternate shall represent, in meaning, the LAB as set forth throughout this chapter except in LAB membership composition and/or other duties that are not appropriate under such structure.

1. (No change.)

(b) (No change.)

(c) Certification to the Division of Economic Assistance (DEA)/General Assistance Program (GAP) Unit (DEA/GAP Unit): Each municipality shall submit annually a certification form, Status Report for Calendar Year (Form GA-15), to the DEA/GAP Unit signed by the municipal clerk and attesting to the appointment of the board members, if any, and the director of welfare. The director of welfare shall be responsible for informing the municipal clerk and other appropriate local officials regarding the required certification, and arranging for the completion of the Status Report and filing same with the DEA/GAP Unit on or before March 1 of the year to which the certification applies.

1. Prior to January 1 of the next calendar year, three copies of Form GA-15, with necessary instructions, will be distributed by the DEA/GAP Unit to welfare directors.

2. (No change in text.)

(d) Rules concerning the appointment of the director of welfare are:

1. Power to appoint: Under law, the LAB is solely responsible for the appointment and reappointment of a director of welfare. Appointment shall be by formal action of the board at a regular or special meeting and such action duly recorded in the minutes. All appointments and reappointments to the position of director of welfare require the approval of the DEA (see (d)4 below).

2.-6. (No change.)

(e) (No change.)

(f) The LAB is responsible for establishment of the official municipal welfare agency office and designation of hours of operation.

1. (No change.)

ADOPTIONS

HUMAN SERVICES

2. Day and hours: The office of the municipal welfare department shall be open to the public during the five-day work week at hours specified by the LAB. Additional arrangements shall be instituted by the LAB to ensure that persons in need of assistance are served without delay at times other than normal office hours.

i. Each MWD office shall be required to post a sign(s), in a conspicuous place(s), which lists the telephone number(s) and person(s) who shall be available to handle emergencies beyond normal office hours.

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

10:85-2.5 (Reserved)

10:85-2.6 Fraudulent receipt of assistance

(a) To protect the local assistance agency and the public, it is essential to exercise appropriate controls against the commission of fraud. Likewise, the individual's rights must be protected on the basis that a person is presumed innocent until proven guilty.

1.-3. (No change.)

4. Recoupment of overpayments for willful withholding of information or when fraud has been proven through the courts shall be performed in accordance with N.J.A.C. 10:85-3.6(a)1.

10:85-3.2 Application process

(a) (No change.)

(b) Rules concerning responsibilities of the agency are:

1.-2. (No change.)

3. Immediate application: When the individual indicates his or her decision to apply for General Assistance, an application shall be taken immediately.

*[i. When, upon review of the applicant's statements, it is determined that the applicant has voluntarily ceased employment without good cause, including cessation of employment due to inappropriate work habits, within 90 days prior to the date of application, the MWD shall determine the applicant ineligible for a period of 90 days beginning with the date of the termination of employment.

(1) The MWD shall take into consideration the applicant's mental and/or physical incapacities as a reason for "good cause."

(2) Good cause reasons claimed by the applicant must be verified in accordance with (e) below.

(3) In an eligible unit of more than one, when one person incurs such a penalty of ineligibility, the grant shall be calculated in accordance with the eligible unit at time of application, then reduced by the penalized person's pro-rata share.]*

4. (No change.)

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

(e) Rules concerning verification and sources of evidence are:

1. Applicant's statements:

i. The client's statements regarding his or her eligibility are evidence. For purposes of public assistance, the client's statements must be consistent, and certain facts must be verified and documented, such as, but not limited to, client identity, residence, and ownership of resources. The applicant will be informed that the municipal welfare department is required to document the facts regarding certain eligibility criteria and that this process will include contacting collateral sources as necessary.

ii. (No change.)

2.-3. (No change.)

4. Verification of income and resources:

i. Earned income: The worker will verify, either through examination of pay stubs or with the client's employer, the amounts of gross income received.

(1) MWD staff shall make telephone contact with DEA's Bureau of Integrity Control to elicit available wage match information for every new applicant within 30 days of the application date and shall document such information in the case file.

ii. Unearned income: All unearned income shall be verified by examination of benefit check or by contact with the company or agency granting such benefit.

(1) MWD staff shall make telephone contact with DEA's Bureau of Integrity Control to elicit available Unemployment Insurance Benefit (UIB) or Temporary Disability Insurance Benefit (TDI) information for every new applicant within 30 days of the application

date and shall document such information received in the case file. For situations of incomplete or inconsistent information about Unemployment/Disability Insurance benefits from the client himself or herself, or, where the agency experiences difficulty in securing verification, the MWD may send Form PA-24 (Verification of Unemployment/Disability Insurance) to the DEA, Att: Bureau of Integrity Control.

iii.-v. (No change.)

5. (No change.)

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain *[for such reasons as, but not limited to, a potential employment opportunity, or a friend or relative is living in the municipality]*, or a person who enters a New Jersey medical facility from out-of-State and qualifies as a resident in accordance with (f)1i below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or in a residential medical facility.

1. When the last municipality of residence was not in New Jersey and the person qualifies in accordance with (f)1i below, that person shall be considered a resident of the municipality in which the medical facility is located.

i. (No change in text.)

ii. If, after full consideration of the factors in (f)1i above, the MWD is satisfied that the individual has become a resident of this State, then the person shall be considered a resident of the municipality in which the person is present.

2.-4. (No change.)

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

10:85-3.3 Financial eligibility

(a)-(e) (No change.)

(f) Assistance allowance standards are as follows.

1.-3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i.-iii. (No change.)

iv. Drug and alcohol treatment centers: When an individual is receiving room and board in a residential center for the treatment of drug or alcohol abuse, whether or not the center is licensed by the New Jersey Department of Health, the total allowance shall not exceed the amount to which the individual would be entitled as an eligible unit of one as given in Schedule I or Schedule II, as appropriate. Of that amount, \$25.00 shall be considered as an allowance for personal incidentals and the remainder as the room and board payment to the center. (Note: Licensure of the center by the New Jersey Department of Health as a medical institution will not affect the payment rate.)

v. (No change.)

5. (No change.)

(g) (No change.)

10:85-3.5 Continuing eligibility

(a) (No change.)

(b) Redetermination of eligibility: In order to continue granting assistance, the MWD shall make a complete redetermination for each case at least once every six months except that for the chronically ill, recertification by a physician via Form GA-18 shall be made at time intervals in accordance with N.J.A.C. 10:85-5.3(e)1i.

1.-4. (No change.)

5. MWD staff shall make telephone contact with DEA's Integrity Control Section to obtain available wage match, UIB, or TDI information.

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

10:85-3.6 Recoupment of overpayments

(a) Overpayments/underpayments: In all situations of overpayment or underpayments, the facts and circumstances in each case shall be evaluated, and where indicated, action taken as appropriate in accordance with the following manual regulations.

1. Overpayments:

i. The MWD may, at its discretion, recoup overpayments of assistance upon a determination that the overpayment occurred after the client signed Form GA-51 and resulted from the willful withholding of information which would, if revealed, have resulted in a smaller grant or in denial or termination of eligibility.

(1) Recoupment shall be made from future assistance grants by reducing the payments in amounts of up to 10 percent of the monthly assistance allowance until the amount of the overpayment is thereby repaid. When earned income disregards are applicable, the MWD may deduct up to an additional 10 percent of the monthly assistance allowance but no more than the amount of the disregard (\$60.00 plus 1/3).

(2) MWDs shall obtain, through a court of law, civil judgment(s) against former GA recipient(s) to recoup GA overpayment amounts of \$500.00 or more.

(A) MWDs who cannot locate the delinquent recipient(s) to have such judgment(s) enforced shall submit Form PA-39 to DEA's Bureau of Integrity Control for assistance in such instances. Judgments submitted on Form PA-39 must be docketed in Superior Court.

ii. Deductions for overpayments which resulted from agency error or for any reason other than willful withholding of information are not authorized.

iii. Eligibility for medical payments shall not be influenced by grant reductions made on account of previous overpayments.

2. (No change.)

10:85-4.2 Periods for which assistance is granted

(a) General assistance is granted to meet needs of individuals in a variety of situations. The director of welfare shall determine which of the following is appropriate:

1. (No change.)

2. Weekly or biweekly period: When authorized, payment shall be issued on a weekly or biweekly basis, and will be determined by prorating the applicable monthly allowance standard. The total payments to the client in any calendar month shall not exceed the full monthly allowance less any countable income for that monthly period.

i. MWDs may use the weekly or biweekly period for the granting of assistance to persons who demonstrate patterns of noncompliance with the work requirement or in situations where the MWD is experiencing difficulty in reconciling questionable areas of eligibility.

3.-6. (No change.)

10:85-4.3 Methods of payment

(a) Acceptable forms of payment to or on behalf of an eligible unit include:

1. (No change.)

2. An order for a specific item or items or for a specific service (Form GA-11). A check is subsequently drawn to a vendor for the specified commodity or service. Neither the order nor any information provided about the order may limit the client's choice of vendor in any way except that the client may not, by his or her choice of vendor, incur a charge against the municipality higher than the limits provided in this manual.

i. The MWD shall inform the vendor that all bills must be submitted to the MWD within six months after the date of the service, unless special circumstances are brought to the MWD's attention which warrant an alternate billing timeframe arrangement.

(b) Assistance orders shall be serially numbered when printed. Assistance orders submitted for payment shall bear the signatures of the director of welfare, the recipient and the vendor except that orders for residential services such as room and board or residential health care need not bear the signature of the recipient. Rubber stamp or typescript signatures are not valid unless countersigned by a duly authorized staff member.

(c) The MWD shall provide a sufficient portion of the grant amount in the form of cash or check directly to the client for incidentals such as laundry and personal needs.

1. MWDs that utilize a voucher method of payment for grants shall be required to establish a Petty Cash Fund Account in ac-

cordance with N.J.A.C. 10:85-6.6, to provide a portion of the grant amount to the client in the form of cash or check.

10:85-5.3 Other medical payments

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate and, for services rendered after July 1, 1988, if the bill for each such service reaches the municipal welfare office within one year after the date of the service. For services rendered after July 1, 1991, the bill for each such service must reach the municipal welfare office within six months after the date of the service.

1. (No change.)

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

(g) Miscellaneous services: The director of welfare shall authorize payment for drugs, blood, blood plasma, infusions, hearing aids, prosthetics, oxygen, dental services or dentures, eyeglasses and other visual prosthesis, braces and appliances, if recommended in writing by an appropriately licensed practitioner and if not otherwise available without cost to the patient.

1.-2. (No change.)

3. Prosthetics and orthotics (for example, artificial limb, eye or brace): Clients who have a job handicap which may be reduced or diminished if provided with an appliance (that is, prosthesis or brace) should be referred to the Division of Vocational Rehabilitation Services (see N.J.A.C. 10:85-8.4(h)). If accepted for service by that agency, the cost of the appliance is the responsibility of DVRS. Only if the client is rejected as not feasible for the services furnished by DVRS should the municipal welfare agency consider authorizing payment for such an appliance, and then only after consulting with the DEA/GAP Unit.

(h) (No change.)

(i) Resident treatment for drug or alcoholic abuse: When the director of welfare authorizes payment for room and board, and personal incidentals in amounts as specified in N.J.A.C. 10:85-3.3(f)4iv, the payment shall be considered as inclusive of all goods and services.

1. When laboratory tests necessary for admission to drug treatment programs are performed by independent laboratories, payment procedures are as follows:

i. For costs incident to admission to methadone maintenance outpatient drug treatment facilities, laboratories will submit their charges on the appropriate Medicaid form and send that form to the MWD for submittal to the DEA/GAP Unit for costing.

ii. For costs incident to admissions to residential drug treatment facilities, laboratories will submit charges on the appropriate Medicaid form to the MWD for submittal to the DEA/GAP Unit for costing and processing in customary manner.

10:85-6.1 Statutory authority

(a) (No change.)

(b) Further, N.J.S.A. 44:8-112 provides that the Commissioner may require keeping of records and submission of reports, and investigate the administration of public assistance within each municipality.

1. (No change.)

(c) The Commissioner reserves the right to approve municipal welfare agency budgets.

1. Such budget approvals shall be contingent on the MWD's submission and DEA's approval of Form GA-15.

10:85-6.2 State financial participation

Effective July 1, 1991, in accordance with P.L. 1990 c.66, the amount of State aid for General Assistance which an approved municipality may receive shall equal 100 percent of the amount of municipal funds approved for public assistance on or after that date. For commitments approved before that date or with date of service prior to July 1, 1991, the amount of State aid for General Assistance which an approved municipality may receive shall equal 75 percent of the amount of municipal funds expended and approved for public assistance. The amount of such State aid shall be exclusive of any costs incurred in the administration of the program.

ADOPTIONS

HUMAN SERVICES

10:85-6.3 Public Assistance Trust Fund Accounts

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account. Effective July 1, 1991, approved municipalities will have both a Public Assistance Trust Fund I and a Public Assistance Trust Fund II account.

1. Fiscal-year continuation of Trust Fund Accounts: A municipality which has received State aid in the year last preceding shall not close out its Public Assistance Trust Fund Accounts at the end of that fiscal year. Municipalities which have filed with the Division of Economic Assistance reports of commitments (Form GA-6) made by them for assistance during the year last preceding, in anticipation of receiving State aid in succeeding years, shall maintain existing Public Assistance Trust Fund Accounts in order to qualify for State aid. Such accounts and any balance used for public assistance only, exclusive of administrative costs, shall be carried over to the next fiscal year.

2. Non-transferability of funds: Under no circumstances shall payments made to a municipality as State aid for General Assistance in the current or prior years be deposited or transferred to the municipal current account or used for any purpose other than public assistance grants exclusive of administrative costs. Transfers from Public Assistance Trust Fund I to Public Assistance Trust Fund II are not barred by this subsection. Transfer of surpluses arising from municipal appropriations in prior years is not barred by this regulation.

3. With exception of those municipalities that have a Public Assistance Trust Fund II zero balance account, State aid advances at 100 percent shall be deposited to the Public Assistance Trust Fund II Account. State aid advances at 75 percent shall be deposited to the Public Assistance Trust Fund I Account.

4. Deposit of refunds and receipts: Except as noted in (a)3 above, all payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" designated on Form GA-12 and duly accounted for on a monthly basis.

i. Preparation of statement of refunds and receipts: Each municipal welfare department is required to prepare Form GA-12, General Assistance Program—Statement of Refunds. Refunds are separated according to items eligible and ineligible for State participation and completed in accordance with instructions provided on the reverse side of Form GA-12. Form GA-12 shall be distributed as follows:

(1) (No change.)

(2) A copy forwarded to the Bureau of Business Services/Division of Economic Assistance (BBS/DEA) as follows:

(A) With the exception of (B) below, a copy is due every December (June for municipalities with such fiscal year end) and is to be submitted with Form GA-6, observing the December (June, if applicable) deadline for receipt of Form GA-6 by the BBS/DEA.

(B) If any time prior to the December (June, if applicable) submittal the MWD's amount of State aid recovered reaches \$500.00, Form GA-12 is to ***be*** completed at such time. A copy of the completed Form GA-12 is to be forwarded to the BBS/DEA and the original retained by the municipal welfare department. Such submittal does not replace the December (June) deadline for the submittal of the final Form GA-12 for the entire year.

(3)-(4) (No change.)

ii. Adjustment of State reimbursement: In accordance with instructions on the reverse side of Form GA-12, a check in the amount of State aid recovered is to be drawn on Public Assistance Trust Fund I for deposit into Public Assistance Trust Fund II.

(b) Disbursement may be made from the Public Assistance Trust Fund Accounts only for payment of public assistance costs, exclusive of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. Types of disbursements authorized from Public Assistance Trust Fund I Account: Disbursements from the Public Assistance Trust Fund I Account are limited to:

i. Payment to GA clients or to vendors providing authorized services to GA clients of public assistance costs eligible for zero percent or 75 percent State aid;

ii. Replacement checks;

iii. Payment of Supplemental Security Income (SSI) proceeds to SSI recipients, the Social Security Administration or other municipal welfare departments from which the SSI recipient received Interim Assistance and completed a Form GA-30;

iv. The Transfer of GA State aid recovered into the municipality's Public Assistance Trust Fund II Account; and

v. Payment to replenish the petty cash account.

2. Disbursements from the Public Assistance Trust Fund II Account are limited to:

i. Payment to GA clients or to vendors providing authorized services to GA clients of public assistance costs eligible for 100 percent State aid;

ii. Payment to establish or replenish the Public Assistance Petty Cash Fund Account;

3. (No change in text.)

10:85-6.4 Fiscal and statistical reporting requirements

(a) General completion and submittal requirements: Forms described below shall be completed and either submitted to the Division of Economic Assistance, as indicated, or retained by each municipality approved to receive State aid in the General Assistance program. Use of the forms described herein is required.

1. (No change.)

2. Report of Assistance Commitments (Form GA-6): Form GA-6, accompanied by Form GA-6A, will be submitted on a monthly basis to the DEA/BBS within 10 days after the end of the assistance month.

i. Separate Forms GA-6 shall be submitted in order to separately identify assistance provided that is eligible for 100 percent State aid from the assistance provided that is eligible for 0 to 75 percent State aid.

ii. Cases must be listed in sequential order according to case number and employability status. Case numbers for all employable cases must be identified with an "E" prefix and all unemployable cases must be identified with a "U" prefix. Cases that are classified as employable must be listed first, followed by the unemployable cases. At the end of each page, totals must be indicated for the number of cases opened, the number of cases closed, the number of single persons aided, family case persons aided, and the commitments reported for each category (Maintenance, Hospitalization, Nursing Home, and so forth). On the bottom section of any GA-6 page that lists both "E" prefixed and "U" prefixed cases and on the final page, totals must be segregated for employables and unemployables, and be followed by a combined page total (grand totals on final page).

iii. The list will include all cases for which assistance was granted during the calendar month of the report and for which the reporting municipality is financially responsible. It will include cases serviced for the municipalities for which payments were made to medical facilities. Payment for medical goods and/or services must be reported on the Form GA-6 for the month in which the payments are actually made, date of authorization or commitment notwithstanding. Column 1-C (Social Security Number) must be completed in the months of January, April, July and October.

3. Statistical summary (Form GA-6A):

i. Form GA-6A is a summary of data contained on Forms GA-6 and GA-7. Separate Forms GA-6A must be submitted in order to identify assistance provided that is eligible for 100 percent State aid from assistance provided that is eligible for 0 or 75 percent State aid. Items on all forms (that is, GA-6, GA-6A and GA-7) must correspond for use in computing other statistical data. Section VI of the Form GA-6A that reports costs eligible for 100 percent State aid must include information on the monthly total numbers and costs of salaried employees related solely to the administration of the source of funds;

HUMAN SERVICES

ADOPTIONS

- ii. (No change.)
- iii. The "Certification of Director of Welfare" section of Form(s) GA-6A shall be signed by the director of welfare before submittal to the State Division.

10:85-6.5 Reimbursement of assistance for cases pending SSI entitlement

- (a)-(d) (No change.)
- (e) Rules concerning remittal of balance of SSI award to clients are:
 - 1.-3. (No change.)
 - 4. In accordance with instructions on Form GA-31 Supplement (Form GA-31 reverse side), a copy of the SSI check shall be attached to Form GA-31 and the GA-31 Supplement completed.
 - 5. The deposit of State share of Interim Assistance recovered shall be as follows:
 - i. A check representing the State share of Interim Assistance recovered must be drawn on Public Assistance Trust Fund I for deposit into Public Assistance Trust Fund II.
- (f) (No change.)

10:85-6.6 Establishment of Petty Cash Fund Account

- (a) The LAB shall request the municipal governing body to establish a General Assistance Petty Cash Fund for use by the municipal department of welfare, unless the MWD is able to make direct payments to clients from the Public Assistance Trust Fund Account(s).
 - 1. (No change.)
 - 2. Application procedure: To establish a petty cash fund, Form GA-32, Application to Establish a Petty Cash Fund for Direct Payment of General Public Assistance, must be completed in triplicate, signed and dated by the clerk of the municipality and submitted to the Director of Local Government Services, 363 W. State Street, CN 800, Trenton, New Jersey 08625.
 - i. Conditions for approval: Conditions under which the Director of Local Government Services may grant approval are as follows:
 - (1) (No change.)
 - (2) No deposits may be made to this account other than funds transferred from the Public Assistance Trust Fund Accounts:
 - (3) A schedule (two schedules if disbursements were eligible for State aid at 100 percent and 75 percent) listing all disbursements for a given period or, in the alternative, a schedule(s) together with actual vouchers must be submitted to the governing body for approval, after which a check(s) will be drawn to reimburse the fund(s);
 - (4) The fund shall be closed out to a zero balance on December 31 of each year (June 30 if fiscal year end) and reestablished after January 1 (July 1 if fiscal year) of the following year. (Also see Form GA-32 for additional requirements.)
 - 3.-4. (No change.)
 - 5. Identification of checks: General Assistance petty cash fund checks and public assistance trust fund checks shall be of three distinct colors for the purpose of readily distinguishing between the three accounts.

10:85-6.7 Retention and destruction of case records

- (a)-(b) (No change.)
- (c) Cases shall be selected for destruction in accordance with the following schedule:

Record	Retention period
Inactive case records	6 years
Denied cases	10 years
Copies of relief orders or vouchers	6 years
General correspondence not relating to policy or active cases	3 years
Form GA-6, Report of Assistance Commitments	6 years
Form 100, Original Invoice for Expenses	6 years
Form GA-12, Statement of Refunds	6 years
Form GA-30, Authorization for Reimbursement of Initial Supplemental Security Income or Initial SSI Post Eligibility	6 years

Form GA-31, Repayment of Interim Assistance Authorization 6 years

The current year shall not be counted when determining the retention period.

10:85-6.8 Pharmaceutical payments

- (a) (No change.)
- (b) Each month Blue Cross will provide to the DEA, through DMAHS, a detailed statement of pharmacy bills paid for General Assistance recipients. The DEA will forward this report to the respective municipal welfare departments. The monthly statement will show:

Municipal Code	Amount dispensed
Provider (Medicaid I.D. No.)	Number of days supply
Sequential claim No.	Prescription (Rx) No.
Recipient No.	Individual Medicaid
National Drug Co.	Practitioner (IMP) No.
Name of Drug	Date of Service
Metric quantity	Amount paid

- 1. (No change.)
- 2. Monthly statements shall be retained for the same periods applicable to Form GA-6.
- (c) (No change.)
- (d) Periodically, the administrative costs of processing the MC-24 forms up to that time will either be billed to or deducted from payments of State aid to the respective municipalities.

1. For municipalities that maintain a zero balance Public Assistance Trust Fund II Account, a check shall be drawn from the municipal account used for administrative expenses and made payable to the Public Assistance Trust Fund II Account for the total amount billed the municipality for the processing of each Form MC-24, the prescription processing form. The amount of the check must be recorded on GA-12, Statement of Refunds, as administrative costs of the pharmaceutical (Rx) program (abbreviate as "Admin Rx Pgm").

2. For municipalities that receive either monthly or quarterly advance payments of State aid for deposit into the municipality's Public Assistance Trust Fund II Account, the total amount of the administrative costs of processing the MC-24 forms will be deducted from one State aid advance payment. Therefore, a check shall be drawn on the municipal account used for the payment of administrative expenses, made payable and deposited to the Public Assistance Trust Fund II Account, and recorded as a refund on Form GA-12, Statement of Refunds, to the Public Assistance Trust Fund II Account for "Admin Rx Pgm."

10:85-6.9 Computerized match reports

(a) MWDs shall complete investigation of the following computerized match reports and submit their findings, along with an indication as to the appropriate action undertaken, to the DEA's Bureau of Integrity Control within 60 days of receipt:

1. GA-Wage Match Report: A match of the GA files with the Department of Labor's wage files. The GA-Wage Match Reports are sent to all MWDs on a quarterly basis;

2. GA-SSI Match Report: A match of the GA files with the (SDX) State Data Exchange which lists all Supplemental Security Income (SSI) recipients.

i. The GA-SSI Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a quarterly basis;

3. GA-GA Match Report: A match of all municipalities matched against each other.

i. The GA-GA Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a yearly basis;

4. GA-FAMIS Match Report: A match of all GA cases matched against the FAMIS (county welfare) files.

i. The GA-FAMIS Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a yearly basis;

5. GA-UIB Match Report: A match of the GA cases with the Department of Labor's Unemployment Insurance Benefits files. The

ADOPTIONS

HUMAN SERVICES

GA-UIB Match Reports are sent only to the computerized municipalities on a monthly basis.

10:85-7.2 Notices to applicants or recipients

- (a) (No change.)
- (b) Exceptions to timely notices are:

- 1. (No change.)
- 2. Time-limited assistance: When it is mutually understood between the applicant and the MWD that assistance is requested for and will be granted to cover only a limited period of time, or is limited to a specific purpose or an emergency grant (see N.J.A.C. 10:85-4.2(a)4 and 5) or when other circumstances warrant the MWD to grant assistance to cover a limited period of time, the MWD will send a time-limited notice promptly when such assistance is granted. No further notice will be required.

- i. (No change.)
- (c) (No change.)

10:85-9.4 Determining amount of support

(a) Monthly income standards provide the basis for evaluation of an LRR's capacity to contribute to the support of the eligible unit:

- 1. Schedule IV applies to all legally responsible relatives.
- 2. (No change in text.)

(b) Rules concerning the determination of LRR capacity to support are:

- 1.-2. (No change.)
- 3. Method for determining capacity:

i. The amount of the obligatory contribution is calculated as follows:

- (1)-(2) (No change.)
- (3) Compare this adjusted income with the applicable Monthly Income Standard on Schedule IV;
- (4)-(5) (No change.)

ii. (No change.)

Schedule IV Monthly Income Standards	
Family Size	All LRRs
1	\$1189
2	1657
3	2135
4	2607
5	3000
6	3319
7	3632
8	3951
Each Additional Person	+ \$319

SUBCHAPTER 12. EFFICIENCY AND EFFECTIVENESS OF PROGRAM OPERATIONS

10:85-12.1 Authority of the Commissioner

(a) Under P.L. 1990, c.66, the Commissioner of the Department of Human Services is obligated to ensure that the benefits provided under the 100 percent State-funded GA program, administered by municipalities throughout the State, are issued to eligible persons in an accessible, efficient and cost-effective manner.

(b) The Commissioner has the authority to establish rules, regulations, and directives, including incentives and sanctions, to ensure that local agencies provide GA benefits to eligible recipients in an efficient, effective manner consistent with State law.

(c) The Commissioner shall have the authority to review and approve municipal welfare agency budgets.

(d) The Commissioner shall have the power to assume direct administration of and operate any municipal welfare operation when it is determined that the MWD substantially fails to administer the GA program in an efficient, effective manner in accordance with State law.

10:85-12.2 Action of the State to assume direct administration

(a) When it is determined that action of the State to assume direct administration of MWD GA operations is necessary due to ongoing

MWD failure to substantially follow State law and rules in its administration of the GA program or an arising emergent situation that warrants such immediate State action, the Department shall:

1. Make any administrative and programmatic changes deemed necessary to provide services in an efficient, effective manner and ensure compliance with State law and regulation;

i. The municipality shall be billed for the reasonable expenses incurred by the State in ensuring compliance;

2. Hire any consultant or undertake any studies of the agency operations deemed necessary;

3. Direct expenditures of the municipal welfare agency in a reasonable and prudent manner to effectuate the purpose of the GA program, including reallocating funds within the municipal welfare agency budget and determine additional amounts of revenue needed to implement the program within the agency's budget;

4. Operate the municipal welfare agency; and/or

5. Do all acts necessary or appropriate to ensure that the needs of eligible GA recipients are met pursuant to State law.

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Business Enterprise Program

Adopted New Rule: N.J.A.C. 10:97-5.4

Adopted Amendments: N.J.A.C. 10:97-1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 6.1, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.3 and 9.1

Proposed: June 3, 1991 at 23 N.J.R. 1749(a).

Adopted: September 19, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: September 20, 1991 as R.1991 d.512, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:40-4.3).

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2; P.L. 74-732, as amended by P.L. 83-565; P.L. 93-516; and 34 CFR 395.

Effective Date: October 21, 1991.

Expiration Date: May 15, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Commission for the Blind and Visually Impaired (the Commission) received comments from two business enterprise operators, Thomas Blume and Henry C. Ingra. A summary of the comments and the responses of the Commission appears below.

COMMENT: One commenter, as committee chairman of the business enterprise operators, requested that consideration be given to a resolution which was passed unanimously by the committee. The resolution stated that seniority be a consideration in the transfer and promotions section of the code and that a three point margin of error be used so that seniority would not be the only factor in a transfer or promotion.

RESPONSE: Prior to the proposed new rule and amendments, the Commission's supervisor of its Business Enterprise Program (BEP) met with the Committee of Business Enterprise Operators several times to consider this and other issues concerning the revision of N.J.A.C. 10:97. The Committee voted unanimously that the promotional package developed by the State Office of Management and Budget (OMB) should be implemented as a rule as soon as possible. The Committee also voted unanimously that seniority and margin of error should be eliminated as part of the selection criteria. Recently some committee members and other operators have expressed dissatisfaction with the new "promotions and transfers" process stated at N.J.A.C. 10:97-7.3. The Commission's BEP has requested that the committee re-study the issues in detail and report their findings and recommendations to it. If the recommendations have merit, they will be considered for a subsequent amendment to the current rules.

COMMENT: The same commenter suggested, on behalf of several other operators, that the \$50.00 repair fee, which the operators were required to pay, remain the same and not be raised or eliminated

(N.J.A.C. 10:97-4.7). In addition, the commenter suggested that the fee be paid from the Vending Stand Administration Fund.

RESPONSE: The increase in the deductible amount as stated at N.J.A.C. 10:97-4.7, Maintenance and repair of equipment was originally proposed by the Committee of Business Enterprise Operators and discussed in detail at subsequent meetings between the supervisor of the Commission's Business Enterprise Program and the Committee. The Commission agreed with the position of the Committee that the deductible increase would promote more self-reliance among the operators. Therefore, the Commission disagrees with this suggestion as it does not believe the deductible increase from \$50.00 to \$150.00 to be unreasonable or excessive.

The payment of the "fee," which is the deductible amount required for payment of equipment repairs, should not come from the Federal Set Aside Fund (formerly known as the Vending Stand Administration Fund) because such payment would be contrary to the aforementioned position of the Committee of Business Enterprise Operators, to encourage the promotion of self-reliance among the operators.

COMMENT: One commenter remarked that N.J.A.C. 10:97-7.3 states that the supervisor of the Business Enterprise Program (BEP) must circulate a letter to all licensed operators regarding the availability of a vending location and if only one licensed operator expresses interest in the location, the BEP supervisor must appoint that operator regardless of his or her qualifications. Since the BEP is being offered more complex locations which require competent, qualified and well trained operators, the commenter suggested that if the BEP supervisor, after carefully reviewing all applicant site visit reports and other pertinent data, feels that none of the applicants is qualified, the BEP supervisor may consider offering the available location to someone on the "Certified for Placement" list if it is felt he or she would be better qualified because of the demands of the location.

RESPONSE: The Commission agrees that the commenter is correct in the observation that the promotional process stated at N.J.A.C. 10:97-7.3, Promotions and transfers, does not provide for the handling of the specific situation described. The Commission believes the change proposed by the commenter may have merit, but requires further study. The Commission suggests that the Committee of Business Enterprise Operators undertake a review of the promotional process, including the commenter's suggestion, and make recommendations to the Commission based on their findings. If the Commission and the Committee agree to modify the promotional process, the rule can be amended.

COMMENT: The same commenter stated that, at present, the BEP supervisor is empowered to provide a non-interest bearing stock loan of up to \$1,000 in cash or stock and supplies to an operator who changes locations (see N.J.A.C. 10:97-3.4). This amount may be higher if approved by the Commission's Executive Director after reviewing a justifying written request. The commenter added that, at present time, there is little more than \$40,000 in the account used for this purpose and the account could be rapidly depleted if several requests for large amounts of money were granted. The commenter suggested that any operator who requests more than the allowable \$1,000, when transferring from one facility to another, submit his or her request to the Executive Director. The Executive Director and the supervisor of the Business Enterprise Program can review the request and, if questions exist, set up a panel similar to the Promotions and Transfers panel to review the request and make recommendations to approve or disapprove the loan. The commenter further suggested that this resource be available, utilized and granted to operators only after he or she exhausts all other available resources such as personal loans, home equity and other types of commercial small business loans available from banks, other lending institutions or the U.S. Small Business Administration.

RESPONSE: Following the established procedure stated at N.J.A.C. 10:97-3.4, Commission loans to business; repayment of loans, the maximum loan is for an amount up to \$1,000. Exceptions to the maximum amount may be granted by the Executive Director, based on the justification for the loan. Since the Executive Director is responsible for all Commission funds, the Executive Director is the person to decide whether to grant such exceptions regardless of other types of possible financial resources. Terms for repayment are spelled out in a promissory note signed by the operator. To involve members of the Committee of Business Enterprise Operators in the process, could be adjudged to be in violation of the confidentiality rights of an individual operator. Therefore, the Commission does not accept this suggestion for inclusion in the rule. To require the applicant to exhaust other sources of money, that is, interest bearing loans, would, in the view of the Commission,

be contrary to the spirit of the Business Enterprise Program. The Program policy is that, by providing an interest free loan, the blind operator is better able to compete in a sighted world.

COMMENT: The same commenter stated that, at the present time, a licensed operator who would like to improve his or her skills, learn more about operating a business, or stocking and servicing vending machines must apply to the Commission's vocational rehabilitation program for "Upward Mobility" training. This is a term outlined in the Randolph-Sheppard Act and is also used for reporting purposes on the RSA-15. The commenter indicated that this phrase is often misunderstood by operators and many think it refers to "cane travel" or some other type of mobility training. The commenter suggested the following term be added to the definitions section of the rule: "Upper or upward mobility" means mobility that can also be used interchangeably with the term advanced training.

RESPONSE: Although the term "Upward Mobility" is used in the Federal Randolph-Sheppard regulations at 34 CFR 395, this is not a term found at N.J.A.C. 10:97, Business Enterprise Program. The definitions section of the rules defines terms that are specifically included in the rules. Since the term is not dealt with in the rule, it is inappropriate to include it as a definition.

Summary of Agency-Initiated Changes:

At N.J.A.C. 10:97-4.15(b), the term "miscellaneous income" is replaced with "miscellaneous sales." This change is made because the Business Enterprise Program (BEP) recently developed a new Weekly Sales Report for the use of all operators in the BEP. Money collected from operator-owned or leased vending machines is considered sales as distinguished from vending commissions (not a part of direct sales) distributed to operators from other sources. The new report form more clearly delineates sales and other income and is in conformance with the required Federal Annual Report, RSA-15. The BEP operators are aware of this change in the Weekly Sales Report.

At N.J.A.C. 10:97-7.3(d), the term "vending facility" is replaced with "business enterprise." This change is made in keeping with the references made in the Summary of the proposed new rule and proposed amendments wherein all references to vending facilities were to be changed to business enterprises.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:97-1.3 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Active participation" means the activity in which the Committee of Business Enterprise Operators provides meaningful input into the decision making process in the formulation of policies and standards that affect the Program.

"Business enterprise" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters and such other appropriate equipment which may be operated by blind operators and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

"Business Enterprise Program Fund, non-Federal" means funds which accrue to the Business Enterprise Program from all non-Federal sources.

"Certified for placement list" means a roster of blind persons who have successfully completed training for the Business Enterprise Program and are so certified by the Commission.

"Committee" means Committee of Business Enterprise Operators.

"License" means a written certificate issued by the Commission to a qualified blind person permitting the operation of a business enterprise.

"Management services" means supervision, inspection, quality control, consultations, bookkeeping services, regulating, in-service

ADOPTIONS

HUMAN SERVICES

training, and other related services provided on a systematic basis to support and improve business enterprises.

"Net profit or net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine or other income accruing to operators after deducting the cost of such sale and other expenses.

"Operator" means a qualified blind person assigned by the Commission to operate a business enterprise on Federal or other property. An operator is not an employee of the State of New Jersey.

"Operating agreement" means the agreement which shall be entered into between the Commission and each operator, covering the basic terms and conditions required of each party for the operation of a specific business enterprise.

"Permit" means the agreement between the Commission and a department or agency in the control of the maintenance, operation and protection of Federal and non-Federal property whereby the Commission is authorized to establish a business enterprise.

"Property manager" means the official responsible for the property where the business enterprise is located.

...

10:97-1.4 Objectives

(a) The rules of the New Jersey Commission for the Blind and Visually Impaired are intended to set forth the administrative requirements governing the operation of the Business Enterprise Program on Federal and non-Federal property.

(b) The Business Enterprise Program is designed to:

1. Provide blind persons with remunerative career opportunities;
2. Enlarge the economic opportunities for blind persons;
3. Stimulate blind persons to greater efforts in striving to make themselves self supporting; and
4. Improve the public awareness of the business capabilities of blind and visually impaired persons.

10:97-2.1 Application and qualification to enter program

(a) Any blind person desiring to operate a business enterprise, under the supervision of the Commission, shall apply to the Commission and will be referred to the Vocational Rehabilitation Program in order to receive proper evaluation.

(b) The interested blind person must be certified as eligible by the Vocational Rehabilitation Program and be a citizen of the United States in order to participate in the Business Enterprise Program.

10:97-2.2 Selection and training

(a) A blind person who has been certified eligible by the Vocational Rehabilitation Program and wishes to enter the Business Enterprise Program must meet the following minimum criteria:

1. Mobility skills, that is, the ability to move about and orient to environment, especially in small areas;
2. Self-communication skills, that is, the ability to keep information for oneself in some organized format and the ability to retrieve such information as needed; and
3. (No change.)

(b) If selected for the program he or she will undergo a course of evaluation and training at the Joseph Kohn Rehabilitation Center or other training facility, or site as appropriate.

(c) Upon satisfactory completion of this training, the person will be issued a certificate and placed on the "certified for placement list."

10:97-2.3 Business enterprises for training

(a) Any business enterprise may be used for evaluation or training under terms and conditions established in the operating agreement.

(b) The trainee will be an unpaid employee of the operator.

10:97-2.4 Placement

When a business enterprise is available, the Commission will make every effort to match the individual needs and capabilities of persons on the certified for placement list to the demands of the business enterprise offered to him or her. Seniority on the list shall be a consideration in the selection.

10:97-2.5 Probation for a new operator

(a) When a person from the certified for placement list is assigned to a business enterprise, he or she will be subject to a probationary period of three months.

1. Written reports will be prepared at the end of six weeks and at the end of three months; and

2. The three month report will certify that the probationary period has or has not been successfully completed.

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

10:97-2.6 Failure to complete probation

Any person who is unable to satisfactorily complete the probation period, after a maximum of two extensions, will lose certification with the Business Enterprise Program and at his or her option may be referred for Vocational Rehabilitation reevaluation.

10:97-3.1 Completion of probation period and license

(a) When the probationary period has been successfully completed, a license shall be issued to the business enterprise operator for an indefinite period but subject to suspension or revocation.

(b) (No change.)

(c) The granting of a license to an operator is not subject to transfer.

(d) The license shall be immediately terminated by improvement of vision if the operator no longer meets the definition of a blind person. Also, the license shall be terminated by death, revocation or voluntary withdrawal from the business by the licensee.

(e) If a permit authorizing a business to be established in a specific location is terminated, the operator's license is terminated. However, if termination is through no fault of the operator, he or she will be eligible to apply for subsequent promotion and transfer opportunities, under conditions set forth in N.J.A.C. 10:97-7.3.

10:97-3.2 Operating agreement

(a) A written agreement shall be entered into between the Commission and the operator, covering the basic terms and conditions required of each party each time an operator begins business at any business enterprise, including the probation period. A signed copy will be provided to the operator.

(b) No operator will be charged rental for the operation of a business enterprise on Federal, State, county or municipal property pursuant to N.J.S.A. 30:6-15.2 and 34 C.F.R. 395.35.

10:97-3.4 Commission loans to start business; repayment of loans

(a) When an operator is assigned to a business enterprise, a non-interest bearing loan in the amount of \$1,000 in cash and/or equivalent stock may be granted by the Commission, upon request of the operator, for the initial stock and supplies of the business enterprise.

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

10:97-3.5 Inventory taking

(a) (No change.)

(b) The Commission shall schedule the taking of inventory on the effective date of transfer or closing of the facility. Both operators and/or their representatives, and a representative of the Commission, are to be present so that there can be agreement as to the amount and value of stock and supplies on hand. The Commission may compute the value of the inventory using current average wholesale prices and document the procedure in the operators' records.

(c) Either operator may waive, in writing, his or her right to participate in the scheduled inventory. If either operator chooses not to participate in the inventory taking or signs a waiver, the Commission shall determine the value of the inventory and document the procedure in the operators' records.

(d) At the time of the inventory taking, the Commission will conduct an inspection of all equipment in which the Commission has title to assure its working order. The previous operator shall be responsible for the cost of repairs of any defective equipment under conditions set forth in N.J.A.C. 10:97-4.7.

10:97-4.1 Personal operation of a business enterprise

(a) The operator shall personally conduct the business assigned to him or her.

(b) The operator shall devote his or her full time to the conduct of the business.

10:97-4.2 Absences

(a) The operator bears full responsibility for the operation of the business during his or her absence.

1.-2. (No change.)

(b) Absence by an operator from his or her business enterprise because of sickness or accident shall be limited to a period of no more than six consecutive months from the date of initial absence. If an operator is absent from the business enterprise for more than six consecutive months, his or her license shall be immediately terminated.

10:97-4.6 Equipment

(a) (No change.)

(b) Any request for purchase or lease of equipment by an operator must be made in writing to the Commission. The Commission will notify the operator of its decision regarding the request within 20 days.

(c) The granting of permission to purchase equipment does not imply agreement on the part of the Commission to maintain the equipment or purchase the item from the operator at the time he or she leaves the program or from his or her heirs or assignees after his or her death.

10:97-4.7 Maintenance and repair of equipment

(a) All business enterprise equipment in which the Commission has title shall be maintained in good repair by the operator to insure continued operation of the business enterprise.

(b) The operator shall pay the first \$150.00 for the repair of each piece of equipment except when the cost of equipment repair is incurred during the first 45 calendar days of an operator's occupancy at a business enterprise. Full cost of repair of equipment during the first 45 calendar days shall be the responsibility of the Commission.

(c) The Commission shall pay for repair charges over and above the first \$150.00 except as stated in (b) above.

(d) Worn and obsolete equipment shall be replaced by the Commission, as necessary, when the cost of repair of the equipment cannot be justified in relation to the value of the equipment.

10:97-4.8 Disposition of Commission owned property

The operator or his or her employees shall not destroy, sell or in any way alter or dispose of any of the fixtures, equipment or other property to which the Commission holds title or permit anyone else to do so without the written authorization of the Commission.

10:97-4.14 Responsibility for damage

The operator shall be liable to the Commission for any damage of the equipment or fixtures owned by the Commission or any losses resulting from the neglect or failure to observe the rules of the Commission.

10:97-4.15 Operator owned or leased vending machines

(a) Operators must obtain written approval from the Commission and the property manager to have vending machines as part of the business enterprise.

(b) All income from these vending machines will be counted as miscellaneous *[income]* *sales* of the business enterprise.

10:97-5.1 Weekly sales report

(a) The operator shall submit to the Commission the prescribed weekly sales report. Cash register tapes, or daily reports where registers are not available, along with invoices or photocopies, shall also be submitted.

(b) Weekly reports shall be submitted on at least a monthly basis, on or before the 15th day of the following month. These reports do not constitute complete financial reporting as set forth in N.J.A.C. 10:97-5.2.

(c) Cash registers shall be used at all business enterprises, when available.

10:97-5.3 Right of inspection

(a) The operator shall recognize any representative directed by the Commissioner of Human Services or the Commission, with

official State identification, to make unannounced inspections in order to monitor the appearance and conduct of the business enterprise.

(b) The Commission representative shall make site visits at a minimum of one visit every three months; however, more frequent visits may occur. Each time a Commission representative visits a business enterprise, a site visit report shall be completed, read to the operator (who shall have the right to include his or her comments) and signed by both the operator and the Commission representative. The operator shall be given a copy and the Commission shall retain a copy. It shall be the responsibility of the operator to implement the requirements set forth in the site visit report.

10:97-5.4 Confidentiality of records

No operator and/or client information shall be released except under the provisions of N.J.A.C. 10:91-5.7.

10:97-6.1 Federal Set Aside Fund

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

(c) A use set forth in (b)1, 2, 3 and 4 above can be authorized only by the Commission. The use set forth in (b)5 above can only be authorized by a majority vote of all the licensed operators in the Business Enterprise Program.

10:97-6.3 Business Enterprise Program Fund Non-Federal

The Business Enterprise Fund Non-Federal consists of all monies accruing to the Program from non-Federal sources. These funds will be used to cover expenses which are necessary for the operation of the Program except for costs which can be paid from the Federal Set Aside Fund.

10:97-6.4 Vending machine income due to operators

(No change in text.)

10:97-6.5 Access to program and financial information

(a) Each operator will be provided access, in braille, recorded tape, or print, to all financial data relevant to the operation of the Business Enterprise Program.

(b) Such access will include quarterly and annual financial reports, provided that such disclosure does not violate Federal and State laws pertaining to the disclosure of confidential information.

10:97-7.1 Advance notice of termination

If an operator decides to terminate his or her assignment as a business enterprise operator, he or she shall notify the Commission by mail at least one month in advance of the actual date of termination.

10:97-7.2 Procedure when an operator leaves a business enterprise

(a) Whenever an operator is transferred, terminated, or otherwise leaves a business enterprise, all equipment and other property belonging to the Commission shall be surrendered in good order and condition, except for reasonable wear and tear.

(b) All accounts and bills shall be paid in full, and an inventory of stock taken as required under the provisions of "Inventory taking" at N.J.A.C. 10:97-3.5.

10:97-7.3 Promotions and transfers

(a) The supervisor of the Business Enterprise Program shall circulate a letter to all operators announcing business enterprise vacancies. The letter shall contain a description and the location of the business enterprise, the gross sales and the net profit for the previous year, scheduled hours of operation and other significant information about the vacancy.

(b) Any interested operator shall apply, in writing, to the supervisor of the Business Enterprise Program within two weeks of the vacancy announcement.

(c) The selection shall be made by the supervisor of the Business Enterprise Program based on an evaluation of the operator's record of performance and the results of a panel interview.

(d) Performance evaluation shall account for 75 percent of the total promotion and transfer evaluation procedure. Evaluation shall be based on individual site visit reports, semi-annual evaluations and any other documented reports completed by field representatives

ADOPTIONS

assigned to work with the interested operators. The supervisor of the Business Enterprise Program shall give weight value to each factor, depending on the type and needs of the specific *[vending facility]* *business enterprise* up for bid. Weight values for all factors shall total 25 points. Each weight value shall be multiplied by the respective performance value ranging from zero for "below average" to three for "outstanding." The factors on which all interested operators shall be rated are management ability, health and sanitation, public relations, compliance with Business Enterprise Program rules and participation in meetings and instructional conferences sponsored by the Commission.

(e) The prescribed interview shall account for 25 percent of the total promotion and evaluation procedure. The interview panel shall consist of the supervisor of the Business Enterprise Program (who shall serve as lead interviewer), the field representative assigned to the announced vacant business enterprise, a non-vocational rehabilitation employee of the Commission and a member of the Committee of Business Enterprise Operators (excluding Committee members who have expressed an interest in the vacant business enterprise) or a designee assigned by the Chairperson of the Committee.

(f) As a group the panel shall give each candidate a rating for the interview based on a scale of 1 to 25. Questions to be asked of all candidates, based on the requirements of the vacant business enterprise, and procedures for scoring shall be designated by the supervisor of the Business Enterprise Program when the panel convenes and before the interviews are held.

(g) If a candidate does not appear for his or her scheduled interview and has not given prior notice to or been excused by the supervisor of the Business Enterprise Program, he or she shall not be re-scheduled and shall be ineligible for the announced promotion or transfer opportunity.

(h) If a candidate has been interviewed for a promotion or transfer opportunity within the previous six months, the score from the previous interview shall be used for scoring the interview segment of the current evaluation process.

(i) The candidate with the highest overall rating shall be selected for appointment as operator of the business enterprise for which he or she has applied.

(j) Once an operator accepts an assignment to a new location, the only way that he or she can return to the previous location shall be as a new applicant.

10:97-7.4 Interim operator

When a business enterprise becomes vacant, it is often necessary to keep that business enterprise operating in order that the location is not lost to the Business Enterprise Program. Such a vacancy shall be filled by the appointment of an interim operator, pending the completion of the formal promotion process. The interim operator may be appointed from the "certified for placement" list.

10:97-8.1 Immediate suspension

(a) In the event that an operator is in violation of the regulations and/or laws of a governmental agency, his or her license shall be subject to immediate suspension.

(b) Grounds for immediate suspension of a license shall exist when any activity, policy or conduct of an operator presents a serious or imminent hazard to the health, safety, and well being of the public or otherwise demonstrates total unfitness or inability to operate a business enterprise in compliance with all of the requirements of these regulations and all applicable Federal and State law.

(c) The operator shall be notified of the reason for suspension. In addition, the operator shall be afforded an Administrative Review, if so requested, as set forth in N.J.A.C. 10:97-8.3(a) and (b). The operator shall be entitled to all the grievance procedures afforded by New Jersey and Federal Law, including an Administrative Hearing if the Administrative Review does not resolve the problem (see N.J.A.C. 10:97-8.3(c)).

10:97-8.2 Disciplinary probation

(a) In situations other than immediate suspension, the operator shall comply with all of the requirements in these regulations and of State and Federal law. In the event that there is a violation, the

HUMAN SERVICES

operator shall be placed on disciplinary probation. The operator shall be given a written notice by the Commission stating the grounds at issue and shall have a period of 15 days to correct any violation cited in the notice.

(b) In the event that the violation is not corrected during the disciplinary probation period, the Commission shall issue to the operator a notice of license termination, citing any unresolved violation. Termination shall be effective 15 days after such notice of termination, provided that the operator has been given an opportunity for an Administrative Review and/or an Administrative Hearing prior to final termination.

10:97-8.3 Administrative Reviews and Hearings

(a) The Commission shall afford an opportunity for an Administrative Review to each operator who is dissatisfied with any action arising from the operation or administration of the Business Enterprise Program when a written request is submitted within 15 days of the occurrence of the action. The operator has the option of transmitting the grievance through the Committee of Business Enterprise Operators.

(b) (No change.)

(c) The Commission shall afford an opportunity for an Administrative Hearing, also known as a Full Evidentiary Hearing, to each operator in accord with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.), subject to any superseding Federal or State law (see 34 C.F.R. 361.48 and 34 C.F.R. 395.13).

(d) If an operator has participated in an Administrative Hearing and is dissatisfied with any action taken or decision rendered as a result of the hearing, he or she may file a complaint with the Secretary, United States Department of Education. Such complaint shall be accompanied by all supporting documents, including a statement of the decision which was rendered and the reasons in support thereof. Filing of the complaint by the operator shall indicate consent for the release of such information for the hearing of an ad hoc arbitration panel (see 34 C.F.R. 395.13).

SUBCHAPTER 9. COMMITTEE OF BUSINESS ENTERPRISE OPERATORS

10:97-9.1 Committee of Business Enterprise Operators

(a) The Commission shall provide for the biennial election of a Committee of Business Enterprise Operators which, to the extent possible, shall be representative of all operators in the Business Enterprise Program on the basis of such factors as geography and type of business enterprise, with the goal of providing for proportional representation of operators on Federal property and operators on other property.

(b) The Committee shall be elected by the majority of all active licensed operators in the State Program.

(c) Participation by any active licensed operator in any election shall not be conditioned upon the payment of dues or any other fee.

(d) The Committee of Business Enterprise Operators shall:

1. Actively participate with the Commission in major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprise Program;

2. Receive and transmit to the Commission grievances at the request of operators and serve as advocates for such operators in connection with such grievances;

3. Actively participate with the Commission in the development and administration of the system for the transfer and promotion of operators;

4. Actively participate with the Commission in the development of training and re-training programs for operators; and

5. Sponsor, with the assistance of the Commission, meetings and instructional conferences for operators within the State.

(e) It is the responsibility of the Committee of Business Enterprise Operators to establish and maintain bylaws under which they will operate and which are approved by the Commission.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Relief from Insurer Obligations Under the Fair Automobile Insurance Reform Act of 1990 (FAIR Act)

Adopted New Rules: N.J.A.C. 11:2-35

Proposed: March 4, 1991 at 23 N.J.R. 660(a).

Adopted: September 27, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: September 27, 1991 as R.1991 d.519, with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

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

Effective Date: October 21, 1991.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received five written comments from insurers and an insurance trade association. A list of commenters follows:

New Jersey Association of Mutual Insurance Companies
MCA Insurance Company
The Prudential Property and Casualty Insurance Company of New Jersey
State Farm Mutual Insurance Company
Selective Insurance Group, Inc.

COMMENT: Several commenters generally objected to the volume of data required by these rules. The commenters stated that the required data is unnecessary to the Department's determination of whether an insurer is in an unsafe or unsound financial condition; is for the most part, in the Department's possession; and exceeds that which the Department may legally require to determine whether an insurer is entitled to relief from obligations under the FAIR Act.

One commenter specifically stated that it does not possess the ability to develop the required information and must retain outside actuaries to do so. The commenter additionally stated that the requirement that the data be provided for the latest calendar quarter is unduly burdensome; and suggested that the Department require that only the most recent annual statement be provided since this data is more readily available. Further, the commenter stated that the requirements as proposed will serve to discourage requests for relief by companies which are already financially burdened. Finally, the Commissioner stated that the rules as proposed do not provide for filing updated financial information on an annual basis.

Another commenter specifically stated that only seven years, rather than 10 years, of data need be required as seven years of data is sufficient for the Department to make its determination.

RESPONSE: After consideration of comments, the Department has determined that no change is required. These rules essentially codify current filing requirements for requests for relief as set forth in various orders of the Commissioner which were issued in 1990. The Department has found that this information is necessary and appropriate in its evaluation of requests for relief from obligations under the FAIR Act. Further, while there may be some overlap in the data required by these rules and data already required to be submitted, all data submitted to the Department is evaluated by different Department personnel for different purposes. The Department believes it appropriate and necessary to require the filing of all data utilized in its determination of a request for relief in one submission to effectively review and evaluate the requests.

The Department further believes that it is necessary to require the most recent quarterly reports to ensure that the Department is in possession of the most recent financial data reflecting the insurer's financial condition. An insurer requesting relief must demonstrate that fulfillment of an obligation imposed by the FAIR Act will result in the insurer's financial condition being or becoming unsafe or unsound. An insurer may request relief many months after the period for which its most recent annual statement is filed. Accordingly, the Department

believes that the insurer's most recent quarterly reports are necessary to evaluate its current financial condition to properly evaluate an insurer's request for relief.

Regarding the comment that the rules should provide for filing updated financial information on an annual basis, the Department believes that no change is necessary. Insurers requesting relief must submit the most recent quarterly financial reports at the time of the request. Providing for updating financial information on an annual basis is thus unnecessary.

In light of the Department's experience with these filing requirements for over one year, it has determined that three years of data is sufficient to enable the Department to determine the pattern or past history of changes in the insurer's financial condition. Accordingly, the rules have been changed upon adoption to reflect this revision.

COMMENT: One commenter suggested that the rules provide definitions of the following terms: "exemption," "abate," "deferral" and "suspension."

RESPONSE: These terms have their customary English language usage. The Department believes that formal definitions of these terms is unnecessary.

COMMENT: One commenter stated that the term "unsafe or unsound financial condition" is not defined in statutory sections cited in the definition of the terms set forth in the rules. Rather, the statutory sections set forth the standards the Commissioner shall consider in determining whether fulfillment of a FAIR Act obligation will result in the insurer being or becoming unsafe or unsound. The commenter thus suggested that the term "unsafe or unsound financial condition" be defined in the rules.

RESPONSE: The standard for determining "unsafe or unsound financial condition" is set forth in pertinent sections of N.J.S.A. 17:33B-1 et seq. governing requests for relief from FAIR Act obligations. The FAIR Act provides different standards for "immediate" and "discretionary" requests. The Department's determination of "unsafe or unsound financial condition" in a particular matter pending before it is made pursuant to the statutory standards. The Department therefore believes that a definition of "unsafe or unsound financial condition" in these rules which would essentially reflect the two statutory standards is unnecessary and may be confusing.

COMMENT: One commenter objected to the requirement that insurers provide 10 copies of the request. The commenter stated that this requirement is unprecedented under any other Department regulation and is unduly burdensome.

RESPONSE: The Department believes that this requirement is necessary to facilitate the Department's review of a request for relief. This is especially true in the case of a request for "immediate relief" pursuant to N.J.S.A. 17:33B-19, 17:33B-23, 17:33B-27, 17:33B-53 or 17:33B-55 in which the Department must render a determination on the request within 10 days of its receipt.

COMMENT: One commenter stated that N.J.A.C. 11:2-35.3(f) conflicts with 11:2-35.3(g), which provides for notification to the insurer if its request for relief is deficient and provides an opportunity to cure the deficiency. The commenter suggested that N.J.A.C. 11:2-35.3(f) be deleted.

RESPONSE: The Department believes that these provisions are consistent and that no change is required. While the commenter stated that N.J.A.C. 11:2-35.3(f) and (g) are inconsistent, it failed to provide any basis for that conclusion.

COMMENT: One commenter stated that the information required by these rules is identical for requests for both "immediate" and "discretionary" relief under the FAIR Act. This fails to address the statutory criteria for considering a request for discretionary relief (that is, information regarding adverse changes in an insurer's rating by A.M. Best and Company, Dun and Bradstreet, Moody's or Standard and Poor's; financial ratios outside the acceptable range as established by the National Association of Insurance Commissioners (NAIC); or a net reduction to the insurer's policyholder's surplus greater than 25 percent during a period of two years or less).

RESPONSE: The Department disagrees. The information regarding the insurer's financial ratios or the reductions to surplus may be developed from the information required for all requests for relief. Information regarding adverse changes in an insurer's rating by A.M. Best, Moody's or Standard and Poor's cannot be provided by the insurer making the request. Rather, this information must be provided by A.M. Best, Dun and Bradstreet, Moody's or Standard and Poor's. However, in the interests of clarification, the rules have been revised upon adoption

to provide that insurers asserting an adverse change in its rating by A.M. Best and Company, Dun and Bradstreet, Moody's or Standard and Poor's shall obtain a statement from a representative of the appropriate rating agency that the insurer's rating will be adversely affected through fulfillment of the obligation from which relief is sought.

COMMENT: One commenter stated that the rules fail to address an insurer's right to a hearing on its request for relief as is provided in the FAIR Act. The rules thus violate the FAIR Act, the Administrative Procedures Act and the insurer's right to due process. The commenter cited as an example, Section 95A of the FAIR Act, which states that the Commissioner shall, after a hearing, provide that the New Jersey Property-Liability Insurance Guaranty Association exempt, abate or defer the assessment imposed on a member insurer.

RESPONSE: Administrative rules can neither confer nor deny a right to a hearing. Such a right is statutorily granted. The fact that the rules do not specifically address the insurer's right to a hearing, does not affect the insurer's right to such hearing. In addition, the commenter's reliance on Section 95A is misplaced. This section provides for a hearing when the Commissioner on his own initiative exempts, abates or defers an assessment because a member insurer is in an unsafe or unsound financial condition.

COMMENT: One commenter stated that once an exemption, abatement or deferral is granted, it should continue during the entire period of the assessment or surtax until revoked by the Commissioner. It is burdensome to require an insurer to seek relief yearly. Finally, the commenter stated that the FAIR Act provides that once an exemption, abatement or deferral is granted, it shall continue until revoked by the Commissioner.

RESPONSE: The Department disagrees. An insurer requesting relief from fulfilling obligations under the FAIR Act must demonstrate an immediate need for such relief or that fulfillment of the obligation will result in the insurer's financial condition becoming unsafe or unsound. The statute presumes that an insurer is able to fulfill its obligations unless it demonstrates otherwise. The insurer must therefore demonstrate for each separate obligation that fulfillment of an obligation under the FAIR Act will result in its financial condition being or becoming unsafe or unsound. While the FAIR Act provides that once relief is granted, it shall continue until revoked, the Department interprets this provision to mean that once relief is granted from fulfillment of a particular obligation, relief from that obligation shall continue until revoked. An interpretation as suggested by the commenter would be inconsistent with the statutory presumption that all insurers are able to fulfill their obligations under the FAIR Act.

COMMENT: Several commenters stated that the rules should provide the standards utilized to determine whether and under what circumstances relief would be granted and an insurer's liability for abated or deferred assessments and surtaxes. One commenter specifically stated that N.J.A.C. 11:2-35.3(b) refers to the Commissioner's discretionary power to grant relief. Unsafe or unsound financial conditions should be determined objectively without discretion on the part of the Commissioner.

Another commenter additionally stated that the rules do not provide a standard when the revocation of an exemption, abatement or deferral is appropriate.

RESPONSE: These rules merely codify existing filing requirements for insurer requests for relief from obligations under the FAIR Act. The standard by which the Commissioner determines whether relief should be granted is set forth in the FAIR Act. These same standards would be utilized for determining whether revocation for relief already granted is appropriate. Thus, the determination of unsafe or unsound financial condition for purposes of granting relief is performed pursuant to objective standards set forth in the FAIR Act.

COMMENT: Several commenters objected to N.J.A.C. 11:2-34(a)4, which requires insurers seeking relief to provide five-year projections including worldwide and New Jersey business. The commenters believe that this information is inappropriate and irrelevant to the determination of an unsafe or unsound financial condition.

One commenter specifically stated that this provision would enable the Commissioner to examine an insurer's experience on all lines of its business in New Jersey and in all states to determine whether relief is necessary to ensure that the insurer earns a constitutionally adequate rate of return. The insurer's financial condition when considering all lines of its business in all states could be safe and sound, thus precluding relief even if the automobile line of business in New Jersey is earning an inadequate return. The commenter further believes that considering

all lines of business on a worldwide basis will require increased insurance rates for citizens of other states and for citizens in New Jersey on other lines. Further, the determination of a constitutionally adequate rate of return must be made by line of business. To do otherwise, could result in an insurer receiving an inadequate rate of return on its automobile business in New Jersey. Such a result would run afoul of section 2g of the FAIR Act which provides that automobile insurers are entitled to an adequate rate of return through the ratemaking process. Finally, the commenter stated an insurer with a concentration of its business in automobile insurance in New Jersey would be at a competitive disadvantage.

Another commenter specifically stated that consideration of business in other lines in other states and consideration of past profits as required by N.J.A.C. 11:2-35.4(a)(3) may be an unconstitutional taking of property, and an intrusion upon interstate commerce. The commenter further stated that review of business in other states allows the operations of other states to support losses generated in New Jersey lines of business. This is unconstitutional and violates New Jersey statutes which require that rates be justified by the cost associated with the transfer of the risk. The system envisioned by these rules would require an improper interstate subsidy of New Jersey drivers.

RESPONSE: The Department disagrees. The commenters mistakenly rely on the position that review of all lines of business, business in other states and consideration of past profits will preclude an insurer from earning a constitutionally adequate rate of return for its automobile insurance business in New Jersey, is irrelevant and unnecessary to the determination of financial condition or results in an unconstitutional taking of property. The Legislature has provided that insurers may seek relief from FAIR Act obligations if fulfillment of the obligation results in the insurer being or becoming in an unsafe or unsound financial condition as an entity. The standard is not, as the commenters suggest, whether an insurer is able to earn an adequate rate of return on its New Jersey automobile insurance business. The rules set forth the information which the Department deems necessary and appropriate to enable the Commissioner to determine whether relief should be granted pursuant to the statutory standard. In determining whether fulfillment of a FAIR Act obligation will result in the insurer being or becoming in an unsafe or unsound financial condition, it is necessary to review the insurer's overall financial condition and not merely its rate of return on one line of business in New Jersey. In addition, the Department is not taking away the insurer's past profits, nor requiring an insurer to increase its rates in other states. The determination of financial condition is as of the date of the request for immediate relief, or in the immediate future in the case of discretionary requests. The Department's review of an insurer's financial condition thus does not result in a "taking" of property or require interstate subsidization of insurance in other lines or other states. If an insurer believes that it is unable to earn a constitutionally adequate rate of return, the appropriate course of action is through the ratemaking process, not relief of its FAIR Act obligations.

COMMENT: One commenter stated that these rules deny insurers relief until the threshold of insolvency is reached. This is not the appropriate means to maintain financial integrity of an already stressed automobile insurance system in New Jersey.

RESPONSE: The Legislature, not the Department, has established the threshold for granting relief from FAIR Act obligations. These rules do not alter this threshold, but rather codify existing information requirements to enable the Commissioner to determine if the threshold has been met.

Further, the Department disagrees that insurers are denied relief until it is insolvent. The FAIR Act provides that an insurer may request "immediate relief" if fulfillment of the obligation will result in the insurer being in an unsafe or unsound financial condition; and may make discretionary requests for relief if fulfillment of the obligation will result in the insurer's financial condition becoming unsafe or unsound. Thus, an insurer is not required presently to be in an unsafe or unsound financial condition to obtain relief.

COMMENT: One commenter suggested that N.J.A.C. 11:2-35.3(a), which requires an insurer seeking "immediate relief" to submit its request no more than 45 days nor later than 15 days prior to the due date for payment or fulfillment of the obligation, be amended to provide for submission of the application for relief within 60 days after receipt by the insurer of the assessment or surtax billing. The commenter stated that tying the due date of the request to the due date of the obligation may result in the insurer having insufficient time to prepare the request within the time allotted in the rules.

RESPONSE: The Department believes that the time frames established by the rules allow sufficient time for preparation of a filing since insurers receive notice not later than 30 days prior to the due date of any assessment or surtax.

COMMENT: One commenter objected to N.J.A.C. 11:2-35.3(f) and (g), which authorize the Commissioner to reject requests which are untimely, not submitted in the proper format or do not contain all the information required by N.J.A.C. 11:2-35.4. The commenter stated that these provisions are inappropriate in that denial of a request on the basis of format could lead to delay that could impair the financial integrity of individual insurers beyond "the point of resuscitation" and result in the insurer being unable to fulfill its obligations to policyholders. Technical defects should not deprive an insurer of immediate relief.

RESPONSE: The Department disagrees. An insurer seeking relief has the obligation to submit information in a format to enable the Department to conduct a review of an insurer's financial condition to determine whether it is entitled to relief. If a request is not in the required format or does not contain all of the information required, the Department is unable to make a determination. It is therefore appropriate to reject the request in such circumstances. To do otherwise could result in some insurers receiving relief which are not entitled to relief under the standards set forth in the FAIR Act. For example, an insurer could submit a request for immediate relief which is deficient or not in the proper format, thus hindering Department review. The request for immediate relief is deemed approved, unless disapproved within 10 days of receipt of the filing. Given these time frames, the request would be deemed approved prior to the time an insurer could submit a revised filing in the proper format and/or containing all required information.

The Department further believes that the commenter exaggerates in asserting that denial of a request on the basis of format could lead to delay that could impair the financial integrity of an insurer "beyond the point of resuscitation." Any insurer that was already in such dire financial straits that any delay in granting relief will result in it becoming insolvent would most likely be in a hazardous financial condition prior to imposition of a FAIR Act obligation, and would most likely already be in liquidation or rehabilitation.

COMMENT: One commenter requested that the term "investment changes" be defined as it is used in N.J.A.C. 11:2-35.4(a)2iv. The commenter further stated that without definition, investment changes could be interpreted to require reporting of the sale or purchase of any investment owned by the insurer.

RESPONSE: The term "investment changes" means changes in investments as reported in Schedules I through VI of the NAIC quarterly statement blank. The rules have been changed upon adoption to reflect this clarification.

COMMENT: One commenter suggested that the term "profit" be defined, as it is used in N.J.A.C. 11:2-35.3(a)3i. The commenter specifically suggested that it be defined in terms of profit in the Clifford Formula (that is, operating profit which equals underwriting gain or loss plus investment income from loss and unearned premium reserves).

RESPONSE: The Department disagrees. The Clifford Formula is utilized for ratemaking purposes and is thus prospective in nature. The profit and loss statements required to be submitted should reflect an insurer's actual results, and thus should be in the format of the statutory Annual Statement, Underwriting and Investment Exhibit, Statement of Income. The rules have been changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that the Department should only require Profit and Loss statements for the previous three years, rather than 10 years. The commenter believes that three years is sufficient since the Commissioner cannot invade past profits of the insurer to justify denial of relief.

RESPONSE: As noted in a response to a previous comment, the rules have been changed upon adoption to require three years of data. The Department reiterates, however, that past years' data is utilized to determine patterns of change in an insurer's financial condition and is not an "invasion of past profits" to justify denial of relief.

COMMENT: One commenter objected to N.J.A.C. 11:2-35.3(a)9, which requires that an insurer requesting relief submit a summary of pending rate filing requests, including any flex rate filing projected to be made on or after July 1 of the year in which relief was requested for two reasons. First, the Commissioner should already have this information since all rate filings are submitted to the Department. Secondly, it is impossible for an insurer to accurately predict the actual flex

rate that the Commissioner may order. Thus, a projection of the anticipated flex rate would be useless in determining whether to grant relief.

RESPONSE: The Department believes that a statement summarizing pending rate filings is necessary to facilitate the review of the request for relief, and should not impose an undue burden on filers. Further, as noted in a response to a previous comment, while there may be some overlap in the information required and that already submitted, all data submitted is reviewed by different Department personnel for different purposes. All information utilized in the determination of a request for relief should be submitted in one filing to facilitate the review of such request. Finally, the Department believes that insurers should be able to estimate any flex rate change to be made in that the flex rate is calculated from published increases in various components of the National Consumer Price Index as set forth in N.J.A.C. 11:3-16A.

COMMENT: One commenter objected to 3(a)10, which requires insurers to provide information regarding mergers and acquisitions. The commenter stated that such disclosure could have substantial anti-trust and securities law implications. Further, disclosure of these activities is already regulated under the New Jersey Insurance Holding Company Systems Act, N.J.S.A. 17:27A-1 et seq. The requirement that insurers disclose this information thus should be eliminated from these rules.

RESPONSE: The Department disagrees. N.J.A.C. 11:2-35.3(a)10 merely requires a statement addressing whether the company is planning to modify its methods of doing business. This provision should not be construed to require an insurer to submit specific information contrary to other laws.

COMMENT: One commenter suggested that N.J.A.C. 11:2-35.3(a)11, which requires parent company financial information, be omitted. The commenter stated that this requirement is inappropriate since each company and line of business must stand on its own without regard to profitability of any other line of business or profitability. The commenter believes that the only other possible use for this information would be to use the parent company's financial condition as a means for denying relief to a subsidiary company, which is impermissible.

RESPONSE: The ultimate determination of whether relief should be granted is based on the financial condition of the company making the request. Since actions by a parent company impact upon the financial condition of its affiliate, the Department believes it is appropriate to require information on intercompany transactions to determine whether any unsafe or unsound financial condition of the insurer requesting relief is due to factors other than fulfillment of the FAIR Act obligation from which relief is sought, which, in turn, may require further evaluation or action by the Department.

COMMENT: One commenter objected to N.J.A.C. 11:2-35.4(a)14, which authorizes the Commissioner to request additional information deemed relevant to the consideration of a request for relief, as inappropriate and unnecessary. The commenter stated that the Commissioner already has extensive amounts of information available to allow for examination of insurer information.

RESPONSE: The Department disagrees. The rules set forth the requirements which are generally applicable. However, all possible situations cannot be anticipated. The Department therefore believes it appropriate to authorize the Commissioner to require additional information as may be necessary to properly evaluate a request.

COMMENT: One commenter requested that the rules clarify that a single filing may request relief from any number of FAIR Act obligations.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter noted that the rules request data for the latest calendar quarter. The commenter stated that given the time constraints provided by the rules in which to file a request for relief, the rules should permit any insurer to make a filing for six months after the end of the quarter using that quarter's data. For example, for any filing submitted up to March 31, 1991, data valued as of September 30, 1990 should be permitted. The commenter further stated that preparing a filing under the current rules would be unrealistic. For example, if an obligation were due exactly at the end of a quarter, such as March 31, 1991, the rules as drafted require a filing by March 16, 1991 utilizing data valued as of December 31, 1990. The commenter believes that it would not be feasible to prepare the required data within the time available. The commenter further stated that it would be impossible to submit a request for relief from an obligation due in the middle of a quarter such as February 15, 1991.

RESPONSE: The Department believes that insurers should be able to develop data for the preceding quarter in less than six months.

Regarding the commenter's example of a filing made on March 16, 1991, data valued as of December 31, 1990 would be available in the insurer's annual statement which must be filed by March 1 of each year. The Department is aware however that insurers cannot develop data "overnight." For example, if an insurer filed a request for relief on July 3, the insurer would not be in a position to submit data valued as of June 30. Accordingly, the rules have been revised upon adoption to provide that insurers should submit data for the last preceding calendar quarter ending at least 45 days prior to the date the request is filed.

COMMENT: One commenter noted that N.J.A.C. 11:2-35.4(a)11 and 14, taken together, require data on a pooled, pre-pooled, consolidated and unconsolidated basis. The commenter stated that this would require a large volume of data which would not be meaningful. The commenter stated that it operates four individual companies under a pooling agreement. The companies are operated under a common management. Most expenses are incurred through one company and pooled back to the others. The company stated that its surplus is indivisible among members and that the consolidation of surplus is not equal to the sum of individual companies because of ownership of affiliates. The commenters believe that reviewing its individual companies will overstate surplus. Further, the commenter's A.M. Best financial ratio evaluation and Best rating are done on a pooled basis. The commenter therefore believes that it would be appropriate to evaluate its companies on a pooled basis. Data on pre-pooled basis would contain operating expenses in only one company because of its pooling agreement. One company in its group would, therefore, have underrated results, and the others would be overstated. The commenter thus suggested that filers be permitted to make a filing on whatever basis they demonstrate is most appropriate for their situation.

RESPONSE: The Department notes the commenter's concerns. The Department disagrees however that an insurer should be permitted to make a filing on whatever basis it determines is appropriate since the Department must ultimately determine whether relief should be granted. In order to make such determination, the Department must review all information required. Further, in order to determine the appropriate basis on which to review the request, the Department must evaluate all relevant information. The Department agrees, however, that an insurer asserting that its request be evaluated on a particular basis (that is, pooled, pre-pooled, consolidated or unconsolidated) be permitted to submit an explanation which sets forth reasons why review on one particular basis is appropriate and that review on other bases would be inappropriate. The rules have been changed upon adoption to reflect this clarification.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 35. RELIEF FROM INSURER OBLIGATIONS UNDER THE FAIR AUTOMOBILE INSURANCE REFORM ACT OF 1990

11:2-35.1 Purpose and scope

(a) The purpose of this subchapter is to establish the informational and procedural requirements for insurer requests for exemption, abatement, deferral or suspension of an insurer's obligation, as the case may be, under the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

(b) This subchapter applies to all insurers licensed to transact the business of property/casualty insurance in this State and all insurers licensed to transact and writing the business of private passenger automobile insurance in this State, as the case may be.

11:2-35.2 Definitions

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

"Applicant" means the insurer seeking an exemption, abatement, deferral or suspension of or from its obligations pursuant to the FAIR Act.

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

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (N.J.S.A. 17:33B-1 et seq.).

"Insurer" means any person, corporation, association, partnership, company or interinsurance exchange authorized or admitted by the laws of this State to transact the business of insurance in this State.

"Relief" means an exemption, abatement, deferral or suspension of the obligations imposed pursuant to the FAIR Act.

"Unsafe or unsound financial condition" is as defined in N.J.S.A. 17:33B-19, 17:33B-20, 17:33B-23, 17:33B-24, 17:33B-27, 17:33B-28, 17:33B-53 and 17:33B-56, as applicable.

11:2-35.3 Application procedures and filing format

(a) Any insurer seeking immediate relief from any FAIR Act obligation pursuant to N.J.S.A. 17:33B-19, 17:33B-23, 17:33B-27, 17:33B-53 or 17:33B-55 shall submit a request for such relief no more than 45 days and not less than 15 days prior to the due date for payment or fulfillment of such obligation.

(b) Any insurer seeking discretionary relief from any FAIR Act obligation pursuant to N.J.S.A. 17:33B-20, 17:33B-24, 17:33B-28, 17:33B-53 or 17:33B-56 shall submit a request for such relief no later than the due date of such obligation.

(c) All requests outlined in this subchapter shall be accompanied by a statement averring a need for immediate or discretionary relief from such obligation, as the case may be, including supporting documentation, as set forth in N.J.A.C. 11:2-35.4. ***A single filing may request relief from any number of FAIR Act obligations.***

(d) Each request shall be in loose leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the exhibits set forth in N.J.A.C. 11:2-25.4. The loose leaf sheets used in the request shall be eight and one-half inches wide and 11 inches long and punched for two-ring or three-ring binders, as appropriate.

(e) All insurers requesting relief pursuant to this subchapter shall submit 10 copies of each request in the format set forth in (d) above.

(f) A request which is untimely, which is not submitted in the proper format, or which does not contain all of the information required by N.J.A.C. 11:2-35.4, may be rejected on such grounds by the Commissioner.

(g) If a request fails to contain all of the information required by N.J.A.C. 11:2-35.4, the Department shall notify the insurer that its request for relief is deficient and is denied for inadequate documentation. The notice shall also set forth the information required to cure the deficiency. The insurer shall submit the additional information within 30 days of receipt of the Department's notice of deficiency. Failure to submit within 30 days the information necessary to cure the deficiency may result in the insurer's request being rejected as untimely.

11:2-35.4 Informational filing requirements

(a) When requesting immediate or discretionary relief pursuant to the FAIR Act, an insurer shall provide with its request the following information in a clear, concise and complete manner.

1. A cover letter stating:
 - i. The name of the applicant;
 - ii. The form and specific amount/percentage of relief which the insurer is requesting and a statement of facts relied upon as the basis under which relief is sought; and
 - iii. A name, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;
2. Exhibits for the latest preceding calendar quarter ***ending at least 45 days prior to the date of the request***, and, unless otherwise indicated, on a statutory accounting basis that show:
 - i. Balance sheet;
 - ii. Profit and loss statement*, **containing information as set forth in the statutory annual statement page 4, Underwriting and Investment Income Exhibit, Statement of Income***;
 - iii. Cash flow page;
 - iv. All investment changes since the last annual statement was prepared ***as reported in Schedules I through VI of the NAIC quarterly statement blank***;
 - v. Statutory annual statement Schedule F, all Parts and Sections; and

vi. Loss and loss adjustment expense reserve development schedule on a summary basis as required in the annual statement Schedule P;

3. Exhibits by each line of business written in New Jersey that show:

i. Profit and loss statements ***containing information as set forth in (a)2ii above*** by line of business for ***[10]* *three*** calendar years prior to the date of filing*, in order to cover an entire business cycle*];

ii. Profit and loss statements ***containing information as set forth in (a)2ii above*** by line of business from the period beginning January 1 in the year of filing to date of filing; and

iii. Detailed description of the method of allocation of expenses by line of business;

4. Five-year projections beginning with the calendar year of the date of filing (including a detailed description of all underlying assumptions) assuming the relief is denied and assuming the relief is granted. The projections shall assume the same rate of assessment as in the first year for the subsequent years, and shall include:

i. Worldwide business by line of business;

(1) Profit and loss projection ***containing information as set forth in (a)2ii above***; and

(2) Gross and net premium written projection; and

ii. New Jersey business by line of business:

(1) Profit and loss projection ***containing information as set forth in (a)2ii above***; and

(2) Gross and net premium written projection;

5. A detailed explanation of the projected effect that fulfillment of the obligation would have on the immediate and long term financial condition of the company unless relief is granted as requested;

6. The most recent financial examination report conducted by the state of domicile;

7. The most recent market conduct report by any jurisdiction other than the State of New Jersey;

8. If a publicly-held company, a copy of the annual report and all 10K and 10Q and other SEC filings for the past three years; if a nonpublicly-held company, a copy of the annual report and all reports of audits conducted by an independent certified public accountant for the past three years;

9. A statement that summarizes any pending New Jersey rate filing requests, including any New Jersey flex rate filings projected to be made on or after July 1 of the year in which relief was requested. The Department of Insurance filing number, the amount of the rate request, and the requested effective date of the change shall be included;

10. A statement addressing whether the company is planning to modify its method of doing business in any way including, but not limited to, new acquisitions or new restructuring;

11. If the company is a member of a holding company system, the following shall be provided:

i. A list of all members of the holding company system;

ii. A list of all intercompany transactions for the period noted in (a)3i and ii above;

iii. A balance sheet and profit and loss statement for the ultimate parent company on a consolidated basis for the periods noted in (a)3i and ii above; and

iv. A balance sheet and profit and loss statement for the ultimate parent company on an unconsolidated basis for the periods noted in (a)3i and ii above;

12. A certification of reserves for unearned premiums, losses and loss adjustment expense, such certification to be attested to by a qualified actuary as defined in N.J.A.C. 11:1-21.1;

13. A report signed by the certifying actuary referred to in (a)12 above, which includes in summary form, if necessary, all data utilized by him or her, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;

i. All data shall be presented as hard copy and on 5/4 inch floppy diskettes as Lotus 1-2-3 worksheet files or the equivalent thereof with page breaks omitted (submitting, in total, one copy of the diskettes for each filing). The data shall include, at a minimum,

relevant loss and loss expense triangles both on paid and incurred bases for sufficient numbers of accident years and maturities such that, on a paid basis, at least five accident years are developed to within 90 percent of ultimate. If only a lesser amount of data is available, state the reason for this deficiency.

ii. In the event that paid or incurred loss developments have been distorted by changes in the rate of settlements, in the relative adequacy of reserving, in the mix of business, or in other relevant factors, such distortions shall be fully explained in the narrative. To include the impact of these distortions, appropriate adjusted triangles shall also be supplied plus corresponding triangles of reported, paid and outstanding claim counts.

iii. Annual earned premiums shall be shown as the first column of each triangle; ***[and]***

14. For insurers seeking discretionary relief and asserting that it would experience an adverse change in its rating by A.M. Best and Company, Dun and Bradstreet, Moody's or Standard and Poor's, a statement from a representative of the appropriate rating agency that the insurer will experience an adverse change in its rating through fulfillment of the obligation from which relief is sought; and

[14.]*15. Any other information the Commissioner may deem relevant to the consideration of the request.

(b) If the applicant is a member of a pooling operation among affiliates, all information requested in items (a)2, 3 and 4 above shall be provided on a pre-pooled and post-pooled basis. Which other members in the pool are also filing for exemption, abatement or deferral shall be indicated.

*** (c) An insurer asserting that the Department's review of its request be evaluated on a particular basis (that is, pre-pooled, post-pooled, consolidated or unconsolidated) shall submit a written statement which sets forth the reasons for which it believes evaluation on a particular basis is appropriate to that insurer, and the reasons for which evaluation on other bases would be inappropriate.***

(a)

DIVISION OF ADMINISTRATION

Legal Services Insurance

Readoption: N.J.A.C. 11:12

Proposed: August 5, 1991 at 23 N.J.R. 2304(a).

Adopted: September 27, 1991 by Samuel F. Fortunato,

Commissioner, Department of Insurance.

Filed: September 27, 1991 as R.1991 d.520, **without change.**

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:46C-1 et seq.

Effective Date: September 27, 1991.

Expiration Date: September 27, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:12.

LAW AND PUBLIC SAFETY

(b)

VIOLENT CRIMES COMPENSATION BOARD

Transportation Costs

Adopted Amendment: N.J.A.C. 13:75-1.24

Proposed: August 19, 1991 at 23 N.J.R. 2482(a).

Adopted: September 20, 1991 by the Violent Crimes

Compensation Board, Jacob C. Toporek, Chairman.

Filed: September 24, 1991 as R.1991 d.514, **without change.**

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

ADOPTIONS

Effective Date: October 21, 1991.

Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Response:

No comments received.

Full text of the adoption follows.

13:75-1.24 Transportation costs

(a) Maximum reimbursement for transportation expenses incurred as a direct result of the incident giving rise to the claim shall not exceed \$10.00 a day and shall include, but not be limited to, visits to treating physicians, health and care facilities, substitute travel costs other than ambulance or ambulatory mobile care services incurred due to a criminally-induced physical incapacity, and attendance at court proceedings for purposes of prosecuting the alleged offender. However, reimbursement for the purposes of this section does not include costs arising pursuant to N.J.A.C. 13:75-1.13.

1. Necessary and reasonable transportation expenses incurred such as railroad and airline fare which are a direct result of the incident and incidental to treating and caring for the victim, and for attendance at a victim's funeral, may be reimbursed to claimant or to victim's relatives as defined by N.J.S.A. 52:4B-2 at a maximum of \$200.00 per person and not to exceed \$1,000 in total.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS

Water and Sewer Adjustment Clauses

Adopted New Rules: N.J.A.C. 14:10-8 and 14:10-9, recodified upon adoption as N.J.A.C. 14:9-7 and 14:9-8

Proposed: April 1, 1991 at 23 N.J.R. 946(b).

Adopted: September 4, 1991 by the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Filed: September 5, 1991 as R.1991 d.488, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: WX87060524.

Effective Date: October 21, 1991.

Expiration Date: April 1, 1996.

Summary of Agency-Initiated Changes Upon Adoption:

The originally proposed definitions of "base cost of purchased water" set out in N.J.A.C. 14:10-8.2 and "base cost of purchased sewerage treatment" set out in N.J.A.C. 14:10-9.2 provide that the actual contractual costs of purchased water and purchased sewerage treatment be reflected on a cost per 1000 gallons. This methodology was chosen because most utilities billed on this basis. While most utilities, therefore, will file pursuant to this methodology, the Board is cognizant of the fact that some utilities bill on a basis other than per 1000 gallons. In order to allow the Board and the utilities additional flexibility, the Board will consider each filing based upon the individual and particular billing practices of each utility. Accordingly, the Board will modify, for clarification purposes, the definitions of "base cost of purchased water" and "base cost of purchased sewerage treatment" by requiring actual costs to be reflected as costs per 1000 gallons "unless otherwise specifically approved by the Board."

Summary of Public Comments and Agency Responses:

The Board notes that the proposal (23 N.J.R. 946(b)) designated the purchased water adjustment clause and the purchased sewerage adjustment clause as N.J.A.C. 14:10-8 and N.J.A.C. 14:10-9, respectively. As Chapter 10 of Title 14 of the New Jersey Administrative Code contains rules pertaining to the regulation of telephone utilities, the Board, in its adoption of the proposal as set out herein below, intends to recodify to Chapter 9 the proposed purchased water and purchased sewerage treatment adjustment clauses as N.J.A.C. 14:9-7 and N.J.A.C. 14:9-8,

PUBLIC UTILITIES

respectively. This is being done because Chapter 9 pertains to sewer and water utilities. This recodification is set out in full in the adoption that follows.

A public hearing was held on April 22, 1991 by the Board of Public Utilities. No hearing officer was used as the Commissioners themselves heard testimony. At that time, eight individuals spoke and their comments and the agency's responses are noted below. A copy of the transcript of the public hearing is available through the Office of the Board of Regulatory Commissioners, Two Gateway Center, Newark, New Jersey 07102.

The following organizations have submitted written comments and/or given oral testimony at the public hearing held on April 22, 1991:

The New Jersey Chapter of the National Association on Water Companies (NAWC) on behalf of:

Adelphia Water Company
Brookdale Utilities
Elizabethtown Water Company
Fayson Lake Water Company
Garden State Water Company
Gordon's Corner Water Company
Hackensack Water Company
Lake Valley Water Company
Lambertville Water Company
Logan Wells Water Company
Middlesex Water Company
Mount Holly Water Company
New Jersey-American Water Company
Parkway Water Company
Pennsgrove Water Company
Pequest Water Company
Seaview Water Company
Shorelands Water Company
South Jersey Water Supply Company
Toms River Water Company
Township of Howell
Elizabeth Water Company

United Water Resources on behalf of the Hackensack Water Company, Vernon Valley Water Company, Arlington Hills Water Company, Vernon Sewage Transmission Company, Great Gorge Sewer Company and Arlington Hills Sewerage Company

Adelphia Water Company
Gordon's Corner Water Company
Shorelands Water Company
Middlesex Water Company
New Jersey-American Water Company
City of Trenton, Trenton Water Works and the Board of Public Works, Borough of Park Ridge
Department of the Public Advocate, Division of Rate Counsel

COMMENT: City of Trenton, Trenton Water Works and the Board of Public Works, Borough of Park Ridge (Trenton and Park Ridge) suggest that N.J.A.C. 14:10-8.1 be amended to include purchased power expenses. They argue that such costs, like purchased water costs, are not controllable by municipal and private utilities in that rates for purchased power are set by a governmental entity (primarily the Board) pursuant to law. Gordon's Corner Water Company (Gordon's Corner) concurs with this position, and further recommends the inclusion of waste disposal costs. Similarly, United Water Resources (UWR) recommends that water utilities also be eligible for the purchased sewerage treatment adjustment clause since the costs associated with purchased sewerage treatment services are no more controllable for a water utility than for a sewerage utility.

RESPONSE: The purpose of the proposed rule is limited to the recovery by water utilities of those costs attributable to purchased water. While recognizing that certain ancillary costs may also increase incrementally, the Board is of the opinion that the proper forum in which to address such increases is an appropriate base rate proceeding.

COMMENT: The National Association of Water Companies (NAWC) suggests that N.J.A.C. 14:10-8.3(a) be amended by eliminating the 10 percent qualifying limit discussed therein or, in the alternative by reducing the qualifying limit to five percent. The NAWC believes that changes in purchased water expenses can have as great an impact on the financial margins and ratios of a water company that attributes less than 10 percent of its operations and maintenance expenses to purchased water as does a water company that attributes 10 percent or more. The Elizabethtown Water Company (E'town), Adelphia Water

Company (Adelphia), Shorelands Water Company (Shorelands), New Jersey-American Water Company (NJAM), Middlesex Water Company (Middlesex), UWR, Gordon's Corner, Trenton and Park Ridge concur with the NAWC position. The Division of Rate Counsel Rate (Rate Counsel) believes that the 10 percent cut-off is unsupported, while the Township of Howell (Howell) suggests that the qualifying limit be raised to 50 percent because 10 percent is too low and opens up the availability of the clause to those utilities whose reliance on purchased water is minimal.

RESPONSE: The Board does not agree that this section should be amended. The proposed rule was formulated specifically to permit expedited rate changes to be made in response to increased purchased water costs. The Board is of the opinion that a qualifying limit of 10 percent of operating and maintenance expenses represents a reasonable threshold by which to trigger the filing mechanism for the rate relief contemplated by this rule. The Board is of the further opinion that the economic impact on a water utility would be less than significant absent a qualifying limit of at least 10 percent.

COMMENT: The NAWC suggests that N.J.A.C. 14:10-8.3(b) be amended to delete the requirement that the Board must have approved base rates within the three year period prior to the filing by a utility of a petition for a purchased water adjustment clause (PWAC). The NAWC argues that this would require a water utility to file a base rate case every three years even if it would not be necessary based on the financial position of the utility. The NAWC contends that this would cause unnecessary expense to the utility which would be ultimately reflected in rates and recovered from customers. E'town, Shorelands, NJAM, UWR, and Gordon's Corner concur with the NAWC position. Gordon's Corner adds that an ongoing true-up could be made periodically once the PWAC is established if the Board believes that there is a possibility of over earnings. Adelphia suggests that utilities similar to itself which have already had purchased water contracts considered in prior Board actions should be allowed to utilize the clause without having to relitigate the very same issue. Middlesex suggests that if a utility's first petition for an adjustment clause is filed prior to January 1, 1994, the water utility should be allowed to rely on data from the decision and order in its most recent base rate filing, including any stipulation documents, provided that filing was decided after January 1, 1990. Trenton and Park Ridge concur with the Middlesex position.

RESPONSE: The Board's intent in establishing the PWAC is to provide a vehicle by which any incremental changes in purchased water costs can be recognized. In order that this intent may be realized, the Board is of the opinion that it is imperative that appropriate and timely base data be established. The Board is of the further opinion that a requirement for the filing of a base rate case on not more than a three year time frame as a condition for eligibility for a PWAC represents a reasonable and necessary basis upon which to test the reasonableness of a PWAC filing. Likewise, an on-going true up as recommended by Gordon's Corner, could result in PWAC adjustments based upon outdated data. Accordingly, the Board cannot concur with the recommendation of Middlesex that an initial PWAC filed prior to January 1, 1994, could be supported by data that had not been accumulated within a three year time frame.

With regard to the comment of Adelphia, the Board would note that any contract that has been considered by the Board and has, therefore, been reflected in base rates, should not be revisited within the context of a PWAC filing.

COMMENT: The NAWC suggests that N.J.A.C. 14:10-8.3(c) and 14:10-8.4(c) be amended to provide for the inclusion of interest on under recoveries in order to be consistent with the proposed requirement of interest for over recoveries. The NAWC suggests that the interest be applied annually on the average Reconciliation Account Balance after the PWAC has been in effect for 12 months and annually thereafter. E'town, Adelphia, Shorelands, NJAM, Middlesex, UWR, Gordon's Corner, Trenton and Park Ridge concur with the NAWC position.

RESPONSE: The Board is of the opinion that this comment is inconsistent with present Board policy. Said policy, which is reflected in the treatment of adjustment clauses pertaining to the electric and gas industries, provides for interest only in the event of over recoveries. In recognition of the fact that the recovery of interest may be treated in various methodologies, the Board will clarify N.J.A.C. 14:10-8.4(c) by indicating that any treatment of interest will be reflected in an appropriate manner. For the sake of consistency and for the reasons set out above, the Board will make an identical clarification with regard to the "Sewerage Treatment Clause" set out in N.J.A.C. 14:10-9.4(c).

COMMENT: The NAWC suggests that a subsection, designated as N.J.A.C. 14:10-8.3(d), be added to allow a water utility, qualifying for the PWAC, to defer on its books any change in the cost of purchased water as of the effective date of this rule and thereafter thus avoiding the delay of a base rate case and the need to file separate deferred accounting petitions. E'town, Adelphia, Shorelands, NJAM, Middlesex, UWR and Gordon's Corner concur with the NAWC position.

RESPONSE: While of the opinion that the recommendation offered by the above commenters is not entirely without merit, the Board believes that any deferral of costs associated with purchased water should be initiated by a filing within the context of a pending PWAC or base rate case proceeding.

COMMENT: The Township of Howell (Howell) suggests that the proposed rule be amended to include a prudence review of the water supply contract entered into and the least cost alternatives available. Howell believes that without such protection, water purveyors will have no real economic incentive to follow the least cost alternative.

RESPONSE: All utilities, including water utilities, are obligated to provide safe, adequate and proper services at the lowest reasonable costs. All utility costs, including those associated with purchased water, are closely scrutinized within the context of base rate proceedings. The Board does not agree that the proposed rule should be extended in order to relitigate base cost issues.

COMMENT: The NAWC recommends an addition to the proposed rule, to be designated as N.J.A.C. 14:10-8.4(h), which would specify a time frame in which the Board should be required to act on an adjustment clause petition. The NAWC suggests that action be required within six months of the filing of the petition or when the new cost of purchased water is determined by the water purveyor, whichever is later. The NAWC argues that, without a designated time frame, a utility will be required to continue carrying the increased costs of purchased water as a deferred charge for an indefinite period of time, thus possibly causing financial hardship and cash flow problems. E'town, Adelphia, Shorelands, NJAM, Middlesex, UWR and Trenton and Park Ridge concur with the NAWC position. Gordon's Corner suggests that the Board should be required to act on the PWAC petition within three months.

RESPONSE: The proposed rule has been formulated to permit expedited rate adjustments in response to increases or decreases in purchased water costs incurred by water utilities. As such, the Board will consider all PWAC filings at the earliest possible date following the completion of a sufficient record. This is consistent with current Board policies related to adjustment clause proceedings in the electric and gas industries. Accordingly, the Board is of the opinion that the inclusion of a specific time frame in the proposed rule is unnecessary.

COMMENT: The NAWC recommends that N.J.A.C. 14:10-8.4(f) be eliminated on the grounds that the adjustment clause proceeding is not the appropriate vehicle in which to review other aspects of ratemaking. The NAWC argues that maintaining such language will encourage intervenors to request lengthy discovery and to extensively cross-examine witnesses in an attempt to reargue aspects other than purchased water expenses. E'town, Adelphia, Shorelands, NJAM, Middlesex, UWR, Gordon's Corner, Trenton and Park Ridge join in the NAWC position.

RESPONSE: The Board is of the opinion that it must be free to review information that it deems to be relevant to its consideration of any matter before it. As it will be the determiner of what information will, in fact, be deemed to be relevant, the Board does not share the concerns raised by the commenters regarding possible abuses.

COMMENT: UWR suggests that the definitions found in N.J.A.C. 14:10-8.2 pertaining to "public entity" and "water purveyor" be amended to conform to the NAWC recommendations. UWR believes that the definitions, as proposed by the Board, appear to preclude a utility that purchases water from another utility from qualifying for the adjustment clause.

RESPONSE: The Board is of the opinion that the definitions contained in its proposed rule clearly indicate that a water utility that purchases water from another water utility is not precluded from qualifying for PWAC treatment.

COMMENT: UWR and the NAWC argue that all costs associated with the processing of a PWAC filing should be recoverable and made part of any rate adjustment resulting therefrom. These costs would include such items as legal, administrative, professional and investigatory expenses. Rate Counsel, however, argues that such recovery would be inappropriate outside the context of a base rate filing and would be inconsistent with present Board policy in adjustment clause proceedings affecting the electric and gas industries.

RESPONSE: The Board is of the opinion that the PWAC should be solely limited to the recovery of those costs associated with the purchase of water as identified in the proposed rule. The recovery of any other expenses should be left to consideration within the context of an appropriate base rate proceeding.

COMMENT: Adelphia suggests that N.J.A.C. 14:10-8.4(g) be amended as it does not believe that a formal petition is the appropriate procedure for incremental changes in the rates or the annual true-up schedule. Adelphia recommends that utilities be permitted to file all required data to the Board with notice to Rate Counsel; then, if there is no objection by Board Staff or Rate Counsel, within a delineated time frame (30 to 60 days) the proposal would become effective. Adelphia argues this procedure would facilitate the implementation of non-controversial changes. Accordingly, if only one element of a proposed change was objected to, the other elements of the change could be implemented while the contested issues are litigated before the Board or the Office of Administrative Law. Gordon's Corner has submitted similar comments.

RESPONSE: The Board is of the opinion that, because of the possibility of adjustments in rates, PWAC proceedings must be initiated by formal filings to the Board. For the same reason, all aspects of the proceeding must be consistent with and subject to the provisions of the Uniform Administrative Procedure Rules at N.J.A.C. 1:1.

COMMENT: Trenton and Park Ridge suggest that the proposed rules be amended to include all regulated municipal utilities, since municipal water utilities which provide service beyond their municipal boundaries are subject to the same kind of regulation as investor owned utilities.

RESPONSE: It was always the Board's intent that all water utilities subject to its jurisdiction be included within the scope of the proposed rules. As set out in N.J.S.A. 40A:31-23(d), municipal water utilities which supply water to more than 1000 billed customers within another municipality shall be "... subject to the jurisdiction, regulation and control of the Board of Public Utilities in accordance with the provisions of Title 48 of the Revised Statutes ..." Accordingly there is no reason to distinguish between private and municipal utilities and there was no intent to do so. Therefore, the Board will clarify the definition of "water utility" set out in N.J.A.C. 14:10-8.1 by specifically including municipal water utilities. The Board will also clarify the definition of "water purveyor" as set out in N.J.A.C. 14:10-8.2 in order to distinguish the differences between the term and a "water utility." This change in language is for clarification purposes only and does not substantively change the meaning or intent of the rule as originally proposed. For the sake of consistency and for the reasons set forth above, the Board will make an identical clarification with regard to the definition of a "sewerage treatment purveyor" set out in N.J.A.C. 14:10-9.2.

COMMENT: In order to avoid an inefficient use of resources and a higher level of rate case expense that would be incorporated in customer rates, Adelphia suggests that the proposed rules be amended to provide some relief to utilities which have completed a recent proceeding in which their purchased water costs were approved by Board action. Adelphia argues that utilities which have already had purchased water contracts considered in prior Board actions should be allowed to utilize the PWAC without having to relitigate the very same issue.

RESPONSE: The Board would note that the proposed rule provides for the establishment of base cost and consumption data within the context of a base rate proceeding. The PWAC would only be utilized in the event that a subsequent adjustment to the base cost and consumption data was required.

COMMENT: Gordon's Corner suggests that the definition of "new costs of purchased water" contained in N.J.A.C. 14:10-8.2 be amended to apply to increases in costs of purchasing water resulting from higher volume requirements imposed by contract as well as to increases in unit prices.

RESPONSE: The Board would note that the definition of "base consumption" contained in N.J.A.C. 14:10-8.2 and the formula for determination of base cost set out in N.J.A.C. 14:10-8.5 indicate that changes in levels of consumption can be taken into consideration within a PWAC proceeding.

COMMENT: Middlesex suggests that N.J.A.C. 14:10-8.4(d) be deleted because the requirement of a separate and identifiable listing on customers' bills of any rate adjustment allowed by the Board in a PWAC proceeding will generate a large number of inquiries for water utilities' customer service departments.

RESPONSE: The Board is of the opinion that any inconvenience suffered by the water utilities with regard to replying to consumer

inquiries is offset by the public policy of providing customers with adequate billing information. The Board would further note that this policy is consistent with the adjustment clause information now available to electric and gas customers.

COMMENT: Rate Counsel suggests that the intent of the PWAC set out in the summary refers only to increased/decreased purchased water charges, and therefore differs from the bulk of the proposed rules which refer to changes in charges and changes in volume purchased. Rate Counsel further argues that if the intent of the PWAC is to pass through increased charges set by governmental entities, then the clause should involve only price differences and not volume differences.

RESPONSE: The Board does not agree with Rate Counsel that any inconsistency exists between the stated purpose of the proposed rule set out in the summary and the body of the proposed rule itself. It is the Board's opinion that any rate adjustment review must include consideration of not only any incremental cost deviations but also any consumption deviations and the underlying factors thereof. To do otherwise would result in possible inequities in any allowed adjustment.

COMMENT: Rate Counsel suggests that the proposed rule be clarified as to whether the PWAC will involve annual reviews, with rate changes on a cycle determined by changes in purveyor rates.

RESPONSE: The Board would note that the provisions of N.J.A.C. 14:10-8.3(c) make it clear that a review will occur after any PWAC has been in effect for one year.

COMMENT: Rate Counsel believes that the PWAC should apply only to incremental costs in excess of the amounts included in base rates and that the definition of "new purchased water" and the formulae as proposed in N.J.A.C. 14:10-8.5 and 8.6 should be clarified accordingly.

RESPONSE: The intent of the proposed rule is to allow for the recognition of any incremental adjustment to the base costs. The term "new contracted price of water" contained in the definition "new cost of purchased water" set out in N.J.A.C. 14:10-8.2 is intended to apply specifically to only those incremental differences not yet recognized in base costs. In order to eliminate any confusion as to the Board's intent, the Board will clarify this definition by replacing "contracted price" with "increment to the base cost." For the sake of consistency and for the reasons set forth above, the Board will make an identical clarification with regard to the definition of "new purchased sewerage treatment" set out in N.J.A.C. 14:10-9.2.

COMMENT: Because it feels that the proposed clause presents the possibility of increasing revenues to a utility which is earning at or above its authorized level of return, Rate Counsel suggests that an earnings review be conducted on all proposed PWAC petitions. Rate Counsel argues that it is the Board's duty to ensure that the increase does not lead to or validate overearnings.

RESPONSE: The purpose of the PWAC is to allow for the recognition of the incremental differences in costs for purchased water which may include volume deviations, when substantiated. The proposal of Rate Counsel to include an earnings review as an adjunct to this process will cause an undue burden and preclude the expeditious rate adjustments contemplated by the proposed rule. The Board currently has the authority to review a utility's financial condition at any time and certainly within the context of a base rate filing. The Board believes this authority to be sufficient in order to protect the public interest, and that the PWAC will not diminish the authority of the Board to review earnings.

COMMENT: Because of the similarities between the proposed adjustment clauses, UWR and Adelphia suggest that the comments submitted by them and the NAWC with regard to the proposed purchased water adjustment clause are applicable to the proposed purchased sewerage adjustment clause. Likewise, Howell and Rate Counsel incorporate all of their prior comments related to proposed subchapter 8 into subchapter 9.

RESPONSE: The Board has adequately responded to all suggestions raised with regard to the proposed purchased water adjustment clause and relies on said responses as they may pertain to the purchased sewerage adjustment clause.

COMMENT: NJAM believes that the surcharge resulting from the purchased sewerage treatment clause be calculated as a percent surcharge to be applied against the total bill. The Company feels that a surcharge expressed in costs per thousand gallons would be extremely confusing when applied in the context of their sewer bills.

RESPONSE: The Board recognizes NJAM's concern and will address same by clarifying the definition of "base cost of purchased sewerage treatment" to reflect the Board's intent to consider other alternatives on a case by case basis.

COMMENT: NJAM suggests that N.J.A.C. 14:10-9.3(c) be amended to require submission of the true up data within 45 days after the clause has been in effect for one year, not the proposed 30 day time frame. The Company feels that this time frame would be adequate to gather all appropriate data and prepare same for submission to the Board.

RESPONSE: The Board is of the opinion that a 30 day period provides a reasonable and practical time frame in which to submit all necessary and relevant data.

COMMENT: NJAM suggests adding a subsection designated as N.J.A.C. 14:10-9.3(d), which would allow a utility to defer on its books any changes in the cost of purchased sewerage treatment, including deficit and credit bills, as of the effective date of this rule.

RESPONSE: As previously indicated in its response to proposed N.J.A.C. 14:10-8.3(d), the Board believes that any deferral of costs associated with purchased sewerage treatment should be initiated by a filing within the context of a pending PWAC or base rate proceeding.

COMMENT: NJAM suggests amending N.J.A.C. 14:10-9.4(f) to limit the scope of review in order to avoid delay in the process which may cause financial hardship to the sewer utility in the interim period when its costs have increased and the needed rate relief is pending.

RESPONSE: The proposed rule has been formulated to permit expedited rate adjustments in response to increases or decreases in purchased sewerage treatment costs. As such the Board will consider all filings at the earliest possible date following the completion of a sufficient record. As previously set forth hereinabove, such treatment is consistent with current Board policies related to adjustment clause proceedings in the electric and gas industries. Accordingly, the Board is of the opinion that the proposed recommendation is unnecessary.

Full text of the adoption follows (additions to proposal are indicated in boldface with asterisks ***thus***; deletions from proposal are indicated in brackets with asterisks ***[thus]***).

SUBCHAPTER ***[8.]*7.*** PURCHASED WATER ADJUSTMENT CLAUSE

[14:10-8.1]**14:9-7.1 Scope

The rules contained in this subchapter shall apply to the increase or decrease ***in*** purchased water charges incurred by a water utility, as defined in N.J.S.A. 48:2-13.

[14:10-8.2]**14:9-7.2 Definitions

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

"Base consumption" means the level of consumption as established in the most recent base rate or adjustment clause case of a water utility.

"Base cost of purchased water" means the cost of contractually purchased water as established in the most recent base rate or adjustment clause case of a water utility. Actual cost shall be reflected as cost per 1,000 gallons ***unless otherwise specifically approved by the Board***.

"Deferred accounting treatment" means the deferring on the books and records of a water utility the difference between the expense imposed upon it by a water purveyor for purchased water, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

"New cost of purchased water" means the Board recognized new ***[contracted price]* *increment to the base cost*** of water from a purveyor to a water utility.

"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of water.

"Purchased water adjustment clause" means the methodology by which a water utility obtains recognition in its rates of an increase or decrease in the cost of water purchased by it from a water purveyor.

"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a water utility's last base rate or adjustment clause case.

"Water purveyor" means any ***[owner of water facilities who sells water to a water utility and whose rates or charges therefor are established by itself or by a public entity pursuant to law]* *gov-**

ernmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the sale of water; or a private entity, whose rates for the sale of water are regulated by the Board*.

"Water utility using a flat rate basis" means any water utility whose rates and tariffs are not designed on a metered flow basis.

"Water utility" means any investor owned ***or municipal*** water utility subject to the regulation of the Board which purchases water from a water purveyor.

"Water utility using a metered basis" means any water utility whose rates and tariffs are designed on a metered flow basis.

"Truing Up Schedule" means a detailed analysis reconciling the proposed or new cost of purchased water with the most recent base cost approved by the Board.

[14:10-8.3]**14:9-7.3 Petitions for Purchased Water Adjustment Clauses; Truing Up Schedules; time for filing

(a) A water utility with purchased treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased water adjustment clause to reflect in its rates an increase or decrease in the cost of water purchased by it. The petition shall be filed as soon as the water utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its water purveyor, but in no event later than 30 days after such notification.

(b) No purchased water adjustment clause shall be approved unless a water utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased water can be measured.

(c) Within 30 days after its purchased water adjustment clause has been in effect for one year, a water utility shall file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

[14:10-8.4]**14:9-7.4 Petitions for Purchased Water Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased water adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased water approved in the water utility's most recent base rate case or water adjustment clause case, whichever is later, and copies of the present and the proposed purchased water contracts, including price and detailed financial statements of associated expenses;

2. The actual number and classes of customers as approved in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

3. The actual volume of water purchased as approved in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the water utility's most recent base rate case or purchased water adjustment clause case, whichever is later;

5. Copies of the Board's Orders, including stipulations, if any, in the water utility's latest base rate case and in its most recent intervening purchased water adjustment clause case;

6. A proposed tariff schedule, entitled "Purchased Water Adjustment Clause," to implement the proposed purchased water adjustment clause. Said schedule shall set forth all rate schedules in the water utility's tariff which are affected by the clause;

7. Volumes and costs under the water utility's present contract and the proposed contract, with specific calculations showing the basis of any volume and/or cost differential from the base cost of purchased water on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased water with the most recent level of base cost of purchased water and the

ADOPTIONS

most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased water allowed in the adjustment clause; and

9. A detailed description of the efforts of the water utility to investigate and analyze the basis for any increase in rates proposed by its water purveyor as well as a detailed description of the water utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base consumption and base costs as set forth in the water utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased water adjustment clause proceeding ***and reflected appropriately***.

(d) The amount of a rate adjustment allowed by the Board in a purchased water adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

[14:10-8.5]**14:9-7.5 Formula for determination of basic costs by a water utility using a flat rate basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ &\pm \text{ Compression or Deferred Accounting} \\ &\times \text{ Revenue Tax Factor} \\ &\div \text{Number of Customers by Class} = \text{Annual Charge Per Customer} \\ &\div \frac{\text{Annual Charge Per Customer}}{\text{Billing Cycle}} \end{aligned}$$

[14:10-8.6]**14:9-7.6 Formula for determination of Base Costs by a water utility using a metered basis

$$\begin{aligned} &\text{Adjustment Clause} = \text{New Cost of Purchased Water} \\ &\pm \text{ Compression or Deferred Accounting} \\ &\times \text{ Revenue Tax Factor} \\ &\div \frac{\text{Base Consumption (Pumpage less unaccounted for water)}}{\text{Base Consumption (Per Tariff Units)}} \\ &\div \text{Billing Cycle} \end{aligned}$$

SUBCHAPTER [9]8* PURCHASED SEWERAGE TREATMENT ADJUSTMENT CLAUSE**

[14:10-9.1]**14:9-8.1 Scope

The rules contained in this subchapter shall apply to the increase or decrease in purchased sewerage treatment charges incurred by a sewer utility, as defined in N.J.S.A. 48:2-13.

[14:10-9.2]**14:9-8.2 Definitions

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

PUBLIC UTILITIES

"Base sewerage treatment" means the level of sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility.

"Base cost of purchased sewerage treatment" means the cost of contractually purchased sewerage treatment as established in the most recent base rate or adjustment clause case of a sewer utility. Actual cost shall be reflected as cost per 1,000 gallons ***unless otherwise specifically approved by the Board***.

"Deferred accounting treatment" means the deferring on the books and records of a sewer utility the difference between the expense imposed upon it by a sewerage treatment purveyor for purchased sewerage treatment, and the amount of expense currently approved by the Board for inclusion in rates for recovery of this expense.

"New cost of purchased sewerage treatment" means the Board recognized new ***[contracted price]* *increment to the base cost*** of purchased sewerage treatment from a purveyor to a sewer utility.

"Public entity" means any governmental entity, including a utilities authority, empowered by law to establish rates or charges for the sale of sewerage treatment.

"Purchased sewerage treatment adjustment clause" means the methodology by which a sewer utility obtains recognition in its rates of an increase or decrease in the cost of sewerage treatment purchased by it from a sewerage treatment purveyor.

"Revenue tax factor" means the tax factor applied to recoup the Gross Receipts and Franchise Taxes at the rate established in a sewer utility's last base rate or adjustment clause case.

"Sewerage treatment purveyor" means any ***[owner of a sewerage treatment facility who sells sewerage treatment to a sewer utility and whose rates or charges therefor are established by itself or by a public entity pursuant to law] *governmental entity, including a utilities authority or commission, empowered by law to establish sales or charges for the treatment of sewerage; or a private entity, whose rates for the sale of sewerage treatment are regulated by the Board***.

"Sewerage treatment utility using a flat rate basis" means any sewer utility whose rates and tariffs are not designed on a metered flow basis.

"Sewer utility" means any investor owned sewer utility subject to the regulation of the Board which purchases sewerage treatment from a sewerage treatment purveyor.

"Sewer utility using a metered basis" means any sewer utility whose rates and tariffs are designed on a metered flow basis.

"Truing Up Schedules" means a detailed analysis reconciling the proposed or new cost of purchased sewerage treatment with the most recent base cost approved by the Board.

[14:10-9.3]**14:9-8.3 Petitions for Purchased Sewerage Treatment Adjustment Clauses; Truing Up Schedules; time for filing

(a) A sewer utility with purchased sewerage treatment costs exceeding 10 percent of its total Operating and Maintenance expense shall file a petition with the Board for approval of a purchased sewerage treatment adjustment clause to reflect in its rates an increase or a decrease in the cost of sewerage treatment purchased by it. The petition shall be filed as soon as the sewer utility can reasonably compile the data required by this subchapter after notification of an increase or decrease in charges by its sewerage treatment purveyor, but in no event later than 30 days after such notification.

(b) No purchased sewerage treatment adjustment clause shall be approved unless a sewer utility, within the prior three years, has had its base rates set by the Board in a decision and order which established base level data against which the new cost of purchased sewerage treatment can be measured.

(c) Within 30 days after its purchased sewerage treatment adjustment clause has been in effect for one year, a sewer utility shall

TRANSPORTATION

ADOPTIONS

file schedules with the Board which true up its actual recovery of costs under the clause with the previous Board allowed recovery of such costs.

[14:10-9.4]**14:9-8.4 Petitions For Purchased Sewerage Treatment Adjustment Clauses; content; procedures

(a) A petition for approval of a purchased sewerage treatment adjustment clause, for an increase or decrease therein, and for the filing for approval of a truing up schedule shall include the following:

1. A copy of the contract for purchased sewerage treatment approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and copies of the present and the proposed purchased sewerage treatment contracts, including price and detailed financial statements of associated expenses;

2. The actual number and classes of customers as approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

3. The actual volume of sewerage treatment purchased as approved in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later, and as of the end of the most recent calendar year;

4. A calculation of a proposed cost per unit of volume using the methodology approved by the Board in the sewer utility's most recent base rate case or purchased sewerage treatment adjustment clause case, whichever is later;

5. Copies of the Board's Orders, including stipulations, if any, in the sewer utility's latest base rate case and in its most recent intervening purchased sewerage treatment adjustment clause case;

6. A proposed tariff schedule, entitled "Purchased Sewerage Treatment Adjustment Clause," to implement the proposed purchased sewerage treatment adjustment clause. Said schedule shall set forth all rate schedules in the sewer utility's tariff which are affected by the clause;

7. Volumes and costs under the sewer utility's present contract and the proposed contract, with specific calculations showing the basis of any volume and/or cost differential from the base cost of purchased sewerage treatment on a cost per unit basis;

8. A schedule truing up the proposed cost of purchased sewerage treatment with the most recent level of base cost of purchased sewerage treatment and the most recent level of Board approved rates. This schedule shall contain an adjustment for any under/over recovery of revenues related to the cost of purchased sewerage treatment allowed in the adjustment clause; and

9. A detailed description of the efforts of the sewer utility to investigate and analyze the basis for any increase in rates proposed by its sewerage treatment purveyor as well as a detailed description of the sewer utility's findings. The utility shall also fully describe its efforts in actively participating in the process to assure that these rates are just and reasonable.

(b) Base levels of sewerage treatment and base costs as set forth in the sewer utility's previous base rate case shall be established in each subsequent base rate filing.

(c) Interest on any over recovery shall be considered in each purchased sewerage treatment adjustment clause proceeding ***and reflected appropriately***.

(d) The amount of a rate adjustment allowed by the Board in a purchased sewerage treatment adjustment clause proceeding shall be listed separately and identified on customer bills.

(e) A copy of the petition and all exhibits shall be served upon the Department of the Public Advocate, Division of Rate Counsel, simultaneously with the filing thereof with the Board.

(f) In reviewing the petition, the Board may consider such additional relevant information or financial analysis as it deems appropriate.

(g) Filings pursuant to these rules shall be considered contested cases and shall be heard in accordance with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

[14:10-9.5]**14:9-8.5 Formula for determination of basic costs by a sewer utility using a flat rate basis

$$\begin{aligned} &\text{Adjustment Clause} = \frac{\text{New Cost of Purchased Sewerage Treatment} \pm \text{Compression or Deferred Accounting} \times \text{Revenue Tax Factor}}{\text{Number of Customers by Class}} = \text{Annual Charge Per Customer} \\ &\qquad\qquad\qquad \div \frac{\text{Annual Charge Per Customer}}{\text{Billing Cycle}} \end{aligned}$$

[14:10-9.6]**14:9-8.6 Formula for determination of Base Costs by a sewer utility using a metered basis

$$\begin{aligned} &\text{Adjustment Clause} = \frac{\text{New Cost of Purchased Sewerage Treatment} \pm \text{Compression or Deferred Accounting} \times \text{Revenue Tax Factor}}{\frac{\text{Base Sewerage Treatment Costs}}{\text{Base Sewerage Treatment (Per Tariff Units)}}} \\ &\qquad\qquad\qquad \div \frac{\text{Billing Cycle}}{\text{Billing Cycle}} \end{aligned}$$

TRANSPORTATION
(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Routes N.J. 45 in Gloucester County and U.S. 202 In Morris County

Adopted Amendment: N.J.A.C. 16:28A-1.31 and 1.55

Proposed: August 19, 1991 at 23 N.J.R. 2484(a).
Adopted: September 19, 1991, by Richard C. Dube, Director, Traffic Engineering and Local Aid.
Filed: September 26, 1991 as R.1991 d.518, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
Effective Date: October 21, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
A comment was received from Mr. Roy E. Duffield, Mullica Hill, New Jersey, concerning the rule proposal of Time Limits Parking along Route N.J. 45, and from Mr. John L. Dalton, Executive Director, Parking Authority of the Town of Morristown, Morristown, New Jersey, regarding "no stopping or standing" during certain hours along Route U.S. 202 in Morris County.

COMMENT: I am opposed to any DOT interference in parking on Route 45 (Main Street) in Mullica Hill, New Jersey.

RESPONSE: The Department has proposed and adopted the time limited parking restriction on Route 45 based upon its evaluation of a December 1990 request from the Township of Harrison, in Gloucester County, and not on its own initiative.

COMMENT: As the agency directly responsible for on- and off-street parking, we are concerned about the effect the proposal may have on the present metered parking along certain portions of the west side of Speedwell Avenue and the east side of Bank Street.

RESPONSE: In an effort to manage traffic congestion during the peak hours of use, that is, between 7:00 A.M. and 9:00 A.M. and between 4:00 P.M. and 6:00 P.M., the Town of Morristown requested, and the Department agreed to, the parking restriction delineated in the proposal. While there may be some residual effect on parking in the areas indicated by the commenter, the benefit to the overall traffic pattern is apparently important to the Town of Morristown as indicated by their request of August 1989.

ADOPTIONS

TREASURY-GENERAL

The Department appreciates the comments and expressions of interest.

Full text of the adoption follows.

16:28A-1.31 Route 45

(a) The certain parts of State highway Route 45 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-6. (No change.)

(b) (No change.)

(c) The certain parts of State highway Route 45 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified 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. In Harrison Township, Gloucester County:

i. Along the west side:

(1) South Main Street (Route N.J. 45):

(A) Two hours time limit parking between High Street and Mullica Hill Road (Route N.J. 45) Monday through Friday 6:00 A.M. to 6:00 P.M.

ii. Along the east side:

(1) South Main Street (Route N.J. 45):

(A) Two hours time limit parking Monday through Friday 6:00 A.M. to 6:00 P.M., between a point where the extended southerly side line of High Street would intersect the easterly side line of South Main Street and a point where the extended northwesterly line of Woodstown Road would intersect the easterly line of South Main Street.

16:28A-1.55 Route U.S. 202

(a) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. (No change.)

Recodify existing 4. as 2. (No change in text.)

Recodify existing 6, 7 and 8 as 3, 4 and 5. (No change in text.)

Recodify existing 10. as 6. (No change in text.)

(b) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established LOADING ZONES:

1. (No change.)

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

(e) The certain parts of State highway Route U.S. 202 described in this subsection shall be designated and established as "no stopping or standing during certain hours" zones where stopping or standing is prohibited at all times except as specified 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 "no stopping or standing during certain hours" zones:

1. No stopping or standing during certain hours:

i. In the Town of Morristown, Morris County:

(1) Along the west side of Speedwell Avenue (Route U.S. 202)—2:00 A.M. to 10:00 A.M.

(A) From a point 145 feet south of the southerly curb line of Frederick Street to a point 375 feet south of the southerly curb line of Walker Avenue.

(B) From a point 100 feet south of the southerly curb line of Cutler Street to a point 450 feet south of the southerly curb line of Henry Street.

(C) From a point 175 feet south of the southerly curb line of Sussex Avenue to a point 165 feet north of Early Street.

(D) From a point 270 feet south of the southerly curb line of Early Street to Park Place.

(2) Along the east side of Bank Street (U.S. Route 202):

(A) From a point 110 feet south of the southerly curb line of West Park Place to a point 35 feet north of the prolongation of the northerly curb line of Ann Street.

(3) Along the east side of Speedwell Avenue (U.S. Route 202)—2:00 A.M. to 7:00 A.M. and 3:30 P.M. to 6:30 P.M.:

(A) From the northerly curb line of Orchard Street to the prolongation of the southerly curb line of Frederick Street.

ii. In Bernardsville Township, Somerset County:

(1) Along both sides Friday only, 2:00 A.M. to 9:00 A.M.:

(A) From the northerly curb line of Woodland Road to a point 1,420 feet northerly therefrom.

iii. In Morris Plains Borough, Morris County—7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M.:

(1) Along the northbound side:

(A) From the prolongation of the northerly curb line of Rosedale Avenue to the prolongation of the southerly curb line of Academy Road;

(B) From a point 105 feet north of the prolongation of the northerly curb line of Morris Plains Avenue to the prolongation of the southerly curb line of Allen Place.

(2) Along the southbound side:

(A) From a point 500 feet south of the prolongation of the southerly curb line of Glennbrook Road to a point 120 feet north of the prolongation of the northerly curb line of Hillview Avenue;

(B) From the prolongation of the southerly curb line of Hillview Avenue to the prolongation of the northerly curb line of Rosedale Avenue.

(3) Along the west side of Speedwell Avenue (Route U.S. 202):

(A) From a point 105 feet south of the southerly curb line of Franklin Place to a point 35 feet north of the prolonging curb line of Allen Place.

(B) From a point 359 feet south of the southerly curb line of Franklin Place to a point 428 feet south therefrom.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax

Extension of Time to File Property Tax Appeals

Adopted Amendment: N.J.A.C. 18:12-5.1

Proposed: August 5, 1991 at 23 N.J.R. 2230(a).

Adopted: September 19, 1991 by Leslie A. Thompson, Director, Division of Taxation.

Filed: September 19, 1991 as R.1991 d.511, **without change**.

Authority: N.J.S.A. 54:3-21.5.

Effective Date: October 21, 1991.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:12-5.1 Extension of time to file property tax appeal due to failure to mail or deliver tax bill

(a) With respect to any tax year, a property owner may, upon written application to the county board of taxation of the county in which his property is located, request, pursuant to N.J.S.A. 54:3-21.4, that the county board of taxation extend his time to appeal to such board to a date not later than September 14 of the tax year, upon a showing under oath that the local taxing district failed to mail or deliver a tax bill to him before July 15 of the tax year. If an extension of the taxpayer's time to appeal to such board has already been granted by the board and approved, in writing, by the Director of the Division of Taxation pursuant to N.J.S.A. 54:3-21.4 and 5, the taxpayer may request an extension of time beyond September 14 of the tax year, but not more than 30 days from the date of the extension previously approved, upon a showing under oath that the local taxing district failed to mail or otherwise deliver

a tax bill to him at least 30 days prior to the date of the extension previously approved.

(b) The county board of taxation may, upon receipt of an application by an aggrieved property owner to extend the time to appeal either to a date not later than September 14 of the tax year or, alternatively, to a date not later than 30 days from an extension previously approved, grant such extension, provided there is a showing that:

1. The taxing district failed to mail or otherwise deliver a tax bill to such taxpayer before July 15 of the tax year;

2. It appears that the appeal is taken pursuant to N.J.S.A. 54:3-21; and

3. The Director of the Division of Taxation has approved said application.

(c)-(g) (No change.)

(h) This section promulgated pursuant to N.J.S.A. 54:3-21.5 and shall take effect with all tax appeals filed pursuant to N.J.S.A. 54:3-21 for the tax year 1973 and thereafter with the exception that the last sentence in (a) above and related provisions in (b) above shall take effect for the tax year 1991 and thereafter.

Statement of Ownership, Management and Circulation (Required by 39 U.S.C. 3685) 1A. Title of Publication: NEW JERSEY REGISTER. 1B. Publication number: 03006069. 2. Date of filing: September 27, 1991. 3. Frequency of issue: Semimonthly. A. Number of issues published annually: 24. B. Annual subscription price: \$125 controlled circulation; \$215 first class. 4. Location of known office of publication: New Jersey Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, NJ 08625. 5. Location of general business offices of the publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 6. Names and addresses of publisher, editor, managing editor. Publisher: New Jersey Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Editor: Norman Olsson, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. Managing Editor: Anthony Miragliotta, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 7. Owner: Office of Administrative Law, State of New Jersey, CN 301, Trenton, NJ 08625. 8. Known bondholders, mortgagees, or other security holders owning or holding one percent or more of total amount of bonds, mortgages or other securities: None. 9. Purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: Has not changed during preceding 12 months. 10. Average

number of copies each issue during preceding 12 months. A. Total no. copies printed: 3,372. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,474 controlled; 348 first class. C. Total paid circulation: 2,822. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 432. E. Total distribution (sum of C and D): 3,254. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 118. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,372. Actual number of copies of a single issue published nearest to filing date. A. Total no. copies printed: 3,450. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,543 controlled; 366 first class. C. Total paid circulation: 2,909. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 423. E. Total distribution (sum of C and D): 3,332. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 118. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,450. 11. I certify that the statements above are correct and complete: Norman Olsson, Editor.

PUBLIC NOTICES

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Extension of Comment Period Discipline of Administrative Law Judges

Proposed New Rules: N.J.A.C. 1:31-3

Take notice that the Office of Administrative Law has extended the comment period until November 21, 1991 for the proposed adoption of new rules concerning the discipline of administrative law judges which were published in the October 7, 1991 New Jersey Register at 23 N.J.R. 2901(a).

Submit comments by November 21, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

THE COMMISSIONER

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.

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 preparing environmental resources inventories, planning studies and reports describing strategies to protect environmental resources, and draft ordinances or master plan amendments to protect environmental resources; and in conducting projects designed to disseminate information to the public concerning environmental resources.

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 to any local environmental agency, except a joint environmental commission may receive up to \$2,500 for each municipality participating in such joint environmental commission. Applicant 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: An applicant must be a "local environmental agency" as defined in N.J.S.A. 13:1H-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 Procedural Guide and Application Form ("Application") from:

New Jersey Department of Environmental Protection
and Energy
Office of Environmental Services
CN-402, 401 E. State Street, 7th Floor
Trenton, New Jersey 08625
(609) 984-0828

Complete the Application.

G. Address for Application to be submitted: Completed Applications must be submitted to the address listed directly above.

H. Deadline by which completed Applications must be submitted: Applications must be delivered to the Office of Environmental Services or postmarked by December 1, 1991.

I. Date by which applicants shall be notified of approval or disapproval: On or about March 1, 1992.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Northeast Water Quality Management Plan Public Notice

Take notice that on September 5, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for the Pequannock, Lincoln Park and Fairfield Sewerage Authority (PLPFSA). The WMP proposes an increase in the permitted flow of the PLPFSA sewage treatment plant (STP) for treatment of a projected annual average flow of 9.6 million gallons per day and delineates the existing and future PLPFSA STP sewer service areas and the non-surface discharge service areas for facilities having design capacities of less than 20,000 gallons per day.

In addition, the WMP provides for the elimination of the Laurel Homes and Plains Plaza Shopping Center STPs with flows diverted to the PLPFSA STP. The PLPFSA WMP will amend the Caldwell Borough WMP by including a portion of Fairfield currently in the Caldwell STP sewer service area within the PLPFSA STP sewer service area. Notwithstanding N.J.A.C. 7:15-5.11(b), adoption of this WMP shall not expand the PLPFSA WMP area to include any portions of Butler, Bloomingdale, Kinnelon or Riverdale. The municipalities of Butler, Bloomingdale and Kinnelon will remain in the WMP area of the Pequannock River Basin Regional Sewerage Authority (PRBRSA). Riverdale is included in the PRBRSA WMP area through the PRBRSA WMP.

This amendment was noticed in the New Jersey Register on March 4, 1991 at 23 N.J.R. 777(d). Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

COMMENT: The PLPFSA WMP provides that the Plains Plaza Shopping Center STP in Pequannock Township be eliminated with flows treated at the PLPFSA STP. The WMP does not indicate, however, when this will occur or the costs involved.

RESPONSE: The role of the WMP is to provide for 20 year wastewater planning within the planning area. In terms of the Plains Plaza STP, the WMP provides for the STP to be eliminated and tied in to the PLPFSA STP by the year 2010. A more specific time for abandonment and tie in is not required in the WMP and has not been provided. The costs involved with this proposal should not be addressed in the WMP. Instead, these issues should be addressed at the local level. If it is determined that the Plains Plaza STP should remain instead of being eliminated, an amendment to the PLPFSA WMP to allow for this may be proposed.

COMMENT: An existing contract between Fairfield and West Caldwell that provides West Caldwell with 100,000 gallons per day of capacity at the PLPFSA STP without any limitations to any specific areas of West Caldwell, has not been provided for in the PLPFSA WMP. Specifically, the Rowit site in West Caldwell is not included in the PLPFSA STP sewer service area.

RESPONSE: As per N.J.A.C. 7:15-5.18, the sewer service areas to each STP located within the WMP area must be specifically delineated. The PLPFSA WMP currently delineates a portion of West Caldwell in the PLPFSA STP sewer service area. It would be inappropriate to specify that any area in West Caldwell may be served by the PLPFSA STP up to the limits of contractual allowance unless the entire municipality was shown to be in the PLPFSA STP sewer service area. This would conflict

with the Caldwell WMP which delineates a large portion of West Caldwell as within the Caldwell STP sewer service area. If it is determined that a portion of West Caldwell should be included in the PLPFSA STP sewer service area, an amendment to the PLPFSA WMP (and Caldwell WMP if appropriate) to allow for this may be proposed.

(a)

**OFFICE OF REGULATORY POLICY
Amendment to the Tri-County Water Quality
Management Plan
Public Notice**

Take notice that on September 12, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management (WQM) Plan was adopted by the Department. The amendment was proposed by the Burlington County Board of Chosen Freeholders. This amendment updates the Mansfield Township Wastewater Management Plan (WMP). The amendment allows the existing Burlington County Solid Waste Facility Complex leachate treatment facility's surface water discharge to be upgraded and expanded from 28,000 gallons per day (GPD) to 130,000 GPD. In addition, prior to the completion of the expanded facility, 67,100 GPD of leachate from the proposed co-composting facility, materials recovery facility, and Florence Land Recontouring facility will be stored in a new 200,000 gallon aerated storage tank via the existing leachate transfer pump station and then hauled to an NJDEPE approved treatment facility. After completion of the leachate treatment plant expansion, the proposed 200,000 gallon storage tank would be incorporated into the treatment process as a flow equalization tank.

(b)

**GREEN ACRES PROGRAM
Notice of Public Hearing
Proposed Easement on Lands
Comprising Part of Greenwood Lake State Park**

Take notice that the State of New Jersey, Department of Environmental Protection and Energy, Green Acres Program will hold a public hearing to seek comments on the proposed eight-inch sewer easement on the following State-owned land in order to provide a sewer outfall pipe for the West Milford Municipal Utilities Authority's, Awosting Sewer Plant.

All of that certain land located at Greenwood Lake State Park identified as a proposed permanent easement containing .133 acres and a temporary construction easement containing .133 acres designated as a portion of Block 3802, Lot 2 on the current tax map of the Township of West Milford, County of Passaic.

The value of these easements has been appraised at \$1,000.

The proposed sewer outfall pipe is necessitated by the upgrading of the Awosting Sewage Plant under Administrative Consent Order with the Department of Environmental Protection and Energy.

The easement documents will be available for review at the Ringwood State Park office during regular office hours, Monday through Friday.

The land affected by the proposed easement and adjacent State-owned lands serve as a buffer between privately-owned and State-owned lands. The easement will not interfere with or affect the use and enjoyment of State-owned lands.

The public hearing will be held on:

Thursday, December 5, 1991 at 7:00 P.M. at the
Ringwood State Park, Skylands Carriage House
Sloatsburg Road
Ringwood, New Jersey

Persons wishing to make oral presentation are asked to limit their comments to a five minute time period. Presenters should bring a copy of their comments to the hearing for use by the Department. The hearing records will be kept open for a period of seven days following the date of the public hearing so that additional written comments can be received.

Interested persons may submit written comments until December 12, 1991 to:

Dennis B. Davidson
Deputy Administrator
Green Acres Program
Department of Environmental Protection and Energy
CN 412
Trenton, New Jersey 08625

(c)

**DIVISION OF PARKS AND FORESTRY
Natural Areas System
Adoption of Management Plan for Swimming River
Natural Area**

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C. 7:2-11.

Take notice that in accordance with N.J.A.C. 7:2-11.8 and the recommendation of the Natural Areas Council, Scott A. Weiner, Commissioner, Department of Environmental Protection, has adopted a management plan for the Swimming River Natural Area.

The Swimming River Natural Area, located within Tinton Falls Borough, Monmouth County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Allaire State Park. The designation objective for Swimming River Natural Area is preservation of habitat diversity including fresh water marsh, salt water marsh, woodlands, fields and estuary. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the area in accordance with its designation objective (see N.J.A.C. 7:2-11.8).

At the April 10, 1991 Council meeting, the Natural Areas Council reviewed a draft management plan prepared by the Department and received staff recommendations regarding the management of the Swimming River Island Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Swimming River Natural Area and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection for his approval. The Commissioner of Environmental Protection approved the Swimming River Natural Area Management Plan on September 19, 1991.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625
Department of Environmental Protection
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
501 E. State Street
Station Plaza Bldg. #5, 2nd Floor
Trenton, New Jersey 08625

This notice is published as a matter of public information.

HIGHER EDUCATION

(d)

**NEW JERSEY HIGHER EDUCATION ASSISTANCE
AUTHORITY**

**New Jersey College Loans to Assist State Students
(NJCLASS)**

**Notice of Loan Interest Rates
N.J.A.C. 9:9-7**

Take notice that the loan interest rate for student loans under the State loan program, New Jersey College Loans to Assist State Students (NJCLASS), has now been established by the Authority pursuant to N.J.A.C. 9:9-7.7.

The loan interest rate is 8.95 percent, stepping up to 9.70 percent beginning with the borrower's fifth year of repaying loan principal. For those borrowers who choose the option of capitalizing loan interest during the in-school period, this program feature is offered at a loan interest rate of 9.25 percent, stepping up to 10.0 percent beginning with the borrower's fifth year of repaying loan principal.

This notice is published as a matter of public information.

HUMAN SERVICES

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice of Availability of Grants

Charity Racing Days for the Developmentally Disabled Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Developmental Disabilities Council hereby announces the availability of the following grant program:

A. Name of program: Charity Racing Days for the Developmentally Disabled Program, P.L.1977, c.200.

B. Purpose: To distribute funds received by the New Jersey Racing Commission to nonprofit organizations in New Jersey which expend funds for direct services in full-time programs to individuals who are developmentally disabled.

C. Amount of monies in program: The amount of monies available is based on money collected on designated racing days by the New Jersey Racing Commission in compliance with N.J.S.A. 5:5-44.2, and distributed proportionally among eligible organizations on the basis of an incidence and service formula as defined in N.J.A.C. 10:141.

D. Organizations which may apply for funding under this program: Agencies which may apply for Charity Racing Days monies must be nonprofit organizations located in New Jersey and expend funds for direct services in full time programs to residents who are developmentally disabled. Agencies must be affiliated with a national organization of the same type and purpose.

E. Qualifications needed by an applicant to be considered for the program: An eligible organization shall be a full time service provider to individuals who are developmentally disabled which expends funds for direct services and has as its main purpose either:

1. The provision of services; or
2. The raising of funds on behalf of a single other organization whose sole purpose is the provision of eligible services.

All funds raised shall be contributed to the provision of eligible services (except minimal costs for administration and fund raising).

At least 75 percent of the recipients of eligible services provided by the organization must be developmentally disabled.

F. Procedure for eligible organizations to apply: Application can be requested from:

Susan Richmond
NJ Developmental Disabilities Council
CN 700
Trenton, NJ 08625
(609) 292-3745

G. Address for applications to be submitted: same as F, above.

H. Deadline by which applications must be submitted: Completed applications must be submitted by November 29, 1991.

I. Date by which application shall be notified of approval or disapproval: Applicants shall receive notice of approval or disapproval within 60 days after deadline.

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS

Notice of Receipt of Petition for Rulemaking Prevailing Wages for Public Works

N.J.A.C. 12:60-3.2

Petitioners: American Telephone & Telegraph Company by Mudge Rose Guthrie Alexander & Ferdon (Joseph A. Hoffman); New Jersey Bell Telephone Company by Schiller, Vyzas, Squeo & Hartnett (Bernard Hartnett).

Authority: N.J.S.A. 34:11-56.25 et seq.

Take notice that the Department of Labor (the Department) received a petition on September 12, 1991 from petitioners, American Telephone & Telegraph Company and New Jersey Bell Telephone Company, for rulemaking concerning N.J.A.C. 12:60, the Department's rules governing the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

Specifically, petitioners request that the Department amend N.J.A.C. 12:60-3.2 to include "telephone workers" within those crafts, trades or classes of workmen which shall be paid prevailing wages on public works construction contracts governed by the New Jersey Prevailing Wage Act.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.

OTHER AGENCIES

(c)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Notice of Receipt of Petition for Rulemaking and Action thereon

Procedure to Request Commission Action to Promulgate, Amend or Repeal Rules

N.J.A.C. 19:61-5.5

Petitioners: Somerset-Middlesex Area Libertarians, a county committee of the New Jersey Libertarian Party.

Authority: N.J.S.A. 52:14B-4(f).

Take notice that on September 13, 1991 petitioners filed a petition with the Executive Commission on Ethical Standards requesting an amendment to N.J.A.C. 19:61-5.5, concerning the procedure to request Commission action to promulgate, amend or repeal rules.

Specifically, petitioners are requesting an amendment to the to-be-proposed rulemaking rule, identical to the expired N.J.A.C. 19:61-5.5, concerning the form of a petition for rulemaking. Petitioners wish the Commission to amend N.J.A.C. 19:61-5.5 to create a rule that would prescribe the form in which a petition must be submitted and the procedures which a petitioner must follow for submitting a petition to the Commission.

The Commission has reviewed this petition and is deliberating thereon. The Commission expects to conclude its deliberations on or before November 21, 1991.

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 September 3, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 19, 1991

NEXT UPDATE: SUPPLEMENT SEPTEMBER 16, 1991

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
22 N.J.R. 3183 and 3274	October 15, 1990	23 N.J.R. 1227 and 1482	May 6, 1991
22 N.J.R. 3275 and 3420	November 5, 1990	23 N.J.R. 1483 and 1722	May 20, 1991
22 N.J.R. 3421 and 3606	November 19, 1990	23 N.J.R. 1723 and 1854	June 3, 1991
22 N.J.R. 3607 and 3666	December 3, 1990	23 N.J.R. 1855 and 1980	June 17, 1991
22 N.J.R. 3667 and 3896	December 17, 1990	23 N.J.R. 1981 and 2071	July 1, 1991
23 N.J.R. 1 and 144	January 7, 1991	23 N.J.R. 2079 and 2204	July 15, 1991
23 N.J.R. 145 and 248	January 22, 1991	23 N.J.R. 2205 and 2446	August 5, 1991
23 N.J.R. 249 and 332	February 4, 1991	23 N.J.R. 2447 and 2560	August 19, 1991
23 N.J.R. 333 and 636	February 19, 1991	23 N.J.R. 2561 and 2806	September 3, 1991
23 N.J.R. 637 and 798	March 4, 1991	23 N.J.R. 2807 and 2898	September 16, 1991
23 N.J.R. 799 and 924	March 18, 1991	23 N.J.R. 2899 and 3060	October 7, 1991
23 N.J.R. 925 and 1048	April 1, 1991	23 N.J.R. 3061 and 3192	October 21, 1991
23 N.J.R. 1049 and 1226	April 15, 1991		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
----------------------	--------------------------------------	--------------------	-------------------------------------

ADMINISTRATIVE LAW—TITLE 1

1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)	R.1991 d.513	23 N.J.R. 3133(a)
1:5	Council on Affordable Housing hearings	23 N.J.R. 2082(a)	R.1991 d.499	23 N.J.R. 2998(a)
1:5	Council on Affordable Housing hearings: extension of comment period	23 N.J.R. 2497(a)		
1:10B	Medical Assistance and Health Services hearings	23 N.J.R. 2083(b)	R.1991 d.500	23 N.J.R. 2998(b)
1:13A-18.2	Lemon Law hearings: exception to initial decision	23 N.J.R. 2208(a)		
1:14-14.1, 14.4	Board of Public Utility hearings: prefiled testimony; interlocutory review	23 N.J.R. 2083(c)	R.1991 d.501	23 N.J.R. 2998(c)
1:31-3	Discipline of administrative law judges	23 N.J.R. 2901(a)		

Most recent update to Title 1: TRANSMITTAL 1991-4 (supplement July 15, 1991)

AGRICULTURE—TITLE 2

Most recent update to Title 2: TRANSMITTAL 1991-6 (supplement August 19, 1991)

BANKING—TITLE 3

3:1-2.17	Closing of branch offices	23 N.J.R. 2208(b)	R.1991 d.523	23 N.J.R. 3133(b)
3:1-16	Mortgage processing rules	23 N.J.R. 2613(b)		
3:1-19	Consumer checking accounts: preproposed new rules	23 N.J.R. 2617(a)		
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)	R.1991 d.525	23 N.J.R. 3133(c)
3:6-4.5, 4.6	Banks and savings banks: reporting of crimes	23 N.J.R. 2903(a)		
3:13	Bank holding companies and interstate acquisitions	23 N.J.R. 2904(a)		
3:18-10.3	Licensure of secondary mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)
3:21-1	Low-income credit unions	23 N.J.R. 2905(a)		
3:26-3.1, 3.2	Savings and loan associations: reporting of crimes	23 N.J.R. 2903(a)		
3:38-1.2, 1.4, 1.9, 2.1	Mortgage banker and broker net worth standards	23 N.J.R. 2450(a)		
3:38-1.3	Licensure of mortgage lenders	23 N.J.R. 2210(a)	R.1991 d.524	23 N.J.R. 3134(a)

Most recent update to Title 3: TRANSMITTAL 1991-7 (supplement August 19, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:2-2.13	Expungement from personnel files of references to disciplinary action	23 N.J.R. 2906(a)		
4A:4-2.11	Enforcement of residency requirements	23 N.J.R. 1984(a)	R.1991 d.498	23 N.J.R. 2999(a)
4A:4-2.16	Inspection of examination scoring keys	23 N.J.R. 2906(b)		
4A:4-7.10, 7.12	Reinstatement following disability retirement	23 N.J.R. 2907(a)		
4A:4-7.11	Retention of rights by transferred employees	23 N.J.R. 1984(b)		
4A:6-1.6	Sick Leave Injury (SLI): State service	23 N.J.R. 2907(b)		

Most recent update to Title 4A: TRANSMITTAL 1991-2 (supplement August 19, 1991)

COMMUNITY AFFAIRS—TITLE 5

5:14-1.1-1.6, 2.1, 2.2, 2.3, 3.1-3.12, 3A, 4.10, App. A-D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
---	--	-------------------	--	--

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:18-1.4	Uniform Fire Code: applicability of requirements	23 N.J.R. 2813(a)		
5:18-2.4A, 2.4B, 2.4C, 2.4D, 2.7, 2.8	Uniform Fire Code: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18-2.8	Uniform Fire Code life hazard uses and permit fees: administrative correction and extension of comment period	23 N.J.R. 2453(a)		
5:18-2.19	Uniform Fire Code: identifying emblems for structures with truss construction	23 N.J.R. 2618(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)	R.1991 d.480	23 N.J.R. 2861(a)
5:18A-2.6	Fire Code enforcement: life hazard uses and permit fees	23 N.J.R. 2234(a)	R.1991 d.504	23 N.J.R. 2999(b)
5:18C-4.2	Firefighter I certification	23 N.J.R. 2084(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)	R.1991 d.455	23 N.J.R. 2633(a)
5:23-2.8, 2.17A, 2.24, 2.32	Uniform Construction Code: approval of completed work	23 N.J.R. 2236(a)	R.1991 d.509	23 N.J.R. 3001(a)
5:23-3.15, 3.21	Uniform Construction Code: plumbing; one and two family dwelling subcodes	23 N.J.R. 2619(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: pre-proposal regarding private enforcing agencies	23 N.J.R. 1985(a)		
5:23-4.14, 4A.17, 8.18	Uniform Construction Code: preproposal regarding private enforcing agencies	23 N.J.R. 2908(a)		
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)	R.1991 d.479	23 N.J.R. 2861(b)
5:23-7.6A	Barrier-Free Subcode enforcement	23 N.J.R. 2620(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:23-12.2	Elevator Safety Subcode: referenced standards	23 N.J.R. 2046(a)		
5:33-3	Tenants' Property Tax Rebate Program	23 N.J.R. 2183(a)	R.1991 d.484	23 N.J.R. 3002(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	23 N.J.R. 2621(a)		
5:80-31	Housing and Mortgage Finance Agency: attorney services	23 N.J.R. 2622(a)		
5:91-15	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 1.4, 8.4, 18	Council on Affordable Housing: municipal development fees	23 N.J.R. 2813(b)		
5:92-1.6	Council on Affordable Housing: extension of certification period/judgment of repose	23 N.J.R. 2084(b)		

Most recent update to Title 5: TRANSMITTAL 1991-8 (supplement August 19, 1991)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General William C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:8	Thorough and efficient system of schools	23 N.J.R. 2908(b)		
6:8-1.1, 6.1, 6.2, 6.3	Preventive and remedial programs in reading, writing and mathematics	23 N.J.R. 2085(a)		
6:11-6.2	Early childhood instructional certificate	23 N.J.R. 2210(b)		
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)	R.1991 d.459	23 N.J.R. 2634(a)
6:20-2.13, 2A.11, 3.1, 3.3, 3.4, 5.8	Free balance and restricted appropriations; tuition rates for regular public and county schools; excess surplus calculation	23 N.J.R. 2818(a)		
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)	R.1991 d.460	23 N.J.R. 2636(a)

Most recent update to Title 6: TRANSMITTAL 1991-7 (supplement August 19, 1991)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)	R.1991 d.465	23 N.J.R. 2656(a)
7:1E-1.6, 1.9, 7, 8, 9, 10	Discharges of petroleum and other hazardous substances: confidentiality of information	23 N.J.R. 2848(a)		
7:1H	County environmental health standards: request for public input concerning amendments to N.J.A.C. 7:1H	23 N.J.R. 2237(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)	R.1991 d.487	23 N.J.R. 3005(a)
7:2-11.3-11.9, 11.12-11.14	Natural Areas and Natural Areas System	23 N.J.R. 1985(b)		
7:4	New Jersey Register of Historic Places: procedures for listing of historic places	23 N.J.R. 2103(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Stormwater management: Water Pollution Control Act compliance	23 N.J.R. 1926(a)	R.1991 d.510	23 N.J.R. 3134(b)
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:9-6	Ground water quality standards: request for comment on draft revisions	23 N.J.R. 1988(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2, 7.1, 9.8, 9.10	Shellfish growing water classification	23 N.J.R. 2993(a)		
7:13	Flood hazard area control: opportunity to comment on draft revisions	23 N.J.R. 1989(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8.2, 8.5	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14-8.13	Water Pollution Control Act: request for public input regarding economic benefit derived from noncompliance and determination of civil administrative penalties	23 N.J.R. 2241(a)		
7:14A-1.9, 3.10	Clean Water Enforcement Act: civil administrative penalties and reporting requirements	23 N.J.R. 2238(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:14B-4.5, 9.1, 13.20	Underground storage tank systems	23 N.J.R. 2854(a)		
7:25-6	1992-93 Fish Code	23 N.J.R. 2115(a)		
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.1, 18.12, 18.13	Weakfish management program	23 N.J.R. 1989(b)		
7:26-1.2, 1.4, 8.2, 8.13, 9.1, 9.4, 9.5, 9.7, 9.10, 10.4, 10.7, 10.8, 11.5, 12.1, 12.2, 12.4, 12.5, 12.9, 17.4	Hazardous waste management	23 N.J.R. 2453(b)		
7:26-2.4	Small scale solid waste facility permits: request for comment on draft revisions to N.J.A.C. 7:26-2.4	23 N.J.R. 2458(a)		
7:26-3A.17, 5.4	Medical waste exemptions; penalties for violations of Solid Waste Management Act: administrative corrections	_____	_____	23 N.J.R. 3138(a)
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-7.7, 8.2, 8.3, 8.4, 8.20, 9.1	PCB hazardous waste	23 N.J.R. 2855(a)		
7:26-8.12	Hazardous waste management: administrative correction	_____	_____	23 N.J.R. 2880(a)
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)	R.1991 d.472	23 N.J.R. 2874(a)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3-17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-16.5	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)	R.1991 d.462	23 N.J.R. 2778(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		
7:27B-3.1, 3.2, 3.4-3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic compounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:27B-3.10	Air pollution by volatile organic compounds: corrections to proposal and addresses for inspection of copies	23 N.J.R. 2119(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)	R.1991 d.463	23 N.J.R. 2780(a)
7:50-2.11, 4.61-4.70, 5.27, 5.28, 5.30, 5.32, 6.13	Pinelands Comprehensive Management Plan: waivers of strict compliance	23 N.J.R. 2458(b)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1991-8 (supplement August 19, 1991)

HEALTH—TITLE 8

8:18-1.2, 1.4, 1.5, 1.7, 1.10, 1.11, 1.13-1.17	Catastrophic Illness in Children Relief Fund Program	23 N.J.R. 2564(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:24-13.9, 13.11	Sanitation in community residences and bed and breakfast establishments	23 N.J.R. 2088(a)	R.1991 d.507	23 N.J.R. 3026(a)
8:31A-1.1, 2.6, 7.4, 7.5, App. A, D	SHARE Manual: patient day add-on; EDR and OPPM cost centers	23 N.J.R. 2242(a)		
8:31B-3.65, 3.71	Hospital reimbursement: Schedule of Rates adjustments and reconciliation	Emergency (expires 11-15-91)	R.1991 d.506	23 N.J.R. 3042(a)
8:31C-1.21, App. A	Residential alcoholism treatment facilities: patient day add-on	23 N.J.R. 2243(a)		
8:33-5.1	Certificate of Need moratorium	Emergency (expires 10-21-91)	R.1991 d.474	23 N.J.R. 2881(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:40	Licensure of invalid coach and ambulance services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 2245(a)		
8:40	Invalid coach and ambulance services	23 N.J.R. 2566(a)		
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43G-4.1, 5.2, 5.3, 5.5, 5.7, 5.9, 5.12, 5.16, 5.18, 7.5, 7.16, 7.22, 7.23, 7.24, 7.26, 7.28, 7.32, 7.33, 7.34, 7.37, 7.40, 8.4, 8.7, 8.11, 9.7, 9.14, 9.19, 10.1, 10.4, 11.5, 12.2, 12.3, 12.7, 12.10, 13.4, 13.13, 14.1, 14.9, 15.2, 15.3, 16.1, 16.2, 16.6, 16.7, 18.4-18.7, 19.2, 19.5, 19.13, 19.14, 19.15, 19.17, 19.18, 19.22, 19.23, 19.33, 20.1, 20.2, 22.2, 22.3, 22.12, 22.17, 22.20, 23.1, 23.2, 23.6, 24.9, 24.13, 25.1, 26.2, 26.3, 26.9, 28.1, 28.8, 28.10, 29.13, 29.17,	Hospital licensing standards	23 N.J.R. 2590(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
30.1, 30.2, 30.3, 30.5, 30.6, 30.8, 30.11, 32.3, 32.5, 32.9, 32.12, 33.6, 35.2				
8:52	Local boards of health: activities and standards	23 N.J.R. 2825(a)		
8:57-2.2, 2.4, 2.6, 2.7	Reporting of HIV infection with identifiers	23 N.J.R. 2089(a)	R.1991 d.516	23 N.J.R. 3138(b)
8:61	AIDS prevention and control	23 N.J.R. 2245(b)		
8:61	AIDS prevention and control: extension of comment period	23 N.J.R. 2882(e)		
8:61-2.1, 2.2, 2.3, 2.6	Participation in AIDS Drug Distribution Program	23 N.J.R. 2247(a)		
8:61-2	Participation in AIDS Drug Distribution Program: extension of comment period	23 N.J.R. 2883(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 206(b))	22 N.J.R. 3191(a)		
8:71	Interchangeable drug products (see 23 N.J.R. 1670(a), 2136(a))	23 N.J.R. 178(a)	R.1991 d.464	23 N.J.R. 2783(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		
8:71	Interchangeable drug products	23 N.J.R. 2610(a)		

Most recent update to Title 8: TRANSMITTAL 1991-8 (supplement August 19, 1991)

HIGHER EDUCATION—TITLE 9

9:4	County community colleges	23 N.J.R. 2467(a)	R.1991 d.517	23 N.J.R. 3143(a)
9:4-3.12	Noncredit courses at county community colleges	23 N.J.R. 1056(a)		
9:7-4.2	Garden State Scholarships: academic requirements	23 N.J.R. 2211(a)		
9:9-7.7	New Jersey College Loans to Assist State Students (NJCLASS) Program: repayment of loan	23 N.J.R. 2212(a)	R.1991 d.515	23 N.J.R. 3143(b)
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		

Most recent update to Title 9: TRANSMITTAL 1991-5 (supplement August 19, 1991)

HUMAN SERVICES—TITLE 10

10:3-3	Contract administration: Request for Proposal (RFP) process	23 N.J.R. 957(a)		
10:7	Role of county adjuster	23 N.J.R. 2953(a)		
10:12-3	Referral of handicapped students for adult educational services	23 N.J.R. 2959(a)		
10:15, 15A, 15B, 15C	Child Care Services: provision, eligibility for programs, co-payments and procedures	23 N.J.R. 2960(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)	R.1991 d.453	23 N.J.R. 2637(a)
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-5.6	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56	Dental Services Manual	23 N.J.R. 1992(a)	R.1991 d.473	23 N.J.R. 2862(a)
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:60-4.3	Home Care Expansion Program: cost sharing by beneficiaries	23 N.J.R. 2826(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.6, 3	Independent Clinic Services: partial care	23 N.J.R. 2213(a)	R.1991 d.508	23 N.J.R. 3027(a)
10:66-3	Medicaid program: personal care assistant services at independent clinics	23 N.J.R. 2091(a)	R.1991 d.481	23 N.J.R. 2862(b)
10:69-5.1	HAAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-1.2, 5.3, 5.6, 6.2, 6.10	PAAD: income eligibility limits	23 N.J.R. 2623(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)	R.1991 d.454	23 N.J.R. 2637(b)
10:69B-4.2	Lifeline Credit Program: income eligibility limits	23 N.J.R. 2623(a)		
10:72-1.1, 4.1	Medicaid eligibility: pregnant women and children	23 N.J.R. 2543(a)	R.1991 d.526	23 N.J.R. 3144(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)	R.1991 d.483	23 N.J.R. 3028(a)
10:72-6.1-6.5	New Jersey Care: presumptive eligibility process for pregnant women	23 N.J.R. 2827(a)		
10:81-3.19, 8.22, 14.8, 14.20	REACH/JOBS Program: Medicaid eligibility	23 N.J.R. 2988(a)		
10:81-14.12, 14.18	Public Assistance Manual: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2214(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:81-14.18, 14.18A, 14.18B	REACH child care co-payment	23 N.J.R. 2981(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:81-App. C	Public Assistance Manual forms: administrative correction			23 N.J.R. 3029(a)
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-2.8, 4.4, 5.3	Assistance Standards Handbook: child care payment for AFDC families in REACH/JOBS program	23 N.J.R. 2217(a)		
10:82-3.1	Assistance Standards Handbook: bank account resources	23 N.J.R. 2625(a)		
10:82-4.9	Assistance Standards Handbook: DYFS monthly foster care rates	23 N.J.R. 2220(a)		
10:82-5.3	REACH child care voucher rates	23 N.J.R. 2989(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)	R.1991 d.522	23 N.J.R. 3144(b)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:84-1	Efficiency and effectiveness of program operations: public hearing and extension of comment period	23 N.J.R. 2220(b)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1-6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)	R.1991 d.521	23 N.J.R. 3155(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:87-12	Food Stamp Program: income eligibility, deductions, coupon allotments			23 N.J.R. 3030(a)
10:97-1.3, 1.4, 2.1-2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1-7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)	R.1991 d.512	23 N.J.R. 3161(a)
10:123A	Youth and Family Services: Personal Attendant Services Program	23 N.J.R. 2091(b)		
10:132	Youth and Family Services: court actions and procedures	23 N.J.R. 2099(a)		

Most recent update to Title 10: TRANSMITTAL 1991-8 (supplement August 19, 1991)

CORRECTIONS—TITLE 10A

10A:2-2	Inmate accounts	23 N.J.R. 1992(b)	R.1991 d.494	23 N.J.R. 3031(a)
10A:3	Security and control	23 N.J.R. 1259(a)	R.1991 d.503	23 N.J.R. 3031(b)
10A:10-3	Interstate Corrections Compact	23 N.J.R. 2221(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		
10A:18-2.9	Identification of inmate outgoing correspondence	23 N.J.R. 2468(a)		

Most recent update to Title 10A: TRANSMITTAL 1991-7 (supplement August 19, 1991)

INSURANCE—TITLE 11

11:1-1.1	Organization of the Department	Exempt	R.1991 d.476	23 N.J.R. 2862(c)
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)	R.1991 d.461	23 N.J.R. 2638(a)
11:2-17.7	Automobile insurance: payment of PIP claims	23 N.J.R. 2830(a)		
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)	R.1991 d.519	23 N.J.R. 3166(a)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-41	Association Producer Voluntary Placement Plan	23 N.J.R. 2275(a)		
11:3-42	Association Producer Assignment Program	23 N.J.R. 2297(a)		
11:12	Legal services insurance	23 N.J.R. 2304(a)	R.1991 d.520	23 N.J.R. 3170(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)	R.1991 d.411	23 N.J.R. 2340(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		

Most recent update to Title 11: TRANSMITTAL 1991-8 (supplement August 19, 1991)

LABOR—TITLE 12

12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1992 rates	23 N.J.R. 2611(a)		
-------------------------------	---	-------------------	--	--

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:51	Vocational Rehabilitation Services	23 N.J.R. 2927(a)		
12:55	Wage payments	23 N.J.R. 2939(a)		
12:55-1.4	Voluntary wage deductions for repayment of debts to State: administrative correction	_____	_____	23 N.J.R. 2864(a)
12:56-1.2-1.6	Wage and hour violations, administrative penalties and fees, hearings, and employer offenses	23 N.J.R. 2942(a)		
12:58-5	Child labor violations and administrative penalties	23 N.J.R. 2944(a)		
12:60-2.1, 6.1	Public works employers: inspection of payroll records	23 N.J.R. 2945(a)		
12:60-9	Prevailing wages for public works: violations, penalties, and fees	23 N.J.R. 2945(b)		
12:61-1	Wage collection	23 N.J.R. 2947(a)		
12:90-4.12, 4.13, 5.9, 5.14, 7.2	Boilers, pressure vessels, and refrigeration units: inspection and license fees	23 N.J.R. 2948(a)		
12:190-3.14	Explosives: annual fees for permits to manufacture, sell, store or use	23 N.J.R. 2949(a)		
12:195-1.9	Carnival-amusement rides: annual inspection fees	23 N.J.R. 2950(a)		
12:210-1	Apparel industry registration	23 N.J.R. 2951(a)		
12:235	Workers' Compensation system	23 N.J.R. 1759(a)	R.1991 d.466	23 N.J.R. 2642(a)
12:235-1.6	Workers' Compensation: 1992 maximum rates	23 N.J.R. 2612(a)		

Most recent update to Title 12: TRANSMITTAL 1991-5 (supplement August 19, 1991)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:12-3.4	Tourism Matching Grants: application deadline	_____	_____	23 N.J.R. 3032(a)
12A:31-1, 3	Direct Loan Program for small, minority, and women's businesses	23 N.J.R. 2626(a)		
12A:31-2.3, 2.7	Loan Guarantee Program for small, minority, and women's businesses: financial statements	23 N.J.R. 2627(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)		
12A:121-1.2, 2	Urban Enterprise Zone program: public hearing and reopening of comment period regarding extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 2885(a)		

Most recent update to Title 12A: TRANSMITTAL 1991-3 (supplement August 19, 1991)

LAW AND PUBLIC SAFETY—TITLE 13

13:14-1	Family Leave Act rules	23 N.J.R. 1993(a)	R.1991 d.475	23 N.J.R. 2864(b)
13:18-11.3, 11.4, 11.5	Access to Division of Motor Vehicles records	23 N.J.R. 2857(a)		
13:20-41	Persian Gulf War commemorative license plates	23 N.J.R. 2916(a)		
13:27-6.2-6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:31-1	Board of Examiners of Electrical Contractors: administration and procedure	23 N.J.R. 2917(a)		
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)	R.1991 d.482	23 N.J.R. 3032(b)
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-2.5	Medical standards for screening and diagnostic testing offices	23 N.J.R. 2858(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.7	Practice of medicine: prescribing of amphetamines and sympathomimetic amine drugs	23 N.J.R. 2248(a)		
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)	R.1991 d.458	23 N.J.R. 2651(a)
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:38-1.2, 1.3	Practice of optometry: permissible advertising	23 N.J.R. 2002(a)		
13:39-5.8	Prescriptions and medication orders transmitted by technological devices	23 N.J.R. 2469(a)		
13:40-7.2-7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:40A	Board of Real Estate Appraisers rules	23 N.J.R. 2628(a)		
13:41-4.2-4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
13:44E-1.1	Scope of chiropractic practice	23 N.J.R. 2100(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:45B	Employment and personnel services	23 N.J.R. 2470(a)		
13:45B	Employment and personnel services: extension of comment period	23 N.J.R. 2919(a)		
13:51	Chemical breath testing	23 N.J.R. 2248(b)	R.1991 d.505	23 N.J.R. 3032(c)
13:54	Regulation of firearms	23 N.J.R. 2250(a)		
13:54	Regulation of firearms: extension of comment period	23 N.J.R. 2919(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-2.1	Thoroughbred racing: "advance wagers", "delay period", "early bird wagering"	23 N.J.R. 2266(a)		
13:70-14A.9	Thoroughbred racing: first-time respiratory bleeders	23 N.J.R. 2919(c)		
13:70-29.48	Thoroughbred racing: daily double	23 N.J.R. 2003(a)	R.1991 d.491	23 N.J.R. 3033(a)
13:70-29.55	Thoroughbred racing: cash-sell wagering system	23 N.J.R. 2266(b)		
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:70-29.59	Thoroughbred racing: cancellation of certain wagers	23 N.J.R. 2267(a)		
13:70-29.60	Thoroughbred racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2267(b)		
13:71-4.1	Harness racing: "advance wagers", "delay period", "early-bird wagering"	23 N.J.R. 2267(c)		
13:71-23.8	Harness racing: first-time respiratory bleeders	23 N.J.R. 2919(d)		
13:71-27.47	Harness racing: daily double	23 N.J.R. 2004(a)	R.1991 d.490	23 N.J.R. 3034(a)
13:71-27.52	Harness racing: cash-sell wagering system	23 N.J.R. 2268(a)		
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:71-27.57	Harness racing: cancellation of certain wagers	23 N.J.R. 2268(b)		
13:71-27.58	Harness racing: expiration of mutuel tickets and vouchers	23 N.J.R. 2269(a)		
13:75-1.7, 1.23, 1.27	Violent Crimes Compensation Board: victim compensation	23 N.J.R. 2269(b)	R.1991 d.492	23 N.J.R. 3034(b)
13:75-1.24	Violent crimes compensation: transportation costs	23 N.J.R. 2482(a)	R.1991 d.514	23 N.J.R. 3170(b)

Most recent update to Title 13: TRANSMITTAL 1991-8 (supplement August 19, 1991)

PUBLIC UTILITIES—TITLE 14

14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:1	Rules of practice of Board of Public Utilities	23 N.J.R. 2487(a)		
14:5	Electric service	23 N.J.R. 1519(a)		
14:5A	Nuclear generating plant decommissioning: preproposed new rules regarding periodic cost review	23 N.J.R. 942(a)		
14:6	Gas service	23 N.J.R. 944(a)	R.1991 d.456	23 N.J.R. 2652(a)
14:10	Telephone utilities	23 N.J.R. 2270(a)	R.1991 d.489	23 N.J.R. 3035(a)
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)	R.1991 d.488	23 N.J.R. 3171(a)
14:12	Demand side management	23 N.J.R. 1283(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:18-7.7	Cable television: telephone system performance	23 N.J.R. 2273(a)		
14:38-1.2, 2.1-2.3, 3.1-3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1-8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

Most recent update to Title 14: TRANSMITTAL 1991-7 (supplement August 19, 1991)

ENERGY—TITLE 14A

14A:11-2	Reporting of energy information by home heating oil suppliers	23 N.J.R. 2830(b)		
----------	---	-------------------	--	--

Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)

STATE—TITLE 15

15:2-4	Commercial recording: designation of agent to accept service of process	23 N.J.R. 2483(a)		
--------	---	-------------------	--	--

Most recent update to Title 15: TRANSMITTAL 1991-2 (supplement August 19, 1991)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
PUBLIC ADVOCATE—TITLE 15A				
Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)				
TRANSPORTATION—TITLE 16				
16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)	R.1991 d.477	23 N.J.R. 2872(a)
16:28-1.41	Middle Township Elementary School zone along U.S. 9, Cape May County	23 N.J.R. 2831(a)		
16:28A-1.28	No stopping or standing zone along U.S. 40 in Hamilton Township, Atlantic County	23 N.J.R. 2101(a)	R.1991 d.496	23 N.J.R. 3037(a)
16:28A-1.31, 1.55	Time limit parking zones along Route 45 in Harrison Township, and no stopping or standing zones along U.S. 202 in Morris Plains	23 N.J.R. 2484(a)	R.1991 d.518	23 N.J.R. 3176(a)
16:28A-1.41	No stopping or standing zones along Route 77 in Bridgeton	23 N.J.R. 2101(b)	R.1991 d.497	23 N.J.R. 3037(b)
16:32-3.1, 3.6	Operation of 53-foot semitrailers in State	23 N.J.R. 2485(a)		
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47-App. B, E, E1, J	State Highway Access Management Code	23 N.J.R. 2831(b)		
16:49-App.	Transportation of hazardous materials: physical qualifications of drivers	23 N.J.R. 2102(a)	R.1991 d.485	23 N.J.R. 3037(c)
16:53D-1.1	Zone of Rate Freedom for regular route autobus carriers: 1992 percentage maximums	23 N.J.R. 2004(b)	R.1991 d.486	23 N.J.R. 3038(a)
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)		
16:79	NJ TRANSIT: background checks of prospective employees	23 N.J.R. 1775(a)	R.1991 d.495	23 N.J.R. 3038(b)
Most recent update to Title 16: TRANSMITTAL 1991-8 (supplement August 19, 1991)				
TREASURY-GENERAL—TITLE 17				
17:1-12.9	County and municipality early retirement incentive program: deadline for filing participation resolutions	23 N.J.R. 2847(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)		
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer"	23 N.J.R. 2612(b)		
17:12-2.11	Preference laws and out-of-State vendors	23 N.J.R. 2225(a)	R.1991 d.502	23 N.J.R. 3038(c)
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:16-63.6	Common Pension Fund B: date of valuation	23 N.J.R. 2103(a)	R.1991 d.478	23 N.J.R. 2868(a)
17:25-1.1, 1.2, 1.3, 1.5, 1.11, 1.12	Collection of debts owed NJHEAA by employees in certain State, county, and municipal jurisdictions	23 N.J.R. 2226(a)		
17:29-1.5, 2.3, 2.4, 2.6, 2.7, 3.2, 3.4, 4.6	Local Public Employee Charitable Fund-Raising Campaign	23 N.J.R. 2228(a)	R.1991 d.493	23 N.J.R. 3040(a)
17:32-4.7, 5	State Development and Redevelopment Plan: negotiation and issue resolution phases of cross-acceptance	23 N.J.R. 1778(b)	R.1991 d.457	23 N.J.R. 2654(a)
Most recent update to Title 17: TRANSMITTAL 1991-7 (supplement August 19, 1991)				
TREASURY-TAXATION—TITLE 18				
18:2-2.7	Abatement of penalty and interest for failure to pay tax or file return	23 N.J.R. 1899(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:12-5.1	Property tax appeals: extension of time to file due to late tax bills	23 N.J.R. 2230(a)	R.1991 d.511	23 N.J.R. 3177(a)
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:24-9.11	Sales and Use Tax: exempt organizations carrying on trade or business	23 N.J.R. 2004(a)		
18:24-16.6, 16.7, 16.9, 17.1-17.4	Vending machine sales	23 N.J.R. 396(a)		
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)		
Most recent update to Title 18: TRANSMITTAL 1991-6 (supplement August 19, 1991)				
TITLE 19—OTHER AGENCIES				
19:3A-1.3	Hackensack Meadowlands Development Commission: petitions for rulemaking	23 N.J.R. 1917(a)		
19:4-6.27, 6.29, 6.30	Hackensack Meadowlands Development Commission: District zoning and rule changes	23 N.J.R. 1917(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
19:16	Labor disputes in public fire and police departments: preproposal regarding compulsory interest arbitration	23 N.J.R. 2486(a)		
19:25-11.12	ELEC: fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		

Most recent update to Title 19: TRANSMITTAL 1991-4 (supplement August 19, 1991)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:41-11.1	Filing of agreements	22 N.J.R. 3202(a)		
19:41-11.1	Vendor registration form	23 N.J.R. 2486(b)		
19:43-1.2	Determination of casino service industries	23 N.J.R. 1963(a)		
19:45-1.1, 1.2, 1.46, 1.47	Complimentary distribution programs	23 N.J.R. 1308(a)		
19:45-1.7	Filing of licensee's financial and statistical reports	23 N.J.R. 2006(a)	R.1991 d.470	23 N.J.R. 2868(b)
19:45-1.11	Casino licensee's organization	23 N.J.R. 2323(a)		
19:45-1.11, 1.12	Implementation of red dog	23 N.J.R. 2231(a)		
19:45-1.11, 1.12	Implementation of sic bo	23 N.J.R. 2922(a)		
19:45-1.37, 1.39, 1.40A	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:45-1.38	Movement of slot machines and bill changers	23 N.J.R. 2920(a)		
19:45-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)		
19:45-1.40B	Annuity jackpot payouts	23 N.J.R. 2920(b)		
19:45-1.41	Slot machine hopper fill procedure	23 N.J.R. 2921(a)		
19:46-1.6	Destruction of gaming chips, tokens and plaques	23 N.J.R. 1780(a)	R.1991 d.468	23 N.J.R. 2869(a)
19:46-1.13A, 1.15, 1.16, 1.16A, 1.20	Implementation of sic bo	23 N.J.R. 2922(a)		
19:46-1.14, 1.17, 1.19	Implementation of red dog	23 N.J.R. 2231(a)		
19:46-1.26	Progressive slot jackpots and jackpots of merchandise	23 N.J.R. 1306(a)		
19:46-1.27	Density of slot machines: alternatives	23 N.J.R. 192(a)		
19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6, 7.2, 8.2, 8.3	Optional variations in rules of table games	23 N.J.R. 1784(b)		
19:47-2.3	Payout odds for blackjack	23 N.J.R. 1781(a)		
19:47-2.3, 2.7	Payout odds and payment of blackjack	23 N.J.R. 1781(b)		
19:47-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)		
19:47-2.6	Dealing "hole" card in blackjack	23 N.J.R. 1782(a)		
19:47-2.8	Surrender option in blackjack	23 N.J.R. 1783(a)		
19:47-2.11	Splitting pairs in blackjack	23 N.J.R. 1783(b)		
19:47-2.14	Wagering on more than one box in blackjack	23 N.J.R. 1784(a)	R.1991 d.471	23 N.J.R. 2869(b)
19:47-3.3, 4.10, 7.3	Vigorous options in baccarat, minibaccarat, and baccarat-chemin de fer	23 N.J.R. 2926(a)		
19:47-6, 8.2	Implementation of red dog	23 N.J.R. 2231(a)		
19:47-7.7, 7.8	Dealing of hands	23 N.J.R. 2927(a)		
19:47-8.2, 8.3	Rules of the games: notice of changes	23 N.J.R. 2613(a)		
19:47-8.2, 9.1-9.6	Implementation of sic bo	23 N.J.R. 2922(a)		
19:50-3.5	Casino hotel alcoholic beverage control: Type V locations	23 N.J.R. 2006(b)	R.1991 d.469	23 N.J.R. 2869(c)
19:51-1	Advertising by casino licensees	23 N.J.R. 2007(a)	R.1991 d.467	23 N.J.R. 2870(a)

Most recent update to Title 19K: TRANSMITTAL 1991-7 (supplement August 19, 1991)

NOTES

NOTES

OAL CUSTOMER INFORMATION

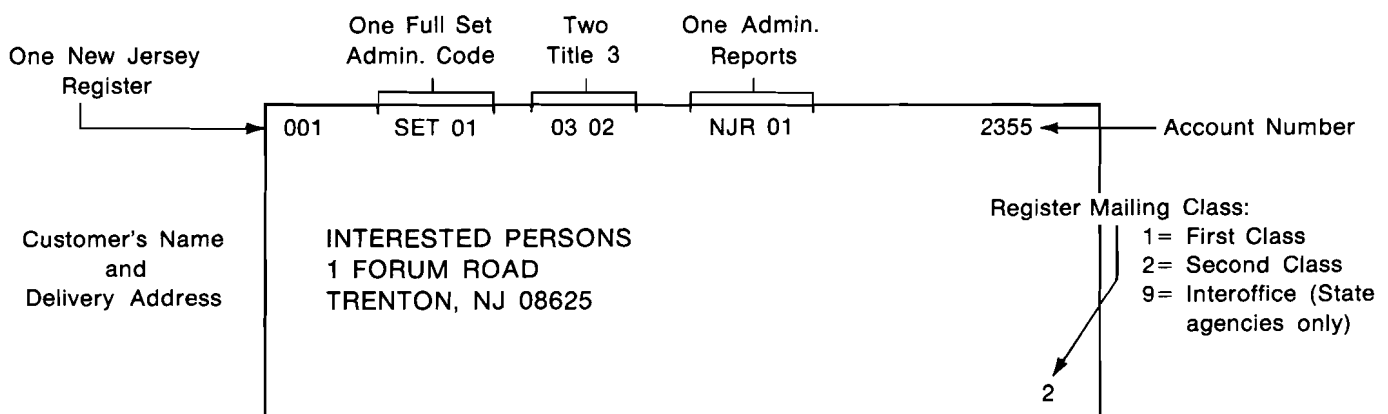
How to Read Your Register Mailing Label

Your customer address label for the New Jersey Register contains a thumbnail sketch of your account at the Office of Administrative Law. Knowing how to read your mailing label enables you to verify the information in your personal records, and should a problem arise, allows us to help you quickly and efficiently.

Printed on the label are the number and kinds of subscriptions you have purchased, and your account number. This master number enables us to retrieve your account record from the thousands on file at the OAL.

The diagram below represents a typical customer address label and shows subscription codes for the New Jersey Register, the New Jersey Administrative Code, and New Jersey Administrative Reports. If, after reviewing your own customer label, you have any questions about your account, please telephone or write to Customer Service, OAL Publications.

Publication and Number of Subscriptions:



OAL Customer Service: 609-588-6606, or write to OAL Publications, CN 301,
Trenton, NJ 08625. Inquiries about payments, only: 609-588-6602 or 6612.



OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

NEW JERSEY ADMINISTRATIVE CODE

- FULL SET (INCLUDES ALL TITLES BELOW) \$1600
- INDIVIDUAL TITLES**
- 1. Administrative Law \$ 70
 - 2. Agriculture \$ 70
 - 3. Banking \$ 70
 - 4A. Personnel (formerly Civil Service) \$ 70
 - 5. Community Affairs (two volumes) \$140
 - 5A. Military and Veterans' Affairs \$ 70
 - 6. Education (two volumes) \$140
 - 7. Environmental Protection (six volumes; includes NJPDES) \$420
 - 7:14A. NJPDES Program Rules only \$ 70
 - 8. Health (four volumes) \$280
 - 9. Higher Education \$ 70
 - 10. Human Services (four volumes) \$280
 - 10A. Corrections \$ 70
 - 11. Insurance (two volumes) \$140
 - 12. Labor (two volumes) \$140
 - 12A. Commerce, Energy and Economic Development ... \$ 70
 - 13. Law and Public Safety (four volumes; includes ABC and AGC) \$280
 - 13:2,3. Alcoholic Beverage Control and Amusement Games Control only \$ 70
 - 14/14A. Public Utilities/Energy \$ 70
 - 15. State \$ 70
 - 15A. Public Advocate \$ 70
 - 16. Transportation (two volumes) \$140
 - 17. Treasury-General \$ 70
 - 18. Treasury-Taxation (two volumes) \$140
 - 19. Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes) \$140

- 19K. Casino Control Commission \$ 70
- Gubernatorial Executive Orders \$ 70
- Full Code Index \$ 70

(Prices include first year of Update Service. Thereafter, Annual Update Service, \$40 per volume. Full Set, \$750.)

New Jersey Register (one year, 24 issues)

By second class mail, \$125

By first class mail, \$215

NEW JERSEY ADMINISTRATIVE REPORTS

New Jersey Administrative Reports (1982-1991).

Volumes 1 through 13, hardbound. Plus,

Cumulative Index \$299

Individual volumes \$35 each

Order from OAL Publications

Now Publishing!

New Jersey Administrative Reports 2d

Comprehensive State Agency coverage, administrative law decisions, September 1991 and after. For subscription information and brochure, write or call:

Barclays Law Publishers

File No. 52030

P.O. Box 60000

San Francisco, CA 94160-2030

(800) 888-3600

Prepayment is required
for all subscriptions.

Please return form with your payment to:

OAL Publications
9 Quakerbridge Plaza
CN 049
Trenton, New Jersey 08625

Name and Delivery Address:

Billing Address, if different:

Telephone Number _____

Amount Enclosed (specify publications) _____

Use this form for the Administrative Code, Register, and N.J.A.R. (1982-1991), only. To order N.J.A.R. 2d, call 800-888-3600.