NEW JERSEY REGISTER

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MAY 21, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JUNE 18, 1990

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDER

RULE PROPOSALS

RULE ADOPTIONS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **August 15, 1990.** 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

Filing Deadlines

August 6 issue:	
Adoptions	**July 16**
August 20 issue:	
Proposals	**July 23**
Adoptions	**July 30**
September 4 issue:	
Proposals	**August 6**
Adoptions	**August 13**
September 17 issue:	
Proposals	**August 17**
Adoptions	**August 24**
October 1 issue:	
Proposals	**August 31**
Adoptions	**September 10**

NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 11(1990)
Rescission of Executive Orders

Issued: June 14, 1990.
Effective: June 14, 1990.
Expiration: Indefinite.

WHEREAS, Executive Order No. 5 signed by Governor Thomas H. Kean declared a state of emergency in certain communities in New Jersey in response to a limited water supply, which emergency has now ceased; and

WHEREAS, Executive Order No. 12 created the Commission on Science and Technology, which Commission has subsequently been made permanent by statute at N.J.S.A. 52:9X-1 et seq.; and

WHEREAS, Executive Order No. 14 created an Advisory Committee on Cancer, which Committee has completed its work; and

WHEREAS, Executive Order No. 20 created the Port Authority Development Advisory Committee, which Committee has completed its work; and

WHEREAS, Executive Order No. 28 created the Certified Public Manager Program in the Department of Civil Service (now the Department of Personnel), which program has been established by the Department of Personnel by regulation under the authority of the Civil Service Reform Act, N.J.S.A. 11A:6-25; and

WHEREAS, Executive Order No. 36 created an Advisory Committee on Capital Expenditures for Health Care Facilities and Executive Order No. 61 extended the Committee, which Committee has completed its work; and

WHEREAS, Executive Order No. 37 created a Committee on the Disabled and Executive Order No. 41 increased its membership, which Committee is duplicative of a new advisory council created by the Commissioner of Labor by administrative order; and

WHEREAS, Executive Order No. 46 created the Inter-Agency Procurement Committee and Executive Order No. 54 increased its membership, which Committee has completed its work that has been implemented through regulations published at N.J.A.C. 12A:10-1.13; and

WHEREAS, Executive Order No. 63 created the Advisory Committee on Hispanic Affairs, which Committee has issued its initial report and has subsequently been made permanent by statute; and

WHEREAS, Executive Order No. 73 created the Pinelands Agricultural Study Commission, which Commission has issued its report and completed its function; and

WHEREAS, Executive Order No. 76 created a Solid Waste Emergency Task Force in response to a work stoppage by certain solid waste contractors, which work stoppage is over; and

WHEREAS, Executive Order No. 88 declared a State of Emergency in various county penal and correctional facilities, and directed the Commissioner of Corrections to designate places of confinement, which Executive Order has been codified by statute at N.J.S.A. 30:4-85.1; and

WHEREAS, Executive Order No. 90 created the State Commission on Child Support, which Commission has issued its report and completed its functions; and

WHEREAS, Executive Order No. 95 created the Agricultural Financing Task Force and Executive Order No. 120 extended the Task Force, which Task Force has issued its report and completed its functions; and

WHEREAS, Executive Order No. 96 required the Division of Criminal Justice to turn over its file on the criminal investigation of an attorney to the Office of the Attorney Ethics, which file has been turned over; and

WHEREAS, Executive Order No. 111 required the Division of Criminal Justice to turn over a file to the Department of Civil Service (now the Department of Personnel) so that the latter could conduct an investigation and disciplinary hearings, which file has been turned over; and

WHEREAS, Executive Order No. 112 created the Law Enforcement Training Academy Study Commission, which Commission has completed its work; and

WHEREAS, Executive Order No. 128 ordered the removal of all Tylenol capsules and Tylenol containing capsules from store shelves due to safety concerns regarding the sale of such capsules, which concerns no longer exist; and

WHEREAS, Executive Order No. 132 created the Intergovernmental Task Force on Motor Vehicles, which Task Force has completed its work; and

WHEREAS, Executive Order No. 145 created a mechanism to monitor and define the permissible use of special service employees, which Executive Order has been implemented through N.J.A.C. 4A:3-3.8; and

WHEREAS, Executive Order No. 150 created a commission to study and make recommendations to improve the shad fishing rights of New Jersey commercial fishermen in the lower Delaware River and Bay, which commission has completed its work; and

WHEREAS, Executive Order No. 154 created the Private Sector Advisory Panel on Motor Vehicles, which Advisory Panel has completed its work; and

WHEREAS, Executive Order No. 166 created a Task Force on Market-Based Pricing, which Task Force has issued its report and completed its functions; and

WHEREAS, Executive Order No. 167 created the Urban Affairs Cabinet Council, which Council has completed its work; and

WHEREAS, Executive Order No. 177 created the Task Force on the Laws Governing the University of Medicine and Dentistry of New Jersey and Executive Order No. 183 extended the Task Force, which Task Force has issued its report and completed its functions; and

WHEREAS, Executive Order No. 187 created the Task Force on Unemployment Insurance Financing, which Task Force has issued its report and completed its functions; and

WHEREAS, Executive Order No. 188 created the New Jersey Commission on Employment and Training and amended Executive Order No. 22 concerning the Job Training Coordinating Council, which Commission has subsequently been created by statute at N.J.S.A. 52:18A-129 et seq.; and

WHEREAS, Executive Order No. 198 created the Performance Reward Committee to review and approve increases in salaries for members of the Executive Branch Senior Executive Service, which has been implemented through salary regulations adopted under the authority of the annual Appropriations Act; and

WHEREAS, Executive Order No. 201 required the Urban Enterprise Zone Authority to review applications on behalf of the State of New Jersey for federal urban enterprises zone consideration, which Authority has issued its report and completed its functions; and

WHEREAS, Executive Order No. 212 declared a State of Emergency due to a trash fire under portions of Routes 22 and 78 and adjacent to Route 1, which emergency has now ceased;

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:

Executive Order Nos. 5, 12, 14, 20, 28, 36, 37, 41, 46, 54, 61, 63, 73, 76, 88, 90, 95, 96, 111, 112, 120, 128, 132, 145, 150, 154, 166, 167, 177, 183, 187, 188, 198, 201, and 212 of Governor Thomas Kean are rescinded, and any regulations adopted and promulgated thereunder shall be null and void.

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Transmission of Contested Cases to the Office of Administrative Law

Proposed Amendment: N.J.A.C. 1:1-8.2

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1990-364.

Submit comments by August 15, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 1:1-8.2 makes several changes in the procedure which agencies use to transmit contested cases for hearing to the Office of Administrative Law (OAL).

First, the proposed amendment would require agencies transmitting cases for hearing to provide specific information about parties and their representatives on the form used to transmit cases to the OAL. This information will allow the OAL to process cases more efficiently and insure that hearing notices are sent to everyone who must receive notices.

The OAL has found that when cases are transmitted without information about how to contact parties and their representatives, delays can occur in scheduling cases. The most frequent delays occur when agencies transmit cases involving corporate parties without specifying the corporation's representative. The time spent locating parties and representatives can also contribute to delays in processing other cases.

The proposed amendment requires that telephone numbers be provided for parties and representatives. Telephone numbers are necessary not only for scheduling purposes, but also because almost all prehearing proceedings are now conducted by telephone. Therefore, telephone numbers must be included in the case file for the judge.

To facilitate compliance with the proposed amendment, the OAL will revise its transmittal form so that the required information will be specifically requested on the form. It should be noted that under N.J.A.C. 1:1-8.3(b), the OAL may return an improperly transmitted case to the agency. The OAL believes that the responsibility for providing accurate information about parties and representatives should rest with the agencies transmitting the cases for hearing.

In addition, the proposed amendment limits to one per agency the number of informational copies of notices that the OAL will supply. If there is more than one person in the agency who requires notice, it will be the responsibility of the agency to duplicate and disseminate the copies. Agencies frequently request copies of notices for more than one person at the agency. Copying and mailing these extra copies is a significant burden for the OAL.

The proposed amendment also specifies that cases should be transmitted to the Clerk in the OAL's Newark office. Delays in processing cases are sometimes caused when agencies misdirect transmitted cases. The OAL is therefore clarifying through this rule amendment that all cases must be transmitted to the Clerk's office in Newark.

Finally, because of internal procedure changes, the OAL has found that it is not necessary for agencies to file the transmittal form itself in duplicate. However, it is essential that any attachments to the form be submitted in duplicate. The proposed amendment clarifies that one transmittal form and two copies of any attachments must be filed.

Social Impact

It is anticipated that the proposed amendment will have a positive social impact. The proposed amendment will enable the OAL to process cases more efficiently and economically and will insure that matters are sent expeditiously to the appropriate persons. Additionally, a positive benefit will be effected by the proposed amendment because it clarifies the procedures used by transmitting agencies.

Economic Impact

The proposed amendment will have an economic benefit by enabling the OAL to use its resources and personnel more efficiently. Staff will be able to focus on scheduling and processing cases, rather than on locating parties and their representatives. In addition, there may be fewer delays in hearings if all newly transmitted cases are directed to the clerk in Newark and notices can be sent to all persons who must receive notice. By limting the number of informational copies of notice, the OAL will reduce its costs for duplicating and mailing notices. There may be some additional costs for agencies which decide to duplicate notices for their own personnel.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment requires more information on forms used by agencies to transmit cases to the OAL for hearing and makes some changes in the transmission procedure.

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

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1.-9. (No change.)

10. The names, [and] addresses **and telephone numbers** of all parties and their attorneys or other representatives, **with each person clearly designated as either party or representative. For any party that is a corporation, the transmitting agency shall provide the name, address and telephone number of the corporation's attorney or non-lawyer representative qualified under N.J.A.C. 1:1-5.4(b)2v.**

11.-12. (No change.)

13. The transmitting agency may provide the name and address of one additional person other than a party or representative to receive a copy of all Clerk's notices in the case. If no person is designated, the OAL shall send an informational copy of notices to the agency's transmitting officer.

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

(f) The completed transmittal form and **two copies of** any attachments shall be filed [in duplicate] with the Clerk of the Office of Administrative Law **at 185 Washington Street, Newark, New Jersey 07102.**

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Clerk's Notices

Rule Pre-Proposal: N.J.A.C. 1:1-9.5

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Pre-proposal Number: PPR 1990-9.

Submit comments by August 15, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
Quakerbridge Road, CN 049
Trenton, New Jersey 08625

Take notice that the Office of Administrative Law (OAL) is considering amending N.J.A.C. 1:1-9.5(a), which requires the OAL Clerk to send a Notice of Filing when a case is accepted at this office to the parties to a contested case. Currently, only a few agencies notify the parties when they grant a hearing that the case is being sent to the OAL. The Notice of Filing thus primarily serves to notify parties to a case that the matter has been transmitted to the OAL. The OAL is weighing whether or not the Notice of Filing serves any significant function given the cost of providing such notice.

The Notice of Filing is one of a series of notices sent by OAL which typically include a Notice of Prehearing and a Notice of Hearing. If the Notice of Filing is eliminated, the OAL would continue to send out other notices scheduling a proceeding.

It should be noted that a single Notice of Filing and Hearing is sent in cases subject to special time requirements, for example, in cases from the Division of Economic Assistance, lemon law cases from the Division of Consumer Affairs and some Community Affairs cases. The elimination of the Notice of Filing would not have any impact on those cases, which involve a large percentage of pro se parties.

The OAL invites comments on the pre-proposal and specifically as to whether the Notice of Filing performs a significant service to the public. In particular, the Office of Administrative Law would like to know if the notice facilitates discovery or settlement discussions or any other discussions concerning the case prior to the prehearing or hearing. Additionally, the OAL would like to know whether the Notice of Filing minimizes requests for adjournments or future notice problems.

This is a notice of pre-proposal for a rule. Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Special Hearing Rules
Exceptions

Proposed Amendments: N.J.A.C. 1:1-18.4, 1:10-18.2, and 1:10B-18.2

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

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

Proposal Number: PRN 1990-365.

Submit comments by August 15, 1990 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, NJ 08625

The agency proposal follows:

Summary

The Office Of Administrative Law (OAL) is proposing amendments to N.J.A.C. 1:1-18.4, 1:10-18.2 and 1:10B-18.2, which alter the method for computing the time frame for filing exceptions to initial decisions issued by administrative law judges. Instead of requiring exceptions for most contested cases within "10 days from receipt of the judge's initial decision," the OAL is amending the text to require that exceptions be filed within "12 days from the date the judge's initial decision was mailed to the parties." For Human Services cases, the proposed amendments replace the five-day exception period with provisions that require exceptions to be filed within seven days from the date the initial decision was mailed to the parties.

The reason for the change is that the OAL prefers to use regular mail to send initial decisions to parties. Decisions are presently being sent by certified mail, but the OAL has decided that using certified mail for thousands of decisions per year is too costly in a time of budget constraints. Currently, to the OAL's knowledge, no New Jersey Court routinely utilizes certified mail to issue its decisions. The proposed amendments add two days to the exception periods to allow for mailing time. The time will run from the date of mailing because the change from certified to regular mail will mean that the date of receipt can no longer be definitely established.

The proposed amendments do not affect the handling of decisions in emergency fair hearings pursuant to N.J.A.C. 1:10-12.2. The OAL will continue to transmit those decisions by overnight mail rather than regular mail in order to insure receipt the day following the decision.

Social Impact

No substantial social impact is foreseen. The proposed amendments affect only the time frame for filing exceptions to initial decisions and are necessary because the OAL has decided to minimize costs by using regular mail rather than certified mail to transmit initial decisions to parties involved in OAL hearings. The proposed amendments extend the time for filing exceptions in order to allow time for initial decisions to reach the parties by regular mail. The OAL will continue to hand-deliver the agency head's copy of the initial decision. Therefore, the agency's 45 day review period remains unimpaired by these proposed amendments. In order to handle those situations where good cause requires that the agency head have additional time to prepare the final decision, the extension process (N.J.A.C. 1:1-18.8) remains available.

Economic Impact

The proposed amendments will have no adverse economic impact on any involved parties. A positive economic benefit will result because the proposed amendments will enable the OAL to implement a new policy that reduces the agency's costs and, therefore, costs to the taxpayer may be reduced as well.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments change the method for computing the time frame for filing exceptions to initial decisions issued by administrative law judges.

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

1:1-18.4 Exceptions; replies

(a) Within [10] **12** days from the [receipt of] **date** the judge's initial decision **was mailed to the parties**, any party may file written exceptions with the agency head and with the clerk. A copy of the exceptions shall be served on all other parties. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

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

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the Office of Administrative Law, the Director of the DEA and to all parties. The exceptions must be received by the DEA no later than [five] **seven** days after [receipt of the initial decision] **the date the initial decision was mailed to the parties**. No replies or cross-exceptions shall be permitted.

1:10B-18.2 Exceptions

(a) (No change.)

(b) Exceptions must be received by the Division of Medical Assistance and Health Services no later than [five] **seven** days after [receipt of the initial decision] **the date the initial decision was mailed to the parties.**

(c) (No change.)

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Biological Products for Diagnostic or Therapeutic Purposes

Proposed Readoption with Amendments: N.J.A.C. 2:6

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:5-107-112.
Proposal Number: PRN 1990-370.

Submit comments by August 15, 1990 to:
Sidney R. Nusbaum, D.V.M., Director
Division of Animal Health
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-3965

The agency proposal follows:

Summary

N.J.A.C. 2:6, Biological Products for Diagnostic or Therapeutic Purposes is due to expire on September 3, 1990 pursuant to the requirements and criteria of Executive Order No. 66(1978). The Department proposes to readopt these rules with amendments to the use of some vaccines and to add a prohibited vaccine.

In September 1985, the New Jersey Department of Agriculture adopted these rules controlling the sale and use of biologics in the State. Previous rules had been found to be largely bookkeeping exercises, ineffective and impractical in helping to secure animal health. Scientific information demonstrated that misuse of veterinary biologics causes the maintenance and spread of disease, complicates the diagnostic process and fails to provide effective disease protection. In December 1985 the Congress of the United States amended the Federal Virus, Serum, and Toxins Act of 1913 to include Federal control of intrastate and export sales. Therefore, the New Jersey Department of Agriculture amended and readopted the rules to clarify the relationship of the state rules to the Federal law and regulations.

The current rules exempt individual registration of most Federally licensed manufacturers or products, limit the use of certain products which may introduce disease or diagnostic complications to the State, and limit the use of all, except poultry, biologics to the use or the prescription of a veterinarian. The proposed amendments are for the purpose of clarification or correction. At N.J.A.C. 2:6-1.2, (a) is being deleted and replaced with more precise language and (b) is being deleted because, with the addition of Brucella Abortus Vaccine to the list of prohibited biological products at (c), (b) is redundant. At N.J.A.C. 2:6-1.5(a), an unnecessary reference to the Administrative Procedures Act is being deleted and a reference to diagnostic biologics is added to (b) as well as the deletion and rewriting of redundant material concerning the administration of Brucella Abortus and ecthyma vaccines.

These rules do not apply to drugs or chemicals, including antibiotic preparations.

Social Impact

The rules affect veterinarians, livestock owners and poultrymen in that they are designed to protect them from ineffective vaccines, serums, antigens and diagnostic agents used to determine, prevent, and treat animal disease. The rules also protect the general public by keeping ineffective products off the market. The risks of not having these rules include ineffective vaccines, maintenance and spread of infection, improper handling, misdiagnosis and treatment by laymen. In addition, they protect human health by restricting exposure to virulent organisms.

Economic Impact

Diagnosis, prevention and treatment of animal disease by the proper use of veterinary biologics prevent losses of horses, livestock and poultry due to morbidity and mortality, thus increasing economic return of animal agricultural products. Healthy animals permit farmers to compete more effectively in the national and international distribution and sale of animal agricultural products. A minor degree of economic loss may occur within the animal feedstuff industry and the pet-animal industry by not being able to sell certain biologicals.

Regulatory Flexibility Analysis

The restriction of biologics use to veterinarians has an impact upon the farmers of this State. Most if not all farmers are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no reporting or recordkeeping requirements in these rules; however, there are compliance requirements which establish that biologics must be administered or sanctioned by a veterinarian. Therefore, the farmer may incur expenses related to the need for the professional services of a veterinarian in the treatment of livestock. However, they must be applied in a uniform and complete manner to be effective. They deal with the control of disease and the public welfare. The Department does not believe an exception for small businesses which all farmers and veterinarians in New Jersey must be considered could be allowed. The rules permit non-professional people to acquire and use the products if a veterinarian believes they are capable, and the veterinarian sanctions it.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:6.

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

2:6-1.2 Distribution of biologics

[(a) No biologic, diagnostic biologic or prophylactic biologic shall be distributed without a license or written permission by the Director, or exemption by these regulations.

(b) The distribution of any Brucella Vaccine and Contagious Ecthyma of sheep vaccines for use in New Jersey is prohibited except by the Division of Animal Health.]

(a) Unless otherwise stated, all United States Department of Agriculture (U.S.D.A.) licensed biologics may be distributed and used according to the terms of this chapter.

(b) No unlicensed or conditionally licensed biologic or diagnostic biologic shall be distributed without the written permission of the Director.

(c) The distribution and use of the following biological products in New Jersey is prohibited:

1.-3. (No change.)

4. Brucella Abortus Vaccine:

Existing 4.-11. recodified as **5.-12.** (No change in text.)

(d) (No change.)

2:6-1.5 Use of biologic products, diagnostic biologics and prophylactic biologics

(a) Only approved biologic products may be used in New Jersey in accordance with N.J.A.C. 2:6-1.2 and 2:6-1.3[, and the Administrative Procedures Act, N.J.S.A. 52:14B-1, et seq].

(b) All biologic products, including **diagnostic biologics and** rabies vaccines, shall be administered only by or on the order of a licensed veterinarian, except:

1. Prophylactic biologics used to immunize poultry;

[2. The use of diagnostic biologics for any reportable animal disease as enumerated in N.J.S.A. 4:5-4 et seq., shall only be by or on the order of an accredited veterinarian;

3. Only accredited veterinarians may administer prophylactic biologics for the immunization of domestic animals against brucella contagious ecthyma of sheep and any other disease which may be designated by the Director;]

2. Administration of Brucella Abortus and contagious ecthyma vaccines shall be performed only by accredited veterinarians;

[4.]**3.** (No change in text.)

(a)

DIVISION OF PLANT INDUSTRY

Sale and Distribution of Plants and Plant Material Rose Plants

Proposed New Rules: N.J.A.C. 2:19-2

Authorized By: State Board of Agriculture, Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:7-1 et seq.
Proposal Number: PRN 1990-371.

Submit written comments by August 15, 1990 to:
William W. Metterhouse, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

The agency proposal follows:

Summary

The Department of Agriculture is proposing new rules to limit the trade in virus-infected rose plants. The proposed new rules require that rose plants be inspected during the growing season by an official state inspector in the state in which the rose plants were produced, and officially certified to be visibly free from virus diseases before such plants are admissible into New Jersey. The proposed new rules also require that all shipments of rose plants into and within New Jersey be accompanied by a copy of the official certificate stating that the plants were found to be visibly free of plant viruses; and that any garden center, nursery, plant dealer or broker, or anyone offering rose plants for sale shall have a copy of the above-mentioned official certificate for each shipment on file in their establishment.

Rose mosaic virus is readily visible in the foliage when plants are forced for bloom, but is very hard to detect in dormant plants. Nurseries and growers who force rose plants into bloom for resale have had large portions of these crops condemned when the virus is detected. The proposed new rules are intended to prevent further economic losses experienced by nurseries and growers dealing in rose plants due to poor propagation practices by rose producers.

Dormant plants that are virus-infected can readily be passed on to consumers without detection. The proposed new rules are also intended to provide broader consumer protection.

Finally, the new rules are intended to assist the Department of Agriculture in its statutory responsibility to prohibit the movement of diseased plant material. Rose mosaic virus is spread through propagation from infected plants and cannot be eradicted through chemical treatment. Removal and destruction of infected plants is the most effective method of control. The trade of rose plants is a large multi-state operation. The negligence of the industry in failure to implement rigorous selection in its propagation practices has created a situation where interstate commerce is threatened; this situation is further compounded by the failure of the growing states to properly police the industry.

Social Impact

The Department of Agriculture believes that enforcement of the proposed new rules will result in hardier, more beautiful and longer-lasting plants being provided to consumers. This should benefit all consumers purchasing rose plants, as well as the approximately 500 plant dealers and 1,000 nurseries in New Jersey. These desirable qualities in roses should offset the costs of compliance.

Economic Impact

The costs of compliance will be higher on producers of roses. These increased costs will likely be passed on to the consumer as slightly higher retail prices. However, there will be a reduction in the cost to New Jersey brokers and growers due to the decreased numbers of infected plants condemned by the Department of Agriculture. The dealer or nurserymen who must force plants before disease identification have the added costs associated with forcing; pots, soil, fertilizer, pesticides, greenhouse heat, labor and management, prior to the ultimate destruction of the diseased plants. There also will be savings in the damage to the reputation of businesses, and in the disruption of commerce when large numbers of infected plants are detected and destroyed.

Regulatory Flexibility Analysis

The Department of Agriculture believes most of the establishments affected by these rules, the approximately 500 plant dealers and 1,000 nurseries in New Jersey, are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules do not entail increased reporting, but do increase record keeping. Currently, all plant dealers and nurseries are required to keep on file a listing of the sources of plant material for sale in their establishments pursuant to N.J.S.A. 4:7-16 et seq. The cost to comply with the proposed new rules and the administrative impact of providing copies of the official certificates with each shipment are expected to be minimal. To the extent that these rules add a better product to the stream of commerce and decreased numbers of condemned plants in New Jersey, these rules will be beneficial to small businesses and consumers. No differentiation in requirements based upon business size is, therefore, provided.

Full text of the proposal follows:

SUBCHAPTER 2. ROSE PLANTS

2:19-2.1 Purpose

The provisions of this subchapter are prescribed for the shipment of rose plants into and within the State of New Jersey in order to prevent the movement into the State of diseased, virus-infected rose plants.

2:19-2.2 Virus-infected rose plants declared a nuisance

The State Board of Agriculture declares virus-infected rose plants *(Rosa sp.)*, being those plants infected with rose mosiac disease (containing apple mosaic virus or prunus necrotic ringspot virus), appearing to be infected with rose mosaic disease or plants exhibiting symptoms of, or similar to, known virus diseases of roses, to be a nuisance.

2:19-2.3 Rose plants eligible for movement only after official inspection for virus diseases

Rose plants may be shipped into the State of New Jersey only after they have been inspected during the growing season by a state inspector in the state in which they were grown, at the time appropriate for symptom expression and found to be visibly free from virus diseases; especially viruses associated with rose mosaic disease (apple mosiac virus and prunus necrotic ringspot virus).

2:19-2.4 Shipments of rose plants must carry certification of visual freedom from virus diseases

(a) All shipments of rose plants entering the State of New Jersey must be accompanied by an official certificate or statement issued by the proper state official in the state of origin, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found visibly free of plant viruses. For the purposes of this section, the term "shipments of rose plants" includes any conveyance (including mail order) of dormant, packaged, preplanted or "in-leaf" rose plants.

(b) Anyone offering rose plants for sale in New Jersey must have on file in their establishment, and available for public inspection upon request, a copy of the official certificate or statement issued by the proper state official in the state of origin for each shipment of plants, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found visibly free of plant viruses.

(c) The New Jersey Department of Agriculture may, in accordance with the appropriate statutes, order the destruction of or return to the point of origin any rose plants received in the State of New Jersey without such a certificate, or expressing symptoms of virus diseases whether or not accompanied by such certificate.

2:19-2.5 Effective date of growing season certificates

Growing season certificates shall be required for all shipments sent or received on or after October 1, 1991.

(a)

DIVISION OF PLANT INDUSTRY

Quarantines

White Pine Blister Rust

Proposed New Rules: N.J.A.C. 2:20-2

Authorized By: State Board of Agriculture, Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 4:7-1 et seq.
Proposal Number: PRN 1990-372.

Submit comments by August 15, 1990 to:
William W. Metterhouse, Director
Division of Plant Industry
New Jersey Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5441

The agency proposal follows:

Summary

The Department of Agriculture is proposing to adopt after a lapse of many years, quarantines to prevent the establishment of the White Pine Blister Rust *(Cronartium ribicola Fischer).* White Pine Blister Rust is a plant disease which primarily attacks pine trees and European black currant plants. White pine is widely planted throughout New Jersey for landscape and soil erosion control purposes. The disease has two phases, one on pine and the other on its alternate host, European black currant. Eliminating the black currant and prohibiting its planting prevents the spread of the disease to pine. These rules prohibit the planting of European black currant in New Jersey; and reestablish a protected area where red currant and gooseberry plants, which also support the disease to a lesser extent, are prohibited.

Social Impact

Currant plants are highly prized by some home gardeners. The Department of Agriculture believes this group will be the most negatively affected by the prohibition of planting. However, the adoption of the quarantine will, in the opinion of the Department of Agriculture, be beneficial to the general public. White pines are major components of many residential and commercial landscapes. Death of mature trees due to blister rust diminishes the aesthetic value of the landscape and may also reduce the property value, while burdening the property owner with the cost of removal and replacement. White pines are also widely planted around watersheds in the state for soil erosion control. Loss of these trees would contribute to destabilization of the soil surrounding the watersheds, leading to increased run-off and siltation.

Economic Impact

The cost of compliance with the rules will be cheaper than the costs of chemical applications to retard the spread of the disease, or the loss of trees when diseased. Nurserymen producing white pines may be significantly negatively impacted if their trees are deemed unsalable due to widespread infection by blister rust in nurseries. Nurseries, dealers, brokers and shippers do not engage in significant trade of currant plants; loss of this trade would be negligible.

Regulatory Flexibility Analysis

The Department of Agriculture believes only a limited number of affected persons, that is, nurseries, dealers, brokers and shippers dealing in European black currant, red currant or gooseberry plants, are small businesses as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance with the proposed rules would require that European black currant plants not be sold; loss of this trade would be negligible. This rulemaking does not impose any added reporting or record keeping requirements. Because this is a disease control measure, no exceptions can or should be made for small businesses.

Full text of the proposal follows:

SUBCHAPTER 2. WHITE PINE BLISTER RUST
(CRONARTIUM RIBICOLA FISCHER)

2:20-2.1 White pine blister rust declared a nuisance

The State Board of Agriculture has determined that white pine blister rust *(Cronartium ribicola Fischer)* is a dangerous plant disease and is hereby declared a nuisance.

2:20-2.2 Preventing the spread of white pine blister rust

(a) In order to prevent the spread of white pine blister rust *(Cronartium ribicola Fischer)* in the State of New Jersey, the distribution and movement of the plant material will be regulated as follows:

1. Five-leaved pines *(Pinus sp.),* except such pines visibly infected with white pine blister rust, may be moved into or within New Jersey.

2. The movement of European Black Currant *(Ribes nigrum L.)* plants into or within New Jersey is prohibited.

3. The movement of any species, variety, or hybrid of currant and gooseberry plants *(Ribes sp.* and *Grossularia sp.)* into the following townships, constituting a protective area, is prohibited: Montague, Sandyston, Walpack and Vernon Townships in Sussex County; West Milford, Ringwood and Wanaque Townships in Passaic County; and Jefferson Township in Morris County.

4. Currant plants and gooseberry plants other than the European Black Currant *(Ribes nigrum L.)* may be moved into and within all other points in New Jersey by complying with the general requirements of the New Jersey Department of Agriculture for the movement of nursery stock (N.J.S.A. 4:7-16 et seq.).

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Landlord-Tenant Relations

Proposed Readoption: N.J.A.C. 5:29

Proposed Amendments: N.J.A.C. 5:29-1.2

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 46:8-28, 46:8-9.2 and 52:27D-3(e).
Proposal Number: PRN 1990-363.

Submit written comments by August 15, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), the rules concerning Landlord-Tenant Relations, N.J.A.C. 5:29, are scheduled to expire on June 18, 1991. The Division of Housing and Development has reviewed these rules and finds that they continue to be necessary to ensure uniformity in the forms given by landlords to tenants in compliance with the Landlord Identity Disclosure Act and in the forms given by certain disabled tenants in accordance with N.J.S.A. 46:8-9.2, which allows early termination of tenancies under certain circumstances. The chapter proposed for readoption includes these two prescribed forms.

The rule concerning the Landlord Identity Disclosure statement has been amended to indicate that the address of the dwelling must be included. Though it would appear to be a matter of common sense, as well as in the landlord's own interest, that the document be appropriately identified with the property, particularly since a copy of it may have to be produced in any eviction action, the Department has come across a few cases where landlords, for reasons known only to them, have refused to include it.

Social Impact

Failure to readopt these rules would remove an obstacle to non-uniformity in the form of Landlord Identity Disclosure statements and would leave disabled tenants who might need to terminate their tenancies without the form that the Department is required by statute to provide. Requiring identification of Landlord Identity Disclosure forms by street address will assist municipal clerks in filing the documents properly.

Economic Impact

Failure to readopt these rules would not be likely to have any very great economic impact. However, a disabled tenant who found himself or herself in need of a form that no longer existed in order to terminate a tenancy might be forced to incur expenses in the unlikely event that an intransigent landlord insisted on collecting the rent for the balance

of the term because the proper form was not submitted. The lack of a standard Landlord Identity Disclosure form might conceivably complicate eviction actions if a form lacking some of the required information is used.

Regulatory Flexibility Statement

These forms implement statutory requirements. There is no basis for any distinction between landlords that are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, and those that are not.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:29.

Full text of the amendments follows (additions indicated in boldface **thus**).

5:29-1.2 One and two-unit dwelling registration form

(a) The form of the certificate of registration to be filed with the municipal clerk and distributed to tenants by owners of non-owner occupied one- and two-unit dwellings shall be substantially as follows:

LANDLORD IDENTITY STATEMENT
(One and Two-Unit Rental Dwellings)

Address of Dwelling:
1.-8. (No change.)

Date: _____ _____
Landlord or Authorized Representative

(b) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1991-92 Fish Code

Proposed Amendments: N.J.A.C. 7:25-6

Authorized By: Fish and Game Council, Cole Gibbs, Acting Chairman.
Authority: N.J.S.A. 13:1B-29 et seq. and 23:1-1 et seq.
DEP Docket Number: 023-90-06.
Proposal Number: PRN 1990-380.

A **public hearing** concerning these proposed amendments will be held on:

August 14, 1990 at 7:30 P.M., at:
Assunpink Wildlife Conservation Center
Eldridge Road
Assunpink Wildlife Management Area
Robbinsville, New Jersey 08691

Submit written comments by August 20, 1990 to:
Sue Kleinberg, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Fish Code (Code), N.J.A.C. 7:25-6, states when, by what means, at which location, in what numbers and at what sizes, fish may be pursued, caught, killed or possessed.

The proposed amendments to N.J.A.C. 7:25-6 for the 1991-92 fishing season are as follows:

1. Opening day of the 1991-92 trout season has been set for April 6, 1991. All of the dates throughout the Code which are dependent on this date have been adjusted accordingly.

2. A number of clarifications in the descriptions of trout-stocked waters have been made. These clarifications do not involve substantial changes.

3. The Department of Environmental Protection (Department) has implemented a standardized rating system for the State's trout-stocked waters. Based on such criteria as size, flow and angler interest, each body of water is given a discrete numerical weight, upon which its trout allocation is based. As a result, adjustments in the number of in-season stockings which specific waters are scheduled to receive have been proposed in these amendments.

4. A section of the Delaware-Raritan Canal, extending from Mulberry Street in Trenton to U.S. Route 1, has been added to the list of trout-stocked waters, based, in part, on water quality, availability of parking, proximity to population centers and angler interest. This is the only section of the canal between Trenton and Princeton not heretofore stocked with trout.

5. The Manasquan (Oak Glen) Reservoir will open to public fishing in 1991 and it has been added to the list of trout-stocked waters.

6. Columbia Lake (Warren County) and the section of the Paulinskill River between that lake and the Delaware River have been deleted from that portion of the Paulinskill River which is subject to in-season closures. Trout allocations have been adjusted to reflect the fact that Columbia Lake is separate from the lower end of the Paulinskill River which is one of 16 major New Jersey trout streams. Both the lake and the downstream stretch of the river will continue to be stocked with trout.

7. The daily possession limit for trout will be six trout for the period of April 6, 1991 to May 31, 1991 and four thereafter on all waters, except those designated as Special Regulation Trout Fishing Areas.

8. A daily possession limit has been established for lake trout taken outside of Special Regulation Trout Fishing Areas. The limits will be the same as those set for the other species of trout taken outside these specially regulated areas. Currently, except for the Special Regulation Trout Fishing Areas, the taking of lake trout is unregulated.

9. The Pequest Trout Conservation Area, in which additional restrictions as to seasons and catches are imposed, has been extended one half mile upstream and now includes the portion of the river from the County bridge on Pequest Furnace Road upstream to the Conrail Railroad Bridge upstream of the Pequest Trout Hatchery Access Road. This area, with its superior habitat due to excellent water quality from a good groundwater feed and population supplemented by escaping fish from the Pequest Hatchery, is especially desirable for angling and requires special measures to preserve the population.

10. The effective dates of the Trout Conservation Area regulations have been extended to include the final in-season stocking of trout and the fall stockings (May 20, 1991 to March 16, 1992) instead of the four-month period (June-September) covered previously.

11. The commercial netting season in the Delaware River tributaries has been set to open on March 1, 1991 (previously the traditional opening date for this season has been February 1) in order to reduce the by-catch of striped bass.

12. A closed season, from March 1 to April 30, has been established for walleye in the Monksville Reservoir system. This has been done to protect the walleyes during their spawning period and, thereby, maximize the potential for their establishment in this new impoundment.

13. A 13-inch size limit has been set for smallmouth bass in the Manasquan Reservoir. This size has been found empirically to protect 1-1/2 year classes of spawners in reservoirs and has therefore been adopted as the Department's standard procedure for establishing and maintaining this species in major impoundments.

14. Seasons, size limits and creel limits on striped bass have, for the most part, been deleted from this Code, as they are now governed by the Striped Bass Act, N.J.S.A. 23:5-43 et seq., as amended by P.L. 1990, c.5.

15. The term "longbow" technically prohibited many of the bows that were commonly used for bow and arrow fishing. A clarification has been made to legalize recurved and compound bows which are hand-held and hand-drawn for the purpose of fishing.

16. The size limits on smallmouth bass and walleye have been increased to 12 inches (from nine inches) and 18 inches (from 15 inches), respectively, in the Delaware River and the daily creel limit for walleye has been reduced from five to three. This change has been proposed, in conjunction with the States of New York and Pennsylvania, to improve the size structure of the populations of these species so as to provide acceptable numbers of fish of suitable size for angling.

17. Chinook salmon is included in the definition of fish for the purpose of these amendments, in anticipation of its pending inclusion in the Department's fishery management program.

18. The definition section has been amended and recodified to N.J.A.C. 7:25-6.2, resulting in additional recodification of N.J.A.C. 7:25-6.2 through 6.19.

Social Impact

For the most part, the proposal departs little from the 1990-91 Fish Code. The amendments proposed for the 1991-92 Fish Code are generally minor clarifications of the rules presented in the 1990-91 Fish Code and include adjustments in season, size, and creel limits of certain species based upon the most recent population data. Two items, however, are expected to have a discernible impact:

1. The expansion of the Pequest Trout Conservation Area will result in a reduction of the number of trout that may be removed from the area. This is a heavily fished stretch of river adjacent to the State trout hatchery that is well stocked and provides for only a short-term (2-3 months) fishery. Anglers who habitually fish the stretch for the purpose of taking trout for consumption will have decreased opportunity to take these fish under this provision. However, the limited catch associated with the proposal will enable this stretch of stream to maintain numbers of trout commensurate with a year-round fishery.

2. Increased size limits on smallmouth bass and walleye in the Delaware River will reduce the permissible catch of these species. The data used to support these changes, which were collected by the Commonwealth of Pennsylvania, implicate overfishing rather than loss of habitat as the primary population stressor.

Economic Impact

No specific, significant, economic impact or detriment is expected to arise from the proposed amendments, since they are primarily a continuation, after annual review, of the same level of activity as in the existing freshwater fisheries program. Any adverse impact on anglers who utilize these species as food or on suppliers of bait or tackle to these fishermen is anticipated to be infinitesimal.

Environmental Impact

The Fish Code has been established to promote the greatest recreational use of the State's freshwater fisheries without endangering the future of the resource. The annual revisions to the Fish Code help to preserve and maintain the resource based upon the most recent changes in the resource and its user population. This will maximize the recreational potential of the resource.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments would not impose reporting, record keeping, or other compliance requirements on small businesses, because small businesses are not regulated by N.J.A.C. 7:25-6.

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

SUBCHAPTER 6. [1990-91] **1991-92** FISH CODE

7:25-6.1 (No change.)

[7:25-6.2] **7:25-6.3** Trout Season and Angling in Trout-Stocked Waters

(a) [The] **Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19, and (i) below; the** trout season for [1990] **1991** shall commence 12:01 A.M. January 1, [1990] **1991** and extend to midnight March [18, 1990] **17, 1991.** The trout season shall re-open at 8:00 A.M. Saturday, April [7, 1990] **6, 1991** and extend to include March [17, 1991] **16, 1992.** [(See separate regulations for Greenwood Lake, the Delaware River between New Jersey and Pennsylvania and Special Regulation Trout Fishing Areas.)]

(b) [It] **Except as provided in N.J.A.C. 7:25-6.4, 6.6 and 6.7 and (i) below, it** shall be unlawful to fish for any species of fish from midnight of the [18th] **17th** of March to 8:00 A.M. on April [7, 1990] **6, 1991** in ponds, lakes or those portions of streams that are listed herein for stocking during [1990] **1991**. [(See separate regulations for Spruce Run Reservoir and Special Regulation Trout Fishing Areas.)]

(c) [Waters] **Except as provided in N.J.A.C. 7:25-6.6 to 6.9, waters** with listed stocking dates shall be closed to all fishing from 5:00 A.M. to 5:00 P.M. on listed dates; included in these waters are all feeder and tributary streams for a distance of 100 feet from the main channel.

(d) [Trout] **Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout**-stocked waters from which in-season closures will be in force[;], waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated[.], **provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following**:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April [13, 20, 27; May 4, 11, 18, 25.] **12, 19, 26; May 3, 10, 17, 24.**

2. Black River—Route 206, Chester [at dam at], **the posted Black River Fish and Game Club property at the** lower end of Hacklebarney State Park—April [12, 19, 26; May 3, 10, 17, 24] **11, 18, 25; May 2, 9, 16, 23.**

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden footbridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April [13, 20, 27; May 4, 11, 18, 25] **12, 19, 26; May 3, 10, 17, 24.**

7. Paulinskill River **and E. Br. and W. Br.**—[Limecrest Railroad Spur Bridge] **County Route 648 Bridge on E. Br.,** Sparta Township, **and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp.,** to [Delaware River] **Columbia Lake**—April [12, 19, 26; May 3, 10, 17, 24] **11, 18, 25; May 2, 9, 16, 23.**

8. Pequest River—Source to Delaware River—April [13, 20, 27; May 4, 11, 18, 25] **12, 19, 26; May 3, 10, 17, 24.**

9. Pohatcong Creek—Route 31 to Delaware River—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21.**

10. Ramapo River—State line to Pompton Lake—April [12, 19, 26; May 3, 10, 17] **11, 18, 25; May 2, 9, 16.**

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April [11, 18, 25; May 2, 9, 16, 23] **10, 17, 24; May 1, 8, 15, 22.**

12. Raritan River S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April [10, 17, 24; May 1, 8, 15, 22] **9, 16, 23, 30; May 7, 14, 21.**

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

15. Wallkill River—W. Mt. Road to Route 23 Hamburg—April [9, 16, 23, 30; May 7, 14, 21] **8, 15, 22, 29; May 6, 13, 20.**

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, **Monksville Reservoir** and Lake Inez—April [13, 20, 27; May 4, 11, 18, 25] **12, 19, 26; May 3, 10, 17, 24.**

[(Note: The Division reserves the right not to stock on the above dates when emergency situations prevail.)]

(e) **Except as provided in N.J.A.C. 7:25-6.6 to 6.8**, [No] **no** person shall catch, take, kill or possess trout during the closed period (5:00 a.m. to 5:00 p.m.) on any of the waters listed for in-season closures.

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parentheses indicates the anticipated number of stockings to be carried out from April [10] **8** through May 31[.], **provided that, in the event of emergent conditions, the Division may suspend stocking of any or all of the following:**

[(Note: The Division reserves the right to suspend stocking when emergency conditions prevail.)]

1. (No change.)

2. Bergen County

Hackensack River—Lake Tappan to Harriot Avenue, Harrington Park—(4)

Hohokus Brook—Forest Road to Whites Pond—(4)

Indian Lake—Little Ferry—(4)

Mill Pond—Park Ridge—[(2)] (3)

Pascack Creek—Orchard Street, Hillsdale, to Lake Street, Westwood—(4)

Saddle River—State Line to Grove Street, Ridgewood—(5)
Tienekill Creek—Closter, entire length—[2] (3)
Whites Pond—Waldwick—[3] (4)
3.-9. (No change.)
10. Hunterdon County
Amwell Lake—Linvale—(3)
Beaver Brook—Clinton Township, entire length—(2)
Capoolong Creek—Pittstown, entire length—(5)
Delaware-Raritan Feeder Canal—Bulls Island to Hunterdon—Mercer County line—(6)
Everittstown Brook—Everittstown, entire length—(1)
Frenchtown Brook—Frenchtown, entire length—(2)
Hakihohake Creek—[Milford,] **Holland Township,** entire length—[(2)] (5)
Lockatong Creek—Opdyke Road Bridge, Kingwood Township to Delaware-Raritan Feeder Canal—[(3)] (5)
[Milford Brook—Milford, entire length—(3)]
Mulhockaway Creek—Pattenburg, source to Spruce Run Reservoir—[(4)] (5)
Neshanic River—Kuhl Road to Hunterdon County Route 514—(2)
Rockaway Creek—Readington Township, entire length—(4)
Rockaway Creek, S. Br.—Lebanon to Whitehouse, entire length—[(3)] (5)
Round Valley Reservoir—Lebanon—(3)
Spring Mills Brook—Spring Mills, entire length—(2)
Spruce Run—Glen Gardner and Lebanon Township, entire length—[(4)] (5)
Spruce Run Reservoir—Clinton—(3)
Sydney Brook—Sydney, entire length—(1)
Wickecheoke Creek—Covered Bridge, Sergeantsville, to Delaware River—(2)
11. Mercer County
Assunpink Creek—Assunpink Site 5 dam upstream of Rt. 130 Bridge to Carnegie Road, Hamilton Township—[(5)] (4)
Colonial Lake—Lawrence Township—(3)
Delaware-Raritan Canal—[U.S. 1] **Mulberry Street Trenton, to** Alexander St., Princeton—(4)
Delaware-Raritan Feeder Canal—Hunterdon-Mercer County line to Upper Ferry Road Bridge—(6)
Rosedale Lake—Rosedale—(3)
Stony Brook—Woodsville to Port Mercer—(4)
12. (No change.)
13. Monmouth County
Big Brook—Clover Hill, Route 34 to Swimming River Reservoir—(2)
Englishtown Mill Pond—Englishtown—(3)
Garvey's Pond—Navesink—(3)
Hockhocksen Brook—Hockhocksen Road to Garden State Parkway bridge (northbound)—[(3)] (5)
Holmdel Park Pond—Holmdel—[(3)] (5)
Manasquan Reservoir—Howell Township—(3)
Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—[(4)] (5)
Mohawk Pond—Red Bank—(4)
Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocksen Brook—(2)
Shark River—Hamilton, Route 33 to Remsen Mill Road—[(4)] (5)
Spring Lake—Spring Lake—(3)
Takanassee Lake—Long Branch—(4)
Topenemus Lake—Freehold—(3)
Yellow Brook—Heyers Mill Road to Muhlenbrink Rd., Colts Neck Township—(2)
14. Morris County
Beaver Brook—Rockaway, entire length—(3)
Burnham Park Pond—Morristown—[(3)] (4)
Drakes Brook—Flanders, entire length—[(3)] (5)
Hibernia Brook—Hibernia, entire length—[(4)] (5)
India Brook—Mountainside Ave. to Route 24, Ralston—(5)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Musconetcong—Netcong—[(2)] (3)
Mill Brook—Center Grove, entire length—(2)
Mt. Hope Pond—Mt. Hope—[(2)] (3)
Passaic River—White Bridge to Dead River—(6)
Pompton River—Pequannock Township (see Passaic Co.)—(4)
Russia Brook—Jefferson Township, Ridge Road to Lake Swannanoa—(2)
Speedwell Lake—Morristown—[(3)] (4)
Whippany River—Tingley Road, Morris Township, to Rt. 202, Morristown—(2)
15. (No change.)
16. Passaic County
Barbour's Pond—West Paterson—[(2)] (3)
Clinton Reservoir—Newark Watershed—(3)
Greenwood Lake—West Milford—[(2)] (3)
Monksville Reservoir—Hewitt—(3)
Oldham Pond—North Haledon—[(2)] (3)
Pequannock River—Route 23, Smoke Rise to Paterson-Hamburg Turnpike, Pompton Lakes—(6)
Pompton Lake—Pompton Lakes—[(2)] (3)
Pompton River—Pompton Lake to Newark-[Paterson] **Pompton** Turnpike—(4)
Ringwood Brook—State line to Sally's Pond, Ringwood Park—[(4)] (5)
Sheppard's Lake—Thunder Mountain, Ringwood Borough—(3)
17. (No change.)
18. Somerset County
Harrison Brook—Liberty Corner, entire length—(1)
Lamington River—Rt. 523 (Lamington Road) at Burnt Mills to Jct. with North Branch of Raritan River—(4)
Middle Brook, E. Br.—Martinsville, entire length—(2)
Passaic River—White Bridge to Dead River—[(6)] (4)
Peapack Brook—Peapack, entire length—[(4)] (5)
Raritan River—Jct. of Raritan River N.Br. and S.Br. to dam at Edgewater Road—(4)
Rock Brook—Zion, entire length—(1)
19. Sussex County
Alm's House Brook—Myrtle Grove, Hampton Township, entire length—(2)
Andover Junction Brook—Andover, entire length—(2)
Beaver Run Brook—Beaver Run, entire length—(1)
Bier's Kill—Shaytown, entire length—(2)
Big Flat Brook, Upper—Saw Mill Lake, High Point State Park, to 100 ft. above Steam Mill Bridge on Crigger Road—(4)
Canistear Reservoir—Newark Watershed—(3)
Clove River—Junction of Route 23 and Mt. Salem Road to Route 565 bridge—[(3)] (5)
Cranberry Lake—Byram Township—(3)
Culver's Lake Brook—Frankford Township, entire length—(2)
Dry Brook—Branchville, entire length—[(2)] (3)
Franklin Pond Creek—Hamburg Mt. W.M.A., entire length—[(4)] (5)
Glenwood Brook—Lake Glenwood to State line—(2)
Iliff Lake—Andover Township—(3)
Kymer's Brook—Andover, entire length—(2)
Lake Musconetcong—Netcong—(2)
Lake Hopatcong—Lake Hopatcong—(3)
Lake Ocquittunk—Stokes State Forest—(3)
Little Flat Brook—Sandyston Township, entire length—(5)
Little Swartswood Lake—Swartswood—[(2)] (3)
Lubbers Run—Byram Township, entire length—(5)
Neldon Brook—Swartswood, entire length—(2)
Papakating Creek—Plains Road bridge to Route 565 Lewisburg—(2)
Papakating Creek, W. Br.—Libertyville, entire length—(2)
Pond Brook—Middleville, entire length—[(3)] (5)
Roy Spring Brook—Stillwater, entire length—(1)
Saw Mill Lake—High Point State Park—(3)
Shimers Brook—Montague Township, entire length—(2)
Stony Lake—Stokes State Forest—(3)
Swartswood Lake—Swartswood—(3)
Trout Brook—Middleville, entire length—(2)
Tuttles Corner Brook—Tuttles Corner, entire length—(2)
Wawayanda Lake—Vernon—(3)

20. Union County
Green Brook—Route 527, Berkeley Heights, to Route 22, Scotch Plains—(2)
Lower Echo Park Pond—Mountainside—(3)
Milton Lake—Madison Hill Road Bridge to Milton Lake Dam, Rahway—(4)
Rahway River—[Morris Ave. (Route 524), Union] **Route I-78 Bridge, Springfield,** to St. George Ave. (Route 27), Rahway—(4)
Seeleys Pond—Berkeley Heights—(3)
21. Warren County
Barker's Mill Brook—Vienna, entire length—(1)
Beaver Brook—Silver Lake Dam to Pequest River—(5)
Blair Creek—Hardwick Center to Blair Lake—(2)
Blair Lake—Blairtown—[(2)] (3)
Buckhorn Creek—Roxburg, entire length—(2)
Columbia Lake and Gatehole—Knowlton Township—(3)
Dunnfield Creek—Delaware Water Gap National Recreation Area, entire length—(2)
Furnace Brook—Oxford, entire length—(2)
Furnace Lake—Oxford—(3)
Honey Run—Swayze's Mill Road to Route 519, Hope Township—(2)
Jacksonburg Creek—Jacksonburg, entire length—(2)
Lopatcong Creek—Route 519 to South Main Street, Phillipsburg—[(4)] (5)
Merrill Creek—Stewartsville, below reservoir—(2)
Merrill Creek Reservoir—Stewartsville—(3)
Mountain Lake—Buttzville—(3)
Pohatcong Creek—Mt. Bethel to Route 31—(2)
Pophandusing Creek—Oxford Road, Hazen, to Delaware River—(2)
Roaring Rock Brook—Brass Castle, entire length—(2)
Trout Brook—Hackettstown, entire length—(2)
Trout Brook—Hope, entire length—(2)

(g) There shall be no minimum size [on] **prescribed for** brook trout, brown trout, rainbow trout or hybrids thereof except as designated [for Special Regulation Trout Fishing Areas. Authority: N.J.S.A. 23:5-7.] **in N.J.A.C. 7:25-6.5 to 6.9.**

(h) A person shall not take, kill, or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, **lake trout** or hybrids thereof during the period extending from 8:00 A.M. April [7, 1990] **6, 1991** until midnight May 31, [1990] **1991** or more than 4 of these species during the periods of January 1, [1990] **1991** to midnight March [18, 1990] **17, 1991** and June 1, [1990] **1991** through midnight March [17, 1991] **16, 1992** [from trout stocked streams and rivers] except as designated [for specially regulated trout fishing areas.] **in N.J.A.C. 7:25-6.4 to 6.9.**

[(i) A person shall not take, kill or have in possession, in one day, more than 6 in total of brook trout, brown trout, rainbow trout or hybrids thereof during the periods extending from January 1, 1990 to midnight March 18, 1990 and from 8:00 A.M. April 7, 1990 to midnight March 17, 1991 from trout stocked lakes, ponds and canals, except as designated for specially regulated trout fishing areas.]

[(j)] (i) Spruce Run Reservoir in Hunterdon County will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March [18] **17,** [1990] **1991** extending to 8:00 A.M., April [7, 1990] **6, 1991** must be returned to the water immediately and unharmed.

[7:25-6.3] **7:25-6.4** Special Regulation Trout Fishing Areas—Fly Fishing Waters

(a) From 5:00 A.M. on Monday, April [16, 1990] **15, 1991** to and including November 30, [1990] **1991** the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, [1990] **1991** to midnight March [18, 1990] **17, 1991** and from 8:00 a.m. on April [7, 1990] **6, 1991** to midnight March [17, 1991] **16, 1992** the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c) (No change.)

(d) The following rules shall apply to the above designated fly-fishing waters:

1. (No change.)

2. Not more than 6 trout may be killed daily during the April [7] **6** through May 31 portion of the season; at other times the limit is four. [Any number of trout] **Trout in exess of the creel limit** may be caught provided such trout are immediately returned to the water unharmed [except that the Musconetcong fly-fishing stretch is designated a "no kill" area and all trout caught in this stretch must be immediately returned to the water unharmed].

3. No bait or lures of any kind may be used except artificial flies which are expressly limited to dry flies, wet flies, bucktails, nymphs and streamers. Expressly prohibited are metal, plastic or wooden lures, plugs, spinners and flies with spinners attached, or any multiple-hooked device. In the Musconetcong "no kill" area, only single pointed barbless hooks may be used. [Authority: N.J.S.A. 23:5-11, 23:5-15.1.]

4. Also expressly prohibited are spinning reels or any type of angling whereby the fly is cast directly from the reel. [Authority: N.J.S.A. 23:5-11.]

5. No person may have in possession while engaged in angling on the waters designated as fly waters, any natural bait, live or preserved, in that period of time during which fly-fishing only is in effect. [Authority: N.J.S.A. 23:5-11; 23:5-15.1.]

[7:25-6.4] **7:25-6.5** Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stretch of the Pequest River is designated as a Seasonal Trout Conservation Area: An approximate [0.5] **1.0** mile portion of the Pequest River, within the Pequest Wildlife Management area, extending from the County bridge on Pequest Furnace Road at Pequest upstream to [a point, clearly defined by markers, adjacent to foot Hill Lane.] **the Conrail Railroad Bridge upstream of the Pequest Trout Hatchery Access Road.**

(b) During the period of May [28] **20, 1991** through [September 30,] **March 16, 1992** the following regulations shall apply to the above designated Pequest River Trout Conservation Area:

1.-5. (No change.)

[7:25-6.5] **7:25-6.6** Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) The following streams, or portions thereof, are designated as "Wild Trout Streams." Listing of streams in this category does not convey the right to trespass or fish on private lands without the landowner's permission. These waters will not be stocked with trout. Unless otherwise noted, the entire length of the stream is included in the designation:

1.-5. (No change.)

6. Dark Moon Brook, **also known as Bear Brook** (Johnsonburg)

7.-12. (No change.)

13. Lomerson Brook, **also known as Herzog Brook** (Pottersville)

14.-28. (No change.)

29. Willoughby Brook, **also known as Buffalo Hollow Brook** (Clinton Twp.)

(b) The following shall apply to the wild trout streams designated at (a) above:

1.-3. (No change.)

4. During the period extending from 8:00 A.M. April [7, 1990] **6, 1991** to September 15, [1990]**1991,** a person shall not have in possession any more than two legally sized dead, creeled or otherwise appropriated trout. **No trout may be killed or possessed during other times of the year.** [Additional] **Any number of** trout may be caught [during the period, and during the remainder of the year,] provided they are immediately returned to the water unharmed; and

5. (No change.)

[7:25-6.6] **7:25-6.7** (No change in text.)

[7:25-6.7] **7:25-6.8** Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) (No change.)

(b) The following rules apply to the Trophy Trout Lake designated at (a):

1.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M. January 1, [1990]**1991** to midnight, September 15, [1990]**1991** and from December 1, [1990]**1991** to midnight, September 15, [1991]**1992.**

5. (No change.)

[7:25-6.8]**7:25-6.9** Special Regulation Trout Fishing Areas—Major Trout Stocked Lakes

(a) (No change.)

(b) The following regulations apply to the above designated Major Trout Stocked lakes.

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day, more than 6 in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April [7, 1990] **6, 1991** until May 31, [1990] **1991** or more than 4 of these species during the periods of January 1, [1990]**1991** to midnight March [18, 1990] **17, 1991** and June 1, [1990]**1991** through midnight March [17, 1991] **16, 1992.** Trout, if taken during the period commencing at midnight, March [18, 1990] **17, 1991** and extending to 8:00 A.M., April [7, 1990,] **6, 1991** must be returned to the water immediately and unharmed.

4. (No change.)

5. In Merrill Creek Reservoir, the season for lake trout shall extend from 12:01 A.M. January 1, [1990]**1991** to midnight September 15, [1990]**1991** and from December 1, [1990]**1991** to midnight September 15, [1991]**1992.**

[7:25-6.9]**7:25-6.10** Baitfish

(a) Except as provided for in trout-stocked waters listed in [this Code,] **N.J.A.C. 7:25-6.3, 6.11, and (b) and (c) below**, up to 35 baitfish per person per day may be taken from the freshwaters of the state with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not over 30 feet in length, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter or an umbrella net no greater than 3.5 feet square may be used in any of the freshwaters of the state [(See exception for Deal Lake].

(b) In waters listed in [this Code] **N.J.A.C. 7:25-6.3** to be stocked with trout, it is prohibited to net, trap or attempt to net or trap baitfish from March [18] **17** to June 15th except where the taking is otherwise provided for. For the remainder of the year, up to 35 baitfish per person per day may be taken with a seine not over 10 feet in length and 4 feet in depth or a minnow trap not larger than 24 inches in length with a funnel mouth no greater than 2 inches in diameter or an umbrella net no greater than 3.5 feet square.

(c) (No change.)

(d) Baitfish may be taken from the freshwater of the State in number greater than 35 per day under special permit issued by the Division [at] **in its** discretion. [Authority: N.J.S.A. 23:5-11.]

[7:25-6.10]**7:25-6.11** Nets

(a) (No change.)

(b) In the tidal freshwaters of New Jersey other than the Delaware River, its tributaries and tributaries to Delaware Bay:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until the following Sunday at 12 midnight. [Authority N.J.S.A. 25:5-1, 13:1B-30, 13:1B-31.]

2. It shall be legal to take baitfish by means of a bait seine not more than 150 feet in length or a dip net not to exceed 24 inches in diameter. [Authority: N.J.S.A. 23:5-11.]

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-[6.17]**6.2** by the following means:

i.-iii. (No change.)

iv. Drifting gill nets, the smallest mesh of which shall be five inches while being fished, and shall not exceed 50 fathoms in length, for all species excepting striped bass. March 1 to June 15. [Authority: N.J.S.A. 23:5-1, 23:5-11.]

(c) In the tidal waters of the tributaries of the Delaware River, in New Jersey, between Trenton Falls and Birch Creek:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character, except for fyke nets and nets commonly used for the purpose of taking baitfish, from Saturday at 2:00 P.M. until Sunday at 12 midnight next ensuing in each week. [Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.]

2. It shall be legal to take baitfish by means of minnow seine not more than 100 feet in length; a dip net not more than five feet square; a [minow] **minnow** trap, the opening of which shall not be more than 1¼ inches in diameter; or a scoop net with a single handle and with a diameter or not more than two feet. [Authority: N.J.S.A. 23:5-11.]

3. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-[6.17]**6.2** by means of a seine, gill net, eel pot or fyke net, each without wings, or a parallel net at the edge of low water.

4. It shall be illegal to take or attempt to catch and take Atlantic sturgeon by means of a seine or gill net the meshes of which are less than 13 inches stretched measure while being fished, or to catch and take or attempt to catch or take any other foodfish with a seine the meshes of which shall be less than 2½ inches stretched measure while being fished, or any gill net the meshes of which shall be less than 5¼ inches stretched measure while being fished, provided that gill nets with a mesh not smaller than three inches may be used from March 1 through June 10 in each year, for the purpose of taking herring only. No person shall catch and take or attempt to catch and take any foodfish, except Atlantic sturgeon, by means of a seine or gill net between June 10 in each and every year, and March 1 next ensuing. Suckers may be taken with seine only from October 15 in each and every year to March 15 next ensuing. [Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.]

5. No person shall catch and take or attempt to catch and take fish of any kind, with a pound net, or net of any character, which is anchored or staked or fastened down in any manner, permanently or otherwise, or use any net so anchored or fastened down in any manner, except for a parallel net set at the edge of low water, but no such net shall be set within 500 feet of a sluice, breach or intake emptying into the Delaware River or its tributaries. [Authority: N.J.S.A. 23:5-11.]

6. Eelpots and [fykes] **fyke** nets, each without wings, may only be used from July 1 to May 31, both dates inclusive, each year for the purpose of catching carp, catfish, eels, and suckers only, provided that the entrance of said eelpot and fyke net shall not be more than six inches in diameter and the outside diameter not more than 30 inches. All other species of fish which may be caught in said nets must be returned unharmed immediately to the waters from which taken. [Authority: N.J.S.A. 23:5-11, 13:1B-30, 13:1B-31.]

7. Parallel nets whose meshes are not less than 3½ inches stretched measure, when being fished, may be used from September 1 to May 31, next ensuing in each year for the purpose of taking carp only. **No such net shall be set in a manner that will impede navigation.**

8. Seines with meshes not smaller than 2½ inches, and case nets may be used from September 1 to May 31 for the purpose of taking catfish and carp only. [No such net shall be set in manner that will impede navigation.] All fish other than catfish and carp shall be returned unharmed to the water below low-water mark. [Authority: N.J.S.A. 23:5-11, 13:1B-30, 13:1B-31.]

(d) In the tidal freshwater portions of the tributaries to the Delaware Bay and River between New Jersey and Delaware[.]:

1. No person shall catch or take or attempt to catch or take fish of any kind by means of a net or use a net of any kind, except for fyke nets and nets commonly used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until Sunday at 12:00 midnight next ensuing in each week. [Authority: N.J.S.A. 23:5-1, 13:1B-30, 13:1B-31.]

2. It shall be legal to take baitfish by means of a minnow seine not more than 100 feet in length; a dip net not more than five feet square; a minnow trap, the opening of which shall not be more than 1¼ inches **in** diameter or a scoop net with a single handle and with a diameter of not more than two feet. [Authority: N.J.S.A. 23:5-11.]

3. (No change.)

4. Shad may be taken with a drifting gill net, the meshes of which shall be not less than five and one-quarter inches stretched while being fished, from [February 1] **March 1** to June 15. [Authority: N.J.S.A. 23:5-1, 23:5-11, 13:1B-30, 13:1B-31.]

5. All foodfish may be taken with **the following**:

i.-iii. (No change.)

iv. Eelpots or fyke nets, each without wings, provided the entrance to said eelpots and fyke nets shall not exceed six inches in diameter and the outside diameter not exceed 30 inches may be used at any time for the taking of eels only. [Authority: N.J.S.A. 23:5-11, 13:1B-30, 13:1B-31.]

6. Not more than one gill net or hauling seine shall be used from a boat. [Authority: N.J.S.A. 23:5-11.]

[7:25-6.11]**7:25-6.12** Snagging Prohibited

[(a)] The foul hooking of largemouth bass, smallmouth bass, striped bass [or any hybrid thereof], chain pickerel, northern pike, muskellunge [or any hybrid thereof], walleye, [and] brook trout, lake trout, brown trout and rainbow trout, or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season. [(See separate regulations for Greenwood Lake, and for the Delaware River between New Jersey and Pennsylvania.)]

[7:25-6.12]**7:25-6.13** Warmwater Fish

(a) Except as **provided in N.J.A.C. 7:25-6.3, 6.14, and 6.19,** [noted for waters stocked with trout] closed seasons are hereby eliminated on all freshwater fish [and on striped bass or any hybrid thereof.] **except walleye in Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir.** [(See Delaware River between New Jersey and Pennsylvania, and ice fishing sections for separate regulations.)]

(b) **Except as provided in N.J.A.C. 7:25-6.18,** [The] **the** size limits [on] **prescribed for** rock bass, black crappie, white crappie, redfin pickerel and chain pickerel are hereby eliminated in all waters except in Lake Hopatcong[,] **and** Swartswood Lake (Sussex County)[,] and Hammonton Lake (Atlantic County) where there shall be a minimum size of 15 inches **prescribed for** chain pickerel. [See separate regulations for Greenwood Lake.]

(c) The provision that a person may not take or have in possession more than 25 in total of fish commonly classed as fresh water game and foodfish is hereby abolished. [(See Code and statutes for bag limits on individual species.) Authority: N.J.S.A. 23:5-10.]

(d) The minimum size of smallmouth bass shall be 9 inches, except **13 inches** for **Manasquan Reservoir (Monmouth County),** Monksville Reservoir (Passaic County), Merrill Creek Reservoir (Warren County) and Round Valley Reservoir (Hunterdon County)[, where the minimum size shall be 13 inches] **and 12 inches in the Delaware River and Greenwood Lake**. [(See separate rules for Greenwood Lake and the Delaware River between New Jersey and Pennsylvania.)]

(e) The minimum size of largemouth bass in lakes, ponds and reservoirs shall be 12 inches and in rivers, streams and other waters it shall be nine inches, except that in Lake Hopatcong during the period of April 1 through June 15, an 18-inch minimum size limit shall be in effect. There shall be no size limit on largemouth bass in Round Valley Reservoir. [(See separate rules for Greenwood Lake and the Delaware River.)]

(f) The daily [bag] **creel** and possession limit for largemouth bass and smallmouth bass shall be five in total[,] except that in Lake Hopatcong during the period of April 1 through June 15, the limit for largemouth bass is one. [(See separate rules for Greenwood Lake and the Delaware River.)]

[(g) In Mountain Lake (Warren County), Parvin Lake (Salem County), Lake Musconetcong (Sussex County), Mercer Lake (Mercer County) and Lake Carasaljo, including the South Branch of the Metedeconk River on South Lake Drive and Lake Manetta to the bridge over Watering Place Brook on Sunset Avenue (Ocean County), the minimum size for largemouth bass shall be 12 inches at all times and the daily bag and possession limit shall be not more than five in the aggregate with smallmouth bass.]

[(h)](**g**) Warmwater fish in excess of the daily limit may be caught provided they are returned to the water immediately and unharmed. [Authority: N.J.S.A. 23:5-10.]

[(i)](**h**) (No change in text.)

[(j)](**i**) The minimum length [on] **prescribed for** northern pike shall be 24 inches and 30 inches for the muskellunge and tiger muskie. The daily [bag] **creel** and possession limit for these species shall be two in aggregate.

[(k)](**j**) Fishing for all species of freshwater fish is permitted 24 hours daily except on those days that certain trout waters are closed for stocking during April and May. [Authority: N.J.S.A. 23:5-17.]

[(l)](**k**) The daily [bag] **creel** and possession limit for chain pickerel shall be five.

[(m)](**l**) The minimum length [on] **prescribed for** walleye shall be 15 inches, except for Monksville Reservoir [and] **, Wanaque Reservoir and the Wanaque River between** Greenwood Lake **and Monksville Reservoir**, where it shall be 18 inches.

[(n)](**m**) The daily [bag] **creel** and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be two[.] **with a closed season during the period of March 1, 1991 to April 30, 1991.**

[(o)](**n**) The minimum length for striped bass **x white bass hybrid** shall be [36 inches, and the minimum length for their hybrids shall be] 16 inches. The daily [bag] **creel** and possession limit [for either] shall be two.

[7:25-6.13]**7:25-6.14** Ice fishing

(a) [Ice] **Except as provided in N.J.A.C. 7:25-6.3, ice** fishing shall be permitted whenever ice is present.

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

[(d) When ice is not present, open water regulations will be in effect. (See separate regulations for Greenwood Lake and for the Delaware River between New Jersey and Pennsylvania.)]

[7:25-6.14]**7:25-6.15** Bow and arrow fishing

(a) [It] **Except as provided in N.J.A.C. 7:25-6.3, 6.18 and 6.19, it** shall be legal to take any species of fish except brook trout, lake trout, brown trout, rainbow trout, landlocked Atlantic salmon, largemouth bass, smallmouth bass, striped bass [or any hybrid thereof], chain pickerel, northern pike, **walleye,** muskellunge, or any [hybrid thereof] **hybrids of any of these species**, [or walleye,] at any time by use of [longbow] **bow** and arrow with line attached, provided a person has a proper fishing license. **For the purpose of this section a bow means any longbow, recurved bow or compound bow that is hand-held and hand-drawn.** [(See separate regulations for Greenwood Lake, for the Delaware River between New Jersey and Pennsylvania, and for the waters listed for trout stocking during the current season.)]

[7:25-6.15]**7:25-6.16** Closed waters

(a) It is illegal to fish, place any contrivance for the taking of fish, or attempt to catch or kill fish by any manner or means in any fish ladder or within 20 feet of any fish ladder entrance or exit. [Authority: N.J.S.A. 23:5-11.]

(b) It is illegal to fish or attempt to catch or kill fish by any manner or means in waters within the boundaries of the State Fish Hatcheries, except where specifically permitted, [i.e.] **that is,** the Musconetcong River and Pequest River. [Authority: N.J.S.A. 13:1B-31.]

[7:25-6.16]**7:25-6.17** Emergency closure notice

It shall be illegal to fish or attempt to catch or kill fish by manner or means in any waters for which the Director of the Division of Fish, Game and Wildlife, upon approval of the Fish and Game Council, issues an Emergency Closure Notice. Such notice shall be effective and/or rescinded immediately upon public notification. It shall be based upon imminent threat to the well-being of the fishery resource and/or its users, and may include any exceptions to the total ban on fishing that the Director deems practical. [Authority: 23:5-11.]

[7:25-6.17] **7:25-6.18** Greenwood Lake

(a) In cooperation with the New York State Department of Environmental Conservation, Division of Fish and Wildlife, the following rules for Greenwood Lake, which lies partly in Passaic County,

New Jersey, and partly in Orange County, New York, are made a part of the New Jersey State Fish and Game Code and will be enforced on the whole lake by the conservation authorities of both states.

1.	Season	Size	[Bag] **Creel** Limit
Trout	No closed season	No minimum	3
Largemouth bass and smallmouth bass	No closed season	12″ minimum	5 singly or in aggregate
Chain pickerel	No closed season	15″ minimum	5
Muskellunge and any hybrid thereof	No closed season	30″ minimum	1
All other species	No closed season	No minimum	No limit

2. (No change.)

3. On Greenwood Lake, fishing will be permitted 24 hours a day. [Authority: N.J.S.A. 23:5-17.]

4. Either New York or New Jersey fishing licenses will be honored on all of Greenwood Lake. [Authority: N.J.S.A. 23:9-126.]

5. Bow and fishing for carp, suckers, herring, catfish and eels will be permitted on Greenwood Lake by properly licensed fishermen. [Authority: 23:5-11.]

[7:25-6.18] **7.25-6.19** Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	[Bag] Daily **Creel** Limit
Trout	April [7] 6-Sept. 30	No minimum	5
Largemouth bass & smallmouth bass	No closed season	[9″] **12″** minimum	5 in total
Walleye	No closed season	[15″] **18″** minimum	[5] **3**
Chain pickerel	No closed season	12″ minimum	5
Muskellunge & any hybrid thereof	No closed season	30″ minimum	2
Northern pike	No closed season	24″ minimum	2
[Striped bass	No closed season	36″ minimum	2]
Baitfish, fish bait	No closed season	No minimum	50
Shortnose sturgeon	Closed-endangered species		
All other freshwater species	No closed season	No minimum	No limit

2. Fishing licenses of either [State] **New Jersey and Pennsylvania** will be recognized in the Delaware River from water's edge to water's edge and fishermen will be permitted to take off in a boat from either shore and on returning, to have in possession any fish which may be legally taken[,] **in** New Jersey and Pennsylvania, however, any person fishing from the shore must obtain a license in [that State] **New Jersey and Pennsylvania** on whose shore fishing is done. Residents of Pennsylvania must possess a New Jersey non-resident license if they fish from the New Jersey bank.

3. Angling may be done with two rods each with one line or two lines or one of each. Not more than three single hooks or three burrs of lines or one of each may be used per line. [Authority: N.J.S.A. 23:9-8.]

4. Ice fishing shall be legal whenever ice is present. Open (unfrozen) water [bag] **creel** and size limits shall apply. The maximum size of the ice [hold] **hole** shall not exceed 10 inches in diameter. Five tip-ups or any combination of five devices that will include tip-ups of not more than two rods and lines or two hand lines or one of each may be used. [Authority: N.J.S.A. 23:9-6; 23:9-8; 23:9-12; 23:9-13.]

5. Spears (not mechanically propelled) and longbows may be used to take shad, eels, carp, suckers, herring and bullheads by properly licensed fishermen, except within 50 rods (825 feet) of an eel weir. [Authority: N.J.S.A. 23:9-8.]

6. Bait fish may be taken and possessed for personal use only but not to exceed 50 per day. [Authority: N.J.S.A. 23:9-7.]

7. Eel weirs for the catching of carp, catfish, eels, and suckers only, may be operated under permit from the Division of Fish, Game and Wildlife at any time of the year and at any time of day. [Authority: N.J.S.A. 23:9-14.]

[7:25-6.19] **7:25-6.20** Fresh tidal tributaries of the Delaware River and Bay

The minimum length [on] **prescribed for** Atlantic sturgeon shall be 60 inches with no daily [bag] **creel** limit.

[7:25-6.20] **7:25-6.21** Definitions

[Unless the context clearly implies a differing usage, the following definitions shall apply in this Code:] **The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.**

"[Bag] **Creel** or possession limit" means the total number of fish that are legally retainable. Most normally this is expressed on a daily basis.

. . .

"Creeled trout" shall mean [a trout in the possession of a fisherman] **any trout which a fisherman has in his possession**.

. . .

"Foodfish" for purposes of [section 6.8] **N.J.A.C. 7:25-6.11** only, means the following species:

1.-16. (No change.)

17. Bowfin Amia calva; **and**

18. [Also any] **Any other** marine fish species that is legal for taking **with net** in marine waters[, except striped bass].

. . .

"Other fish species", and all hybrids and strains thereof, which are provided for by the provisions of this Code, either directly or implied, are as follows:

1.-2. (No change.)

3. Striped bass **hybrid** [Morone saxatillis] **Morone saxatilis x Morone chrysops**

4.-11. (No change.)

12. Chinook salmon **Oncorhynchus tshawytscha**

. . .

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Program
Emergency Assistance

Proposed Amendment: N.J.A.C. 10:85-4.6

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

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1990-366.

Submit comments by August 15, 1990, to:

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

The agency proposal follows:

Summary

The goal of General Assistance (GA) emergency assistance (EA) is to prevent a state of homelessness of those eligible individuals served under the provisions of the GA program. The current rule at N.J.A.C. 10:85-4.6 provides emergency assistance for a temporary period of five months. The proposed amendment to N.J.A.C. 10:85-4.6 modifies the EA program to include entitlement to post five-month EA benefits (temporary rental assistance and EA extensions) for those EA recipients whose initial five-month EA period expires and who continue to require EA benefits. Temporary rental assistance may be authorized at the outset as well as at any other time during the period of EA entitlement. Shared municipal welfare department (MWD) and client responsibilities are established at the outset to address the EA client's short and long term emergency needs. Development of a mutual agreement provides an individual plan of action to address the EA client's immediate emergency needs and work toward a permanent resolution of the emergency situation. The proposed amendments are in support of the decision by the New Jersey Supreme Court in the case of *Floyd Williams et al. v. The Department of Human Services and Sam Jimperson et al. v. The Department of Human Services*, 116 N.J. 102, 114-115 (1989), concerning the provision of GA/EA. Specifically, eligible individuals, whose EA five-month period expires and who continue to require assistance for shelter, shall be entitled to continuing EA benefits.

The proposed amendment at N.J.A.C. 10:85-4.6(a) sets forth regulatory provisions to cover three major areas: prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance.

The proposed amendment also eliminates a "30 calendar day" stipulation for EA eligibility. The current provision stipulates that eligibility for EA shall be contingent on the fact that the emergency occurred within the 30 calendar days immediately prior to the application for GA. The list of documents needed to prove a pending eviction has been expanded at N.J.A.C. 10:85-4.6(a)3 to include a letter from the landlord. Lack of realistic capacity to plan for substitute housing has been expanded to include those situations where the eligible person(s) can demonstrate functional incapacity that would prevent him or her from planning for or securing substitute housing. Additionally, the client has to sign a document prepared by the MWD stating that available funds were exhausted in payment of ordinary and necessary household expenses.

Text is added at N.J.A.C. 10:85-4.6(b) to establish that municipalities whose population is in excess of 75,000 people or whose percentage of the population receiving GA is greater than the State average are designated as high impact municipalities and shall be responsible for establishing affiliation agreements with local human service agencies in order to utilize EA resources and other services offered by those agencies to meet special needs of EA clients.

Proposed provisions at N.J.A.C. 10:85-4.6(c) delineate MWD and client responsibilities aimed at initially resolving the emergency situation and working toward securing and ultimately maintaining a permanent housing arrangement without EA. MWD and client responsibilities include the immediate authorization of EA and the development and signing of a mutual agreement to provide an individualized plan of action, based on the client's physical, mental and functional abilities, that includes permanent housing searches, provisions for transportation, appropriate referrals to other available benefit entitlements or services, as well as involvement in a training or rehabilitation program.

Proposed language at N.J.A.C. 10:85-4.6(d) establishes procedures for the personal delivery of EA due process notices, EA appeal rights and EA fair hearing procedures. Due to the emergent nature of EA, the proposed language ensures that the EA client is duly notified of any EA denial or termination action and is provided with the opportunity to appeal the action and receive a fair hearing.

Under the proposed amendment at N.J.A.C. 10:85-4.6(e), the initial five-month EA period of three months with two incremental one-month extensions is changed to a continuous five-month period. The proposed amendment also provides that in making shelter arrangements the client's mental and physical needs shall be taken into account. At N.J.A.C. 10:85-4.6(e)1vii, language concerning the two incremental extensions is deleted.

The proposed language at N.J.A.C. 10:85-4.6(e)2 establishes temporary rental assistance that may be authorized initially to resolve an emergency situation as well as at any other time during the receipt of EA. Temporary rental assistance supplements an EA recipient's regular monthly GA grant to meet his or her monthly payment for a permanent housing arrangement, inclusive of basic utilities. The proposed amendment provides that the EA client who is receiving temporary rental assistance shall retain 25 percent of his or her GA monthly grant amount or a minimum of $35.00 and that an amount in excess of 25 percent may be authorized when it is determined that the client has special needs. Provisions are also established for EA extensions beyond the initial five-month EA period that provide EA to eligible recipients for temporary shelter arrangements.

N.J.A.C. 10:85-4.6(e)5 provides MWDs the opportunity to initiate and operate special EA programs, through the submission of plans to the Division of Economic Assistance for approval, in order to serve specific population groups.

The proposed amendments at N.J.A.C. 10:85-4.6(e)1i and ii provide that, for purposes of documentation, a physician's certification is needed to show that a person does suffer from Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus Positive with symptoms or is terminally ill. Text at N.J.A.C. 10:85-4.6(e)1i is amended to provide for EA client functional capacity considerations.

In addition, text at N.J.A.C. 10:85-4.6(f) and (f)1 is revised to indicate that emergency food allowances are increased by $3.00.

The proposed amendment stipulates that emergency food allowances are to be authorized until other funds become available.

Minor technical changes as well as recodification and integration of certain text for clarity are included.

Social Impact

The proposed changes designed to meet the critical needs of homeless, low income individuals served through the GA/EA program are expected to have a positive social impact. The eligibility for EA entitlement is expanded beyond the initial five-month period to ensure that those individuals who are otherwise eligible for GA and continue to need EA assistance will be provided EA benefits. Shared MWD and EA client responsibilities are established at the outset to address the client's immediate EA needs and to develop a mutual agreement that will be signed by the EA client and the MWD. The agreement will provide an individualized plan of action aimed at mutually resolving the emergency situation and working toward securing and ultimately maintaining permanent housing without EA. The mutual agreement will be reviewed and updated in accordance with changes in the EA client's needs and circumstances. Compliance with the terms of the mutual agreement will ensure GA eligible clients continuing eligibility for EA benefits.

In addition, municipalities which have a population in excess of 75,000 people or whose percentage of the population receiving GA is greater than the State average are designated as high impact municipalities and shall be responsible for establishing affiliation agreements with local human service agencies in order to utilize available EA resources and services offered by such agencies to address special needs of EA clients. The proposed amendments establish temporary rental assistance that may be authorized, as appropriate, at the outset or at any time during the receipt of EA to enable the EA client to retain or secure permanent housing. Elimination of a 30-calendar day stipulation for EA eiigibility will ensure that individuals who are otherwise eligible for GA will not be denied EA because they did not apply for EA within a specific time period.

Further, the proposed amendments which provide that in making shelter arrangements the client's mental and physical needs will be taken into account are expected to have a positive social impact on EA clients.

Economic Impact

Current provisions in the GA program provide for up to five months of EA shelter payments. Due to lack of adequate emergency shelters, such assistance is often provided in hotels and motels at varying rates but averaging close to $1,000 per month. The proposed amendment, while continuing to provide for this kind of assistance, also includes the facility to provide temporary rental assistance from the onset of the emergency. This will allow clients to stay in or acquire more permanent living arrangements at a much lower cost then hotel or motel placement. The proposed changes are not expected to result in a significant increase in expenditures.

The proposed amendment also allows for incremental one month extensions of emergency assistance beyond the initial five months. Since MWDs will be required by this rule to begin planning for the resolution of the emergency situation from the onset of the emergency, the number of individuals reaching the end of the five months without other alternatives and, therefore, requiring extensions should be minimal and should not result in a significant increase in expenditures.

Other procedures included in the proposed changes such as the requirement to establish a mutual agreement and the coordination of other services within the community merely codify activities already expected of MWDs and should not result in increased expenditures.

The overall effect of the rule amendment is expected to be a reprogramming of funds currently being spent on servicing homeless GA clients in ways that result in more humane and cost-effective response to this problem.

In State Fiscal Year 1989, total State and municipal GA/EA program expenditures amounted to $7,714,876 with 1,243 persons served on an average monthly basis. For State Fiscal Year 1990, total expenditures are estimated to amount to $8,484,000 with a monthly average of 1,400 persons served.

Regulatory Flexibility Statement

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

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

(OAL NOTE: As currently appearing in the New Jersey Administrative Code, N.J.A.C. 10:85-4.6(b)1iii, iv and x are erroneous, and should not be in the rule. These subparagraphs are deleted through a Notice of Administrative Correction published elsewhere in this issue of the New Jersey Register. The text of the rule that follows is the text of the rule as corrected.)

10:85-4.6 Emergency [grants] **assistance**

(a) **Emergency assistance (EA), as delineated in the following rules, provides for the prevention of homelessness, the granting of emergency shelter assistance and temporary rental assistance.** [An emergency grant] **EA** shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the rules in this manual when circumstances set forth in (a)1-3 below exist. [In addition, these rules shall apply to an emergency (as described in (a)1-3 below) which occurred within the 30 calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.]

1.-2. (No change.)

3. Where there is official documentation of a pending eviction, 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 is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, emergency assistance shall be authorized in accordance with (a)3i and ii below.

i. (No change.)

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

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

(1) (No change.)

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

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

(b) High impact municipalities, defined as those municipalities with a population in excess of 75,000 people or whose percentage of the population receiving GA is greater than the State average, shall have responsibility to establish affiliation agreements with local human service agencies for shelter and other services, including those agencies affiliated with the Comprehensive Emergency Assistance System (CEAS). High impact municipalities shall utilize the available EA resources and services offered through such affiliations to meet specific needs of EA clients. These municipalities shall also have responsibility for publicizing the CEAS toll free, 24-hour, hotline telephone number.

(c) The MWD and client shall have a shared obligation to resolve the emergency situation and to secure a shelter arrangement which he or she will be able to ultimately maintain without EA. Upon contact with the EA eligible individual, the MWD shall have responsibility to:

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

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

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

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

5. Explain that a written mutual agreement shall be developed, within five working days of the EA authorization date, to provide an individualized plan of action aimed at working toward resolving the circumstances that contributed to his or her emergency situation and securing a permanent shelter arrangement which he or she will be able to ultimately maintain without EA. Refusal to cooperate with the mutual agreement's plan of action or the initial development of such an agreement shall render the client ineligible for continuing EA benefits; and

6. Arrange a face-to-face meeting with the client to prepare the mutual agreement at a time and place convenient to both the client and the MWD.

i. The mutual agreement shall be signed by both the client and the MWD.

ii. The MWD shall retain the original agreement and provide a copy to the client.

iii. The agreement's individualized plan of action shall include, but is not limited to:

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

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

(A) Such permanent housing searches are to begin no later than the 11th day after the date the mutual agreement is signed.

(B) The MWD shall determine a reasonable number of contacts to be made per week by the client, taking into consideration his or her medical and/or social circumstances and availability of potential housing. For example, it shall be considered reasonable for a person who

is not suffering from physical or mental incapacity to conduct up to 10 contacts per week, if potential housing resources are available. Where good cause for non-participation in housing searches exists, the agreement shall reflect the applicable reason(s).

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

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

(3) Provision of services as set forth at (1) below, emphasizing the following reasonable transportation needs:

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

(B) Search for alternate temporary or permanent shelter;

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

(D) Visits to the appropriate MWD office for case processing purposes and/or to secure assistance payments or visits to any other appropriate service agency for assistance, such as the social security office; and

(E) Attendance at counseling sessions;

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

(5) If appropriate, involvement in a 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. It is noted that such involvement shall be coordinated with existing General Assistance Employability Program (GAEP) requirements.

iv. The MWD shall monitor the EA client's compliance with the agreement as well as document MWD support activities at least once a month.

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

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

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

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

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

4. Upon receipt of a notice of EA denial or termination, the client has a right to request a fair hearing provided that such request is made on or before the effective date of the EA termination or within 10 days of the personal delivery receipt date of a denial notice. Such appeals shall be resolved through the State level fair hearing process in accordance with N.J.A.C. 10:85-7.4 through 7.6.

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

(e) The goal of GA/EA is to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. EA is designed to provide, with reasonable certainty, for the initial and/or continuing emergency shelter needs of otherwise eligible GA recipients. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county and State levels.

[(b) Standards for emergency grants are:]

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed [the two] **five** calendar months [following the month in which the state of homelessness first becomes known to the municipal welfare department.] **which shall include any portion of the initial month of EA. The shelter arrangement shall also be reasonably related to the client's mental and physical needs (for example, if a client is suffering from a mental or physical incapacity, and the shelter arrangement would be detrimental to his or her condition, for instance in a situation where a client has recently been discharged from a hospital, requiring bed rest, he or she should be placed in a shelter arrangement that is available for 24 hours, enabling bed rest).** Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i. The temporary time period identified at [(b)1] **(e)1** above[, as well as the period set forth as an incremental extension time frame at (b)1vii below,] shall not apply to EA recipients who have been medically diagnosed, **as documented by a physician's certification,** as having Acquired Immune Deficiency Syndrome (AIDS), **or** Human Immunodeficiency Virus (HIV) Positive with symptoms, **or** [and those who] are terminally ill, **and are unable to perform activities of daily living.**

ii. In order to enable individuals medically diagnosed, **as documented by a physician's certification,** as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms, and those who are terminally ill, to maintain or secure residence in a permanent housing arrangement, funds shall be authorized, based on the most reasonable housing rates available, to supplement their regular grants of assistance, until such time as they qualify for SSI and/or similar statutory benefits pursuant to filing of application as stipulated at N.J.A.C. 10:85-8.3. Individuals who lose entitlement to presumptively issued SSI and/or similar statutory benefits and otherwise qualify for GA shall be provided EA, in accordance with this subparagraph and [(b)1i] **(e)1i** above, pending confirmation of their permanent entitlement to such benefits.

iii. (No change.)

[iv. Client responsibility: While receiving emergency assistance for temporary shelter, eligible persons have a continuing responsibility to seek alternative permanent shelter. The eligible persons are also responsible for documenting their efforts in locating alternative permanent housing. The efforts are to begin no later than the 11th day after the date on which the agency became aware of the emergency. Such documentation must reflect at least 10 contacts per week unless the agency determines that fewer contacts are appropriate or that good cause, for example, illness or incapacity, exists for fewer contacts. Contacts may be made by telephone, personal visit, or a combination of both. Documentation consists of a written record showing:

(1) Date of contact;

(2) Telephone number (if applicable);

(3) Address (location) of housing site; and

(4) Name of person contacted (landlord or agent).

v. Each person receiving emergency assistance for temporary shelter shall present the record of contacts at each monthly review of eligibility and at such other times as may be required by the agency.]

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

[vii. In situations where the municipal welfare agency determines that, despite efforts of both the client and the agency, permanent living arrangements are unavailable at the expiration of the initial emergency assistance period, an extension for up to two additional

months may be authorized under conditions including but not limited to, the following:

(1) Illness or incapacity of the client or of another person which requires the client's presence in the home on a substantially continuous basis, and no other person is available to seek permanent shelter;

(2) Permanent housing has been secured but will not be available until after the expiration of the initial emergency assistance period;]

[viii.]v. Payment may be authorized for furniture storage, moving expenses, advance rent and security deposits for rent and/or utilities when the municipal welfare director determines it is necessary to establish the client in a new permanent living arrangement.

2. Temporary rental assistance may be authorized by the MWD upon initial authorization of EA or at any other time during the receipt of EA as follows:

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

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

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

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

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

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

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

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

(3) MWDs shall authorize temporary rental assistance of up to $200.00 per month to supplement an EA recipient's regular GA grant. MWDs shall ensure, however, that the recipient retains at least 25 percent of his or her monthly grant or a minimum of $35.00. Amounts in excess of 25 percent may be authorized when it is determined that the client has special needs. The portion of the client's regular grant retained by the MWD as well as any other available income shall represent his or her contribution towards the monthly shelter costs. The recipient shall, as a condition of eligibility for temporary rental assistance, cooperate in making application for other benefits for which he or she has potential entitlement, such as Section 8 Housing Certificates and/or the Home Energy Assistance Program, with the assistance of the MWD.

(4) Requests for temporary rental assistance in amounts in excess of $200.00 must be approved by DEA prior to issuance.

(5) The MWD shall authorize temporary rental assistance on a case by case basis up to a period of one year. Such authorization shall be based on a review of the individual's circumstances and in keeping with the mutually developed agreement.

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

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

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

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

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

5. Municipalities may be authorized to operate approved EA programs in order to serve specific population target groups such as those suffering from substance abuse, mental illness, 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 must:

i. Include the goal of reducing the use of motels/hotels for emergency placements as well as facilitate a more humane response to EA recipients in need of support services beyond simply shelter 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;

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); and

iv. Have prior written approval from DEA before funding can be authorized.

[2.]**(f)** Emergency food: As authorized in [subsection] (a) [of this section] **above**, when food is not available from any other source, an amount of [$1.50] **$4.50** per day per person shall be allowed for a specified number of days only, and in no event beyond such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, **receipt of food stamps** and so forth).

[i.]**1.** When it is necessary to provide temporary living arrangements in a hotel, motel, or other facility in which cooking facilities are not available or are determined by the MWD to be inadequate, payment for restaurant meals shall not exceed [$4.50] **$7.50** per person per day **and shall be allowed until such time as other funds become available (for example, next regular assistance payment, support payment, receipt of earnings, receipt of food stamps, and so forth).**

[3.]**(g)** Emergency clothing: When authorized under (a) above to the individual(s) to purchase minimum essential clothing for physical health and safety, payment may be granted not to exceed the amounts stated below:

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

[i.]**1.** (No change in text.)

[4.]**(h)** Emergency house furnishings: When authorized under (a) above, emergency [grants] **assistance** for house furnishings which the MWD deems urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximum allowances in the following table.

[i. Funds from the regular assistance grant or funds considered in the development of that grant are not to be considered in computing the amount of payment for replacement of house furnishings lost or destroyed in the incident giving rise to the emergency.]

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

*Over 6—$12 each additional person

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

1. Funds from the regular assistance grant or funds considered in the development of that grant are not to be considered in computing the amount of payment for replacement of house furnishings lost or destroyed in the incident giving rise to the emergency.

[(c)](**i**) Persons who appear to be eligible for AFDC shall be referred immediately to the county welfare agency. However, [an] emergency [grant] **assistance** may be provided under the conditions stated in N.J.A.C. 10:85-3.2(b)4ii and in accordance with [the foregoing regulations in] this section [6].

[(d)](**j**) In an emergency situation such as sudden removal of the mother or responsible caretaker from the home, the MWD may be called upon to provide a temporary care arrangement for the child(ren) until it is possible to refer the situation to the county welfare agency or the appropriate office of the Division of Youth and Family Services (see N.J.A.C. 10:85-3.2(b)4).

1. (No change.)

[(e)](**k**) Emergency **assistance** payments shall be made by order or check drawn to a vendor or as direct payment to the recipient, in accordance with **N.J.A.C.** 10:85-4.3.

[(f)](**l**) (No change in text.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Extension of Public Comment Period Personal Attendant Services Program

Proposed New Rules: N.J.A.C. 10:123A

Take notice that the Department of Human Services, Division of Youth and Family Services, hereby extends the public comment period for the proposed new rules, N.J.A.C. 10:123A, Personal Attendant Services Program, published in the New Jersey Register on May 21, 1990, at 22 N.J.R. 1527(a). The new public comment deadline will be October 1, 1990.

Submit comments by October 1, 1990 to:

Kathryn A. Clark
Administrative Practice Officer
CN717
Trenton, N.J. 08625-0717

INSURANCE

(b)

DIVISION OF ACTUARIAL SERVICES

Reporting Financial Disclosure and Excess Profits

Proposed Amendments: N.J.A.C. 11:3-20.3, 20.6, 20.8, 20.11, 20.12 and Appendix

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

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

Proposal Number: PRN 1990-373.

Submit comments by August 15, 1990 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:29A-5.6 et seq. (effective September 8, 1988) requires insurers authorized to transact private passenger automobile insurance in this State to file an Excess Profits Report on or before July 1 of each year. N.J.A.C. 11:3-20 was adopted and became effective on May 15, 1989, and provides the procedures and forms for the filing of Excess Profits Reports.

Upon review and reevaluation of the current rules and procedures, the Department of Insurance (Department) has determined that changes to these rules and procedures are necessary. Accordingly, the Department proposes amendments to N.J.A.C. 11:3-20 to revise the standard by which the Commissioner determines if excessive subsidization exists for members of an insurance holding company system, provide procedures by which an insurer may request permission to supplement its initial Excess Profits Report filing and provide procedures by which an adequate administrative record of the determination of excess profits may be generated.

N.J.S.A. 17:29A-5.7 provides that the computation of excess profits for an insurance holding company system shall be performed on its combined Excess Profits Report, except that the Commissioner of Insurance (Commissioner) may order an adjustment in the combined report if, in his or her judgement, upon examining each insurer's report in the insurance holding company system, one or more insurers in that system are excessively subsidizing other insurers in that system. The exhibits and accompanying instructions contained in N.J.A.C. 11:3-20 currently provide for a stated dollar amount that does not reflect the volume of business transacted.

Under the proposed amendments, non-excessive subsidization is the number of dollars of excess profits that is equal to 0.5 percent (one half of one percent) of the three-year earned premium for a member of a holding company system and which is not returned to policyholders. This amendment changes the prior standard because, after review of the July 1989 filings, it appears that a better method is to analyze reasonable differences among insurers based upon the volume of business transacted.

Under the excess profits statutes, an insurer is able to earn 2.5 percent of earned premiums above the "Clifford formula" rate of return before the insurer must distribute excess profits to its policyholders. The "Clifford formula" allows a rate of 3.5 percent of premiums (that is, for every dollar in premiums, 3.5 cents is retained as profit). However, the Clifford formula is calculated on an after-tax basis and the excess profits calculations are made on a pre-tax basis, so an adjustment must be made to the 3.5 percent figure. This is done by dividing 3.5 by .67 (which represents 1 minus .33, with .33 being the standard corporate tax rate), resulting in a 5.3 percent pre-tax rate of return.

The 5.3 percent is then added to the 2.5 percent allowed under the excess profits statute to yield a 7.8 percent rate of return of premiums allowed before excess profits must be returned to policyholders. However, this still does not represent the total return which the insurers receive, because they also are receiving investment income on the surplus monies which they retain. Departmental data shows that the ratio of premiums to surplus is about 1.8 to 1, or approximately 2 to 1. The Department uses this factor to translate the rate of return from a rate of 7.8 percent of premiums to 15.6 percent of surplus (7.8 x 2; this is done so the Clifford rate and the investment rate are both percentages of surplus.) The investment rate of nine percent of surplus, which is standardized by regulations, is then added to the 15.6 percent to yield a 24.6 percent of surplus rate which insurers reap before excess profits must be repaid to policyholders.

A rate of return of nearly 25 percent of surplus is a very high rate of return to surplus because it is approximately five percentage points above that contemplated by the Clifford formula.

In selecting the standard for non-excessive subsidization, then, one goal is to avoid increasing what is already a very high rate of return (that is, 25 percent) by very much. The proposed standard permits an insurer to keep an additional 0.5 percent of premiums, which means that the rate of return to surplus increases from 25 percent to 26 percent (that is, .5 percent of premiums x 2 = 1 percent of surplus). A one percentage point increase in what is already a high rate of return to surplus is considered to be enough to constitute non-excessive subsidization. More than a one percentage point increase would mean the rate of return is over 26 percent of surplus, and the Department considers that to be an excessive return to surplus by one insurer within a holding company system.

The exhibits and accompanying instructions contained in the Appendix are also revised consistent with the above proposed changes. Similarly, definitions of "combined profits report," "non-excessive subsidization" and "subsidization" are proposed to provide the meanings of these terms as used in these rules as amended.

Additionally, the determination that an insurer has made excess profits has been the subject of appeals to the Superior Court, Appellate Division which has demonstrated the need to provide procedures to develop a more complete administrative record for the Department, for the information of filers and for use in connection with appeals to the Superior Court, Appellate Division. In order to provide a procedure by which an adequate administrative record may be generated, N.J.A.C. 11:3-20.8 is proposed for amendment to provide the procedures by which an insurer may request a reevaluation of a determination of excess profits and the manner by which the Commissioner shall dispose of these matters.

Finally, numerous insurers filing Excess Profits Reports, upon a determination by the Commissioner that they have made excess profits, have undertaken to supplement their initial filings with additional information after the date the Excess Profits Reports are due. The Department has determined that a threshold procedure is necessary by which the Commissioner may evaluate an insurer's request for permission to supplement its initial filing, to determine whether the insurer's request is made to correct inaccuracies resulting from good faith error or excusable mistake or to improperly delay the refund of excess profits, challenge standard methods of calculation or remedy simple carelessness in the preparation of the original report.

Accordingly, the Department proposes to amend N.J.A.C. 11:3-20.11 to specify the procedures by which an insurer may request permission to supplement its initial Excess Profits Report filing.

Social Impact

The Department believes these proposed amendments will benefit insurers required to file Excess Profits Reports by providing a more appropriate excessive subsidization standard which more accurately reflects the size of a member of an insurance holding company system. Insurers will also benefit in that they will be fully apprised of the procedures and requirements by which they may request a reevaluation of a determination of excess profits and request permission to supplement an initial Excess Profits Report filing.

Finally, the proposed amendments will benefit the Department by establishing uniform filing requirements and procedures by which it may review requests by insurers to supplement their initial Excess Profits Reports filings and requests for a reevaluation of a determination of excess profits.

Economic Impact

The proposed change to the excessive subsidization standard will benefit insurers in that it more accurately reflects the size of a member of an insurance holding company system in relation to other members in that system.

In addition, the procedures by which an insurer may request permission to make a supplemental filing will provide the insurer with prior notice regarding whether its request is approved or denied. Insurers thus should avoid any unnecessary expenses associated with developing and submitting a supplemental filing which may be rejected by the Commissioner.

The proposed amendments may have an impact upon the Department in that Department staff will be required to review requests for supplemental filings and reevaluations of determinations of excess profits.

Regulatory Flexibility Analysis

The proposed amendments may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent the amendments apply to small businesses, they will be insurers authorized to transact private passenger automobile insurance in this State. These proposed amendments change the existing excessive subsidization standard and provide procedures and filing requirements for supplemental filings and reevaluations of excess profits determinations.

Since N.J.S.A. 17:29A-5.6 et seq. and N.J.A.C. 11:3-20 require all private passenger automobile insurers to file an Excess Profits Report, unless exempted pursuant to N.J.S.A. 17:29A-5.11, regardless of insurer size, and to ensure consistency and uniformity in the data submitted and in the review of requests to make supplemental filings and for reevaluations of determinations of excess profits, no differentiation is provided based on insurer size.

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

11:3-20.3 Definitions

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

. . .

"Combined profits report" means the Excess Profits Report consisting of the aggregated profits results of all members within an insurance holding company system and the individual profits results for each individual member within that holding company system.

. . .

"Non-excessive subsidization" means the number of dollars of excess profit, as calculated pursuant to this subchapter, for an individual insurer within an insurance holding company system, that is less than or equal to .5 percent (one half of one percent) of its earned premiums for the three calendar-accident years immediately preceding the year in which the Excess Profits Report is due to the extent that this excess profit has not been refunded or credited to policyholders.

. . .

"Subsidization" means the number of dollars of excess profit as calculated pursuant to this subchapter, for a member of an insurance holding company system, which has not been refunded or credited to policyholders.

11:3-20.6 Reporting requirements for insurance holding companies

(a) (No change.)

(b) For each insurance holding company system, a [separate] combined profits report for all insurers in its system shall be filed with

the Commissioner. The excess profits computation for an insurance holding company system shall be performed on its combined profits report, except the Commissioner may order an adjustment in the combined profits report if [in his or her judgement], upon examining each insurer's profits report in the insurance holding company system, one or more of the insurers in that system is excessively subsidizing other insurers in that system.

(c) Excessive subsidization shall exist if the number of dollars of excess profit, as calculated pursuant to this subchapter, for an individual insurer within an insurance holding company system, exceeds .5 percent (one half of one per cent) of its earned premiums for the three calendar-accident years immediately preceding the year in which the Excess Profits Report is due to the extent that this excess profit has not been refunded or credited to policyholders.

11:3-20.8 Refund or credit of excess profits

(a) If the Commissioner determines that an insurer [has made] **is required to refund** excess profits, the Commissioner shall issue written notice to the insurer of his or determination. **The notice shall contain a written explanation of the basis on which such a determination was made and shall advise the insurer that it may request a reevaluation of the determination as set forth at (b) below.**

(b) An insurer may request a reevaluation of the determination that it is required to refund excess profits by submitting a written request to the Department within 30 days of the receipt of the notice in (a) above.

1. The written request shall set forth the legal or factual basis for the requested reevaluation.

2. If the basis for the requested reevaluation is good faith error or excusable mistake, the request shall be accompanied by a written request to make a supplemental filing pursuant to N.J.A.C. 11:3-20.11.

3. The Commissioner shall notify the insurer in writing of his or her determination within 60 days, which shall constitute a final agency decision. If no written request for a reevaluation is made as set forth in (b)1 and 2 above, the original notice of determination shall constitute a final agency decision.

[(b)] **(c)** The insurer shall submit to the Commissioner a fair, practicable and nondiscriminatory plan to refund or credit to policyholders the excess profits within 30 days after the written notice in (a) **or (b) above, as applicable**, has been given to the insurer by the Commissioner.

1.-2. (No change.)

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

11:3-20.11 Supplemental filings

(a) An insurer may request permission to supplement its Excess Profits Report filing due to good faith error or excusable mistake by submitting a written request to the Department containing the following:

1. The reasons why the insurer believes that a supplemental filing is necessary;

2. A brief but complete description of the nature of the information to be contained in the supplemental filing (Note: The actual supplemental filing should not be submitted until the insurer is notified that the request has been approved); and

3. The reasons why the insurer failed to provide this information in its initial Excess Profits Report filing.

(b) The Commissioner shall either approve or disapprove the request, in writing, within 30 days after the request is received by the Department. If the insurer is notified that its request is approved, the insurer shall submit the supplemental filing to the Department within 10 days after the receipt of such notification.

Recodify existing 11:3-20.11 and 20.12 as **11:3-20.12 and 20.13** (No change in text.)

APPENDIX

EXCESS PROFIT EXHIBITS—INSTRUCTIONS

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

The Exhibits attached are 1988 exhibits. Where exhibits for prior years or later years must be reported, the filer is required to submit Exhibits which are substantially similar to the attached Exhibits to report the prior years' or later years' data, and which contain all information, including dates, adjusted accordingly.

. . .

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

The sources of data for Exhibit Ten follow.

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

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

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

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

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

Item 5: Exhibit Seven—Part Two

Item 7: Exhibit Seven—Part Two

Item 9: Exhibit Seven—Part Two

Item 11: Exhibit Seven—Part Two

Item 13: Exhibit One, Item 12B.

Item 14: Exhibit One, Item 12A.

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

Item 19 = Item 17–Item 18.

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

Item 21 = Item 19–Item 20.

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

Item 24 = Item 21 + Item 22–Item 23.

[Item 25 is 250 for a filer that is a member of a holding company system, and 0 for all other filers.]

Item 26 is Item 24 minus Item 25.

. . .

Exhibit Ten
Excess Profit Calculation

Check One:

BI Liability _____

Other Liability _____

PIP _____

Physical Damage _____

Total of above four coverages _____

		1986	1987	1988	Three Year Total
Item 1:	Direct Calendar Year Written Premium				
Item 2:	Direct Calendar Year Earned Premium				
Item 2A:	AIRE Compensation, Developed to Ultimate				
Item 2B:	AIRE Charges				
Item 2C:	Item 2A - Item 2B				
Item 3:	Direct Calendar/Accident Year Losses and Loss Adjustment Expenses Incurred, Developed to Ultimate				
Item 4:	Item 3 as a Ratio to Item 2				
Item 5:	Direct Commission and Brokerage Fees Incurred				
Item 6:	Item 5 as a Ratio to Item 1				
Item 7:	Direct Other Acquisition, Field Supervision and Collection Expenses Incurred				
Item 8:	Item 7 as a Ratio to Item 1				
Item 9:	Direct General Expenses Incurred				
Item 10:	Item 9 as a Ratio to Item 2				
Item 11:	Direct Taxes, Licenses and Fees Incurred				
Item 12:	Item 11 as a Ratio to Item 1				
Item 13:	Direct Policyholder Dividends Other Than Excess Profits. Refunds or Credits Incurred				
Item 14:	Credit or Refund of Excess Profits				
Item 15:	Subtotal Item 13 + Item 14				
Item 16:	Item 15 as a Ratio to Item 2				
Item 17:	Underwriting Income = Item 2 + Item 2A - Item 2B - Item 3 - Item 5 - Item 7 - Item 9 - Item 11 - Item 15				
Item 18:	Allowance for Profit and Contingencies				
Item 19:	Actuarial Gain				
Item 20:	Total Development Adjustment	X	X	X	
Item 21:	Total Actuarial Gain	X	X	X	
Item 22:	Excess Investment Income				
Item 23:	Item Two times .025				
Item 24:	Excess Profit	X	X	X	
Item 25:	Non-excessive Subsidization (.005 times Item 2)	X	X	X	
Item 26:	Excessive Subsidization	X	X	X	

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage

Proposed New Rules: N.J.A.C. 11:3-29

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

Authority: P.L. 1988, c.119, section 10, enacted September 8, 1988; as amended P.L. 1988, c.156, section 4, enacted November 15, 1988; as amended P.L. 1990, c.8, section 7, enacted March 12, 1990 (N.J.S.A. 39:6A-4.6).

Proposal Number: PRN 1990-374.

Submit comments by August 15, 1990 to:

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

The agency proposal follows:

Summary

N.J.S.A. 39:6A-4.6 directs the Commissioner to promulgate medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to be made under the personal injury protection coverage provided by automobile insurance policies. The Department proposed promulgation of medical fee schedules in the Apirl 3, 1989 issue of the New Jersey Register at 21 N.J.R. 842(b) but those schedules were never adopted.

Section 7 of the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8 (enacted March 12, 1990) amended N.J.S.A. 39:6A-4.6 to require that the fee schedules incorporate the reasonable and prevailing fees of 75 percent of the practitioners within the region. If, in the case of a specialist provider, there are fewer than 50 specialists within a region, the fee schedule must incorporate the reasonable and prevailing fees of the specialist providers on a Statewide basis.

The medical fee schedules set forth in these proposed new rules represent the Department's initial effort to implement the 1990 amendments and to develop fee schedules required by the new law. In accordance with N.J.S.A. 39:6A-4.6, the schedules are subject to biannual review (meaning twice a year) and thus may undergo refinement where appropriate.

The law has been amended to provide that no health care provider may demand or request any payment from any person in excess of that permitted by the medical fee schedules, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules.

Medical providers supplying services and equipment to those injured in automobile accidents include the following:

1. Providers of medical services, including medical doctors, osteopathic physicians, chiropractors, medical laboratories, etc.;
2. Dentists;
3. Nurses and other providers of allied health professional services, including registered nurses, physical therapists, speech therapists, occupational therapists, licensed practical nurses and home health agencies;
4. Providers of durable medical equipment;
5. Providers of medical transportation services, including mobile intensive care units and ambulances; and
6. Acute care hospitals and other specialized medical care facilities.

The schedules proposed are categorized by the type of service or equipment provided. Types of medical services are listed in a nationally recognized coding system known as the Physicians Current Procedural Terminology, fourth edition (hereinafter "CPT-4"). The Department utilized the CPT-4 system as the basic code and description for medical services provided in the proposed fee schedule.

Using a large Statewide data base, the Department analyzed several million billed charges for CPT-4 services to determine levels of fees to be included in the schedule. The Department analyzed billed charges to develop Statewide and regional means. Statewide fees were used in the event the number of billed charges for a particular service in a particular region were inadequate for analysis.

Medical services provided by specialists were not separately analyzed in the development of the schedules except to comply with the requirement that in cases where there are fewer than 50 specialists within a region, the services for such specialists on a Statewide basis were incorporated in the analysis of medical services for that region.

In analyzing the level of fees actually billed by medical service providers, the Department noted that, in general, the charge levels in region III were approximately eight to 12 percent higher than those in region I; those in region II fell generally in between. To avoid wide disparities among regions for specific services, and to eliminate statistical anomalies, the scheduled fees were flattened so that all regions were within 10 percent of the fee that would exist had there been a single Statewide fee applied to each region. All fees were reviewed item by item and minor adjustments made where required to eliminate obvious fee aberrations among similar procedures.

In some cases, various service types (CPT-4 codes) have been aggregated into a single compressed code. The number of procedural categories has thus been decreased, and the credibility for each average fee enhanced.

To develop dental service fees, the Department first identified those services generally provided to victims of traumatic injury. Dental services are identified by the nationally recognized American Dental Association numerical codes described on the schedules. The Department surveyed several large dental insurers to determine the level of charges billed and paid and utilized a relative value scale to establish the fees for each of the specific services described. No significant or consistent difference was noted in the level of fees by region of the State; therefore, the fees set forth in the proposed schedule for each service are the same in each region.

Nursing and allied health professional services provided to victims of traumatic injury include both nursing services and rehabilitation services for home physical therapy, home speech therapy and home occupational therapy. These services are generally billed on an hourly basis; home health care services are billed on a per visit basis. The Department surveyed several large medical insurers and providers of these services to determine the levels of fees billed and paid in the various regions of the State. The Department analyzed the level of prevailing fees for each of the specific services mentioned. With regard to private nursing care, the data did not reveal significant or consistent differences among the various regions of the State; therefore, the fees for each service in each region are the same. With regard to home health visits, the survey did not reveal a significant difference between regions II and III, although the prevailing fees in these regions were slightly higher than region I. Therefore, the schedule sets forth the same fee for these services in regions II and III, which is slightly higher than the fee for region I.

In developing the schedule for durable medical equipment, the Department referred to a fee schedule used by the Federal Medicare program for New Jersey Medicare recipients. The Medicare program is the principal payer countrywide for durable medical equipment; it is generally the source of more than 50 percent of the total revenue of durable medical equipment providers. The Medicare fee schedule contains a numerical code for each item which has been incorporated into the proposed schedule.

The schedule sets forth the retail purchase price for each item of equipment. The proposed rules limit the monthly rental of any item to 10 percent of the purchase price, and limit the total of rentals to 15 times the monthly rental fee. The Medicare schedule is applied in New Jersey without regard to region; therefore, the schedule reflects the same fee for durable medical equipment in each region.

Medical transportation services are provided to victims of automobile accidents both by Mobile Intensive Care Units (hereinafter "MICU") and by ambulance companies. For ambulance services, the Department referred to the Federal Medicare program rates for New Jersey. For MICU services, the Department surveyed medical insurers and providers of MICU services to determine the level of fees in the various regions of the State. No significant and consistent difference was noted by region; therefore, the fee for each service in each region is identical.

With regard to medical services provided by acute care hospitals, fees are regulated by the Hospital Rate Setting Commission in the Department of Health. These proposed rules incorporate by reference fees established by the Hospital Rate Setting Commission as automobile insurers' limit of liability under the medical expense benefit portion of the personal injury protection coverage provided in an automobile insurance policy.

Other specialized medical facilities also have their rates determined by the New Jersey Department of Health in accordance with the Standard Hospital Accounting Rate Evaluation system ("SHARE") pursuant to

N.J.S.A. 26:2H-18. The level of charges for these facilities set by the Commissioner of Health for hospital or health service corporations (that is, Blue Cross) has been incorporated by reference in these proposed rules.

In proposing these rules, the Department realizes that many other medical services not specifically listed are nevertheless provided to persons injured in automobile accidents. These include a variety of services and equipment not described for which there was insufficient data available. Development of fees for these services will continue, and these rules will be amended to include them as they are developed. With regard to services and equipment not on the fee schedules, these proposed rules contain a provision that the limit of liability for medical expense benefits is a reasonable amount considering the fee schedule for similar services or equipment in the region where such services or equipment is provided.

Proposed N.J.A.C. 11:3-29.1 describes the purpose and scope, which is to establish medical fee schedules on a regional basis, as required by N.J.S.A. 39:6A-4.6 as amended. The scope is specifically limited to the medical expense benefit portion of the personal injury protection coverage in private passenger automobile insurance. The proposed fee schedules do not apply to other automobile insurance coverages such as bodily injury liability, to other forms of health insurance, or to medical services or equipment provided outside of New Jersey.

Proposed N.J.A.C. 11:3-29.2 sets forth definitions of various terms.

Proposed N.J.A.C. 11:3-29.3 sets forth the regions.

Proposed N.J.A.C. 11:3-29.4 sets forth specific rules for the application of the schedules, and incorporates by reference hospital and health care facility fees established by the New Jersey Department of Health.

Proposed N.J.A.C. 11:3-29.5 sets forth the legislative prohibition against balance billing.

Proposed N.J.A.C. 11:3-29.6 consists of the medical fee schedules.

Social Impact

These proposed rules affect automobile insurers, automobile insurance purchasers, and those who provide medical services and equipment to insureds injured in automobile accidents. The proposed rules will have a positive social impact by furthering the legislative policy of controlling the cost of medical services and automobile insurance. The rules set limits of liability for medical services and equipment furnished to those injured in automobile accidents.

Economic Impact

These proposed rules are expected to limit the amount of medical expenses paid by individuals and their automobile insurers. The fees included on the schedule have been set so as to be equal to or greater than the charges billed by 75 percent of the medical service providers. This will result in an anticipated saving of a portion of the automobile insurance premium used for personal injury protection medical expenses. Some of this savings will be offset by the added costs to automobile insurers necessary to develop and implement the schedules through revised claims processing and adjudication procedures. Much of this administrative cost will be a capital cost that will provide rate savings over time. Health care providers will also incur some cost in the process of incorporating the fee schedules into their billing procedures and accepting lower fees in certain circumstances.

The Department will monitor the effect of these schedules to determine the actual economic impact, as provided in the legislation.

Regulatory Flexibility Statement

These proposed rules will apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" include health care providers and insurers authorized to write private passenger automobile insurance. Less than 10 of the more than 200 automobile insurers in New Jersey qualify as "small businesses".

A regulatory flexibility analysis is not required because these rules do not impose reporting, record keeping or other compliance requirements on small businesses beyond the statutory requirements. The medical fee schedules contained in the rules set forth the limits of liability for the medical expense benefit portion of the personal injury protection coverage contained in automobile insurance policies.

While the rules do not impose reporting, record keeping and other compliance requirements, it is fully expected that all automobile insurers including those qualifying as small businesses, will implement the fee schedules in their claims adjudication processes so as to reduce loss expenses for personal injury protection medical expense claims. Health care providers will be required to incorporate the fee schedules into their billing procedures.

Full text of the proposed rules follows:

SUBCHAPTER 29. MEDICAL FEE SCHEDULES: AUTOMOBILE INSURANCE PERSONAL INJURY PROTECTION COVERAGE

11:3-29.1 Purpose and scope

(a) This subchapter implements the provisions of P.L. 1988, c.119; P.L. 1988, c.156; and P.L. 1990, c.8 (N.J.S.A. 39:6A-4.6) to establish medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to be made by automobile insurers under PIP coverage.

(b) This subchapter applies to all insurers that issue policies of automobile insurance containing PIP coverage.

(c) These fee schedules do not apply to the following:

1. Other coverages contained in an automobile insurance policy such as coverage for bodily injury liability;

2. Any other kind of insurance, such as health insurance, even when the health insurers may be required pursuant to its health insurance contract to pay benefits to, or on behalf of, a person who sustained bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or an object propelled by or from an automobile; and

3. Medical services or equipment provided outside of the geographic boundaries of New Jersey.

11:3-29.2 Definitions

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

"BLS" means basic life support.

"Health insurance" means a contract or agreement whereby an insurer is obligated to pay or allow a benefit of pecuniary value with respect to the bodily injury, disablement, sickness, death by accident or accidental means of a human being, or because of any expense relating thereto, or because of any expense incurred in prevention of sickness, and includes every risk pertaining to any of the enumerated risks. As used in this subchapter, health insurance includes workers' compensation coverage. As used in this subchapter, health insurance does not include any PIP coverage.

"Health insurer" includes any insurer issuing a policy of health insurance as defined in this subchapter.

"PIP coverage" means personal injury protection coverage described in N.J.S.A. 39:6A-4a and N.J.S.A. 39:6A-10 as amended.

"PIP insurer" includes any insurer issuing a policy of automobile insurance on any vehicle that contains PIP coverage.

"Provider" includes all persons who furnish services or equipment for medical expense benefits for which payment is required to be made under PIP coverage in automobile insurance policies.

11:3-29.3 Regions

(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem.

(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, Sussex and Warren.

(c) Region III, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Morris, Passaic and Union.

11:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance issued in this State shall provide that the automobile insurer's limit of liability for medical expenses payable under PIP coverage is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel a PIP insurer to pay more for any service or equipment than the amount billed by the provider.

(b) The region used to determine the proper fee set forth in the schedules shall be determined by the region in which the services were rendered or the equipment was provided.

(c) The fees set forth in the schedule for durable medical equipment are retail purchase prices.

1. The insurer's limit of liability for monthly rental of durable medical equipment described in the schedule is 10 percent of the amount of the purchase price.

2. The insurer's total limit of liability for the rental of a single item of durable medical equipment set forth in the schedule is 15 times the monthly rental fee.

(d) The insurer's limit of liability for any medical expense benefit for any service or equipment not set forth in the fee schedules shall be a reasonable amount considering the fee schedule for similar services or equipment in the region where the service or equipment was provided.

(e) The insurer's limit of liability for any medical expense benefit for service or equipment provided outside the State of New Jersey shall be as follows:

1. When the service or equipment is provided by reason of emergency or medical necessity, the reasonable and necessary costs shall not exceed fees that are usual, customary and reasonable for that provider in the geographic location where the service or equipment is provided.

2. When the service or equipment is provided by reason of the election by the insured to receive treatment outside the State of New Jersey, the reasonable and necessary costs shall not exceed fees that are usual, customary and reasonable for 75 percent of the providers in the geographic location where the service or equipment is provided.

(f) When multiple procedures are performed at the same time, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principal procedure at an operative session shall be paid at 100 percent of the eligible charge, the second procedure at 50 percent, and, if performed, any additional procedure, at a total of 25 percent of the charge. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same medical visit.

1. All procedures/subprocedures performed in one day in one operative session are inherently part of the major or principal service performed; exceptions to this rule may occur and can be considered on a case-by-case basis based on the facts of the particular situation. For surgery and many other procedures, it is established practice to include follow-up care and visits as part of the basic procedure charge. Such charges shall not be subject to additional billings.

2. Artificially separating or partitioning what is inherently one total surgical procedure into subparts which are integral to the whole for the purpose of increasing medical fees is prohibited. Such practice is commonly referred to as "unbundling" or "fragmented" billing. The existence of a CPT-4 code, per se, does not equate to the inherent right to receive separate compensation for the procedure/subprocedure so described. If a procedure is judged to be part of the major or principal procedure, only the charges for the principal procedure are eligible.

(g) The fee schedule for services provided by acute care hospitals shall be the schedule of rates determined by the Hospital Rate Setting Commission in the New Jersey Department of Health, established pursuant to N.J.S.A. 26:2H-4.1, which is hereby incorporated by reference.

(h) The fee schedule for other health care facilities shall be the rates established by the New Jersey Commissioner of Health pursuant to N.J.S.A. 26:2H-18 and in accordance with the Standard Hospital Accounting Rate Evaluation system applicable to hospital or health service corporations (that is, Blue Cross), which are hereby incorporated by reference.

11:3-29.5 Balance billing prohibited

No health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules, nor shall any person be liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fees schedules.

11:3-29.6 Medical Fee Schedules

(a) The following is the Medical Fee Schedule for medical services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE--MEDICAL SERVICES

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
10120	10120	INCISION & REMOVAL FOREIGN BODY, SUBCUTANEOUS TISSUES; SIMPLE	79	96	79
10121	10121	INCISION & REMOVAL FOREIGN BODY, SUBCUTANEOUS TISSUES; COMPLICAT	119	119	138
10140	10140	INCISION AND DRAINAGE OF HEMATOMA; SIMPLE	60	67	72
10160	10160	PUNCTURE ASPIRATION OF ABSCESS OR HEMATOMA	89	99	94
11730	11730	AVULSION OF NAIL PLATE, PARTIAL OR COMPLETE, SIMPLE; SINGLE	66	66	54
11730	11731	AVULSION OF NAIL PLATE, PART OR COMPLETE, SIMPLE; SECOND NAIL PLA	66	66	54
12001	12001	SIMP REPAIRS SUPERFICIAL WNDS/SCALP, NECK, AXILLAE; 2.5CM OR LES	109	111	125
12001	12002	SIMPLE REPAIR OF SUPERFICIAL WOUNDS OF SCALP, NECK, 2.6 TO 7.5C	109	111	125
12001	12004	SIMP REPAIR WNDS/SCALP, NECK, AXIL/GEN/TRUNK/EXTR; 7.6 TO 12.5CM	109	111	125
12005	12005	SIMP REPAIR WNDS/SCALP, NECK, AXIL/GEN/TRUNK/EXTR; 12.6 TO 20.0C	219	219	219
12011	12011	SIM REPAIR WOUND FAC/EAR/EYELIDS/NOS/LIPS/MUCMEM UP TO 2.5 CM	119	121	139
12011	12013	SIMP REPAIR WNDS/FAC/EAR/EYEL/NOS/LIP; 2.6 TO 5.0 CM	119	121	139
12011	12014	SIMP REPAIR SUPERFICIAL WNDS FAC/EARS/EYEL/NOSE; 5.1 TO 7.5CM	119	121	139
12031	12031	LAYER CLOS WOUND SCAL/AXIL/TRUNK/EXTREMITIES UP TO 2.5 CM	187	187	194
12031	12032	LAYER CLOSURE OF WOUNDS OF SCALP, AXILLAE, TRUNK; 2.6 to 7.5 CM	187	187	194
12031	12034	LAYER CLOSURE OF WOUNDS OF SCALP, AXILLAE, TRUNK; 7.6 to 12.5 CM	187	187	194
12031	12041	LAYER CLOS WOUND NEC HANDS/FT/GENIT; UP TO 2.5 CM	187	187	194
12031	12042	LAYER CLOSURE OF WOUNDS NECK, HANDS, FEET, GENIT; 2.6 TO 7.5 CM	187	187	194

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
12051	12051	LAYER CLOS WOUNDS FACE/EAR/EYELID/NOSE/LIP; UP TO 2.5 CM	330	305	294
12051	12052	LAYER CLOSURE OF WOUNDS OF FACE, EARS, EYELID, NOSE; 2.6 TO 5.0C	330	305	294
12051	12053	LAYER CLOSURE OF WOUNDS OF FACE, EARS, EYELID, NOSE; 5.1 TO 7.5C	330	305	294
12031	13120	REPAIR, COMPLEX, SCALP, ARMS & OR LEGS; 1.1 CM TO 2.5 CM	187	187	194
13121	13121	REPAIR, COMPLEX, SCALP, ARMS & OR LEGS; 2.6 CM TO 7.5 CM	344	344	344
12051	13131	REPAIR, COMPLEX, FOREHEAD, CHEEKS, GENITALIA, HANDS/FT 1.1 TO 2.5C	330	305	294
13132	13132	REPAIR, COMPLEX, FOREHEAD, CHEEKS, MOUTH, HANDS/FEET; 2.6 TO 7.5 CM	658	658	564
13151	13151	REPAIR, COMPLEX, EYELIDS, NOSE, EARS, LIPS; 1.1 CM TO 2.5 CM	478	478	531
13150	13152	REPAIR, COMPLEX, EYELIDS, NOSE, EARS, LIPS; 2.6 CM TO 7.5 CM	796	796	796
13300	13300	COMPLEX WOUND REPAIR, UNUSUAL, COMPLICATED OVER 7.5 CM ANY AR	796	796	796
14000	14000	ADJACENT TIS TRANS OR REARRANS, TRUNK; UP TO 1.0 SQ CM	589	589	589
14001	14001	ADJACENT TIS TRANS OR REARRANS, TRUNK; 10 SQ CM TO 30 SQ CM	747	747	863
14000	14020	ADJAC TIS TRANS OR REARRANGE SCAL/ARM/LEG UP TO 10 SQ CM	589	589	589
14040	14040	ADJ TIS TRANS/REAR FOR/CHK/CH/MTH/NK/AXILGEN/HND/FT TO 10 SQ	1173	1173	1173
14040	14060	ADJ TIS TRANS/REARR, EYELID/NOSE/EAR/LIPS UP TO 10 SQ CM	1173	1173	1173
14300	14300	ADJAC TIS TRANS/REARR, MORE THAN 30 SQ SM UNUSUAL/COMP ANY AR	1149	1149	1149
15100	15100	SPLIT GRAFT TRNK/SCAL/ARM/LEG/HNDS/FT UP TO 100 SQ CM	1327	1327	1327
16000	16000	INIT TREAT, 1ST DEGREE BURN, ONLY LOCAL TREATMENT REQUIRED	64	64	72
16020	16020	DRESS &/OR DEBRIDEMENT; WO ANES, OFFICE OR HOSP, BURN, SMALL	88	88	88
16020	16025	DRESS &/OR DEBRIDEMENT; WO ANES, MEDIUM (WHOLE FACE/ EXTREMITY)	88	88	88
16020	16030	DRESS &/OR DEBRIDEMENT; WO ANES, BURN, LG (MORE THAN 1 EXTREMITY)	88	88	88
17250	17250	CHEMICAL CAUTERIZATION OF A WOUND	67	67	67
20501	20501	INJECTION OF SINUS TRACT; DIAGNOSTIC (SINOGRAM) (SEPARATE PROC)	94	94	94
20550	20550	INJECTION, TENDON SHEATH, LIGAMENT, TRIGGER PTS OR GANGLION	51	41	46
20600	20600	ARTHROCENTESIS, ASPIRATION &/OR INJEC; SMALL JOINT, BURSA/ GANGLI	46	51	46
20605	20605	ARTHROCENTESIS, ASPIRA/INJECT; INTERMEDIATE JNT, BURSA/ GANGLIO	60	57	57
20605	20610	ARTHROCENTESIS, ASPIRATION/INJECTION; MAJOR JOINT/BURSA (HIP, KNEE	60	57	57
20670	20670	REMOVAL OF IMPLANT; SUPERFICIAL (EG, BURIED WIRE, PIN OR ROD)	253	292	239
20680	20680	REMOVAL OF IMPLANT; DEEP (EG, BURIED WIRE, PIN SCREW, METAL BAND,	711	711	868
21315	21315	MANIPULATIVE TREATMENT NASAL BONE FX; WITHOUT STABILIZATION	630	630	663
21315	21320	MANIPULATIVE TREATMENT NASAL BONE FX; WITH STABILIZATION	630	630	663
21325	21330	NASAL FX; COMPLICATED W INT AND EXT SKELETAL FIXATION	996	996	996
21325	21335	NASAL FX WITH CONCOMITANT OPEN TREATMENT OF FX SEPTUM	2654	2654	2654
21310	21337	NASAL SEPTAL FRACTURE/CLOSED	598	598	598
21800	21800	RIB, FRACTURE(S) CLOSED (SIMPLE), UNCOMPLICATE	72	72	72
23350	23350	INJECTION PROCEDURE FOR SHOULDER ARTHROGRAPHY	167	167	179
23500	23500	TREATMENT OF CLOSED CLAVICULAR FRACTURE W/O MANIPULATION	179	198	173
23650	23650	TREATMENT OF CLOSED SHOULDER DISLOCATION W MANIP, WO ANESTHES	321	321	292
24577	24577	TREATMENT OF CLOSED CONDYLAR FX MEDIAL OR LATERAL W MANIPULAT	258	258	258
25565	25565	TX OF CLOSED RADIAL & ULNAR SHAFT FRACTURES; W/ MANIPULATION	730	697	724
25605	25605	SEE CPT-4 (1988) FOR COMPLETE NOMENCLATURE	562	511	465
26600	26600	METACARPAL FRACTURE, SINGLE, CLOSED (SIMPLE), W	333	339	339
26600	26605	CLOSED METACARPAL FX SINGLE; WITH MANIPULATION	333	339	339
26720	26720	PHALANGES, FRACTURE, PROXIMAL OR MIDDLE, FINGER	215	228	206
26720	26725	PHALANGES, FRACTURE, PROXIMAL OR MIDDLE, FINGER	215	228	206
26750	26750	CLOSED DISTAL PHALANGEAL FX WO MANIPULATION	175	175	175
26750	26755	CLOSED DISTAL PHALANGEAL FX WITH MANIPULATION	175	175	175
26760	26760	OPEN DISTAL PHALANGEAL FX W SOFT TISSUE CLOSURE, EACH	398	398	398

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
27130	27130	ARTHROPLASTY, ACETABULAR AND PROXIMAL FEMORAL P	6569	6569	5971
27236	27236	OPEN TX OF CLOSED OR OPEN FEMORAL FRACT, PROXIMAL END, NECK	3211	3211	3211
27244	27244	CLOSED OR OPEN INTER OR PERTROCHANTERIC FX W INT FIXATION	3650	3650	3650
27370	27370	INJECTION PROCEDURE FOR KNEE ARTHROGRAPHY	132	147	162
27447	27447	ARTHROPLASTY, KNEE, MEDIAL AND LAT. W/WO PATELLA RESURFACING	6687	6687	7160
27520	27520	PATELLA, FRACTURE, CLOSED (SIMPLE), WITHOUT RED	465	465	465
27752	27752	TIBIA, SHAFT FRACTURE, CLOSED (SIMPLE), CLOSED	788	788	876
27760	27760	CLOSED DISTAL TIBIAL FX WO MANIPULATION	431	431	431
27760	27762	CLOSED DISTAL TIBIAL FX WITH MANIPULATION	431	431	431
27781	27781	CLOSED PROX FIBULA OR SHAFT FX; WITH MANIPULATION	451	465	502
27781	27786	CLOSED DISTAL FIBULAR FX; WO MANIPULATION	451	465	502
27781	27788	CLOSED DISTAL FIBULAR FX; WITH MANIPULATION	451	465	502
28455	28455	TRTM OF CLOSED TARSAL BONE FRACTURE, W MANIPULATION, EACH	345	345	333
28470	28470	METATARSAL(S), FRACTURE(S), CLOSED (SIMPLE), WI	304	352	299
28470	28475	METATARSAL(S), FRACTURE(S), CLOSED (SIMPLE), CL	304	352	299
28490	28490	PHALANX OR PHALANGES, FRACTURE GREAT TOE, CLOSE	113	113	113
28590	28495	PHALANX OR PHALANGES, FRACTURE GREAT TOE, CLOSE	166	166	166
28510	28510	CLOSED FX, PHALANX/PHALANGES, BESIDES BIG TOE; WO/ MANIPULATION, E	132	125	108
28510	28515	CLOSED FX, PHALANX/PHALANGES, BESIDES BIG TOE; W/ MANIPULATION, E	132	125	108
29065	29065	APPLICATION; SHOULDER TO HAND (LONG ARM)	162	190	189
29065	29075	APPLICATION; ELBOW TO FINGER (SHORT ARM)	162	190	189
29085	29085	APPLICATION; HAND & LOWER FOREARM (GAUNTLET)	143	159	166
29105	29105	APPLICATION LONG ARM SPLINT/SHOULDER TO HAND	96	191	123
29105	29125	APPLICATION SHORT ARM SPLINT/FOREARM TO HAND/STATIC	96	191	123
29130	29130	APPLICATION FINGER SPLINT/STATIC	70	86	86
29220	29220	STRAPPING/LOW BACK	86	78	81
29220	29240	STRAPPING/SHOULDER	86	78	81
29260	29260	STRAPPING/ELBOW OR WRIST	69	69	70
29260	29280	STRAPPING/HAND OR FINGER	69	69	70
29345	29345	LONG LEG CAST (THIGH TO TOES), UNDER AGE 10 YEARS	215	253	264
29345	29355	LONG LEG CAST (THIGH TO TOES), WALKING OR AMBUL	215	253	264
29405	29405	APPLICATION TO SHORT LEG CAST (BELOW KNEE TO TOES)	203	203	218
29405	29425	SHORT LEG CAST (BELOW KNEE TO TOES), WALKING OR	203	203	218
29870	29870	ARTHROSCOPY, KNEE, DIAG, W/WO SYNOVIAL BIOPSY (SEP PROC)	1136	1387	1327
29874	29874	ARTHROSCOPY, KNEE, SURGICAL; F/REMOVAL LOOSE/FOREIGN BODY	2676	3134	3014
29874	29875	ARTHROSCOPY, KNEE, SURGICAL; SYNOVECTOMY, LIMITED	2676	3134	3014
29874	29877	ARTHROSCOPY, KNEE, SURG; DEBRIDEMENT/SHAVING ARTICULAR CARTILAGE	2676	3134	3014
29874	29881	ARTHROSCOPY, KNEE, SURG; W MENISCECTOMY	2676	3134	3014
29874	29882	ARTHROSCOPY, KNEE, SURG; W MENISCUS REPAIR	2676	3134	3014
30200	30200	INJECTION INTO TURBINATE(S), THERAPEUTIC	37	37	37
30300	30300	REMOVAL FOREIGN BODY INTRANASAL; OFFICE TYPE PROCEDURE	60	60	60
30410	30420	RHINOPLASTY PRIMARY INCLUDING MAJOR SEPTAL REPAIR	3981	3716	4246
30500	30500	SEPTECTOMY, SUBMUCOUS RESECTION (W/WO TURBINECTOMY & POLYPECTOM	2389	2389	2123
30520	30520	SEPTOPLASTY WITH OR WITHOUT CARTILAGE IMPLANT	2359	2389	2654
30901	30901	CONTROL NASAL HEMORRHAGE, ANT, SIMPLE (CAUTERIZATION) UNILATE	89	99	99
30902	30902	CONTROL NASAL HEMORRHAGE, ANT, SIMPLE (CAUTERIZATION) BILATER	99	99	99
30903	30903	CONTROL NASAL HEM ANT COMPLEX (CAUT W LOCAL ANESTH PACK) UNI	133	133	133
30904	30904	CONTROL NASAL HEM ANT COMPLEX (CAUT W LOCAL ANESTH PACK) BILA	200	200	200
30905	30905	CONTROL NASAL HEMORRHAGE, POST, W POST NASAL PACKS; INITIAL	398	398	398
31000	31000	LAVAGE BY CANNULATION; MAXILLARY SINUS, UNI (ANTRUM/NAT OSTIU	102	102	102
31001	31001	LAVAGE BY CANNULATION; MAXILLARY SINUSES, BILATERAL	166	166	150
31201	31201	ETHMOIDECTOMY; INTRANASAL, TOTAL	1990	1990	1990
31505	31515	LARYNGOSCOPY DIRECT; FOR ASPIRATION	346	370	341
31505	31525	LARYNGOSCOPY DIRECT; DIAGNOSTIC; EXCEPT NEWBORN	346	370	341
31505	31535	LARYNGOSCOPY, DIRECT, OPERATIVE, W BIOPSY	346	370	341

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
31505	31575	LARYNGOSCOPY, FLEXIBLE FIBERSCOPIC; DIAGNOSTIC	346	370	341
31600	31600	TRACHEOSTOMY, PLANNED (SEPARATE PROCEDURE);	1061	1061	1061
31620	31620	BRONCHOSCOPY; DIAGNOSTIC, RIGID BRONCHOSCOPE	693	693	847
32000	32000	THORACENTESIS, PUNCTURE PLEURAL CAVITY FOR ASPIRATION INIT/SU	232	206	232
32020	32020	TUBE THORACOSTOMY W WATER SEAL (PNEUMOTHO/HEMOTHO) (SEP PROC)	598	730	663
32100	32100	THORACOSTOMY; MAJOR; W EXPLORATION AND BIOPSY	3317	3317	3317
36415	36415	ROUTINE VENIPUNCTURE FOR COLLECTION OF SPECIMEN(S)	7	7	7
36430	36430	BLOOD TRANSFUSION, INDIRECT	74	74	60
36488	36488	PLACEMENT CENTRAL VENOUS CATH; PERCUTANEOUS, AGE 2 YRS OR UNDER	333	479	414
36488	36489	CATH, SUBCLVIAN, PERCU, BY CUTDOWN F CENTRAL VENOUS PRESSR DETERM	333	479	414
36488	36490	CUTDOWN PLACEMENT OF CENT. VENOUS CATH. AGE 2 OR UNDER	333	479	414
36488	36491	PLACEMENT CENTRAL VENOUS CATHETER; CUTDOWN, OVER AGE 2	333	479	414
36620	36620	ARTERIAL CATHETERIZATION FOR MONITORING OR TRAN	232	200	200
39400	39400	MEDIASTINOSCOPY, WITH OR WITHOUT BIOPSY	1182	1182	1168
49000	49000	EXPLORATORY LAPAROTOMY; EXPLORATORY CELIOTOMY	1857	1877	2210
49081	49080	ABDOMINAL PARACENTESIS, INITIAL	152	159	183
49081	49081	ABDOMINAL PARACENTESIS, SUBSEQUENT	152	159	183
49420	49420	INTRODUCTION; INSERTION OF INTRAPERITONEAL CANN	219	219	219
50200	50200	RENAL BIOPSY, PERCUTANEOUS	465	465	419
50220	50220	NEPHRECTOMY, INCLUDING PARTIAL URETERECTOMY, AN	3650	3650	3650
50392	50392	INTRO OF INTRACATHETER RENAL PELVIS DRAINAGE/INJECTION, PERCUT	133	133	133
50392	50394	INJECT PROC FOR PYELOGRAPHY (SEPARATE PROCEDURE)	133	133	133
51600	51600	INJECTION PROCEDURE FOR CYSTOGRAPHY	132	132	108
51725	51725	SMPLE CYSTOMETGRM	159	143	175
52000	52000	CYSTOURETHROSCOPY (SEPARATE PROCEDURE)	230	235	294
52000	52005	DIAGNOSTIC CYSTOURETHROSCOPY WITH URETERAL CATH	230	235	294
62270	62270	SPINAL PUNCTURE, LUMBAR PUNCTURE (INDEPENDENT PROCEDURE)	143	166	166
65205	65205	REMOVAL FOREIGN BODY EXT EYE; CONJUNCTIVAL SUPERFICIAL	113	89	90
65205	65210	REM FOREIGN BODY, EXT EYE CONJ EMBED, SUBCONJ OR SCLERA/ NONFERF	113	89	90
65205	65220	REMOVAL OF IMBEDDED FOREIGN BODY-CORNEA	113	89	90
65205	65222	REM FOREIGN BODY EXT EYE; CORNEAL, WITH SLIT LAMP	113	89	90
67036	67036	VITRECTOMY, MECHANICAL, PARS PLANA APPROACH	5308	5308	5308
67105	67105	INITIAL REPAIR RETINAL, DETACH, 1 OR MORE SESSIONS; PHOTOCOAGULA	1593	1593	1593
67107	67107	SCLERAL BUCKLING W/WO IMPLANT (SUCH AS LAMELLAR EXC; IMBRICATIO	4379	4379	4379
69000	69000	INCISION: DRAINAGE OF ABSCESS OR HEMATOMA OF AU	133	133	133
69200	69200	ENDOSCOPY: OTOSCOPY WITH REMOVAL OF FOREIGN BODY	84	103	99
70100	70100	MANDIBLE PARTIAL LESS THAN FOUR VIEWS	60	60	60
70100	70110	MANDIBLE COMPLETE MINIMUM OF FOUR VIEWS	60	60	60
70120	70130	MASTOIDS COMPLETE MINIMUM OF THREE VIEWS	115	115	120
70140	70150	FACIAL BONES COMPLETE MINIMUM OF THREE VIEWS	77	67	74
70140	70160	NASAL BONES COMPLETE MINIMUM OF THREE VIEWS	77	67	74
70200	70200	ORBITS COMPLETE PROCEDURE	75	90	91
70210	70210	SINUSES PARANASAL LESS THAN THREE VIEWS	74	70	60
70220	70220	SINUSES PARANASAL COMPLETE MINIMUM THREE VIEWS W/O CONTRAST	99	98	99
70250	70250	SKULL LESS THAT FOUR VIEWS WITH OR W/O STERO	111	99	102
70250	70260	SKULL COMPLETE MINIMUM FOUR VIEWS WITH OR W/O STERO	111	99	102
70360	70360	NECK FOR SOFT TISSUES	58	58	48
70380	70380	SALIVARY GLAND FOR CALCULUS	80	80	80
70450	70450	COMPUTERIZED AXIAL TOMOGRAPHY HEAD W/O CONTRAST MATERIAL	511	497	531
70460	70460	COMPUTERIZED AXIAL TOMOGRAPHY HEAD WITH CONTRAST MATERIAL	623	589	577
70460	70470	CAT HEAD W/O CONTRAST FOLLOWED BY CONTRAST FURTHER SECT	623	589	577
70480	70480	CAT ORBIT SELLAEAR W/O CONTRAST MATERIAL	406	406	406
70481	70481	CAT ORBIT SELLAEAR WITH CONTRAST MATERIAL	658	658	630
70481	70482	CAT ORBIT SELLAEAR W/O CONTRAST FOLLOWED BY CONTRAST	658	658	630
70486	70486	COMPUTERIZED AXIAL TOMOGRAPHY MAXILLOFACIAL W/O CONTRAST MAT	724	724	724
70487	70487	COMPUTERIZED AXIAL TOMOGRAPHY MAXILLOFACIAL WITH CONTRAST MAT	735	735	735

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
71010	71010	CHEST, SINGLE VIEW	56	53	53
71020	71020	CHEST, TWO VIEWS	74	67	67
71100	71100	RIBS UNILATERAL TWO VIEWS	88	80	83
71100	71101	RIBS UNILATERAL INCLUDING CHEST MINIMUM OF THREE VIEWS	88	80	83
71110	71110	RIBS BILATERAL THREE VIEWS	88	88	89
71110	71111	RIBS BILATERAL INCLUDING CHEST MINIMUM OF FOUR VIEWS	88	88	89
71120	71120	STERNUM MINIMUM TWO VIEWS	64	64	77
71250	71250	COMPUTERIZED AXIAL TOMOGRAPHY THORAX W/O CONTRAST MATERIAL	643	643	643
71250	71260	COMPUTERIZED AXIAL TOMOGRAPHY THORAX WITH CONTRAST MATERIAL	643	643	643
72010	72010	SPINE SURVEY STUDY AP AND LATERAL	147	152	133
72040	72040	SPINE, CERVICAL, A-P AND LATERAL	60	67	67
72125	72125	COMPUTERIZED AXIAL TOMOGRAPHY CERVICAL SPINE W/O CONTRAST MAT	598	630	630
72131	72131	COMPUTERIZED AXIAL TOMOGRAPHY LUMBAR SPINE W/O CONTRAST MAT	598	630	630
72141	72141	MRI, SPINAL CANAL & CONTENTS; CERVICAL	996	996	996
72192	72192	COMP TOMOGRAPHY/PELVIS/W/O CONTRAST MATERIAL	592	544	590
72192	72193	COMP TOMOGRAPHY/PELVIS/WITH CONTRAST MATERIAL	592	544	590
73000	73000	CLAVICLE	62	54	60
73010	73010	SCAPULA	60	60	66
73030	73030	SHOULDER COMPLETE MINIMUM OF TWO VIEWS	69	67	67
73080	73080	ELBOW COMPLETE MINIMUM OF THREE VIEWS	72	64	67
73090	73090	X-RAY FOREARM AP & LATERAL VIEWS	60	60	66
73100	73100	WRIST AP AND LATERAL VIEWS	60	60	60
73130	73130	HAND, COMPLETE STUDY, MINIMUM OF THREE VIEWS	67	60	64
73140	73140	HAND, FINGER OR FINGERS, MINIMUM OF TWO VIEWS	53	53	53
73510	73510	HIP UNILATERAL COMPLETE MINIMUM OF TWO VIEWS	80	72	80
73520	73520	HIPS BILATERAL MIN TWO VIEWS OF EACH HIP INCLUD AP OF PELVIS	99	94	86
73550	73550	FEMUR AP AND LATERAL VIEWS	72	67	67
73560	73560	KNEE AP AND LATERAL VIEWS	67	67	67
73590	73590	TIBIA AND FIBULA AP AND LATERAL VIEWS	72	67	67
73610	73610	ANKLE COMPLETE MINIMUM OF THREE VIEWS	72	67	67
73620	73620	FOOT, LIMITED	53	53	53
74020	74020	ABDOMEN, COMPLETE, INCLUDES DECUBITUS AND/OR ER	82	90	80
74410	74410	UROGRAPHY, INFUSION (DRIP)	215	215	219
76512	76512	ECHOGRAPHY OPHTHALMIC, CONTACT SCAN B-MODE (TOTAL X-RAY)	366	299	333
76516	76516	OPTHALMIC BIOMETRY ULTRASOUND ECHOGRAPHY, A-MODE (EACH EYE)	255	209	255
76536	76536	ECHOGRAPHY, SOFT TISSUES—HEAD & NECK, B-SCAN &/OR REALTIME IMAG	200	200	205
76620	76620	ECHOCARDIOGRAPHY, M-MODE, COMPLETE	299	299	306
76627	76627	ECHOCARDIOGRAPHY, COMPLETE-REALTIME W IMAGE DOCUMENTATION	323	333	378
76629	76629	ECHOCARDIOGRAPHY, M-MODE & REALTIME, W IMAGE DOCUMENTATION	465	474	398
76700	76700	ECHOGRAPHY ABDOMINAL B-SCAN AND/OR REALTIME COMPLETE	213	213	239
76770	76770	ECHOGRAPHY RETROPERITONEAL B-SCAN AND/OR REALTIME COMPLETE	270	239	239
76815	76815	ECHOGRAPHY PELVIC B-SCAN AND/OR REALTIME; LIMITED	150	166	166
76816	76816	ECHOGRAPHY, PREGNANT UTERUS, B-SCAN, REALTIME; FOLLOW-UP/ REPEAT	113	113	113
78300	78300	BONE IMAGING; LIMITED (EG SKULL, PELVIS)	205	205	226
78305	78305	BONE IMAGING; MULTIPLE AREAS	245	245	245
80019	80002	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 1 OR 2 TESTS	33	38	38
80019	80003	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 3 TESTS	33	38	38
80019	80004	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 4 TESTS	33	38	38
80019	80005	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 5 TESTS	33	38	38
80019	80006	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 6 TESTS	33	38	38
80019	80007	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 7 TESTS	33	38	38
80019	80008	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 8 TESTS	33	38	38
80019	80009	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 9 TESTS	33	38	38
80019	80010	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 10 TESTS	33	38	38
80019	80012	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 12 TESTS	33	38	38
80019	80016	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 13-16 TESTS	33	38	38
80019	80018	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 17-18 TESTS	33	38	38
80019	80019	AUTOMATED MULTICHANNEL CHEMISTRY TEST, 19 OR MORE TESTS	33	38	38
80031	80031	THERAPEUTIC DRUG MONITORING—BLOOD OR URINE—1 DRUG	50	56	56

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
80050	80058	HEPATIC FUNCTION PANEL	38	46	38
80050	80059	HEPATITIS PANEL	38	46	38
80050	80065	METABOLIC PANEL	38	46	38
80050	80070	THYROID PANEL	38	46	38
80071	80071	THYROID PANEL WITH TRH	53	53	53
80050	80072	ARTHRITIS PANEL	38	46	38
80050	80073	RENAL PANEL	38	46	38
81000	81000	ROUTINE URINALYSIS	11	10	12
81000	81002	URINALYSIS; ROUTINE—WITHOUT MICROSCOPY	11	10	12
81000	81005	URINALYSIS, CHEMICAL, QUALITATIVE	11	10	12
82011	82011	ACETYLSALICYLIC ACID, QUANTITATIVE	38	38	38
82040	82040	ALBUMIN, SERUM	16	16	16
82055	82055	CHEMISTRY: ALCOHOL (ETHANOL, BLOOD)	55	55	55
82065	82065	ALCOHOL ETHANOL, URINE, CHEMICA	55	55	55
82085	82085	ALDOLASE, BLOOD, KINETIC ULTRAVIOLET METHOD	35	35	35
82137	82137	AMINOPHYLLINE	46	51	46
82138	82138	AMITRIPTYLINE	105	105	105
82140	82140	CHEMISTRY: AMMONIA, BLOOD	52	52	52
82150	82150	CHEMISTRY: AMYLASE, BLOOD	23	21	21
82156	82156	CHEMISTRY: AMYLASE, URINE	21	21	18
82157	82157	ANDROSTENEDIONE RIA	89	89	89
82164	82164	ANGIOTENSIN-CONVERTING ENZYME	60	60	60
82205	82205	CHEMISTRY: BARBITURATES (BLOOD, URINE), QUANTIT	58	58	58
82232	82232	BETA-2 MICROGLOBULIN, RIA, SERUM	35	35	35
82250	82250	BILIRUBIN, BLOOD, TOTAL OR DIRECT	16	17	17
82251	82251	BILIRUBIN; BLOOD, TOTAL AND DIRECT	21	21	21
82270	82270	BLOOD, OCCULT, FECES, SCREENING	9	9	10
82310	82310	CHEMISTRY: CALCIUM, BLOOD	14	15	15
82330	82330	CALCIUM, BLOOD, FRACTIONATED, DIFFUSIBLE	91	91	91
82340	82340	CALCIUM, URINE QUANTITATIVE, TIME SPECIMEN	19	19	21
82355	82355	CALCULUS (STONE) QUALITATIVE, CHEMICAL	37	37	37
82365	82365	CALCULUS (STONE), QUANTITATIVE, INFRARED SPECTROSCOPY	52	52	52
82372	82372	CARBAMAZEPINE, SERUM	57	64	65
82374	82374	CARBON DIOXIDE, COMBINING POWER OR CONTENT	15	15	15
82375	82375	CARBON MONOXIDE, QUANTITATIVE	27	27	27
82380	82380	CHEMISTRY: CAROTENE, BLOOD	33	33	33
85014	85014	BLOOD COUNT, HEMATOCRIT	10	10	11
85018	85018	BLOOD COUNT, HEMOGLOBIN, COLORIMETRIC	10	10	7
85022	85022	BLOOD COUNT, HEMOGRAM, AUTOMATED W/DIFF WBC (CBC)	17	19	19
85610	85610	PROTHROMBIN TIME	15	17	16
85730	85730	THROMBOPLASTIN TIME, PARTIAL (PTT), PLASMA OR WHOLE BLOOD	22	22	24
90000	90000	OFFICE VISIT NEW PATIENT BRIEF SERVICE	55	55	54
90010	90010	OFFICE VISIT NEW PATIENT LIMITED SERVICE	67	67	67
90015	90015	OFFICE VISIT NEW PATIENT INTERMEDIATE SERVICE	87	87	88
90015	90017	OFFICE VISIT NEW PATIENT EXTENDED SERVICE	87	87	88
90015	90020	OFFICE VISIT NEW PATIENT COMPREHENSIVE SERVICE	87	87	88
90030	90030	OFFICE VISIT ESTABLISHED PATIENT MINIMAL SERVICE	33	33	40
90040	90040	OFFICE VISIT ESTABLISHED PATIENT BRIEF SERVICE	37	40	45
90050	90050	OFFICE VISIT ESTABLISHED PATIENT LIMITED SERVICE	46	46	52
90050	90060	OFFICE VISIT ESTABLISHED PATIENT INTERMEDIATE SERVICE	46	46	52
90070	90070	OFFICE VISIT ESTABLISHED PATIENT EXTENDED SERVICE	54	65	66
90080	90080	OFFICE VISIT ESTABLISHED PATIENT COMPREHENSIVE SERVICE	80	80	86
90130	90150	HOME VISIT ESTABLISHED PATIENT LIMITED SERVICE	58	58	86
90130	90160	HOME VISIT ESTABLISHED PATIENT INTERMEDIATE SERVICE	58	58	86
90130	90170	HOME VISIT ESTABLISHED PATIENT EXTENDED SERVICE	58	58	86
90200	90200	BRIEF HISTORY & EXAM, INITIATION OF DX & TREATM PROG HOSP RECOR	96	100	106
90215	90215	INITIAL HOSPITAL CARE INTERMEDIATE HISTORY AND EXAMINATION	133	133	133
90220	90220	INITIAL HOSPITAL CARE COMPREHENSIVE HISTORY AND EXAMINATION	166	166	173
90240	90240	SUBSEQUENT HOSPITAL CARE BRIEF SERVICE	48	49	53
90250	90250	SUBSEQUENT HOSPITAL CARE LIMITED SERVICE	53	53	64
90260	90260	SUBSEQUENT HOSPITAL CARE INTERMEDIATE SERVICE	54	54	64
90270	90270	SUBSEQUENT HOSPITAL CARE EXTENDED SERVICE	67	67	72
90280	90280	SUBSEQUENT HOSPITAL CARE COMPREHENSIVE SERVICE	88	72	80
90282	90282	SUBSEQUENT HOSPITAL NORMAL NEWBORN SERVICES, EACH DAY	40	40	0
90350	90350	SKILLED NURSING FACILITY SUBSEQUENT CARE LIMITED SERVICE	46	46	46
90360	90360	SKILLED NURSING FACILITY SUBSEQUENT CARE INTERMEDIATE SERVICE	46	46	46

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
90450	90450	NURSING HOME ESTABLISHED PATIENT LIMITED SERVICE	53	53	53
90460	90460	NURSING HOME ESTABLISHED PATIENT INTERMEDIATE SERVICE	55	55	55
90500	90500	EMERGENCY DEPARTMENT NEW PATIENT MINIMAL SERVICE	27	27	29
90505	90505	EMERGENCY DEPARTMENT NEW PATIENT BRIEF SERVICE	46	45	48
90510	90510	EMERGENCY DEPARTMENT NEW PATIENT LIMITED SERVICE	60	67	70
90515	90515	EMERGENCY DEPARTMENT NEW PATIENT INTERMEDIATE SERVICE	79	91	88
90517	90517	EMERGENCY DEPARTMENT NEW PATIENT EXTENDED SERVICE	113	113	126
90520	90520	COMPREHENSIVE SERVICE, NEW PATIENT, EMERGENCY DEPARTMENT	186	186	179
90550	90550	EMERGENCY DEPARTMENT ESTABLISHED PATIENT LIMITED SERVICE	75	75	75
90560	90560	EMERGENCY DEPARTMENT ESTABLISHED PATIENT INTERMEDIATE SERVICE	75	75	80
90570	90570	EMERGENCY DEPARTMENT ESTABLISHED PATIENT EXTENDED SERVICE	89	99	99
90600	90600	CONSULTATION INITIAL, LIMITED	99	99	109
90605	90605	CONSULTATION INITIAL, INTERMEDIATE	125	113	132
90610	90610	CONSULTATION INITIAL, EXTENSIVE	137	147	166
90620	90620	CONSULTATION INITIAL, COMPREHENSIVE	180	186	200
90630	90630	CONSULTATION INITIAL, COMPLEX	200	200	219
90640	90640	FOLLOW-UP CONSULT; BRIEF	54	48	58
90641	90641	FOLLOW-UP CONSULTATION; LIMITED	54	54	66
90642	90642	FOLLOW-UP CONSULT; INTERMEDIATE	67	60	67
90643	90643	FOLLOW-UP CONSULT; EXTENDED	88	88	80
90703	90703	IMMUNIZATION ACTIVE; TETANUS TOXOID	15	16	17
90782	90782	THERAPEUTIC INJECTION OF MEDICATION; SUBCUTANEOUS OR INTRAMUS	17	19	19
90784	90784	THERAPEUTIC INJECTION OF MEDICATION INTRAVENOUS	30	30	33
90788	90788	INTRAMUSCULAR INJECTION OF ANTIBIOTIC	19	19	19
90801	90801	COMPLETE NEURO-PSYCHIATRIC EXAMINATION, INITIAL PROCEDURE	180	200	200
90825	90825	PSYCHIATRIC EVALUATION OF HOSPITAL RECORDS AND OTHER REPORTS	138	138	138
90830	90830	PSYCHOLOGICAL TEST BY PHYSICIAN, WRITTEN REPORT PER HOUR	125	133	133
90841	90841	INDIVIDUAL PSYCHOTHERAPY, LIMITED TREATMENT LESS THAN 25 MIN	41	41	51
90843	90843	INDIVIDUAL PSYCHOTHERAPY, ONE-HALF SESSION (25 MINUTES)	86	79	88
90844	90844	INDIVIDUAL PSYCHOTHERAPY, FULL SESSION (50 MINUTES)	147	133	125
90847	90847	FAMILY PSYCHOTHERAPY OF TWO FAMILY MEMBERS	156	156	156
90849	90849	MULTIPLE-FAMILY GROUP MEDICAL PSYCHOTHERAPY	40	40	40
90853	90853	GROUP MEDICAL PSYCHOTHERAPY, 90 MINUTE SESSION	60	54	60
90862	90862	CHEMO MGMT, INC PRESCRIP, USE, REVIEW MEDICINE MIN PSYCHOTHERAPY	80	80	72
90870	90870	ELECTROCONVULSIVE THERAPY; SINGLE SEIZURE	152	152	187
90887	90887	INTERPRETATION OF MEDICAL DATA TO FAMILY OF PSYCHIATRIC PATI	120	120	120
90900	90900	BIOFEEDBACK TRAINING; BY ELECTROMYOGRAM APPLICATION	106	116	116
90915	90915	BIOFEEDBACK TRAINING; OTHER	96	96	117
92002	92002	OPHTHALMOLOGICAL SERVICES; INTERMEDIATE, NEW PATIENT	67	72	67
92004	92004	OPHTHALMOLOGICAL SVS; COMPREHENSIVE, NEW PT. 1 OR MORE VISIT	67	72	72
92012	92012	OPHTHALMOLOGICAL SERVICES; INTERMEDIATE, ESTABLISHED PATIENT	53	60	56
92014	92014	OPHTHALMOLOGICAL SERVICES; COMPREHENSIVE, ESTABLISHED PATIENT	66	72	72
92020	92020	GONIOSCOPY WITH MEDICAL DIAGNOSTIC EVALUATION	58	58	53
92060	92060	SENSORIMOTOR EXAM WITH MEDICAL DIAGNOSTIC EVALUATION	75	75	75
92081	92081	VISUAL FIELD EXAM WITH MEDICAL DIAGNOSTIC EVALUATION	53	53	53
92083	92083	VISUAL FIELD EX W/MED DX EVAL; EXTEND EX, QUANTITATI PERIMETRY	109	99	89
92100	92100	SERIAL TONOMETRY W MED DX EVAL; ONE OR MORE SESSIONS SAME DAY	46	46	46
92225	92225	OPHTHALMOSCOPY EXTENDED AS FOR RETINAL DETACHMENT; INITIAL	147	147	159
92226	92226	OPHTHALMOSCOPY EXTENDED AS FOR RETINAL DETACHMENT; SUBSEQUENT	68	68	67
92235	92235	OPHTHALMOSCOPY INC. MED DX EVAL WITH FLUORESCEIN ANGIOGRAPHY	343	281	311
92250	92250	OPHTHALMOSCOPY, WFUNDUS PHOTOGRAPHY, INCL MED DIAG EVALUATION	88	71	80

COMPRESSED CODE	CPT4 CODE	DESCRIPTION OF SERVICES	FEES: REGION 1	2	3
92280	92280	VISUALLY EVOKED POTENTIAL STUDY, W MEDICAL DIAG EVALUATION	239	292	266
92504	92504	BINOCULAR MICROSCOPY	19	19	19
92507	92507	SPEECH, LANGUAGE OR HEARING THERAPY WITH MED SUPERVISION, IND	37	37	37
92511	92511	NASOPHARYNGOSCOPY WITH ENDOSCOPE (SEPARATE PROCEDURE)	183	183	183
92551	92551	SCREENING TEST PURE TONE, AIR ONLY	22	22	19
92552	92552	AUDIOMETRIC HEARING TEST, PURETONE (AIR ONLY)	33	30	37
92555	92555	AUDIOMETRIC HEARING TEST, SPEECH (THRESHOLD ONLY)	24	24	24
92556	92556	SPEECH AUDIOMETRY; THRESHOLD AND DISCRIMINATION	37	37	30
92557	92557	BASIC COMPREHENSIVE AUDIOMETRY (92553 + 92556 COMBINED)	80	67	72
92566	92566	IMPEDANCE TESTING	37	30	33
92567	92567	TYMPANOMETRY	37	33	33
92568	92568	ACOUSTIC REFLEX TESTING	24	27	29
92569	92569	ACOUSTIC REFLEX DECAY TEST	29	29	29
92581	92581	EVOKED RESPONSE AUDIOMETRY	266	266	266
92950	92950	CARDIOPULMONARY RESUSCITATION (EG, IN CARDIAC ARREST)	299	333	366
92960	92960	CARDIOVERSION ELECTIVE, ELECTRICAL CONVERSION OF ARRHYTHMIA EX	299	330	308
93000	93000	ELECTROCARDIOGRAM (EKG) WITH INTERPRETATION AND REPORT	53	53	60
93010	93010	EKG, INTERPRETATION AND REPORT ONLY	45	40	40
93012	93012	TELEPHONIC/TELEMETRIC TRANSMISSION-EKG, RHYTHM STRIP	72	72	72
93014	93014	TELEPHONIC/TELEMETRIC TRANSMISSION EKG, RHYTHM STRIP; REVU-INT	80	80	80
93015	93015	CARDIAC STRESS TESTING, PHYSICIAN MONITORED, DURING EXERCISE,	299	286	279
93018	93018	CARDIOVASCULAR STRESS TEST; INTERPRETATION AND REPORT	173	166	166
93040	93040	RHYTHM ECG 1 TO 3 LEADS; WITH INTERPRETATION	40	45	37
93042	93042	RHYTHM ECG ONE TO THREE LEADS; INTERPRETATION AND REPORT ONLY	22	19	19
93274	93274	ECG MONITORING 12 THRU 24 HRS; INCL RECORDING ANALY INTER REP	299	319	333
93300	93300	ECHOCARDIOGRAPHY, M-MODE; COMPLETE	253	253	253
93307	93307	ECHOCARDIOGRAPHY, REAL-TIME W/IMAGE (2D); COMPLETE	402	327	333
93309	93309	ECHOCARDIOGRAPHY, M-MODE AND/OR REAL TIME WITH IMAGE	439	398	398
93501	93501	CATHETERIZATION OF THE HEART, RIGHT	663	663	663
93503	93503	SWAN GANZ CATHETERIZATION (FLOW DIRECTED CATHET)	663	697	697
93505	93505	ENDOCARDIAL BIOPSY	663	663	663
93510	93510	CATHETERIZATION OF LEFT HEART, RETROGRADE: PERCUTANEOUS	929	929	996
93526	93526	COMBINED RIGHT AND LEFT HEART CATHETERIZATION	1274	1274	1274
93545	93545	RIGHT HEART CATHETERIZATION, WITH SELECTIVE ANGIOCARDIOGRAM O	897	897	897
93547	93547	COMBINED L/HEART CATHETER SELECT/CORONARY ANGIOG/L-VENTRI ANG	1593	1593	1460
93548	93548	COMBINED LF HEART CATH, SELECTIVE CORNRY ANGIOGRAPHY, SELECT L	1327	1327	1327
93549	93549	COMBINED LEFT AND RIGHT HEART CATHETERIZATION WIT	1433	1593	1752

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(b) The following is the Medical Fee Schedule for durable medical equipment:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
A4214	STERILE SALINE OR WATER, 30 CC VIAL	26.47	26.47	26.47
A4252	IRRIGATION KITS, NONSTERILE	2.62	2.62	2.62
A4341	INDWELLING CATHETER, FOLEY TYPE, TWO-WAY, TEFLON	8.66	8.66	8.66
A4342	INDWELLING CATHETER, FOLEY TYPE, TWO-WAY, LATEX	1.49	1.49	1.49
A4343	INDWELLING CATHETER, FOLEY TYPE, TWO-WAY, LATEX WITH TEFLON COATING	5.22	5.22	5.22
A4344	INDWELLING CATHETER, FOLEY TYPE, TWO-WAY, ALL SILICONE	9.74	9.74	9.74
A4345	INDWELLING CATHETER, FOLEY TYPE, TWO-WAY, SILICONE WITH ELASTER COATING	6.75	6.75	6.75

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
A4346	INDWELLING CATHETER, FOLEY TYPE, THREE-WAY, LATEX OR TEFLON FOR CONTINUOUS IRRIGATION	12.75	12.75	12.75
A4347	EXTERNAL CATHETER, CONDOM TYPE	1.44	1.44	1.44
A4348	URINARY COLLECTION AND RETENTION SYSTEM, DRAINAGE BAG WITH TUBE	4.71	4.71	4.71
A4349	URINARY COLLECTION AND RETENTION SYSTEM, LEG BAG WITH TUBE	6.87	6.87	6.87
A4350	CATHETER CARE KIT	2.91	2.91	2.91
A4353	CATHETER INSERT TRAY WITH CATHETER, INCLUDING TUBING AND DRAINAGE BAG	8.34	8.34	8.34
A4354	CATHETER INSERT TRAY WITHOUT CATHETER, INCLUDING TUBING AND DRAINAGE BAG	4.66	4.66	4.66
A4355	THREE-WAY IRRIGATION SET FOR CATHETER	2.65	2.65	2.65
A4356	INCONTINENCE CLAMP	22.86	22.86	22.86
A4357	URINARY DRAINAGE BAG	4.32	4.32	4.32
A4358	URINARY LEG BAG	3.39	3.39	3.39
A4359	URINARY SUSPENSORY	16.76	16.76	16.76
A4360	COLOSTOMY SET	37.41	37.41	37.41
A4361	OSTOMY FACE PLATE	3.13	3.13	3.13
A4362	OSTOMY SKIN BARRIER	2.77	2.77	2.77
A4363	OSTOMY LIQUID BARRIER	7.31	7.31	7.31
A4364	OSTOMY SKIN BOND OR CEMENT	7.57	7.57	7.57
A4365	OSTOMY BAG, DISPOSABLE/CLOSED	1.77	1.77	1.77
A4366	OSTOMY BAG, REUSABLE OR DRAINABLE	1.86	1.86	1.86
A4367	OSTOMY BELT	6.15	6.15	6.15
A4368	STOMA WICKS	46.73	46.73	46.73
A4369	TAIL CLOSURES	1.41	1.41	1.41
A4370	OSTOMY SKIN BOND OR CEMENT, REMOVER	1.91	1.91	1.91
A4400	IRRIGATION SET FOR IRRIGATION OF OSTOMY	28.11	28.11	28.11
A4402	OSTOMY LUBRICANT	2.25	2.25	2.25
A4404	OSTOMY RINGS	1.57	1.57	1.57
A4421	NOT OTHERWISE CLASSIFIED OSTOMY SUPPLIES	2.81	2.81	2.81
A4430	URETEROSTOMY SET	44.39	44.39	44.39
A4440	NOT OTHERWISE CLASSIFIED URETEROSTOMY SUPPLIES	3.69	3.69	3.69
E0100	CANE, INCLUDES CANES OF ALL MATERIALS, ADJUSTABLE OR FIXED WITH TIP	15.87	15.87	15.87
E0105	CANE, QUAD OR THREE PRONG, INCLUDES CANES OF ALL MATERIALS, ADJUSTABLE OR FIXED WITH TIPS	41.72	41.72	41.72
E0110	CRUTCH, FOREARM, INCLUDES CRUTCHES OR VARIOUS MATERIALS, ADJUSTABLE OR FIXED, PAIR COMPLETE WITH TIPS AND HANDGRIPS	61.56	61.56	61.56
E0111	CRUTCH FOREARM, INCLUDES CRUTCHES OF VARIOUS MATERIALS, ADJUSTABLE OR FIXED, EACH, WITH TIP AND HANDGRIP	50.78	50.78	50.78
E0112	CRUTCHES UNDERARM, HOOD, ADJUSTABLE OR FIXED, PAIR, WITH PADS, TIPS AND HANDGRIPS	30.33	30.33	30.33
E0114	CRUTCHES UNDERARM, ALUMINUM, ADJUSTABLE OR FIXED, PAIR, WITH PADS, TIPS AND HANDGRIPS	40.82	40.82	40.82
E0116	CRUTCH UNDERARM, ALUMINUM, ADJUSTABLE OR FIXED, EACH, WITH PAD, TIP AND HANDGRIP	21.21	21.21	21.21
E0130	WALKER, RIGID (PICKUP), ADJUSTABLE OR FIXED HEIGHT	58.85	58.85	58.85
E0135	WALKER, FOLDING (PICKUP), ADJUSTABLE OR FIXED HEIGHT	61.07	61.07	61.07
E0141	WALKER, WHEELED, WITHOUT SEAT	103.85	103.85	103.85
E0143	FOLDING WALKER, WHEELED, WITHOUT SEAT	106.29	106.29	106.29
E0145	WALKER, WHEELED, WITH SEAT AND CRUTCH ATTACHMENTS	186.99	186.99	186.99
E0146	WALKER, WHEELED, WITH SEAT	336.95	336.95	336.95
E0147	HEAVY DUTY, MULTIPLE BREAKING SYSTEM, VARIABLE WHEEL RESISTANCE WALKER	195.60	195.60	195.60
E0150	UNDERARM PAD, CRUTCH, REPLACEMENT, EACH	3.99	3.99	3.99
E0151	HANDGRIP, CANE, CRUTCH, OR WALKER REPLACEMENT, EACH	1.95	1.95	1.95
E0152	TIP, CANE OR CRUTCH, WALKER REPLACEMENT, EACH	53.01	53.01	53.01
E0153	PLATFORM ATTACHMENT, FOREARM CRUTCH, EACH	53.01	53.01	53.01
E0154	PLATFORM ATTACHMENT, WALKER, EACH	53.90	53.90	53.90
E0155	WHEEL ATTACHMENT, RIGID PICK-UP WALKER ATTACHMENTS	26.09	26.09	26.09
E0158	LEG EXTENSIONS FOR A WALKER	28.14	28.14	28.14
E0160	SITZ TYPE BATH, PORTABLE, FITS OVER COMMODE SEAT	10.06	10.06	10.06
E0161	SITZ TYPE BATH, PORTABLE, FITS OVER COMMODE SEAT, WITH FAUCET ATTACHMENT	9.99	9.99	9.99
E0163	COMMODE CHAIR, STATIONARY, WITH FIXED ARMS	93.73	93.73	93.73
E0164	COMMODE CHAIR, MOBILE, WITH FIXED ARMS	99.67	99.67	99.67
E0165	COMMODE CHAIR, STATIONARY WITH DETACHABLE ARMS	194.80	194.80	194.80
E0166	COMMODE CHAIR, MOBILE WITH DETACHABLE ARMS	280.96	280.96	280.96
E0167	PAIL OR PAN FOR USE WITH COMMODE CHAIR	10.78	10.78	10.78
E0180	PRESSURE PAD, ALTERNATING WITH PUMP, LIGHT DUTY	254.65	254.65	254.65

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
E0181	PRESSURE PAD, ALTERNATING WITH PUMP, HEAVY DUTY	270.13	270.13	270.13
E0182	PUMP FOR ALTERNATING PRESSURE PAD	308.20	308.20	308.20
E0184	FLOTATION MATTRESS, DRY	64.92	64.92	64.92
E0185	DECUBITUS CARE PAD, FLOTATION OR GEL PAD WITH FOAM LEVELING PAD (MATTRESS SIZE)	89.49	89.49	89.49
E0188	SYNTHETIC SHEEPSKIN PAD	31.52	31.52	31.52
E0189	LAMBSWOOL SHEEPSKIN PAD, ANY SIZE	29.12	29.12	29.12
E0190	DECUBITUS CARE MATTRESS, INCLUDES FLOTATION OR GEL MATTRESS	307.09	402.46	402.46
E0195	REPLACEMENT PAD FOR USE WITH MEDICALLY NECESSARY ALTERNATING PRESSURE PAD OWNED BY THE PATIENT	49.31	49.31	49.31
E0210	ELECTRIC HEAT PAD, STANDARD	27.50	27.50	27.50
E0215	ELECTRIC HEAT PAD, MOIST	36.20	36.20	36.20
E0235	PARAFFIN BATH UNIT, PORTABLE	204.07	204.07	204.07
E0238	NON-ELECTRIC HEAT PAD MOIST	29.03	29.03	29.03
E0250	HOSPITAL BED, WITH SIDE RAILS, FIXED HEIGHT, WITH MATTRESS	1083.73	1083.73	1083.73
E0251	HOSPITAL BED, WITH SIDE RAILS, FIXED HEIGHT, WITHOUT MATTRESS	737.00	737.00	737.00
E0255	HOSPITAL BED, WITH SIDE RAILS, VARIABLE HEIGHT, HI-LO, WITH MATTRESS	1148.49	1148.49	1148.49
E0260	HOSPITAL BED, SEMI-ELECTRIC, (HEAD AND FOOT ADJUSTMENT), WITH MATTRESS WITH SIDE RAILS	1983.76	1983.76	1983.76
E0265	HOSPITAL BED, TOTAL ELECTRIC (HEAD, FOOT AND HEIGHT ADJUSTMENT), WITH MATTRESS WITH SIDE RAILS	2553.26	2553.26	2553.26
E0276	BED PAN, FRACTURE, METAL OR PLASTIC	13.35	13.35	13.35
E0325	URINAL, MALE, ANY MATERIAL	6.95	6.95	6.95
E0326	URINAL, FEMALE, ANY MATERIAL	10.15	10.15	10.15
E0330	URINAL, MALE, DAY/NIGHT	14.52	14.52	14.52
E0450	VOLUME VENTILATOR	994.41	994.41	994.41
E0451	VOLUME VENTILATOR, PORTABLE	530.60	530.60	530.60
E0505	IPPB MACHINES WITH MANUAL VALVES ELECTRICALLY DRIVEN WITH INTERNAL POWER, SOURCE, BUILT-IN NEBULIZATION	96.03	96.03	96.03
E0510	IPPB MACHINES WITH AUTOMATIC VALVES, EXTERNAL POWER SOURCE INCLUDES CYLINDER REGULATOR, BUILT-IN NEBULIZATION	96.80	96.80	96.80
E0515	IPPB MACHINES WITH AUTOMATIC VALVES, ELECTRICALLY DRIVEN WITH INTERNAL COMPRESSOR BUILT-IN NEBULIZATION	102.65	102.65	102.65
E0560	HUMIDIFIER, DURABLE FOR SUPPLEMENTAL HUMIDIFICATION DURING IPPB TREATMENT OR OXYGEN DELIVERY, E.G., CASCADE JR.	68.44	68.44	68.44
E0570	NEBULIZER, WITH COMPRESSOR E.G., DEVILDISS PULMO-AID	68.25	68.25	68.25
E0575	NEBULIZER, SELF-CONTAINED, ULTRASONIC	98.47	98.47	98.47
E0600	SUCTION PUMP, HOME MODEL, PORTABLE	75.14	75.14	75.14
E0601	NASAL CONTINUOUS AIRWAY PRESSURE (CPAP) DEVICE	111.67	111.67	111.67
E0605	VAPORIZER, ROOM TYPE	25.43	25.43	25.43
E0607	HOME BLOOD GLUCOSE MONITOR	165.51	165.51	165.51
E0609	BLOOD GLUCOSE MONITOR WITH SPECIAL FEATURES (E.G. VOICE SYNTHESIZERS, AUTOMATIC TIMER, ETC.)	1049.67	1049.67	1049.67
E0610	PACEMAKER MONITOR SELF-CONTAINED CHECKS BATTERY DEPLETION: INCLUDES AUDIBLE AND VISIBLE CHECK SYSTEMS	26.80	26.80	26.80
E0620	SEAT LIFT CHAIR, MOTORIZED TO ASSIST PATIENT IN STANDING AND SITTING	1035.81	1035.81	1035.81
E0621	SLING OR SEAT, PATIENT LIFT, CANVAS OR NYLON	67.86	67.86	67.86
E0630	PATIENT LIFT, HYDRAULIC, WITH SEAT OR SLING	1006.90	1006.90	1006.90
E0635	PATIENT LIFT, ELECTRIC WITH SEAT OR SLING	815.45	815.45	815.45
E0650	PNEUMATIC COMPRESSOR, NON-SEGMENTAL HOME MODEL, (LYMPHODEMA PUMP)	439.45	439.45	439.45
E0655	PNEUMATIC APPLIANCE FOR USE WITH PNEUMATIC COMPRESSOR, HALF ARM	94.49	94.49	94.49
E0660	PNEUMATIC APPLIANCE FOR USE WITH PNEUMATIC COMPRESSOR, FULL LEG	125.49	125.49	125.49
E0665	PNEUMATIC APPLIANCE FOR USE WITH PNEUMATIC COMPRESSOR, FULL ARM	89.60	89.60	89.60
E0666	PNEUMATIC APPLIANCE FOR USE WITH PNEUMATIC COMPRESSOR, HALF LEG	93.02	93.02	93.02
E0740	REPLACEMENT BATTERIES FOR MEDICALLY NECESSARY TENS OWNED BY THE PATIENT	4.17	4.17	4.17
E0747	OSTEOGENESIS STIMULATOR (NON-INVASIVE)	1507.50	1507.50	1507.50
E0776	IV POLE	79.50	79.50	79.50
E0781	EXTERNAL AMBULATORY INFUSION PUMP WITH ADMINISTRATIVE EQUIPMENT	668.09	668.09	668.09
E0840	TRACTION FRAME, ATTACHED TO HEADBOARD, SIMPLE CERVICAL TRACTION	31.93	31.93	31.93
E0850	TRACTION STAND, FREE STANDING, SIMPLE CERVICAL TRACTION	38.74	38.74	38.74
E0870	TRACTION FRAME, ATTACHED TO FOOTBOARD, SIMPLE EXTREMITY TRACTION E.G., BUCK'S	41.32	41.32	41.32
E0880	TRACTION STAND, FREE STANDING SIMPLE EXTREMITY TRACTION E.G., BUCK'S	61.27	61.27	61.27
E0890	TRACTION FRAME, ATTACHED TO FOOTBOARD, SIMPLE PELVIC TRACTION	65.83	65.83	65.83
E0900	TRACTION STAND, FREE STANDING SIMPLE PELVIC TRACTION E.G., BUCK'S	65.95	65.95	65.95
E0910	TRAPEZE BARS, A/K/A PATIENT HELPER, ATTACHED TO BED, COMPLETE WITH GRAB BAR	277.16	277.16	277.16

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
E0935	PASSIVE MOTION, EXERCISE DEVICE	330.99	330.99	330.99
E0940	TRAPEZE BAR, FREE STANDING, COMPLETE WITH GRAB BAR	357.54	357.54	357.54
E0942	CERVICAL HEAD HARNESS/HALTER	12.36	12.36	12.36
E0944	PELVIC BELT/HARNESS/BOOT	34.75	34.75	34.75
E0945	EXTREMITY BELT/HARNESS	34.06	34.06	34.06
E0953	PNEUMATIC TIRE, EACH	39.12	39.12	39.12
E0954	SEMI-PNEUMATIC CASTER, EACH	29.05	29.05	29.05
E0958	WHEELCHAIR ATTACHMENT TO CONVERT ANY WHEELCHAIR TO ONE-ARM DRIVE	446.11	446.11	446.11
E0959	AMPUTEE ADAPTER (DEVICE USED TO COMPENSATE FOR TRANSFER OF HEIGHT DUE TO LOST LIMBS TO MAINTAIN PROPER BALANCE)	69.92	69.92	69.92
E0961	BRAKE EXTENSION, FOR WHEELCHAIR	21.47	21.47	21.47
E0969	NARROWING DEVICE, WHEELCHAIR	120.43	120.43	120.43
E0970	NO. 2 FOOTPLATES, EXCEPT FOR ELEVATING LEG REST	28.89	28.89	28.89
E0971	ANTI-TIPPING DEVICE WHEELCHAIRS	63.54	63.54	63.54
E0973	ADJUSTABLE HEIGHT DETACHABLE ARMS, DESK OR FULL LENGTH, WHEELCHAIR	58.55	58.55	58.55
E0975	REINFORCED SEAT UPHOLSTERY, WHEELCHAIR	50.02	50.02	50.02
E0976	REINFORCED BACK UPHOLSTERY, WHEELCHAIR	28.28	28.28	28.28
E0990	ELEVATING LEG REST, EACH	78.33	78.33	78.33
E0991	UPHOLSTERY SEAT	29.38	29.38	29.38
E0992	SOLID SEAT INSERT	54.74	54.74	54.74
E0993	BACK, UPHOLSTERY	28.97	28.97	28.97
E0994	ARM REST, EACH	13.71	13.71	13.71
E0995	CALF REST, EACH	27.54	27.54	27.54
E0996	TIRE, SOLID, EACH	24.34	24.34	24.34
E0997	CASTER WITH A FORK	46.76	46.76	46.76
E0999	PNEUMATIC TIRE WITH WHEEL	72.04	72.04	72.04
E1000	TIRE, PNEUMATIC CASTER	27.83	27.83	27.83
E1001	WHEEL, SINGLE	63.45	63.45	63.45
E1005	REPLACEMENT, BATTERIES FOR MEDICALLY ELECTRIC WHEELCHAIR OWNED BY THE PATIENT	81.37	81.37	81.37
E1035	GERIATRIC CHAIR	644.48	644.48	644.48
E1036	POSITIONING CHAIR (SUBMIT BRAND NAME, MODEL NUMBER AND SPECIFICATIONS)	770.50	770.50	770.50
E1040	ROLLABOUT CHAIR, WITH FIXED OR REMOVABLE ARMS	609.98	609.98	609.98
E1050	FULLY-RECLINING WHEELCHIAR, FIXED FULL LENGTH ARMS ELEVATING LEG REST SWING AWAY DETACHABLE	1275.18	1275.18	1275.18
E1060	FULLY-RECLINING WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) ELEVATING LEG REST, SWING AWAY DETACHABLE	1303.44	1303.44	1303.44
E1065	POWER ATTACHMENT (TO CONVERT ANY WHEELCHAIR TO MOTORIZED WHEELCHAIR; E.G. SOLO)	1839.71	1839.71	1839.71
E1069	DEEP CYCLE BATTERY	97.94	97.94	97.94
E1070	FULLY-RECLINING WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) SWING AWAY DETACHABLE FOOTREST	963.12	963.12	963.12
E1083	HEMI-WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETCHABLE ELEVATING LEG REST	841.07	841.07	841.07
E1084	HEMI-WHEELCHAIRS, DETACHABLE ARMS DESK OR FULL LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING LEG RESTS	1085.14	1085.14	1085.14
E1085	HEMI-WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE FOOTRESTS	877.98	877.98	877.98
E1086	HEMI-WHEELCHAIR, DETACHABLE ARMS DESK OR FULL LENGTH, SWING AWAY DETACHABLE FOOTRESTS	1102.89	1102.89	1102.89
E1087	HIGH STRENGTH LIGHTWEIGHT WHEELCHAIR, FIXED FULL LENGTH ARMS	1220.51	1220.51	1220.51
E1088	HIGH STRENGTH LIGHTWEIGHT WHEELCHAIR, DETACHABLE ARMS DESK OR FULL LENGTH, SWING AWAY DETACHABLE ELEVATING LEG RESTS	1627.20	1627.20	1627.20
E1089	HIGH STRENGTH LIGHTWEIGHT WHEELCHAIR, FIXED LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING FOOTREST	1200.70	1200.70	1200.70
E1090	HIGH STRENGTH LIGHTWEIGHT WHEELCHAIR, DETACHABLE ARMS DESK OR FULL LENGTH, SWING AWAY DETACHABLE FOOTRESTS	1587.22	1587.22	1587.22
E1092	WIDE HEAVY DUTY WHEELCHAIR, DETACHABLE ARMS, DESK OR FULL LENGTH, SWING AWAY DETACHABLE ELEVATING LEG RESTS	1473.42	1473.42	1473.42
E1093	WIDE HEAVY DUTY WHEELCHAIR, DETACHABLE ARMS, DESK OR FULL LENGTH, SWING AWAY DETACHABLE FOOTRESTS	1328.83	1328.83	1328.83
E1100	SEMI-RECLINING WHEELCHAIR, FIXED FULL LENGTH ARMS, ELEVATING LEG REST SWING AWAY DETACHABLE	1099.92	1099.92	1099.92
E1110	SEMI-RECLINING WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) ELEVATING LEG REST	1206.77	1206.77	1206.77
E1130	STANDARD WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE FOOT REST OR FIXED	527.71	527.71	527.71

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
E1140	STANDARD WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH SWING AWAY DETACHABLE FOOTREST	801.44	801.44	801.44
E1150	WHEELCHAIR, DETACHABLE ARMS, DESK OR FULL LENGTH, SWING AWAY DETACHABLE ELEVATING LEG RESTS	903.93	903.93	903.93
E1160	WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING LEG RESTS	685.12	685.12	685.12
E1170	AMPUTEE WHEELCHAIR, FIXED FULL LENGTH ARMS, ELEVATING LEG RESTS SWING AWAY DETACHABLE	1249.10	1249.10	1249.10
E1180	AMPUTEE WHEELCHAIR, DETACHABLE ARMS (DESKS OR FULL LENGTH) SWING AWAY DETACHABLE FOOTRESTS	963.97	963.97	963.97
E1190	AMPUTEE WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) ELEVATING LEG RESTS SWING AWAY DETACHABLE	1132.52	1132.52	1132.52
E1195	HEAVY DUTY WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING LEG RESTS	1089.64	1089.64	1089.64
E1200	AMPUTEE WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE FOOTREST	946.43	946.43	946.43
E1210	MOTORIZED WHEELCHAIR, WITH MICRO-SWITCH CONTROL, DETACHABLE LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING LEG RESTS	4496.20	4496.20	4496.20
E1211	MOTORIZED WHEELCHAIR, W/MICRO-SWITCH CONTROL, DETACHABLE ARMS DESK OR FULL LENGTH SWING AWAY, DETACHABLE ELEVATING LEG REST	3980.92	3980.92	3980.92
E1212	MOTORIZED WHEELCHAIR, WITH MICRO-SWITCH CONTROL, FIXED FULL LENGTH SWING AWAY DETACHABLE FOOT RESTS	3548.15	3548.15	3548.15
E1213	MOTORIZED WHEELCHAIR, WITH MICRO-SWITCH CONTROL, DETACHABLE ARMS DESK OR FULL LENGTH, SWING AWAY DETACHABLE FOOT RESTS	3609.06	3609.06	3609.06
E1221	WHEELCHAIR WITH FIXED ARM, FOOT RESTS	802.99	802.99	802.99
E1222	WHEELCHAIR WITH FIXED ARM, ELEVATING LEG REST	937.78	937.78	937.78
E1224	WHEELCHAIR WITH DETACHABLE ARMS, ELEVATING LEG RESTS	1243.08	1243.08	1243.08
E1230	POWER OPERATED VEHICLE (3 WHEEL NON-HIGHWAY) INDICATE BRAND NAME AND MODEL #	1623.25	1623.25	1623.25
E1240	LIGHTWEIGHT WHEELCHAIR, DETACHABLE ARMS, (DESK OR FULL LENGTH) SWING AWAY DETACHABLE, ELEVATING LEG REST	742.12	742.12	742.12
E1260	LIGHTWEIGHT WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) SWING AWAY DETACHABLE FOOT REST	1233.92	1233.92	1233.92
E1270	LIGHTWEIGHT WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE ELEVATING LEG RESTS	1204.29	1204.29	1204.29
E1280	HEAVY DUTY WHEELCHAIR, DETACHABLE ARMS (DESK OR FULL LENGTH) ELEVATING LEG RESTS	1358.71	1358.71	1358.71
E1285	HEAVY DUTY WHEELCHAIR, FIXED FULL LENGTH ARMS, SWING AWAY DETACHABLE FOOT REST	1032.69	1032.69	1032.69
E1290	HEAVY DUTY WHEELCHAIR, DETACHBLE ARMS (DESK OR FULL LENGTH) SWING AWAY DETACHABLE FOOT REST	1467.80	1467.80	1467.80
E1295	HEAVY DUTY WHEELCHAIR, FIXED FULL LENGTH ARMS, ELEVATING LEG REST	998.52	998.52	998.52
E1296	SPECIAL WHEELCHAIR SEAT HEIGHT FROM FLOOR	1567.80	1567.80	1567.80
E1372	IMMERSION EXTERNAL HEATER FOR NEBULIZER	22.92	22.92	22.92
E1375	NEBULIZER PORTABLE WITH SMALL COMPRESSOR, WITH LIMITED FLOW	33.31	33.31	33.31
E1400	OXYGEN CONCENTRATOR, MANUFACTURER SPECIFIED MAXIMUM FLOW RATE DOES NOT EXCEED 1 LITER PER MINUTE, AT 85% CONCENTRATION	303.44	303.44	303.44
E0183	FLOTATION PAD FOR WHEELCHAIR	166.94	166.94	166.94
E0271	MATTRESS, INNERSPRING	151.78	151.78	151.78
E0305	BED SIDE RAILS, HALF LENGTH	185.09	185.09	185.09
E0310	BED SIDE RAILS, FULL LENGTH	150.43	150.43	150.43
E0585	NEBULIZER, WITH COMPRESSOR AND HEATER	84.11	84.11	84.11
E0860	TRACTION EQUIPMENT, OVERDOOR, CERVICAL	28.76	28.76	28.76
E0967	WHEELCHAIR HAND RIMS WITH 8 VERTICAL RUBBER TIPPED PROJECTIONS, PAIR	87.16	87.16	87.16
E0998	CASTER WITHOUT FORK	37.57	37.57	37.57
L0120	CERVICAL, FLEXIBLE, NON-ADJUSTABLE (FOAM COLLAR)	14.27	14.27	14.27
L0130	CERVICAL, FLEXIBLE THERMOPLASTIC MOLDED TO PATIENT	50.10	50.10	50.10
L0140	CERVICAL, SEMI-RIGID, ADJUSTABLE (PLASTIC COLLAR)	24.00	24.00	24.00
L0150	CERVICAL, SEMI-RIGID, ADJUSTABLE MOLDED CHIN CUP (PLASTIC COLLAR WITH MANDIBULAR/OCCIPITAL PIECE)	99.61	99.61	99.61
L0160	CERVICAL, SEMI-RIGID, WIRE FRAME OCCIPITAL/MANDIBULAR SUPPORT	139.59	139.59	139.59
L0210	THORACIC, RIB BELT, CUSTOM FITTED	15.33	15.33	15.33
L0220	THORACIC, RIB BELT, CUSTOM FABRICATED	34.06	34.06	34.06
L0300	THORACIC-LUMBER-SARCRAL-ORTHOSES (TLSO), FLEXIBLE (DORSO-LUMBAR SURGICAL SUPPORT), CUSTOM FITTED	110.97	110.97	110.97
L0310	TLSO, FLEXIBLE, (DORSO-LUMBAR SURGICAL SUPPORT), CUSTOM FABRICATED	186.67	186.67	186.67
L0320	TLSO, ANTERIOR-POSTERIOR CONTROL (TAYLOR TYPE), WITH APRON FRONT	303.43	303.43	303.43
L0330	TLSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (KNIGHT-TAYLOR TYPE), WITH APRON FRONT	363.21	363.21	363.21

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L0340	TLSO, ANTERIOR-POSTERIOR-LATERAL-ROTARY CONTROL (ARNOLD, MAGNUSON, STEINDLER TYPES), WITH APRON FRONT	488.54	488.54	488.54
L0350	TLSO, ANTERIOR-POSTERIOR-LATERAL-ROTARY CONTROL, FLEXION COMPRESSION JACKET, CUSTOM FITTED	800.27	800.27	800.27
L0360	TLSO, ANTERIOR-POSTERIOR-LATERAL-ROTARY CONTROL, FLEXION COMPRESSION JACKET, CUSTOM FITTED	1116.67	1116.67	1116.67
L0370	TLSO, ANTERIOR-POSTERIOR-LATERAL-ROTARY CONTROL, HYPEREXTENSION (JEWETT, LENNOX, BAKER TYPES)	295.13	295.13	295.13
L0380	TLSO, ANTERIOR-POSTERIOR CONTROL-LATERAL-ROTARY CONTROL, WITH ANTERIOR EXTENSIONS	457.83	457.83	457.83
L0390	TLSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (BODY JACKET) MOLDED TO PATIENT MODEL	971.50	971.50	971.50
L0400	TLSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (BODY JACKET) MOLDED TO PATIENT MODEL, WITH INTERFACE MATERIAL	1329.51	1329.51	1329.51
L0500	LUMBAR-SACRAL-ORTHOSES (LSO), FLEXIBLE, (LUMBO-SACRAL SURGICAL SUPPORTS), CUSTOM FITTED	82.02	82.02	82.02
L0510	LSO, FLEXIBLE (LUMBO-SACRAL SURGICAL SUPPORT), CUSTOM FABRICATED	130.46	130.46	130.46
L0520	LSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (KNIGHT, WILCOX TYPES), WITH APRON FRONT	286.19	286.19	286.19
L0530	LSO, ANTERIOR-POSTERIOR CONTROL (MACAUSLAND TYPE), WITH APRON FRONT	268.00	268.00	268.00
L0540	LSO, LUMBAR FLEXION (WILLIAMS FLEXION TYPE), WITH APRON FRONT	299.63	299.63	299.63
L0550	LSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (BODY JACKET), MOLDED TO PATIENT MODEL	530.42	530.42	530.42
L0560	LSO, ANTERIOR-POSTERIOR-LATERAL CONTROL (BODY JACKET), MOLDED TO PATIENT MODEL, WITH INTERFACE MATERIAL	1228.33	1228.33	1228.33
L0600	SACROILIAC, FLEXIBLE (SACROILIAC SURGICAL SUPPORT), CUSTOM FITTED	52.57	52.57	52.57
L0700	CERVICAL-THORACIC-LUMBARSACRAL-ORTHOSES ANTERIOR-POSTERIOR-LATERAL CONTROL, MOLDED TO PATIENT MODEL, (MINERVA TYPE)	1563.33	1563.33	1563.33
L0810	HALO PROCEDURE, CERVICAL HALO INCORPORATED INTO JACKET VEST	2791.67	2791.67	2791.67
L0900	TORSO SUPPORT, PTOSIS SUPPORT, CUSTOM FITTED	124.23	124.23	124.23
L0910	TORSO SUPPORT, PTOSIS SUPPORT, CUSTOM FABRICATED	348.96	348.96	348.96
L0920	TORSO SUPPORT, PENDULOUS ABDOMEN SUPPORT, CUSTOM FITTED	153.54	153.54	153.54
L0930	TORSO SUPPORT, PENDULOUS ABDOMEN SUPPORT, CUSTOM FABRICATED	245.67	245.67	245.67
L0940	TORSO SUPPORT, POST SURGICAL SUPPORT, CUSTOM FITTED	167.50	167.50	167.50
L0960	TORSO SUPPORT, POST SURGICAL SUPPORT, PADS FOR POST SURGICAL	83.76	83.76	83.76
L0970	TLSO, CORSET FRONT	44.02	44.02	44.02
L0972	LSO, CORSET FRONT	86.82	86.82	86.82
L0974	TLSO, FULL CORSET	120.35	120.35	120.35
L0976	LSO, FULL CORSET	102.06	102.06	102.06
L0978	AXILLARY CRUTCH EXTENSION	27.92	27.92	27.92
L0980	PERONEAL STRAPS, PAIR	12.00	12.00	12.00
L0982	STOCKING SUPPORTER GRIPS, SET OF FOUR (4)	13.40	13.40	13.40
L1000	CERVICAL-THORACIC-LUMBAR-SACRAL (CTLSO) (MILWAUKEE), INCLUSIVE OF FURNISHING INITIAL ORTHOSES INCLUDING MODEL	446.67	446.67	446.67
L1010	ADDITIONS TO CERVICAL-THORACIC-LUMBAR-SACRAL ORTHOSES (CTLSO) OR SCOLIOSIS ORTHOSES, AXILLA SLING	75.38	75.38	75.38
L1040	ADDITION TO CTLSO OR SCOLIOSIS ORTHOSIS, LUMBAR OR LUMBAR RIB PAD	61.42	61.42	61.42
L1200	THORACIC-LUMBAR-SACRAL-ORTHOSES (TLSO), INCLUSIVE OF FURNISHING INITIAL ORTHOSIS ONLY	1600.55	1600.55	1600.55
L1210	ADDITIONS TO TLSO, (LOW PROFILE) LATERAL THORACIC EXTENSION	204.35	204.35	204.35
L1300	OTHER SCOLIOSIS PROCEDURES, BODY JACKET MOLDED TO PATIENT MODEL	1357.59	1357.59	1357.59
L1499	UNLISTED PROCEDURE FOR SPINAL ORTHOSIS	41.28	41.28	41.28
L1640	HO, ABDUCTION CONTROL OF HIP JOINTS, STATIC, PELVIC BAND OR SPREADER BAR, THIGH CUFFS	102.73	102.73	102.73
L1680	HO, ABDUCTION CONTROL OF HIP JOINTS, DYNAMIC, PELVIC CONTROL, ADJ. HIP MOTION CONTROL, THIGH CUFFS (RANCO HIP ACTION TYPE)	1326.04	1326.04	1326.04
L1700	LEGG PERTHES ORTHOSIS, TORONTO TYPE	446.11	446.11	446.11
L1800	KNEE ORTHOSES (KO), ELASTIC WITH STAYS	36.37	36.37	36.37
L1810	KO, ELASTIC WITH JOINTS	57.46	57.46	57.46
L1820	KO, ELASTIC WITH DONDYLE PADS AND JOINTS	88.05	88.05	88.05
L1825	KO, ELASTIC KNEE CAP	39.58	39.58	39.58
L1830	KO, IMMOBILIZER, CANVAS LONGITUDINAL	45.79	45.79	45.79
L1840	KO, DEROTATION, FABRICATED TO PATIENT MODEL (LENNOX HILL SCOTT SPIRAL TYPES)	657.08	657.08	657.08
L1850	KO, SWEDISH TYPE	158.87	158.87	158.87
L1860	KO, MODIFICATION OF SUPRACONDYLAR PROSTHETIC SOCKET, MOLDED TO PATIENT MODEL (SK)	744.26	744.26	744.26
L1870	KO, DOUBLE UPRIGHT, THIGH AND CALF LACERS, MOLDED TO PATIENT MOLDED WITH KNEE JOINTS	634.95	634.95	634.95

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L1880	KO, DOUBLE UPRIGHT, NON-MOLDED THIGH AND CALF CUFFS/LACERS WITH KNEE JOINTS	426.73	426.73	426.73
L1900	ANKLE-FOOT ORTHOSES (AFO), SPRING WIRE, DORSIFLEXION ASSIST CALF BAND	135.38	135.38	135.38
L1910	AFO, POSTERIOR, SINGLE BAR, CLASP ATTACHMENT TO SHOE COUNTER	205.14	205.14	205.14
L1930	AFO, CUSTOM FITTED, PLASTIC	188.43	188.43	188.43
L1940	AFO, MOLDED TO PATIENT MODEL, PLASTIC	621.85	621.85	621.85
L1960	AFO, POSTERIOR SOLID ANKLE, MOLDED TO PATIENT MODEL, PLASTIC	539.02	539.02	539.02
L1970	AFO, PLASTIC MOLDED TO PATIENT MODEL, WITH ANKLE JOINT	711.88	711.88	711.88
L1980	AFO, SINGLE UPRIGHT FREE PLANTAR DORSIFLEXION, SOLID STIRRUP, CALF BAND/CUFF (SINGLE BAR "BK" ORTHOSIS)	310.88	310.88	310.88
L1990	AFO, DOUBLE UPRIGHT FREE PLANTAR DORSIFLEXION, SOLID STIRRUP, CALF BAND/CUFF (DOUBLE BAR "BK" ORTHOSIS)	357.07	357.07	357.07
L2000	KNEE-ANKLE-FOOT-ORTHOSES SINGLE UPRIGHT, FREE KNEE, SOLID STIRRUP, THIGH AND CALF BAND/CUFFS (SINGLE BAR "AK" ORTHOSIS)	568.84	568.84	568.84
L2010	KAFO, SINGLE UPRIGHT, FREE ANKLE, SOLID STIRRUP, THIGH AND CALF BANDS/CUFFS (SINGLE BAR "AK" ORTHOSIS), W/O KNEE JOINT	796.63	796.63	796.63
L2020	KAFO, DOUBLE UPRIGHT, FREE KNEE, FREE ANKLE, SOLID STIRRUP, THIGH AND CALF BANDS/CUFFS (DOUBLE BAR "AK" ORTHOSIS)	686.26	686.26	686.26
L2030	KAFO, DOUBLE UPRIGHT, FREE KNEE, FREE ANKLE, SOLID STIRRUP, THIGH & CALF BANDS/CUFFS, (DOUBLE BAR "AK" ORTHOSIS), W/O KJ	1079.58	1079.58	1079.58
L2036	KNEE-ANKLE-FOOT-ORTHOSES, FULL PLASTIC, MOLDED TO PATIENT MODEL	1235.91	1235.91	1235.91
L2040	HIP-KNEE-ANKLE-FOOT ORTHOSIS, TORSION CONTROL, BILATERAL ROTATION STRAPS, PELVIC BAND/BELT	72.59	72.59	72.59
L2060	HKAFO, TORSION CONTROL, BILATERAL TORSION CABLES, BALL BEARING HIP JOINT, PELVIC BAND/BELT	405.69	405.69	405.69
L2080	HKAFO, TORSION CONTROL, UNILATERAL, TORSION CABLE, HIP JOINT, PELVIC BAND/BELT	311.89	311.89	311.89
L2106	AFO, FRACTURE ORTHOSIS, TIBIAL FRACTURE CAST ORTHOSIS, THERMOPLASTIC TYPE CASTING MATERIAL, MOLDED TO PATIENT	602.29	602.29	602.29
L2134	KAFO, FRACTURE ORTHOSIS, FEMORAL FRACTURE CAST ORTHOSIS, SEMI-RIGID CUSTOM FITTED	989.86	989.86	989.86
L2200	ADDITIONS TO LOWER EXTREMITY, LIMITED ANKLE MOTION, EACH JOINT	46.85	46.85	46.85
L2210	ADDITIONS TO LOWER EXTREMITY, DORSIFLEXION ASSIST (PLANTAR FLEXION RESIST) EACH JOINT	57.22	57.22	57.22
L2220	ADDITION TO LOWER EXTREMITY, DORSIFLEXION AND PLANTAR FLEXION ASSIST/RESIST, EACH JOINT	124.84	124.84	124.84
L2230	ADDITION TO LOWER EXTREMITY, SPLIT FLAT CALIPER STIRRUPS AND PLATE ATTACHMENT	84.02	84.02	84.02
L2240	ADDITION TO LOWER EXTREMITY, ROUND CALIPER AND PLATE ATTACHMENT	62.56	62.56	62.56
L2250	ADDITION TO LOWER EXTREMITY, FOOT PLATE, MOLDED TO PATIENT MODEL, STIRRUP ATTACHMENT	293.32	293.32	293.32
L2270	ADDITION TO LOWER EXTREMITY, VARUS/VALGUS CORRECTION ("T") STRAP, PADDED/LINED OR MALLEOLUS PAD	70.38	70.38	70.38
L2280	ADDITION TO LOWER EXTREMITY, MOLDED INNER BOOT	139.59	139.59	139.59
L2310	ADDITION TO LOWER EXTREMITY, ABDUCTION BAR-STRAIGHT	50.26	50.26	50.26
L2320	ADDITION TO LOWER EXTREMITY, NON-MOLDED LACER	115.67	115.67	115.67
L2330	ADDITION TO LOWER EXTREMITY, LACER MOLDED TO PATIENT MODEL	212.17	212.17	212.17
L2340	ADDITION TO LOWER EXTREMITY, PRE-TIBIAL SHELL, MOLDED TO PATIENT MODEL	290.65	290.65	290.65
L2350	ADDITION TO LOWER EXTREMITY, PROSTHETIC TYPE, (BK) SOCKET, MOLDED TO PATIENT MODEL (USED FOR "PIB" "AF" ORTHOSIS)	567.23	567.23	567.23
L2360	ADDITION TO LOWER EXTREMITY, EXTENDED STEEL SHANK	49.09	49.09	49.09
L2385	ADDITION TO LOWER EXTREMITY, STRAIGHT KNEE JOINT, HEAVY DUTY, EACH JOINT	65.05	65.05	65.05
L2390	ADDITION TO LOWER EXTREMITY, OFFSET KNEE JOINT, EACH JOINT	91.94	91.94	91.94
L2395	ADDITION TO LOWER EXTREMITY, OFFSET KNEE JOINT, HEAVY DUTY, EACH JOINT	111.67	111.67	111.67
L2500	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, GLUTEAL/ ISCHIAL WEIGHT BEARING, RING	139.09	139.09	139.09
L2510	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, QUADRILATERAL BRIM, MOLDED TO PATIENT MODEL	810.46	810.46	810.46
L2520	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, QUADRILATERAL BRIM, CUSTOM FITTED	461.21	461.21	461.21
L2530	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, LACER, NON-MOLDED	175.04	175.04	175.04
L2540	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, LACER, MOLDED TO PATIENT MODEL	253.81	253.81	253.81
L2550	ADDITION TO LOWER EXTREMITY, THIGH/WEIGHT BEARING, HIGH ROLL CUFF	67.83	67.83	67.83
L2560	ADDITION TO LOWER EXTREMITY, GLUTEAL/ISCHIAL WEIGHT BEARING	290.33	290.33	290.33

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L2570	ADDITION TO LOWER EXTREMITY, GLUTEAL/ISCHIAL WEIGHT BEARING, TWO POSITION HIP JOINT	237.29	237.29	237.29
L2600	ADDITION TO LOWER EXTREMITY, PELVIC CONTROL, HIP JOINT, CLEVIS TYPE, OR THRUST BEARING, FREE, EACH	153.71	153.71	153.71
L2610	ADDITION TO LOWER EXTREMITY, PELVIC CONTROL, HIP JOINT, CLIVIS OR THRUST BEARING, LOCK, EACH	145.17	145.17	145.17
L2620	ADDITION TO LOWER EXTREMITY, PELVIC CONTROL, HIP JOINT, HEAVY DUTY, EACH	177.73	177.73	177.73
L2630	ADDITION TO LOWER EXTREMITY, PELVIC CONTROL, BAND AND BELT, UNILATERAL	201.59	201.59	201.59
L2640	ADDITION TO LOWER EXTREMITY, PELVIC CONTROL, BAND AND BELT, BILATERAL	147.40	147.40	147.40
L2750	ADDITION TO LOWER EXTREMITY, ORTHOSIS, PLATING CHROME OR NICKEL, PER BAR	55.83	55.83	55.83
L2760	ADDITION TO LOWER EXTREMITY, ORTHOSIS, EXTENSION, PER EXTENSION, PER BAR (FOR LINEAL ADJUSTMENT FOR GROWTH)	44.53	44.53	44.53
L2770	ADDITION TO LOWER EXTREMITY, ORTHOSIS, STAINLESS STEEL—PER BAR OR JOINT	64.55	64.55	64.55
L2780	ADDITION TO LOWER EXTREMITY, ORTHOSIS, NON-CORROSIVE FINISH, PER BAR	53.04	53.04	53.04
L2795	ADDITION TO LOWER EXTREMITY, ORTHOSIS, KNEE CONTROL, FULL WHEELCAP	73.09	73.09	73.09
L2999	UNLISTED PROCEDURES FOR LOWER EXTREMITY ORTHOSES	224.15	224.15	224.15
L3650	SHOULDER ORTHOSIS, (SO), FIGURE OF "8" DESIGN ABDUCTION RESTRAINER	33.28	33.28	33.28
L3660	SO, FIGURE OF "8" DESIGN ABDUCTION RESTRAINER, CANVAS AND WEBBING	83.76	83.76	83.76
L3720	EO, DOUBLE UPRIGHT WITH FOREARM/ARM CUFFS, FREE MOTION G8553	435.50	435.50	435.50
L3740	EO, DOUBLE UPRIGHT WITH FOREARM/ARM CUFFS, ADJUSTABLE POSITION LOCK WITH ACTIVE CONTROL	1434.92	1434.92	1434.92
L3800	WRIST-HAND-FINGER-ORTHOSES (WHFO), SHORT OPPONENS, NO ATTACHMENTS	69.83	69.83	69.83
L3805	WHFO, LONG OPPONENS, NO ATTACHMENT	294.06	294.06	294.06
L3810	WHFO, ADDITION TO SHORT AND LONG OPPONENS, THUMB ABDUCTION	39.09	39.09	39.09
L3835	WHFO, ADDITION TO SHORT AND LONG OPPONENS, M.P. SPRING EXTENSION ASSIST	83.76	83.76	83.76
L3840	WHFO, ADDITION TO SHORT AND LONG OPPONENS, SPRING SWIVEL THUMB	44.67	44.67	44.67
L3845	WHFO, ADDITION TO SHORT AND LONG OPPONENS, THUMB I.P. EXTENSION ASSIST, WITH M.P. STOP	50.26	50.26	50.26
L3850	WHFO, ADDITION TO SHORT AND LONG OPPONENS, ACTION WRIST, WITH DORSIFLEXION ASSIST	89.33	89.33	89.33
L3906	WHFO, WRIST (GAUNTLET), MOLDED TO PATIENT MODEL	378.05	378.05	378.05
L3908	WHFO, WRIST EXTENSION CONTROL (COCK-UP) CANVAS OR LEATHER DESIGN, NON-MOLDED	47.51	47.51	47.51
L3910	WHFO, SWANSON DESIGN	301.50	301.50	301.50
L3912	WHFO, FLEXION GLOVE WITH ELASTIC FINGER CONTROL	100.50	100.50	100.50
L3914	WHFO, WRIST EXTENSION (COCK-UP)	58.07	58.07	58.07
L3918	WHFO, KNUCKLE BENDER	36.29	36.29	36.29
L3930	WHFO, FINGER EXTENSION, WITH WRIST SUPPORT	67.00	67.00	67.00
L3936	WHFO, PALMER	86.14	86.14	86.14
L3950	WHFO, COMBINATION OPPENHEIMER, WITH KNUCKLE BENDER AND TWO ATTACHMENTS	134.00	134.00	134.00
L3954	WHFO, SPREADING HAND	55.83	55.83	55.83
L3960	ABDUCTION POSITIONING—CUSTOM FITTED SHOULDER-ELBOW-WRIST-HAND ORTHOSIS (SEWHO) ABDUCTION POSITIONING, AIRPLANE DESIGN	253.34	253.34	253.34
L3980	UPPER EXTREMITY FRACTURE ORTHOSIS, HUMERAL	241.07	241.07	241.07
L3984	UPPER EXTREMITY FRACTURE ORTHOSIS, WRIST	418.76	418.76	418.76
L3986	UPPER EXTREMITY FRACTURE ORTHOSIS, COMBINATION OF, HUMERAL, RADIUS/ULNAR, WRIST, (EXAMPLE—COLLES FRACTURE)	676.38	676.38	676.38
L3999	UNLISTED PROCEDURES FOR UPPER LIMB ORTHOSIS	105.25	105.25	105.25
L4020	REPLACE QUADRILATERAL SOCKET BRIM, MOLDED TO PATIENT MODEL	625.33	625.33	625.33
L4040	REPLACE MOLDED THIGH LACER	223.33	223.33	223.33
L4050	REPLACE MOLDED CALF LACER	167.50	167.50	167.50
L4060	REPLACE HIGH ROLL CUFF	136.90	136.90	136.90
L4070	REPLACE PROXIMAL AND DISTAL UPRIGHT FOR KAFO	173.09	173.09	173.09
L4080	REPLACE METAL BANDS KAFO, PROXIMAL THIGH	78.17	78.17	78.17
L4090	REPLACE METAL BANDS KAFO-AFO, CALF OR DISTAL THIGH	66.22	66.22	66.22
L4100	REPLACE LEATHER CUFF KAFO, PROXIMAL THIGH	86.62	86.62	86.62
L4110	REPLACE LEATHER CUFF KAFO-AFO, CALF OR DISTAL THIGH	66.89	66.89	66.89
L4200	REPAIR OF ORTHOTIC DEVICE, HOURLY RATE	50.22	50.22	50.22
L4210	REPAIR OF ORTHOTIC DEVICE, REPAIR OR REPLACE MINOR PARTS	39.09	39.09	39.09
L5000	PARTIAL FOOT, SHOE INSERT WITH LONGITUDINAL ARCH, TOE FILLER	506.32	506.32	506.32
L5010	PARTIAL FOOT, MOLDED SOCKET, ANKLE HEIGHT, WITH TOE FILLER	861.92	861.92	861.92
L5020	PARTIAL FOOT, MOLDED SOCKET, TIBIAL TUBERCLE HEIGHT, WITH TOE FILLER	1315.21	1315.21	1315.21

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L5050	ANKLE (SYME), MOLDED SOCKET, SACH FOOT	1798.34	1798.34	1798.34
L5100	BELOW KNEE, MOLDED SOCKET, SHIN, SACH FOOT	1347.03	1347.03	1347.03
L5110	BELOW KNEE, WOOD SOCKET, JOINTS AND THIGH LACER, SACH FOOT	1627.06	1627.06	1627.06
L5150	KNEE DISARTICULATION (OR THROUGH KNEE), MOLDED, EXTERNAL KNEE JOINTS, SHIN, SACH FOOT	2828.89	2828.89	2828.89
L5200	ABOVE KNEE, MOLDED SOCKET, SINGLE AXIS CONSTANT FRICTION KNEE, SHIN, SACH FOOT	1669.15	1669.15	1669.15
L5210	ABOVE KNEE, SHORT PROSTHESIS, NO KNEE JOINT ("STUBBIES"), WITH FOOT BLOCKS, NO ANKLE JOINTS, EACH	1898.33	1898.33	1898.33
L5220	ABOVE KNEE, SHORT PROSTHESIS, NO KNEE JOINT ("STUBBIES"), WITH ARTICULATED ANKLE/FOOT, DYNAMICALLY ALIGNED, EACH	2345.00	2345.00	2345.00
L5250	HIP DISARTICULATION, CANADIAN TYPE, MOLDED SOCKET, HIP JOINT, SINGLE AXIS CONSTANT FRICTION KNEE, SHIN, SACH FOOT	3248.38	3248.38	3248.38
L5300	BELOW KNEE, MOLDED SOCKET, SACH FOOT, ENDOSKELETAL SYSTEM INCLUDING SOFT COVER AND FINISHING	1634.87	1634.87	1634.87
L5310	KNEE DISARTICULATION (OR THROUGH KNEE), MOLDED SOCKET, SACH FOOT ENDOSKELETAL SYSTEM, INCLUDING SOFT COVER AND FINISHING	3908.33	3908.33	3908.33
L5320	ABOVE KNEE, MOLDED SOCKET, OPEN END, SACH FOOT, ENDOSKELETAL SYSTEM, SINGLE AXIS KNEE, INCLUDING SOFT COVER AND FINISHING	2178.59	2178.59	2178.59
L5330	HIP DSRTCLTN, CAN. TYPE MOLDED SCKT, ENSKLTL SYS. SNGL. AXIS KNEE, HIP, JOINT, SACH FOOT, INCL. SOFT COVER AND FINISHING	2996.39	2996.39	2996.39
L5340	HEMIPELVECTOMY, CAN. TYPE MOLDED SOCKET, ENDSKLTL SYS., SNGL. AXIS KNEE, HIP JOINT, SACH FOOT, INCL. SOFT COVER & FINISHING	5583.33	5583.33	5583.33
L5400	IMMDITE POST SRGCL OR EARLY FITTING, APPLICATION OF INITIAL RIGID DRESSING, INCL. FITTING, ALGMNT, SUSPNSN, & ONE CAST	837.50	837.50	837.50
L5500	PREPARATORY, BELOW KNEE ("PTB") (TYPE) SOCKET, SUPRACONDYLAR STRAP SUSPENSION, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT)	971.04	971.04	971.04
L5510	PREPARATORY, BELOW KNEE ("PTB") (TYPE) SOCKET, SUPRACONDYLAR STRAP SUSPENSION, "USMC" OR EQUAL PYLON, NO COVER, SACH	970.84	970.84	970.84
L5520	PREPARATORY, BELOW KNEE "PTB" TYPE SOCKET, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT, THERMOPLASTIC OR EQUAL, DIRECT	1197.06	1197.06	1197.06
L5530	PREPARATORY, BELOW KNEE, "PTB" TYPE SOCKET, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT, THERMOPLASTIC OR EQUAL, MOLDED TO	1273.53	1273.53	1273.53
L5540	PREPARATORY, BELOW KNEE "PTB" TYPE SOCKET, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT, LAMINATED SOCKET, MOLDED TO MODEL	1380.80	1380.80	1380.80
L5560	PREPARATORY, ABOVE KNEE—KNEE DISARTICULATION, ISCHIAL LEVEL SOCKET, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT, PLASTER	1384.67	1384.67	1384.67
L5570	PRPRTRY, ABOVE KNEE—KNEE DISRTCLTN, ISCHIAL LEVEL SCKT, USMC OR EQUAL PYLON, NO COVER, SACH FOOT, THERMOPLASTIC OR EQUAL	1667.55	1667.55	1667.55
L5580	PRPRTRY, ABOVE KNEE—KNEE DSRTILTN, ISCHIAL LEVEL SCKT, USMC OR EQUAL PYLON, NO COVER, SACH FT, THERMOPLASTIC OR EQUAL	1661.22	1661.22	1661.22
L5590	PREPARATORY, ABOVE KNEE—KNEE DISARTICULATION, ISCHIAL LEVEL SOCKET, "USMC" OR EQUAL PYLON, NO COVER, SACH FOOT, LAMINATE	1503.12	1503.12	1503.12
L5618	ADDITION TO LOWER EXTREMITY, TEST SOCKET, SYMES	223.33	223.33	223.33
L5620	ADDITION TO LOWER EXTREMITY, TEST SOCKET, BELOW KNEE	254.30	254.30	254.30
L5622	ADDITION TO LOWER EXTREMITY, TEST SOCKET, KNEE DISARTICULATION	271.18	271.18	271.18
L5624	ADDITION TO LOWER EXTREMITY, TEST SOCKET, ABOVE KNEE	330.33	330.33	330.33
L5626	ADDITION TO LOWER EXTREMITY, TEST SOCKET, HIP DISARTICULATION	418.76	418.76	418.76
L5630	ADDITION TO LOWER EXTREMITY, SYMES TYPE, EXPANDABLE WALL SOCKET	375.35	375.35	375.35
L5632	ADDITION TO LOWER EXTREMITY, SYMES TYPE, "PTB" BRIM DESIGN SOCKET	216.50	216.50	216.50
L5636	ADDITION TO LOWER EXTREMITY, SYMES TYPE, MEDIAL OPENING SOCKET	435.50	435.50	435.50
L5642	ADDITION TO LOWER EXTREMITY, ABOVE KNEE, LEATHER SOCKET	558.33	558.33	558.33
L5650	ADDITION TO LOWER EXTREMITY, TOTAL CONTACT, ABOVE KNEE OR KNEE DISARTICULATION SOCKET	513.51	513.51	513.51
L5652	ADDITION TO LOWER EXTREMITY, SUCTION SUSPENSION, ABOVE KNEE OR KNEE DISARTICULATION, SOCKET	546.66	546.66	546.66
L5654	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, SYMES, (KEMBLO, PELITE, PLIPLAST, PLASTAZOTE OR EQUAL)	263.65	263.65	263.65
L5655	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, BELOW KNEE (KEMBLO, PELITE, ALIPLAST PLASTAZOTE OR EQUAL)	239.14	239.14	239.14
L5656	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, KNEE DISARTICULATION, (KEMBLO, ALIPLAST, PLASAZOTE OR EQUAL)	302.19	302.19	302.19
L5658	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, ABOVE KNEE (KEMBLO, PELITE, ALIPLAST, PLASAZOTE OR EQUAL)	275.53	275.53	275.53
L5660	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, SYMES, SILICONE GEL OR EQUAL	446.67	446.67	446.67
L5662	ADDITION TO LOWER EXTREMITY, SOCKET INSERT, BELOW KNEE, SILICONE GEL OR EQUAL	325.23	325.23	325.23
L5666	ADDITION TO LOWER EXTREMITY, BELOW KNEE, CUFF SUSPENSION	53.44	53.44	53.44

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L5668	ADDITION TO LOWER EXTREMITY, BELOW KNEE, MOLDED DISTAL CUSHION	83.33	83.33	83.33
L5670	ADDITION TO LOWER EXTREMITY, BELOW KNEE, MOLDED SUPRACONDYLAR SUSPENSION ("RTS" OR SIMILAR)	282.39	282.39	282.39
L5672	ADDITION TO LOWER EXTREMITY, BELOW KNEE, REMOVABLE MEDIAL BRIM SUSPENSION	256.32	256.32	256.32
L5674	ADDITION TO LOWER EXTREMITY, BELOW KNEE, LATEX SLEEVE SUSPENSION OR EQUAL, EACH	33.91	33.91	33.91
L5676	ADDITION TO LOWER EXTREMITY, BELOW KNEE, KNEE JOINTS, SINGLE AXIS, PAIR	219.18	219.18	219.18
L5678	ADDITION TO LOWER EXTREMITY, BELOW KNEE, JOINT COVERS, PAIR	25.22	25.22	25.22
L5680	ADDITION TO LOWER EXTREMITY, BELOW KNEE, THIGH LACER, NON-MOLDED	197.50	197.50	197.50
L5682	ADDITION TO LOWER EXTREMITY, BELOW KNEE, THIGH LACER, GLUTEAL/ ISCHIAL, MOLDED	521.93	521.93	521.93
L5684	ADDITION TO LOWER EXTREMITY, BELOW KNEE, FORK STRAP	43.33	43.33	43.33
L5686	ADDITION TO LOWER EXTREMITY, BELOW KNEE, BACK CHECK (EXTENSION CONTROL)	44.95	44.95	44.95
L5688	ADDITION TO LOWER EXTREMITY, BELOW KNEE, WAIST BELT, WEBBING	55.70	55.70	55.70
L5690	ADDITION TO LOWER EXTREMITY, BELOW KNEE, WAIST BELT, PADDED AND LINED	87.26	87.26	87.26
L5692	ADDITION TO LOWER EXTREMITY, ABOVE KNEE, PELVIC CONTROL BELT, LIGHT	85.40	85.40	85.40
L5694	ADDITION TO LOWER EXTREMITY, ABOVE KNEE, PELVIC CONTROL BELT, PADDED AND LINED	154.98	154.98	154.98
L5696	ADDITION TO LOWER EXTREMITY, ABOVE KNEE OR KNEE DISARTICULATION, PELVIC JOINT	150.18	150.18	150.18
L5697	ADDITION TO LOWER EXTREMITY, ABOVE KNEE OR KNEE DISARTICULATION, PELVIC BAND	44.47	44.47	44.47
L5698	ADDITION TO LOWER EXTREMITY, ABOVE KNEE OR KNEE DISARTICULATION, SILESIAN BANDAGE	91.96	91.96	91.96
L5699	ALL LOWER EXTREMITY PROSTHESES, SHOULDER HARNESS	158.29	158.29	158.29
L5700	ALL LOWER EXTREMITY PROSTHESES, FOOT, EXTERNAL KEEL, SACH FOOT	106.63	106.63	106.63
L5702	ALL LOWER EXTREMITY PROSTHESES, FOOT, SINGLE AXIS ANKLE/FOOT	150.29	150.29	150.29
L5704	ALL LOWER EXTREMITY PROSTHESES, FOOT, MULTIAXIAL ANKLE/FOOT (GREISSINGER OR EQUAL)	186.31	186.31	186.31
L5706	ALL EXOSKELETAL LOWER EXTREMITY PROSTHESES, AXIAL ROTATION UNIT	307.09	307.09	307.09
L5710	ADDITION, EYOSKELETAL KNEE-SHIN SYSTEM, SINGLE AXIS, MANUAL LOCK	231.93	231.93	231.93
L5712	ADDITION, EYOSKELETAL KNEE-SHIN SYSTEM, SINGLE AXIS, FRICTION SWING AND STANCE PHASE CONTROL (SAFETY KNEE)	293.09	293.09	293.09
L5714	ADDITION, EYOSKELETAL KNEE-SHIN SYSTEM, SINGLE AXIS, VARIABLE FRICTION SWING PHASE CONTROL (SAFETY KNEE)	390.83	390.83	390.83
L5716	ADDITION, EYOSKELETAL KNEE-SHIN SYSTEM, POLYCENTRIC, MECHANICAL STANCE PHASE LOCK	420.84	420.84	420.84
L5718	ADDITION, EYOSKELETAL KNEE-SHIN SYSTEM, POLYCENTRIC, FRICTION SWING AND STANCE PHASE CONTROL	586.26	586.26	586.26
L5724	ADDITION, EXOSKELETAL KNEE-SHIN SYSTEM, SINGLE AXIS, FLUID SWING AND STANCE PHASE CONTROL	1079.43	1079.43	1079.43
L5728	ADDITION, EXOSKELETAL KNEE-SHIN SYSTEM, SINGLE AXIS, FLUID SWING AND STANCE PHASE CONTROL	1957.65	1957.65	1957.65
L5999	UNLISTED PROCEDURES FOR LOWER EXTREMITY PROSTHESIS	327.77	327.77	327.77
L6050	WRIST DISARTICULATION, MOLDED SOCKET, FLEXIBLE ELBOW HINGES, TRICEPS PAD	1423.75	1423.75	1423.75
L6130	BELOW ELBOW, MOLDED DOUBLE HALL SPLIT SOCKET, STUMP ACTIVATED LOCKING HINGE, HALF CUFF	2453.88	2453.88	2453.88
L6250	ABOVE ELBOW, MOLDED DOUBLE WALL SOCKET, INTERNAL LOCKING ELBOW, FOREARM	2023.95	2023.95	2023.95
L6500	ABOVE ELBOW, MOLDED SOCKET, ENDOSKELETAL SYSTEM, INCLUDING SOFT PROSTHETIC TISSUE SHAPING	2110.50	2110.50	2110.50
L6600	UPPER EXTREMITY ADDITION, POLYCENTRIC HINGE, PAIR	139.59	139.59	139.59
L6620	UPPER EXTREMITY ADDITION, FLEXION-FRICTION WRIST UNIT	290.33	290.33	290.33
L6630	UPPER EXTREMITY ADDITION, STAINLESS STEEL, ANY WRIST	94.92	94.92	94.92
L6635	UPPER EXTREMITY ADDITION, LIFT ASSIST FOR ELBOW	167.50	167.50	167.50
L6655	UPPER EXTREMITY ADDITION, STANDARD CONTROL CABLE, EXTRA	78.17	78.17	78.17
L6665	UPPER EXTREMITY ADDITION, TEFLON, OR EQUAL, CABLE LINING	27.92	27.92	27.92
L6670	UPPER EXTREMITY ADDITION, HOOK TO HAND, CABLE ADAPTER	53.04	53.04	53.04
L6672	UPPER EXTREMITY ADDITION, HARNESS, CHEST OR SHOULDER, SADDLE TYPE	122.83	122.83	122.83
L6675	UPPER EXTREMITY ADDITION, HARNESS, FIGURE OF ("8") EIGHT TYPE, FOR SINGLE CONTROL	118.18	118.18	118.18
L6676	UPPER EXTREMITY ADDITION, HARNESS, FIGURE OF ("8") EIGHT TYPE, DUAL CONTROL	156.33	156.33	156.33
L6680	UPPER EXTREMITY ADDITION, TEST SOCKET, WRIST DISARTICULATION OR BELOW ELBOW	223.33	223.33	223.33

PROCEDURE CODE	DESCRIPTION OF SERVICES	REGION 1	2	3
L6682	UPPER EXTREMITY ADDITION, TEST SOCKET, ELBOW DISARTICULATION OR ABOVE ELBOW	223.33	223.33	223.33
L6705	TERMINAL DEVICE, HOOK, DORRANCE, OR EQUAL, MODEL #5	206.59	206.59	206.59
L6710	TERMINAL DEVICE, HOOK, DORRANCE, OR EQUAL, MODEL #5X	255.44	255.44	255.44
L6715	TERMINAL DEVICE, HOOK, DORRANCE, OR EQUAL, MODEL #5XA	262.42	262.42	262.42
L6835	TERMINAL DEVICE, HAND, SIERRA, VO	809.59	809.59	809.59
L6860	TERMINAL DEVICE, HAND, ROBIN-AIDS, VO SOFT	558.33	558.33	558.33
L6890	TERMINAL DEVICE, GLOVE FOR ABOVE HANDS, PRODUCTION GLOVE	115.02	115.02	115.02
L6895	TERMINAL DEVICE, GLOVE FOR ABOVE HANDS, CUSTOM GLOVE	413.17	413.17	413.17
L7499	UNLISTED PROCEDURES FOR LOWER EXTREMITY PROSTHESIS	6.59	6.59	6.59
L7510	REPAIR PROSTHETIC DEVICE, REPAIR OR REPLACE WITH MINOR PARTS	463.42	463.42	463.42
L8000	BREAST PROSTHESIS, MASTECTOMY BRA	23.60	23.60	23.60
L8300	TRUSS, SINGLE WITH STANDARD PAD	53.96	53.96	53.96
L8310	TRUSS, DOUBLE WITH STANDARD PADS	112.71	112.71	112.71
L8320	TRUSS, ADDITION TO STANDARD PADS, WATER PAD	27.70	27.70	27.70
L8330	TRUSS, ADDITION TO STANDARD PADS, SCROTAL PAD	23.38	23.38	23.38
L8400	PROSTHETIC SHEATH, BELOW KNEE, EACH	13.23	13.23	13.23
L8410	PROSTHETIC SHEATH, ABOVE KNEE, EACH	15.67	15.67	15.67
L8420	PROSTHETIC SOCK, WOOL, BELOW KNEE, EACH	18.36	18.36	18.36
L8430	PROSTHETIC SOCK, WOOL, ABOVE KNEE, EACH	19.57	19.57	19.57
L8440	PROSTHETIC SHRINKER, BELOW KNEE, EACH	37.84	37.84	37.84
L8460	PROSTHETIC SHRINKER, ABOVE KNEE, EACH	49.10	49.10	49.10
L8470	STUMP SOCK, SINGLE PLY, FITTING, BELOW KNEE, EACH	3.56	3.56	3.56
L8480	STUMP SOCK, SINGLE PLY, FITTING, ABOVE KNEE, EACH	3.49	3.49	3.49
L8499	UNLISTED PROCEDURE FOR MISCELLANEOUS PROSTHETIC SERVICES	6.98	6.98	6.98
Q0036	OXYGEN CONCENTRATOR, HIGH HUMIDITY	303.44	303.44	303.44
Q0037	OXYGEN AND WATER VAPOR ENRICHING SYSTEM	303.44	303.44	303.44

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(c) The following is the Medical Fee Schedule for dental services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DENTAL SERVICES

DIAGNOSTIC

ADA CODE	TERMINOLOGY	REGION 1	2	3
	PROFESSIONAL VISITS AND CONSULTATIONS			
00110	First visit, office or hospital, including examination and reports.	34	34	34
00111	Office or hospital call, subsequent, other than night emergency.	30	30	30
00112	Office call or hospital call, night emergency (12 Midnight to 8 AM)	46	46	46
00150	Consultation and/or first complete examination, in office or hospital.	91	91	91
	RADIOGRAPHS			
00210	Intraoral—complete series.	69	69	69
00220	Intraoral—single, first film.	8	8	8
00230	Intraoral—each additional film.	6	6	6
00270	Bitewing—single, first film (each).	8	8	8
00280	Bitewing—each additional film.	6	6	6
00290	Posteriorantero and lateral skull and facial bone, survey film.	83	83	83
00310	Sialography (series of films).	138	138	138
00330	Panoramic—maxillary and mandibular, single film.	69	69	69
00340	Cephalometric film (series).	138	138	138
	TESTS AND LABORATORY EXAMINATIONS			
00470	Diagnostic casts.	41	41	41
00471	Diagnostic photographs.	28	28	28

PREVENTIVE

	SPACE MAINTAINERS			
01510	Fixed, unilateral band type.	124	124	124
01511	Fixed, lingual or palatal arch band type.	193	193	193
01512	Fixed, distal shoe type.	165	165	165
01515	Fixed, stainless steel crown type.	138	138	138
01520	Fixed, cast type.	165	165	165
01530	Removable, acrylic.	138	138	138

RESTORATIVE

ADA CODE	TERMINOLOGY	REGION 1	2	3
	GOLD FOIL RESTORATIONS			
02410	Gold foil—one surface.	138	138	138
02420	Gold foil—two surfaces.	207	207	207
02430	Gold foil—three surfaces.	248	248	248
	GOLD INLAY RESTORATIONS			
02510	Inlay, gold—one surface.	234	234	234
02520	Inlay, gold—two surfaces.	303	303	303
02530	Inlay, gold—three surfaces.	345	345	345
02540	Inlay, per tooth (in addition to above).	41	41	41
	PORCELAIN RESTORATIONS			
02610	Inlay, porcelain.	207	207	207
	CROWNS/SINGLE RESTORATIONS ONLY			
02710	Plastic (acrylic).	372	372	372
02711	Plastic—prefabricated.	207	207	207
02720	Plastic with gold.	552	552	552
02721	Plastic with non-precious metal.	441	441	441
02722	Plastic with semi-precious metal.	496	496	496
02740	Porcelain.	414	414	414
02750	Porcelain with gold.	648	648	648
02751	Porcelain with non-precious metal.	538	538	538
02752	Porcelain with semi-precious metal.	593	593	593
02790	Gold (full cast).	469	469	469
02791	Non-precious metal (full cast)	331	331	331
02792	Semi-precious metal (full cast)	386	386	386
02810	Gold (3/4 cast).	414	414	414
02820	Gold thimble.	138	138	138
02830	Stainless steel.	97	97	97
02840	Temporary (emergency procedure only).	124	124	124
02891	Cast post and core (in addition to crown).	165	165	165
02892	Steel post and composite or amalgam (in addition to crown).	138	138	138

REMOVABLE PROSTHODONTICS

ADA CODE	TERMINOLOGY	REGION 1	2	3
	COMPLETE DENTURES INCLUDING ADJUSTMENTS			
05110	Complete upper	689	689	689
05120	Complete lower	689	689	689
05130	Immediate upper	745	745	745
05140	Immediate lower	745	745	745
	PARTIAL DENTURES (INCLUDING 6 MONTHS POST-DELIVERY CARE)			
05210	Upper or lower, without clasps, acrylic base.	358	358	358
05220	Upper or lower, with two gold or chrome clasps with rests, acrylic base.	552	552	552
05239	Lower with gold or chrome lingual bar and two clasps, acrylic base.	689	689	689
05240	Lower with gold or chrome lingual bar and two clasps, cast base.	689	689	689
05250	Upper with gold or chrome palatal bar and two clasps, acrylic base.	689	689	689
05260	Upper with gold or chrome palatal bar and two clasps, cast base.	689	689	689
05280	Removable unilateral partial denture, one-piece casting, gold or chrome cobalt clasp attachments, per unit including pontics.	276	276	276
05290	Full cast partial.	689	689	689
	ADDITIONAL UNITS FOR PARTIAL DENTURES			
05315	Each additional tooth or clasp beyond 10.	83	83	83
	ADJUSTMENTS TO DENTURE (BY OTHER THAN DENTIST PROVIDING APPLIANCES)			
05410	Complete denture.	25	25	25
05420	Partial denture.	25	25	25
	REPAIRS TO DENTURES			
05610	Repair broken complete or partial dentures, no teeth damaged.	55	55	55
05620	Repair broken complete or partial denture and replace one broken tooth.	83	83	83
05630	Replace additional teeth, each tooth.	28	28	28
05640	Replace broken tooth on denture, no other repairs.	22	22	22
05650	Adding tooth to partial denture to replace extracted tooth, each tooth (not involving clasp or abutment tooth).	110	110	110

ADA CODE	TERMINOLOGY	REGION 1	2	3
05660	Adding tooth to partial denture to replace extracted tooth, each tooth (involving clasp or abutment tooth).	110	110	110
05670	Reattaching damaged clasp on denture	55	55	55
05680	Replacing broken clasp with new clasp on denture.	97	97	97
05690	Each additional clasp with rest.	83	83	83
	DENTURE DUPLICATION AND RELINING			
05730	Relining, upper or lower complete denture (office reline).	124	124	124
05740	Relining, upper or lower partial denture (office reline).	97	97	97
05750	Relining, upper or lower complete denture (laboratory).	193	193	193
05760	Relining, upper or lower partial denture (laboratory).	152	152	152
	OTHER PROSTHETIC SERVICES			
05830	Obturator for surgically excised palatal tissue.	689	689	689
05840	Obturator for deficient velopharyngeal function (cleft palate)	689	689	689
05850	Tissue conditioning.	97	97	97

FIXED PROSTHODONTICS

ADA CODE	TERMINOLOGY	REGION 1	2	3
	BRIDGE PONTICS			
06210	Cast gold.	414	414	414
06220	Slotted facing.	386	386	386
06230	Slotted pontic.	386	386	386
06235	Pin facing.	303	303	303
06240	Porcelain fused to gold.	648	648	648
06241	Porcelain fused to non-precious metal.	538	538	538
06242	Porcelain fused to semi-precious metal.	593	593	593
06250	Plastic processed to gold.	552	552	552
06251	Plastic processed to non-precious metal.	441	441	441
06252	Plastic processed to semi-precious metal.	496	496	496
	RETAINERS			
06520	Two-surface gold inlay.	303	303	303
06530	Three-or-more-surface gold inlay.	345	345	345
06540	Gold inlay.	386	386	386
	REPAIRS			
06610	Replace broken pin facing with slotted or other facing.	83	83	83
06620	Replace broken facing where post is intact.	55	55	55
06630	Replace broken facing where post backing is broken.	83	83	83
06640	Replace broken facing with acrylic.	55	55	55
06650	Replace broken Tru-Pontic.	55	55	55
	CROWNS			
06710	Plastic (acrylic).	372	372	372
06720	Plastic processed to gold.	552	552	552
06721	Plastic processed to non-precious metal.	441	441	441
06722	Plastic processed to semi-precious metal.	496	496	496
06740	Porcelain.	414	414	414
06750	Porcelain fused to gold.	648	648	648
06751	Porcelain fused to non-precious metal.	538	538	538
06752	Porcelain fused to semi-precious metal.	593	593	593
06780	Gold (3/4 cast).	414	414	414
06790	Gold (full cast).	414	414	414
06791	Non-precious metal (full cast).	276	276	276
06792	Semi-precious metal (full cast).	331	331	331

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(d) The following is the Medical Fee Schedule for nursing and allied professional health services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE

NURSING AND ALLIED PROFESSIONAL HEALTH SERVICES

ADA CODE	TERMINOLOGY	REGION 1	2	3
	PRIVATE NURSING CARE (PER HOUR)			
PNC01	Registered nurse	36	36	36
PNC02	Licensed practical nurse	29	29	29
PNC03	Home health aide	13	13	13
PNC04	Live-in attendant (per 24-hour shift)	128	128	128
	HOME HEALTH VISITS (PER VISIT)			
HHV01	Skilled nursing	75	75	77
HHV02	Physical therapy	72	72	75
HHV03	Speech therapy	78	78	81
HHV04	Occupational therapy	75	75	77
HHV05	Home health aide	43	43	46

FOR SERVICES AND EQUIPMENT NOT ON THE SCHEDULE, THE LIMIT OF PIP LIABILITY IS A REASONABLE AMOUNT CONSIDERING THE FEE SCHEDULES FOR SIMILAR SERVICES OR EQUIPMENT IN THE REGION.

(e) The following is the Medical Fee Schedule for transportation services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE

TRANSPORTATION SERVICES

ADA CODE	TERMINOLOGY	REGION 1	2	3
A0010	BLS BASE RATE (within service area)	123	123	123
A0020	BLS per mile (outside service area)	4	4	4
A0070	Ambulance service, oxygen and supplies	33	33	33
A0500	Mobile intensive care unit	446	446	446

(a)

DIVISION OF ADMINISTRATION

Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule

Proposed New Rules: N.J.A.C. 11:3-34

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:33B-13 and 14; N.J.S.A. 17:1C-6(e).
Proposal Number: PRN 1990-375.

Submit comments by August 15, 1990 to:
Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Insurance ("the Department") proposes new rules in accordance with the Fair Automobile Insurance Reform Act ("the Act"), section 26 of P.L. 1990, c.8 (N.J.S.A. 17:33B-14). The Act requires the Commissioner of Insurance ("Commissioner") to promulgate a schedule of automobile insurance eligibility points. The automobile insurance eligibility points schedule shall be used to determine which persons shall be eligible for insurance in the voluntary market. The schedule assesses a point value to driving experience related violations as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions. Automobile insurance eligibility points are to be used to refine the definitions of "eligible person" as set forth in N.J.S.A. 17:33B-13. The FAIR Act provides that "eligible persons" shall secure automobile insurance coverage in the voluntary market. The proposed new rules set forth certain driving experience related violations, as well as certain insurance law violations that preclude a person from being an eligible person.

In promulgating the schedule of eligibility points, the Department examined data from the Division of Motor Vehicles ("DMV") which included convictions for serious violations and statistical compilations of the number of drivers with various numbers of DMV points on their driving records.

The Department designed the automobile insurance eligibility point schedule to incorporate the DMV point schedule. The Department examined other driving experience related violations that were not assigned points under the Department of Motor Vehicles system and assigned them automobile insurance eligibility points. In examining these driving experience related violations the Department determined that certain violations were severe enough that a person committing any one of these violations warranted being classified as an ineligible person. The Department assigned the most severe violations nine automobile eligibility points, which is the minimum number that makes a person "ineligible".

The Department in accordance with the Act examined at-fault accidents and assigned five automobile insurance eligibility points to each at-fault accident. The Department determined that if a person was involved in one at-fault accident, they would still be eligible for insurance in the voluntary market as long as they did not accumulate sufficient additional eligibility points within a three-year period.

The Department also examined and assigned automobile insurance eligibility points to certain other motor vehicle violations that did not result in DMV points, but nevertheless were serious motor vehicle violations that included an element of dishonesty. These violations were assigned five eligibility points.

Automobile insurance eligibility points are considered as part of a person's driving experience for a period of three years. The date used to calculate eligibility points for violations is the date that the violation is entered on the DMV's computer. The date used to calculate points for at-fault accidents is the date that the insurer has knowledge of the at-fault accident.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:3-34.1 states the purpose of the proposed new rules.

N.J.A.C. 11:3-34.2 states the scope of the proposed new rules.

N.J.A.C. 11:3-34.3 provides the definition for terms that are used in the proposed new rules.

N.J.A.C. 11:3-34.4 provides the qualifications to be used in determining whether a person meets the definition of an "eligible person."

N.J.A.C. 11:3-34.5 establishes the automobile insurance eligibility points schedule.

Social Impact

The proposed new rules are designed to assure that drivers with good driving records are able to procure automobile insurance coverage in the voluntary market. The proposed new rules provide an eligibility points schedule which assesses a point value to adverse events from a person's driving experience. Accumulating nine points renders a person ineligible for coverage in the voluntary market.

Conversely, the proposed new rules will require insurers to provide insurance in the voluntary market to any eligible person as this term is defined in these rules. Since the voluntary market contains lower rates, an insured's automobile insurance premium will be directly related to his or her driving record.

The proposed new rules will affect all New Jersey insureds procuring automobile insurance.

Economic Impact

The proposed new rules are expected to increase those insureds' premiums whose driving record indicates that they are higher risks based on the number of automobile eligibility points that they have accumulated within the preceding three years. Those insureds who have no automobile insurance eligibility points will be able to secure automobile insurance at lower rates than a person in the nonstandard or assigned risk markets, with the same car but more eligibility points. No economic impact on insurers is anticipated.

Regulatory Flexibility Analysis

The proposed new rules impose no reporting or recordkeeping requirements. Insurance companies authorized to transact private passenger automobile insurance, which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the proposed new rules.

These proposed new rules implement N.J.S.A. 17:33B-14 which requires the Commissioner to promulgate a schedule of automobile insurance eligibility points. The proposed new rules are to be used by insurers and producers to determine a person's eligibility for automobile insurance in the voluntary market. In order to provide for uniform and consistent applicability of these rules in the automobile insurance market, no differential treatment is accorded small businesses. The proposed new rules will not require small businesses to use any other kinds of professional services to comply.

Full text of the proposed new rules follows:

SUBCHAPTER 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person," and to provide the schedule for "automobile insurance eligibility points" pursuant to P.L. 1990, c.8.

11:3-34.2 Scope

The provisions of this subchapter apply to all insurers which write private passenger automobile insurance and all persons who are required to procure automobile insurance coverage in this State.

11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least $500.00 and for which the driver is at least proportionately responsible based on the number of vehicles involved. A person is proportionately responsible if 50 percent responsible for a two-car accident; if 33⅓ percent responsible for a three-car accident; etc.

"Automobile" means an automobile as defined in N.J.S.A. 39:6A-2.

"Automobile insurance" means insurance for an automobile including any or all of the following coverages: bodily injury liability and property damage liability, comprehensive and collision coverages, uninsured and underinsured motorist coverage, personal injury protection coverage, additional personal injury protection coverage and any other automobile insurance required by law.

"Automobile insurance eligibility points" means points calculated under the schedule promulgated by the Commissioner pursuant to this subchapter.

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

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

"State" means the State of New Jersey.

11:3-34.4 Eligible person qualifications

(a) An "eligible person" is a person who is an owner or registrant of an automobile registered in this State or who holds a valid New Jersey driver's license to operate an automobile, but does not include any person:

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.5a, or for an offense of a substantially similar nature committed in another jurisdiction; or

2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle; or

3. Whose driver's license to operate an automobile is under a court ordered suspension or revocation; or

4. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an insurance claim or an application for insurance; or

5. Who has been successfully denied, within the immediate preceding five years, payment by an insurer of a claim in excess of $1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application. For the purpose of this section:

i. If the claim has been subject to litigation between the insurer and the insured in which the insurer defended against payment of the claim in whole or in part on grounds of fraud, it shall be conclusively presumed that the claim was successfully denied if judgement was entered for the insurer in the litigation; and conclusively presumed that the claim was not successfully denied if judgement was entered for the insured;

ii. If the claim has not been subject to litigation between the insurer and the insured, but the insurer denied the claim without payment by reason of fraud, it shall be presumed that the claim was successfully denied. This presumption may be overcome in an administrative proceeding pursuant to N.J.A.C. 11:3-33; or

6. Whose automobile insurance policy has been cancelled because of nonpayment of premiums or financed premium within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium; or

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for

membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; or

8. Whose driving record for the three-year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of nine or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5.

11:3-34.5 Automobile insurance eligibility points

(a) Automobile insurance eligibility points shall be accumulated as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions in accordance with the schedule set forth in the Appendix to this subchapter herein incorporated by reference.

(b) Automobile insurance eligibility points shall be deemed to accrue as follows:

1. Points for at-fault accidents shall accrue when the insurer has knowledge of the event, that is, when the accident is reported or a claim is made.

2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey Division of Motor Vehicles or comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.

(c) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Division of Motor Vehicles by rule, N.J.A.C. 13:19-10.1, which is hereby incorporated by reference. Any additions, deletions or modifications to N.J.A.C. 13:19-10.1 shall likewise be incorporated as of the effective date of amendment. Schedule 2 is included in the Appendix for convenience.

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

Offense	DMV Event Identifier(s)	Points
Operating a motor vehicle while under the influence of alcohol or drugs	0450; 3261; CSDD; OSDD	9
Refusal to submit to a chemical test	4504; CBST; OSBT	9
Vehicular homicide	C115	9
Operating a motor vehicle while driving privilege is suspended	0340	9
Operating a motor vehicle without liability insurance	06B2; 6A15	9
Each at fault accident		5
For each full year of a court imposed driver's license suspension within the preceding 3 years		3
+Involved in a fatal accident	EFTL; NFTL	4 2
Obtaining a driver's license or registration through deception of any kind	0337; 0312; 05D5; C312; 1313; MSNJ; MSOS	5
Make or use counterfeit plate or plates other than issued	0338	5
Make, alter or counterfeit driver's license or registration	3381	5
Failure to verify insurance involved in an accident	FVIA	2

+(Points for this offense are in addition to the 5 points for the at fault accident)

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23-29	Moving against traffic —New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23-29	Improper passing— New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23-29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3-20	Operating constructor vehicle in excess of 30 mph	3
39:3-76.7 & 39:4-14.3q	Operating motorcycle or motorized bicycle without protective helmet	2
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bike	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through a safety zone	2
39:4-52 & 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2

39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper "U" turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing or railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5
39:4-128.4	Improper passing of a frozen dessert truck	4
39:4-129	Leaving the scene of an accident No personal injury Personal injury	 2 8
39:4-144	Failure to observe "stop" or "yield" signs	2
39:5D-4	Moving violation out-of-state	2

(a)

DIVISION OF FRAUD

Automobile Physical Damage Insurance Inspection Procedures

Proposed New Rules: N.J.A.C. 11:3-36

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

Authority: P.L.1990, c.8. (N.J.S.A. 17:33B-33 et seq.)

Proposal Number: PRN 1990-376.

Submit comments by August 15, 1990 to:

Verice M. Mason, Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The Department of Insurance ("the Department") proposes new rules in accordance with sections 41 through 48 of the Fair Automobile Insurance Reform Act of 1990 P.L.1990, c.8, (N.J.S.A. 17:33B-33 et seq.) ("the Act") which requires the Department to establish procedures for the inspection of an automobile by the insurer prior to the issuance of automobile physical damage insurance coverage.

The Act requires the Commissioner to exempt new automobiles from insurance inspections under conditions established by these rules. The Act permits insurers to require, as a condition of renewal, that the automobile be made available for inspection at locations and times reasonably convenient to the insured. The Act requires that insurers inspect an automobile acquired by the insured as a replacement for or in addition to an automobile insured for physical damage insurance coverage.

The proposed new rules require the inspection of all private passenger automobiles insured when the policy is next renewed after the operative date of these rules.

The proposed new rules establish procedures for the inspection of an automobile by the insurer prior to the issuance of physical damage insurance coverage. The proposed new rules apply to all private passenger automobiles being insured for physical damage insurance coverage in this State.

A summary of the various provisions of the proposed new rules follows:

N.J.A.C. 11:3-32.1 states the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-32.2 provides the definitions for terms that are used in the proposed new rules.

N.J.A.C. 11:3-32.3 provides the mandatory inspection requirements for private passenger automobiles insured under a new policy or endorsement or insured as an additional or replacement automobile.

N.J.A.C. 11:3-32.4 provides the circumstances under which insurers may waive mandatory inspections.

N.J.A.C. 11:3-32.5 provides the circumstances and the length of time for which insurers may defer the inspection of an automobile.

N.J.A.C. 11:3-32.6 provides the standards and procedures to be used by the insurer in the inspection of the automobile.

N.J.A.C. 11:3-32.7 provides the standards that the insurer is to follow in suspending physical damage insurance coverage on the insured's automobile.

N.J.A.C. 11:3-32.8 addresses the enforcement of this subchapter by the Department and states the amount of fines to be imposed for a violation of any provision of this subchapter.

N.J.A.C. 11:3-32.9 requires insurers to maintain records and to be responsible for the monthly auditing of inspection reports.

N.J.A.C. 11:3-32.10 provides for the severability of any portion of this rule if it is held invalid by any court.

Social Impact

The proposed new rules are designed to curtail fraudulent physical damage claims. The proposed new rules require insurers to inspect the physical condition of an automobile prior to issuing physical damage insurance coverage. The inspection should prevent insurers from paying a claim for damage to an automobile that was not damaged as the result of the accident reported, but was in damaged condition that existed prior to an accident. Inspections should also prevent fraudulent schemes in which nonexistent "paper cars" are insured and then reported stolen.

The proposed new rules will affect all New Jersey insureds with physical damage insurance coverage on their automobile(s). Unless they are exempted by these rules or the Act, the proposed new rules require that insureds make their automobiles available for inspection by the insurer's authorized representative.

The proposed new rules will affect insurers in that it requires them to inspect private passenger automobiles prior to the issuance of physical damage insurance coverage and requires inspection records to be kept. The proposed new rules allow insurers to waive the inspection requirements under specified conditions.

Economic Impact

The Department expects the proposed new rules to help stabilize premiums on physical damage coverage that have increased partly due to fraudulent physical damage claims. The proposed new rules are expected to reduce or eliminate fraudulent claims in this area, and eliminate the insuring of nonexistent or paper cars.

The Department expects that insurers will incur some costs as a result of the proposed new rules but the Department believes that the costs will be balanced by the anticipated reduction in fraudulent claims and, therefore, does not anticipate a negative economic impact on insurers. The proposed new rules do not require insurers to hire additional personnel to conduct the automobile inspections. The proposed new rules permit insurers to use their employees to conduct the inspection of the automobiles. The proposed new rules should help insurers and the public in that the rules are intended to reduce the cost of fraudulent claims paid by insurers.

Regulatory Flexibility Analysis

The proposed new rules impose reporting, recordkeeping, and compliance requirements on insurance companies authorized to transact private passenger automobile insurance, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting requirement is to provide monthly reports to the Department of specific inspection data. Private passenger automobile insurers are required to maintain various forms and inspection photographs as records. The rules delineate the compliance requirements for inspections, inspection waivers and inspection deferrals.

The Department is unable to estimate the costs that will be incurred or the need for professional services that may be required by small business insurers to comply with these rules, which effectuate the Fair Automobile Insurance Reform Act's inspection requirements. The costs and need for services will vary substantially depending upon each insurer's internal resources and insured base. In order to effectuate the goals of these rules and meet the requirements of the Act, no differentiation in requirements based upon business size can be provided.

Full text of the proposed new rules follows:

SUBCHAPTER 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

11:3-36.1 Purpose and scope

(a) The purpose of this subchapter is to provide rules for the inspection of automobiles in connection with the issuance of physical damage insurance coverage by insurers pursuant to N.J.S.A. 17:33B-33 through 17:33B-40.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State.

11:3-36.3 Definitions

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

"Authorized representative" means any person other than the insurer which is authorized by the insurer to conduct insurance inspections pursuant to this subchapter; an authorized representative may be an employee of the insurer, a producer or an inspection service.

"Automobile physical damage insurance" means a policy providing one or more of the following insurance coverages:

1. Collision;
2. Comprehensive; and
3. Fire and theft.

"Book of business" means all private passenger automobile insurance written by one producer with one insurer.

"Certificate of mailing" means a receipt from the United States Postal Service that the item was received by it with the proper postage affixed for delivery.

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

"Inspection" means a physical examination of an automobile by an authorized representative of the insurer, in accordance with the standards set forth in N.J.A.C. 11:3-36.6.

"Inspection service" means any person or legal entity other than the insurer, established and operated to perform the inspections required by this subchapter.

"Insured" means the named insured (as defined in the policy) or an applicant for automobile physical damage insurance.

"Insurer" means any person authorized to write automobile insurance in New Jersey, including any residual market mechanism, and includes all affiliated companies within a group.

"New automobile" means an automobile not previously titled with less than 300 recorded miles.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a.

"Renewal" means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

"Replacement automobile" is a vehicle acquired to replace one shown in the Declarations.

11:3-36.3 Mandatory inspection requirements

(a) Prior to providing physical damage coverage, an insurer shall require that the automobile be made available for insurance inspection under the following circumstances:

1. When a new policy or endorsement insuring a private passenger automobile is issued;

2. When coverage is effected for an additional or replacement private passenger automobile; or

3. For all private passenger automobile insurance policies in effect on the operative date of this subchapter, as a condition of the next renewal after the operative date of this subchapter.

(b) An insurer may require, prior to continuing physical damage coverage on an automobile, that the automobile be made available for inspection, under the following circumstances:

1. When the automobile insured for physical damage coverage has been in an accident or otherwise damaged; or

2. As a condition of renewal.

11:3-36.4 Waivers of mandatory inspection

(a) An insurer may waive a mandatory inspection under any of the following circumstances:

1. When a new automobile is purchased from a franchised automobile dealership and the insurer is provided with the following:

i. A copy of the bill of sale which contains a full description of the automobile, including all options and accessories; and

ii. A copy of the window sticker or advanced dealer shipping notice (invoice) showing the itemized options and equipment, the total retail price of the automobile, and any dealer installed option purchased by the customer;

2. When the automobile is more than nine model years old. For example: in 1991 an insurer shall inspect 1982 and newer model year vehicles and in 1992 an insurer shall inspect 1983 and newer model year vehicles;

3. When the named insured has been continuously insured for automobile physical damage insurance with the same insurer for five or more policy years;

4. When a policy is being renewed by a different individual insurance company within a group of affiliated companies;
5. When the insured automobile is insured under a commercially rated policy which insures 10 or more automobiles;
6. When an insurance producer is transferring a book of business from one insurer to another insurer(s);
7. When requiring an inspection within the time provided would cause a serious hardship to the insurer or the insured and such hardship is documented in the insured's policy record;
8. When the insurer has no inspection facility or authorized representative within 10 miles of the city or town in which the automobile is principally garaged; or
9. Where an individual insured's coverage is being transferred by an independent insurance agent to a new insurer and the agent provides the new insurer with a copy of the inspection report completed on behalf of the previous insurer provided:
i. The independent agent represents both insurers; and
ii. The insured vehicle was physically inspected by the previous insurer.
(b) A record of the waiver shall be maintained in the insured's policy record.
(c) Any decision by an insurer whether to waive an inspection shall be based solely on underwriting criteria uniformly applied and shall not be based on the age, race, sex or marital status of the insured, the principal place of garaging or the fact that the vehicle is insured in the residual market.

11:3-36.5 Deferral of inspection
(a) An insurer, by itself or through its authorized producers, may defer inspections required by N.J.A.C. 11:3-36.3 for not more than seven calendar days if an inspection at the time of the request for coverage would create a serious inconvenience for the insured.
1. When an inspection is deferred pursuant to (a) above, an insurer/producer shall:
i. Immediately obtain the Acknowledgement of Requirement for Insurance Inspection form (as set forth in Appendix A and incorporated herein by reference) signed by the insured if the insured has applied for coverage in person; or
ii. Immediately confirm physical damage coverage and advise the insured of the inspection requirements on the Notice of Insurance Inspection form (as set forth in Appendix B and incorporated herein by reference) if the insured has applied for coverage by mail or by telephone.
2. In addition to the notice requirements set forth in (a)1i and ii above, the insurer/producer shall furnish the insured with information about where an inspection can be conducted and the consequences of the insured's failure to have the automobile inspected.
3. Documentation of the required notice shall be retained in the insured's policy record.
(b) An insurer's decision whether to defer an inspection shall be based solely on underwriting criteria and not based on age, sex, race, or marital status of the insured, the principal place of garaging, or the fact that a policy is insured in the residual market.

11:3-36.6 Standards and procedures for inspection
(a) Inspections shall be made by an authorized representative of the insurer at a time and place reasonably convenient to the insured. A reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours. A reasonably convenient place shall not be more than 10 miles from the city or town where the automobile is principally garaged.
(b) Whenever an insurer requires an automobile to be inspected pursuant to this subchapter, the insurer by itself or through its authorized producer shall provide the insured with a Notice of Inspection in the form set forth in Appendix B or an Acknowledgement of Requirement for Insurance Inspection as set forth in Appendix A. Any form so provided shall not contain the Vehicle Identification Number of the automobile to be inspected.
(c) The inspection shall include the following:
1. Completion of the recorded Automobile Insurance Inspection Report as set forth in Appendix C incorporated herein by reference;
2. Two color photographs of the automobile, taken as directed on the inspection report (Appendix C), which shall be attached to the report;
3. A third close-up color photograph showing the Vehicle Identification Number (VIN) located on the Environmental Protection Agency/Federal Certification Label (EPA) sticker affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and VIN is legible. If the EPA sticker is damaged, faded, missing or otherwise not legible, a photograph of the EPA sticker or of the area of the door jamb where the sticker is normally located, is still required;
4. The authorized representatives may take additional photographs showing any damaged areas, which shall also be attached to the report; and
5. The authorized representative shall provide a copy of the report, without photographs, to the insured at the time of inspection.
(d) An insurer shall utilize authorized representatives who shall:
1. Verify the accuracy, completeness and signature of the person completing each inspection report; and
2. Maintain a control system on its inspection reports such as the use of sequentially numbered reports.
(e) There shall be no charge either directly or indirectly to the insured in connection with an inspection.
(f) After the inspection is completed, the report and photographs shall be retained in the insured's policy record for as long as the automobile is insured for physical damage coverage or three years, whichever is longer.
(g) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list shall include the names, addresses and business telephone numbers of all authorized representatives. The insurer shall send a copy of the list to the Department and update it semi-annually at the following address:

New Jersey Department of Insurance
Fraud Division
CN 324
Trenton, New Jersey 08625

(h) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the automobile on physical damage claims whenever:
1. The appraisal indicates prior damage;
2. The automobile is a total loss or unrecovered theft; or
3. The damage exceeds $1,000.
(i) A copy of the inspection report and photographs shall be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report shall be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein.

11:3-36.7 Suspension of physical damage coverages
(a) If the inspection is not conducted prior to the expiraton of the deferral period or the expiration of the policy in the case of renewals, the insurer shall suspend automobile physical damage coverage on the automobile at 12:01 A.M. of the day following the last day for inspection. Suspension of coverage shall apply to all insureds, owners and lienholders.
(b) Whenever physical damage coverage is suspended, the insurer shall:
1. No later than the 30th calendar day after the effective date of the suspension, mail to the insured, the producer of record and any lienholders a Notice of Suspension of physical damage coverage (as set forth in Appendix D incorporated herein by reference);
2. Obtain a certificate of mailing or other evidence of mailing of the Notice of Suspension to the insured and shall retain the certificate and copy of the Notice in the insured's policy record; and
3. Make a pro-rata premium adjustment (premium refund or credit) whenever there is a suspension of physical damage coverage for more than 10 days. A refund of premium, if applicable, shall be sent to the insured within 45 days of the effective date of suspension.
(c) A reinstatement of physical damage coverage shall only be effective upon inspection and payment by the insured to the insurer of the adjusted premium for the physical damage coverage in full

or in accordance with the insurer's normal payment plan, at the insurer's option.

(d) If the automobile is not inspected pursuant to this subchapter due to the fault of the insurer, or if the insurer fails to give the verbal or telephone notice required by the subchapter or mail or deliver the Notice of Insurance Inspection (Appendix B) or obtain the Acknowledgement of Requirements for Insurance Inspection (Appendix A) as set forth in this subchapter, physical damage coverage on the motor vehicle shall not be suspended. The failure of the insurer to act promptly does not relieve it of its obligation to inspect. An insurer's failure, however, to comply with (b) above does not restore physical damage coverage, but shall subject the insurer to a penalty pursuant to N.J.S.A. 17:33B-39.

(e) Physical damage coverage on a new automobile shall not be suspended during the term of the policy due to the insured's failure to provide a copy of the bill of sale and a copy of the window sticker or advance shipping notice.

1. Payment of a physical damage claim shall be conditioned upon the receipt of such document(s) by the insurer. No physical damage claim occurring after the effective date of coverage shall be payable until the document(s) are provided to the insurer.

2. If the above document(s) are not received by the insurer at least 60 days prior to the next policy renewal date, the insurer shall require an inspection upon renewal.

11:3-36.8 Enforcement

(a) A violation of any provision of this subchapter by an insurer shall be deemed a violation under the statute or subchapter under which such insurer is licensed and shall be sufficient ground, after hearing, for the imposition of fines as prescribed in the licensing statute or regulation. Any such violation may also be punishable by a $500.00 fine pursuant to N.J.S.A. 17:33B-39.

1. Insurers shall be responsible for the conduct of their authorized representatives with respect to all duties imposed by this subchapter.

2. Nothing contained in this subchapter shall be deemed to preclude the insured, the Commissioner or the Attorney General of the State of New Jersey from pursuing any other remedy or penalty provided by law for a violation of this subchapter. Each issuance, procurement or negotiation of a policy of insurance in violation shall be deemed a separate offense.

11:3-36.9 Results and audits

(a) Insurers shall maintain records as to the costs and savings related to this subchapter and shall make such records available to the Department upon request.

(b) Insurers shall be responsible for the monthly auditing of inspections reports received from their authorized representatives and shall provide such authorized representatives.

(c) Insurers shall report the following information to the New Jersey Department of Insurance Fraud Division on a monthly basis:

1. The number of automobiles inspected;

2. The number of automobiles which were not inspected by reason of the insured's failure to present the automobile for inspection; and

3. The number of incomplete or incorrect reports received.

11:3-36.10 Severability

If any section or portion of a section of this subchapter or its application to any person, entity or circumstance is held invalid by any court, the remainder of this regulation or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.

APPENDIX A

IFD 30 A

(COMPANY LETTERHEAD)

ACKNOWLEDGMENT OF REQUIREMENT FOR INSURANCE INSPECTION
(This is **not** a safety inspection)

NAME OF INSURED OR APPLICANT: _____

EFFECTIVE DATE OF COVERAGE: _____ (Date)

ADDRESS: _____

_____

_____

INSPECTION SHALL BE COMPLETED BY: _____
(Date: not more than 7 days after the effective date of coverage)

AUTOMOBILE(S) TO BE INSPECTED

	YEAR	MAKE	MODEL
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

BY MY SIGNATURE BELOW I CERTIFY THAT I HAVE BEEN INFORMED THAT MY AUTOMOBILE(S) WHICH IS (ARE) BEING INSURED FOR FIRE AND THEFT/COMPREHENSIVE AND/OR COLLISION COVERAGE SHALL BE INSPECTED BY A REPRESENTATIVE OF THE INSURER. THIS INSPECTION SHALL BE COMPLETED NO LATER THAN THE DATE SHOWN ABOVE TO AVOID A SUSPENSION IN COVERAGE.

I UNDERSTAND THAT FAILURE TO SUBMIT TO THE REQUIRED INSPECTION(S) WILL RESULT IN THE SUSPENSION (LOSSES WILL NOT BE COVERED) OF THE PHYSICAL DAMAGE COVERAGES (FIRE AND THEFT/COMPREHENSIVE, COLLISION), AS OF 12:01 A.M. OF THE DAY FOLLOWING THE DATE BY WHICH THE INSPECTION SHALL BE COMPLETED, AS SHOWN ABOVE.

I UNDERSTAND THAT IF COVERAGE IS SUSPENDED IT WILL BE RESTORED ONLY AFTER THE INSPECTION HAS BEEN COMPLETED AND THE ADJUSTED PREMIUM DUE FOR SUCH COVERAGE(S) HAS BEEN PAID.

SIGNATURE OF INSURED
OR APPLICANT: _____ _____
(Date)

SIGNATURE OF PRODUCER
OR INSURANCE COMPANY
REPRESENTATIVE: _____ _____
(Date)

NAME, ADDRESS & TELEPHONE NUMBER
OF PRODUCER OR INSURANCE REPRESENTATIVE
COMPLETING THIS FORM:
_____
_____
_____

INSURED/APPLICANT MUST RECEIVE A COMPLETED COPY OF THIS FORM

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX B

IFD 30 B

(COMPANY LETTERHEAD)

NOTICE OF INSURANCE INSPECTION
(This is **not** a safety inspection)

IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE

_____
(Date of mailing)

Name of
Insured: _____

Address: _____
_____
_____

EFFECTIVE DATE
OF COVERAGE: _____
(Date)

INSPECTION SHALL BE
COMPLETED BY: _____
(Date)

POLICY #: _____

Dear Policyholder,

This will confirm coverage for FIRE AND THEFT/COMPREHENSIVE ____ ; COLLISION ____ ; on your

	YEAR	MAKE	MODEL
1.	_____ ,	_____ ,	_____ .
2.	_____ ,	_____ ,	_____ .
3.	_____ ,	_____ ,	_____ .

Please disregard this notice if you have already had your car inspected.

This notice will also serve as a reminder that the above described car(s) **shall** be inspected by the date indicated above, or your physical damage coverages will be **suspended** effective 12:01 A.M. on _____ .
(Date)

If you have your car inspected after the above deadline your coverage will only be restored after your car has been inspected **and** the adjusted premium due for the coverages listed above had been paid. You will have **no** coverage for any physical damage loss that occurs during the suspension period.

FOR FURTHER INFORMATION PLEASE CALL:

_____
Name and Phone No. of Company Representative

Very truly yours,

_____

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX C(1)

IFD 30 C

INSURANCE COMPANY LETTERHEAD
OR
INSPECTION SERVICE LETTERHEAD

CONTROL NUMBER SITE ID NO.

DATE OF INSPECTION	TIME OF INSPECTION	INSURANCE COMPANY NAME	INSURED'S POLICY NUMBER	NUMBER OF PHOTOS
	AM PM			

INSURED'S NAME INSURED'S ADDRESS TELEPHONE NO.

INSPECTOR'S NAME INSPECTION SITE NAME AND ADDRESS TELEPHONE NO.

YEAR: _____ ___ 2 DR _____ STG WGN STYLE
MAKE: _____ ___ 4 DR _____ VAN
MODEL: _____ ___ CPE _____ HTCHBK

COLOR
MAJOR _____ _____ CLOTH _____ LEATHER
MINOR _____ _____ VINYL _____ COLOR

INTERIOR

ODOMETER READING PRINCIPAL PLACE OF GARAGING VEHICLE IDENTIFICATION NUMBER (NOT FROM REGISTRATION FORM) LICENSE PLATE NO. AND STATE

V.I.N. LOCATION:

ACCESSORIES AND OPTIONAL EQUIPMENT
(COMPLETE FOR ALL VEHICLES INCLUDING VANS)

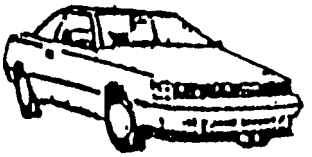
( ) AIR CONDITIONER
( ) MANUAL TRANSMISSION
( ) 3 SPD ( ) 4 SPD ( ) 5 SPD
( ) AUTOMATIC TRANSMISSION
( ) OVERDRIVE
( ) AM RADIO
( ) AM/FM RADIO ( ) STEREO
( ) CASSETTE PLAYER
BRAND _____
BUILT IN ( ) YES ( ) NO
( ) COMPACT DISC PLAYER
BRAND _____
( ) CAR PHONE
BRAND _____
BUILT IN ( ) YES ( ) NO
( ) CAR PHONE ANTENNA
( ) CAR PHONE TRANSMITTER
( ) C.B. RADIO
BRAND _____
BUILT IN ( ) YES ( ) NO
( ) STEREO AMPLIFIER
BRAND _____
BUILT IN ( ) YES ( ) NO

( ) CRUISE CONTROL
( ) REAR DEFROSTER
( ) REAR WIPER
( ) TILT WHEEL
( ) TINTED GLASS
( ) POWER STEERING
( ) POWER BRAKES
( ) POWER WINDOWS
( ) POWER LOCKS
( ) POWER ANTENNA
( ) VINYL TOP/ROOF
( ) T-TOP ROOF
( ) SUN ROOF
FACTORY INSTALLED
( ) YES ( ) NO
TYPE _____
( ) SPECIAL ROOF
TYPE _____
( ) BUCKET SEATS
( ) SPECIAL WHEELS
( ) SPECIAL TIRES
TYPE _____
( ) SPECIAL HUB CAPS
( ) RADAR DETECTOR
BRAND _____

( ) ANTI-THEFT DEVICE
TYPE _____
( ) CAR ALARM
BRAND _____
( ) HIGH MOUNTED BRAKE LIGHT
( ) ROOF RACK
( ) SPARE TIRE (OUTSIDE MOUNT)
( ) CARPETING
( ) INSTRUMENTATION
TYPE _____
_____
_____
( ) SPECIAL MIRRORS
TYPE _____
( ) TRAILER HITCH
( ) AUTO RECOVERY SYSTEM
TYPE _____
( ) SPECIAL CUSTOM OPTIONS OR
ADDITIONS (LIST)
_____
_____
_____
_____

APPENDIX C(2)

ATTACH AT LEAST TWO (2) COLOR PHOTOGRAPHS OF THE AUTOMOBILE TAKEN FROM THE ANGLES SHOWN ON THE DIAGRAMS TO THE RIGHT. ALSO ATTACH CLOSE-UP PHOTO OF THE E.P.A. STICKER (INCLUDING THE V.I.N.) FROM DRIVER'S SIDE DOOR JAMB.



Front and
Passenger Side

Rear and
Driver Side

PHYSICAL CONDITION OF VEHICLE
(CHECK DAMAGED AREAS OR AREAS IN POOR CONDITION AND DESCRIBE BELOW)

DAMAGED/RUSTED

( ) ( ) FRONT BUMPER
( ) ( ) LEFT FRONT FENDER
( ) ( ) LEFT FRONT DOOR
( ) ( ) LEFT REAR DOOR
( ) ( ) LEFT REAR QUARTER PANEL
( ) ( ) REAR BUMPER
( ) ( ) REAR DOOR/TRUNK LID
( ) ( ) RIGHT REAR QUARTER PANEL
( ) ( ) RIGHT REAR DOOR
( ) ( ) RIGHT FRONT DOOR
( ) ( ) RIGHT FRONT FENDER
( ) ( ) HOOD PANEL
( ) ( ) ROOF PANEL
( ) ( ) GRILL
( ) ( ) UNDERCARRIAGE

DAMAGED

( ) WINDSHIELD
( ) LEFT FRONT SIDE GLASS
( ) RIGHT FRONT SIDE GLASS
( ) LEFT REAR SIDE GLASS
( ) RIGHT REAR SIDE GLASS
( ) REAR WINDOW
( ) REAR VIEW MIRROR
( ) WHEEL COVERS
( ) WORN/TORN OR SOILED INTERIOR
( ) OTHER DAMAGE OR RUST (LIST)

_____
_____
_____
_____

( ) CHECK HERE IF NO EXISTING DAMAGE, RUST OR MISSING PARTS

DESCRIBE EXISTING DAMAGES OR RUST:

LIST ANY MISSING PARTS:

DESCRIBE ANY ALTERATIONS FROM FACTORY DESIGN:

THE ABOVE IS A TRUE STATEMENT OF ANY EXISTING DAMAGE, RUST, OR MISSING PARTS AS OF THE DATE OF THIS INSPECTION. I CERTIFY THAT THIS INSPECTION REPORT IS TRUE AND COMPLETE AND THAT I HAVE SEEN AND PHOTOGRAPHED THE VEHICLE IDENTIFIED ABOVE.

DATE: _____ INSPECTOR'S SIGNATURE: _____

NAME AND ADDRESS OF PERSON PRESENTING VEHICLE FOR INSPECTION	SIGNATURE	RELATIONSHIP TO INSURED

APPENDIX D

IFD 30 D

(COMPANY LETTERHEAD)

NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

_____
(Date of Mailing)

Name of Insured: _____

Address: _____

POLICY #: _____

Dear Policyholder,

The vehicle(s) listed below is (are) no longer covered for FIRE AND THEFT/COMPREHENSIVE ____ ; COLLISION ____;

	YEAR	MAKE	MODEL
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

DATE COVERAGE WAS REQUESTED _____

DATE COVERAGE WAS SUSPENDED _____

The physical damage coverage(s) indicated above, has (have) been suspended on the vehicle(s) described, effective 12:01 A.M. on the suspension date. Such coverage has been suspended due to your failure to comply with the Physical Damage Insurance Inspection Regulation (N.J.A.C. 11:3-36), as required by the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq.

If your coverage has been suspended for more than ten (10) days, you will receive a premium adjustment (return premium or credit) for the suspended coverage(s) within forty-five (45) days from the date of suspension.

The coverage(s) will be restored when you have your vehicle(s) inspected **and** the adjusted premium due for such coverage(s) has been paid.

_____
INSURER REPRESENTATIVE

_____
TELEPHONE NUMBER

cc: PRODUCER OF RECORD
LIENHOLDER

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping Routes U.S. 22 in Warren, Hunterdon, Union and Somerset Counties and N.J. 12 in Hunterdon County.

Proposed Amendments: N.J.A.C. 16:28A-1.13 and 1.62

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.
Proposal Number: PRN 1990-383.

Submit comments by August 15, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish and revise "no stopping or standing" zones along Routes U.S. 22 in the Town of Phillipsburg and Pohatcong, Greenwich and Lopatcong Townships, Warren County; Clinton Township and Lebanon Borough, Hunterdon County; North Plainfield, Watchung and Bound Brook Boroughs, Bridgewater and Green Brook Townships, Somerset County; Scotch Plains Township, Union County; and N.J. 12 in Flemington Borough and Kingwood Township, Hunterdon County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Route U.S. 22 in Warren, Hunterdon, Somerset and Union Counties and Route N.J. 12 in Hunterdon County were warranted.

The significant changes effected by those amendments are no stopping or standing along both sides of Route U.S. 22 in Pohatcong and Greenwich Townships, Warren County, and along both sides along N.J. 12 in Kingwood Township, Hunterdon County. Additionally, N.J.A.C. 16:28A-1.13(a) was amended to make the requirements more clear to the regulated public, and those responsible for enforcing the rules, by organizing the respective zones by municipalities within the counties.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.13(a) and 1.62, based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish and revise "no stopping or standing" zones along Routes U.S. 22 in the Town of Phillipsburg and Pohatcong, Greenwich and Lopatcong Townships, Warren County; Clinton Township and Lebanon Borough, Hunterdon County; North Plainfield, Watchung and Bound Brook Boroughs, Bridgewater and Green Brook Townships, Somerset County; and Scotch Plains Township, Union County; and N.J. 12 in Flemington Borough and Kingwood Township, Hunterdon County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. The amendments will further clarify the requirements imposed on the regulated public. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Approximate costs for single post signs total $117.00 per sign for planning, engineering and installation and approximately $7.00 per square foot for the fabrication of the sign. 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 amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public and the governmental entities responsible for enforcement of the rules.

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

[16:28A-1.13 Route US 22

(a) The certain parts of State highway Route U.S. 22 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing along both sides eastbound and westbound lanes, for the entire length within the corporate limits of the Town of Phillipsburg, including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

2. No stopping or standing in Clinton Township along both sides from the easterly curb line of Petticoat Lane to the Clinton Township-Lebanon Borough corporate line.

3. No stopping or standing along both sides of entire corporate limits of North Plainfield Borough, Borough of Bound Brook, and the Township of Bridgewater including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation.

4. No stopping or standing in Green Brook Township, Somerset County, along both sides of Route US 22 between the Bridgewater Township corporate line and Rock Avenue.

5. Along both sides of Route 22 in Lebanon Borough, Hunterdon County for the entire limits of Lebanon Borough including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

6. No stopping or standing in Pohatcong and Greenwich Townships, Warren County:

i. Along the eastbound side:

(1) From a point 3,100 feet west of the center line of Route 173, eastbound to the center line of Route 173, eastbound.

ii. Along the westbound side:

(1) Along the westbound side of Route 173, westbound (island nose) to a point 2,200 feet west of Route 173, westbound (island nose).

7. No stopping or standing in Greenwich Township, Warren County:

i. Along the westbound lanes—Median side only:

(1) From a point 1,525 feet west of the center line of Straw Church Road to a point of 1,665 feet west of the center line of Straw Church Road.

8. No stopping or standing in Watchung Borough, Somerset County and Scotch Plains Township, Union County:

i. Along the eastbound side:

(1) From the center line of Terrill Road to a point 425 feet east of the center line of Union Avenue;

(2) From the center line of Victor Street to a point 825 feet east of the center line of Victor Street.

ii. Along the westbound side:

(1) From a point 425 feet east of the center line of Union Avenue to the center of Terrill Road.

9. No stopping or standing in Greenwich Township, Warren County:

i. Westbound side:

(1) Beginning at a point 2,080 feet from the westerly curb line of County Road 519 and extending 205 feet west thereof.

10. No stopping or standing in Lopatcong Township, Warren County:

i. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.]

16:28A-1.13 Route U.S. 22

(a) The certain parts of State highway Route U.S. 22 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. No stopping or standing along both sides:

i. In Warren County:

(1) Town of Phillipsburg:

(A) For the entire length within the corporate limits of the Town of Phillipsburg including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

(2) Township of Pohatcong:

(A) For the entire length within the corporate limits of the Township of Pohatcong, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(3) Greenwich Township:

(A) For the entire length within the corporate limits of Greenwich Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(4) Lopatcong Township:

(A) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

ii. In Hunterdon County:

(1) Clinton Township:

(A) From the easterly curb line of Petticoat Lane to the Clinton Township-Lebanon borough corporate line.

(2) Lebanon Borough:

(A) For the entire limits of Lebanon Borough, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation.

iii. In Somerset County:

(1) North Plainfield Borough:

(A) For the entire corporate limits of North Plainfield Borough, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(2) Bound Brook Borough:

(A) For the entire corporate limits of Bound Brook Borough, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(3) Bridgewater Township:

(A) For the entire corporate limits of Bridgewater Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(4) Green Brook Township:

(A) Between the Bridgewater Township corporate line and Rock Avenue.

2. No stopping or standing along the westbound side:

i. In Warren County:

(1) Greenwich Township:

(A) Beginning at a point 2,080 feet from the westerly curb line of County Road 519 and extending 205 feet west thereof.

(B) Westbound lanes—Median side only: From a point 1,525 feet west of the center line of Straw Church Road to a point 1,665 feet west of the center line of Straw Church Road.

ii. In Union County:

(1) Scotch Plains Township:

(A) From a point 425 feet west of the center line of Union Avenue to the center line of Terrill Road.

3. No stopping or standing along the eastbound side:

i. In Somerset County:

(1) Watchung Borough:

(A) From the center line of Terrill Road to a point 425 feet east of the center line of Union Avenue.

ii. In Union County:

(1) Scotch Plains Township:

(A) From the center line of Victor Street to a point 825 feet east of the center line of Victor Street.

(b) (No change.)

16:28A-1.62 Route 12

(a) The certain parts of State highway Route 12 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

[1. No stopping or standing in Flemington Borough, Hunterdon County along both sides for the entire length within the corporate limits of the Borough of Flemington, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

2. No stopping or standing in Kingwood Township, Hunterdon County along both sides for the entire length within corporate limits of the Township of Kingwood, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas. Signs will be posted only where an official township resolution has been submitted to the Department.]

1. No stopping or standing along both sides:

i. In Hunterdon County:

(1) Flemington Borough:

(A) For the entire length within the corporate limits of Flemington Borough, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(2) Kingwood Township:

(A) For the entire length within the corporate limits of Kingwood Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

TREASURY-GENERAL

(a)

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

Rules of the Governor's Council on Alcoholism and Drug Abuse

Proposed New Rules: N.J.A.C. 17:40

Authorized By: Governor's Council on Alcohol and Drug Abuse, J. P. Miele, Chairman.

Authority: N.J.S.A. 26:2BB-1 et seq., specifically N.J.S.A. 26:2BB-4j.

Proposal Number: PRN 1990-362.

Public hearings concerning this proposal will be held from 10:30 A.M. to 12:30 P.M. as follows:

August 1, 1990
Hall of Records
Morristown, N.J. 07960

August 16, 1990
Casino Control Commission
1325 Boardwalk
Atlantic City, N.J. 08401

September 5, 1990
Richard J. Hughes Justice Complex
Room C
Trenton, N.J. 08625

For further information and to be included on the list of speakers, contact:

Brian Hughes
Governor's Council on Alcoholism and Drug Abuse
CN 345
Trenton, N.J. 08625
609-777-0526

Summit written comments on the proposal by September 14, 1990 to:

Riley Regan
Governor's Council on Alcoholism and Drug Abuse
CN 345
Trenton, N.J. 08625

The agency proposal follows:

Summary

On March 27, 1989, P.L.1989, c.51 (N.J.S.A. 26:2BB-1 et seq.) was enacted. This legislation established a Governor's Council on Alcoholism and Drug Abuse (GCADA) as an independent coordinating, policy, planning and review body regarding all aspects of alcoholism and drug abuse.

The proposed new rules will implement the legislative mandate that the Council review and coordinate all State Departments' efforts in regard to the planning and provision of treatment, prevention, research, evaluation and education services for, and public awareness of, alcoholism and drug abuse. These proposed rules will also set forth the procedures by which the Council shall award the Alliance grants provided for by the statute.

The proposed rules begin with scope, construction and definitions sections. The duties and responsibilities of the Governor's Council are then enumerated in detail.

Pursuant to N.J.S.A. 26:2BB-7a, an Alliance to Prevent Alcoholism and Drug Abuse was created in the Council. These proposed rules prescribe how the Alliance is to be formed and its functions.

The proposed rules also set standards for the formation of County Alliance Steering Subcommittees and the functions they are to perform. The rules also prescribe the role, make-up and functions of the Municipal Alliance Committees and, set standards for the awarding of grants to Alliance programs and specify the RFP process which must be followed.

There are two main thrusts to the rules. The first sets out the duties and responsibilities of the GCADA and the second installs structure to the Alliance to Prevent Alcoholism and Drug Abuse.

The duties and responsibilities of the GCADA is cornerstoned by the need to take a horizontal view at alcoholism and drug abuse programs at the state level. This view will encompass all programs in treatment,

prevention, research, evaluation, education, and public awareness which are funded or initiated on the State level. It will provide an across the board, objective look at state activities.

The rules call not only for observation of the alcoholism and drug abuse programs but include specific mandates for the GCADA to follow. These mandates include:

1. Preparing a State Component of Comprehensive Statewide Alcoholism and Drug Abuse Master Plan by July 1. This would be mainly a review of State government activities for the fiscal year, with an emphasis on prevention, community awareness, and family and youth services programs;
2. Submission to the Governor and Legislature of a Comprehensive Statewide Alcoholism and Drug Abuse Master Plan by December 1. This document will be much larger in scope and will incorporate activities at the local level. It will also include recommendations regarding appropriations, both State and Federal, to State departments, local governments and agencies, and appropriate service providers. This document will unify and coordinate all alcoholism/drug abuse initiatives and in doing so correct instances of reptition of service and identify gaps in services provided to New Jersey's residents;
3. Examining existing funding methods for alcoholism and drug abuse, and recommend any effective changes to the Governor and Legislature;
4. Supporting initiation or expansion of employee assistance programs throughout New Jersey in both the public and private sector;
5. Examining the need and appropriateness of including other addictions, smoking and gambling into the GCADA's purview;
6. Reviewing the County Alliance Annual Plan, in conjunction with the Division of Alcoholism and Drug Abuse of the Department of Health and make recommendations for awarding Alliance grants; and
7. Distributing Alliance grants, upon the recommendation of the Executive Director, to counties and municipalities as established under the Alliance to Prevent Alcoholism and Drug Abuse.

The last two functions of the GCADA listed above provide a lead-in to the second main objective of the proposed rules, which is the structure of the Alliance to Prevent Alcoholism and Drug Abuse. This Alliance has been established pursuant to N.J.S.A. 26:2BB-1 et seq., the same public law that established the GCADA.

It has long been felt that prevention provides the most efficient and desirable, especially in human terms, response to alcoholism and drug abuse. Given that, prevention has also traditionally been the least funded response to these illnesses. There are many reasons for these two incongruous facts, but some stand out in importance.

One is the notion that these are not "real" illnesses on the scale of, for example, cancer or diabetes. The fact that cancer prevention and cancer treatment get practically equal allotments of public monies is an example of this misconception. The fact that the American Medical Association views alcoholism as a "chronic, fatal disease if not treated" has hardly eliminated the stigma and misconceptions of addiction.

Secondly, treatment is funded more readily than prevention because the results are so much easier to gauge and that there are so many needing treatment. To see the recovery of someone who has successfully received treatment for alcoholism or drug abuse is certainly inspiring, whereas prevention programs target persons before a problem exists. Measuring prevention programs for effectiveness against treatment programs is, therefore, a difficult proposition.

However, many advances have recently come about which help in measuring the comparative effects of prevention programs. New initiatives on the Federal level and a frustration with traditional responses to alcoholism and drug abuse have all combined to make prevention programs a viable option.

The GCADA, in conjunction with the Division of Alcoholism and Drug Abuse of the Department of Health and the Local Advisory Councils on Alcoholism and Drug Abuse (LACADA) (there is one LACADA in each New Jersey county) will make available matching grants to all 567 New Jersey municipalities. The purpose of these grants will be to promote prevention programs on a municipal level.

To this end, Municipal Alliance Committees will bring together community leaders, private citizens, and representatives of public and private human services agencies. The benefits of this alliance is twofold. While supplying seed money for municipal level prevention programs, communities are also informally gathering and taking an overview of other services at the local level which provides a forum for the elimination of duplicate services.

These rules set forth guidelines for the structure of the Alliance to Prevent Alcoholism and Drug Abuse from the GCADA to the local level. They also set forth the functions of the various committees (State, county and local levels), the funding mechanisms for the Municipal Alliance Committees and the GCADA and the mandated and suggested memberships of the various committees.

Social Impact

The proposed new rules will have a beneficial social impact because they will enhance the effectiveness of the State's role in formulating comprehensive and integrated public policy and providing effective treatment, prevention and public awareness efforts against alcoholism and drug abuse. The rules also have the potential to affect all aspects of the State's population through coordinated community, business and agency involvement in combatting the addictions of alcoholism and drug abuse.

The social costs of alcoholism and drug abuse are immense. The numbers seem to lose validity and comprehension due to the sheer size. Estimates of alcohol and other drug abusers and their associate problems include:

—455,000 alcoholics in New Jersey

—120,000 drug addicts in New Jersey

—Sixty-five percent of child abuse is fostered by alcoholism and drug abuse

—Up to 80 percent of domestic violence is impacted by addiction

—Addiction and substance abuse account for over 20 percent of New Jersey Health Care costs

—Up to 70 percent of inmates in state and county correctional facilities have histories of alcoholism or drug abuse

—Fifty percent of absenteeism and work related accidents have alcoholism or other drug abuse as a root cause

—Alcoholism and drug abuse create unique problems in specific groups including the disabled, women, minorities and the elderly among others.

Under the weight of statistics such as these, the impact of the individual suffering, by those affected and by those around them, is sometimes lost.

The GCADA and the Alliance to Prevent Alcoholism and Drug Abuse will attempt to return to the individual as the primary focus of all alcoholism and drug abuse programs. It will do this in many ways, one of which will be the July 1 State Component document which serves as the base line for the Comprehensive State Master Plan. This will be the first disease-specific review of New Jersey's alcohol/drug abuse programs. This will provide an opportunity to see where services can be streamlined, compared, and made more cost effective to the benefit of the State and the individual.

The Alliance to Prevent Alcoholism and Drug Abuse will allow prevention programs to become more effective by targeting their recipients. The whole basis of the Alliance and its dominant attention to the municipal level is based on one simple assumption.

That assumption is that an individual community can best determine the needs particular to that community. As an example of why a broad-based prevention program is not as effective, one should consider the reaction to a prolonged anti-crack campaign on a retirement community.

The Alliance allows communities to individualize their own prevention programs, and thus have the most effective social impact on its population. A Statewide prevention network will provide an opportunity to make major changes and to take a different approach to the way New Jersey confronts the social costs and casualties of alcohol and drug abuse.

The proposed new rules will impact on the population as a whole. The full resources of this State, including counties, municipalities and residents of the State, must be mobilized in a persistent and sustained manner in order to achieve a response capable of meaningfully addressing not only the symptoms but the root causes of this pervasive problem. These rules achieve this public goal.

The Alliance to Prevent Alcoholism and Drug Abuse will mobilize in a persistent and sustained effort to achieve a response capable of meaningfully addressing not only the symptoms but the root causes of this pervasive problem. Communities will assess individual municipality needs and propose ways to meet them in the Request for Funding Proposal.

Individuals, communities, counties and the State all stand to benefit from the concentrated and orchestrated efforts of the Alliances to stem the increase of alcoholism and drug abuse. The Legislature found and declared that alcoholism and drug abuse are major health problems facing the residents of this State. The cooperation and active participation of all communities in the State is necessary to achieve the goal of reducing alcoholism and drug abuse. These proposed rules will effectuate this goal.

Economic Impact

Funding is provided to the County Alliances Steering Committees, based on a formula developed by the Governor's Council on Alcoholism

and Drug Abuse. N.J.S.A. 26:2BB-1 et seq. (P.L. 1989 c.51) authorizes the Drug Enforcement and Demand Reduction grants to be matched by funds derived from fundraising attempts by a community assuming a commitment to the prevention of substance abuse.

Funding will be provided to the County Alliance Steering Committees based on a formula developed by the Governor's Council on Alcoholism and Drug Abuse on an annual basis. This formula will be adopted annually by the Council as a separate rule. Local funding sources will not be affected, as they will not supplant any existing program funding. Matching funds will be generated through such appropriate means as may be available. An increase in resources and programs will be realized without significant monetary cost to the community.

The Governor's Council on Alcoholism and Drug Abuse and its associate Alliance to Prevent Alcoholism and Drug Abuse has an extremely limited economic effect on traditional funding. P.L.1989, c.51 provides for the funding of Municipal Alliances and Municipal Alliance programs to be funded specifically from the Drug Enforcement and Demand Reduction Fund (DEDR).

This DEDR fund is monies that are collected by the courts, Probation and the Department of Corrections from penalties imposed on drug related offenses. This being the case, the vast majority of economic impact rests with the populations of the convicted drug offender.

The economic benefits of the GCADA will be felt Statewide. At the local level, the Alliance to Prevent Alcoholism and Drug Abuse will provide grant funds that cannot supplant existing programs thus providing additional services to the community. The matching grant kept in mind the limited resources available at the local level by making it 25 percent hard match and the other 75 percent soft. A hard match is a cash match and a soft match can be in-kind services, such as a donation, of municipal space or the equivalent of a municipal employee's salary.

The feeling was that a 25 percent cash match was not too great a strain on already stretched municipal fund raising while it, along with the soft match, exhibits a commitment by the communities to prevention. The strength of the Municipal Alliance reflects the will and resolve of the individual community in facing alcoholism and drug abuse issues.

On the State level, the GCADA is mandated to make recommendations for effective, appropriate funding throughout the State. In taking an objective overview of funding for all State programs impacting on alcoholism or drug abuse, the GCADA can eliminate redundant services and advise of the most cost effective approaches to others.

The proposed rules outline the safeguards and formulas which will fund the Alliance to Prevent Alcoholism and Drug Abuse. They also describe the economic benefits of this funding by outlining the nature and scope of The Governor's Council on Alcoholism and Drug Abuse and The Alliance to Prevent Alcoholism and Drug Abuse.

Municipal alliances will greatly enhance the community in terms of social desirability as a drug and alcoholism "prevention community." Savings will result from a decrease in criminality, social services and community disturbance.

Regulatory Flexibility Statement

The proposed new rules do not apply to small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules set out the duties and responsibilities of the GCADA and regulate the cooperative efforts of the 21 counties and 567 municipalities in New Jersey in their efforts to prevent alcoholism and drug abuse and to coordinate services.

Full text of the proposed new rules follows:

CHAPTER 40
RULES OF THE GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

SUBCHAPTER 1. GENERAL PROVISIONS

17:40-1.1 Scope

This chapter shall constitute the Governor's Council on Alcoholism and Drug Abuse's rules governing the establishment of the Alliance to Prevent Alcoholism and Drug Abuse, Local Advisory Committees on Alcoholism and Drug Abuse, County Alliance Steering Subcommittees, and Municipal Alliance Committees. These rules shall also govern the distribution of grants to counties and municipalities for alcohol and drug abuse programs established under the Alliance to Prevent Alcoholism and Drug Abuse.

17:40-1.2 Construction

This chapter shall be liberally construed to permit the Council, the Alliance, LACADAs, County Alliance Steering Subcommittees and Municipal Alliance Committees to discharge their Statutory functions under N.J.S.A. 26:2BB-1 et seq. and N.J.S.A. 2B:2B-32 et seq.

17:40-1.3 Definitions

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

"Alcoholism" means the chronic, habitual, or periodic consumption of alcohol beverages to the extent that such use substantially and progressively injures the health, interferes with social or economic functioning in the community or results in the loss of self-control with respect to the use of such beverages.

"Alliance" means the Alliance to Prevent Alcoholism and Drug Abuse created in the Governor's Council on Alcoholism and Drug Abuse.

"Alliance coordinator" means the individual designated by the county to coordinate all activities of the County Alliance Steering Committee.

"Council" means the Governor's Council on Alcoholism and Drug Abuse (GCADA).

"County Alliance Steering Subcommittee" means the subcommittee established by each Local Advisory Committee on Alcoholism and Drug Abuse pursuant to N.J.S.A. 26:2BB-8.

"DEDR Funds" means the Mandatory Drug Enforcement and Demand Reduction Penalties established by N.J.S.A. 2C:35-15 et seq.

"Drug abuse" means the regular use of a controlled dangerous substance and/or licit psychoactive substances that affect the central nervous system resulting in persistent or recurrent psychological, physical, social, legal, or occupational problems.

"LACADA" means the Local Advisory Committee on Alcoholism and Drug Abuse established pursuant to N.J.S.A. 26:2B-33.

"Matching funds" means a percentage or designated amount of funds required as a cost sharing for grants awarded by the Council.

"Municipal Alliance Committee" means the committee established by the governing body of a municipality pursuant to N.J.S.A. 26:2BB-9.

"RFP" means the Request For Proposal process described in this chapter.

17:40-1.4 Duties and Responsibilities of the Governor's Council on Alcoholism and Drug Abuse

(a) The Council shall:

1. Review and coordinate all State departments' efforts in regard to the planning and provision of treatment, prevention, research, evaluation, and education services for, and public awareness of, alcoholism and drug abuse;

2. Prepare by July 1 of each year, the State government component of the Comprehensive Statewide Alcoholism and Drug Abuse Master Plan for the treatment, prevention, research, evaluation, education and public awareness of alcoholism and drug abuse in this State, which plan shall include an emphasis on prevention, community awareness, and family and youth services;

3. Review each County Alliance Annual Plan and the recommendations of the Division of Alcoholism and Drug Abuse in the Department of Health for awarding the Alliance grants and, by October 1 of each year, return the plan to the Local Advisory Committee on Alcoholism and Drug Abuse with the Council's proposed recommendations for awarding Alliance grants;

4. Submit to the Governor and the Legislature by December 1 of each year the Comprehensive Statewide Alcoholism and Drug Abuse Master Plan, which shall include recommended appropriate allocations to State departments, local governments and local agencies and service providers of all State and federal funds for the treatment, prevention, research, evaluation, education and public awareness of alcoholism and drug abuse in accordance with the regular budget cycle, and shall incorporate and unify all State, county, local and private alcohol and drug abuse initiatives;

5. Distribute grants, upon the recommendation of the Executive Director of the Council, by August 1 of each year to counties and

municipalities for alcohol and drug abuse programs established under the Alliance to Prevent Alcoholism and Drug Abuse;

6. Evaluate the existing funding mechanisms for alcoholism and drug abuse services and recommend to the Governor and the Legislature any changes which may improve the coordination of services to citizens in this State;

7. Encourage the development or expansion of employee assistance programs for employees in both government and the private sector;

8. Evaluate the need for, and feasibility of, including other addictions, such as smoking and gambling, within the scope and responsibility of the Council; and

9. Collect from any State, county, local governmental entity or any other appropriate source data, reports, statistics or other materials which are necessary to carry out the Council's functions.

SUBCHAPTER 2. ALLIANCE TO PREVENT ALCOHOLISM AND DRUG ABUSE

17:40-2.1 Purpose and scope

(a) Pursuant to N.J.S.A. 26:2BB-7a, an Alliance to Prevent Alcoholism and Drug Abuse was created in the Council. The purpose of the Alliance is to create a network, comprised of all the communities in New Jersey, which is dedicated to a comprehensive and coordinated effort against alcoholism and drug abuse.

(b) The Alliance shall be a mechanism both for implementing policies to reduce alcoholism and drug abuse at the municipal level, and for providing funds, including moneys from mandatory penalties on drug offenders, to member communities to support appropriate county and municipal-based alcohol and drug abuse education and public awareness activities.

(c) The Alliance shall be comprised of all LACADAs, County Alliance Steering Subcommittees and Municipal Alliance Committees established under N.J.S.A. 26:2BB-1 et seq., N.J.S.A. 26:2B-32 et seq., and this chapter.

(d) Alliance members, in accordance with N.J.S.A. 26:2BB-1 et seq., 26:2B-32 et seq. and this chapter, may be awarded grants by the Governor's Council for the purpose of developing:

1. Organized and coordinated efforts involving schools, law enforcement, business groups and other community organizations for the purpose of reducing alcoholism and drug abuse;

2. In cooperation with local school districts, comprehensive and effective alcoholism and drug abuse education programs in grades K through 12;

3. In cooperation with local school districts, procedures for the intervention, treatment and discipline of students abusing alcohol or drugs;

4. Comprehensive alcoholism and drug abuse education, support and outreach efforts for parents in the community; and

5. Comprehensive alcoholism and drug abuse community awareness programs.

17:40-2.2 County Alliance Steering Subcommittees; membership; meetings

(a) Each LACADA established pursuant to N.J.S.A. 26:2B-33 shall establish a County Alliance Steering Subcommittee.

(b) Each County Alliance Steering Subcommittee shall include broad representation from the county. The members of the Subcommittee shall include, but shall not be limited to, private citizens and representatives of the following:

1. The LACADA;
2. The county Human Services Advisory Council;
3. The county superintendent of schools;
4. The existing county council on alcoholism, if any;
5. The county prosecutor's office;
6. Family Part of the Chancery Division of the Superior Court;
7. The Youth Services Commission;
8. The county school board association;
9. The county health agency;
10. The county mental health agency;
11. Local businesses;
12. The county affiliate of the New Jersey Education Association;
13. The Parent-Teacher Association (PTA) or Parent-Teacher Organization (PTO); and
14. Other service providers.

(c) The county LACADA shall be responsible for appointing members to the County Alliance Steering Subcommittee. There is no limitation on the number of members who may be appointed to the Subcommittee by the LACADA. Members should be appointed for specific terms. Officers may be appointed by the LACADA or elected by the Subcommittee. A complete list of Steering Committee members, with their addresses, shall be annually provided to the Council.

(d) The County Alliance Steering Subcommittee shall hold meetings regularly with an annual calendar of meetings established at the Subcommittee's organizational meeting. Minutes must be kept of all Subcommittee meetings and a quorum of Subcommittee members is needed for action to be taken by the Subcommittee. A quorum shall be 50 percent of the Subcommittee membership plus one.

17:40-2.3 Functions of the County Alliance Steering Subcommittee

(a) The functions of the County Alliance Steering Subcommittee shall include:

1. Development and submission of a County Annual Alliance Plan for the expenditure of DEDR funds;

2. Development of programs and fiscal guidelines consistent with Council directives for the awarding of funds to counties and municipalities for drug and alcohol Alliance activities;

3. Identification of a network of community leadership for the expansion, replication and development of successful community model programs throughout the county;

4. Coordination of projects among and within municipalities to assure cost effectiveness and avoid fragmentation and duplication;

5. Establishment of a cooperative relationship with the County Youth Services committee in regard to the development of Municipal Alliances;

6. Provision of ongoing training to both itself and municipal-member alliance committees; and

7. Development of a County Alliance Plan incorporating the Municipal Alliance Committee Requests for Proposals for submission by October of each year to the Governor's Council on Alcoholism and Drug Abuse.

(b) The County Alliance Steering Subcommittee shall ensure that funds dedicated to education pursuant to N.J.S.A. 54:32C-3.1 do not duplicate the Alliance effort.

17:40-2.4 Municipal Alliance Committees; membership; bylaws; meetings

(a) Municipalities, in compliance with the standards set forth herein, may become members of the Alliance effort and may become eligible to receive State funds to assist the programs developed in their community.

(b) The governing body of each municipality may appoint a Municipal Alliance Committee, or join with one or more municipalities to appoint a Municipal Alliance Committee.

(c) Members of the Municipal Alliance Committee may be appointed by the governing body of the municipality. Each Committee shall include broad representation from the local community. Membership may include, but is not limited to:

1. The governing body's appointed representative;
2. The chief of police;
3. The President of the school board;
4. The superintendent of schools;
5. A student assistance coordinator;
6. A representative of the Parent-Teacher Association;
7. A representative of the local bargaining unit for teachers;
8. A representative of the Chamber of Commerce;
9. A representative from the local court system;
10. A representative of local civic associations;
11. Representatives of local religious groups;
12. Individuals who have been impacted by alcoholism and/or drug abuse, including individuals who have been directly affected by their own, or family's member's abuse or addictions;
13. Representatives of labor unions;
14. Representatives of the media;

15. Private citizens with interest or experience in issues concerning alcohol and/or drug abuse; and/or

16. Representatives of public and private organizations involved in treatment of alcohol and drug related problems.

(d) There shall be no limitation on the number of members who may be appointed to the Municipal Alliance Committee by the Mayor or governing body. Fifty percent of the members, however must reside in the municipality. Members shall be appointed for specific terms. Officers may either be appointed by the governing body, or elected by the Committee. A complete list of Municipal Alliance Committee members, with their addresses, shall be annually provided to the Council.

(e) Municipal Alliance Committees shall be established by municipal ordinance or resolution. Thereafter, a letter from the local governing body shall be submitted to the County Alliance Steering Committee, along with a copy of the ordinance and a membership list, requesting acknowledgement of the municipality as an Alliance member. The County Alliance Steering Committee shall acknowledge all Municipal Alliance Committees which meet the requirements of this chapter and shall promptly advise the muncipality and the Council in writing when acknowledgement is issued.

(f) Bylaws should be adopted by each Municipal Alliance Committee. Committee meetings shall be held regularly, with an annual calendar of meetings established at the Committee's organizational meeting. Minutes shall be kept of all Committee meetings, and a quorum of Committee meetings shall be required for action to be taken by the Committee. A quorum shall be 50 percent of the Committee membership plus one.

17:40-2.5 Functions of the Municipal Alliance Committee

(a) The Municipal Alliance Committee, in consultation with the Local (County) Advisory Committee on Alcoholism and Drug Abuse, shall identify alcoholism and drug prevention, education, and community needs.

(b) The Municipal Alliance Committee shall implement the Alliance programs formulated pursuant to N.J.S.A. 26:2BB-8.

(c) The Municipal Alliance Committee may apply for funding through the procedures described in this chapter.

(d) The Municipal Alliance Committee shall also be responsible for:

1. Organizing and coordinating efforts involving schools, law enforcement, business groups and other community organizations for the purpose of reducing alcoholism and drug abuse;

2. In cooperation with local school districts, developing comprehensive and effective alcoholism and drug abuse education programs in grades K through 12;

3. In cooperation with local school districts, developing procedures for the intervention, referral to treatment and discipline of students abusing alcohol or drugs;

4. Developing comprehensive alcoholism and drug abuse education support and outreach efforts for parents in the community;

5. Developing comprehensive alcoholism and drug abuse community awareness programs;

6. Creating a network of community leaders, private citizens, and representatives of public and private human service agencies who will make a comprehensive and coordinated effort to promote and support drug and alcohol prevention and education programs and related activities with an emphasis on youth;

7. Conducting an assessment of their community to determine the needs of the community in relation to alcoholism and drug abuse issues;

8. Identifying existing efforts and services acting to reduce alcoholism and drug abuse;

9. Coordinating projects within the municipality to avoid fragmentation and duplication;

10. Developing programs to be implemented at the municipal level or participating in regionally-developed programs that accomplish the purpose of the Alliance effort and the purposes of the Municipal Alliance Committee;

11. Assisting the municipality in acquiring funds for Alliance programs, including the establishment of a permanent, standing subcommittee on fundraising;

12. The Municipal Alliance Committee shall keep such records and provide such information to the Governor's council as may be required for fiscal audit; and

13. Cooperating with the Governor's Council on Alcoholism and Drug Abuse and the Alliance Steering Subcommittee of the County Local Advisory Committee on Alcoholism and Drug Abuse to provide municipal data, reports or other information which may be required for the County Alliance Plan or needed to assist the Alliance effort.

17:40-2.5 Development of the Municipal Alliance Network

Cooperative relationships are necessary to effectively develop the Municipal Alliance Network, to maximize coordination and avoid duplication of efforts, and to assure effective use of resources, including volunteers and funds. Therefore, each municipality should determine how best to work with and/or join municipal groups, such as drug and alcohol task forces, municipal youth services commissions, youth task forces or other groups compatible with the purposes and functions of the Alliance. These interrelationships may involve shared memberships, joint subcommittees or joined groups.

SUBCHAPTER 3. FUNDING FOR ALLIANCE PROGRAMS

17:40-3.1 Overview of the funding process

(a) Mandatory drug enforcement and demand reduction (DEDR) penalties imposed in drug-related offenses are collected by the courts, Probation and the Department of Corrections. These monies are then forwarded to the State Department of Treasury and are deposited in a fund known as the DEDR Fund. The funds may then be appropriated by the Legislature to the Governor's Council on an annual basis for the purposes of funding the Alliance to Prevent Alcoholism and Drug Abuse and other alcohol and drug abuse programs.

(b) DEDR funds may be released by the Governor's Council on Alcoholism and Drug Abuse to counties, contingent upon submission and approval of a County Annual Alliance Plan. Following the establishment of a Municipal Alliance Committee, a municipality may apply for these funds through the Request for Proposal (RFP) process initiated annually through the County Local Advisory Committee on Alcoholism and Drug Abuse/Alliance Steering Subcommittee. Funds will be released to municipalities only upon approval of the proposal by the Council.

(c) It is the Council's intention that the DEDR funds be used primarily for programs in municipalities which are members of the Alliance and for the County Alliance Coordinator established by this chapter.

17:40-3.2 Request for Proposal contents

(a) The RFP application form shall be developed annually by the Council and shall include the following:

1. Program Description and Guidelines:
   i. Background and purpose;
   ii. Biopsychosocial disease model;
   iii. Allowable use of funds;
   iv. Suggested program models; and
   v. Criteria for selection.
2. Application for Funding:
   i. Applicant description;
   ii. Statement of assurances;
   iii. Statement of need;
   iv. Program description;
   v. Goals and objectives;
   vi. Activity plan (applicant cites activities, dates of completion);
   vii. List of participating/affiliated agencies;
   viii. Evaluation (applicant cites method and manner);
   ix. Budget; and
   x. Matching funds.

17:40-3.3 Request for Proposal process

(a) The Council shall develop the RFP and distribute it to the LACADA Alliance Steering Subcommittee each year.

(b) The LACADA Alliance Steering Subcommittee shall distribute the RFP forms to the Municipal Alliance Subcommittees.

(c) The LACADA Alliance Steering Subcommittee, in conjunction with the Alliance Coordinator, shall provide technical assistance and monitoring to the Municipal Alliance Subcommittees in the completion of the RFP forms.

(d) In order to be considered for approval, the Municipal Alliance Committee must complete and return the RFP form to the LACADA Alliance Steering Subcommittee.

(e) The LACADA Alliance Steering Subcommittee, in conjunction with the Alliance Coordinator, shall review the RFPs submitted by Municipal Alliance Committees for compliance with the requirements of the RFP process, this chapter, and the governing law (N.J.S.A. 26:2BB-1 et seq.). The LACADA Alliance Steering Committee, in conjunction with the Alliance Coordinator, shall then develop a county plan incorporating the Municipal Alliance Committees' RFPs for submission to the Governor's Council on Alcoholism and Drug Abuse.

(f) Upon receipt of the LACADA Alliance Steering Subcommittee's plan, it and the RFPs contained therein shall be reviewed by the Governor's Council and its staff. Additional information may be requested by the Council from the LACADA Alliance Steering Subcommittee or the Municipal Alliance Committee as needed.

(g) The Governor's Council will annually develop a formula for funding for the purpose of granting funds appropriated each year to the LACADA Alliance Coordinator and the Municipal Alliance Committees. The formula shall be adopted by the Council at a public meeting and shall thereafter be promulgated as a separate rule.

(h) To the extent the Legislator makes appropriation therefor, DEDR funds shall be granted by the Council, upon the recommendation of its Executive Director, to the LACADA Alliance Coordinator for the purpose of training and coordination and to Municipal Alliance Committees and member municipalities within the county which successfully complete the RFP and have it approved by the Council.

(i) The Governor's Council shall issue its determinations for the distribution of DEDR funds to LACADA Alliance Coordinators and Municipal Alliance Committees.

(j) The county agency or individual designated by the governing body of each county pursuant to N.J.S.A. 26:2B-33 is authorized to receive from the Governor's Council moneys made available under the RFP process. The designated county agency shall establish a separate fund for the receipt and disbursement of these moneys and such disbursement shall be made as directed by the Council for approved grants only.

17:40-3.4 Acceptance of grants through the RFP process

(a) In accepting a grant of DEDR funds from the Governor's Council, the grantee (municipality) must agree to abide by the following conditions:

1. The grantee agrees to repay to the Council's fund any portion of the amount granted which is not used for purposes of the grant at the end of the contract term;

2. The grantee shall submit detailed and accurate accounting, in a form prescribed by the Council, of all expenditures made under the grant;

3. The grantee shall submit periodic reports, in a form prescribed by the Council, of the progress made in accomplishing the purpose of the grant; and

4. The grantee shall be prohibited from using the grant funds to undertake any activity not in accordance with the purpose of the grant as approved by the Council.

(b) At the end of the fiscal year in which the grant falls, the grantee must submit an audited financial statement explaining its use and provide such other information as may be prescribed by the Council.

17:40-3.5 Matching funds

(a) Funds disbursed by the Council to grantees shall not supplant local funds that would have otherwise been available for alcoholism and drug abuse initiatives.

(b) Each Municipality Alliance Committee receiving DEDR funds from the Council shall develop a comprehensive plan to provide matching funds equivalent to the amount of the grant award, with a minimum to be established by the Governor's Council on an annual basis as part of the RFP process.

(c) Each Municipal Alliance Committee shall establish a fundraising subcommittee, which shall meet at least quarterly during the project period.

(d) The comprehensive plan for providing matching funds may include, but is not limited to, the following:

1. The donation of the use of municipal property at a fair market value to the project;

2. Time, as reflected by salary and wages, of municipal and private sector employers who perform services in accord with the project;

3. Complimentary (public service) advertising on local media, such as newspapers, radio and cable television, above the level of standard public service requirements;

4. Organized community benefits focused on the Alliance, which utilize celebrities, sports figures or experts in the field of addictions, who donate their services;

5. Door-to-door types of fund raising;

6. Solicitations to business and industry for donations;

7. Activities to raise funds which have the potential for bringing a significant number of community persons together, such as runs, walks, bake sales, and car washes; and

8. The donation of printing and other mass reproductions of materials to carry the anti-alcohol and drug abuse message to the community.

(e) The quality of the plan for matching grant funds received shall be a major factor in the Council's consideration of the Municipal Alliance Committee's RFP application.

(f) The participating municipal government shall have the duty of ensuring that the match requirement is met and shall be responsible for any failure to do so. The County Alliance Coordinator, under guidelines established by the Governor's Council, shall be responsible for monitoring the municipal government's compliance with the match requirement and shall submit such reports on the progress of the municipal government in meeting this requirement as the Council may require. The Council shall make the final determination on whether the municipal government has met its match requirement.

(g) The grantee shall submit periodic reports to the Council on its progress in obtaining matching funds.

(h) If, at the end of the contract period, the grantee fails to generate sufficient matching funds, the grantees must provide the Council with a detailed explanation of its failure. In the discretion of the Council, a grantee which fails to generate the required matching funds, may be required to return all, or a portion of, the grant funds received by it.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
IRC 338(h)(10) Election
Proposed Amendments: N.J.A.C. 18:7-11.12, 11.15, 12.1 and 12.3

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1990-361.

Submit comments by August 15, 1990 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments describe the manner of reporting and tax payment responsibilities for New Jersey corporation business tax purposes of corporate taxpayers which are involved in an election under IRC Section 338(h)(10) at the Federal level.

IRC Section 338 allows a corporation that has purchased a controlling interest (80 percent or more) in another corporation ("target") to elect to have the acquisition of the target's stock treated as a purchase of the target's assets.

The target is treated as if it had sold and simultaneously reacquired its assets at a price determined by the purchasing corporation's basis in the target's stock. The purchasing corporation receives a stepped-up basis in the assets acquired from the target, and the target recognizes a gain or loss on the deemed sale of its assets.

Where the target is part of an affiliated group filing consolidated returns ("selling group"), an alternative 338(h)(10) election allows the target's deemed asset sale to be included on the selling group's consolidated return. Gain or loss on the deemed sale of assets is recognized by the selling group on its consolidated return and the selling group recognizes no gain or loss on the sale of target stock. The election is available to affiliated groups not filing consolidated returns to the extent to be provided in Federal regulations.

New Jersey's Corporation Business Tax Act (1945) is a franchise tax for the privilege of having or exercising a corporate franchise in New Jersey or for the privilege of doing business, employing or owning capital or property or maintaining an office in New Jersey. Entire net income is to be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Under the corporation business tax, there should be no difference in treatment for the portion of the joint election which is governed by IRC 338(a). It continues to result in Federal taxable income which must be taken into account under N.J.S.A. 54:10A-4(k) and Attorney General's Formal Opinion No. 2—1960. To recognize the portion of the joint election under IRC 338(h)(10) relating to the non-recognition of gain on the sale of the target stock, however, violates the policy underlying New Jersey's long-standing prohibition against filing consolidated returns under the Corporation Business Tax Act.

The policy against the consolidated returns is reflected in the **Second Report of the Commission on State Tax Policy** (1947) which considered and rejected a proposal to permit consolidated returns. It stated: "The resulting tax would depend on group holdings and group activity and would not reflect a payment for individual corporate charters or privileges." **Second Report**, 97, quoted in *United States Steel Corporation v. Director, Division of Taxation,* 38 *N.J.* 533, 546 (1962). Although, at the time the Second Report was issued, the corporation business tax was not an income based tax, its recommendation on consolidated returns was reviewed in the 1972 Report of the New Jersey Tax Policy Committee, which concluded that the prohibition against consolidated returns should remain unchanged. Part V, p. 29.

The result under IRC 338(h)(10) depends entirely on group holdings and activity. Group dependence clearly occurs when a consolidated return is actually filed because the income or loss of each member is combined in a single return. But even if a consolidated return is not filed, under IRC 338(h)(10) the selling corporation's results are significantly affected solely by virtue of membership in the consolidated group; specifically, it is spared Federal tax on the sale of target stock. Further, where a consolidated return is not filed, there is not even the potential that the selling corporation's results would be increased or its losses reduced, by the income of other members of the group. Thus, the result under IRC 338(h)(10) is not a tax based on an individual corporate charter and, therefore, it contradicts New Jersey's policy.

The proposed amendments also supply guidance in the use of an allocation factor. New Jersey uses a three-fraction computation for allocation. As a practical matter in the context of a one-day return, the business allocation factor would be based on the property fraction (reflecting location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short, one-day period.

Social Impact

The proposed amendments set forth the tax responsibilities of corporate taxpayers involved in affiliated groups and is in keeping with the underlying concept of the Corporation Business Tax Act. The amendments will make more clear the Division's position on this subject and thus will assist taxpayers in tax planning and in return preparation responsibilities.

Economic Impact

The proposed amendments will provide all corporations with notice of the State's position on the subject of IRC 338(h)(10) elections. Because the amendments follow the underlying logic of the franchise tax act in the context of affiliated groups in treating each corporation as a separate entity, the amendments may result in an increase in revenue to the State. Since the election is not mandatory, it is within the power of the taxpayer to determine whether or not the rules will be applicable to a given transaction.

Regulatory Flexibility Analysis

The proposed amendments impose requirements regarding the extension of time to file a return, taxability of gain on the sale of target stock and filing a one-day return. The proposed amendments apply to small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to large businesses. Any action to exempt taxpayers who may be small businesses would not be in compliance with the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq.; therefore, the Division of Taxation has applied these provisions to taxpayers uniformly.

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

18:7-11.12 Extension of time to file return; interest and penalty

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

(g) Where taxpayer makes an election on Federal form 8023, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that a CBT-200T has been properly filed in accordance with these rules.

[(g)]**(h)** (No change in text.)

18:7-11.15 Consolidated returns

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

(d) For New Jersey purposes, a selling parent in a consolidated group may not exclude gain on the sale of target stock pursuant to a federal election under IRC 338(h)(10). Each corporation is required to report income on a separate entity basis under N.J.A.C. 18:7-5.1(c).

(e) Where a target corporation recognizes gain as the result of an IRC 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7-5.1(a).

18:7-12.1 Short period returns; when required

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

(c) If a corporation is required to file a one-day return for Federal purposes in connection with a Federal IRC 338(h)(10) election, the corporation shall also file a one-day return for New Jersey purposes and pay the tax reflected on such return.

18:7-12.3 Short period returns; allocation

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

(c) A taxpayer filing a one-day return recognizing gain on a step up in the basis of its assets would use a business allocation factor which would be based upon the property fraction (reflecting the location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short one-day period.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Building Code

Proposed Repeals: N.J.A.C. 19:6-1 and N.J.A.C. 19:6-3

Proposed New Rules: N.J.A.C. 19:6-1

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i).
Proposal Number: PRN 1990-369.

A public hearing concerning these proposed amendments will be held on August 2, 1990 at 7:00 P.M. at:

Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

Submit written comments by August 15, 1990 to:

Thomas R. Marturano, Acting Chief Engineer
Hackensack Meadowlands Development Commission
One DeKorte Park Plaza
Lyndhurst, New Jersey 07071

The agency proposal follows:

Summary

N.J.A.C. 19:6-1 became effective on May 1, 1970 and N.J.A.C. 19:6-3 became effective on December 12, 1977. N.J.A.C. 19:6-1 established the building code for the Hackensack Meadowlands District (HMD) and N.J.A.C. 19:6-3 established the uniform procedure for administration and enforcement of the code between the Hackensack Meadowlands Development Commission (HMDC) and its 14 constituent municipalities. It also incorporated provisions of the Uniform Construction Code (N.J.A.C. 5:23) which had recently been adopted by the State. Neither of these subchapters have been revised since their adoption. The Hackensack Meadowlands Development Commission proposes to repeal subchapter 3 (N.J.A.C. 19:6-3) and incorporate the administration and enforcement procedures into subchapter 1 (N.J.A.C. 19:6-1).

The proposed new rules delineate more clearly duties and responsibilities pursuant to N.J.S.A. 13:17 et seq., the Hackensack Meadowlands Reclamation and Development Act. The proposed new rules more clearly delineate which duties will be performed by HMDC and those delegated to the municipalities, and prescribe remedies when a municipality is remiss in the performance of its enforcement duties. Furthermore, the proposed new rules eliminate inconsistencies with previously adopted rule changes and proposes an appeal process consistent with that followed by other State agencies.

Social Impact

The proposed new rules should have no significant social impact, because the principal effect of the proposed rules is to clarify existing requirements and to establish more precise rules in those areas less clearly defined. Those affected by the new rules will be the code enforcement personnel of the HMDC and of the municipalities lying therein and applicants for building permits within the HMD. The nature of the changes will primarily be minor administration adjustment in some enforcement procedures; applicants will probably be unaware of rule changes unless they become subject to penalty. The reaction to the changes should all be either neutral or positive, since the clarification of the requirements should benefit all involved in the code enforcement process.

Economic Impact

The proposed new rules will have no significant economic impact on the municipalities, since they will continue to collect their normal fees, unless they surrender their responsibility to perform inspections. In that case, the Office of the Chief Engineer shall collect the inspection fees and return 20 percent of that fee to the municipality for administrative costs. The proposed new rules may have a significant economic impact on those construction permit applicants who violate the rules, since penalties up to $5,000 per day, per violation, may be assessed (see N.J.A.C. 19:4-6.24(c)).

Regulatory Flexibility Analysis

The proposed new rules will affect everyone within the Hackensack Meadowlands District who is involved in a construction project requiring a building permit and/or anyone applying for a Certificate of Occupancy. However, the rules pertain basically to the way that the Office of the Chief Engineer (OCE) of the HMDC interacts with building code officials of the 14 constituent municipalities. These rules will not require any additional recording or recordkeeping on either individual owners nor those considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The building code officials of all 14 constituent municipalities, under the proposed rules, will be required to perform additional recordkeeping and forwarding. The proposed rules require municipal building code officials to forward to the OCE copies of permits issued and notify the OCE of action taken on violations of the building code.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 19:6-1 and 19:6-3.

Full text of the proposed new rules follows:

CHAPTER 6
BUILDING CODE

SUBCHAPTER 1. GENERAL PROVISIONS

19:6-1.1 Title

The rules contained in this chapter shall be known and may be cited as the Building Code for the Hackensack Meadowlands District (hereinafter referred to as HMD).

19:6-1.2 District Building Code

The construction code hereby adopted for the HMD shall be the New Jersey Uniform Construction Code, N.J.A.C. 5:23, as amended by this chapter.

19:6-1.3 HMDC responsibility

The HMDC shall have the ultimate responsibility for the enforcement of the District's building code, pursuant to N.J.S.A. 13:17-1 et seq., specifically N.J.S.A. 13:17-11. The HMDC may delegate specific portions of the District's building code to officials qualified in accordance with N.J.A.C. 5:23-1 et seq. to perform these tasks.

19:6-1.4 Enforcement

(a) There shall be an HMD Construction Code enforcing agency consisting of the following: The Office of the Chief Engineer (hereinafter referred to as OCE) of the HMD, each municipal code official, and each municipal subcode official of those municipalities within the HMD.

(b) The OCE shall have sole responsibility for reviewing and approving plans for all work within the HMD, subject to the requirements of this chapter, and the OCE shall act as the HMD building subcode official. The OCE shall reserve the right to perform any or all inspections conducted in accordance with N.J.A.C. 5:23-2.18.

(c) Each municipal construction official shall be delegated the responsibility of enforcing the requirements of this chapter in that portion of the HMD within the boundaries of his or her municipality, except for the specific circumstances noted in these rules.

(d) At least one OCE inspector/plan examiner in each subcode shall hold a class I license, and be licensed as a subcode official in accordance with N.J.A.C. 5:23-5. The OCE staff member serving as HMD building subcode official shall also be licensed as a construction official, in accordance with N.J.A.C. 5:23-5.6.

(e) In the event that a municipal code enforcement official fails to implement any provision of this chapter in that portion of the HMD within his or her jurisdiction, or if a municipality fails to appoint a person qualified in accordance with N.J.A.C. 5:23-5, to fill a position created by (a) above, the OCE shall act in the capacity of that official, in order to insure compliance with this chapter.

(f) Except for (g) below, when the OCE shall determine that a violation of this chapter exists, the OCE shall notify the Municipal Construction Official in writing of such violation and request the municipal construction official and the appropriate subcode official to take action necessary to bring about compliance with this chapter and to notify the OCE of his or her actions.

(g) When the OCE determines that work in progress is being done contrary to approved plans and there is not adequate time to follow the procedure outlined in (f) above, and/or the OCE believes that any delay may exacerbate the extent and nature of the violation, then the OCE may act immediately to prevent continuation of such violations. The OCE staff member having plan review responsibility is hereby authorized to utilize any provision of this chapter necessary to bring about compliance.

19:6-1.5 Fees

(a) Fees for plan review shall be in accordance with N.J.A.C. 19:3-1.3.

(b) In the event the OCE enters into an agreement with any or all municipalities within the District to perform required inspections, the OCE shall collect 100 percent of the HMDC's permit fee. Twenty

percent of that fee, exclusive of plan review fees, will be returned to the municipality to cover administrative costs.

19:6-1.6 Violations and penalties

For any violation of this chapter, including those specifically adopted in N.J.A.C. 19:6-1.2, notice of violation and penalty procedure shall be in accordance with N.J.A.C. 19:4-6.24.

19:6-1.7 Hackensack Meadowlands District uniform procedure

(a) All applications shall be initiated at the office of the municipal construction official.

(b) The municipal construction official shall advise applicants that all applications requiring plan review are to be approved by HMDC prior to the issuing of a construction permit.

(c) Each submittal shall be in accordance with N.J.A.C. 5:23-2.15, except that three sets of plans shall be submitted, and accompanied by the plan review fees required by N.J.A.C. 19:3-1.3.

(d) Following approval of construction plans, the OCE shall return two copies of the approved plans and a Certificate of Compliance to the municipal construction official. The municipal construction official shall then issue a construction permit, a copy of which shall be sent to the OCE.

(e) Whenever the municipal construction official shall fail to issue a construction permit after the applicant has satisfied all provisions of this chapter, the OCE shall issue such permit; the OCE will then assume all responsibility for the compliance of such project with this chapter. The OCE will receive all fees for such permits, pursuant to N.J.A.C. 19:3-1.3.

(f) The inspection procedure shall be as follows:

1. The primary responsibility for all required inspections is delegated to the municipal code officials.

2. As per N.J.A.C. 19:6-1.4(b), the OCE reserves the right to perform all inspections pursuant to N.J.A.C. 5:23-2.18.

3. The OCE and Municipal Construction Official shall be notified by the owner or his agent at the various stages of construction when inspections are required.

4. If the municipal code official is unable to perform an inspection upon notification, he or she can request that the OCE perform the inspection.

5. When the municipal code official relinquishes his or her responsibility for the performing of an inspection, and the inspection is performed by the OCE, the HMDC shall receive fees for such inspection in accordance with the municipality's fee schedule.

(g) Municipal construction officials shall supply applicants with a list of all required inspections and apprise the applicant of his responsibility to notify the municipal construction official and the OCE when work is ready for inspection.

(h) No construction permit nor certificate of occupancy shall be issued by the municipal construction official without the written approval from the OCE stating that all provisions of N.J.A.C. 19:4, 19:5 and this chapter have been fulfilled.

19:6-1.8 Certificates of Occupancy

(a) No certificate of occupancy, temporary certificate of occupancy, certificate of continued occupancy, nor certificate of approval, shall be issued by the municipal construction official without certification by the OCE that such occupancy or approval is in compliance with HMDC rules.

(b) Whenever the municipal construction official fails to issue a Certificate of Occupancy for a structure or tenant space which is in compliance with all provisions of this chapter, the OCE will issue such Certificate of Occupancy and receive all fees associated with such certificates.

19:6-1.9 Appeals

Whenever the OCE shall act in the capacity of enforcing official under these regulations, any appeal of decision of the OCE shall be made directly to the Hackensack Meadowlands Development Commission. All appeals shall proceed in accordance with N.J.A.C. 19:4-6.25.

All appeals shall proceed in accordance with N.J.A.C. 19:4-6.25.

19:6-1.10 Separability

If any section or subsection of these regulations is invalidated by judicial decision, such decision shall not affect the remaining sections or subsections of these regulations.

19:6-1.11 HMDC Statutory Authority

Except as provided herein, nothing contained in this subchapter shall be construed to affect the statutory authority of the Commission pursuant to N.J.S.A. 13:17-1 et seq.

(a)

NEW JERSEY HIGHWAY AUTHORITY GARDEN STATE PARKWAY

Definitions

Proposed Amendment: N.J.A.C. 19:8-1.1

Authorized By: New Jersey Highway Authority, George P. Zilocchi, Executive Director (with approval of the Board of Commissioners).

Authority: N.J.S.A. 27:12B-5(j), N.J.S.A. 27:12B-17(b), N.J.S.A. 27:12B-20.

Proposal Number: PRN 1990-368.

Submit comments by August 15, 1990 to:

George P. Zilocchi
Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed amendment permits service vehicles of types for which issuance of passenger car plates is authorized (pickup and panel van trucks) having more than two axles and four tires to use the Garden State Parkway north of Interchange 105. This had been previously prohibited by the amendment proposed at 20 N.J.R. 49(a) and adopted at 20 N.J.R. 913(c). The proposed amendment will amend the definition of "car" at N.J.A.C. 19:8-1.1 to delete the phrase, "and having no more than 2 axles and 4 tires". The proposed amendment brings the rule into conformity with N.J.S.A. 27:12B-20, which provides that "the authority: (1) shall exclude from any part of such highway situated north of its interchange with State Highway Route No. 18 (Interchange 105) *all traffic* (emphasis added) except passenger motor vehicles, hearses, funeral flower and *service vehicles of types for which issuance of passenger car plates is authorized,* (emphasis added) campers, omnibusses, taxicabs, and panel vans, pickup trucks and similar vehicles having a gross weight not exceeding 6,999 pounds, and may further regulate the use thereof pursuant to the provisions of section 17(b) hereof".

Social Impact

The proposed amendment should have little social impact. The amendment is merely corrective and permits six-wheel vehicles to use the roadway north of Interchange 105, if those vehicles meet the other definition of passenger vehicle. The amendment will beneficially affect owners of panel vans and pickup trucks having six wheels who use the Garden State Parkway for commuting, small business use and recreational purposes. Persons owning and operating six-wheel vehicles, in all probability, will support this amendment, since it permits the use of their vehicles north of Interchange 105, which had been previously prohibited. Owners of other vehicles primarily used for commercial purposes and not of a type for which the issuance of passenger car plates is authorized, for example, step vans, cube vans and rack body trucks may take the position that the amendment does not go far enough, in that vehicles such as those described above should also be permitted to utilize the entire roadway.

Economic Impact

The proposed amendment beneficially affects persons owning vehicles for which passenger plates may be authorized and which have more than four wheels and two axles, that is, principally six-wheeled panel vans and pickup trucks. The amendment does not require the expenditure of any additional funds by the adopting agency. Consequently, there will be no effect on its funding sources. Permitting the use of pickup trucks, panel vans and similar principally passenger-oriented vehicles will permit

greater use of the roadway by small businesses that may use panel vans and pickup trucks for the provision of goods and services along the length of the Garden State Parkway.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.C.A. 52:14B-16 et seq.

The sole effect of the amendment is to permit greater use of the Garden State Parkway north of Interchange 105 by vehicles having more than four wheels or two axles, principally passenger-oriented pickup trucks and panel vans.

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

19:8-1.1 Definitions

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

. . .

"Car" means a passenger motor vehicle, including station wagons, hearses, funeral flower and funeral service vehicles for which issuance of passenger car plates is authorized, taxicabs, motorcycles, two-axle, four-tire campers, school buses and panel vans, pickup trucks and similar vehicles having a gross weight not exceeding 6,999 pounds [and having no more than two axles and four tires].

. . .

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Family Leave Act Rules

Proposed New Rules: N.J.A.C. 13:14

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

Authority: N.J.S.A. 34:11B-16.

Proposal Number: PRN 1990-377.

The Division intends to conduct **public hearings** in order to elicit information and views relevant to the proposed action. Notice of the hearings, including the date, time, and place, will appear in the New Jersey Register.

Submit written comments by August 15, 1990 to:

C. Gregory Stewart
Division on Civil Rights
1100 Raymond Blvd.
Room 400
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Family Leave Act (the Act), N.J.S.A. 34:11B-1 et seq., effective May 4, 1990, entitles most employees in the State to a maximum of 12 weeks family leave from employment in any 24-month period. Under the Act, eligible employees may take a family leave in order to provide care made necessary by reason of the birth or adoption of a child, or the serious health condition of certain family members (that is, child, parent, or spouse). Employees returning from family leave are entitled to be restored to the position held prior to the leave or to an equivalent position of like seniority, status, employment benefits, pay and other terms and conditions of employment.

The Division on Civil Rights has been charged with the responsibility of enforcing the Act, and under its terms, the Director of the Division is to promulgate rules and regulations deemed necessary for the implementation and enforcement of the Act.

Following are summaries of the proposed rules, which are intended to interpret the Act's various provisions consistent with the Legislature's intent.

N.J.A.C. 13:14-1.2 sets forth the chapter's purpose.

N.J.A.C. 13:14-1.2 defines key words and phrases as they appear in the Act and the proposed rules, as follows:

"Base hours" is defined in terms of an employee's regularly compensated hours of work, excluding overtime. This definition applies to the term "base hours" as it is used in section 3e of the Act in order to determine whether an employee is eligible for family leave.

"Base salary" is defined to include an employee's gross salary exclusive of any amounts which exceed an employee's compensation for base hours (that is, bonuses, overtime, etc.). This definition applies to section 4h1 of the Act, which provides an exception to the basic entitlement to a family leave.

"Child" is defined by setting forth the various relationships which an employee may have with another person in order to be entitled to family leave for the case of a child with a serious health condition. The definition is intended to make family leave available to traditional parents (for example, biological, adoptive, foster, etc.) as well as those who may not be parents in the ordinary sense of the word, but who provide parental care to a child (that is, grandparents and others who have a "parent-child" relationship with another person).

The term "disability leave" is defined as the period of time during which the employee is unable to perform his or her work due to disability, inclusive of any period for which the employer collects temporary disability benefits. This term is used in proposed N.J.A.C. 13:14-1.6, which stipulates that disability leave is separate from and in addition to any family leave provided by the Act.

The phrase "disrupt unduly the operations of the employer" is defined. Sections 4 and 5 of the Act provide that an employee who takes family leave on an intermittent or reduced leave schedule basis must make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer. The Division has interpreted the Act to require that an eligible employee be given the option of taking intermittent leave or a reduced leave so long as that option will not cause an employer economic or other harm significantly greater than that which would be caused by the employee taking consecutive family leave.

The definition of "eligible employee" sets forth the test the Division will apply in order to determine whether an employee is eligible for family leave under the Act. The Act requires that an eligible employee be a person who has been employed by the same employer in the State of New Jersey for at least 12 months, and who has worked at least 1,000 base hours for that employer during the immediately preceding 12-month period. Under the proposed rules, a person has been employed by an employer in the State of New Jersey if he or she either 1) works exclusively in New Jersey; or 2) performs some work in New Jersey and either has his or her base of operation in New Jersey or has his or her work directed and controlled from New Jersey.

The definition of "employer" is based on the definition contained in the Act. For purposes of determining whether an employer has the requisite number of employees for coverage under the Act, all employees employed by that employer will be counted, including those employed outside of the State.

"Health care provider" is defined as any person licensed to provide health care services under Federal, State, or local laws, or under the laws of a foreign nation. An individual who has been authorized to provide health care by a licensed health care provider also satisfies this definition.

"Health insurance policy" is defined as including all health benefits provided by an employer to an employee, exclusive of plans and programs to which an employer does not contribute.

"Intermittent leave" and "reduced leave" are defined as forms of family leave available to eligible employees under certain circumstances. "Intermittent leave" is defined as a non-consecutive leave (that is, one which is made up of more than one interval) each interval of which is at least one workweek but less than 12 workweeks. "Reduced leave" is defined as a non-consecutive leave taken in increments of not less than one workday but not more than one workweek at a time. The definition of "reduced leave schedule" provides that a reduced leave must be scheduled for not more than 24 consecutive weeks.

"Spouse" is defined as a person to whom an employee is lawfully married as defined by New Jersey law.

The definition of the term "substantial and grievous economic injury" provides a standard for the term as it is used in section 4g of the Act, which provides that certain high salaried employees may be denied family leave if such denial would prevent substantial and grievous economic injury to the employer. Under the proposed definition, an employer would have to show that the granting of family leave to an employee would cause the employer economic harm of such a magnitude that it would imperil the continuation of the employer's business.

"Workweek" is defined as the sum of the number of days an employee works each calendar week irrespective of hours worked per day.

N.J.A.C. 13:14-1.3, Applicability, clarifies which employers are covered under the Act. Specifically, for purposes of counting the number of employees of an employer in order to determine whether the applicable minimal threshold has been met, the following categories of employees will be counted: 1) all employees of the employer working in New Jersey, regardless of whether those employees are eligible for family leave; 2) all employees of the employer who work outside New Jersey; and 3) all employees of an employer's subsidiary if a significant interrelationship exists between the employer and its subsidiary as determined by applying the four-part test outlined in the proposed rules.

N.J.A.C. 13:14-1.4, Terms of leave, simply sets forth the terms of family leave as provided for under the Act. Eligible employees are entitled to up to 12 weeks family leave in any 24-month period. The 24-month period commences at the start of the employee's family leave. The leave may be paid, unpaid, or a combination of both, and an employee requesting leave must give the employer advanced written notice, the length of which is to be determined by the reason for the requested leave.

N.J.A.C. 13:14-1.5, Leave entitlements, sets forth the reasons for which family leave may be taken, and stipulates that an employer who takes less than 12 weeks leave for any one reason referenced above is entitled to take additional family leave for any of the referenced reasons so long as the total leave taken does not exceed 12 weeks within any 24-month period (and all other provisions of the Act are complied with).

N.J.A.C. 13:14-1.5(c) concerns leave for birth or placement for adoption of a child, and stipulates that an eligible employee is entitled to 12 consecutive weeks of leave for the birth or adoption of a child at any time within one year of such birth or adoption, even if the birth or adoption occurred before the effective date of the Act. Leaves may be taken intermittently or on reduced leave schedule if the employer agrees. Paragraph (c)1 requires an employee taking a leave to provide at least 30 days written notice, except in emergent circumstances.

N.J.A.C. 13:14-1.5(d) concerns leave for a serious health condition, and stipulates that an employee whose family member has a serious health condition is entitled to 12 weeks leave and that the leave may be taken intermittently, consecutively or on a reduced leave schedule. Paragraph (d)1 requires an employee taking a leave to provide the employer with at least 15 days written notice, except in emergent circumstances. Paragraph (d)2 requires an employee who takes an intermittent leave because of a single serious health condition to take said leave within a 12 consecutive month period. This paragraph also requires an employee who takes intermittent leave because of more than one serious health condition episode to take said leaves within a 24 consecutive month period, the period beginning with the first leave. This paragraph further provides that an employee is entitled to use the remaining leave, if any, of the 12 week entitlement, in any manner that is consistent with other provisions of these rules. Paragraph (d)3 requires an employee taking a leave on reduced leave schedule to take such leave within a 24 consecutive week period. This paragraph provides that any of the 12 week leave entitlement not taken during this period may be taken consecutively or intermittently as long as the remaining leave is taken within the consecutive 24 month period which began at the start of the reduced leave.

N.J.A.C. 13:14-1.6, Disability leave, provides that disability leave cannot be counted as part of an employee's 12-week family leave entitlement.

N.J.A.C. 13:14-1.7, Accrued paid leave, provides for the treatment of accrued paid leave in a manner which is consistent with an employer's present policy/practice regarding similar leaves of absence. The rule allows employers who have policies which require employees to exhaust all accrued paid leave during a leave of absence to require employees to exhaust said leave during a family leave. However, when an employer does not have an established policy regarding the use of accrued paid leave, the employer shall not require the employee to exhaust such leave.

N.J.A.C. 13:14-1.8, Other employment, prohibits an employee on family leave from engaging in other full-time employment, unless he or she was already employed full-time prior to taking the leave and said employment is not prohibited by an employer policy or practice. This rule also limits part-time employment to no more than 20 hours per week, but permits an employee to engage in such employment unless the employer has an existing policy or practice which prohibits it.

N.J.A.C. 13:14-1.9, Exemptions, sets forth the conditions that must be present in order for an employer to deny family leave. Paragraph (a)1 requires that an employee denied family leave have a salary that ranks within the highest paid five percent of the employer's employees or have a base salary which is one of the seventh highest, whichever is greatest. Paragraph (a)2 requires the employer to demonstrate that the leave would cause economic harm of such a magnitude that it would place the continuation of the employer's business in jeopardy. Paragraph (a)3 requires the employer to notify the employee that his or her request for family leave is denied.

N.J.A.C. 13:14-1.10, Certification by an employee, allows the employer to require an employee seeking family leave to certify that the employee meets all eligibility requirements for which the leave is sought, and that the employee's request is consistent with the purposes of the Act. An employee who refuses to comply with such a certification requirement may be denied family leave. It is recognized that this provision, which allows an employer to require certification that an employee's request conform with the purposes of the Act, is in addition to the certification by a health care provider referred to in section 4e of the Act. The Division feels strongly, however, that such a regulatory provision is consistent with the essential purpose of the Act (that is, family leave should be made available to those who need it in order to care for a family member), and that, by allowing employers to require such certification, the potential for abuse of the Act's basic entitlements is greatly diminished.

N.J.A.C. 13:14-1.11, Reinstatement, provides that an employee returning from family leave shall be restored to the same position such employee held prior to the commencement of family leave unless such position has been filled, in which case the employee shall be placed in an equivalent position as defined in the Act.

N.J.A.C. 13:14-1.12, Multiple request for family leave, states that an employer must grant family leave to more than one employee of the same family at the same time if the employees are eligible for family leave and request such a coterminous leave.

N.J.A.C. 13:14-1.13, Employers with multiple leaves of absence, Section 8b of the Act requires that during a family leave taken under the Act, an employer is required to provide employee benefits (other than those health related benefits referred to in Section 8a) to the level and extent dictated by its policy controlling employee benefits during other temporary leaves of absence. This section of the proposed rules stipulates that where an employer has several types of leaves of absence, an employer shall follow the policy governing employee benefits of the leave which most closely resembles family leave.

N.J.A.C. 13:14-1.14, Retroactivity, provides that, as a general rule, a leave of absence given to an employee before the Act's effective date shall not be deemed to satisfy the employer's obligation to an eligible employee who requests family leave after the effective date of the Act. The exception to this general principle is that a leave taken by an employee during the period commencing May 4, 1989 and ending May 3, 1990, for the purpose of providing care made necessary because of the birth or placement for adoption of a child, shall be considered as part of the employee's family leave entitlement under the Act, if such leave maintained the same benefits and preserved the same rights as are required by the Act.

N.J.A.C. 13:14-1.15, Prohibition against retaliation, prohibits an employer from taking any punitive action against an employee because said employee exercised any right granted under or associated with this Act or these rules, or engaged in any other conduct outlined in section g of the Act.

N.J.A.C. 13:14-1.16, Processing of complaints, stipulates that any complaint alleging a violation of the Act which is filed with the Division will be processed in the same manner as a complaint alleging a violation of N.J.S.A. 10:5-1 et seq. Such complaints are processed in accordance with the Division's Rules of Practice and Procedure, N.J.A.C. 13:4.

Social Impact

The proposed new rules will have a beneficial social impact upon all eligible employees in the State of New Jersey. The rules implement the stated purpose of the Legislature in promoting the economic security of families by guaranteeing jobs to employees who choose to take a leave due to the birth or adoption of a child or because of the serious health condition of a family member.

The rules also recognize the practical difficulties facing employers in providing the leave required by the Act and therefore have made provisions to protect employers from possible employee abuse. Moreover, the rules will also have a beneficial social impact in that they clarify provisions of the Act which may be the cause of confusion among employers and employees regarding the types and terms of leave permitted as well as eligibility requirements of the Act. As provided for by the Act, the applicability of the rules will be phased in gradually so that initially only employers with 100 or more employees will be covered by the requirements of the regulations.

Although it is the Division's understanding that most large employers already provide leaves of absence similar to the leave required under the Act, the Division anticipates that smaller employers may experience some negative impact as a result of the requirements imposed by the Act. However, these rules merely implement the stated intent of the Legislature to promote economic security for employees who must take a leave of absence for legitimate family related purposes.

If these rules are not adopted, it would create uncertainty among employers and increase the burden on them to interpret the Act and to determine their responsibilities under the Act.

Economic Impact

These rules will not economically impact employers to a degree greater than they are presently impacted by the Act. The potential economic impact of the Act, as implemented by these regulations, has not been assessed by the Legislature or the Division. It is anticipated that public comments on these rules will provide the Division with information regarding the economic impact of the Act and these rules.

Moreover, the Legislature's determination to phase in the terms of the Act over four years will reduce the economic impact on small businesses and afford such businesses with an opportunity to adjust to the requirements of the Act. Larger employers may not experience any economic impact since larger employers already have policies or collective bargaining agreements which provide similar or more extensive leaves than those required by the Act. Additionally, although the Act rquires that an employer provide for continued benefits, neither the Act nor the rules require that the family leave must be paid. Therefore, the economic impact to employers should be minimal. The economic impact to eligible employees will be substantial in that employees will be able to attend to specific family needs without risk to their job security.

Regulatory Flexibility Analysis

The proposed new rules will not impose any bookkeeping or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the Act presently applies only to employers with 100 or more employees, there will be no immediate impact upon small businesses.

Consistent with the phase in provision of the Act, after May 4, 1991, the Act and these rules will apply to small businesses or employers with less than 100 employees. However, these rules do not impose any reporting, recordkeeping or compliance requirements beyond the compliance requirements imposed by the Act itself.

The recordkeeping requirements imposed by the Act are minimal and should be able to be performed by an employer's current personnel or benefits officer. Employers will, however, likely find it necessary to hire temporary employees to assume the duties normally performed by the employees who are on leave. At this point the actual cost to small businesses cannot be estimated. However, the Legislature has made the determination to impose the requirements of the Act on employers as indicated in the phase in provision of the Act and the Division has no discretion to interpret the Act's applicability otherwise.

Full text of the proposal follows:

CHAPTER 14
RULES PERTAINING TO THE FAMILY LEAVE ACT

SUBCHAPTER 1. GENERAL PROVISIONS

13:14-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 34:11B-1 et seq. which provide for family leave for employees in certain cases and prohibit certain employer practices by establishing interpretations of the provisions of that statute.

13:14-1.2 Definitions

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

"Act" means N.J.S.A. 34:11B-1 et seq., the Family Leave Act, unless the context indicates otherwise.

"Base hours" means an employee's regular hours of work excluding overtime, for which an employee receives compensation.

"Base salary" as used in Section 4h(1) of the Act means the salary paid to an employee, excluding overtime, bonuses, etc., but not excluding salary withheld for State, Federal, and local taxes, FICA, employee contributions to any pension, health and/or insurance plans or programs, etc.

"Child", for the purpose of determining whether an employee is eligible for family leave because of such employee's parental status, means a child as defined in the Act to whom such employee is a biological parent, adoptive parent, foster parent, step-parent, or legal guardian, or has a "parent-child relationship" with a child as defined by law, or has sole or joint legal or physical custody, care, guardianship or visitation with a child.

"Disability leave" means any period of leave for which the employee is disabled (that is, unable to perform his or her work) including, but not limited to, any period of time during which an employee is collecting disability benefits.

"Disrupt unduly the operations of the employer", as used in sections 4a(3) and 5b of the Act means, an intermittent or reduced leave schedule that, if implemented, would cause the employer measurable harm, economic or otherwise, significantly greater than any measurable harm which would befall the employer if the same employee was granted a consecutive leave. The burden of proof in these instances rests with the employer and will be determined by the Division on a case by case basis.

"Eligible employee" means any individual employed by the same employer in the State of New Jersey for 12 months or more and has worked 1,000 or more base hours during the preceding 12 month period. An employee is considered to be employed in the State of New Jersey if:

1. Such employee works in New Jersey; or
2. Such employee performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey.

"Employer" means:

1. Effective May 4, 1990, an "employer" shall mean an employer as defined in the Act, which employs 100 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.
2. Effective May 4, 1991, an "employer" shall mean an employer as defined in the Act which employs 75 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.
3. Effective May 4, 1993, an "employer" shall mean an employer as defined in the Act which employs 50 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

"Health care provider" means any person licensed under Federal, State, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

"Health insurance policy" means all health benefits provided by an employer to an employee. Health benefit policies, plans or programs to which the employer does not contribute are excluded from this definition.

"Intermittent leave" means a non-consecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12 month period.

"Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, but not more than one workweek at a time.

"Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

"Spouse" means a person to whom an employee is lawfully married as defined by New Jersey law.

"Substantial and grievous economic injury" as used in Section 4h(2) of the Act means economic harm that will befall an employer which is of such a magnitude that it would imperil the continuation of the employer's business.

"Workweek" means the number of days that an employee normally works each calendar week, irrespective of the number of hours worked each day. (For purposes of a reduced leave, an employee who

normally works five days each calendar week is entitled to a maximum of 60 days of family leave. An employee who normally works four days each calendar week is entitled to a maximum of 48 days of family leave, etc.)

13:14-1.3 Applicability

(a) For the purpose of counting employees, an employer, as defined in the Act and in this chapter, shall consider:

1. Employees in this State, irrespective of their eligibility for family leave;

2. Employees who work outside of the State of New Jersey;

3. Employees of an employer's subsidiary, division or other related entity. In making the determination of whether to count the employees of an employer's subsidiary, division or other entity, the Division on Civil Rights will consider any or all of the following factors on a case by case basis:

i. The interrelationship of the employer's operation;

ii. The degree of centralized control of labor relations;

iii. The existence of common management; and/or

iv. The degree of common ownership or financial control.

13:14-1.4 Terms of leave

Family leave may be taken for up to 12 weeks within any 24-month period. The calculation of the 24-month period shall commence with the commencement of the family leave. The leave may be paid, unpaid or a combination of paid and unpaid. The employee who requests the leave must provide the employer reasonable advance written notice, the length of which to be determined by the type of leave requested.

13:14-1.5 Leave entitlements

(a) An eligible employee may take 12 weeks of family leave within any 24-month period in order to provide care made necessary by reason of:

1. The birth of a child of the employee;

2. The placement for adoption of a child with an employee; or

3. The serious health condition of a family member of the employee.

(b) The leave may be paid, unpaid or a combination of paid and unpaid. Should an eligible employee take less than 12 weeks of family leave for any of the above reasons, such employee shall be entitled to take additional leave for any of the above reasons provided that the total leave taken does not exceed 12 weeks in any consecutive 24-month period and the other qualifications and restrictions contained in the Act, attendant to each type of leave, are not abridged.

(c) An eligible employee is entitled to up to 12 consecutive weeks of family leave in order to care for such employee's newly born child or child placed for adoption with such employee. Such consecutive leave shall commence at any time within 12 months of said birth or placement for adoption, even if such event occurred before the effective date of the Act. An employee taking a family leave for either of these reasons may take such leave intermittently or on a reduced leave schedule only if agreed to by the employee and the employer.

1. An employee who takes a leave for these purposes shall provide the employer with written notice, no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

(d) An employee whose family member (as defined by the Act) has a serious health condition is entitled to up to 12 weeks of family leave taken on a consecutive, intermittent or reduced leave basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided.

1. An employee who takes a leave in connection with the serious health condition of a family member shall provide the employer with written notice, no later than 15 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

2. For purposes of this subsection, the total time within which an intermittent leave is taken may not exceed a 12 month period, if such leave is taken in connection with a single serious health condition. Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive 24 month period, or until such time as the employee's 12 week family leave entitlement is exhausted, whichever is shorter. Any remaining family leave to which the employee is entitled, subsequent to the expiration of any or all intermittent leaves, may be taken in a manner consistent with this chapter.

3. For purposes of this subsection, an employee taking a family leave or a leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive 24 week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive 24 month period. Any remaining family leave to which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.

13:14-1.6 Disability leave

Disability leave is separate from, and in addition to, any family leave provided by the Act.

13:14-1.7 Accrued paid leave

For the purpose of governing the use of accrued paid leave, employers shall treat family leave in the same manner as similar leaves of absence have been treated. If an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave. If an employer has a policy of allowing employees to take unpaid leaves without first exhausting accrued paid leave while on a family leave, it shall not require employees to exhaust accrued paid leave while on family leave. In situations where an employer does not have an established policy in this regard, the employee shall be entitled to utilize any accrued paid leave as part of the family leave. If such an employee determines not to utilize accured paid leave, the employer shall not require such employee to utilize any accrued paid leave as part of the leave. Where an employer maintains leaves of absence which provide different policies and/or practices regarding the use of accrued paid leave, the employer shall treat family leave in the same manner as that other leave of absence which most closely resembles family leave.

13:14-1.8 Other employment

An employee on family leave may not engage in other full-time employment during the term of the leave, unless such employment commenced prior to the leave and is not otherwise prohibited by law or an employer's policies or practices. Part-time work (not more than 20 hours per week) is permitted. An employer may not maintain a policy or practice which prohibits part-time employment during the course of a leave, unless such employer prohibits outside employment of any type, at any time.

13:14-1.9 Exemptions

(a) An employer is not required to grant a family leave to any employee who would otherwise be eligible under this Act if:

1. The employee's base salary ranks within the highest paid five percent or his or her base salary is one of the seven highest, whichever number of employees is greater (for purposes of this exception, all employees of an employer whether employed in New Jersey or not shall be included in this calculation);

2. The employer can demonstrate that the granting of the leave would cause a substantial and grievous economic injury to the employer's operations; and

3. The employer notifies the employee of its intent to deny the leave when such determination is made.

13:14-1.10 Certification by an employee

An employer may require an employee who requests family leave to sign a form of certification that indicates that such employee meets all of the eligibility requirements for which the leave is sought under the terms of the Act and this chapter and that such employee's request conforms to the purposes stated in the Act. Any employee who refuses to sign such certification may be denied the requested leave. Any employee who falsely so certifies may be subject to whatever disciplinary policy the employer has established for the same or similar offenses. The form of certification established by the employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

13:14-1.11 Reinstatement

Upon the expiration of a family leave, an employee shall be restored to the position such employee held immediately prior to the commencement of the leave. If such position has been filled, the employer shall reinstate such employee to an equivalent position.

13:14-1.12 Multiple requests for family leave

An employer shall grant a family leave to more than one employee from the same family (for example, brother and a sister) at the same time, provided such employees are otherwise eligible for the leave.

13:14-1.13 Employers with multiple leaves of absence

Where an employer maintains leaves of absence which provide benefits, other than those health benefits defined in N.J.A.C. 13:14-1.2 under "health insurance policy," that differ depending upon the type of leave taken, such employer shall provide those benefits to an employee on family leave in the same manner as it provides benefits to employees who are granted that other leave of absence which most closely resembles family leave.

13:14-1.14 Retroactivity

Any leave of absence granted to an employee prior to the effective date of the Act shall not be considered a family leave for purposes of determining an employee's entitlement to a family leave under the Act, with the following exception: any period of leave taken by an employee during the period commencing May 4, 1989 and ending May 3, 1990, for the purpose of providing care made necessary because of the birth or placement for adoption of a child shall be considered as part of the employee's family leave entitlement under the Act, if such leave maintained the same benefits and preserved the same rights as are required by the Act.

13:14-1.15 Prohibition against retaliation

No employer shall discharge or in any way retaliate against or penalize any employee because such employee sought information about family leave provisions, filed a complaint alleging a violation of the Act or this chapter or exercised any right granted under the Act or this chapter.

13:14-1.16 Processing of complaints

Any complaint filed in the Division which alleges a violation of the Act or this chapter shall be processed in the same manner as a complaint filed under the terms of N.J.S.A. 10:5-1 et seq. and N.J.A.C. 13:4.

(a)

DIVISION OF MOTOR VEHICLES

Automatic Vehicle Identification System

Proposed New Rules: N.J.A.C. 13:20-10

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-43 and 39:3-74.

Proposal Number: PRN 1990-367.

Submit comments by August 15, 1990 to:

Col. Clinton L. Pagano, Director
Division of Motor Vehicles, 7th Floor
25 South Montgomery Street
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposed new rules set forth the application process which must be followed by a person (such as a toll authority or agency organized under the laws of this State or any other state) seeking approval to utilize an automatic vehicle identification system on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The proposed new rules also require the owner or operator of a motor vehicle registered in this State who participates in a testing program of an automatic vehicle identification system operated by a toll authority or agency organized under the laws of this State or any other state to have a transponder attached to inside the motor vehicle on the left most side of the windshield as viewed from inside the motor vehicle or at such other location on the motor vehicle as the Director deems appropriate. The proposed new rules also provide that the transponder shall not cover the inspection decal and shall be located in a position on the windshield that will not unduly restrict the vision of the driver. The proposed new rules also specify that the placement of an automatic vehicle identification system on vehicles or motor-drawn vehicles registered in this State shall be determined by the Director based upon the size and configuration of the vehicle or motor-drawn vehicle. The proposed new rules also define various terms which are used in the rules, and also specify that no more than one transponder shall be attached to the windshield of a motor vehicle.

Social Impact

The proposed new rules are beneficial because, by specifying transponder placement requirements, the rules serve to promote highway safety by prohibiting the attachment of a transponder on a motor vehicle windshield at a location which would obstruct the driver's vision. The proposed new rules have no social impact on the Division of Motor Vehicles.

Economic Impact

A person (such as a toll authority or agency organized under the laws of this State or any other state) may incur costs in connection with complying with the application process established by the proposed new rules, including, but not limited to, the cost of supplying automatic vehicle identification system equipment samples to the Division of Motor Vehicles for examination. Aside from the previously mentioned application costs which may be incurred, the Division of Motor Vehicles has no knowledge as to what type of economic impact a testing program of an automatic vehicle identification system will have upon a toll authority or agency organized under the laws of this State or any other state which chooses to undertake or participate in such a testing program; nor does the Division know what type of economic impact such a testing program will have upon the State. The Division of Motor Vehicles has no knowledge as to what type of economic impact a testing program of an automatic vehicle identification system will have upon those owners or operators of vehicles, motor vehicles or motor-drawn vehicles registered in this State who choose to participate in such a testing program. The proposed new rules will impact economically on the Division of Motor Vehicles only to the extent that the Division must review applications for approval of an automatic vehicle identification system which are submitted to it pursuant to these rules.

Regulatory Flexibility Analysis

The proposed new rules will impact small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., only if they choose to participate in a testing program of an automatic vehicle identification system as set forth in the rules. Those small businesses must comply with the transponder placement requirements specified in the rules. The Division of Motor Vehicles has no knowledge as to whether small businesses which choose to participate in such a testing program will incur costs in connection with such participation, nor does the Division know whether professional services will be required to facilitate compliance with the transponder placement requirements imposed by the proposed new rules. Such costs and the need for professional services will be dictated by the specific testing program in which the business participates. Since the Division of Motor Vehicles does not know which small businesses may choose to participate in such a testing program, and in view of the need for uniformity in the transponder placement requirements, a differentiation in such requirements predicated upon size of business cannot be provided.

Full text of the proposed new rules follows:

SUBCHAPTER 10. AUTOMATIC VEHICLE IDENTIFICATION SYSTEM

13:20-10.1 Definitions

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

"Automatic vehicle identification system" means a toll collection system comprised of an interrogation/receiver unit and a remote transponder affixed to a vehicle, motor vehicle or motor-drawn vehicle.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Person" includes natural persons, firms, copartnerships, associations, and corporations, including a toll authority or agency organized under the laws of this State or any other state.

"Transponder" means a receiver/transmitter which automatically receives radio or light signals from an interrogation/receiver and emits a reply pulse to the interrogation/receiver.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

13:20-10.2 Application

(a) A person may apply to the Director to obtain approval of an automatic vehicle identification system for use on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The person shall provide the Director with sufficient information regarding the size, dimensions, composition, operation and proposed use of the automatic vehicle identification system as the Director may require, to enable the Director to determine whether the device is safe for use on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The Director may require the applicant to provide test results from an independent laboratory.

(b) The Director reserves the right to require an applicant to furnish, without charge, a reasonable number of properly identified samples for examination or to provide such demonstration as may be required.

(c) The Director reserves the right to require such additional proof as may be needed to make his determination.

13:20-10.3 Placement

(a) Each owner or operator of a motor vehicle registered in this State who participates in a testing program of an automatic vehicle identification system operated by a toll authority or agency organized under the laws of this State or any other State shall have a transponder attached to inside the motor vehicle on the left most side of the windshield as viewed from inside the motor vehicle or at such other location on the motor vehicle as the Director deems appropriate. The transponder shall not cover the inspection decal and shall be located in a position on the windshield that will not unduly restrict the vision of the driver. No more than one transponder shall be attached to the windshield of a motor vehicle pursuant to this subchapter.

(b) The placement of an automatic vehicle identification system on vehicles or motor-drawn vehicles registered in this State shall be determined by the Director based upon the size and configuration of the vehicle or motor-drawn vehicle.

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

Proposed Amendments: N.J.A.C. 13:21-1.3, 1.4 and 1.5

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-4, 39:3-10 and 39:3-13 et seq.; 42 U.S.C. §405(c)(2)(C).

Proposal Number: PRN 1990-378.

Submit comments by August 15, 1990 to:
Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
CN 162
Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

As the Division of Motor Vehicles prepares to implement the proposed New Jersey Commercial Driver License Act which is being enacted to comply with requirements imposed on states under §12009 of the Federal Commercial Motor Vehicle Safety Act of 1986, it is necessary to amend the Division's rules concerning the disclosure and use of social security numbers.

The Division's rules currently require applicants to disclose their social security number on applications before learner permits, examination permits, driver licenses or registrations are issued. These proposed amendments make clear that existing requirements also apply to any application for commercial driver licenses.

Restrictions on the use and dissemination of social security numbers continue, but additional exceptions are made to permit the commercial driver licensing system to operate effectively. Although the Division will continue to utilize social security numbers as secondary identifiers, other entities (for example, the Commercial Driver License Information Service) may utilize social security numbers in conjunction with the driver license number rather than merely as secondary identifiers. However, the Division does not intend to display social security numbers on driver licenses or registrations unless Federal or State statutes require it to do so.

Minor grammatical changes are also included so that the terms in the regulations conform with common Division of Motor Vehicles usage.

Social Impact

All applicants for commercial driver licenses must provide the Division of Motor Vehicles with their social security numbers, pursuant to the proposed amendments to these rules. The proposed amendments will have virtually no effect on commercial drivers or businesses because applicants for basic driver licenses in New Jersey must already supply their social security numbers to the Division under current rules.

Economic Impact

The proposed amendment has no economic impact on businesses, commercial drivers or the Division.

Regulatory Flexibility Analysis

Small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are not affected by the proposed amendments because anyone who applies for a driver license or who registers a vehicle already must provide the Division of Motor Vehicles with their social security number. Since social security numbers are not issued to corporations, or other business entities, they are not required when corporations or other business entities register vehicles.

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

13:21-1.3 Mandatory disclosure of social security number

(a) An applicant for [learner's] **any learner** permit, examination permit, [driver's] **driver** license, **commercial driver license or any endorsement thereto,** or registration shall disclose his or her social security number(s) upon the application form furnished by the [director] **Director**.

(b) A [learner's] **learner** permit, examination permit, [driver's] **driver** license, **commercial driver license or any endorsement thereto,** or registration shall not be issued unless the applicant therefore discloses his or her social security number(s) upon the application form.

(c) (No change.)

13:21-1.4 Restricted use of social security numbers

(a) The Division of Motor Vehicles shall, in the administration of the [driver's] **driver** license and motor vehicle registration laws of this State, **including any New Jersey commercial driver license act and the regulations adopted thereunder,** utilize social security numbers for the purpose of establishing the identification of individuals affected by such laws.

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

(d) The Division of Motor Vehicles shall utilize social security numbers as [a secondary] **an** identifier in the administration and enforcement of the "Driver License Compact" (N.J.S.A. 39:5D-1 et seq.) and [N.J.S.A. 39:3-10] **the licensing provisions of Title 39** for the purpose of determining through the National Driver [Registry] **Register whether a** driver license applicant has had his [driver's] **or her driver** license suspended in any other State.

(e) **The social security number shall be provided to and used in communications with the Commercial Driver License Information Sys-**

tem, the National Driver Register and the driver licensing authorities of other states and jurisdictions, including the District of Columbia, Canadian provinces and the Republic of Mexico. It shall be used in reporting motor vehicle and other violations, driver license suspensions, revocations, disqualifications or out-of-service orders. The social security number may be displayed on the commercial driver license and examination permits and shall be used in carrying out the purposes and provisions of the Federal Commercial Motor Vehicle Safety Act of 1986 and the regulations adopted thereunder and any New Jersey commercial driver license act and the regulations adopted thereunder.

[(e)] **(f)** (No change in text.)

[(f)] **(g)** The Division of Motor Vehicles shall inform an individual required to disclose a [Social Security Number] **social security number** that disclosure is mandatory under N.J.A.C. 13:21-1.3 and shall inform the individual of the uses that will be made of that number under this section.

13:21-1.5 Public record exception: disclosure prohibited

(a) Social security numbers recorded on applications for [drivers] **driver** licenses **(including commercial driver licenses),** motor vehicle registrations, **and other documents set forth in N.J.A.C. 13:21-1.3,** are not public records and are not accessible for public examination pursuant to the "Right to Know Law" (N.J.S.A. 47:1A-1 et seq.).

(b) Social security numbers shall not be disclosed by the Division of Motor Vehicles in any manner or any circumstance other than those specified in N.J.A.C. 13:21-1.4. Social security numbers shall not be disclosed on **driver licenses,** driver license **abstracts** or motor vehicle registration abstracts prepared by the Division, **except as provided in N.J.A.C. 13:21-1.4(e).**

(a)

STATE BOARD OF MEDICAL EXAMINERS

Notice of Change of Address for Receipt of Public Comments and Comment Deadline Extension Examination Fees

Proposed Amendment: N.J.A.C. 13:35-6.13

Take notice the address provided for the receipt of comments on the amendment to N.J.A.C. 13:35-6.13 proposed in the July 2, 1990 New Jersey Register at 22 N.J.R. 1988(a) is not correct. The correct address is as set forth below, along with an extended deadline until August 15, 1990 for comments on the proposal.

Submit comments by August 15, 1990 to:
Charles A. Janousek, Executive Director
State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

(b)

STATE BOARD OF MEDICAL EXAMINERS

Delegation of Tasks to Physician Assistants

Proposed New Rule: N.J.A.C. 13:35-6.15

Authorized By: The State Board of Medical Examiners, Michael B. Grossman, D.O., President.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1990-379.

Submit written comments by August 15, 1990 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners
28 West State Street
Trenton, NJ 08608

In addition, the Board will conduct **a public hearing** on August 15, 1990 at 9:30 A.M. at the Office of Administrative Law, Room 1, Quakerbridge Plaza, Trenton, N.J. 08625. Persons wishing to speak at this hearing shall submit a synopsis of the proposed statement to Mr. Janousek no later than August 6, so that the Board may determine the sequence and identity of speakers who will provide it with relevant, non-cumulative comments and data.

Summary

This proposed new rule is the culmination of the Board's consideration of three concurrent, separate but interrelated petitions for rulemaking which had sought the recognition and certification of physician assistants (PAs) and surgical assistants in this State. The first petition filed by the New Jersey State Society of Physician Assistants articulated the need for physician assistants as well as historical background relating to the issue but did not include specific regulatory language for Board consideration. The second petition was filed by Ames Filippone, M.D., Chairman of the Department of Surgery of Morristown Memorial Hospital. That petition called for the recognition of surgical assistants. While it also did not include specific regulatory language, Dr. Filippone suggested guidelines by which the level of training would be set forth, the tasks delegable would be identified, and the quality of supervision specified. The third petition was filed by Stanley Bergen, President of the University of Medicine and Dentistry of New Jersey ("UMDNJ"). A draft regulation was provided with this petition which called for the registration of physician assistants ("PAs") with the Board. Upon reviewing those petitions, the Board chartered a committee to address the issue and called for the appointment of a Task Force to be comprised of interested persons who might assist the Board.

Representatives of the Society of Physician Assistants as well as personnel affiliated with the University of Medicine and Dentistry noted the esteem with which persons graduating from the UMDNJ Physician Assistant Program are held, and the beneficial role that PAs play in the 49 states where they have been recognized by law in servicing the needs of patients and controlling continued rising medical costs. Representatives of the Nursing Association and of the Board of Nursing noted their adamant opposition to the recognition of PAs, contending that the services provided were more appropriately within the scope of nursing and that no need could be demonstrated. Additional testimony was proffered by representatives of the Departments of Health, Human Services and Correction. Specifically, the Department of Health representative reported that licensed hospitals offering accredited training programs are anticipating a reduction in residency positions as well as increasing demands on current personnel caused by the rising census of aging and AIDS patients. So, too, the Department of Human Services has expressed concern at the difficulties it has encountered in filling ancillary health care professional positions in State hospitals and programs. A representative from the Department of Corrections noted that physician assistants would be a valuable asset at prison infirmaries in helping assigned physicians handle daily sick call.

Given these expressed needs and in recognition of its authority to advise its licensees of the circumstances under which they are permitted to delegate tasks to unlicensed personnel, the Board is proposing a rule which would authorize identified physicians practicing in these specified practice settings, each of which is regulated by an overseeing State agency, to participate in a program sponsored by that entity pursuant to which they could delegate limited tasks to unlicensed persons who are certified by (or on the road to receiving certification from) the National Commission on Certification of Physician Assistants. In addition to specifying the tasks, the settings and the qualifications of those to whom delegations can be made, the rule would also mandate that patients be advised that services are being provided by physician assistants and that they have a right to demand patient care directly by the physician. The rule also details how supervision must be provided. Each participating institution is to submit a protocol which will establish a permitted ratio and delineate a mechanism for the recision of the privilege to participate in the program if any abuses are noted.

The Board expects that the first such program could begin six months after the adoption of this rule. During the succeeding two years, the Board would evaluate, with the aid and assistance of such experts as it might designate, the experience of those participating institutions to determine whether the program should be altered, continued or expanded.

Social Impact

By this rule, the Board has sought to create a narrow role for physician assistants to play in the delivery of health care services in this State. This experiment is to be conducted subject to strict supervision so that the Board can assess the value of delegating these tasks. Numerous persons who testified as part of the Task Force noted the difficulties that certain institutions are experiencing in meeting the health care needs of their client population. There is hope that physicians delegating specified tasks to physician assistants will be in a better position to meet those health needs. While the Board takes note that many representatives of the nursing profession have spoken in opposition to this initiative and antici-

pate that there will be considerable reluctance on the part of practicing nurses to work alongside of physician assistants, the Board remains hopeful that all health care providers will collaborate in the delivery of health care in the best interests of the patient.

The Board also expects that the creation of this initiative would allow for the retention of graduates from the UMDNJ Physician Assistant Training Program and, thus, it will serve to benefit those New Jersey residents who have trained at that institution and wish to continue to service the population of this State.

Economic Impact

The Board foresees no economic impact to be borne by it. Those institutions contemplating the creation of such a program may have certain start-up costs. In addition, there may be costs associated with the monitoring as may be required by the Board to determine the continued viability of the program. Of course, institutions offering such programs will incur costs associated with the hiring of physician assistants, but those costs may be less than the costs associated with the hiring of physicians to do tasks which would be delegable under this rule.

Regulatory Flexibility Statement

The proposed new rule provides for the establishment of physician assistants pilot programs within three institutional settings, each of which would employ more than one hundred full-time employees. Since these institutions are not considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required.

Full text of the proposed new rule follows:

13:35-6.15 Delegation of tasks to physician assistants

(a) A physician participating in a physician assistant program that is sponsored by an eligible institution, meets the criteria set forth in (b) below, and is approved by the Board, may direct and supervise an agreed upon number of physician assistants who meet the qualifications set forth in (c) below in the performance of tasks as delineated in (d) below but only at the sponsoring entity after appropriate notice has been provided to patients as required by (e) below, and only so long as the delegated tasks are within the protocol, training and experience of both the physician and the physician assistant.

(b) In order to be approved by the Board pursuant to (a) above, a physician assistant program shall:

1. Complete such application as the Board may require;

2. During the first year following the implementation of this rule, be sponsored by a hospital licensed by the New Jersey State Department of Health which has established one or more accredited postgraduate training programs in a clinical department (such as internal medicine, pediatrics, surgery, obstetrics and gynecology or family practice) or by an institution, facility or program regulated by the New Jersey State Department of Human Services or at an infirmary within a correctional facility regulated by the New Jersey State Department of Corrections, which sponsoring entity will employ physician assistants. During the second year following the implementation of this rule, the Board in its discretion may review and approve applications from licensed hospitals which do not maintain training programs;

3. Have a designated director who is a plenary licensed physician in good standing in this State, with supervisory experience, who shall have a continuing responsibility to provide the Board with the names, license numbers and qualifications of all participating supervising physicians as well as the names and addresses of those participating physician assistants meeting the qualifications set forth in (c) below and any updates on such lists as may be necessary. In advance of such designation, the sponsoring entity shall submit to the Board a copy of the proposed director's *curriculum vitae* for its review and approval;

4. Establish a written delineation of the tasks delegable to physician assistants which is consistent with (d) below, a written protocol setting forth the supervising physician's responsibilities and a specific ratio of physicians to physician assistants (or physician assistants to physicians) applicable to that setting in accordance with (f) below and a mechanism for the revocation of the privilege of participating in the program in accordance with (g) and (h) below, all of which shall be acceptable to the Board;

5. Establish a method for the continuing and ongoing evaluation of the program, supervising physicians and participating physician assistants. Programs sponsored by entities regulated by the Department of Corrections and the Department of Human Services shall establish a collaborative relationship with a clinical department within a licensed hospital which will supervise and assist in an evaluative process on a regular periodic basis;

6. File periodic reports with the Board providing such information as the Board may require; and

7. Cooperate with the Board or any independent consulting panel which the Board may choose to appoint in order to evaluate the continued appropriateness of the program.

(c) In order to be qualified pursuant to (a) above, a physician assistant shall have submitted to the director of the program the following. The program director shall secure and maintain all proofs required under this subsection and make these proofs available to the Board upon request.

1. An application for participation in the entity's program which shall be supported by an affidavit of good moral character;

2. Proof of successful completion of a curriculum for the education and training of physician assistants or surgeon assistants, approved by the American Medical Association Committee on Allied Health Education and Accreditation; and

3. Proof of certification by the National Commission on Certification of Physician Assistants ("NCCPA"); or

4. In the case of persons having graduated from a program for the education and training of physician assistants in New Jersey, proof that an application has been made to take the next examination scheduled by the NCCPA or proof that the examination has been taken and results are forthcoming. Failure of that examination shall disqualify the physician assistant from continued participation in a program, until such time as he or she has received certification from NCCPA.

(d) The tasks which are delegable pursuant to (a) above subject to the supervision as required by (f) below are as follows. In no case may a physician assistant prescribe, administer or dispense medication without the supervising physician's order or direction.

1. Obtaining and recording of case histories, performing an appropriate preliminary physical examination (which shall not include rectal, pelvic or breast examinations unless expressly specified in the program protocol), presenting the resulting data to the physician and making pertinent progress note entries. All entries by a physician assistant in the clinical record should be appropriately signed and followed by the designation "P.A.". Such histories and physicals performed by a physician assistant shall not be a substitute for that required of the physician as part of an admitting process;

2. Performing non-invasive laboratory procedures and related studies or assisting licensed personnel in the performance of invasive laboratory procedures and related studies;

3. Giving injections, administering medications, and requesting diagnostic studies which have been ordered, prescribed or directed by the supervising physician or are specified in a protocol approved by the program director (which shall not include intravenous injections or medications unless specified in the program protocol);

4. Suturing and caring for wounds including removing sutures and clips and changing dressings, except that physicians may not delegate to physican assistants the care of facial wounds or traumatic wounds requiring suturing in layers or infected wounds and shall in all cases retain the responsibility for post-operative care;

5. Providing patient counseling services and patient education consistent with orders made by the supervising physician;

6. Assisting the supervising physician in delivery of services to patients, including recording progress notes, requesting non-invasive diagnostic studies (that is, studies that do not involve the physical penetration of the body for the purpose of the study, except for routine administration of intravenous fluids) transcribing or executing studies, transcribing or executing specific orders at the direction of the supervising physician, recording detailed narrative case summaries; and

7. Assisting a supervising surgeon in the operating room when a qualified first assistant surgeon is not required pursuant to N.J.A.C 13:35-4.1.

(e) Before any tasks as set forth at (d) above may be undertaken by a qualified physician assistant, the patient shall have been notified verbally (and if appropriate by supplemental printed material) that the physician assistant:

1. Is not a physician; in addition, the physician assistant shall conspicuously wear an identification tag which uses the term "physician assistant";
2. May perform services delegated and directed by the supervising physician; and
3. Will notify the supervising physician if the patient elects to be treated directly by the physician.

(f) Any participating physician may delegate specific tasks consistent with (d) above to a qualified physician assistant, so long as the physician:

1. Is in good standing with the Board and possesses unrestricted privileges at the sponsoring institution and a knowledge of pertinent regulations;
2. Maintains proper supervision in the form of direct continuing presence or intermittent presence while on site, with constant accessibility through electronic communication;
3. Engages in active and continuing overview of the activities of the physician assistant to ensure that delegated tasks are being implemented, such as would be provided through the personal and regular review of patient records and periodic education and review sessions during which specific conditions, protocols, procedures and patients are discussed;
4. Establishes written transport and back-up procedures to be implemented when the supervising physician is not on the premises to provide for immediate care of patients needing emergency care beyond the physician assistant's scope of practice;
5. Countersigns all chart entries documenting his or her direction; test and treatment orders shall be countersigned within 24 hours;
6. Confirms in writing, to the director of the program, that he or she is professionally and legally responsible for all of those services rendered by physician assistants under his or her direction; and
7. Complies with program protocols as to applicable ratios of physicians to physician assistants which are to be designed to ensure that each supervising physician will have sufficient experience with an assigned physician assistant to adequately evaluate his or her work.

(g) The director of an approved program shall give notice to the Board and immediately revoke or suspend the privilege of any physician assistant participating in the program if the director has information indicating that the physician assistant:

1. Has obtained certification through fraud, deception or misrepresentation;
2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
3. Has engaged in gross negligence, gross malpractice or gross incompetence or repeated acts of malpractice, negligence or incompetence;
4. Has been convicted of a crime or has pleaded guilty, *non vult,* or *nolo contendere* to a crime or any other offense which relates adversely to the physician assistant's delegated activities;
5. Has had his or her authority to engage in the activities of a physician assistant revoked, suspended, rescinded or limited by any other state, agency or authority;
6. Is incapable of discharging the functions assigned by the supervising physician;
7. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or
8. Has engaged in activities or performed tasks without physician direction and supervision, beyond the scope of those permitted herein or beyond the abilities, experience or training of the physician assistant or the supervising physician.

(i) The director of an approved program shall give notice to the Board and immediately revoke or suspend the privilege of any supervising physician participating in the program if the director has information indicating that the physician, in the course of performing responsibilities as a supervisor:

1. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
2. Has engaged in gross negligence, gross malpractice or gross incompetence or repeated acts of malpractice, negligence or incompetence;
3. Has been convicted of a crime or has pleaded guilty, *non vult,* or *nolo contendere* to a crime or any other offense which relates adversely to the physician assistant's delegated activities;
4. Has had his or her license or authority to practice revoked, suspended, rescinded or limited by any other state, agency or authority;
5. Is incapable of discharging the functions as a supervising physician;
6. Has exhibited any behavior or engaged in any conduct reasonably demonstrating a mental impairment or substance abuse; or
7. Has allowed or permitted a physician assistant to engage in tasks without physician direction and supervision, beyond the scope of those permitted under this rule or beyond the abilities, experience or training of the physician assistant or the supervising physician.

(j) The director shall not reinstate any revoked participant without the approval of the Board.

(k) Any physician who delegates tasks to a person not in accordance with the requirements set forth in this rule or who allows a physician assistant to perform tasks in violation of (d) above shall be deemed to have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e).

(l) This section shall be operative six months after the date of adoption. Two years following that operative date, the Board shall determine after study and consultation with such experts as it may deem warranted whether the program established pursuant to this rule should be continued, altered or expanded.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Milk Dealers and Stores

Adopted Concurrent Repeals: N.J.A.C. 2:52-6 and 2:53-3 and 4

Adopted Concurrent New Rules: N.J.A.C. 2:52-7 and 2:53-6 and 7

Proposed: May 21, 1990 at 22 N.J.R. 1629(a).
Adopted: June 22, 1990 by Vin G. Samuel, Acting Director, Division of Dairy Industry.
Filed: June 22, 1990 as R.1990 d.355, **without change**.

Authority: N.J.S.A. 4:12A-1 et seq.; specifically 4:12A-7.

Effective Date: June 22, 1990.
Expiration Date: May 1, 1995, N.J.A.C. 2:52; March 3, 1991, N.J.A.C. 2:53.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter expressed concern that the use of a variable cost standard would not provide the market climate to support a viable dairy industry and that the notice requirement was not adequate to accomplish its purpose. Concerning the cost standard, this commenter declared that the use of a variable cost standard as a pricing determinant for wholesale control "fails to encourage resale sales at levels which discourage the use of milk as a loss leader." The commenter further states that the use of milk as a loss leader by large retail outlets will disadvantage small business distributors and subdistributors because larger outlets can offset losses on milk sales by charging higher prices for other products. After making these two observations, the commenter stated that "a depressed price for milk directly threatens the viability of the business."

RESPONSE: While the Division agrees that the total cost standard included in the now repealed regulations (and in other State milk control programs) is preferred, the use of the variable cost standard was mandated by the Federal court. Also, the use of the variable cost standard provides a floor to prevent the downward spiraling of prices to unreasonably low levels. If market pressures develop which force small businesses to discontinue the sale of milk and limit the supply of milk to consumers, new rules will need to be considered.

The presently proposed rules should be adopted for the benefit of the dairy industry and consumer.

COMMENT: Several commenters declared that New Jersey should abandon milk price controls which prohibit sales below cost. Instead, for economic regulation purposes, milk should be treated in the same manner as all other commodities; below cost sales should be prohibited only if it is shown that such sales are undertaken with predatory intent.

RESPONSE: The Milk Control Act does not mandate the use of a predatory intent requirement. The inclusion of such an element of intent would make the rules practically unenforceable.

The fact that some other states have enabling statutes which prohibit sales below cost only when the sale is with predatory intent or effect is not persuasive. The definition of cost in the other states in all instances is based upon a total cost standard, and some states have abandoned their regulations because of the inability to prove intent. The rules prohibiting sales below cost per se will best serve the interest of the industry and consumer.

In 1985, New Jersey's Superior Court, Appellate Division, found the regulations prohibiting the sale of milk below cost was a constitutional exercise of the policy powers under the Milk Control Act. See *Cumberland Farms, Inc. v. Moffett*, 218 *N.J. Super.* 330 (App. Div. 1985).

COMMENT: Predatory pricing of milk is unlikely to occur. Thus, the only effect of a regulation which prohibits milk sales below average variable cost is to prevent promotional pricing.

RESPONSE: Legislative concern regarding predatory pricing of milk animated the passage of New Jersey's Milk Control Act. The fact that this Act remains effective reflects the Legislature's belief that milk is a product which remains especially susceptible to predatory pricing.

Summary and assumption-laden discussions regarding the pricing of non-agricultural items such as calculators and televisions are unhelpful in assessing whether predatory pricing may occur with regard to milk. Further, several of the assertions made concerning milk processing/distributing are tenuous (for example, that milk processing operations may be initiated inexpensively). Due to its high perishability, milk is unique even among other agricultural commodities which may be frozen or more readily converted to other products than packaged fluid milk may be converted. Accordingly, milk prices should be regulated in the proposed manner.

COMMENT: The terms of the proposed rules are inconsistent with the terms of the settlement in *Beyer Farms, Inc. v. Brown, et al.*; Docket No. 87-3017.

RESPONSE: The proposed rules contain substantial changes from previously existing rules and are entirely consistent with the terms of the settlement. The cost standard was changed from "total average cost" to "average variable cost," prior approval authority with regard to the change of milk suppliers was eliminated and a requirement that 48 hours notice be supplied to the current supplier was implemented.

COMMENT: Compliance with retail milk price controls imposes "learning costs" upon retailers.

RESPONSE: The milk price rules are straightforward. Any minor learning costs imposed are more than offset by the benefits of such rules.

COMMENT: A retail store which has sold milk below its average variable cost has increased its sales volume of milk and other products. Other stores would experience similar benefits if retail price controls were abolished.

RESPONSE: The referenced increases in sales volume have occurred in a protected environment in which proximate retail outlets have abided by the law. If retail price controls were abolished, *all* retail outlets could sell milk below cost. In this context, small stores would be disadvantaged significantly vis-a-vis large stores which could charge extremely low prices for milk because they could spread their losses on milk among more products. Thus, elimination of retail price controls would be more likely to harm small stores than to help them.

Further, purported savings to consumers as a result of below cost retail milk sales are illusory. Retailers who charge below cost prices for milk must compensate for losses sustained from milk sales by charging commensurately higher prices for other products.

COMMENT: If a below cost prohibition is to be applied, "cost" should be defined as "invoice cost" because "invoice cost" is the cost standard used in regulations regarding sales of alcoholic beverages.

RESPONSE: Predatory pricing is more likely to occur with regard to milk than it is with regard to alcohol, because milk is a more perishable product than alcohol. Therefore, an "invoice cost" standard should not be used with regard to milk.

COMMENT: The notice requirement would more effectively accomplish its purpose if (1) notice were given at least two full business days prior to any change of source and supply, (2) if written, receipted notice were required and (3) the rule were clarified "so that acceptance of the next regularly scheduled delivery from the present supplier was not an arguable excuse of failure to provide notice."

RESPONSE: The proposed 48 hour notice requirement is a reasonable time period to allow a distributor to obtain notice that he need not load his truck with milk on the scheduled delivery day.

The requirement that a store which fails to provide notice must accept the next regularly scheduled delivery from its present supplier serves as an incentive to provide the required notice in a timely manner. As such, acceptance of the next delivery is not "an arguable excuse" for failure to provide notice.

The proposed notice rule should be adopted and tested.

COMMENT: Three commenters declared that the 48-hour notice requirement is unique to the milk industry and that the Division of Dairy Industry should not, through the application of this requirement, involve itself in private disputes between milk distributors and retailers. The only possible justification for the notice requirement is to protect farmers, and stricter bonding requirements would serve this function better than the notice requirement. One of these commenters further noted that the requirement "takes away an important bargaining tool for retailers" in their negotiation of price terms with wholesalers.

RESPONSE: The notice requirement takes away none of the bargaining power of a store but simply prevents a dealer from loading a per-

ishable, dated product that will be refused by a customer and discourages nonpayment of monies owed by retailers to distributors. As such, the notice requirement satisfies the concerns of United States District Judge Wolin regarding fair treatment of milk distributors. The notice requirement is essential to the approximately 275 small subdealers serving New Jersey stores. If these subdealers are forced out of business many small inner city stores and restaurants would be without service and availability of milk to consumers would be restricted.

The use of a security fund to protect New Jersey farmers has been carefully considered but found not to be appropriate for a state such as New Jersey with a relatively small producer base.

COMMENT: Inasmuch as the proposed rules, in their preamble, state that a store may change their supplier without prior notice to or approval by the Director, there should be no conditions subsequent to such changes. Nor, for that matter, should the Director require either the store or the new supplier to certify to anything.

RESPONSE: At the Federal court's direction, prior approval authority has been forfeited. However, in order to effectively monitor the market, the Director requires accurate information regarding price offers made by dealers to retailers. The proposed rules merely establish a mechanism through which such information can be collected.

Full text of the adopted concurrent repeals may be found in the New Jersey Administrative Code at N.J.A.C. 2:52-6 and 2:53-3 and 4.

Full text of the adopted concurrent new rules follows.

SUBCHAPTER 7. SALES BELOW COST; DEALER

2:52-7.1 Sales below variable cost prohibited

It shall be unlawful and a violation of these rules for any dealer licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer to sell milk and milk products within the State of New Jersey, or for sale in the State of New Jersey, at less than the variable cost thereof as defined in N.J.A.C. 2:52-7.2; but nothing in this section shall prevent a dealer from meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-7.2 Variable cost defined

The term "variable cost" as used in this subchapter shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other variable costs associated with the business of the dealer including the cost of material, labor, receiving, cooling, processing, manufacturing, storing and distributing the products sold; selling expense, maintenance charges, delivery expense, gifts, and free service allocated proportionately to each unit of product sold in accordance with generally accepted accounting principles. The proportioned allocation may be adjusted to reflect efficiencies in packaging different sized containers. Not included in these costs are office expense, salaries of executives and officers, interest, rent, depreciation, license fees, taxes, insurance, advertising, and advertising allowances.

2:52-7.3 Certain costs to be averaged

(a) In computing cost as used in this subchapter, all variable costs of doing business with the exception of raw products and ingredient costs shall be based on average costs for the dealer in question during the previous 12 months, adjusted to appropriately reflect any significant changes in costs of operation in the averaging period or such shorter time as the licensee may have been in business.

(b) In determining cost for a specific account, the value of any gifts and free services must be included in cost to be averaged for the 12-month period, except where a written contract for a specified term exists between the dealer and the recipient customer, the value of such gifts and free services may be amortized over the remaining term of the contract.

(c) All costs of delivery shall be based on average variable costs for the dealer in question during the previous 12 months and allocated proportionately to each unit of product delivered except where specific delivery cost records are maintained for each method and size of delivery, the actual direct cost of the delivery shall be the basis of the allocation and shall be prorated to each unit of product included in the delivery.

2:52-7.4 Raw milk costs defined

As used in this subchapter, the cost for raw and the reconstituted milk shall be the total cost of acquiring the milk or butterfat, or milk solids-not-fat, but shall not be less than the applicable class price under the joint State-Federal orders in the respective New Jersey order areas or in the case of butterfat and milk solids-not-fat, not less than the current market price for such products as announced by the United States Department of Agriculture for the New York City market.

2:52-7.5 Enforcement

The Director shall enforce the provisions of this subchapter by proceeding pursuant to N.J.S.A. 4:12A-39 (monetary penalties) or 4:12A-44 (actions to restrain violations). Proceedings to revoke or suspend, or to refuse to renew, the license of any milk dealer who violates the provisions of this subchapter may be commenced by the Director where the licensee has continued in a course of dealing of such nature to satisfy the Director of that dealer's inability or unwillingness properly to conduct the business of receiving or selling milk in accordance with the provisions of the Milk Control Act, N.J.S.A. 4:12A-1 et seq. Such proceedings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 6. SALES BELOW COST; STORES

2:53-6.1 Sales below variable cost prohibited

It shall be unlawful and a violation of this subchapter for any licensed store to offer for sale or sell milk or milk products at less than the variable cost thereof as defined in N.J.A.C. 2:53-6.2; but nothing in this section shall prevent a store from meeting the price or offer of a competitor for a product or products of like quality sold in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:53-6.2 Variable cost defined

(a) Except as hereinafter provided, the term "variable cost" as used in this subchapter shall include the net invoice cost of the milk and milk products plus all other variable costs related to the sale of milk and milk products. Such costs will be determined in accordance with generally accepted accounting principles and be allocated proportionately to each unit of product sold. These costs shall include labor, receiving, cooling, storing, selling, distributing, maintenance, delivery, gifts, and free service allocated to each unit of product sold. Not included in these costs are salaries of those engaged in administrative functions, office expenses, interest, rent, depreciation, license fees, taxes, insurance and advertising.

(b) In the absence of proof of a smaller amount, a store may add (as a proxy for total variable cost) five percent of the net invoice cost to determine the lawful selling price for milk and milk products. Also, pursuant to N.J.A.C. 2:53-6.1, a store may meet any price or offer of a competitor.

SUBCHAPTER 7. NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

2:53-7.1 Notice of intent

(a) Unless the licensed store and the present supplier(s) mutually agree to different credit and notice terms, a licensed store may change source of supply or engage an additional supply of milk and milk products once it has complied with each of the following requirements:

1. A store shall pay all indebtedness, less any legal rebates and discounts earned, for fluid milk and milk products purchased from the present supplier(s).

2. A store shall give the present supplier at least 48 hours actual notice of intent to change suppliers. Actual notice shall be given

orally or in writing reasonably calculated to be received 48 hours prior to the date and time of the proposed change. Unless the store gives at least 48 hours prior notice to its existing supplier, the store shall not refuse to accept the next scheduled delivery from the present supplier.

(b) The licensed store shall give notice to the Division of Dairy Industry within three business days of an agreement to change or add suppliers. Such notice shall be filed by the store, or the new supplier on its behalf, on the forms provided for that purpose by the Director.

(c) A store changing suppliers without complying with the requirements of (a) above may be cited for a violation of this section. A cited store may request a hearing before an Administrative Law Judge pursuant to the Administrative Procedure Act and the Uniform Administrative Procedure Rules, or at an informal hearing pursuant to N.J.S.A. 4:12A-43, provided that, if the total amount owed is in controversy, the amount not in controversy must be paid and the balance referred to the Director for mediation pursuant to N.J.S.A. 4:12A-24.

(a)

DIVISION OF REGULATORY SERVICES

Commercial Fertilizer and Soil Conditioner Commercial Values

Adopted Amendment: N.J.A.C. 2:69-1.11

Proposed: May 7, 1990 at 22 N.J.R. 1295(b).
Adopted: June 21, 1990 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: June 22, 1990 as R.1990 d.353, **without change.**

Authority: N.J.S.A. 4:9-15.26 and 15.33.

Effective Date: July 16, 1990.
Expiration Date: November 7, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial value of primary plant nutrients to be:

1. Nitrogen:	$4.00 per unit.
2. Water Insoluble Nitrogen:	$7.50 per unit.
3. Available phosphoric acid	$3.00 per unit.
4. Soluble potash:	$3.00 per unit.

(b) These values shall be effective July 1, 1990 through June 30, 1991.

(b)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

Adopted Amendments: N.J.A.C. 2:71-2.2 through 2.6

Proposed: May 7, 1990 at 22 N.J.R. 1296(a).
Adopted: June 21, 1990 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: June 22, 1990 as R.1990 d.354 **without change.**

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: July 16, 1990.
Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:71-2.2 Use of the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" Logos, (referred to as the "logos") on containers of certain fresh fruits and vegetables

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

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

(e) All applications approved for issuance of licenses and registration numbers shall have the license granted for the period of one year commencing April 1. Interim licenses and registration numbers may be granted to qualified packers for the remainder of the license year. Applications shall be submitted at least 20 days prior to application approval. The Department shall approve or deny applications within 20 days of receipt.

2:71-2.3 Fee and reporting requirements for Jersey Fresh Quality Grading Program participation

(a) A fee of $30.00 shall accompany the application form and shall be made payable to the New Jersey Farm Products Publicity Fund. If an applicant is deemed ineligible, the fee shall be refunded.

(b) Licensees packing Jersey Fresh Quality Grading program commodities may mark with self-adhesive labels, rubber stamp or use imprinted fiberboard containers to identify those commodities as being packed under the "logo" program. For required markings, see N.J.A.C. 2:71-2.5.

(c) A copy of each shipping invoice or a statement shall be supplied to the Department by the licensed person, firm, partnership, corporation or co-operative that transfers ownership of containers or stamps bearing the "logo" to the licensed registrant.

(d) Each licensed packer shall submit by December 31 of each license year a report, on forms supplied by the Department, indicating the number of containers packed by commodity under the Jersey Fresh Quality Grading Program. Failure to timely supply the above may be cause for denial or delay of licensing for the following licensing year.

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, asparagus, beets (bunched), beets (topped), blueberries, broccoli greens, cabbage (domestic, savoy and red), cabbage (Chinese), collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers, cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, eggplants, endive, escarole, herbs (fresh), kale, kohlrabi, bib Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, peaches, hot peppers (green or red), sweet peppers, sweet peppers (yellow, bell type), sweet potatoes, white potatoes, radishes (bunched), raspberries, romaine, shallots (topped), snap beans, spinach plants, strawberries, summer squash (yellow or green), fall and winter type squash (butternut, acorn and spaghetti), swiss chard, tomatoes (fresh market), cherry tomatoes, turnips (topped), turnip greens, and watermelon (sugar baby).

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) Each container bearing the "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. Each container stamped or imprinted with the "logo" must be identified by the licensed packer's registration number, which also shall be no less than three-eighths inch in height. The registration number shall be printed or marked on the carton in close proximity to the "logo" or the name and address of the registrant. All imprinted containers must also have "Produce of U.S.A. (NJ)" imprinted no less than three-eighths inch in height. All containers, packages and packaging materials shall be new.

(b) Commodities shall be graded, packed, identified and contained as follows:

1. (No change.)

2. Asparagus shall be U.S. No. 1 grade with not less than two-thirds of the stalk length green color. Stalks shall be of the following

diameter classifications. Small—five-sixteenths inch to less than eight-sixteenths inch in diameter. Medium—eight-sixteenths inch to less than eleven-sixteenths in diameter. Large—eleven-sixteenths inch to less than fourteen-sixteenths in diameter. Small to medium—five-sixteenths inch to less than eleven-sixteenths inch in diameter. Medium to large—eight-sixteenths inch to less than fourteen-sixteenths inch in diameter. Stalks shall be well trimmed. When packed loose, all containers shall have a tight pack.

3.-5. (No change.)

6. Broccoli greens shall be U.S. No. 1 grade. The pack shall be for 12 to 16 bunches per container. All containers shall have at least a fairly tight pack.

7. (No change.)

8. Cabbage, Domestic type or savoy type, shall be U.S. No. 1 or U.S. No. 1, Green grade, domestic type heads shall be two pound minimum weight to five pound maximum weight, savoy type heads shall be one and a half pound minimum weight to four pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. All containers, except sacks, shall have a tight pack. The U.S. No. 1, Green grade requires that the heads be fairly well trimmed.

9. Cabbage (red type) shall be U.S. No. 1 or U.S. No. 1 new red grade, with the heads being of two pound minimum weight to five pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. The U.S. No. 1 new red grade requires that the heads be fairly well trimmed. All containers, except sacks, shall have a tight pack.

10. (No change in text.)

11. Green Corn shall be U.S. Fancy grade with a minimum count of 48 ears per container for large varieties and 54 ears per container for all other varieties, and when packed in crates, the pack shall be tight. All green corn shall be hydrocooled. All containers shall be marked "hydrocooled".

Existing 11.-16. recodified as 12.-17. (No change in text.)

18. Dandelion greens shall be U.S. No. 1 grade. All containers shall have at least a fairly tight pack.

Existing 17.-23. recodified as 19.-25. (No change in text.)

26. Kohlrabi (green or purple) shall consist of plants of similar varietal characteristics which bulbs are hard and tops are not wilting and which are free from decay, seedstems, growth cracks and dirt, bulbs and tops are not materially affected by discoloration, freezing, disease, insects and mechanical or other injury. Roots shall be cut so that they extend no more than one-half inch beyond the point of attachment of the bulb. Each bulb shall have a minimum of two inches and a maximum of four inches in diameter. The pack shall be for 12 bunches per container. All containers shall have at least a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight of bunches, are provided. Not more than a total of 10 percent in any lot may fail to meet the required specifications, including not more than five percent for defects seriously affecting the lot including not more than one percent for decay. For application of tolerances, see N.J.A.C. 2:71-2.6.

27. Leeks shall be fairly clean, tops and bulbs shall be characteristic color. Tops and bulbs must not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Plants shall be free from decay. If tops are trimmed, it must be done so as not to materially affect the appearance of the individual plant. In order to allow for variations incident proper grading and handling, the following tolerance, by weight of bunches are provided: 10 percent for plants in any lot which fail to meet the requirements, including therein not more than one percent for plants affected by decay. All containers shall have a tight pack. For application of tolerance, see N.J.A.C. 2:71-2.6.

Existing 25.-32. recodified as 28.-35. (No change in text.)

36. Hot peppers (green or red) shall consist of peppers of similar varietal characteristics which are firm; long hot peppers may have curved shape; all other varieties must be fairly well shaped for the variety and free from sunscald and decay, and not materially affected by freezing injury, hail, scars, sunburn, discoloration, disease, insects, mechanical or other injury. In lots designated as green shall be full green color for the variety, in lots designated as red. One hundred percent of the peppers shall show full red color. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided. Ten percent in any lot which fails to meet the requirements, but not more than one-half of this amount, or five percent, shall be allowed for peppers which are seriously affected, including therein not more than two percent for peppers affected by decay. All containers shall be well filled. For application of tolerance, see N.J.A.C. 2:71-2.6.

37. Sweet peppers (Green or Red, Bell type) shall be U.S. No. 1 grade, or better. Minimum size shall be two and one-half inch minimum diameter and two and one-half inch minimum length. Containers shall be packed to a maximum average of no more than 90 peppers per container. Large-Average no more than 75 peppers per container. Extra Large-Average no more than 65 peppers per container. In lots designated U.S. No. 1 Red, 100 percent of the peppers shall show full red color. All containers shall be at least fairly well filled.

38. Sweet peppers (Yellow, Bell type) shall be U.S. No. 1, as specified by the U.S. Standard for Sweet Peppers, for defects and tolerances with 100 percent of the peppers showing full yellow or orange color. Minimum size and/or count pack shall be as specified under the Sweet Peppers (Green and Red, Bell type) requirements. All containers shall be at least fairly well filled.

Existing 35.-40. recodified as 39.-44. (No change in text.)

45. Snap beans shall be U.S. No. 1 grade. All containers shall be well filled.

46. Spinach plants shall be U.S. No. 1 grade. All containers shall have at least a fairly tight pack.

47. Squash, Fall and Winter (acorn, butternut and spaghetti) shall be U.S. No. 1 grade and shall meet the following size specifications: acorn shall be a minimum of one pound and a maximum of three pounds in weight. Butternut shall be a minimum of one and one-half pounds and a maximum of four pounds in weight. Spaghetti must have a creamy yellow color, pack shall be for 12 to 16 squash per container, with no more than one under or one over the specified count, but the average must meet the count specified for the pack. All containers shall be well filled.

Existing 42.-48. recodified as 48.-54. (No change in text.)

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Application of tolerances" means, in the case of cabbage (Chinese), kohlrabi, hot peppers (green and red), shallots (topped), swiss chard, leeks and herbs (fresh), that the contents of individual packages in the lot are subject to the following limitations:

1. For a tolerance of 10 percent, individual packages may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified.

2. For a tolerance of less than 10 percent, individual packages may contain not more than double the tolerance specified, provided that at least one defective specimen may be permitted in any package and provided, further, that the average for the entire lot is within the tolerance specified.

. . .

"Fairly tight" means, in the case of eggplants, beets (bunched), broccoli greens, collard greens, dandelion greens, endive, escarole, herbs, kale, kohlrabi, lettuce (green and red leaf), mustard greens, common green onions, radishes (bunched), spinach plants, swiss chard, and turnip greens that the package is sufficiently filled to prevent any appreciable movement of the product and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall not be more than three-quarter inch below the top edge of the carton. In the case of nectarines and peaches packed in mold or cell compartments, that they are of the proper size for the mold or cell compartments in which they are packed and that the molds or cells are filled in such a way

that there is no more than slight movement within the mold or cells, and that the pad or tray over the top layer must be in contact with the lid.

. . .

"Fairly well filled" means that in the case of beets (topped), cucumbers, okra, cubanelle peppers (green or red), sweet peppers (green, red or yellow, bell type), sweet potatoes, squash (summer), shallots (topped), tomatoes (fresh market), and turnips (topped), except in sacks, are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of peaches, the container is level full and there is practically no movement of the fruit when the container is closed. In the case of nectarines, the contents of the container may be slightly below the top edge but not more than one-half inch.

"Tight" means, in the case of iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. In the case of asparagus (loose), cabbage (domestic, savoy red and Chinese), fennel, leeks, parsley and romaine, that the packages are sufficiently well filled so as to prevent the product from moving in the container, but not overly filled so that injury to the product results.

"Tolerances" means, in the case of packages identified with the Premium Jersey Fresh "logo", the applicable tolerance will be two percent less than the total tolerance stated in the U.S. Standard or the Jersey Fresh Regulations for the commodities in the premium program.

. . .

"Well filled" means, in the case of blueberries, cherry tomatoes, raspberries and strawberries, that the fruit be one-quarter to one-half inch above the rim of the cup. In the case of snap beans and fall and winter squash (acorn, butternut and spaghetti) they shall be in contact with the cover.

. . .

(a)

DIVISION OF RURAL RESOURCES

State Soil Conservation Committee

General Provisions—Soil Erosion and Sediment Control Act; Soil and Water Conservation Project Cost Sharing—Eligible Practices and Procedural Rules

Readoption: N.J.A.C. 2:90

Proposed: May 7, 1990 at 22 N.J.R. 1299(a).
Adopted: June 18, 1990 by the State Soil Conservation Committee, Arthur R. Brown, Jr., Chairman.
Filed: June 22, 1990 as R.1990 d.356, **without change.**

Authority: N.J.S.A. 4:24-3, 4:24-42 and 4:1C-24.

Effective Date: June 22, 1990.
Expiration Date: June 22, 1995.

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. 2:90.

BANKING

(b)

CEMETERY BOARD

Temporary Storage

Adopted New Rule: N.J.A.C. 3:41-7.4

Proposed: April 16, 1990 at 22 N.J.R. 1185(a).
Adopted: June 22, 1990 by the New Jersey Cemetery Board, William L. Ingling, Executive Director.
Filed: June 22, 1990 as R.1990 d.357, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 8A:2-2.

Effective Date: July 16, 1990.
Expiration Date: October 16, 1990.

Summary of Public Comments and Agency Responses:

The Cemetery Board received two public comments regarding the proposed rule from trade associations.

COMMENT: Both commenters indicated that the receptacle placed in temporary storage should not contain the cause of death. The presence of this information on the storage receptacle could be an unpleasant reminder to the family of the decedent. Further, there is a State policy to protect the confidentiality of specific causes of death.

RESPONSE: The Cemetery Board agrees with this comment and has deleted the requirement that the receptacle contain the cause of death.

COMMENT: One commenter stated that, because of the language of N.J.A.C. 13:36-8.10 which governs funeral director responsibility for interments, the proposed new rule is not binding on funeral directors until the State Board of Mortuary Science amends N.J.A.C. 13:36-8.10.

RESPONSE: The adopted rule does not conflict with rules adopted by the State Board of Mortuary Science. Nevertheless, the Cemetery Board would support amendment of N.J.A.C. 13:36-8.10 consistent with this rule.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

3:41-7.4 Temporary storage prior to final entombment or interment within a single cemetery

(a) A cemetery company may temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for not more than four years. The cemetery company may transfer the remains from the place of temporary storage to the place of final entombment or interment without obtaining a disinterment permit and without the presence of a licensed funeral director if both places are within a single cemetery.

(b) A cemetery company may conduct temporary storage and transfer under this section only if the words "temporary storage" along with the location of the temporary storage within the cemetery appear on the death certificate and burial permit.

(c) The receptacle to be placed in temporary storage which contains the human remains shall be clearly, legibly and durably marked by the licensed funeral director whose name appears on the death certificate and burial permit, with the decedent's full name*[,]* ***and*** date of death *[and the cause of death]* as stated on the death certificate and burial permit; and with the full name, mailing address and telephone number of both the responsible next of kin as defined under N.J.S.A. 8A:5-18, and the designated licensed funeral director or funeral establishment whose name appears on the death certificate and burial permit.

(d) Prior to transfer from the place of temporary storage to the place of final entombment or interment pursuant to this section, the cemetery company shall notify in writing the licensed funeral director or funeral establishment that originally supervised the delivery to temporary storage or another licensed funeral director or funeral establishment of the next of kin's choice, and the responsible next of kin as defined by N.J.S.A. 8A:5-18, at least seven days before the transfer from the temporary storage.

(e) A cemetery company may not pursuant to this section temporarily store or transfer the body of a person who died of a communicable disease as defined in N.J.S.A. 26:6-38.

(f) For purposes of this section "properly constructed receiving vault" means a container, made of concrete, slate, brick, steel, or other similar durable material, used or intended to be used for the temporary placement of a casket in which human remains have been placed and may be a space in a mausoleum used or intended to be used to entomb human remains.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Medical and/or Psychological Disqualification Appeals

Adopted Amendment: N.J.A.C. 4A:4-6.5

Proposed: May 7, 1990 at 22 N.J.R. 1300(a).
Adopted: June 19, 1990 by the Merit System Board, Andrew Weber, Commissioner, Department of Personnel.
Filed: June 20, 1990 as R.1990 d.346, **without change.**

Authority: N.J.S.A. 11A:4-1 and 45:14B-1 et seq.

Effective Date: July 16, 1990.
Expiration Date: June 6, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The president of the New Jersey Psychological Association stated that the Association opposes the proposed amendment to N.J.A.C. 4A:4-6.5 because, although in compliance with statutory law, it would lower the standards for evaluations in the psychological disqualification process. The Association wishes for only licensed psychologists to be involved in this process.

RESPONSE: The Merit System Board has decided to adopt the amendment as proposed. As noted in the proposal, current law allows an individual who is not a licensed psychologist to practice psychology at a State, county or local government institution or agency as long as all activities are in accordance with the duties of the individual's title. It would not be appropriate for the Department of Personnel to require, with respect to the psychological disqualification process, a higher standard than permissible under law for other psychological services, which must be performed. Furthermore, the merit system examination process provides added assurance that employees in the Clinical Psychologist title series, although not required to be licensed psychologists, are qualified to perform psychological services.

Full text of the adoption follows.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (e) below for report requirements.

3. (No change in text.)

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

COMMUNITY AFFAIRS

(b)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Notice of Administrative Correction

Substantive Rules
Municipal Adjustments
Adjustment Process

Adopted Amendment: N.J.A.C. 5:92-8.2

Summary of Public Comments and Agency Response

Take notice that the New Jersey Council on Affordable Housing has discovered a printing error in the text of the published response to the comment submitted on the amendment to N.J.A.C. 5:92-8.2 proposed in the March 5, 1990 New Jersey Register at 22 N.J.R. 730(a). The notice of adoption containing the error had appeared in the May 21, 1990 New Jersey Register at 22 N.J.R. 1557(b). The word "variability" in the last line of the response is a typographical error. The correct word is "viability." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7 in order to accurately reflect the Council's response to the comment received.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF COASTAL RESOURCES
DIVISION OF WATER RESOURCES

Ninety-Day Construction Permit Rules

Readoption with Amendments: N.J.A.C. 7:1C

Proposed: March 5, 1990 at 22 N.J.R. 731(a).
Adopted: June 11, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: June 15, 1990 as R.1990 d.343, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:1D-9 and 13:1D-29 et seq., specifically 13:1D-33.

DEP Docket Number: 005-90-02.

Effective Date: June 15, 1990, Readoption; July 16, 1990, Amendments.
Expiration Date: June 15, 1995.

Summary of Public Comments and Agency Responses:

This rule was proposed on March 5, 1990. Secondary notice was provided by publication in The Atlantic City Press, The Asbury Park Press, The Trenton Times, The Bridgeton Evening News, The Bergen Record, The Star Ledger and The Courier Post. A public hearing was held on April 10, 1990. No members of the public attended. Three commenters submitted written comments during the comment period which closed on April 23, 1990.

COMMENT: One commenter commended the Department for decreasing the fees for certain upland waterfront development projects in N.J.A.C. 7:1C-1.5(a).

RESPONSE: The Department acknowledges this comment in support of the proposal.

COMMENT: Although one commenter supported the changes at N.J.A.C. 7:1C-1.8(a) regarding when the 90-day period for the review of a permit application begins, two commenters objected to the changes. These commenters stated that the modifications would allow the Department to delay the commencement of the 90-day clock indefinitely every time it requested additional information from an applicant.

RESPONSE: The reference to additional information at N.J.A.C. 7:1C-1.8(a) refers only to that additional information requested by the Department within 20 working days of receipt of an application to determine if the application is complete and acceptable for review. This type of information request differs from other Department requests for ad-

ditional information that occur once the application has been deemed administratively complete for filing. The Department usually makes these later requests in order to clarify technical information submitted in a permit application after the Department conducts an initial review of the project and/or site. However, as there is some confusion regarding this provision, the Department has further clarified N.J.A.C. 7:1C-1.8(a) to provide that the request for additional information refers only to the information request made by the Department within 20 working days following the filing of a permit application when the Department has determined that the application is not complete and acceptable for review, not to the requests made after the Department has declared an application administratively complete for filing.

COMMENT: Several commenters suggested that the Department "stop the clock" when the Department requests additional information on an application and restart it when the information is provided.

RESPONSE: The Department does not have the authority to stop the 90-day clock once an application is deemed complete and the review process has begun. However, an applicant who believes he does not have adequate time in which to address all the Department's concerns may request an extension of the 90-day period pursuant to N.J.S.A. 13:1D-31, N.J.A.C. 7:1C-1.8(e) and the individual permit program rules.

COMMENT: One commenter suggested that the Department should add a provision that would require the Department to use a published checklist when deciding if an application is complete. The commenter further suggested that this checklist could be modified by mutual consent of the Department and the applicant during the pre-application conference.

RESPONSE: The Department does not see a need for the commenter's suggested provision. The Department lists the items required for a complete application package in each of the individual permit program rules affected by N.J.A.C. 7:1C. However, until the Department begins an in-depth review of a project, it may not be aware of all the technical information it will need from an applicant. The need for this information may only become evident later in the review process, after the optional pre-application conference. Thus, any list developed in the pre-application conference will still have to be modified based on the Department's review. A requirement, therefore, to make the pre-application conference the forum in which the Department and the applicant must define all of the technical information necessary for a complete review of an application package would not enhance the efficiency of the existing review procedure.

COMMENT: One commenter suggested that the Department delete the requirement at N.J.A.C. 7:1C-1.3(b) for notification of an applicant's intent to file a permit with certain local agencies since the DEP Bulletin already provides such notice.

RESPONSE: Although the requirement at N.J.A.C. 7:1C-1.3(b) may seem unnecessary to an applicant, the Department has found that it is a good mechanism to facilitate early coordination of the concerned parties and that it ultimately shortens the overall review and processing time of an application. Municipal environmental commission and planning board meetings are usually held once or twice a month but because the DEP Bulletin is a bimonthly publication, there may be a time lag of a month or more before the information from DEP Bulletin becomes available to these governmental bodies. In addition, not all information contained in a CP-1 form is published in the DEP Bulletin. Therefore, the Department does not see the DEP Bulletin as an appropriate alternative to the notification procedure at N.J.A.C. 7:1C-1.3(b).

COMMENT: One commenter suggested that the Department modify N.J.A.C. 7:1C-1.7(b) to require the Department to schedule a public hearing as required by CAFRA no later than 60 days after the application is declared complete for public hearing in order to be consistent with N.J.A.C. 7:7-4.5 of the CAFRA rules.

RESPONSE: The Department agrees and has modified the rule accordingly.

COMMENT: One commenter suggested that the rules should be modified to allow for different process times and decision due dates reflecting different review requirements for minor and major projects.

RESPONSE: Since the volume of new permit applications is unpredictable, the existing 90-day time frame allows the Department the flexibility to redistribute workload more evenly among the different types of applications on an as needed basis. It is the Department's goal to process all applications in the shortest possible time period. To further reduce certain processing times, the Department is presently investigating how certain applications may be separated and processed more expeditiously through a separate tracking system. Once the Department has worked with this alternative tracking system, it will be in a better position to consider whether different process times and decision due dates for major and minor projects should be adopted.

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 1C
NINETY-DAY CONSTRUCTION PERMITS

SUBCHAPTER 1. 90-DAY CONSTRUCTION PERMIT RULES

7:1C-1.1 (No change.)

7:1C-1.2 Definitions

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

. . .

"Appropriate agency" means:

1. The Division of Coastal Resources, CN 401, Trenton, New Jersey 08625 for:

i.-iv. (No change.)

2. The Division of Water Resources, Wastewater Facilities Management Element, CN 029, Trenton, New Jersey 08625 for:

i. (No change.)

. . .

7:1C-1.3 to 1.4 (No change.)

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

1. Waterfront development:

i. The fee for any work consisting solely of capital repairs or reconstruction with all work taking place above the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location shall be $250.00.

ii. The fee for any work taking place landward of the mean high water line and qualifying as a CAFRA facility as defined in N.J.A.C. 7:7-2.1 shall be as set forth in (a)3 below.

iii. The fee for any work taking place landward of the mean high water line and not qualifying as a CAFRA facility as defined in N.J.A.C. 7:7-2.1 shall be $250.00 for the first four residential dwelling units plus $50.00 for each additional dwelling unit, and shall be $500.00 plus half of one percent of the construction cost, up to a maximum of $1,500, for all non-residential developments.

iv. (No change in text.)

2.-5. (No change.)

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

7:1C-1.6 (No change.)

7:1C-1.7 Review of application

(a) Within a maximum of 20 working days following the date of receipt of the application, the appropriate agency shall:

1.-5. (No change.)

(b) The appropriate agency shall hold the public hearing required by the "Coastal Area Facility Review Act," N.J.S.A. 13:19-1 et seq., ***within 60 days after the date the application is declared complete for public hearing*** and may schedule public hearings for other construction permit programs within the time limits prescribed by these regulations.

(c) (No change.)

7:1C-1.8 Decision on permit application

(a) The Department shall approve, condition, or disapprove an application for a construction permit, other than CAFRA permit, within 90 days following the date of receipt of an application that has been accepted for filing, except when additional information has been requested ***pursuant to N.J.A.C. 7:1C-1.7(a)2***. In the latter case, the Department shall make a decision on the permit application within 90 days following the date of receipt of the information re-

quested. The date of receipt of the application or of the additional information requested is the date that an application or additional information is received by the appropriate agency.

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

7:1C-1.9 to 1.14 (No change.)

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Regulated Medical Waste Generator Fees

Adopted Amendment: N.J.A.C. 7:26-3A.8

Proposed: May 21, 1990 at 22 N.J.R. 1478(a).
Adopted: June 26, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: June 26, 1990 as R.1990 d.358, **without change.**

Authority: N.J.S.A. 13:1D-9, 13:1E-1 et seq., particularly 13:1E-6, and 13:1E-48.1 et seq., particularly 13:1E-48.7.

DEP Docket Number: 019-90-04.
Effective Date: July 16, 1990.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The amendment was proposed May 21, 1990. A public hearing was held June 5, 1990. The public comment period closed June 20, 1990. Three comments were received. The amendment is being adopted without change.

COMMENT: The commenter requests that generator fees for non-profit providers of human services be waived. In some cases, non-profit health care providers are subsidized with State funds that may be diverted to pay the generator registration fee.

RESPONSE: The fees are assessed in accordance with the requirements of the Comprehensive Regulated Medical Waste Act at N.J.S.A. 13:1E-48.7, which requires every generator of medical waste to register with the Department and pay a fee. The Legislature did not provide an exemption from this requirement for non-profit health care providers or any other group; therefore, no exemptions from the fee are provided by the rules.

COMMENT: A veterinarian states that medical waste generated by a veterinary practice is not hazardous to human health. While veterinary waste cannot be differentiated in a landfill situation, veterinarians should not be financially penalized for this reason.

RESPONSE: The Comprehensive Act defines "generator" at N.J.S.A. 13:1E-48.3 to include veterinary offices and clinics. Furthermore, "regulated medical waste" is defined by this section to include "contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals." If a veterinary office or clinic generates any of these materials, it must be handled and managed as regulated medical waste. The Department has no authority to weaken the definitions as supplied by the Legislature. Moreover, the Department believes this material is best managed under this scheme.

COMMENT: Commenters in the largest quantity generator category oppose the $3,500 per year fee claiming the fees are nearly quadruple of the pre-existing fee and that the fee is not in keeping with the State and Federal governments' attempt to control health care costs.

RESPONSE: Generators of greater than 1,000 pounds of regulated medical waste per year are required to pay a $3,500 registration fee. When compared to the pre-existing fee schedule, this is the only category of generators to experience an increased fee. In fact, 98 percent of all generators have reduced fees under this schedule. The new fee schedule reflects legislative changes made to the Comprehensive Act as a result of the pre-existing fee schedule. The Legislature set fee maximums for five categories of generators. The Department is incorporating those fee maximums in order to fund the program at a level necessary to provide a base program.

Full text of the adoption follows.

7:26-3A.8 Registration and fees for regulated medical waste generators, transporters, intermediate handlers and owners and operators of destination facilities

(a) Any person who generates regulated medical waste in this State shall register with the Department as a regulated medical waste generator in accordance with (d) below, and shall pay fees in accordance with the following:

1. For computation of the annual regulated medical waste generator fee, generators of regulated medical waste are divided, according to the amount of waste generated, into five categories as explained in the following table:

Generator Category	Pounds Generated Per Year	Base Fee Category
1	less than 50	$100.00
2	50-200	$300.00
3	200-300	$500.00
4	300-1000	$1,000.00
5	greater than 1,000	$3,500.00

i. (No change in text.)

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

(e) The Department shall prepare an annual fee schedule report of regulated medical waste fees which shall include the following:

1. The annual assessment rate of "r_1" for transporters and "r_2" for intermediate handlers and destination facilities for the forthcoming fiscal year;

2. The projected number of transporters, number of intermediate handlers and destination facilities that will register with the Department;

3. A detailed financial statement showing the estimated budget for transporters and the estimated budget for intermediate handlers and destination facilities for the forthcoming fiscal year. The statement shall include a separate breakdown of the regulated medical waste program for each of the budgets listed above by account title (for example, printing and office supplies, vehicular, and maintenance of vehicles); and

4. A detailed financial statement of the previous fiscal year's actual expenditures for each budget including a separate breakdown of the total number of transporters registered and total number of intermediate handlers and destination facilities registered, actual revenue and any credit or deficit to be carried forward to the next fiscal year.

(f) The Department shall hold a public hearing concerning the fees assessed for transporters, intermediate handlers and destination facilities only when the projected fees exceed a 10 percent increase as compared to the previous fiscal year's fees. The Department shall hold the hearing prior to the actual assessment of fees. The Department shall provide public notice of the hearing in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(g) In those years in which a public hearing is not required in accordance with (f), above, publication of the forthcoming year's annual adjustment rate of "r_1" and "r_2" and the projected number of transporters and intermediate handlers and destination facilities together with a synopsis of the annual fee schedule report shall appear in the New Jersey Register, DEP Bulletin, and several newspapers with general circulation.

(h) (No change.)

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Volatile Organic Substances in Consumer Products

Adopted Amendments: N.J.A.C. 7:27-23.2, 23.3, 23.5, 23.6, and 23.7

Adopted Repeal: N.J.A.C. 7:27-23.4

Proposed: November 6, 1989 at 21 N.J.R. 3360(a).
Adopted: June 10, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: June 13, 1990 as R.1990 d.342, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

DEP Docket Number: 047-89-10.
Effective Date: July 16, 1990.
Operative Date: August 9, 1990.
Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, hereinafter referred to as subchapter 23. This subchapter controls the emission of volatile organic substances (VOS) into the atmosphere by limiting the amount of VOS allowed in architectural coatings. These amendments modify and add several definitions, incorporate a "grandfather clause" for the continued sale and use of noncomplying products manufactured prior to the compliance date, and revise the labeling, record keeping and inspection requirements. The provisions of subchapter 23 are part of the Department's continuing efforts to attain the National Ambient Air Quality Standard (NAAQS) for ozone, as well as efforts to promote national and regional consistency in rules affecting architectural coatings.

The amendments to subchapter 23 dealing with air fresheners have been deleted. The existing air freshener rule was invalidated by the Appellate Division of the Superior Court of New Jersey, *In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products.* N.J.A.C. 7:27-23, _____*N.J. Super.* _____, Dkt. No. A-1226-89T1 (App. Div. February 26, 1990). The court reversed promulgation of the rule on air fresheners because "... the rule, as adopted, differs so substantially from the rule as proposed that it violates the Administrative Procedures Act (APA)," N.J.S.A. 52:14B-1 et seq. The court remanded the case for further proceedings consonant with the APA. In response to this, the Department will propose separate rules, N.J.A.C. 7:27-24, on VOS in consumer products, including air fresheners.

A public hearing was held on December 5, 1989, at the War Memorial Building in Trenton, New Jersey, to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed December 8, 1989. The Department received written testimony from 31 persons. Sixteen persons presented comments at the public hearing.

General Comments

COMMENT: The notice of public hearing for the proposed rule fails to comply with N.J.S.A. 26:2C-8 of the Air Pollution Control Act. That statute mandates a "public hearing to be held after 30 days prior notice thereof by public advertisement of the date, time and place of the hearing." The official notice in the New Jersey Register was published on November 6, 1989, which is less than 30 days from December 5, 1989, the date of the hearing. Since the notice of the public hearing was defective, a new public hearing in accordance with the notice requirements of the Air Pollution Control Act should be scheduled.

RESPONSE: The public hearing was held 30 days from publication in the New Jersey Register, when November 6, 1989, is included in the determination. In addition, public advertisement of the hearing was published in the legal advertisement section of 12 newspapers in New Jersey prior to November 6, 1989. At least one was published as early as October 31, 1989. The requirements of N.J.S.A. 26:2C-8 were met and a new public hearing is not needed.

COMMENT: When a rule that will affect other agencies or entities is under development, those affected agencies, such as the New Jersey Department of Transportation, should be involved in the early planning of the rule. It is too late in the process when the Department publishes a specific rule. There should be ample time to budget for, plan for, equip for, and staff for rules that will impact other agencies.

RESPONSE: The Department generally attempts to involve any affected agencies in the development of rules. However, in the case of these rules there were several constraints. These rules were developed under a court-ordered deadline, and the time frame was very short. In addition, the question of national consistency for rules affecting items such as architectural coatings is always present. California and New York already had VOS limits in place when this Department's proposal came out. In fact, California has spent many years on the development of rules on architectural coatings and the Department relied on the involvement of affected agencies in that development process.

COMMENT: Although the proposed amendments resolve some of the differences between New Jersey's rule and other states' rules, there are still critical differences between them, and the compliance timetable causes major concern.

RESPONSE: The only difference between subchapter 23 and rules in effect in other states that could be considered potentially significant from a national perspective is the type size requirement for the labeling because labeling may be used nationwide. However, no other state has a type size requirement and there is, therefore, no conflict with other rules. Rather, this rule sets an appropriate precedent. The Department does agree that the proposed timetable for the labeling requirements was too short, and it has been extended.

COMMENT: In keeping with the philosophy of national uniformity, one commenter requests that all proposed requirements included in subchapter 23 that are unique to New Jersey, and thus completely inconsistent with other states' rules, be reconsidered. If some of the requirements are judged to be necessary, whether VOS emissions will actually be reduced by these requirements should be carefully considered. Many of these unique requirements are no more than costly and confusing paperwork.

RESPONSE: Before proposing requirements different from those in the few other states with such rules, the Department did carefully consider them. The purpose of these rules is to reduce emissions of VOS. To ensure that this purpose is attained, there should be means to promote compliance with the VOS content limits. Thus, the labeling, record keeping and inspection sections have been established to incorporate these means into the rules. Rules from other states were found to be lacking in these areas. As architectural coating rules are relatively new and have only been adopted in a few states, it is appropriate to improve on the rules. It is illogical for all states to copy the first rule. A certain amount of adjustment and improvement must be expected.

COMMENT: When considering changes to subchapter 23, the Department, as agreed to, should follow national standards wherever possible. New Jersey should not set national standards wherever possible, as some of the current proposed amendments tend to imply.

RESPONSE: The Department has never agreed to simply follow standards set by others. If it is determined that a standard is not stringent enough, or not enforceable, or will not meet New Jersey's needs for some reason, then the Department will do what it believes best for the State and encourage other states to follow suit.

COMMENT: One commenter supports a division of subchapter 23 into two rules, one for architectural coatings and one for consumer products. It would make the rules consistent with other states, reduce the number of definitions and eliminate requirements for non-coating products. It would also simplify compliance activities by increasing the interpretability of the rules.

RESPONSE: The Department is considering dividing these rules into two separate subchapters for the reasons mentioned by this commenter, as well as other reasons. However, action in regard to doing so is dependent upon what steps the Department takes in response to the court decision invalidating of the air freshener rule.

COMMENT: If the Department continues to propose new rules and changes without moving the implementation date, noncompliance is assured.

RESPONSE: Many parts of these rules were adopted in January 1989. The VOS content limits were adopted by October 1989, at the latest, and in the case of architectural coatings, are all identical to those that went into effect in New York on July 1, 1989. Therefore, there should be no noncompliance because of VOS content over the established limit. Only labeling and record keeping requirements have been changed with this adoption, and a compliance period for these requirements has been added to the rules.

COMMENT: One commenter said he can find no data, research, or competent studies to support the action taken by the Department and is opposed to these unnecessary and unfair rules.

RESPONSE: The studies done by Scientific Application International Corporation (SAIC) solicited information from experts on consumer products. However, these experts were reluctant to provide any hard data claiming problems of confidentiality and trade secrets made it impossible. The Department has encountered the same obstacle to data collection. The Department developed a proposal using the data available. It is based on a good approximation of present conditions, although not exact.

Information for architectural coatings was obtained from the California Air Resources Board (CARB) which has a technical group composed of experts from industry, environmental groups and academia working on architectural coatings.

COMMENT: Consumer products should be regulated on a national basis.

RESPONSE: A national approach to consumer products has been advocated by the Department. However, in view of the lack of such

action, the Department has been forced to proceed with rules for New Jersey as part of its responsibility under the Clean Air Act (CAA), 42 U.S.C. 7401 et seq., to achieve the NAAQS for ozone. While New Jersey believes that the United States Environmental Protection Agency (USEPA) should take the lead on regulating consumer products nationally, we also believe there should be no preemption of state rules. Severe regional or local ozone problems may require some states to be more stringent than USEPA. Also, state rules can be a testing ground for innovative strategies which could help USEPA in efforts to develop national rules.

COMMENT: One commenter requests that the two SAIC studies which were specifically referred to by the Department in its initial proposal of these rules, 20 N.J.R. 2003 (August 15, 1988), be included in the record of this regulatory proceeding. He assumes because of the above-noted reference that the Department is in possession of these studies. If that is not the case, he will supply copies of these studies.

RESPONSE: The Department always considers all information available to it during rulemaking proceedings. In light of that, the two SAIC studies are being maintained in the technical information files of the Division of Environmental Quality.

COMMENT: Overall, subchapter 23 will provide for the implementation of VOS control measures committed to by New Jersey in its State Implementation Plan (SIP). The reductions that are projected to result from the control of consumer products were an integral part of USEPA's approval of that SIP.

RESPONSE: The Department acknowledges that these rules implement an important control strategy contained in the SIP and as such are a necessary part of ongoing efforts to attain the NAAQS for ozone.

N.J.A.C. 7:27-23.3 Definitions

COMMENT: One commenter asks for clarification of the definition of "consumer product" as used in subchapter 23.

RESPONSE: As the definition of "consumer product" states, those products available in retail markets are defined as consumer products. Those available only in wholesale markets or only to commercial users are not subject to N.J.A.C. 7:27-23. At the present time, only air fresheners have a VOS content limit established by the rules.

COMMENT: One commenter opposes the amended definition of "fire retardant coating." Although uniformity between states is desirable, the adoption of the wording used by CARB would severely restrict the sale and use of such coatings in New Jersey, as it has in California. Such wording would prevent the sale and use of special purpose fire retardant coatings designed for application to surfaces such as structural steel, cedar shingles, structural timbers, and electrical and communication cables. These coatings are tested to comply with fire code standards other than American Society for Testing and Materials (ASTM) E-84. Further, the wording "flame spread index of less than 25" restricts fire retardant coatings to those that have been assigned a Class "A" rating. The New Jersey Building Code and the National Fire Prevention Association Life Safety Code allow interiors of many buildings to be finished with Class "B" rated materials, which have a flame spread index of 26 to 75. And because flame spread indices are multiples of five, only those having an index of 0, 5, 10, 15 or 20 would be classed as fire retardant coatings, but not those with an index of 25.

It should also be noted that the last two digits of the "ASTM designation E-84-87" indicates the year of issuance of the standard. As worded, no product tested under ASTM E-84-76, E-84-81, E-84-83, or any revisions or publications of future years would be allowed to be sold and used in New Jersey.

Therefore, the following definition is recommended:

> Fire Retardant Coatings: Are coatings which are tested and rated by an approved laboratory and are used to bring building and construction materials into compliance with the state and local fire building code requirements.

CARB is considering such a change to the wording in its Suggested Control Measure (SCM) for architectural coatings.

RESPONSE: Because of the concerns raised by this commenter, the amendment of the definition of "fire retardant coating" is not being adopted at this time. The Department agrees that the use of the proposed definition could severely restrict the sale of "fire retardant coatings," perhaps to the detriment of safety. The definition will remain the same as that in effect in New York, and the recommended definition will be considered jointly by New York and New Jersey. The Department will approach New York about this by the end of the year.

COMMENT: Two commenters compliment the Department for amending the definitions of "label" and "shellac."

RESPONSE: The Department appreciates the support.

COMMENT: The New Jersey definition of VOS is different from those promulgated in other jurisdictions. Thus, labels using this definition may be accurate in New Jersey, but subject to scrutiny elsewhere. This could prevent interstate commerce problems.

RESPONSE: The use of terms other than VOS is permitted for labeling purposes, as long as the compounds in the product being described by the labeling conform to the definition of VOS. Only if a compound which is not exempt from New Jersey's VOS definition but is exempt in another state is included in a product must the VOS content be expressly given. There should be no interstate commerce or other problems with this.

COMMENT: One commenter suggested that the revision of the definition of "wood preservative coating" should result in its reclassification from Group I to Group II to be consistent with the handling of other products which were defined or redefined subsequent to the initial adoption.

RESPONSE: The architectural coatings in Group I have VOS content limits that were adopted in January 1989. The limits for Group II were adopted in October 1989. The limit for "wood preservative coating" is not being amended. A minor change to the definition was proposed and has been adopted to eliminate any confusion as to what is a "wood preservative" and to make it more similar to the definition in effect in New York. This is not sufficient reason to change the compliance date.

N.J.A.C. 7:27-23.3 Architectural coatings

COMMENT: Will the exemption of adhesives and sealants from the provisions of this rule still be operative upon adoption of these proposed amendments?

RESPONSE: Only those products classified as architectural coatings as defined in this subchapter have VOS content limits established for them. However, under N.J.A.C. 7:27-23.6(b), products such as adhesives and sealants are subject to recordkeeping and reporting requirements if they are sold in retail markets and contain greater than five percent by weight VOS.

COMMENT: Several commenters expressed support for the "grandfather clause" for architectural coatings which allows the sale of noncompliant coatings manufactured prior to the compliance date for three years and the indefinite use of such coatings. This clause will allow sufficient time for product turnover without significantly adding to the VOS problem, as only a small percentage of coating will be involved. It will also eliminate disposal problems for noncomplying products, making subchapter 23 consistent with rules in other states, and providing the needed relief sought by the paint industry.

RESPONSE: The Department acknowledges the commenters' support, and has adopted the "grandfather clause" as proposed.

COMMENT: The three-year "grandfather clause," while consistent with California, is not consistent with New York Part 205, which contains an indefinite "grandfathering" period. This inconsistency between the two states may cause problems with the interstate distribution networks. Shipments for New York may inadvertently enter New Jersey. The Department should develop language which addresses this potential problem.

RESPONSE: The Department does not believe this will present any more of a problem than that posed by noncomplying products destined for other states. Therefore, there is no need for language to specifically address shipments meant for New York that may enter New Jersey.

COMMENT: One commenter recommends that the "grandfather clause" be deleted. It is essential for the protection of public health and the environment that VOS emissions be reduced immediately. There is no data to justify a three-year "grandfather" period and it is excessive. Further, it undermines the objectives of the SIP.

RESPONSE: A period of three years for "grandfathering" was chosen to reduce the impact of this rule on the small retailer. VOS emissions from architectural coatings will be reduced quickly, even with a "grandfather clause." It is estimated that by June 1990, 85 percent of all coatings on the retail shelves will be in compliance with the VOS content limits. The other 15 percent represents approximately 2.4 million gallons of paint. To return all of this paint to the distributor or manufacturer, or to dispose of it, would place an unreasonable burden on the retailer. If this paint were returned to the manufacturer or distributor for sale in other nearby states, its use there could still affect New Jersey's air quality because ozone formation and transport are a long range problem. The increased emissions from using the paint in New Jersey are estimated at

100 tons of VOS over three years, which will not cause a significant impact on the environment. Therefore, inclusion of the "grandfather clause" is justified.

In addition, consumers who have previously purchased paint now stored in their homes should be permitted to use it, rather than dispose of it. Although the Department has no estimate of the quantity of paint that may be stored by consumers, it could be quite substantial. The disposal of this paint into landfills would result in eventual emission of the VOS content into the air anyway.

COMMENT: The Department does not explain why three years is needed to turn over architectural coatings, when a substantial majority will turn over in six months. By extending the "grandfather clause" for three years, the Department effectively permits all noncomplying stock to be sold for the entire period, undermining the effort to reduce 85 percent of stock within six months. Furthermore, a "grandfather clause" encourages manufacturers to produce large quantities of noncomplying coatings before the compliance dates, and holds out the hope that present activities can be continued, regardless of the availability of alternative technology, with a subsequent press for a delay in the compliance deadline.

RESPONSE: The Department placed a three-year cap on "grandfathering" to eliminate, or at least reduce, the types of problems the commenter mentions. The three-year "grandfather" period encourages retailers to turn over their stock to complying coatings, while discouraging them from stocking noncomplying products which will be illegal once the "grandfather" period ends. Manufacturers must be producing complying architectural coatings by the applicable compliance date if they wish to continue to market in New Jersey. There are inspection and recordkeeping provisions in the rule to enable the Department to enforce this provision. Finally, the proposal of the "grandfather clause" shortly before the compliance dates and adoption after the January 1, 1990, compliance date did not give much encouragement to the stockpiling of large quantities of noncomplying coatings prior to the compliance dates.

COMMENT: One commenter would like to see a waiver in the rule for all highway projects which have already been advertised or awarded, and for maintenance traffic striping operations. This "grandfather clause" should allow the current bridge painting and traffic striping specifications to be utilized until January 1, 1991. By that time, it is expected that a new VOS compliant qualified paint list could be developed for bridge painting, and this grace period would allow the continued critical safety operation of traffic striping with existing proven paints until the testing of new waterborne products is completed. He would also like the rule to allow application for a waiver of the January 1, 1990 manufacture deadline for industrial maintenance coatings in the event a supply problem arises in a construction contract during the "grandfather" period.

RESPONSE: In regard to bridge painting, the Department has determined that there are two situations which could be problematic. These are the maintenance of a qualified paint list (QPL) for new work and the completion of work in progress. It has been determined that of the coatings on the QPL, all zinc primers applied on site are subject to the VOS content limit of 4.2 pounds per gallon (500 grams per liter) for metallic pigmented coatings, provided such coatings contain a minimum of 0.4 pounds per gallon (five grams per liter) of metallic pigment. Coatings applied at the factory are subject to N.J.A.C. 7:27-16.5, not N.J.A.C. 7:27-23. The epoxy primers, and the intermediate and finish coatings used in a system must comply with the 3.8 pounds per gallon (450 grams per liter) VOS content limit established for industrial maintenance coatings. This means six of the inorganic zinc coating systems presently on the QPL (code numbers IEU-3, IEU-5, IEU-6, IEU-7, IEU-10 and IEU-11) appear to comply with the VOS content limit. For the organic zinc systems, there appear to be two complying systems (IEU-3 and IEU-7) and a possible third system (IEU-13). For epoxy mastic coatings systems on the QPL, three systems comply (EU-4, EU-6, and EU-7).

As for work already in progress, that is, contracts already let for bid, the Department will apply the "grandfather clause" to cover the coatings used to complete these projects. All contracts bid prior to January 1, 1990 can be completed using the bridge coating system selected at the time of bid.

In regard to traffic striping operations, any traffic paint manufactured before January 1, 1990 can continue to be used until February 28, 1993, or the supply is exhausted, whichever occurs first. The Department understands that testing of complying coatings will occur shortly. These tests will be monitored, and if a need for a waiver is seen, one will be developed.

COMMENT: As most states now exclude containers up to one liter in size for architectural coatings, New Jersey should amend this rule to do likewise.

RESPONSE: The Department is maintaining consistency with New York by retaining the present less than a quart exemption. The Department is aware of three other states that have architectural coatings: California, Arizona and New York. Of these, California and Arizona exempt quarts. They are on the west coast, and New Jersey is on the east coast. It is more important for New Jersey to be consistent with New York.

COMMENT: One commenter requests that the test methods for silane-based waterproofers be amended. These are unique coating materials in that the active ingredient is a liquid and intrinsically a VOS. However, upon application to concrete or masonry, silane reacts with any water present, producing a nonvolatile, substrate-reactive species which bonds to the substrate. This unique reactivity requires a different test method than that commonly used. The commenter also requests that the Department institute a "grandfather clause" on the sale of such products until a decision on the test method is reached.

RESPONSE: N.J.A.C. 7:27-23.3(d) does not need to be amended to incorporate a new test method. Besides those test methods specifically listed in the rule, "any other method approved by the Department" can be used. Therefore, the request for an alternative test method for silane-based waterproofing materials has been submitted to the Division of Environmental Quality's Laboratories and Quality Assurance Element for evaluation. If the method is approved, it will be used to test silane-based products in New Jersey.

As for "grandfathering" such products, there is already a general "grandfather clause" in the rule, and the Department sees no reason to specifically "grandfather" silane-based materials.

COMMENT: The Department should consider the concept of average VOS emissions over a product line, similar to Federal requirements on automobile gasoline consumption for individual manufacturers. The net result would be emissions well below the maximum limits, while still allowing the manufacture and sale of those few essential products that cannot be reformulated.

RESPONSE: The averaging of emissions over a product line is administratively infeasible and difficult to enforce. In order to ensure equivalent emission reductions, the quantities of all coatings sold in New Jersey by a manufacturer would have to be reported annually, requiring extensive recordkeeping. Even with this, there is no direct means of determining compliance. Enforcement would be based on review of records, rather than on straightforward product testing. One small recordkeeping error could put a company in noncompliance with such a rule. The Department sees no useful purpose in averaging.

COMMENT: For bridge painting systems, the VOS content limit of 3.8 pounds per gallon should apply to the average VOS content of all of the specified coats of a structural steel coating system. This would increase the available complying paint systems from 16 percent to 73 percent of the present qualified paint list.

RESPONSE: The averaging of VOS content over a system of paints is difficult to implement and enforce. The VOS content of each coating cannot be simply averaged. The relative amounts of each coating used are factors in the determination. Because relative amounts of coating used can change with each application, averaging is not feasible. More than 16 percent of the qualified paint list may still not comply even if averaging is permitted.

COMMENT: One commenter asks for clarification as to what coatings are covered by subchapter 23. Do industrial coatings have to conform to the same limits as architectural coatings, or does the rule only apply to products for sale to consumers?

RESPONSE: Industrial coatings used by manufacturers to produce a product are subject to N.J.A.C. 7:27-16, not N.J.A.C. 7:27-23. Coatings used by industry to paint its own infrastructure, such as plant equipment or buildings, are subject to N.J.A.C. 7:27-23. Some industrial maintenance coatings are not available to consumers, but are subject to subchapter 23, so the rule does not apply only to products for sale to consumers.

COMMENT: The Department states that the source of data that illustrates a significant reduction in VOS emissions from this proposed rule derives from a 1985 survey conducted by New York and information from CARB. A list of the individuals and companies that contributed to the background for this rule does not exist. That admission sounds like the basis for a legal challenge.

RESPONSE: The information as to what individuals and companies have contributed to the background information on this rule does exist.

It has not been compiled into a single list. This information is in the Department's files that pertain to this rule. In addition, the 1985 survey was performed jointly by the Department and New York and covered New Jersey and the New York City metropolitan area.

COMMENT: The Department used a survey of paint contractors in California to support its position on waterborne roof coatings and their selling season. The average daily temperature in New Jersey is much different from California and these coatings will have a shorter selling season. Also, a survey of painting contractors in California, who may be using paint materials both on the interior and exterior of buildings, does not relate to the use of roof coatings on the exterior of buildings.

RESPONSE: The survey used in support of low VOS roof coatings was of coating manufacturers, not painting contractors. Over 90 percent of roof coatings manufactured for sale in California comply with the limit established in this rule.

As for average daily temperature, not all of California is sunny and warm year round. Placer and El Dorado Counties, which encompass Lake Tahoe, have architectural coatings rules in place and have climatic conditions similar to New Jersey.

COMMENT: One commenter supports the provisions of subchapter 23, with one important exception. He recommends a 3.8 pounds per gallon (450 grams per liter) limit for all clear wood finishes, including lacquers. Such a limit is necessary to provide a level playing field for all manufacturers of clear wood finishes. Lacquers and varnishes are both used for the same reason: to provide a clear protective film for wood. It also would encourage the continuous development, by all clear wood finish manufacturers, of better, low VOS coatings.

RESPONSE: The Department and New York will jointly consider the inclusion of a "clear wood finishes" category in their respective rules. However, the Department is not incorporating such a category at this time.

COMMENT: The VOS limit for mastic texture coatings should be set at 2.5 pounds per gallon (300 grams per liter), not the 1.7 pounds per gallon (200 grams per liter) set in the rule. Because this higher limit is in CARB's Suggested Control Measure (SCM), and the possibility exists that New York Part 205 could reflect a modification to this higher level, the Department should consider amending the VOS limit for mastic texture coatings to 2.5 pounds per gallon (300 grams per liter).

RESPONSE: At this time, the Department knows of no intention by New York to revise the VOS content limit for mastic texture coatings. To retain consistency with New York, the limit is not being considered for change.

COMMENT: The continued use of present coatings for bridge painting will be hindered by subchapter 23. These coatings must meet certain specifications for use and performance. Over 82 percent of the bridge paint systems on the qualified paint list are not in compliance with the VOS content limits in N.J.A.C. 7:27-23. The absence of complying paint systems will delay the advertising of new construction, increase costs for projects already awarded, increase costs overall because of reduced competition, and jeopardize Federal funding for highway construction.

RESPONSE: The VOS content limit applicable to bridge painting was adopted in January 1989. There has been a year in which to seek out and test VOS compliant coatings for use on bridges. In addition, New Jersey is not the first state to regulate the VOS content of bridge paint systems. California and New York both enacted such requirements before New Jersey and should have experience of and information on paints that meet the VOS content limit and the specifications for use and performance, and on suppliers of these paints. "Grandfathered" supplies of coatings can be used until they are depleted. This should keep costs down and shelter federal funding.

COMMENT: This new rule will not allow the continued use of current traffic paint formulas. Therefore, current construction contract specifications for striping paint must be revised. In addition, the initiation of this rule and its timing make it impossible to carry on a cost-effective and safe maintenance traffic striping operation without being provided a period in which to phase in the utilization of waterborne traffic paint. The annual contract for the purchase of traffic stripe paint goes to bid in December of the previous year with commitments for deliveries in place as of August. Striping equipment must be retrofitted to utilize waterborne traffic paints. Such retrofitting will take two to three weeks and a minimum of $33,000 per vehicle. Waterborne paints have not been field tested. Changes must be made to paint application practices to utilize waterborne systems.

RESPONSE: Any traffic stripe paint manufactured prior to January 1, 1990, can be used any time during the next three years. Therefore, current formulations can be used until the "grandfathered" supply is exhausted.

As to the timing of this rule, the VOS content limit for traffic coatings was originally proposed in August 1988, and adopted in January 1989. Thus, information about the need to use complying coatings has been available for about a year, and notice of such a requirement was available prior to December.

Because striping equipment may be using noncomplying coatings until current stocks are depleted, the retrofitting of that equipment cannot occur until after that. Waterborne paints have been field tested in various states, and the Department has information on these tests that will be shared with the commenter.

COMMENT: The last listed category in Table 1 has been amended by replacing the words "all others" with "all other architectural coatings." What products are included in this category? Are adhesives or sealant products covered by this category?

RESPONSE: The change in wording is a clarification of the rule. The category "all other architectural coatings" covers all products that fall into the definition of "architectural coating," but do not fit into a specifically defined architectural coating category. Products that are strictly adhesives or sealants and which are not used for surface coating would not be architectural coatings.

N.J.A.C. 7:27-23.4 Air fresheners

COMMENT A: The statement that these rules "and their corresponding limits were substantially similar to those in effect in California and proposed by the New York Department of Environmental Conservation (NYDEC)" may be true for the architectural coatings part, but not for the air fresheners section. There is no rule for air fresheners in California, and the NYDEC rule is substantially different.

COMMENT B: One commenter expressed concern with the scientific basis for this rule. The complete study of the extraordinary measure control technologies, committed to in the SIP, was not completed. The Federal District Court ordered the Department to complete the study, propose and promulgate implementing rules. The Department continues to suggest that a report by SAIC is one upon which a determination of controls for consumer products can be made. Such a determination is beyond the scope and capacity of that report.

COMMENT C: One commenter requested that all data submitted on air fresheners and consumer products at previous hearings be considered part of this record. This is not to be repetitive, but to ensure adequate data exist for decisions.

COMMENT D: The February 28, 1990, compliance date for the 50 percent VOS limit for air fresheners is opposed. Changes to the rule are still being considered just three months before the implementation date of the standards. This time frame is grossly unfair and inadequate. At least two years should be provided for manufacturers whose products are over 50 percent to achieve compliance.

COMMENT E: Several commenters supported the three year "grandfather clause" for air fresheners as this will allow time for complete turnover of noncomplying products, including noncompliance due to labeling, throughout the chain of distribution and request that it be adopted. This will prevent any unintended violation of the rule by merchants in New Jersey and will allow manufacturers to avoid having to retrieve noncomplying stock and ship it out-of-State.

COMMENT F: There is no explanation, facts, or supporting evidence to justify a "grandfather clause" for air fresheners, and it should be deleted. All of the Department's comments in 21 N.J.R. 3360(a) justifying a "grandfather clause" refer to and apply to architectural coatings. Not once do these comments refer to a need for a "grandfather clause" for air fresheners, and none of the justifications relate to the nature or number of air fresheners. It is possible that the Department inadvertently extended the "grandfather clause" to air fresheners in a misperceived effort "to be fair." If so, the proposed "grandfather clause" for air fresheners should be abandoned. If, however, the Department believes air fresheners need additional time to clear the pipeline, there is no data in the record upon which to base such a view. It should be noted that the manufacturers of these products have already been given more than one year from the date of publication of the initial rule on February 21, 1989, to the effective date of February 28, 1990, to clear their inventories of noncomplying products. Adoption of a "grandfather clause" at this time would reward those companies which ignored the previously adopted rule and played a game of Russian roulette hoping for a reprieve. It would simultaneously penalize those companies which, in good faith, sought to comply with the adopted rule. The Department should grant no "grandfather clause" for air fresheners.

COMMENT G: If air fresheners need a "grandfather" period beyond the year already provided in order to avoid returning nonconforming products to the manufacturer, the Department should weigh the extra expense of return (which is nominal) against the additional VOS emissions to the air of New Jersey that such a period would cause. In weighing these factors, it should be remembered that any returned product can be readily resold by the manufacturer in all of the other 49 states.

COMMENT H: In considering a "grandfather clause," the Department should recognize that such a clause will not limit the sale of nonconforming air fresheners to those remaining in the pipeline, but instead could effectively delay the entire reduction of VOS emissions from air fresheners for the entire "grandfather" period. Air freshener sales to New Jersey are a small fraction of the air fresheners produced for the national and international markets. It is quite conceivable that prior to February 28, 1990, an air freshener manufacturer could retain from its inventory, which is large enough to supply the entire nation, sufficient product to continue to supply New Jersey for the entire "grandfather" period, thus totally defeating the reduction of VOS emissions from that product for that period.

COMMENT I: The "grandfather clause" could become a detrimental precedent in the Department's future regulation of VOS in other consumer products. In the case of air fresheners, some manufacturers acted promptly to comply with the rule published last February. At least one air freshener bearing the required labeling has already appeared on the shelves of New Jersey stores. If a manufacturer postponement is granted now, after the rule has already been promulgated, the clause will not only be unfair to those air freshener manufacturers who have already begun compliance, but also manufacturers of products regulated in the future will be less likely to comply promptly and some manufacturers will be encouraged to press for a "grandfather clause" for their products.

COMMENT J: The Department has failed to discharge its obligation under N.J.S.A. 52:14B-4(a)(2) to "[prepare] for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, [and] **a clear and concise explanation of the purpose and effect of the rule** . . ." (emphasis added). The Department's statement, at 21 N.J.R. 3360(a), published November 6, 1989, lacks any stated purpose for "grandfathering" air fresheners. Entirely lacking is even a bald, conclusionary assertion that air fresheners need a "grandfather clause."

The Department has also failed to discharge its obligation under N.J.S.A. 52:14B(a)(2) to provide a "description of expected socio-economic impact of the rule . . ." The Department gives a full description of the VOS increase resulting from "grandfathering" architectural products, but entirely omits the substantially greater VOS increase resulting from "grandfathering" air fresheners.

COMMENT K: One commenter requested that the "grandfather clause" be extended to facilitate the transition by manufacturers of existing air freshener products to the new subchapter 23 rules, in order to avoid the imposition of undue hardship or disproportionate burdens on such manufacturers. A "grandfather clause" for manufacturers would allow the Department to permit the continued manufacture of an existing air freshener product that does not comply if reformulation of that product is not technically feasible or would impose an undue hardship or disproportionate burden on the manufacturer, as long as the manufacturer was making a good faith effort to reformulate the product to comply with the rule. Any exceptions to the compliance deadline for the manufacture of a particular existing air freshener product would be insignificant in terms of possible VOS emissions.

Permitting continued manufacture of an existing noncomplying air freshener for three years, while a reformulation of the product is being developed, would also avoid sudden disruptions in the market place and the loss of revenues expected as a result of the investments made in existing products. Like the cost to distributors and retailers of disposing of noncomplying products, this is a cost that should not be imposed on a manufacturer unless it is absolutely necessary. Moreover, because the Department did not adopt its originally proposed staged reductions in VOS content of air fresheners to 25 percent and 5 percent, the need to use a non-VOS aerosol propellant has not been imposed on most air freshener manufacturers. Consequently, because only a very limited portion of all air fresheners are affected by the new rule, there is less incentive for propellant manufacturers to intensify their efforts to develop non-VOS alternatives. Similarly, there are few, if any, air freshener manufacturers, which are in desperate need for additional time in which to reformulate their products. Thus, the Department has not received a substantial volume of comments on this issue and may therefore have concluded the transition problem for manufacturers is not a serious one. Also, the Department's current deadline for termination of the manufacture of noncompliant air freshener products fails to take into account the long lead times associated with developing safe and effective alternatives to existing formulas. For example, once a technically feasible new formula has been developed, required toxicity tests will take approximately one year to complete.

Therefore, the commenter recommended the following language be incorporated into N.J.A.C. 7:27-23.4:

(a) No person shall sell, offer for sale, hold for sale, use, or manufacture for sale within New Jersey any air freshener manufactured after February 28, 1990, **or such later date as may be determined under (c), below,** which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) Effective February 28, 1993, **or such later date as may be stated on the label,** no person shall sell, offer for sale, or hold for sale in New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(c) **The Department may authorize a three-year extension of the date of manufacture specified in (a), above, for an existing air freshener product, if it finds such action is necessary to prevent an undue hardship or a disproportionate burden on the manufacturer of that product and if it finds the manufacturer is making a good faith effort to reformulate the product. As a condition of granting such relief, the Department shall require the label of the product to include a statement that the last sale date of the product is a date which is three years after the last date on which the product may be manufactured.**

COMMENT L: The Department should clearly require that all air fresheners as defined in its rule are subject to both the terms of the rule and strict enforcement of those terms. "Air freshener" is defined in the rule as "any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing . . ." Clearly, a product that is available to a direct consumer which prominently claims in its advertising and on its label that it "deodorizes" is an air freshener within the meaning of N.J.A.C. 7:27-23. Products fitting the above description whose labels are also registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., are the source of over 65 percent of all VOS emanating from air fresheners into New Jersey's air. The fact that their labels are registered under FIFRA (because they claim to "disinfect" and are thus required to register under FIFRA as pesticides) does not exempt them from regulation, and there is clearly no federal pre-emption. It is suggested that the following statement would be evenhanded and fair, and the Department is urged to issue it:

"A product meeting the definition of "air freshener" is such a product irrespective to registration under FIFRA or of any other claims made concerning the product."

COMMENT M: Both N.J.A.C. 7:27-23.4(a) and (b) seem to have the same requirement but different effective dates. Therefore, it is not clear what the effective dates of these requirements are.

RESPONSE TO A THROUGH M: The air freshener portion of N.J.A.C. 7:27-23.4 has been invalidated by the Appellate Division of the Superior Court of New Jersey in its February 26, 1990 decision on *In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products,* N.J.A.C. 7:27-23, ____ *N.J. Super.* ____, Dkt. No. A-1226-89T1 (App. Div. February 26, 1990). The proposed amendments are not being adopted and N.J.A.C. 7:27-23.4 has been reserved.

N.J.A.C. 7:27-23.5 Labeling requirements

COMMENT: The proposed "grandfather clause" at N.J.A.C. 7:27-23.3(b) applies only to the VOS content and not to the VOS declaration type size. Certainly the arguments that persuaded the Department to propose a three-year sell-off period for the current rule should lead to similar treatment for the proposed rule. The chain of distribution needs time to work off inventories of products manufactured to comply in good faith with rules currently in place. One commenter requests a three-year sell-off period for products labeled in accord with the February 21, 1989 rule to make the "grandfather clause" consistent for VOS content and the VOS declaration. Another commenter requests that the labeling and date coding not go into effect until one year after the amendments are adopted.

RESPONSE: N.J.A.C. 7:27-23.5(b) (proposed as N.J.A.C. 7:27-23.5(c)) has been revised. Those products manufactured after February 28, 1991 are subject to the type size requirement. Any product manufactured prior to that can have the required information displayed using any format and type size.

COMMENT: The most important concern for coatings manufacturers is uniformity of Volatile Organic Compound (VOC) control measures in the standards set, and in labeling, recordkeeping and implementation requirements. New Jersey's rules need to be consistent with those of other states, particularly New York. For the manufacturer, all states' requirements must be distilled into a single set of compliance parameters, including any specific labeling. Other states may follow New Jersey's lead and develop individual requirements so that containers will be filled with identical information in different forms and locations.

RESPONSE: The Department has adopted labeling requirements which are not identical to those in effect in New York but which are not incompatible. The term VOC used in New York, can be used in New Jersey also, as long as the terms, as applied to that product, are synonymous. In response to comments, the positioning of information has been confined to a prohibition on using the bottom of product containers.

Differences in recordkeeping are based on the Department's perception of what is needed to promote compliance and enforce the rule.

COMMENT: The labeling requirements should be uniform with other states. No manufacturer can control inventory of a product that has to have special labeling for a particular locale. Otherwise, the manufacturer will include labeling that complies for all states, presenting the consumer with a complex label, difficult to decipher and absorb.

RESPONSE: Although not identical to the requirements for New York, the labeling required by subchapter 23 is not so different as to require a separate label. Any differences are small and can be easily accommodated into one labeling statement.

COMMENT: One commenter requests that the new labeling provisions be deleted entirely, or at least be held in abeyance until answers to the questions raised at the public hearing can be submitted. These answers cannot be completed by the end of the public comment period.

RESPONSE: The majority of questions raised at the hearing were answered by either subsequent commenters or research by the Department. There is no need for the labeling provisions to be held in abeyance. However, in response to comments made, the compliance date for the type size requirement for labeling has been extended.

COMMENT: Any rule dealing with the labels on architectural coatings should take into account industry practices of label handling. For instance, paint manufacturing facilities commonly stock a year's supply of labels, which is replenished on a quarterly or semi-annual basis with a four to six months lead time. Therefore, it is not possible to make changes to label copy throughout a manufacturer's product line in less than one year.

RESPONSE: The Department has incorporated a February 28, 1991 deadline for use of a particular type size. All products manufactured after that date must display labels in complete conformance with all provisions of the rule. This will allow the time to use up current stock, rework labels, and print new labels.

COMMENT: It should be clarified as to whether the "grandfather clause" applies to labeling requirements. Since it would be prohibitive to retrofit "grandfathered" stock with new labels, such stock should be exempt from labeling.

RESPONSE: The "grandfather clause" does apply to labeling. For architectural coatings, N.J.A.C. 7:27-23.5(a) states "For any architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3 . . ." Since the compliance dates are set for architectural coatings in N.J.A.C. 7:27-23.3, those same dates apply when labeling is required.

COMMENT: One commenter, while disagreeing with some of the proposed labeling requirements, commends the use of terms other than VOS and the deletion of the exact language to express VOS content.

RESPONSE: The Department acknowledges the comment and appreciates the support.

COMMENT: It appears that the effective date for the VOS information to appear on product labels is the date of promulgation of the rule. The effective date of the rule should be defined.

RESPONSE: The date for VOS information to appear on the label is the compliance date of the rule. Because changes to the labeling have been adopted after the first compliance date, an implementation period for those labeling changes has been incorporated into the requirements.

COMMENT: Manufacturers of architectural coatings are presently working toward compliance with the New Jersey Right-to-Know Law which requires certain labeling by March 3, 1990. Therefore, they are trying to incorporate what they think the final VOS rule will require so labels will not have to be changed again in three months. There should be some coordination of labeling requirements between state agencies.

RESPONSE: The labeling requirements were adopted in January, 1989. Since that time, amendments have been proposed in response to comments received from industry. These proposed changes are to make compliance with the rule easier. The labeling required by the New Jersey Right-to-Know Law is for different purposes and is to convey different information. The Right-to-Know labeling must include the five chemical compounds most prominent in a given product plus any other defined as hazardous. These compounds must be listed on the label by chemical name and chemical abstract service number. The labeling required by the VOS rule can be as simple as "VOS = x lbs/gal." The Department has incorporated an implementation period for the VOS labeling requirements in order to lessen any burden imposed by these requirements.

COMMENT: When added to the cost of printing labels for compliance with subchapter 23 and the New Jersey and Pennsylvania Right-to-Know Laws and other costs imposed by Federal and state regulations, the cost of space to store records and of manpower to retrieve these records go from being reasonable to being considerable.

RESPONSE: The records that are to be kept are, in many cases, already kept for other purposes. The Department did consider the incremental costs of these requirements and attempted to keep them as small as possible. The proposed recordkeeping is much simpler and less burdensome than that originally adopted in January, 1989.

In response to comments concerning Right-to-Know labeling and timing factors, the Department has adopted February 28, 1991 as the date by which labels must be in complete compliance with subchapter 23. This will allow manufacturers to phase-in the required type size for labeling when current stocks are depleted and new labels are printed. Thus, there will be a negligible additional cost for new labels.

COMMENT: One commenter states that her company has 48 million labels in inventory for architectural coatings, with a value of $4.8 million. To print new labels would cost $2.7 million, and to relabel New Jersey bound products would cost $1.8 million, for a total of $9.3 million to comply with this subchapter. This is not "relatively small."

RESPONSE: A date one year from now, February 28, 1991, by which the type size requirement must be met has been added to the provisions of N.J.A.C. 7:27-23.5. This will eliminate the need to dispose of existing labels and relabel New Jersey bound products. When label stocks are depleted, the cost of printing new labels will exist if a change is made to them or not. With a one-year implementation period, the cost is relatively small.

COMMENT: One commenter states that his company has developed an adhesive sticker that contains, in part, the VOS statement, and that has been accepted in California, Texas, New York and Arizona. It uses eight point type for the VOS statement. New Jersey should revise its rule so that this sticker also is acceptable in this State.

RESPONSE: The use of eight point type will be acceptable in New Jersey, as the minimum type size has been established at 12 point. The use of stickers also is acceptable.

COMMENT: The phrase "One year after the adoption of the rule" should be added to N.J.A.C. 7:27-23.5(a)1 and 2, to allow a one-year implementation period for labeling.

RESPONSE: The requirements for labeling on thinning and on the VOS content were adopted about one year ago. Compliance with these requirements, in some form, can be reasonably expected by the appropriate compliance date. The type size requirement is new, and a one-year implementation period has been incorporated into the rule for use of this type size for labeling.

COMMENT: Although amendments proposed for N.J.A.C. 7:27-23.5(a) require the placement of the label "on the side of the container," the current New Jersey rule does not limit its placement. This is supported by the proposed "label" definition which contains non-restrictive language reflecting this flexible approach. Clearly, the definition must be consistent with the regulatory language of N.J.A.C. 7:27-23.5(a). Therefore, an agency interpretation is needed to clarify this inconsistency. In addition to the structural inconsistencies, the term "on the side of the container" must be clarified to mean the vertical portion of the container when held upright, as otherwise the term is ambiguous.

Three commenters state that the labeling requirement should specify only that the VOS content statement be "prominent." The statement should be permitted on any "side" of the container, except the bottom, as long as it is prominently displayed and visible to a user or inspector.

RESPONSE: The Department's major concern is that the indicated information be readily visible to consumers. If it is on the bottom, it is not visible unless the container is turned upside down and this cannot be considered readily visible. Because the top is easily visible, the language has been changed to allow information on the top while excluding the bottom as the site for certain labeling information. This should eliminate

the ambiguity presented by the phrase "on the side of the container," while preserving the visibility of the information.

COMMENT: Manufacturers need the flexibility to display necessary information anywhere on the container. One commenter suggests the word "label" in N.J.A.C. 7:27-23.5 be replaced with "container" or "label-or container" and that the position of thinning instructions or VOS content not be specified. Another commenter also states that flexibility in positioning of information is needed, but feels that the definition of "label" is sufficient.

RESPONSE: The term "label," as defined for use in subchapter 23, encompasses the container that holds the product. The Department sees no need to use the term "container." The only positioning requirement now contained in the rule is a prohibition on using the bottom of the container to display certain information.

COMMENT: Three commenters recommend that thinning instructions not be required if only water is used for thinning. Water is not a VOS and the statement is not necessary. One recommends the sentence "This requirement does not apply to thinning of an architectural coating with water" be added to N.J.A.C. 7:27-23.5(a) to accomplish this. Another recommends ". . . the container of solvent thinned paints shall carry a statement . . ." to accomplish the same thing. This is consistent with CARB and New York. One commenter states that some of his company's products carry the statement "Thin sparingly with water if necessary," and feels this is sufficient and adequate.

RESPONSE: The Department agrees that thinning with water will not cause a coating to exceed its applicable VOS standard. However, the Department believes it is important that thinning instructions be included to reflect the fact that the product is only to be thinned with water and not a VOS. The statement required, if not already present, should be simple and any burden will be minimal. The statement that the one commenter's company uses is a good example of an acceptable statement regarding thinning.

COMMENT: The Department has stated that it is trying to promote regional consistency. However, the requirement of the VOS content in pounds per gallon at a specific size is absolutely in conflict with New York's grams per liter VOS. It would be of tremendous benefit if manufacturers had the option of expressing the content as VOS or VOC, in pounds per gallon or grams per liter, anywhere on the container. An inspector with a hand-held calculator can easily convert from metric to English units. Also, the average consumer has no idea of what VOS means, and the presence or absence of VOS content language on the container will not affect the decision to purchase or use a coating.

RESPONSE: The terms VOS and VOC can both be used for labeling, as stated in N.J.A.C. 7:27-23.5(d). However, labeling serves the valuable function of providing information to the public on the relative amounts of VOS in the products they use and allows the consumer the opportunity to use this information in making consumption decisions. Pounds per gallon will be more easily understood by consumers, particularly in light of the fact that paint is often sold by the gallon. Therefore, the requirement will remain for pounds per gallon.

Also, news stories about ozone violations have informed some consumers of what VOS is. As more consumer products are regulated to minimize VOS content, more consumers will become aware of what VOS means and how it contributes to air pollution.

COMMENT: For companies that use lithographed cans, the labeling requirement does not mean printing new labels, it means retooling portions of the can manufacturing process. Because such cans display only that information common to an entire product line, the color is displayed on an adhesive label on top of the can. This is a prominent location for VOS information, as the consumer must look at the top of the can to determine the color of the contents. An exemption for forms of packaging that convey essential information on the lid should be adopted.

RESPONSE: N.J.A.C. 7:27-23.5(a) now prohibits only the bottom of the container for use in displaying VOS information. The Department believes that this is sufficient to ensure the prominence and accessibility of the VOS information, as originally intended. Therefore, there is no need for an exception for certain types of packaging.

COMMENT: The Department assured industry that "what was acceptable in New York would be acceptable in New Jersey as far as VOS/VOC requirements are concerned," so one commenter ordered over one million new labels, while another ordered three million. The proposed requirement of a four millimeter type size and specific placement of information on the label is inconsistent with this assurance. Also, the use of pounds per gallon as opposed to grams per liter is inconsistent with New York.

RESPONSE: The Department never stated that the labeling requirements in subchapter 23 would be identical to those in effect in New York. The requirement for the VOS statement to be in pounds per gallon has been in the rule since it was adopted in January 1989. A change to grams per liter was never proposed by the Department. The requirement for a specific location for information has been clarified as a prohibition against the use of the bottom of the container. This is not inconsistent with New York's requirement. The type size requirement remains, although the type size has changed. New York has no type size requirement, so this cannot be inconsistent. As to labels already ordered, they now can be used until February 28, 1991, after which all products must have the proper labeling.

COMMENT: One commenter stated that manufacturers who also sell in New York have printed labels that conform to New York's rule and use VOC rather than VOS. These labels should be permitted until current stock is depleted. Another commenter requested that New York's requirement concerning type size be adopted, or that the following be added to the rule:

> "Manufacturers who presently have undersized type VOC/VOS statement or units printed on their present stock of labels may use them up, but must comply with the requirements of this rule on the next printing."

A similar request is made by another commenter to amend the rule to read as follows:

> "Manufacturers whose present label stocks are not printed in the 4mm type size and/or who only state their VOC/VOS levels in grams/liter may use up their current stock of labels but must comply with the requirements of this rule on the next printing of each of their product labels."

RESPONSE: The term VOC is permitted on labels and does not need to be changed provided the VOC content and the VOS content are identical. A one-year implementation period has been incorporated into the rule to allow for the use of current label stocks and the printing of complying labels. This makes the suggested language unnecessary.

COMMENT: In order to ensure that the majority of complying coatings manufactured after the rule effective date will be properly labeled and that the labeling requirements in the New York/New Jersey region will be consistent with other areas of the country, N.J.A.C. 7:27-23.5(a)2 should be revised as follows:

2. The container shall include a statement which specifies the maximum pounds of VOS in a gallon of architectural coating as produced by the manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning.

RESPONSE: N.J.A.C. 7:27-23.5(a)2 does state what the commenter suggests. However, it goes on to require a given type size for this VOS statement, and gives manufacturers one year to implement the use of that type size.

COMMENT: N.J.A.C. 7:27-23.5(a)2 should be revised to read as follows:

2. Containers shall include a statement which specifies the maximum pounds of VOS in a gallon of architectural coating as produced by the manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. This statement shall be in print no smaller than 0.16 inches (four millimeters) in size on labels used on containers of one gallon capacity or larger and no smaller than 0.11 inches (2.8 millimeters) in size on the labels of containers of less than one gallon in capacity.

Products manufactured prior to (twelve months from the date of adoption of this rule) will not be considered in violation of this provision if the required statement does not meet the type size requirements of this provision.

The word "prominent" should be deleted because it is not defined and is therefore subjective. It will only cause confusion. Also, the suggested change will incorporate an implementation period of twelve months in order to print new labels and use up existing stock. One commenter requests a two-year period to delete existing stock.

RESPONSE: The type size requirement has been revised to a minimum of 0.08 inches (two millimeters or 12 point) for all labels. This ensures that the VOS statement is legible and uniform, making it easy for consumers to read. A one year implementation period has been incorporated into the rule to allow for the printing of new labels and the depletion of existing label stock. Based on information available to the Department and the preponderance of the comments on this issue, one year will be sufficient to accomplish this. The word "prominent" has been retained,

as it indicates the importance the Department attaches to this information.

COMMENT: Several commenters prefer that type size for the VOS statement not be specified. However, if the Department believes it is necessary, 0.16 inches should apply to gallons and larger, with a smaller size of 0.11 inches for smaller containers. One commenter stated that 0.16 inches is too big even for gallon containers, as it is larger than safety and health warnings, instructions for use, and other information. Another commenter believes the type size requirement is inconsistent with federal labeling requirements.

The type size should be scaled to the size of the container or the area of the label. If in the future, VOS information is required on pint or smaller containers, the specified 0.16 inches will be totally inappropriate. In addition, the use of this type size on quart containers may necessitate the omission or limitation of product instructions because of area constraints. This would lead to a poorly informed product user. One commenter suggested that the type size requirement be replaced by:

> This statement shall be prominent and in a type size in relationship to the container size and to other printed copy on the label.

Also, the type size requirement appeared for the first time in this latest set of proposed amendments. By adding a type size requirement for labeling, the Department negates its comment that there has been plenty of time since the rule was first proposed to print new labels and that most manufacturers have already printed compliant labels. In anticipation of the January 1, 1990 compliance date, many companies have made substantial investments in label design, art work, paper labels and lithographed cans. The labels comply with earlier versions of the rule which did not contain a type size specification. Now, it would be impossible, and costly, to change labels by January 1, 1990. The compliance dates are January 1, and February 28, 1990, although the hearing on these amendments was not scheduled until December 5, 1989. If a type size is to be required, manufacturers should be allowed to use up their stock of labels and incorporate the change as new labels are printed. This would conserve a natural resource (wood), put less waste into already overcrowded landfills, and prevent VOS emissions from the printing of replacement labels. One commenter suggested a three-year period for compliance with this requirement. Several other commenters suggested one year, as contained in the CARB SCM. This implementation period will not result in additional VOS emissions.

RESPONSE: While ozone does have important health implications, the Department agrees those health effects are not as immediate as the ones covered by health and safety warnings. Therefore, the type size requirement has been reduced to a minimum of 0.08 inches (two millimeters or 12 point) for all containers. This is equal to or smaller than the type size required by the Consumer Product Safety Commission, yet large enough for the legibility the Department intended.

In addition, a one-year implementation period has been incorporated for the type size requirement. The Department acknowledges that it takes time to design and print new labels. This one-year implementation period will allow existing labels to be used until new ones can be printed. However, the existing labels must have some indication of the VOS content of the product as required by the rule since it was first adopted in January 1989. This should be sufficient for the depletion of existing label stocks and the printing of new ones. A relatively small cost will be incurred and additional waste or VOS emissions will not be generated.

COMMENT: Requiring a large type size in many cases would cause manufacturers to increase their packaging. With New Jersey, and the nation, in a solid waste crisis, it would seem inconsistent to discourage increased packaging on the one hand, and encourage it on the other.

RESPONSE: The type size has been reduced. The 0.08 inch type size should fit easily on small labels and should not encourage increased packaging.

COMMENT: Several commenters question the preemption of safety and health warnings with the requirements for such large VOS statements, and consider this an important issue for the protection of the health and safety of the consumer. Information on things like flammability is important to proper handling of products, while VOS content is not. Because labels are often used nationwide, the implications of the type size requirement should be discussed with other regulatory agencies within New Jersey, particularly fire marshals, the Federal government, and other states. Two commenters state that the VOS statement should be no larger or equal to the print size required by the Consumer Product Safety Commission for the statement of hazard for the size container.

RESPONSE: It was never the Department's intention to preempt safety and health warnings on consumer products. In order to retain the visibility and prominence of the VOS statement while deleting the unplanned preemption of health and safety information, the type size requirement has been adjusted to 0.08 inches (two millimeters or 12 point). This is smaller in size than the 0.11 (2.8 millimeters) required by the Consumer Product Safety Commission for safety information on quart cans.

COMMENT: The Department states that the large type size VOS statement will act as a warning to consumers who will provide a quasi-enforcement activity by deciding to buy lower VOS paint. One commenter states it will have the opposite effect. Generally, the educated consumers are paint contractors who are biased toward high VOS content paint based on past performance, and will most likely choose the higher VOS products.

RESPONSE: As the ozone problem in New Jersey and elsewhere continues, people are becoming more informed about VOS and its role in the problem. Not all paint contractors are biased toward high VOS content products. As consumers learn more about the environmental effects of the products they use, the VOS statement will become more important.

COMMENT: Although the Department's definition of label is broad enough to include the lid of the can, where most date codes are applied, one commenter expressed concern that calling for the code to be on the label might be confusing.

RESPONSE The Department determined that using the word "label" and defining it in broad terms is preferable to using words like "container." If "container" were used it could be interpreted to mean the carton the product is shipped in, and not the can or other container which actually holds the product.

COMMENT: The new requirement in N.J.A.C. 7:27-23.5(c) for the date code needs to be clarified as to whether the code needs to be "on the side of the container." The majority of manufacturers place the code on the bottom or the lid. If it also is required on the side, duplication of effort and information will occur. In addition, no other state requires this information "on the side of the container." This section should not be adopted.

RESPONSE: N.J.A.C. 7:27-23.5(c) simply states that the label must display the date code. Any surface on the container can be considered part of the label, so the date code can appear on any surface. It does not need to be "on the side of the container." It can be on the top or bottom as well.

COMMENT: One commenter has no objection to providing date codes on his products and providing the State with an explanation of the codes. He agrees that such information is an enforcement tool.

RESPONSE: The Department appreciates the support of its position that date codes and their explanations are an enforcement tool.

COMMENT: One commenter cannot determine if date coding is necessary only on "grandfathered" material. A product that is properly labeled should not need a date code. Therefore, N.J.A.C. 7:27-23.5(c) should be changed to include the following:

> The provisions of this paragraph shall not apply to articles jointly in compliance with 7:27-23.5(a) and 7:27-23.3.

RESPONSE: A date or date code is required on all architectural coatings affected by this rule and manufactured after the applicable compliance dates of January 1, 1990 for Group I coatings and February 28, 1990 for Group II coatings. The date code is an indication that a given coating should be in compliance with the VOS content limits. This enforcement tool is made more necessary by the fact that what constitutes compliance will change next year when the type size requirement becomes effective on February 28, 1991.

COMMENT: Two commenters oppose the requirement to furnish date code information to the seller of any product. One sees it as unnecessary and inconsistent with other states' rules, and the other feels it is an impossible burden, because many retailers do not purchase directly from the manufacturer, and ensuring that they all get date code information is a huge task. The use of a code serves to eliminate concerns by distributors, retailers and purchasers/users that paint manufactured last month is in some way preferable to that made several months ago. Distributing the date code to the seller defeats the purpose of the code and creates another paperwork burden for the manufacturer, distributor and retailer. The phrase "seller of the product" should be deleted from N.J.A.C. 7:27-23.5(c).

RESPONSE: The phrase has been deleted. The Department agrees that it is unnecessary for the date code to be supplied to the seller. The

compliance statement required by N.J.A.C. 7:27-23.6(a) will be a sufficient safeguard for retailers and other sellers.

COMMENT: The Department does not appreciate the magnitude of the information that will be submitted on date codes. One commenter states his company will be required to provide initially 2,100 codes, with 700 or more additional codes being provided each year, and suspects other companies will have similar situations. He suggests that New Jersey rely on an honor system for compliance with deadlines, and only audit manufacturers' date coding. This would preserve the State's right to check on compliance, while eliminating a tremendous paperwork and administrative burden for both manufacturers and New Jersey. Besides, the difficulty of keeping files current, as well as possible interpretation problems, will make it likely that the Department will need to contact the manufacturer in most cases where a manufacturing date is in question. The manufacturer could then supply and explain the code in question, eliminating the filing and updating of voluminous information.

RESPONSE: If all companies were honorable, the Department could rely on an honor system. Unfortunately, not all companies are honorable, and the Department needs an enforceable way to determine compliance. It is the Department's understanding that date codes are not extremely complicated things. They are generally designed in one of two ways: each symbol represents part of the date, or a simple sequential numbering system. If a symbol type system is used, the company needs to submit an explanation of the symbols. If a sequential numbering system is used, the company needs to submit the number of the last batch manufactured prior to the compliance date. Neither is voluminous.

COMMENT: The United States Congress expressly intended to prohibit any state, despite environmental and health based labeling concerns, from imposing labeling requirements other than those approved by USEPA on FIFRA products. In addition, the Department cannot mandate a formulation change prior to USEPA approval. A state can regulate pesticide contents more stringently than the federal government only if it is possible to comply with both the federal and state requirements. Therefore, FIFRA preempts this State rule. This section should be deleted, or at least modified to incorporate the labeling and formulation limitations imposed by FIFRA, as New York has done.

RESPONSE: The Department agrees that the formulation and labeling of pesticides is governed by FIFRA. N.J.A.C. 7:27-23.5(d) does not require a product to be relabeled in violation of FIFRA, rather it requires the manufacturer to submit an application to USEPA for necessary approval of label amendments. New Jersey is not the first state to require application to USEPA for label changes on FIFRA products. Both New York and California also require amendment applications to be made. The change requested is minor, but the information the change will convey is important.

The provisions of N.J.A.C. 7:27-23.5(d) have been modified to include formulation as well as the label in the exemption. The Department is aware that both the formulation and the label are governed by FIFRA and time for compliance with FIFRA's requirements has been given.

COMMENT: One commenter disagreed with the claim that FIFRA preempts the Department's right to include FIFRA registered products in its rules. This rule is being promulgated under the requirements of the CAA and a SIP approved by USEPA pursuant to the CAA. FIFRA also is implemented by the USEPA. There is no irreconcilable conflict between USEPA's duties and requirements of the two statutes, and the Department should not strain to find one. There cannot be preemption of one Federal statute by another.

RESPONSE: The Department concurs that both the purpose of the CAA and the purpose of FIFRA can be fulfilled on a single label.

COMMENT: One commenter stated that the Department should amend its rule to specifically exempt FIFRA-registered products from the VOS labeling requirements, because the FIFRA labeling requirements adopted by USEPA are exhaustive. The USEPA's authority to regulate labeling under FIFRA is not only plenary, but exclusive. Under FIFRA, state regulations that require a change or supplementation to USEPA-approved pesticide labels are expressly preempted. Since this rule purports to dictate the label requirements of FIFRA-registered pesticides, this rule is expressly preempted and is therefore, invalid. Subchapter 23 does not evade FIFRA's preemptive effect simply because a covered manufacturer must submit the Department-required label to USEPA for approval. In effect, the Department attempts to do indirectly what it may not do directly. Although the applicability of the regulations is contingent upon USEPA approval of the Department label, the Department is still attempting to engage in an activity expressly prohibited by federal law. To force a manufacturer to seek USEPA approval of local labeling requirements would upset the balance struck by FIFRA and place an intolerable burden on interstate commerce. The potential for interstate labeling conflicts cannot be ignored. FIFRA was specifically designed to eliminate a patchwork of varying and conflicting requirements.

RESPONSE: The Department does not agree that this rule violates the letter or spirit of FIFRA. States retain authority to limit the sale or use of FIFRA-registered products, and this may require manufacturers to reformulate in order to continue sales. Relabeling must accompany reformulation. USEPA has indicated that it will give due consideration to applications to reformulate and relabel those products covered under FIFRA. Applications to relabel are also required by California state regulations. The VOS clean air regulations leave the final determination on relabeling to USEPA, which is consistent with FIFRA. USEPA will consider the burden, if any, on interstate commerce in its determination.

COMMENT: The rule appears to exempt FIFRA-registered products pending approval of amendments by USEPA. Recently, the Department has stated that the product in the container will not be exempt. The effect of this interpretation is to eliminate these products from the marketplace. One commenter feels this present interpretation is not appropriate for the following reasons:

1. In previous discussions with the Department, several companies were assured that the FIFRA exemption, although included in the label section, was intended to exempt the product as well.

2. The above was reinforced by the concept of regional uniformity. New York Part 205 exempts FIFRA registered products from the entire regulation, pending USEPA approval of an amended registration.

3. It is beyond the scope of the VOS regulations to effectively ban the sale of certain products. Many VOS levels and definitions were discussed and modified during rulemaking to permit continued availability of product.

4. It is well established that certain federal laws and regulations, specifically FIFRA, preempt State laws and regulations. Clearly, the current interpretation of the rule is in conflict with this principle.

5. A careful reading of N.J.A.C. 7:27-23.5(d) reveals mixed intentions. For instance the phrase ". . . provided the manufacturer files an application for any registration amendment necessary for compliance with this subchapter . . ." clearly exempts the product as well as the label since both are regulated under the subchapter and both require amendment. Later in the paragraph it says "Those products for which an amended registration . . . are exempt . . ." Again the statement seems to be addressing both the product and the label, despite being placed in the labeling requirements section. Only in the latest proposed amendment, at the end of the paragraph, is the word "label" actually mentioned.

6. The removal of pesticide paint products from the shelves of New Jersey paint dealers, even temporarily, will deprive New Jersey consumers of effective, government-regulated preservative products. These products are important in extending the life of exposed wood and FIFRA registration insures that consumers are adequately informed of directions for use and assured of product efficacy. To ban registered products is a step backwards in consumer and environmental protection.

The Department should issue an official interpretation of this section which acknowledges the exemption of both the label and the product pending USEPA approval of an amended registration. This would protect manufacturers from future misinterpretation of the rule without further amending it.

RESPONSE: The language in N.J.A.C. 7:27-23.5(d) has been modified to include formulation and labeling. Although it was not the initial intention of the Department to exempt formulation, the confusion resulting from the way this requirement is written and the fact that wood preservative coatings represent only three percent of the total emissions of VOS from architectural coatings makes exempting the formulation for a short period of time inconsequential. The rule is now consistent with that in effect in New York. The exemption of FIFRA formulation will be contingent on the manufacturer reformulating the product and submitting an amended registration to USEPA. Only manufacturers that have completed both of these steps can continue to sell noncomplying products in the State. Also, those noncomplying products can continue to be sold only up to six months after USEPA approves the reformulation. Even if every wood preservative product now on the market does not comply, the Department estimates that the emission reduction expected will be decreased by only one-half of one ton per day (tpd). It is expected that this insignificant environmental impact will last for the projected two years necessary to obtain EPA approval and the one year necessary for turnover of product, while allowing the continued availability of these important products. However, some products already comply, and the

decrease in the emission reductions will be less than one-half ton per day. The impact of one-half ton per day VOS from an areawide source is undetectable and insignificant compared to VOS reductions already achieved by the Department, such as 20 tpd from Stage II controls, 15 tpd from architectural coating rules, and 140 tpd from reduction of volatility of gasoline sold during the summer ozone season.

As for the right of the Department to ban the sale of certain products, it certainly exists. N.J.S.A. 26:2C-8 states "The department shall have power to formulate and promulgate, amend and repeal codes and rules and regulations preventing, controlling and prohibiting air pollution throughout the State . . ." Subchapter 23 does just that and has been promulgated following the proper procedures. In addition, the rule does not ban the sale of any category of products, but only those specific products that do not meet the limits established for them.

COMMENT: Approval by USEPA of wood preservative formula changes is necessary to claim wood preservative protection. Without this approval, a coating cannot be called a wood preservative and protection of the substrate cannot be claimed. At the present time, it takes six to 18 months for approval of amendments. The exception listed in N.J.A.C. 7:27-23.5(e) should be moved to N.J.A.C. 7:27-23.3(d), and expanded to cover formulation as well.

RESPONSE: The exemption has been expanded to cover formulation to allow the continued availability of FIFRA-registered products during the registration amendment process. However, it is not being moved and will remain at N.J.A.C. 7:27-23.5(e), renumbered as N.J.A.C. 7:27-23.5(d). The exemption is only for such time until USEPA has rendered a decision upon the amendment request. This will forestall the submission of incomplete or frivolous registration amendments to circumvent the intent of the rule, which is to protect air quality.

COMMENT: N.J.A.C. 7:27-23.5(d), which applies to FIFRA-registered products, is significantly different, at least in the way it is written, from any other state's VOC rule. Since it appears in the labeling requirements, it is assumed this section relates only to labeling. FIFRA registration applies to both the label and the formula. Adopting the New York provision would accomplish this without reducing the rule's effectiveness, and would allow sale of current products upon documentation substantiating submission of a registration amendment to USEPA, including a three-year "grandfather clause." The language could read:

> Any consumer product registered with the United States Environmental Protection Agency as a pesticide product is exempt from the provisions of (a), (b), and (c) above until the EPA approves whatever changes to the formulation and/or package label are needed to comply with this subchapter, provided that the manufacturer submits an application to the EPA for amended registration by February 28, 1990, and submits a copy to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey 08625. Within 30 days of receipt of notice of EPA action on amendment request, a copy of that notice will be sent to the Assistant Director, Enforcement Element, at the address specified above. Within six months of EPA approval of revised product and/or label change, the manufacturer shall begin use of the amended product and/or label change on existing compliant products. Any product manufactured prior to six months after the approval by the EPA of the revised product and/or label change can be sold for three years.

Other similar language is also suggested.

RESPONSE: The provisions of N.J.A.C. 7:27-23.5(d) have been expanded to include formulation as well as labeling. The way it was written it did apply only to labeling. However, FIFRA does apply to both the label and the formulation. FIFRA-registered architectural coatings account for only about three percent of VOS emissions from all architectural coatings. Exempting them until they can complete the registration requirements contained in FIFRA will decrease expected areawide emission reductions by, at most, one-half of one ton per day, which will not have a significant or detectable environmental impact. The social and economic impact of the change is positive, allowing manufacturers, distributors and retailers to continue to sell FIFRA affected products and allowing consumers the continued use of these important coatings.

The Department appreciates the effort of commenters submitting suggested language. However, the minor changes to N.J.A.C. 7:27-23.5(e) needed to incorporate this modification into the rule have been made.

COMMENT: N.J.A.C. 7:27-23.5(d) requires simultaneous submittal of FIFRA applications to the USEPA and the Department. As many companies submitted such applications months ago in response to New York's rule this requirement is impossible to meet. One commenter suggests January 1, 1990 as the deadline for submitting a copy to the Department. Another commenter states that the requirement to file a registration amendment is preempted by federal law and would be unduly burdensome on companies engaged in national marketing of pesticide products and should be deleted.

RESPONSE: The word "simultaneously" has been deleted from N.J.A.C. 7:27-23.5(d). August 31, 1990 will now be the deadline for submission of copies of amendment applications to the Department.

The requirement to file a registration amendment is necessary to be in compliance with this rule. A manufacturer can choose not to change his or her product or product label and not submit a registration amendment. Such a product cannot be sold in New Jersey because it does not comply with the rule N.J.A.C. 7:27-23.5(a).

The following comments were received on air fresheners. There is one response to comments which appears at the end.

COMMENT A: One commenter stated that the effect of the mandatory VOS content statement on air fresheners might well be an increase in VOS emissions. Consumers who observe a VOS content statement on an air freshener could reasonably conclude that the statement appears because the VOS content is harmful. They could also reasonably conclude that a product that has no VOS content statement on its label contains no VOS, and is therefore a safer product for them to use. As a result they could decide to use a competitive product that contains more than 50 percent VOS, but which is unregulated and therefore has no VOS content statement on its label. For example, an aerosol air freshener/disinfectant containing more than 50 percent VOS could be used instead of an aerosol air freshener containing 50 percent VOS, in the mistaken belief that VOS is harmful and that products without a VOS content statement do not contain VOS. Further VOS emission increases could also be expected to result from product substitutions within the regulated air freshener category. The same mistaken conclusion about the risk to a consumer of using a household product containing VOS could lead consumers to switch from aerosol to wick-type air fresheners, which typically have a lower percentage of VOS content than aerosols. But because wick-type air fresheners are placed in continuous evaporative use, their rate of VOS emissions can exceed that of aerosol air fresheners, notwithstanding their lower VOS content.

COMMENT B: The required type size is the same as that required for signal words (that is "caution" or "warning") on half gallon cans. Most air freshener containers are much smaller. On such containers, the VOS statement will be larger than any other print on the label, except the product name. This will give the statement more prominence than any cautionary statement, thus overshadowing such statements. The size of the cautionary statements is regulated under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.). One commenter states that the minimum type size should not be required at this time as manufacturers are making the attempt to comply with the intent of the rule. Another commenter suggests the statement be printed in a type size 0.016 inches less than that required by the CPSC for "KEEP OUT OF REACH OF CHILDREN" but in no case smaller than 0.03 inches. Another states that the provision should be deleted, or replaced with a requirement that the statement be clearly legible.

COMMENT C: The date code requirement for air fresheners is a last minute change that manufacturers will not be able to meet by February 28, 1990. Those who currently use such codes are unsure what is required by N.J.A.C. 7:27-23.5(c). For those who do not use such codes, especially small manufacturers, this requirement will be onerous, and perhaps impossible to meet. It would seem the Department only needs to know which products were manufactured as a product before or after the compliance date, which the manufacturer could report. This would allow the greatest flexibility.

COMMENT D: The Department should not grant any additional time to FIFRA regulated products to meet the labeling requirements. The regulation of FIFRA-regulated air fresheners is more lenient than that imposed on all others in that they enjoy a much more lenient labeling timetable, which is subject to abuse. Originally, FIFRA-regulated air fresheners were to have no label requirement. Currently, they have no label requirement until USEPA approves a new label conforming to this rule. Now the Department proposes to relax the labeling requirements for FIFRA-regulated air fresheners even further by giving those products an additional six months after USEPA label approval to begin using conforming labels. There is no information in the record as to how long

USEPA label approval takes for the label change contemplated here or how long it would take a manufacturer to implement a labeling change.

USEPA is favorably disposed to assisting the Department in regulating VOS emissions from FIFRA-regulated products. If the Department makes inquiries of USEPA, it will find that the label change contemplated, though subject to USEPA's approval, is not within the regulatory subject matter of FIFRA. USEPA considers approval of such changes *pro forma,* which are often granted in less than 30 days. And absent a requirement to proceed with alacrity, an applicant for a label change could drag approval out, through no fault of USEPA, for over a year.

Therefore, the commenter recommends that the Department:

(a) Contact USEPA and ask for its assistance in expediting label change applications under this air freshener rule;

(b) Modify its rule as to labeling of FIFRA-registered air fresheners by requiring manufacturers to seek USEPA approval *at the earliest practicable date;* and

(c) Ascertain the time *actually* needed to change a label once approved by USEPA and embody that time period in its rule for FIFRA-registered products.

RESPONSE FOR A TO D: The air freshener rule has been invalidated by the Appellate Division of the Superior Court of New Jersey in its decision on February 26, 1990 on *In The Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products,* N.J.A.C. 7:27-23, ___ *N.J. Super.* ___, Dkt. No. A-1226-89T1. The proposed amendments are not being adopted and those sections of the rule dealing with air fresheners have been deleted.

N.J.A.C. 7:27-23.6 Administrative requirements

COMMENT: Two commenters consider the proposed administrative requirements to be a significant improvement over previous versions.

RESPONSE: The Department proposed these requirements in response to previous comments.

COMMENT: One commenter advocates the deletion of the administrative (recordkeeping) requirements section. Removal of this section would promote regional and national regulatory uniformity. In the alternative, adoption of this section's requirements would require the Department to develop a guidance document. This document would review the various distribution scenarios (for example, out-of-state manufacturer, out-of-state distributor, in-state manufacturer, in-state distributor, etc.) and how each part of the distribution chain must comply with the appropriate requirements in N.J.A.C. 7:27-23.6. The Department has already stated that the suggestion to produce a guidance document will be considered. The commenter believes that such a guidance document would be necessary for industry and for Department enforcement personnel.

RESPONSE: The Department proposed the administrative section of this rule in response to comments on the original provisions. The recordkeeping and documentation required by this section are important tools the Department believes necessary for enforcement and future development of consumer product rules. These provisions are not inconsistent with other states' rules, and removing them simply for uniformity between states is not a sufficient reason.

The development of a general guidance document will be considered. The Department does develop an implementation plan for new and amended rules. Guidance may be included in that plan or in a separate document.

COMMENT: The administrative burden that would be imposed by N.J.A.C. 7:27-23.6 would be significant and is particularly troubling considering the Department makes no commitment to collect and evaluate any of this data.

RESPONSE: The Department considers the collection of data generated under N.J.A.C. 7:27-23.6 as part of its continuing commitment to attain the NAAQS for ozone which will be formalized in a new SIP. A periodic reporting of the data was not included in the rule so that requests for it can be made as needed. This will allow the Department to collect the data in manageable sections that can be evaluated readily. The Department is committed to the collection and evaluation of portions of this data within the next five years.

COMMENT: One commenter suggests that "consumer products" in N.J.A.C. 7:27-23.6 be changed to "air fresheners."

RESPONSE: The term "consumer product" in N.J.A.C. 7:27-23.6 cannot be changed throughout to "air fresheners." N.J.A.C. 7:27-23.6(a) now applies to architectural coatings. N.J.A.C. 7:27-23.6(b) applies to all consumer products including air fresheners containing greater than five percent by weight VOS. However, the phrase "subject to this subchapter" in N.J.A.C. 7:27-23.6(a) has been amended to "subject to N.J.A.C. 7:27-23.3" to clarify who is subject to this provision.

COMMENT: The requirements of N.J.A.C. 7:27-23.6(a) should be deleted. To require invoice notices will be an administrative nightmare. The inclusion of such general information on shipping documents serves no apparent purpose, will not aid enforcement, will not generate data for the Department and will not reduce VOS emissions. It will only add to the paperwork nightmare of manufacturers and distributors. New invoice forms will need to be printed at a considerable expense, or additional computer lines will need to be printed on forms. The information will have to be printed on invoices just for New Jersey, or those used in all 50 states. Neither option is recommended.

RESPONSE: The requirements of N.J.A.C. 7:27-23.6(a) act as a safeguard for wholesale and retail purchasers of affected architectural coatings. These persons rely on the manufacturers and wholesale distributors to provide complying products. With a statement on the invoice, the contractual obligation of the supplier to provide complying products is clear. In addition, this creates a paper trail for enforcement to use to trace back noncomplying products. Therefore, these invoice notices do provide an aid to enforcement, which in turn aids the reduction of VOS emissions.

New invoice forms are not necessary. A separate document can be used, or a sticker containing the necessary statement can be affixed to invoices going to New Jersey.

COMMENT: The requirements of N.J.A.C. 7:27-23.6(a) are burdensome and unnecessary. Requiring all manufacturers and distributors of consumer products as defined in this subchapter to include information on a shipping document to the effect that the products shipped are in compliance with the rule and that they are aware of penalties for noncompliance is totally inconsistent with previous action of the Department. Imposition of this new requirement on all consumer products is either a mistake or a misinterpretation.

In addition, N.J.A.C. 7:27-23.6(a) needs clarification as to which products are subject to this provision, although it can be assumed that only air fresheners and architectural coatings are. One commenter agrees with the proposal to include a statement on the shipping documents stating compliance, but feels that a statement that the manufacturer is aware of penalties for noncompliance is unnecessary. It is redundant because the manufacturer will have already stated he is in compliance. Another commenter states that products shipped to New Jersey must comply with this subchapter and penalties for noncompliance would exist whether or not there is a statement of compliance on the shipping documents. Requiring shipping documents to bear a compliance statement and an acknowledgment of potential penalties, and requiring retention of those documents for five years will do nothing to further the goal of improving air quality in New Jersey.

RESPONSE: The provisions of N.J.A.C. 7:27-23.6(a) now apply to only architectural coating shipments as air fresheners have been deleted from the rule. The language has been changed to clarify this. The phrase "subject to this subchapter" has been modified to "subject to N.J.A.C. 7:27-23.3." This elucidates the original intention of this provision. The requirement for a statement about awareness of penalties has not been adopted at this time.

COMMENT: The requirement of proposed N.J.A.C. 7:27-23.6(a) that documentation be included with every shipment does not serve any purpose that could not be equally served by a one-time certification of compliance to each customer for each product formulation. Changing a product formula is an expensive and time consuming process, and therefore occurs infrequently. A one-time certification to each customer would greatly simplify the process.

RESPONSE: Some manufacturers will continue to produce some products that comply and other products that do not comply with the requirements of this subchapter. A one-time certification of compliance to a customer does not guarantee that only complying products will be shipped to that customer from that time on. The statement of compliance with each shipment will remind the manufacturer or distributor to be sure that products shipped for sale in New Jersey comply with N.J.A.C. 7:27-23. It will act as a safeguard for purchasers of architectural coatings to ensure they receive coatings legal for sale in the State.

COMMENT: Many out-of-State manufacturers can expect to make shipments to distributors in New Jersey that are a mix of complying and noncomplying products. The distributor will then sell complying products within New Jersey and ship noncomplying ones to out-of-State customers. Because of this mix of complying and noncomplying coatings, it will be

impossible to include a statement of compliance on invoices or shipping documents. Also, although customers can be notified as to which coatings comply, a manufacturer cannot prohibit a customer from purchasing noncompliant products to sell to out-of-State customers.

RESPONSE: The shipment into New Jersey of noncomplying coatings is permissible under subchapter 23. Such coatings can be shipped into the State provided the documentation requirement of N.J.A.C. 7:27-23.3(d) is met. This documentation ensures that noncomplying coatings will not be sold for use in New Jersey, but will be shipped out-of-State. Compliance with this documentation requirement is compliance with the rule. Therefore, a statement of compliance can pertain to both complying and noncomplying products.

COMMENT: One commenter states that his company uses bound bill of lading books and the recordkeeping requirements would mean segregating bill of lading books for shipments to New Jersey and shipments outside of New Jersey. This will increase the paperwork and the possibility of errors in shipping documents, billing, and storage of records. In addition, some companies have several names, or drop ship for their customers on the customer's bill of lading.

RESPONSE: The statement does not have to be printed directly on the document, but can be on a sticker that is affixed to the document or a separate document. Therefore, separate bill of lading books will not be necessary, and the use of a customer's bill of lading should present no problems.

COMMENT: The requirement in N.J.A.C. 7:27-23.6(a) that the shipping document contain a specific statement about VOS content is in conflict with Federal requirements developed and enforced by the United States Department of Transportation (USDOT). The Hazard Manifest used by private carriers uses a format required by USDOT and cannot be modified to fit the needs of an individual state. These proposed shipping statements must be removed to avoid a Federal-state preemption conflict. Similarly, other shipping documents, which are contracts between the commercial carrier and the shipper, are subject to requirements set forth by the Federal Interstate Commerce Commission.

RESPONSE: Documents other than shipping documents can be used. Invoices or bills of lading can be used. A separate document containing just the necessary statement can be used. A sticker containing the necessary statement can be affixed to any of the documents that accompany a shipment of affected products. The Department does not believe this will cause any conflict between State and Federal laws.

COMMENT: The statement "and the person receiving them" must be clarified as to whom must receive the shipping documents, and maintain them for five years. Generally, the need for a retailer or even a distributor to maintain a copy of the shipping documents would be burdensome and result in a duplicative record retention system. This duplication is not necessary as it only creates a logistical burden on the distributor and retailer to transfer, store, and maintain the records for five years. Further, this proposed requirement is amplified as large shipments are often separated into smaller shipments for distribution either out-of-State or within New Jersey. Under either scheme, the ability to match the original shipping statements with the appropriate paint products will be hindered through the reshipment process, thus creating high costs.

RESPONSE: The maintenance of shipping records will create a paper trail that enforcement personnel can follow. The exact matching of smaller shipments to the invoices from larger ones will not be necessary in general. The fact that the product was received from a given manufacturer or distributor and that the product was further shipped is the important information. Only if a specific container of a product is the focus will the match between the original shipping statements and the appropriate products be required.

COMMENT: The phrase "for sale in New Jersey" in N.J.A.C. 7:27-23.6(a) needs clarification. It should be made clear whether this phrase means when the sale is for use in the State, or if any sale, including that to a distributor who plans to resell out-of-state, is covered. Also, would shipment by an out-of-state manufacturer to its own distribution system within New Jersey be covered by this?

RESPONSE: There are provisions in subchapter 23 that cover the sale of complying coatings and provisions that cover the sale of noncomplying coatings. If an architectural coating is shipped into New Jersey for in-State retail sale, it is subject to the limits on VOS content, the labeling requirements, and the documentation requirements. Architectural coatings shipped into New Jersey that will be shipped out-of-state for retail sale are subject to only the documentation requirements of N.J.A.C 7:27-23.3(d)1 in support of that out-of-State sale.

COMMENT: The present rule calls for manufacturers and distributors to document the VOS content of air fresheners shipped for use in New Jersey. One commenter planned to do this by adding a one-line computer generated statement to shipping papers and therefore supports the concept in the proposed administrative requirements section to use shipping documents to transmit required information to customers. The lengthy statements proposed, one declaring that products subject to subchapter 23 are in compliance with it, and another declaring awareness of the penalties for noncompliance with it, would consume a significant amount of space on the shipping document. In most cases, an additional page would be necessary to accommodate these statements. In effect, this would cause the creation of a separate shipping document for New Jersey. Moreover, it is unnecessary for a manufacturer to declare that he is a law abiding citizen since that is a status required by corporate policies. It is understood that rules are not violated. The commenter recommends that N.J.A.C. 7:27-23.6(a) be deleted from the rule.

RESPONSE: The air freshener rule has been invalidated by the Appellate Division of the Superior Court of New Jersey in *In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products,* N.J.A.C. 7:27-23, Dkt. No. A-1226-89T1 (decided February 26, 1990). The proposed amendments relating to air fresheners are not being adopted and those sections of the rule dealing with air fresheners have been deleted.

COMMENT: The rule requires each manufacturer and distributor to inform the recipient of a consumer product, through a printed statement, that a product is subject to subchapter 23. Let the distributor or retailer on the receiving end in New Jersey maintain this information and report it to the Department, not out-of-State facilities.

RESPONSE: The Department may want to verify that a shipment came from a certain facility. If the records do not exist, confirmation cannot occur.

COMMENT: The recordkeeping requirements are excessive. New Jersey should adopt the approach taken in New York, California and Texas. In these states, manufacturers are required to provide an explanation of their batch code systems, which will enable the regulatory authorities to determine when and where the material was produced.

RESPONSE: While explanations of batch code systems are required for architectural coatings, they are not sufficient to replace N.J.A.C. 7:27-23.6(a). The requirement for certification and recordkeeping on architectural coating shipments will indicate how a given coating came to be in New Jersey.

Also, recordkeeping pursuant to N.J.A.C. 7:27-23.6(b) applies to all types of consumer products, most of which do not have VOS limits or requirements for batch or date codes. In these cases, the records are needed to obtain information about VOS emissions from products for sale in New Jersey.

COMMENT: The definition of "consumer product" is broad and all inclusive, covering thousands of products that do not damage the environment. Only after the contribution of a specific product category to environmental pollution has been determined should the rule be expanded beyond the currently regulated categories.

RESPONSE: The kind of data requested by N.J.A.C. 7:27-23.6(b) is the type needed to determine the contribution of a specific product category to ozone formation. The VOS content of a product and how much of it is manufactured and sold is part of the first step in ranking products as to their contribution to air pollution, and in choosing what categories of products should be regulated. However, the Department has determined that products containing less than five percent VOS by weight can be excluded from the recordkeeping requirement, and over 90 percent of the VOS emissions from consumer products will still be covered. Therefore, in order to reduce the burden on both industry and the Department, while still obtaining the vast majority of the desired information, an exemption for products containing less than five percent VOS by weight has been incorporated into the rule.

Also, it has been clarified that items that are basically the same except for color or fragrance, such as different shades of lipstick, can be aggregated for the purposes of recordkeeping and reporting. This should further reduce any burden resulting from this requirement, while still providing the Department with the information it needs.

COMMENT: In order for future rules on VOS in consumer products to contribute to improving the State's air quality, such rules should be predicated on relevant, scientifically valid information which is current, accurate and takes into account the true fate of the VOS in these products. This is the approach taken by California and New York. Obtaining such information is a complicated matter which should be the subject of a

carefully considered study program. Such a study should have clearly specified objectives, a narrow focus to ensure accuracy, a scientifically sound protocol, and be of sufficient duration to accomplish its objectives. Instead of this kind of a program, N.J.A.C. 7:27-23.6(b) substitutes a generic and overly broad recordkeeping and reporting requirement.

RESPONSE: N.J.A.C. 7:27-23.6(b) will collect important basic information which can be used to choose product categories for well-grounded scientific studies. Knowledge of how much VOS is in a given product and how much of it is manufactured and sold can set the criteria for choosing categories for future study and regulation. The requirements of N.J.A.C. 7:27-23.6(b) are not a substitution for scientific study, but a first step in such a study. The Department has added upon adoption a reasonable time frame of 90 days for manufacturers to submit requested reports.

COMMENT: The recordkeeping requirement outlined in the rule will not help the Department accurately determine VOS emission levels. Total volumes are not necessary, when only a portion is sold in New Jersey. A company's shipping records will not convey the actual amount sold in the State. Sales information should be gathered from distributors and retailers, not manufacturers. To achieve this, the rule should be modified as follows:

> The manufacturer shall provide all purchasers of consumer coatings with a list of the products showing the quantity of VOS in each product. The retailer shall keep a copy of each shipping document for five years and on request provide data to the Department concerning the amount of product sold and the VOS content.

RESPONSE: The Department is interested in a vast array of products, not just architectural coatings. The majority of consumer products of interest are not subject to labeling requirements or any VOS limits. In order to obtain information about these products, the Department wants to go directly to the manufacturers. That way, information can be kept confidential if necessary.

COMMENT: Several commenters oppose adoption of those amendments that will broaden the scope of the rule to cover all consumer products. Several state that recordkeeping should be limited to those products subject to VOS limits in the rule or those products that would be expected to have a meaningful impact on ozone formation. Most consumer products contribute no significant pollution to the air and adoption of these amendments would not result in an overall improvement in the air quality in New Jersey while placing a severe economic burden on industry and requiring unnecessary expenditures of resources by both manufacturers and the Department. One commenter states that the requirement that manufacturers compile New Jersey specific sales figures is particularly onerous. Another commenter suggests that manufacturers could provide estimates of sales in New Jersey based on national or regional sales figures. This is the approach taken by New York.

RESPONSE: The Department needs a variety of information in order to properly determine the possibility of regulating a given category of consumer products and the impact such regulation will have. The possibility of substituting a low VOS product for one with a high VOS content can be pointed out by information from all types of products. The provisions of N.J.A.C. 7:27-23.6(b) have been limited to products containing greater than five percent VOS by weight, as this will cover over 90 percent of VOS emissions while reducing the burden on industry. This information will be used, in part, to determine which product categories are significant contributors to air pollution.

As to New Jersey specific sales figures, the rule requests an approximate amount. An estimate based on national or regional sales is perfectly acceptable and should not be onerous to determine.

COMMENT: Two commenters strongly oppose the requirements contained in N.J.A.C. 7:27-23.6(b) that each manufacturer of a consumer product containing VOS and sold in New Jersey maintain certain records for five years and provide them to the Department upon request. They request that this amendment be withdrawn. Such requirements should be proposed as a separate rule.

RESPONSE: Subchapter 23 is the rule on consumer products. This is the most appropriate place for recordkeeping requirements on consumer products. The Department believes the recordkeeping is an important part of the continuing development of rules on such products and has adopted it.

COMMENT: Prior to the institution of recordkeeping requirements, there should be a definite plan for utilizing the data that will be generated. Collection of this data should be systematic, efficient and have a minimum impact on the regulated community. Future rules should be based on relevant and valid scientific data, but this proposed amendment will not result in such data.

RESPONSE: The Department has a definite plan for using the data generated by this rule. It will be used, in part, to develop studies to solicit further information useful as a basis for future rules. The provisions of N.J.A.C. 7:27-23.6(b) were written so as to have a minimum impact on the regulated community. Consumer products containing five percent VOS by weight or less have been exempted from this recordkeeping. The Department will still be able to obtain information about 90 percent of the VOS emissions from consumer products, while removing thousands of products from the need to keep records.

COMMENT: Recordkeeping and reporting requirements should not be proposed until the Department has thoroughly considered the goals of recordkeeping, established critical data needs, and established priorities for data needs based on sound scientific judgment, so as to keep the burden and economic cost of such requirements within reasonable bounds. Recordkeeping requirements should only be implemented as part of a comprehensive program to assess emissions of VOS from consumer products. A comprehensive program would include the consumer's method of use of each product and the final fate of any VOS contained in the product. For example, many VOS containing products enter sewage treatment systems where they are biodegraded. One commenter offered assistance in the development of such a recordkeeping program.

RESPONSE: The Department considered the goals of recordkeeping before proposing these requirements, and determined that the data that will be generated by this recordkeeping is one of the critical data needs for consumer products. The data requested is not appreciably different from information kept for other purposes, and it should not be an economic burden. This data will be used as a basis for further study and data gathering.

The first step in determining which consumer products to consider regulating is to establish which categories of products are high in VOS content and emissions. This data will come from this recordkeeping requirement. Then, the method of use and final fate of the VOS from the product can be considered. However, studies performed at sewage treatment systems indicate that a substantial percentage of VOS in the wastewater volatilizes before it would be biodegraded.

The Department appreciates the offer of assistance, and will be asking for input from industry when future rulemaking on consumer products is considered.

COMMENT: As written, N.J.A.C. 7:27-23.6(b) may be interpreted to mean that any manufacturer that has one consumer product containing VOS must keep records on all products manufactured, irregardless of VOS content. A de minimis level of VOS should be incorporated into the recordkeeping requirements. This would eliminate diversion of government and industrial resources towards investigation of insignificant sources of VOS.

RESPONSE: The Department has clarified the language in N.J.A.C. 7:27-23.6(b) to make clear the intention to require records only on products containing VOS, not on all products regardless of whether or not they contain VOS. Also, a de minimis level of five percent by weight of VOS has been incorporated into the rule.

COMMENT: When the multiplicity of sizes and variations in color, fragrance, and other factors affecting personal use products are considered, the sheer number of products makes the recordkeeping requirements of N.J.A.C. 7:27-23.6(b) an onerous and unnecessary burden, a burden unrecognized by the Department in its proposal. This section as written would add new requirements that are impossible to comprehend, let alone implement. These burdens are particularly difficult for small companies without the personnel and data storage system to manage the task.

RESPONSE: The recordkeeping requirements have been limited to those products containing greater than five percent by weight VOS. This will reduce the number of affected products while still covering over 90 percent of the VOS emissions from consumer products. Also, different colors or fragrances of the same product can be aggregated for recordkeeping purposes.

The burden of recordkeeping should not be that great, as much of the requested information is kept for other purposes. The rules state that records "sufficient to provide the above information" need to be kept. If the information requested, total units produced, VOS content, and units sold in New Jersey, can be derived from business records currently maintained, no new records are needed.

COMMENT: If the Department feels it must persist in collecting extensive data before determining which categories may require regu-

lation, the following types of exemptions from recordkeeping should be considered:

1. Exempt colorants, fragrances and preservatives, which are present in small amounts in many products. They are essential to give a product its distinct characteristics and do not impose any environmental concern. For example, California's recent underarm product rule exempts a minimum level of two percent for fragrances and colorants.

2. Exempt all products containing less than a reasonable minimum percentage or amounts of VOS. Amounts up to 25 percent are suggested.

3. Exempt smaller package sizes, as is done for architectural coatings. Contributions from small size packages are negligible.

4. Exempt active ingredients that provide a necessary functional benefit or satisfy a federal or state registration need.

5. Exempt non-liquid products because they do not contribute significantly to ozone formation.

RESPONSE: The Department has considered all the suggested exemptions. An exemption for products containing five percent by weight VOS or less exempts less than ten percent of the VOS emissions from consumer products while greatly reducing the burden of recordkeeping. As for exempting some part of the VOS because it is an active ingredient, doing so would defeat part of the reason for recordkeeping. The data generated by this recordkeeping will give the Department an indication of the range of VOS content for a given product category and of an appropriate limit on VOS content. The Department understands that certain VOS components may be necessary because they are active ingredients or preservatives, and needs to know of such compounds if they are present in large quantities in order to set appropriate limits which will allow for their continued use.

Small size packages cannot be exempt because for some products that may be the only form of packaging. Non-liquid products do not have to keep records if they contain less than five percent by weight VOS. If they do contain more VOS than this, the Department wants information on them for all the reasons already listed.

COMMENT: Recordkeeping should be based on the amount of VOS in formulations manufactured annually. This procedure must be consistent with the system used to comply with New York Part 235.

RESPONSE: The Department is interested in all products that contain VOS, and has determined that requiring those products which contain greater than five percent by weight VOS will supply sufficient information for its purposes. This is not inconsistent with New York.

COMMENT: If the extensive recordkeeping requirements are adopted, the time for initial compliance should be extended at least one year. The time needed to set up such an extensive recordkeeping system will be in excess of the sixty days allowed by the amendment.

RESPONSE: The recordkeeping is not that extensive and consists mostly of the type of information already maintained for other purposes. The Department sees no need for a one-year implementation period.

COMMENT: It is proposed that the burden of maintaining records on the approximate number of units sold in New Jersey be placed on the manufacturer. This is impossible. The manufacturer often supplies the product to a distributor who has sole control and knowledge of the ultimate distribution of the product. Products are sold to distributors both inside and outside of New Jersey. Some distributors will ship into or out of the state, with the manufacturer having no idea where a particular unit ends up. Therefore, in many instances, the manufacturer will not be capable of maintaining the required records. The only data the manufacturers can keep is how many units were shipped to distributors inside and outside of New Jersey.

RESPONSE: The manufacturer can estimate the amount sold in New Jersey using national or regional sales data, population data, use data, or any other information that will give a good approximation.

COMMENT: The economic impact of the maintenance of the required records has not been considered. Such an impact should be evaluated before these amendments are considered further. In addition, the economic impact on the Department has been ignored. The compilation and evaluation of the submitted data could require the expenditure of a significant amount of the Department's resources, and should be considered.

RESPONSE: The records that are required by this rule are most likely already being kept. Therefore, there should not be much of an economic impact for maintaining records. The Department has evaluated the impact on its resources, and the provisions of N.J.A.C. 7:27-23.6(b) have been tailored to accommodate the limitations of those resources.

COMMENT: Part of the recordkeeping requirements is to record the number of units each manufacturer produces. This information is irrelevant in understanding the quantity of consumer product sold in New Jersey. Since the record requirements also include an approximation of the number of units sold in New Jersey, which would be more relevant to New Jersey, the requirement that each manufacturer report the total number of units manufactured is unnecessary.

RESPONSE: The amount of a product sold in New Jersey and the total amount of product produced by a given manufacturer are both important pieces of information. A comparison of these two pieces of data will give the Department an idea of how important the New Jersey market is to that manufacturer. That can then be used as a starting point in determining how long industry should be given to attain compliance and what type of VOS content limits can be established.

COMMENT: The length of time records must be kept should be reduced. Five years is an excessively long time to maintain the large volume of information this rule will generate. In addition, data five years old may be misleading in today's fast changing marketplace. One year of data should suffice, with two years being more than adequate. If the Department wants to study longer periods than that, it should take on the responsibility of gathering, processing and storing the required information on an annual basis. Asking industry to do this is asking too much.

RESPONSE: The majority of the information requested to be kept should already be kept for other purposes. Therefore, there should be no increase in the volume of data being maintained. The Department is interested in trends in consumer products and believes that five years is a reasonable time period to maintain the requested records.

COMMENT: Recordkeeping is not needed, as the label will state that the product meets the VOS requirements. New York has no such recordkeeping requirements. If the product does not meet the VOS standard, then it is the manufacturer who should be responsible.

RESPONSE: N.J.A.C. 7:27-23.6(b) applies to all types of consumer products, not simply those that are required to comply with VOS limits and labeling requirements. Most of the products subject to the recordkeeping requirements will have no labeling, and the maintenance and submission of records is the only way the Department will be able to obtain information on them.

COMMENT: One commenter objects to the requirement that records be transcribed on demand onto forms obtained from the Department.

RESPONSE: The Department will want to be able to compare data from all manufacturers. By requesting that it be submitted on specific forms, the Department can ensure that the same type of data is submitted in the same format by all manufacturers.

COMMENT: The issue of confidentiality of information is not addressed. The types of marketing and sales information required to be made available to the State is highly privileged and confidential and must be protected from public disclosure. Industry is not prepared to divulge sales and marketing information without adequate provisions for ensuring its confidentiality. Would such information be subject to the Freedom of Information Act? Rather than impose this burden on industry at this time, one commenter urges the Department to work with USEPA as they determine if the VOS content of consumer products needs to be regulated.

RESPONSE: The information that would be submitted to the Department would not necessarily be subject to the Freedom of Information Act. Provisions the Department will use to ensure confidentiality of information appear in the proposed amendments to N.J.A.C. 7:27-8, Permits, Certificates, Hearings and Confidentiality, published in the February 5, 1990, issue of the New Jersey Register, at 22 N.J.R. 292(a).

The Department is working with USEPA on the area of consumer products. However, the Department cannot assume that the Federal government will take the lead on this. It has already been determined that New Jersey needs to regulate consumer products as part of the Department's continuing effort to attain the NAAQS for ozone.

COMMENT: Given that previous rulemaking makes clear the Department's intent to exempt both consumer and industrial adhesives and sealants from this rule, one commenter suggests that N.J.A.C. 7:27-23.6(b) be amended as follows:

(b) Each manufacturer of a consumer product regulated under this section which contains VOS . . .

RESPONSE: Consumer adhesives and sealants presently have no VOS content limits established for them. However, it is not now nor ever has been the intention of the Department to wholly exempt any consumer product that contains VOS from this rule. The recordkeeping requirements of N.J.A.C. 7:27-23.6(b) apply to all types of products that contain greater than five percent by weight VOS, not just architectural coatings.

N.J.A.C. 7:27-23.7 Inspections

COMMENT: N.J.A.C. 7:27-23.7 should be deleted. The Department's power to conduct inspections is legally limited to New Jersey. The Department cannot enter a business without a search warrant based on probable cause. A nationwide inspection scheme is also impractical.

RESPONSE: Pursuant to both the Department's enabling legislation at N.J.S.A. 13:1D-9(d) and the Air Pollution Control Act (1954) at N.J.S.A. 26:2C-9(d) and 9.1, the Department has the right to enter any facility except private residences, to ascertain compliance or noncompliance with any code, rules, and regulations of the Department. The Department has the legal authority under these provisions to conduct unannounced inspections to the extent necessary to determine compliance or noncompliance. There may be circumstances which require the inspection of equipment and physical structures. A statement of the right to inspect does not mean the Department will exercise that right in all circumstances.

Sampling at the manufacturing facility may be needed. There is no guarantee that a product leaving a manufacturing facility will be the same when it reaches the retailer. An independent means of checking, such as samples taken at the facility, would then prove useful.

COMMENT: The inspections provisions requiring owners to assist in inspections would be disruptive to production schedules or lab work, because inspectors come unannounced. In addition, the lab must supply all testing equipment. One commenter feels that if a facility cannot spare the staff to assist an inspector, that an appointment be made for him to return at a mutually convenient time. Also, the inspector should supply any testing equipment necessary and tests should be performed at a state lab or at a private lab at state expense.

RESPONSE: Pursuant to the Air Pollution Control Act, at N.J.S.A. 26:2C-9(d), the Department has the right to enter and inspect any building, except private residences, for the purpose of investigating suspected sources for air pollution and ascertaining compliance or noncompliance with any code, rules and regulations of the Department. In order to ascertain compliance or noncompliance with the Department's rules, it is necessary that sampling and testing occur. Depending on the particular facility, sampling equipment necessary might include such items as ladders, keys, and hoses. It is both necessary and appropriate that the owner or operator make available the equipment and facilities needed to sample his or her particular operation. As manufacturing sources will generally have sampling equipment at their facilities, it is anticipated any additional cost will be minimal or nonexistent. For distributors and retailers, due to their operations any sampling equipment will be minimal. Testing of samples will be performed by State laboratories, with part of the sample left with the facility for independent tesing, if it is desired.

COMMENT: The provisions for inspection of manufacturing facilities should be eliminated. What happens inside manufacturing facilities has no bearing on the VOS emissions from consumer products during use. Products on store shelves in New Jersey, or more specifically the VOS emissions from those products during use should be the focus of this rule. It is those emissions which should be studied for their impact on New Jersey air quality. A container of paint obtained at a retail establishment is the best way to check for compliance. Sampling at the manufacturer would not be effective. Once a product leaves the manufacturer, anyone wishing to change the paint would have to open every can and add solids so that the paint meets the VOS requirements. This would be very expensive. Also, some paints may be for out-of-state customers and will not need to meet the VOS requirements. The activities at manufacturing facilities are regulated under stationary source rules and should remain outside the scope of this rule.

RESPONSE: Pursuant to both the Department's enabling legislation at N.J.S.A. 13:1D-9(d) and the Air Pollution Control Act (1954) at N.J.S.A. 26:2C-9(d) and 9.1, the Department has the right to enter any facility except private residences, to ascertain compliance or noncompliance with any code, rules, and regulations of the Department. The Department has the legal authority under these provisions to conduct unannounced inspections to the extent necessary to determine compliance or noncompliance. There may be circumstances which require the inspection of equipment and physical structures. A statement of the right to inspect does not mean the Department will exercise that right in all circumstances.

Sampling at the manufacturing facility may be needed. There is no guarantee that a product leaving a manufacturing facility will be the same when it reaches the retailer. An independent means of checking, such as samples taken at the facility, would then prove useful. While it may be difficult to make a noncomplying coating comply, noncomplying coatings could be relabeled as complying once they have left the manufacturer.

The Department acknowledges that VOS emissions from the manufacturing process are covered by stationary source requirements in N.J.A.C. 7:27-16. However, the Department has the right to inspect for compliance with all of N.J.A.C. 7:27.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]*).

7:27-23.2 Definitions

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

. . .

"All other architectural coatings" means any coating which does not meet any other architectural coating definition.

. . .

"Fire retardant coating" means any coating which ***is designed to retard fire and which will reduce the rate of flame spread on the surface of a substrate to which the coating has been applied, resist ignition when exposed to high temperatures, or insulate the substrate to which such a coating has been applied and thus prolong the time required to reach ignition temperature*** *[has a flame spread index of less than 25 when tested in accordance with ASTM Designation E-84-87, "Standard Test Method for Surface Burning Characteristics of Building Material," after application to Douglas fir according to the manufacturer's recommendation]*.

. . .

"Label" means anything functioning as a means of identification, such as any paper, plastic or printed inscription, placed on the container provided to direct or indirect consumers.

. . .

"Shellac" means any clear or pigmented coating formulated solely with the resinous secretions of the lac beetle (laccifier lacca), thinned with alcohol, and dried by evaporation without a chemical reaction.

. . .

"Volatile organic substance" or "VOS" means any organic substance, mixture of organic substances, or mixture of organic and inorganic substances defined as a volatile organic substance in N.J.A.C. 7:27-16.

. . .

"Wood preservative coating" means any coating which is formulated for the purpose of protecting exposed wood from decay or insect attack and which is registered as a pesticide product by the EPA.

7:27-23.3 Architectural coatings

(a) No person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating manufactured after January 1, 1990, for Group I coatings and after February 28, 1990, for Group II coatings which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(b) Effective February 28, 1993, no person shall sell, offer for sale, provide, or hold for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as allowed in Table 1 in (f) below.

(c) (No change in text.)

(d) The provisions of (a), (b) and (c) above shall not apply to architectural coatings sold in:

1.-2. (No change.)

(e) (No change in text.)

(f) Table 1 contains the VOS content limits for architectural coatings:

TABLE 1
VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type of Architectural Coating	Maximum Allowable VOS Content Per Volume of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
Group I		
Bituminous pavement sealer	0.8	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40
Industrial maintenance primer or topcoat	3.8	0.45
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Non-flat architectural coating	3.2	0.38
Primer, sealer, and undercoater	2.9	0.35
Roof coating	2.5	0.30
Swimming pool coating	5.0	0.60
Traffic coating	2.1	0.25
Waterproof mastic coating	2.5	0.30
Wood preservative coatings	4.6	0.55
Group II		
Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.6	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All other architectural coatings	2.1	0.25

7:27-23.4 *[Air Fresheners]* ***(Reserved)***

*[(a) No person shall sell, offer for sale, hold for sale, use, or manufacture for sale within New Jersey any air freshener manufactured after February 28, 1990, which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) Effective February 28, 1993, no person shall sell, offer for sale, or hold for sale within New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(c) The provisions of (a) and (b) above shall not apply to air fresheners sold in New Jersey for shipment and use outside of the State. Documentation indicating the final destination of product shipments shall be made available to representatives of the Department upon request.]*

7:27-23.5 Labeling *[Requirements]* ***requirements***

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.3, the following shall apply:

1. The label on *[the]* ***any*** side of the container ***except the bottom*** shall carry a statement of the manufacturer's recommendation regarding thinning of the coating. The statement shall either specify that the coating is to be applied under normal environmental conditions without thinning, or limit thinning required for normal environmental conditions such that after thinning the coating will not exceed its applicable standard as given in Table 1 at N.J.A.C. 7:27-23.3(f).

2. The label on *[the]* ***any*** side of the container ***except the bottom*** shall include a statement which specifies the maximum pounds of VOS in a gallon of architectural coating as produced by that manufacturer, excluding water and any colorant added to tint bases and after any recommended thinning. *[This]* ***For architectural coatings manufactured after February 28, 1991, this*** statement shall be prominent and in print no smaller than *[0.16]* ***0.08*** inches (*[four]* ***two*** millimeters ***or 12 point***) in size.

[(b) For any air freshener containing greater than five percent VOS and manufactured after February 28, 1990, a statement shall be displayed on the label which specifies the maximum concentration of VOS in percent by weight in that manufacturer's air freshener. This statement shall be prominent and in print no smaller than 0.16 inches (four millimeters) in size.]

*[(c)]***(b)*** For all consumer products subject to (a) *[and (b)]* above, the label shall display the date on which the contents were manufactured or a code indicating the date of manufacture. The manufacturer shall supply an explanation of *[each]* ***any*** code used to *[sellers of the product and]* the Assistant Director, Enforcement Element, Division of Environmental Quality, CN 027, Trenton, New Jersey, 08625***-0027***, by February 28, 1990, and thereafter, *[thirty]* ***30*** days prior to the use of any new or altered code.

*[(d)]***(c)*** (No change in text.)

*[(e)]***(d)*** The provisions of *[(a), (b) and (c) above]* ***this subchapter*** shall not apply to any *[consumer product]* ***architectural coating*** registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., provided the manufacturer *[files]* ***has filed*** an application for any registration amendment necessary for compliance with this subchapter with EPA *[prior to February 28, 1990]*. A copy of this application shall be *[simultaneously]* submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN027, Trenton, New Jersey 08625***-0027 by August 31, 1990***. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as ***EPA has rendered a decision upon*** the amendment request *[has been approved by EPA]*. Within 30 ***calendar*** days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above. Within *[six months]* ***180 calendar days*** of the receipt of an approval of *[a label]* ***any necessary*** change, the manufacturer shall begin use of the *[amended label on his or her]* ***complying*** product ***or label***.

7:27-23.6 Administrative requirements

(a) Each manufacturer and distributor of *[a consumer product]* ***an architectural coating*** subject to *[this subchapter]* ***N.J.A.C. 7:27-23.3*** shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer ***receiving the product in New Jersey*** a statement indicating that the *[consumer products]* ***architectural coatings*** included on that shipping document and subject to *[this subchapter]* ***N.J.A.C. 7:27-23.3***, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. *[The statement shall further acknowledge that the manufacturer or distributor is aware there are penalties for noncompliance with this subchapter.]* These documents shall be maintained by the manufacturer and the person receiving them for no less than five years and shall be made available to the Department upon request.

(b) Each manufacturer of a consumer product which contains ***greater than five percent by weight*** VOS and is sold for use in New Jersey shall maintain ***calendar year*** records indicating the types of products ***containing greater than five percent by weight VOS*** produced by that manufacturer for sale in New Jersey, the number of units produced, the VOS content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. ***Within a given product category variations of products that have VOS contents within a range of five percent by weight may be combined for the purpose of recordkeeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded.*** Upon the request of the Department, the manufacturer shall submit***, within 90 days of the request,*** a report on forms obtained from

the Department about products sold in New Jersey containing ***greater than five percent by weight*** VOS. Records sufficient to provide the above information shall be maintained by each manufacturer for five years ***after each calendar year for which the data is collected***.

7:27-23.7 Inspections

(a) (No change.)

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a *[product]* ***coating*** will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of *[consumer product]* ***architectural coating*** being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or indirect consumer shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of *[consumer product]* ***architectural coating*** being provided, stored, transported, exchanged in trade, sold, or offered for sale by the indirect consumer or at the retail or distribution outlet. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of *[consumer product]* ***architectural coating*** at the facility are available on site, these equipment or facilities shall be made available for Department use.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Suspension of Enforcement of Nurse Staffing Requirements for Long-Term Care Facilities

N.J.A.C. 8:39-25.2(b)1 and (b)2

Take notice that the Department of Health will suspend enforcement of the mandatory nurse staffing requirements for long-term care facilities found at N.J.A.C. 8:39-25.2(b)1 and (b)2 until October 1, 1990. These rules were scheduled to take effect by July 15, 1990 (see 22 N.J.R 1161(e)). The Commissioner of Health has determined that the nurse staffing requirements at N.J.A.C. 8:39-25.2(b)1 and (b)2 should not be enforced until the Division of Medical Assistance and Health Services of the Department of Human Services finalizes the reimbursement mechanism for Medicaid patients. Since Medicaid patients comprise a significant portion of the residents in long-term care facilities, the facilities will not be surveyed against these new standards at the present time.

The decision to suspend implementation of the new nurse staffing requirements until October 1, 1990 will provide for an orderly transition to the use of new nurse staffing requirements because Medicaid reimbursement recognizing these new requirements will be offered to long-term care facilities as of October 1, 1990. The Department acknowledges the need for the Division of Medical Assistance and Health Services to finalize the reimbursement mechanism for Medicaid patients.

Until N.J.A.C. 8:39-25.2(b)1 and (b)2 are implemented on October 1, 1990, the interim mandatory nurse staffing requirements specified at N.J.A.C. 8:39-43.3(a) will continue to be used for purposes of licensing surveys and enforcement for all long-term care facilities.

(b)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: April 16, 1990 at 22 N.J.R. 1214(b).

Adopted: June 19, 1990, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: June 21, 1990 as R.1990 d.347, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 16, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

(1) Concerning the proposed Ru-Tuss substitute:

COMMENT: Boots Pharmaceuticals opposed the addition of Ru-Tuss to the Formulary, citing infrequent usage, lack of bioavailability data on the proposed substitute, and manufacturing problems at Anabolic's manufacturing facility.

RESPONSE: The Council agrees that Ru-Tuss is seldom prescribed in the New Jersey geographic area and also that the substitute has no bioequivalency data, which is needed because the product is an extended release product. The Council has no information from the FDA negative to Anabolic's manufacturing facility.

(2) Concerning the proposed morphine sulfate ER tablets:

COMMENT: The Purdue Frederick Company objected to the proposed substitute, noting the lack of appearance of the proposed product in the FDA's "Orange Book," and providing a letter from the FDA to Roxane which is negative towards Roxane's marketing of the generic as equivalent to Purdue-Frederick's brand, MS-Contin.

RESPONSE: The Council points out that appearance in the FDA "Orange Book" is not a prerequisite for being considered acceptable in New Jersey. However, it is correct that the proposed generic has not provided bioequivalency data demonstrating its equivalency to MS-Contin. The Council therefore rejected the proposed morphine sulfate ER tablets by Roxane.

The following products and their manufacturers were **adopted**:

Aspirin/codeine tabs 30/325, 60/325	**Lee**
Carbinoxamine/pseudoephedrine 4/60 tabs	**Anabolic**
Cephalexin caps 250, 500 mg	**Squibb**
Cephalexin for susp. 250 mg/5 ml	**Squibb**
Choline mag. salicylate tabs 1 g	**Sidmak**
Choline mag. salicylate tabs 500, 750 mg	**Sidmak**
Ibuprofen tabs 400, 600 mg	**Danbury**
Imipramine tabs 10, 25, 50 mg	**Mutual**
Meprobamate tabs 400 mg	**Lee**
Morphine sulfate soln 20 mg/ml	**Roxane**
Novaphed-A caps substitute	**Ferndale**
Phenylephrine/PPA/guaifenesin liq.	**Pegasus**
Propranolol tabs 60 mg	**Lederle**
Rynatan tabs substitute	**Sidmak**
Salsalate tabs 500, 750 mg	**Lee, Sidmak**
Salsalate tabs 500, 750 mg	**Upsher-Smith**
Sodium fluoride tabs 1.1, 2.2 mg	**Lee**
Trimethobenzamide caps 250 mg	**Anabolic**
Trimethobenzamide supp 100, 200 mg	**G&W**

The following products and their manufacturers were **not adopted**:

Bendroflumethiazide/rauwolfia 4/50 mg	Anabolic
Morphine sulfate ER tabs 30 mg	Roxane
Ru-Tuss tablets substitute	Anabolic
Rynatuss Ped. Susp. substitute	Ferndale
Rynatuss tabs substitute	Ferndale, Sidmak

The following products were **not adopted but are still pending**:

Acetylcysteine solution 10%, 20%	Hollister-Stier
Albuterol tabs 2, 4 mg	Mylan
Atenolol tabs 50, 100 mg	Cord
Cephalexin for susp. 125/5 ml	Squibb
Clemastine fumarate syrup 0.5 mg/5 ml	Copley
Erythromycin topical soln 2%	PharmBasics
Fenoprofen tabs 600 mg	Mutual
Griseofulvin ultramicro. tabs 165, 330 mg	Sidmak
Isoetharine inhalation 0.08, 0.17, 0.25, 1%	Dey
Isoproterenol inhalation 0.5%	Dey
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Metaproterenol inhal. 0.4, 0.6, 5%	Dey
Methyldopa/HCTZ tabs 250/15, 250/25	Lederle
Nifedipine caps 20 mg	Cord
Potassium Cl ER tabs 8 mEq	Mylan, Upsher-Smith
Racepinephrine inhalation 2.25%	Dey
Sodium polystyrene sulfonate powder	PharmBasics
Sulindac tabs 150, 200 mg	Lederle, Mylan
Theophylline soln 80 mg/15 ml	Ferndale
Triamterene/HCTZ caps 50/25	Cord
Triamterene/HCTZ tabs 37.5/25	Cord
Valproic acid syrup 250 mg/5 ml	Copley

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: February 20, 1990 at 22 N.J.R. 596(a).

Adopted: June 19, 1990, by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: June 21, 1990 as R.1990 d.348, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 16, 1990.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

Concerning norethindrone/ethinyl estradiol:

COMMENT: Ortho Pharmaceuticals opposed the addition of the Gideon-Richter substitute for Ortho's brand, Ortho-Novum 1/35, on the following bases: (1) the generic's variability in the bioequivalency study exceeded that of the brand, thus possibly causing the generic to be therapeutically inequivalent to the brand; (2) packaging and tablet appearance differences between the brand and the generic could be confusing and cause patients to take the generic tablets improperly; (3) the clinical study submitted to support the generic was flawed and biased its design in that too few "cycles" were involved; (4) physicians and pharmacists display "discomfort" with switching oral contraceptives; (5) oral contraceptives with low doses of estrogen are in a category of products with narrow therapeutic ranges, thus differences between the generic and the brand may cause patient problems; and (6) the generic is noted to be bioinequivalent to the brand, based on the Council's own expert's review.

RESPONSE: The Council has responded as follows:

(1) Individual subject variability, although being somewhat greater with the generic, would not be a cause for therapeutic failure. Indeed, the average (not individual) data show little difference between the proposed generic and the brand.

(2) Packaging and tablet appearance differences do exist, but are not reason to reject this generic, as such differences did not prevent a few other generics from being accepted into the formulary. If tablet appearance differences were to be an overriding concern, no generic substitution could occur for any product, not only for oral contraceptives. Such an approach would invalidate the State's generic substitution law entirely.

(3) The clinical study reinforces the equivalency of the generic. The Council does not find it flawed in its extent or in its findings, nor biased in favor of the generic.

(4) Physicians who are uncomfortable with switching to a generic are allowed under the law to negate the generic substitute. Pharmacists are mandated to substitute by law; thus, their discomfiture has been overridden by the statute's provisions for all products, not just oral contraceptives.

(5) The concept of narrow therapeutic range is one which the Council has not accepted as a reason for not accepting a generic. When any generic, no matter how critical its nature or narrow its therapeutic range, is found therapeutically equivalent to the brand, then it is the Council's statutory mandate to allow its placement into the Formulary. Further, the Council has found that Ortho's salesmen have extensively encouraged prescribers to allow pharmacists to switch from Ortho-Novum 1/50 to Ortho-Novum 7/7/7, a product with less estrogen content (as well as a different appearance). Such marketing is in direct opposition to Ortho's contention that such products are in a "narrow therapeutic range" and therefore are not candidates for substitution.

(6) The Council's pharmacokinetics expert, after reviewing additional data, has changed his opinion from "bioinequivalent" to "technically bioinequivalent," the latter meaning that the differences seen in the bioequivalency study are so minimal as to be clinically meaningless. Indeed, the Council is not held to the technical expert's opinion, even were it to remain "bioinequivalent," because the final decision is based on therapeutic equivalency, not bioequivalency.

As a result of all the above factors, the Council acted to add Gideon-Richter's substitute for Ortho-Novum to the Formulary.

The following products and their manufacturers were **adopted**:

APAP/codeine 300 mg/30 mg tabs	**Pharmafair**
Carbinoxamine/pseudoephedrine drops 2/25	**Hi-Tech**
Carbinoxamine/pseudoephedrine syr 4/60/5	**Hi-Tech**
Digoxin tabs 0.125, 0.25 mg tabs	**Halsey**
Diphenoxylate/atropine 2.5/0.25 tabs	**Pharmafair**
Erythromycin base EC/ER tabs 333 mg	**Barr**
Erythromycin stearate tabs 500 mg	**Barr**
Iodochlorhydroxyquin/HC 3%/1% cream	**Pharmafair**
Morphine sulfate oral solution 20 mg/ml	**Upsher-Smith**
Norethindrone/Ethin. estra. tabs 1/.035	**Gideon-Richter**
Oxybutynin tabs 5 mg	**Sidmak**
Phenylephrine/pyrilamine/CP tannate susp	**Copley**
Phenylephrine/pyrilamine/CP tannate tabs	**Copley**
Potassium chloride powder 20 mEq	**USA American**
Potassium chloride soln 40 mEq/15 ml	**Cenci**
Potassium gluconate elixir 20 mEq/15 ml	**Cenci**
Sodium fluoride tabs 2.2 mg	**Pharmafair**
Thioridazine tabs 10, 25, 50 mg	**Mutual**

The following products and their manufacturers were **not adopted**:

Dexchlorpheniramine syrup 2 mg/5 ml	PharmBasics
Epinephrine (levo) ophth soln 1%, 2%	Pharmafair
Erythromycin ophth oint	Pharmafair
Lidocaine topical soln 4%	PharmBasics
Naphazoline/pheniramine .025%/.3% ophth	Pharmafair
Pancrelipase caps	Ph.Del.Sys.
Phenylephrine ophth soln 10% (viscous)	Pharmafair
Phenylephrine ophth soln 2.5%	Pharmafair

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Barr
Amoxapine tabs 25, 50, 100, 150 mg	Cord
Betamethasone valerate cream, oint 0.1%	Pharmafair
Betamethasone valerate lotion 0.1%	Pharmafair
Butalbital/APAP tabs	Pharmafair
Cyclobenzaprine tabs 10 mg	Cord
Erythromycin base EC/ER tabs 250 mg	Barr
Erythromycin ethylsucc. susp 200/5, 400/5	Barr
Flurazepam caps 15, 30 mg	Cord
Hydrochlorothiazide tabs 50 mg	Pharmafair
Hydroxyzine pamoate caps 25, 50, 100 mg	Cord
Lithium citrate syrup 8 mEq/5 ml	PharmBasics
Nifedipine caps 10 mg	Chase
Nifedipine caps 10 mg	Cord
Prednisone oral soln 5 mg/5 ml	PharmBasics
Propoxyphene napsylate/APAP 100/650	Cord
SMZ/TMP susp 200/40	Barr
Sulindac tabs 150, 200 mg	Cord
Sulindac tabs 150, 200 mg	Lemmon
Tolmetin sodium caps 400 mg	Purepac
Trazodone tabs 50, 100 mg	Cord

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 22 N.J.R. 1597(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: October 16, 1989 at 21 N.J.R. 3292(a).
Adopted: June 19, 1990, by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: June 21, 1990 as R.1990 d.349, **with portions of the proposal not adopted and portions not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: July 16, 1990.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Abbott Laboratories commented that the Upjohn erythromycin product, a proposed substitute for Abbott's brand, PCE, differed sufficiently in its pharmaceutical form (the brand being a particulate formulation) that the Drug Utilization Review Council should not consider the proposed generic to be pharmaceutically equivalent to PCE. In addition, Abbott pointed out that the Federal Food and Drug Administration considers the proposed generic to be pharmaceutically inequivalent to PCE.

RESPONSE: The Council agreed that the proposed substitute is not pharmaceutically equivalent to PCE, the brand to which it was compared, thus rejecting the proposed substitute.

The following products and their manufacturer were **not adopted**:

Erythromycin EC tabs 250, 333 mg	Upjohn

The following products were **not adopted but are still pending**:

Albuterol tabs 2, 4 mg	Copley
Albuterol tabs 2, 4 mg	Superpharm
Aspirin ER tabs 800 mg	Sidmak
Betamethasone valerate lotion 0.1%	Clay-Park
Chlordiazepoxide/amitrip. 5/12.5, 10/25	Par
Clonidine/chlorthal. tabs 0.1, 0.2, 0.3 mg	Cord
Cyclobenzaprine tabs 10 mg	Par
Cyclobenzaprine tabs 10 mg	Superpharm
Disopyramide ER caps 100, 150 mg	Chelsea
Divalproex EC tabs 125, 250, 500 mg	Par
Erythromycin topical soln 2%	Clay-Park
Fenoprofen tabs 600 mg	Barr
Fluocinonide soln 0.05%	Copley
Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg	Chelsea
Iodinated glycerol elixir 60 mg/5 ml	PharmBasics
Loperamide caps 2 mg	Cord
Loxapine caps 5, 10, 25, 50 mg	Cord
Minocycline caps 50, 100 mg	W-C
Potassium Cl ER tabs 10 mEq	Adria
Sulfacet./prednisolone 10%/0.2% oph. sol	Iolab
Sulfanilamide vaginal cream 15%	Clay-Park
Sulindac tabs 150, 200 mg	Mutual
Sulindac tabs 150, 200 mg	Par
Verapamil ER tabs 240 mg	Invamed
Verapamil tabs 40, 80, 120 mg	Invamed

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 214(c), 1136(b) and 1597(a).

HUMAN SERVICES

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Manual of Standards for Licensed Community Care Residences for the Developmentally Disabled

Adopted New Rules: N.J.A.C. 10:44B

Proposed: March 5, 1990 at 22 N.J.R. 756(a).
Adopted: June 22, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 22, 1990 as R.1990 d.359, **without change.**

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

Effective Date: July 16, 1990.
Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:44B expired on April 15, 1990. In accordance with N.J.A.C. 1:30-4.4, the rules proposed for readoption with amendments are herein adopted as new rules.

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

Full text of the amendments to the rules proposed for readoption, adopted herein as new rules, follows.

CHAPTER 44B
MANUAL OF STANDARDS FOR COMMUNITY CARE RESIDENCES

SUBCHAPTER 1. GENERAL PROVISIONS

10:44B-1.1 Purpose and scope

The purpose of this chapter is to provide for the protection of persons with developmental disabilities who require such supervision and to provide for overall improvement of the quality of life for individuals residing in community care residences for the developmentally disabled. If all persons living in a particular place of residence are developmentally disabled, and where all such individuals do not require personal guidance, as determined by the interdisciplinary teams, licensure is available on a voluntary basis in accordance with the expressed preferences of the developmentally disabled individuals.

10:44B-1.2 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

10:44B-1.3 Definitions

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

"Abuse" means any act or omission of an act that willfully deprives a resident of his or her rights or which may cause or causes actual physical injury or emotional harm, and is not limited to physical injury. Examples of abuse are acts that cause pain, cuts, bruises, temporary loss of a body function, temporary or permanent disfigurement, death; striking with a closed or open hand; pushing to the ground or shoving aggressively; twisting a limb; pulling hair; dousing with water; intentionally ignoring a resident; withholding food; forcing an individual with developmental disabilities to eat obnoxious substances; or use of verbal or other communication to curse, vilify, degrade an individual or threaten an individual with physical injury. This list is by no means exhaustive.

"Advocate" means a public or private officer, agency, or organization designated by state legislation, state plan, or the governor to

represent the interests of persons with developmental disabilities and speak on behalf of such individuals.

"Age appropriateness" means that aspect of normalization which reinforces recognition of an individual as a person of a certain chronological age.

"Autism" means a behaviorally-defined syndrome affecting both children and adults. The essential features are typically manifested prior to five years of age and include: disturbances of developmental rates and sequences; disturbances of responses to sensory stimuli; disturbances of speech, language-cognition, and non-verbal communication; and disturbances of the capacity to relate appropriately to people, events, and objects.

"Boarder" means any person residing in the residence who is not a member of the family, who is not developmentally disabled, and who receives room, board, and personal guidance.

"Capacity" means the maximum number of individuals, including boarders, who may be accommodated in the home, other than family members, at any time under the terms of the home's license.

"Case manager" means the authorized representative of any agency who coordinates the provision of social services and/or habilitation services to boarders or developmentally disabled individuals.

"Cerebral Palsy" means a persisting qualitative motor disturbance appearing before the age of three, due to non-progressive damage of the brain.

"Chores" means those duties which are normally performed by members of a household as a matter of routine.

"Community care residence" means a private home or apartment in which an adult person or family contracts to provide developmentally disabled persons with care and/or training.

"Community residence for the developmentally disabled" means any community residential facility housing up to 16 developmentally disabled persons which also provides food, shelter, personal guidance and/or training for developmentally disabled persons who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act," P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, hostels, and community care residences (formerly skill development homes, family care homes, and respite homes).

"Community Services" means a component of the Division of Developmental Disabilities which provides work and training programs, housing and supportive services to aid persons with developmental disabilities in establishing themselves in the community.

"Department" means the Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major activity; self care, receptive and/or expressive language, learning, mobility, self-direction; and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

"Epilepsy" means a chronic disease of the central nervous system characterized by convulsions and often unconsciousness.

"Exploitation" means any unjust or improper use of another person for one's profit or advantage.

"Family care program" means a private home or apartment in which the community care licensee contracts to provide developmentally disabled persons with room, board, and personal guidance.

"Immediate family" means the licensee's spouse, parents, step-parents, children, step-children, grandchildren, and grandparents.

"Individual" means a person with developmental disabilities residing in a licensed community residence for the developmentally disabled. "Individual with developmental disabilities" will be used as necessary to distinguish between such persons and others, such as staff of the agency or staff of the Division of Developmental Disabilities.

"Interdisciplinary team" (IDT) means a group of persons with a variety of skills and services knowledge who assist in the development of a habilitation plan appropriate to a specific individual who is being served.

"Individual Habilitation Plan" (IHP) means a document that provides an evaluation of the individual's capabilities and needs and sets forth clearly-defined goals and measurable, behaviorally-stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable.

"License" means the authorization issued by the Department of Human Services for a period of up to one year to operate a community residence providing services to developmentally disabled persons. A license can be denied, revoked, suspended, or can be placed on provisional status by the Department of Human Services for violations of minimum standards promulgated herein.

"Licensee" means one or more adults, otherwise known as providers, responsible for the overall operation of the home, and who are named on the license.

"Licensing agency" means the Office of Licensing and Inspections, within the Department of Human Services, Division of Developmental Disabilities.

"Natural person" means an individual human being, as opposed to a corporation (an "artificial" or "legal" person).

"Negative licensing sanction" means an action taken which imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, a reduction in the licensed capacity, a non-renewal of license, a suspension of the license, or a revocation of the license.

"Neglect" means the failure of an individual to provide for or maintain the care and safety of individuals under his or her supervision, including, but not limited to, failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or adult supervision.

"Pattern of non-compliance" means the recurrence of licensing violations over time.

"Personal guidance" means the assistance provided to an individual with developmental disabilities in activities of daily living because he or she routinely requires help completing activities of daily living and/or cannot direct someone to complete such activities when physical handicaps prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the individual or others. In the absence of a court determination, the IDT shall determine the need for personal guidance for each individual.

"Private placement" means the status of an individual who does not receive services from the Division of Developmental Disabilities at the time of his or her admission to a community residence governed by this chapter.

"Provisional license" means that authorization to operate issued to new homes or used to prompt corrective actions in existing homes. A provisional license shall be for less than 12 months.

"Respite care program" means the provision of room, board and personal guidance services, on a temporary basis not to exceed 30 days, in a licensed community care residence.

"Skill development program" means care and training conducted in accordance with an Individual Habilitation Plan and overseen by the case manager, provided in a private home or apartment to developmentally disabled persons by an adult person or family under contract with the Department.

"Substantial non-compliance" exists when not meeting licensing requirements directly endangers the health, safety, or well-being of an individual(s) when the unmet requirements exist in significant number; when the degree of the condition(s) is severe; when one or more requirements have been left unmet with great frequency; and/or when the terms of the license have been violated.

"Variance" means recognition that the licensee has complied with the intent of a standard in a Division-approved alternative manner.

"Waiver" shall mean the temporary suspension of a standard, which is granted in writing by the licensing agency.

"Willful non-compliance" exists when the applicant or licensee has knowledge of conditions which are in violation of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

10:44B-1.4 Application for community care licensure

(a) All initial inquiries for a license to operate a community care residence shall be made to the appropriate Regional Office of the Division of Developmental Disabilities.

Regional Office:	Counties of Jurisdiction:
Northern Regional Office	Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Regional Office	Essex, Somerset, Union
Lower Central Regional Office	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(b) All applicants shall complete an Initial Application and submit three personal/professional references and one medical reference.

(c) An initial interview and review of the applicant's home ("Home Study") shall be conducted.

(d) Applicants shall attend and successfully complete a training and orientation program conducted or otherwise approved by the Division of Developmental Disabilities.

10:44B-1.5 Licenses and inspection

(a) Upon receipt of the Initial Provider Application, personal and medical references, Home Study Report, and training evaluation, a licensure inspection shall be arranged by:

Office of Licensing and Inspections
Division of Developmental Disabilities
CN 700
Trenton, New Jersey 08625

(b) A license shall be issued if the inspection provides reasonable assurance that the home will be operated in the manner required by the standards.

(c) The initial license shall permit a licensee to operate a maximum six-month period in which to demonstrate their ability to comply with minimum standards.

(d) The license shall be issued by the Department of Human Services only to natural persons and is not transferable to any other person or address. All licenses remain the property of the Department of Human Services and shall be returned upon termination.

(e) The license shall specify the maximum bed capacity of the home, including boards and individuals with developmental disabilities. Although individuals receiving services of another agency may reside in the home, there shall be written agreement signed by the Regional Administrator of Community Services and the director of the placing agency serving the boarder.

(f) The community care residence shall be the licensee's primary address.

(g) No licensee shall operate more than one community care residence.

(h) The residence shall be subject to inspection by the licensing agency at least annually, and as deemed necessary, without limitation or notice, to allow for inquiry into the facilities, records, equipment, sanitary conditions, accommodations, and management of the individuals.

(i)-(j) (No change.)

(k) A licensee shall not deny access to a community residence to any individual or group with proper identification and statutory authority to protect the rights of, and advocate on behalf of, the individuals placed in the residence. Such persons may include, but not be limited to, the case manager, guardian, or guardianship worker, and licensing personnel.

(l) Failure of an applicant or licensee to provide necessary information in connection with an inspection or investigation by representatives of the Division of Developmental Disabilities shall be considered grounds for denial, suspension, revocation, or refusal to renew a license.

(m) Waivers or variances of specific standards may be granted at the discretion of the Division of Developmental Disabilities, provided that:

1. Strict enforcement of the rule would result in unreasonable hardship on the residence;

2. The waiver or variance is not simply for the convenience of the licensee or other occupants of the home;

3. The waiver or variance is in accordance with the particular needs of an individual(s).

i. The waiver or variance does not adversely affect the health, safety, welfare, or rights of any individual.

ii. Verification that the waiver or variance is in accordance with individual needs may be requested from the case manager by the licensing agency; and

4. The waiver is requested in writing by the licensee complete with substantial detail justifying the request.

10:44B-1.6 Options on non-compliance with standard

(a) After each inspection, the licensee shall be provided with a copy of the inspection report. At the discretion of the licensing agency, it shall be the obligation of the provider to provide a plan of correction within 30 days of the issuance of the report. Unless a plan for earlier correction is required, all deficiencies shall be corrected by the time of the next inspection. Failure to make such corrections shall be considered grounds for action against the license.

(b) If the inspection report indicates substantial non-compliance and/or willful non-compliance with the regulations contained in this manual, or if any of the regulations not met represent a threat to the health, safety, or rights of the individuals or boarders, licensure may be denied or revoked, following 30-day notice to the provider of such intent. Any subsequent application may be denied.

(c) In cases of non-compliance where licensure denial or revocation may be deemed by the Division of Developmental Disabilities to be too harsh an action, intermediate sanctions may be invoked following 30-day notice to the licensee of such intent. These include removal of individuals from the residence, imposition of a moratorium or suspension of admissions into the home, reduction of capacity or licensing term of the residence.

(d) Licensees whose license has been suspended, revoked, or not renewed, or who have had intermediate sanctions invoked against them have the right to appeal the licensing agency's decision in accordance with N.J.A.C. 10:48.

SUBCHAPTER 2. ADMINISTRATIVE POLICIES AND PRACTICES

10:44B-2.1 Licensee requirements

(a) The licensee shall have overall responsibility for the individuals with developmental disabilities and boarders in the residence.

1. Except as otherwise provided in the Rehabilitated Offenders Act, no license will be issued to any person who, at any time, has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offense(s). Additionally, no license shall be issued for a residence in which any occupant has been adjudged civilly or criminally liable for abuse of another person.

2. The licensee shall read, write, and understand English or otherwise demonstrate that he or she can sufficiently comply with the licensing requirements.

3. The licensee and members of the licensee's family participating in individual care shall be of sound physical and emotional health.

i. Every two years, the licensee shall provide a statement from his or her physician to the effect that he or she is physically capable of performing his or her duties.

(b) Falsification of any information contained in the application or provided during any inspection shall be sufficient grounds for licensure denial, suspension, revocation, or non-renewal.

(c) Any applicant who receives or applies, subsequent to licensure, for public assistance shall document in writing to the licensing agency that he or she has notified the welfare agency or board of social services of his or her intention to seek licensure as a community residence for the developmentally disabled, as well as information on the allowable rates for reimbursement in the program.

(d) In instances where the licensee must be absent, a person 18 years of age or older shall be identified to assume the licensee's responsibility.

1. An alternate shall be available in case of emergency.

2. The use of an alternate for more than six hours daily is prohibited unless the following conditions are met:

i. The alternate shall complete an approved training and orientation program as designated by the placing and/or licensing agency;

ii. The alternate shall meet the requirements of (a)3i above;

iii. The alternate shall be a family member that resides at the residence; and

iv. The alternate shall only be used during an individual's normal bedtime hours.

3. The alternate must be familiar with the individuals, the licensee's residence, and all emergency procedures.

4. The alternate shall meet the requirements of (a) above with the exception of (a)3i above.

5. The licensee shall provide the name, address, and telephone number of the alternate to representatives of both the placing agency and licensing agency.

i. Whenever the licensee changes the alternate, the placing and licensing agencies shall be notified in writing.

(e) An individual(s) may be permitted to be left unsupervised for specific amounts of time with documented approval of the Interdisciplinary Team. Additionally, approval must be documented in the IHP.

(f) Physical and verbal abuse, corporal punishment, physical discipline, the use of unapproved aversive stimuli, neglect, and exploitation shall be prohibited.

1. Substantiation of such mistreatment of any individual by the licensee shall be sufficient cause for immediate licensure revocation.

2. Individuals shall not be directed or allowed to discipline other individuals in the residence.

3. All alleged and suspected mistreatment of individuals shall be reported immediately to the responsible placing agency representatives.

i. After normal working hours, the Regional Office of the Division of Developmental Disabilities can be reached at the appropriate hotline number.

ii. In the case of minors, allegations of abuse or neglect shall be reported to the local district office of the Division of Youth and Family Services or the Office of Child Abuse Control (800-792-8610) as well as the Division of Developmental Disabilities.

iii. Suspected abuse or neglect of a person 60 years of age or older who resides in living arrangements other than their own home shall be reported to the New Jersey Office of the Ombudsman.

(g) The licensee shall immediately notify the responsible placing agency representative in the case of:

1. Death of an individual or a boarder;

2. Admission of the individual or boarder to a hospital or treatment in an emergency room;

3. Emergency removal of an individual or a boarder;

4. An individual or boarder missing for more than two hours, or an individual's returning from a home or other visit two hours or more past scheduled time;

5. Injuries to an individual or boarder involving sutures, fractures, lost teeth, etc;

6. Any fire requiring the services of a fire department; or

7. The disruption of any vital utility, for example, heat, water, electricity, telephone, etc.

(h) The licensee shall notify the placing agency within five days of:

1. Any disruption of day program;

2. The grossly negative impact of any individuals' visits to or with family or friends;

3. An increase in the number of family members in the residence; or

4. Any change of the licensee's telephone number.

(i) The use of unapproved mechanical restraints or isolation shall be prohibited.

(j) There shall be no charge for any services to the individual beyond those contracted and actually provided.

(k) No licensee or his or her relative shall be the legal guardian, representative payee or beneficiary of an insurance policy for any individual residing in the licensee's residence.

(l) The licensee shall be required to complete all courses of instruction that are required or deemed necessary by the placing agency and/or licensing agency.

10:44B-2.2 Placements and departures

(a) There shall be no more than five persons in the residence requiring care and assistance, including, but not limited to, family members, children (natural, adopted, or foster), individuals, and boarders.

1. No more than four individuals receiving services from the Division of Developmental Disabilities shall be placed in any one residence.

(b) The Division of Developmental Disabilities shall set the total bed capacity of the home, excluding family members.

(c) The licensee shall at no time exceed the licensed bed capacity of the residence. Individuals shall only occupy bedrooms that have been inspected and/or approved by the Office of Licensing and Inspections.

(d) Third floor occupancy by individuals shall be prohibited.

(e) Non-ambulatory individuals shall not have bedrooms above or below the first floor of any residence, unless a specific waiver is granted by the Office of Licensing and Inspections.

(f) The licensee shall accept only individuals for whom he or she can provide adequate care.

1. If an individual, because of a changed physical or mental condition, is no longer suitable for the living arrangement, he or she shall not be maintained in the residence after consultation between the licensee and the placing agency representative.

2. Individuals requiring skilled nursing care shall not be maintained in the residence unless the following requirements are met:

i. The licensee shall have a valid LPN or RN license; and

ii. The alternate shall have a valid LPN or RN license.

(g) The licensee shall notify the Regional Office 60 days in advance of any intention to voluntarily cease to operate a community residence.

(h) The licensee shall notify the Regional Office in writing, 30 days prior, of any intention to have an individual discharged from the home.

10:44B-2.3 Records

(a) All records shall be maintained in the licensee's residence. Maintenance of records in any other place, either permanently or temporarily, is prohibited.

(b) Individual records shall be considered the property of the agency providing case management services, and shall be relinquished to that agency's representative if the individual is discharged or transferred from the licensee's residence or if otherwise necessary to safeguard the records.

(c) Records shall be stored in such a manner as to properly provide access only to the individual, the licensee, alternate, involved agency, or other persons authorized by law or a court of competent jurisdiction.

(d) The licensee and alternate shall protect and maintain the confidentiality of all records.

1. The licensee shall not make copies or allow copies to be made of individual records without explicit written permission of the involved agency representative.

(e) A separate folder shall be maintained for each individual and be appropriately marked with his or her name.

(f) Each individual's record shall include:
1. The full name of the individual;
2. The individual's date of birth;
3. The date of placement into the residence;
4. The names and addresses of all persons or agencies responsible for placement;
5. The name and address of all personal physicians and dentists;
6. The name, address and telephone numbers of the individual's legal guardian (or guardianship worker), next of kin, and other interested person(s);
7. A contract for each person placed or boarder, which shall note at least the following:
i. The responsibilities of all parties;
ii. The rate of payment to the licensee;
iii. The effective dates of the contract;
iv. The amount of the individual's spending money/personal needs allowance; and
v. The signatures of all parties;
8. Background information to include:
i. Individual abilities;
ii. Religious preference;
iii. Social Security number;
iv. Special dietary needs;
v. Behavioral characteristics;
vi. Additional handicaps or disabilities;
vii. Interests, hobbies; and
viii. Medical history to include:
(1) Allergies;
(2) Seizure history;
(3) Present medication;
(4) Special medical problems; and
(5) For children, an immunization record;
9. Monthly reports of individual's social and behavioral progress or regression (Does not apply to Respite Care Program);
i. Monthly reports of individuals receiving skill development training shall include, but not be limited to, the individual's progress on Individual Habilitation Plan goals.
ii. If the individual is subject to seizures, the provider shall indicate all seizure activity in the monthly report (including date, time, duration, surrounding circumstances, and treatment given);
10. A copy of the current Individual Habilitation Plan;
11. Annual physical examination and the results of the Mantoux Test for tuberculosis completed within the last three years;
12. A medication record, if the individual receives any medication prescribed or ordered by a physician;
13. Authorization for emergency medical treatment (for individuals requiring a guardian);
14. Medical insurance information regarding payment for emergency services; and
15. Licensees providing Respite Care services are required to maintain all records of individuals receiving services, to include (f)1-14 above, with the exception of (f)10i above.
(g) If the individual is not capable of managing his or her own funds, the licensee shall maintain a record of all expenditures of the individual's personal funds. The record shall include:
1. The date the individual's funds were received and disbursed;
2. The amount received and disbursed;
3. The purpose of each disbursement or expenditure; and
4. All receipts related to disbursements or expenditures over $10.00, which shall be saved by the licensee until the case manager signs off on the financial record.
(h) The licensee shall keep on file, at the residence, the following administrative records:
1. A placement agreement with all social service agencies from which the licensee will accept individuals;
2. A record of all admissions and departures, including names and dates, for the previous 12-month period;
3. A current copy of this Manual of Standards;
4. A record of monthly fire evacuation drills, as specified in N.J.A.C. 10:44B-6.2(g)1; and
5. A copy of his or her current license.

SUBCHAPTER 3. CARE OF THE INDIVIDUAL

10:44B-3.1 Individual rights and responsibilities

(a) Individuals' civil, human, and legal rights shall not be abridged solely on the basis of their diagnosis, nor without due process.
1. The exercise of individuals' rights shall not be prohibited or be used as a cause for retribution against the individual.
(b) The licensee may establish reasonable house rules which shall not infringe on the rights of the individuals.
1. These rules shall include provisions to ensure that individuals exercise their rights in such a way as not to infringe upon the rights of or endanger others.
2. The licensee shall make certain that the private life of the individual is respected at all times.
i. The licensee shall avoid any unreasonable schedule concerning the hours at which individuals shall rise or retire.
ii. Individuals shall be permitted to rest in their homes for such periods as may be consistent with personal needs.
iii. Complete privacy shall be afforded during visits.
3. Visiting is to be permitted during reasonable hours.
(c) Individuals shall have the opportunity to associate with members of the opposite sex.
(d) Individuals shall have the right to participate in social, religious, or community groups of their choice.
1. Licensees shall not impose their religious beliefs on individuals under their care.
2. Licensees shall provide each individual with adequate substitutes for foods which the individual's religious beliefs forbid him or her to eat.
(e) Individuals shall have an opportunity to register and vote.
(f) Individuals shall have free use of all living areas within the residence without infringing on the privacy of others.
(g) Individuals shall have the right to use the community for recreation, education, shopping, and employment.
(h) Individuals shall have access to a telephone for unmonitored incoming and outgoing calls.
(i) Individuals shall have the right to open their own mail and packages without surveillance.
(j) Licensees shall not read individuals' incoming or outgoing mail unless requested by the individual.
(k) If the individual requests, he or she shall receive assistance in reading and writing letters.
(l) Individuals shall be allowed to handle their own money consistent with their ability as determined by the case manager, licensee, and guardian (guardianship worker).
(m) Individuals shall be permitted to exercise all those rights outlined in the pamphlet "Your Rights as a Developmentally Disabled Person," distributed by the Division of Developmental Disabilities.

10:44B-3.2 Personal health, hygiene, and grooming

(a) Individuals shall be encouraged to exercise maximum independence in health, hygiene, and grooming practices.
(b) Within the home, each individual shall have the opportunity for personal care, with assistance if necessary, to include:
1. A daily bath or shower;
2. Oral hygiene twice daily;
3. Opportunity to shave;
4. Care of fingernails and toenails; and
5. Grooming of hair.
(c) Individual toilet articles—soap, washcloths, towels and toilet tissue—shall be available without additional expense to individuals.
(d) Individual toothbrushes, hair brushes, combs and razors shall be available for each individual at their own expense.
(e) Female individuals shall be assisted as necessary to attain maximum independence in caring for menstrual needs.

10:44B-3.3 Food

(a) The licensee shall ensure that an individual receiving services is provided with three meals daily, either in the residence itself or in the community.
(b) There shall not be more than a 14-hour span between the evening meal and breakfast.

(c) Snacks shall be available for individuals who desire them, unless there is a documented medical or programmatic reason not to supply them.

(d) The daily diet for each individual shall include foods from the four basic food groups:

1. Milk, cheese, and other dairy products;
2. Bread, cereal, grains;
3. Vegetables, fruits; and
4. Meats, fish, poultry, and eggs.

(e) Food shall be wholesome, stored in a manner to keep it clean and safe for human consumption, prepared in the form that meets the medical and dietary needs of the individual.

(f) Individual(s) shall dine with the licensee's family on a regular basis.

(g) If a medically prescribed diet is required, the menu planning shall be appropriate to individual needs, and be properly documented.

(h) Licensees shall make a reasonable attempt to comply with food preferences requested by the individual(s) residing in the home.

10:44B-3.4 Clothing

(a) Each individual shall have the opportunity to select and purchase his or her own clothing as independently as possible.

1. Each individual shall have adequate, clean, well-fitting and attractive clothing appropriate to age, gender, individual needs, community standards, and season.

2. The licensee shall assist the individual in maintaining a good appearance, and using their personal money properly to make reasonable clothing purchases.

(b) The licensee shall provide laundry services without additional charge to the individuals.

(c) Individuals' undergarments shall be changed daily and outerwear changed at least three times a week.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Individualized Habilitation Plan

(a) An Individual Habilitation Plan shall be developed for each individual in accordance with N.J.S.A. 30:6D-10, 11, and 12 and shall be kept on file in the home. A copy of the Individual Education Plan for school age individuals shall also be kept on file in the home. (These requirements do not apply to Respite Care Programs).

(b) Each plan shall be developed by an interdisciplinary team consisting of those persons providing service to the individual. Documentation of who participated in the plan shall be provided on the sign-in sheet page of the IHP.

(c) Training received by an individual in the home shall be consistent with the Individual Habilitation Plan.

(d) Written monthly progress notes shall be available at the residence and correspond to the IHP goals and objectives currently being implemented for each individual. The progress notes shall sufficiently describe the individual's progress or regression to give a clear picture of the individual's functioning in the skill area.

(e) If an individual is to be transferred or discharged, the Individual Habilitation Plan shall specify the plan to be followed upon his/her transfer or discharge. Except in an emergency, the Individual Habilitation Plan shall be prepared at least 30 days prior to the time the actual discharge or transfer takes place.

10:44B-4.2 Day programs

(a) Each individual shall be afforded an opportunity to participate in an organized program of habilitation, rehabilitation, or employment.

1. Every individual between the ages of three and 22 years shall receive an appropriate education in accordance with Federal and State laws.

2. All individuals over 22 years of age shall be provided with a program, unless a physician certifies in writing that such activity is medically inadvisable.

3. If employed, individuals 55 years or older may elect to retire; however, involvement in age-appropriate activities outside the residence shall be encouraged by the licensee.

(b) The individual shall be paid for productive work, except for assisting with normal chores within the home.

SUBCHAPTER 5. HEALTH SERVICES

10:44B-5.1 General medical and health care

(a) A personal, primary physician or medical group shall be provided for each individual.

(b) Each individual shall have an annual medical examination.

1. No licensee shall accept into his or her residence any individual being placed directly from an institution who has not been certified by a physician to be contagion-free within 24 hours prior to placement, and who has not had a complete physical examination within 30 days prior to placement.

2. A copy of the annual examination, signed and dated by the physician, shall be kept on file at the residence.

(c) A Mantoux Skin Test shall be administered to every individual every three years.

1. If the Mantoux Skin Test for tuberculosis is negative, the test shall be repeated at three-year intervals or upon exposure to a case of tuberculosis.

2. If the Mantoux Skin Test for tuberculosis is positive, certification by a physician that the individual is free of contagion shall be obtained initially and at three-year intervals.

3. A copy of the complete examination signed and dated by the physician, shall be kept on file at the residence.

(d) Each individual shall have at least an annual dental examination.

1. Documentation from the dentist of this examination, signed and dated by the dentist, shall be kept on file at the residence.

(e) The licensee shall follow-up on all individual health needs, including medical treatment, pharmaceutical, dental, or other needed services.

(f) The licensee shall make arrangements for medical care to be available for emergencies.

(g) The licensee shall have a first aid kit to include:

1. Antiseptic;
2. Sterile rolled gauze bandage (kerlix);
3. Sterile gauze pads or telfa pads;
4. Adhesive tape or surgical tape;
5. Scissors;
6. Adhesive bandage, (for example, band aids) or ribbon tape; and
7. A thermometer (standard or digital).

10:44B-5.2 Medication and drugs

(a) Individuals receiving medication shall be evaluated for their ability to take their own medication. (Does not apply to Respite Care Program).

1. Individuals receiving medication shall be trained to take their own medication to the extent that it is possible, as assessed and determined by the Interdisciplinary Team and documented in the IHP.

i. Upon written certification that an individual is capable of taking medication without assistance, no daily medication record is required; however, the licensee must record in the individual's file the date the medication was prescribed, name of medication, dosage, frequency, and where the medication is stored.

(b) If an individual is found capable of learning to take his or her own medication, training shall be provided.

1. Life-sustaining drugs, such as injectable insulin, may be self-administered if the individual has documented training from licensed medical personnel.

i. If the individual is unable to learn to self-administer the injectable medication, a licensee who has documented training from licensed medical personnel and is approved by the licensing agency may administer the medication.

(c) If the individual is not responsible or capable enough to take his or her own medication, the licensee or his or her alternate shall give it to him or her to take exactly as prescribed, and assure that the medication is taken.

1. The licensee shall maintain a record of all medication taken where assistance is required. The medication record shall include:

i. The signature of any persons administering medication followed by his or her initials;
ii. The type of medication;
iii. The dosage;
iv. The date and time of administration; and
v. A record of each dosage administered identified by the initials of the person administering the medication.
(d)-(f) (No change.)
(g) Medication errors and drug reactions shall be reported, at the time of the occurrence, to the individual's physician and case manager.
(h) The licensee shall not change or discontinue any individual's prescription without documented approval of the physician.

SUBCHAPTER 6. PHYSICAL PLANT AND SAFETY

10:44B-6.1 General home requirements
(a) The licensee shall take such measures as may be reasonably necessary to protect the occupants from hazards to health and safety arising from the location or environment of the residence.
(b) Any one or two family dwelling shall be subject to the requirements of the New Jersey Uniform Construction Code (Use Group Category R-3).
(c) In single family homes which have been subdivided into more than two apartments, the following shall apply:
1. If the licensee is renting, he or she shall obtain a copy of the Certificate of Occupancy.
2. If the licensee is the owner, the building shall comply with the Uniform Construction Code Use Group Category R-2 (Multi-family dwelling).
(d) Every home shall have heating facilities and plumbing which are properly installed, maintained in good and safe working conditions. Heating facilities shall be capable of maintaining all habitable rooms at a temperature of 65 degrees Fahrenheit (18 degrees C) when the outdoor temperature is 0 degrees Fahrenheit (-18 degrees C).
1. Heat sources exceeding 110 degrees Fahrenheit (43 degrees C), which are accessible to individuals, must be equipped with protective guards or insulated to prevent individuals from coming into direct contact with the heat source.
(e) Hot and cold running potable water shall be available in adequate supply at all times.
(f) The licensee shall have an operable telephone.
1. The telephone number of the Division of Developmental Disabilities hotline, as well as the nearest hospital, fire department, ambulance service, and police department shall be readily accessible by the primary telephone.
(g) All stair treads and landings shall be equipped with non-slip surfaces.
(h) Stair treads shall be at least nine inches deep and have risers no more than 8-1/4 inches high.
(i)-(k) (No change.)
(l) Every porch, balcony, staircase, or place higher than 30 inches off the ground accessible to individuals shall be provided with adequate railings. Such railings shall be no less than 30 inches nor more than 34 inches in height.
(m) All outside stairways consisting of four or more steps shall be provided with a secure handrail.
(n) Separate living and dining areas shall be provided which are large enough to provide seating for all occupants of the residence at one time.
(o) Every residence shall be provided with one flush type toilet, lavatory, and bathtub or shower for every eight persons living in the residence.
1. Every toilet, lavatory, bathtub, or shower shall be accessible without passing through any other sleeping unit and shall be available within one floor above or below the individual's room, unless it is a "master bedroom" type suite for the sole use of that bedroom's occupants.
2. Toilet paper shall be available at each toilet.
3. Non-slip surfaces shall be available in each shower or bath.
(p) The accumulation of garbage or waste shall be prohibited. Garbage containers shall be non-corrosive and non-combustible, leak-proof, and provided with tight fitting covers. Any garbage container 13 gallons or less used inside the residence will not require a lid.
(q) Floors, walls, ceilings, and other interior surfaces shall be kept clean and in good repair.
(r) The interior and exterior of the residence shall be maintained free of hazards to the health, safety, and welfare of the individuals.
(s) Swimming pools shall meet the requirements of all local ordinances and the State Uniform Construction Code.
(t) Outside walkways shall be kept clean of ice, snow, leaves, and other hazards.
(u) Exterminator services shall be arranged and documentation retained, by the licensee when there is evidence of infestation.
(v) If the residence is to house individuals using wheelchairs, it shall incorporate barrier-free design appropriate to the individual, for example, ramps; handrails in bathroom areas; and corridors, doorways, and rooms of adequate size to accommodate wheelchairs.
1. Design of the residence shall be approved by the licensing agency prior to placement of such individuals.
(w) Basements may be used for storage, laundry, heating, water supply equipment, and other utilities.
1. Basements may be used as activity rooms so long as they are dry, warm, and adequately lighted and have two independent means of egress.
(x) Kitchen facilities requirements are as follows:
1. Storage space shall be clean and well ventilated.
i. Containers of food shall be covered and appropriately stored above the floor on shelves or other clean surfaces.
2.-6. (No change.)

10:44B-6.2 Fire safety
(a) Independent battery or electric powered smoke detectors shall be securely mounted on the ceiling, at least four inches from the wall or according to manufacturers' instructions. Detectors shall be installed on each floor, including the basement, and located in the following areas:
1. One unit on the hallway ceiling of any floor with sleeping areas;
2. One unit in the general living area of the residence; and
3. Additional units may be required in areas designated as high hazard or without adequate coverage.
(b) Smoke detectors shall be properly maintained and be in good operating condition.
(c) The licensee shall test all the smoke detectors monthly.
(d) One 1A:10B:C rated fire extinguisher shall be maintained in the kitchen, stored in clear view, and readily accessible.
(e) The licensee shall demonstrate a knowledge of the use of the fire extinguisher.
(f) The licensee shall develop and have available for review a written diagram for fire evacuation that indicates exits and evacuation routes.
(g) Fire drills shall be conducted once a month. Drills should be held at varying times of the day and night.
1. Records of these drills shall be maintained and shall include the date and time of the drill, time required for evacuation, and names of persons involved.
2. Evacuation time shall be 2½ minutes or less.
3. A fire drill shall be conducted within 24 hours of any admission.
4. Locations of the hypothetical fire shall vary.
5. If there is any reason to believe that an evacuation problem exists, a representative of the Division of Developmental Disabilities shall observe a fire drill conducted in the residence.
(h) Combustible materials shall not be stored within three feet of the furnace or hot water heater.
(i) Portable area or space heater shall be prohibited.
(j) The licensee shall establish smoking rules on the basis of fire safety, and provide ash trays in all areas where smoking is permitted.
(k) Woodburning stoves shall be permitted only if proof of inspection by the local building official is provided.
1. An A-rated fire extinguisher shall be available in the same room as the woodburning stove.
2. Protective screening shall be provided as necessary.

(l) Combustive materials shall be stored in non-combustible containers.

(m) The accumulation of combustible materials in attics, basements or other parts of the residence is prohibited.

(n) There shall be two ground level doors for egress.

(o) The licensee's bedroom shall be located within one floor of an individual(s) bedroom.

10:44B-6.3 Individual rooms

(a) Every individual bedroom shall be provided with at least one operable window opening directly outdoors.

1. First floor windows shall have an operable window space of five square feet. Second floor windows shall have an operable window space of 5.7 square feet.

2. Plastic covering on an individual's bedroom window shall be prohibited.

(b) Individuals' bedrooms shall not be a means of access to any other room. The primary access to an individual's bedroom shall not be accessible through a bathroom or other bedroom.

(c) Individual occupancy shall be limited to floors on or above grade level. However, under certain conditions, basement occupancy may be permitted.

1. Such occupancy shall be allowed if:

i. More than half the height of the room is above grade level;

ii. The basement is provided with two or more independent means of egress, at least one of which leads directly outside; and

iii. There are no other conditions which hinder the health, safety, or welfare of the individual.

(d) There shall be a limit of three individuals to a bedroom.

(e) Bedrooms used by individuals shall contain the following minimum areas per person:

1. 70 square feet for occupancy by one person;

2. 130 square feet for occupancy by two people;

3. 190 square feet for occupancy by three people.

(f) At least one half of the floor area of every individual's room shall have a ceiling height of 7½ feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered in determining allowable floor space.

(g) Every individual room shall be provided with sufficient electrical outlets and lamps or light fixtures.

1. No temporary wiring shall be used except U.L.-listed extension cords, which do not run under rugs, through walls, or through doorways.

(h) Each individual shall be provided:

1. A separate bed of proper size and height for his or her convenience. High hospital beds shall not be used except for physically handicapped persons requiring them.

i. The bed may not be of the fold-up or convertible type. Rollaways, cots, hide-a-beds, trundle beds, double deck beds, and day beds shall be prohibited;

2. A clean, comfortable mattress of fire resistant material not less than four inches thick;

3. A bed spring in good repair, unless a platform bed is being utilized;

4. A pillow, of non-allergenic material if necessary;

5. Drawers and an enclosed closet for the storage of personal possessions, and in-season clothing. Out-of-season clothing may be stored in a place other than the individual's bedroom;

6. Sufficient light for reading or hobbies;

7. Adequate sheets and blankets;

i. Bed linen shall be changed a minimum of once a week; and

8. One mirror of sufficient size.

(a)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction
General Assistance Manual
General Assistance Payments
Emergency Grants
N.J.A.C. 10:85-4.6

Take notice that the Division of Economic Assistance has discovered errors in the current text of N.J.A.C. 10:85-4.6(b). Subparagraphs (b)1iii and iv were originally adopted on an emergency basis as subparagraphs (b)1i and ii (see 21 N.J.R. 3790(a), R.1989 d.598). Upon their permanent adoption (see 22 N.J.R. 355(a), R.1990 d.117), a last sentence was added to subparagraph (b)1ii. While these subparagraphs as permanently adopted were incorporated into the Code, the text of the subparagraphs as adopted on an emergency basis was erroneously recodified as (b)1iii and iv.

Regarding N.J.A.C. 10:85-4.6(b)1x, this subparagraph was adopted on an emergency basis effective June 2, 1988 (see 20 N.J.R. 1484(a), R.1988 d.291) and expired on June 30, 1988. It was not deleted from the Code after its expiration.

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

10:85-4.6 Emergency grants

(a) (No change.)

(b) Standards for emergency grants are:

1. Emergency shelter: The authorized payment shall be the actual cost of adequate emergency shelter arrangements, at the most reasonable rate available, for a specified temporary period not to exceed the two calendar months following the month in which the state of homelessness first becomes known to the municipal welfare department. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible individual currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence.

i.-ii. (No change.)

[iii. The temporary time period identified at (b)1 above, as well as the period set forth as an incremental extension time frame at (b)1vii below, shall not apply to EA recipients who have been medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms and those who are terminally ill.

iv. In order to enable individuals medically diagnosed as having Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Positive with symptoms, and those who are terminally ill, to maintain or secure residence in a permanent housing arrangement, funds shall be authorized, based on the most reasonable housing rates available, to supplement their regular grants of assistance, until such time as they qualify for SSI and/or similar statutory benefits pursuant to filing of application as stipulated at N.J.A.C. 10:85-8.3.]

Recodify existing v.-ix as **iii.-vii.** (No change in text.)

[x. Time Limited Extension for EA Benefit: A one month extension shall be granted for those individuals exhausting their maximum entitlement to EA either prior to or on June 30, 1988. Such one month extension of benefits is time limited and shall commence on July 1, 1988 and end July 31, 1988. This extension of EA benefits granted under this provision is unconditional and not subject to the requirements set forth in (b)1v above.]

[xi.] **viii.** (No change in text.)

2.-4. (No change.)

(c)-(f) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Adoptions

Adopted New Rules: N.J.A.C. 10:121

Proposed: October 2, 1989 at 21 N.J.R. 3047(b).
Adopted: June 18, 1990, by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 18, 1990, as R.1990 d.344, **without change.**

Authority: N.J.S.A. 30:4C-45 through 49, 30:4C-31 and P.L. 96-272.

Effective Date: July 16, 1990.
Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Division received three written comments, one from the Association for Children of New Jersey, one from the Children's Home Society of New Jersey, and one from The Adoption Agency of Ardmore, Pennsylvania.

COMMENT: The Association for Children of New Jersey (Association) strongly supports the revision that allows subsidy payments for eligible children placed by private agencies to begin at subsidy application rather than at the time the adoption is finalized, because it is a significant incentive to the recruitment of adoptive homes for special needs children.

RESPONSE: The Division acknowledges and appreciates the Association's support of this revision.

COMMENT: The Association supports the lowering of the eligible age for hard-to-place children from five to two, again because it is a significant incentive to prospective adoptive families and will enhance the Division's recruitment and outreach efforts to find permanent homes for hard-to-place children.

RESPONSE: The Division acknowledges and appreciates the Association's support of this revision.

COMMENT: The Children's Home Society (Society) supports the revision that allows subsidy payments to begin earlier in the adoption process.

RESPONSE: The Division acknowledges and appreciates the Society's support of this revision.

COMMENT: The Society supports the redefinition of "hard-to-place" child to include a child over two years of age and a member of an ethnic group for whom adoptive homes are not readily available.

RESPONSE: The Division acknowledges and appreciates the Society's support of this revision.

COMMENT: The Adoption Agency of Ardmore, Pennsylvania (Agency), asked that all New Jersey State licensed agencies, and not just the Division of Youth and Family Services, be allowed to request and receive from the New Jersey State Police, State and Federal criminal history record information on prospective adoptive parents. The Agency said that such information is available in Pennsylvania to licensed adoption agencies.

RESPONSE: New Jersey and Pennsylvania laws differ on access to criminal history record information. Pennsylvania has an "open criminal history record" law, unlike New Jersey, which permits access to State, county and local government agencies. The Division, as a State agency, may access these records. Any expansion of this access would require legislative action.

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 10:121.

Full text of the amendments to the expired rules adopted as new follows.

CHAPTER 121
ADOPTIONS

SUBCHAPTER 1. APPROVAL OF AGENCIES DESIRING TO PLACE CHILDREN IN NEW JERSEY

10:121-1.1 Approval of agencies

(a) This section shall apply to agencies, public or private, whose principal offices are not located within the State of New Jersey, which do not otherwise maintain an adequately staffed office within the State of New Jersey and which do not provide direct adoption services in New Jersey but do on occasion place children for adoption with families living in or moving to New Jersey. Whenever the contemplated adoption may not or cannot be completed in their own state, approval under this section will permit the agency to consent to an adoption in a New Jersey court. An agency must, before placing a child for adoption with a family living in New Jersey:

1. Be a non-profit or governmental agency and be licensed, certified or otherwise approved in its own state to place children for adoption under procedures and standards established in that state, which procedures and standards shall be consistent with those of the State of New Jersey with respect to services provided to birth parents and termination of parental rights;

2. Enlist the cooperation of a duly certified New Jersey adoption agency to provide all direct adoption services in New Jersey including home evaluation, concurrence with the proposed placement and proper supervision of the adoption placement until the final decree of adoption is entered by a court of competent jurisdiction or until some alternate plan is made for the child; and

3. Provide the New Jersey Department of Human Services, Division of Youth and Family Services, with a written statement certifying that (a)1 and 2 above have been complied with and, further, that interstate placement requirements of both states will be followed, including continued responsibility for the child until an adoption is finalized, the child is removed from the State of New Jersey or some other plan approved by the Department of Human Services, Division of Youth and Family Services, is made.

SUBCHAPTER 2. ADOPTION SUBSIDY

10:121-2.1 Definitions

For the purposes of this subchapter, the following definitions shall apply.

. . .

"Hard-to-place child" means any child who the State of New Jersey has the legal right to place for adoption but who is reasonably expected not to be placed for adoption due to the lack of a prospective adoptive home for any of the following reasons:

1.-6. (No change.)

7. The child is over two years of age and a member of an ethnic group for whom adoptive homes are not readily available. Information regarding availability of homes may be obtained from the Adoption Service Unit of the Division;

8. (No change.)

9. The child is over five years of age and has been living with foster parents for at least 12 months and adoption by the foster parents is the most appropriate plan for the child. A child under five may be deemed hard-to-place and qualify for subsidy under this subsection if he or she is a member of an ethnic group for whom adoptive homes are not readily available.

10:121-2.2 Payments for the care and maintenance of a hard-to-place child (adoption subsidy)

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

(d) Payments shall be made on behalf of a child placed for adoption by the Division except that whenever a child who would otherwise be eligible for subsidy payments is in the care of any approved New Jersey adoption agency other than the Division pursuant to N.J.S.A. 9:3-37 et seq. that child shall, upon application by the agency and satisfaction of the regular requirements of the adoption subsidy program, be approved for participation in the adoption subsidy program. Subsidy payments for children in private agency adoptions shall begin when the Division receives the application for adoption subsidy from the private agency. A determination as to the child's eligibility to receive subsidy may be made by the Division. However, such determination must be made prior to the child's adoptive placement, in order to assist the prospective adoptive parents in making a decision as to their ability to accept the child into their home. The Division is responsible for monitoring the adoption subsidy to the private agency. The Division may approve adoption subsidy payments for a child without legal transfer of care or custody of the child to the Division.

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

(g) The written agreement covering subsidy payments shall remain in effect regardless of adoptive parent(s) income until the child's 18th birthday, provided that the adoptive parents remain legally responsible for the support of the child and the child continues to receive support from such parents. On an annual basis the Division will determine that the adoptive parents continue to be legally responsible for the support of the child and that the child continues to receive support from the adoptive parents or the subsidy payments will be terminated. In the event of the death of the adoptive parent(s), subsidy payments shall be transferred to the new caretaker when the caretaker demonstrates legal responsibility for the child as a result of being named guardian in the adoptive parent's will or having obtained a custody order through the courts.

(h)-(l) (No change.)

10:121-2.3 Exceptions

(a) The requirements and standards prescribed in this subchapter may be subject to exceptions such as those provided in (b) below in specific cases where the Division determines that strict compliance would result in undue hardship or jeopardize the health, safety and welfare of the prospective adoptive parent or child, or the public generally, except that no exception to these rules may exceed the limitations provided by Federal or State law.

(b) Exceptions to the provisions of this chapter may be made upon request for:

1. Families who are funded below the 100 percent board rate whose cases were approved prior to January 17, 1984 so that their level of funding may be increased to the applicable 100 percent rate, if documentation shows a dramatic decrease in their financial circumstances;

2. Medical coverage for families whose subsidy cases were approved prior to January 17, 1984 when there is documentation of the development of a severe and permanent physical or mental handicap under the hard-to-place guidelines, and there is no third party medical insurance or where inadequate third party medical insurance is available to provide for the needs of the child; or

3. The continuation of subsidy payment for all cases at an 80 percent foster care board rate for those children between the ages of 18 to 21 years of age who are enrolled in a curriculum directed toward gainful employment at any educational level below college.

10:121-3.2 Fees for adoption complaint investigation

(a) The fees and methods of payment for Preliminary Investigation and Report services provided by the Division of Youth and Family Services are as follows:

1. (No change.)

2. A monthly payment, which is determined by dividing the total fee ($296.00) by the prospective adoptive applicant's monthly capacity to support, is made. The application's monthly capacity to support is obtained by completing DYFS Form 26-6a, Income Worksheet for Legally Responsible Persons.

(b) The fees and methods of payment for Supervision Services and Final Report provided by the Division of Youth and Family Services are one of the following:

1.-2. (No change.)

3. Monthly payments are made in accordance with the evaluated capacity to support if the adoptive parents indicate that the other payment options would be a financial hardship. In this case, monthly payments are determined by dividing the total fee by the applicant's monthly capacity to support. The applicant's monthly capacity to support is obtained by completing DYFS Form 26-6a, Income Worksheet for Legally Responsible Persons.

SUBCHAPTER 4. RELEASE OF CRIMINAL HISTORY RECORD INFORMATION

10:121-4.1 (Reserved)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Micro-Loan Program

Adopted New Rules: N.J.A.C. 12A:31-1

Proposed: February 20, 1990 at 22 N.J.R. 608(a).

Adopted: June 22, 1990 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Doggett, Chairman.

Filed: June 22, 1990 as R.1990 d.350, **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. 34:16-47 et seq., specifically 34:16-50(t).

Effective Date: July 16, 1990.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Authority received seven comment letters concerning these rules as proposed in the February 20, 1990 issue of the New Jersey Register from the following: Evanbow Construction Co., Inc., the New Jersey United Minority Business Brain Trust, and the following organizations within the Department of Commerce and Economic Development: the Division of Development for Small Businesses and Women and Minority Businesses, Office of Small Business Assistance, Office of Minority Business Enterprise, Bureau of Hispanic Enterprise, Set-Aside and Certification Office. The comment letters addressed three major areas of concern as follows: (1) the definitions used, (2) the length of time required for application review, and (3) the five year business plan requirement. In addition, comment letters included suggestions for additional services, a recommendation for inclusion of an appeal process, and questioned the need for an annual audit prepared by a CPA utilizing GAAP. Specific comments and responses are set forth below.

N.J.A.C. 12A:31-1.2 Definitions

COMMENT: Six comment letters included suggestions for amending the definition of small business, minority-owned and women-owned enterprises. Most commenters felt that these definitions should be the same as those used in N.J.A.C. 12A:11-1.2 in the chapter on certification of women-owned and minority-owned businesses. Other commenters felt that a size or sales limitation should be included and that Portuguese should not be included.

RESPONSE: The definitions used in these rules are those required by the Authority's enabling legislation, N.J.S.A. 34:1B-48 et seq. Because these definitions are legislatively mandated, they cannot be changed during the rulemaking process.

N.J.A.C. 12A:31-1.3(a) Application for a micro-loan

COMMENT: Three comment letters expressed the opinion that the $250.00 application fee was too high.

RESPONSE: The Authority has established fees to cover the estimated cost of loan application evaluation. Additionally, it should be noted that the Authority is required by legislation (N.J.S.A. 34:1B-60) to cover all of its expenses from the proceeds of its activities.

N.J.A.C. 12A:31-1.3(c)

COMMENT: Three comment letters expressed the opinion that the five year business plan required as part of the micro-loan application would be burdensome for small businesses and of limited value to the Authority.

RESPONSE: The Authority has added language to change the requirements of N.J.A.C. 12A:31-1.3(c) to require a business plan for three years or for the term of the loan, whichever is less.

N.J.A.C. 12A:31-1.3(d)4

COMMENT: Four comment letters asked for a clarification of the requirements that applicants must submit financial and operating statements for the past three years. Specifically, they want to know if all

applicants must have been in business for three years in order to apply? Additionally, other commenters expressed the opinion that the financial statements be prepared by a certified public accountant utilizing generally accepted accounting principles (GAAP) would be unduly burdensome to small businesses.

RESPONSE: The Authority will accept applications from businesses which have been in operation for less than three years. To satisfy the requirement to submit financial statements for the past three years, the Authority will accept the owner's personal financial statements to partially satisfy this requirement. The rules have been changed to accept financial compilation statements prepared by either a public accountant or a certified public accountant.

N.J.A.C. 12A:31-1.3(d)6

COMMENT: Five comment letters expressed concern over the certification requirements of this provision. One commenter expressed the opinion that certification from the Port Authority of New York and New Jersey and the New Jersey Department of Transportation be accepted as well as certification by the New Jersey Department of Commerce. Other commenters felt that the only acceptable certification should be the New Jersey Department of Commerce. Additionally, the suggestion was made that minority-owned and women-owned businesses should be required to show proof that they are managed on a daily basis by minorities and/or women in addition to having at least 51 percent beneficial ownership by eligible persons.

RESPONSE: The Authority will accept certification from the agencies suggested as well as from the U.S. Small Business Administration 8(a) programs. The decision was made not to restrict acceptable certification to New Jersey Department of Commerce and Economic Development in order to make loans available to the largest possible number of eligible businesses. The suggestion that the Authority require that minority and women-owned businesses be managed on a daily basis by eligible persons would modify the legislative definition in N.J.S.A. 34:1B-48. The rule as changed upon adoption incorporates the exact language of the statute.

N.J.A.C. 12A:31-1.4(c)1 and 2 Micro-loan assistance available from the Authority

COMMENT: One commenter expressed the opinion that a term of five years is too short for repayment of micro-loan whose proceeds are to be used for fixed assets and/or working capital loan.

RESPONSE: Within the micro-loan program, the maximum amount available to an applicant is $50,000. The Authority projects that a five year term loan's payment will not exceed $1,000 per month, which is a reasonable amount.

N.J.A.C. 12A:31-1.4(c)3

COMMENT: Two commenters questioned the restriction to a term of one year on micro-loans used for contract financing.

RESPONSE: The Authority accepts the suggestion that the rule be modified to allow micro-loans for the purpose of contract financing to extend for a period of one year or the term of the contract, whichever is greater.

N.J.A.C. 12A:31-1.6(c) Evaluation of application

COMMENT: All seven comment letters expressed the opinion that 120 days is an excessive amount of time for the Authority to review applications.

RESPONSE: The Authority has deleted this stipulation that "the Authority will have 120 days in which to review the application." The Authority will complete the review and approval process as expeditiously as possible.

N.J.A.C. 12A:31-1.7(c) Reporting and compliance

COMMENT: Two commenters objected to the proposed requirement that businesses informing the Authority of contemplated changes be required to obtain approval of the Authority's Board prior to making such business changes.

RESPONSE: The Authority has deleted the language requiring prior approval of the Board. It should be noted that the letter of commitment, promissory note or loan agreement will contain provisions governing substantive changes during the term of the loan.

N.J.A.C. 12A:31-1.8(a)4 Recession of a micro-loan

COMMENT: Three commenters questioned the provisions permitting the Authority to rescind a loan if the recipient is found not to be of good moral character. Each of the commenters interpreted this portion of the rules as applying to persons who had been convicted and who had completed their incarceration prior to applying for a loan. This provision was seen as unduly punitive.

RESPONSE: The Authority's loan application will clearly state "THE FACT THAT YOU HAVE AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU." However, the provisions of N.J.A.C. 12A:31-1.8 are meant to address a situation involving conviction subsequent to the loan approval.

Other Comments:

COMMENT: In addition to comments made directly impacting the proposed rules, many of the commenters offered suggestions for additional programs or asked that the rules be expanded to include other provisions.

RESPONSE: The Authority recognizes the need for additional types of financial programs. The suggestion that a bonding program, lines of credit, and a project financing program will be considered in the future when additional resources are available. The suggestion that an appeal process be included in these rules thereby enabling successful applicants to protect the Authority's decision is not contemplated. The Authority will disclose the reason for rejection and provide technical assistance to unsuccessful applicants requesting it.

Summary of Changes Upon Adoption:

Changes being made are to correct grammatical errors in the proposed rules and to make explicit the existing method of determining compliance with the Authority's eligibility standards and applications for micro-loans to small businesses, minority-owned businesses, and women-owned businesses.

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 31
NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

SUBCHAPTER 1. MICRO-LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a micro-loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

(b) This program provides for the Authority to provide, for eligible businesses, small term loans with short repayment periods.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-1.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a micro-loan.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Eligible business" means a small business, minority business or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Micro-loan" or "ML" means a short term loan advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or

2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; or

3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands; or

4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business in which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Loan recipient" means an eligible business which has been approved to receive or has received an ML.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the business is held by women, and in which the majority of the management are women.

12A:31-1.3 Application for a micro-loan

(a) Each application for an ML shall be accompanied by a nonrefundable application fee of $250.00.

(b) Each application for an ML shall be accompanied by written evidence that the applicant has been unable to acquire *[like or]* similar financing as that sought from the Authority.

(c) Each application for an ML shall be accompanied by *[a five-year business plan of the applicant]* ***a business plan for three years or for the term of the loan, whichever is less***, provided in a format as determined by the Authority.

(d) Each application for an ML shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;

2. A representative list of the current and prior clients of the applicant for the past two years where applicable;

3. The resumes of the principals and key employees of the applicant business;

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years. All financial and operating statements submitted must be *[prepared by certified public accountants utilizing generally accepted accounting principles (GAAP)]* ***a compilation statement prepared by an accountant (either CPA or PA)***;

5. The projected financial and operating statements of the applicant for the next three years;

6. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by***, and in which the majority of the management are,*** minorities or *[females]* ***women***; and

7. Any other information that the Authority deems necessary.

12A:31-1.4 Micro-loan assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and 50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restrictions established by that act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority by the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide micro-loans to an eligible business in the following manners:

1. For the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed five years. The maximum amount of the loan shall not exceed $50,000.

2. For the purpose of working capital for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of five years. The maximum amount of the loan shall not exceed $50,000.

3. For the purpose of contract financing for an eligible business at Authority designated rates. Terms of the micro-loan shall not exceed a period of one year ***or the term of the contract, whichever is greater***. The maximum amount of the loan shall not exceed $50,000.

12A:31-1.5 Time of application for a micro-loan

An applicant may apply to the Authority at any time for a micro-loan. However, the Authority may establish deadlines for receipt and approval of applications, as it deems necessary.

12A:31-1.6 Evaluation of applications for micro-loans

(a) The Executive Director shall evaluate each application for an ML considering the following factors:

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;

3. The likelihood that the applicant will not default on the ML; and

4. The length of time that the applicant has been in existence as well as the success and growth of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Board for its consideration.

(c) The Authority shall have 120 days in which to review the application and advise the applicant that:

1. The application has been approved;

2. The application has been approved contingent on modification;

3. The application has been rejected; or

4. The application is continuing to be considered pending additional information being received.

(d) No micro-loan approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent or $100.00, whichever is greater, and a closing fee of one-half of one percent of the amount of the micro-loan which has been approved by the Board.

12A:31-1.7 Reporting and compliance

(a) Upon receipt of an ML from the Authority, the loan recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan recipient;

2. Any financial or technical assistance which the loan recipient has obtained;

3. Any substantive change in ownership or financial condition of the loan recipient; and

4. Any other information which the Authority may require.

(b) Upon receipt of an ML from the Authority, the loan recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of a micro-loan, the micro-loan recipient shall inform the Authority of any contemplated substantive changes in the business *[and shall not commence with the change until approval of the Board is given]*.

12A:31-1.8 Rescission of a micro-loan

(a) The Authority may, at its discretion, rescind all or part of an ML when it has become reasonably evident that:

1. Other commitments of financial resources to the loan recipient have been withdrawn or have been amended in such a manner as to undermine the ability of the loan recipient to repay the ML;

2. The loan recipient is judged no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has been found to have supplied false, or incorrect information, or has misrepresented information of a material matter, whether oral or written, upon which the Authority relied when approving the ML; or

4. The loan recipient is found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that an ML shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing them of the rescission.

12A:31-1.9 Information confidentiality

(a) All information and documents submitted to the Authority as part of an ML application relating to the financial status of the applicant or which is given with the expressed or implicit expectation of confidentiality shall be disclosed only with the permission of the applicant and at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive a micro-loan.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISE

Loan Guarantee Program

Adopted New Rules: N.J.A.C. 12A:31-2

Proposed: February 20, 1990 at 22 N.J.R. 610(a).

Adopted: June 22, 1990 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Businesses, Yvonne Doggett, Chairman.

Filed: June 22, 1990 as R.1990 d.351, **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. 34:16-47 et seq., specifically 34:16-50(t).

Effective Date: July 16, 1990.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Authority received seven comment letters concerning these rules as proposed in the February 20, 1990 issue of the New Jersey Register from the following: Evanbow Construction Co., Inc., the New Jersey United Minority Business Brain Trust, and the following organizations within the Department of Commerce and Economic Development: the Division of Development for Small Businesses and Women and Minority Businesses, Office of Small Business Assistance, Office of Minority Business Enterprise, Bureau of Hispanic Enterprise, Set-Aside and Certification Office. The comment letters addressed three major areas of concern as follows: (1) the definitions used, (2) the length of time required for application review, and (3) the five year business plan requirement. In addition, comment letters included suggestions for additional services, a recommendation for inclusion of an appeal process, and questioned the need for an annual audit prepared by a CPA utilizing GAAP. Specific comments and responses are set forth below.

N.J.A.C. 12A:31-2.2 Definitions

COMMENT: Six comment letters included suggestions for amending the definition of small business, minority owned and women owned enterprises. Most commenters felt that these definitions should be the same as those used in N.J.A.C. 12A:11-1.2 in the chapter on certification of women-owned and minority owned businesses. Other commenters felt that a size or sales limitation should be included and that Portuguese should not be included.

RESPONSE: The definitions used in these rules are those required by the Authority's enabling legislation N.J.S.A. 34:1B-48 et seq. Because these definitions are legislatively mandated, they can not be changed during the rulemaking process.

N.J.A.C. 12A:31-2.3(a) Application for a loan guarantee

COMMENT: Three comment letters expressed the opinion that the $500.00 application fee was too high.

RESPONSE: The Authority has established fees to cover the estimated cost of loan application evaluation. Additionally, it should be noted that the Authority is required by legislation (N.J.S.A. 34:1B-60) to cover all of its expenses from the proceeds of its activities.

N.J.A.C. 12A:31-2.3(b)

COMMENT: One commenter stated that the requirement that applicants for loan guarantees submit proof that they had been unsuccessful in acquiring similar guarantees be deleted because few financial institutions offer such guarantees.

RESPONSE: The Authority recognizes that loan guarantees are not readily available; therefore, the Authority has changed this section of the rules to require those seeking loan guarantees to submit proof that they have been denied a loan having similar terms from a financial institution.

N.J.A.C. 12A:31-2.3(d)4

COMMENT: Four comment letters asked for a clarification of the requirements that applicants must submit financial and operating statements for the past three years. Specifically, they want to know if all applicants must have been in business for three years in order to apply? Additionally, other commenters expressed the opinion that the financial statements be prepared by a certified public accountant utilizing generally accepted accounting principles (GAAP) would be unduly burdensome to small businesses.

RESPONSE: The Authority will accept applications from businesses which have been in operation for less than three years. To satisfy the requirement to submit financial statements for the past three years, the Authority will accept the owner's personal financial statements to partially satisfy this requirement. The rules have been changed to accept financial compilation statements prepared by either a public accountant or a certified public accountant.

N.J.A.C. 12A:31-2.3(d)6

COMMENT: Five comment letters expressed concern over the certification requirements of this provision. One commenter expressed the opinion that certification from the Port Authority of New York and New Jersey and the New Jersey Department of Transportation be accepted as well as certification by the New Jersey Department of Commerce. Other commenters felt that the only acceptable certification should be the New Jersey Department of Commerce. Additionally, the suggestion was made that minority owned and women owned businesses should be required to show proof that they are managed on a daily basis by minorities and/or women in addition to having at least 51 percent beneficial ownership by eligible persons.

RESPONSE: The Authority will accept certification from the agencies suggested as well as from the U.S. Small Business Administration 8(a) programs. The decision was made not to restrict acceptable certification to New Jersey Department of Commerce and Economic Development in order to make loans available to the largest possible number of eligible businesses. The suggestion that the Authority require that minority and women owned businesses be managed on a daily basis by eligible persons would modify the legislative definition in N.J.S.A. 34:1B-48. The rule as changed upon adoption incorporates the exact language of the statute.

N.J.A.C. 12A:31-2.6(c) Evaluation of application

COMMENT: All seven comment letters expressed the opinion that 120 days is an excessive amount of time for the Authority to review applications.

RESPONSE: The Authority has deleted this stipulation that "the Authority will have 120 days in which to review the application." The Authority will complete the review and approval process as expeditiously as possible.

N.J.A.C. 12A:31-2.7(c) Reporting and compliance

COMMENT: Two commenters objected to the proposed requirement that businesses informing the Authority of contemplated changes be required to obtain approval of the Authority's board prior to making such business changes.

RESPONSE: The Authority has deleted the language requiring prior approval of the Board. It should be noted that the letter of commitment, promissory note or loan agreement will contain provisions governing substantive changes during the term of the loan guarantee.

Other Comments:

COMMENT: In addition to comments made directly impacting the proposed rules, many of the commenters offered suggestions for additional programs or asked that the rules be expanded to include other provisions.

RESPONSE: The Authority recognizes the need for additional types of financial programs. The suggestion that a bonding program, lines of credit, and a project financing program will be considered in the future when additional resources are available. The suggestion that an appeal process be included in these rules thereby enabling successful applicants to protect the Authority's decision is not contemplated. The Authority will disclose the reason for rejection and provide technical assistance to unsuccessful applicants requesting it.

Summary of Changes Upon Adoption:

Changes being made are to correct grammatical errors in the proposed rules and to make explicit the existing method of determining compliance with the Authority's eligibility standards and applications for loan guarantees to small businesses, minority-owned businesses, and women-owned businesses.

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 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a loan guarantee program for eligible businesses to help those businesses acquire private sector financing that would not otherwise be available without a guarantor for the loan.

(b) This program provides for the Authority to make available, for eligible businesses, loan guarantees to help those businesses obtain private sector financing.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-2.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a loan guarantee.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Eligible business" means a small business, minority businesses or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan guarantee" means a guarantee for the repayment of commercial private source loans, which guarantee does not exceed 90 percent of the loan amount.

"Loan guarantee recipient" means an eligible business which has been approved to receive or has received a loan guarantee.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or

2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America or the Caribbean islands, regardless of race; or

3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the management are women.

12A:31-2.3 Application for loan guarantee

(a) Each application for a loan guarantee shall be accompanied by a non-refundable application fee of not less than $500.00.

(b) Each application for a loan guarantee shall be accompanied by written evidence that the applicant has been *[unable to acquire like or similar guarantees]* ***denied a loan having similar terms*** as that sought from the Authority.

(c) Each application for a loan guarantee shall be accompanied by *[a five year business plan of the applicant]* ***a business plan for three years or for the term of the loan, whichever is less***, provided in a format as determined by the Authority.

(d) Each application for a loan guarantee shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;

2. A representative list of the current and prior clients of the applicant for the past two years where applicable;

3. The resumes of the principals and key employees of the applicant business;

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years. All financial and operating statements submitted must be *[prepared by certified public accountants utilizing generally accepted accounting principles (GAAP)]* ***a compilation statement prepared by an accountant (either by CPA or PA)***;

5. The projected financial and operating statements of the applicant for the next three years;

6. Any proof *[of certification by a public entity which certification is at least in part, a certification based upon the business being beneficially owned by minorities or females]* ***of certification by a public entity which certifies that the business is at least 51 percent beneficiary owned by, and in which the majority of the management are, minorities and women***; and

7. Any other information that the Authority deems necessary.

12A:31-2.4 Loan guarantee assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and 50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restrictions established by the act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide loan guarantees to an eligible business in the following manners:

1. Loan guarantees from the Authority for the purpose of fixed asset acquisition for an eligible business at Authority designated

rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $1,000,000 or 90 percent of the loan, whichever is less.

2. Loan guarantees from the Authority for the purpose of acquiring working capital for an eligible business at Authority designated rates. Term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed $600,000 or 90 percent of the loan, whichever is less.

12A:31-2.5 Time of application for a loan guarantee

An applicant may apply to the Authority at any time for a loan guarantee. However, the Authority may establish deadlines for receipt and approval of applications as it deems necessary.

12A:31-2.6 Evaulation of applications for loan guarantees

(a) The Executive Director shall evaluate each application for a loan guarantee considering the following factors:

1. The debt to equity ratio of the applicant;
2. The general financial condition of the applicant;
3. The likelihood that the applicant will not default on the loan for which it seeks the guarantee; and
4. The length of time that the applicant has been in business as well as the success and growth of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Board for their consideration.

(c) The Authority shall *[have 120 days in which to]* review the application and advise the applicant that:

1. The application has been approved;
2. The application has been approved contingent on modification;
3. The application has been rejected; or
4. The application is continuing to be considered pending additional information being received.

(d) No loan guarantee approved by the Authority shall be disbursed to an eligible business until it has forwarded to the Authority a commitment fee of one-half of one percent of the amount of the loan guarantee and a guarantee fee of one half of one percent of the amount of the loan guarantee times the number of years that the guarantee is to be in effect.

12A:31-2.7 Reporting and compliance

(a) Upon receipt of a loan guarantee, the loan guarantee recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan guarantee recipient;
2. Any financial or technical assistance which the loan guarantee recipient has obtained;
3. Any substantive change in ownership or financial condition of the loan guarantee recipient; and
4. Any other information which the Authority may require.

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of a loan guarantee, the loan guarantee recipient shall inform the Authority of any contemplated substantive changes in the business *[and shall not commence with the change until approval of the Board is given]*.

12A:31-2.8 Information confidentiality

(a) All information and documents submitted to the Authority as part of a loan guarantee application relating to the financial status of applicant or which is given with the expressed and implicit expectation of confidentiality shall be disclosed only with the permission of the applicant or at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive the loan guarantee.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISE

Direct Loan Program

Adopted New Rules: N.J.A.C. 12A:31-3

Proposed: February 20, 1990 at 22 N.J.R. 610(a).
Adopted: June 22, 1990 by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Doggett, Chairman.
Filed: June 22, 1990 as R.1990 d.352, **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. 34:16-47 et seq., specifically 34:16-50(t).

Effective Date: July 16, 1990.
Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

The Authority received seven comment letters concerning these rules as proposed in the February 20, 1990 issue of the New Jersey Register from the following: Evanbow Construction Co., Inc., the New Jersey United Minority Business Brain Trust, and the following organizations within the Department of Commerce and Economic Development: the Division of Development for Small Businesses and Women and Minority Businesses, Office of Small Business Assistance, Office of Minority Business Enterprise, Bureau of Hispanic Enterprise, Set-Aside and Certification Office. The comment letters addressed three major areas of concern as follows: (1) the definitions used, (2) the length of time required for application review, and (3) the five year business plan requirement. In addition, comment letters included suggestions for additional services, a recommendation for inclusion of an appeal process, and questioned the need for an annual audit prepared by a CPA utilizing GAAP. Specific comments and responses are set forth below.

N.J.A.C. 12A:31-3.2 Definitions

COMMENT: Six comment letters included suggestions for amending the definition of small business, minority-owned and women-owned enterprises. Most commenters felt that these definitions should be the same as those used in N.J.A.C. 12A:11-1.2 in the chapter on certification of women-owned and minority-owned businesses. Other commenters felt that a size or sales limitation should be included and that Portuguese should not be included.

RESPONSE: The definitions used in these rules are those required by the Authority's enabling legislation N.J.S.A. 34:1B-48 et seq. Because these definitions are legislatively mandated, they can not be changed during the rulemaking process.

N.J.A.C. 12A:31-3.3(a) Application for a direct loan

COMMENT: Three comment letters expressed the opinion that the $250.00 application fee was too high.

RESPONSE: The Authority has established fees to cover the estimated cost of loan application evaluation. Additionally, it should be noted that the Authority is required by legislation (N.J.S.A. 34:1B-60) to cover all of its expenses from the proceeds of its activities.

N.J.A.C. 12A:31-3.3(c)

COMMENT: Three comment letters expressed the opinion that the five-year business plan required as a part of the direct loan application would be burdensome for small businesses and of limited value to the Authority.

RESPONSE: The Authority has added language to change the requirements of N.J.A.C. 12A:31-3.3(c) to require a business plan for three years or for the term of the loan, whichever is less.

N.J.A.C. 12A:31-3.3(d)4

COMMENT: Four comment letters asked for a clarification of the requirements that applicants must submit financial and operating statements for the past three years. Specifically, they want to know if all applicants must have been in business for three years in order to apply. Additionally, other commenters expressed the opinion that the financial statements be prepared by a certified public accountant utilizing generally

accepted accounting principles (GAAP) would be unduly burdensome to small businesses.

RESPONSE: The Authority will accept applications from businesses which have been in operation for less than three years. To satisfy the requirement to submit financial statements for the past three years, the Authority will accept the owner's personal financial statements to partially satisfy this requirement. The rules have been changed to accept financial compilation statements prepared by either a public accountant or a certified public accountant.

N.J.A.C. 12A:31-3.3(d)6

COMMENT: Five comment letters expressed concern over the certification requirements of this provision. One commenter expressed the opinion that certification from the Port Authority of New York and New Jersey and the New Jersey Department of Transportation be accepted as well as certification by the New Jersey Department of Commerce. Other commenters felt that the only acceptable certification should be the New Jersey Department of Commerce. Additionally, the suggestion was made that minority-owned and women-owned businesses should be required to show proof that they are managed on a daily basis by minorities and/or women in addition to having at least 51 percent beneficial ownership by eligible persons.

RESPONSE: The Authority will accept certification from the agencies suggested as well as from the U.S. Small Business Administration 8(a) programs. The decision was made not to restrict acceptable certification to New Jersey Department of Commerce and Economic Development in order to make loans available to the largest possible number of eligible businesses. The suggestion that the Authority require that minority- and women-owned businesses be managed on a daily basis by eligible persons would modify the legislative definition in N.J.S.A. 34:1B-48. The rule as changed upon adoption incorporates the exact language of the statute.

N.J.A.C. 12A:31-3.4(c)1 and 2 Direct loan assistance available from the Authority

COMMENT: One commenter questioned the rationale for establishing a 10-year maximum term for financing loans to purchase fixed assets while allowing a maximum term of 15 years for mortgage financing.

RESPONSE: A 15-year term for mortgage financing and a 10-year term loan for fixed asset are simply due to different risk factors including appreciation of real estate versus depreciation of fixed assets.

N.J.A.C. 12A:31-3.6(c) Evaluation of application for direct loan

COMMENT: All seven comment letters expressed the opinion that 120 days is an excessive amount of time for the Authority to review applications.

RESPONSE: The Authority has deleted this stipulation that "the Authority will have 120 days in which to review the application." The Authority will complete the review and approval process as expeditiously as possible.

N.J.A.C. 12A:31-3.7(c) Reporting and compliance

COMMENT: Two commenters objected to the proposed requirement that businesses informing the Authority of contemplated changes be required to obtain approval of the Authority's board prior to making such business changes.

RESPONSE: The Authority has deleted the language requiring prior approval of the Board. It should be noted that the letter of commitment, promissory note or loan agreement will contain provisions governing substantive changes during the term of the loan.

N.J.A.C. 12A:31-3.8(a)4 Recession of a direct loan

COMMENT: Three commenters questioned the provisions permitting the Authority to rescind a loan if the recipient is found not to be of good moral character. Each of the commenters interpreted this portion of the rules as applying to persons who had been convicted and who had completed their incarceration prior to applying for a loan. This provision was seen as unduly punitive.

RESPONSE: The Authority's loan application will clearly state "THE FACT THAT YOU HAVE AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU." However, the provisions of N.J.A.C. 12:31-1.8 are meant to address a situation involving conviction subsequent to the loan approval.

Other Comments:

COMMENT: In addition to comments made directly impacting the proposed rules, many of the commenters offered suggestions for additional programs or asked that the rules be expanded to include other provisions.

RESPONSE: The Authority recognizes the need for additional types of financial programs. The suggestion that a bonding program, lines of credit, and a project financing program will be considered in the future when additional resources are available. The suggestion that an appeal process be included in these rules thereby enabling successful applicants to protect the Authority's decision is not contemplated. The Authority will disclose the reason for rejection and provide technical assistance to unsuccessful applicants requesting it.

Summary of Changes Upon Adoption:

Changes being made are to correct grammatical errors in the proposed rules and to make explicit the existing method of determining compliance with the Authority's eligibility standards and applications for direct loans to small businesses, minority-owned businesses, and women-owned businesses.

Additional text regarding proof of minority or women's business status and management has been added as part of the application process at N.J.A.C. 12A:31-3.3(d)6. This text was inadvertently omitted from the proposal. The requirement is identical to that found in the Authority's direct loan and loan guarantee programs, and is derived from the definitions of minority and women's businesses.

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 3. DIRECT LOANS

12A:31-3.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for real estate acquisition, fixed asset acquisition or working capital.

(b) This program provides for the Authority to issue, for eligible businesses, loans of up to $200,000 with a repayment of from one to 15 years.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small
Businesses, Minorities' and Women's Enterprises
23 South Warren Street
Third Floor
CN 836
Trenton, New Jersey 08625

12A:31-3.2 Definitions

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

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a direct loan.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Direct loan" means a loan advanced by the Authority to an eligible business for the purpose of real estate acquisition, fixed asset acquisition, or working capital.

"Eligible business" means a small business, minority or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan recipient" means an eligible business which has been approved to receive or has received a direct loan.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or

2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean islands, regardless of race; or

3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii, or the Pacific Islands; or

4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business in which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means a female, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the business is held by women, and in which the majority of the management are women.

12A:31-3.3 Applications for a direct loan

(a) Each application for a direct loan shall be accompanied by a nonrefundable application fee of $250.00.

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire *[like or]* similar financing as that sought from the Authority.

(c) Each application for a direct loan shall be accompanied by *[a five year business plan of the applicant]* ***a business plan for three years or for the term of the loan, whichever is less***, provided in a format as determined by the Authority.

(d) Each application for a direct loan shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;

2. A representative list of the current and prior clients of the applicant for the past two years where applicable;

3. The resumes of the principals and key employees of the applicant business;

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past years in addition to any business financial and operating statements. All financial and operating statements submitted must be *[prepared by certified public accountants utilizing generally accepted accounting principles (GAAP)]* ***a compilation statement prepared by an accountant (either CPA or PA)***;

5. The projected financial and operating statements of the applicant for the next three years; *[and]*

6. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficiary owned by, and in which the majority of the management are, minorities and women; and

*[6.]***7.*** Any other information that the Authority deems necessary.

12A:31-3.4 Direct loan assistance available from the Authority

(a) Financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities and women, 50 percent of which shall be made available to women, and 50 percent of which shall be made available to minorities and shall be invested in accordance with the geographic restriction established by that act.

(b) Financial assistance allocated by the Authority provided from sources other than those funds made available to the Authority pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181) shall be distributed to minorities, small businesses, and women, 50 percent of which shall be made available to small businesses, 25 percent of which shall be made available to minorities, and 25 percent of which shall be made available to women.

(c) The Authority may provide direct loans to an eligible business in the following manners:

1. Direct loans from the Authority in the form of permanent mortgage financing for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 15 years. The maximum amount of the loan shall not exceed $200,000. The minimum amount of the loan shall be $50,000.

2. Direct loans from the Authority for the purpose of fixed asset acquisition for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 10 years. The maximum amount of the loan shall not exceed $200,000. The minimum amount of the loan shall be $50,000.

3. Direct loans from the Authority for the purpose of working capital for an eligible business at Authority designated rates. Terms of the direct loan shall not exceed a period of 10 years. The maximum amount of the loan shall not exceed $200,000. The minimum amount of the loan shall be $50,000.

12A:31-3.5 Time of application for a direct loan

An applicant may apply to the Authority at any time for a direct loan. However, the Authority may establish deadlines for the receipt and approval of applications, as it deems necessary.

12A:31-3.6 Evaluation of applications for direct loans

(a) The Executive Director shall evaluate each application for a direct loan considering the following factors:

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;

3. The likelihood that applicant will create new permanent full-time employment;

4. The likelihood that the applicant will not default on the direct loan; and

5. The length of time that the applicant has been in business as well as the success and growth of the business.

(b) After the evaluation of the application by the Executive Director, the Executive Director will forward the application to the Board for its consideration.

(c) The Authority shall have *[120 days in which to]* review the application and advise the applicant that:

1. The application has been approved;

2. The application has been approved contingent upon modification;

3. The application has been rejected; or

4. The application is continuing to be considered pending additional information being received.

(d) No direct loans approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the loan and a closing fee of one-half of one percent of the amount of the direct loan.

12A:31-3.7 Reporting and compliance

(a) Upon the receipt of a direct loan from the Authority, the loan recipient shall be required to submit a report to the Authority every three months which shall include the following:

1. The number of employees working for the loan recipient;

2. Any substantive change in the ownership or financial condition of the loan recipient; and

3. Any other information which the Authority may require.

(b) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit an annual audit prepared by a certified public accountant utilizing GAAP.

(c) Upon receipt of *[a loan guarantee]* ***a direct loan***, *[the loan guarantee]* ***the direct loan*** recipient shall inform the Authority of any contemplated substantive changes in the business *[and shall not commence with the change until approval of the Board is given]*.

12A:31-3.8 Rescission of a direct loan

(a) The Authority may, at its discretion, rescind all or part of a direct loan when it has become reasonably evident that:

1. Other commitments of financial resources made to the loan recipient have been withdrawn or have been amended in such a manner so as to undermine the ability of the loan recipient to utilize the loan in the manner it proposed to the Authority;

2. The loan recipient is judged no longer capable of meeting any financial obligations made to the Authority;

3. The loan recipient has been found to have supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing a direct loan; or

4. The loan recipient is found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a direct loan shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing them of the rescission.

12A:31-3.9 Information confidentiality

(a) All information and documents submitted to the Authority as part of a direct loan application relating to the financial status of the applicant or which is given to the Authority with the expressed and implicit expectation of confidentiality shall be disclosed only with the permission of the applicant or at the discretion of the Executive Director.

(b) Information and documents provided to the Authority may be shared with the assignees and/or agents of the Authority for purposes of analysis of the credit-worthiness of the applicant to receive a direct loan.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Regulations Pertaining to Discrimination on the Basis of Handicap

Adopted New Rules: N.J.A.C. 13:13

Proposed: May 21, 1990 at 22 N.J.R. 1436(a).
Adopted: June 21, 1990 by C. Gregory Stewart, Director, Division on Civil Rights.
Filed: June 26, 1990 as R.1990 d.360, **without change.**

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

Effective Date: July 16, 1990.
Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

N.J.A.C. 13:13 expired June 17, 1990, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), the rules proposed for readoption are adopted herein as new rules.

Full text of the rules proposed for readoption, adopted as new rules, may be found in the New Jersey Administrative Code at N.J.A.C. 13:13.

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ARCHITECTS

Education and Training Requirements for Architecture Examination

Adopted Repeal: N.J.A.C. 13:27-5.6
Adopted Repeal and New Rule: N.J.A.C. 13:27-5.5

Proposed: May 7, 1990 at 22 N.J.R. 1326(a).
Adopted: June 7, 1990 by the Board of Architects, Frank H. Radey, Jr., Commissioner.
Filed: June 13, 1990 as R.1990 d.341, **without change.**

Authority: N.J.S.A. 45:3-3.

Effective Date: July 16, 1990.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27-5.5 Education and training requirements for architecture examination

(a) The following standards must be met in order to be eligible to take the Architecture Registration Examination in New Jersey. An applicant shall:

1. Be of good character as verified by employers, architects and other references;

2. Hold a bachelor's or master's professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment. Degrees from foreign colleges or universities will be evaluated by the Education Credential Evaluators, Inc., an evaluation service recognized by NCARB and all other jurisdictions;

3. Present evidence of the following:

i. At least three years of training credits acceptable to the Board in accordance with N.J.A.C. 13:27-5.5(b) below; or

ii. Successful completion of the training requirements of the Intern-Architect Development Program (IDP). The Board must be in receipt of the "Green Cover" approving the candidate from the National Council of Architectural Registration Boards (NCARB).

(b) The following table sets forth the ways in which training credits can be acquired in order to satisfy the requirement in (a)3 above:

Item	Description of Training	Percent Credit Allowed	Maximum Credit Allowed
1.1	Diversified experience in architecture as an employee in the architectural office and under the direct supervision of a licensed architect.	100%	No limit
1.2	Diversified experience in architecture as an employee of an organization (other than offices of a licensed architect/s) when the experience is under the direct supervision of a licensed architect.	100%	2 years
1.3	Experience directly related to architecture, when under the direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a licensed professional engineer, landscape architect, planner or interior designer.	50%	1 year
1.4	Experience other than 1.1, 1.2 and 1.3, directly related to on-site building construction operations or experience involving physical analyses of existing buildings.	50%	6 months
1.5	A post-professional degree in architecture or teaching or research in an NAAB-accredited architectural program.	100%	1 year

(c) No training credits may be earned prior to satisfactory completion of:

1. Three years in a professional degree in architecture program credited by NAAB;

2. The third year of a four-year pre-professional degree program in architecture accepted for direct entry to an NAAB-accredited professional master's degree program;

3. One year in an NAAB-accredited professional master's degree program; or

4. Ninety-six semester credit hours as evaluated by the Board in accordance with NCARB Circular of Information No. 3, of which no more than 60 hours can be in the general education category.

i. Thirty-two semester credit hours or 48 quarter credit hours shall equal one year in an academic program.

(d) The following requirements apply to training credits:

1. No experience used to meet education requirements may be used to earn training credits.

2. After satisfying (a)2 above, every applicant must earn at least one year of credit under item 1.1 in the table in (b) above.

3. To earn credits under table items 1.1 through 1.4 in (b) above, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under table item 1.1 or six consecutive months under table items 1.2, 1.3 or 1.4. An applicant may earn one-half of the credits specified under table item 1.1 for work of at least 20 hours per week in periods of six or more consecutive months. No credits will be given for part-time work in any category other than table item 1.1.

4. To earn credit under table item 1.5, an applicant's credit hours must be in subjects evaluated by NCARB as directly related to architecture. Twenty semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one year.

5. An organization will be considered to be "an office of a licensed architect" if:

i. The architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal;

ii. The applicant works under the direct supervision of a licensed architect; and

iii. The organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.

6. An organization (or an affiliate) is "engaged in construction" if it customarily engages in either of the following activities:

i. The organization (or an affiliate) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation; or

ii. The organization (or an affiliate) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

7. A person practices as a "principal" by being a licensed architect who:

i. Is responsible for signing and sealing plans; and

ii. Is the person in charge of the organization's architectural practice, either alone or with other licensed architects.

8. A "licensed architect" is a person licensed or registered to practice architecture in the jurisdiction in which (s)he practices.

9. In deciding whether training represents "diversified experience in architecture," the Board will compare the applicant's training with the training requirements set forth in the Intern-Architect Development Program (IDP).

10. Applicants employed in settings described in table items 1.1 and 1.2 in (b) above whose experience is not diversified may obtain credit only under table item 1.3.

13:27-5.6 (Reserved)

(a)

DIVISION OF CONSUMER AFFAIRS
BUREAU OF EMPLOYMENT AND PERSONNEL SERVICES

Notice of Administrative Correction
Fees
Adopted New Rule: N.J.A.C. 13:45B-6.1

Take notice that the Division of Consumer Affairs has discovered an error in the adopted text of N.J.A.C. 13:45B-6.1 published in the June 18, 1990 New Jersey Register at 22 N.J.R. 1941(b). Through a printing error, the adopted $250.00 fees for "job listing service and registration" and "prepaid computer job matching service annual registration" as proposed at 22 N.J.R. 906(a) and adopted by the Division without change (see R.1990 d.317), were not reproduced in the published text of the adoption. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

SUBCHAPTER 6. FEES

13:45B-6.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Job listing service and registration	**$250.00**
Prepaid computer job matching service annual registration	**$250.00**
Temporary help service firm annual registration, primary location	$250.00
Temporary help service firm, permit for operation of each other location	$10.00
Agent's annual license	$25.00
Agent's conditional license	$25.00
Transfer of agent's license	$10.00
Agent-registrants	$25.00
Fee for abstract of law	$5.00

(b)

DIVISION OF MOTOR VEHICLES
BOAT REGULATION COMMISSION

Boating Regulations
Budd Lake
Adopted Concurrent New Rules: N.J.A.C. 7:6-3.13 and 4.9

Proposed: May 21, 1990 at 22 N.J.R. 1631(a).

Adopted: June 29, 1990 by the New Jersey Boat Regulation Commission, Kenneth L. Husted, Chairman, and Douglas S. Eakeley, Acting Attorney General, Department of Law and Public Safety.

Filed: July 2, 1990 as R.1990 d.366, **without change.**

Authority: N.J.S.A. 12:6-1(e), 12:7-34.36 et seq., particularly 12:7-34.40, 12:7-34.49, 12:7-44 and 12:7A-29.

Effective Date: July 16, 1990.

Expiration Date: June 9, 1994.

Summary of Public Comments and Agency Responses:

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules were proposed for adoption in compliance with the normal rule-making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted rules become effective upon publication in the New Jersey Register, since the adoption of the concurrent proposed new rules was not filed with the Office of Administrative Law prior to the expiration of the emergency period (see N.J.A.C. 1:30-4.4(f)).

No comments received.

Full text of the adoption follows.

7:6-3.13 Budd Lake, Morris County

(a) The ski boat operator shall, when a skier has fallen or has otherwise become disconnected from the tow line, reduce speed and return to the skier in a safe and reasonable manner.

(b) The dropping of skis for the purpose of barefoot or slalom skiing is prohibited, unless the ski is immediately retrieved by a following vessel.

7:6-4.9 Operation on Budd Lake

(a) No vessel shall be operated on Budd Lake on Saturdays, Sundays, and legal holidays between May 15th and September 15th, at a speed in excess of 35 miles per hour, from sunrise to sunset.

(b) No vessel shall be operated on Budd Lake between the hours of sunset and sunrise at a speed in excess of 15 miles per hour.

(c) Any applicant for a permit from the Department for a race or regatta shall submit an application to the Township Clerk, who

shall then submit such application to the Department with any comments or recommendations from the Township.

(d) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water, except in the case of a race or regatta, where permitted by the rules of such race or regatta.

(e) No vessel shall be operated at a speed in excess of five miles per hour within 50 feet of any shore, wharf, pier, bridge, dock structure, buoy, or person in the water or designated bathing areas which are marked by buoy.

(f) A distance of at least 30 feet shall be maintained between all vessels operating at speeds in excess of five miles per hour.

(g) No person shall operate a personal watercraft on Budd Lake on Saturdays, Sundays, or legal holidays between May 15th and September 15th.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Notice of Administrative Correction
Lane Usage
Route U.S. 1 in Mercer County
Adopted Amendment: N.J.A.C. 16:30-3.6

Summary of Public Comments and Agency Response:

Take notice that the Department of Transportation has discovered that a comment submitted within the comment period was inadvertently not included in the notice of adoption published in the July 2, 1990 New Jersey Register at 22 N.J.R. 2031(a). The comment and the Department's response follow:

COMMENT: A commenter proposed that the amendment be changed to allow use of the shoulder of Route 1 in the vicinity of Alexander Road and Fisher Place from 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. in both directions, Monday through Friday, rather than in one direction only, as provided for in the rule. The commenter supported the request with the contention that there is equal traffic congestion in both directions, and that, in fact, there is extensive use of both shoulders during both rush hour periods.

RESPONSE: The Department has reviewed the comment, conducted field observations, and reviewed previous recommendations. The Department does not intend to permit use of the shoulder during those periods of the day when traffic would normally be considered moderate to heavy, but only during the peak hours of congestion. Field observations currently show that the peak hours and directions of congestion are those provided for in the proposed amendment to N.J.A.C. 16:30-3.6 published in the May 7, 1990 issue of the New Jersey Register at 22 N.J.R. 1345(a). Therefore, the Department will not make any changes to the rule at this time. The Department will continue to monitor the operation of the shoulder usage and, should modifications to the hours of operation be of benefit to the motoring public using the highway, such modifications will be proposed as amendments.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Local Property Tax
Revaluations; Reassessments
Adopted Amendment: N.J.A.C. 18:12A-1.14

Proposed: May 7, 1990 at 22 N.J.R. 1350(a).
Adopted: June 12, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: June 12, 1990 as R.1990 d.339, **without change.**
Authority: N.J.S.A. 54:3-14.
Effective Date: July 16, 1990.
Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:

One comment on the proposal was received during the comment period. The comment proposed that N.J.A.C. 18:12A-1.14(b) also include the following sentence: "The board shall send a copy of the proposed order to the assessor of the taxing district, who shall be given an opportunity to submit comments thereon to the Director."

The Division replied that there did not appear to be any compelling reason to adopt this provision. An assessor is not presently precluded under existing rules from submitting his or her comments respecting an order for revaluation prepared by the county board of taxation. As a practical matter the assessor and municipal officials are typically aware of a pending order.

The commenter also suggested that the proposal be amended to make clear that if a district gets an order for a revaluation instead of hiring a contractor, the assessor should still be able to do the revaluation on his or her own to avoid unnecessary expenditure of municipal funds.

In response the Division pointed out that where the assessor may prefer to perform a reassessment after receiving a revaluation order, he or she could file a plan and seek to have the order revised to specify a reassessment rather than a revaluation. Accordingly, it was felt that such amendment to the proposal was unnecessary.

Accordingly, the proposal is adopted without change.

Full text of the adoption follows.

18:12A-1.14 Revaluations; reassessments

(a) (No change.)

(b) Regarding revaluation orders by county board of taxation, when a board determines the need to order a taxing district to revalue its real property, it shall submit the proposed order to the Director, Division of Taxation, for his or her approval outlining the reasons that warrant such action. Upon approval of such order, the Board shall take appropriate action to implement same.

1. (No change.)

2. The assessor of a municipality directed to undertake a revaluation shall file with the county tax administrator a written plan detailing measures that are being taken or have been accomplished to comply with the terms and provisions of the approved revaluation order issued by the county board of taxation. The assessor shall submit the report on Form RCR (Revaluation Compliance Report), prescribed by the Director of the Division of Taxation, within 30 days of notice of the order and the first of each month thereafter, until approval of a contract for revaluation has been obtained from the Director of the Division of Taxation.

(c) An assessor proposing to revise and update assessments shall submit an application to perform a reassessment with the county board of taxation.

1. The application shall be completed on Form AFR (Application for Reassessment) as prescribed by the Director of the Division of Taxation.

2. The county board shall review the application within 30 days of its submission and forward a copy to the Director of the Division of Taxation with a recommendation of approval or disapproval. In the case of a recommendation of disapproval, the Director shall be advised of the reason.

3. Within 30 days of receipt of the application and the board's recommendation, the Director shall advise the county tax administrator of his or her determination as to whether the assessor may proceed with the reassessment program. In the case of disapproval, the Director shall specify the reason for his or her determination.

(d) The assessor of a district that has received approval of a contract for revaluation or an application to perform a reassessment shall submit a plan of work to the county tax administrator within 30 days of such approval. Thereafter, a report on the status of the revaluation or reassessment, as the case may be, shall be filed with the county tax administrator every 30 days until the program has been completed and the tax list has been filed with the county board of taxation.

1. The plan of work and revaluation progress report shall be completed on Form POW/RSR (Plans of Work/Revaluation Status

Report) as prescribed by the Director of the Division of Taxation, and include the following information:

i. A listing of all major activities and functions to be performed during the course of the revaluation or reassessment;

ii. An indication, in the case of a revaluation, as to whether the assessor or the revaluation firm will be responsible for the performance of each listed activity or function;

iii. The overall anticipated starting and completion date of each listed activity or function;

iv. The breakdown of units, portion or percentage of work activities or functions that are targeted to be started and completed during each month of the revaluation or reassessment program;

v. The breakdown of units, portion or percentage of work activities or functions that have been completed during the month for which the progress report is being submitted; and

vi. Any revision or change in schedule from the previously submitted plan of work or progress report.

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

(g) Where a contract for a revaluation under (a) or (b) above has been entered into by a municipality with an appraisal company, the Director of the Division of Taxation, before approving or disapproving said contract, shall forward a copy thereof to the county tax administrator for his or her review and comment. The county tax administrator shall submit his or her comment respecting the contract to the Director within two weeks. In the event that the county tax administrator fails to respond to said request within the prescribed period, the Director shall proceed with his or her review and approve or disapprove the contract, as provided by law.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Administrative Correction District Zoning Regulations N.J.A.C. 19:4

Take notice that the Hackensack Meadowlands Development Commission (HMDC) has discovered errors in, and requested corrective changes to, the current text of N.J.A.C. 19:4, District Zoning Regulations. The Office of Administrative Law has confirmed the nature of the errors and agreed to the changes requested. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7. A summary of the corrections and changes follows:

At N.J.A.C. 19:4-3.3(b), the word "waterway" is inserted between "public way" and "or railroad right-of-way." This correction reflects the original rule text as adopted by the HMDC and filed with the Division of Administrative Procedure (see 1 N.J.R. 17(b); 2 N.J.R. 52(a)).

Cross reference citations and formats have been corrected at N.J.A.C. 19:4-4.8(a)2, 4.16(a), 4.19A(e), 4.41(a), 4.26, 4.44, 4.144(e)2, (e)3 and (p), 5.21(d)3vi, 5.5(c) and (c)5iii, 5.8(a)2x, 6.20(a), and 6.23(e)1 and (e)2.

References to the "public park and recreation zone" have been corrected to "park and recreation zone" at N.J.A.C. 19:4-4.22(a) and 6.9(c) and (d) to correspond to the term as used throughout the chapter.

At N.J.A.C. 19:4-4.23A(a)3i, the word "with" is changed to "any" to reflect the rule text as adopted by the HMDC and filed with the Office of Administrative Law (see 15 N.J.R. 16(b) and 1873(a)).

Certain proper terms have been capitalized at N.J.A.C. 19:4-4.30(a)3i and 6.25(e) in keeping with correct Code editorial style.

At N.J.A.C. 19:4-4.49(a)6, the word "acres" is changed to "acre" to be grammatically correct.

The term "general planned unit development" has been corrected to "planned unit development" at N.J.A.C. 19:4-4.54, 4.64, 4.73, 4.93, 4.103, 4.112, 4.125 and 4.147 to correspond to the term as used throughout the chapter.

Use of the word "district" has been corrected to "zone" to accurately describe the areas addressed in N.J.A.C. 19:4-4.63 and 4.72.

The correct word "exception" has been added to replace "use" in the term "special use permit" in N.J.A.C. 19:4-4.141(e) and (f), and added to clarify the type of application referenced in N.J.A.C. 19:4-4.141(a).

At N.J.A.C. 19:4-4.144(g), the word "and" after "development" is replaced with a comma to properly depict the relationship between the sentence's two clauses.

The misspelling of the word "staged" as "stated" in N.J.A.C. 19:4-5.3(d)1v is corrected, as is the typographic error of "enforcement" appearing in the heading of N.J.A.C. 19:4-6.16 instead of "enhancement."

At N.J.A.C. 19:4-6.14(h)1, the word "the" is changed to "any" to reflect the original rule text as adopted by the HMDC and filed with the Division of Administrative Procedure (see 1 N.J.R. 17(b) and 2 N.J.R. 52(a); 4 N.J.R. 13(c) and 311(c)).

Changes are made to the second sentence of N.J.A.C. 19:4-6.18(b)4 in order to correct language inconsistent with the requirements of the paragraph's first sentence.

At N.J.A.C. 19:4-6.19(c), the term "special planning areas" is corrected to "specially planned areas" to be consistent with chapter terminology.

Punctuation errors are corrected at N.J.A.C. 19:4-6.24(g)4 by the deletion of the comma after "number(s)," and at N.J.A.C. 19:4-6.24(a) by insertion of a comma after the term "occupancy certificate."

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

19:4-3.3 Zoning of public ways, waterways, and railroad rights-of-way

(a) (No change.)

(b) Where the center line of a street, road, highway, alley, public way, **waterway,** or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

(c) (No change.)

19:4-4.8 Obstructions in required yards

(a) The following shall not be considered to be obstructions and shall be permitted when located in a required yard:

1. (No change.)

2. In any yard except a front yard: Accessory uses permitted by N.J.A.C. 19:4-[5.145]**4.145** and meeting the applicable minimum side yard requirements; recreational and laundry drying equipment; and parking and loading facilities, provided that a minimum distance of six feet of landscaping is maintained between parking facilities and buildings.

(b) (No change.)

19:4-4.16 Marshland preservation zone; environmental performance standards

(a) All uses in the marshland preservation zone shall comply with the following environmental performance standard categories of [Subchapter 6] **N.J.A.C. 19:4-6**:

1.-4. (No change.)

19:4-4.19A Planned park zone 1; permitted uses

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

(e) Outdoor park and recreation uses: Outdoor park and recreation uses shall be related to the needs of the anticipated population of the zone and DeKorte State Park. Such uses shall be consistent with the type of recreational activities provided for in the DeKorte State Park Master Plan which include, but are not limited to, an equestrian center, swim clubs, skating centers, marinas, and bicycle rental facilities. Such uses, but not their associated structure or off-street parking, shall be deemed open space for the purpose of satisfying the provisions of N.J.A.C. 19:4-4.23**A**.

19:4-4.22 Park and recreation zone; environmental performance standards

(a) All uses in the [public] park and recreation zone shall comply with the following environmental performance standard categories of N.J.A.C. 19:4-6.1 et seq.:

1.-3. (No change.)

19:4-4.23A Planned park zone 1; bulk regulations

(a) The bulk regulations for the planned park zone are:

1.-2. (No change.)

3. Setbacks and Yards:

i. Minimum road setback is 75 feet along [with] **any** major north-south roadway which borders the development in this zone on the

west; and 35 feet along any easement or internal non-dedicated private roadway.

ii. (No change.)

4.-5. (No change.)

19:4-4.26 Low density residential zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with [sections 133 to 139 of this subchapter] **N.J.A.C. 19:4-4.133 to 4.139** or as a planned unit development in accordance with the provisions of [section 144 of this subchapter] **N.J.A.C. 19:4-4.144**.

19:4-4.30 Low density residential zone; bulk regulations

(a) Bulk regulations in the low density residential zone include:

1.-2. (No change.)

3. Yards:

i. Minimum front yard: 25 feet, except in those cases where the [office of the chief engineer] **Office of the Chief Engineer** determines that the average prevailing setbacks of existing adjacent dwellings are substantially less than 25 feet, the minimum front yard may be reduced to not less than 20 feet;

ii.-iii. (No change.)

4.-5. (No change.)

19:4-4.41 Waterfront recreation zone; environmental performance standards

(a) All uses in the waterfront recreation zone shall comply with the following environmental performance standard categories of [Subchapter 6] **N.J.A.C. 19:4-6**:

1.-5. (No change.)

19:4-4.44 Highway commercial zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with [Sections 133 to 139 of this Subchapter] **N.J.A.C. 19:4-4.133 to 4.139** or as a planned unit development in accordance with the provisions of [Section 144 of this subchapter] **N.J.A.C. 19:4-4.144**.

19:4-4.49 Highway commercial zone; bulk and density regulations

(a) The bulk and density regulations in the highway commercial zone are:

1.-5. (No change.)

6. The maximum number of hotel and motel rooms per [acres] **acre** is 25.

7. (No change.)

19:4-4.54 Service-highway commercial zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 19:4-4.137 or as a [general] planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.63 Research park zone; purposes

This [district] **zone** is designed to accommodate research facilities and office facilities in a park-like environment, with substantial amounts of landscaped open space.

19:4-4.64 Research park zone; type of development

Developers of land located in this zone shall develop said land by following the procedure set forth in N.J.A.C. 19:4-4.144 or may develop such land as a [general] planned unit development in accordance with the requirements of N.J.A.C. 19:4-4.144.

19:4-4.72 Research distribution park zone; purposes

This [district] **zone** is designed to accommodate research facilities, office facilities and warehouse facilities in a park-like environment, with substantial amounts of landscaped open space.

19:4-4.73 Research distribution park zone; type of development

Developers of land located in this zone shall develop said land by following the procedure set forth in accordance with the requirements of N.J.A.C. 19:4-4.144 or may develop such land as a [general] planned unit development in accordance with the requirements of N.J.A.C. 19:4-4.144.

19:4-4.93 Light industrial zone B; type of development

Developers of land located in the zone shall have the option of developing said land in accordance with the provisions of N.J.A.C. 19:4-4.133 to 19:4-4.139 or as a [general] planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.103 Heavy industrial zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 19:4-4.139 or as a [general] planned development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.112 Airport facilities zone; type of development

Developers of land located in this zone shall have the option of developing said land in acccordance with N.J.A.C. 19:4-4.133 to 19:4-4.139 or as a [general] planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.125 Public utilities zone; type of development

Developers of land located in this zone shall have the option of developing said land in accordance with N.J.A.C. 19:4-4.133 to 19:4-4.139 or as a [general] planned development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.141 Special exceptions

(a) The Executive Director may authorize the establishment of those special exceptions that are expressly authorized to be permitted in a particular zone or in one or more zones. No special exceptions shall be authorized unless the same complies with all of the applicable provisions of these regulations. Prior to any action being taken by the Executive Director pursuant to this Section, the Office of the Chief Engineer shall review the special **exception** application and prepare findings, conclusions and recommendations thereon which shall then be submitted to the Executive Director.

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

(e) In the granting of a special exception permit, such conditions, safeguards and restrictions may be imposed upon the premises benefited by the special exception as may be necessary to comply with the standards set out in subsection (d) hereof, to reduce or minimize any potentially injurious effect of such special exception upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Failure to comply with any of the conditions or restrictions placed on a special [use] **exception** permit shall constitute a violation of these regulations.

(f) A written decision on an application for a special [use] **exception** permit shall be rendered within eight weeks after the close of the hearing. The Office of the Chief Engineer shall maintain complete records of all actions with respect to applications for special exception permits.

(g)-(h) (No change.)

19:4-4.144 Planned unit development

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

(e) Permitted uses and standards are as follows:

1. (No change.)

2. All special exceptions permitted under the regulations of the zone in which the planned unit development is located without regard to the procedures for approval thereof provided in [§6-30] **N.J.A.C. 19:4-4.141**, the procedures in this Section constituting a replacement and substitute therefor.

3. All other uses except that residential uses shall only be allowed in planned unit developments located in the Low-Density Residential, Highway Commercial, Research-Park, and Research Distribution Park Zone, provided that no use other than uses permitted under [subsections (a) and (b) hereof] **(e)1 and 2 above** shall be allowed to predominate.

4. (No change.)

(f) (No change.)

(g) With respect to all land areas devoted to residential use within a planned unit development [and], the maximum permitted density shall be 20 dwellings per acre. For purposes of this Section, land area devoted to residential use shall mean the sum of all areas on which structures containing residential uses, whether or not in conjunction

and other uses, are to be constructed and all open space designed for the benefit of the residential uses. Such area shall not be deemed to include dedicated streets or other public rights-of-way.

(h)-(o) (No change.)

(p) In order to effectuate the purposes of this Section it is necessary to waive and modify the subdivision regulations otherwise applicable. The applicability of the subdivision regulations to planned unit developments shall be as provided in N.J.A.C. 19:4-[5.14] **5.13**.

(q) (No change.)

19:4-4.147 Commercial Park Zone: Type of development

Developers of land located in the zone shall have the option of developing said land in accordance with the provisions of N.J.A.C. 19:4-4.133 to 19:4-4.139[,] or as a [general] planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-5.2 The parkside residential specially planned areas: PR-1, PR-2 and PR-3

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

(d) No general plan for any PR shall be approved under N.J.A.C. 19:4-5.8, no development plan shall be approved under N.J.A.C. 19:4-5.9, and no implementation plan shall be approved under N.J.A.C. 19:4-5.10 unless it contains the following types and amounts of development.

1.-2. (No change.)

3. Common open space:

i.-v. (No change.)

vi. Maintenance of Common Open Space. All common open space, and facilities and structures thereon, shall either be dedicated to the public, with the approval and subject to the terms of the Meadowlands Commission, or maintained in accordance with the provisions of [§7-402] **N.J.A.C. 19:4-5.14**.

4.-13. (No change.)

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

19:4-5.3 The island residential specially planned areas: IR-1, IR-2, IR-3, and IR-4

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

(d) No general plan for any IR shall be approved under Section 8 of this Subchapter, no development plan shall be approved under Section 10 of this Subchapter unless it contains the following types and amounts of development:

1. Residential development:

i.-iv. (No change.)

v. If the development of any IR is [stated] **staged**, each section thereof must substantially comply with the requirements of this subsection.

vi.-ix. (No change.)

2.-14. (No change.)

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

19:4-5.5 The transportation center specially planned areas: TC-1, TC-2, and TC-3

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

(c) Development shall be permitted in each TC only upon approval of and pursuant to a general plan for the entire TC under [Section 8 of this Subchapter] **N.J.A.C. 19:4-5.8**, upon approval of and pursuant to development plan for the section to be developed under [Section 10 of this Subchapter] **N.J.A.C. 19:4-5.9** and upon approval of and pursuant to an implementation plan for the subsection to be developed under [Section 10 of this Subchapter] **N.J.A.C. 19:4-5.9**.

1.-4. (No change.)

5. Common open space:

i.-ii. (No change.)

iii. Maintenance. All open space, and facilities and structures thereon shall either be dedicated to the public, with the approval and subject to the terms of the Meadowlands Commission, or maintained in accordance with the requirements of [§7-402] **N.J.A.C. 19:4-5.14**.

(d)-(g) (No change.)

19:4-5.8 General plan

(a) An applicant shall file a general plan covering the entire specially planned area as follows:

1. (No change.)

2. Contents:

i.-ix. (No change.)

x. A statement of any requirement the applicant wishes the Development Board to vary and why the requested variations will conform to the standards of [§7-405] **N.J.A.C. 19:4-5.17**.

xi.-xxii. (No change.)

3.-4. (No change.)

19:4-6.9 Performance standards; glare

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

(c) Uses subject to Category A, B, and C performance standards shall not produce glare so as to cause illumination in a residential specially planned area, residential zone, and residential planned unit development, marshland preservation zone, or [public] park and recreation zone, in excess of 1.0 foot candles. Flickering or intrinsically bright sources of illumination shall be controlled so as not to be a nuisance in these districts.

(d) Uses subject to Category A, B, and C performance standards shall limit the use of light sources and illuminated surfaces within 500 feet of, and visible in, a residential specially planned area, residential zone, residential planned unit development, marshland preservation zone, [public] park and recreation zone, to comply with the light intensities indicated in Table VIII.

TABLE VIII (No change.)

19:4-6.14 Performance standards; water

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

(h) The flow from any pipe, conduit, or any other source discharging into the river or its tributaries shall meet the following values:

1. Five day B.O.D. not to exceed 25 mg/l during [the] **any** period of discharge;

2.-15. (No change.)

19:4-6.16 Wetlands buffer strip; water quality and [enforcement] **enhancement** of wetlands

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

19:4-6.18 Design of structures; provision and design of other improvements, including parking and loading facilities, landscaping, lighting, fencing, signs and satellite antennas

(a) (No change.)

(b) Location and design of certain improvements regulations include:

1.-3. (No change.)

4. Distribution and service lines for telephone and electricity shall be placed underground wherever technologically possible and wherever aboveground lines do not predominate. Where this is not possible, utility lines [shall] **may** be placed [underground, and all] **aboveground. All** utility installations remaining above ground shall be located so as to have a harmonious relationship to neighboring properties and the surroundings.

(c)-(o) (No change.)

19:4-6.19 Appointment and operation of Environmental Design Committee

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

(c) In the [special planning] **specially planned** areas and for planned unit developments, the Development Board shall review all development and implementation plans submitted to determine whether the design plans therein fulfill the standards for design of site, structures and open space set forth in the applicable regulations. Where the Development Board determines that the proposal contained in the development or implementation plan warrants design review by the Environmental Design Committee, because of the nature of the design plans proposed, the scope or complexity of the proposal, or other appropriate considerations, it may, upon receipt of the development plan and implementation plan, request the Environmental Design Committee to review the design plans in question. Within the time specified in the procedure for specially planned areas, the En-

vironmental Design Committee thereof shall issue a report to the Development Board, which shall be filed with the office of the Chief Engineer, where it shall be of public record, setting forth its recommendations on approval, modification or disapproval of the design plans. The report must be adopted by the concurring vote of a majority of the Environmental Design Committee; dissenters may file a separate report. The Development Board shall approve, approve with conditions or disapprove such design plans, based upon the recommendations of the Environmental Design Committee, and upon its own review of the design plans.

19:4-6.20 Landmark preservation

(a) The Commission may, after public hearing called and held in accordance with [Section 22 of this Subchapter] N.J.A.C. 19:4-6.22, designate any structure, use or unique physical feature within the Hackensack Meadowlands District a landmark, is such use:

1.-3. (No change.)

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

19:4-6.23 Nonconformities

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

(e) Limitations include the following:

1. Maintenance, repair, remodeling: Any such structures may be maintained, repaired or remodeled: provided, however, that no such maintenance, repair or remodeling shall either create any additional nonconformity or increase the degree of existing nonconformity of all or any part of such structure, except that, in zones, as to structures located on a lot that does not comply with the applicable lot size requirements, the side yard requirements shall be determined by [the applicable subsection of (a) herein] **(b) above**.

2. Damage or destruction: In the event that any such structure is substantially damaged or destroyed, by any means, such structure shall not be restored unless it shall thereafter conform to the regulations for the zone in which it is located; or would be consistent with the approved implementation plan covering the section in which it is located; provided that, in zones, structures located on a lot that does not comply with the applicable lot size requirements shall not in any event be required to provide a side yard that exceeds the yard requirements in [(a)] **(b)** above.

3. (No change.)

(f)-(h) (No change.)

19:4-6.24 Fees, penalties and enforcement

(a) Any application for a zoning certificate, occupancy certificate, variance, special exception permit, amendment, or accompanying a general, development, or implementation plan, or the filing of a notice of appeal shall be accompanied by such fee as shall be specified from time to time by resolution of the Commission.

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

(g) The HMDC's rights of entry and inspection are as follows:

1.-3. (No change.)

4. All inspections, investigations, examinations, surveys, soundings or test borings shall be memorialized by a written report which shall include the name of the HMDC representative who entered the premises, the address, including the lot and block number(s)[,] of the premises entered and a description of the premises, including a description of any and all violations.

5.-6. (No change.)

19:4-6.25 Appeals

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

(e) The [office] **Office** of the Chief Engineer shall maintain complete records of all actions of the [commission] **Commission** with respect to appeals.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY
GARDEN STATE PARKWAY
Notice of Administrative Correction
Tolls
Toll-Free Passage
N.J.A.C. 19:8-3.2

Take notice that the New Jersey Highway Authority has discovered an error in the text of N.J.A.C. 19:8-3.2(a)1. As amended in 1983 (see 15 N.J.R. 1638(a) and 2046(b)), this paragraph should also provide for toll-free passage through Garden State Parkway collection points for former Governors of the State of New Jersey and former Commissioners of the New Jersey Highway Authority. Through an error in publication, the amended rule was not published in the New Jersey Administrative Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

19:8-3.2 Toll-free passage

(a) Unless expressly authorized by the Authority, no toll-free passage through toll collection points on the Parkway will be permitted except the following:

1. The Governor of the State of New Jersey**, former Governors of the State of New Jersey**, Commissioners and executive staff members of the Authority **and former Commissioners of the Authority**;

2.-6. (No change.)

(b)

CASINO CONTROL COMMISSION
Temporary Amendment of Rules of the Games Pursuant to Five Times Odds at Craps Experiment
N.J.A.C. 19:47-1.6

Petitioner: Resorts International Hotel, Inc.

Authority: N.J.S.A. 5:12-69(e) (P.L. 1987 c.354) 5:12-70(f) and 5:12-100(e).

Take notice that beginning July 23, 1990, the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for a period of 90 days for the purpose of determining if a new rule should be adopted which would permit casino licensees to offer a patron up to five times odds at the game of Craps.

Specifically, the test would allow Resorts International Hotel, Inc. to offer supplemental wagers at the game of Craps in an amount up to five times the patron's Pass Line or Come Wager or in the case of a Don't Pass or Don't Come Wager in an amount so as to win five times the original wager for the purpose of gathering empirical data to determine the impact on Craps revenues. The test will be conducted on a limited number of Craps tables at Resorts International Hotel, Inc. Signage will be posted at the major casino entrances and at the tables involved in the testing of 5 times odds.

A petition for rulemaking on this subject was filed with the Commission on March 30, 1990. Should the test prove successful, the Commission will propose the new rule for adoption in accordance with the public notice and comment requirements of the Administrative Procedure Act and N.J.A.C. 1:30-1 et seq.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Take notice that on June 13, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment changes the existing Clinton Township Wastewater Management Plan to allow the Department of Corrections (DOC) Mountain View Youth Correctional facility sewage treatment plant (STP) to remain in operation and expand to accommodate wastewater flows of 260,000 gallons per day. The sewer service area of the STP has been defined with the remainder of the DOC property being designated as an individual subsurface sewage disposal area.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Manville Borough, Somerset County. This WMP allows Manville Borough to abandon its sewage treatment plant and convey all wastewater flows to the Somerset Raritan Valley Sewerage Authority wastewater treatment facilities in Bridgewater Township.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 a.m. and 4:00 p.m., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice, that is, by August 15, 1990. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt an updated Montgomery Township Wastewater Management Plan (WMP). This WMP updates the existing information and identifies several existing treatment facilities which were previously not identified. The WMP identifies two proposed wastewater treatment and recycling systems, serving the Attica Properties and Montgomery Commons commercial developments, which will convey wastewater to the Stage II sewage treatment plant (STP). Also proposed is the Oakmont Country Club wastewater effluent irrigation system. The Pike Brook STP sewer service area will be reduced to exclude the Oakmont Country Club development.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

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(d)

DIVISION OF ENVIRONMENTAL QUALITY

New Jersey Radiological Emergency Response Plan Public Hearing: Mannington Township, New Jersey

Take notice that pursuant to the "Radiation Accident Response Act," N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection, in cooperation with the Division of State Police, will hold a public hearing to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The hearing will be held on:

Tuesday, July 24, 1990
7:00 P.M.-9:30 P.M.
Fire Training Center
Cemetery Road
Mannington Township, New Jersey

In addition to accepting public comments, the following speakers will appear at the hearing: the Director of the Office of Emergency Management, Division of State Police, and the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection.

Copies of the New Jersey Radiological Emergency Response Plan are available at the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey and at the Salem County Emergency Management Office, Cemetery Road, Mannington Township, New Jersey.

For additional information contact:

New Jersey Department of Environmental Protection
c/o Maryanne Quinn, Nuclear Emergency Preparedness
Bureau of Nuclear Engineering
CN 415
Princeton, New Jersey 08540
Telephone: (609) 987-2036

(a)

DIVISION OF ENVIRONMENTAL QUALITY

New Jersey Radiological Emergency Response Plan Public Hearing: Toms River, New Jersey

Take notice that pursuant to the "Radiation Accident Response Act," N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection, in cooperation with the Division of State Police, will hold a public hearing to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The hearing will be held on:

Monday, July 30, 1990
7:00 P.M.-9:30 P.M.
Ocean County Administrative Building
Room 119
101 Hooper Avenue
Toms River, New Jersey

In addition to accepting public comments, the following speakers will appear at the hearing: the Director of the Office of Emergency Management, Division of State Police, and the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection.

Copies of the New Jersey Radiological Emergency Response Plan are available at the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey and at the Ocean County Office of Emergency Management, Robert J. Miller Air Park, Route 530, Berkeley Township, New Jersey.

For additional information contact:

New Jersey Department of Environmental Protection
c/o Maryanne Quinn, Nuclear Emergency Preparedness
Bureau of Nuclear Engineering
CN 415
Princeton, New Jersey 08540
Telephone: (609) 987-2036

(b)

DIVISION OF ENVIRONMENTAL QUALITY

New Jersey Radiological Emergency Response Plan Public Hearing: Greenwich, New Jersey

Take notice that pursuant to the "Radiation Accident Response Act," N.J.S.A. 26:2D-43 et seq., the Department of Environmental Protection, in cooperation with the Division of State Police, will hold a public hearing to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The hearing will be held on:

Thursday, August 9, 1990
7:00 P.M.-9:30 P.M.
Greenwich Fire Station
Greenwich, New Jersey

In addition to accepting public comments, the following speakers will appear at the hearing: the Director of the Office of Emergency Management, Division of State Police, and the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection.

Copies of the New Jersey Radiological Emergency Response Plan are available at the Office of Emergency Management, State Police Headquarters, West Trenton, New Jersey and at the Cumberland County Office of Emergency Management, Bridgeton Avenue, Bridgeton, New Jersey.

For additional information contact:

New Jersey Department of Environmental Protection
c/o Maryanne Quinn, Nuclear Emergency Preparedness
Bureau of Nuclear Engineering
CN 415
Princeton, New Jersey 08540
Telephone: (609) 987-2036

HEALTH

(c)

DIVISION OF COMMUNITY HEALTH SERVICES

Notice of Availability of Grants Family Planning (Adolescents)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of grant program: Family Planning (Adolescents), Grant Program No. 91-79-MCH.

B. Purpose for which the grant program funds will be used: To provide funds to support special adolescent preventive and primary care and family planning service in an area of need as evidenced by a high adolescent fertility rate.

C. Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

D. Groups or entities which may apply for the grant program: Governmental or non-profit agencies which are licensed ambulatory care facilities and currently providing comprehensive family planning services in conformity with State guidelines and Federal regulations. Agencies must be located within and serve areas of the State that demonstrate need for a special adolescent program, evidenced by high fertility rates among women less than 20 years of age.

E. Qualifications needed by an applicant to be considered for the grant:

1. A licensed ambulatory care facility with professional staff which can provide clinical family planning services in accord with State guidelines and Federal regulations in the provision of services and willing to expand services to provide preventive and primary adolescent health services.
2. Be a governmental or non-profit agency willing to provide family planning related community education services.
3. Medicaid provider or has applied to become one.

F. Procedures for eligible entities to apply for grant funds:

1. Contact Office of Director for Program referral.
2. Contact Program.
3. Submit Letter of Intent to Program.
4. Prepare Health Service Grant Application.

G. For information contact:

Maternal and Child Health Services
Office of Director
363 W. State Street, CN 364
Trenton, NJ 08625
609-292-5656

H. Deadline by which applications must be submitted: Letter of Intent due to funding program by July 15, application by August 15, for January 1 grants.

I. Date by which applicant shall be notified whether they will receive funds: Applicant will be notified 30 days prior to start date of grant.

LAW AND PUBLIC SAFETY

(d)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Notice of Action Regarding Petition for a Rule on Fingerprinting

N.J.S.A. 33:1-39

Petitioner: David S. Steinburg, Esq., Assistant General Counsel for Prime Motors Inn Inc.

Take notice that a notice of petition for a rule (a) permitting the fingerprinting of an applicant for a retail liquor license to be taken by any duly authorized police department or other agency designated by the Director and (b) permitting fingerprints taken in connection with a prior license application to be acceptable in a subsequent license application pending before another municipality, was received on January 24, 1990 and was published in the March 19, 1990 New Jersey Register at 22 N.J.R. 996(b).

The Division has reviewed the petition and concludes that the present regulatory scheme shall be maintained. The limited incidences of apparent inconvenience to an application cannot support a rule change which might diminish the numerous responsibilities and methods available to the municipal issuing authorities which must, in issuing or transferring a plenary retail liquor license, find that the applicants have not been convicted of a crime involving moral turpitude and are in all other respects qualified. The purpose of requiring fingerprints of the applicant is one method by which the municipality can determine whether or not the applicant has been convicted of a crime. There is nothing under the current regulatory procedure which would prohibit the municipal issuing authority from using fingerprints taken previously in connection with a prior application in another municipality or allow the applicant to be fingerprinted by a police department or other agency and have the fingerprints forwarded to the issuing authority. However, this option is solely at the discretion of the local issuing authority and would be a determination the issuing authority would make based upon the circumstances of the application before it.

Since the issuing authority has the responsibility to make these determinations regarding qualifications, it should also have the ability to determine the method and procedure it wishes to employ in investigating the applicant and the information it feels is necessary to make a determination. These procedures must be within the bounds of being reasonable, however, to mandate by regulation the changes requested by the petitioner, would impinge upon the duty of the issuing authority to make a full and complete determination with regards to the qualifications of the applicant.

The petition for a rule is denied.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking Jackpot Payouts in the Form of an Annuity N.J.A.C. 19:45-1.40A and 1.40B

Petitioner: Atlantic City Megabucks Trust.
Authority: N.J.S.A. 5:12-69(c), N.J.S.A. 52:14B-4(f).

Take notice that on May 29, 1990, petitioner filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:45-1.40A and 1.40B, concerning jackpot payouts in the form of an annuity.

Specifically, petitioner's requested amendments would permit casino licensees which offer annuity jackpots to deduct the amounts paid out as annuity jackpots from gross revenue in determining the gross revenue tax payable pursuant to N.J.S.A. 5:12-144. The amendments would also permit casino licensees offering annuity jackpots to invest in other financial vehicles besides annuity contracts as a means of ensuring that the deferred payments will be made as promised. Additionally, they would allow the trusts which are established pursuant to the rules to deposit their funds in an institution other than a "bank." Finally, several changes in the existing language of N.J.A.C. 19:45-1.40B are also requested.

After due notice, this petition will be considered by the Casino Control Commission in accordance with N.J.S.A. 5:12-69(c).

(b)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking Jackpot Payouts in the Form of an Annuity New Rule: N.J.A.C. 19:45-1.40C

Petitioners: Bally's Park Place, Inc. and GNOC Corp.
Authority: N.J.S.A. 5:12-69(c), N.J.S.A. 52:14B-4(f).

Take notice that on May 29, 1990, petitioners filed a joint petition with the Casino Control Commission requesting a new rule, N.J.A.C. 19:45-1.40C, concerning jackpot payments in the form of an annuity.

Specifically, petitioners request a new rule which would permit casino licensees to operate a multi-casino progressive slot system offering annuity jackpots without creating a trust fund or purchasing annuity contracts to finance the jackpots as required in N.J.A.C. 19:45-1.40B. Instead, petitioners' requested new rule would allow casinos to purchase standby letters of credit to ensure that winning patrons receive the annuity jackpot payments when due. Petitioners' new rule would apply only to casino licensees which are under common ownership and which own and control all of the gaming equipment utilized in offering the annuity jackpot.

The Commission notes that there is already a rule codified as N.J.A.C. 19:45-1.40C. Petitioners' requested proposal would therefore require the recodification of the existing 19:45-1.40C as 19:45-1.40D, and the existing 19:45-1.40D as 19:45-1.40E (see 22 N.J.R. 624(a), 22 N.J.R. 841(a), 22 N.J.R. 1381(a)).

After due notice, this petition will be considered by the Casino Control Commission in accordance with N.J.S.A. 5:12-69(c).

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 June 4, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MAY 21, 1990

NEXT UPDATE: SUPPLEMENT JUNE 18, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	Scheduling of special education hearing	22 N.J.R. 1295(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
Most recent update to Title 1: TRANSMITTAL 1990-3 (supplement May 21, 1990)				
AGRICULTURE—TITLE 2				
2:52-6, 7	Milk supply and sale	22 N.J.R. 1629(a)	R.1990 d.355	22 N.J.R. 2138(a)
2:53-3, 4, 6, 7	Milk supply and sale	22 N.J.R. 1629(a)	R.1990 d.355	22 N.J.R. 2138(a)
2:69-1.11	Commercial values of primary plant nutrients	22 N.J.R. 1295(b)	R.1990 d.353	22 N.J.R. 2140(a)
2:70-1	Classification of liming materials	22 N.J.R. 1411(a)		
2:71-2.2–2.6	Jersey Fresh Quality Grading Program	22 N.J.R. 1296(a)	R.1990 d.354	22 N.J.R. 2140(b)
2:71-2.28, 2.29, 2.31	Fruits and vegetables: fees for inspection and grading	22 N.J.R. 1242(c)	R.1990 d.318	22 N.J.R. 1914(a)
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)		
2:90	State Soil Conservation Committee rules	22 N.J.R. 1299(a)	R.1990 d.356	22 N.J.R. 2142(a)
Most recent update to Title 2: TRANSMITTAL 1990-4 (supplement May 21, 1990)				
BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:16-2.3	Pawnbrokers' sales of unredeemed pledges at public auction	22 N.J.R. 1015(a)	R.1990 d.302	22 N.J.R. 1914(b)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:41-7.4	Temporary storage of human remains by cemetery company	22 N.J.R. 1185(a)	R.1990 d.357	22 N.J.R. 2142(b)
Most recent update to Title 3: TRANSMITTAL 1990-3 (supplement May 21, 1990)				
CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)				
PERSONNEL—TITLE 4A				
4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)	R.1990 d.308	22 N.J.R. 1915(a)
4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)	R.1990 d.346	22 N.J.R. 2143(a)
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)		
4A:8-2.4	Family leave	22 N.J.R. 1300(b)		
Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)				

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)		
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12–4.15, 4.21, 4.22, 4.24–4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	R.1990 d.325	22 N.J.R. 2001(a)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)		
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)	Expired	
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:23-9.5	Uniform Construction Code: records retention by code office	22 N.J.R. 1455(a)		
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:26-2.2	Planned real estate development full disclosure: registration exemptions	22 N.J.R. 1872(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)	R.1990 d.275	22 N.J.R. 1720(a)
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)	R.1990 d.274	22 N.J.R. 1720(b)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:70-6.3	Congregate Housing Services Program: income and service subsidies	22 N.J.R. 1970(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)	R.1990 d.282	22 N.J.R. 1720(c)
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		
5:91-1.2, 4.5, 6.2, 7.1–7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)	Expired	
5:92-8.2	Council on Affordable Housing: administrative correction to adoption notice	_____	_____	22 N.J.R. 2143(b)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)	R.1990 d.316	22 N.J.R. 1926(a)

Most recent update to Title 5: TRANSMITTAL 1990-5 (supplement May 21, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:2	Military leave for public employee members of National Guard	22 N.J.R. 1185(b)	R.1990 d.309	22 N.J.R. 1935(a)
	Most recent update to Title 5A: TRANSMITTAL 1990-1 (supplement April 16, 1990)			
EDUCATION—TITLE 6				
6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:3-2.1, 2.2, 2.5–2.8	Pupil records	22 N.J.R. 1302(a)		
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:20	School business services	22 N.J.R. 1246(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)		
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5–2.9, 3.3–3.7, 3.9, 4.1, 4.2, 4.4–4.8, 5.1, 5.2, 6.1–6.5, 7.1, 7.4, 8.1, 8.4–8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)		
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)		
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)		
	Most recent update to Title 6: TRANSMITTAL 1990-4 (supplement May 21, 1990)			
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)		
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)	R.1990 d.343	22 N.J.R. 2143(c)
7:1E	Discharges of petroleum and other hazardous substances	22 N.J.R. 1651(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)	R.1990 d.292	22 N.J.R. 1743(a)
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	22 N.J.R. 1631(a)	R.1990 d.366	22 N.J.R. 2182(b)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)	R.1990 d.294	22 N.J.R. 1755(a)
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)	R.1990 d.293	22 N.J.R. 1756(a)
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)	R.1990 d.320	22 N.J.R. 1937(b)
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)	R.1990 d.319	22 N.J.R. 1937(a)
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-2.1	Application for NJPDES permit: administrative corrections	————	————	22 N.J.R. 2001(b)
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:15-1.1, 1.5, 3.1, 3.2, 3.4, 3.5, 3.6, 3.8, 3.9, 4.1, 4.2, 5.2, 5.4, 5.6, 5.8, 5.14, 5.18, 5.19, 5.23	Statewide water quality management planning: administrative corrections	————	————	22 N.J.R. 2001(b)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:20-1	Dam safety standards	22 N.J.R. 279(a)	R.1990 d.276	22 N.J.R. 1760(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)		
7:25-7.13	Crab dredging in Atlantic Coast section: administrative correction	————	————	22 N.J.R. 2005(a)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)		
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-3A.8	Medical waste generator fees	22 N.J.R. 1478(a)	R.1990 d.358	22 N.J.R. 2145(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(a)	R.1990 d.324	22 N.J.R. 2005(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.2–23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)	R.1990 d.342	22 N.J.R. 2145(b)
7:28	Radiation protection	22 N.J.R. 890(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)		
	Most recent update to Title 7: TRANSMITTAL 1990-5 (supplement May 21, 1990)			
HEALTH—TITLE 8				
8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19	Newborn Screening Program	22 N.J.R. 733(a)	R.1990 d.289	22 N.J.R. 1764(a)
8:31B	Hospital rate setting	22 N.J.R. 1480(a)		
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:33	Certificate of need application and review process	22 N.J.R. 1494(a)		
8:33B-1	Extracorporeal shock wave lithotripsy services	22 N.J.R. 1495(a)		
8:33H	Long-term care facilities and services	22 N.J.R. 897(a)	R.1990 d.303	22 N.J.R. 1938(a)
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)		
8:39-25.2	Nurse staffing requirements for long-term care facilities: suspension of enforcement	————	————	22 N.J.R. 2162(a)
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)		
8:43A	Ambulatory care facilities: licensure standards	22 N.J.R. 1496(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(b)		
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)		
8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)		
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)		
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(a)		
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(a)		
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)		
8:43G-34.2, 34.10, 34.12	Surgery (advisory)	21 N.J.R. 2177(a)		
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)		
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)		
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)	R.1990 d.243	22 N.J.R. 1766(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:60	Asbestos training courses	22 N.J.R. 736(a)	R.1990 d.278	22 N.J.R. 1773(a)
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)		
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a), 22 N.J.R. 214(b), 1137(a))	21 N.J.R. 1790(a)	R.1990 d.263	22 N.J.R. 1598(a)
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products	22 N.J.R. 1214(b)	R.1990 d.347	22 N.J.R. 2162(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		

Most recent update to Title 8: TRANSMITTAL 1990-5 (supplement May 21, 1990)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2	Board administrative policies and programs	22 N.J.R. 749(a)	R.1990 d.280	22 N.J.R. 1721(a)
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-2.4	County community colleges: code of ethics	22 N.J.R. 755(a)	R.1990 d.281	22 N.J.R. 1724(a)
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)		
9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		
	Most recent update to Title 9: TRANSMITTAL 1990-4 (supplement May 21, 1990)			
HUMAN SERVICES—TITLE 10				
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)	R.1990 d.359	22 N.J.R. 2164(b)
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49	Medicaid program administration manual	22 N.J.R. 1512(a)		
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)	R.1990 d.326	22 N.J.R. 2009(a)
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)		
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(a)		
10:60	Home Care Services Manual	22 N.J.R. 1663(a)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)		
10:63-1.2–1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)		
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)	R.1990 d.327	22 N.J.R. 2009(b)
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)		
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)		
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)	R.1990 d.340	22 N.J.R. 2010(a)
10:82-5.10	Emergency Assistance: administrative correction	————	————	22 N.J.R. 1938(b)
10:85-4.6	Emergency shelter grants: administrative correction	————	————	22 N.J.R. 2171(a)
10:87-5.10, 6.15, 12.1–12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)		
10:89	Home Energy Assistance	22 N.J.R. 599(a)	R.1990 d.315	22 N.J.R. 1939(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:99	State Use Program for blind and severely handicapped	22 N.J.R. 766(a)	R.1990 d.295	22 N.J.R. 1724(b)
10:121	Adoption of children	21 N.J.R. 3047(b)	R.1990 d.344	22 N.J.R. 2172(a)
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123	Social services program for individuals and families	22 N.J.R. 1520(a)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)	R.1990 d.277	22 N.J.R. 1724(c)
10:125	Youth and Family Services capital funding program: reopening of public comment period	22 N.J.R. 766(b)		
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)		
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)	R.1990 d.328	22 N.J.R. 2019(a)
	Most recent update to Title 10: TRANSMITTAL 1990-5 (supplement May 21, 1990)			
CORRECTIONS—TITLE 10A				
10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)		
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)		
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)		
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:22-2.6	Release of confidential inmate or parolee records	22 N.J.R. 898(a)	R.1990 d.284	22 N.J.R. 1725(a)
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
	Most recent update to Title 10A: TRANSMITTAL 1990-5 (supplement May 21, 1990)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
INSURANCE—TITLE 11				
11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-20.12, 22.4	Cancellation and nonrenewal of commercial policies	22 N.J.R. 1225(b)	R.1990 d.321	22 N.J.R. 1940(a)
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-31.5, App.	Private passenger automobile insurers: annual Financial Data Report	22 N.J.R. 1026(a)	R.1990 d.290	22 N.J.R. 1725(b)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)		
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)		
11:10	Hospital/medical-dental services	22 N.J.R. 1691(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		

Most recent update to Title 11: TRANSMITTAL 1990-4 (supplement April 16, 1990)

LABOR—TITLE 12				
12:15-1	Unemployment compensation and temporary disability insurance	22 N.J.R. 1895(b)		
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)	R.1990 d.337	22 N.J.R. 2020(a)
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:120	Asbestos training courses	22 N.J.R. 736(a)	R.1990 d.278	22 N.J.R. 1773(a)
12:190-3.15	Explosives: administrative correction concerning recordkeeping by permit holders	———	———	22 N.J.R. 2022(a)
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)		
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)	R.1990 d.338	22 N.J.R. 2023(a)
	Most recent update to Title 12: TRANSMITTAL 1990-4 (supplement May 21, 1990)			
COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)	R.1990 d.350	22 N.J.R. 2173(a)
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)	R.1990 d.351	22 N.J.R. 2176(a)
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)	R.1990 d.352	22 N.J.R. 2178(a)
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)	R.1990 d.334	22 N.J.R. 2026(a)
	Most recent update to Title 12A: TRANSMITTAL 1990-1 (supplement April 16, 1990)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)		
13:2	Alcoholic beverage control	22 N.J.R. 1811(a)		
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)		
13:13	Discrimination on the basis of handicap	22 N.J.R. 1436(a)	R.1990 d.360	22 N.J.R. 2181(a)
13:20-40.1	Motor vehicle registration: reflectorized plates fee	22 N.J.R. 1230(b)	R.1990 d.322	22 N.J.R. 1940(b)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)		
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)	R.1990 d.341	22 N.J.R. 2181(b)
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)	R.1990 d.312	22 N.J.R. 1940(c)
13:29	Board of Accountancy rules	22 N.J.R. 1042(a)	R.1990 d.314	22 N.J.R. 1940(d)
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.10	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)	R.1990 d.311	22 N.J.R. 1941(a)
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)	R.1990 d.291	22 N.J.R. 1738(a)
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)		
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)	R.1990 d.279	22 N.J.R. 1739(a)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)		
13:45B-6.1	Private employment agencies and personnel services firms: license, registration, and other fees	22 N.J.R. 906(a)	R.1990 d.317	22 N.J.R. 1941(b)
13:45B-6.1	Private employment agencies and personnel services forms: administrative correction regarding license fees	———	———	22 N.J.R. 2182(a)
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)		
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)		
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)		
13:59-1	Criminal history checks for non-criminal matters	22 N.J.R. 1869(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)		
	Most recent update to Title 13: TRANSMITTAL 1990-4 (supplement May 21, 1990)			
PUBLIC UTILITIES—TITLE 14				
14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-4.11	Meter tampering: extension of comment period	22 N.J.R. 327(b)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)		
	Most recent update to Title 14: TRANSMITTAL 1990-2 (supplement March 19, 1990)			
ENERGY—TITLE 14A				
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		
	Most recent update to Title 14A: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
STATE—TITLE 15				
	Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)			
PUBLIC ADVOCATE—TITLE 15A				
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		
15A:2-1.2	Petitions for rulemaking: extension of comment period	22 N.J.R. 1694(a)		
	Most recent update to Title 15A: TRANSMITTAL 1990-2 (supplement April 16, 1990)			
TRANSPORTATION—TITLE 16				
16:13	Rural Secondary Road System Aid	22 N.J.R. 1989(a)		
16:21	State aid to counties and municipalities	22 N.J.R. 1896(a)		
16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)	R.1990 d.330	22 N.J.R. 2028(a)
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)	R.1990 d.232	22 N.J.R. 1379(a)
16:28-1.38	Speed limit zones along Route 57 in Mansfield Township: administrative correction	———	———	22 N.J.R. 1942(a)
16:28-1.41, 1.55, 1.69, 1.132	Speed limit zones along U.S. 9 in Cape May County, Route 54 in Atlantic County, U.S. 130 in Camden County, and Route 47 in Cumberland, Gloucester and Camden counties	22 N.J.R. 1694(b)		
16:28-1.55, 1.104, 1.119	Speed limit zones along Routes 54 in Atlantic County, 26 in Middlesex County, and 83 in Cape May County	22 N.J.R. 1060(a)	R.1990 d.285	22 N.J.R. 1739(b)
16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)	R.1990 d.331	22 N.J.R. 2030(a)
16:28-1.80, 1.86	Speed limit zones along Routes 172 and 171 in Middlesex County	22 N.J.R. 1239(a)	R.1990 d.297	22 N.J.R. 1942(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.94	Speed limit zones along Route 10 in Morris and Essex counties	22 N.J.R. 1697(a)		
16:28A-1.7, 1.11, 1.65	Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	22 N.J.R. 1897(a)		
16:28A-1.21, 1.33	No stopping or standing zones along U.S. 30 in Berlin and Route 47 in Franklin Township	22 N.J.R. 1239(b)	R.1990 d.298	22 N.J.R. 1943(a)
16:28A-1.25	Restricted parking along Route 35 in Red Bank	22 N.J.R. 1240(a)	R.1990 d.299	22 N.J.R. 1943(b)
16:28A-1.33	Restricted stopping along Route 47 in Dennis Township	22 N.J.R. 1536(a)		
16:28A-1.33, 1.41, 1.55	Restricted parking and stopping along Routes 47 in Vineland, 77 in Bridgeton, and U.S. 202 in Morris Plains	22 N.J.R. 1990(a)		
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	22 N.J.R. 1536(b)		
16:28A-1.61	Bus stop zones along U.S. 9W in Alpine	22 N.J.R. 1241(a)	R.1990 d.300	22 N.J.R. 1943(c)
16:30-3.6	Shoulder lane usage along U.S. 1 in West Windsor and Plainsboro	22 N.J.R. 1345(a)	R.1990 d.332	22 N.J.R. 2031(a)
16:30-3.6	Shoulder lane usage along U.S. 1: administrative correction to adoption notice	———	———	22 N.J.R. 2183(a)
16:30-10.11	Midblock crosswalk along Route 49 in Fairfield Township	22 N.J.R. 1242(a)	R.1990 d.301	22 N.J.R. 1944(a)
16:30-10.12	Mid-block crosswalks along Route 47 in Glassboro and Deptford	22 N.J.R. 1992(a)		
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:41B	Newspaper boxes on State highways	22 N.J.R. 1346(a)	R.1990 d.333	22 N.J.R. 2032(a)
16:43	Junkyards adjacent to State highway systems	22 N.J.R. 1061(a)	R.1990 d.286	22 N.J.R. 1740(a)
16:44-8.1, 8.2, 8.3	Construction services: vendor ethical standards	22 N.J.R. 1898(a)		
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		
16:53D-1	Regular route autobus carriers: zone of rate freedom	22 N.J.R. 1993(a)		
16:62-7.2	Air safety zone for Somerset Airport	22 N.J.R. 1899(a)		

Most recent update to Title 16: TRANSMITTAL 1990-5 (supplement May 21, 1990)

TREASURY-GENERAL—TITLE 17

17:1-1.19, 1.21, 1.22, 1.23, 1.24	Pensioners' Group Health Insurance Plan	22 N.J.R. 1347(b)		
17:1-12.7	Police and Firemen's Retirement System: entry age limit and transfers	22 N.J.R. 1454(a)		
17:2-3.2, 6.24	Public Employees' Retirement System: computation of final compensation	22 N.J.R. 1348(a)		
17:3-6.16	Teachers' Pension and Annuity Fund: mandatory retirement	22 N.J.R. 329(a)	R.1990 d.283	22 N.J.R. 1740(b)
17:4	Police and Firemen's Retirement System	22 N.J.R. 908(a)	R.1990 d.329	22 N.J.R. 2032(b)
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:8	Supplemental Annuity Collective Trust program	22 N.J.R. 1900(a)		
17:9-4.2	State Health Benefits Program: "full-time employee"	22 N.J.R. 1903(a)		
17:9-6.7	Police and Firemen's and State Police retirement systems: health insurance coverage for accidental death benefit recipients	22 N.J.R. 1903(b)		
17:16-7.2	State pension fund investments: corporate obligations	22 N.J.R. 1042(b)	R.1990 d.304	22 N.J.R. 1944(b)
17:16-27.1	State funds investment: certificates of deposit	22 N.J.R. 1349(a)	R.1990 d.335	22 N.J.R. 2032(c)
17:16-43	State pension fund investments: mortgage-backed passthrough securities	22 N.J.R. 1043(a)	R.1990 d.305	22 N.J.R. 1945(a)
17:16-50	State pension fund investments: U.S. Treasury futures	22 N.J.R. 1043(b)	R.1990 d.306	22 N.J.R. 1945(b)
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:16-52	State pension fund investments: use of covered put options	22 N.J.R. 1044(b)	R.1990 d.307	22 N.J.R. 1945(c)
17:28	Public Employee Charitable Fund-Raising Campaign	22 N.J.R. 1994(a)		
17:32-3, 4	Municipal and county cross-acceptance of State Development and Redevelopment Plan	22 N.J.R. 621(c)	R.1990 d.336	22 N.J.R. 2033(a)

Most recent update to Title 17: TRANSMITTAL 1990-3 (supplement April 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TREASURY-TAXATION—TITLE 18				
18:1-1.3–1.8	Division of Taxation: procedures and operations	22 N.J.R. 159(a)	R.1990 d.288	22 N.J.R. 1740(c)
18:1-1.8	Administrative hearings	22 N.J.R. 1995(a)		
18:1-2	Division of Taxation: petitions for rules	22 N.J.R. 160(a)	R.1990 d.287	22 N.J.R. 1742(a)
18:5-8.10	Administrative hearings	22 N.J.R. 1995(a)		
18:7-1.15, 3.8	Corporation Business Tax: investment companies	22 N.J.R. 1904(a)		
18:7-3.13	Corporation Business Tax: application of overpayment to estimated tax	22 N.J.R. 1045(a)	R.1990 d.296	22 N.J.R. 1946(a)
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:7-13.2	Administrative hearings	22 N.J.R. 1995(a)		
18:8-5.1, 5.2	Administrative hearings	22 N.J.R. 1995(a)		
18:9-6.7–6.10	Administrative hearings	22 N.J.R. 1995(a)		
18:12A-1.14	Local property tax revaluation and reassessment	22 N.J.R. 1350(a)	R.1990 d.339	22 N.J.R. 2183(b)
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)		
18:23A-1	Tax maps	22 N.J.R. 1997(a)		
18:37	Spill Compensation and Control Tax	22 N.J.R. 1908(a)		
	Most recent update to Title 18: TRANSMITTAL 1990-2 (supplement March 19, 1990)			
TITLE 19—OTHER AGENCIES				
19:4	Hackensack Meadowlands District zoning rules: administrative corrections	_____	_____	22 N.J.R. 2184(a)
19:4-6.28	Hackensack Meadowlands Development Commission: rezone sites in Ridgefield	22 N.J.R. 1699(b)		
19:8-3.2	Toll-free passage on Garden State Parkway: administrative correction	_____	_____	22 N.J.R. 2187(a)
19:11-6.1, 7.2, 7.3	Public Employment Relations Commission: hearing transcripts	22 N.J.R. 1910(a)		
19:14-6.5, 7.2, 7.3	Public Employment Relations Commission: hearing transcripts	22 N.J.R. 1910(a)		
19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:30	Economic Development Authority: organization and procedure	22 N.J.R. 1537(a)		
19:31	Economic Development Authority: assistance programs	22 N.J.R. 1545(a)		
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Fee schedule for review of applications	22 N.J.R. 1999(a)		
	Most recent update to Title 19: TRANSMITTAL 1990-5 (supplement May 21, 1990)			
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:41-1.3	Casino employees license display	22 N.J.R. 1911(a)		
19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:45-1.1, 1.26, 1.26A	Redemption of checks	22 N.J.R. 1911(b)		
19:45-1.12	Gaming supervision	21 N.J.R. 3080(a)	R.1990 d.323	22 N.J.R. 2039(a)
19:45-1.24A	Wire transfer of funds	22 N.J.R. 1700(a)		
19:45-1.27	Bank verification services	22 N.J.R. 162(a)		
19:47-1.3	"Don't come bet" in craps	21 N.J.R. 3869(b)	R.1990 d.310	22 N.J.R. 1946(b)
	Most recent update to Title 19K: TRANSMITTAL 1990-5 (supplement May 21, 1990)			